CHAPTER 96

South Carolina Solid Waste Policy and Management Act

ARTICLE 1

Solid Waste Policy; Specific Wastes

**SECTION 44‑96‑10.** Short title.

 This chapter is known and may be cited as the “South Carolina Solid Waste Policy and Management Act of 1991”.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

For regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

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

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.

NOTES OF DECISIONS

County ordinances 1

1. County ordinances

Ordinance regulating flow of solid waste within county was not expressly preempted by South Carolina Solid Waste Policy and Management Act (SWPMA) which imposed a coordinated, statewide regulatory scheme overseen at the state level; although language of SWPMA favored regional approaches, SWPMA was laden with references to counties’ involvement in management and regulation of solid waste, and SWPMA specifically stated that nothing in the act should be construed to require a county to participate in a regional plan. Sandlands C & D, LLC v. County of Horry (S.C. 2011) 394 S.C. 451, 716 S.E.2d 280. Environmental Law 352

**SECTION 44‑96‑20.** Findings; purposes.

 (A) The General Assembly finds that:

 (1) Over three million eight hundred thousand tons of solid waste are generated in South Carolina each year.

 (2) On the average, each South Carolinian currently produces approximately four and one‑half pounds of solid waste each day.

 (3) Unless steps are taken to reduce or recycle the amount of waste produced in this State, over five million tons of solid waste will be generated annually in South Carolina by the year 2000.

 (4) Approximately eighty percent of the solid waste generated in South Carolina is landfilled.

 (5) There are currently some seventy‑nine permitted sanitary landfills in this State.

 (6) Most of the permitted landfill capacity will be used within the next ten years. Twenty‑three of forty‑six counties have ten years or less of landfill space remaining.

 (7) Siting of solid waste facilities is becoming increasingly difficult due to the opposition of local residents.

 (8) The costs of solid waste management will increase significantly due to decreased landfill capacity and more stringent federal requirements for solid waste management facilities. More stringent federal and state requirements may also force a number of existing solid waste landfills to close.

 (9) Insufficient and improper methods of managing solid waste can create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, and create public nuisances.

 (10) The economic growth and population growth of our State have required increased industrial production which, together with related commercial and agricultural operations to meet our needs, have resulted in increased amounts of discarded materials.

 (11) The continuing technological progress and improvements in methods of manufacturing, packaging, and marketing of consumer products have resulted in an increasing amount of material discarded by the purchasers of these products, necessitating a statewide approach to assist local governments in improving solid waste management practices and to promote more efficient methods of solid waste management.

 (12) The failure or inability to economically recover material and energy resources from solid waste results in the unnecessary waste and depletion of our natural resources, such that maximum resource recovery from solid waste and maximum recycling and reuse of these resources must be considered goals of the State.

 (13) A coordinated statewide solid waste management program is needed to protect public health and safety, protect and preserve the quality of the environment, and conserve and recycle natural resources.

 (14) The statewide solid waste management program should be implemented through the preparation of a state solid waste management plan and through the preparation by local governments of solid waste management plans consistent with the state plan and with this chapter.

 (B) It is the purpose of this article to:

 (1) protect the public health and safety, protect and preserve the environment of this State, and recover resources which have the potential for further usefulness by providing for, in the most environmentally safe, economically feasible and cost‑effective manner, the storage, collection, transport, separation, treatment, processing, recycling, and disposal of solid waste;

 (2) establish and maintain a cooperative state program for providing planning assistance, technical assistance, and financial assistance to local governments for solid waste management;

 (3) require local governments to adequately plan for and provide efficient, environmentally acceptable solid waste management services and programs;

 (4) promote the establishment of resource recovery systems that preserve and enhance the quality of air, water, and land resources;

 (5) ensure that solid waste is transported, stored, treated, processed, and disposed of in a manner adequate to protect human health, safety, and welfare and the environment;

 (6) promote the reduction, recycling, reuse, and treatment of solid waste, and the recycling of materials which would otherwise be disposed of as solid waste;

 (7) encourage local governments to utilize all means reasonably available to promote efficient and proper methods of managing solid waste, which may include contracting with private entities to provide management services or operate management facilities on behalf of the local government, when it is cost effective to do so;

 (8) promote the education of the general public and the training of solid waste professionals to reduce the generation of solid waste, to ensure proper disposal of solid waste, and to encourage recycling;

 (9) encourage the development of waste reduction and recycling programs through planning assistance, technical assistance, grants, and other incentives;

 (10) encourage the development of the state’s recycling industries by promoting the successful development of markets for recycled items and by promoting the acceleration and advancement of the technology used in manufacturing processes that use recycled items;

 (11) establish a leadership role for the State in recycling efforts by requiring the General Assembly, the Governor’s Office, the Judiciary, and all state agencies to separate solid waste for recycling and by granting a preference in state procurement policies to products with recycled content;

 (12) require counties to develop and implement source separation, resource recovery, or recycling programs, or all of the above, or enhance existing programs so that valuable materials may be returned to productive use, energy and natural resources conserved, and the useful life of solid waste management facilities extended;

 (13) require local governments and state agencies to determine the full cost of providing storage, collection, transport, separation, treatment, recycling, and disposal of solid waste in an environmentally safe manner; and

 (14) encourage local governments to pursue a regional approach to solid waste management.

HISTORY: 1991 Act No. 63, Section 1.

**SECTION 44‑96‑30.** Applicability.

 This chapter does not apply to hazardous waste regulated under the South Carolina Hazardous Waste Management Act, to infectious waste regulated under the South Carolina Infectious Waste Management Act, to radioactive waste regulated under the South Carolina Atomic Energy and Radiation Control Act, to the Southeast Interstate Radioactive Waste Compact, or to 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.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Application of definition of “solid waste” as defined in this section to the crime of dumping litter on private or public property, see Section 16‑11‑700.

South Carolina Atomic Energy and Radiation Control Act, see Sections 13‑7‑10 et seq.

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

South Carolina Infectious Waste Management Act, see Sections 44‑93‑10 et seq.

South Carolina Mining Act, see Sections 48‑20‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 116, Littering in Waters.

**SECTION 44‑96‑40.** Definitions.

 As used in this chapter:

 (1) “Beverage” means beer or malt beverages, mineral water, soda water, and similar carbonated soft drinks in liquid form, and all other liquids intended for human consumption, except for liquids marketed for and intended for consumption for medicinal purposes.

 (2) “Beverage container” means the individual, separate, and sealed glass, aluminum or other metal, or plastic bottle, can, jar, or carton containing beverage intended for human consumption.

 (3) “Collection” means the act of picking up solid waste materials from homes, businesses, governmental agencies, institutions, or industrial sites.

 (4) “Compost” means the humus‑like product of the process of composting waste.

 (5) “Composting facility” means any facility used to provide aerobic, thermophilic decomposition of the solid organic constituents of solid waste to produce a stable, humus‑like material.

 (6) “Construction and demolition debris” means discarded solid wastes resulting from construction, remodeling, repair and demolition of structures, road building, and land clearing. The wastes include, but are not limited to, bricks, concrete, and other masonry materials, soil, rock, lumber, road spoils, paving material, and tree and brush stumps, but does not include solid waste from agricultural or silvicultural operations.

 (7) “County solid waste management plan” means a solid waste management plan prepared, approved, and submitted by a single county pursuant to Section 44‑96‑80.

 (8) “Degradable”, with respect to any material, means that the material, after being discarded, is capable of decomposing to components other than heavy metals or other toxic substances after exposure to bacteria, light, or outdoor elements.

 (9) “Department” means the South Carolina Department of Health and Environmental Control.

 (10) “Discharge” means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of solid waste, including leachate, into or on any land or water.

 (11) “Disposal” means the discharge, deposition, injection, dumping, spilling or placing of any solid waste into or on any land or water, so that the substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

 (12) “Energy recovery” means the beneficial use, reuse, recycling, or reclamation of solid waste through the use of the waste to recover energy therefrom.

 (13) “Facility” means all contiguous land, structures, other appurtenances and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, including, but not limited to, one or more landfills, surface impoundments, or combination thereof.

 (14) “For hire motor carrier” means a company operating a fleet of vehicles used exclusively in the transportation of freight for compensation.

 (15) “Generation” means the act or process of producing solid waste.

 (16) “Groundwater” means water beneath the land surface in the saturated zone.

 (17) “Hazardous waste” has the meaning provided in Section 44‑56‑20 of the South Carolina Hazardous Waste Management Act.

 (18) “Incineration” means the use of controlled flame combustion to thermally break down solid, liquid, or gaseous combustible wastes, producing residue that contains little or no combustible materials.

 (19) “Industrial waste” means solid waste that results from industrial processes including, but not limited to, factories and treatment plants.

 (20) “Infectious waste” has the meaning given in Section 44‑93‑20 of the South Carolina Infectious Waste Management Act.

 (21) “Land‑clearing debris” means solid waste which is generated solely from land‑clearing activities, but does not include solid waste from agricultural or silvicultural operations.

 (22) “Landfill” means a disposal facility or part of a facility where solid waste is placed in or on land, and which is not a land treatment facility, a surface impoundment, or an injection well.

 (23) “Lead‑acid battery” means any battery that consists of lead and sulfuric acid, is used as a power source, and has a capacity of six volts or more, except that this term shall not include a small sealed lead‑acid battery which means a lead‑acid battery weighing twenty‑five pounds or less, used in non‑vehicular, non‑SLI (start lighting ignition) applications.

 (24) “Lead‑acid battery collection facility” means a facility authorized by the Department of Health and Environmental Control to accept lead‑acid batteries from the public for temporary storage prior to recycling.

 (25) “Local government” means a county, any municipality located wholly or partly within the county, and any other political subdivision located wholly or partly within the county when such political subdivision provides solid waste management services.

 (26) “Materials Recovery Facility” means a solid waste management facility that provides for the extraction from solid waste of recoverable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

 (27) “Motor oil” and “similar lubricants” mean the fraction of crude oil or synthetic oil that is classified for use in the crankcase, transmission, gearbox, or differential of an internal combustion engine, including automobiles, buses, trucks, lawn mowers and other household power equipment, industrial machinery, and other mechanical devices that derive their power from internal combustion engines. The terms include re‑refined oil but do not include heavy greases and specialty industrial or machine oils, such as spindle oils, cutting oils, steam cylinder oils, industrial oils, electrical insulating oils, or solvents which are not sold at retail in this State.

 (28) “Municipal solid waste landfill” means any sanitary landfill or landfill unit, publicly or privately owned, that receives household waste. The landfill may also receive other types of solid waste, such as commercial waste, nonhazardous sludge, and industrial solid waste.

 (29) “Office” means the Office of Solid Waste Reduction and Recycling established within the Department of Health and Environmental Control pursuant to Section 44‑96‑110.

 (30) “Owner/operator” means the person who owns the land on which a solid waste management facility is located or the person who is responsible for the overall operation of the facility, or both.

 (31) “Person” means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity.

 (32) “Plastic bottle” means a plastic container intended for single use, which has a neck that is smaller than the body of the container, accepts a screw‑type, snap cap, or other closure, and has a capacity of sixteen fluid ounces or more, but less than five gallons.

 (33) “Plastic container” means any container having a wall thickness of not less than one one‑hundredth of an inch used to contain beverages, foods, or nonfood products and composed of synthetic polymeric materials.

 (34) “Recovered materials” means those materials which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing. At least seventy‑five percent by weight of the materials received during the previous calendar year must be used, reused, recycled, or transferred to a different site for use, reuse, or recycling in order to qualify as a recovered material.

 (35) “Recovered Materials Processing Facility” means a facility engaged solely in the recycling, storage, processing, and resale or reuse of recovered materials. The term does not include a solid waste processing facility; however, solid waste generated by a recovered material processing facility is subject to all applicable laws and regulations relating to the solid waste. The term does not include facilities which thermally treat solid waste principally for volume reduction or for reduction of contaminants. Records must be kept documenting the amount by weight of materials that are received at the facility and used, reused, or recycled or transferred to another site for use, reuse, or recycling. Records must also be kept which clearly document the location of final disposition of the materials. Records must be made available for inspection by department personnel upon request.

 (36) “Recyclable material” means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

 (37) “Recycling” means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products (including composting).

 (38) “Region” means a group of counties in South Carolina which is planning to or has prepared, approved, and submitted a regional solid waste management plan to the department pursuant to Section 44‑96‑80.

 (39) “Regional solid waste management plan” means a solid waste management plan prepared, approved, and submitted by a group of counties in South Carolina pursuant to Section 44‑96‑80.

 (40) “Resource recovery” means the process of obtaining material or energy resources from solid waste which no longer has any useful life in its present form and preparing the waste for recycling.

 (41) “Resource recovery facility” means a combination of structures, machinery, or devices utilized to separate, process, modify, convert, treat, or prepare collected solid waste so that component materials or substances or recoverable resources may be used as a raw material or energy source.

 (42) “Reuse” means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

 (43) “Rigid plastic container” means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more, but less than five gallons.

 (44) “Sanitary landfill” means a land disposal site employing an engineered method of disposing of solid waste on land in a manner that minimizes environmental hazards and meets the design and operation requirements of this chapter.

 (45) “Secondary lead smelter” means a facility which produces metallic lead from various forms of lead scrap, including used lead‑acid batteries.

 (46) “Solid waste” means any garbage, refuse, or sludge from a waste treatment facility, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semi‑solid, 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 1954, 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. For the purposes of this chapter, this term excludes steel slag that is a product of the electric arc furnace steelmaking process; provided, that such steel slag is sold and distributed in the stream of commerce for consumption, use, or further processing into another desired commodity and is managed as an item of commercial value in a controlled manner and not as a discarded material or in a manner constituting disposal.

 (47) “Solid waste disposal facility” means any solid waste management facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

 (48) “Solid waste management” means the systematic control of the generation, collection, source separation, storage, transportation, treatment, recovery, and disposal of solid waste.

 (49) “Solid waste management facility” means any solid waste disposal area, volume reduction plant, transfer station, or other facility, the purpose of which is the storage, collection, transportation, treatment, utilization, processing, recycling, or disposal, or any combination thereof, of solid waste. The term does not include a recovered materials processing facility or facilities which use or ship recovered materials, except that portion of the facilities which is managing solid waste.

 (50) “Solid Waste Management Grant Program” means the grant program established and administered by the Office of Solid Waste Reduction and Recycling pursuant to Section 44‑96‑130.

 (51) “Solid Waste Management Trust Fund” means the trust fund established within the Department of Health and Environmental Control pursuant to Section 44‑96‑120.

 (52) “Source reduction” means the reduction of solid waste before it enters the solid waste stream by methods such as product redesign or reduced packaging.

 (53) “Source separation” means the act or process of removing a particular type of recyclable material from other waste at the point of generation or under control of the generator for the purposes of collection, disposition, and recycling.

 (54) “Specific wastes” means solid waste which requires separate management provisions, including plastics, used oil, waste tires, lead‑acid batteries, yard trash, compost, and white goods.

 (55) “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 Section 44‑96‑60.

 (56) “Storage” means the containment of solid waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such solid waste; provided, however, that storage in containers by persons of solid waste resulting from their own activities on their property, leased or rented property, if the solid waste in such containers is collected at least once a week, shall not constitute “storage” for purposes of this chapter. The term does not apply to containers provided by or under the authority of a county for the collection and temporary storage of solid waste prior to disposal.

 (57) “Surface water” means lakes, bays, sounds, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within territorial limits, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private.

 (58) “Tire” means the continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle, trailer, or motorcycle as defined in Section 56‑3‑20(2), (4), and (13). It does not include an industrial press‑on tire, with a metal or solid compound rim, which may be retooled.

 (59) “Tire retailing business” means the retail sale of tires in any quantity for any use or purpose by the purchaser other than for resale.

 (60) “Transport” means the movement of solid waste from the point of generation to any intermediate point and finally to the point of ultimate processing, treatment, storage, or disposal.

 (61) “Transporter” means a person engaged in the off‑site transportation of solid waste by air, rail, highway, or water.

 (62) “Treatment” means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport, amenable to storage, recovery, or recycling, safe for disposal, or reduced in volume or concentration.

 (63) “Used oil” means oil that has been refined from crude oil or synthetic oil and that has been used and, as a result of that use, is contaminated by physical or chemical impurities.

 (64) “Used oil collection center” means a facility which, in the course of business, accepts used oil for subsequent disposal or recycling.

 (65) “Used oil energy recovery facility” means a facility that burns more than six thousand gallons of used oil annually for energy recovery.

 (66) “Used oil recycling facility” means a facility that recycles more than six thousand gallons of used oil annually.

 (67) “Waste tire” means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

 (68)(a) “Waste tire collection facility” means a permitted facility used for the storage of waste tires or processed tires before recycling, processing, or disposal.

 (b) “Waste tire disposal facility” means a permitted facility where processed waste tires are placed on the land in a manner which constitutes disposal.

 (c) “Waste tire processing facility” means a permitted facility where equipment is used to cut, shred, burn for volume reduction, or to otherwise alter whole waste tires. The term includes mobile waste tire processing equipment.

 (d) “Waste tire recycling facility” means a permitted facility where waste tires are used as a fuel source or returned to use in the form of products or raw materials.

 (69) “Waste tire hauler” means a person engaged in the picking up or transporting of waste tires for the purpose of storage, processing, or disposal.

 (70) “Waste tire site” means an establishment, site, or place of business, without a collector or processor permit, that is maintained, operated, used, or allowed to be used for the disposal, storing, or depositing of unprocessed used tires, but does not include a truck service facility which meets the following requirements:

 (a) all vehicles serviced are owned or leased by the owner or operator of the service facility;

 (b) no more than two hundred waste tires are accumulated for a period of not more than thirty days at a time;

 (c) the facility does not accept any tires from sources other than its own; and

 (d) all waste tires are stored under a covered structure.

 (71) “Waste tire treatment site” means a permitted site used to produce or manufacture usable materials, including fuel, from waste tires.

 (72) “Waters of the State” means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction.

 (73) “White goods” include refrigerators, ranges, water heaters, freezers, dishwashers, trash compactors, washers, dryers, air conditioners, and commercial large appliances.

 (74) “Yard trash” means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

HISTORY: 1991 Act No. 63, Section 1; 1992 Act No. 449, Part V Section 4; 1992 Act No. 450, Section 3; 2000 Act No. 405, Section 1; 2015 Act No. 36 (H.3575), Section 1, eff June 1, 2015.

CROSS REFERENCES

Application of these definitions to provisions governing solid waste management, see Section 44‑96‑250.

Atomic Energy and Radiation Control Act, see Sections 13‑7‑10 et seq.

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

Infectious Waste Management Act, see Sections 44‑93‑10 et seq.

Pollution Control Act of South Carolina, see Sections 48‑1‑10 et seq.

South Carolina Mining Act, see Sections 48‑20‑10 et seq.

Federal Aspects

The Atomic Energy Act of 1954 is codified in 42 U.S.C.A. Sections 2011 et seq.

Provisions governing Federal Water Pollution Control Act NPDES permits may be found in 33 U.S.C.A. Sections 1342 et seq.

**SECTION 44‑96‑50.** State solid waste management policy and goals.

 (A) It is the policy of this State to promote appropriate methods of solid waste management prior to utilizing the options of disposal in landfills, treatment or disposal by incineration or other treatment, storage, or disposal methods, and to assist local government with solid waste management functions. In furtherance of this state policy, it shall be preferable to reduce the production and generation of waste at the source and to promote the reuse and recycling of materials rather than the treatment, storage, or disposal of wastes by landfill disposal, incineration, or other management methods designed to handle waste after it enters the waste stream.

 It is the policy of this State that the methods of management of solid waste shall protect public health, safety, and the environment by employing the best available technology which is economically feasible for the control of pollution and the release of hazardous constituents into the environment. Such methods shall be implemented in a manner to maximize the reduction of solid waste through source reduction, reuse, and recycling.

 (B) It is the policy of this State to encourage research by private entities, by state agencies, and by state‑supported educational institutions into the reduction of solid waste production and generation.

 (C) It is the policy of this State to encourage a regional approach to solid waste management.

 (D) It is the goal of this State to reduce, on a statewide per capita basis, the amount of municipal solid waste being generated to 3.5 pounds per day not later than June 30, 2005.

 (E) It is the goal of this State to recycle, on a statewide basis, at least thirty‑five percent, calculated by weight, of the municipal solid waste stream generated in this State no later than June 30, 2005.

 (F) It is the goal of this State to continue setting new and revised solid waste recycling and waste reduction goals after June 30, 2005. These goals must be established in a manner so as to attempt to further reduce the flow of solid waste being disposed of in municipal solid waste landfills and solid waste incinerators.

 (G) It is the policy of this State that each county or region make every effort to meet, on an individual basis, the state solid waste recycling and reduction goals and that each county or region, and municipalities located therein, which meet this goal be financially rewarded by the State.

 (H) For the purposes of Sections 44‑96‑50 and 44‑96‑60, “municipal solid waste” includes, but is not limited to, wastes that are durable goods, nondurable goods, containers and packaging, food scraps, yard trimmings, and miscellaneous inorganic wastes from residential, commercial, institutional, and industrial sources including, but not limited to, appliances, automobile tires, old newspapers, clothing, disposable tableware, office and classroom paper, wood pallets, and cafeteria wastes. “Municipal solid waste” does not include solid wastes from other sources including, but not limited to, construction and demolition debris, auto bodies, municipal sludges, combustion ash, and industrial process wastes that also might be disposed of in municipal waste landfills or incinerators.

HISTORY: 1991 Act No. 63, Section 1; 2000 Act No. 405, Sections 2, 3.

Federal Aspects

Solid waste disposal, see 42 U.S.C.A. Sections 6901 et seq., 6941 et seq.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑60.** State solid waste management plan; revision of plan and annual report; State Solid Waste Advisory Council.

 (A) Not later than eighteen months after this chapter is effective, the department shall submit to the Governor and to the General Assembly a state solid waste management plan. All regulations promulgated by the department in accordance with this chapter are subject to the provisions of Chapter 23 of Title 1, the Administrative Procedures Act. The plan shall, at a minimum, include:

 (1) an inventory of the amounts and types of solid waste currently being disposed of at solid waste disposal facilities in this State, both in the municipal solid waste stream and in the industrial solid waste stream;

 (2) an estimate of solid waste which will require disposal at solid waste disposal facilities in this State projected for the twenty‑year period following this chapter’s effective date;

 (3) an estimate of the current capacity in this State to manage solid waste, including an identification of each solid waste management facility and a projection of its remaining useful life;

 (4) an evaluation of current solid waste management practices, including without limitation waste reduction, recycling, incineration, storage, processing, disposal, and export;

 (5) an analysis of the types of solid waste facilities which will be needed to manage the state’s solid waste during the projected twenty‑year period;

 (6) a description of procedures by which the State may facilitate the siting, construction, and operation of new facilities needed to manage the state’s solid waste over the projected twenty‑year period;

 (7) an evaluation of existing local government solid waste management programs, including recommendations, if necessary, on ways to improve such programs;

 (8) a description of the means by which the State shall achieve its statewide solid waste recycling and reduction goals; including recommendations on which categories of solid waste materials should be recycled;

 (9) procedures and requirements for meeting state goals for waste reduction and recycling, including composting, and objectives for waste‑to‑energy implementation and sanitary landfilling;

 (10) a description of existing state programs and recommendations for new programs or activities that will be needed to assist local governments in meeting their responsibilities under this article, whether by financial, technical, or other forms of aid;

 (11) procedures by which local governments and regions may request assistance from the department;

 (12) procedures for encouraging and ensuring cooperative efforts in solid waste management by the State, local governments, and private industry, including a description of the means by which the State may encourage local governments to pursue a regional approach to solid waste management;

 (13) minimum standards and procedures developed after consulting with local government officials which must be met by a county or region in its solid waste management plan, including the procedures which will be used to provide for input from private industry and from private citizens;

 (14) a comprehensive analysis of the amounts and types of hazardous waste currently being disposed of in municipal solid waste landfills and recommendations regarding more appropriate means of managing such waste;

 (15) a description of the public education programs to be developed in consultation with local governments, other state agencies, and business and industry organizations to inform the public of solid waste management practices in this State and the need for and the benefits of recycling, reduction, and other methods of managing the solid waste generated in this State;

 (16) a description of the program for the certification of operators at solid waste management facilities;

 (17) recommendations on whether to require that certain solid waste materials be made degradable and, if so, which categories of materials; and

 (18) a fiscal impact statement identifying the costs incurred by the department in preparing the state solid waste management plan and which will be incurred in carrying out all of the department’s duties and responsibilities under this chapter, including the number of new employees which may be necessary, and an estimate of the revenues which will be raised by the various fees authorized by this chapter.

 (B) After submission of the state solid waste management plan, the department shall submit to the Governor and to the General Assembly by March fifteenth of each year a comprehensive report on solid waste management in this State for the previous year. The annual report shall, at a minimum, include:

 (1) any revisions in the state solid waste management plan which the department determines are necessary;

 (2) a description and evaluation of the progress made in implementing the state solid waste management plan;

 (3) a description and evaluation of the progress made by local governments in implementing their solid waste management plans;

 (4) an inventory of the amounts and types of solid waste received, recycled, incinerated, or disposed at solid waste disposal facilities during the previous year and the methods of recycling, incineration, or disposal used including, but not limited to, paper, polystyrene, and beverage containers;

 (5) a determination of the success of the State, each county or region, and municipality, if a program is in existence in the municipality, in achieving the solid waste recycling and reduction goals established in Section 44‑96‑50;

 (6) recommendations to the Governor and to the General Assembly for improving the management of solid waste in this State; and

 (7) the number of lead‑acid batteries recycled.

 The department may establish procedures and promulgate regulations necessary to obtain recycling data. These procedures may include, but are not limited to, registration of municipal solid waste recyclers and requiring municipal solid waste recyclers to submit annual reports on the amounts, actual or estimated, and types of materials recycled and the county, when available, in which the materials were generated.

 (C) Not later than six months after this chapter is effective, there shall be established a State Solid Waste Advisory Council. The council shall consist of the following sixteen members:

 (1) twelve members appointed by the Governor which shall include one member to represent manufacturing interests; one member to represent the retail industry; two members to represent the solid waste disposal industry; one member to represent existing private recycling industry; two members to represent the general public; three members to represent county governments to be recommended by the South Carolina Association of Counties, one shall represent a county with a population of 50,000 or less, one shall represent a county with a population more than 50,000 and up to 100,000, and the final county representative shall represent a county with a population over 100,000; and two members shall represent municipalities to be recommended by the South Carolina Municipal Association. County, regional, and municipal representatives who are elected officials shall serve ex officio;

 (2) the consumer advocate or his designee;

 (3) one member to represent the Department of Health and Environmental Control;

 (4) the Secretary of Commerce or his designee; and

 (5) one member to represent the Governor.

 The members of the council in (1) above appointed after May 27, 1997, shall serve terms of four years dating from May 27, 1997, except that the member representing manufacturing interests, one member representing the solid waste disposal industry, the member representing existing private recycling industry, one member representing the general public, the member representing a county with a population of over one hundred thousand, and one municipal member must be appointed for a term of two years dating from May 27, 1997, and subsequent appointment of these members must be for a term of four years. No member appointed after May 27, 1997, may serve more than two terms. Members named in (2), (3), (4), and (5) above shall serve co‑terminus with their office or at the pleasure of the respective appointing authority. No member appointed before May 27, 1997, shall serve past May 27, 2001. Members shall promulgate regulations concerning meeting attendance. The council shall advise the department on the preparation of the state solid waste management plan, on methods of implementing the state plan on the preparation of the annual reports by the department on solid waste management and provide technical expertise regarding solid waste management grants and planning. The council shall be provided with drafts of the plan and reports and shall be given adequate opportunity to comment. The council also shall be advised on a regular basis by the department regarding the grant applications which have been accepted or denied under the Solid Waste Management Grant Program and on the status of the Solid Waste Management Trust Fund.

HISTORY: 1991 Act No. 63, Section 1; 1993 Act No. 181, Section 1151; 1994 Act No. 361, Section 8; 1997 Act No. 131, Section 1; 2000 Act No. 405, Sections 4, 5 and 20.

CROSS REFERENCES

Application to construct new solid waste management facility or to expand existing facility prior to adoption and approval of solid waste management plans pursuant to this section, see Section 44‑96‑290.

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

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Solid Waste Management Grant Program, see Section 44‑96‑130.

Solid Waste Management Trust Fund, see Section 44‑96‑120.

Federal Aspects

Solid waste disposal, see 42 U.S.C.A. Sections 6901 et seq., 6941 et seq.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑80.** County or regional solid waste management plans; local government responsibilities; local Solid Waste Advisory Councils.

 (A) Not later than fifteen months after the date on which the department submits its state solid waste management plan to the Governor and to the General Assembly, the governing body of each county, if the county intends to submit a single county plan, or the governing bodies of the counties in a region, if two or more counties intend to submit a regional plan, in cooperation with the local governments located in the county or region, shall prepare a solid waste management plan for the area within that county or region. Local governments within the county or region shall participate in the development of the county or regional plan and are required to be a part of the plan. This plan must provide for public participation and include, at a minimum, the following:

 (1) an estimate of the amount of solid waste currently disposed of at solid waste disposal facilities within that county or region and a projection of the amount of solid waste which will be disposed of at solid waste disposal facilities during the twenty‑year period following this chapter’s effective date;

 (2) an estimate of the current capacity within that county or region to manage solid waste, including identification of each solid waste management facility and a projection of its useful life;

 (3) an analysis of the existing and new solid waste facilities which will be needed to manage the solid waste generated within that county or region during the projected twenty‑year period;

 (4) an estimate of the cost of implementing the solid waste management plan within that county or region;

 (5) an estimate of the revenue which each local government or region needs and intends to make available to fund implementation of the solid waste management plan;

 (6) an estimate of the cost of siting, constructing, and bringing into operation any new facilities needed to manage solid waste within that county or region during the projected twenty‑year period;

 (7) a description and estimate of the sources and amount of revenues which can be made available for the siting, construction, and operation of new solid waste management facilities;

 (8) a description of resource recovery, or recycling program, or both, which shall be implemented in each county or region which shall include, at a minimum, the following:

 (a) the designation of a recycling coordinator;

 (b) an identification of the categories of solid waste materials to be source separated, recovered, recycled, or all of the above;

 (c) an identification of the means by which such materials will be collected and marketed;

 (d) a description of the incentives or penalties, or both, that will be used to ensure compliance with the recycling program; and

 (e) a description of the public education program which will be used to inform the public of the need for and benefits of source separation, recovery, and recycling and of the requirements of the recycling program.

 A county or region may be exempted from the requirements of Section 44‑96‑80(A)(8)if it provides sufficient justification to the department that the implementation of a source separation, resource recovery, recycling program, or all of the above within that county or region is economically infeasible or impracticable or that such program is unnecessary for the county or region to meet the waste recycling and reduction goals established in Section 44‑96‑50; and

 (9) a description of efforts, in addition to the recycling program, which will be undertaken within that county or region to meet the solid waste reduction goal as established on a statewide basis in Section 44‑96‑50.

 (B) Each county or region shall submit its solid waste management plan to the department for review. The department shall have one hundred eighty days from the date on which a plan is submitted to review the plan and provide comments to the submitting entity. At the end of the one hundred eighty‑day review period, the county or region shall begin implementation of its solid waste management plan. Such plan must be implemented not later than one year after the end of the one hundred eighty‑day review period.

 (C) Each solid waste management plan submitted by a county or region shall be designed to achieve within that county or region the same recycling and waste reduction goals established on a statewide basis in Section 44‑96‑50. Nothing in this chapter, however, prohibits a county or region from setting higher percentage goals for recycling and waste reduction in its solid waste management plan than the goals established in Section 44‑96‑50. The department may reduce or modify the statewide goals as they apply to a county or region to account for industrial growth or other good cause shown. However, reduction or modification must not result in a failure to meet the recycling and reduction goals on a statewide basis as established in Section 44‑96‑50.

 (D) Each county or region submitting a solid waste management plan containing a source separation, resource recovery, recycling programs, or all of the above to the department shall provide its residents with the opportunity to recycle the categories of solid waste materials designated in the county or regional solid waste management plan. The opportunity to recycle may include one or more of the following:

 (1) curbside collection systems;

 (2) drop‑off centers;

 (3) collection centers; or

 (4) collection systems for multi‑family residences.

 (E) Each solid waste management plan submitted pursuant to this section shall be consistent with the state solid waste management plan, with the provisions of this chapter, with all other applicable provisions of state law, and with any regulation promulgated by the department for the protection of public health and safety or for protection of the environment.

 (F) Each county or region submitting a solid waste management plan to the department shall thereafter submit an annual progress report to the department by a date to be determined by the department. The annual report shall contain information as may be requested by the department but must contain, at a minimum, the following:

 (1) any revisions to the solid waste management plan previously submitted by the county or region;

 (2) the amount of waste disposed of at municipal solid waste disposal facilities during the previous year by type of waste;

 (3) the percentage reduction each year in solid waste disposed of at municipal solid waste disposal facilities;

 (4) the amount, type, and percentage of materials that were recycled, if any, during the previous year;

 (5) the percentage of the population participating in various types of source separation, recovery, or recycling activities during the previous year; and

 (6) a description of the source separation, recovery, or recycling activities or all of the above activities attempted, if any, their success rates, the reasons for their success or failure, and a description of such activities which are ongoing.

 (G) Counties are strongly encouraged to pursue a regional approach to solid waste management. Nothing in this chapter, however, shall be construed to require a county to participate in a regional plan or to prohibit two or more counties within the State which are not contiguous from preparing, approving, and submitting a regional solid waste management plan or one or more counties, including industrial waste generators located therein, from contracting with an in‑state solid waste disposal facility located outside of the county or region. Not later than eighteen months after the date of enactment of this chapter, each county shall notify the department in writing whether it intends to submit a single county solid waste management plan or to participate in a regional plan.

 (H) Local governments may enter into cooperative agreements with other local governments to provide for the collection, separation, or recycling of solid waste at mutually agreed upon sites. Local governments may expend funds received from any source to establish and maintain such regional facilities and to provide for sharing the costs of establishing and maintaining such facilities in an equitable manner.

 (I) Each county or region shall ensure that all their local governments participate in the preparation and implementation of the solid waste management plan, including the source separation, resource recovery, or recycling program, or all of the above.

 (J) The governing body of a county has the responsibility and authority to provide for the operation of solid waste management facilities to meet the needs of all incorporated or unincorporated areas of the county. Nothing in this chapter, however, prohibits a local government from continuing to operate or to use an existing management facility, permitted on or before this chapter is effective, in accordance with the provisions of the solid waste management plan submitted by the county or region within which the local government is located. Notwithstanding any provision of law to the contrary, a county which does not regulate the operation or closure of a solid waste management facility, or which has not obtained a permit for that solid waste management facility, shall not be held liable for the operation, closure, and postclosure of that solid waste management facility if it is owned and operated by a private entity under a permit issued by the department. However, that inclusion in a county or regional plan shall not constitute regulation by a county or region under this section.

 (K) The governing body of a county is authorized to enact such ordinances as may be necessary to carry out its responsibilities under this chapter; provided, however, that the governing body of a county may not enact an ordinance inconsistent with the state solid waste management plan, with any provision of this chapter, with any other applicable provision of state law, or with any regulation promulgated by the department providing for the protection of public health and safety or for protection of the environment.

 (L) (Reserved)

 (M) Not later than eighteen months after this chapter is effective, each operator of a municipal solid waste disposal facility shall install scales conforming to requirements established by the department to weigh and record all solid waste when it is received. The department shall promulgate regulations exempting existing facilities which can demonstrate financial hardship and establishing a volume equivalent for such facilities to use in estimating the weight of the solid waste which they receive. All solid waste disposal facilities permitted on or after this chapter is effective shall install scales.

 (N) Not later than one year after this chapter is effective, there shall be established a local Solid Waste Advisory Council for each county or region intending to submit a solid waste management plan. The local council shall advise the county or region on the preparation of the solid waste management plan and on methods of implementing the plan. The local council shall be provided with all drafts of the plan and shall be given sufficient opportunity to comment on the drafts. Each local council shall consist of not more than fifteen members. The membership of each council shall be as follows:

 (1) one‑third of the membership of the council shall represent the county or member counties of a region and shall be appointed by the governing body or bodies of the county or counties;

 (2) one‑third of the membership of the council shall represent the municipalities within the county or region and shall be appointed by the governing body or bodies of the municipalities within the county or region; and

 (3) one‑third of the membership of the council shall include a representative of the private solid waste management industry and a representative of the private recycling or processing industry, if any, operating within the county or region, and at least two members shall represent the general public and have been active in public participation on environmental issues for the past five or more years. These members shall be appointed by the county and municipal representatives serving on the council. Each local council shall elect a chairman and vice‑chairman from among its members. Members shall promulgate regulations concerning meeting attendance. Each council shall, at a minimum, remain in existence until the end of the one hundred eighty‑day review period for the plans, but may remain in existence for a longer period of time as determined by its appointing entities. The comments of a local council on the final solid waste management plan shall be forwarded to the department when the final plan is submitted.

 (O) Any amendments to a county or regional solid waste management plan must be adopted and implemented in the same manner as provided for in the initial plan.

 (P) This chapter does not:

 (1) authorize a local government to enter into agreements or to enact ordinances or resolutions determining private rights with respect to recovered materials in solid waste separated for recycling use or reuse at any time prior to pickup by or delivery to a local government or persons under contract with the local government; or

 (2) prohibit a generator of recovered materials from selling, conveying, or arranging for the transportation of materials to a recycler for recycling nor prevent a recycling company or nonprofit entity from collecting and transporting recovered materials from a buy‑back center, drop box, or a generator of recovered materials.

HISTORY: 1991 Act No. 63, Section 1; 2000 Act No. 405, Section 6.

CROSS REFERENCES

Application to construct new solid waste management facility or to expand an existing facility prior to adoption and approval of solid waste management plans pursuant to this section, see Section 44‑96‑290.

Deposit of funds generated pursuant to this section in the Solid Waste Management Trust Fund, see Section 44‑96‑120.

General requirements, solid waste management, solid waste landfills and structural fill, see S.C. Code of Regulations R. 61‑107.19 Part I.

Requirement that local government submit solid waste management plan meeting requirements of this section in order to be eligible for a grant from the Solid Waste Management Grant Program, see Section 44‑96‑130.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 3, Enforcement.

Attorney General’s Opinions

The county is not required to pay the full costs for the collection and disposal of the solid waste generated by both the incorporated and unincorporated areas of the county. S.C. Op.Atty.Gen. (September 20, 1995) 1995 WL 805745.

NOTES OF DECISIONS

In general 1

Letters of consistency 2

Mandamus 4

Preemption 3

1. In general

As governing body of county, county council had authority to consider landowner’s request for letter of consistency (LOC) in connection with landowner’s desire to operate solid waste management facility, even if county’s prior procedure was to have county administrator consider such requests. Pressley v. Lancaster County (S.C.App. 2001) 343 S.C. 696, 542 S.E.2d 366, rehearing denied, certiorari denied. Environmental Law 361

2. Letters of consistency

Solid Waste Policy and Management Act (SWPMA) provision requiring county to submit an annual progress report to Department of Health and Environmental Control (DHEC) containing revisions to its solid waste management plan did not provide that revisions would be rendered null and void when they were omitted from annual progress report, and, thus, county’s method of notifying DHEC of its amendments by letters of consistency was an accepted method of notification; provision did not make inclusion of revision in the annual progress report mandatory or exclusive means for recognition and acceptance of amendment to county’s solid waste management plan. Oakwood Landfill, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2009) 381 S.C. 120, 671 S.E.2d 646. Environmental Law 355

Solid Waste Policy and Management Act (SWPMA) provision requiring amendments to a county or regional solid waste management plan to be adopted and implemented in same manner as provided for in initial plan allowed county to retain planning authority and did not place limitations on county’s ability to amend its plan, and, thus, letters of consistency issued by county to Department of Health and Environmental Control (DHEC) approving issuance of landfill permit to disposal company were valid amendment to county’s plan; plan itself did not specifically state how it should be amended, and letters of consistency had been part of amendment process in the past. Oakwood Landfill, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2009) 381 S.C. 120, 671 S.E.2d 646. Environmental Law 355; Environmental Law 358

3. Preemption

Regulation under Solid Waste Policy and Management Act (SWPMA) requiring that counties wishing to build solid waste disposal facilities demonstrate a need did not mandate regionalism and foreclose county regulation of the flow of solid waste and, therefore, implied conflict preemption did not apply to county ordinance regulating flow of solid waste within county; language of SWPMA merely encouraged a regional approach to solid waste management while at the same time explicitly allowing single‑county planning, and demonstration of need requirement merely served to pinpoint the permissible locations of new facilities. Sandlands C & D, LLC v. County of Horry (S.C. 2011) 394 S.C. 451, 716 S.E.2d 280. Environmental Law 352

Section of South Carolina Solid Waste Policy and Management Act (SWPMA) that required counties to comply with state law, Department of Health and Environmental Control (DHEC) regulations, and the state solid waste management plan when submitting their own plans for solid waste management did not demonstrate General Assembly’s intent to grant DHEC exclusive regulatory authority over entire field of solid waste management and, therefore, implied field preemption did not apply to county ordinance regulating flow of solid waste within county; SWPMA was silent with respect to control over the flow of local waste generated in counties and, instead, expressly invited county regulation, planning, authority, and responsibility in the field of solid waste management. Sandlands C & D, LLC v. County of Horry (S.C. 2011) 394 S.C. 451, 716 S.E.2d 280. Environmental Law 352

4. Mandamus

Mandamus would not issue to require county to grant landowner’s request for letter of consistency (LOC), without which landowner could not obtain permit from Department of Health and Environmental Control (DHEC) to operate solid waste landfill; county council acted within its discretion in determining that proposed landfill was not consistent with its local and/or regional plans, and landowner’s remedy for alleged wrongful denial was to seek judicial review of council’s decision. Pressley v. Lancaster County (S.C.App. 2001) 343 S.C. 696, 542 S.E.2d 366, rehearing denied, certiorari denied. Mandamus 4(5); Mandamus 87

**SECTION 44‑96‑90.** Full cost disclosure.

 (A) Not later than one year after this chapter is effective, the department shall promulgate regulations establishing the method for local governments to use in calculating the full cost for solid waste management within the service area of the local government which, at a minimum, shall include the provisions of subsections (C), (D), and (E)of this section. The department shall comply with the requirements of the South Carolina Administrative Procedures Act and notify local government officials of the opportunity to provide input prior to issuing proposed regulations for comment under this article.

 (B) Not later than one year after promulgation of the regulations provided in Section 44‑96‑80(A), and annually thereafter, each local government shall determine its full cost for its solid waste management services within its service area for the previous year. Each local government shall publish annually a notice in a newspaper of general circulation in its service area setting forth the full cost and the cost to residential and nonresidential users, on an average or individual basis of its solid waste management services within its service area for the previous year. In calculating the costs, local governments must include costs charged to them by persons with whom they contract for solid waste management services.

 (C) For local governments which provide collection, recycling, transfer station services, or all three services, “full cost” shall, at a minimum, include an itemized accounting of:

 (1) the cost of equipment, including, but not limited to, trucks, containers, compactors, parts, labor, maintenance, depreciation, insurance, fuel and oil, and lubricants for equipment maintenance;

 (2) the cost of overhead, including, but not limited to, supervision, payroll, land, office and building costs, personnel and administrative costs of running the waste management program, and support costs from other departments, government agencies, and outside consultants or firms;

 (3) the cost of employee social security, worker’s compensation, pension and health insurance payments; and

 (4) disposal cost and laboratory and testing costs.

 (D) For local governments which provide disposal services, “full cost” shall, at a minimum, include an itemized accounting of:

 (1) the cost of land, disposal site preparation, permits and licenses, scales, buildings, site maintenance and improvements;

 (2) the cost of equipment, including operation and maintenance costs such as parts, depreciation, insurance, fuel and oil, and lubricants;

 (3) the cost of labor and overhead, including, but not limited to, supervision, payroll, office and building costs, personnel and administrative costs of running the waste management program, and support costs from, and studies provided by, other departments, government agencies, and outside consultants or firms;

 (4) the cost of employee social security, worker’s compensation, pension and health insurance payments; and

 (5) disposal costs, leachate collection and treatment costs, site monitoring costs, including, but not limited to, sampling, laboratory and testing costs, environmental compliance inspections, closure and postclosure expenditures, and escrow, if required.

 (E) For purposes of this section, “service area” means the area in which the local government provides, directly or by contract, solid waste management services.

 (F) A person operating under an agreement to collect or dispose of solid waste within the service area of a local government or region shall assist and cooperate with the local government or region to make the calculations or to establish a system to provide the information required under this section. However, contracts entered into prior to the effective date of this chapter are exempt from the provisions of this section.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Solid waste management, full cost disclosure, see S.C. Code of Regulations R. 61‑107.2.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 44‑96‑100.** Violations of certain regulations; issuance of order for compliance or civil action for injunctive relief; wilful violations; penalty; additional powers and duties of department.

 (A) Whenever the department determines that a person is in violation of a regulation promulgated pursuant to this article regarding Sections 44‑96‑160(X) (Used Oil), 44‑96‑170(H) (Waste Tires), or 44‑96‑190(A) (Yard trash, compost), the department may issue an order requiring the person to comply with the regulation 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 this section. The department also may impose reasonable civil penalties not to exceed ten thousand dollars, for each day of violation, for violations of the regulations promulgated pursuant to this article regarding Sections 44‑96‑160(X), 44‑96‑170(H), or 44‑96‑190(A). 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 of the court of common pleas, pursuant to the Administrative Procedures Act.

 (B) A person who wilfully violates a regulation promulgated pursuant to this article regarding Sections 44‑96‑160(X), 44‑96‑170(H), or 44‑96‑190(A) 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 a fine not to exceed twenty‑five thousand dollars for each day of violation or imprisonment not to exceed two years, or both. The provisions of the subsection do not apply to officials and employees of a local government owning or operating, or both, a municipal solid waste management facility or to officials and employees of a region, comprised of local governments, owning or operating, or both, a regional municipal solid waste management facility.

 (C) Each day of noncompliance with an order issued pursuant to this section or noncompliance with a permit, regulation, standard, order, or requirement established under Sections 44‑96‑160, 44‑96‑170, or 44‑96‑190 constitutes a separate offense.

 (D) In addition to the other powers and duties set forth in this article, the department shall:

 (1) establish such programs and promulgate such regulations as are necessary to implement the state solid waste management plan;

 (2) establish such programs and promulgate such regulations as are necessary to implement the provisions of this article;

 (3) provide to local governments, upon request, planning and technical assistance in preparing and implementing their solid waste management plans;

 (4) provide to state agencies, upon request, planning and technical assistance in carrying out their responsibilities under this article;

 (5) cooperate and coordinate with federal agencies in carrying out federal and state solid waste management requirements, including seeking available federal grants and loans for solid waste management plans and activities in this State;

 (6) cooperate and coordinate with private organizations and with business and industry in implementing the requirements of this article;

 (7) encourage counties to pursue a regional approach to solid waste management within a common geographical area;

 (8) contract as needed with private entities or with state‑supported educational institutions to carry out the department’s responsibilities under this article, and contract with private entities or with state‑owned educational institutions to conduct research on solid waste management technologies;

 (9) receive appropriated funds and receive and administer grants or other funds or gifts from public or private entities, including the state and the federal government, to carry out the requirements of this article; and

 (10) increase public awareness of solid waste management issues through appropriate statewide educational programs on recycling, volume reduction, litter control, proper methods of managing solid waste, and other related issues.

HISTORY: 1991 Act No. 63, Section 1; 1997 Act No. 131, Section 2.

CROSS REFERENCES

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 383.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 141.

**SECTION 44‑96‑105.** Promulgation of regulations.

 All regulations promulgated by the department pursuant to this chapter must be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, pursuant to the Administrative Procedures Act.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Administrative Procedures Act, see Sections 1‑23‑310 et seq.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Regulation which prohibits landfill facility from receiving nonhazardous waste generated outside state violates commerce clause. State has legitimate interest in protecting human health and environment but effect of regulation as applied was to discriminate against out‑of‑state waste that posed no more threat than waste generated within state. Northeast Sanitary Landfill, Inc. v. South Carolina Dept. of Health and Environmental Control, 1992, 843 F.Supp. 100. Commerce 52.10; Environmental Law 376

**SECTION 44‑96‑110.** Establishment of the Office of Solid Waste Reduction and Recycling.

 (A) Ninety days after this chapter is effective there shall be established within the department an Office of Solid Waste Reduction and Recycling which shall promote and assist in the development of source separation, recovery, and recycling programs for local governments and for private entities under a contractual agreement with local governments or state‑supported institutions. The Office of Solid Waste Reduction and Recycling shall be separate from, and shall not participate in, any of the regulatory functions of the department with regard to solid waste management.

 (B) The Office of Solid Waste Reduction and Recycling shall have the following duties and responsibilities:

 (1) receive funds for and disburse funds from the Solid Waste Management Trust Fund established in Section 44‑96‑120;

 (2) manage the Solid Waste Management Grant Program established in Section 44‑96‑130;

 (3) promote and assist in the development of solid waste reduction, source separation, recycling, household hazardous materials management programs, and resource recovery programs;

 (4) maintain a directory of recycling and resource recovery systems in the State and provide assistance in matching recovered materials with markets;

 (5) provide for the education of the general public and the training of solid waste management professionals to encourage recycling and solid waste reduction;

 (6) develop descriptive literature to educate local governments on solid waste reduction and recycling issues.

 (C) The Office of Solid Waste Reduction and Recycling shall develop guidelines for the establishment and implementation of recycling education grants to school districts and public and private schools to establish waste reduction and recycling education programs. The office shall develop guidelines for the establishment and implementation of recycling education grants to public and private colleges and universities to establish waste reduction and recycling education programs and demonstration projects. The office shall notify the superintendent of each school district and each public and private school and public and private college and university of the existence of the grant programs and provide information on how to apply for the program. Upon request of the school, the office shall provide technical assistance. The office shall determine the number of grant projects that may be feasibly initiated in a single calendar year. The office, in consultation with the Department of Education, also shall develop and make available to public and private schools, upon request, curriculum materials and resource guides for recycling awareness programs for instruction at the elementary, middle, and high school levels.

HISTORY: 1991 Act No. 63, Section 1; 2000 Act No. 405, Section 7.

CROSS REFERENCES

Solid waste management grants, recycling education grants, and waste tire grants, see S.C. Code of Regulations R. 61‑107.1.

This office to administer the Petroleum Fund, see Section 44‑96‑160.

This office to administer the Waste Tire Grant Trust Fund, see Section 44‑96‑170.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑120.** Establishment of the Solid Waste Management Trust Fund; Waste Tire Grant Trust Fund.

 (A) There is established a Solid Waste Management Trust Fund to be administered by the Office of Solid Waste Reduction and Recycling to fund:

 (1) activities of the department to implement the provisions of this chapter;

 (2) research by state‑supported educational institutions or by private entities under contract with state‑supported educational institutions on solid waste management technologies;

 (3) activities of the Recycling Market Development Advisory Council including its staff in the amount of one hundred thousand dollars from the Solid Waste Management Trust Fund for fiscal year 1994‑95;

 (4) demonstration projects or pilot programs to be conducted by local governments within their jurisdictions, including local governments which contract with private entities to assist in conducting the demonstration projects or pilot programs;

 (5) grants to local governments to carry out their responsibilities under this article, pursuant to the provisions of Section 44‑96‑130, including local governments which contract with private entities to assist in carrying out their responsibilities under this article;

 (6) grants to school districts and public and private schools to establish waste reduction and recycling education programs; and

 (7) grants to public and private colleges and universities to establish waste reduction and recycling education programs and demonstration projects.

 (B) The Solid Waste Management Trust Fund shall consist of:

 (1) funds appropriated by the General Assembly;

 (2) contributions and grants from public and private sources;

 (3) funds generated by the out‑of‑state disposal fee authorized pursuant to Section 44‑96‑80;

 (4) the balance of the funds generated by the two‑dollar fee imposed pursuant to Section 44‑96‑170(N), which is not remitted back to the counties for the management of waste tires; these funds shall be remitted to a special fund designated as the Waste Tire Trust Fund;

 (5) funds generated by the two‑dollar fee for each lead‑acid battery fee imposed pursuant to Section 44‑96‑180(F) for the management of lead‑acid batteries;

 (6) funds generated by the two‑dollar fee for each white good fee imposed pursuant to Section 44‑96‑200(D) for the management of white goods;

 (7) funds generated by fees imposed on motor oil and similar lubricants pursuant to Section 44‑96‑160(W);

 (8) interest earnings accrued on the Solid Waste Management Trust Fund; and

 (9) three million dollars of oil overcharge refund monies to be awarded to this fund by the Governor, upon enactment of this chapter; in addition, the Office of Solid Waste Reduction and Recycling will advise the Governor on solid waste project criteria contained within oil overcharge fund competitive grant solicitations totalling one million dollars each over the next two years, to be used only for local government grants and local government demonstration projects and pilot programs. The Office of Solid Waste Reduction and Recycling and the Governor’s Energy Office shall cooperate to develop the necessary application information and other documentation to implement the requirements of this appropriation.

 (C) The department shall report on a quarterly basis to the State Solid Waste Advisory Council, House Ways and Means Committee, Senate Finance Committee, and the Joint Legislative Committee on Energy on the condition of the Solid Waste Management Trust Fund and on the use of all funds allocated from the Solid Waste Management Trust Fund. Quarterly reports shall be made not later than sixty days after the last day of each fiscal quarter beginning with the first full quarter after this chapter is effective. Notwithstanding Chapter 39 of Title 11, the Department of Health and Environmental Control, through the Office of Solid Waste Reduction and Recycling, shall make decisions on the allocation of oil overcharge funds transferred to the Solid Waste Management Trust Fund pursuant to Section 44‑96‑120(B)(9). The department’s decisions shall be made upon the approval of the statewide Solid Waste Advisory Council and after consultation with the Governor’s Office and the Joint Legislative Committee on Energy to ensure that the funds are administered according to decisions of the federal courts and requirements of the United States Department of Energy. If all oil overcharge funds transferred to the Solid Waste Management Trust Fund are not committed for projects or programs authorized by this chapter five years from the date this chapter is effective, they shall be returned to the Governor’s Office.

 (D) The electrical output from a resource recovery facility constructed in whole or in part with monies from the Solid Waste Management Trust Fund shall be sold by competitive bids or requests for proposals, wherein the contracts are awarded to the highest responsible and responsive bidder. If the highest bid does not equal or exceed the avoided cost price which could be obtained under the Public Regulatory Policy Act of 1978, said power will be disposed of pursuant to the Federal Act. For the purposes of this subsection “responsible bidder” shall mean a corporation doing business in South Carolina who is an electric supplier as defined in Section 58‑27‑610, an electric cooperative incorporated under Chapter 49 of Title 33, a South Carolina municipality owning retail distribution facilities on the effective date of this chapter, or the South Carolina Public Service Authority.

 (E) The revenue generated by the sale of electricity from a resource recovery facility funded in whole or in part by a grant under this section which is in whole or in part owned by a municipality, county, or consolidated political subdivision, must be used for reduction of the public cost for collection, separation, and disposal of solid waste or environmental concerns related to disposal of solid waste, including reasonable expenses of operation of the facility, or both. Revenue generated from the sale of electricity by such resource recovery facility may not be commingled with other public funds.

HISTORY: 1991 Act No. 63, Section 1; 1993 Act No. 181, Section 1152; 1994 Act No. 497, Part II, Section 124A, eff July 1, 1994; 2000 Act No. 405, Sections 8, 9.

Editor’s Note

The out‑of‑state disposal fee referred to in paragraph (B)(3) was deleted by Act 405 of 2000.

CROSS REFERENCES

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Federal Aspects

Public Utility Regulatory Policies Act of 1978 is codified at 16 U.S.C.A. Section 824a‑3 and 43 U.S.C.A. Section 2011.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑130.** Solid Waste Management Grant Program.

 (A) The Office of Solid Waste Reduction and Recycling shall establish a grant program utilizing funds within the Solid Waste Management Trust Fund to assist local governments and regions in carrying out their responsibilities under this article. Grant disbursements must be approved by the State Solid Waste Advisory Council.

 (B) The department shall ensure that all grant funds made available to local governments and regions shall be utilized for activities necessary to carry out their solid waste management responsibilities established by this article. All grant funds made available to public and private schools and public and private colleges and universities must be used for waste reduction and recycling education programs. These grants must be made available as soon as possible following the promulgation by the department of regulations establishing the Solid Waste Management Grant Program. After the date on which county or regional solid waste management plans are required to be submitted to the department, no local government shall be eligible for a grant from the Solid Waste Management Grant Program unless it has submitted a solid waste management plan meeting the requirements of Section 44‑96‑80. All regional or local government grant proposals must be consistent with the State Solid Waste Management Plan and the county or regional solid waste management plan.

 (C) Solid waste management grants must be made available to local governments and regions which have been determined by the department to be in need of assistance in carrying out their responsibilities established by this article. The department shall use information contained in the Solid Waste Management Annual Report to determine which responsibilities of the article have not been met and which local governments are in need of assistance. The requirements of this subsection supersede all rules, regulations, standards, orders, or other actions of the department that are not consistent with this subsection.

 (D) Not later than twelve months after this chapter is effective, the Office of Solid Waste Reduction and Recycling shall promulgate regulations establishing the Solid Waste Management Grant Program. Such regulations, at a minimum, shall establish the criteria for counties, regions, and municipalities to qualify for grants, and shall set forth the procedures for applying for grants. The department may require such information of the entity applying for the grant as is necessary to properly evaluate the grant proposal. The department shall comply with the requirements of the South Carolina Administrative Procedures Act and notify local government officials of the opportunity to provide input before issuing proposed regulations for comment under this article.

 (E) The regulations required to be promulgated by subsection (D) of this section must include procedures for any party aggrieved by a grant decision of the Office of Solid Waste Reduction and Recycling to obtain review of that decision.

HISTORY: 1991 Act No. 63, Section 1; 2000 Act No. 405, Section 10.

CROSS REFERENCES

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑140.** Recycling programs of state government; state procurement policy; report of the Department of Transportation.

 (A) Not later than twelve months after the date on which the department submits the state solid waste management plan to the Governor and to the General Assembly, the General Assembly, the Office of the Governor, the Judiciary, each state agency, and each state‑supported institution of higher education shall:

 (1) establish a source separation and recycling program in cooperation with the department and the Division of General Services of the Department of Administration for the collection of selected recyclable materials generated in state offices throughout the State including, but not limited to, high‑grade office paper, corrugated paper, aluminum, glass, tires, composting materials, plastics, batteries, and used oil;

 (2) provide procedures for collecting and storing recyclable materials, containers for storing materials, and contractual or other arrangements with collectors or buyers of the recyclable materials, or both;

 (3) evaluate the amount of waste paper material recycled and make all necessary modifications to the recycling program to ensure that all waste paper materials are recycled to the maximum extent feasible; and

 (4) establish and implement, in cooperation with the department and the Division of General Services of the Department of Administration, a solid waste reduction program for materials used in the course of agency operations. The program shall be designed and implemented to achieve the maximum feasible reduction of solid waste generated as a result of agency operations.

 (B) Not later than September fifteen of each year, each state agency and each state‑supported institution of higher learning shall submit to the department a report detailing its source separation and recycling program and a review of all goods and products purchased during the previous fiscal year by those agencies and institutions containing recycled materials using the content specifications established by the Division of General Services, Department of Administration.

 (C) By November first of each year, the department shall submit a report to the Governor and to the General Assembly reviewing all goods and products purchased by the State and determining what percentage of state purchases contain recycled materials using content specifications established by the Division of General Services, Department of Administration. The report also must review existing procurement regulations for the purchase of products and materials and must identify any portions of such regulations that discriminate against products and materials with recycled content and products and materials which are recyclable.

 (D) Not later than one year after this chapter is effective, the Division of General Services, Department of Administration shall amend the procurement regulations to eliminate the portions of the regulations identified in its report as discriminating against products and materials with recycled content and products and materials which are recyclable.

 (E) Not later than one year after the effective date of the amendments to the procurement regulations, the General Assembly, the Office of the Governor, the Judiciary, all state agencies, all political subdivisions using state funds to procure items, and all persons contracting with such agency or political subdivision where such persons procure items with state funds shall procure products and materials with recycled content and products and materials which are recyclable where practicable, as determined by the Division of General Services, Department of Administration. The list of recycled content specifications must be updated annually. It is the goal of the General Assembly for state and local governmental agencies to reflect a twenty‑five percent goal in their procurement policies. The decision not to procure such items shall be based on a determination that such procurement items:

 (1) are not available within a reasonable period of time;

 (2) fail to meet the performance standards set forth in the applicable specifications; or

 (3) are only available at a price that exceeds by more than seven and one‑half percent the price of alternative items.

 (F) Not later than six months after this chapter is effective, and annually thereafter, the Department of Transportation shall submit a report to the Governor and to the General Assembly on the use of:

 (1) compost as a substitute for regular soil amendment products in all highway projects;

 (2) solid waste including, but not limited to, ground rubber from tires and fly ash or mixtures of them from coal‑fired electrical facilities in road surfacing of subbase materials;

 (3) solid waste including, but not limited to, glass aggregate, plastic, and fly ash in asphalt or concrete; and

 (4) recycled mixed‑plastic materials for guardrail posts, right‑of‑way fence posts, and sign supports.

HISTORY: 1991 Act No. 63, Section 1; 1993 Act No. 181, Section 1153; 2000 Act No. 405, Section 11; 2014 Act No. 121 (S.22), Pt V, Section 7.DD, eff July 1, 2015.

CROSS REFERENCES

Direction that all state agencies, political subdivisions, and contractors procure composted materials and products pursuant to this section, see Section 44‑96‑190.

Direction that all state agencies, political subdivisions, and contractors procure recycled lead‑acid batteries pursuant to this section, see Section 44‑96‑180.

Direction that all state agencies, political subdivisions, and contractors procure used oil materials and products pursuant to this section, see Section 44‑96‑160.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑150.** Packaging; plastics.

 (A) Six months after this chapter is effective, no beverage shall be sold or offered for sale within this State in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

 (B) On or after January 1, 1994, no person may distribute, sell, or offer for sale in this State any food or drink in packages or containers, including point of sale packaging, made with fully halogenated chlorofluorocarbons (CFC’s). Producers or manufacturers of all types of containers, packaging, or packing material made from fully halogenated CFC’s are strongly urged to introduce alternative containers, packages, and packing materials which are environmentally acceptable as soon as possible. Not later than three years after this chapter is effective, the department shall report to the Governor and to the General Assembly on the progress made in introducing such alternative containers, packages, and packing materials. Such report may include recommendations for legislative actions to encourage or require the development and use of such alternatives.

 (C) One year after this chapter is effective, no plastic bag shall be provided at any retail outlet to any retail customer for use in carrying items purchased by that customer unless the bag is composed of material which is recyclable.

 (D) One year after this chapter is effective, no plastic rings or any other device or material used to connect one container to another shall be provided at any retail outlet to any retail customer unless such rings or other device or material are degradable or recyclable. Producers of plastic ring carriers are strongly urged to introduce alternatives as soon as possible. Not later than three years after the date of enactment of this chapter, the department shall report to the Governor and to the General Assembly on the progress made in introducing such alternative packaging or materials. Such report may include recommendations for legislative actions to encourage or require the development and use of such alternatives.

 (E) One year after this chapter is effective, no person shall distribute, sell, or offer for sale in this State any polystyrene foam product for use in conjunction with food for human consumption unless such product is composed of material which is recyclable.

 (F) Not later than eighteen months after this chapter is effective, no person shall distribute, sell, or offer for sale in this State a plastic bottle or rigid plastic container unless such bottle or container is labeled with a code identifying the appropriate resin type used to produce the structure of the container. The code shall consist of a number placed within three triangulated arrows. The three arrows shall form an equilateral triangle with the common point of each line forming each angle of the triangle at the midpoint of each arrow and rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The label shall appear on or near the bottom of the plastic container product and be clearly visible. The numbers and letters shall be as follows:

 (1) for polyethylene terephthalate, the letters “PETE” and the number “1”;

 (2) for high density polyethylene, the letters “HDPE” and the number “2”;

 (3) for vinyl, the letter “V” and the number “3”;

 (4) for low density polyethylene, the letters ‘LDPE” and the number “4”;

 (5) for polypropylene, the letters “PP” and the number “5”;

 (6) for polystyrene, the letters “PS” and the number “6”; and

 (7) for any other, the letters “OTHER” and the number “7”.

 Nothing in this subsection may prevent a manufacturer or distributor of containers that are produced from a plastic resin not identified in this subsection from adopting a labeling code number and letter that will assist in the segregation and collection of that resin for recycling if the code number and letter used are nationally recognized industry standards.

 (G) Not later than five years after this chapter is effective, the department shall make a determination as to the number of beverage containers being sold annually in this State and the percentage of such containers that are being recycled or recovered by individual category of glass, aluminum, and plastic. If the department determines that one or more categories of beverage containers are being recycled at a rate of less than twenty‑five percent, the department shall submit a report to the Governor and to the General Assembly making recommendations on incentives, penalties, or both, which may include the imposition of fees to increase the recycling rate of that category to a minimum of twenty‑five percent within a reasonable period of time. Seven years after this chapter is effective, the department shall make a determination, by individual category of container, as to the percentage of such containers that are being recycled. If the department determines that one or more categories of beverage containers are being recycled at a rate of less than thirty‑five percent, the department shall submit a report to the Governor and to the General Assembly making recommendations, which may include the imposition of appropriate fees, to increase the recycling rate of that category to at least thirty‑five percent within a reasonable period of time. The department may, by regulation, establish a program to obtain and verify the information that is necessary to make the determinations and recommendations required by this subsection.

HISTORY: 1991 Act No. 63, Section 1; 2000 Act No. 405, Section 12.

Library References

Environmental Law 354.

Westlaw Topic No. 149E.

**SECTION 44‑96‑160.** Used oil.

 (A) Twelve months after this chapter is effective, no person shall knowingly:

 (1) place used oil in municipal solid waste, discard or otherwise dispose of used oil, except by delivery to a used oil collection facility, used oil energy recovery facility, oil recycling facility, or to an authorized agent for delivery to a used oil collection facility, used oil energy recovery facility, or oil recycling facility;

 (2) dispose of used oil in a solid waste disposal facility unless such disposal is approved by the department;

 (3) collect, transport, store, recycle, use or dispose of used oil in any manner which may endanger public health and welfare or the environment;

 (4) discharge used oil into sewers, drainage systems, septic tanks, surface water or groundwater, or any other waters of this State, or onto the ground; or

 (5) mix or commingle used oil with hazardous substances that make it unsuitable for recycling or beneficial use.

 Notwithstanding any other provision of law, a person who knowingly disposes of any used oil which has not been properly segregated or separated from other solid wastes by the generator is guilty of a violation of this subsection and shall be subject to a fine not to exceed two hundred dollars. This provision may be enforced by a state, county, or municipal law enforcement official, or by the department.

 (B) No person shall knowingly dispose of used oil filters in a landfill unless the filter has been crushed to the smallest practical volume possible or unless the filter has been hot drained, as established by the department in regulations.

 (C) The utilization of used oil for road oiling, dust control, weed abatement, or other similar uses which has the potential to cause harm to the environment is prohibited.

 (D) The department shall encourage the voluntary establishment of used oil collection centers and recycling programs and provide technical assistance to persons who organize such programs.

 If a hazardous substance is mixed with used oil accepted at a volunteer used oil collection center, any costs for the proper disposal of this contaminated waste will be incurred by the Petroleum Fund, if no more than five gallons of used oil was accepted from any one person at any one time.

 (E) All government agencies and private businesses that change motor oil for the public and major retail dealers of motor and lubricating oil are encouraged to serve as used oil collection centers.

 The Department of Transportation shall establish or contract for at least one used oil collection center in every county unless it can certify to the Office of Solid Waste Reduction and Recycling that a private used oil collection center is in operation in a county and is accepting up to five gallons of used oil from any member of the public.

 A retail dealer of motor oil who maintains a separate tank for a voluntary used oil collection center as approved by the department under this section is eligible for a payment from the South Carolina Department of Revenue from fees collected pursuant to subsection (W) of five cents for every gallon of motor oil that is properly returned on a voluntary basis to a registered used oil transporter or permitted used oil recycling facility upon proper verification.

 (F) A person who maintains a used oil collection facility that receives a volume of used oil annually, which exceeds a limit to be determined by the department, must register with the department.

 (G) A used oil collection center must report annually to the department by a date to be determined by the department and must indicate if it is accepting used oil from the public, the quantities of used oil collected in the previous year, and the total quantity of used oil handled in the previous year.

 (H) No person may recover from the owner or operator of a used oil collection center any costs of response actions resulting from a release of either used oil or a hazardous substance from a used oil collection center if such used oil is:

 (1) not mixed with any hazardous substance by the owner or operator of the used oil collection center;

 (2) not knowingly accepted with any hazardous substances contained in it;

 (3) transported from the used oil collection center by a registered transporter; or

 (4) stored in a used oil collection center that is in compliance with this section.

 This subsection applies only to that portion of the used oil collection center utilized for the collection of used oil and does not apply if the owner or operator is grossly negligent in the operation of the public used oil collection center. Nothing in this section shall affect or modify in any way the obligations or liability of a person under any other provisions of state or federal law, including common law, for injury or damage resulting from the release of used oil or hazardous substances. For the purpose of this subsection, the owner or operator of a used oil collection center may presume that a quantity of no more than five gallons of used oil accepted from a member of the public is not mixed with a hazardous substance, if the owner or operator acts in good faith and in the belief the oil is generated from the individual’s personal activity.

 (I) Any motor, lubricating, or other oil offered for sale, at retail or at wholesale for direct retail sale, for use off the premises, must be clearly marked or labeled as containing a recyclable material which must be disposed of only at a used oil collection center. A statement on a container of lubricating or other oil offered for sale is in compliance with this section if it contains the following statement: “Don’t pollute. Conserve resources. Return used oil to collection centers.”

 (J) Motor oil retailers shall post and maintain, at or near the point of sale, a durable and legible sign, not less than eleven inches by fifteen inches in size, informing the public of the importance of the proper collection and disposal of used oil and how and where used oil may be properly disposed.

 (K) The department may inspect any place, building, or premises subject to subsections (I) and (J) and issue warnings and citations to a person who fails to comply with the requirements of those subsections. Failure to comply following a warning shall constitute a violation punishable by a fine not to exceed one hundred dollars per day. Each day on which an establishment fails to comply shall constitute a separate violation. The proceeds of a fine imposed pursuant to this subsection must be remitted to the Solid Waste Management Trust Fund.

 (L) The following persons shall register annually with the department pursuant to department regulations on forms prescribed in such regulations:

 (1) a person who transports over public highways more than five hundred gallons of used oil weekly;

 (2) a person who maintains a collection facility that receives more than six thousand gallons of used oil annually; and

 (3) a facility that recycles more than six hundred gallons of used oil annually.

 (M) The department shall require each registered person to submit by a date to be determined by the department an annual report which specifies the type and quantity of used oil transported, collected, and recycled during the preceding year. The department also shall require each registered person who transports or recycles used oil to maintain records which identify the:

 (1) source of the materials transported or recycled;

 (2) quantity of materials received;

 (3) date of receipt; and

 (4) destination or the end use of the materials.

 (N) The department shall require sample analyses of used oil at facilities of representative used oil transporters and at representative recycling facilities to determine the incidence of contamination of used oil with hazardous, toxic, or other harmful substances.

 (O) The following entities are exempted from the requirements of subsection (L):

 (1) an on‑site burner which only burns a specification used oil generated by the burner, if the burning is done in compliance with any air permits issued by the department; or

 (2) an electric utility which generates during its operation used oil that is then reclaimed, recycled, or refined by the electric utility for use in its operations.

 (P) A person who fails to register with the department as required by subsection (L), or to file the annual report required by subsection (M), is subject to a fine not to exceed three hundred dollars per day. Each day on which the person fails to comply shall constitute a separate violation. The proceeds of a fine imposed pursuant to this subsection must be remitted to the Solid Waste Management Trust Fund.

 (Q) After the effective date of regulations promulgated by the department pursuant to this section, a person who transports over public highways more than five hundred gallons of used oil weekly must be a registered transporter.

 (R) The department shall promulgate regulations establishing a registration program for transporters of used oil and shall issue, deny, or revoke registrations authorizing the holder to transport used oil. Registration requirements must ensure that a used oil transporter is familiar with applicable regulations and used oil management procedures. The department shall promulgate regulations governing registration which must include requirements for the following:

 (1) registration and annual reporting;

 (2) evidence of familiarity with laws and regulations governing used oil transportation; and

 (3) proof of liability insurance or other means of financial responsibility for any liability which may be incurred in the transport of used oil.

 (S) Each person who intends to operate, modify, or close a used oil recycling facility shall obtain an operation or closure permit from the department before operating, modifying, or closing the facility.

 (T) Not later than eighteen months after this chapter is effective, the department shall develop a permitting system for used oil recycling facilities.

 (U) Permits must not be required under subsection (S) for the burning of used oil as a fuel, provided:

 (1) a valid air permit, if required, issued by the department is in effect for the facility;

 (2) the facility burns used oil in accordance with applicable state and local government regulations, and the requirements and conditions of its air permit; and

 (3) the on specification used oil is burned in industrial furnaces and boilers and nonindustrial furnaces and boilers.

 (V) No permit is required under this section for the use of used oil for the benefaction or flotation of phosphate rock.

 (W)(1) For sales made after October 31, 1991, a person making wholesale sales of motor oil or similar lubricants, and a person importing into this State ex‑tax motor oil or similar lubricants, shall pay a fee on a monthly basis of eight cents for each gallon of motor oil or similar lubricants sold at wholesale or ex‑tax motor oil or similar lubricants imported. As used in this provision, “ex‑tax motor oil or similar lubricants” means motor oil or similar lubricants upon which the fee imposed has not been levied and which is not sold at wholesale in this State. The fee imposed must be imposed only once with respect to each gallon of motor oil or similar lubricants. The South Carolina State Department of Revenue shall administer, collect, and enforce this fee in the same manner the sales and use taxes are collected pursuant to Chapter 36 of Title 12. However, taxpayers are not required to make payments pursuant to Section 12‑36‑2600. Instead of the discount allowed pursuant to Section 12‑36‑2610, the taxpayer may retain three percent of the total fees collected as an administrative collection allowance. This allowance applies whether or not the return is timely filed.

 A motor carrier which purchases lubricating oils not for resale used in its fleet is exempt from the fee. The motor carrier must:

 (a) have a maintenance facility to service its own fleet and properly store waste oil for recycling collections;

 (b) have on file with the Environmental Protection Agency the existence of storage tanks for waste oil storage;

 (c) maintain records of the dispensing and servicing of lubrication oil in the fleet vehicles; and

 (d) have a written contractual agreement with an approved waste oil hauler.

 (2) The Department of Revenue shall remit fees collected pursuant to this section to the Solid Waste Management Trust Fund, less payments made pursuant to subsection (E). The fees must be reserved in a separate account designated as the Petroleum Fund. The Petroleum Fund must be under the administration of the Office of Solid Waste Reduction and Recycling.

 The funds generated by the fees authorized by this section and set aside for the Petroleum Fund must be used by the Office of Solid Waste Reduction and Recycling as follows:

 (a) Two‑fifths of the funds must be used to establish incentive programs to encourage:

 (1) individuals who change their own oil to return their used oil to used oil collection centers;

 (2) the establishment and continued operation of collection centers which accept used oil, including a one‑time rebate to retailers who maintain department approved used oil collection centers for equipment used in the used oil collection process, not to exceed five hundred dollars a location. The used oil collection center must maintain a separate tank for the collection of voluntarily returned used oil to be eligible for this rebate. This rebate must be distributed by the department upon approval of the collection center by the department and submittal of proof of purchase of the equipment.

 (3) the establishment and continued operation of recycling facilities which prepare used oil for reuses or which utilize used oil in a manner that substitutes for a petroleum product made from new oil.

 (b) Two‑fifths of the funds must be used to provide grants for local government projects that the office determines will encourage the collection, reuse, and proper disposal of used oil and similar lubricants. Local government projects may include one or more of the following programs or activities:

 (1) curbside pickup of used oil containers by a local government or its designee;

 (2) retrofitting of solid waste equipment to promote curbside pickup or disposal of used oil at used oil collection centers designated by the local government;

 (3) establishment of publicly operated used oil collection centers at landfills or other public places; or

 (4) providing of containers and other materials and supplies that the public can utilize in an environmentally sound manner to store used oil for pickup or return to a used oil collection center.

 (c) One‑fifth of the funds must be used for public education and research including, but not limited to, reuses, disposal, and development of markets for used oil and similar lubricants.

 The office may use funds set aside under subitem (a) of item (2) to contract for the development and implementation of incentive programs, and the office may use funds set aside under subitem (c) of item (2) to contract for the development and implementation of research and education programs.

 After the fee is imposed upon a distributor, the fee may not be imposed again upon a person who subsequently receives motor oil or similar lubricants from a distributor upon whom the fee already has been imposed.

 Motor oil or similar lubricants exported from this State in its original package or container must be exempt from the fee imposed in this section. A person purchasing motor oil or similar lubricants at wholesale in its original package or container and who exports such motor oil or similar lubricants from this State may certify in writing to the seller that the motor oil or similar lubricants will be exported, and such certification, if taken by the seller in good faith, will relieve the seller of the fee otherwise imposed. If the purchaser subsequently uses the motor oil or similar lubricants in this State, the purchaser shall be liable for the fee imposed and the purchaser’s certification to the seller must include an acknowledgment to that effect.

 (X) The fee imposed under item (W) of this section must be imposed until the unobligated principal balance of the Petroleum Fund equals or exceeds three million dollars. Based upon the amount of revenue received and the time frame in which the amount is collected, the Department of Revenue is required to adjust the rate of the fee to reflect a full year’s collection to produce the amount of revenue required in the fund. The increase or decrease in the fee made by the Department of Revenue must take effect for sales beginning on or after the first day of the third month following determination by the commission.

 (Y) The department shall promulgate regulations necessary to implement the provisions of this section. Such regulations may include the imposition of reasonable registration and permitting fees to assist in defraying the costs of the regulatory activities of the department required by this section.

 (Z) All state agencies, all political subdivisions using state funds to procure items, and all persons contracting with such agency or political subdivision where such persons procure items with state funds shall procure used oil materials and products where practicable, subject to the provisions of Section 44‑96‑140(E).

 (AA) Beginning February 28, 1993, and no later than July first each year thereafter, the Office of Solid Waste and Recycling shall submit to the Governor and to the General Assembly a report for the previous calendar year, including:

 (1) the number of used oil collection sites available in each county to the general public;

 (2) the number and location of used oil collection sites in each county receiving ongoing and start‑up assistance from the Office of Solid Waste Reduction and Recycling; and

 (3) the amount of used oil collected in each county.

HISTORY: 1991 Act No. 63, Section 1; 1992 Act No. 449, Part V, Sections 5‑8; 1993 Act No. 181, Section 1154; 1995 Act No. 145, Part II, Section 50; 2000 Act No. 405, Section 13.

CROSS REFERENCES

Deposit of funds generated pursuant to this section in the Solid Waste Management Trust Fund, see Section 44‑96‑120.

Office of Solid Waste Reduction and Recycling, see Section 44‑96‑110.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Federal Aspects

Federal actions to promote recycling of oil, see 42 U.S.C.A. Section 6363.

Library References

Environmental Law 354.

Westlaw Topic No. 149E.

**SECTION 44‑96‑165.** Independent audits of trust funds.

 The Department of Health and Environmental Control, with the approval of the State Auditor, shall contract with one or more qualified, independent certified public accountants on a one‑year basis to audit revenues and disbursements from the Solid Waste Management Trust Fund and the Waste Tire Trust Fund established pursuant to Section 44‑96‑120 and from the Petroleum Fund established pursuant to Section 44‑96‑160(V). The auditors may audit relevant records of a public or private entity that has submitted, kept, handled, or tracked monies for any of the three funds. This contract must be funded by the Solid Waste Management Trust Fund, the Petroleum Fund, and the Waste Tire Trust Fund.

HISTORY: 2000 Act No. 405, Section 21; 2005 Act No. 164, Section 22, eff June 10, 2005.

**SECTION 44‑96‑170.** Waste tires.

 (A) Not later than ninety days after this chapter is effective, the owner or operator of a waste tire site shall notify the department of the site’s location and size and the approximate number of waste tires that are accumulated at the site. However, this section does not apply to a manufacturer who disposes only of tires generated in the course of its scientific research and development activities, so long as the waste tires are buried on the facility’s own land or that of its affiliates or subsidiaries and the disposal facility is in compliance with all applicable regulations.

 (B) Not later than six months after this chapter is effective, the department shall submit to the Governor and to the General Assembly a report on waste tire management and disposal in this State. The report shall, at a minimum, include the following:

 (1) the number of waste tires generated in this State and the geographical distribution of the waste tires;

 (2) the number and location of existing waste tire sites;

 (3) the location of existing waste tire collection sites;

 (4) the necessary financial responsibility requirements for sites, haulers, processors, collectors, and disposers of waste tires;

 (5) alternative methods of collecting waste tires;

 (6) current and future options for waste tire recycling;

 (7) methods to establish reliable sources of waste tires for waste tire users; and

 (8) types and location of facilities in this State that can utilize waste tires as a fuel source.

 (C) State and county solid waste management plans shall include a section on waste tires. The section on waste tires shall provide for public participation in its preparation and shall, as a minimum, include:

 (1) an estimate of the number of waste tires currently generated annually within that county or region and a projection of the number of waste tires to be generated during the twenty‑year period following the date this chapter is effective;

 (2) an estimate of the current capacity in the county to manage waste tire disposal;

 (3) an estimate of the annual cost of implementing the approved waste tire disposal plan;

 (4) an estimate of the cost of siting, construction, and bringing into operation any new facilities needed to provide waste tire disposal;

 (5) the number of waste tires generated in each county and the geographical distribution of such waste tires;

 (6) the number and location of existing waste tire sites;

 (7) the location of existing waste tire collection sites;

 (8) alternative methods of collecting waste tires;

 (9) current and future options for waste tire recycling;

 (10) methods to establish reliable sources of waste tires for waste tire users; and

 (11) types and location of facilities in this county that can utilize waste tires as a fuel source.

 (D) Each county is required by the department to participate in ongoing waste tire clean‑up enforcement efforts, and no later than twelve months after promulgation of regulations by the department, establish approved waste tire accumulation sites, designate waste tire processing, recycling, and disposal methods to be used, and begin disposal operations in compliance with the applicable regulations. Counties may contract with other counties and with private firms to implement the provisions of this chapter. The department shall administer waste tire management plans for those counties which do not submit proposals.

 (E) Counties are prohibited from imposing an additional fee on waste tires generated within the county. However, a county may impose an additional fee on waste tires, heavy equipment tires, and oversized tires that have a greater diameter than the largest tire with a Department of Transportation number. A fee may be charged on waste tires generated outside of South Carolina. Counties may require fleets to provide documentation for proof of purchase on in‑state tires. For tires not included in documentation, an additional tipping fee may be charged. Counties may charge a tipping fee of up to one dollar and fifty cents for each tire or up to one hundred fifty dollars a ton for waste tires generated in this State for which no fee has been paid otherwise.

 (F) Counties may charge a tipping fee of up to one dollar and fifty cents for each waste tire manufactured in this State or up to one hundred fifty dollars per ton for waste tires manufactured in this State for which no fee has been paid otherwise.

 (G) Not later than six months after the department promulgates regulations, a person, except as provided, shall not knowingly deposit whole waste tires in a landfill as a method of ultimate disposal.

 (H) Eighteen months after this chapter is effective, a person shall not:

 (1) maintain a waste tire collection site unless such site is an integral part of the person’s permitted waste tire treatment facility or that person has entered into a contract with a permitted waste tire treatment facility for the disposal of waste tires;

 (2) knowingly dispose of waste tires in this State, unless the waste tires are disposed of at a permitted solid waste disposal facility; or

 (3) knowingly dispose of or discard waste tires on the property of another in a manner not prescribed by this chapter.

 For an interim period to be determined by the department, waste tires may be disposed of at a solid waste disposal facility, a waste tire recycling or processing facility, or a waste tire collection center seeking a permit from the department pursuant to this section. Notwithstanding any other provision of law, a person violating this subsection shall be subject to a fine not to exceed two hundred dollars. This provision may be enforced by a state, county, or municipal law enforcement official, or by the department. Each tire improperly disposed of must constitute a separate violation.

 (I) It is the policy of this State to recommend that waste tires be managed at a:

 (a) waste tire collection site which is an integral part of a permitted waste tire recycling or processing facility;

 (b) permitted waste tire recycling or processing facility; or

 (c) permitted waste tire collection center.

 (J) Not later than twelve months after this chapter is effective, the department shall promulgate regulations requiring all collectors, processors, recyclers, haulers, and disposers of waste tires to obtain a permit or registration issued by the department. The regulations must set forth the requirements for the issuance of such permits or registrations. After the effective date of the regulations, a person shall not collect, haul, recycle, or process waste tires unless that person has obtained a permit or registration from the department for that activity or, for an interim period to be determined by the department, is seeking a permit or registration from the department for that activity.

 (K) Subsection (J) does not apply to items (1) through (5) if these designated waste tire sites are maintained so as to prevent and control mosquitoes or other public health nuisances as determined by the department:

 (1) a tire retailing business where less than one thousand waste tires are kept on the business premises;

 (2) a tire retreading business where less than two thousand five hundred waste tires are kept on the business premises or a tire retreading facility that is owned or operated by a company that manufactures tires in this State or the tire manufacturer’s parent company or its subsidiaries;

 (3) a business that, in the ordinary course of business, removes tires from motor vehicles if less than one thousand of these tires are kept on the business premises;

 (4) a permitted solid waste facility with less than two thousand five hundred waste tires temporarily stored on the business premises; or

 (5) a person using waste tires for agricultural purposes.

 (L) The department shall encourage the voluntary establishment of waste tire collection centers, waste tire treatment facilities, and solid waste disposal facilities to be open to the public for the deposit of waste tires.

 (M) The department is authorized to establish incentive programs to encourage individuals to return their used tires to waste tire recycling or processing facilities.

 (N) For sales made on or after November 1, 1991, there is imposed a fee of two dollars for each new tire sold with a Department of Transportation number to the ultimate consumer, whether or not the tire is mounted by the seller. The wholesaler or retailer receiving new tires from unlicensed wholesalers is responsible for paying the fee imposed by this subsection.

 The Department of Revenue shall administer, collect, and enforce the tire recycling fee in the same manner that the sales and use taxes are collected pursuant to Chapter 36 of Title 12. The fee imposed by this subsection must be remitted on a monthly basis. Instead of the discount allowed pursuant to Section 12‑36‑2610, the taxpayer may retain three percent of the total fees collected as an administrative collection allowance. This allowance applies whether or not the return is timely filed.

 The department shall deposit all fees collected to the credit of the State Treasurer who shall establish a separate and distinct account from the state general fund.

 The State Treasurer shall distribute one and one‑half dollars for each tire sold, less applicable credit, refund, and discount, to each county based upon the population in each county according to the most recent United States Census. The county shall use these funds for collection, processing, or recycling of waste tires generated within the State.

 The remaining portion of the tire recycling fee is to be credited to the Solid Waste Management Trust Fund by the State Treasurer for the Waste Tire Grant Trust Fund, established under the administration of the South Carolina Department of Health and Environmental Control.

 The General Assembly shall review the waste tire disposal recycling fee every five years.

 (O) A wholesaler or retailer required to submit a fee pursuant to subsection (N) who delivers or arranges delivery of waste tires to a permitted or approved waste tire recycling facility, or a permitted or approved waste tire processing facility which processes waste tires before recycling, may apply for a refund of one dollar for each tire delivered. If waste tires generated in this State, on which a fee has been paid, are delivered to a waste tire facility located outside this State, a wholesaler or retailer may apply for a refund of one dollar per tire delivered if the receiving facility is permitted or approved by the host state as a waste tire recycling facility or a waste tire processing facility which processes waste tires before recycling; in no case may a refund be approved for a number of tires delivered in excess of the number of new tires sold by the individual wholesaler or retailer. Verification must be provided as required by the South Carolina State Department of Revenue. All refunds made pursuant to this subsection must be charged against the appropriate county’s distributions under subsection (N).

 (P) The Office of Solid Waste Reduction and Recycling of the Department of Health and Environmental Control may provide grants from the Waste Tire Trust Fund to counties which have exhausted all funds remitted to counties under Section 44‑96‑170(N), to regions applying on behalf of those counties and to local governments within those counties to assist in the following:

 (1) constructing, operating, or contracting with waste tire processing or recycling facilities;

 (2) removing or contracting for the removal of waste tires for processing or recycling;

 (3) performing or contracting for the performance of research designed to facilitate waste tire recycling; or

 (4) the purchase or use of recycled products or materials made from waste tires generated in this State.

 (Q) Waste tire grants must be awarded on the basis of written grant request proposals submitted to and approved, not less than annually, by the committee consisting of ten members appointed by the commissioner representing:

 (1) the South Carolina Tire Dealers and Retreaders Association;

 (2) the South Carolina Association of Counties;

 (3) the South Carolina Association of Regional Councils;

 (4) the South Carolina Department of Health and Environmental Control;

 (5) tire manufacturers;

 (6) the general public;

 (7) a public interest environmental organization;

 (8) the South Carolina Department of Natural Resources;

 (9) the Office of the Governor; and

 (10) the South Carolina Municipal Association.

 Members of the committee shall serve for terms of three years and until their successors are appointed and qualify.

 Vacancies must be filled in the manner of original appointment for the unexpired portion of the term. The representative of the department shall serve as chairman. The committee shall review grant requests and proposals and make recommendations on grant awards to the State Solid Waste Advisory Council. Grants must be awarded by the State Solid Waste Advisory Council.

 (R) Notwithstanding subsection (N), the department may use funds from the Waste Tire Trust Fund to fund activities of the department to implement provisions of this section to promote the recycling of waste tires and to encourage higher end uses of waste tires. The use of these funds must be reviewed annually by the Waste Tire Committee and the Solid Waste Advisory Council. The Recycling Market Development Advisory Council and the Solid Waste Advisory Council also may make recommendations to the office for use of these funds.

 (S) The department shall establish by regulation recordkeeping and reporting requirements for waste tire haulers and collection, processing, recycling, and disposal facilities.

 (T) A county failing to comply with the requirements of this section and regulations promulgated under it is not eligible for monies from the Waste Tire Trust Fund.

HISTORY: 1991 Act No. 63, Section 1; 1993 Act No. 181, Section 1155; 1993 Act No. 181, Section 1156; 1998 Act No. 432, Section 17; 2000 Act No. 405, Section 14.

CROSS REFERENCES

Deposit of funds generated pursuant to this section in the Solid Waste Management Trust Fund, see Section 44‑96‑120.

Office of Solid Waste Reduction and Recycling, see Section 44‑96‑110.

Regulation pertaining to waste tires, see S.C. Code of Regulations R. 61‑107.3.

Solid Waste Management Trust Fund, see Section 44‑96‑120.

Federal Aspects

Discarded tire disposal, see 42 U.S.C.A. Section 6914.

Library References

Environmental Law 354.

Westlaw Topic No. 149E.

NOTES OF DECISIONS

Permitted or approved facility 1

1. Permitted or approved facility

Evidence raised fact issue for the jury, in Tort Claims Act action by operator of waste tire processing and disposal facility against Department of Health and Environmental Control (DHEC), regarding whether DHEC was “grossly negligent” in failing to restore operator to rebate list, which allowed tire retailers a rebate for each tire delivered to a permitted waste tire facility, following decision by ALJ in administrative proceeding ordering DHEC to return operator to the list; DHEC’s policy was to inspect facilities on a monthly basis, once operator was removed from list he could not be restored absent an inspection, and after DHEC removed operator from list it failed to inspect operator’s facility for four years despite his repeated requests for an inspection. Proctor v. Dept. of Health and Environmental Control (S.C.App. 2006) 368 S.C. 279, 628 S.E.2d 496. States 112.2(1)

**SECTION 44‑96‑180.** Lead‑acid batteries.

 (A) Twelve months after this chapter is effective, no person shall knowingly place a used lead‑acid battery in mixed municipal solid waste, discard or otherwise dispose of a lead‑acid battery, except by delivery to:

 (1) a lead‑acid battery retailer or wholesaler;

 (2) a collection, recycling, or recovered material processing facility that is registered by the department to accept lead‑acid batteries; or

 (3) a permitted secondary lead smelter.

 (B) Twelve months after this chapter is effective, no battery retailer shall knowingly dispose of a used lead‑acid battery except by delivery to:

 (1) the agent of a lead‑acid battery wholesaler or the agent of a permitted secondary lead smelter;

 (2) a vehicle battery manufacturer for delivery to a permitted secondary lead smelter;

 (3) a collection, recycling, or recovered material processing facility that is registered by the department to accept lead‑acid batteries; or

 (4) a permitted secondary lead smelter.

 (C) Any person violating the provisions of subsections (A) or (B) shall be subject to a fine not to exceed two hundred dollars. This provision may be enforced by a state, county, or municipal law enforcement official or by the department. Each lead‑acid battery improperly disposed of shall constitute a separate violation.

 (D) A person selling lead‑acid batteries or offering lead‑acid batteries for retail sale in this State shall:

 (1) accept, at the point of transfer, lead‑acid batteries from customers; and

 (2) post written notice, visible to customers, at his place of business which must be at least eight and one‑half inches by eleven inches in size and must contain the following language:

 (a) “It is illegal to put a motor vehicle battery in the garbage.”

 (b) “Recycle your used batteries.”

 (c) “State law requires us to accept motor vehicle batteries for recycling”.

 (E) No person may recover from the owner or operator of a lead‑acid battery collection center any costs of response actions resulting from a release of either a hazardous substance from lead‑acid batteries, unless the owner or operator is grossly negligent in the operation of the public lead‑acid battery collection center, or recovered materials processing facility. Nothing in this section shall affect or modify in any way the obligations or liability of any person under any other provisions of state or federal law, including common law, for injury or damage resulting from the release of hazardous substances.

 (F) For sales made on or after November 1, 1991, there is imposed a fee of two dollars per lead‑acid battery sold to the ultimate consumer, whether the battery is installed by the seller or not. The retailer is to remit the fee to the Department of Revenue on a monthly basis. The Department of Revenue shall administer, collect, and enforce the lead‑acid battery disposal fee in the same manner that the sales and use taxes are collected pursuant to Chapter 36 of Title 12. However, taxpayers are not required to make payments under Section 12‑36‑2600. In lieu of the discount allowed pursuant to Section 12‑36‑2610, the taxpayer may retain three percent of the total fees collected as an administrative collection allowance. This allowance applies whether or not the return is timely filed. The department shall deposit all fees collected to the credit of the State Treasurer. The State Treasurer is required to establish a separate and distinct account from the state general fund. The lead‑acid battery disposal fee must be credited to the Solid Waste Management Trust Fund by the State Treasurer.

 (G) The lead‑acid battery retailer must charge a five dollar refundable deposit for each battery sold for which a core is not returned to the retailer. The deposit must be returned to the consumer if a core is returned to the same retailer within thirty days.

 (H) The department shall produce, print, and distribute the notices required by subsection (D) to all lead‑acid battery retailers.

 (I) Any person selling lead‑acid batteries at wholesale or offering lead‑acid batteries for sale at wholesale must accept, at the point of transfer, lead‑acid batteries from customers.

 (J) Not later than eighteen months after this chapter is effective, the department shall promulgate regulations necessary to carry out the requirements of this section. Such regulations may include the imposition of reasonable fees to assist in defraying the costs of the regulatory activities of the department required by this section.

 (K) All state agencies, all political subdivisions using state funds to procure items, and all persons contracting with such agency or political subdivision where such persons procure items with state funds shall procure recycled lead‑acid batteries where practicable, subject to the provisions of Section 44‑96‑140(D).

 (L)(1) Within eighteen months after enactment of this subsection, the department shall conduct a study on the recycling and disposal of small sealed lead‑acid batteries.

 (2) Within twelve months after completion of the study required in paragraph (1), the department must promulgate regulations regarding the proper management and disposal of small sealed lead‑acid batteries. It shall be unlawful for any person to incinerate or place any small sealed lead‑acid battery in a landfill.

HISTORY: 1991 Act No. 63, Section 1; 1992 Act No. 450, Section 4; 1992 Act No. 450, Section 5; 1993 Act No. 181, Section 1157; 2000 Act No. 405, Section 15.

CROSS REFERENCES

Deposit of funds generated pursuant to this section in the Solid Waste Management Trust Fund, see Section 44‑96‑120.

Solid waste management, lead‑acid batteries, see S.C. Code of Regulations R. 61‑107.8.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 354.

Westlaw Topic No. 149E.

**SECTION 44‑96‑190.** Yard trash; compost.

 (A) Not later than twelve months after this chapter is effective, the department shall:

 (1) promulgate regulations governing the proper management or disposal, or both, of yard trash and land‑clearing debris;

 (2) promulgate regulations establishing standards for the production of compost, including requirements necessary to produce hygienically safe compost products for varying applications; and

 (3) comply with the requirements of the South Carolina Administrative Procedures Act and notify local government officials of the opportunity to provide input prior to issuing proposed regulations for comment under this article.

 (B) Twenty‑four months after this chapter is effective, no person shall knowingly mix yard trash and land‑clearing debris with other municipal solid waste that is intended for collection or disposal at a municipal solid waste landfill or a resource recovery facility.

 (C) Twenty‑four months after this chapter is effective, no person shall knowingly mix other municipal solid waste with yard trash and land‑clearing debris that is intended for collection and disposal at a composting facility. This prohibition does not apply to bags or other containers approved by the operator of the composting facility.

 (D) Twenty‑four months after this chapter is effective, no owner or operator of a municipal solid waste landfill shall knowingly accept at the gate loads composed primarily of yard trash or land‑clearing debris unless the landfill provides and maintains a separate waste composting facility and composts all yard trash or land‑clearing debris before disposal in the landfill or contracts for the composting of such waste at the facility.

 (E) Any person violating the provisions of subsections (B) or (C) shall be subject to a fine not to exceed two hundred dollars. This provision may be enforced by a state, county, or municipal law enforcement official or by the department.

 (F) All state agencies, all political subdivisions using state funds to procure items, and all persons contracting with such agency or political subdivision where such persons procure items with state funds shall procure composted materials and products where practicable, subject to the provisions of Section 44‑96‑140(D).

HISTORY: 1991 Act No. 63, Section 1; 1992 Act No. 450, Section 6; 1997 Act No. 131, Section 6.

CROSS REFERENCES

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 354.

Westlaw Topic No. 149E.

**SECTION 44‑96‑200.** White goods.

 (A) Not later than eighteen months after this chapter is effective, the department shall promulgate regulations governing the proper management or disposal, or both, of white goods requiring a person selling or offering white goods for sale at retail in this State to post written notice at his place of business informing the purchaser of the proper method of disposal of used white goods. Persons dealing with the disposal of white goods are encouraged to reclaim freon from white goods containing freon before recycling or disposal.

 (B) Three years after this chapter is effective, no person shall knowingly include white goods with other municipal solid waste that is intended for collection or disposal at a municipal solid waste landfill.

 (C) Three years after this chapter is effective, no owner or operator of a municipal solid waste landfill shall knowingly accept white goods for disposal at such landfill.

 (D) Notwithstanding any other provision of law, any person violating the provisions of subsections (B) and (C) of this section shall be subject to a fine not to exceed two hundred dollars. This provision may be enforced by a state, county, or municipal law enforcement official, or by the department. Each white good improperly disposed of shall constitute a separate violation.

 (E) For sales made on or after November 1, 1991, there is imposed a fee of two dollars for each white good delivered by wholesalers to licensed retail merchants, jobbers, dealers, or other wholesalers for resale in this State. Retail merchants, jobbers, dealers, or other wholesalers receiving new white goods from unlicensed wholesalers shall be responsible for the fee imposed by this section. The wholesaler or retailer is to remit the fee to the Department of Revenue on a monthly basis. The Department of Revenue shall administer, collect, and enforce the white good disposal fee in the same manner that the sales and use taxes are collected pursuant to Chapter 36 of Title 12. However, taxpayers are not required to make payments under Section 12‑36‑2600. In lieu of the discount allowed pursuant to Section 12‑36‑2610, the taxpayer may retain three percent of the total fees collected as an administrative collection allowance. This allowance applies whether or not the return is timely filed. The department is required to deposit all fees collected to the credit of the State Treasurer. The State Treasurer is required to establish a separate and distinct account from the state general fund. The State Treasurer shall credit the white good disposal fee to the Solid Waste Management Trust Fund.

HISTORY: 1991 Act No. 63, Section 1; 1993 Act No. 181, Section 1158.

CROSS REFERENCES

Deposit of funds generated pursuant to this section in the Solid Waste Management Trust Fund, see Section 44‑96‑120.

Solid waste management, white goods, see S.C. Code of Regulations R. 61‑107.9.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 354.

Westlaw Topic No. 149E.

**SECTION 44‑96‑210.** Newsprint.

 (A) Five years after this chapter is effective, the department shall make a determination as to whether newsprint sold within this State is being recycled at a rate of thirty‑five percent or more of the quantity sold within the State. If the department determines that newsprint is being recycled at a rate of less than thirty‑five percent, the department shall submit a report to the Governor and to the General Assembly making recommendations on incentives or penalties to increase the recycling percentage of newsprint to at least thirty‑five percent within a reasonable period of time. The department may, by regulation, establish a program to obtain and verify the information necessary to make the determination and recommendations required by this section.

 (B) For the purposes of this section, “newsprint” means uncoated paper, whether supercalendered or machine finished, of the type generally used for, but not limited to, the publication of newspapers, directories, or commercial advertising mailers, which is primarily from mechanical woodpulps combined with some chemical woodpulp.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 354.

Westlaw Topic No. 149E.

**SECTION 44‑96‑220.** Uniform Department of Revenue collection and enforcement methods apply.

 The provisions of Chapter 54 of Title 12 apply to the administration, collection, and enforcement of the fees imposed by this chapter as administered by the Department of Revenue.

HISTORY: 1991 Act No. 63, Section 1; 1993 Act No. 181, Section 1159.

Library References

Environmental Law 383.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 141.

**SECTION 44‑96‑235.** Severability.

 If any clause, sentence, paragraph, or part of this chapter or application thereof to any person or circumstance shall, for any reason, be judged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this chapter or its application to other persons or circumstances.

HISTORY: 1991 Act No. 63, Section 1.

ARTICLE 2

Solid Waste Management

**SECTION 44‑96‑240.** Findings; purposes.

 (A) The General Assembly finds that:

 (1) South Carolina is generating increasingly large volumes of solid waste which may pose a threat to human health and safety and to the environment if not properly managed or if managed in facilities inadequately designed and operated to ensure protection of human health and safety and the environment.

 (2) Many communities are managing solid waste in existing facilities not designed and operated with technology and engineering controls that are adequately protective of the environment.

 (3) A number of new solid waste management facilities will have to be established in coming years to replace older facilities as they reach capacity or as they are required to close because they cannot meet new state or federal regulatory requirements.

 (4) It is the policy of the State of South Carolina to protect human health and safety and the environment from the effects of improper or inadequate solid waste management.

 (5) Legislation is needed to establish an adequate regulatory framework for the siting, design, construction, operation, and closure of solid waste management facilities in order to provide protection for human health and safety and for the environment.

 (6) A regional approach to the establishment of solid waste management facilities should be strongly encouraged in order to provide solid waste management services in the most efficient and cost‑effective manner and to minimize any threat to human health and safety or to the environment.

 (B) It is the purpose of this article to:

 (1) regulate solid waste management facilities other than hazardous waste management facilities subject to the South Carolina Hazardous Waste Management Act, infectious waste management facilities subject to the South Carolina Infectious Waste Management Act, and radioactive waste facilities subject to the South Carolina Atomic Energy and Radiation Control Act and other federal and state laws; and

 (2) ensure that all solid waste management facilities in this State are sited, designed, constructed, operated, and closed in a manner that protects human health and safety and the environment.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Atomic Energy and Radiation Control Act, see Sections 13‑7‑10 et seq.

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

Infectious Waste Management Act, see Sections 44‑93‑10 et seq.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Atomic Energy Section 1 , Introductory Comments.

**SECTION 44‑96‑250.** Definitions.

 (A) The definitions set forth in Article 1 of this chapter are incorporated by reference in this article.

 (B) The following definitions are applicable in this article:

 (1) “Applicant” means an individual, corporation, partnership, business association, or government entity that applies for the issuance, transfer, or modification of a permit under this article.

 (2) “Ash” means the solid residue from the incineration of solid waste.

 (3) “Closure” means the discontinuance of operation by ceasing to accept, treat, store, or dispose of solid waste in a manner which minimizes the need for further maintenance and protects human health and the environment.

 (4) “Director” means the Director of the South Carolina Department of Health and Environmental Control.

 (5) “Composite liner” means a liner which shall consist of a geomembrane placed over a natural or recompacted soil layer.

 (6) “Construction” means any physical modification to the site at which a potential or proposed solid waste management facility is to be located including, but not limited to, site preparation.

 (7) “Contingency plan” means a document acceptable to the department setting out an organized, planned, and coordinated course of action to be followed at or by the facility in case of a fire, explosion, or other incident that could threaten human health and safety or the environment.

 (8) “Cover” means soil or other suitable material acceptable to the department, or both, that is used to cover compacted solid waste in a land disposal site.

 (9) “Daily cover” means a compacted layer of at least six inches of soil or other cover material, in an amount approved by the department, that is placed on all exposed solid waste in a landfill at the end of each day of operation, except for recyclable materials properly located in a salvage area.

 (10) “Disclosure statement” means a sworn statement or affirmation, the form and content of which shall be determined by the department and as required by Section 44‑96‑300.

 (11) “Double geomembrane liner” means a liner which shall consist of the following layers from bottom to top:

 (a) a properly graded and prepared subbase;

 (b) a minimum 60 mil HDPE geomembrane secondary liner;

 (c) a secondary leachate collection system;

 (d) an approved bentonite mat or equivalent;

 (e) a geomembrane primary liner; and

 (f) a primary leachate collection system.

 (12) “Equity” means both legal and equitable interests.

 (13) “Financial responsibility mechanism” means a mechanism designed to demonstrate that sufficient funds will be available to meet specific environmental protection needs of solid waste management facilities. Available financial responsibility mechanisms include, but are not limited to, insurance, trust funds, surety bonds, letters of credit, personal bonds, certificates of deposit, financial tests, and corporate guarantees as determined by the department by regulation.

 (14) “Flood plain” means the lowland and relatively flat areas adjoining inland and coastal areas of the mainland and off‑shore islands including, at a minimum, areas subject to a one percent or greater chance of flooding in any given year.

 (15) “Leachate” means the liquid that has percolated through or drained from solid waste or other man‑emplaced materials and that contains soluble, partially soluble, or miscible components removed from such waste.

 (16) “Liner” means a continuous layer of natural or man‑made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste, and constituents of such waste, or leachate.

 (17) “Monofill” means a landfill or landfill cell into which only one type of waste is placed.

 (18) “Municipal solid waste incinerator” means any solid waste incinerator, publicly or privately owned, that receives household waste. Such incinerator may receive other types of solid waste such as commercial or industrial solid waste.

 (19) “Permit” means the process by which the department can ensure cognizance of, as well as control over, the management of solid wastes.

 (20) “Responsible party” means:

 (a) any officer, corporation director, or senior management official of a corporation, partnership, or business association that is an applicant;

 (b) a management employee of a corporation, partnership, or business association that is an applicant who has overall responsibility for operations and financial management of the facility under consideration;

 (c) an individual, officer, corporation director, senior management official of a corporation, partnership, or business association under contract to the applicant to operate the facility under consideration; or

 (d) an individual, corporation, partnership, or business association that holds, directly or indirectly, at least five percent equity or debt interest in the applicant. If any holder of five percent or more of the equity or debt of the applicant is not a natural person, the term means any officer, corporation director, or senior management official of the equity or debt holder who is empowered to make discretionary decisions with respect to the operation and financial management of the facility under consideration.

 (21) “Run‑off” means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

 (22) “Solid waste processing facility” means a combination of structures, machinery, or devices utilized to reduce or alter the volume, chemical, or physical characteristics of solid waste through processes, such as baling or shredding, prior to delivery of such waste to a recycling or resource recovery facility or to a solid waste treatment, storage, or disposal facility and excludes collection vehicles.

 (23) “Transfer station” means a combination of structures, machinery, or devices at a place or facility where solid waste is taken from collection vehicles and placed in other transportation units, with or without reduction of volume, for movement to another solid waste management facility.

 (24) “Vector” means a carrier that is capable of transmitting a pathogen from one organism to another including, but not limited to, flies and other insects, rodents, birds, and vermin.

 (25) “Vehicle” means any motor vehicle, water vessel, railroad car, airplane, or other means of transporting solid waste.

HISTORY: 1991 Act No. 63, Section 1; 1993 Act No. 181, Section 1160.

**SECTION 44‑96‑260.** Powers and duties of the department.

 To carry out the purposes and provisions of this article, the department is authorized to:

 (1) promulgate such regulations, procedures, or standards as are necessary to protect human health and safety or the environment from the adverse effects of improper, inadequate, or unsound management of solid waste;

 (2) issue, deny, revoke, or modify permits, registrations, or orders under such conditions as the department may prescribe, pursuant to procedures consistent with the South Carolina Administrative Procedures Act, for the operation of solid waste management facilities;

 (3) establish, by regulation, and collect reasonable registration and permit fees to assist in defraying the costs of the department’s solid waste regulatory programs;

 (4) conduct inspections, conduct investigations, obtain samples, and conduct research regarding the operation and maintenance of any solid waste management facility;

 (5) enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the department determines appropriate, with other state, federal, or interstate agencies, counties, municipalities, educational institutions, other local governments, and local health departments, consistent with the purposes and provisions of this article;

 (6) receive financial and technical assistance from the federal government or private entities;

 (7) cooperate with private organizations and with business and industry in carrying out the provisions of this article;

 (8) establish qualifications for, and provide certification programs for, operators of landfills and other solid waste management facilities;

 (9) establish and carry out an appropriate statewide educational program to inform local governments and private entities of the requirements of this article; and

 (10) encourage counties and municipalities to pursue a regional approach to solid waste management within a common geographical area.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Administrative Procedures Act, see Sections 1‑23‑310 et seq.

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 14.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 97, 101, 123, 125 to 130.

NOTES OF DECISIONS

In general 1

Delegation of authority 2

1. In general

Department of Health and Environmental Control could not base decision to withdraw solid waste landfill permit solely on county’s withdrawal of letter of consistency, as Solid Waste Policy and Management Act charged Department, not county, with ensuring such facilities meet the requirements for permitting. Southeast Resource Recovery, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2004) 358 S.C. 402, 595 S.E.2d 468, rehearing denied. Environmental Law 358

2. Delegation of authority

Department of Health and Environmental Control’s (DHEC) finding that proposed long‑term construction, demolition, and land‑clearing debris (C & D) landfill was inconsistent with county solid waste management plan in denying landfill permit application did not constitute an improper delegation of DHEC’s permitting authority; plan indicated that the county could address its current and projected capacity needs for C & D waste with existing facilities and the potential for expansion of existing facilities rather than directly making consistency determination by expressly declaring the proposed landfill inconsistent with the local solid waste management plan, and DHEC conducted its own analysis and independently verified that county had accurately identified the amount of waste it currently generated, made a logical projection of how much waste the county would generate in the future based on population and tons per person, and that the existing facilities had the capacity to adequately handle the current and expectant amount of waste. Greeneagle, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2012) 399 S.C. 91, 730 S.E.2d 869, rehearing denied, certiorari denied. Environmental Law 358

**SECTION 44‑96‑270.** Department report on regional solid waste management facilities.

 The department shall conduct a study and shall submit a report to the Governor and to the General Assembly not later than eighteen months after this chapter is effective on ways to encourage counties and municipalities to pursue a regional approach to solid waste management, including incentives to encourage the siting, construction, and operation of regional solid waste management facilities.

HISTORY: 1991 Act No. 63, Section 1.

Library References

Environmental Law 14.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 97, 101, 123, 125 to 130.

**SECTION 44‑96‑280.** Powers of the commissioner.

 The director, upon receipt of information that any aspect of solid waste management within any publicly or privately owned facility, may present an imminent and substantial hazard to human health or safety or to the environment, and may take necessary action to protect human health or safety or the environment which may include, but is not limited to, the following:

 (1) entering the solid waste management facility in order to assess what actions may be necessary;

 (2) issuing or modifying an order directing the person responsible for facility operations to take appropriate action to prevent or eliminate the practice which is causing the hazard or a violation of any provision of this article or regulation promulgated pursuant to this article;

 (3) commencing an action to enjoin any act or practice that is causing the hazard; and

 (4) inspecting and obtaining samples from a person owning, operating, or supervising any solid waste management facility. However, the department shall provide, upon request, a sample of equal volume or weight to the person owning, operating, or supervising the facility. The department also shall provide such person with a copy of the results of the analysis of the samples after the results have been properly evaluated by the department to determine their validity.

HISTORY: 1991 Act No. 63, Section 1; 1993 Act No. 181, Section 1161.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑290.** Permitting.

 (A) No person shall operate a solid waste management facility without a permit from the department. However, pursuant to a county or regional plan, any political subdivision of this State may hold a permit for a solid waste management facility as the owner of the facility and may contract for the operation, management, or both, of the facility. A separate permit shall be required for each site or facility although the department may include one or more different types of facilities in a single permit if the facilities are collocated on the same site. The department may, by regulation, exempt certain facilities from all or part of the requirements of this section.

 (B) No person shall initiate construction, expansion, modification, or closure of a solid waste management facility except in accordance with requirements established by the department pursuant to this article.

 (C) Permits issued by the department to existing solid waste management facilities pursuant to statutory and regulatory requirements in effect before the date this article is effective remain valid for the life of the permit. However, a solid waste management facility without an approved closure plan is subject to the closure and postclosure requirements of this article applicable to that type of facility and to any other requirements made applicable specifically to existing solid waste management facilities by this article or by regulations promulgated pursuant to it. Upon expiration of the permit, the permittee shall comply with the requirements of this article and regulations promulgated pursuant to it.

 (D) The department shall promulgate regulations for the permitting of solid waste management facilities which shall, at a minimum, address the following issues:

 (1) contents of permit applications and application procedures;

 (2) suspension, revocation, modification, issuance, denial, or renewal of a permit, including the criteria for taking such action and the procedures for taking such action consistent with the South Carolina Administrative Procedures Act;

 (3) exemptions, variances, and emergency approvals;

 (4) financial responsibility requirements sufficient to ensure the satisfactory maintenance, closure, and postclosure care of any solid waste management facility or to carry out any corrective action which may be required as a condition of a permit; provided, however, that consideration shall be given to mechanisms which would provide flexibility to the owner or operator in meeting its financial obligations. The owner or operator shall be allowed to use combined financial responsibility mechanisms for a single facility and shall be allowed to use combined financial responsibility mechanisms for multiple facilities, utilizing actuarially sound risk‑spreading techniques. The department shall require the demonstration of financial responsibility prior to issuing a permit for any solid waste management facility. The department regulations regarding financial responsibility requirements shall not apply to any local government or region comprised of local governments which owns and operates a municipal solid waste management facility unless and until such time as federal regulations require such local governments and regions to demonstrate financial responsibility for such facilities;

 (5) public notice and public hearing requirements consistent with the requirements of the South Carolina Administrative Procedures Act; and

 (6) generally applicable operational requirements.

 (E) No permit to construct a new solid waste management facility or to expand an existing solid waste management facility may be issued until a demonstration of need is approved by the department. Facilities which lawfully burn nonhazardous waste for energy recovery up to the normal rate of manufacturing production or which lawfully use or reuse the waste to make a product shall not be excluded from the demonstration of need requirement. No construction of new or expanded solid waste management facilities may be commenced until all permits required for construction have been issued. In determining if there is a need for new or expanded solid waste disposal sites, the department shall not consider solid waste generated in jurisdictions not subject to the provisions of a county or regional solid waste management plan pursuant to this chapter.

 The department shall promulgate regulations to implement this section. These regulations must apply to all solid waste management facilities which have not obtained all permits required for construction. This subsection does not apply to inert or cellulosic solid waste facilities which are not commercial solid waste management facilities or to industrial facilities managing solid waste generated in the course of normal operations on property under the same ownership or control as the solid waste management facility if the industrial facility is not a commercial solid waste management facility.

 (F) No permit to construct a new solid waste management facility or to expand an existing solid waste management facility within a county or municipality may be issued by the department unless the proposed facility or expansion is consistent with local zoning, land use, and other applicable local ordinances, if any; the proposed facility or expansion is consistent with the local or regional solid waste management plan and the state solid waste management plan; and the host jurisdiction and the jurisdiction generating solid waste destined for the proposed facility or expansion can demonstrate that they are actively involved in and have a strategy for meeting the statewide goal of waste reduction established in this chapter. This subsection must not apply to industrial facilities managing solid waste generated in the course of normal operations on property under the same ownership or control as the waste management facility. However, the facilities shall be consistent with the applicable local zoning and land use ordinances, if any; and provided further, that the industrial facility is not a commercial solid waste management facility.

 (G) [Redesignated as (F)‑See 2000 Effect of Amendment note]

 (H) A permit issued pursuant to this article shall contain such conditions or requirements as are necessary to comply with the requirements of this article and the regulations of the department and to prevent a substantial hazard to human health or to the environment. Permits issued under this section shall be effective for the design and operational life of the facility, to be determined by the department, subject to the provisions of this article. However, at least once every five years, the department shall review the environmental compliance history of each permittee. The time period for review for each category of permits shall be established by the department by regulation. If, upon review, the department finds that material or substantial violations of the permit demonstrate the permittee’s disregard for or inability to comply with applicable laws, regulations, or requirements and would make continuation of the permit not in the best interests of human health and safety or the environment, the department may, after a hearing, amend or revoke the permit, as appropriate and necessary. When a permit is reviewed, the department shall include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original permit was based have been changed by statute or amended by regulation.

 (I) The department may amend or attach conditions to a permit when:

 (1) there is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect human health and safety and the environment;

 (2) the investigation has shown the need for additional equipment, construction, procedures, and testing to ensure the protection of human health and safety and the environment; and

 (3) the amendment is necessary to meet changes in applicable regulatory requirements.

 (J) The department may issue permits for short‑term structural fills pursuant to department regulations. These permits shall require that structural fills be closed and cover put in place within twelve months of issuance of the permit. Consistency with solid waste management plans pursuant to subsection (G) is not required for the issuance of permits for short‑term structural fills. For the purpose of this subsection, “cover” means soil or other suitable material, or both, acceptable to the department that is used to cover solid waste. For the purpose of this subsection, “structural fill” means landfilling for future beneficial use utilizing land‑clearing debris, hardened concrete, hardened/cured asphalt, bricks, blocks, and other materials specified by the department by regulation, compacted and landfilled in a manner acceptable to the department, consistent with applicable engineering and construction standards and carried out as a part of normal activities associated with construction, demolition, and land‑clearing operations; however, the materials utilized must not have been in direct contact with hazardous constituents, petroleum products, or painted with lead‑based paint. Applicable department regulations in effect on the effective date of this act, not inconsistent with this subsection, remain in effect unless changed by statute or amended or repealed by the department pursuant to the Administrative Procedures Act, Article 1, Chapter 23, Title 1.

HISTORY: 1991 Act No. 63, Section 1; 1996 Act No. 454, Section 1; 2000 Act No. 405, Section 16.

CROSS REFERENCES

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 355.

Westlaw Topic No. 149E.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 3, Enforcement.

Attorney General’s Opinions

The DHEC does not have the authority to place a moratorium on its issuance of permits for construction and debris landfills until proposed amendments to DHEC regulations are approved. S.C. Op.Atty.Gen. (August 27, 2008) 2008 WL 4146002.

The requirement that the county governing body must request a permit before the Department of Health and Environmental Control can issue one is a valid requirement. S.C. Op.Atty.Gen. (April 10, 1991) 1991 WL 632974.

NOTES OF DECISIONS

In general 1

County ordinances 4

Demonstration of need 2

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1. In general

The administrative law court (ALC), which held a full contested hearing in which it acted as fact finder and final agency decision maker upon review of decision of Department of Health and Environmental Control (DHEC) issuing applicant a permit to construct and operate a commercial construction, demolition waste, and land‑clearing debris (C & D) landfill, had authority under governing regulations to consider excess regional landfill capacity as a factor in its decision to deny applicant a C & D landfill permit, even though DHEC had declined to consider regional excess landfill capacity in its initial decision; applicant was required to submit demonstration of need (DON) request prior to obtaining landfill permit, prior version of regulation governing DON requests did not require reviewing agency to consider excess landfill capacity but allowed agency to review “additional factors” to determine an applicant’s need for a permit, and ALC properly considered regional excess landfill capacity as an “additional factor” that weighed in favor of denying landfill permit based upon the ALC’s own findings of fact, rather than DHEC’s findings of fact. Engaging and Guarding Laurens County’s Environment (EAGLE) v. South Carolina Dept. of Health and Environmental Control (S.C. 2014) 407 S.C. 334, 755 S.E.2d 444, rehearing denied. Environmental Law 382

2. Demonstration of need

Applicant for permit to operate solid waste disposal landfill failed to show that county council violated commerce clause by denying applicant’s request for letter of consistency (LOC), without which landowner could not obtain permit from Department of Health and Environmental Control (DHEC) to operate landfill; even though majority of waste coming to proposed landfill would be from North Carolina, landowner did not challenge constitutionality of Solid Waste Policy and Management Act, and Act prohibited consideration of solid waste from jurisdictions outside plan area in determining need. Pressley v. Lancaster County (S.C.App. 2001) 343 S.C. 696, 542 S.E.2d 366, rehearing denied, certiorari denied. Commerce 52.10; Environmental Law 376

Waste management company failed to demonstrate need for expansion of landfill, in compliance with Solid Waste Policy and Management Act, where only documents regarding demonstration of need in its permit application were letters from two counties indicating that waste from those counties might be sent to waste management company, and Department of Health and Environmental Control’s (DHEC) permitting officer testified that no document meeting demonstration of need criteria had been filed. Ballenger v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1998) 331 S.C. 247, 500 S.E.2d 183, rehearing denied. Environmental Law 362

Solid Waste Policy and Management Act’s requirement that demonstration of need for expansion of existing landfill be approved by Department of Health and Environmental Control (DHEC) was in addition to, and not supplanted by, requirement that proposed expansion be consistent with local zoning, land use, and other applicable local ordinances and consistent with local or regional solid waste management plan. Ballenger v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1998) 331 S.C. 247, 500 S.E.2d 183, rehearing denied. Environmental Law 362

3. Letter of consistency

Solid Waste Policy and Management Act (SWPMA) authorized Department of Health and Environmental Control (DHEC) as the sole agency to promulgate regulations governing the design of landfill facilities, and, thus, determination to set disposal capacity at 1,819,000 cubic yards was within DHEC’s exclusive authority, although letters of consistency issued by county authorized a maximum capacity of 2.2 million cubic feet; capacity of 2.2 million cubic feet would have allowed facility to operate for only four or five months, which was an absurd result. Oakwood Landfill, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2009) 381 S.C. 120, 671 S.E.2d 646. Environmental Law 360; Environmental Law 361

Department of Health and Environmental Control could not delegate to counties the authority to determine through letters of consistency whether a solid waste permit would be consistent with local zoning, land use, and other applicable ordinances. Southeast Resource Recovery, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2004) 358 S.C. 402, 595 S.E.2d 468, rehearing denied. Environmental Law 358

In requiring an applicant to procure a letter of consistency (LOC) from the host county as a prerequisite to the Department of Health and Environmental Control’s (DHEC) grant of a permit to operate a solid waste management facility, DHEC intends for the local government to evaluate the same factors which the Solid Waste Policy and Management Act requires DHEC to consider. Pressley v. Lancaster County (S.C.App. 2001) 343 S.C. 696, 542 S.E.2d 366, rehearing denied, certiorari denied. Environmental Law 361

County council did not act arbitrarily or capriciously in refusing to issue letter of consistency (LOC), without which landowner could not obtain permit from Department of Health and Environmental Control (DHEC) to operate proposed construction and demolition (C & D) landfill; another industrial waste landfill was already in existence when landowner applied for permit, such landfill had capacity of 100,000 tons per year of C & D waste and of another 100,000 tons of industrial waste, county produced only 3,998.70 tons of C & D waste in previous year, and county’s plan at time of landowner’s request called for only one facility. Pressley v. Lancaster County (S.C.App. 2001) 343 S.C. 696, 542 S.E.2d 366, rehearing denied, certiorari denied. Environmental Law 361

County zoning board’s finding that prospective solid waste landfill complied with all applicable development standards of county land use ordinance did not require county council to issue letter of consistency (LOC) for operation of landfill; compliance with land use ordinance was not equivalent to compliance with Catawba Regional Solid Waste Management Plan or state statutes, and council had responsibility and authority to provide for operation of solid waste management facilities. Pressley v. Lancaster County (S.C.App. 2001) 343 S.C. 696, 542 S.E.2d 366, rehearing denied, certiorari denied. Environmental Law 361

4. County ordinances

Department of Health and Environmental Control (DHEC) could disregard county’s emergency ordinance that placed a moratorium on new landfills in deciding whether to grant a permit for a construction, demolition, and land‑clearing debris landfill in county; the emergency ordinance was an effort by the county to control DHEC’s permitting decision, and deferring to the county’s ordinance would have amounted to an improper delegation of DHEC’s exclusive authority over permitting decisions for solid waste management facilities. York County v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2012) 397 S.C. 217, 723 S.E.2d 255, rehearing denied, certiorari dismissed as improvidently granted 408 S.C. 180, 758 S.E.2d 187. Environmental Law 358

Section of South Carolina Solid Waste Policy and Management Act (SWPMA) that required counties to comply with state law, Department of Health and Environmental Control (DHEC) regulations, and the state solid waste management plan when submitting their own plans for solid waste management did not demonstrate General Assembly’s intent to grant DHEC exclusive regulatory authority over entire field of solid waste management and, therefore, implied field preemption did not apply to county ordinance regulating flow of solid waste within county; SWPMA was silent with respect to control over the flow of local waste generated in counties and, instead, expressly invited county regulation, planning, authority, and responsibility in the field of solid waste management. Sandlands C & D, LLC v. County of Horry (S.C. 2011) 394 S.C. 451, 716 S.E.2d 280. Environmental Law 352

5. Sufficiency of evidence

Substantial evidence supported administrative law court’s (ALC) finding that there was excess regional landfill capacity within planning area surrounding proposed landfill, as factor supporting ALC’s decision to deny applicant’s request for a permit to construct and operate a commercial construction, demolition waste, and land‑clearing debris (C & D) landfill under governing regulations; although Department of Health and Environmental Control (DHEC) failed to consider excess regional landfill capacity in the administrative proceeding below, the ALC’s decision to consider regional landfill capacity was permissible and supported by the evidence, since applicable regulation did not prohibit ALC from considering such evidence, excess landfill capacity had been discussed during public comment period regarding proposed landfill permit, and evidence established that only 32.9% of available C & D regional landfill capacity was being utilized at time of permit application. Engaging and Guarding Laurens County’s Environment (EAGLE) v. South Carolina Dept. of Health and Environmental Control (S.C. 2014) 407 S.C. 334, 755 S.E.2d 444, rehearing denied. Environmental Law 389

Permit applicant was entitled to solid waste landfill permit; facility was not inconsistent with county solid waste management plan, and Department of Health and Environmental Control had determined after public hearing and investigation that facility met all regulatory requirements. Southeast Resource Recovery, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2004) 358 S.C. 402, 595 S.E.2d 468, rehearing denied. Environmental Law 358

6. Review

Applicant was not required to pursue further administrative review before seeking judicial review of county council’s denial of application for letter of consistency (LOC) for applicant’s proposed solid waste disposal landfill; without LOC, applicant could not obtain requisite permit from Department of Health and Environmental Control (DHEC), and when council refused to issue LOC, effect of DHEC’s policy of delegating authority was to deny request for permit without further DHEC consideration. Pressley v. Lancaster County (S.C.App. 2001) 343 S.C. 696, 542 S.E.2d 366, rehearing denied, certiorari denied. Environmental Law 665

**SECTION 44‑96‑300.** Disclosure statements by permit applicants.

 (A) The department may obtain a disclosure statement from the applicant at the same time that an application for a permit for operation of a solid waste management facility is filed, except that this section shall not apply if the applicant is a local government or a region comprised of local governments. The disclosure statement shall contain the following information with regard to the applicant and his responsible parties:

 (1) the full name, business address, and social security number of all responsible parties;

 (2) a description of the experience and credentials, including any past or present permits or licenses for the collection, transportation, treatment, storage, or disposal of solid waste, issued to or held by the applicant within the past five years;

 (3) a listing and explanation of all convictions by final judgment of a responsible party in a state or federal court, whether under appeal or not, of a crime of moral turpitude punishable by a fine of five thousand dollars or more or imprisonment for one year or more, or both, within five years immediately preceding the date of the submission of the permit application;

 (4) a listing and explanation of all convictions by final judgment of a responsible party in a state or federal court, whether under appeal or not, of a criminal or civil offense involving a violation of an environmental law punishable by a fine of five thousand dollars or more or imprisonment for one year or more, or both, in a state or federal court within five years of the date of submission of the permit application;

 (5) a listing and explanation of the instances in which a disposal facility permit held by the applicant was revoked by final judgment in a state or federal court, whether under appeal or not, within five years of the date of submission of the permit application; and

 (6) a listing and explanation of all adjudications of the applicant for having been in contempt of any valid court order enforcing any federal environmental law or any state environmental law relative to the activity for which the permit is being sought, within five years of the date of submission of the permit application.

 (B) The burden of proof with regard to any application shall lie with the applicant. The department shall deny a permit if it finds by a preponderance of the evidence that:

 (1) the applicant is not financially and technically qualified to carry out the activity for which the permit is sought;

 (2) the applicant has knowingly misrepresented or concealed any material fact in the permit application or disclosure statement, or in any other report or certification required under this article or under regulations promulgated pursuant to this article;

 (3) the applicant has obtained or attempted to obtain the permit by misrepresentation or fraud; or

 (4) the applicant has a documented and continuing history of criminal convictions or a documented history of violation of state or federal environmental laws such that the applicant’s ability to operate within the law is questionable.

 (C) In making a determination of whether a preponderance of the evidence exists under subsection (B), the department shall consider:

 (1) the nature and details of the acts attributed to the applicant;

 (2) the degree of culpability of the applicant;

 (3) the applicant’s policy or history of discipline, or both, of a responsible party convicted of acts described in subsection (A);

 (4) whether the applicant has substantially complied with this state’s statutes, rules, regulations, permits, and orders applicable to the applicant in this State relative to the activity for which the permit is sought;

 (5) whether the applicant, if the applicant has no prior history within this State, has substantially complied with other jurisdictions’ statutes, rules, regulations, permits, and orders applicable to the applicant relative to the activity for which the subject permit is sought;

 (6) whether the applicant has in place and observes formal management controls to minimize and prevent the occurrence of violations or other unlawful activities relative to the activity for which the subject permit is sought;

 (7) mitigation based upon any demonstration of good citizenship by the applicant including, without limitation, prompt payment of damages, cooperation with investigations, termination of employment or other relationship with responsible parties or other persons responsible for the activity described in subsection (A) or other demonstration of good citizenship by the applicant that the department finds acceptable; and

 (8) whether the best interests of the public will be served by denial of the permit.

 (D) The department may request specific information or a background investigation of an applicant by the State Law Enforcement Division or by the Attorney General. Such investigations shall be completed and the results provided to the department within ninety days of the department’s request for the investigation.

 (E) In making a determination under this section, the department shall comply with the notice and public hearing requirements for administrative proceedings pursuant to the South Carolina Administrative Procedures Act and with public notice requirements for permit decisions required pursuant to this chapter.

 (F) The department shall provide for an adjudicatory hearing if an aggrieved party with standing appeals the granting, denial, or granting with conditions of a permit by making a written request to the department for an adjudicatory hearing within fifteen days of receiving the notification required by this section.

 (G) If a responsible party of an applicant is a chartered lending institution or a publicly held corporation reporting under the Federal Securities and Exchange Act of 1934 or a wholly‑owned subsidiary of a publicly held corporation reporting under the Federal Securities and Exchange Act of 1934, such responsible party shall not be required to submit a disclosure statement in accordance with the provisions of subitems (1), (2), (3), (4), and (5) of subsection (A) of this section, excluding subitem (A)(6), but shall submit to the department reports covering its structure and operations required by the chartering body or the Federal Securities and Exchange Commission. The department is authorized to require a responsible party to provide such additional information to the department as is reasonably necessary to make the determinations provided for in this section.

 (H) Every applicant shall file a disclosure statement with the department together with the permit application or within sixty days of the adoption of the form and content of the disclosure statement by the department, whichever is later.

 (I) Every holder of a permit issued pursuant to this article who has not earlier filed a disclosure statement shall, not later than one year after this article is effective, file a disclosure statement with the department.

 (J) Not later than two years after this article is effective, every holder of a permit issued pursuant to this article shall update its disclosure statement not later than the end of January of each calendar year regarding any material changes in information in the permit holder’s most recent disclosure statement on file with the department.

 (K) If the department denies or revokes a permit based on this section or on Section 44‑96‑290(F), the applicant of the denied permit or the holder of the revoked permit may petition the department at any time for reconsideration of the denial or revocation. The department shall issue the denied permit or reinstate the revoked permit if the applicant of the denied permit or the holder of the revoked permit affirmatively demonstrates rehabilitation of the individual or business concern by a preponderance of the evidence. In determining whether subsequent issuance or reinstatement of a permit would be in the public interest, the department shall give consideration to any relevant factors including, but not limited to, the factors identified in subsection (C). The department may approve a conditional permit, not to exceed two years, to allow the applicant of the denied permit or the holder of the revoked permit a reasonable opportunity to continue to affirmatively demonstrate the applicant’s rehabilitation.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Definition of “disclosure statement”, see Section 44‑96‑250.

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Federal Aspects

The Federal Securities and Exchange Act of 1934 is codified in 15 U.S.C.A. Sections 78a et seq.

Library References

Environmental Law 355.

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.

NOTES OF DECISIONS

In general 1

Hearing 2

1. In general

Solid Waste Policy and Management Act did not require disclosure statement from parent corporation of waste management company applying for landfill expansion permit in addition to disclosure statement from waste management company, where waste management company operated landfill for 13 years prior to its application and it was only entity applying for permit. Ballenger v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1998) 331 S.C. 247, 500 S.E.2d 183, rehearing denied. Environmental Law 362

2. Hearing

Hearing on challengers’ motions to dismiss landfill expansion permit issued to waste management company by Department of Health and Environmental Control (DHEC) was not an adjudicatory hearing on the merits, to which challengers were entitled under Solid Waste Policy and Management Act; hearing officer did not address many substantive issues raised by challengers because he reversed issuance of permit on basis of procedural, statutory, and due process defects, and he stated in his order that a full hearing on the merits was not warranted. Ballenger v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1998) 331 S.C. 247, 500 S.E.2d 183, rehearing denied. Environmental Law 381

Solid Waste Policy and Management Act gives citizens standing to request an adjudicatory hearing on the merits concerning the issuance of a landfill permit. Ballenger v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1998) 331 S.C. 247, 500 S.E.2d 183, rehearing denied. Environmental Law 650

**SECTION 44‑96‑310.** Research, development, and demonstration permits.

 (A) The department may issue a research, development, and demonstration permit for any solid waste management facility proposing to utilize an innovative and experimental solid waste management technology or process. The application for such permit must clearly demonstrate adequate protection of human health and safety and the environment and must be consistent with federal and state laws and regulations and this article. A permit issued under this section must not be for an activity of a continuing nature.

 (B) An application for a permit issued under this section must, at a minimum:

 (1) describe the proposed activity in detail;

 (2) describe how the permit applicant intends to provide for the management of solid waste in order to determine the efficiency and performance capabilities of the technology or process and the effects of such technology or process on human health and safety and the environment, and how the permit applicant intends to protect human health and safety and the environment in the conduct of the project; and

 (3) state that the permit applicant will share on a timely basis with the department any information obtained as a result of the activity undertaken under the permit.

 (C) Not later than eighteen months after this article is effective, the department shall promulgate the criteria and procedures for the issuance of such permits.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Solid waste management, research, development, and demonstration permit criteria, see S.C. Code of Regulations R. 61‑107.10.

Library References

Environmental Law 355.

Westlaw Topic No. 149E.

**SECTION 44‑96‑320.** Solid waste landfills.

 (A) Not later than eighteen months after this article is effective, the department shall promulgate, in addition to regulations generally applicable to all solid waste management facilities, regulations governing the siting, design, construction, operation, closure, and postclosure activities of all landfills that dispose of solid waste. The department may, by regulation, exempt certain facilities from all or part of the requirements of this section. In determining if exemptions are warranted from all or part of the regulations applicable to this section and Section 44‑96‑330, the department must consider in situ soil as a criterion for granting exemptions. These regulations shall not apply to the disposal of solid waste from a single family or household on property where such waste is generated.

 (B) The regulations governing solid waste landfills shall, at a minimum, contain the following requirements:

 (1) the submission by the permit applicant of the following documents:

 (a) a comprehensive engineering report that describes, at a minimum, existing site conditions and construction plans;

 (b) a quality assurance and quality control report;

 (c) a hydrogeologic report and water quality and air quality monitoring plans;

 (d) a contingency plan describing the action to be taken in response to contingencies which may occur during construction and operation of the landfill;

 (e) an operational plan describing how the facility will meet all applicable regulatory requirements;

 (f) the maximum volume of solid waste the facility is capable of receiving over the operational life of the facility and the maximum rate at which the facility will receive that waste; and

 (g) a landscape plan;

 (2) locational criteria. However, the department shall grant exemptions from such criteria upon a demonstration by the permit applicant of circumstances which warrant an exemption;

 (3) landfill construction requirements;

 (4) facility design and operational requirements including, but not limited to, access controls, cover requirements, gas control, leachate control, exclusion of hazardous wastes, liner requirements, litter control, groundwater and surface water monitoring, and air quality monitoring;

 (5) closure and postclosure requirements;

 (6) financial responsibility requirements; and

 (7) corrective action requirements.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Requirement that any new solid waste management facility or expansion of existing facility meet requirements of this section, see Section 44‑96‑290.

Library References

Environmental Law 356.

Westlaw Topic No. 149E.

NOTES OF DECISIONS

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1. In general

Solid Waste Policy and Management Act (SWPMA) authorized Department of Health and Environmental Control (DHEC) as the sole agency to promulgate regulations governing the design of landfill facilities, and, thus, determination to set disposal capacity at 1,819,000 cubic yards was within DHEC’s exclusive authority, although letters of consistency issued by county authorized a maximum capacity of 2.2 million cubic feet; capacity of 2.2 million cubic feet would have allowed facility to operate for only four or five months, which was an absurd result. Oakwood Landfill, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2009) 381 S.C. 120, 671 S.E.2d 646. Environmental Law 360; Environmental Law 361

The Department of Health and Environmental Control (DHEC) Board properly deemed landfill owned by corporation as an “existing unit” that was allowed to establish compliance with DHEC location standards for hazardous waste disposal facilities within 180 days after final hazardous waste disposal permit was effective, rather than requiring evidence of compliance with location standards as prerequisite to permit issuance, where landfill was issued a final permit prior to effective date of location standard regulations. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 432

Hazardous waste management statutes and regulations applied to landfill as a whole, not just to hazardous waste disposed of at landfill, and, thus, the Department of Health and Environmental Control (DHEC) properly counted both hazardous and nonhazardous waste disposed of at landfill towards 2250 acre‑foot capacity limit contained in landfill’s hazardous waste disposal permit. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 432

Interpretation of Department of Health and Environmental Control (DHEC) mixture rule by DHEC Board to deem solid nonhazardous waste disposed of at landfill as hazardous when mixed with listed hazardous waste, regardless of proportion, was reasonable, in challenge to conditions imposed on landfill’s hazardous waste disposal permit, where there was evidence that waste disposed of at landfill became mixed, that leaks within landfill cells might still cause mixing, and that excavating landfill’s waste would require treating waste as hazardous. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 427

2. Constitutional issues

Even if the Department of Health and Environmental Control (DHEC) and corporation seeking hazardous waste disposal permit for landfill violated regulatory procedure by entering into ex parte stipulated agreement with respect to corporation’s financial obligations and landfill’s hazardous waste capacity limit, due process rights of nonprofit environmental organizations challenging issuance of permit were not prejudiced thereby; extensive administrative hearing was held at which organizations presented witnesses and cross‑examined DHEC’s and corporation’s witnesses, and DHEC Board objectively reviewed hearing commissioner’s decision to uphold permit issuance as modified by agreement and cured two of the organizations’ three major concerns. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Constitutional Law 4327; Environmental Law 454

The Department of Health and Environmental Control (DHEC) violated the Administrative Procedures Act (APA) in promulgating hazardous waste regulations addressing financial assurances for environmental impairment without proper notice and opportunity for public comment; proposed financial assurance regulations were not mere modifications from previously issued regulations that DHEC could modify based on comments received but constituted an entirely new set of regulations governing financial assurance that were subject to public notice and comment. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 453

Application of 2250 acre‑foot capacity limit contained in final hazardous waste disposal permit to landfill as a whole, as opposed to only hazardous waste disposed of at landfill, did not revoke landfill’s industrial waste permit without due process, where the Department of Health and Environmental Control (DHEC) subjected landfill and its industrial waste permit to future statutes and regulations governing hazardous waste and corporation that owned landfill complied with regulations once they became effective by submitting application under new regulatory scheme. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Constitutional Law 4327; Environmental Law 432

3. Insurance

Thirty million dollar claims made policy for accidental occurrence liability purchased by corporation seeking hazardous waste disposal permit for landfill from the Department of Health and Environmental Control (DHEC) complied with statutory and regulatory liability coverage requirements for issuance of permit and comported with industry standard. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 435

A county’s insurer did not have the duty to defend an action arising from the county’s operation of a landfill where the terms of the insurance policy contained a pollution exclusion; moreover, an exception to the exclusion for “sudden and accidental” dispersal would not apply to the regular dumping of hazardous waste at a landfill. Greenville County v. Insurance Reserve Fund, a Div. of South Carolina Budget and Control Bd. (S.C.App. 1993) 311 S.C. 169, 427 S.E.2d 913, rehearing denied, certiorari granted in part, reversed 313 S.C. 546, 443 S.E.2d 552.

4. Presumptions and burden of proof

Stipulated agreement entered into between corporation seeking hazardous waste disposal permit for landfill and the Department of Health and Environmental Control (DHEC) with respect to corporation’s financial obligations and landfill’s hazardous waste capacity limit did not improperly absolve or shift corporation’s burden of proof, in nonprofit environmental organizations’ action challenging issuance of permit, as burden of proof was on organizations to demonstrate that DHEC’s decision to issue permit and financial responsibility determination were contrary to reliable, probative, and substantial evidence. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Stipulations 14(1)

5. Sufficiency of evidence

Issuance of hazardous waste disposal permit to landfill by Board of the Department of Health and Environmental Control (DHEC) was supported by evidence that there had been no significant findings of contamination caused by tears in landfill’s lining, that landfill did not have a high potential for release, that landfill’s design exceeded the regulatory requirements at each stage of construction, that monitoring system exceeded the regulatory requirements and would prevent contamination by detecting a release in time to correct the problem before damage occurred, and that there would be no practical impact on nearby lake if an undetected and unremedied leak occurred because of slow migration and dilution. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 432

Board of the Department of Health and Environmental Control (DHEC) acted arbitrarily and capriciously in excluding nonhazardous waste disposed of prior to its order limiting landfill’s hazardous waste disposal permit to 2250 acre‑feet from capacity limit, as exclusion of previously disposed of nonhazardous waste was inconsistent with Board’s application of capacity limit to both hazardous and nonhazardous waste. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Environmental Law 432

**SECTION 44‑96‑325.** Commercial industrial solid waste landfill; location.

 A commercial industrial solid waste landfill or an expansion permitted after the effective date of this section shall not be located within one thousand feet of a residence, hospital, church, or publicly‑owned recreational park areas. For the purpose of this section only, the term “commercial industrial solid waste landfill” means an industrial solid waste landfill which accepts industrial solid waste from more than one generator of industrial solid waste.

HISTORY: 1997 Act No. 100, Section 6.

Library References

Environmental Law 356.

Westlaw Topic No. 149E.

**SECTION 44‑96‑330.** Minimum requirements for new and existing municipal solid waste landfills.

 (A) In addition to the requirements imposed by this article, the regulations promulgated by the department shall, at a minimum, require the following for new and existing municipal solid waste landfills:

 (1) controls to detect and prevent the disposal of hazardous waste, nonhazardous bulk liquids, and nonhazardous liquids in containers, other than household wastes. Such controls shall include random inspections of incoming loads, inspection of suspicious loads, records of inspections, training of facility personnel to recognize illegal materials, and procedures for notifying the proper authorities if any regulated hazardous waters are found;

 (2) daily cover to control disease vectors, fires, odors, blowing litter, and scavenging;

 (3) landfill gas monitoring and controls to minimize the buildup of explosive gases beneath, around, or in facility structures excluding gas control or recovery components;

 (4) access controls to protect human health and safety and the environment, to prevent unauthorized vehicular traffic, and to prevent illegal dumping of wastes;

 (5) run‑on and run‑off controls;

 (6) landfill closure requirements that:

 (a) minimize the need for further maintenance;

 (b) ensure that no adverse effect will be caused from postclosure releases to the groundwater, surface water, or atmosphere; and

 (c) upon issuance of a permit, require the owner or operator to record in the clerk’s office or Register of Deeds Office, in the county in which the site is located, a survey plat indicating the location and dimensions of landfill cells or other solid waste disposal units with respect to permanently surveyed benchmarks. Upon recordation, the owner or operator must submit to the department a copy of the recorded document;

 (7) closure and postclosure care plans which identify for each facility the steps necessary to ensure closure and postclosure care, time estimates, modifications to monitoring and collection systems, final cover, and cost estimates. The postclosure care period shall be determined by results from the monitoring of the landfill, including leachate quality and quantity and methane gas generation or some alternative;

 (8) financial responsibility for closure and postclosure care;

 (9) groundwater monitoring; and

 (10) corrective action requirements.

 (B) The regulations promulgated pursuant to this article shall require, at a minimum, for each new municipal solid waste landfill and lateral expansion to existing municipal solid waste landfills the following:

 (1) a single composite liner, natural or manmade materials, or both, or in situ soil, or a combination of both, capable of preventing the migration of wastes out of the landfill to the aquifer or surface water during the active life of the facility and during the required postclosure period and ensuring that leachate does not contaminate the aquifer or surface water during the active life of the facility and during the required postclosure period;

 (2) leachate collection and removal systems;

 (3) a construction quality assurance plan specifying the materials to be used in liner construction, the construction techniques, the engineering plans, and the installation test procedures; and

 (4) landfills, at a minimum, shall not be located in the following locations:

 (a) within the one hundred‑year flood plain unless it can be demonstrated by the owner or operator that engineering measures have been incorporated into the landfill design to ensure the landfill will not restrict the flow of the one hundred‑year base flood, reduce the temporary water shortage capacity of the flood plain, or result in the washout of solid waste so as to pose a hazard to human health or the environment;

 (b) within two hundred feet of a fault that has had displacement in Holocene time;

 (c) within a seismic impact zone or other unstable areas unless it can be demonstrated by the owner or operator that engineering measures have been incorporated into the landfill design to ensure the structural stability of the landfill capable of protecting human health and safety and the environment; and

 (d) within proximity of airports or wetlands to be determined by the department by regulation.

HISTORY: 1991 Act No. 63, Section 1; 1997 Act No. 34, Section 1.

CROSS REFERENCES

Regulations pertaining to solid waste landfills and structural fill, see S.C. Code of Regulations R. 61‑107.19 Part I et seq.

Requirement that any new solid waste management facility or expansion of existing facility meet requirements of this section, see Section 44‑96‑290.

Library References

Environmental Law 356.

Westlaw Topic No. 149E.

**SECTION 44‑96‑340.** Solid waste incinerators.

 (A) No solid waste incinerator with a daily capacity in excess of six hundred tons may be permitted within the State, nor may any solid waste incinerator with a daily capacity in excess of one hundred tons be permitted to be sited within three miles of another such facility.

 (B) Not later than eighteen months after this article is effective, the department shall promulgate, in addition to regulations generally applicable to all solid waste management facilities, regulations governing the siting, design, construction, operation, closure, and postclosure activities of all solid waste incinerators, other than facilities specifically regulated under other provisions of this article or other applicable provisions of state law. The department may, by regulation, exempt certain facilities from all or part of the requirements of this section.

 (C) The regulations governing solid waste incinerators shall, at a minimum, contain the following requirements:

 (1) the submission by the permit applicant of the following documents:

 (a) an engineering report which must, at a minimum, contain a description of the facility, the process and equipment to be used, the proposed service area, the types and quantities of wastes to be treated, and storage of waste;

 (b) engineering plans and specifications which must, at a minimum, describe the process equipment specifications, instrumentation and control diagrams, and performance specifications for all major equipment and control centers;

 (c) a personnel training program;

 (d) an ash management plan including, at a minimum, an identification of the facility approved by the department that will receive the residue and a certification that the facility shall have adequate capacity to handle such residue;

 (e) an air quality monitoring plan;

 (f) a description of the manner in which waste waters, if any, from the facility will be managed;

 (g) a quality assurance and quality control report;

 (h) a contingency plan describing a technically and financially feasible course of action to be taken in response to contingencies which may occur during construction and operation of the facility;

 (i) an operation plan describing how the facility will meet all applicable regulatory requirements;

 (j) a draft operation and maintenance manual; and

 (k) a closure plan;

 (2) locational criteria; provided, however, that the department shall grant exemptions from such criteria upon a demonstration by the permit applicant of circumstances which warrant an exemption;

 (3) facility design and operational requirements including, but not limited to, access controls, recordkeeping and reporting requirements, receipt and handling of solid waste, process changes, emergency preparedness, and guidelines for identifying items or materials that should be removed prior to incineration;

 (4) air and water quality monitoring requirements;

 (5) closure and postclosure requirements;

 (6) financial responsibility requirements;

 (7) personnel training requirements;

 (8) ash residue requirements including, but not limited to, testing requirements and procedures, the contents of an ash management plan, handling, storage, reuse or recycling, transportation, and disposal of the ash; and

 (9) corrective action requirements.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 370.

Westlaw Topic No. 149E.

**SECTION 44‑96‑350.** Minimum requirements for the management of municipal solid waste incinerator ash.

 (A) In addition to the requirements imposed by this article, the regulations promulgated by the department must require, at a minimum, that municipal solid waste incinerator ash which is disposed of at a solid waste landfill be disposed of only in the following manner:

 (1) the unit is located, designed, and operated so as to protect human health and safety and the environment;

 (2) the unit has a groundwater monitoring system and a leachate collection and removal system; and

 (3) the unit has a single composite liner or double geomembrane liner designed, operated, and constructed of materials to restrict the migration of any constituent into and through such liner during such period as the unit remains in operation.

 (B) The department shall prescribe criteria and testing procedures for identifying the properties of municipal solid waste incinerator ash that may result in entry into groundwater or surface water in such manner as may pose a hazard to human health and safety or to the environment. The department shall prescribe such criteria and testing procedures not later than eighteen months after this article is effective. Based on the criteria and testing procedures, the regulations shall permit municipal incinerator ash which does not exhibit any of the properties identified in such criteria to be disposed of in solid waste landfill units or cells meeting the applicable regulatory requirements of this section. If such ash exhibits any of the properties identified in the criteria, the department may require that it be disposed of in a landfill meeting the requirements for hazardous waste disposal.

HISTORY: 1991 Act No. 63, Section 1; 2000 Act No. 405, Section 17.

CROSS REFERENCES

Class Three Landfills, solid waste landfills and structural fill, see S.C. Code of Regulations R. 61‑107.19 Part V.

General requirements, solid waste landfills and structural fill, see S.C. Code of Regulations R. 61‑107.19 Part I.

Municipal solid waste landfill operator’s certification, see S.C. Code of Regulations R. 61‑107.14.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Requirement that any new solid waste management facility or expansion of existing facility meet requirements of this section, see Section 44‑96‑290.

Library References

Environmental Law 370.

Westlaw Topic No. 149E.

**SECTION 44‑96‑360.** Solid waste processing facilities.

 (A) Not later than eighteen months after this article is effective, the department shall promulgate, in addition to regulations generally applicable to all solid waste management facilities, regulations governing the siting, design, construction, operation, closure, and postclosure activities of facilities which receive solid waste for processing. The department may, by regulation, exempt certain facilities from all or part of the requirements of this section.

 (B) All new processing facilities must comply with the requirements of this section. The department shall establish a schedule for existing facilities to come into compliance with the requirements of this section.

 (C) The regulations governing solid waste processing facilities shall, at a minimum, contain the following requirements:

 (1) the submission by the permit applicant of the following documents:

 (a) an engineering report which must, at a minimum, contain a description of the facility, the process and equipment to be used, the proposed service area, the types and quantities of waste to be processed, and a description of existing site conditions;

 (b) complete construction plans and specifications;

 (c) a design report;

 (d) a personnel training program;

 (e) an identification of possible air releases and groundwater and surface water discharges;

 (f) a waste control plan describing the manner in which waste from the processing activities will be managed. The plan must, at a minimum, identify the facilities to be approved by the department that will receive the waste and a certification that such facilities have adequate capacity to manage the waste;

 (g) a quality assurance and quality control report;

 (h) a contingency plan describing the action to be taken in response to contingencies which could occur during operation of the facility;

 (i) an operation plan describing how the facility will meet all applicable regulatory requirements;

 (j) a draft operation and maintenance manual;

 (k) a closure plan; and

 (l) a description of the restrictions, if any, that the facility places on the materials it receives for processing and a statement explaining the need for such restrictions;

 (2) locational criteria; provided, however, that the department shall grant exemptions from such criteria upon a demonstration by the permit applicant of circumstances which warrant an exemption;

 (3) facility design and operational requirements including, but not limited to, access controls, reporting and recordkeeping requirements, receipt and handling of solid waste, process changes, emergency preparedness, and guidelines for identifying items or materials that may not be accepted for processing;

 (4) monitoring requirements including, at a minimum, air quality monitoring and analysis, groundwater and surface water quality monitoring and analysis, and product quality testing and analysis;

 (5) closure and postclosure requirements;

 (6) financial responsibility requirements;

 (7) personnel training requirements; and

 (8) corrective action requirements.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Conditional exclusion for used, broken Cathode Ray Tubes (CRTs) and processed CRT glass undergoing recycling, see S.C. Code of Regulations R. 61‑79.261.39.

Regulation pertaining to sold waste processing facilities, see S.C. Code of Regulations R. 61‑107.6.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 356.

Westlaw Topic No. 149E.

**SECTION 44‑96‑370.** Storage and transfer of solid waste.

 (A) Not later than eighteen months after this article is effective, the department shall promulgate regulations establishing minimum standards for any storage of solid waste prior to processing or incineration or at or in a transfer station. Such regulations shall require that any spillage or leakage of solid waste be contained on the storage site and that no unpermitted discharges to the environment occur. The department may, by regulation, exempt certain facilities from all or part of the requirements of this section.

 (B) Not later than eighteen months after this article is effective, the department shall promulgate regulations governing solid waste transfer facilities. The regulations shall, at a minimum, require the submission by a permit applicant of a plan of operation and shall establish locational criteria, operational requirements, and closure requirements. The department may, by regulation, exempt certain facilities from all or part of the requirements of this section.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Conditional exclusion for used, broken Cathode Ray Tubes (CRTS) and processed CRT glass undergoing recycling, see S.C. Code of Regulations R. 61‑79.261.39.

Collection, temporary storage and transportation of municipal solid waste, see S.C. Code of Regulations R. 61‑107.5.

Regulation pertaining to the transfer of solid waste, see S.C. Code of Regulations R. 61‑107.7.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 367.

Westlaw Topic No. 149E.

**SECTION 44‑96‑380.** Land application facilities; composting facilities; construction, demolition, and land clearing debris landfills.

 (A) Not later than eighteen months after this article is effective, the department shall promulgate regulations establishing minimum standards for land application facilities and composting facilities. The regulations shall, at a minimum, establish operational requirements and siting requirements. The department may, by regulation, exempt certain facilities from all or part of the requirements of this section.

 (B) Not later than eighteen months after this article is effective, the department shall promulgate regulations establishing minimum standards for construction, demolition, and land clearing debris landfills. The department may, by regulation, exempt certain sites or facilities from all or part of the requirements of this section. The department shall exempt a landfill for the disposal of trees, stumps, wood chips, and yard waste when generation and disposal of such waste occurs on properties under the same ownership or control. The regulation shall, at a minimum, contain the following requirements:

 (1) site selection;

 (2) construction;

 (3) hydrogeologic;

 (4) operation; and

 (5) closure and postclosure.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Requirement that all regulations promulgated pursuant to this chapter be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities, see Section 44‑96‑105.

Library References

Environmental Law 356.

Westlaw Topic No. 149E.

**SECTION 44‑96‑390.** Approval procedures for special wastes.

 (A) For the purposes of this section, “special wastes” is defined as nonresidential or commercial solid wastes, other than regulated hazardous wastes, that are either difficult or dangerous to handle and require unusual management at municipal solid waste landfills, including, but not limited to:

 (1) pesticide wastes;

 (2) liquid wastes and bulk liquid wastes;

 (3) sludges;

 (4) industrial process wastes, defined as wastes generated as a direct or indirect result of the manufacture of a product or the performance of a service, including, but not limited to, spent pickling liquors, cutting oils, chemical catalysts, distillation bottoms, etching acids, equipment cleanings, point sludges, core sands, metallic dust sweepings, asbestos dust, and off‑specification, contaminated, or recalled wholesale or retail products. Specifically excluded are uncontaminated packaging materials, uncontaminated machinery components, landscape waste, and construction or demolition debris;

 (5) wastes from a pollution control process;

 (6) residue or debris from the cleanup of a spill or release of chemical substances, commercial products, or wastes listed in items (1) through (5);

 (7) soil, water, residue, debris, or articles that are contaminated from the cleanup of a facility or site formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in items (1) through (6); and

 (8) containers and drums.

 (B) A special waste must not be disposed of nor accepted for disposal at a municipal solid waste landfill without prior written approval by the disposal facility in accordance with department requirements.

 (C) A facility may apply to the department at any time for modifications or additions to the types of special waste disposed of or methods for disposal.

 (D) Not later than six months after this article is effective or the initial receipt of wastes, whichever is later, the owner or operator of a municipal solid waste landfill shall prepare and submit to the department a waste analysis plan that addresses, at a minimum, the:

 (1) parameters for which each waste will be analyzed and the rationale for the selection of those parameters;

 (2) test methods which will be used to test for those parameters;

 (3) sampling methods which will be used to obtain a representative sampling of the special waste to be analyzed;

 (4) frequency with which the initial analysis of the special waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

 (5) procedures which will be used to inspect and, if necessary, analyze each special waste received at the facility to ensure that it matches the identity of the special waste designated on the accompanying transportation record. At a minimum, the plan must describe the:

 (a) procedures which will be used to determine the identity of each special waste managed at the facility; and

 (b) the sampling methods which will be used to obtain a representative sample of the special waste to be identified, if the identification method includes sampling.

 (E) The department shall respond to the analysis plan within ninety days of the date of its receipt by the department.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Class three landfills, solid waste management, solid waste landfills and structural fill, see S.C. Code of Regulations R. 61‑107.19 Part V.

General requirements, solid waste management, solid waste landfills and structural fill, see S.C. Code of Regulations R. 61‑107.19 Part I.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑400.** Information requirements by department; disclosure of information obtained by department.

 (A) To assist in carrying out its responsibilities under this chapter, the department may require:

 (1) the establishment and maintenance of records;

 (2) the making of reports;

 (3) the taking of samples and the performing of tests or analyses;

 (4) the installation, calibration, use, and maintenance of monitoring equipment; or

 (5) the providing of such other information as may be reasonably necessary to achieve the purposes of this chapter.

 (B) Information obtained by the department pursuant to this chapter shall be available to the public unless the department determines such information to be proprietary. The department may make such determinations where the person submitting the information demonstrates to the satisfaction of the department that the information, or parts thereof, if made public, would divulge methods, production rates, processes, or other confidential information entitled to protection.

HISTORY: 1991 Act No. 63, Section 1; 1997 Act No. 131, Section 3.

CROSS REFERENCES

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑410.** Inspections; samples.

 For the purpose of enforcing this chapter or any regulations promulgated pursuant to this chapter, an authorized representative or employee of the department may, upon presentation of appropriate credentials, at a reasonable time:

 (1) enter any facility where solid wastes are managed;

 (2) inspect and copy any records, reports, information, or test results necessary to carry out the department’s responsibilities under this chapter; or

 (3) inspect and obtain samples of any solid wastes from the owner, operator, or agent in charge of the facility, including samples from any vehicles in which solid wastes are being transported, as well as samples of any containers or labels. The department shall provide a sample of equal volume or weight to the owner, operator, or agent in charge upon request. The department also shall provide such person with a copy of the results of any analyses of such samples.

HISTORY: 1991 Act No. 63, Section 1; 1997 Act No. 131, Section 4.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑420.** Issuance, modification, or revocation of orders to prevent violations of chapter.

 The department may issue, modify, or revoke any order to prevent a violation of this chapter.

HISTORY: 1991 Act No. 63, Section 1; 1997 Act No. 131, Section 5.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑430.** Hearings.

 The department may hold public hearings and compel the attendance of witnesses, conduct studies, investigations, and research with respect to the operation and maintenance of any solid waste management facility and issue, deny, revoke, suspend, or modify permits under such conditions as it may prescribe for the operation of solid waste management facilities. However, no permit shall be revoked without first providing the permit holder with the opportunity for a hearing.

HISTORY: 1991 Act No. 63, Section 1.

Library References

Environmental Law 377.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 120, 123, 126, 130.

**SECTION 44‑96‑440.** Unlawful acts.

 (A) It shall be unlawful for any person to manage solid wastes in this State without reporting such activity to the department as required by regulation.

 (B) It shall be unlawful for any person to manage solid wastes in this State without complying with the standards and procedures set forth in such regulations.

 (C) It shall be unlawful for any person to fail to comply with this article and any regulations promulgated pursuant to this article, or to fail to comply with any permit issued under this article, or to fail to comply with any order issued by the board, commissioner, or department.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

General requirements, solid waste landfills and structural fill, see S.C. Code of Regulations R. 61‑107.19 Part I.

Library References

Environmental Law 383.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 141.

**SECTION 44‑96‑450.** Violations; penalties.

 (A) Whenever the department finds that a person is in violation of a permit, regulation, standard, or requirement under this article, 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 this section. The department also may impose reasonable civil penalties established by regulation, not to exceed ten thousand dollars for each day of violation, for violations of the provisions of this article, including any 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 wilfully violates any provision of this article, or a regulation promulgated pursuant to this article, is guilty of a misdemeanor and, upon conviction, shall 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 shall be a fine not to exceed twenty‑five thousand dollars for each day of violation or imprisonment not to exceed two years, or both. The provisions of this subsection shall not apply to officials and employees of a local government owning or operating, or both, a municipal solid waste management facility or to officials and employees of a region, comprised of local governments, owning or operating, or both, a regional municipal solid waste management facility.

 (C) Each day of noncompliance with an order issued pursuant to this section or noncompliance with a permit, regulation, standard, or requirement established under this article constitutes a separate offense.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Library References

Environmental Law 384.

Westlaw Topic No. 149E.

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

**SECTION 44‑96‑460.** Training of operators of solid waste management facilities.

 (A) The department shall establish qualifications for and encourage the development of certification programs for operators of landfills, coordinators of local recycling programs, and operators of other solid waste management facilities.

 (B) The department shall work with accredited community colleges, vocational technical centers, state universities, and private institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be certified as operators of solid waste management facilities.

 (C) Two years after this article is effective, no person may perform the duties of an operator of a solid waste management facility unless he has completed an operator certification course approved by the department. An owner of a solid waste management facility may not employ any person to perform the duties of an operator unless such person has completed an approved solid waste management facility operator certification course.

 (D) The department shall adopt regulations to carry out the provisions of this section. The department may establish by rule classifications for operators to cover the need for differing levels of certification required to operate various types of solid waste management facilities due to different operating requirements at such facilities.

 (E) For purposes of this section, the term “operator” means any person, including the owner, who is principally engaged in, or is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or period during any part of the day.

HISTORY: 1991 Act No. 63, Section 1.

CROSS REFERENCES

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

**SECTION 44‑96‑470.** Facility issues negotiation process.

 (A) Upon the submission of a permit application to the department for a municipal solid waste disposal facility, the permit applicant shall within fifteen days of the date of submission of the application publicize the submission by public notice and in writing as follows:

 (1) If the application is for a facility serving no more than one county, the public notice must be published in a newspaper of general circulation serving the host county, and each local government in the county shall be notified further in writing of the permit application.

 (2) If the application is for a facility serving more than one county, the public notice must be published in a newspaper of general circulation serving each affected county, and each local government within such counties shall be notified in writing of the permit application. For the purpose of this item, “affected county” includes the host county, each county under contract with the proposed facility, and all counties contiguous to the host county.

 (3) The public notice must be prominently displayed in the courthouse of each notified county. and

 (4) The initial public notice and all other public notices required under this section, at a minimum, shall contain:

 (a) the name and address of the applicant;

 (b) the nature of the proposed facility;

 (c) a description of the proposed site;

 (d) a locational map showing the proposed site; and

 (e) such other information as is necessary to fully inform the public to be determined by regulations to be promulgated by the department.

 (B) The department shall review the application and supporting data and make a determination whether the permit application is administratively complete. The department shall notify, in writing, the applicant, the host local government, if different from the applicant, and any other person who has made a written request for notification to the department of this determination.

 (C) Upon receipt from the department of notice that the permit application is administratively complete, the host local government for the proposed site, within forty‑five days of receipt of such notification from the department, as outlined in items (1), (2), (3), and (4) of subsection (A), shall advertise and hold a public meeting to inform affected residents and landowners in the area of the proposed site and of the opportunity to engage in a facility issues negotiation process.

 (D) Following notification that the permit application is administratively complete, the department shall continue to review the applicant’s permit application, but the department shall not take any action with respect to permit issuance or denial until such time as the local notification and negotiation processes described in this section have been exhausted.

 (E) The department shall not be a party to the negotiation process described in this section, nor shall technical environmental issues which are required by law and by regulation to be addressed in the permitting process be considered negotiable items by parties to the negotiation process.

 (F) Within thirty days following a public meeting held in accordance with subsection (C), a facility issues negotiation process shall be initiated by the host local government upon receipt of a written petition by at least twenty‑five affected persons, at least twenty of whom shall be registered voters of or landowners in the host jurisdiction. Multiple petitions may be consolidated into a single negotiating process. For the purposes of this subsection, the term “affected person” means a registered voter of the host local government or of a county contiguous to such host local government or a landowner within the jurisdiction of the host local government. To be valid, signatures shall be accompanied by the following information:

 (1) for a registered voter: home address and voter registration number; and

 (2) for a landowner: home or business address and the county in which the property lies, together with its tax map number.

 (G) Within fifteen days following receipt of such written petition, the host local government shall validate the petition to ensure that the petitioners meet the requirements of this section.

 (H) Within fifteen days following the validation of the written petition, the host local government shall:

 (1) set a date, time, and location for a petitioner’s meeting to choose a citizens’ facility issues committee and a date, time, and location for a meeting with the citizens’ facility issues committee, the host local government, and the permit applicant not later than thirty days following validation of such written petition to negotiate;

 (2) notify the petitioners by publication as provided in items (1), (2), (3), and (4) of subsection (A) that the facility issues negotiation process is being initiated and the date, time, and location of the first negotiation meeting; and

 (3) notify the permit applicant, if different from the host local government, and the department that the facility issues negotiation process is being initiated and the date, time, and location of the first negotiation meeting.

 (I) The host local government shall organize the petitioners meeting. The majority of the petitioning persons in attendance shall select up to ten members, at least eighty percent of whom shall be registered voters or landowners in the host local government, to serve on a citizens” facility issues committee to represent the petitioning persons in the negotiation process. The membership of the citizens” facility issues committee shall be chosen within fifteen days following the validation of such written petition pursuant to this section.

 (J) The negotiation process shall be overseen by a facilitator named by the host local government, after consultation with the citizens” facility issues committee, from a list provided by the department. The function of the facilitator shall be to assist the petitioners, the host local government, and the permit applicant, if different from the host local government, through the negotiation process. The cost, if any, of the facilitator shall be borne by the permit applicant.

 (K) Beginning with the date of the first negotiation meeting called in accordance with subsection (H), there shall be no fewer than three negotiation meetings within forty‑five days unless waived by consent of the applicant and a majority of the facility issues committee. Such negotiation meetings shall be presided over by the facilitator named in subsection (J) and shall be for the purpose of assisting the petitioners, the host local government, and the permit applicant, if different from the host local government, to engage in nonbinding negotiation.

 (L) Minutes of each meeting and a record of the negotiation process shall be kept by the host local government.

 (M) All issues except those which apply to environmental permit conditions are negotiable. Environmental permit conditions are not negotiable. Issues which may be negotiated include, but are not limited to:

 (1) operational issues, such as hours of operation;

 (2) recycling efforts that may be implemented;

 (3) protection of property values;

 (4) traffic routing and road maintenance; and

 (5) establishment of local advisory committees.

 (N) At the end of the forty‑five‑day period following the first negotiation meeting, the facilitator shall publish a notice of the results, if any, of the negotiation process in the same manner as provided in items (1), (2), (3), and (4) of subsection (A) and shall include the date, time, and place as determined by the facilitator of a public meeting, to be held within ten days after publication, with the permit applicant, host local government, and facility issues committee, at which the input of persons not represented by the citizens” facility issues committee may be received.

 (O) The negotiated concessions reached by agreement of all the negotiating parties shall be reduced to writing and executed by the chairman of the citizens’ facility issues committee and the chief elected official of the host local government and must be certified by resolution of the host local government.

 (P) If the negotiating parties fail to reach consensus on an issue, the permit applicant may proceed to seek a permit from the department. The facilitator shall notify the department in writing that the negotiating parties have failed to reach consensus and the nature of the disputed issues.

 (Q) If the negotiating parties reach consensus on negotiated issues, the permit applicant may proceed to seek a permit from the department. The facilitator shall notify the department in writing that the negotiating parties have reached consensus.

 (R) Negotiated concessions shall not be construed as environmental permit conditions. However, they may be enforced by any negotiating party in a civil proceeding.

 (S) Upon receipt of a written notification from the facilitator that the parties to negotiation have reached consensus or have failed to reach consensus on negotiated issues, and upon written notification from the permit applicant that he wishes to pursue permitting of the solid waste disposal facility for which an application has been filed, the department shall proceed to process the permit.

HISTORY: 1991 Act No. 63, Section 1; 2000 Act No. 405, Section 18.

CROSS REFERENCES

Regulations pertaining to solid waste management, see S.C. Code of Regulations R. 61‑107 et seq.

Library References

Environmental Law 353.

Westlaw Topic No. 149E.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

“Host local government” is a political subdivision which is furnishing the facilities for the solid waste landfill being developed on a regional or multi‑county basis. S.C. Op.Atty.Gen. (February 5, 1996) 1996 WL 93988.

The citizens committee is to be comprised of up to ten members, eighty percent of whom are to be registered voters or landowners in the host local government. S.C. Op.Atty.Gen. (February 5, 1996) 1996 WL 93988.

NOTES OF DECISIONS

In general 1

1. In general

Landfill permit challengers were not prejudiced in their ability to file petition, required by Solid Waste Policy and Management Act for initiation of facility issues negotiations, by false and misleading information given by waste management company applying for permit, where each subject on which challengers were misled involved technical environmental issues or environmental permit conditions which were not negotiable issues under facility issues negotiation process. Ballenger v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1998) 331 S.C. 247, 500 S.E.2d 183, rehearing denied. Environmental Law 358

Waste management company applying for landfill expansion permit complied with Solid Waste Policy and Management Act’s requirement that it give notice to “each affected county” of its permit application and of Department of Health and Environmental Control’s (DHEC) determination of suitability of proposed site, by giving notice to each county in its “service area,” as defined in its operating permit, and it was not required to give notice to all counties from which it received waste. Ballenger v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1998) 331 S.C. 247, 500 S.E.2d 183, rehearing denied. Environmental Law 362