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A Handbook for
Solid Waste Management

The University of Tennessee
County Technical Assistance Service
in cooperation with the
Tennessee Department
of Environment and Conservation

May 1996

CTAS
COUNTY TECHNICAL ASSISTANCE SERVICE
PROVIDING ASSISTANCE TO COUNTY OFFICIALS IN TENNESSEE

A HANDBOOK FOR SOLID WASTE MANAGEMENT

County Technical Assistance Service
Institute for Public Service
The University of Tennessee

in cooperation with the

Tennessee Department of
Environment and Conservation

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THE UNIVERSITY OF TENNESSEE
COUNTY TECHNICAL ASSISTANCE SERVICE

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Dear Public Official:

This Solid Waste Handbook has been developed as a reference guide for counties and municipalities to implement solid waste management programs. The Handbook offers summaries of various state and federal laws, regulations, and court decisions, pending legislation, attorney general opinions, and legal opinions, policies and guidelines of the County Technical Assistance Service, Municipal Technical Advisory Service, and Tennessee Department of Environment and Conservation, relative to solid waste management.

The Handbook also provides copies of permit application forms and instructions, state guidelines and policies, and state solid waste grant applications.

With the many regulations and policies now governing solid waste management practices in Tennessee, it is a challenge for public officials to successfully fulfill the compliance procedures for developing and maintaining these programs. This Handbook will begin to consolidate all the necessary information for implementing solid waste programs into one comprehensive reference guide.

This Handbook is intended as a general reference guide and not as an authority. Your attorney should be consulted before relying on any statement contained here. Also, reviewing the most recent laws and/or regulations is especially important because of frequent changes that occur. For forms and applications, consult the appropriate agency to verify the most current version in order to assure accuracy and program expediency.

Sincerely,

J. Rodney Carmical

J. Rodney Carmical
Executive Director

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This publication was not possible without the cooperation and support of many people and agencies outside of CTAS. Each agency listed below contributed specific information for portions of the chapters in this Handbook. Their assistance is gratefully appreciated, but does not imply an endorsement of the final publication by that organization.

Chief Clerk of the Tennessee House of Representatives

Chief Clerk of the Tennessee Senate

Clean Tennessee Program

Comptroller of the Treasury

State Library and Archives

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Tennessee Department of Environment:
- Division of Solid Waste Management
- Division of Solid Waste Assistance
- Division of Air Pollution
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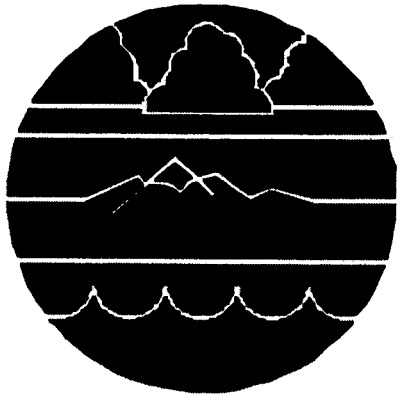
Federal Law

Chapter 1

Resource Conservation and Recovery Act

Overview



RESOURCE CONSERVATION AND RECOVERY ACT

In 1965, the Solid Waste Disposal Act was passed with the primary purpose of improving solid waste disposal methods. It was amended in 1970 by the Resource Recovery Act, and again in 1976 by the Resource Conservation and Recovery Act (RCRA). The Resource Conservation and Recovery Act (RCRA) was passed in 1976 to address how to safely dispose of huge volumes of municipal and industrial solid waste generated nationwide.

The goals set by RCRA are:

- To protect human health and the environment,
- To reduce waste and conserve energy and natural resources, and
- To reduce or eliminate the generation of hazardous waste as expeditiously as possible.

To achieve these goals, three distinct yet interrelated programs were developed under RCRA. The first program, outlined under Subtitle D of RCRA (40 CFR Parts 190 thru 259), encourages States to develop comprehensive plans for managing solid wastes, primarily municipal waste. The second program, outlined under Subtitle C of the Act (40 CFR Parts 260 thru 299), establishes a system for controlling hazardous waste from the time it is generated until its ultimate disposal. The third program is Subtitle I which regulates certain underground storage tanks. It establishes performance standards for new tanks and requires leak detection, prevention and correction at underground tank sites.

For purposes of this manual, only certain parts of Subtitle D and C will be summarized relevant to solid waste management. A copy of the Code of Federal Regulations for Parts 257 and 258 of Subtitle D are available for review in Appendix A of this manual.

RCRA creates a framework for the proper management of hazardous and non-hazardous solid waste, it does not address the problems of hazardous waste encountered at inactive or abandoned sites or those resulting from spills that require emergency response. They are taken care of by a different act, the Comprehensive Environmental Response, Compensation, Liability Act (CERCLA), better known as Superfund.

Subtitle D, 40 CFR Part 258

Purpose of Regulations

This regulation is an important step in improving the safety of municipal landfills. It establishes comprehensive, protective standards for managing the nation's solid waste burden by specifying location provisions and design, operating and closure requirements for municipal landfills. By improving the safety of nearly 6,000 municipal solid waste landfills, these regulations will help to bolster public confidence in landfills as a component of a workable integrated waste management system. In addition, the regulation is an incentive for increasing source reduction and recycling nationwide.

Who Is Covered?

This regulation establishes requirements for municipal solid waste landfills. It covers location restrictions, facility design and operations, groundwater monitoring, corrective action measures and conditions for closing (including financial responsibility). In general, the regulations apply to all municipal landfills that receive waste on or after October 9, 1993. Landfills that stop accepting waste between October 9, 1991 and October 9, 1993, need only comply with the requirements for final cover. Landfills that stopped accepting waste before October 9, 1991, do not need to comply with these regulations.

When Do The Requirements Apply?

The requirements concerning location restrictions, design criteria (new and lateral expansion units only), operating criteria, and closure/post-closure care are effective October 9, 1993. Ground-water monitoring and corrective action requirements are effective three, four, or five years after October 9, 1991, depending on a unit's proximity to drinking water intakes. The financial assurance criteria were recently amended and become effective April 9, 1997. These dates reflect the requirements of the federal MSWLF criteria. Refer to the state regulations, in Appendix C of this Handbook, to determine specific effective dates in Tennessee.

Implementation Of The Regulations

States are entitled to develop their own permitting programs incorporating the federal landfill criteria to ensure that owners/operators are complying. EPA's role is to review and approve these programs. **Approval of the State of Tennessee permitting program was granted by EPA under Subtitle D and announcement of the approval appeared in the Federal Register on September 16, 1993.**

By securing approval for its program, a state has the opportunity for more flexibility and discretion in implementing the criteria according to local needs and conditions. Owners/operators located in a jurisdiction with an approved program may benefit from this potential flexibility, which extends to all parts of the regulations .

While state, and local governments are responsible for ensuring compliance with their waste programs, private citizens play an important role, too. Individuals can help ensure that facilities comply with state regulations through such activities as participating in any public meetings regarding landfill siting and permit issuance, and working closely with their responsible state, and local officials. Citizens also have the right to sue landfill owners/operators who are not in compliance with the federal regulations.

A. Criteria for Municipal Solid Waste Landfills

Management standards for municipal landfills cover six categories:

1) Location

2) Operation

3) Design

4) Ground-water monitoring and corrective action

5) Closure and post-closure care

6) Financial assurance

Owners/operators are responsible for reviewing the criteria to determine which of the provisions apply to their landfill(s). (Owners/operators should refer to EPA's Technical Manual for Solid Waste Disposal Facility Criteria for details.) They should also bear in mind that state programs might include provisions that do not mirror the federal provisions discussed below. Owners/operators are therefore encouraged to work with their state regulators in complying with the regulations.

1) Location (40 CFR 258.10 thru 258.15)

There are six location restrictions that apply to municipal landfills: airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas. Owners/operators must demonstrate that their units meet the criteria and keep the demonstration documents in the facility operating record.

If an owner/operator cannot show compliance with the airport safety, floodplain, or unstable-area provisions, the unit must be closed by October 9, 1996. However, states with EPA-approved programs can extend this deadline by as much as two years when no alternative waste management capacity exists and there is no immediate threat to human health and the environment.

Restricted areas include:

Airports (40 CFR 258.10)

The owner/operator of a municipal landfill located within 10,000 feet of the end of any airport runway used by turbojet aircraft, or within 5,000 feet of any airport runway used only by piston-type aircraft, must demonstrate that the unit does not pose a bird hazard.

If an owner/operator plans to build a new unit or laterally expand an existing unit within 5 miles of any airport, the airport and the Federal Aviation Administration must be notified.

Floodplains (40 CFR 258.11)

Units located in 100-year floodplains cannot restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or allow the washout of solid waste.

Wetlands (40 CFR 258.12)

In general, owners/operators of new or expanding municipal landfills may not build or expand in wetlands. However, states with EPA-approved permitting programs can make exceptions for units able to show:

- No siting alternative is available.
- Construction and operation will not (1) violate applicable state regulations on water quality or toxic effluent; (2) jeopardize any endangered or threatened species or critical habitats; or (3) violate protection of a marine sanctuary.
- The unit will not cause or contribute to significant degradation of wetlands.
- Steps have been taken to achieve no net loss of wetlands by avoiding effects where possible, minimizing unavoidable impacts, or making proper compensation (e.g., restoring damaged wetlands or creating man-made wetlands).

Fault areas (40 CFR 258.13)

New units or lateral expansions are generally prohibited within 200 feet of fault areas that have shifted since the last Ice Age. However, the director of an approved state program may allow an alternative setback distance of less than 200 feet if the owner/operator can show that the unit will maintain structural integrity in the event of a fault displacement.

Seismic impact zones (40 CFR 258.14)

When a new or laterally expanding unit is located in a seismic impact zone, its containment structures (liners, leachate collection systems, surface-water control systems) must be designed to resist the effects of ground motion due to earthquakes.

Unstable areas (40 CFR 258.15)

All owners/operators must show that the structure of their units will not be compromised during "destabilizing events," including:

- Debris flows resulting from heavy rainfall.
- Fast-forming sinkholes caused by excessive ground-water withdrawal.
- Rockfalls set off by explosives or sonic booms.

- The sudden liquification of the soil after a long period of repeated wetting and drying.

2) Operation (40 CFR 258.20 thru 258.29)

All owners/operators must comply with the requirements for proper management of municipal solid waste landfills. These cover a range of procedures, including:

Receipt of regulated hazardous waste (40 CFR 258.20)

The owner/operator must set up a program to detect and prevent disposal of regulated quantities of hazardous wastes and polychlorinated biphenyl (PCB) wastes. The program must include procedures for random inspections, record keeping, training of personnel to recognize hazardous and PCB wastes, and notification of the appropriate authorities if such waste is discovered at the facility.

Cover material (40 CFR 258.21)

The owner/operator must cover disposed solid waste with at least 6 inches of earthen material at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging. An approved state or tribe may allow an owner/operator to use an alternative cover material or depth, and/or grant a temporary waiver of the cover requirement (if local climate conditions make such a requirement impractical).

Vectors (40 CFR 258.22)

The owner/operator is responsible for controlling vector populations. Vectors include any rodents, flies, mosquitoes, or other animals or insects capable of transmitting disease to humans. Application of cover at the end of each operating day generally controls vectors.

Explosive gases (40 CFR 258.23)

The owner/operator must set up a program to check for methane gas emissions at least every three months. If the limits specified in the regulations are exceeded, the owner/operator must immediately notify the state director (that is, the official in the state or area responsible for implementing the landfill criteria) and take immediate steps to protect human health and the environment. The owner/operator also must develop and implement a remediation plan within 60 days. States jurisdictions with approved programs may alter this interval.

Air quality (40 CFR 258.24)

Open burning of waste is not permitted except for infrequent burning of agricultural waste, silvicultural waste, land-clearing debris, diseased trees, or debris from emergency clean-up operations. Owners/operators must comply with the applicable requirements of their State Implementation Plans for meeting federal air quality standards.

Access (40 CFR 258.25)

The owner/operator must control public access to prevent illegal dumping, unauthorized vehicular traffic, and public exposure. Artificial and/or natural barriers may be used to control access.

Storm water run-on/run-off (40 CFR 258.26)

The owner/operator must build and maintain a control system designed to prevent storm waters from running on to the active part of the landfill. The run-on control system must be able to handle water flows as heavy as those expected from the worst storm the area might undergo in 25 years.

The owner/operator also must build and maintain a surface water run-off control system that can collect and control, at a minimum, the surface water volume that results from a 24-hour, 25-year storm. Run-off waters must be managed according to the requirements of the Clean Water Act, particularly with regard to the restrictions on the discharge of pollutants into water bodies and wetlands.

Surface water protection (40 CFR 258.27)

All landfills must be operated in a way that ensures they do not release pollutants that violate the Clean Water Act, which protects surface waters.

Liquids (40 CFR 258.28)

A landfill cannot accept bulk or noncontainerized liquid waste unless (1) the waste is nonseptic household waste, or (2) it is leachate or gas condensate that is recirculated to the landfill, and the unit is equipped with a composite liner and leachate collection system as described below under "Design."

Containers of liquid waste may be placed in the landfill only if the containers: (1) are similar in size to those typically found in household waste, such as cleaning, automotive, or home-improvement products (i.e., containers such as 55-gallon drums are excluded); (2) are designed to hold liquids for use other than storage; or (3) hold only household waste (containers collected in routine pickups from households).

Record-keeping (40 CFR 258.29)

Owners/operators are required to keep certain documents in or near the facility, including:

- Location restriction demonstrations.
- Procedures for excluding hazardous waste.
- Gas monitoring results.
- Leachate or gas condensate system design documentation.
- Ground-water monitoring and corrective action data and demonstrations.

- Closure and post-closure plans.
- Cost estimates and financial assurance documentation.

3) Design (40 CFR 258.40)

The criteria for landfill design apply only to new units and lateral expansions. (Existing units are not required to retrofit liner systems.) The criteria give owners/operators two basic design options.

First, in states with EPA-approved programs, owners/operators may build their landfills to comply with a design approved by the state director. In approving the design, the director must ensure that it meets the EPA performance standard, i.e., that Maximum Contaminant Levels (MCLs) will not be exceeded in the uppermost aquifer at a "relevant point of compliance." This point is determined by the approved-state director, but it must be no farther than 150 meters from the landfill unit boundary and on land owned by the landfill owner.

In reviewing these performance-based designs, approved states also must consider other factors, such as the hydrogeologic characteristics of the facility and surrounding land, the local climate, and the amount and nature of the leachate.

The second option is a design developed by EPA that consists of a composite liner and a leachate collection system. In general, landfills in states or tribal jurisdictions without EPA-approved programs must use this design. The composite liner system combines an upper liner of a synthetic flexible membrane and a lower layer of soil at least 2 feet thick with a hydraulic conductivity of no greater than 1 X 10-7 cm/sec. The leachate collection system must be designed to keep the depth of the leachate over the liner to less than 30 centimeters.

4) Ground-Water Monitoring and Corrective Action (40 CFR 258.50 thru 258.58)

This section sets criteria for ground-water monitoring systems, programs for sampling and analysis of ground water, and corrective action as necessary to ensure that human health and the environment are protected. Here, as with the other provisions in the federal criteria, approved states may adopt programs with requirements that are more stringent than the federal criteria. Again, owners/operators are encouraged to work closely with their states.

Ground-water monitoring systems (40 CFR 258.51 thru 258.53)

Generally, ground-water monitoring must be conducted at all MSWLF units. Owners/operators must install enough ground-water monitoring wells in the appropriate places to accurately assess the quality of the uppermost aquifer (1) beneath the landfill before it has passed the landfill boundary (to determine background quality) and (2) at a relevant point of compliance (downgradient). Owners/operators should consider the specific characteristics of the sites when establishing their monitoring systems, but the systems must be certified as adequate by a qualified ground-water scientist or the director of an EPA-approved state program.

In approved states jurisdictions, an owner/operator may be able to obtain a variance from the ground-water monitoring requirements if the owner/operator can demonstrate that the landfill is located over a geologic structure that will prevent hazardous constituent migration to the ground water. The demonstration must show that no migration of constituents from the unit will occur during the unit's life, including the closure and post-closure care period.

Detection and assessment monitoring programs (40 CFR 258.54 and 258.55)

States with EPA-approved programs have the flexibility to design ground-water monitoring programs that are well-suited to the landfills operating in their area, and that may therefore differ from the federal program. In states without an approved permit program, owners/operators must follow the federal regulations describing detection and assessment monitoring.

During detection monitoring, owners/operators must take ground-water samples and analyze them for specific constituents (as defined in the federal regulations or by the director of an approved state program). Under the federal regulations, sampling and analysis must be conducted at least twice a year. Approved state programs may set alternative frequencies, but sampling and analysis must be done at least annually. If significant ground-water contamination is detected, owners/operators may seek to demonstrate that the results are due to contamination from other sources, sampling error, or natural variation in ground-water quality. Otherwise, owners/operators must notify the appropriate state official and begin assessment monitoring.

The purpose of assessment monitoring is to determine the nature and extent of ground-water contamination. During assessment monitoring, ground-water must be analyzed both for constituents detected initially and for other constituents (defined in the federal criteria or by the director of an approved state program). States with EPA-approved programs specify the frequency for sampling and analysis conducted during assessment monitoring. In nonapproved states, the frequency is specified in the federal regulations. As in detection monitoring, if ground-water analysis shows significant contamination, owners/operators might be able to make the determination that the landfill is not the source of the contamination. If the owner/operator cannot make this determination, then the ground water must be cleaned up (see "Corrective Action" below). In EPA-approved states, it must be cleaned up to levels specified by the state director; in nonapproved states, contamination must not exceed federal limits set for drinking water quality or background levels.

The federal ground-water monitoring requirements are more complex and technical than described here. A thorough explanation of the regulations can be found in EPA's Technical Manual for Solid Waste Disposal Facility Criteria and in Appendix A of this handbook.

Ground-water monitoring regulations in states with EPA-approved programs may differ somewhat from the federal regulations. Landfill owners/operators conducting ground-water monitoring in nonapproved states must comply with the federal regulations in addition to their state's regulations. In all cases, the owner/operator is encouraged to work with his or her state to ensure compliance with all applicable regulations.

The corrective action program (40 CFR 258.56 thru 258.58)

Cleaning up ground water requires corrective action. The owner/operator must assess corrective measures and select the appropriate one(s). During corrective action, the owner/operator must continue ground-water monitoring in accordance with the assessment monitoring program.

While evaluating potential remedies, the owner/operator must hold a public meeting to discuss them. Once the remedy has been selected, the owner/operator is responsible for carrying it out. During this period, a ground-water monitoring program must be established to measure the effectiveness of the remedy. The owner/operator must continue corrective action until compliance with the clean-up standard has been met for three consecutive years, although the director of an approved state program may specify a different period.

5) Closure and Post-Closure Care (40 CFR 258.60 and 258.61)

The criteria establish specific standards for all owners/operators to follow when closing a landfill and setting up a program of monitoring and maintenance during the post-closure period. The owner/operator must enter the closure and post-closure plans into the landfill's operating records by October 9, 1993, or by the initial receipt of waste, whichever is later.

Owners/operators of landfills that stop receiving waste between October 9, 1991, and October 9, 1993, must install final covers that meet the federal criteria within six months of the last receipt of waste. Here again, owners/operators should work with their state program officials to ensure that all applicable closure requirements are considered.

The final cover must be designed and constructed to have a permeability less than or equal to the bottom liner system or natural subsoils, or a permeability no greater than 1x10-5 cm/sec, whichever is lower. Thus, the regulation is in the form of a performance standard that must be achieved by the owner/operator.

The final cover must be constructed of an infiltration layer composed of a minimum of 18 inches of earthen material to minimize the flow of water into the closed landfill. The cover must also contain an erosion layer to prevent the disintegration of the cover. The erosion layer must be composed of a minimum of 6 inches of earthen material capable of sustaining plant growth.

When a landfill's bottom liner system includes a flexible membrane or synthetic liner, the addition of a flexible liner in the infiltration layer cover will generally be the only design that will allow the final cover design to achieve a permeability less than or equal to the bottom liner.

The director of an approved state may approve an alternative final cover design that achieves an equivalent reduction in infiltration and protection from erosion as the design described above.

For 30 years after closure, the owner/operator is responsible for maintaining the integrity of the final cover, monitoring ground water and methane gas, and continuing leachate management. (Approved states may vary this interval.)

6) Financial Assurance (40 CFR 258.70 thru 258.74)

All units except those owned or operated by state or federal government entities must comply with the financial assurance criteria, which are effective April 9, 1997.

The owner/operator must demonstrate financial responsibility for the costs of closure, post-closure care, and corrective action for known releases. This requirement can be satisfied by the following mechanisms:

- Trust fund with a pay-in period.
- Surety bond.
- Letter of credit.
- Insurance.
- Guarantee.
- State assumption of responsibility.
- Multiple mechanisms (a combination of those listed above).

Owners/operators of landfills in approved states jurisdictions may also use other state-approved mechanisms.

EPA has amended the Financial Assurance Criteria under 40 CFR Part 258, subpart G, to become effective April 9, 1997. Additional financial mechanisms have been developed for owners/operators to use in order to satisfy the financial assurance requirements : (1) a financial test for local government owners/operators; (2) a financial test for corporate owners/operators; (3) a guarantee for local governments that wish to cover the costs of a municipal landfill for an owner/operator; and (4) a guarantee for corporations that wish to cover the costs of a landfill for an owner/operator. The Final Rule on the Financial Assurance Criteria was published in the Federal Register, Volume 60, No. 67, Friday, April 7, 1995.

B. Small Communities and the Municipal Landfill Regulations (40 CFR 258.1(f)(1))

This regulation concludes a major effort to improve the safety of municipal solid waste landfills. It establishes comprehensive and protective standards for the disposal of municipal solid waste. The Agency has taken special care to reduce the impacts of these regulations on small communities. Small communities can further reduce the impacts of the regulations by developing regional solid waste management facilities with other communities.

Since small communities operate nearly half of the landfills potentially affected by this rule, EPA carefully considered its impact on small landfills. In this regulation, small landfills serve communities that dispose of less than 20 tons of municipal waste per day. To mitigate the impact on these landfills, the regulations exempt certain small landfills from the design, ground water monitoring and corrective action requirements so long as they are not causing ground water contamination and they meet one of the following criteria:

> The landfill serves a community where surface transportation is interrupted for at least three months in a row each year, preventing

access to a regional waste management facility. (For example, communities experiencing significant snowfall may be unable to transport waste outside their local area for several months).

OR

The landfill serves a community that has no practical waste management alternative, and the landfill is located in an area that receives no more than 25 inches of precipitation a year.

The Agency built in extensive flexibility regarding technical requirements and implementation in States with EPA-approved permitting programs. In these States, this flexibility is available to all landfills and may be particularly useful for small communities that cannot qualify for the special small landfill exemption.

Subtitle C (40 CFR Part 261)

The regulatory framework established under Subtitle C was designed to protect human health and the environment from the effects of improper management of hazardous waste. RCRA defines hazardous wastes in terms of properties of a solid waste in Section 1004(5). A "hazardous waste is a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."

EPA has identified those solid wastes that must be managed as hazardous wastes under Subtitle C in 40 CFR Part 261. A solid waste is hazardous if it meets one of four conditions:

- Exhibits, on analysis, any of the characteristics of a hazardous waste (ignitability, corrosivity, reactivity, extraction procedure toxicity)
- Has been named as a hazardous waste and listed
- Is a mixture containing a listed hazardous waste and a non-hazardous solid waste
- Is not excluded from regulation as a hazardous waste.

The responsibility for determining if a particular solid waste is hazardous falls on the generators. When RCRA was passed in 1976, households were specifically exempted from the regulations. Congress chose not to regulate household hazardous waste (HHW) because it was considered impractical to regulate every household in the U.S. However, local governments continue to maintain liability as owners, operator, generators and/or transporters of solid waste containing hazardous substances if a municipal landfill develops into a toxic or hazardous waste site

through improper disposal of household hazardous waste. Therefore, many communities have established collection and disposal programs especially for HHW. The State of Tennessee has been operating a mobile HHW collection program for counties (See Chapter 7 - Collection for more detail).

Incinerator Ash

The U.S. Supreme Court ruled on May 2, 1994 that municipal waste combustion ash could be subject to federal hazardous waste rules. On May 24, 1994 the EPA has issued draft guidelines for owners/operators of municipal waste combustors (MWCs) or incinerators to comply with RCRA Subtitle C requirements. The guidelines specify that incinerator ash must be sample tested, and use a chemical analysis to determine if the ash exhibits a toxic characteristic (according to results from a Toxicity Characteristic Leaching Procedure test). If the ash exhibits a toxic characteristic, then it must be managed as a hazardous waste under Subtitle C Criteria. On January 25, 1995, EPA issued a final guideline document indicating that ash from MWCs does not become a regulated waste until it leaves the combustion facility. EPA also determined that MWC operators can combine fly ash and bottom ash before TCLP testing. For more information on Tennessee requirements for testing municipal waste combustion ash, contact the Division of Solid Waste Management in Nashville at (615) 532-0780.

Recent Amendments

RCRA regulations are continuously being developed. When a regulation is developed, it is published in the ***Federal Register*** as a proposed regulation. The public may comment on the proposed regulation for a period of time, normally 60 days. Following the comment period, the Environmental Protection Agency (EPA) revises the proposed regulations and finalizes them through publication in the ***Federal Register*** as a Final Rule. Annually, the regulations are compiled and placed in the Code of Federal Regulation (CFR). This is the codification process.

Several new amendments to the RCRA regulations have been adopted. Those amendments of interest are summarized below.

(1) Financial Assurance - 40 CFR Part 258 - EPA amended the Financial Assurance Criteria set out in 40 CFR Part 258, subpart G, until April 9, 1997. The extension applies to any size municipal solid waste landfill, including very small landfills as defined at 40 CFR 258.1(f)(1). The extension delays the compliance date for owners and operators of municipal solid waste landfills to provide financial assurance to the Agency from April 9, 1995 until April 9, 1997. A copy of the Final Rule for Financial Assurance Criteria was published in the Federal Register, Volume 60, No. 67, Friday, April 7, 1995.

(2) Universal Waste Rule - 40 CFR Part 273 - Three specific types of HHW will no longer be regulated under Subtitle C criteria. They are:

- hazardous waste batteries of all kinds, with the exception of automotive lead-acid batteries, which already have a substantial recycling infrastructure that recovers more than 90% of such cells;

- certain unused hazardous waste pesticides that have been collected for discard, have come to the end of their useful lives, or have been subject to recall by the Federal Insecticide, Fungicide, and Rodenticide Act; and

- mercury-containing thermostats and ampules separated from thermostats.

State Implementation

The national solid waste management program creates a framework for federal, state and local government cooperation in controlling the management of municipal solid waste. While this regulation establishes minimum standards for protecting human health and the environment, implementation of solid waste programs remain largely state responsibilities.

Since implementation is primarily a state function, States will need to incorporate these standards into their permitting programs to ensure that landfills are being operated properly.

EPA will evaluate each State's program to determine its adequacy for safely managing municipal solid waste. States that apply for, and receive, EPA's approval of their program are provided extensive flexibility in implementing the regulations. The Agency has the authority to enforce the regulations in those States that EPA determines do not have adequate permitting programs. Approval of the State of Tennessee permitting program was granted by EPA under Subtitle D and announcement of the approval appeared in the Federal Register on September 16, 1993.

Contact

For additional information or to order a copy of the ***Federal Register*** notice, contact the RCRA Hotline, Monday-Friday, 8:30 a.m. to 7:30 p.m. EST. The national, toll-free number is (800) 424-9346; TDD (800) 553-7672 (hearing impaired); in Washington, D.C., the number is (703) 920-9810, TDD (703) 486-3323.

Complete copies of documents applicable to this rulemaking may be obtained by writing: RCRA Information Center (RIC), U.S. Environmental Protection Agency, Office of Solid Waste (OS-305), 401 M Street SW, Washington, D.C. 20460.

Additional Reading:

RCRA Orientation Manual, EPA/530-SW-86-001, Office of Solid Waste, January 1986.

Technical Manual for Solid Waste Disposal Facility Criteria, EPA.

Chapter 2

Federal Court Decisions

FEDERAL COURT DECISIONS

The following are summaries of major Federal Court decisions related to solid waste.

United States Supreme Court

C & A CARBONE, INC., et al., petitioners,
v.
TOWN OF CLARKSTOWN, NEW YORK
114 S.Ct. 1677,128 L.Ed. 2d 399
Argued: Dec. 7, 1993.
Decided: May 16, 1994.

The town sued operators of a recycling facility to enjoin them from violating local ordinance requiring that solid waste processed or handled within the town be processed or handled at the town's transfer station. The Appellate Division, Supreme Court of New York, Second Judicial Department, Harwood, J., 182 A.D. 2d 213, 587 N.Y.S. 2d 681, affirmed grant of summary judgment for the town. Certiorari was granted. The Supreme Court, Justice Kennedy, held that: (1) the ordinance regulated interstate commerce, and (2) the ordinance impermissibly discriminated against interstate commerce.

Reversed and remanded.

Justice O'Connor filed opinion concurring in judgment.
Justice Souter filed dissenting opinion in which Chief Justice Rehnquist and Justice Blackmun joined.

OREGON WASTE SYSTEMS, INC., et al., petitioners
v.
DEPARTMENT QUALITY COMMISSION of the STATE of OREGON, et al.
COLUMBIA RESOURCE COMPANY, petitioner
v.
ENVIRONMENTAL QUALITY COMMISSION of the STATE of OREGON
114 S.Ct. 1345, 128 L.Ed. 2d 13
Argued: Jan 18, 1994.
Decided: April 4, 1994.

Operators of solid waste disposal facilities challenged the constitutionality of Oregon's imposition of a $2.50 per ton surcharge on in-state disposal of solid waste generated in other states in light of $0.85 per ton fee on disposal of waste generated in Oregon. The Court of Appeals, 114 Or. App. 369, 837 P. 2d 965, found the surcharge valid and the Oregon Supreme Court, 316 Or. 99, 849 P. 2d 500, affirmed. Certiorari was granted. The Supreme Court, Justice Thomas, held that the surcharge was facially invalid under the negative commerce clause, and could not be sustained as compensatory tax or as resource protectionism designed to conserve space in landfills for waste generated in Oregon.

Judgment of Oregon Supreme Court reversed and cases remanded.

Chief Justice Rehnquist, with whom Justice Blackmun joined, filed dissenting opinion.

FORT GRATIOT SANITARY LANDFILL, INC., petitioner
v.
MICHIGAN DEPARTMENT of NATURAL RESOURCES, et al.
112 S.Ct. 2019, 504 U.S. 353, 119 L.Ed. 2d 139
Argued: March 30, 1992.
Decided: June 1, 1992.

After the county denied a landfill operator's application for authority to accept out-of-state solid waste at its landfill, the operator filed an action seeking judgment declaring the waste import restrictions of Michigan's Solid Waste Management Act (SWMA) invalid under the commerce clause. The United States District Court for the Eastern District of Michigan, James Harvey, J., 732 F. Supp 761, dismissed the complaint, and the operator appealed. The Court of Appeals, for the Sixth Circuit, 931 F. 2d 413, affirmed. Certiorari was granted. The Supreme Court, Justice Stevens, held that: (1) the Michigan statute prohibiting private landfill operators from accepting solid waste that originates outside the county in which their facilities are located, unless authorized by that county's solid waste management plan, violated the commerce clause, and the fact that statute purports to regulate intercounty commerce in waste and that some Michigan counties accept out-of-state waste did not qualify its discriminatory character, and (2) the state did not meet the burden of proving that waste import restrictions furthered health and safety concerns that could not be adequately served by nondiscriminatory alternatives.

Reversed.

Chief Justice Rehnquist filed dissenting opinion in which Justice Blackmun joined.

Circuit Court of Appeals

SSC CORP.
v.
TOWN OF SMITHTOWN
66 F.3d 502 (2nd Cir. 1995), *cert. denied.*

This case involved commerce clause challenges to a flow control ordinance and a contract requiring disposal of all waste at the town incineration facility. The central issue revolved around the "market participation" exception to the dormant commerce clause: the commerce clause comes into play only when a governmental action can be characterized as a "regulation" of interstate commerce, but not when that action is "participation" in the open market. Under this analysis, the town's flow control ordinance requiring all waste to be disposed of at the local facility was struck down as an impermissible regulation since it was enforced through criminal fines and jail terms. However, the court upheld a contract between the town and a private hauler which contained a provision stipulating that the hauler would dispose of all waste at the local facility. In this instance the court found that the town was participating as a private entity in the waste collection and disposal markets, and therefore this participation was exempt from scrutiny under the commerce clause.

District Court

WASTE MANAGEMENT, INC., OF TENNESSEE
v.
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
No. 3-94-0411
(M.D. Tenn. May 17, 1995)

This case presents constitutional challenges to the county's mandatory solid waste disposal fee and flow control ordinance. Metro enacted an eight dollar per ton fee for disposal of solid waste generated inside its boundaries, regardless of whether the waste was disposed of inside or outside of the county; however, the fee was not imposed on waste deposited at the Metro-owned thermal transfer plant or a landfill owned or operated by the county. The effect of these provisions was that the fee was assessed only against two collection firms which both disposed of solid waste at facilities outside Metro's boundaries. The federal district court found this fee to be a discriminatory violation of the Commerce Clause since local interests benefited and non-local interests were burdened by the assessment of the surcharge. Furthermore, there was a reasonable nondiscriminatory alternative: a tax on the generators of the solid waste.

Metro's ordinance also contained flow control provisions which were challenged on the basis of the Commerce Clause. These provisions required all residential solid waste collected inside Metro boundaries to be disposed of at the thermal transfer plant. Noncommercial waste was not burdened with this requirement unless the collector had not deposited its pro rata share of solid waste necessary for the thermal plant's operation. The court found these restrictions permissible, stating that only a part of the waste flow was regulated since normally the ordinance required only residential waste to be delivered to the thermal plant Also significant was the fact that their purpose was not solely to generate revenue, but to advance significant environmental interests as well. Finally, the flow control provision did not totally exclude disposal outside Metro or create a monopoly for the thermal plant.

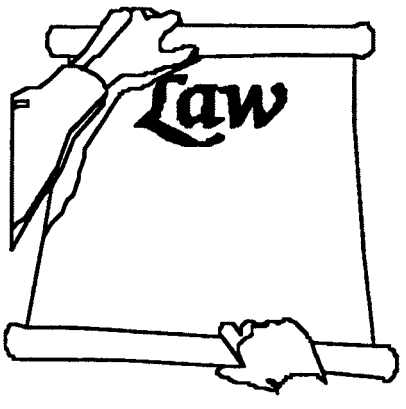
A third challenged ordinance required that firms providing solid waste collection and disposal services must also provide, without charge, containers for disposal of waste transported in private passenger cars; the facilities also had to accept waste from private pickup trucks at a fee of five dollars per load. The court made short work of the argument that these requirements constituted a taking of property without just compensation, stating that they were only minor intrusions which were clearly justified by important legitimate state interests.

Section II

State Law

Chapter 3

Solid Waste Management Act of 1991 Overview



THE SOLID WASTE MANAGEMENT ACT OF 1991 (68-211-801 et seq.)

On May 31, 1991, the Tennessee Solid Waste Management Act of 1991 became law.

Major components of the Solid Waste Management Act of 1991 are:

A. PLANNING

B. PROTECTION OF DISPOSAL CAPACITY

C. COLLECTION

D. RECYCLING AND SOURCE REDUCTION

E. PROBLEM WASTE

F. PUBLIC EDUCATION

G. TECHNICAL ASSISTANCE

H. FULL COST ACCOUNTING

I. DATA MAINTENANCE

J. FUNDING

K. SOLID WASTE AUTHORITIES

A. Planning

The Act establishes a comprehensive planning program under which each development district would constitute a municipal solid waste planning district and submit a district needs assessment for all counties within the district to the State Planning Office by September 30, 1992 (68-211-811(a)). Municipal solid waste regions comprised of one or more counties were established by resolutions of the respective county legislative bodies by December 12, 1992. The preferred organization of the region was to be multi-county and any county adopting a resolution establishing a single county region was to state the reasons for acting alone in the resolution (68-211-813(a)(1)). The County Clerk of each county then provided a copy of the resolution establishing the region to the State Planning Office by December 31, 1992 (68-211-813(a)(1).

Executive Orders #50 and #54 transferred all responsibilities from the State Planning Office to the Tennessee Department of Environment and Conservation (See Appendix D).

Each municipal solid waste region was to submit its plan to the Tennessee Department of Environment and Conservation (TDEC) by July 1, 1994 (68-211-814(a)(1)). The plan shall be

revised to reflect subsequent developments in the region every five years after 1994 (Note: 68-211-814(a)(2) was revised to reflect change in date).

Beginning on March 1, 1994 and annually thereafter, each region shall submit an annual report to the TDEC for the immediately preceding calendar year on implementation of the region plan, solid waste collection, recycling, transportation, disposal costs, etc (68-211-871(a)). From funds available in the Solid Waste Management Fund established in this act, planning grants were awarded to the development districts to assist in developing the district's needs assessments (68-211-823(1)). In addition, annual plan maintenance grants have been awarded to development districts in order to assist in revising data and maintaining district needs assessments, and assisting counties within the district (68-211-823(2). Planning assistance grants were also awarded to each county or solid waste region in order to assist such counties or regions in developing and maintaining regional plans (68-211-823(3)).

B. Protection of Disposal Capacity

Each region developed a plan to manage municipal solid waste in the region, planning for ten year disposal capacity and twenty-five percent (25%) reduction in the amount of solid waste entering landfills and incinerators in the region, by weight on a per capita basis, by December 31, 1995 (T.C.A. 68-211-861).

Each region must approve any application for a permit to own and/or operate a solid waste disposal facility or incinerator within the region consistent with the region's disposal needs before the Commissioner may issue a permit (T.C.A. 68-211-814(b)(1)(D)) However, a region may reject an application for a new permit or expansion of an existing solid waste disposal facility or incinerator within the region if it can determine that the application is inconsistent with the Solid Waste Management Plan (T.C.A. 68-211-814(b)(1)(B)).

C. Collection

Effective January 1, 1996, each county shall assure that one or more municipal solid waste collection and disposal systems are available to meet the needs of the residents of the county. The minimum level of service that the county shall assure is a system consisting of a network of convenience centers throughout the county (T.C.A. 68-211-851(a)). From funds available in the Solid Waste Management Fund, TDEC shall offer matching grant assistance to counties for the purpose of establishing or upgrading convenience centers required by this act (T.C.A. 68-211-824).

Transporters of municipal solid waste collected and/or to be disposed of in Tennessee shall register with the department and shall register annually thereafter (T.C.A. 68-211-852(a)). However, transporters of less than five (5) cubic yards are exempt from these requirements.

D. Recycling and Source Reduction

The state has established a twenty-five percent (25%) goal to reduce the amount of solid waste disposed of at municipal solid waste disposal facilities and incinerators. This shall apply to each

municipal solid waste region by December 31, 1995. The goal will be measured on a per capita basis by weight. In the absence of a variance, failure to meet the twenty-five percent waste reduction goal may subject the offending counties and municipalities, including any solid waste authority, to sanctions (T.C.A. 68-211-861(a)). However, if a region is unable to meet the twenty-five percent (25%) reduction goal, then such region may apply to TDEC for a variance. If TDEC determines that the applicant failed to meet the goal due to circumstances beyond the control of the region, then the director shall grant the region a variance from the goal. It is important to note that in the event that the failure of a region to meet its waste reduction goals is due to the failure of less than all of the constituent counties or municipalities of the region, the commissioner may apply sanctions only to the counties, municipalities, or solid waste authorities that caused the failure.

In addition, effective July 1, 1993, the owner or operator of each municipal solid waste disposal facility or incinerator shall be responsible for keeping an accurate written record of all amounts of solid waste measured in tons received at the facility unless the facility will be permanently closed on or before October 9, 1996.

As of January 1, 1996, each county shall provide directly, by contract or through a solid waste authority, one or more sites for collection of recyclable materials within the county unless an adequate site for collection of recyclable material is available to the residents of the county (T.C.A. 68-211-863 (a)). TDEC is authorized to establish a grant program for the purchase of equipment needed to establish or upgrade recycling at public or not-for-profit recycling collection sites (T.C.A. 68-211-825). In addition, the Department of Environment and Conservation is directed to establish an office of cooperative marketing for recyclables by July 1, 1992 (T.C.A. 68-211-826 & 821).

E. Problem Waste

Effective January 1, 1995, each county shall provide directly, by contract or through a solid waste authority at least one site to receive and store waste tires, used automotive oils and fluids, and lead-acid batteries, if adequate sites are not otherwise available in the county for the use of the residents of the county (T.C.A. 68-211-866(b)). No municipal solid waste disposal facility or incinerator shall accept for disposal any whole tires, lead-acid batteries or used oil except that certain incinerators may accept whole waste tires (T.C.A. 68-211-866(a)). Landfill operators shall segregate whole, unshredded waste tires at landfills and provide a temporary storage area for such tires until a mobile tire shredder shreds the waste tires (T.C.A. 68-211-867(b)). Tires may also be transported to an end-use facility for processing and disposal. Please see Chapter 6 of this handbook for more information on the TDEC tire collection policy.

From funds available from the Solid Waste Management Fund, the Department of Environment and Conservation shall:

1. Obtain six mobile tire shredders and operate them throughout the state, as waste tire disposal needs may require (T.C.A. 68-211-867(c));

2. Provide mobile collection units to provide collection of household hazardous wastes. The county or solid waste authority will provide a site for collection and

at least one person at the service site to assist persons in operating the mobile collection unit as well as advertising services (T.C.A. 68-211-866(b)); And,

3. TDEC will award competitive grants for collection of household hazardous waste at a permanent site to municipalities with a population of 100,000 or more, located in counties with a population of 287,700 or more, according to the 1980 federal census or any subsequent federal census. (Chattanooga, Knoxville, Memphis and Nashville).

F. Public Education

Each solid waste region plan shall include an education program to assist adults and children to understand solid waste issues, management options and costs, and the value of waste reduction and recycling (T.C.A. 68-211-842). TDEC will establish an information clearinghouse to acquire, review, evaluate and distribute a catalog of materials on source reduction and recycling and they are authorized to organize and conduct workshops and conferences on solid waste management, source reduction and recycling (T.C.A. 68-211-843).

In addition, TDEC, in consultation with the Department of Education, shall prepare information and programs on a statewide basis for the following groups: (T.C.A. 68-211-844).

1. Municipal, county and state officials and employees;

2. Kindergarten through graduate students and teachers;

3. Businesses that use or could use recycled materials or that produce projects from recycled materials and persons who provide support services to those businesses; And,

4. The general public.

TDEC is also authorized to establish an awards program for outstanding school-based solid waste, source reduction or recycling education programs (T.C.A. 68-211-846). After a solid waste region or county's plan is approved, TDEC shall award grants for implementing the education program component of the plan from funds available in the Solid Waste Management Fund (T.C.A. 68-211-847).

G. Technical Assistance

From funds available in the Solid Waste Management Fund, TDEC is authorized to award annual grants to the University of Tennessee's County Technical Assistance Service and Municipal Technical Advisory Service, Development Districts and the Department of Economic and Community Development's Division of Local Planning for rendering technical assistance to regions, counties and municipalities as needed in the development of the plan required by the state (T.C.A. 68-211-822).

If requested, the University of Tennessee's County Technical Assistance Service and Municipal Technical Advisory Service shall provide technical assistance to a county or region for siting, designing, constructing, upgrading developing and maintaining a system of convenience centers. (T.C.A. 68-211-851(c)). The Institute for Public Service of the University of Tennessee shall provide technical assistance in the design and management of a recycling program to each county, municipality, authority, or region which requests assistance (T.C.A. 68-211-864).

By October 9, 1996, the Solid Waste Disposal Control Board shall, by rule (Rule 1200-1-7-.04(1)(b)(3)(ii), establish a program for the certification of operators, attendants and other persons participating in or responsible for the operation of any landfill or incinerator regulated by the department (T.C.A. 68-211-853(a)).

H. Full Cost Accounting

Effective July 1, 1992, each county, solid waste authority and municipality shall use a uniform solid waste accounting system developed by the Comptroller of the Treasury (68-211-874(a)).

I. Data Maintenance

TDEC shall establish and maintain a statewide solid waste planning and management data base which can aggregate and analyze county reports on waste generation, collection, recycling, transportation, disposal and costs (T.C.A. 68-211-872).

J. Funding

A. Local

Effective July 1, 1991, each county, municipality or solid waste authority which owns a municipal solid waste disposal facility or incinerator may impose a tipping fee upon each ton of municipal solid waste or its volume equivalent received at any disposal facility or incinerator owned by the governmental unit imposing the tipping fee. Revenue from tipping fees received by counties, municipalities, and solid waste authorities at publicly owned solid waste disposal facilities and incinerators shall be expended only for solid waste management purposes (T.C.A. 68-211-835(a)).

In addition to tipping fees at their own facilities, after a regional solid waste plan is approved, each county, municipality, and solid waste authority may impose a surcharge on each ton of municipal solid waste received at each landfill or incinerator within their jurisdiction, whether publicly or privately owned. Furthermore, after the regional plan is approved, a county, city or solid waste authority may impose a surcharge on waste received by any public or private landfill or incinerator (T.C.A. 68-211-835(f)(1)). Also, each county, municipality, and solid waste authority is authorized to impose a solid waste disposal fee on generators of solid waste in their respective jurisdictions, except that such a fee may not be imposed on any generator of solid waste when the generator disposes of the waste in a facility located on land owned by the generator. A county, municipality, or solid waste authority may enter into an agreement with an electric utility to collect the solid waste disposal fee as part of the utility's billing process. This

agreement is subject to any other requirements of law. The funds generated from these local fees may be used to establish and maintain collection and disposal services, including convenience centers. (T.C.A. 68-211-835).

Once the regional solid waste plan is approved by TDEC, a county that is host to a solid waste disposal facility or incinerator used by other counties in the same region may impose a surcharge on municipal solid waste received at any such solid waste disposal facility or incinerator by resolution of the county legislative body(ies) in the region. This surcharge is to be imposed on each ton or volume equivalent of municipal solid waste received at the facility. The revenue received by a county from this surcharge shall be expended for solid waste management purposes or for purposes related to offsetting costs incurred and other impacts resulting from the county being host to the solid waste disposal facility or incinerator. (T.C.A. 68-211-835(e)).

B. State

Effective July 1, 1991, a state surcharge of eighty-five cents (85¢) per ton on each ton of municipal solid waste received at all solid waste disposal facilities or incinerators will be charged and will go to the Solid Waste Management Fund (T.C.A. 68-211-835(d)). Nothing in the act prohibits a county from establishing a tipping fee higher than the eighty-five cents (85¢) per ton required to be paid to the state for the waste received at a county facility.

K. Solid Waste Authorities

Although the subject of authorities is presented in the Solid Waste Management Act of 1991(T.C.A. 68-211-801 et seq.), the Solid Waste Authority Act of 1991(T.C.A. 68-211-901 et seq.) primarily defines the parameters for creating and utilizing a solid waste authority.

A region's county, or counties acting jointly, may create (and later dissolve if they wish) a solid waste authority to implement solid waste plans. Cities in the region may join by agreement of the governing bodies of all participating counties and cities. The resolution(s) creating an authority will provide for a board of directors appointed by the county executives and mayors of the participating local governments and approved by the respective legislative bodies. The region's board may be the same board as the Authority's board (T.C.A. 68-211-904(a)).

The authority will have broad power to act as a corporate public body and provide services, contract for services, set tipping fees. etc. It will also have the power of eminent domain, and may borrow money and issue bonds backed by its property and/or revenue. The participating cities and counties will only be liable for the debts of the authority if they choose to secure such debt by resolution or ordinance. Authorities may collect and dispose solid waste in their territories with the agreement of the affected city or county governing body. Counties and cities may contribute property or revenues to an authority. Counties or cities contracting with an authority may levy a special property tax to finance these obligations (T.C.A. 68-211-901 et seq.).

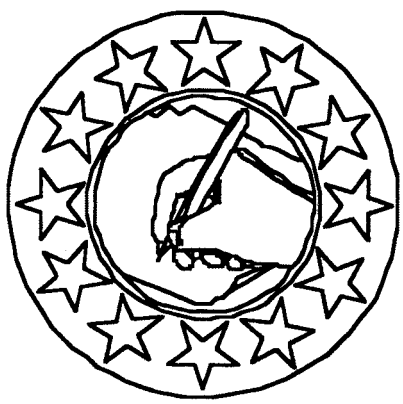
CHRONOLOGY OF EVENTS OF SIGNIFICANCE TO COUNTIES

1991	1992	1993	1994	1995	1996
TDEC issues guidelines for district needs assessments. (Sept. 30, 1991)	District needs assessment by Development Districts submitted to State. (Sept. 30, 1992)			No MSW disposal facility shall accept any unshredded waste tires, lead acid batteries, or used oil. Each county shall provide at least one site for the collection and storage of these items. (Jan. 1, 1995)	
	Formation of Municipal Solid Waste Regions by Counties. (Dec.12, 1992)				
	County Clerk of each county must provide a copy of the resolution to TDEC. (Dec. 31, 1992)		Each county shall submit an annual Solid Waste Management Planning Report to the TDEC (Mar. 1, 1994)		
	TDEC issues guidelines for development of Municipal Solid Waste Plans. (Jan. 1, 1992)		Submission of Municipal Solid Waste Region plan to TDEC. (July 1, 1994)		
Each owner or operator of a MSW Disposal Facility must keep accurate written records of the amount of solid waste (weight or volume) received at the facility. (July 1, 1991-Jun. 30, 1993)	Each county, solid waste authority, and municipality must use a uniform Solid Waste Financial Accounting System developed by the State. (July 1, 1992)	Each owner operator of a MSW disposal facility must keep written records of the amount of solid waste measured in tons received at the facility. (July 1, 1993)			MSW landfill/incinerator operator certification program established by State. (October 9, 1996)
	The Department of Economic and Community Development shall establish an office of Co-Operative Marketing and Recyclables. (July 1, 1992)				Each county must assure that a countywide MSW collection and disposal system is in place. (Jan. 1, 1996)
All solid waste disposal facilities and incinerators must collect a surcharge of $0.85/ton of waste received. (July 1, 1991)				Each county or region must meet the 25% waste reduction goal. (Dec. 31, 1995)	Each county must provide one or more sites for collection of recyclables within the county. (Jan. 1, 1996)

Chapter 4

Solid Waste Processing and Disposal Regulations

Summary



STATE SOLID WASTE PROCESSING AND DISPOSAL REGULATIONS

On March 1990, the state promulgated new regulations regarding solid waste processing and disposal facilities. A complete copy of the regulations is available in Appendix C.

Included in these regulations is a new classification system for landfills, permit, design and operational requirements for landfills, processing facilities, convenience centers, financial assurance requirements for landfill operators, fee system, waste reduction goal, solid waste management fund.

A. Solid Waste Management System (Rule 1200-1-7-.01)

The purpose of this Rule is to provide definitions of terms and categories of waste disposal facilities, general standards, variances and waivers and an overview of information applicable to these topics.

Classification of Disposal Facilities

Disposal facilities in Tennessee will now be identified according to Classes I-VI (Rule 1200-1-7-.01(3).

Class I Disposal Facility refers to a sanitary landfill which serves a municipal, institutional and/or rural population and is used or to be used for disposal of domestic wastes, commercial wastes, institutional wastes, municipal wastes, bulky wastes, landscaping and land clearing wastes, industrial wastes, construction/demolition wastes, farming wastes, discarded automotive tires and dead animals.

This refers to city, county or private landfills servicing a city, county or community and has specific standards associated with buffer zones, leachate migration control, gas migration control, waste handling and cover and groundwater protection and monitoring.

Class II Disposal Facility refers to a landfill which receives waste which is generated by one or more industrial or manufacturing plants and is used or to be used for the disposal of solid waste generated by such plants, which may include industrial wastes, commercial wastes, domestic wastes, institutional wastes, farming wastes, bulky wastes, landscaping and land clearing wastes, construction/demolition wastes, discarded automotive tires, dead animals. Additionally, a Class II disposal facility may also serve as a monofill for ash disposal from the incineration of municipal solid waste.

This specifically refers to landfills which are used only by industries or manufacturing plants or exclusively for disposal of ash from incinerated municipal solid waste. These landfills also have specific standard requirements in the same categories listed for Class I facilities but generally are allowed more flexibility depending upon a case by case analysis of wastes to be disposed, site characteristic, etc.

Class III Disposal Facility refers to a landfill which is used or to be used for the disposal of farming wastes, landscaping and land clearing wastes and/or certain special wastes having similar characteristics.

These facilities also have specific standard requirements associated with them but they are generally less stringent than those for Class I or Class II disposal facilities.

Class IV Disposal Facility refers to a landfill which is used or to be used for the disposal of construction/demolition wastes and/or certain special wastes having similar characteristics.

These facilities have specific standard requirements as well, but due to the more inert nature of this type of waste, are generally the least stringent.

All solid waste generators wishing to dispose of special wastes at Class I - IV disposal facilities must complete the TDEC (special) waste evaluation application and usually have tested this waste according to the Toxic Constituent Leachate Procedure (TCLP) which replaces the previous EP Toxicity Test and must have received written permission to dispose of such waste from the commissioner.

Class V Disposal Facility refers to a land farming facility.

Class VI Disposal Facility refers to a surface impoundment used for disposal of solid waste.

Specific requirements for Class V and VI facilities have not been outlined at this point. It should also be noted that requests for variances or waivers will be processed as part of the final permit or as a permit modification.

B. Permitting of Solid Waste Processing and Disposal Facilities (Rule 1200-1-7-.02)

The purpose of this Rule is to establish the procedures, documentation and other requirements for a person to receive and retain a permit to operate a solid waste processing or disposal facility in Tennessee.

Permit by Rule - This section of the solid waste regulations has been expanded to identify classes of activities deemed to have a permit by rule if certain conditions are met. A permit by rule is a situation where no formal permitting process is required if the facility is eligible for such a permit, however written approval from the Commissioner is required before to operation of the facility.

This is basically only applicable to: 1) processing facilities, 2) coal ash fill areas, certain tire storage facilities, and convenience centers which meet the outlined criteria and adhere to the requirements set forth in this rule paragraph (1), subparagraph (c), parts 1 and 2. The operator of such a facility must notify the Department of Environment and Conservation as per the requirements of this part.

Application for a Permit - Applicants for a solid waste disposal facility permit no longer have to prepare a feasibility study.

Existing facilities shall not be subject to further public notice and public hearings when making permit modifications that are necessary to comply with these new regulations.

The format and contents for a permit application are defined in this rule, paragraph (2), subparagraph (d). The permit application is divided into two parts. Part I consists of forms supplied by the Department with accompanying instructions as well as general information regarding the owner(s), operator(s) and the facility, including location, type of waste to be handled, zoning authority for the facility location, how the facility is zoned, topography, and wells, springs and other surface water bodies in the area.

Part II of the permit application is defined in detail in Rule 1200-1-7-.04, paragraph (9). It consists of a Hydrogeologic report, engineering plans, narrative description of the facility and operations and the closure/post-closure plan which must contain cost estimates for financial assurance.

If upon receiving a permit, the facility does not initiate construction and/or operation within one year of the date of the permit, the permittee may not initiate construction and or operation of the facility unless recertification by the commissioner in writing has been received. The procedure for obtaining recertification is defined in this rule, paragraph (2), subparagraph (e).

A detailed description for processing the permit is found in paragraph (3).

The terms of a permit are found in paragraph (4).

The regulations regarding the transfer, modification, revocation and reissuance and termination of permits is found in paragraph (5).

C. Requirements for Financial Assurance (Rule 1200-1-7-.03)

The purpose of this Rule is to establish requirements for developing and maintaining acceptable financial assurance for the proper operation, closure and post-closure care of certain solid waste disposal facilities in Tennessee. These financial assurance requirements are to ensure that adequate financial resources are available to the Commissioner to ensure proper operation, closure and post-closure care. This rule also establishes criteria and procedures to be used by the Commissioner in setting the amount of financial assurance required and in use and release of these funds.

Basically, operators of Class I-IV solid waste disposal facilities will be required to have an approved closure/post-closure care plan by the Department of Environment and Conservation. The contents of this plan are detailed in paragraph (2). As of the effective date of these regulations, the Commissioner of Department and Environment and Conservation (TDEC) has requested closure, post-closure plans from existing facilities. The operators of these facilities will have 180 days from the date of the commissioner's notice to submit this plan. The operator of a facility, however, may voluntarily submit this plan at any time.

All existing facilities were required to have a closure/post-closure plan by March 1993.

Additionally, operators of Class I-IV solid waste disposal facilities will be required to file and maintain financial assurance with the Commissioner of TDEC.

The amount of financial assurance required of the operator shall be established by the Commissioner based upon estimated cost of operating the facility for a 30-day period plus the estimated closure and post-closure care costs included in the approved closure/post-closure care plan. This required amount may be adjusted as the plan is amended. In no case, however, shall the amount of financial assurance be less than $1,000 per acre or the fraction thereof affected by the facility operation. For facilities being developed or to be developed according to a phased development plan, the commissioner may establish the amount of financial assurance required on a parcel-by-parcel basis.

The acceptable mechanisms of financial assurance are identified in paragraph (3), subparagraph (d). The rest of paragraph (3) addresses the following issues:

Subparagraph

(e) Use of Multiple Financial Mechanisms
(f) Use of a Financial Mechanism for Multiple Facilities
(g) Substituting Alternate Financial Assurance
(h) Incapacity of Operator or Financial Institutions
(i) Maintenance/Release of Financial Assurance
(j) Forfeiture of Financial Assurance
(k) Effect on Transfer of Permits
(l) Wording of the Instruments guaranteeing proper operation and performance of closure and/or post-closure care.

Please refer to Appendix C for proposed amendments to this rule.

D. Specific Requirements for Class I, II, III and IV Disposal Facilities (Rule 1200-1-7-.04)

The purpose of this Rule is to establish:
1) The standards which Class I through IV facilities must meet to obtain a permit.
2) The specific information required in Part II of the permit application.

On March 18, 1990, new facilities were subject to all applicable requirements.

Existing Facilities

Unless it is already in the permit (or in the already submitted construction and operational plans) as of the effective date of this rulemaking, any new unit or lateral expansion to be added to an existing facility shall, on the effective date of this rulemaking, be subject to all applicable requirements.

Existing facilities shall on the effective date of this rulemaking, be subject to the following subparagraphs of paragraph (2):

Subparagraph

(a) Overall performance standard
(b) Control of access and use
(c) Fire safety
(d) Litter control
(e) Personnel services
(f) Communications
(g) Operating equipment
(h) Availability of cover material
(i) Run-on, run-off and erosion control
(j) Dust control
(k) Waste restrictions
(1) Sealing of bore holes
(m) Endangered species
(o) Permanent benchmark
(s) Random inspection program
(t) Future planning,

as well as, paragraph (6) *waste handling and cover standards,* paragraph (7) *groundwater protection/monitoring standards,* and paragraph (8) *closure and post-closure standards.*

By October 9, 1996 existing facilities shall be subject to applicable requirements of paragraph (4) *leachate migration control standards* and paragraph (5) *gas migration control standards.*

Existing facilities shall not be subject to the following subparagraphs of paragraph (2):

Subparagraph

(n) Location in floodplain
(p) Wetlands
(q) Karst terrain
(r) Airport safety

and paragraph (3) *buffer zone standards.*

All facilities shall be subject to applicable requirements of paragraph (9) when applying for a permit or permit modification This paragraph establishes the requirements for the Part II permit application.

Some of the more significant requirements of paragraph (2) *General Facility Standards* are as follows:

Subparagraph (i) - *Run-on, Run-off and Erosion Control*

The operator must design, construct, operate and maintain a run-on and run-off control system including collection and holding facilities capable of handling the peak flow or discharge from a 24-hour, 25-year storm. Additionally, holding facilities must be designed to detain at least the

water volume resulting from a 24-hour, 25-year storm and capable of diverting through emergency spillways at least the peak flow resulting from a 24-hour, 100-year storm.

Run-on and run-off must be managed separately from leachate unless otherwise approved by the Commissioner.

Subparagraph (n) - *Location in Floodplain*

Facilities must not be located in the 100-year floodplain unless it is demonstrated to the Commissioner that it will not restrict the flow of the 100-year flood nor reduce the temporary water storage capacity of the floodplain and is designed, constructed, operated or maintained to prevent washout of any solid waste.

Subparagraph (o) - *Permanent Benchmark*

There must be installed on-site a permanent benchmark (e.g., a concrete marker) of known elevation.

Subparagraph (p) - *Wetlands*

Facilities must not be located in a wetlands.

Subparagraph (r) - *Airport Safety*

Disposal facilities located within 5,000 feet of any runway used by piston aircraft or 10,000 feet of runways used by turbojet shall demonstrate to the Commissioner that it will not pose a bird hazard to aircraft. New Class I disposal facilities proposing to locate within five (5) miles of an airport runaway must notify the airport and the Federal Aviation Administration (FAA).

Paragraph (3) Buffer Zone Standards for Siting New Class I, II, III or IV Landfills contains the following minimum requirements:

1) 100 feet from all property line;
2) 500 feet from all residences, unless the owner of the residential property agrees in writing to a shorter distance;
3) 500 feet from all wells determined to be down gradient and used as a drinking water source by humans or livestock;
4) 200 feet from the normal boundaries of springs, streams, lakes and other bodies of water (except that this standard shall not apply to any wet weather conveyance nor to bodies of water constructed and designed to be a part of the facility); and,
5) A total site buffer with no constructed appurtenances within 50 feet of the property line.

Paragraph (4) Leachate Migration Control Standards contains the minimum standards for liners, geologic buffers, leachate control systems and cap for disposal facilities. A summary of some of the more significant items in these standards are found in the following figure cross-section of a solid waste landfill and table of terms.

Paragraph (5) Gas Migration Control Standards sets forth the requirements for the design, construction, operation and maintenance of gas at Class I, II, III and IV disposal facilities.

Paragraph (6) Waste Handling and Cover Standards establishes the standards for waste placement in the disposal facility as well as cover requirements for daily, intermediate and final cover for Class I through IV facilities.

Paragraph (7) Groundwater Protection/Monitoring Standards are extensively detailed in this paragraph. Most specifically detailed is a more extensive detection monitoring program which will require considerably more groundwater sampling and analysis during the first year of a facility's operation.

Paragraph (8) Closure and Post-Closure Standards establishes the closure/post-closure standards for Class I through IV disposal facilities. This paragraph establishes 30 years as the period of time for post-closure care for Class I and Class II landfills and two (2) years for Class III and Class IV landfills unless a different period is set by the Commissioner.

Paragraph (9) Contents of the Part II Permit Application establishes the information that must be included in the Part II permit applications for Class I through IV disposal facilities.

E. Specific Requirements for Class V Disposal Facilities (Rule 1200-1-7-.05)

This rule is reserved for Class V disposal facilities.

F. Specific Requirements for Class VI Disposal Facilities (Rule 1200-1-7-.06)

This rule is reserved for Class VI disposal facilities.

G. Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste (Rule 1200-1-7-.07)

The purpose of this Rule is to establish a system and schedule of fees levied and collected by the Commissioner.

Paragraph (2) Application Filing/Processing Fees states the following are the amounts specified for any person applying for a permit or permit-by-rule:

1. Disposal Facility
   (i) Class I

Hydrogeologic	$4,000
Design and Construction	$6,000

   (ii) Class II

Hydrogeologic	$4,000
Design and Construction	$6,000

(iii)	Class III	$3,000
(iv)	Class IV	$3,000
2. Processing Facility		$1,000
3. Major Modifications		$2,000
4. Special Waste Approval		$ 250

Paragraph (3) Annual Maintenance Fees states the following are the amounts specified for any person who has a permit:

1. Disposal Facilities		
(i)	Class I (tons/year)	
	(I) Greater than 100,000	$15,000
	(II) 50,000 to 100,000	$10,000
	(III) 25,000 to 50,000	$ 6,000
	(IV) 10,000 to 25,000	$ 2,000
	(V) Less than 10,000	$ 1,000
(ii)	Class II (tons/year)	
	(I) Greater than 1,000	$ 5,000
	(II) Less than 1,000	$ 2,000
(iii)	Class III	$ 2,000
(iv)	Class IV	$ 2,000
2. Processing Facilities		$ 2,000

Paragraph (4) establishes an inspection fee for baled waste. Any facility that plans to receive baled waste, that was not baled according to permit, will pay a $3.00/bale inspection fee prior to receiving the waste.

Paragraph (5) establishes an annual fee of fifty dollars ($50) per vehicle for all transporters of municipal solid waste in Tennessee. Any vehicle of less than five (5) cubic yards capacity is exempt. A maximum fee of $15,000 per company or municipal corporation is applied.

Paragraph (6) establishes the Schedule for Timely Action on Permit Applications.

A completeness determination will be reviewed and applicant notified within the following time frames:

Hydrogeologic Report	30 days
Design and Construction Plans	45 days

A permit application will be issued or denied by the Department within the following time frames (except consideration of stay periods) after the application is certified to be complete:

1.	Disposal	
	(i) Class I	270 days
	(ii) Class II	270 days
	(iii) Class III	240 days
	(iv) Class IV	240 days
2.	Processing Facility	90 days
3.	Major Modification	
	(i) Regulatory Requirement	180 days
	(ii) Application	
	(I) Plans Only	240 days
	(II) Geologic	270 days
4.	Special Waste Approval	30 days

Subparagraph (d) states that all application fees will be refunded with interest if the Department does not issue or denies a permit.

H. Solid Waste Management Fund (Rule 1200-1-7-.08)

The purpose of this Rule is to establish the procedures to follow in maintaining the Solid Waste Management Fund (the fund).

Subparagraph (a) states that a surcharge of eighty-five cents ($.85) per ton of waste received at municipal solid waste (MSW) disposal facilities or incinerators is imposed on all owners or operators of MSW disposal facilities or incinerators. This surcharge will expire June 30, 1996.

Subparagraph (d) establishes a quarterly fee schedule for paying the surcharge to the Department.

Paragraph (3) Records standards are established for reporting daily tonnages of waste received.

Paragraph (4) Municipal Solid Waste Equivalency establishes four (4) cubic yards of municipal solid waste to be equal to one ton of municipal solid waste.

I. Waste Disposal Reduction Goal (Rule 1200-1-7-.09)

The purpose of this Rule is to establish a statewide goal to reduce by twenty-five percent (25%) the amount of solid waste disposed of at municipal solid waste disposal facilities and incinerators by December 31, 1995 as measured on a per capita basis by weight. The goal applies to each solid waste region.

Paragraph (2) Waste Reduction Methods are established, but not limited to the following: diversion from Class I landfills to Class III or Class IV landfills, composting, recycling, source reduction, problem waste diversion, and mulching.

Paragraph (3) Region's Waste Reduction Plan provides directions to the regions in designing waste reduction plans. The base year for measuring the waste reduction is 1989 unless a region can demonstrate that the 1989 data is in error.

Paragraph (4) Variance to Waste Reduction Goal establishes provisions for solid waste regions seeking a variance who fail to meet the goal. Failure to meet the goal without a variance could bring sanctions to the region. If a multi-county regions fails to meet the goal, sanctions will apply to the specific counties or cities within that region that have not carried out the waste reduction plan.

J. Convenience Centers (Rule 1200-1-7-.10)

The purpose of this Rule is to establish for every county a minimum level of service for collection and disposal service. This Rule also establishes minimum standards for designing and operating convenience centers, if such service is selected by the county. In addition, an economic index and local matching rates are set for grant assistance to counties for establishing and upgrading convenience centers.

Paragraph (2) Minimum Level of Service establishes *household collection* and *convenience centers*, or *higher level of service* as the means of collecting and disposing of solid waste in the county.

A county providing at least ninety percent (90%) of all residents access to *household collection* will have met the minimum level of service.

A county providing a minimum number of *convenience centers* will have met the minimum level of service. The minimum number of centers is established as:

(i) The service area in square miles divided by one hundred eighty square miles; or
(ii) The service area population divided by 12,000.

If a county proposes a *higher level of service*, or alternative system, this system must be approved by the Commissioner.

Paragraph (3) Design and Operation Standards establishes the following standards for designing and operating a convenience center site:

Subparagraph
(a) Access
(b) Dust and Mud Control
(c) Run-on and Run-off Control
(d) Fire Safety
(e) Communication

(f) Personnel Facilities
(g) Water
(h) Process Water
(i) Waste Handling
(j) Facility Supervision
(k) Siting Restrictions
(l) Special Waste
(m) Medical Waste

Paragraph (4) Municipal Solid Waste Collection and Plan establishes the method by which each solid waste region will annually report and revise the local collection and disposal plan. The annual report will be submitted to TDEC on July 1, 1996 and each year thereafter on the following issues:

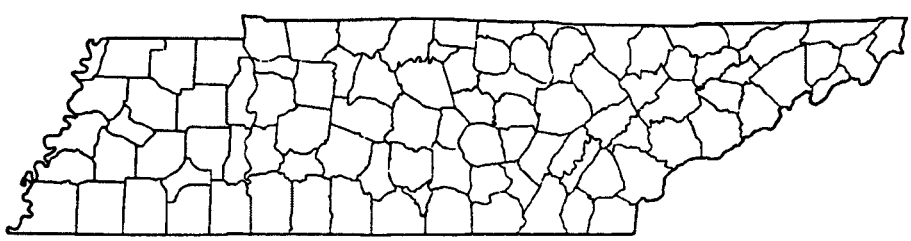
1. Survey of roadside dumps;
2. Citizen complaints;
3. Alternative systems available; and
4. Volume of waste received or collection by the existing systems.

Paragraph (5) Economic Index establishes the local share required to match grant funds to be 10% for those counties in the lower one-half (1/2) of the economic index. Those counties in the upper one-half (1/2) of the economic index will be required to provide a 20% local match.

Matching rates for convenience center grants are determined using the mean of a county's rank for equalized property tax generation and per capita income each year.

Chapter 5

Planning



PLANNING

A. Regions

To begin implementation of the Solid Waste Management Act, each development district was instructed to conduct a needs assessment. Based on that assessment, counties were to develop a solid waste region (single or multi-county), and establish a solid waste board and advisory committee for each region. These activities were to be concluded by December 31, 1992 (T.C.A. 68-211-811 through 68-211-813).

A checklist for forming a solid waste region and draft resolutions are provided on the following pages. Also copied are TDEC policies for dissolving and creating a region.

Each region was required to formulate a plan for collection and disposal of solid waste in the area, and submit this plan to the state planning office by July 1, 1994. Every five years after 1994 the plan must be revised to reflect subsequent developments in the region (T.C.A. 68-211-814).

County Technical Assistance Service

September 24, 1992

TO: County Executives

FROM: Robert M. Wormsley, Executive Director, CTAS, and
Dr. Ruth Neff, Executive Administrative Assistant Tennessee State Planning Office

FORMATION OF MUNICIPAL SOLID WASTE REGIONS

The Solid Waste Management Act of 1991, codified at T.C.A. § 68-211-801, et seq., at T.C.A. § 68-211-813, calls for counties to form solid waste planning regions after receiving the needs assessment from the development district but before December 12, 1992. In an effort to be of assistance to counties in the process of forming regions, CTAS and the Tennessee State Planning Office developed the enclosed Checklist for forming a solid waste region and sample resolutions to create a solid waste region. Two sample resolutions are offered, one for a multi-county region (which the Act encourages), and one for a single county region (which must state the county's reasons for acting alone). If your county is one of the very few that had a solid waste authority in existence on July 1, 1991, then your county may wish to modify the sample resolution. See T.C.A. § 68-211-813(b)(2).

Please note that the formation of a solid waste region is not the same as the formation of a solid waste authority. The solid waste region is formed for the express purpose of developing a regional plan. The creation of a solid waste region is needed for planning purposes, whereas the creation of a solid waste authority (which would perform or contract for actual collection and/or disposal services) is optional and is not discussed in the checklist or resolutions attached.

The enclosed sample resolutions are samples only, and each resolution should be reviewed carefully by the county attorney before passage. If your county intends to form a single county region, then particular care should be used in stating the reasons for acting alone.

We wish to acknowledge the assistance of Sam Edwards, Attorney for the Greater Nashville Regional Council, in the formulation of the sample resolutions.

FORMING A SOLID WASTE REGION

A Checklist

---

1. Development District Presents Needs Assessment ___

   Each development district will submit to the state planning office a needs assessment for the district which will identify rational waste disposal areas within the district and include other relevant information regarding solid waste management in the district at present and will be needed in the future and particularly during the ten year capacity assurance period.

   Each development district will sponsor a district-wide meeting to deliver the findings of the district needs assessment to the citizens of the district. T.C.A. § 68-211-811.

2. County Legislative Body Considers Needs Assessment ___

   The state law requires that each county commission consider the needs assessment prior to forming a solid waste region. T.C.A. § 68-211-813. This consideration may be accomplished by holding a special meeting of the county legislative body to consider the recommendations of the needs assessment and the possibilities for a multi-county region prior to the meeting in which a resolution is passed to form a solid waste region. The county legislative body may find it desirable to form a committee to make a recommendation on the formation of a region and/or it may authorize the county executive to negotiate with contiguous counties for the formation of a multi-county region, with the county executive to report his/her findings and recommendations to the county legislative body.

3. County Legislative Body Adopts Resolution Establishing Region ___

   The county legislative body must pass a resolution (simple majority of full membership) in order to form a solid waste region. This resolution must be passed by December 12, 1992. T.C.A. § 68-211-813. This resolution must contain the following information at a minimum:

   A. Identity of the county or counties in the solid waste region.

   B. If a single county region is formed, the reasons for acting alone must be stated.

C. Establish a Board to administer the activities of the region. The Board must consist of an odd number of members, not less than 5, nor more than 15. Each county in the region must have at least one member and each municipality that provides either collection or disposal services or both, directly or by contract, must be represented on the Board. Board members are to serve staggered terms of 6 years, with the initial board to have some members (to be identified by the government they represent) serving 2 or 4 year initial terms in order to create the stagger in the terms. Approximately one-third of the members' terms must expire every 2 years. (Actual members are to be appointed by the county executive or city mayor and approved by the governing body of the appointing official).

4. County Clerk Sends Copy of Resolution to State Planning Office by December 31, 1992_

The county clerk must provide a certified copy of the resolution establishing the solid waste region to the state planning office by December 31, 1992. The clerk should also mail certified copies of the resolution to the county executive and county clerk of other counties in the region if the region consists of more than one county.

5. Members Appointed to Region Board ___

The county executive of each county in the region and the mayor of each municipality in the region that provides either collection or disposal services appoints members to the Board in accordance with the resolution establishing the region. Each member's appointment is subject to approval by the governing body of the respective county or city that the member is to represent. The county clerk shall send a copy of the appointment letter(s) and a record of the appointee's confirmation to the state planning office.

6. Solid Waste Region Organizes ___

The Board of the solid waste region meets and elects a chairman, a vice-chairman, and a secretary. The Board establishes a regional municipal solid waste advisory committee whose composition is determined by the Board. The Board shall send a list of the current officers of the region to the state planning office.

IMPLEMENTING THE PLAN - THE BEST OPTION FOR YOUR REGION

I. GOING ALONE

A. Authority
   1. Counties - T.C.A. § 5-19-101, et seq.
   2. Cities and Metro Counties - Charter authority

A. Advantages
   1. Operations easily organized
   2. Least politically difficult

B. Disadvantages
   1. Usually a very costly choice - volume too small for good economy of scale for operations or market power for contact
   2. Public landfill must use complicated enterprise fund accounting
   3. No sharing of liability risks

II. INTERLOCAL AGREEMENT

A. Authority
   1. Interlocal Agreement and Joint Board - T.C.A. §12-9-101, et seq.
   2. Interlocal Contract for Services - T.C.A. §§ 5-19-106, 12-9-108

B. Advantages
   1. Lowers costs, economy of scale for operations and market power
   2. Flexibility of organization
   3. Risks can be shared - insurance costs should be less than going alone

C. Disadvantages
   1. May be politically difficult
   2. Each government loses some degree of control as others must be accommodated
   3. Borrowing may be more complicated, as local governments must approve of debt

III. SOLID WASTE AUTHORITY

A. Authority - T.C.A. § 68-211-901 et seq.

B. Advantages
   1. Useful for multi-jurisdictional organization
   2. Independent governmental entity
   3. Solid Waste Planning Board may be named Authority Board
   4. May issue revenue bonds on its own authority
   5. No county or city is responsible for debts of Authority unless agreed to by county or city
   6. Counties and cities may supplement the budget of the Authority
   7. Authorities may enter into contracts with other authorities or governments

C. Disadvantages
   1. County or city cannot directly control independent authority board
   2. May be politically difficult to form

Sample Resolution for a Multi-County Solid Waste Region

RESOLUTION NO. _____

A RESOLUTION CREATING _____ COUNTIES' MUNICIPAL SOLID WASTE PLANNING REGION

WHEREAS, the adoption of the Subtitle D landfill regulations by the United States Environmental Protection Agency and companion regulations adopted by the Tennessee Solid Waste Control Board will impact on both the cost and method of disposal of municipal solid waste; and

WHEREAS, at the urging and support of a coalition of local government, environmental, commercial and industrial leaders, the 97th Tennessee General Assembly enacted T.C.A. 68-211-801 et seq. titled "Solid Waste Management Act of 1991"; and

WHEREAS, with the view that better planning for solid waste will help control the additional costs that will be imposed by the new landfill regulations, help protect the environment, provide an improved solid waste management system, better utilize our natural resources and promote the education of the citizens of Tennessee in the areas of solid waste management including the need for and desirability of reduction and minimization of solid waste, local governments in Tennessee supported and worked for the passage of this Act; and

WHEREAS, one of the stated public policies of this Act is to institute and maintain a comprehensive, integrated, statewide program for solid waste management; and

WHEREAS, as per T.C.A. 68-211-811, the nine development districts in the State of Tennessee have completed a district needs assessment which are inventories of the solid waste systems in Tennessee; and

WHEREAS, _____ County's Board of County Commissioners has given consideration to the needs assessment prepared by the _____ development district; and

WHEREAS, T.C.A. 68-211-813, requires that counties in the State of Tennessee form municipal solid waste regions no later than December 12, 1992; and

WHEREAS, the Act's stated preferences is the formation of multi-county regions with counties having the option of forming single or multi-county municipal solid waste regions; and

WHEREAS, the State of Tennessee will provide grant monies of varying amounts to single county, two county and three or more municipal solid waste regions to assist these regions on developing their municipal solid waste region plans; and

WHEREAS, primary and prevailing purpose of the municipal solid waste regions are the preparation of municipal solid waste regional plans which among other requirements must identify how each region will reduce its solid waste disposal per capita by twenty-five percent (25%) by December 31, 1995, and a planned capacity assurance of its disposal needs for a ten (10) year period; and

WHEREAS, the development of a municipal solid waste regional plan that results in the most cost effective and efficient management of municipal solid waste is in the best interest of the citizens of _____ County.

NOW, THEREFORE BE IT RESOLVED, by the Board of County Commissioners of _____ County, Tennessee, acting pursuant to T.C.A. 68-211-801 et seq., that there is hereby established a Municipal Solid Waste Region for and by _____ Counties, Tennessee; and

BE IT FURTHER RESOLVED, that this Resolution by the Boards of County Commissioners of _____ Counties evidences and constitutes the agreement of _____ Counties in the joint formation of a multi-county municipal solid waste region; and

BE IT FURTHER RESOLVED, that pursuant to T.C.A. 68-211-813(b)(1), a Municipal Solid Waste Region Board is hereby established to administer the activities of this Region; and

BE IT FURTHER RESOLVED, that this Municipal Solid Waste Region Board shall be composed of (odd number between 5 and 15) members; and

BE IT FURTHER RESOLVED, that pursuant to T.C.A. 68-21-813(b)(1), and as part of the participating counties' agreement as evidenced and constituted by this Resolution, the Municipal Solid Waste Region Board shall be composed of the following number of members representing their respective County and, in the instance of a City or Town which collects or provides disposal services through its own initiative or by contract, the number of members representing the city(ies) or town(s):

_____ County	_____ members
_____ County	_____ members
_____ City or Town	_____ members
_____ City or Town	_____ members; and

(Note - add additional space as necessary.)

BE IT FURTHER RESOLVED, that the Municipal Solid Waste Region Board members shall be appointed by the County Executive of the respective county the member shall represent and by the Mayor of the respective city or town the member shall represent and, that the members so appointed, shall be approved by the respective Board of County Commissioners and municipal governing bodies.

BE IT FURTHER RESOLVED, that the members of the Board of the Municipal Solid Waste Region shall serve a six year term except that, as pursuant to T.C.A. 68-211-813(b)(1) and as part of the participating counties agreement as evidenced by this Resolution, the following shall be the initial terms of office: (number of members) members from _____ _____ _____ Counties for a two year term, (number of members) members from _____ _____ _____ Counties for a four year term, (number of members) members from _____ _____ _____ _____ Counties for a six year term, (number of members) members from _____ _____ _____ (Cities or Towns) for a two year term, (number of members) members from _____ _____ _____ (Cities or Towns) for a four year term, (number of members) members from _____ _____ _____ (Cities or Towns) for a six year term; and

BE IT FURTHER RESOLVED, that this Municipal Solid Waste Region Board shall have all powers and duties as granted it by T.C.A. 68-211-813 et seq. and, as part of the participating counties agreement as evidenced by this Resolution, it shall have the additional rights and is empowered to utilize existing governmental personnel, services, facilities and records of the counties which are a party to this agreement evidenced by this Resolution, and to employ or contract with persons, private consulting firms and/ or governmental, quasi-governmental and public entities and agencies in the performance of its duty to cause a municipal solid waste region plan to be produced; and

BE IT FURTHER RESOLVED, that at the Municipal Solid Waste Region Board's initial organization meeting it shall select from its members a chair, vice-chair and secretary and shall cause the establishment of a municipal solid waste advisory committee whose membership shall be chosen by the Board and whose duties are to assist and advise the Board; and

BE IT FURTHER RESOLVED, that the Municipal Solid Waste Region Board, in furtherance of its duty to produce a municipal solid waste region plan, is authorized to apply for and receive funds from the State of Tennessee, the federal government, the counties and municipalities that are within the region, and donations and grants from private corporations and foundations; and

*(OPTIONAL PROVISION) BE IT FURTHER RESOLVED, that as part of the participating counties' agreement, as evidenced and constituted by this Resolution, _____ County shall receive, disburse and act as the final agent for the administration of the funds of the Municipal Solid Waste Region and the Region's Board; and

* (By this provision the counties may allow only one county to receive and disburse funds for the region. This provision of the Resolution is optional and each county may wish to administer its funds separately.)

BE IT FURTHER RESOLVED, that upon the passage of this Resolution and at no later date than December 31, 1992, the County Clerk of _____ County shall transmit a copy of this Resolution to the Tennessee State Planning Office.

RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF _____ COUNTY, TENNESSEE, this _____ day of _____, 1992, the welfare of the citizens of _____ County requiring it.

Sponsor:

_____
County Commissioner

Attest:

_____
County Clerk

Approved:

_____
County Executive

Approved as to form:

_____
County Attorney

Sample Resolution for a Single County Solid Waste Region

RESOLUTION NO. _____

A RESOLUTION CREATING _____ COUNTY'S MUNICIPAL SOLID WASTE PLANNING REGION

WHEREAS, the adoption of the Subtitle D landfill regulations by the United States Environmental Protection Agency and companion regulations adopted by the Tennessee Solid Waste Control Board will impact on both the cost and method of disposal of municipal solid waste; and

WHEREAS, at the urging and support of a coalition of local government, environmental, commercial and industrial leaders, the 97th Tennessee General Assembly enacted T.C.A. 68-211-801 et seq. titled "Solid Waste Management Act of 1991"; and

WHEREAS, with the view that better planning for solid waste will help control the additional costs that will be imposed by the new landfill regulations, help protect the environment, provide an improved solid waste management system, better utilize our natural resources and promote the education of the citizens of Tennessee in the areas of solid waste management including the need for and desirability of reduction and minimization of solid waste, local governments in Tennessee supported and worked for the passage of this Act; and

WHEREAS, one of the stated public policies of this Act is to institute and maintain a comprehensive, integrated, statewide program for solid waste management; and

WHEREAS, as per T.C.A. 68-211-811, the nine development districts in the State of Tennessee have completed a district needs assessment which are inventories of the solid waste systems in Tennessee; and

WHEREAS, _____ County's Board of County Commissioners has given consideration to the needs assessment prepared by the _____ development district; and

WHEREAS, T.C.A. 68-211-813, requires that counties in the State of Tennessee form municipal solid waste regions no later than December 12, 1992; and

WHEREAS, the Act's stated preferences is the formation of multi-county regions with counties having the option of forming single or multi-county municipal solid waste regions; and

WHEREAS, the State of Tennessee will provide grant monies of varying amounts to single county, two county and three or more municipal solid waste regions to assist these regions on developing their municipal solid waste region plans; and

WHEREAS, primary and prevailing purpose of the municipal solid waste regions are the preparation of municipal solid waste regional plans which among other requirements must identify how each region will reduce its solid waste disposal per capita by twenty-five percent (25%) by December 31, 1995, and a planned capacity assurance of its disposal needs for a ten (10) year period; and

WHEREAS, the development of a municipal solid waste regional plan that results in the most cost effective and efficient management of municipal solid waste is in the best interest of the citizens of _____ County.

NOW, THEREFORE BE IT RESOLVED, by the Board of County Commissioners of _____ County, Tennessee, acting pursuant to T.C.A. 68-211-801 et seq., that there is hereby established a Municipal Solid Waste Region for and by _____ County, Tennessee; and

BE IT FURTHER RESOLVED, that pursuant to T.C.A. 68-211-813(a)(2), that the Board of County Commissioners of _____ County, Tennessee finds and determines that _____ County shall be and shall constitute a single county municipal solid waste region due to the following: _____
_____
_____
_____
_____; and

BE IT FURTHER RESOLVED, that pursuant to T.C.A. 68-211-813(b)(1), a Municipal Solid Waste Region Board is hereby established to administer the activities of this Region; and

BE IT FURTHER RESOLVED, that this Municipal Solid Waste Region Board shall be composed of (odd number between 5 and 15) members; and

BE IT FURTHER RESOLVED, that pursuant to T.C.A. 68-211-813(b)(1) _____ Board members shall be appointed by the County Executive and approved by this Board of County Commissioners and, due to the fact that _____ (City or Town) collects or provides disposal services through its own initiative or by contract, the City (or Town) of _____ shall have a Board member appointed by the Mayor of _____ and approved by the City (or Town) of _____ (repeat this clause for each City or Town within county that qualifies); and

BE IT FURTHER RESOLVED, that members of the Board of the Municipal Solid Waste Region shall serve a six year term except that _____ members appointed by the County Executive shall have a two year term, that _____ members appointed by the County Executive shall have a four year term, that _____ members appointed by the County Executive shall have

a six year term, that _____ members appointed by the Mayor of _____ shall have a year term (repeat this for each City or Town within county that qualifies); and

BE IT FURTHER RESOLVED, that this Municipal Solid Waste Region Board shall have all powers and duties as granted it by T.C.A. 68-211-813 et seq. and in addition, in the performance of its duty to produce a municipal solid waste region plan, it shall be empowered to utilize existing _____ County governmental personnel, to employ or contract with persons, private consulting firms and/ or governmental, quasi-governmental and public entities and agencies and to utilize _____ County's services, facilities and records in completing this task; and

BE IT FURTHER RESOLVED, that at the Municipal Solid Waste Region Board's initial organization meeting it shall select from its members a chair, vice-chair and secretary and shall cause the establishment of a municipal solid waste advisory committee whose membership shall be chosen by the Board and whose duties are to assist and advise the Board; and

BE IT FURTHER RESOLVED, that the Municipal Solid Waste Region Board, in furtherance of its duty to produce a municipal solid waste region plan, is authorized to apply for and receive funds from the State of Tennessee, the federal government, _____ County, _____ (City or Town) and donations and grants from private corporations and foundations; and

BE IT FURTHER RESOLVED, that _____ County shall receive, disburse and act as the final agent for the administration of the funds of the Municipal Solid Waste Region and the Region's Board; and

BE IT FURTHER RESOLVED, that upon the passage of this Resolution and at no later date than December 31, 1992, the County Clerk of _____ County shall transmit a copy of this Resolution to the Tennessee State Planning Office.

RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF _____ COUNTY, TENNESSEE, this _____ day of _____, 1992, the welfare of the citizens of _____ County requiring it.

Sponsor:

Attest:

_____
County Commissioner

_____
County Clerk

Approved:

Approved as to form:

_____
County Executive

_____
County Attorney

Policy and Procedure for Dissolution of Existing Solid Waste Regions and Creation of New Regions
(Post Plan Approval)

Tennessee Department of Environment and Conservation
Division of Solid Waste Assistance
14th floor, L&C Tower
401 Church Street
Nashville, Tennessee 37243
615-532-0091

January 1995

1. County Commissions from each member region must each pass a dissolution resolution that **a.** dissolves the existing region **and b.** announces the county's intention to establish membership in a new solid waste region. The dissolution of the existing region is not official until **ALL** member counties of the existing region pass similar dissolution resolutions.

2. For every new region formed, a creating resolution (identical in structure to original creating resolutions, samples available from the Division) must be passed. The establishment of any new region is not final until a similar creating resolution is passed by ALL member counties of the new region.

3. A county may both dissolve the region they are currently a member to (1. above) and create the new region (2. above) in the same instrument.

4. A complete list of the new board members, their addresses, phone numbers, terms of office, and the name of the chairman should be forwarded to this Division as soon as possible and no later than the submission of the region's annual report in March.

5. New regions formed subsequent to the approval of regional plans will be expected to discuss fully any and all changes to their planning scheme as a result of the change in regional make-up in the region's annual report due in March. New regions are reminded that each will be held accountable for all the applicable requirements of the Solid Waste Management Act including the 25% reduction goal to be met by December 31, 1995.

6. A complete and total plan revision reflecting the change in regional membership will be expected from each new region at the five year plan update in 1999.

B. Plans

The plan submitted by each region must be consistent with the state solid waste plan and with all relevant state law and regulations. The required information for preparing the plan can be found in the "Guidelines for Preparation of a Municipal Solid Waste Regional Plan, Tennessee State Planning Office, July 1, 1992." At a minimum, each plan must contain the following items:

(a) Demographic information;
(b) A current system analysis of waste streams, collection capability, disposal capability, costs, and revenues;
(c) Adoption of the statutorily-required uniform financial accounting system;
(d) Anticipated growth trends and waste capacity needs for the next ten years;
(e) A recycling plan;
(f) A plan for the disposal of household hazardous wastes;
(g) Adoption of the statutorily-required reporting requirements;
(h) A description of waste reduction activities designed to attain the required 25% reduction in solid waste;
(i) A description of education initiatives designed to achieve the goals stated in the statute;
(j) An evaluation of multi-county solid waste disposal region options with an explanation of the reasons for adopting or failing to adopt a multi-county regional approach;
(k) A timetable for implementation of the plan;
(l) A description of the responsibilities of each participation jurisdiction, if a multi-county approach is chosen; and
(m) Any other information of the state planning office deems relevant (T.C.A. 68-211-815).

Also, each region is required to submit an annual progress report to TDEC by March of that year for the immediate preceding calendar year (T.C.A. 68-211-871). A copy of the Guidance on Statutory Waste Reporting Requirements is on the following pages. Please note that the contents and format of the annual report form will be different each year. Contact the Division of Solid Waste Assistance at (615) 532-0091 for the most recent annual reporting form.

The Division of Solid Waste Assistance has issued a **Planning Assistance Grant** to assist counties or solid waste regions in developing, revising, and maintaining regional plans. A copy of the grant application is available at the end of this chapter.

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Solid Waste Assistance
14th Floor, L & C Tower
401 Church Street
Nashville, TN 37243-0455

MEMORANDUM

TO: Regional Solid Waste Planning Board Chairman

FROM: Paul Evan Davis, Director

SUBJECT: **Solid Waste Plans - Annual Progress Reports**

DATE: December 4, 1995

Beginning March 1, 1994 and each year thereafter, the Solid Waste Management Act of 1991 [T.C.A. 68-211-871(a)] requires each solid waste planning region to submit an annual report to the State. The region's 1995 annual report is due in the Department of Environment and Conservation by March 31, 1996.

A guidance document is enclosed to assist you with preparing your report. You are not required to submit the information on this document. You must, however, include all of the information and in the same order as required in the enclosed guidance document. Furthermore, we are now requiring the Chairman of the Solid Waste Planning Region **and** the County Executive of each county located within the region to sign the report.
The report is divided into four categories of information as follows:

- General information;
- Annual Report issues raised in the Department's plan evaluations;
- The recycling contact;
- Progress, updates and changes in the region's ten year plan.

Please pay particular attention to the waste reduction section of the guidelines. This year, 1995, is when each region is required to determine if it has achieved the 25% waste reduction goal required in the Act. If it is determined the region failed to achieve the goal, a variance request must be received by the Division no later than **March 31, 1996.** The information in the report will be considered an update to the region's ten year solid waste plan and shall be filed with the complete plan previously filed with the Department of Environment and Conservation.

Please contact our office at (615) 532-0091 for assistance or clarification concerning any part of this report.
PED/dlm

cc: UT-C.T.A.S. Solid Waste Management Consultants
Development District Solid Waste Staff

Enclosure

GUIDELINES ON SOLID WASTE REGIONAL PLANS' ANNUAL PROGRESS REPORT

NOTE: The information required to be submitted, as outlined in this guidance, will be considered an update to the Region's ten year solid waste plan submitted in 1994 and shall be filed with the complete plan at the Department of Environment and Conservation.

Should the region have difficulty collecting the necessary information for annual planning reports and/ or five-year revisions, the statute allows the region to compel those persons actively engaged in the collection, transportation, and disposal of municipal solid waste to provide the necessary information [T.C.A. 68-211-871©(d)]. If the region needs further assistance, please contact the Division of Solid Waste Assistance at 615-532-0091.

I. General Information

Name of Region: _____

Name of Counties within Region: _____

Name of person completing report: _____

Relationship to region (e.g., Chairman of Regional Planning Board; Consultant; Development District, etc.): _____

_____

Address: _____

Telephone: _____

Include any changes (by name and position) in the Region's planning board since the last annual report.

Has the Region made use of State sponsored solid waste information assistance and seminars over the past year?

_____ Yes _____ No

What topics would you like to see addressed in State seminars in 1996? _____

_____

II. Resolution of any "Annual Report" issues identified in the region's ten year plan review comments from the Department of Environment and Conservation

(This section applies **ONLY** if the Department's response to your ten year plan is dated in 1995).

As most are aware, Department responses to ten year plans routinely raised issues with regard to matters of significance to the planning process which should be addressed in the Annual Report. A copy of the Department's review comments to your region's plan is attached. **Please address and resolve the issues marked "Annual Report" and attach your response to this report for submission March 31, 1996.**

III. Recycling Contact

The Solid Waste Management Act requires the reporting of the amount and type of recycled materials collected. In order to assure state and regional coordination in the Region's recycling program, the Region should designate a recycling contact.

Identify the contact person for your region who will be responsible for the Region's recycling program's.

Name of Recycling Contact: _____

Title: _____ Telephone: _____

Mailing Address: _____

IV. The Region's Ten Year Solid Waste Plan: Progress, Updates, Changes

The Solid Waste Management Act of 1991 requires that entities implementing the plan must report their progress toward the region's goals to the Solid Waste Regional Planning Board annually. The Solid Waste Regional Planning Board should assimilate this information in this report to be submitted by March 31, 1996. Any changes in the planning strategy should be reflected in this report. It is implicit that the means of implementation to attain the goals in the Act (e.g., 25% per capita waste reduction, ten year disposal capacity, county-wide collection, etc.) May change due to unforeseen circumstances in the name of efficiency and good sense over time. Those that oversee implementation of certain facets of the plan (counties, cities, authorities, etc.) will make judgment calls in daily operation of solid waste programs.

This flexibility in altering planning strategy **does not relieve regions, counties, cities, and/or authorities of their responsibility to achieve the act's mandates** (like the 25% per capita waste reduction goal).

The following questions are organized according to topics in the Guidelines for the Preparation of a Municipal Solid Waste Regional Plan (chapters 4-13). They are designed to evaluate progress in the plan implementation process and identify any significant changes in strategy to achieve the Region's goals.

CHAPTER 4. Waste Reduction (the 25% Waste Reduction Goal)

As mandated in the Solid Waste Management Act of 1991 [T.C.A. 68-211-861] the region's 25% **per capita** waste reduction goal is to be evaluated as of December 31, 1995. Disposal figures available as of December 31, 1995, should be compared with base year generation (based on disposal at Class I facilities) and population figures collected by the University of Tennessee in 1989 (**Note**: Many regions sought and received adjustments in base year data from the Department due to the subsequent revelation of more reliable reporting methods). The Act mandates a 25% **per capita** reduction between 1989 and 1995. All solid waste generated within your region must be accounted for as the basis for calculating your region's **per capita** waste reduction rate.

According to the Department's current records, your region's population in 1989 was_____ (See Attachment#1 column 2) and your region's generation (based on waste generated in the region and disposed at Class I landfills or incinerators in or out of the region in 1989) was_____ tons (see Attachment #1 column 3), for a **per capita** generation rate of _____tons per year (see Attachment #1 column 3). According to these figures, the region's per capita generation (based on waste generated in the region and disposed at Class I landfills or incinerators in or our of the region) rate in 1995 should be_____or below (see Attachment #1 column 5).

What is your region's population (see Attachment #1 column 4 or the results of documented certified census) _____and number of tons of solid waste generation_____in 1995 (based on waste generated in the region and disposed at Class I landfills or incinerators in or out of the region)? Using the formula below, the region's resulting per capita generation rate for 1995 is___ tons.

(Formula: 1995 tons generated - 1995 population = region's tons per capita)

(Documentation, attested to by an elected official, to support the 1995 disposal figures should be included in the report).

If the per capita rate meets the 25% per capita waste reduction goal indicated in column 5 of Attachment #1, no further action is required. If a region falls short of its goal, a request for a variance may be made to the State which, if approved, will grant an extension for up to five years.

Procedure for requesting a variance (T.C.A. 68-211-861):

The region must show that jurisdictions within the region have made a good faith effort to implement elements of the ten year plan designed to reduce waste in the region. In order to qualify for a variance, the region should make a formal request to the Department's Division of Solid Waste Assistance documenting current figures and efforts to reach the mandated 25% per capita waste reduction goal. Please provide official documentation (disposal figures attested to by a public official) regarding the region's current status. Volumes and categories of materials counted in determining your region's waste reduction activities should be documented. Documentation should be broken out according to jurisdiction (city, county, authority etc.) To the extent possible. The Department will be particularly interested to see that methods to reach the per capita goal outlined in the region's ten year plan have been utilized. An explanation of the reason for non-attainment for the goal must be included in the request.

Bear in mind that it is permissible for the region to have altered its original strategy as long as legitimate reduction methods are use and any changes in strategy are reported to the Department annually (see related question below). If the region and jurisdictions therein have made a good faith effort to follow the course of action outlines in the plan (or subsequent official changes in strategy), then a favorable response to the variance request will be likely.

All region reduction activities must be documented as evidence of the good faith effort by the region. The following points may be considered when making a variance request:

- Municipal solid waste collected within your region and disposed in another Class I municipal solid waste facility outside your region **can not** be considered as waste diversion.

- Construction and demolition (C&D) waste collected in your region and disposed of in a Class III/IV landfill inside or outside your region **can be** considered as diversion. All tonnage disposed of in Class III and/or Class IV landfills must documented.

- Materials collected for recycling which are being stored due to a lack of market(s) **can not** be considered as waste diversion. At least 75% of the collected volume must be sold to processors/end-users to be considered as diversion. The collection and marketing of recyclables in your regions must be documented.

- Special/problem wastes collected in the region during State-sponsored household hazardous waste collection events **can be** considered as diversion. Information on the tonnage of materials collected in your region can be obtained by contacting Alan Ball, Division of Solid Waste Assistance, at (615) 532-0090.

- Waste tires that are diverted to beneficial end-use or sold to end-users (not landfilled) **can be** considered as diversion. Document the tonnage and the end-use of the tires.

- Used automotive oil collected (not allowed to be landfilled) at **do-it-yourself** used oil collection centers **can be** considered as diversion. Gallons must be converted to pounds using a weight of 7.62 pounds/gallon. The Division may have information which may be helpful to the region in this matter. Contact Jim Coe, Division of Solid Waste Assistance, at (615) 532-0281 if assistance is required.

- Compost/mulch volumes **can be** considered as diversion **if put to beneficial end-use**. No compost or mulch can be considered if landfilled, and at least 75% must be marketed in order to be considered. Volumes must be documented including the beneficial end-use of the product.

- Source reduction activity by commercial businesses and industry may be considered as diversion if properly documented by the region. Such documentation should include the materials and tonnage as well as what was done to reduce the waste. Also, please identify any regional or local outreach programs that were implemented to assist business with waste reduction.

- No illegal disposal methods may be considered to be solid waste diversion.

If the region is not meeting their plan's mandated goal AND the Department does not receive a request for a variance, then the Department will consider the region out of compliance with the Act and a warning letter will be issued. The region has ninety (90) days from the issuance of the warning letter to return to compliance before losing eligibility for funds from the solid waste management fund [T.C.A. 68-211-816(a)(1)(2)(3)].

Were waste reduction targets and methods followed as outlined in the Region's ten year solid waste plan?

_____ Yes _____ No

If "No", please describe any significant changes: _____

_____

CHAPTER 5. Waste Collection and Transportation

By January 1, 1996, each county in the Region should have assured adequate collection (T.C.A. 68-211-851) to meet the needs of its citizens. For additional information, refer to the Fact Sheet on COUNTY-WIDE COLLECTION ASSURANCE issued by the Division in June 1995.

Have the Region's plans to assure adequate collection changed significantly from the intentions described in the Region's ten year solid waste plan?_____ Yes _____ No

If "Yes", please describe any significant changes: _____

_____

Attach a narrative that describes in detail the region's efforts to assure region-wide collection assurance. Include the course of action taken by the region to ensure collection based on the Fact Sheet. Each region shall identify unmet needs and report annually [T.C.A. 68-211-851(b) and 68-211-815 (b)(2)(B)] considering the following:

Survey of roadside dumps;
Citizen complaints;
Alternative systems available; and
Volume of waste received or collection by the existing systems.
Pursuant to Department Rule Chapter 1200-1-.10(4)

CHAPTER 6. Recycling

By January 1, 1996, each county must have provide, directly or by contract, one or more sites for collection of recyclable materials, unless an adequate site is otherwise available in the county [T.C.A. 68-211-863(a)].

Please provide the location(s) of site(s) that are available to the citizens of the region:_____

_____

Have the Region's recycling goals and plans changed significantly from the intentions described in the Region's ten year solid waste plan?_____ Yes _____ No

If "Yes", please describe any significant changes: _____

_____

Attach a recap of the region's recycling activity during 1995 [T.C.A. 68-211-863(b)]. The region may use the information that was supplied by the Division during its survey of the

recycling entities located in the region. Information obtained independently by the region which can be documented mat be added to the report. NOTE: This information is **not** used to determine an increase or decrease in the region's per capita waste generation. However, it may be useful in supporting a variance request by the region (see Chapter 4).

CHAPTER 7. Composting, Solid Waste Processing, Waste to Energy, and Incineration Capacity

Does the reduction strategy in the Region's ten year solid waste plan rely upon any methods discussed in this chapter to meet the 25% waste reduction goal?_____ Yes _____ No

If "Yes", have the Region's plans with regard to these methods changed significantly from the intentions described in the Region's ten year solid waste plan?_____ Yes _____ No

If "Yes", please describe any significant changes: _____
_____

CHAPTER 8. Disposal Capacity

Did each county in the region assure adequate disposal to meet the needs of its citizens by January 1, 1996?
_____ Yes _____ No

Have the Region's plans to assure ten year solid waste disposal capacity for the Region changed significantly from the intention described in the Region's ten year solid waste plan?
_____ Yes _____ No

If "Yes", please describe any significant changes: _____
_____
_____

CHAPTER 9. Public Information and Education

Have the Region's education and information goals and plans changed significantly from the intentions described in the Region's ten year solid waste plan?_____ Yes _____ No

If "Yes", please describe any significant changes: _____
_____
_____

CHAPTER 10. Problem Wastes

By January 1, 1995, did each county in the Region provide at least one site (if adequate sites were not otherwise available in the county) to receive the following problem wastes?

whole waste tires _____ Yes _____ No

lead-acid batteries _____ Yes _____ No

used automotive oil and other automotive fluids _____ Yes _____ No

If "No" for any of the above problem wastes, please describe the Region's plans to come into [T.C.A. 68-211-866(b)] compliance with the above mandate from the Solid Waste Management Act of 1991 and identify any changes in the strategy from the Region's ten year solid waste plan:

_____

_____

_____

_____

CHAPTER 11. Implementation Schedule, Staffing, and Funding

Have any new sources of funding been approved or adopted by the Region's local jurisdictions since the submission of the Region's ten year solid waste plan? _____ Yes _____ No

If "Yes", describe the new funding mechanisms and the programs they will fund. (Please note any funding changes necessary due to changes in the ten year plan identified in the questions above.):

_____

_____

CHAPTER 12. Allocation of Implementation Responsibilities: Plan Adoption and Submission

Are implementation responsibilities allocated to the same jurisdictions identified in the ten year plan?

_____ Yes _____ No

If "No", what changes have been made: _____

_____

Have any counties within your region formed a Part 9 Solid Waste Authority?

_____ Yes _____ No

If "Yes", which jurisdictions are actively participating in the Authority (named in the creating resolution):

_____

If "Yes", briefly describe the Part 9 Solid Waste Authority's mission: _____

_____

CHAPTER 13. Flow Control and Permit Review Application

Is the Region attempting to control the flow of solid waste, either into or out of the region, by statutory, contract or other method(s)?_____ Yes _____ No

If "Yes", please describe: _____

_____

Is the Region aware that the SOLID WASTE REGIONAL PLANNING BOARD (or Part 9 Authority, if one has been created), has primary responsibility for permit review of proposed new disposal facilities once the Region's ten year solid waste plan has been approved?
_____ Yes _____ No

Is the Region aware that the Solid Waste Regional Planning Board (or Part 9 Authority, if one has been created), may reject an application for a permit for a new solid waste disposal facility or incinerator within the region **ONLY** upon determining that the application is **INCONSISTENT WITH THE REGION'S TEN YEAR SOLID WASTE PLAN (T.C.A. 68-211-814(b)(2)(B))?**
_____ Yes _____ No

To the best of my knowledge, the foregoing information is accurate as of the date of submission of this report:

_____

Signature of the Chairman of the Solid Waste Region

_____

Date

To the best of my knowledge, the foregoing information is accurate as of the date of submission of this report:

_____

Signature of the County Executive(s)

_____

Date

PLEASE SUBMIT THE INFORMATION REQUIRED IN THIS GUIDELINE DOCUMENT BY MARCH 31, 1996, TO:

Tennessee Department of Environment and Conservation
Division of Solid Waste Assistance
Paul Evan Davis, Director
14th Floor, L & C Tower
401 Church Street
Nashville, TN 37243-0455

Have questions? Call Elizabeth Blackstone or Don Manning at 615-532-0091.

PER CAPITA WASTE REDUCTION **ATTACHMENT #1**

1	2	3		4	5
COUNTY	**1989** PROJECTED POPULATION**	***1989 BASE YEAR WASTE GENERATION** **TONS**	**PER CAPITA**	**1995** PROJECTED POPULATION**	**1995 ALLOWABLE TONS PER CAPITA**
MARSHALL***	21,500	25,366	1.1798	22,804	**0.8849**
MAURY***	55,900	63,726	1.1400	57,029	**0.8550**
TOTAL	**77,400**	**89,092**	**1.1511**	**79,833**	**0.8633**
CARROLL	28,000	39,128	1.3974	27,108	**1.0481**
HENRY	29,425	21,216	0.7210	27,298	**0.5408**
TOTAL	**57,425**	**60,344**	**1.0508**	**54,408**	**0.7881**
FRANKLIN	34,700	30,888	0.8901	35,820	**0.6676**
GILES	25,200	20,362	0.8080	26,310	**0.6060**
City of Tullahoma	18,173	11,009	0.6058		**0.4543**
LINCOLN***	27,600	28,570	1.0351	29,151	**0.7764**
TOTAL	**105,673**	**90,826**	**0.8595**	**91,281**	**0.8446**
LAKE	7,400	6,011	0.8123	7,061	**0.6092**
OBION	32,500	27,178	0.8362	31,204	**0.6272**
WEAKLEY	32,500	29,120	0.8960	31,740	**0.6720**
TOTAL	**72,400**	**62,309**	**0.8606**	**70,005**	**0.6455**
CROCKETT	13,900	14,730	1.0597	12,663	**0.7948**
DYER	35,300	31,369	0.8886	35,143	**0.6665**
GIBSON	48,100	67,665	1.4068	44,808	**1.0551**
TOTAL	**97,300**	**113,784**	**1.1692**	**92,614**	**0.8769**
HAYWOOD	21,200	13,156	0.6202	18,924	**0.4654**
LAUDERDALE	25,150	25,740	1.0235	23,002	**0.7676**
TIPTON	39,050	31,174	0.7983	40,348	**0.5987**
TOTAL	**85,400**	**70,070**	**0.8205**	**82,274**	**0.6154**
MONTGOMERY	99,450	114,169	1.1480	110,103	**0.8610**
ROBERTSON***	42,509	30,606	0.7200	44,223	**0.5400**
STEWART	9,450	5,371	0.5684	9,985	**0.4263**
TOTAL	**151,409**	**150,146**	**0.9917**	**164,311**	**0.7437**

PER CAPITA WASTE REDUCTION **ATTACHMENT #1**

1	2	3		4	5
COUNTY	**1989** PROJECTED POPULATION**	***1989 BASE YEAR WASTE GENERATION**		**1995** PROJECTED POPULATION**	**1995 ALLOWABLE TONS PER CAPITA**
		TONS	**PER CAPITA**		
MACON	16,300	15,807	0.9698	16,102	**0.7273**
SMITH	14,850	11,983	0.8069	14,382	**0.6052**
TROUSDALE	6,300	5,977	0.9487	5,985	**0.7115**
TOTAL	**37,450**	**33,767**	**0.9017**	**36,469**	**0.6762**
CARTER***	51,200	38,912	0.7600	51,702	**0.5700**
JOHNSON	13,950	6,564	0.4705	13,659	**0.3529**
UNICOI	16,700	16,528	0.9897	16,496	**0.7423**
WASHINGTON	91,800	110,612	1.2049	93,493	**0.9037**
TOTAL	**173,650**	**172,616**	**0.9940**	**175,350**	**0.7455**
CANNON	10,950	7,169	0.6547	10,673	**0.4910**
COFFEE***	24,387	19,021	0.7800	41,520	**0.5850**
RUTHERFORD	116,350	130,369	1.1205	140,249	**0.8404**
WARREN***	32,958	22,741	0.6900	33,072	**0.5175**
TOTAL	**184,645**	**179,300**	**0.9711**	**225,514**	**0.7283**
CHESTER	12,900	5,335	0.4136	12,913	**0.3102**
HARDIN	22,457	21,900	0.9752	22,947	**0.7314**
McNAIRY	24,200	17,446	0.7209	22,358	**0.5407**
WAYNE	14,200	11,794	0.8306	13,935	**0.6229**
TOTAL	**73,757**	**56,475**	**0.7657**	**72,153**	**0.5743**
BLEDSOE***	9,650	7,817	0.8101	9,890	**0.6075**
BRADLEY***	73,096	65,786	0.9000	76,779	**0.6750**
GRUNDY***	13,404	12,600	0.9400	13,134	**0.7050**
HAMILTON***	284,081	451,110	1.5880	282,741	**1.1910**
MARION	24,816	26,056	1.0500	25,107	**0.7875**
McMINN***	42,332	38,454	0.9084	42,588	**0.6813**
MEIGS***	7,973	4,555	0.5713	8,316	**0.4285**
POLK***	13,639	11,678	0.8562	13,615	**0.6422**
RHEA***	24,333	19,233	0.7904	24,355	**0.5928**
SEQUATCHIE***	8,863	11,794	1.3307	9,026	**0.9980**
TOTAL	**502,187**	**649,083**	**1.2925**	**505,551**	**0.9694**

PER CAPITA WASTE REDUCTION **ATTACHMENT #1**

1	2	3		4	5
COUNTY	**1989** PROJECTED POPULATION**	***1989 BASE YEAR WASTE GENERATION**		**1995** PROJECTED POPULATION**	**1995 ALLOWABLE TONS PER CAPITA**
		TONS	**PER CAPITA**		
ANDERSON	70,700	73,393	1.0381	68,234	**0.7786**
BEDFORD***	29,500	19,230	0.6519	31,981	**0.4889**
BENTON	14,900	21,528	1.4448	14,448	**1.0836**
BLOUNT***	85,533	106,917	1.2500	89,984	**0.9375**
CAMPBELL	34,900	14,114	0.4044	35,046	**0.3033**
CHEATHAM	26,784	15,886	0.5931	30,789	**0.4448**
CLAIBORNE***	26,742	20,592	0.7700	26,885	**0.5775**
CLAY	7,900	3,751	0.4748	7,049	**0.3561**
COCKE	29,450	32,781	1.1131	29,246	**0.8348**
CUMBERLAND	34,200	49,660	1.4520	38,248	**1.0890**
DAVIDSON***	511,834	865,001	1.6900	525,594	**1.2675**
DECATUR	10,800	7,800	0.7222	10,282	**0.5417**
DEKALB	14,450	18,018	1.2469	14,738	**0.9352**
DICKSON	35,600	31,964	0.8979	38,440	**0.6734**
FAYETTE	26,600	14,482	0.5444	25,581	**0.4083**
FENTRESS***	14,669	10,415	0.7100	14,577	**0.5325**
GRAINGER	17,450	23,707	1.3586	17,283	**1.0189**

PER CAPITA WASTE REDUCTION **ATTACHMENT #1**

1	2	3		4	5
COUNTY	**1989** PROJECTED POPULATION**	***1989 BASE YEAR WASTE GENERATION**		**1995** PROJECTED POPULATION**	**1995 ALLOWABLE TONS PER CAPITA**
		TONS	**PER CAPITA**		
GREENE***	56,250	62,584	1.1126	56,280	**0.8345**
HAMBLEN	51,550	84,240	1.6341	51,095	**1.2256**
HANCOCK(1)	6,750		0.0000	6,613	**0.0000**
HARDEMAN	24,550	29,640	1.2073	23,171	**0.9055**
HAWKINS***	44,565	64,200	1.4406	44,857	**1.0804**
HENDERSON	22,950	18,096	0.7885	22,016	**0.5914**
HICKMAN	16,950	7,800	0.4602	17,673	**0.3451**
HOUSTON	7,250	3,168	0.4370	7,107	**0.3277**
HUMPHREYS	16,150	18,096	1.1205	15,707	**0.8404**
JACKSON	9,400	8,848	0.9413	9,253	**0.7060**
JEFFERSON	33,500	31,200	0.9313	33,764	**0.6985**
KNOX***	332,400	385,584	1.1600	342,848	**0.8700**
LAWRENCE	35,400	25,740	0.7271	36,128	**0.5453**
LEWIS	10,700	12,480	1.1664	9,031	**0.8748**
LOUDON	31,500	26,508	0.8415	32,719	**0.6311**
MADISON***	78,500	104,405	1.3300	79,859	**0.9975**
MONROE	31,400	28,600	0.9108	31,493	**0.6831**

PER CAPITA WASTE REDUCTION **ATTACHMENT #1**

1	2	3		4	5
COUNTY	**1989** PROJECTED POPULATION**	***1989 BASE YEAR WASTE GENERATION**		**1995** PROJECTED POPULATION**	**1995 ALLOWABLE TONS PER CAPITA**
		TONS	**PER CAPITA**		
MOORE	4,950	5,485	1.1081	4,812	**0.8311**
MORGAN	17,900	23,400	1.3073	17,645	**0.9804**
OVERTON	17,950	21,202	1.1812	17,631	**0.8859**
PERRY	6,500	10,660	1.6400	6,842	**1.2300**
PICKETT	4,450	1,198	0.2692	4,632	**0.2019**
PUTNAM	52,950	50,180	0.9477	53,608	**0.7108**
ROANE	49,650	64,272	1.2945	46,171	**0.9709**
SCOTT	20,550	18,200	0.8856	18,055	**0.6642**
SEVIER***	52,380	55,000	1.0500	56,959	**0.7875**
SHELBY***	825,700	1,362,405	1.6500	846,584	**1.2375**
SULLIVAN	147,800	114,660	0.7758	142,367	**0.5818**
SUMNER	105,150	101,650	0.9667	115,762	**0.7250**
UNION	12,900	5,504	0.4267	14,783	**0.3200**
VAN BUREN	4,650	2,340	0.5032	4,828	**0.3774**
WHITE***	20,237	16,190	0.8000	20,408	**0.6000**
WILLIAMSON***	81,296	64,224	0.7900	96,100	**0.5925**

PER CAPITA WASTE REDUCTION **ATTACHMENT #1**

1	2	3		4	5
COUNTY	**1989** PROJECTED POPULATION**	***1989 BASE YEAR WASTE GENERATION**		**1995** PROJECTED POPULATION**	**1995 ALLOWABLE TONS PER CAPITA**
		TONS	**PER CAPITA**		
WILSON***	70,236	47,546	0.6769	74,597	**0.5077**
TOTAL STATE	4,915,722	5,932,339	1.2068	5,029,564	**0.9051**

* Includes base year adjustment
** Projected by the University of Tennessee
*** Base year adjustment requests approved
(1) Base year changed to 1995

B. Plans (continued)

Agreement between county commission within the region and solid waste planning boards is necessary in developing and implementing the plans. (See TDEC Policy & Guidance under Chapter 16, County Commission Approval of Solid Waste Plans, April 29, 1994). The State Planning Office asked county commissions to ratify the plans before submission to the state (See page 53 of Guidelines for Preparation of a Municipal Solid Waste Regional Plan, Tennessee State Planning Office, July 1, 1992). Any plan received without county commission adoption, will be considered incomplete (T.C.A. 68-211-814 (a)(1) and 68-211-815(b)(15)).

If any region fails to submit a plan in a timely fashion, submits an inadequate plan, or fails to comply with other provisions of this act, then the Commissioner of Environment and Conservation may impose sanctions, including loss of funds from the solid waste management fund and civil penalties of $1,000 to $5,000 for each day of noncompliance (T.C.A. 68-211-816).

State law appears to grant regions and solid waste authorities powers under certain conditions to direct the flow of solid waste generated within the region and to restrict the flow of solid waste into the region for disposal. (See Tenn. Atty. Gen. 89-01, January 3, 1989; Tenn. Atty. Gen. U94-024, February 24-94). However, federal court decisions, including recent U.S. Supreme Court rulings, makes the validity of Tennessee statutes on flow control very questionable in that they may violate the commerce clause of the U.S. Constitution. (See Chapter 2, Federal Court Decisions: C&A Carbone Inc. v. Clarkstown, N.Y.; Fort Gratiot Sanitary Landfill Inc. v. Michigan Department of Natural Resources; Pennsylvania v. Union Gas Company).

State law also provides that any construction or expansion of solid waste facilities or incinerators within the region must be approved by the region or authority before a permit is issued. (See Tenn. Atty. Gen. U94-20, February 4, 1994). The region is to hold a public hearing after proper notice, and may reject the proposal if it is inconsistent with the regional plan (T.C.A. 68-211-814).

C. Authorities

A county (or counties in multi-county solid waste regions) may decide to form a solid waste authority to operate all solid waste systems within the region (T.C.A. 68-211-901 through 68-211-925). Cities may participate or remain outside the authority, although all counties in the region must agree to the creation of the authority before it may be formed; a municipality with most of its territory in the county creating the authority may participate (T.C.A. 68-211-903). Similarly, the authority can be dissolved by agreement of its participating counties and cities. The board of directors may be composed of the same members as the region's solid waste board, but it is not required to be. The Solid Waste Management Act sets out the method of selection, officers required, terms of office, and vacancy procedures (T.C.A. 68-211-904 through 68-211-905).

The advantage of using a solid waste authority to oversee the region's waste management lies in the authority's broad statutory powers. (See TDEC Policies and Guidelines, May 27 1994).

The solid waste authority is a separate legal entity which may issue bonds, incur debts, enter into contracts, and exercise the power of eminent domain. With the concurrence of the counties and municipalities participating in the solid waste authority, it may exercise exclusive control over solid waste systems within its boundaries (T.C.A. 68-211-906).

A copy of a checklist for forming a solid waste authority is provided on the following page. Also, please refer to Chapter 16 for TDEC's policy on authorities, entitled, "Authorities Formed Under the Solid Waste Authority Act of 1991."

D. Interlocal Agreements

A county (or counties in multi-county solid waste regions) may decide to form an interlocal agreement to operate the solid waste system within the region (T.C.A. 12-9-101 et seq.). Interlocal agreements are the widely used type of organizational structure for operating a solid waste management system. These agreements are contracts or informal agreements between two or more governmental entities to perform a specific task together.

The primary advantages of intergovernmental agreements are flexibility and expediency. Communities can combine their resources on specific projects without developing a formal organizational structure. One disadvantage to these agreements, however, is that capital financing can be hard to obtain since each participating government must raise money for the project individually.

SOLID WASTE AUTHORITIES

A Checklist for Formation

1. Form Regions ___

Each county government determines whether or not to plan for the management of solid waste with any other county or counties. The Solid Waste Management Act of 1991 requires each county legislative body to review the needs assessment provided by their development district and determine whether to form a single or multi-county municipal solid waste planning region. Regions must be formed by December 12, 1992 through resolutions of county legislative bodies. Regions must be formed prior to the creation of a Solid Waste Authority under the Solid Waste Authority Act of 1991. All county governments in the municipal solid waste planning region must participate for an Authority to be formed under the 1991 law.

After a region is formed, the county and city governments in the region determine which local governments wish to act jointly to actively manage solid waste.

2. Determine the Best Organizational Structure ___

County and city governments decide whether the Solid Waste Authority Act of 1991 is the best legal vehicle for accomplishing the goals of the local government(s) of the region regarding solid waste collection and disposal. If not, other organizational structures such as a Board of Sanitation (county or multi-government) pursuant to T.C.A. § 5-19-101, et seq. should be explored.

3. Draft Resolutions ___

If a Solid Waste Authority under the Solid Waste Authority Act of 1991 (T.C.A. § 68-31-901, et seq.) is selected as the best legal vehicle, then a resolution of the county legislative body should be drafted which lists the participating governments, names the Authority, determines the number of members of the board of directors (5 to 15), and determines the representation from each participating county or municipality, or alternatively, designates the municipal solid waste regional planning board as the board of directors for the Authority.

4. Hold Public Hearings ___

A public meeting must be held so that members of the public may comment on the proposed resolution to form a Solid Waste Authority. Such an opportunity for public comment should precede action by each local legislative body which may authorize participation in the Solid Waste Authority.

5. Approve Resolutions Creating Authority ___

The legislative body of each county in the region must approve the resolution creating an Authority for one to be formed. Any municipality which is to participate in the Authority must also approve the resolution(s) creating the Authority. Each participating government must agree on the participation of the other government(s).

6. Select Board of Directors ___

If the municipal solid waste regional planning board is not selected as the board of directors of the Authority, then the county executives and mayors appoint members to the board of directors, subject to approval by their respective county and city legislative bodies, in such numbers as specified in the creating resolution.

7. Authority Board Elects Officers ___

The Authority's board of directors meets and elects from its membership a chairman, vice-chairman, treasurer, and a secretary. Each officer serves for a term of one year.

8. Assets Transferred to Authority ___

If not done in the creating resolutions, the participating governments, by resolution or ordinance, authorize the transfer of assets and duties regarding solid waste management to the Authority.

9. Authority Begins Operations ___

The Authority begins operations in accordance with the powers given in the Solid Waste Authority Act of 1991, the creating resolution(s), and the regional plan (when it is approved).

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Solid Waste Assistance
401 Church Street
14th Floor, L & C Tower
Nashville, TN 37243-0455

MEMORANDUM

DATE: May 2, 1996

TO: All County Executives and Regional Solid Waste Board Chairmen

FROM: Joyce Dunlap, Manager

SUBJECT: Planning Assistance Grants

The Solid Waste Management Act of 1991 made possible the establishment of a grant program to provide planning assistance grants to each county or solid waste region in order to assist in developing, revising, and maintaining regional plans as required by TCA 68-211-814.

We are enclosing a guidance document giving pertinent details regarding eligibility and application requirements. The necessary application forms have been included for your use in applying for these funds.

If you need assistance in completing the application, please contact Kathy Fowlkes at (615) 532-0087.

JND/kf

Enclosure

THE SOLID WASTE MANAGEMENT ACT OF 1991
TCA 68-211-823(3)
GUIDELINES FOR PLANNING ASSISTANCE GRANTS

Statutory Authority

Tennessee Code Annotated (TCA) Section 68-211-823: From available funds in the solid waste management fund the State . . . *shall* award:

(3) Planning assistance grants to each county or solid waste region in order to assist such counties or regions in developing, revising, and maintaining regional plans required by TCA 68-211-814.

Eligibility

Each county, solid waste planning region, or solid waste authority may apply for grants under this part to assist in implementing, revising, and maintaining their regional plans as required by TCA 68-211-814. If award is made to a solid waste region, one county must be appointed (by resolution) to be the fiscal agent to receive and disburse funds.

Special Requirements

Grants may not be awarded until the solid waste region's ten year waste plan has been approved by the Department. Grantees are required to prepare and submit by March of each year, an annual report as required by TCA 68-211-814(a)(3) and TCA 68-211-871.

Grant funds may be used for:

- Preparing and submitting by March of each year, an annual report as required by TCA 68-211-814(a)(3) and TCA 68-211-971.
- Conducting meetings and public hearings and prepare documentation required by TCA 68-211-814(b)(1)(A)-(C) to regulate flow control within the region.
- Maintaining the Solid Waste Plan and document developments within the region in preparation of the five year update of the plan in accordance with TCA 68-211-814(a)(2).
- Reviewing applications for permits and conduct public hearings, render decisions and notify the Commissioner of decisions regarding proposed solid waste disposal facilities or incinerators within the region in accordance with TCA 68-211-814(b)(2)(A)-(E).

Grant funds shall not be paid to counties or solid waste regions with outstanding debts and/or penalties owed to the Department of Environment and Conservation.

Amount

The maximum amount of the planning grant is $5,000 for each single county planning region, $6,000 per county in a two-county planning region and $7,000 for multi-county planning regions consisting of three or more counties. Each county, solid waste planning region or solid waste authority may receive only one grant for planning assistance per fiscal year and may carry remaining grant funds forward to the next fiscal year.

Awards may be increased if other counties join the region during the planning process. Awards may be reduced if a county withdraws from the region during the planning process.

Application

In order to receive funds, the applicant should complete the Grant Application form and give budget information with details regarding use of the grant funds and the designate the fiscal agent. The application must be certified and signed by an officer legally authorized to sign for the applicant.

Submission Date

The application should be submitted to the Department of Environment and Conservation after receiving departmental approval of the ten year solid waste plan. The Department will prepare a grant offer within 30 days of receiving a complete application.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE

APPLICATION FOR PLANNING ASSISTANCE GRANTS

APPLICANT INFORMATION:

Name of Agency/Organization

_____

Address:

_____

_____

_____

Name and telephone number of person to be contacted about the application:

Name: _____

Telephone: _____

FEIN # _____

Type of Organization:

[ ] County

[ ] Municipality

[ ] Solid Waste Authority

[ ] Not-for-Profit Organization

[ ] Other (please specify)

_____

FOR NON PROFIT ORGANIZATIONS:

Chartered in Tennessee? Yes [ ] No [ ]

Date of Charter: _____

IRS Classification: _____

Attach a copy of approval letter for Charter or 501(c)(3) exemption.

To the best of my knowledge and belief, all data in this application are true and correct. The document has been duly authorized by the governing body of the applicant.

_____
Typed Name of Authorized Representative

_____
Signature

Title: _____

Telephone: _____

Date: _____

For State Use Only:

DATE RECEIVED BY STATE _____

Return to: **Department of Environment and Conservation**
Division of Solid Waste Assistance
L & C Tower, 14th Floor
401 Church Street
Nashville, Tennessee 37243-0455

Part II

1. **Who (which County) will act as the designated fiscal agent for the Solid Waste Planning Region?**

_____

2. The cost categories listed below may be used to provide financial assistance to solid waste planning regions in maintaining and revising their regional solid waste plans. An example of applicable costs for each cost category is also included. Evaluate how you intend to use the planning grant funds and allocate estimated costs for your planning activities to the allowable cost categories, giving a brief description for each. Please complete the section following this description. This information will be used to prepare the budget for your grant.

Cost Category	Description/ Detail
Administrative Salaries/ Benefits	Staff costs associated with collecting data for maintaining and updating the regional solid waste plan.
Travel	Travel costs for Solid Waste Board members to attend official meetings and public hearings.
Printing/ Duplicating	Cost for preparation of regional solid waste plan update.
Communications	Phone and postage expenses related to preparing up-date of regional solid waste plan.
Consulting Fees	Costs for salary, benefits, profits and overhead for services of another agency to collect data for maintaining and updating the regional solid waste plan.
Supplies/ Materials	Expendable items for preparation of regional solid waste plan up-date.
Other	List the specific item(s).

COST CATEGORY	DESCRIPTION	AMOUNT
Administrative Salaries/ Benefits		$
Travel		$
Printing/ Duplicating		$
Communications		$
Consulting Services		$
Supplies/ Materials		$
Other (Must list specific item)		$
TOTAL BUDGET AMOUNT		$

Additional Reading:

"Assuring the Economic Viability of Local Government Solid Waste Management Systems: Local Government Case Studies." Conference of Southern County Associations and EPA, July 1995.

Guidelines for Preparation of a Municipal Solid Waste Regional Plan, Tennessee State Planning Office, July 1, 1992.

Joining Forces on Solid Waste Management: Regionalization is Working in Rural and Small Communities, October 1994, EPA/530-K-93-001.

"Solid Waste Flow Control: Does it Have a Future and What are the Alternatives?" by James N Katsiaficas and Emily A. Blake, April 1995.

Chapter 6

Collection

COLLECTION

A. Special Districts

Counties are authorized to provide garbage and rubbish collection and/or disposal services to the entire county or to special districts within the county and are also granted the power to do all things necessary to carry out these functions (T.C.A. 5-19-101, 5-19-107). This authority is exercised through resolution by the county legislative body and carried out by an existing agency, a county sanitation department, or, more commonly, a county board of sanitation appointed by the county executive and confirmed by the county legislative body (T.C.A. 5-19-104). If a municipality within the county furnishes garbage (solid waste) collection and disposal services, the county must establish service districts outside the municipality to fund this county service (T.C.A. 5-19-10). If the county services are provided within special service districts, they are funded by user fees or by a tax levied only within the district served, or a combination of the two (T.C.A. 5-19-109).

Plans for collection and disposal services must be submitted to the regional planning commission for study before they are carried out (T.C.A. 5-19-11). The county must inspect these facilities at least once every quarter, and the commissioner of health may also investigate and make recommendations for improvement (T.C.A. 5-19-113, 5-19-114).

B. Collection Assurance

The Solid Waste Management Act mandates each county in Tennessee to assure an available collection system to all residents by January 1, 1996 (T.C.A. 68-211-851). At the minimum, counties are required to provide a network of convenience centers throughout the county (Rule 1200-1-7-.10).

Convenience Centers
Convenience centers have been adopted in most counties in Tennessee as a means of collecting and processing residential solid waste before final disposal. Convenience centers are manned solid waste collection sites for residential solid waste. Centers can also be used to handle recyclable materials, bulky and problem wastes. Manned centers can prevent vandalism, scavenging, littering and ultimately control what is deposited at the site.

The Tennessee Department of Environment and Conservation has issued specific guidelines for constructing and operating convenience centers (Rule 1200-1-7-.10). Any county interested in establishing a convenience center must first register the site with the Tennessee Department of Environment and Conservation, Division of Solid Waste Management, by completing a Permit by Rule application. A copy of the Permit by Rule application form to register the site(s) and instructions is available on the following pages.

After the TDEC office issues a registration number for the convenience center site, a county can then apply for grant funds to construct or expand the facility. A copy of the grant application and instructions follows the Permit by Rule application.

GENERAL INSTRUCTIONS FOR COMPLETING NOTIFICATION PACKAGE FOR A CONVENIENCE CENTER

1. Read the instructions on the back of the "Solid Waste Permit-By-Rule Notification," then complete all applicable sections. Do not use "Ditto Marks" or "Same" in filling in the spaces.

2. Provide a map that clearly identifies the location of all centers.

3. A scaled drawing (1:20") of the convenience center layout is also required. This drawing should include the flow of wastes through the facility and the location and sites of all the processing and storage areas.

4. In responding to the 13 conditions (attached) that must be met for a permit to be issued, pay attention to the following:

   Don't just copy the statement and then answer "yes" or "no," but rather elaborate on what will be done at your site to meet these requirements. For example, what steps have been taken to prevent fires and explosions?

5. After the above information is complete and signed in the appropriate places, the material should be submitted to:

   Mr. David Moses, Chief
   Permit Administration
   Division of Solid Waste Management
   5th Floor, L&C Tower
   401 Church Street
   Nashville, Tennessee 37243-1535

6. If there are questions concerning the completing the application, contact E. Levine or, David Moses at (615) 532-0815, the Central Office in Nashville.

INSTRUCTIONS FOR SOLID WASTE PERMIT BY RULE NOTIFICATION

Complete this form for each facility that is processing and/or disposing of solid waste in Tennessee. If multiple facilities exist or are planned, describe each facility and its wastes on a separate form. **Submit completed documents to the respective field office in your area.**

Each existing facility must submit this form along with the required information [1200-1-7-.02(c)(2)] within ninety (90) days after the effective date of this rulemaking. Facilities beginning operation after the effective date of this rulemaking must submit this form along with the required information [1200-1-7-.02(c)(2)] at least thirty (30) days before beginning operation.

Line 1 (a) **Facility's full legal, name** - Give the applicant's full, legal name for this site to distinguish it from any other site the applicant or organization may own or operate in Tennessee. **Identification Number** - leave blank for Division usage.

(b) **Mailing address** - Give a complete mailing address for applicant or organization.

Line 2 (a) **Physical location or address of facility** - Give information which will aid the Division in going to the site/facility. Do not give a Post Office Box Number.

(b) Supply the **latitude** and **longitude** of the site with the precision of degrees, minutes and seconds.

Line 3 **Responsible official name** - Give the name and phone number of the person who the Division may contact for further information about the contents of this form.

Line 4 **Manager or Operator name** - Give the name and phone number of the manager or person who is responsible for the direction of activities at the site/facility.

Line 5 (a) **Landowner name** - Give the person(s) or organization name(s) and phone number(s) of the immediate owner(s) of the property [attached letter from landowner(s) as required by Rule 1200-1-7-.02(2)(d)(vi)].

(b) **Mailing address** - Give a complete mailing address for landowner.

Line 6 (a) **Zoning authority name** - Give the name and phone number of the zoning authority plus the current zoning status of the property.

(b) Mailing address - Give a complete mailing address for the zoning authority.

Line 7 (a) **Type(s) of activity** - check the appropriate type(s) of activity.

(b) **Description of activities** - Unless this is a landfill, enter a brief narrative description of how the solid waste will be handled and processed from the time it enters the facility until it leaves the facility.

Line 8 **Type(s) of waste handled or processed** - Check the type(s) of waste to be handled at the facility. If the waste type is not listed, check "other" and briefly describe the source or characteristics of the solid waste.

Line 9 **Amount of waste handled/processed/stored** - Provide an estimate of the daily weight in tons/day and/or volume in cubic yards/day that will be handled at the facility. Indicate the maximum amount of waste that can be stored in cubic yards.

Line 10 **Certification** - After all documents have been compiled for submission to the Division, the manager or owner responsible for the site must sign, give his title and the date signed. This signature must be notarized.

SOLID WASTE PERMIT BY RULE NOTIFICATION

Tennessee Department of Environment and Conservation
Division of Solid Waste Management

1. a. Facility's full, legal name			**Official use only**
b. Mailing address	City	State	Zip Code
2. a. Physical location or address of facility			County
b. Latitude (degrees, minutes, and seconds)	Longitude (degrees, minutes, and seconds)		
3. Responsible official's name			Phone number with area code ( )
4. Manager's or Operator's name			Phone number with area code ( )
5. a. Landowner's name			Phone number with area code ( )
b. Mailing address	City	State	Zip Code
6. a. Zoning authority's name	Current zoning status		Phone number with area code ( )
b. Mailing address	City	State	Zip Code

7. a. Type(s) of activity:

☐ Mulching ☐ Recycle Center ☐ Tire Processor ☐ Incineration ☐ Transfer Station
☐ Baling ☐ Tub Grinder ☐ Composting ☐ Soil Remediation ☐ Convenience Center
☐ Waste Food Processor ☐ Other _____

b. Description of activities

8. Type(s) of waste handled or processed:

☐ Food ☐ Tires ☐ Commercial ☐ Soil ☐ Wood ☐ Medical ☐ Yard Waste
☐ Other _____

9. Amount of waste handled or processed:

Weight _____tons/day Volume _____cubic yards/day

Storage Capacity _____cubic yards

10. I certify under penalty of law that this document and all attachments were under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information.

Date_____ Signature of Responsible Official _____

Official Title _____

Signature of Notary _____

Date Commission Expires _____

(Notary Seal)

DESIGN AND OPERATION STANDARDS FOR CONVENIENCE CENTERS

(a) Access - The facility shall restrict unauthorized access by means of a fencing with the ability to secure access points. Operating hours shall be posted at the facility.

(b) Dust and Mud Control - In order to prevent the creation of a nuisance or safety hazard all surfaces utilized for access and general operation shall be paved (includes compacted stone).

(c) Run-on and Run-off Control

1. In order to prevent operational hazards all run-on surface water shall be diverted around the facility.

2. In order to prevent ponding of water the surface of the facility shall be graded to assure proper run-off control. All run-off shall be diverted to an area that can be controlled with reference to release from the property. The release area shall be properly graded and stabilized to prevent erosion or other damage to adjoining properties. Release of solids in the run-off must be controlled.

(d) Fire Safety - The facility must have on-site, properly maintained, fire suppression equipment. Arrangements must be made with the nearest available fire protection agency to provide additional protection.

(e) Communication - There shall be maintained during operating hours on-site equipment capable of notifying the appropriate authorities of an emergency.

(f) Personnel Facilities

1. In order to provide shelter during inclement weather and store necessary records and supplies a suitable structure shall be provided on-site.

2. Sanitary facilities shall be provided.

(g) Water - Service water should be provided to the facility if equipment and/or the facility management requires such water for maintenance.

(h) Process Water - If mechanical compaction is utilized all liquid generated by this equipment shall be collected and properly managed.

(i) Waste Handling

1. Recycled material shall be placed in separate receiving containers;

2. All waste handling (including loading and unloading) shall be conducted on paved surfaces;

3. There is no storage of solid waste at the facility except in containers, bins or on paved surface designed for such storage;

4. All loose litter shall be collected at the end of each working day.

(j) Facility Supervision - Trained personnel must always be present during operating hours. Training will be established as per T.C.A. 68-221-853.

(k) Siting Restrictions

1. The facility must not be located in a wetland.

2. The facility must not be located in a 100 year floodplain.

3. The facility must not cause or contribute to the taking of any endangered or threatened species of plants, fish or wildlife; or result in the destruction or adverse modification of a critical habitat.

(l) The facility shall not receive special waste unless approval is received from the Department in writing. Approval will require the construction of special containment areas.

(m) The facility shall not receive medical waste.

(n) Municipal Solid Waste Collect and Plan

1. Annually each solid waste disposal region shall revise the local plan as required by T.C.A. 68-211-814. This annual revision shall consider:

a. Survey of roadside dumps;

b. Citizen complaints;

c. Alternative systems available;

d. Volume of waste received or collected by the existing systems.

2. This report shall be submitted to the State Planning Office on July 1, 1996, and each year thereafter.

THE SOLID WASTE MANAGEMENT ACT OF 1991
TCA 68-211-824
Grants for Convenience Centers
Guidelines
April, 1995

Statutory Authority

TCA 68-211-824 states: ''From funds available in the Solid Waste Management Fund, the state... shall offer matching grant assistance to counties for the purpose of establishing or upgrading convenience centers required by TCA Section 68-211-851. Such grant funds may be applied to expenses for land, paving, fencing, shelters for attendants, containers and basic equipment including, but not limited to, balers, crushers, grinders and fencing. Such funds may also be applied to expenditures for developing and printing of operating manuals, but may not be used for regular operating expenses of a recurring nature .''

Eligibility

Counties may apply for grants under TCA 68-211-824.

Applicants may request a grant for eligible costs to establish new convenience centers or upgrade existing convenience centers. Applicants may also request a grant to reimburse them for eligible costs incurred after the effective date of TCA 68-211-824 which is July 1, 1991.

All convenience centers must be registered with the Department's Division of Solid Waste Management and must be constructed in accordance with the provisions of the Solid Waste Management Rules, Chapter 1200-1-7-.10, Convenience Center Rule.

Counties whose systems have been approved by the Commissioner as a higher level of service may request funds to provide additional services to further enhance this higher level of service. These applications will be reviewed and eligibility determined on a case-by-case basis.

Amount

Each county is eligible to receive up to $125,000. Each county is required to provide a local match of either 10% or 20% which will be determined by the economic index developed by the Department and included in the Solid Waste Management Rules, Chapter 1200-1-7-.10(5). The required local match may be in the form of appropriations or ''in-kind'' contributions. In-kind contributions are defined as donations of services and/or materials for eligible project costs, i.e. Highway Department donating site work, local hardware store donating materials, private citizen donating land, etc.

Amendments

Those counties that have already received grant funds, may apply to have their grant increased to the $125,000 maximum.

Application

The grant application should be completed and signed by a representative authorized by the county. Applicants should provide full information regarding the number and location of convenience centers proposed and must provide a detailed budget for funds requested. The application must be certified and signed by an officer legally authorized to sign for the county.

Submission Date

Counties may submit applications at any time after they have received confirmation from the Department that their convenience centers have been registered. Contact Joyce Dunlap at (615) 532-0091 for the deadline for receipt of these applications.

Award

The Department of Environment and Conservation should announce grant awards and commit funds to meet the obligation approximately 45 days after receipt of a signed grant offer from the county.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE
APPLICATION FOR CONVENIENCE CENTER GRANT

Complete Part I and Part II

Part I

APPLICANT INFORMATION:

Name of Agency/Organization:

_____

Address: _____

_____

_____

Name and telephone number of person to be contacted about the application

Name: _____

Telephone: _____

FEIN#: _____

To the best of my knowledge and belief, all data in this application are true and correct. The document has been duly authorized by the governing body of the applicant.

_____
Typed Name and Title of Authorized Representative

_____
Signature

_____
Telephone

_____
Date

Return to:

Tennessee Dept. of Environment and Conservation
Division of Solid Waste Assistance
14th Floor - L & C Tower
401 Church Street
Nashville, TN 37243-0455

FOR STATE USE ONLY:
DATE RECEIVED BY STATE ____

_____

Part II

Provide complete information, using separate sheets as necessary.

1. The cost categories listed below may be used for activities to construct a new center, upgrade a center, or be reimbursed for work previously completed at a convenience center site. Examples of applicable costs for each cost category is also included. Evaluate how you intend to use the grant funds, allocating the estimated costs of planned activities to the appropriate cost categories, providing a description for each. If your grant will reimburse the construction costs of a center(s) already completed, allocate the actual costs incurred to the appropriate cost categories. Please complete the section following this description. This information will be used to prepare the grant budget.

Cost Category	**Description/Detail**
Land Acquisition	Price of land, surveys, title search and transfer, recording fees and related costs to acquire site.
Construction and Project Improvement Costs	Hourly labor costs, equipment usage and materials for Construction; engineering and contractor services for construction and design; providing fencing, berms, drainage, concrete, gravel and other site preparation.
Equipment	Equipment needed to establish the site and make it operational, including freight, installation and setup of equipment.
Utilities Installation & Connection	Costs associated with providing electrical, water, phone services and sanitary services.
Other (Must list specific item)	Signage

Cost Category	**Description**	**Amount**
Land Acquisition		$
Construction/Project Improvement		$
Equipment		$

Cost Category	Description	Amount
Utilities Installation & Connection		$
Other (Must list specific item)		$

2. What is the total minimum number of convenience centers required for your county (Chapter 1200-1-7-.10, Solid Waste Management Rules)?

Determined as follows: Service area in square miles
Divided by 180 square miles = _____

or

Service area population divided
By 12,000 = _____

3. If the grant funds you will receive construct fewer than the minimum number of convenience centers required for your county, provide details of your plan (including dates) for completing the remaining required centers.

_____

_____

_____

4. Indicate how the local matching funds will be provided. (If local funds are county appropriations, invoices submitted for payment will be paid proportionally, taking into consideration the local match required.)

_____

_____

_____

5. Provide the location of the convenience center(s) where equipment purchased will be located, construction activities will be undertaken, or where you are requesting reimbursement for work completed prior to the application but after July 1, 1991.

_____

_____

_____

_____

6. Provide confirmation that the convenience centers for which you are requesting funding have been registered by the Division of Solid Waste Management. Confirmation may be either a copy of the approval letter from Solid Waste Management or a list of the registration numbers by site.

_____

_____

_____

7. Provide a tentative schedule for completion of the activities for which you are requesting funding. (Example: Purchase compactor - 3 months after grant award; Complete construction - 6 months after grant award, etc.) Please be realistic and allow yourself adequate time to complete these activities. This will eliminate the need for numerous grant time extensions.

_____

_____

_____

Collection Assurance Contracts

Counties must assure that a minimum level of service for residential garbage collection is available through a network of convenience centers, unless a higher level of household garbage service is available to residents. If a county or region proposes an alternative system, said system shall be approved by the Commissioner. See Rule 1200-1-7-.10(2)(c).

In an effort to clarify the intent of state law for minimum collection service, the Tennessee Department of Environment and Conservation, Division of Solid Waste Assistance has issued several policy statements on collection assurance and contracting. A copy of these guidance documents from the Division are presented on the following pages.

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
401 Church Street
Nashville, Tennessee 37243

MEMORANDUM

TO: County Executives

FROM: Paul Evan Davis, Director
Division of Solid Waste Assistance

SUBJECT: TDEC Policy on County-Wide Collection Assurance

DATE: April 8, 1994

It has come to our attention that some confusion exists regarding the Department's policy on county-wide collection and higher levels of service. I have enclosed a letter for your information that may be helpful.

Of special note: **The deadline for counties to assure that one or more municipal solid waste collection and disposal systems are available to meet the needs of the residents of the county has recently been extended by the General Assembly to January 1, 1996.**

I hope you find this letter useful in completing your regional solid waste plans. For more information on the Department's collection policy contact Mike Apple with Division of Solid Waste Management (615)-532-0780) or Elizabeth Blackstone with the Division of Solid Waste Assistance (615-532-0077).

PED:EKB:dhm

cc: Development Districts

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
401 Church Street
Nashville, Tennessee 37243

April 5, 1994

Mr. Gary Lide
Draper Aden Associates
Consulting Engineers
2214 Metro Center Boulevard
Suite 100
Nashville, TN 37228

Dear Gary:

I am writing in response to your letter of March 14, 1994 concerning the Department's policy on collection higher levels of service. I recently met with staff from the Department's Office of General Counsel and the Division of Solid Waste Management to discuss the questions you raise. I offer our responses based on that discussion:

Question 1: If a county has private haulers operating within its boundaries and those haulers are willing to serve any household in the county, does this (in and of itself) constitute a higher level of service and bring the county into compliance with the collection requirements of the Solid Waste Act of 1991?

Response: No, verbal assurance is not adequate to meet the requirements of the Act.

Question 2: If the answer to question #1 above is "no", and a contract of some kind is required, would a simple letter contract in which private hauler(s) serving a county promise to provide service to any household in the county requesting said service be sufficient to bring the county into compliance with the requirements of the Solid Waste Act of 1991?

Response: No, the letter described is probably not an enforceable, reasonable contract for consideration.

Question 3: If the answer to both of the above questions is "no", please provide a brief description of the minimum contract required for private haulers that could be utilized to meet the "higher level of service" collection criteria.

Response: In counties choosing to rely on the services of private door-to-door haulers, the Department will look for **enforceable, reasonable** contracts for at least some consideration. These contracts between the county and the hauler(s) do not have to be contracts for payment of the actual collection service, they may be for a minimal fee to assure service availability at a reasonable price. The reasonable price element of the contract is important because if the service is available to residents at a price far above that of neighboring counties or far above that of convenience centers then the collection service is not really "assured" or available as a practical matter. Should a citizen seek door-to-door collection at a reasonable price and be denied, then the county would have legal recourse against the hauler under the assurance contract.

Keep in mind that the existence of such a collection assurance contract would not preclude the operation of other haulers in the county that are not included in the contract. Also, assurance contracts may be issued to two or more haulers to split the county geographically if desired.

According to the regulations, at least 90% of all residents should have access to household collection service in order to meet minimum requirements (Rule 1200-1-7-.10(2)(a)). Any proposed alternate system must have a higher level of service than convenience centers (Rule 1200-1-7-.10(2)(c)). Thus, the Department will be looking to see that the service is at least as effective as the minimum required convenience centers would be. Hybrid systems using both house-to-house collection and one or more convenience centers are permissible and may be a wise option. This would allow individual households to select what option is best for them.

Grant money from the solid waste management fund will only be awarded by State for capital expenses related to convenience centers (TCA 68-211-824). Matching grants of up to $125,000 are available to counties electing to develop a partial or full convenience center network. Grant funds are not available to fund door-to-door collection.

The deadline for counties to assure that one or more municipal solid waste collection and disposal systems are available to meet the needs of the residents of the county has recently been extended by the General Assembly to January 1, 1996.

With regard to higher levels of service, the regulations state: "If a county or region proposes an alternative system, said system shall be approved by the Commissioner" (Rule 1200-1-7-.10(2)(c)). The Solid Waste Management Act requires that each county provide a plan identifying unmet needs and goals for collection in the county. The collection plan is to be updated annually (TCA 68-211-851(b)). **The Commissioner will use these annual collection reports, along with citizen complaint logs, roadside dump surveys, and other means, to approve proposed systems and evaluate the county's compliance after January 1, 1996 (Rule 1200-1-7-.10(4)).**

Additional Notes: If a county provides the minimum number of convenience centers required by rule, private haulers may operate in the county and the county is not required to have an assurance contract.

Counties that are willing to provide public collection services may assure collection for citizens door-to-door at a reasonable price if requested and eliminate the need for an assurance contract with private haulers.

I hope you find this response helpful. Please let me know, if the Division can be of any further assistance.

Sincerely,

Paul Evan Davis
Director
Division of Solid Waste Assistance

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
401 Church Street
Nashville, Tennessee 37243

MEMORANDUM

TO: County Executive
Chairman of Solid Waste Regional Planning Boards
Local Solid Waste Officials
Development Districts

FROM: Paul Evan Davis, Director
Division of Solid Waste Assistance

SUBJECT: County-Wide Collection Assurance and Assurance Contracts

DATE: November 15, 1994

Many questions have been asked with regard to the county-wide collection assurance requirement in the Solid Waste Management Act of 1991. In response, the Division has formulated a fact sheet regarding the January 1, 1996 requirement which has been in distribution since May. In addition, the Department's Office of General Counsel has offered a sample collection assurance contract for those counties who wish to rely on the services of private haulers to fulfill statutory requirements.

A copy of the sample contract is attached. I would like to emphasis that it is a sample to be used as a guideline. It does not represent a required format. Provisions unique to individual situations will likely be necessary. For example, if more than one hauler were involved, a "territory" provision may be appropriate.

Regions are reminded that it is important to establish a fair and reasonable price for potential customers in assurance contracts (see paragraph 3, of the sample contract). Without a reasonable price provision, collection is essentially not assured.

Be aware that assurance contracts are simply a way to guarantee the minimum requirements under the law. Counties still have the option of directly contracting with haulers to actually provide (as opposed to assure) county-wide services.

If the Division can be of further assistance with regard to this or other solid waste issues, please do not hesitate to contact my staff (615-532-0091).

PED:EKB:dhm

WASTE COLLECTION AND DISPOSAL
ASSURANCE CONTRACT

This contract is made and entered into by and between _____ County (hereinafter the "County") AND _____ (hereinafter "whatever") waste collection company.

WHEREAS, Tennessee Code Annotated 68-211-815(a) requires every county in Tennessee to assure that waste collection and disposal is available to its citizens; and,

WHEREAS, the county is mandated to have established on or before January 1, 1996 a minimum level of service for collection and disposal of solid wastes under Tennessee Code Annotated 68-211-851 unless a higher level of service is available; and,

WHEREAS, State Administrative Rule 1200-1-7-.10(2)(a) provides that a county is deemed to have met the minimum level of service if ninety percent (90%) of residents have access to household collection; and,

WHEREAS, _____is in the waste collection and disposal business.

WHEREFORE, the Parties agree as follows:

1. Beginning on _____ and continuing until _____ _____, "whatever" shall make available to the citizens of the county its waste collection services, in the area described as follows:_____ _____(either the entire county or a description of the area).

2. The waste collection services that "whatever" makes available to the citizens of the county shall, at a minimum, include door to door pick-up, at least weekly, of household waste.

3. Whatever shall charge all households that subscribe to its service the same fee which may not exceed _____ per week.

4. Whatever shall dispose of all waste that it collects in accordance with good management practices and all applicable laws and regulations.

5. Whatever shall obtain and maintain any and all permits/licenses that are necessary to carry-out the activities described hereinabove including the hauler registration under Tennessee Code Annotated Section 68-211-852.

6. For and in consideration of whatever's above agreed promises and activities the county agrees to pay the sum of _____.
must be something

Made and entered into this _____day of _____199__.

County of _____

BY: _____
County Executive

Whatever_____

BY: _____
President

EJS/wastecon.doc

C. Problem Wastes

Certain substances are no longer to be placed in a landfill, but are to be disposed of through alternative methods. Examples of these substances are, used oil, waste tires, batteries, and household hazardous waste (T.C.A. 68-211-866, 68-211-867, and 68-211-829).

Used Oil

The county must designate at least one (1) site to receive and store used oil directly, through an Authority, or by contract, if adequate sites are not available in the county (T.C.A. 68-211-866(b)). Through the Used Oil Collection Act of 1993, funds are available to counties and municipalities for establishing and operating used oil collection centers. A copy of the Used Oil Collection and Recycling Program Policy Guide, notification and permit forms, and grant application, provided by the Department, is provided on the pages that follow.

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE

USED OIL COLLECTION AND RECYCLING PROGRAM POLICY GUIDE
Revised January 1995

Pursuant to the State of Tennessee's policy of non-discrimination, the Tennessee Department of Environment and Conservation does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service, in its policies, or in the admission or accees to, or treatment or employment in, its programs, services or activities.

Equal Employment Opportunity/Affirmative Action/ADA inquiries or complaints should be directed to the Tennessee Department of Environment and Conservation, EEO/AA/ADA Coordinator, 401 Church Street, 21st floor, Nashville, TN 37243 (615) 532-0103

Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Tennessee Department of Environment and Conservation, authorization No. 327493, 1,200 copies. This public document was promulgated at a cost of $0.28 per copy. January 1995.

INTRODUCTION

The Used Oil Collection Act of 1993 (TCA 68-211-1001) was enacted by the General Assembly to "reduce the amount of improperly disposed used oil by providing incentives to increase the number of collection facilities for used oil." The Act establishes a used oil collection fund ($.02 per quart fee levied at the wholesale level on sales of oil in packaged form) to be used in part to establish used oil collection centers. The Act establishes a toll free telephone number(1-800-287-9013) for use by do-it-yourselfers to obtain information on used oil collection centers and programs. The Act complements the Solid Waste Management Act of 1991 (TCA section 68-211-866 (b)) which requires all counties to provide at least one site to collect used oil and other automotive fluids by January 1, 1995 unless adequate sites are otherwise available for use by the citizens of the county.

The purpose of this policy guide is to provide used oil collection centers general information concerning several items of importance and good management practices which must be met in order to qualify for grant funding through our program. It is not, nor is it intended to be, a regulatory manual. Questions concerning regulatory matters should be directed to the Division of Solid Waste Management at (615) 532-0780. Questions concerning grants or grant guidelines should be directed to the Division of Solid Waste Assistance (615) 532-0091. Questions concerning technical matters regarding this program should be directed to the Division of Solid Waste Assistance, Special Waste Section (615) 532-0281.

1. Used Oil Collection Centers

A. Definitions:

Tennessee Code Annotated, Section 68-211-1002 (4), (8), and (9), defines used oil, used oil collection centers and do-it-yourselfers as follows:

> "Used oil" means any oil which has been refined from crude or synthetic oil and, as a result of use, becomes unsuitable for its original purpose due to loss of original properties, or presence of impurities, but which may be suitable for further use and may be economically recyclable. Used oil does not include oil filters; and
>
> "Used oil collection center" means a facility, including fixed locations, tanks and containers, which accepts used oil from DIYers and which constitutes an approved centralized collection center for used oil".
>
> "Do-it-yourselfer (DIYer)" means an individual who removes used oil from the engine of a light duty motor vehicle, small utility engine owned or operated by such individual, non-commercial motor vehicle or farm equipment".

Since counties are required by the Solid Waste Management Act of 1991 to provide at least one site to collect used oil, the Used Oil Collection Act of 1993 provides for collection center grants to counties, cities, and profit and non-profit organizations to assist with establishing these sites.

B. Provisions for Inclusion in State's Used Oil Collection Database:

The Division of Solid Waste Assistance has established a toll-free telephone used oil information network. To be included in the database, a representative for each collection site must complete and sign an agreement form (See Used Oil Collection Center Database Entry Form attached) agreeing to accept used oil from local do-it-yourselfer oil changers. Upon receipt of the completed form, the site's name and location will be included in the network's database and provided to citizens who call the Division's toll-free number looking for a collection center in their area. The Division will provide a used oil collection center sign to each facility which requests such as required by the Act.

A used oil collection center site/facility may be removed from the Division's hotline network after;

a. three (3) valid complaints from the public against the center owner/operator have been received.

b. being advised by Division of Solid Waste Management personnel or other regulatory agencies of a regulatory violation citation against the facility.

(Note: There may be other reasons deemed as necessary and/or appropriate by the Division of Solid Waste Assistance for removal of a site from the database. The Division will attempt to notify the site operator of the reason(s) for removal.)

If the Division receives a complaint against a center, Special Waste Section personnel will contact the operator to discuss and attempt to resolve the complaint. If a resolution does not result, the center may be removed from the hotline database until the Division has been assured that the problem(s) have been or will be corrected. Any further complaints of the same nature can result in automatic removal of the facility from the network without prior notice. Notice of regulatory violations will result in automatic removal of the facility's name from the database without prior notice. Removal of the violation does not ensure reinstatement on the database. If the collection center/site is removed from the Division's *hotline* network and the site was established using funds obtained through a program grant, the grantee may be required to repay (pursuant to the terms and conditions of the grant agreement) those funds.

C. Collection/Storage Tanks:

The collection/storage tank or container may include a compartment for the collection and storage of used oil filters. Collection/storage tanks and containers must comply with regulations established under Rule Chapter 1200-1-11-.11 of the rules and regulations of the State of Tennessee. Underground storage tanks or containers are not recommended and will not be considered for grant funding. If existing underground tanks are used for collection and storage of used oil, the operator should be aware that these tanks are subject to standards for used oil stored underground and all fill pipes must be labeled "USED OIL ONLY".

Site preparation for placement of the container/tank should include a concrete slab or other similar impermeable and oil resistant material. It is recommended that the pad on which the tank is placed have a berm or other containment device to collect used oil in the event of a spill. Use of the following guidelines may assist with determining the size of the spill containment area:

> The height of the berm should be one (1) foot. In order to determine the spill containment area in cubic feet, divide the total storage capacity of the tank by 7.48 (the number of cubic gallons in a cubic foot). This formula will provide you with the recommended size of the containment area. (Example: A 300 gallon storage tank should have a spill containment area of 40 cubic feet).

Spill containment areas may also collect rainwater. If this water contains spilled oil, proper disposal procedures/methods must be followed. One method may be to contact the local wastewater treatment facility and request their assistance with proper disposal. Failure to properly dispose of used oil or water polluted with oil may constitute a violation of environmental regulations.

The Division recommends that aboveground collection/storage tanks be used which meet or exceed the following specifications:

1. Double wall containment, 110% containment capacity
2. Reservoir capacity of 300 gallons
3. Lockable, rain-proof lids and access doors

4. "Stand alone" tank requiring neither roofing or other structural cover

5. Oil level monitoring gauge

6. Corrosion proof, maintenance free exterior shell

7. Built-in, deep-well sink with removable debris screen (dual debris screens preferred)

8. Automatic shut-off mechanism to prevent overflow

9. All stainless steel or galvanized exterior hardware

10. Universal, two (2) inch quick disconnect fitting (preferably exterior access) for easy service by oil transporters with a vacuum hose tank truck

11. Movable (empty only) by hoist truck or forklift

12. Vented to prevent the build-up of harmful gases

13. Meets National Fire Protection Association (NFPA) 30 code specifications

14. Aboveground tank exterior must be prominently labeled as "USED OIL ONLY"

15. Manufacturer's comprehensive operations manual supplied with each unit

16. Manufacturer's warranty of at least one (1) year against defects or failure

17. Manufacturer's statement of the recycled material content as well as the recyclability of the tank at disposal

Collection/aggregation sites with a single aboveground storage tank exceeding a capacity of 660 gallons or more and/or the combined tank (multiple tanks) capacity of a facility that exceeds 1,320 gallons are subject to further regulation. Contact the Division of Water Pollution Control (615-532-0625) to determine specific requirements and regulations. (NOTE: The division does not intend to provide funding for sites with tanks and/or capacities that fit this criteria.)

Other considerations for site preparation (such as soil conditions, proximity to surface or groundwater in the area, etc.) should be evaluated and determined.

D. Site Operations:

Each used oil collection site must be registered with the Division of Solid Waste Management. All collection sites must post their hours of operation, and insure that a responsible employee is present at all times during these hours. The tank(s) must be secured during the off-hours to

insure against improper oil disposal or vandalism. The facility should also conspicuously post a sign alerting the public to avoid contamination of the used oil by not mixing any other materials with the used oil brought to the facility. Fire extinguishers capable of fighting petroleum fires should be placed at strategic locations at the site. "No Smoking" signs should be posted. The site should have a communication device capable of alerting the local fire department in the event of a fire or other emergency. Vermiculite or other absorbents should be available to absorb small spills.

Although used oil collection sites may be established at public or private locations, local governments should consider establishing the used oil collection site at convenience center locations. This will eliminate unnecessary additional costs for site preparation and will provide for convenient access by residents at familiar locations. The intent of the law is to have at least one collection site in each county. However, the number of sites will vary. Local governments must also establish their programs consistent with their regional municipal solid waste management plan as required by the Solid Waste Management Act of 1991.

It may be permissible for local governments to contract for used oil and other automotive fluids collection (TCA section 68-211-866(b)). However, there must be a written contract between the parties that identifies the legal responsibilities of each. (The collection facility must be within the boundaries of each county.) A copy of this contract must be on file with the Division of Solid Waste Assistance.

The Department of Environment and Conservation will provide on request, a sign which identifies used oil collection centers (T.C.A. 68-211-1017).

Operation of the attended site must be in compliance with the management standards established by the Division of Solid Waste Management (T.C.A. 68-211-1013).

In the event of a release of used oil to the environment at a used oil collection center, cleanup steps must be performed as stated in T.C.A. 68-211-1018. Immediately notify the Division of Solid Waste Management and the Division of Water Pollution Control at the field office serving your area that a release has occurred. (See Appendix I for listing).

Operators must determine if they will accept and choose the option under which they will process used oil filters at their used oil collection center. NOTE: Collection and/or processing of used oil filters requires a permit issued by the Division of Solid Waste Management.

Tennessee Code Annotated, Section 68-211-1019, states that "Used oil filters shall be:

(1) Punctured and hot-drained for a minimum of twelve (12) hours; or

(2) Punctured and cold-drained for a minimum of twenty-four (24) hours; or

(3) Drained and crushed; or

(4) Prepared for disposal as otherwise provided by rules and regulations promulgated by the Solid Waste Disposal Control Board.

Subsequent to such draining, draining and crushing or other preparation for disposal, such filters shall be recycled or disposed of in accordance with the provisions of the "Used Oil Collection Act of 1993".

The Division of Solid Waste Management has identified three (3) options that used oil generators may exercise in disposing of used oil filters.

Option 1:

Used oil filters are exempt from regulation as a hazardous waste if both the metal from the filters and the used oil from the filters are recycled. To qualify for the scrap metal recycling exemption, free flowing oil must be removed from the filters through draining and crushing or disassembly of the filter prior to shipping to a metal recycler. Under the used oil recycling exemption, the physical processing of the filters (draining, crushing and/or transporting) is not subject to regulation and may be conducted by the generator or another party at a different location. If the filter is disassembled, the remaining material has been granted a statewide special waste approval if the filter element is mechanically compressed to remove all free flowing oil and the oil is collected for recycling. The generator then certifies that the filter element and gaskets are non-hazardous and all free flowing oil has been removed.

Option 2:

Drain and Crush the Filters, Recycle the Oil, and dispose of the Filters as Special Waste. A statewide "special waste" approval has been granted for all used oil filters that are certified as non-hazardous and which have been properly drained and crushed, eliminating all free flowing oil. The oil removed during the draining and crushing must be collected and properly recycled. Under the used oil recycling option, the physical processing of the filters (draining, crushing and/or transporting) is not subject to regulation under the hazardous waste regulation and may be conducted by the generator or by another party at a different location.

Option 3:

Dispose of the Filter as a Hazardous Waste. If a generator chooses not to recycle or crush oil filters, then the filters are handled as a hazardous waste. Special waste approval will not be granted for undrained and uncrushed filters. Any oil which drains from the filters must be disposed of as a hazardous waste if it is not recycled.

Exception: *Terne-plated* oil filters must be treated as a hazardous waste and cannot be recycled due to their lead content. The manufacture of terne-plated oil filters is being eliminated from the market.

Of the options described above, option 1 is the method preferred by the Division of Solid Waste Management for dealing with used oil filters. Used oil collection centers may wish to collect used oil filters on site and negotiate the processing (draining, crushing, etc.) and recycling of oil filters with their used oil transporter. In addition, counties and local governments may wish to

apply for recycling equipment grants when they are available, which would allow for the purchase of the equipment to process the filters on-site . Contact the Division of Solid Waste Assistance at (615) 532-0087 in order to determine the availability and eligibility of these grants.

E. Participant Volume Limits:

The collection center/site may accept used, uncontaminated do-it-yourselfer oil from any person in any one (1) day up to a maximum quantity of 5 (five) gallons per person, per day. To receive a used oil collection center identification number (ID) from the Division of Solid Waste Management or grant funding from the Division of Solid Waste Assistance, this criteria must be observed.

To minimize the risk of an operator receiving contaminated oil, one or more of the following procedures should be implemented:

1. Maintain a log of participants and quantities of used oil received at the facility.
2. Request frequent or otherwise suspicious participants to complete a form containing their name, address, auto tag number, and signature.
3. Randomly test used oil received from participants. Inexpensive test kits may be purchased for this purpose. Such test kits are eligible under the used oil collection center grants.

F. Used Oil Transporters:

Used oil collection centers shall transfer used oil only to certified transporters in possession of a valid United States Environmental Protection Agency identification number and shall maintain records of all volumes of material collected on an annual basis, including the identity of the hauler and the name and location of the recycling facility to which the oil was transported (See Used Oil Program Report Form). T.C.A., Section 68-211-1014.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Solid Waste Assistance
12th Floor, L & C Tower, 401 Church Street
Nashville, TN 37243-0455
(615) 532-0281

USED OIL PROGRAM REPORT

INSTRUCTIONS: **Complete one form for each used oil collection site. Return completed forms to above address.**
Complete Sections A and C to register your collection site for participation in State Database.
Complete Section A, B, and C to submit Used Oil Collection Annual Report.

SECTION A - USED OIL COLLECTION CENTER DATABASE ENTRY

By submitting this form, registrant agrees to be included in the State's Used Oil Collection Center Database. Locations of facilities included in this database will be provided to callers to the Used Oil Information line who are searching for locations to dispose of Do-It-Yourselfers used motor oil and others who may request the information.

Facility Name: _____ County: _____

Used Oil Collection Center Registration ID No: SWP_____

Owner: _____ Owner classification: ☐ Private ☐ Public ☐ Other _____

Mailing Address:	Physical Location / Address:
_____	_____
_____	_____
_____	_____
Zip Code	Zip Code
Contact Person:	Phone: ( )

Days/hours when used motor oil will be accepted: _____

Please mark if you accept the following: [ ] Oil Filters [ ] Antifreeze

Facility currently in operation? [ ] Yes [ ] No If "No", anticipated date of opening: _____

SECTION B - USED OIL COLLECTION ANNUAL REPORT

REPORT PERIOD: _____ **THROUGH** _____

How many gallons of oil were collected from "Do-It-Yourselfers"? _____ gallons

How many gallons of oil have you used for on-site heating fuel? _____ gallons

How many gallons of oil have been picked up by certified transporters? _____ gallons
Please provide the name(s) and registration numbers of certified used oil transporters/haulers servicing your facility.

_____

_____

What was the final disposition of the oil (if known)? _____

How many used oil filters have you collected? _____ Qty. _____ Lbs.

How many used oil filters do you have stored? _____ Qty. _____ Lbs.

What was the final disposition of oil filters collected? _____ Qty. Recycled _____ Qty. Landfilled

SECTION C - I certify that the information given in this document is accurate and complete to the best of my knowledge and belief as evidenced by my signature and the date signed.

_____

Authorized Signature **Typed/Printed Name & Title** **Date**

CN-1000 (Rev. 11/95) Entered By: _____ Date: _____ RDA S836-4

Solid Waste Management Notification
INSTRUCTIONS FOR COMPUTER GENERATED AND BLANK FORMS

Below are instructions for Solid Waste Management Notification. For previous notification, review the data and mark any changes on the computer generated form. If you need extra copies, please photocopy the bland form before writing on it or call the Division of Solid Waste Management (DSWM) at (800) 237-7018.

Complete this form for each collection center, transporter, transfer facility, marketing, processing, re-refining, or off-specification burner site in Tennessee. If a company owns multiple sites, complete a separate form for each location.

Each regulated party must submit this form within 90 days after becoming subject to regulation under the Used Oil Management Standards embodied at Tennessee Rule 1200-1-11-.11. Each regulated party is responsible for maintaining an up-to-date form by notifying the DSWM within 30 days of significant changes. Submit one copy of the applicable form(s) to the Division of Solid Waste Management, Fifth Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243-1535.

Line 1: **Organization name** - Give the organization's full, legal name for this site to distinguish it from any other site the organization may own or operate in Tennessee. If the site has an EPA identification number, supply it. If the site does not possess an EPA identification number, leave that box blank and the DSWM will provide one, if appropriate.

Line 2: **Mailing Address** - Give a complete mailing address for this site. This address will be used to mail the annual reporting forms as well as any other applicable correspondence. Carefully consider where the mail should be delivered to ensure prompt delivery of these forms so that you may return them before penalties, if any, are assessed. Mail will be addressed to the technical contact supplied on line 7. Give the state code of TN for Tennessee or the tow character postal abbreviation for any other state. Please supply the full 9 digit zip code if possible.

Line 3: **Physical location** - Give the full address which will aid the DSWM in going to the site. Do no give a Post Office Box number. Give the Tennessee county name in which the site is located. Give the latitude and longitude of the site by degrees, minutes and seconds. Latitude and longitude may be found by using U.S. Geologic Survey Quadrangle maps.

Line 4: **Owner name** - give the personal or corporate name and phone number of the immediate owner of the site.

Line 5: **Owner address** - Give the complete mailing address of the owner of this facility. Carefully consider where mail to the facility owner should be delivered to ensure prompt delivery. Give the state code of TN for Tennessee or the two character postal abbreviation for any other state. Please supply the full 9 digit zip code if possible .

Line 6: **Manager or operator name** - Give the name and phone number of the manager or person who is responsible for the direction of activities at the site.

Line 7: **Principal technical contact** - Give the name and phone number of the person who is knowledgeable about the used oil management activities at this site and who the DSWM may contact for further information if needed. The blank annual report package from the DSWM will be addressed to that person (if applicable). The annual report is not required for generators or collection centers; however, a principal technical contact must be entered by all parties engaged in used oil management.

Line 8: **Emergency contact(s)** - Give the name, phone number and time the designated emergency contact may be called. The DSWM must be able to call 24 hours per day and 7 days per week regarding emergencies. Only one person should be designated for any time period. Enter only one phone number per line. If additional space is needed, attach a separate sheet and identify the information with thee form name and line number.

Line 9: **Type and number** of supplemental sheets attached - A copy of Schedule A must be completed by parties engaged in used oil collection. A copy of Schedule B must be completed by parties engaged in the transportation, marketing, process re-refining, or management of off-specification used oils. Indicate by checking the appropriate boxes which forms are included with submission, and enter the number of each type of form included with the submission.

Line 10: **Certification** - After all documents have been compiled for submission to the DSWM, the manager or owner responsible for the site must sign, give their title and the date signed. The certification must be made by one who is authorized to legally bind the company as when signing contracts.

Lines 11 through 13 are for Department use only!

Solid Waste Management Notification

Tennessee Department of Environment and Conservation, Division of Solid Waste Management
Fifth Floor, L&C Tower, 401 Church Street, Nashville, TN 37243-1535 Phone: (800) 237-7018

1. Organization's full, legal name			EPA Identification number	
2. Mailing address	City	State	Zip code	
3. a. Physical Location	City	State	Zip code	County
b. Latitude (degrees, minutes & seconds)		Longitude (degrees, minutes & seconds)		
4. Owner name		Phone with area code ( )		
5. Owner address	City	State	Zip code	
6. Manager or operator name		Phone with area code ( )		
7. Principal technical contact		Phone with area code ( )		

8. Emergency contacts for 24 hours per day and 7 days per week

a. Name	Time period covered	Phone with area code ( )
b.		
c.		
d.		

9. Indicate the type and quantity of supplemental information sheets attached to this form.
   [ ] CN-1003 Schedule A Quantity [ ]
   [ ] CN-1003 Schedule B Quantity [ ]

10. Certify that the information given in this document is true, accurate and complete by signing and dating.

Signature of authorized representative	Title	Date

NOTE: SHADED AREAS ARE FOR DEPARTMENT USE ONLY.

11. Date Received	County code	Priority	Special status
12. Date closed			
13. Comments:			

Solid Waste Management Notification
Schedule A - Used Oil Collection Center Supplemental Information
INSTRUCTIONS FOR COMPUTER GENERATED AND BLANK FORMS

Below are instructions for Schedule A of the Solid Waste Management Notification. For previous notification, review the data and mark any changes on the computer generated form. If you need extra copies, please photocopy the bland form before writing on it or call the Division of Solid Waste Management (DSWM) at (800) 237-7018.

Complete this form for each used oil collection center site in Tennessee. If a company owns multiple sites, complete a separate form for each location.

Each regulated party must submit this form within 90 days after becoming subject to regulation under the Used Oil Management Standards embodied at Tennessee Rule 1200-1-11-.11. Each regulated party is responsible for maintaining an up-to-date form by notifying the DSWM within 30 days of significant changes. Submit one copy of the applicable form(s) to the Division of Solid Waste Management, Fifth Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243-1535.

Line 1: **Organization name** - Give the organization's full, legal name for this site to distinguish it from any other site the organization may own or operate in Tennessee. If the site has a Tennessee Used Oil Identification number, supply it. If the site does not possess a Tennessee Used Oil Identification number, leave that box blank and the DSWM will provide one, if appropriate.

Line 2: **Mailing Address** - Give a complete mailing address for this site. This address will be used to mail the annual reporting forms as well as any other applicable correspondence. Carefully consider where the mail should be delivered to ensure prompt delivery of these forms so that you may return them before penalties, if any, are assessed. Mail will be addressed to the technical contact supplied on line 3. Give the state code of TN for Tennessee or the tow character postal abbreviation for any other state. Please supply the full 9 digit zip code if possible.

Line 3: **Principal technical contact** - Give the name and phone number of the person who is knowledgeable about the used oil management activities at this site and who the DSWM may contact for further information if needed. The blank annual report package from the DSWM will be addressed to that person (if applicable).

Line 4: **Used oil collection center management facilities** - Indicate the type(s) of used oil collection activities engaged in by the facility. If the collection center accepts only oils generated by Do-It-Yourselfers, check box a. If the facility receives only used oil wastes generated by commercial activities, check box b. If the facility accepts used oils from Do-It-Yourselfers and commercial operations, check box c.

Line 5: **Notification of used oil filter management activities/permitting waiver certification** - This item determines whether the facility will require a permit for filter management activities, and if so, whether the facility qualifies for a waiver of operating and maintenance fees. To qualify for the waiver, the facility must receive used oil filters from off-site, crush the filters, and be able to document the recycling of at least 75% of all materials received each calendar year.

Line 6: **Certification** - After all documents have been compiled for submission to the DSWM, the manager or owner responsible for the site must sign, give their title and the date signed. The certification must be made by one who is authorized to legally bind the company as when signing contracts.

Solid Waste Management Notification
Schedule A
Used Oil Collection Center Supplemental Information

Tennessee Department of Environment and Conservation, Division of Solid Waste Management
Fifth Floor, L&C Tower, 401 Church Street, Nashville, TN 37243-1535 Phone: (800) 237-7018

1. Organization's full, legal			TN Used Oil identification number
2. Mailing address	City	State	Zip Code
3. Principal technical contact			Phone with area code ( )

4. Used Oil Collection Center Management Activities - Indicate type of activity (check below all applicable boxes.)

[ ] a. Do-It-Yourselfer generated only
[ ] b. Commercially generated only
[ ] c. Do-It-Yourselfer and Commercially generated

5. Used oil filter management activities. Indicate the type of activity (check all applicable boxes)

a. Do you manage used oil filters received from off-site? [ ] Yes [ ] No

b. If the answer to 5a is yes, do you crush, or otherwise process the filters? [ ] Yes [ ] No

c. If the answer to 5b is yes, you will receive a solid waste processing permit. Are you able to document and prove that you recycle at least 75% (by weight) of the solid waste materials received at your facility per year? [ ] Yes [ ] No

IF your answers to 5a, 5b and 5c are all YES, then your used oil collection center is eligible for a waiver of the solid waste processor permitting fee requirements (operating and maintenance) for the filter crusher.

PLEASE CHECK THE FOLLOWING CERTIFICATION BOX ONLY IF YOU QUALIFY FOR THIS WAIVER.

[ ] I CERTIFY, under penalty of law, that at least 75% (by weight) of the materials received at my facility are recycled within a calendar year. I am aware that there are significant penalties for the submission of false information.

6. Certify that the information given in this document is true, accurate and complete by signing and dating.

Signature of authorized representative	Title	Date

(INSTRUCTIONS ON REVERSE)

Solid Waste Management Notification
Schedule B - Used Oil Management Supplemental Information
INSTRUCTIONS FOR COMPUTER GENERATED AND BLANK FORMS

Below are instructions for Schedule B of the Solid Waste Management Notification. For previous notification, review the data and mark any changes on the computer generated form. If you need extra copies, please photocopy the bland form before writing on it or call the Division of Solid Waste Management (DSWM) at (800) 237-7018.

Complete this form for each collection center, transporter, transfer facility, marketing, processing, re-refining, or off-specification burner site in Tennessee. If a company owns multiple sites, complete a separate form for each location.

Each regulated party must submit this form within 90 days after becoming subject to regulation under the Used Oil Management Standards embodied at Tennessee Rule 1200-1-11-.11. Each regulated party is responsible for maintaining an up-to-date form by notifying the DSWM within 30 days of significant changes. Submit one copy of the applicable form(s) to the Division of Solid Waste Management, Fifth Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243-1535.

Line 1: **Organization name** - Give the organization's full, legal name for this site to distinguish it from any other site the organization may own or operate in Tennessee. If the site has an EPA identification number, supply it. If the site does not possess an EPA identification number, leave that box blank and the DSWM will provide one, if appropriate. Line 1.a. describes the Land and Owner types of the facility. Using the following codes, enter the code which best describes the legal status of the owner of the land, and the legal status of the current legal owner of the installation:

F = Federal	S = State	I = Indian	P = Private
C = County	M = Municipal	D = District	O = Other

Line 2: **Mailing Address** - Give a complete mailing address for this site. This address will be used to mail the annual reporting forms as well as any other applicable correspondence. Carefully consider where the mail should be delivered to ensure prompt delivery of these forms so that you may return them before penalties, if any, are assessed. Mail will be addressed to the technical contact supplied on line 3. Give the state code of TN for Tennessee or the tow character postal abbreviation for any other state. Please supply the full 9 digit zip code if possible.

Line 3: **Principal technical contact** - Give the name and phone number of the person who is knowledgeable about the used oil management activities at this site and who the DSWM may contact for further information if needed. The blank annual report package from the DSWM will be addressed to that person (if applicable).

Line 4: **Used oil collection management facilities** - Indicate the types of used oil collection activities engaged in by the facility. Check all boxes that apply!

If the facility is owned/operated by a used oil transporter, check box 1.
If the facility transports only and has no transfer facilities, check box 1.
If the facility is both a transportation and transfer facility, check box 1.b.
If the facility is a transfer facility only and does not engage in transportation, check box 1.c.

If the facility is operated by a marketer, check box 2.
If the facility is operated by a person who directs shipments of off-specification used oils to a burner, check box 2.a.
If the facility is operated by a person who first claims the used oil meets the specification, check box 2.b.

If the facility manages off-specification used oil fuel, check box 3.
If the facility engaging in management of off-specification used oil fuel is a generator marketing to a burner, check box 3.a.
If the facility engaging in management of off-specification used oil fuel is not a generator, but does market the used oil, check box 3.b.

If the facility is a burner of off-specification used oil fuel, check 3.c.
If the off-specification used oil fuel burner burns the off-specification used oil fuel in an utility boiler, check box 3.c.1.
If the off-specification used oil fuel burner burns the off-specification used oil fuel in an industrial boiler, check box 3.c.2.
If the off-specification used oil fuel burner burns the off-specification used oil fuel in an industrial furnace, check box 3.c.3

If the facility engages in the processing/refining of used oils, check box 4.
If the used oil process/re-refiner processes the used oils but does not re-refine the used oils, check box 4.a.
If the used oil process/re-refiner conducts both processing and re-refining activities at the facility check box 4.b.
If the used oil process/re-refiner re-refines used oil but does not otherwise process used oils, check box 4.c.

Line 5: **Certification** - After all documents have been compiled for submission to the DSWM, the manager or owner responsible for the sit must sign, give their title and the date signed. The certification must be made by one who is authorized to legally bind the company as when signing contracts.

Solid Waste Management Notification
Schedule B
Used Oil Management Supplemental Information

Tennessee Department of Environment and Conservation, Division of Solid Waste Management
Fifth Floor, L&C Tower, 401 Church Street, Nashville, TN 37243-1535 Phone: (800) 237-7018

1. Organization's full, legal		TN Used Oil identification number a. Land type ☐ Owner ☐	
2. Mailing address	City	State	Zip Code
3. Principal technical contact	Phone with area code ( )	SIC codes (Primary SIC first, etc.)	

4. Used Oil Management Activities - Indicate type of activity (check below all applicable boxes.)

Used oil transporter activities

1. [ ]Used oil transporter
   - [ ]a. Transport only
   - [ ]b. Transport and transfer facility
   - [ ]c. Transport facility only

Used oil fuel activities

2. [ ]Marketer
   - [ ]a. Person who directs shipments of off-specification used oil to burner
   - [ ]b. Person who first claims the used oil meets the specification

3. [ ]Off-specification Used Oil Fuel
   - [ ]a. Generator marketing to a Burner
   - [ ]b. Other marketer
   - [ ]c. Burner - Indicate device(s) - Type of combustion device(s)
     - [ ]1. Utility Boiler
     - [ ]2. Industrial Boiler
     - [ ]3. Industrial Furnace

Used oil recycling

4. [ ]Used oil processor/re-refiner
   - [ ]a. Process only
   - [ ]b. Process and Re-refine
   - [ ]c. Re-refine only

5. Certify that the information given in this document is true, accurate and complete by signing and dating.

Signature of authorized representative	Title	Date

(INSTRUCTIONS ON REVERSE)

Permit By Rule Issues, as applied to Used Oil Collection Centers

Question: If I wish to operate a used oil collection center only, do I need a Permit By Rule?

Response: Tennessee Rule 1200-1-7-.02(1)(b)2(xvi) [Permitting of Solid Waste Storage, Processing and Disposal Facilities] states that

> "The following facilities or practices are not subject to the requirement to have a permit" . . .
>
> "The storage of solid waste that is incidental to its recycling, reuse, reclamation or salvage provided that upon request of the Commissioner, the operator demonstrates to the satisfaction of the Commissioner that there is a viable market for all stored waste and provided that all waste is stored in a manner that minimizes the potential for harm to the public and the environment. Material may not be stored for more than one (1) year without written approval from the Division."

What this means is that if the collection center only stores used oil, and does not conduct any processing activities, then a permit (including a Permit By Rule) is not required.

Question: If I wish to operate a filter crusher at my used oil collection center, do I need a Permit, and if so, how do I obtain the necessary permit?

Response: A permit is necessary for solid waste processors which manage solid wastes generated off-site. If the processor is able to demonstrate that at least 75% of the materials received are recycled per year, then that processor can qualify for an exemption of the operating and maintenance fees for the filter crusher. Commercial facilities will have to pay those fees "up front" and qualify for reimbursement at year's end. City/ County/ Municipality operated collection centers which operate filter crushers will be exempted from the "up front" fees, but will be subject to paying the fee retroactively if 75% of the materials received are not recycled. The forms for a Permit By Rule may be obtained from the Division by calling (615) 532-0780.

Mail a completed package to:

> Jewell Darden
> Tennessee Department of Environment and Conservation
> Division of Solid Waste Management
> L & C Annex, 5th Floor
> 401 Church Street
> Nashville, TN 37243-1535

GENERAL INSTRUCTIONS FOR COMPLETING NOTIFICATION PACKAGE

1. Read the instructions on the back of the "Solid Waste Permit By Rule Notification", then complete all applicable sections. Do not use Ditto Marks or "Same" in filling in the spaces.

2. A U.S. Geological Survey (U.S.G.S.) minute topographic map indicating the location of the facilities is to be included. This map can provide you with the latitude and longitude information required on the notification form.

3. A scaled drawing of the facility layout is required which shows the location of used oil and filter processing and storage areas.

4. Fill out the "Processing Facility Financial Assurance Worksheet." This will be used to determine what amount of financial assurance, if any, you will be required to post for this facility.*

5. Describe your compliance with the "Solid Waste Permit By Rule Conditions" (attached).

   A. Specify what will be done on your site to meet these requirements. For example, what steps have been taken to prevent fires and explosions?

   B. Identify liquids going to a wastewater treatment facility permitted to receive wastewaters.

   C. If this facility is proposed to handle special wastes, include a description of such wastes.

6. Three copies of the aforementioned materials will be submitted to the central office for their review and approval.

7. An application fee of one thousand ($1000) dollars is to be sent to:*

   Waste Activity Audit Section
   Attn: Ms. Teri James
   5th Floor, L & C Tower
   401 Church Street
   Nashville, TN 37243-1535

8. After Central Office approval, a copy will be forwarded to your Regional Field Office for their notification.

9. The Central Office reviews and prepares an authorization letter which is sent to the applicant with copies to appropriate parties. This completes the permitting process.

10. Annual Maintenance fees of Two Thousand ($2000) Dollars are required. At the end of each year these fees may be refunded if documentary proof is submitted showing that at least 75% of the wastes were recycled.

11. If there are questions concerning the completion of this application for oil filter processing purposes, contact Jewell Darden at (615) 532-0871 in the Central Office in Nashville.

* County and Municipal Convenience Centers are exempt from these requirements.

SOLID WASTE PERMIT BY RULE CONDITIONS

RULE 1200-1-7-.02 PERMITTING OF SOLID WASTE STORAGE, PROCESSING AND DISPOSAL FACILITIES

Section 1, Part C, Permit By Rule.

A solid waste processing facility shall be deemed to have a Permit By Rule if the condition listed are met:

(I) The operator has complied with the notification requirement of part 2 of Rule 1200-1-7-.02, subparagraph I.

(II) The facility is constructed, operated, maintained and closed in such a manner as to minimize:

I. The propagation, harborage or attraction of flies, rodents or other disease vectors;

II. The potential for explosions or uncontrolled fires;

III. The potential for releases of solid wastes or solid waste constituents to the environment, except in a manner authorized by State and local air pollution control, water pollution control and/ or waste management agencies; and

IV. The potential for harm to the public through unauthorized or uncontrolled access.

(III) The facility has an artificial or natural barrier which completely surrounds the facility and a means to control entry, at all times, through the gate or other entrances to the facility.

(IV) The facility, if open to the public, has clearly visible and legible signs at the points of public access which indicate the hours of operation, the general types of waste materials that either will or will not be accepted, emergency telephone numbers, schedule of charges (if applicable) and other necessary information.

(V) Trained personnel are always present during operating hours to operate the facility.

(VI) The facility has adequate sanitary facilities, emergency communications (e.g., telephone) and shelter available for personnel.

(VII) The facility's access road(s) and parking area(s) are constructed so as to be accessible in all weather conditions.

(VIII) Except for convenience centers and land clearing wastes only, all waste handling (including loading and unloading) at the facility is conducted on paved surface.

(IX) There is no storage of solid wastes at the facility except in the containers, bins, lined pits or on paved surfaces, designated for such storage.

(X) Except for incinerators or energy recovery units, there is no burning of solid wastes at the facility.

(XI) There is no scavenging of solid wastes at the facility and any salvaging is conducted at safe, designated areas and times.

(XII) Wind dispersal of solid wastes at or from the facility is adequately controlled, including the daily collection and proper disposal of windblown litter and other loose, unconfined solid wastes.

(XIII) All liquids which either drain from solid waste or are created by washdown of equipment at the facility go to either (1) a wastewater treatment facility permitted to receive such wastewaters under T.C.A. 69-3-101 et seq. (Tennessee Water Quality Control Act), or (2) a subsurface disposal system permitted to handle the wastewater under T.C.A. 68-13-401 et seq. (Subsurface Sewage Disposal Systems).

(XIV) The facility receives no special wastes unless:

I. Such receipt has been specifically approved in writing by the Department, and

II. Special procedures and/or equipment are utilized to adequately confine and segregate the special wastes.

(XV) The operator can demonstrate, at the request of the Commissioner, that alternative arrangements (e.g., contracts with other facilities) for the proper processing or disposal of the solid wastes his facilities handles are available in the event his facility cannot operate.

(XVI) The facility has properly maintained and located fire suppression equipment (e.g., fire extinguishers, water hoses) continuously available in sufficient quantities to control accidental fires that any occur.

(XVII) All waste residues resulting from processing activities at the facility are managed in accordance with this Rule Chapter or Rule Chapter 1200-1-11 (Hazardous Waste Management), whichever is applicable, and/ or with any other applicable State or Federal regulations governing waste management.

(XVIII) The facility is finally closed by removal of all solid wastes and solid wastes residues for proper disposal.

(XIX) The facility is not located in a wetland.

(XX) The facility must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:

I. Location in the floodplain will not restrict the flow of the 100-year flood nor reduce the temporary water storage capacity of the floodplain.

II. The facility is designed, constructed, operated and maintained to prevent washout of any solid waste.

(XXI) The facility does not:

I. Cause or contribute to the taking of any endangered or threatened species of plant, fish or wildlife; or

II. Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.

(XXII) The owner/ operator may not store solid waste until the processing equipment has been installed on-site and is ready for use.

(XXIII) The owner/ operator of a solid waste processing facility which has a solid waste storage capacity of 1000 cubic yards or greater shall file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. Such financial resources are available to the Commissioner to insure the proper operations, closure and post-closure care of the facility. The types of financial assurance instruments and the amount of financial assurance required shall be in a form acceptable to the Commissioner. Such financial assurance shall meet the criteria set forth in T.C.A. 68-211-116(a).

SOLID WASTE PERMIT BY RULE NOTIFICATION

Tennessee Department of Environment and Conservation
Division of Solid Waste Management

Complete this form for each facility that is processing and/or disposing of solid waste in Tennessee. If multiple facilities exist or are planned, describe each facility and its wastes on a separate form.

Each existing facility must submit this form along with the required information [1200-1-7-.02(c)(2)] within ninety (90) days after the effective date of this rulemaking. Facilities beginning operation after the effective date of this rulemaking must submit this form along with the required information [1200-1-7-.02(c)(2)] at least thirty (30) days before beginning operation.

Line 1 (a) **Applicant name** - Give the applicant's full, legal name for this site to distinguish it from any other site the applicant or organization may own or operate in Tennessee. **Identification Number** - leave blank for Division usage.

(b) **Mailing address** - Give a complete mailing address for applicant or organization.

Line 2 (a) **Physical location or address of facility** - Give information which will aid the Division in going to the site/facility. Do not give a Post Office Box Number. Give the Tennessee County name in which the site is located.

(b) Supply the **latitude** and **longitude** of the site with the precision of degrees, minutes and seconds.

Line 3 **Responsible official name** - Give the name and phone number of the person who the Division may contact for further information about the contents of this form.

Line 4 **Manager or Operator name** - Give the name and phone number of the manager or person who is responsible for the direction of activities at the site/facility.

Line 5 (a) **Landowner name** - Give the person(s) or organization name(s) and phone number(s) of the immediate owner(s) of the property [attached letter from landowner(s) as required by Rule 1200-1-7-.02(2)(c)].

(b) **Mailing address** - Give a complete mailing address for landowner.

Line 6 (a) **Zoning authority name** - Give the name and phone number of the zoning authority plus the current zoning status of the property.

(b) **Mailing address** - Give a complete mailing address for the zoning authority.

Line 7 (a) **Type(s) of activity** - check the appropriate type(s) of activity.

(b) **Description of activities** - Unless this is a landfill, enter a brief narrative description of how the solid waste will be handled and processed from the time it enters the facility until it leaves the facility.

Line 8 **Type(s) of waste handled or processed** - Check the type(s) of waste to be handled at the facility. If the waste type is not listed, check "other" and briefly describe the source or characteristics of the solid waste.

Line 9 **Estimate of Quantity** - Provide an estimate of the daily weight ____tons/day and/or volume _____cubic yards/day that will be handled at the facility. Indicate the maximum amount of waste that can be stored in cubic yards.

Line 10 **Certification** - After all documents have been compiled for submission to the Division, the manager or owner responsible for the site must sign, give his title and the date signed. This signature must be notarized.

SOLID WASTE PERMIT BY RULE NOTIFICATION

Tennessee Department of Environment and Conservation
Division of Solid Waste Management

1. a. Facility's full, legal name			**Official use only**
b. Mailing address	City	State	Zip Code
2. a. Physical location or address of facility			County
b. Latitude (degrees, minutes, and seconds)	Longitude (degrees, minutes, and seconds)		
3. Responsible official's name			Phone number with area code ( )
4. Manager's or Operator's name			Phone number with area code ( )
5. a. Landowner's name			Phone number with area code ( )
b. Mailing address	City	State	Zip Code
6. a. Zoning authority's name	Current zoning status		Phone number with area code ( )
b. Mailing address	City	State	Zip Code

7. a. Type(s) of activity:

☐ Mulching ☐ Recycle Center ☐ Tire Processor ☐ Incineration ☐ Transfer Station
☐ Baling ☐ Tub Grinder ☐ Composting ☐ Soil Remediation ☐ Convenience Center
☐ Waste Food Processor ☐ Other _____

b. Description of activities

8. T ype(s) of waste handled or processed:

☐ Food ☐ Tires ☐ Commercial ☐ Soil ☐ Wood ☐ Medical ☐ Yard Waste
☐ Other _____

9. Amount of waste handled or processed:

Weight _____tons/day Volume _____cubic yards/day

Storage Capacity _____cubic yards

10. I certify under penalty of law that this document and all attachments were under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information.

Date_____ Signature of Responsible Official _____

Official Title _____

Signature of Notary _____

Date Commission Expires _____

(Notary Seal)

THE USED OIL COLLECTION ACT OF 1993
T.C.A. 68-211-1005

Grants for Used Oil Collection Centers
Educational Programs and
Equipment That Burns Used Oil for Fuel

Grant Application Guidelines

Statutory Authority

T.C.A. 68-211-1005 states that the fund may be used as follows:

(2) The department may award grants, subsidies and/or loans to municipalities, counties and counties having a metropolitan form of government to establish and operate used oil collection centers at publicly owned facilities or other suitable public or private locations; and provide technical assistance to persons who organize such programs.

(3) The department may award grants or subsidies to local governments to purchase equipment which burns oil as fuel. In awarding such grants or subsidies, priority shall be given to local governments who establish used oil collection centers.

(5) The department may award grants to develop and implement educational programs to encourage proper handling, disposal and recycling of used oil.

(7) The department may award grants to develop and implement programs to provide direct incentives to for-profit and not-for-profit entities to establish and operate used oil collection centers."

In addition to the above referenced code, T.C.A. 68-211-866(b) of the Solid Waste Management Act of 1991 states: "By January 1, 1995, each county shall provide directly, by contract or through a solid waste authority at least one (1) site to receive and store waste tires, used automotive oils and fluids, and lead-acid batteries, if adequate sites are not otherwise available in the county for use of the residents of the county. A single site need not receive all items for which collection is required in this section, but all items listed above shall have at least one (1) site for reception and storage in the county. The operator of any such sites provided by a county shall sell and/or cause the transfer of the recyclable materials stored at these sites to a commercial recycler or a regional receiving facility for such wastes as often as practicable." (T.C.A. 68-31-866.)

Eligibility

Municipalities, counties, and counties having a metropolitan form of government (local governments) may apply for one or all of the grants mentioned above. For-profit and not-for-profit

entities may only apply for used oil collection center grants. **All applicants** must include a letter from the Regional Solid Waste Planning Board confirming the proposal is consistent with the Regional Solid Waste Plan.

Used Oil Collection Centers

Applicants must apply to the Division of Solid Waste Management to receive a used oil collection center identification number. Confirmation of the center's registration will be required prior to making any payments pursuant to the grant. A ''Solid Waste Management Notification'' form is included for this purpose.

Allowable costs for grants to establish a used oil collection center will include:

- Used oil collection/storage tank (above ground only) which may include a compartment for the collection and storage of oil filters.
- Oil filter crushing equipment. Oil filter cutters will not be considered for funding at this time.
- Used oil chlorine/halogen detection kits to determine if oil is contaminated.
- Site preparation and costs associated with preparing a spill containment area.
- Costs to upgrade existing used oil collection center sites and equipment.

Used oil collection centers may be established at public or private locations; however, first priority will be given to local governments who currently offer no used oil collection services. Second priority will be given to local governments who are establishing a used oil collection center at an existing convenience center location. Local governments siting used oil collection centers on private property are required to have a signed agreement detailing specific terms for use of the site. Grantees will be responsible for contacting and selecting a certified transporter to service their center. Such services must be in-place prior to making payments pursuant to the grant.

Applicants must decide whether or not they will accept used oil filters and this information must be included in the application in order to receive funding consideration. The procedures for processing used oil filters are described in the "Used Oil Collection and Recycling Program Policy Guide." Collection and/or processing of used oil filters requires a Permit-By-Rule issued by the Division of Solid Waste Management and an application for this purpose is included.

Establishment and operation of the attended site and collection/storage tanks and containers purchased must be in compliance with the rules and regulations established by the Division of Solid Waste Management, Chapter 1200-1-11-.11, Standards for the Management of Used Oil and the Division of Solid Waste Assistance's policy guidance, ''Used Oil Collection and Recycling Program Policy Guide.'' Requests to purchase collection/storage tanks with capacities exceeding 300 gallonswill require additional information to justify the need for purchasing a greater capacity.

Grants will only be given to applicants:

- Who accept used, uncontaminated do-it-yourselfer oil from any person in any one (1) day up to a maximum quantity of five (5) gallons per person, per day (T.C.A. 68-211-1013).

- Who participate in the state toll-free telephone used oil information network system (T.C.A. 68-211-1013).

- Who transfer used oil only to certified transporters (T.C.A. 68-211-1014) and maintain records of all volumes of material collected on an annual basis, including the identity of the hauler and the name and location of the recycling facility to which the oil was transported.

- Who provide a letter from the Regional Solid Waste Planning Board certifying that the establishment of the used oil collection center is consistent with the Regional Solid Waste Plan.

Educational Programs

Each local government who receives a grant to establish a used oil collection center must develop and implement an educational program to encourage the public to dispose of used oil properly (T.C.A. 68-211-1003 (3)). The success of any new initiative, such as the establishment of a used oil collection center in a community, depends largely on the emphasis and effort placed on education. Listed below are some suggested objectives to consider in developing an educational program.

- Publicizing the availability of the used oil collection center, location, hours of operation, etc.;

- Educating the residents and potential users of the requirements for participation;

- Providing background information to potential users describing why their participation is important and how their community and the environment will benefit from their efforts; and

- Encouraging the proper handling, disposal and recycling of used oil.

Each applicant must submit a narrative with their application which lists the activities they will undertake to educate the public and provide tentative dates for implementation. Applicants must also certify that the educational component proposed is consistent with the Regional Solid Waste Plan. Only local governments are eligible for an educational program grant.

Equipment That Burns Used Oil for Fuel

Allowable costs for grants to purchase equipment that burns used oil for fuel will include equipment cost, flue pipe kits, freight, installation costs, and the cost of a container/tank to collect and store used oil until it is needed for fuel. Priority will be given to local governments that establish a used oil collection center.

Equipment must meet federal regulations (40 CFR 279.24) adopted by the Division of Solid Waste Management. This regulation requires heaters to:

(1) Burn only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators,

(2) Be designed to have a maximum capacity of not more that 0.5 million Btu per hour; and

(3) Have combustible gases from the heater vented to the ambient air.

The burning of used oil for fuel is limited to uncontaminated used oil. Federal regulations prohibit the burning of off-specification used oil for energy recovery. Off-specification used oil fuels are those containing more than 5 ppm arsenic, 2 ppm cadmium, 10 ppm chromium, 100 ppm lead, or 4,000 ppm total halogens or those not having a flash point of at least 100 degrees Fahrenheit. The Department will pay for used oil chlorine/halogen detection kits. However, the state does not endorse any specific testing method nor does it attest to the accuracy of any of these testing kits.

An applicant who burns used oil transported from another location and receives more that 55 gallons at any given time, must obtain an identification number and be considered a used-oil transporter. Transporter identification numbers must be obtained from the Division of Solid Waste Management and confirmation of issuance will be required prior to making any payments pursuant to the grant. **Only local governments are eligible for this grant.**

Amount of Grant Funds Available

The maximum grant amount for the establishment of a used oil collection center and purchasing equipment that burns used oil as fuel is as follows:

- Storage tank/container (approximately 300 gallons) up to $2,200;
- Minimal site preparation up to $300;
- Test kits for detecting contaminated oil (@ $6.00 per kit X 25 qty) up to $150;
- Oil filter crushers up to $1,500;
- Public Education programs up to $1,500; and
- Equipment that burns used oil for fuel up to a maximum of $6,500.

A list of potential vendors for each type of equipment is provided for your convenience and consideration. The Department of Environment and Conservation does not endorse any of these vendors. Grant offers will be issued for the maximum amount allowable for the equipment requested; however, reimbursement will be based on either the actual price or the grant maximum, whichever is less.

Application

The grant application should be completed and signed by an authorized representative of the local government. Applicants should provide complete information for each grant for which they are applying.

Applications will be funded on a first-come basis to the extent that funds are available. First priority will be given to local governments that currently offer no used oil collection services. Second priority will be given to local governments that are establishing a used oil collection center at an existing convenience center location. Local governments may apply for one or all of the available grants. **For-profit and Not-for-profit entities may only apply for a grant to establish a used oil collection center and must include evidence that they have local government concurrence on their grant request.**

Submission Date

Applications may be submitted at any time.

Awards

Approximately sixty (60) days after completion of the application review process, the Department of Environment and Conservation will announce grant awards and commit funds to meet the obligation.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE
APPLICATION FOR USED OIL PROGRAM GRANTS

Part I

APPLICANT INFORMATION:

Name of Agency/Organization

_____

Address:

_____

_____

_____

Name and telephone number of person to be contacted about the application:

Name: _____

Telephone: _____

FEIN # _____

Type of Organization:

[ ] County

[ ] Municipality

[ ] Solid Waste Authority

[ ] Planning Region

[ ] For-Profit Organization

[ ] Not-for-Profit Organization

[ ] Other (please specify)

_____

FOR NON PROFIT ORGANIZATIONS:

Chartered in Tennessee? Yes [ ] No [ ]

Date of Charter: _____

IRS Classification: _____

Attach a copy of approval letter for Charter or 501(c)(3) exemption.

To the best of my knowledge and belief, all data in this application are true and correct. The document has been duly authorized by the governing body of the applicant.

_____
Typed Name of Authorized Representative

_____
Signature

Title: _____

Telephone: _____

Date: _____

For State Use Only:

DATE RECEIVED BY STATE _____

Return to:

Department of Environment and Conservation
Division of Solid Waste Assistance
L & C Tower, 14th Floor
401 Church Street
Nashville, Tennessee 37243-0455

Part II

Provide the information requested for each type of grant for which you are applying. If applying for grant funds establish a used oil collection center and educational program, complete questions 1-11. If you are applying for equipment that burns oil for fuel, complete question 12-15.

1. Provide the complete address or site location for the proposed used oil collection center.

   _____
   _____
   _____

2. Is the proposed site publicly owned (example: city/county owned) or privately owned (example: gas station)?
   Public _____ Private _____ Name and address of property owner.

   _____
   _____

3. If the proposed site is to be located on private property, attach a copy of the signed agreement which details the terms and conditions agreed upon between your agency and the private property owner for the use of the site. Copy Attached _____ Not Applicable _____

4. Indicate if the proposed site is to be established at an existing convenience center, recycling center, or other publicly owned site. _____
   _____

5. Briefly describe the physical appearance of the proposed site. Also list each item of site preparation needed to establish collection site. _____
   _____
   _____
   _____
   _____

6. Provide justification for oil collection tank over 300 gallons. _____
   _____
   _____

7. Please list the business hours and days of the week when used oil collection services will be available. (Please complete the attached "Database Entry" form.) _____
   _____

8. Has your agency established the maximum amount of uncontaminated used oil to be accepted from any one person in any one day to be five (5) gallons as required in the "Used Oil Collection and Recycling Program Policy Guide"? YES _____ NO _____ If not, explain why _____
   _____

   If adoption of this policy was done with a formal resolution or similar document, attach a copy to this application. Copy Attached _____ Not Applicable _____

9. Will your oil collection center accept used oil filters? YES _____ NO _____

   If yes, indicate which procedures your center will use to deal with the acceptance of used oil filters. (Reference the options for processing used oil filters described in the "Used Oil Collection and Recycling Program Policy Guide." Collection and/or processing of used oil filters requires a permit issued by the Division of Solid Waste Management.) _____
   _____
   _____

10. If you are applying for educational funds, attach a narrative which lists the activities you will undertake for education, how it will be implemented, and its implementation schedule. (LOCAL GOVERNMENTS ONLY)

11. Provide a letter from the Solid Waste Regional Planning Board to *confirm that establishment of the proposed collection center and public education program are consistent with the solid waste regional plan.*

****

OIL BURNING EQUIPMENT

12. Provide the complete address where the equipment will be used.

_____

_____

Square footage of building to be heated: _____

13. Will the heater be fueled by used oil generated only at this location? YES _____ NO _____

If no, from what site will the additional used oil be transported? _____

_____

_____

_____

14. If an additional quantity of used oil is being transported (quantities in excess of 55 gallons) from another site, has a Used Oil Transporter Identification Number been issued by the Division of Solid Waste Management? YES _____ NO _____

If no, application should be made to obtain a Used Oil Transporter Identification Number prior to submitting application for grant funds. Confirmation of such ID Number will be required before grant funds will be made available to grantee.

15. Will a collection and storage container/tank be needed at the site where the used oil heater will be used? YES _____ NO _____

Permit By Rule Issues, as applied to Used Oil Collection Centers

Question: If I wish to operate a used oil collection center only, do I need a Permit By Rule?

Response: Tennessee Rule 1200-1-7-.02(1)(b)2(xvi) [Permitting of Solid Waste Storage, Processing and Disposal Facilities] states that

> "The following facilities or practices are not subject to the requirement to have a permit" . . .
>
> "The storage of solid waste that is incidental to its recycling, reuse, reclamation or salvage provided that upon request of the Commissioner, the operator demonstrates to thesatisfaction of the Commissioner that there is a viable market for all stored waste and provided that all waste is stored in a manner that minimizes the potential for harm to the public and the environment. Material may not be stored for more than one (1) year without written approval from the Division."

What this means is that if the collection center only stores used oil, and does not conduct any processing activities, then a permit (including a Permit By Rule) is not required.

Question: If I wish to operate a filter crusher at my used oil collection center, do I need a Permit, and if so, how do I obtain the necessary permit?

Response: A permit is necessary for solid waste processors which manage solid wastes generated off-site. If the processor is able to demonstrate that at least 75% of the materials received are recycled per year, then that processor can qualify for an exemption of the operating and maintenance fees for the filter crusher. Commercial facilities will have to pay those fees "up front" and qualify for reimbursement at year's end. City/ County/ Municipality operated collection centers which operate filter crushers will be exempted from the "up front" fees, but will be subject to paying the fee retroactively if 75% of the materials received are not recycled. The forms for a Permit By Rule may be obtained from the Division by calling (615) 532-0780.

Mail a completed package to:

> Will Scott
> Tennessee Department of Environment and Conservation
> Division of Solid Waste Management
> L & C Annex, 5th Floor
> 401 Church Street
> Nashville, TN 37243-1535

USED OIL GRANT CHECKLIST

PLEASE PROVIDE THE INFORMATION CHECKED BELOW

APPLICANT _____

☐ PROVIDE A LETTER FROM THE REGIONAL SOLID WASTE PLANNING BOARD INDICATING THAT ESTABLISHMENT OF USED OIL COLLECTION SITE IS CONSISTENT WITH TEN (10) YEAR PLAN.

☐ USED OIL COLLECTION CENTER MUST BE REGISTERED WITH DIVISION OF SOLID WASTE MANAGEMENT. COMPLETE THE ENCLOSED "SOLID WASTE MANAGEMENT NOTIFICATION" FORM TO RESISTER YOUR USED OIL COLLECTION SITE.

☐ APPLICANTS ACCEPTING/PROCESSING USED OIL FILTERS MUST APPLY FOR A PERMIT-BY-RULE FROM THE DIVISION OF SOLID WASTE MANAGEMENT. COMPLETE THE ENCLOSED "PERMIT-BY-RULE" FORM FOR THE PROCESSING OF OIL FILTERS.

☐ PROVIDE CERTIFICATION THAT THE MAXIMUM QUANTITY OF UNCONTAMINATED DIY OIL TO BE ACCEPTED IS FIVE (5) GALLONS PER PERSON, PER DAY.

☐ APPLICANTS MUST PARTICIPATE IN THE USED OIL INFORMATION DATABASE. PLEASE COMPLETE AND RETURN THE ATTACHED "DATABASE ENTRY FORM."

☐ PROVIDE COMPLETION DATA FOR USED OIL COLLECTION CENTER.

☐ PROVIDE RATIONALE TO JUSTIFY THE PURCHASE OF COLLECTION AND/CONTAINER WHICH EXCEEDS 300 GALLON CAPACITY.

☐ PROVIDE A LETTER FROM THE REGIONAL SOLID WASTE PLANNING BOARD INDICATION THAT APPLICANT'S EDUCATIONAL COMPONENT IS CONSISTENT WITH THE REGIONAL SOLID WASTE PLAN.

☐ PROVIDE A NARRATIVE WHICH DESCRIBES YOUR USED OIL EDUCATIONAL PROGRAM AND INCLUDE A SCHEDULE FOR ITS IMPLEMENTATION.

☐ PROVIDE SQUARE FOOTAGE OF BUILDING TO BE HEATED WITH THE EQUIPMENT.

☐ APPLICANTS PLANNING TO BURN USED OIL TRANSPORTED FROM ANOTHER LOCATION AND WHO WILL RECEIVE MORE THAN 55 GALLONS AT ANY GIVEN TIME JUST APPLY FOR A TRANSPORTER ID# FROM THE DIVISION OF SOLID WASTE MANAGEMENT. SUBMIT DOCUMENTATION OF ISSUANCE TO OUR OFFICE.

☐ OTHER _____

_____

☐ OTHER _____

_____

COMPANIES ACCEPTING USED OIL AND USED OIL FILTERS Revised 8/16/95

(Charges for filters)

Intercontinental Waste	6401 Congress Ave.	Boca Raton, FL 33487	Jerry Weiss	800 541-9444	Minimum 10 55-gal drums
Necessary Oil Co.	497 Island Rd.	Bristol, VA 24201	Eddie Necessary	703 669-2971	$85/55-gal drum
H&H Oil Recovery Co.	3580 Hwy 641 S	Camden, TN 37832	David Hardin	901 584-2043	$75-$90/55-gal drum
Goins Waste Oil Co.	1606 E. 48th Street	Chattanooga, TN 37404	Joyce Gladney	423 867-2216	$65-$85/drum uncrushed
Jack Goins Waste Oil	801 15th Street, NE	Cleveland, TN 37311	Jack Goins	423 476-7492	$65/drum; 50 mile radius
Industrial Oil Service	1130 Hwy 109 S	Gallantin, TN 37066	Richard Cotton	615 451-1806	$90/55 gal drum
Enterprise Oil	5201 Middlebrook Pike	Knoxville, TN 37923	Charles Alexander	423 690-9751	$35-$50/55 gal drum; 200 mile radius
Industrial Oil Service	2708 Crossland Rd	Knoxville, TN 37921	Robert Kita	423 693-7637	$50/55-gal drum; price varies
First Recovery	301 E. Main Street	Lexington, KY 40507	Curtis Huckaby	800 545-3520	$95-$105/55-gal drum
Laidlaw GS, Inc.	3526 Fite Rd	Memphis, TN 38053	Sam Sheddan	901 358-5695	price varies

Additional Used Oil Handlers serving Tennessee:

NAME	ADDRESS	CITY	ST	ZIP CODE	CONTACT	PHONE
Four Seasons Industrial Services, Inc.	504 Interstate Blvd. S.	Bentwood	TN	37210	Stewart Eiland	615-256-2561
A-1 Shipley's Waste Oil	2846 Harrison Pike	Chattanooga	TN	37406	Ken Shipley	423-622-7039
Business Dynamics	6111 Rutledge Pike	Knoxville	TN	37914	James Rice	423-546-7245
Continental Oil	P.O. Box 2015	Lebanon	TN	37087	Estellas Riveras	615-443-2386
Chemical Waste Management	2600 Delk Rd.	Marietta	GA	30067	Jennifer Sarfass	800-845-5037
Able Energy Company, Inc.	1245 Channel Avenue	Memphis	TN	38113		901-942-1212
All-Worth, Inc.	101 S. Park Dr.	Mt. Pleasant	TN	38474	George Carey	615-379-3215
Laidlaw Environmental	1640 Antioch Pike	Nashville	TN	37016	Carl Williams	615-833-2059
Classic Petroleum Service	P.O. Box 707	Selmer	TN	38375	John Johnson	901-645-3431
Tri-State Oil	Rt. 1 Box 154 AA	Tuscumbia	AL	35674	Jerry McCullouch	800-653-1670

REVISED LISTING 11/4/94

USED OIL PROGRAM - POTENTIAL VENDOR LIST

The following is a list of potential vendors that sell equipment needed to establish a used oil collection program. It does not represent all of the vendors who may market such equipment; and it is not an endorsement of any vendor listed. This information is provided as a convenience to grant applicants.

POTENTIAL VENDORS FOR USED OIL COLLECTION/STORAGE CONTAINERS AND TANKS

C.F. Maier Composites, Inc.
500 East Crystal
Lamar, CO 81052
(719) 336-8745

Fibrex, Inc.
3724 Cook Blvd.
Chesapeake, VA 23323
(800) 346-4458

Kosmos Recycling Systems "Igloo"
37 Skyline Drive, Suite 4304
Lake Mary, FL 32746-6213
(407) 333-0607

Chem-Tainer Industries, Inc.
P.O. Box 429
Arlington, TN 38002
(901) 867-1003

Safe-T-Tank Corp.
30 Powers Drive
Meridian, CT 06451
(800) 536-8910

WATCO Tanks, Inc.
P.O. Box 369
LaVernia, TX 78121
(800) 879-9282

Vital Visions Corp.
Route 1 Box 95
Freeport, FL 32439
(904) 835-1212
(800) 324-1318

POTENTIAL VENDORS FOR CONTAMINATION DETECTION KITS

Dexsil Corp.
One Hamden Park Drive
Hamden, CT 06517
(202) 288-3509

POTENTIAL VENDORS
FOR
OIL FILTER CRUSHERS

Heath Corp.
P.O. Box 72
Lake Wales, FL 33859-0072
(813) 638-1819

Crush-A-Matic
2805 Urbandale Lane, North
Minneapolis, MN 55447
(800) 477-7617

MBI, Inc.
20129 Meadow Lake Road
Snohomisha, WA 98290
(206) 794-9123

G A Morris Enterprises
2393 Teller Road, #108
Newbury Park, CA 91320
(805) 499-0171

Custom Compactors Corp.
8100 East Broadway
Tampa, FL 33619
(800) 223-4741

Lubrication Equipment Service
808 East Magnolia Avenue
Knoxville, TN 37917
(423) 525-8401

Authorized Equipment Services
12 Polk Avenue
Memphis, TN 38104
(901) 774-0850

Mid-South Hydraulic & Equipment
319 S. Sommerville
Memphis, TN 38104
(901) 526-3114

Interstate Marketing Corp.
104 Spence Lane
Nashville, TN 37210
(615) 254-0303

Magnum Force/Gardner Equipment
P.O. Box 106
Juneau, WI 53039
(414) 386-4880

Huth Manufacturing Corp.
225 North Michigan Avenue
Chicago, IL 60601
(312) 565-7500

John Dow Industries, Inc.
120 East Tascarwas Avenue
Barberton, OH 44203
(216) 753-6895

Jobbers Equipment Whse.
5440 NW 78th Avenue
Miami, FL 33166
(800) 274-8730

Hills, Inc
7785 Ellis Road
W. Melborne, FL 32904
(407) 724-2370

Odyssey Manufacturing, Inc.
4249 Blue Star Hwy.
Holland MI 49423
(616) 392-8833

OBERG International, Inc.
6120 - 195th Street, N.E.
Arlington, WA 98223-7714
(206) 435-9100

J.V. Manufacturing, Inc.
P.O. Box 229
Springdale, AK 72765-0229
(800) 678-7320

Mighty Mike, Inc.
3907 S.W. 12th Court
Ft. Lauderdale, FL 33312
(305) 583-2504

CONTINUATION OF POTENTIAL VENDORS FOR OIL FILTER CRUSHERS

Johnson & White Equipment Service, Inc.
1104 Fourth Avenue, South
Nashville, TN 37210
(615) 256-0443

SHRCO, Inc.
414 Main Street
Caldwell, ID 83605
(208) 454-0066

Independent Distributing - OTC
401 3rd Avenue, S.E.
Austin, MN 55912
(800) 727-WARM

Fluid Power, Inc.
460 Metroplex, Suite 112
Nashville, TN 37211
(800) 264-3391

United Recyclers, Inc.
17 Bon Aire Circle
Suffern, NY 10901-7008
(800) 232-7005

Lincoln, Inc.
One Lincoln Way
St. Louis, MO 63120
(314) 679-4300

POTENTIAL VENDORS FOR EQUIPMENT THAT BURNS USED OIL FOR FUEL

Black Gold, Inc.
Great Circle Road, #344
Nashville, TN 37228-1707
(800) 351-0643
(615) 251-0680

Alvin's Auto Equipment, Inc.
1500 - 2nd Avenue, North
Nashville, TN 37208-1710
(800) 654-7543
(615) 255-4872

American Envir. Prod., Inc.
4312 Greenway Drive
Knoxville, TN 37918
(423) 523-6200

Jet-A-Way
P.O. Box 485
Louisville, TN 37777
(800) 367-6485

Parkham Industrial Distributors, Inc.
10013 Old Brownsville Road
Louisville, KY 40241
(502) 426-9995

Lenan Corp.
2347 Kettering Street
Janesville, WI 53546
(800) 753-1601

FORNAX, Inc.
P.O. Box 65
Sanford, ME 04703
(800) 639-2077

ASE Corp./Wastebusters
P.O. Box 174
Hopkinton, MA 01748
(800) 288-6594

Reznor
1555 Lynnfield Road
Memphis, TN 38119
(800) 695-1901

Sunfire of New England
290 Smith Street
Providence, RI 02908
(800) 556-6496

Arrow Equipment, Inc./Clean Burn
Mount Eustis Road
Littleton, NH 03561
(603) 444-3313

M.R. Enterprises, Inc./
Clean Burn
P.O. Box 15349
Asheville, NC 28813
(704) 274-5222

Waste Tires

No landfill shall accept whole, unshredded tires for disposal after December 31, 1994 (T.C.A. 68-211-867). Provisions must be make for each county to provide a site to receive and store waste tires using Rule 1200-1-.02(1)(c) and 1200-1-7-.04(2)(k) as the guidance for establishing and managing a waste tire storage site (T.C.A. 68-211-866(b)).

The Tennessee Department of Environment and Conservation has issued a revised waste tire program policy guide in June 1995. A copy of the guidance document is available on the pages that follow.

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE

WASTE TIRE PROGRAM
POLICY GUIDE

Revised June 1995

Pursuant to the State of Tennessee's policy of non-discrimination, the Tennessee Department of Environment and Conservation does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service, in its policies, or in the admission or access to, or treatment or employment in, its programs, services or activities.

Equal Employment Opportunity/Affirmative Action/ADA inquiries or complaints should be directed to the Tennessee Department of Environment and Conservation, EEO/AA/ADA Coordinator, 401 Church Street, 21st floor, Nashville, TN 37243 (615) 532-0103.

Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

INTRODUCTION

The purpose of this policy guide is to assist counties with establishing new waste tire collection and storage sites and to provide site operators with a guide and reference which can be used in the daily operation of the site.

Tennessee Code Annotated (T.C.A.) Section 68-211-867(a) prohibits landfills from accepting whole, unshredded tires for disposal after December 31, 1994.

In T.C.A. Section 68-211-866(b), counties are (in part) directed to provide a temporary collection and storage area for waste tires until a mobile tire shredder shreds the waste tires, the tires are transported to an appropriate disposal facility or the tires are otherwise disposed of pursuant to regulations promulgated by the Solid Waste Disposal Control Board.

Furthermore, T.C.A. Section 68-211-867(c) directs the Department of Environment and Conservation to provide waste tire shredding at each county's designated waste tire collection and storage site. The Department contracted with a private shredding firm to provide this service.

The following sections of this policy guide should assist each county in complying with the law which includes the following requirements:

1. Establishing a waste tire collection and storage site.

2. Operating a waste tire collection site in compliance with the Department's regulations governing these sites.

3. Understanding the general requirements of the state waste tire shredding contract.

4. General guidelines for marketing whole tires by waste tire collection and storage site operators.

For more information on this program, please contact the following Division of Solid Waste Assistance personnel and/or its contractor:

Grants - Joyce Dunlap, Grants Manager
Telephone (615) 532-0075

Waste Tire Pilot Program - Wayne Brashear
Telephone (615) 532-8010

Waste tire shredding contractor - SET-TN (A Joint Venture)
Clark Jones, telephone (615) 373-2108

Waste tire shredding contract oversight - Special Waste Section
Alan Ball, telephone (615) 532-0090

SECTION I: Establishing a Waste Tire Collection and Storage Site

1. A waste tire collection site may be located at an existing permitted landfill site if the location of the site is <u>not</u>:

   a. an active disposal area;

   b. on a closed disposal area, unless no remaining area is available and remedial closure is specified in writing to the Division of Solid Waste Management;

   c. on an area to be utilized for disposal within one year; and

   d. in wetlands or the 100-year flood plain.

Refer to the waste tire storage rules for more information (Rule 1200-1-7-.04(k)(3)).

2. If a county does not have a publicly owned landfill, it may choose to establish a waste tire collection and storage site by one of the following methods:

a. Permit-by-rule: The county may choose county-owned property outside of a permitted landfill location to establish a waste tire collection and storage site. Certain conditions must be met (See Solid Waste Permit by Rule Conditions, Rule 1200-1-7-.02(1)(c)). Fees for a permit-by-rule waste tire storage facility are not required for public owned facilities. These sites are subject to inspection by Division of Solid Waste Management (SWM) personnel. To obtain a permit-by-rule:

1) Contact the appropriate Department of Environment and Conservation, Division of Solid Waste Management Field Office. Discuss your plans and request a permit-by-rule notification package (See Notification package included).

2) Submit to the Solid Waste Management Field Office three (3) bound copies of the notification package, a map (USGS 7.5 minute topographic map) indicating the location of the proposed waste tire collection and storage area, and a scaled drawing of the storage area showing the storage arrangement. After the Division of Solid Waste Management Field Office reviews and approves the documents, they will be forwarded to the Central Office in Nashville for processing and permit issuance.

b. Counties that do not have a publicly owned landfill and who choose not to establish a permit-by-rule site may designate a privately-owned landfill site as the county's waste tire collection and storage location. However, there must be a written contractual agreement between the two parties, and the Division of Solid Waste Assistance must have a copy of the contract in its files before the state's shredding contractor will be allowed to shred waste tires at the site. It is imperative that, in this circumstance, the county implement safeguards necessary to insure against out-of-state tires being brought into this facility for shredding. The rules and regulations that apply to county-owned sites also apply to these sites.

c. Counties may also choose to establish a transfer station for the **collection of waste tires only.** This will enable the placement of a hardwall enclosed trailer that may be supplied by a private firm under contract to collect and remove the waste tires (no on-site processing). This type of transfer station does not require a permit provided that:

1) waste tires are received only from municipal or private collection vehicles and placed in another transportation unit, and

2) there is **no** solid waste processing. **If any processing such as baling, shredding or separation takes place, a processing permit will be required.**

d. Counties may comply with the law by demonstrating to the Division that adequate waste tire collection sites are available in the county for use by residents. Such a demonstration would require the submission of an assurance contract similar to the example attached.

Please contact your local Division of Solid Waste Management Field Office for information regarding the rules and regulations governing the above indicated choices.

3. Conditions at any county-designated waste tire collection and storage site must meet or exceed the following:

   a. The site must be operated in compliance with all state rules and regulations.

   b. The site should have a minimum of 50 feet of working area which will allow the state's shredding contractor adequate operating space.

   c. The site should be level and have a hard-packed gravel or other stable surface. This will increase site safety and reduce the possibility of the site becoming extremely muddy due to shredder operations and weather.

   d. Construction and use of a pole barn may be permitted, but is **not recommended**. If a pole barn is used, all requirements of the regulations governing waste tire collection and storage must be met. The height of the pole barn must be sufficient to accommodate a large front-end loader that may be required to remove the tires from the barn. If the state's shredding contractor is unable to operate his equipment under the roof of the barn, the county will be required to provide equipment and/or manpower necessary to move the waste tires to the location of the contractor's shredder.

   e. The site operator should take the required action necessary to insure that waste tires received at the site are tires generated in the state of Tennessee. No waste tires brought to the site from an out-to-state location should be accepted.

4. Grant funding is available for construction for waste tire collection and storage sites in each county. T.C.A. Section 68-211-867(d) states: "From funds available from the solid waste management fund, the State Planning Office shall offer to counties a one-time-only grant to assist counties in locating, collection, and appropriately disposing of waste tires." Executive Order 50 transferred all grant administration responsibility from the State Planning Office to the Department of Environment and Conservation. Each county is eligible (under a second round of grants funding) to receive a $10,000 grant. Some of the conditions of this grant are:

   a. All counties that plan to store waste tires either directly, by contract or through a solid waste authority, until such time as tires can be shredded for more effective ultimate disposal and use may apply for grants under (T.C.A. 68-211-867(d)).

b. Applicants may request a grant to assist in locating and collecting waste tires, and in developing sites for temporary storage of waste tires. **Funds may not be used for regular operating expenses of a recurring nature.** If funds are used to cleanup tire dumps located on private property, the county must assure that every effort will be made to identify the responsible party(s) and to pursue all legal options available for recovery of the cleanup costs.

c. Those counties with a tire storage facility completed prior to June 30, 1994, as evidenced by documentation provided to the Department of Environment and Conservation, may receive a total cumulative grant of $15,000. Other counties are eligible to receive grant funds totaling $10,000.

d. Funds will be disbursed to the county upon receipt of invoices for completion of the storage site or activities covered by the grant award. The grantee must also provide proof that an adequate accounting system has been established per T.C.A. Section 68-211-874.

e. The grant application should contain complete information regarding activities to be undertaken with grant funds and be signed by a representative authorized by the applicant.

f. Applicants may submit applications at any time.

SECTION II: Operating a Waste Tire Collection and Storage Site

1. There are certain requirements that each waste tire storage site should meet. These requirements are essential to the contractor's ability to provide waste tire shredding at each site. They are as follows:

a. The contractor's shredder uses a water injection system to lubricate the tires and cool its cutting blades. The shredder, due to weight limitations, cannot travel on state and federal highways with its water tank filled since this will result in exceeding the legal weight limit. Therefore, the site should have a permanent or portable water source available.

b. Waste tires should be handled in a manner that will keep them clean. Tires should be kept free of foreign material (dirt, rocks, metal wheels, etc.). Tires that contain rock, metal wheels or toxic materials will not be shredded by the state's shredding contractor, and the county will be responsible for their disposal. Tires that are filled or coated with dirt or mud may not be shredded by the contractor.

c. If the shredded material piles up and hinders the contractor shredding the remaining waste tires, the contractor may require the county to remove the shredded material in order to continue with shredding operations. In addition, all waste tire storage areas must be situated so that the contractor may place his

shredding equipment as close to the stored tires as possible, but no more than fifty (50) feet away. The contractor is not required to furnish labor or transportation for whole or shredded waste tires located at the county's collection and storage site.

d. No pieces of waste tires, inner tubes, liners or other non-whole automotive waste tire material will be shredded by the State's contractor. If accepted by the site operator, this material should be separated from whole waste tires and may be landfilled without further processing.

2. The waste tire collection and storage site operator is required to take an independent count of the number of tires shredded during the time the state's shredding contractor is on site shredding tires. There are two alternative methods for verifying the count. One is to calculate the volume using the method on the page that follows this guidance policy entitled, "Estimating the Number of Tires in a Pile." Another method involves weighing all tires upon entering the site. Operators must keep weight tickets for the purpose of arriving at a total weight. Divide the total weight by an average of 26 pounds to determine the number of tires. The site operator is also required to sign a certification form (See Certification form attached) that is submitted to the state by the contractor. This is a very important function of the site operator since he/she may be subject to penalty of law for failure to report correctly.

3. Counties should accept at waste tire collection and storage sites only those waste tires covered by the law. Those waste tires are normally generated by tire dealers who sell **new tires** at **retail** which includes automobile, most truck, and most farm tractor and farm implement tires. T.C.A. Section 67-4-1602(4)(9) defines the following:

   a. T.C.A. Section 67-4-1602(4) defines a "motor vehicle" as "any vehicle used in the transportation of persons or property on streets or highways, including automobiles, motorcycles, trucks, trailers, semi-trailers and truck/semitrailer combinations, and also including farm tractors, trailers, trailers and machinery, but not including vehicles propelled solely by human muscular power, such as bicycles;"

   b. T.C.A. Section 67-4-1602(9) defines "tire" as a "continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle."

Basically, all motor vehicle tires may be accepted at each waste tire collection and storage site with the **exception** of heavy machinery tires, solid rubber tires, aircraft tires, high flotation tires greater than 12 inches in width, previously cut, chopped or sliced tires, tires containing metal wheels, and otherwise qualifying tires with a wheel opening greater that 42 inches.

4. The Department of Environment and Conservation, Division of Solid Waste Management, issued new waste tire collection and storage rules (Rule 1200-1-7-.04(k)(3)) that were adopted by the Solid Waste Disposal Board. The new rules became effective on June 29, 1992. The rules provide the following:

a. Whole, shredded, chipped, or circumferentially sliced tires may be stored above ground for up to one (1) year (may be stored longer with the written approval of the Division of Solid Waste Management).

b. The operator must maintain sufficient records to establish the date each tire pile was begun.

c. Tire piles must be restricted to 200 feet long, 50 feet wide, and 15 feet high and must have a 50 foot buffer zone.

d. Whole tires must be shielded from precipitation or appropriately treated for insect, vector and rodent control.

e. The storage area must be surrounded by an 18-inch high earthen berm to control surface water run-on and run-off and be sufficient to contain water in the event of a fire.

f. Surface run-off and rain water must be directed to an appropriate release point. All fire control water must be contained until approved for release.

g. Storage areas and buffer zones must be kept clear of brush or high grass.

h. Flammable liquids must not be stored and equipment with an open flame must not be used in the storage or buffer areas.

i. The site must have communications equipment capable of immediately notifying the responding fire department in the event of a fire.

j. The site operator must file a letter assuring response from the responding fire district with the Division of Solid Waste Management, and the fire district's telephone number must be posted at the facility. If service is not available, specific fire control measures must be specified in writing to the Division.

5. All waste tire collection and storage sites are subject to inspection by the Division of Solid Waste Management Field Office personnel. Any site not found to be in compliance with the waste tire collection and storage or other regulations cannot be served by the state's shredding contractor until it is determined that the site is in compliance.

SECTION III: General Provisions of the Waste Tire Shredding Contract

The waste tire shredding program is designed to comply with state law (T.C.A. Section 68-211-867(c)). The pre-disposal fee that is imposed on new tire retailers is deposited in the Solid Waste Management Fund and used to fund waste tire shredding and other assistance programs for Tennessee counties.

1. In June 1992, the Department of Environment and Conservation awarded a statewide contract for waste tire shredding. The following is a recap of the significant points of the state's shredding contract:

   a. All waste automotive tires (See Section II, paragraph 3. a.) that are collected at waste tire collection and storage sites will be shredded to a six-inch nominal size (approximately six inches wide and varying in length). Tires contaminated with excessive mud dirt may be rejected by the contractor. All tires contaminated with rock or hazardous material will be rejected by the contractor until such time the site operator can render them uncontaminated.

   b. The whole and shredded tires are the property of the collection and storage site owner/operator and may be marketed or disposed of in a sanitary or demolition landfill.

   c. The contractor will not provide transportation for whole or shredded tires from the shredding site to another location. It is the responsibility of the county to provide transportation (cost to be paid from county's budget) of shredded waste tires to the point of disposal or storage.

   d. The contractor will provide waste tire shredding at least twice per contract year (subject to the availability of waste tires at the facility) for each facility. Since all collection and storage sites are on-going in nature, the contractor is not required to remain at any site until there are no tires remaining to be shredded. Therefore, the site operator/owner is required to certify the actual number of tires shredded by the contractor regardless of the number of remaining whole tires.

   e. The contractor is required to complete a certification from that must accompany invoices for waste tire shredding services provided at the county's waste tire collection and storage site (See example attached). The operator of the site is also required to complete a certification form that must be given to the contractor which verifies the number of waste tires shredded by the state's contractor (See example attached). Both forms must be notarized by a Notary Public.

   f. Under this contract, waste tires are shredded at each county's designated and permitted waste tire collection and storage site which is in compliance with the Department's regulations on waste tires.

SECTION IV: General Guidelines for marketing whole tires by waste tire collection and storage site operators.

1. On July 1, 1995, the Division of Solid Waste Assistance offered this new grant designed to assist with the cost of operation of waste tire collection sites and/or marketing whole waste tires by some counties as an alternative to shredding and landfilling.

After three and one-half years of data and documentation, the Department has determined that a more consistent form of measurement is needed to maintain the integrity and the accountability of the Department's scrap tire management responsibility. The Department will convert reimbursement of scrap tire processing (shredding or end use) from a per tire basis of payment to a per ton basis of payment. This method of accounting is congruent with the Department's goal of measurement accuracy in the area of solid waste as established by the General Assembly in the Solid Waste Management Act of 1991. This reimbursement program will be used in conjunction with the Department's Waste Tire Option Program.

The Department will continue to reimburse its shredding contractor (SET-TN) in the amount of $0.6187 per tire. The Department will offer to convert its reimbursement to $40 per ton of shred (the equivalent of $0.6187 per tire calculation currently being used) when the Department amends SET-TN's contract to pick up the final option year. Should the state's shredding contractor decide to convert to the $40 per ton basis of reimbursement, the Department's manifest form and weight scale tickets will be used for invoicing the Department as follows:

Option 1

A. A retail dealer (or tire jockey) will deliver scrap tires at the approved tire collection site with a manifest form.

B. A county representative* will sign the manifest form at the approved tire collection site.

C. The shredding contractor (SET-TN) will shred the tires.

D. The county will transport the shred to the appropriate landfill and receive a scale ticket for the shred if the billing is submitted on a weight basis.

E. The county will return the scale ticket (or a bona fide copy) to the SET-TN crew.

F. SET-TN will submit scale tickets to the Department as accompanying documents to their monthly invoices if the billing is on a weight basis.

G. The counties that have a contract with the Department for **Option 1** of the Waste Tire Pilot Program will submit copies of the manifest forms and the scale tickets to the Department for reimbursement of $25 per ton.

Option 2

A. A retail (or tire jockey) will deliver scrap tires at the approved tire collection site with a manifest form.

B. A county representative* will sign the manifest form at the approved tire collection site.

C. A tire transporter will pick up the tires at the collection site and a manifest form and deliver the tires at the end use processor and receive a scale ticket.

D. The end use processor will sign the manifest form and return a copy to the tire transporter.

E. The tire transporter will return the scale ticket and the manifest form to the county representative.

F. The counties that have a contract with the Department for **Option 2** of the Waste Tire Pilot Program will submit the scale tickets and the manifest forms to the Department for reimbursement at $40 per ton.

G. If the county is a regional waste tire facility, the county and the Department must review and approve any county procedural changes to satisfy all accountability issues.

Option 3

A. A retail dealer (or tire jockey) will deliver scrap tires at the approved tire collection sit with a manifest form.

B. A count representative* will sign the manifest form at the approved tire collection site.

C. A tire transporter will pick up the tires at the collection site and a manifest form and deliver the tires at the end use processor and receive a scale ticket.

D. The end use processor will sign the manifest.

E. The tire transporter will return the scale ticket and the manifest form to the county representative.

F. The counties that have a contract with the Department for **Option 3** of the Waste Tire Pilot Program will submit the scale tickets and manifest forms to the Department for reimbursement at $40 per ton plus $25 per ton for in lieu tipping fees.

G. If the county is a regional waste tire facility, the county and the Department must review and approve any county procedural changes to satisfy all accountability issues.

** A county representative can be an actual employee of the county, an employee of a county contractor or other employee as understood and approved by the Department.*

2. Based on the above options, the county may use an end-use contractor to collect waste tires at their collection site (e.g. providing trailers for collection and storage). The county is required to pay their contractor for these services from the funds received by the

county through the grant. Each county Executive must certify to the State that the end/use contractor is complying with all applicable state and federal laws and regulations. The Department suggests that each county require all end-use contractors to have adequate insurance coverage. Also, counties should require some form of financial assurance which ensures the contractor's performance.

3. The Department will require a pre-numbered manifest (See sample manifest form included) system for tracking the movement of waste tires. Each retail dealer will be notified of this system of tracking. Thus, anyone (including the county) must complete a manifest form indicating the point of generation of the tires and other require information. The county is required to submit the completed manifest forms in support of each reimbursement claim submitted to the Department.

4. It is also recognized that many counties have benefited from or relied upon the Department of Correction (DOC) sites which have collected and stored waste tires at various locations across the State. These facilities are being operated by Correctional

Enterprises of Tennessee (CET). This grant offering may make this service less desirable to new tire retailers which may prefer to use a convenient local county site. Those counties who want to continue using these existing locations as their waste tire collection sites may negotiate an arrangement directly with Correction Enterprises of Tennessee. The contact person is Ms. Vicki Moses who can be reached at (615) 714-0905. This service may be funded using the grant options listed above.

5. If a county elects to receive grant funds in lieu of waste tire shredding services from the State, there should be a written contract with the end-user of the tires. The following paragraphs should be considered for inclusion in the county's end-use contract:

   a. The Contractor shall remove each waste tire collected and stored at each existing county designated waste tire collection facility at a frequency required at each location or as requested by the county.

   b. The Contractor shall remove, at the Contractor's expense, all waste tires from the designated waste tire collection and storage facility(s) prior to the Contractor's submission of an invoice to the county. The Contractor shall provide written proof of delivery of the whole waste tires to the Contractor's end-user. Such written proof of delivery shall be submitted in a format outlined in the waste Tire Manifest, and attached as a supporting document to each invoice submitted by the Contractor for services provided under this contract for each specific date and location of services provided.

   c. The Contractor shall respond to and begin work on a request for waste tire removal from the county waste tire collection and storage site no later than twenty-four (24) hours from the time of the request. Failure by the Contractor to comply with this requirement may result in termination of the contract.

d. The Contractor shall NOT otherwise dispose or temporarily or permanently store at any location other than the end-user's facility any or all waste tires removed from the waste tire collection and storage site without written permission from the county. The Contractor shall NOT be compensated for any waste tires removed from the collection and storage facility until such material is delivered to a end-user of the material.

e. The Contractor shall provide written documentation that is acceptable to the county of an end-use marketing contract(s) for the use of all waste tires removed from the county waste tire collection and storage facilities. A copy of the end-use contract(s) shall be attached to the proposal submitted to the county. This written evidence shall contain a minimum of the following information:

1) The name and address of the contracting entities, contract date and expiration date of end-use contract, and all terms and conditions of the end-use contract.

2) A detailed description of the end-use of the waste tires.

3) An agreement that the end-user of the waste tires will notify the county in writing ten (10) working days prior to the date that the end-use contract is canceled or otherwise amended.

All documentation shall contain the authorized signatures of each party involved in the contract. Documentation shall be labeled as "original" or "copy." All copied documentation shall be certified in writing by the end-user as being a true and exact copy of the original document.

f. If a work stoppage occurs, the Contractor shall notify the county no later than the next working day giving an explanation of the nature of the problem(s), and the date the Contractor expects to resume operations. The county reserves the right to determine if the delays were due to circumstances beyond the control of the Contractor.

g. The Contractor shall furnish a performance bond in the amount of ($XXX,XXX) guaranteeing full and faithful performance of all undertakings and obligations for the initial term of this contract. The bond must be issued through a company licensed by the state of Tennessee to issue such a bond. With prior permission from the county, the Contractor may substitute in lieu of a performance bond an irrevocable letter of credit from a bank satisfactory to the county, the terms of which must be approved by the county prior to issuance, or securities or cash as permitted under T.C.A. 12-4-201(b). This performance bond shall be provided in addition to other bonding demands made by the county or State.

h. The Contractor is required to obtain or possess all necessary permits and licenses that may be required by state or federal law and regulation(s) and to provide proof

of same PRIOR to contract signing. The Contractor shall also ensure that all personnel assigned are knowledgeable of and abide by the provisions of this contract and applicable permits.

i. The Contractor shall complete a Certification By Contractor which shall contain the actual number of waste tires removed from the waste tire collection and storage site. The original of form must be completed in ink, and no erasures or corrections will be allowed. The original of certification form shall accompany each Contractor invoice as an attachment for each shipment received and billed. No invoice shall be honored that does not contain the fully completed original of this form.

j. All travel expenses incurred by the Contractor in the performance of this contract shall be the responsibility of the Contractor.

k. The Contractor shall use hard-wall enclosed trailers (to collect and transport waste tires) which meets all Department of Transportation standards for over-the-road travel. All trailers and transporting equipment shall be clean and maintained at maximum operating efficiency. All equipment shall have lockable doors, and all trailers shall be kept locked when not in use. All equipment, equipment maintenance and operating cost shall be borne by the Contractor.

l. The Contractor shall also have access to backup equipment in numbers adequate to perform the requirements of this contract and shall maintain, at maximum operating efficiency, all equipment that may be required in the performance of loading and transporting waste tires from the collection site to the end user of the product. All equipment, equipment maintenance, and operating costs shall be borne by the Contractor.

m. The Contractor shall complete a Waste Tire Manifest for each shipment of waste tires to the end-use contractor. The Contractor shall ensure that all information stipulated on and all signatures required by the form is provided to the county. Incomplete, altered or inaccurate manifest forms shall not be accepted by the county. The original manifest shall accompany all Contractor invoices for services provided under this contract. This manifest form shall be completed in addition to a uniform straight bill of lading or other forms or documents that may be required by federal or state law(s).

n. The Contractor shall be compensated (fill in amount). The Contractor shall invoice the county at a frequency of no more than monthly providing an original and duplicate invoice and shall be labeled as original and duplicate. The invoice shall show the **actual quantity** of each tire collected. Each invoice shall include the required supporting documents. The invoice shall also include:

    a. The Contractor's name and address;
    b. Contractor's vendor number;

c. Contract number;
d. The current date; and
e. The date and location at which services were provided.

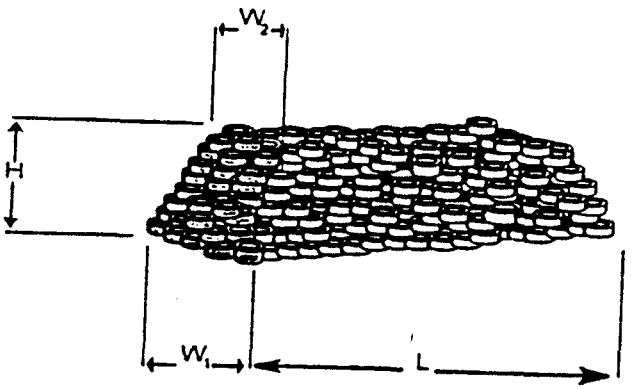
Any invoice received by the county that does not comply with these and other requirements shall be rejected and not honored for payment by the state.

o. All waste tires collected from the waste tire collection and storage site shall become the property of the Contractor. It shall become the responsibility of the Contractor to ensure that all waste tires collected are delivered to the end-use contractor. Failure to comply with this requirement may result in the termination of the contract and forfeiture of the Contractor's performance bond.

ESTIMATING THE NUMBER OF TIRES IN A PILE

To estimate the volume in cubic yards of a trapezoidal shaped tire pile, use the formula:

$$V=(1/2\ [W_1 + W_2]\ x\ H\ X\ L)$$



PROCEDURE

1. Record the general dimensions of the tire pile.
2. Use the formula to estimate the pile's volume in cubic yards.
3. Estimate the percentage of car or truck tires and their compaction.
4. Calculate the number of tires by multiplying the volume, density (compaction), and percentages of car/truck tires.

NOTE: The density or number of tires per cubic yard will depend on age, tire pile depth, method of stacking, and compaction. For very loose pile, use **8.5** car tires or **3** truck tires per cubic yard. For medium compaction, use **10** car tires or **3.5** truck tires per cubic yard.

EXAMPLE: Tire pile measurements are

bottom width (W1) = **50** feet top width (W2) = **35** feet
height (H) = **13** feet length (L) = **200** feet

$$V = \frac{(1/2\ [50 + 35]\ x\ 13\ x\ 200)}{27 \text{ cubic feet per yard}} = 4{,}093 \text{ cubic yards of scrap tires}$$

Case 1: (medium compaction, 100% car)
Number of scrap car tires in pile = 4,093 x **10** = 40,930

Case 2: (loose compaction, 80% car, 20% truck)
Number of scrap tires = (4,093 x **0.80** x **8.5**) + (4,093 x **0.20** x **3**)
= 27,832 car tires + 2,456 truck tires
= 30,288 total tires

WASTE TIRE PILOT PROGRAM ONS FOR FISCAL YEAR 1996-1997

County	1990 Census	Expected Generation Rate/Year (1)	Expected Waste Population (2)	Conversion to tons (3)	Option 1 Grant Amt. $25/ton	Option 2 Grant Amt. $40/ton	Option 3 Grant Amt. $65/ton
Anderson	68,250	47,774	38,220	596	$ 14,908	$ 23,849	$ 38,755
Bedford	30,411	21,288	17,030	266	$ 6,642	$ 10,627	$ 17,269
Benton	14,524	10,167	8,133	127	$ 3,172	$ 5,075	$ 8,247
Bledsoe	9,669	6,768	5,415	84	$ 2,112	$ 3,379	$ 5,490
Blount	85,969	60,178	48,143	751	$ 18,778	$ 30,041	$ 48,617
Bradley	73,712	51,598	41,279	644	$ 16,099	$ 25,758	$ 41,857
Campbell	35,079	24,555	19,644	306	$ 7,661	$ 12,258	$ 19,919
Cannon	10,467	7,327	5,862	91	$ 2,286	$ 3,658	$ 5,944
Carroll	27,514	19,260	15,408	240	$ 6,009	$ 9,614	$ 15,624
Carter	51,505	36,054	28,843	450	$ 11,249	$ 17,998	$ 29,247
Cheatham	27,140	18,998	15,198	237	$ 5,927	$ 9,484	$ 16,411
Chester	12,819	8,973	7,179	112	$ 2,800	$ 4,479	$ 7,279
Claiborne	26,137	18,296	14,637	228	$ 5,708	$ 9,133	$ 14,842
Clay	7,238	5,067	4,053	63	$ 1,581	$ 2,529	$ 4,110
Cocke	29,141	20,399	16,319	255	$ 6,364	$ 10,183	$ 16,547
Coffee	40,339	28,237	22,590	352	$ 8,810	$ 14,096	$ 22,906
Crockett	13,378	9,365	7,492	117	$ 2,922	$ 4,675	$ 7,597
Cumberland	34,736	24,315	19,452	303	$ 7,586	$ 12,138	$ 19,724
Davidson	510,784	357,549	286,039	4,462	$111,555	$178,486	$290,044
Decatur	10,472	7,330	5,864	91	$ 2,287	$ 3,659	$ 5,946
Dekalb	14,360	10,052	8,042	125	$ 3,136	$ 5,018	$ 8,154
Dickson	35,061	24,543	19,634	306	$ 7,657	$ 12,252	$ 19,909
Dyer	34,854	24,398	19,518	304	$ 7,612	$ 12,179	$ 19,701
Fayette	25,559	17,891	14,313	223	$ 5,582	$ 8,931	$ 14,513
Fentress	14,699	10,289	8,231	128	$ 3,210	$ 5,136	$ 8,347
Franklin	34,725	24,308	19,446	303	$ 7,584	$ 12,134	$ 19,718
Gibson	46,315	32,421	25,936	405	$ 10,115	$ 16,184	$ 26,300
Giles	25,741	18,019	14,415	225	$ 5,622	$ 8,995	$ 14,617
Grainger	17,095	11,967	9,573	149	$ 3,734	$ 5,974	$ 9,707
Greene	55,853	39,097	31,278	488	$ 12,198	$ 19,517	$ 31,716
Grundy	13,362	9,353	7,483	117	$ 2,918	$ 4,669	$ 7,587
Hamblen	50,480	35,336	28,269	441	$ 11,025	$ 17,640	$ 28,665
Hamilton	285,536	199,875	159,900	2,494	$ 62,361	$ 89,778	$162,139

WASTE TIRE PILOT PROGRAM OPTIONS FOR FISCAL YEAR 1996-1997 (continued)

County	1990 Census	Expected Generation Rate/Year (1)	Expected Waste Population (2)	Conversion to tons (3)	Option 1 Grant Amt. $25/ton	Option 2 Grant Amt. $40/ton	Option 3 Grant Amt. $65/ton
Hancock	6,739	4,717	3,774	59	$ 1,472	$ 2,355	$ 3,827
Hardeman	23,377	16,364	13,091	204	$ 5,106	$ 8,169	$ 13,274
Hardin	22,633	15,843	12,674	198	$ 4,943	$ 7,909	$ 12,852
Hawkins	44,565	31,196	24,957	388	$ 9,733	$ 15,573	$ 25,306
Haywood	19,437	13,606	10,885	170	$ 4,245	$ 6,792	$ 11,037
Henderson	21,844	15,291	12,233	191	$ 4,771	$ 7,633	$ 12,404
Henry	27,888	19,522	15,617	244	$ 6,091	$ 9,745	$ 15,836
Hickman	16,754	11,728	9,382	146	$ 3,659	$ 6,855	$ 9,514
Houston	7,018	4,913	3,930	61	$ 1,533	$ 2,452	$ 3,985
Humphreys	15,795	11,057	8,845	138	$ 3,450	$ 5,519	$ 6,969
Jackson	9,297	6,508	5,206	81	$ 2,030	$ 3,249	$ 5,279
Jefferson	33,016	23,111	18,489	288	$ 7,211	$ 11,537	$ 18,748
Johnson	13,766	9,636	7,709	120	$ 3,006	$ 4,810	$ 7,817
Knox	335,749	235,024	188,019	2,933	$ 73,328	$117,324	$190,652
Lake	7,129	4,990	3,992	62	$ 1,557	$ 2,491	$ 4,048
Lauderdale	23,491	16,444	13,155	205	$ 5,130	$ 8,209	$ 13,339
Lawrence	35,303	24,712	19,770	308	$ 7,710	$ 12,336	$ 20,046
Lewis	9,247	6,473	5,178	81	$ 2,020	$ 3,231	$ 5,251
Lincoln	28,157	19,710	15,768	246	$ 6,149	$ 9,839	$ 15,989
Loudon	31,255	21,879	17,503	273	$ 6,826	$ 10,922	$ 17,746
Macon	15,906	11,134	8,907	139	$ 3,474	$ 5,558	$ 9,032
Madison	77,982	54,587	43,670	681	$ 17,031	$ 27,250	$ 44,281
Marion	24,860	17,402	13,922	217	$ 5,429	$ 8,687	$ 14,117
Marshall	21,539	15,077	12,062	188	$ 4,704	$ 7,527	$ 12,231
Maury	54,812	38,368	30,695	479	$ 11,971	$ 19,154	$ 31,124
McMinn	42,383	29,668	23,734	370	$ 9,256	$ 14,810	$ 24,067
McNairy	22,422	15,695	12,556	196	$ 4,897	$ 7,835	$ 12,732
Meigs	8,033	5,623	4,498	70	$ 1,754	$ 2,807	$ 4,561
Monroe	30,541	21,379	17,103	267	$ 6,670	$ 10,672	$ 17,342
Montgomery	100,498	70,349	56,279	878	$ 21,949	$ 35,116	$ 57,067
Moore	4,721	3,305	2,644	41	$ 1,031	$ 1,650	$ 2,681
Morgan	17,300	12,110	9,688	151	$ 3,778	$ 6,045	$ 9,824
Obion	31,717	22,202	17,762	277	$ 6,927	$ 11,083	$ 18,010
Overton	17,636	12,345	9,876	154	$ 3,852	$ 6,163	$ 10,014

WASTE TIRE PILOT PROGRAM OPTI.. FOR FISCAL YEAR 1996-1997 (continued)

County	1990 Census	Expected Generation Rate/Year (1)	Expected Waste Population (2)	Conversion to tons (3)	Option 1 Grant Amt. $25/ton	Option 2 Grant Amt. $40/ton	Option 3 Grant Amt. $65/ton
Perry	6,612	4,628	3,703	58	$ 1,444	$ 2,310	$ 3,755
Pickett	4,548	3,184	2,547	40	$ 993	$ 1,589	$ 2,583
Polk	13,643	9,550	7,640	119	$ 2,980	$ 4,767	$ 7,747
Putnam	51,373	35,961	28,769	449	$ 11,220	$ 17,952	$ 29,172
Rhea	24,344	17,041	13,633	213	$ 5,317	$ 8,507	$ 13,823
Roane	47,227	33,059	26,447	413	$ 10,314	$ 16,503	$ 26,817
Robertson	41,494	29,046	23,237	362	$ 9,062	$ 14,500	$ 23,562
Rutherford	118,570	82,999	66,399	1,036	$ 25,896	$ 41,433	$ 67,329
Scott	18,358	12,851	10,280	160	$ 4,009	$ 6,415	$ 10,424
Sequatchie	8,863	6,204	4,963	77	$ 1,936	$ 3,097	$ 6,033
Sevier	51,043	35,730	28,584	446	$ 11,148	$ 17,836	$ 28,984
Shelby	826,330	578,431	462,745	7,219	$180,470	$288,753	$469,223
Smith	14,143	9,900	7,920	124	$ 3,089	$ 4,942	$ 8,031
Stewart	9,479	6,635	5,308	83	$ 2,070	$ 3,312	$ 5,383
Sullivan	143,596	100,517	80,414	1,254	$ 31,361	$ 50,178	$ 81,540
Sumner	103,281	72,297	57,837	902	$ 22,557	$ 36,091	$ 58,647
Tipton	37,568	26,298	21,038	328	$ 8,205	$ 13,128	$ 21,333
Trousdale	5,920	4,144	3,315	52	$ 1,293	$ 2,069	$ 3,362
Unicoi	16,549	11,584	9,267	145	$ 3,614	$ 5,783	$ 9,397
Union	13,694	9,586	7,669	120	$ 2,991	$ 4,785	$ 7,776
Van Buren	4,846	3,392	2,714	42	$ 1,058	$ 1,693	$ 2,752
Warren	32,922	23,045	18,436	288	$ 7,190	$ 11,504	$ 18,694
Washington	92,315	64,621	51,696	806	$ 20,162	$ 32,259	$ 52,420
Wayne	13,935	9,755	7,804	122	$ 3,043	$ 4,869	$ 7,913
Weakley	31,972	22,380	17,904	279	$ 6,983	$ 11,172	$ 18,155
White	20,090	14,063	11,250	176	$ 4,388	$ 7,020	$ 11,408
Williamson	81,021	56,715	45,372	708	$ 17,695	$ 28,312	$ 46,007
Wilson	67,675	47,373	37,898	597	$ 14,780	$ 23,648	$ 38,429
TOTAL	4,877,145	3,414,002	2,731,201	42,607	$1,065,168	$1,704,270	$2,769,438

(1) 70% of census
(2) 80% of Expected Generation Rate
(3) Every 100 tires equals 1.56 tons

SOLID WASTE PERMIT BY RULE CONDITIONS

RULE 1200-1-7-.02 PERMITTING OF SOLID WASTE STORAGE, PROCESSING AND DISPOSAL FACILITIES

Section 1, Part C, Permit By Rule.

A solid waste processing facility shall be deemed to have a Permit By Rule if the conditions listed are met:

(I) The operator has complied with the notification requirement of part 2 of Rule 1200-1-7-.02, subparagraph I.

(II) The facility is constructed, operated, maintained and closed in such a manner as to minimize:

I. The propagation, harborage or attraction of flies, rodents or other disease vectors;

II. The potential for explosions or uncontrolled fires;

III. The potential for releases of solid wastes or solid waste constituents to the environment, except in a manner authorized by State and local air pollution control, water pollution control and/ or waste management agencies; and

IV. The potential for harm to the public through unauthorized or uncontrolled access.

(III) The facility has an artificial or natural barrier which completely surrounds the facility and a means to control entry, at all times, through the gate or other entrances to the facility.

(IV) The facility, if open to the public, has clearly visible and legible signs at the points of public access which indicate the hours of operation, the general types of waste materials that either will or will not be accepted, emergency telephone numbers, schedule of charges (if applicable) and other necessary information.

(V) Trained personnel are always present during operating hours to operate the facility.

(VI) The facility has adequate sanitary facilities, emergency communications (e.g., telephone) and shelter available for personnel.

(VII) The facility's access road(s) and parking area(s) are constructed so as to be accessible in all weather conditions.

(VIII)Except for convenience centers and land clearing wastes only, all waste handling including loading and unloading) at the facility is conducted on paved surface.

(IX) There is no storage of solid wastes at the facility except in the containers, bins, lined pits or on paved surfaces, designated for such storage.

(X) Except for incinerators or energy recovery units, there is no burning of solid wastes at the facility.

(XI) There is no scavenging of solid wastes at the facility and any salvaging is conducted at safe, designated areas and times.

(XII)Wind dispersal of solid wastes at or from the facility is adequately controlled, including the daily collection and proper disposal of windblown litter and other loose, unconfined solid wastes.

(XIII)All liquids which either drain from solid waste or are created by washdown of equipment at the facility go to either (1) a wastewater treatment facility permitted to receive such wastewaters under T.C.A. 69-3-101 et seq. (Tennessee Water Quality Control Act), or (2) a subsurface disposal system permitted to handle the wastewater under T.C.A. 68-13-401 et seq. (Subsurface Sewage Disposal Systems).

(XIV)The facility receives no special wastes unless:

I. Such receipt has been specifically approved in writing by the Department, and

II. Special procedures and/or equipment are utilized to adequately confine and segregate the special wastes.

(XV)The operator can demonstrate, at the request of the Commissioner, that alternative arrangements (e.g., contracts with other facilities) for the proper processing or disposal of the solid wastes his facilities handles are available in the event his facility cannot operate.

(XVI)The facility has properly maintained and located fire suppression equipment (e.g., fire extinguishers, water hoses) continuously available in sufficient quantities to control accidental fires that any occur.

(XVII)All waste residues resulting from processing activities at the facility are managed in accordance with this Rule Chapter or Rule Chapter 1200-1-11 (Hazardous Waste Management), whichever is applicable, and/ or with any other applicable State or Federal regulations governing waste management.

(XVIII)The facility is finally closed by removal of all solid wastes and solid wastes residues for proper disposal.

(XIX) The facility is not located in a wetland.

(XX) The facility must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:

I. Location in the floodplain will not restrict the flow of the 100-year flood nor reduce the temporary water storage capacity of the floodplain.

II. The facility is designed, constructed, operated and maintained to prevent washout of any solid waste.

(XXI) The facility does not:

I. Cause or contribute to the taking of any endangered or threatened species of plant, fish or wildlife; or

II. Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.

(XXII) The owner/ operator may not store solid waste until the processing equipment has been installed on-site and is ready for use.

(XXIII)The owner/ operator of a solid waste processing facility which has a solid waste storage capacity of 1000 cubic yards or greater shall file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. Such financial resources are available to the Commissioner to insure the proper operations, closure and post-closure care of the facility. The types of financial assurance instruments and the amount of financial assurance required shall be in a form acceptable to the Commissioner. Such financial assurance shall meet the criteria set forth in T.C.A. 68-211-116(a).

SOLID WASTE PERMIT BY RULE NOTIFICATION
Tennessee Department of Environment and Conservation
Division of Solid Waste Management

Complete this form for each facility that is processing and/or disposing of solid waste in Tennessee. If multiple facilities exist or are planned, describe each facility and its wastes on a separate form. **Submit completed documents to the respective field office in your area.**

Each existing facility must submit this form along with the required information [1200-1-7-.02(1)(c)2] within ninety (90) days after the effective date of this rulemaking. Facilities beginning operation after the effective date of this rulemaking must submit this form along with the required information [1200-1-7-.02(1)(c)2] at least thirty (30) days before beginning operation.

Line 1(a) **Facility's full legal, name** - Give the applicant's full, legal name for this site to distinguish it from any other site the applicant or organization may own or operate in Tennessee.
Identification Number - leave blank for Division usage.

(b) **Mailing address** - Give a complete mailing address for applicant or organization.

Line 2 (a) **Physical location or address of facility** - Give information which will aid the Division in going to the site/facility. Do not give a Post Office Box Number. Give the Tennessee County name in which the site is located.

(b) Supply the **latitude** and **longitude** of the site with the precision of degrees, minutes and seconds.

Line 3 **Responsible official name** - Give the name and phone number of the person who the Division may contact for further information about the contents of this form.

Line 4 **Manager or Operator name** - Give the name and phone number of the manager or person who is responsible for the direction of activities at the site/facility.

Line 5 (a) **Landowner name** - Give the person(s) or organization name(s) and phone number(s) of the immediate owner(s) of the property [attached letter from landowner(s) as required by Rule 1200-1-7-.02(2)(c)].

(b) **Mailing address** - Give a complete mailing address for landowner.

Line 6 (a) **Zoning authority name** - Give the name and phone number of the zoning authority plus the current zoning status of the property.

(b) **Mailing address** - Give a complete mailing address for the zoning authority.

Line 7 (a) **Type(s) of activity** - check the appropriate type(s) of activity.

(b) **Description of activities** - Unless this is a landfill, enter a brief narrative description of how the solid waste will be handled and processed from the time it enters the facility until it leaves the facility.

Line 8 **Type(s) of waste handled or processed** - Check the type(s) of waste to be handled at the facility. If the waste type is not listed, check "other" and briefly describe the source or characteristics of the solid waste.

Line 9 **Estimate of Quantity** - Provide an estimate of the daily weight ____tons/day and/or volume _____cubic yards/day that will be handled at the facility. Indicate the maximum amount of waste that can be stored in cubic yards.

Line 10 **Certification** - After all documents have been compiled for submission to the Division, the manager or owner responsible for the site must sign, give his title and the date signed. This signature must be notarized.

SOLID WASTE PERMIT BY RULE NOTIFICATION

Tennessee Department of Environment and Conservation
Division of Solid Waste Management

1. a. Facility's full, legal name			**Official use only**
b. Mailing address	City	State	Zip Code
2. a. Physical location or address of facility			County
b. Latitude (degrees, minutes, and seconds)	Longitude (degrees, minutes, and seconds)		
3. Responsible official's name			Phone number with area code ( )
4. Manager's or Operator's name			Phone number with area code ( )
5. a. Landowner's name			Phone number with area code ( )
b. Mailing address	City	State	Zip Code
6. a. Zoning authority's name	Current zoning status		Phone number with area code ( )
b. Mailing address	City	State	Zip Code

7. a. Type(s) of activity:
☐ Mulching ☐ Recycle Center ☐ Tire Processor ☐ Incineration ☐ Transfer Station
☐ Baling ☐ Tub Grinder ☐ Composting ☒ Soil Remediation ☐ Convenience Center
☐ Waste Food Processor ☐ Other _____

b. Description of activities

8. T ype(s) of waste handled or processed:
☐ Food ☐ Tires ☐ Commercial ☐ Soil ☐ Wood ☐ Medical ☐ Yard Waste
☒ Other _____

9. Amount of waste handled or processed:
Weight _____tons/day Volume _____cubic yards/day

Storage Capacity _____cubic yards

10. I certify under penalty of law that this document and all attachments were under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information.

Date_____ Signature of Responsible Official_____

Official Title_____

Signature of Notary_____

Date Commission Expires_____

THE SOLID WASTE MANAGEMENT ACT of 1991
TCA 68-211-867 (d)
Grants for Locating, Collecting and Disposing of Waste Tires
Guidelines

April, 1995

Statutory Authority

Tennessee Code Annotated 68-211-867(d) states: "From funds available from the solid waste management fund, the State Planning Office shall offer to counties a one-time-only grant to assist counties in locating, collecting, and appropriately disposing of waste tires."

Executive Order 50 transferred all grant administration responsibility from the State Planning Office to the Department of Environment and Conservation.

Eligibility

All counties that plan to store waste tires either directly, by contract or through a solid waste authority, until such time as tires can be shredded for more effective ultimate disposal and use may apply for grants under (T.C.A. 68-211-867(d)).

Applicants may request a grant to assist in locating and collecting waste tires and in developing sites for temporary storage of waste tires. **Funds may not be used for regular operating expenses of a recurring nature.** If funds are used to clean up tire dumps located on private property, the county must assure that every effort will be made to identify the responsible party(ies) and to pursue all legal options available for recovery of the cleanup costs.

Amount

Those counties with a tire storage facility completed prior to June 30, 1994, as evidenced by documentation provided to the Department of Environment and Conservation, may receive a total cumulative grant of $15,000. Other counties are eligible to receive grant funds totaling $10,000.

Funds will be disbursed to the county upon receipt of invoices for completion of the storage site or activities covered by the grant award. The grantee must also provide proof that an adequate accounting system has been established (T.C.A. 68-211-874).

Application

The grant application should contain complete information regarding activities to be undertaken with grant funds and be signed by a representative authorized by the applicant.

Submission Date

Applicants may submit applications at any time.

Award

The Department of Environment and Conservation will announce grant awards and commit funds to meet the obligation approximately 45 days after receipt of a signed grant offer from the county.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE
APPLICATION FOR STATE WASTE TIRE GRANT

Part I

APPLICANT INFORMATION:

Name of County

Name and telephone number of person to be contacted about the application.

Address

( ) Telephone Number

Address

FEIN #

City/State/Zip

To the best of my knowledge and belief, all date in this application are true and correct. The document has been duly authorized by the governing body of the applicant.

Typed Name of Authorized Representative

Title

Signature of Authorized Representative

( ) Telephone

Date

Return to:

Department of Environment and Conservation
Division of Solid Waste Assistant
L & C Tower, 14th Floor, 401 Church Street
Nashville, Tennessee 37243-0455

For State use only:

Date Received by State

Part II

1. The cost categories listed below may be used for either the activity of constructing a waste tire storage site or for locating and collecting tires illegally dumped. Examples of applicable costs for each cost category is also included. Evaluate how you intend to use your waste tire grant funds, allocating the estimated costs of your planned activities to the allowable cost categories, providing a description for each. Please complete the section following this description. This information will be used to prepare the budget of your grant.

Cost Category	**Description/Detail**
Administrative & Legal Expenses	Advertising, printing, duplicating, legal fees associated with clean up of illegal tire dumps, and postage for residential mailings, etc.
Construction and Project Improvement Cost	Hourly labor costs, equipment usage and materials for construction and/or contractor services for providing fencing, berms, drainage, concrete, gravel, and other site preparation.
Equipment	Equipment needed to maintain the site and make it operational such as: radio equipment, water tanks, sprayers, etc.
Utilities Installation & Connection	Costs associated with providing electrical, water, phone services and sanitary services.
Tire Collection & Removal	Costs of hourly labor and transportation associated with clean up of illegal tire dumps.
Other (Must list specific item)	Contract or lease agreement costs for providing tire storage site, and signage for site identification, etc.

COST CATEGORY	**DESCRIPTION**	**AMOUNT**
Administrative & Legal Expenses		$
Construction/ Project Improvement		$
Equipment		$

COST CATEGORY	DESCRIPTION	AMOUNT
Utilities Installation & Connection		$
Tire Collection & Removal		$
Other (Must list specific item)		$

TIRE STORAGE SITE

2. Provide the complete address for the waste tire storage site.

   _____

   _____

   _____

3. Have you received approval from the Division of Solid Waste Management for a permit-by-rule for the waste tire storage site? YES _____ NO _____ If yes, enter the permit-by-rule number.

   _____

4. What is the approximate size of the site? _____
   How many tires can be stored at this site? _____

5. Give date the tire storage site was (will be) completed. _____

6. Does the completed site meet the requirements of departmental rules Chapter 1200-1-7-.04(2)(k)3?
   YES _____ NO _____

LOCATING AND COLLECTING WASTE TIRES

7. If grant funds will be used to locate and collect tires, list below the locations to be cleaned up and give the approximate number of tires to be collected.

   _____

   _____

   _____

WASTE TIRE COLLECTION AND STORAGE ASSURANCE CONTRACT

This contract is made and entered into by and between _____ COUNTY (hereinafter the "County") AND _____ (hereinafter "whatever") waste tire collection and storage company.

WHEREAS, Tennessee Code Annotated 68-211-866(b) requires every county in Tennessee to provide a site to receive and store waste tires if adequate sites are not otherwise available in the county for the use of the residents of the county, and,

WHEREAS, the county is mandated to have at least one site established on or before January 1, 1995; and

WHEREAS, _____ is in the waste tire collection and storage business.

WHEREFORE, the Parties agree as follows:

1. Beginning on _____ and continuing until _____, "whatever" shall make available to the citizens of the county its waste tire collection and storage services described as follows:

_____

2. The waste tire collection and storage services that "whatever" makes available to the citizens of the county shall, at a minimum, include _____ (describe the services to be provided).

3. Whatever shall charge all users of its service _____ (amount) which does not exceed the tipping fee paid by or to the county for disposal of other wastes (T.C.A. 67-4-1604).

4. Whatever shall manage all waste tires received from county residents in accordance with Rule 1200-1-7-.04(k)(3) and all other applicable laws and regulations.

5. Whatever shall obtain and maintain any and all permits/ licenses that are necessary to carry out the activities described hereinabove.

6. For and in consideration of whatever above agreed promises and activities the county agrees to pay whatever the sum of _____.
must be something

Made and entered into this _____ day of _____, 199_____.

County of _____

BY: _____
County Executive

Whatever _____

BY: _____
President

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE

CERTIFICATION BY FACILITY OPERATOR

The undersigned certifies that_____waste tires shredded at the below listed collection site during the period beginning _____, 19___, and completed on _____, 19___, as required in contract No. FA-3-10188-3-00 between the State of Tennessee, Department of Environment and Conservation, and SET-TN (A Joint Venture), and I certify under penalty of law, including but not limited to penalties for perjury, that the information contained in this form and on any attachments is true, accurate and complete to the best of my knowledge, information, and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for intentional violations.

SITE LOCATION

FACILITY NAME: _____

ADDRESS: _____

_____

OWNER'S NAME: _____

I further certify that I am not an employee of SET-TN (A Joint Venture) and that I do no receive fees, gifts, commission percentage, or other compensation, and I am in no way related to any owner(s), manager(s), officer(s) of SET-TN (A Joint Venture). (Attach an explanation if a relationship exists)

NAME: _____
(Please Print)

SIGNATURE: _____

TITLE: _____

DATE: _____

State of Tennessee
County of _____

Before me, the undersigned of the state and county aforesaid, personally appeared _____, of _____, with whom I am personally acquainted and who, upon oath, acknowledged him/herself to be the _____of _____, and that he/she as such, being authorized to do so, executed instrument of the purpose therein contained by signing the name of _____by his/herself as of_____.

Witness my hand and seal at _____, this_____ day of_____, 199___.

_____
Notary Public
My commission expires _____

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE

CERTIFICATION BY CONTRACTOR

The undersigned certifies that_____waste tires shredded at the below listed collection site during the period beginning _____, 19___, and completed on _____, 19___, as required in contract No. FA-3-10188-3-00 between the State of Tennessee, Department of Environment and Conservation, and SET-TN (A Joint Venture), and I certify under penalty of law, including but not limited to penalties for perjury, that the information contained in this form and on any attachments is true, accurate and complete to the best of my knowledge, information, and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for intentional violations.

SITE LOCATION

FACILITY NAME: _____

ADDRESS: _____

_____

OWNER'S NAME: _____

I further certify that none of the waste tire collection site owners, managers, or employees receive any form of fees, gifts, commission percentage, or other compensation from SET-TN (A Joint Venture). It is understood that, in addition to the penalties indicated above, falsification of these records will result in a forfeiture of the performance bond and may result in the termination of the contract without prior notice.

NAME OF CERTIFYING OFFICIAL: _____
(Please Print)

TITLE: _____

SIGNATURE: _____

DATE: _____

State of Tennessee
County of _____

Before me, the undersigned of the state and county aforesaid, personally appeared _____, of _____, with whom I am personally acquainted and who, upon oath, acknowledged him/herself to be the _____of _____, and that he/she as such, being authorized to do so, executed instrument of the purpose therein contained by signing the name of _____by his/herself as of_____.

Witness my hand and seal at _____, this_____ day of_____, 199___.

_____
Notary Public
My commission expires _____

SCRAP TIRE MANIFEST AND CERTIFICATION

Storage and/or disposal of waste tires is illegal in Tennessee without a permit issued pursuant to T.C.A. Section 68-211-101 et. seq.

SECTION 1: Certification of party disposing of waste tires:

Taxpayer Identification Number: _____
Name: _____
Mailing Address: _____
City: _____ State_____ Zip Code _____
Telephone: _____

I certify that these tires were collected for disposal in the normal course of business in _____ County, State of _____, by means of one or more of the following activities: (Indicate the number obtained in each activity.)

_____ Retail customer on sale of new tires
_____ Removed from junked/wrecked vehicles
Other _____

_____ from fleet vehicles
_____ rejects from recap or new tire production

Number of waste tires _____ Total Weight (if available) _____
Signature: _____ Date: _____
Title: _____

SECTION 2: Certification of Scrap Tire Hauler:

Trailer Number _____ or Vehicle Tag Number_____
Name of Hauler: _____
Address: _____City:
_____ State: _____ Zip Code: _____
Waste Hauler Permit # _____ or Taxpayer ID # _____

I hereby certify that this load contains the same quantity/weight (unless otherwise noted below*) of waste tires as indicated in SECTION 1 of this document.

*Exception: (please explain fully)_____

Signature of Hauler _____ Date: _____

SECTION 3: Certification of Landfill/Collection Site/End-Use Site Operator:

I certify that _____(number) _____(weight) waste tires were received from the hauler identified in Section 2 of this document.

Firm Name: _____
Address: _____
City: _____ State _____ Zip Code_____

Signature: _____ Date: _____

CR-3509 (5/93)

Batteries

As of January 1, 1995, no landfill could accept lead-acid batteries if an operator was aware of the presence of such materials (See T.C.A. 68-211-866(a)). Effective this same date, each county was responsible for providing a collection site to receive batteries from residents (See T.C.A. 68-211-866(b)). Collection could be provided directly at a convenience center or household hazardous waste collection event, or through contract or authority at other sites throughout the county. Additional information about batteries and proper collection and disposal is provided below.

Household batteries include primary batteries, which cannot be recharged, and secondary (rechargeable) batteries. Household batteries are available in many sizes including button, AAA, AA, C, D, N and 9-volt. Battery types (and examples of household products using them) include alkaline and zinc-carbon (flashlights, radios, toys, calculators)- nickel-cadmium (portable rechargeable products); silver oxide (calculators, watches); zinc-air (hearing aids); mercuric oxide (hearing aids)- small, sealed lead-acid (some rechargeable products)- and lithium(computers and cameras) (Miller, Chaz; Waste Age, April 1994).

Lead-acid batteries provide electricity to the electrical systems of most motorized vehicles. Lead-acid batteries are used by such things as: automobiles, motorcycles, trucks, tractors, boats, jet skis, riding lawn-mowers and off-road vehicles. The electricity produced by these batteries is generated by a chemical reaction between sulfuric acid and lead (Division of Solid Waste Assistance).

Batteries and Integrated Waste Management

With so many batteries in use, it is necessary to determine the proper way to dispose of batteries once their usefulness has expired. Rechargeable batteries are a source reduction option because their rechargeablility avoids the need to purchase primary batteries. However, rechargeable batteries do not last forever. Failure to recycle them will increase the amount of cadmium in the waste stream. Batteries are combustible, but concern over mercury and other heavy metals incinerator emissions and ash has caused several states to ban incineration of household batteries. New EPA landfill regulations are designed to limit any environmental problems caused by the eventual degradation of heavy metals found in batteries generated by households. Due to the heavy metals in batteries, household batteries are not compostable. Household batteries are not recycled back into batteries. Instead, they are collected for metals reclamation. The low value of most battery metals and the high cost of collecting and processing, lead to a low battery recovery rate (Miller 1994).

Because of the toxic properties of lead-acid batteries, it is illegal for Tennessee landfills or incinerators to accept lead-acid batteries for disposal. However, lead-acid batteries can be recycled. The components in a battery do not wear out, they just get dirty. Battery recyclers convert spent batteries into useable lead, sulfuric acid and plastic (Division of Solid Waste Assistance).

Household Battery Recycling

Curbside recycling of batteries is primarily found in few states that have either mandated collection or banned disposal of some types of household batteries. Batteries can also be collected in drop-off programs, although these programs tend to have lower participation rates than curbside collection. After collection, batteries with valuable metals go to recyclers who use thermal or chemical processes to separate out the metals. Batteries without those metals are usually sent to a hazardous waste disposal facility because they were probably mixed with batteries from non-household sources.

There are several limitations to household battery recycling. A program that mixes batteries from household and non-household sources is potentially liable for the full array of federal and state hazardous waste collection, handling and disposal requirements. EPA has proposed regulations to encourage recycling by easing the regulatory requirements for battery requirements. Limited data exists on collection and handling costs. However, costs will be high due to the small size of most household batteries and limited amounts collected by operating programs. Many products using rechargeable batteries were designed with the battery encased in the product. As a result of legislation passed in several states, products using rechargeable batteries are now designed to ease removal of the batteries. This will improve their recyclability (Miller 1994).

Lead-acid Battery Recycling

Every retail store that sells lead-acid batteries in Tennessee is required by Tennessee law to accept used batteries as "trade-ins". Recyclers then buy used batteries from retail stores. Call your local auto parts store, service station or discount department store. Many battery retailers will even accept used lead-acid batteries even when you are not actually purchasing a battery (Division of Solid Waste Assistance).

D. Household Hazardous Waste

Household hazardous waste (HHW) is waste that can catch fire, react, or explode under certain circumstances, or that are corrosive or toxic. HHWs are the leftover contents, of such consumer products as, certain paints, cleaners, stains and varnishes, car batteries, motor oil and pesticides. These products contain hazardous components that could pose a potential risk to people and the environment, if improperly disposed. Improper disposal includes, pouring wastes down the drain, on the ground, into storm sewers, or putting them out with the trash. Certain types of HHW could cause physical injury to sanitation workers; contaminate septic tanks or wastewater treatment systems; and even present hazards to children and pets if left unsecured in the home. HHW, not only requires proper collection and disposal, but also requires safe storage and usage.

The average U.S. household generates up to 100 pounds of HHW per year (EPA, Household Hazardous Waste Management, 1993). Individually, the effect of HHW may appear insignificant, however, it is the cumulative effect of every household disposing this material into a municipal landfill, or other improper disposal methods, that demands attention.

The U.S. Environmental Protection Agency (EPA) has established requirements for managing hazardous waste generated by some industries. However, Congress chose not to regulate household hazardous waste because it was considered impractical to try and regulate every household. On the other hand, local governments continue to maintain liability as owners, operators, generators and/or transporters of waste containing hazardous substances if a municipal landfill develops into a toxic or hazardous waste site through improper disposal of household hazardous waste.

Many communities have established programs to manage HHW. Many states and local governments have introduced HHW collection programs as a means to inform residents on proper use, storage and disposal of household products containing hazardous materials. Until HHW collection programs were put into place, HHW generated by individual households was most commonly dispose of at a municipal landfill, down the drain or on the ground.

In Tennessee, The Solid Waste Management Act requires each county to plan for household hazardous waste collection for its citizens (See T.C.A. 68-211-829). Each county shall provide a site and advertise the collection event where the HHW will be collected by the mobile unit. The mobile unit is operated through a contract with the State of Tennessee.

<u>County Household Hazardous Waste Collection Program</u>

The Tennessee Division of Solid Waste Assistance has published a policy guide to assist county officials with organizing a Collection Event for Household Hazardous Wastes in their counties (August 1993). Copies were sent to each county executive in the 91 counties served by the mobile collection service. A copy of the policy guide is provided on the following pages.

County Responsibilities
Household Hazardous Waste Collection Events
In Tennessee
Policy Guide

Introduction

Responsibilities: As set forth in the Solid Waste Management Act of 1991, county government has three responsibilities to fulfill prior to and during a Household Hazardous Waste Mobile Collection Event. These concern **location, advertising** and **site representative.** To assist county government, the Division of Solid Waste Assistance has defined in this policy guide the minimum criteria for fulfilling these three responsibilities. The policy guide also sets forth the minimum criteria established for scheduling a Collection Event.

Program Integrity: The criteria herein are deemed appropriate for maintaining integrity of the Household Hazardous Waste Mobile collection Program. The State of Tennessee will be liable for a set-up fee each time the household hazardous waste contractor services a county regardless of whether participants show up or not. The program can only realize its greatest benefits with the help and active participation of the county governments.

Criteria Flexibility: These criteria, including the information in all of the attachments, are subject to change based on the needs of the program and the needs of the counties being served. A county may request variances from this policy guide by requesting and justifying a variance in writing to the Manager of the Special Waste Section. The Division reserves the right to refuse household hazardous waste collection service to any county that does not put forth a reasonable effort to meet these criteria.

Manager, Special Waste Section
Division of Solid Waste Assistance
14th Floor, L & C Tower
Nashville, TN 37243-0455

Restrictions: The Contractor is allowed to accept up to one hundred pounds of acceptable household hazardous waste per household (per household). **NO CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR OR SMALL QUANTITY GENERATOR WILL BE ACCEPTED.**

Program Expiration: The Solid Waste Management Act of 1991 has a five year sunset provision. Counties are encouraged to use the State's Mobile Collection Program for Household Hazardous Waste to assist with the design of long-term programs which must be included in their Regional Solid Waste Plans.

I. Location

A. Site Criteria

The county will arrange a temporary site for the Collection Event. If the site is not county--owned, then the county will be responsible for all leasing arrangements. The leasing arrangements must be in writing and submitted to the Special Waste Section Manager 15 working days prior to the Collection Event. Seven to fifteen days prior to the Collection Event, the county will allow the household hazardous waste collection contractor to inspect the site in order to finalize plans for the Event.

The collection contractor is willing to assist the county in evaluating and selecting sites at no cost. To arrange this assistance, please contact the Special Waste Section at (615) 532-0091 or ask for assistance in the written request for a hazardous waste collection.

The temporary site should meet the following minimum requirements:

- Be accessible by paved, gravel roads or well maintained roads;
- Be located conveniently to the majority of the county residents;
- Possess a flat, asphalt or concrete working area of 100 ft X 100 ft minimum;
- Accommodate a minimum of 15 parked cars nearby;
- Have a clean water source within working area;
- Have toilet facilities (portable or permanent) within approximately 200 ft of the working area;
- Have telephone access (portable or permanent) within approximately 50 ft of the working area; and,
- Have accessibility to a grounded, 110 electrical outlet.

The county should have a site location in mind when it submits a request in writing to the State for the collection service. The request should identify any of the above criteria that are impossible for the county to meet. Deviations from the above criteria may possibly be arranged. The State reserves the right to disapprove a site that does not meet the above criteria.

B. Containers for Nonhazardous Household Waste

The county will provide one or more waste containers for the collection of nonhazardous household waste at each Collection Event and provide for the proper disposal of the nonhazardous wastes. The county may also be required to empty the waste containers, at the county's expense, during the Collection Event hours of operation if necessary.

The county will coordinate with the household hazardous waste collection contractor for the location of these waste containers so as to be convenient to the collection contractor an inaccessible to the general public.

The county will have the right to place any restrictions on the use of the waste containers necessary to protect county interests (i.e. location, use, material sorting).

The State cannot hold the collection contractor responsible for any household hazardous or other waste found in the containers after the collection contractor's departure from the site. During the site clean-up it will be the county's responsibility to inspect the waste containers for questionable waste.

II. Advertisement

A Collection Event cannot be successful without advertisement. The county will advertise in one or more newspapers of general circulation the date, hours and location of the Collection Event. To qualify as newspapers of general circulation, the newspapers generally have to be published more for their news content rather than their ads and have a paid subscription.

The advertisement should be published once at least two full weeks preceding the event date and preferably the week of the event also. It should also specify that only 100 pounds of waste will be accepted from each household during the event and specifically list the items excluded from the program as well as examples of acceptable items. The items **excluded** from collection are medical wastes, explosives, radioactive wastes and dioxins including dioxin precursors. Lastly, the ad should also indicate that the collection and disposal costs will be paid by the State of Tennessee.

The county is advised to send a copy of the proposed ad, the names(s) of the paper(s) in which the ad will appear and the advertisement date(s) to the Special Waste Section Manager five working days prior to the proposed advertisement date.

A list of materials to be accepted and excluded in the Household Hazardous Waste Mobile Collection Event is attached to this policy.

It is the State's policy to encourage the county to educate its citizens concerning the proper use and disposal of household hazardous waste. The newspaper advertisement to communicate the characteristics of household hazardous waste, the consequences of improper disposal and the ideology of reducing, reusing and recycling household hazardous waste whenever possible.

The State's household hazardous waste collection contractor and the State are committed to assisting the county with its educational campaign prior to the Collection Event. The contractor and the State have educational materials available for use by the county. The State will coordinate educational and promotional activities with the county and contractor after formal request for service has been received from the county.

III. County Site Representation

The site representative may be either a county employee or a person designated to represent the county during the Collection Event. The county will be responsible for paying any wages and expenses incurred by this site representative.

No minimum qualifications have been established for the site representative. However, the site representative should be someone who the county has confidence will safeguard any county property used by the collection contractor (primarily land and waste containers) and will manage problems that may arise during the Collection Event with the county-provided utilities and the nonhazardous waste containers.

A county representative must be on-site during the Collection Event's hours of operation and during the site clean-up. A county representative must also remain during the times the contractor is packaging the materials for shipment in case assistance is needed with site arrangements, utilities or other problems. If the representative has to leave during the packaging, he should leave a number where he can be reached if needed.

The county should designate a backup representative who can be available to serve as a substitute or to share the responsibility should the Collection Event become lengthy.

The county representative will be asked to return to the site, regardless of the hour, to inspect the site clean-up prior to the contractor's exit from the site. The State will only hold the contractor responsible for any damages that are incurred as a result of the Collection Event operation. The county has the responsibility for documenting any damages to the site.

The representative may make suggestions for improving the site security provided by the contractor in cases where the contractor may leave hazardous materials and/or equipment on site overnight.

Assisting the contractor does not mean providing labor or materials required to fulfill the contractor's obligations. At no time will the county representative be asked to participate in any activity that puts him or her in contact with household hazardous waste.

The county should give the Special Waste Section Manager, in writing, the name of its designated site representative and the backup representative. This notification should also include the home and business addresses and telephone numbers of the representatives.

IV. Procedures for Scheduling a Collection Event

The Collection Events will be schedules on a first-come, first-serve basis. The State reserves the right to make any and all scheduling changes that may be necessary. The procedures for scheduling are as follows:

A. The County Executive will make a request in writing to the Manager of the Special

Waste Section **at least 30 days prior** to the desired collection date. The letter should include the following:

1. Request to be serviced by the State's Household Hazardous Waste Contractor.

2. Indicate the date that the event is desired and at least one alternative date.

3. Identify a contact person who will serve to coordinate the fulfillment of the county's responsibilities associated with the Collection Event. (This contact person and the site representative may be the same or different persons.)

4. Identify (name and daytime telephone number) the site representative who will be on site during the day of the Collection Event.

5. Identify proposed deviations from the minimum site criteria,

6. Provide telephone numbers for the local law enforcement, emergency responses and nearest medical facilities and the address of the medical facilities.

7. Provide a list of local environmental and service organizations and their phone numbers who may be able to provide volunteers for the Collection Event.

B. The Division of Solid Waste Assistance will coordinate a Collection Event date with the contractor and the county contact person.

C. Fifteen (15) working days or more prior to the Collection Event, the county should send the Special Waste Section Manager a written description of the site proposed for the Collection Event detailing the size, the arrangement and estimated proximity of the required utilities and the address of and directions to the site. If the Collection Event is held on property not owned by the County, the agreement authorizing use of the site should also be included.

D. Fifteen (15) working days prior to the Collection Event, the county should send the Special Waste Section Manager a copy of the proposed ad, the name(s) of the paper(s) in which the ad will be published and the proposed advertisement date(s).

V. Volunteers

It is the State's policy to encourage but not to require county volunteers for the State's Household Hazardous Waste Collection Program. The household hazardous waste collection contractor will provide the labor necessary to receive, sort, pack, manifest, transport and dispose of the collected materials. The State requires that this labor force be sufficiently trained to perform these functions and that the contractor be responsible for their personal safety and their insurance coverage. The collection contractor will also be responsible for directing the traffic flow through the site in a manner that facilitates the most efficient collection operation.

There will, however, be areas where volunteers can be used, and the county should make an effort to use the resources of these individuals or groups. These are the areas of **surveys, nonhazardous household waste management and publicity.**

The State plans to ask participants in the Collection Event to complete a short survey form about how far the participants traveled, how long the materials have been stored, other items participants would want to see collected and other such information. Volunteers can be responsible for dispensing and collecting the survey forms.

Since the county will be responsible for managing the nonhazardous household wastes such as cardboard boxes and plastic bags, the county may want to enlist volunteers to help with these wastes especially if they are to be processed for recycling. This will occur only after the contractor has removed the household hazardous wastes from such containers.

Volunteers can also be used to help with publicity for the Collection Event. They can pass out brochures and post notices of the Collection Event at businesses willing to advertise for the county. They can also be used to make and post signs that direct participants to the Collection Event site.

After the county submits its request in writing to the State to schedule a Collection Event, the State will communicate with the county contact person concerning any interested volunteers.

The hazardous waste collection contractor will assist in coordinating volunteers and insuring their safety on site, as well as assist the county in contacting and recruiting organizations that can provide volunteer support. To initiate this assistance, the county should provide a list of local environmental and service organizations and their phone numbers to the Special Waste Section Manager along with the initial request for a Collection Event.

At no time will volunteers be asked to participate in any activity that puts them in contact with the household hazardous waste.

Municipal Household Hazardous Waste Collection Program

Grants are available to municipalities with a population of one hundred thousand (100,000) or more in counties with a population of two hundred eighty-seven thousand seven hundred (287,000) or more for collection of household hazardous waste at a permanent site (T.C.A. 68-211-828). This grant offer involves the cities Knoxville, Chattanooga, Nashville and Memphis. A copy of the grant application is available on the following pages.

It was determined recently that all 95 Tennessee counties are eligible for the state's mobile collection service. Because Shelby, Davidson, Knox and Hamilton Counties may also obtain grant money to build permanent HHW collection facilities, the state may use discretion when determining the scheduling priority of these four counties for a collection event.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE
APPLICATION FOR HOUSEHOLD HAZARDOUS WASTE GRANT

Part I

APPLICATION INFORMATION:

Name of Municipality

Name and telephone number of person to be contacted about the application

Address

( ) Telephone Number

Address

FEIN #

City/ State/ Zip

To the best of my knowledge and belief, all data in this application are true and correct. The document has been duly authorized by the governing body of the applicant.

Typed Name of Authorized Representative

Title

Signature of Authorized Representative

( ) Telephone Number

Date

Return to:

Department of Environment and Conservation
Division of Solid Waste Assistance
L & C Tower, 14th Floor, 401 Church Street
Nashville, Tennessee 37243-0455

For State use only:

Date Received by State

Part II

1. The cost categories listed below may be used for development and implementation of a permanent household hazardous waste collection program. Examples of applicable costs for each cost category is also included. Evaluate how you intend to use the household hazardous waste grant funds, allocating the estimated costs of your planned activities to the allowable cost categories, providing a description of each. Please complete the section following this description. This information will be used to prepare the budget of your grant.

Cost Category	**Description/Detail**
Administrative & Legal Expenses	Advertising, printing, duplicating, and postage for residential mailings, etc.
Land Acquisition	Price of land, surveys, title search, transfer fees, recording fees, legal fees and related costs to acquire a site.
Consultant Services	Contracts for planning, design and construction and engineering services.
Construction & Project	Hourly labor costs, equipment usage and materials for construction contractor(s) Improvement to build the facility. Construction would include all site preparation, fencing, gravel, concrete, etc.
Equipment	Equipment needed to maintain the site and make it operational, including freight, installation and setup of equipment.
Utilities Installation & Connection	Costs associated with providing electrical, water, phone services and sanitary services.
Other	Must list specific item.

COST CATEGORY	**DESCRIPTION**	**AMOUNT**
Administrative & Legal Expenses		$
Land Acquisition		$
Consultant Services		$
Construction & Project Improvement		$

COST CATEGORY	DESCRIPTION	AMOUNT
Equipment		$
Utilities Installation & Connection		$
Other (Must list specific item)		$

Part III Content of Narrative

Provide the information about your city's proposed household hazardous waste collection program in accordance with the following narrative format. Please give complete, concise answers.

1. Discuss the planned service area and availability of the site where the household hazardous waste collection center will be constructed. Describe the activities you plan to complete with the grant funds requested. Identify sources of additional funds needed to complete construction and implementation of the permanent household hazardous waste site. Indicate whether these funds are formally committed.

2. In addition to the itemized budget for the funds shown in Part II of the application, indicate by quarter the amount of funds to be drawn down over the term of the project period. Provide a proposed schedule of planning, design, and construction activities. Be realistic in establishing this schedule as these dates will be used to determine the grant period.

3. Discuss the need for a permanent household hazardous waste collection site as it relates to your specific circumstances. Include in this discussion any household hazardous waste activities previously completed (i.e., roundups, sweeps, costs, level of participation within the area of the sweep, and amounts and types of household hazardous waste collected, etc.)

4. Discuss the proposed operation of your household hazardous waste collection program which could include conditionally exempt small quantity generators (Refer to EPA's memorandum from Sylvia K. Lowrance, dated July 22, 1992). Include in this discussion your plan for handling materials, sorting, categorizing, packing, labeling, manifesting, transporting, and disposing of the collected materials. Discuss the wastes you will accept and your plan for dealing with unknown wastes. Include in the plan how you will deal with recyclable materials, i.e. batteries, solvents, motor oil and other fuels. Discuss staffing of the collection center and include resumes where available. Discuss work you plan to complete using city employees and work you plan to subcontract to others. Discuss criteria you will use to evaluate potential proposals from subcontractors.

   Include any other special consideration (public notification and education), conditions, comments or other pertinent information about your proposed program.

5. Discuss the potential for expansion or integration into a regional collection site for household hazardous waste explaining how such service may interact with other governments within the area and/or region.

Tennessee Household Hazardous Waste Program
Answers to 13 Commonly Asked Questions
August 1993

1. What are the state's criteria for site selection?

In general, a county may use any location, owned or leased, within its borders that meets certain minimum criteria. The criteria concern proximity to necessary utilities and population centers. For further information, a copy of the policy is available upon request. It is entitled "County Responsibilities, HHW Collection Events in Tennessee, 7/93 ". A copy may be obtained by calling the Special Waste Section at (615) 532-0091.

2. Can the county collect household hazardous waste at several locations within the county such as convenience centers and then bring the collected wastes to the collection site on the day of the Collection Event?

Even though it might encourage more participation, this action is not allowed because of the potential liability and added responsibility to the county. In order to remain legal, county collecting household hazardous wastes at various locations would have to personally interview each participant and refuse paints, solvents, petroleum products, pesticides, cleaners, etc., from businesses. (Products that exhibit hazardous characteristics discarded by any business **are** regulated by Tennessee's Hazardous Waste Regulations.) The consequences of not properly screening could result in violation of state and federal transportation and handling regulations which could result in fines and other penalties. Additionally, a collection site always has the potential for becoming a superfund site if the household hazardous waste is spilled or burned. The county would also have the responsibility of interviewing participants for details about waste in unlabeled containers and giving these details to the State's contractor for identification purposes. Lastly, the county would be responsible for the disposal of any waste the State's contractor is unwilling to accept from the county.

3. How can households be made to drive across the county to participate in the Event?

Obviously a household cannot be made to participate or to save household hazardous wastes for collection. In fact, data generated by other states' programs show that the participation rate in a household hazardous waste collection may be low in spite of good advertising. However, the advertising and the Collection Event itself begin an education process within the county on proper management of household hazardous waste. It is hoped that this education will prove beneficial to counties when counties develop their own programs for solid waste management and solid waste reduction as a part of their regional solid waste planning as well as provide an outlet for those items currently stored in garages and basements. It will be possible for the county to hold the Collection Event in a different location from one year to the next.

4. How often can Collection Events be scheduled?

Collection Events are scheduled on a first-come, first-served basis. The State intends to make this service available to all Tennessee counties covered under this program even though funds

are limited. Due to financial and other constraints, when scheduling Collection Events, priority will be given to those counties who have not yet held a Collection Event. Counties which have held at least one Collection may be delayed in scheduling additional Events since the Contractor may be previously scheduled to attend other county Collection Events. There is no established minimum or maximum number of events that may be scheduled for a county. However, the State will not schedule more than one Event for a one day Collection Event. Furthermore, under no circumstances does the State recommend to counties that they collect and store household hazardous waste at any location within the county awaiting the next scheduled Collection Event by the State's Contractor.

5. Will unknown materials be accepted?

As far as the homeowner is concerned, unknown and unlabeled materials may be brought to the collection event. Homeowners should come prepared to share as much information possible about unlabeled materials to assist the contractor with proper identification. With such cooperation from citizens, there are few materials the contractor's chemists cannot identify. Any material that cannot be identified in the presence of the participant will be returned to the participant. (The contractor cannot properly transport or dispose of unidentified material.)

6. Will farm pesticides be accepted?

It is the intent that all **households** may participate, including farms. A farm household, like other households, is limited to bringing 100 pounds of total waste to the Collection Event. This total may include pesticides used on the farm provided that they are not subject to regulation by Tennessee's Hazardous Waste Management Regulations. Pesticides, regardless of type or quantity, are subject to regulation if the farming operation exceeds being a household activity. The collection contractor is responsible for determining whether a pesticide is regulated or not, and can advise a farmer on how to properly dispose of a pesticide that is regulated.

7. Will the county be responsible for any remaining household hazardous waste?

The contractor is required by his contract with the State to properly package and dispose of every household hazardous waste item accepted during the collection event. The contractor has the responsibility to reject any waste he is unable to legally dispose of while it is still in the possession of the owner. The contractor will be expected to accept all materials except those household wastes specifically excluded by contract and business generated wastes. The contractor will not be responsible for the removal and disposal of any non-hazardous household waste (ordinary solid waste).

8. What will the contractor do with the collected wastes?

The contractor disposes of the collected household hazardous wastes at privately - owned facilities that have licenses and permits to dispose of hazardous waste. These facilities may include incinerators, chemical waste landfills or recycling processors. The contractor will be allowed to choose the facilities he uses. The State will only reimburse the hazardous waste contractor for waste disposed of by licensed and permitted disposal facilities.

9. Will the wastes be disposed of in my county?

All wastes are to be disposed of at privately owned facilities licensed and permitted for hazardous waste disposal. The contractor will have to ship the wastes to such facilities, even out of state if necessary, in order to comply with this requirement. There is no obligation on the county's part to provide the collection contractor with a licensed and permitted disposal facility within the county's borders.

10. Will there be records that document where the contractor disposed of the wastes?

The contractor is obligated by the terms of his contract to submit to the State certificates of disposal from licensed and permitted disposal facilities in order to receive payment for the services rendered. These certificates are required 30 days from the date of the collection event. The State will compare the quantities of wastes disposed with the quantities of wastes manifested for shipment during the collection event.

11. Will the contractor provide insurance for the collection event?

The contractor is required by his contract with the State to accept all legal responsibility for the safety and well-being of all persons and property on site during the collecting event. The contractor is required to carry certain types and amounts of insurance necessary to cover his liability, and has the right to restrict any of the work areas from the general public.

12. How is the collection program funded?

The household hazardous mobile collection unit program is funded from the Solid Waste Management Fund. This fund was established by the Solid Waste Management Act of 1991. The fund is financed by the $1.00 predisposal fee collected on the retail sale of new automotive tires in Tennessee, and a $0.85 surcharge per ton on waste being dumped in Tennessee landfills. In addition to the household hazardous waste collection program, the monies from the Solid Waste Management Fund are used to fund all other programs established by the Solid Waste Management Act of 1991. These include a grant program for county recycling equipment, grants for landfill scales and tire storage sites and for the waste tire shredding program.

13. How was the contractor selected?

The contractor was selected through a proposal evaluation process. Each contractor was required to submit a proposal on a specified time and date for evaluation purposes. A Request for Proposal (RFP) was mailed to 64 companies in the hazardous waste industry 42 days prior to the required proposal submission date. The RFP defined the requirements of the program and specified the information required in the proposal. The potential household hazardous waste contractors were required to discuss their experience in household hazardous waste collection, their company organization, the technical aspects of their proposed service to Tennessee and the cost to the State for the service. Each of these sections were evaluated by a separate group of Department employees and the results of these sections were summed to a total. A contract was awarded to the contractor receiving the most points from the evaluation.

Household Hazardous Waste Mobile Collection and Disposal Program
List of Acceptable Materials

I. Household Cleaners
   a. Drain Openers
   b. Oven Cleaners
   c. Wood and Metal Cleaners and Polishes
   d. Toilet Bowl Cleaners
   e. Disinfectants

II. Automotive Products
   a. Oil and Fuel Additives
   b. Grease and Rust Solvents
   c. Carburetor and Fuel Injector Cleaners

III. Home Maintenance and Improvement Products
   a. Paint Thinners
   b. Paint Strippers and Removers
   c. Adhesives
   d. Paint

IV. Lawn and Garden Products
   a. Herbicides
   b. Pesticides/ Rodenticides
   c. Fungicides/ Wood Preservatives

V. Miscellaneous
   a. Batteries
   b. Fingernail Polish Remover
   c. Pool Chemicals
   d. Photo Processing Chemicals
   e. Medicines/ Drugs
   f. Reactives (aerosols/ compressed gas)

Household Hazardous Waste Mobile Collection and Disposal Program
List of Materials Specifically Excluded

I. Medical Wastes (as defined by Rule 1200-1-7-.01(2))

II. Explosives or Ordinance (e.g., ammunition, DOT Class A, B or C explosives)

III. Highly Radioactive Compounds (e.g., plutonium, uranium)

Additional Reading:

Household Hazardous Waste Management, EPA, 1993.

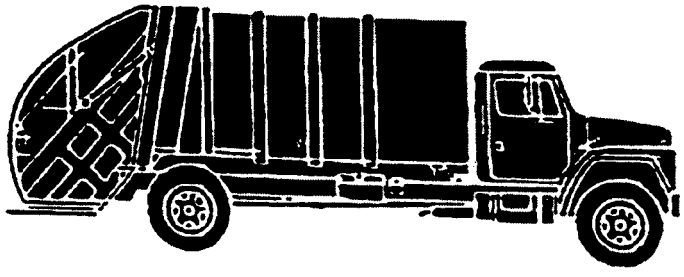
Municipal Disposal of Freon-Containing Appliances Under the Clean Air Act: A Case Study of Knoxville, TN, Prepared for the Tennessee Valley Authority by Bryan Yielding, Knoxville Office of Solid Waste, Knoxville, TN, July 1993.

"Product Profiles," by Chaz Miller, Waste Age, April 1994.

Solid Waste: Transporation and Other Costs, The University of Tennessee County Technical Assistance Service, Prepared by Lewis D. Bumpus, Solid Waste Management Consultant.

Chapter 7

Transportation



TRANSPORTATION

A. Transporter Registration

As specified in the "Solid Waste Management Act of 1991, "all transporters of municipal solid waste shall register annually with the Department" (T.C.A. 68-211-852). In addition to registering, transporters are required to submit information that will be used in the development of the Tennessee regional solid waste management plan. As defined by law and regulation, a transporter must register each vehicle if:

1. a vehicle is over 5 cubic yards capacity; and
2. hauls waste to a Class I landfill at least weekly; and
3. hauls waste that is collected in Tennessee or hauls waste collected outside of Tennessee but is disposed of in Tennessee.

To accomplish the required registration, a windshield decal or sticker must be purchased for each vehicle at a fee of fifty dollars.

Upon processing requests for stickers, all landfills will be notified to restrict access to non-permitted transporters.

B. Transporter Registration Fee

Every person who transports municipal solid waste that originates or terminates in Tennessee shall pay an annual fee of fifty dollars per vehicle. Any vehicle of less than five cubic yards capacity is exempt. Municipal solid waste is regulated as per the definition in Public Chapter 451 Section 2(a)(10). A maximum fee of $15,000 per company or municipal corporation shall apply. The fee specified in the paragraph shall be due annually on October 1.

The registration form for municipal solid waste transporters and instructions are available on the pages that follow.

C. Transporting Solid Waste

Tennessee law requires any motor vehicle, which transports litter or any material likely to fall or be blown off onto the highways, to have that material in an enclosed space or fully covered by a tarpaulin (T.C.A. 39-14-503(a)(1)). Litter is defined as "garbage, refuse, rubbish and all other waste materials" (T.C.A. 39-14-501(2)).

INSTRUCTIONS FOR COMPLETING THE MUNICIPAL SOLID WASTE TRANSPORTER REGISTRATION

1. Place the company name, mailing address with zip code, and company I.D. number in this block. Only one I.D. number per company will be assigned, not one per truck.
2. Enter the company telephone number here, complete with the area code.
3. Give the name of the person or corporation that owns the company.
4. (A) Place the total number of trucks the company is registering in Tennessee in the first blank in this box.
   (B) Multiply this number by $50.00 and enter the total in the second blank in this box.
   (C) If 300 or more trucks are being registered, follow instruction (A) above, then go to the last line in this box and mark the checkbox for the Fleet Rate.
5. Give the physical address (not a Post Office box) of the company's main Tennessee office.
6. **DO NOT WRITE IN THIS BOX.** The Department will place the number(s) of the decal(s) issued to your company here.
7. Enter the total amount of waste you hauled from July 1, 1995 through June 30, 1996 in tons or cubic yards in the blank space and check the appropriate box.

* Enter each county from which you collect waste in the "County Where Waste is Picked Up" column. For out-of-state waste, enter the two-letter state abbreviation (example: AL for Alabama, GA for Georgia, etc.). **Each pickup county or state should be entered on a separate line.**
* Enter waste type (Household, Tires, Other) under the "Type of Waste" column. ("Other" is waste collected from commercial facilities, apartments, condominiums, offices, and cafeteria waste from industries; the "tires" classification is only used when the entire load is tires.) **Each type of waste should be entered on a separate line.**
* Enter the number of homes, apartments, businesses, etc. in the "Number of Homes, Apartments, Businesses, etc." column.
* Enter the total amount of waste collected in the county in the "Amount of Waste" column.
* Enter the name or Site I. D. number of the facility where the waste was hauled under the "Name (or Site I. D. Number) of Landfill or Processing Facility" column. **Information for each specific landfill or processing facility should be entered on a separate line.**
* Example: Pick-up county--Davidson; type of waste--Household; Number of homes--300; Amount of Waste--100 tons; Name of Facility--Bordeaux Landfill. (If waste was hauled to an out-of-state facility, use the two-letter state abbreviation.) If you do not have enough room in this box to record all your activity, use the Continuation Sheet on the back of this form.
* Processed waste haulers enter the name or ID number for the shipping facility, the waste amount, and the receiving facility name or ID number.

If more than one entry is made in this section, the total amount of waste for all entries must add up to the total entered on the top line of section 7.

8. The owner or an officer capable of binding the company must sign and date the form. The person signing the form should print their name and title in the space provided.

Please make check payable to State of Tennessee, Division of Solid Waste Management, and mail the check and completed form to:

Tennessee Department of Environment and Conservation
Division of Solid Waste Management, Non-Hazardous Section
5th Floor, L&C Tower
401 Church Street
Nashville, Tennessee 37243-1535

MUNICIPAL SOLID WASTE TRANSPORTER REGISTRATION
DIVISION OF SOLID WASTE MANAGEMENT
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

(1) Company Name, I.D. Number, & Mailing Address:	Page _____ of _____ Page(s) (2) Telephone Number: ( ) (3) Owner's Name: (4) Total Number of Trucks _____ x $50 Each = $ _____ Over 300 Trucks, $15,000 Fleet Rate ☐
(5) Physical Location of Main Office:	(6) Decal Serial Number(s): (For Department Use Only.) Numbers Below Are For Added or Replacement Decals

(7) Amount of waste hauled between July 1, 1995 and June 30, 1996 _____ ☐ tons or ☐ cu yd

IN THE SPACE BELOW, ENTER THE COUNT WHERE THE WASTE WAS PICKED UP, THE TYPE OF WASTE (HOUSEHOLD, TIRES, OTHER), THE NUMBER OF HOMES/APARTMENTS/BUSINESSES, ETC., THE AMOUNT OF WASTE, AND THE NAME OF THE LANDFILL OR PROCESSING FACILITY FOR ALL WASTES HAULED. THE TOTAL OF ALL THE TYPES OF WASTE MUST ADD UP TO THE TOTAL ENTERED ON THE LINE ABOVE. FOR WASTE COLLECTED OR DELIVERED OUT OF STATE, USE THE TWO-LETTER STATE ABBREVIATION INSTEAD OF PICKUP COUNTY OR LANDFILL/PROCESSING FACILITY NAME. IF ADDITIONAL SPACE IS NEEDED, USE CONTINUATION SHEET(S) ON THE BACK OF THIS FORM.

County Where Waste is Picked Up	Type of Waste (Household, Tires or Other)	Number of Homes, Apartments Businesses, Etc.	Amount of Waste	Name (or Site I.D. Number) of Landfill or Processing Facility

(8) I certify that the information given above is true, accurate, and complete.

_____ (Signed)

_____ (Date)

_____ (Please Print Name)

_____ (Please Print Title)

CENTRAL OFFICE USE ONLY BELOW THIS LINE.

CD Number	Date Rec'd	Amount	Receipt	Comments

CN-0892 (Rev. 3-93)

MUNICIPAL SOLID WASTE TRANSPORTER REGISTRATION CONTINUATION SHEET

(1) Company Name and Transporter I.D. Number:	If Continuation Sheet(s) Are Being Used, Please Number Them and Show the Total Number Being Used. Page _____ of _____ Page(s)

(7) List Information Below the Same as You Did in Item (7) on the Other Side of This Form.

County Where Waste is Picked Up	Type of Waste (Household, Tires or Other)	Number of Homes, Apartments Businesses, Etc.	Amount of Waste	Name (or Site I.D. Number) of Landfill or Processing Facility

(8)b. I certify that the information given above is true, accurate, and complete.

_____ _____

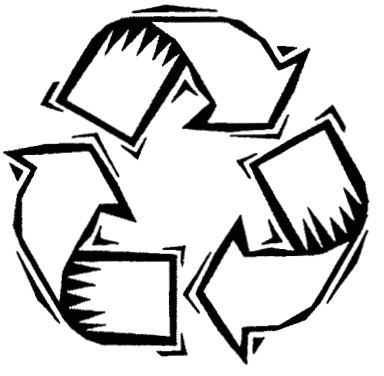
(Signed) (Date)

_____ _____

(Please Print Name) (Please Print Title)

Chapter 8

Waste Reduction



WASTE REDUCTION

The Solid Waste Management Act established a twenty-five percent (25%) reduction goal for each solid waste region in the state (T.C.A. 68-211-861(a)). The goal is to reduce the amount of solid waste disposed of at each municipal solid waste disposal facility and incinerator, measured on a per capita basis within the region by weight by December 31, 1995.

The Tennessee Department of Environment and Conservation (TDEC) established guidelines for measuring and evaluating the waste reduction goal (See Rule 1200-1-7-.09). A copy of the Guidelines on the 25% Waste Reduction Goal is available on the pages that follow.

A. Methods

Presented in the Guidelines are several acceptable waste reduction methods to divert, reduce or recycle quantities of solid waste materials. Waste reduction methods discussed in this chapter will cover similar areas presented in the Guidelines which require permits or have grant monies available to develop reduction programs. The areas presented are recycling, composting, Class III/IV landfilling, and air curtain destructors/pit burners.

GUIDELINES ON THE 25%

WASTE REDUCTION GOAL

As Required By

The Solid Waste Management Act of 1991

T.C.A. 68-211-861(d)

Tennessee Department of Environment & Conservation

Division of Solid Waste Assistance

January 1994

25% WASTE REDUCTION GOAL GUIDELINES

Introduction

The intent of the 25% waste reduction goal as required by the Solid Waste Management Act of 1991 (T.C.A. Section 68-211-861) is to reduce by 25% percent the amount of waste being disposed of at Class I landfills and municipal solid waste incinerators by December 31, 1995, over that which was disposed in 1989, the base year. This is to be measured by municipal solid waste (MSW) regions on a per capita basis and by weight (e.g., tons per person per year). For most regions, the base year will be 1989 unless the region can demonstrate that the data was clearly in error.

Presently, there is a vast disparity across the state between existing solid waste reduction programs due to market availability, local resources, socioeconomic trends, etc. Consequently, the evaluation criteria for assessment of community efforts toward meeting the waste reduction goal should encompass the necessary latitude to assure equitable and reasonable treatment of these diverse communities.

The initial phase of implementation of this 25% waste reduction goal (through December 31, 1995) will provide information on the actual ability and potential of local governments (rural and urban) to reduce waste. The initial phase will also provide information on how waste reduction impacts a community economically as well as environmentally. This information is necessary in order to make sound judgements on future state requirements for waste reduction programs.

The intent of the Tennessee Department of Environment and Conservation is to establish guidelines for measurement and evaluation of this goal which will foster an appropriate regulatory environment for assessing efforts toward the 25% waste reduction goal. It is also the intention of the Department to keep administration and accounting for evaluating the 25% waste reduction goal as simple as possible. (See Rule 1200-1-7-.09).

A description of the waste reduction activities designed to attain the 25% waste reduction goal is required as part of the regional plan. The information and procedure(s) required in the development of a MSW region's plan for meeting the 25% waste reduction goal are located in Chapter IV, entitled Waste Reduction, of the Guidelines for Preparation of a Municipal Solid Waste Regional Plan prepared by the Tennessee State Planning Office.

Statutory Authority

The 25% waste reduction goal as stated in the 1991 Act:

> "The goal of the State is to reduce by twenty-five percent (25%) the amount of solid waste disposed of a municipal solid waste disposal facilities, and incinerators, measured on a per capita basis within Tennessee by weight, by December 31, 1995. The goal shall also apply to each municipal solid waste region; provided, however,

the goal shall not apply to individual disposal facilities or incinerators. The base year from which reductions are to be measured is 1989, unless a region can demonstrate that 1989 data is clearly in error."

For example, this law requires that a MSW region disposing of one ton per person per year (tons/person/year) in 1989 should only be disposing of 0.75 tons/person/year as of December 31, 1995. This goal applies to waste disposed of at Class I landfills and MSW incinerators. Measurements of waste are to be based on the amount of waste entering a disposal facility prior to combustion or landfilling. The regional population will be based on the 1990 census data, as projected and published by the State Data Center in the Governor's State Planning Office.

Diversion of MSW from one region to another region's disposal facility is not considered a waste reduction method. A discussion of policy on import or export of waste between regions is found in the section titled ***Multi-Region Use of Disposal Facilities*** of the guidelines.

Base Year Adjustments and Variances

A need to adjust base year data may become evident during preparation of the regional solid waste plan. It is important that the completed and approved plan reflect the appropriate base year, accurate disposal rates, and the measures needed to attain the 25% waste reduction goal.

In certain instances, the 1989 base year data may not accurately reflect the quantity of waste actually being collected and managed in a region and/or the total amount of waste generated. Unmanaged waste, waste diversion, waste reduction, and/or recycling activities that were taking place in an prior to 1989 may be responsible for this. Waste unaccounted for in base year calculations as a result of the preceding listed activities should be identified, documented, and submitted to the State Planning Office at the earliest time possible during development of the regional plan if an adjustment to the base year is to be requested.

Adjustments to the quantities reported in the base year may be made for diversion, reduction, or recycling activities that occurred between 1985 and 1989 if they can be documented. No credit will be allowed for diversion or recycling prior to 1985. The documentation required must be sufficient, as determined by the State Planning Office, to develop an accurate estimate by weight of the amount of waste or material diverted annually. If deemed appropriate by the State Planning Office, the 1989 base year data will be adjusted to include these quantities in the total generation. As stated previously, base year adjustments are to be sought as soon as it becomes evident that the base year is not accurate **and** sufficient documentation is collected to substantiate the adjustment.

Regions which include a county(ies) which did not collect waste as of January 1, 1991, shall obtain a variance from the waste reduction goal until a collection system and base year data have been established.

Any other type of variance from the waste reduction goal may not be sought until after the deadline of the waste reduction goal (December 31, 1995).

Markets

"Market" as defined in Rule 1200-1-.01(2) means: "the transfer or sale of recovered materials to be used, reused, and recycled."

For purposes of implementing the waste reduction rule, "market" may be construed to mean the sale of materials **or** the movement of materials to an end user where no moneys are transferred. This includes but is not limited to activities such as giving mulch or compost free of charge to citizens, parks, highway departments, business, etc., as long as the material is being handled in a way that is consistent with the rules and regulations of the State of Tennessee which govern the activities. However, persons should contact the Division of Solid Waste Assistance for clarification on specific activities qualifying as waste reduction.

Multi-Region Use of Disposal Facilities

Diversion of MSW from one region to another region's disposal facility or out of state is not considered a waste reduction method.

In the event that a MSW disposal facility accepts waste from more than one region or out of state, an agreement between the regions, waste haulers and the disposal facility should be developed to account for each region's waste separately.

This agreement should be structured so that each MSW region can determine to what extent it is meeting the 25% waste reduction goal. This agreement will also prevent putting an undue burden on the host region to meet their 25% waste reduction goal. Waste imported from other regions and/or out of state should not be included in the per capita waste calculation for the host region. Such waste must be accounted for by the exporting county. The agreement may include recording truck weights from different regions separately at the disposal facility.

If a truck picks up waste from more than one region and/or out of state, a systematic weighing program to determine the general percentage weight of MSW collected from each region and/or out of state on the truck may be developed and conducted as approved by the State Planning Office.

Regions which export MSW to another region or out of state for disposal must determine the quantity of MSW exported and add this amount to the quantity of MSW disposed of within the region since it is generated within the region.

The preceding discussion on MSW movement between regions applies to MSW going to Class I landfills and MSW incinerators only.

Accounting and Measurement of the 25% Reduction Goal

As has been already stated, each region must describe in its plan what measures it will implement to achieve a 25% waste reduction goal.

Individual accounting and measurement of waste diversion, waste reduction, and/or recycling activities are not required to meet this goal with the exception of:

1) Materials recovered or collected for recycling at Class I landfill or MSW incinerators, which shall be weighed and deducted from the total amount being disposed, and

2) Annual reporting by MSW regions of recycled materials collected (amount and type) in the region as part of the Annual Report to the State Planning Office.

However, the Division of Solid Waste Assistance strongly encourages recordkeeping to record quantities of materials diverted, reduced, or recycled by activities including but not limited to the following acceptable waste reduction methods:

1. Diversion of appropriate waste from a Class I (municipal solid waste landfill) disposal facility to a Class III (landscaping waste landfill) or a Class IV (construction/demolition waste landfill) disposal facility and/or air curtain destructors or pit burners.

2. Diversion of problem waste (e.g., waste tires, used oil, lead-acid batteries, paints and other problem wastes) from a Class I (municipal solid waste) disposal facility for appropriate recycling, re-use, energy recovery, etc., activities.

3. Source reduction including modification of industrial processes (e.g., feedstock substitution or improvement, efficiency of machinery and recycling within a process); changes in consumer habits (e.g., selection of products that have reduced and recyclable packaging and re-use of durable goods); and diversion of appropriate industrial process waste to Class II, III, and/or IV landfills.

4. Recycling where recovered materials are marketed for recycling or are stored for recycling. However, at least 75% of the stored material must be marketed within the succeeding 12 months.*

5. Composting of municipal solid waste where such composted product has been marketed.*

6. Mulching of untreated wood waste where such mulched nontreated wood waste has been marketed.*

* Materials stored for more than 12 months may subject the owners or operators of these operations to enforcement action from the Division of Solid Waste Management.

Recordkeeping of these activities will document and demonstrate a good faith effort should the region fail to meet the 25% waste reduction goal. Furthermore, recordkeeping of materials

diverted, reduced or recycled will provide information which communities will need in evaluating and identifying areas of improvement for further reduction of waste disposal as opportunities arise or future regulations require.

Certain activities are **not** acceptable waste reduction methods. These activities include but are not limited to the following:

1. Incineration at MSW incinerators.

2. Unmarketed recyclables where recovered material is stored without at least 75% being marketed within the preceding twelve (12) month period. Unprocessed municipal solid waste is not considered to be "recyclables."

3. Unmarketed municipal solid waste compost and/or untreated mulch where this material is stored for a year or longer.

4. Illegal or unauthorized storage or disposal of municipal solid waste.

5. Export to another region for disposal.

The method for calculating the 25% Waste Reduction Goal is as follows:

Step 1. Calculate the Average 1989 per capita MSW disposal rate:

Divide the 1989 Waste Generation in tons by the 1989 population. Units should be tons/person/year.

(**Note:** 1989 waste generation figures are found in the University of Tennessee's Waste Management Research and Education Institute's report on "Managing Our Waste: Solid Waste Planning for Tennessee," dated February 1991. Regional population will be based on 1990 Census data, as projected and published by the State Data Center in the State Planning Office.)

Step 2. Calculate the 1995 target per capita waste disposal goal:

Multiply the Average 1989 per capita disposal rate (figure obtained in Step 1 above) by 0.75. Units should still be tons/person/year.

Actual measurement of the 25% waste reduction goal will not occur until after December 31, 1995. At that time, the measurement will be the result of dividing the total waste from a region disposed of in Class I landfills and MSW incinerators in 1995 by the 1995 population estimate as projected and published by the State Data Center, in the State Planning Office, and comparing this figure to the figure calculated in Step 2 above.

With regard to the accounting of waste either imported into a solid waste region from another solid waste region and/or from out of state, or exported out of a solid waste region to another

solid waste region and/or out of state see the section of these guidelines titled ***Multi-Region Use of Disposal Facilities*** of the guidelines.

Any MSW which is generated within a solid waste region in 1995 and disposed of in a Class I landfill or MSW incinerator, regardless of the location of the Class I landfill or MSW incinerator, must be included in the calculations of the 25% waste reduction goal.

To document the various diversion and reduction activities, reporting by weight (in tons) is recommended. However, volume estimates in cases where records by weight are not required and not available may be used to account for these activities. These activities might include source reduction at industries, institutions, and/or households. Estimates developed for this purpose must include sufficient calibration or support documentation to the satisfaction of the State Planning Office.

Supporting documentation may include but not be limited to a systematic weighing program carried out on a regular basis, or past records of materials purchased disposed if they have subsequently been eliminated from the waste stream. In these cases, credit toward meeting the goal will be decided on a case-by-case basis by the State Planning Office. In all instances, credit toward meeting the 25% waste reduction goal will be allowed only if waste is being managed in a manner which is consistent with the rules and regulations of the State of Tennessee which govern these activities. For example, unmanaged waste thrown in ditches, creeks, or sinkholes is not considered an appropriate waste diversion activity.

For information on variances toward meeting the 25% waste reduction goal, refer to the section of these guidelines titled ***Base Year Adjustments and Variances.***

Air Curtain Destructors/Pit Burners

The state's current policy (as adopted by the Solid Waste Disposal Control Board) is that untreated wood and yard waste disposed of in combustion devices such as air curtain destructors, pit burners, etc., may count toward the 25% waste reduction goal as long as this waste is being managed according to specific permit conditions and applicable rules and regulations of the State of Tennessee. The location of the devices is not a consideration, provided that all applicable rules and regulations are followed in siting.

While the Department currently allows the above-referenced combustion activities to count toward meeting the 25% waste reduction goal the Department does not advocate the use of pit burners, air curtain destructors, or any other type of similar combustion device.

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Contacting the Department

For additional information or answers to questions regarding these guidelines, please contact by writing or calling:

Department of Environment and Conservation
Division of Solid Waste Assistance
14th Floor, L and C Tower
401 Church Street
Nashville, TN 37243-0455
(615) 532-0091

Tennessee Department of Environment and Conservation, Authorization No. 327488, 750 copies. This public document was promulgated at a cost of $.25 per copy. January 1994

Recycling

One method used in reducing waste is recycling. Recycling is defined by the Environmental Protection Agency to mean "the process by which materials, otherwise destined for disposal, are collected, reprocessed or remanufactured, and reused" (EPA, pg. 150). It is important to note here that recycling is more than just collecting cans, bottles and paper. A recycling program is not complete without marketing the recovered material to an end-use facility. State guidelines require that recycling programs market at least 75% of the collected material within the succeeding 12 months in order to count the material diverted toward the annual reduction goal.

By January 1, 1996, "...each county shall provide directly, by contract or through a solid waste authority one (1) or more sites for collection of recyclable materials within the county, unless an adequate site for collection of recyclable materials is otherwise available to the residents of the county." (See T.C.A. 68-211-863(a) and (b)).

To assist in developing recycling services, TDEC, Division of Solid Waste Assistance Office has offered grant funds to counties and other eligible entities. A copy of the Grants for the Purchase of Recycling Equipment Guidelines and the Recycling Rebates Guidelines is provided on the pages that follow.

THE SOLID WASTE MANAGEMENT ACT OF 1991
T.C.A. 68-211-825
Grants for the Purchase of Recycling Equipment
Guidelines

April, 1995

Statutory Authority

T.C.A. 68-211-825: "From funds available from the solid waste management fund, the state planning office shall establish a grant program for the purchase of equipment needed to establish or upgrade recycling at a public or not-for-profit recycling collection site. Such equipment may include, but is not limited to, containers, balers, crushers, and grinders."

Executive Order #50 transferred all grant administration responsibility from the State Planning Office to the Department of Environment and Conservation.

Eligibility

Counties, cities, solid waste authorities and nonprofit organizations chartered in the state of Tennessee, or organizations which have been determined to be tax exempt nonprofit organizations by the Internal Revenue Service may apply for grants under T.C.A. 68-211-825.

Applicants may request a grant of up to $25,000 for the purchase of key recycling equipment needed to establish a new collection site, to improve the operation of an existing collection site, or to prepare recovered materials for transport and marketing. A list of typical recycling equipment is given in the act. It includes containers, crushers, grinders, balers and shredding equipment.

Counties and/or municipalities which receive a rebate, as directed by T.C.A. 68-211-825(b), are not eligible to receive a recycling equipment grant. The rebate credits are in lieu of grants. In fiscal year 1995, these counties are Blount, Davidson, Hamilton, Knox, Madison, Montgomery, Rutherford, Shelby, Sullivan, Sumner and Washington Counties and the municipalities located within these counties.

Amount

The Department has available $600,000 for these grants this fiscal year. Grants are competitive and will be awarded on the basis of merit, according to the evaluation criteria and weightings assigned in these guidelines. No grant may exceed $25,000. A local government or nonprofit organization may apply for a grant every year.

Application

Applicants must complete the Grant Application and prepare the requested narrative. Please give complete, concise answers and follow the given format answering items number one through seven

in order. The application must be certified and signed by an officer legally authorized to sign for the applicant. Applications signed by anyone other than the regularly authorized agent (county executive, mayor, etc.) must include a resolution from the appropriate governing body giving the signee this authority.

Submission Date

One application (with an original signature) should be submitted to and received by the Department of Environment and Conservation on or before May 15, 1995. Faxed copies will not be accepted. Applications received after 4:30 p.m. on May 15, 1995 will be returned to the applicant without review (**Contact Joyce Dunlap @ (615) 532-0075 for new submission deadline**).

Evaluation and Rating

The Tennessee Department of Environment and Conservation will review all applications. Once the application is determined to be complete, the merits of each proposal will be evaluated based on the following criteria and weightings:

These topics coincide with the application, Part II, Content of Narrative, items 1 through 7.

5 Equipment description and purpose

10 Coordination with existing or proposed waste collection, transport and disposal system

15 Program design, efficiency and past performance

20 Demonstration of need

25 Marketing strategy

15 Public participation, education outreach, volunteer opportunities

10 Potential for expansion or integration into a regional system

Award

The Department of Environment and Conservation should announce recycling equipment grant awards and commit funds to meet the obligation approximately sixty (60) days after completion of the application review process.

Total funds awarded shall be the base for calculation of rebates to the 11 largest counties, as described in T.C.A. 68-211-825(b).

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE
APPLICATION FOR STATE RECYCLING EQUIPMENT GRANT

Part I
APPLICANT INFORMATION:

Name of Agency/Organization:

_____

Address:

_____

_____

_____

Name and telephone number of person to be contacted about the application:

Name: _____

Telephone: _____

FEIN # _____

Type of Organization:

[ ] County

[ ] Municipality

[ ] Solid Waste Authority

[ ] Planning Region

[ ] Not-for-Profit Organization

[ ] Other (please specify)

_____

FOR NON PROFIT ORGANIZATIONS:

Chartered in Tennessee?

yes [ ] no [ ]

Date of Charter: _____

IRS Classification: _____

Attach a copy of approval letter for Charter or 501(c)(3) exemption

To the best of my knowledge and belief, all data in this application are true and correct. The document has been duly authorized by the governing body of the applicant.

_____
Typed Name of Authorized Representative

_____
Signature

Title: _____

Telephone: _____

Date: _____

Return to: Department of Environment
and Conservation
Division of Solid Waste Assistance
L & C Tower, 14th Floor
401 Church Street
Nashville, Tennessee 37243-0455

For State Use Only:

Date Received By State
Application # _____
Rank/ Class _____

Part II

Content of Narrative:

1. **Equipment description and purpose**

   List the item(s) of equipment requested (in priority order) and give the estimated cost of each item. Price quotes should be obtained prior to application so that estimates are accurate. If equipment costs exceed the maximum $25,000 grant amount, explain where the additional funds will be obtained and whether these funds are now formally committed. Also, include a manufacturer's specification for each piece of equipment. Describe the purpose for which each piece of equipment will be used. (Value 5 pts.)

2. **Coordination with existing or proposed waste collection, transport and disposal system**

   Give a brief description of your existing solid waste system. Describe how the recycling program is related to, integrated with, or coordinated with the other elements of your solid waste system (collection, transportation, waste reduction, diversion, incineration, landfill). Be specific in how this program relates to the 10 year solid waste regional plan developed by your Solid Waste Planning Board. (Value 10 pts.)

3. **Program design, efficiency and past performance**

   Describe the existing or new recycling program in detail. Give the service area and population to be served. Show numbers of staff required to operate the program and explain whether positions are existing or planned. List materials to be collected and discuss methods of collecting these materials. Identify locations and operating hours of manned collection sites and/or processing facilities. Existing programs should discuss efficiency of operation and provide details of volumes collected/sold. Provide a description of the facility where equipment will be located. Where possible, include pictures inside and outside with a diagram of the floor plan. (Value 15 pts.)

4. **Demonstration of need**

   Indicate whether this equipment is a first time purchase or if it will replace or duplicate existing equipment. Include in your discussion the cost benefits or impact this equipment will have on volume reduction, savings in transporting waste, etc. Indicate the sources of funding available to assure the long term operation of the recycling program. Finally, describe how this equipment helps to meet recycling needs in the 10 year solid waste regional plan developed by your Solid Waste Planning Board. (Value 20 pts.)

5. **Marketing strategy**

   Describe how you will market recovered materials. Evaluate the long-range stability of these markets. Include specific information about potential buyers and/or end-users. Describe participation in any cooperative marketing contracts. Discuss your ability to meet material specifications required by potential buyers and contracts for materials requiring

specialized processing, such as plastic shredded instead of baled. Describe volumes of materials currently stored or being held pending shipment to market. (Value 25 pts.)

6. **Public participation, education outreach, volunteer opportunities**

Describe how the recycling program is promoted in the community. Discuss efforts to increase public participation, including children and adults, volunteers, businesses and other agencies in your recycling program. Summarize, by month, all educational activities completed in the past 12 months including frequency of activity, content of material presented and numbers participating in the specified activities. Again, discuss how your educational effort is consistent with the 10 year solid waste plan developed by your Solid Waste Planning Board. (Value 15 pts.)

7. **Potential for expansion or integration into a regional system**

Describe your plan for future expansion or modification to your recycling program as well as how this fits into the 10 year solid waste regional plan developed by your Solid Waste Planning Board. Identify new areas (by geographic location and population) which you plan to add to your existing service area. Where known or a reasonable estimate can be made, please include a timetable for implementation of the proposed services. Identify and describe the coordination of services between county(ies), city(ies), and communities working in a joint or regional capacity. Describe the relationship and identify the responsibilities of each participant. (Value 10 pts.)

THE SOLID WASTE MANAGEMENT ACT OF 1991
TCA 68-211-825(B)
Recycling Rebates
Guidelines
April, 1995

Statute Requirements

The counties of Blount, Davidson, Hamilton, Knox, Madison, Montgomery, Rutherford, Shelby, Sullivan, Sumner and Washington are eligible to receive rebates in accordance with T.C.A. 68-211-825(b) in lieu of grants to purchase recycling equipment.

The Department has reserved $900,000 for the above eleven counties which have generated the greatest amount of solid waste. These rebated funds will further be allocated proportionately by population among the municipalities within the county that provide collection or disposal services. The attached schedule shows the rebate amount you may request.

During June, 1995, the State will issue checks based on solid waste data contained in the University of Tennessee's Solid Waste Management Report of February, 1991 (based on 1989 generation data) and populations taken from the 1990 census. The apportionment will be as follows:

$$\text{Rebate} = \frac{\text{(tons of the county's solid waste)}}{\text{(total tons of solid waste from all eleven counties)}} \text{ multiplied by } 150\% \text{ of State funds allocated for recycling grants}$$

Eligibility

Rebate funds may only be spent for recycling purposes which include: establishing new programs/collection sites; preparing recovered materials for transport and marketing; identifying markets for recovered materials; and developing educational programs for adults and children to help them understand solid waste issues, management options and costs and the value of waste reduction and recycling.

Documentation Requirements

In order to receive rebate funds from the State, counties and cities must complete the attached "1995 Recycling Rebate Funds Request and Certification" form. Provide complete details on how rebate funds were used last year and how you plan to use funds this year

Submission Date

Your completed "1995 Recycling Rebate Funds Request and Certification" form must be submitted to our office by June 1, 1995 (Contact Joyce Dunlap @ (615) 532-0075 for new submission deadline). Should you elect not to receive the rebate but want those funds given to the county, another city or non-profit recycler, you must notify us in writing of your intent. **If we do not receive documentation from cities designated to receive rebates by June 1, 1995, the funds will automatically revert to the county.**

1995 RECYCLING REBATE
FUNDS REQUEST AND CERTIFICATION

NAME OF LOCAL GOVERNMENT _____

ADDRESS _____

CITY/ STATE/ ZIP _____

FEDERAL EMPLOYER IDENTIFICATION NUMBER _____

REBATE AMOUNT REQUESTED $_____

1. Please provide the information below relative to rebate funds received in 1994.

Recycling Rebate Funds Received	Total Dollars Expended	Amount of Funds Carried Forward

2. Summarize how the 1994 rebate funds were utilized including timetables, activities and non-profit recyclers supported.

Example: 8/94 Developed and printed a pamphlet on recycling $1,000
2/95 Hired a Recycling Coordinator @$1,950 per month for (4) months = $7,800

_____
_____
_____
_____
_____
_____
_____
_____

3. Summarize how the 1995 rebate funds will be utilized. Give a timetable and include information about non-profit recyclers to be supported.

_____
_____
_____
_____
_____
_____
_____

CERTIFICATION

I hereby certify that the County of/City of _____ :

- **We will abide by the rules and regulations promulgated by the Department of Environment and Conservation relative to the Solid Waste Management Act of 1991.**

- **All books, records and documents relative to the rebate shall be maintained for a period of three (3) full years from date of final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice by the State Agency and Comptroller of the Treasury, or their duly appointed representatives.**

- **We currently owe no fees or penalties to the Department of Environment and Conservation.**

My signature affixed below certifies that the information contained herein is true, accurate, and complete to the best of my knowledge and that misrepresentation or failure to comply may result in reclamation of State rebate funds and/or imposition of other penalties.

_____	_____
Authorized Signature	**Typed Name and Title**
( ) _____	_____
Telephone Number	**Date**

Composting

Another acceptable method for reducing waste, according to state guidelines, is composting. Composting is the "biological decomposition of organic constituents of wastes under controlled conditions" (The Biocycle Guide to Composting Municipal Wastes, pg. 2). State guidelines also require the marketing of the composted product within 12 months of the succeeding months in order to count the diverted material toward the annual reduction goal.

Composting is considered under Tennessee regulations as solid waste processing. Solid waste processing "means an operation for the purpose of modifying the characteristics or properties of solid waste to facilitate transportation or disposal of solid wastes including but not limited to, ...composting, ... (Rule 1200-1-7-.01(2)). In order to operate a solid waste processing facility in Tennessee, a permit-by-rule application must be completed (Rule 1200-1-7-.02). A copy of the Permit-By-Rule application and Instructions is provided on the pages that follow.

Certain composting practices are not subject to a permit under Rule 1200-1-7-.02(1)(b)(2)(v): "Disposal of landscaping and land clearing wastes at facilities which are on the site of generation and with a fill area of less than one acre in areal extent when completed."

The state has proposed regulations governing composting activities in Tennessee. Please refer to Appendix C for a copy of the proposed regulations.

Additional guidelines have been issued by TDEC regarding waste reduction through promotion of home composting. A copy of these guidelines is provided on the pages that follow the Instructions for the Permit-By-Rule.

INSTRUCTIONS FOR SOLID WASTE PERMIT BY RULE NOTIFICATION

Complete this form for each facility that is processing and/or disposing of solid waste in Tennessee. If multiple facilities exist or are planned, describe each facility and its wastes on a separate form. **Submit completed documents to the respective field office in your area.**

Each existing facility must submit this form along with the required information [1200-1-7-.02(c)(2)] within ninety (90) days after the effective date of this rulemaking. Facilities beginning operation after the effective date of this rulemaking must submit this form along with the required information [1200-1-7-.02(c)(2)] at least thirty (30) days before beginning operation.

Line 1 (a) **Facility's full legal, name** - Give the applicant's full, legal name for this site to distinguish it from any other site the applicant or organization may own or operate in Tennessee. **Identification Number** - leave blank for Division usage.

(b) **Mailing address** - Give a complete mailing address for applicant or organization.

Line 2 (a) **Physical location or address of facility** - Give information which will aid the Division in going to the site/facility. Do not give a Post Office Box Number.

(b) Supply the **latitude** and **longitude** of the site with the precision of degrees, minutes and seconds.

Line 3 **Responsible official name** - Give the name and phone number of the person who the Division may contact for further information about the contents of this form.

Line 4 **Manager or Operator name** - Give the name and phone number of the manager or person who is responsible for the direction of activities at the site/facility.

Line 5 (a) **Landowner name** - Give the person(s) or organization name(s) and phone number(s) of the immediate owner(s) of the property [attached letter from landowner(s) as required by Rule 1200-1-7-.02(2)(d)(vi)].

(b) **Mailing address** - Give a complete mailing address for landowner.

Line 6 (a) **Zoning authority name** - Give the name and phone number of the zoning authority plus the current zoning status of the property.

(b) Mailing address - Give a complete mailing address for the zoning authority.

Line 7 (a) **Type(s) of activity** - check the appropriate type(s) of activity.

(b) **Description of activities** - Unless this is a landfill, enter a brief narrative description of how the solid waste will be handled and processed from the time it enters the facility until it leaves the facility.

Line 8 **Type(s) of waste handled or processed** - Check the type(s) of waste to be handled at the facility. If the waste type is not listed, check "other" and briefly describe the source or characteristics of the solid waste.

Line 9 **Amount of waste handled/processed/stored** - Provide an estimate of the daily weight in tons/day and/or volume in cubic yards/day that will be handled at the facility. Indicate the maximum amount of waste that can be stored in cubic yards.

Line 10 **Certification** - After all documents have been compiled for submission to the Division, the manager or owner responsible for the site must sign, give his title and the date signed. This signature must be notarized.

SOLID WASTE PERMIT BY RULE NOTIFICATION

Tennessee Department of Environment and Conservation
Division of Solid Waste Management

1. a. Facility's full, legal name			**Official use only**
b. Mailing address	City	State	Zip Code
2. a. Physical location or address of facility			County
b. Latitude (degrees, minutes, and seconds)	Longitude (degrees, minutes, and seconds)		
3. Responsible official's name			Phone number with area code ( )
4. Manager's or Operator's name			Phone number with area code ( )
5. a. Landowner's name			Phone number with area code ( )
b. Mailing address	City	State	Zip Code
6. a. Zoning authority's name	Current zoning status		Phone number with area code ( )
b. Mailing address	City	State	Zip Code

7. a. Type(s) of activity:
   - ☐ Mulching ☐ Recycle Center ☐ Tire Processor ☐ Incineration ☐ Transfer Station
   - ☐ Baling ☐ Tub Grinder ☐ Composting ☐ Soil Remediation ☐ Convenience Center
   - ☐ Waste Food Processor ☐ Other _____

   b. Description of activities

8. Type(s) of waste handled or processed:
   - ☐ Food ☐ Tires ☐ Commercial ☐ Soil ☐ Wood ☐ Medical ☐ Yard Waste
   - ☐ Other _____

9. Amount of waste handled or processed:
   Weight _____tons/day Volume _____cubic yards/day

   Storage Capacity _____cubic yards

10. I certify under penalty of law that this document and all attachments were under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information.

Date _____ Signature of Responsible Official _____

Official Title _____

Signature of Notary _____

Date Commission Expires _____

(Notary Seal)

GUIDELINES REGARDING
WASTE REDUCTION THROUGH PROMOTION
OF HOME COMPOSTING
Division of Solid Waste Assistance
Tennessee Department of Environment and Conservation
August 11, 1994

Home composting programs can contribute to control of waste management costs by eliminating a portion of the collection costs. Effectiveness and rates of waste reduction through home composting are directly related to the level of effort invested, participation and the balance of urban and rural population. For example, it is not realistic to claim that a simple literature distribution campaign on home composting will result in 16% waste diversion from landfills. The following suggested levels of effort and corresponding waste reduction rates are based on five years experience with urban home composting programs. While these estimates will not apply to all situations they are based on actual performance.

1) Simple literature distribution program with 5% participation: (0 - 0.5%) diversion.

2) Literature campaign with demonstration workshops with 10% participation: (0 - 1%) diversion.

3) Literature, workshops, technical assistance, with city or region providing compost bins free or at cost; with 15-20% participation: (3 - 5%) diversion.

4) All of the above with hot line service, full-time technical assistance and 50-75% participation, after 1-2 years operation: (12 - 16%) diversion.

NOTE: Obtaining 50 - 75% participation is a very ambitious goal. The average is more like 10 - 30%.

OUTREACH:

1) Mass mailings are expensive. Use alternate means for distribution such as including in utility bills.

2) Develop a compost training and Master Composter program with workshops. This can result in a network of participants that exchange information and ideas.

EQUIPMENT AND INCENTIVES:

1) Provide compost bins free to people who attend workshops and commit to doing home composting.

2) For cities with limited budgets, provide compost bins at cost. Payment for equipment can be an incentive to make use of it. (Available at $10 - $45).

IMPLEMENTING HOME COMPOSTING - CONTINUED

3) Have volunteer groups (Boy Scouts) construct composters from use containers such as 50 gallon plastic barrels.

4) Provide incentives through reduced trash collection fees for households doing composting.

5) Long range goal: Purchase small mobile chipper to process individual homeowner's yard waste and allow each household to retain processed yard waste for use in landscaping, mulching and composting.

TRACKING YARD WASTE VOLUMES/WEIGHTS THROUGH A SURVEY:

To determine yard waste volumes generated more accurately, provide a sampling of households with scales and have them weigh materials going into home composters. Use the sample form that follows, or one similar, to have them record all data essential to your survey and submit on a quarterly schedule.

NAME _____

_____ COUNTY BACKYARD COMPOSTING SURVEY

DATA SHEET - INTENSIVE GROUP

PARTICIPANT NUMBER	WEIGHT AND VOLUME OF SOLID WASTE/ADDITIVES												WEIGHT AND VOLUME OF MATERIAL LEAVING THE PILE				COMPOST ACTIVITIES		
	Recyclables		Other Waste		Food Waste		Yard Waste		Manure		Innoculants	Water	Compost ***		Material that did not compost****		Turn Pile?	Water Pile?	Temperature
	wt*	vol**	wt*	vol**	wt*	vol**	wt*	vol**	wt*	vol**	added?	vol	wt*	vol**	wt*	vol**	yes/no	yes/no	Degrees F
Week of:	199____																		
Monday																			
Tuesday																			
Wednesday																			
Thursday																			
Friday																			
Saturday																			
Sunday																			
Week of:	199____																		
Monday																			
Tuesday																			
Wednesday																			
Thursday																			
Friday																			
Saturday																			
Sunday																			

Problems/complaints/comments:_____

_____

_____

_____

_____

_____

* To weigh material: Place each material in a plastic bag provided to you. Hang the bag on the scale provided to you, and record the weight on this data sheet.

** To estimate volume of material: After placing material in a bag provided to you, estimated the volume by the fullness of the bag (eg 1/4, 1/2, 3/4, full).

*** List what you used the finished compost for in the comments section of this data sheet.

**** List -composted material that you remove from the compost pile in the comm ction of this data sheet.

Class III/IV Landfills

Diversion of certain solid wastes from a Class I (municipal solid waste landfill) disposal facility to a Class III or Class IV disposal facility is deemed by state guidelines as an appropriate waste reduction method for a solid waste region.

A Class III disposal facility refers to a "landfill which is used or to be used for the disposal of farming wastes, landscaping and land clearing wastes, and/or certain special wastes having similar characteristics" (Rule 1200-1-7-.01(3)(c)). A Class IV disposal facility refers to a "landfill which is used or to be used for the disposal of demolition/construction wastes, certain special wastes having similar characteristics and waste tires" (Rule 1200-1-7-.10(3)(d)).

In order to own/operate a Class III or IV disposal facility, Part I and Part II application requirements must be completed. The application requirements of Rule 1200-1-7-.04 apply to applicants for permits for all Class I, II, III and IV disposal facilities unless the standard addressed by the information requirement does not apply to such facility. Please note the differences in requirements for all classifications of landfills in Rule 1200-1-7-.04. Also, refer to Chapter 9 - Processing and Disposal of this handbook for specific information pertaining to the Part I and Part II application process for solid waste disposal facilities.

Additional regulations are proposed concerning Class III and IV landfills. Please refer to Appendix C for these proposed regulations.

Air Curtain Destructors/Pit Burners

State guidelines recognize the diversion of certain solid wastes from a Class I (municipal solid waste landfill) disposal facility to an air curtain destructor or pit burner as an appropriate waste reduction method for a solid waste region. Air curtain destructors or pit burners are used to reduce the volume of material, such as, pallets, landclearing debris, and other untreated wood materials (See Rule 1200-3-4-.02(a) for definition). This equipment consumes wood waste through force-air combustion usually inside a refractory pit, either below or above ground. Sometimes a screen house is added to help insure that no burning material escapes into the air.

Typically, the operator uses a front loader with a brush rack attached to load material into the burner. No auxiliary fuel is needed. Once the burner is started, it can sustain itself with material loaded for burning. After the loaded material is consumed and the unit has cooled, the residue is removed from one end of the burner. This residue, about 5% of the original volume, can then be transported to the landfill for disposal.

An air curtain destructor or pit burner is considered a solid waste processing activity under Rule 1200-1-7-.01(2). Solid waste processing "means an operation for the purpose of modifying the characteristics or properties of solid waste to facilitate transportation or disposal of solid wastes including but not limited to, ...volume reduction, ... (Rule 1200-1-7-.01(2)). In order to operate a solid waste processing facility in Tennessee, a permit-by-rule application must be completed (Rule 1200-1-7-.02). A copy of the Permit-By-Rule application and Instructions is provided on the pages that follow.

The operations of an air curtain destructor, or pit burner, is subject to the provisions under Rule 1200-3-4 for Open Burning. Open burning, as it is defined in Rule 1200-3-4-.02(e), is prohibited without a specific permit issued by TDEC, Division of Air Pollution Control, within the parameters defined in Rule 1200-3-4-.05. A copy of the Application for Open Burning is provided on the following page.

There are exceptions to open burning without a permit. Those exceptions are discussed in Rule 1200-3-4-.04. In addition, T.C.A. 68-201-115(c) specifically exempts the burning of wood waste from state supervision and control. Wood waste is defined in Rule 1200-3-4-.02(j) "as any product which has not lost its basic character as wood, such as bark, sawdust, chips and chemically untreated lumber whose 'disposition' by open burning is to solely get rid of or destroy."

To determine whether the operations of an air curtain destructor or pit burner requires a permit for open burning, contact TDEC, Division of Air Pollution Control in Nashville at (615) 532-0554.

INSTRUCTIONS FOR SOLID WASTE PERMIT BY RULE NOTIFICATION

Complete this form for each facility that is processing and/or disposing of solid waste in Tennessee. If multiple facilities exist or are planned, describe each facility and its wastes on a separate form. **Submit completed documents to the respective field office in your area.**

Each existing facility must submit this form along with the required information [1200-1-7-.02(c)(2)] within ninety (90) days after the effective date of this rulemaking. Facilities beginning operation after the effective date of this rulemaking must submit this form along with the required information [1200-1-7-.02(c)(2)] at least thirty (30) days before beginning operation.

Line 1 (a) **Facility's full legal, name** - Give the applicant's full, legal name for this site to distinguish it from any other site the applicant or organization may own or operate in Tennessee. **Identification Number** - leave blank for Division usage.

(b) **Mailing address** - Give a complete mailing address for applicant or organization.

Line 2 (a) **Physical location or address of facility** - Give information which will aid the Division in going to the site/facility. Do not give a Post Office Box Number.

(b) Supply the **latitude** and **longitude** of the site with the precision of degrees, minutes and seconds.

Line 3 **Responsible official name** - Give the name and phone number of the person who the Division may contact for further information about the contents of this form.

Line 4 **Manager or Operator name** - Give the name and phone number of the manager or person who is responsible for the direction of activities at the site/facility.

Line 5 (a) **Landowner name** - Give the person(s) or organization name(s) and phone number(s) of the immediate owner(s) of the property [attached letter from landowner(s) as required by Rule 1200-1-7-.02(2)(d)(vi)].

(b) **Mailing address** - Give a complete mailing address for landowner.

Line 6 (a) **Zoning authority name** - Give the name and phone number of the zoning authority plus the current zoning status of the property.

(b) Mailing address - Give a complete mailing address for the zoning authority.

Line 7 (a) **Type(s) of activity** - check the appropriate type(s) of activity.

(b) **Description of activities** - Unless this is a landfill, enter a brief narrative description of how the solid waste will be handled and processed from the time it enters the facility until it leaves the facility.

Line 8 **Type(s) of waste handled or processed** - Check the type(s) of waste to be handled at the facility. If the waste type is not listed, check "other" and briefly describe the source or characteristics of the solid waste.

Line 9 **Amount of waste handled/processed/stored** - Provide an estimate of the daily weight in tons/day and/or volume in cubic yards/day that will be handled at the facility. Indicate the maximum amount of waste that can be stored in cubic yards.

Line 10 **Certification** - After all documents have been compiled for submission to the Division, the manager or owner responsible for the site must sign, give his title and the date signed. This signature must be notarized.

SOLID WASTE PERMIT BY RULE NOTIFICATION

Tennessee Department of Environment and Conservation
Division of Solid Waste Management

1. a. Facility's full, legal name			**Official use only**
b. Mailing address	City	State	Zip Code
2. a. Physical location or address of facility			County
b. Latitude (degrees, minutes, and seconds)	Longitude (degrees, minutes, and seconds)		
3. Responsible official's name			Phone number with area code ( )
4. Manager's or Operator's name			Phone number with area code ( )
5. a. Landowner's name			Phone number with area code ( )
b. Mailing address	City	State	Zip Code
6. a. Zoning authority's name	Current zoning status		Phone number with area code ( )
b. Mailing address	City	State	Zip Code

7. a. Type(s) of activity:
   - ☐ Mulching ☐ Recycle Center ☐ Tire Processor ☐ Incineration ☐ Transfer Station
   - ☐ Baling ☐ Tub Grinder ☐ Composting ☐ Soil Remediation ☐ Convenience Center
   - ☐ Waste Food Processor ☐ Other _____

   b. Description of activities

8. Type(s) of waste handled or processed:
   - ☐ Food ☐ Tires ☐ Commercial ☐ Soil ☐ Wood ☐ Medical ☐ Yard Waste
   - ☐ Other _____

9. Amount of waste handled or processed:
   Weight _____tons/day Volume _____cubic yards/day

   Storage Capacity _____cubic yards

10. I certify under penalty of law that this document and all attachments were under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information.

Date_____ Signature of Responsible Official _____

Official Title _____

Signature of Notary _____

Date Commission Expires _____

(Notary Seal)

CN-1035 RDA 2202

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Air Pollution Control

APPLICATION FOR OPEN BURNING PERMIT

Company Name _____ County in which Burning to be Conducted _____

Mailing Address _____ Zip _____

Address of Burning Site _____

Name and Title of Official to Contact _____ Phone Number _____

Materials to be Burned	Quantity lbs. per day
Trees, Limbs, Brush	_____
Wood Products	_____
Household Waste **except** Garbage	_____
Petroleum waste	_____
Other (describe)	_____

Total weight of material to be burned _____ (ton/yr).
On what date is it desired to begin such open burning? _____ How long will such open burning continue? _____ During what hours of the day will burning be conducted? _____ to _____
Frequency of burning; days per week _____.

Give reasons which, in your opinion, justify disposal by burning rather than other methods creating less air pollution.

Will an air curtain destructor be used to conduct this burning? _____
What plans have been made to reduce or eliminate open burning at this site?

On a map with a scale of not less than 1:24000 show location of the following:
1. Burning site;
2. Road or highway within one mile of the site with the route number or name;
3. Airports, hospitals, schools or nursing homes within one mile of the site;
4. Nearest incorporated town;
5. Sanitary landfill or similar facility within 1000 ft. of the site;
6. Nearest residence not on the same property as the burning site; and
7. National reservation, wildlife area, state park or forest within 1/2 mile of the burning site.

This is to certify that all of the above information is true, correct and complete to the best of my knowledge:

Date _____ Signature of Company Official _____ Title _____

Return one copy of this form to:

Division of Air Pollution Control
Tennessee Department of Environment and Conservation
2700 Middlebrook Pike, Suite 220
Knoxville, TN 37921-5602

B. Reporting

Recordkeeping of waste reduction efforts will enable the region to demonstrate how it obtained the state waste reduction goal. According to statute, "each person or entity operating a collection site for recyclable materials shall annually report the quantities of recyclables materials collected, by type of material, to the region, which shall then report the amount and type of recycled materials collected in the region annually..." (T.C.A. 68-211-863(b)). Also, statute further determines that reporting by regions of recycled materials collected is required as part of the Annual Report (T.C.A. 68-211-871(a)).

A copy of the Instructions and Recycling Operations Report, provided by TDEC, is available on the pages that follow.

INSTRUCTIONS
for completing the
Tennessee Recycling Operations Report (Form CN-0947)

NOTE: *This report covers the period January 1 - December 31, 1995. If you had no recycling activity during this reporting period, complete Section 1 only and return with the notation* ***"no active program."***

FRONT PAGE

1) List the official name of the organization/program, e.g., *Alpha Salvage Co,. Inc.*, or *Beta County Recycling.* List the name of the contact or the person responsible for completing this report. Fill in the address of the organization and other relevant information asked for in the spaces provided. Be sure to indicate the **county** where located.

2) Check the box beside your organization type, e.g., private, public non-profit, processor, or other. If your organization is other than those types listed, please briefly describe.

3) Check the box beside the type of program(s) your organization operates, e.g., drop-off, curbside, buy-back, processor, or other. If you have a type of program other than those listed, please describe.

4) Check the box by **each** material handled. Regardless of whether or not it is listed on the reverse side of this report, checking the materials handled will tell us, generally, where in the state that markets exist for particular materials.

   To the right of each listed material, there are three (3) columns headed ***Source***, ***Methods*** or ***Market***:

- In the ***Source*** column, please check the box under one or more of the five (5) different listed sources for the material(s) which you handle. Your organization/program may receive materials from all five, in which case you would check all five source boxes.

- Under ***Methods***, please check the box under one or more of the six (6) listed methods used for processing your materials.

- The ***Market*** column list four (4) methods for marketing your materials. Please check the box under one or more of the methods used for marketing your materials (check each box that applies).

(REVERSE SIDE) LIST MATERIALS RECOVERED

Record the **TONNAGE (gallons for used oil)** beside each recyclable material collected. Then, enter the total of all materials listed under a material type, e.g., total paper, total glass, etc., in the right-hand column. Total the right-hand column (all materials required to be reported in tons) and enter this total on the line labeled GRAND TOTAL (TONS). This information will be used, in part, to determine your recycling rate. ***To prevent double-counting, do not report recyclables received by you from another reporting entity.***

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE

REPORTING PERIOD
January 1-December 31
1995

TENNESSEE RECYCLING OPERATIONS REPORT

CN 0947 (Rev. 9-95)

Pursuant to the Solid Waste Management Act of 1991, the Division of Solid Waste Assistance is responsible for tracking the types and volumes of materials processed for recycling throughout the state. This enables the Division to assist local communities with long-term planning and market development for recovered materials.

1. Organization's Name _____ County _____
   Contact's Name _____ Title _____
   Address _____
   City _____ Zip _____
   Telephone ( ) _____ Fax ( ) _____
2. Type of organization: ☐ Private ☐ Public ☐ Non-profit ☐ Other (describe) _____
3. Type of program(s): ☐ Drop-off ☐ Curbside ☐ Buy-back ☐ Processor ☐ Other (describe) _____
4. INDICATE MATERIALS HANDLED **(check all that apply):**

Material	Source					Methods						Market			
	Individual	Business	School	Industry	Recycler	Shredded	Perforated	Baled	Densified	Crushed	Flattened	End-User	Co-op	Broker	Processor
PAPER															
☐ Corrugated Containers	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Mixed Office Papers	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ White Ledger	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Laser Computer	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Old Newspaper	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Old Magazine	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Telephone Books	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
GLASS															
☐ Clear Container Glass	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Brown Container Glass	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Green Container Glass	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Non-Container Glass	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
BATTERIES															
☐ Lead-Acid	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Dry-Cell	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
PLASTICS															
☐ PET #1	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ HDPE #2	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ PVC #3	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ LDPE #4	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ PP #5	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ PS #6	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Industrial Scrap	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
METALS															
☐ Aluminum Beverage Cans	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Scrap Aluminum	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Copper	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Brass	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Stainless Steel	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Steel Food/Beverage Cans	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Mixed Metals	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Appliances/White Goods	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
COMPOSTABLES															
☐ Mulch/Wood	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Compost/ Yard Waste	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Compost-MS Waste	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ Compost-Sewage Sludge	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ PALLETS	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ TEXTILE SCRAP	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
☐ OIL	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

LIST MATERIALS RECOVERED

MATERIAL TYPES	COLLECTED (TONS)	TOTAL COLLECTED (TONS)	
PAPER			
Corrugated Containers	_____		
Mixed Office Papers	_____		
White Ledger	_____		
Laser Computer	_____		
Old Newspaper	_____		
Old Magazine	_____		
Telephone Books	_____	**PAPER**	_____
GLASS			
Clear Container Glass	_____		
Brown Container Glass	_____		
Green Container Glass	_____		
Non-Container Glass	_____	**GLASS**	_____
BATTERIES			
Lead-Acid	_____		
Dry-Cell	_____	**BATTERIES**	_____
PLASTICS			
PET #1	_____		
HDPE #2	_____		
PVC #3	_____		
LDPE #4	_____		
PP #5	_____		
PS #6	_____		
Industrial Scrap	_____	**PLASTIC**	_____
METALS			
Aluminum Beverage Cans	_____		
Scrap Aluminum	_____		
Copper	_____		
Brass	_____		
Stainless Steel	_____		
Steel Food/Beverage Cans	_____		
Mixed Metals	_____		
Appliances/White Goods	_____	**METALS**	_____
COMPOSTABLES			
Mulch	_____		
Compost	_____		
Compost-Municipal Solid Waste	_____		
Compost-Municipal Sewage Sludge	_____	**COMPOST**	_____
PALLETS		**PALLETS**	_____
TEXTILE SCRAP		**TEXTILE**	_____

GRAND TOTAL (TONS) ..... _____

OIL (please list in gallons) **(GALLONS)** _____

RETURN FORM TO: Tennessee Department of Environment & Conservation, Division of Solid Waste Assistance, 14th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-0455

Additional Reading:

Decision-Makers Guide to Solid Waste Management, EPA/530-SW-89-072, Solid Waste and Emergency Response, 1989.

The BioCycle Guide to Collection, Processing and Marketing Recyclables, edited by BioCycle Journal of Waste Recycling, JG Press, Inc., 1990.

The BioCycle Guide to Composting Municipal Wastes, edited by BioCycle Journal of Waste Recycling, JG Press, Inc., 1989.

Chapter 9

Processing and Disposal

PROCESSING AND DISPOSAL

The State of Tennessee promulgated new regulations for solid waste processing and disposal facilities in March 1990. A copy of the regulations is available in Appendix C of this document. The "Solid Waste Processing and Disposal Regulations" are comprised of ten (10) rules:

1200-1-7-.01	Solid Waste Management System
1200-1-7-.02	Permitting of Solid Waste Storage, Processing and Disposal Facilities
1200-1-7-.03	Requirements for Financial Assurance
1200-1-7-.04	Specific Requirements for Class I, II, III, and IV Disposal Facilities
1200-1-7-.05	Specific Requirements for Class V Disposal Facilities
1200-1-7-.06	Specific Requirements for Class VI Disposal Facilities
1200-1-7-.07	Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste
1200-1-7-.08	Solid Waste Management Fund
1200-1-7-.09	Waste Disposal Reduction Goal
1200-1-7-.10	Convenience Centers

The regulations define terms and categories of waste processing and disposal facilities, general standards for design and operation, variances, waivers, fees and an overview of information applicable to these topics. The Tennessee Department of Environment and Conservation is primarily responsible for regulating the implementation of the listed rules.

The following information in this chapter will give brief descriptions of facilities, permit requirements and departmental policy on various topics.

A. Processing Facilities

A processing facility, according to Rule 1200-1-7-.01(2), "means a combination of structures, machinery or devices utilized to perform solid waste processing, including other storage and processing areas. The term does not include collection vehicles." In the definitions of Rule 1200-1-7.01(2), solid waste processing "means an operation for the purpose of modifying the characteristics or properties of solid waste to facilitate transportation or disposal of solid wastes including but not limited to, incineration, composting, separation, grinding, shredding, and volume reduction."

Processing facilities require a Permit by Rule in order to operate in the State of Tennessee. A Permit by Rule is a less formal permitting process than for disposal facilities. The operator of such a facility must notify the Department of Environment and Conservation as per the requirements of Rule 1200-1-7-.02(1)(c) Parts 1 and 2.

Permit by Rule

Rule 1200-1-7.02(1)(c)(1) identifies certain classes of activities as requiring a Permit by Rule for operations. Please refer to the provisions of the Rule to determine if the intended activity warrants application for a Permit by Rule. The following page provides a complete application packet including a copy of the Permit by Rule Notification form and Instructions for completing the application.

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Solid Waste Management

DATE: February 1, 1996

TO: Persons proposing to own or operate Solid Waste Processing Facilities

SUBJECT: **Permit-By-Rule Application**

Attached to this memo is a general instruction package for your proposed solid waste processing facility to be registered under this classification. Complete the attached notification form, then locate the facility on a U.S.G.S. or a topographic map. Provide a brief narrative explaining how the operating standards contained in the regulations will be met. These operating condition are attached for your response. Rules effective as of July 10, 1993 require solid waste processing facilities with storage capacity of 1000 cubic yards or greater to file financial assurance with the Commissioner. Therefore, you are required to enclose a sketch of the facility showing storage capacity for solid waste.

An application fee of One Thousand ($1,000) is required for filing. Make check payable to Treasurer, State of Tennessee; and NOTE THE NAME OF YOUR FACILITY. SEND TO:

Waste Activity Audit Section
Attn.: Ms. Teri James
5th Floor, L & C Tower
401 Church Street
Nashville, TN 37243-1535

This fee schedule applies to processing facilities only (e.g. not convenience centers, tire storage or coal ash facilities).

Once requirements are met and your facility is permitted, an annual maintenance fee of Two Thousand ($2,000) Dollars is required for those facilities that are required to pay an application fee. At the end of each year, the fee may be refunded if documentary proof is submitted to the Waste Activity Audit Section showing that at least 75% of the waste were recycled.

Tennessee Department of Environment and Conservation
Solid Waste Management Contacts

Field Offices

1. Mark Thomas
Division of Solid Waste Management
2510 Mt. Moriah, Suite E 645
Perimeter Park
Memphis, TN 38115-1520
Phone: (901) 368-7939
Fax: (901) 368-7979

2. Randy Harris
Division of Solid Waste Management
362 Carriage House Drive
Jackson, TN 38305-2222
Phone: (901) 661-6200
Fax: (901) 661-6283

3. Al Majors
Division of Solid Waste Management
Nashville Field Office
3000 Morgan Road
Joelton, TN 37080
Phone: (615) 299-8451
Fax: (615) 299-8749

4. Barry Atnip
Division of Solid Waste Management
1221 South Willow Ave.
Cookeville, TN 38501
Phone: (615) 432-4015
Fax: (615) 432-6952

5. Guy Moose
Division of Solid Waste Management
Chattanooga State Office Building
Suite 550
540 McCallie Avenue
Chattanooga, TN 37402
Phone: (423) 634-5745
Fax: (423) 634-6389

6. Jack Crabtree
Division of Solid Waste Management
2700 Middlebrook Pike, Suite 220
Knoxville, TN 37921-5602
Phone: (423) 594-6035
Fax: (423) 594-6105

7. Larry Gilliam
Division of Solid Waste Management
2305 Silverdale Road
Johnson City, TN 37601-2162
Phone: (423) 854-5400
Fax: (423) 854-5401

Facility Name _____

Permit No SWP _____

PROCESSING FACILITY
FINANCIAL ASSURANCE WORKSHEET

---

1. **The maximum storage capacity for solid waste in cubic yards:**
   Attach a sketch and/or calculation to support this number.

   _____ **cy**

2. **The cost per yard times the amount shown above to transport to a disposal site:**

   $ _____

3. **The cost (tipping fee, surcharges, etc.) To dispose of this volume of waste:**

   $ _____

4. **Contingency fee of 5%** **$** _____

5. **Items 2+3+4=Total** **$** _____

6. **Adjustment for future inflation (5% for 3 years)** **$ XXXXXXXX**

   Total Amount Due **$** _____

Signed _____

To the best of my knowledge, the above information is correct and complete.

INSTRUCTIONS FOR SOLID WASTE PERMIT BY RULE NOTIFICATION

Complete this form for each facility that is processing and/or disposing of solid waste in Tennessee. If multiple facilities exist or are planned, describe each facility and its wastes on a separate form. **Submit completed documents to the respective field office in your area.**

Each existing facility must submit this form along with the required information (1200-1-7-.02(c)(2)) within ninety (90) days after the effective date of this rulemaking. Facilities beginning operation after the effective date of this rulemaking must submit this form along with the required information (1200-1-7-.02(c)(2)) at least thirty (30) days before beginning operation.

Line 1 (a) **Facility's full legal, name** - Give the applicant's full, legal name for this site to distinguish it from any other site the applicant or organization may own or operate in Tennessee. **Identification Number** - leave blank for Division usage.

(b) **Mailing address** - Give a complete mailing address for applicant or organization.

Line 2 (a) **Physical location or address of facility** - Give information which will aid the Division in going to the site/facility. Do not give a Post Office Box Number.

(b) Supply the **latitude** and **longitude** of the site with the precision of degrees, minutes and seconds.

Line 3 **Responsible official name** - Give the name and phone number of the person who the Division may contact for further information about the contents of this form.

Line 4 **Manager or Operator name** - Give the name and phone number of the manager or person who is responsible for the direction of activities at the site/facility.

Line 5 (a) **Landowner name** - Give the person(s) or organization name(s) and phone number(s) of the immediate owner(s) of the property (attached letter from landowner(s) as required by Rule 1200-1-7-.02(2)(d)(vi)).

(b) **Mailing address** - Give a complete mailing address for landowner.

Line 6 (a) **Zoning authority name** - Give the name and phone number of the zoning authority plus the current zoning status of the property.

(b) **Mailing address** - Give a complete mailing address for the zoning authority.

Line 7 (a) **Type(s) of activity** - check the appropriate type(s) of activity.

(b) **Description of activities** - Unless this is a landfill, enter a brief narrative description of how the solid waste will be handled and processed from the time it enters the facility until it leaves the facility.

Line 8 **Type(s) of waste handled or processed** - Check the type(s) of waste to be handled at the facility. If the waste type is not listed, check "other" and briefly describe the source or characteristics of the solid waste.

Line 9 **Amount of waste handled/processed/stored** - Provide an estimate of the daily weight in tons/day and/or volume in cubic yards/day that will be handled at the facility. Indicate the maximum amount of waste that can be stored in cubic yards.

Line 10 **Certification** - After all documents have been compiled for submission to the Division, the manager or owner responsible for the site must sign, give his title and the date signed. This signature must be notarized.

SOLID WASTE PERMIT BY RULE NOTIFICATION

Tennessee Department of Environment and Conservation
Division of Solid Waste Management

1. a. Facility's full, legal name			**Official use only**
b. Mailing address	City	State	Zip Code
2. a. Physical location or address of facility			County
b. Latitude (degrees, minutes, and seconds)	Longitude (degrees, minutes, and seconds)		
3. Responsible official's name			Phone number with area code ( )
4. Manager's or Operator's name			Phone number with area code ( )
5. a. Landowner's name			Phone number with area code ( )
b. Mailing address	City	State	Zip Code
6. a. Zoning authority's name	Current zoning status		Phone number with area code ( )
b. Mailing address	City	State	Zip Code

7. a. Type(s) of activity:
   ☐ Mulching ☐ Recycle Center ☐ Tire Processor ☐ Incineration ☐ Transfer Station
   ☐ Baling ☐ Tub Grinder ☐ Composting ☐ Soil Remediation ☐ Convenience Center
   ☐ Waste Food Processor ☐ Other _____

   b. Description of activities

8. Type(s) of waste handled or processed:
   ☐ Food ☐ Tires ☐ Commercial ☐ Soil ☐ Wood ☐ Medical ☐ Yard Waste
   ☐ Other _____

9. Amount of waste handled or processed:
   Weight _____tons/day Volume _____cubic yards/day

   Storage Capacity _____cubic yards

10. I certify under penalty of law that this document and all attachments were under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information.

Date_____ Signature of Responsible Official _____

Official Title _____

Signature of Notary _____

Date Commission Expires _____

(Notary Seal)

GENERAL INSTRUCTIONS FOR COMPLETING NOTIFICATION PACKAGE

1. Read the instructions on the back of the "Solid Waste Permit By Rule Notification," then complete all applicable sections. Do not use "Ditto Marks" or "Same" in filling in the spaces.

2. A U.S. Geological Survey (U.S.G.S.) Minute topographic map indicating the location of the facilities is to be included. This map can provide you with the latitude and longitude information required on the notification form.

3. Attach a scaled drawing of the layout that shows the flow of wastes through the facility and the location and sites of all processing and storage areas. Your solid waste storage areas(s) on this layout must agree with the storage capacity on the financial assurance worksheet.

4. Fill out the "Processing Facility Financial Assurance Worksheet." This will be used to determine what amount of financial assurance, if any, you will be required to post for this facility.

5. Respond to the "Solid Waste Permit By Rule Conditions." (I through XXII if not a tire processor, and I through XXII plus the addendum if a tire processor.)

   A. Don't just copy the statement and then answer "Yes" or "No," but rather elaborate on what will be done at your site to meet these requirements. For example, what steps have been taken to prevent fires and explosions?

   B. Identify liquids going to a wastewater treatment facility permitted to receive such wastewater.

   C. If this facility is proposed to handle special wastes, include a description of such wastes.

6. Three (3) copies of the application and supporting documents (original and two copies) must be submitted to the appropriate Division of Solid Waste Management Field Office for their review and approval. See map of Tennessee for the field office that has jurisdiction over your proposed facility location. Indicate on your transmittal letter to the field office manager that you have paid your application fee. If you have any questions, please call the field office.

7. Send the $1,000 application fee payable to Treasurer, State of Tennessee and note the name of your facility to:

   Waste Activity Audit Section
   Attn.: Ms. Teri James
   5th Floor, L & C Tower
   401 Church Street
   Nashville, TN 37243-1535

Submit to Field Office:

Complete Application
Answer For Conditions
7.5 Minute USGS Map
Financial Assurance Worksheet
Scale Drawing

Submit to Central Office:

Fee

8. If there are questions concerning the completion of the application, contact your field office or David Moses at (615) 532-0815 in the Central Office in Nashville.

APP/SWP2

The Permit by Rule Notification form on the previous pages must be completed for, but not limited to, the following facilities:

- Transfer stations (if compaction is utilized)
- Convenience centers
- Air curtain destructors and pit burners
- Waste tire storage and processing sites
- Waste oil collection and processing sites
- Sites collecting or processing oil filters
- Composting and mulching sites
- Infectious waste incinerator
- Soil remediation sites
- Baling and shredding sites
- Waste food processors
- Coal ash fill areas
- Cement dust storage sites
- Agricultural byproducts sites

B. Disposal Facilities

The sanitary landfill is a method of disposing of solid wastes on land in a manner which protects human health and the environment. Using the principles of engineering, solid waste is confined to the smallest practical area, reduced to the smallest practical volume, and covered with a layer of earth at the conclusion of each day's operation (daily cover), or at more frequent intervals as may be necessary. Daily cover and stringent environmental controls, such as siting, liners, gas control, etc., are the most significant aspects which sets a sanitary landfill apart from an open dump.

In the United States, the Resource Conservation and Recovery Act of 1976 (RCRA) is the primary federal source of solid waste legislation. Subtitle D of RCRA deals with non-hazardous solid waste and requires the development of state comprehensive solid waste management programs. The federal government sets minimum national standards for municipal solid waste disposal, however state and local governments are responsible for implementing and enforcing the programs.

EPA also promulgated criteria for solid waste disposal facilities. The criteria appears in 40 CFR 257 and 258. A complete copy of 40 CFR Parts 257 and 258 is available in Appendix A, and a summary is provided in Chapter 1 of this handbook. EPA's criteria addresses a number of design and operating practices for solid waste disposal facilities, including site selection, facility design, water and air quality considerations, gas control, vector control, aesthetics, cover material, compaction, safety consideration, record keeping and exclusion of specific solid wastes, monitoring, closure, post-closure, corrective action and financial assurance. These criteria were promulgated in the Federal Register on October 9, 1991.

The State of Tennessee developed a state program to ensure safe disposal of municipal solid waste. Tennessee received Environmental Protection Agency (EPA) approval for its program on

September 16, 1993, as specified in Rule 1200-1-7-.01 through 1200-1-7-.07. A complete copy of the state regulations is available in Appendix C.

Those responsible for complying with state and federal regulations must consider the permit and standard requirements in the areas of development/design, operations/management and closure/post-closure of a solid waste disposal facility. For purposes of this handbook, each area will be presented including permit forms, instructions and policy guidance documents issued from the Tennessee Department of Environment and Conservation.

1. Development and Design

To develop and design a solid waste disposal facility in Tennessee requires applying for a permit. The permit application process is briefly discussed in the section that follows.

Application for a Permit

Applicants for a solid waste disposal permit no longer have to prepare a feasibility study. Existing facilities shall not be subject to further public notice and public hearings when making permit modifications that are necessary to comply with the new regulations.

The format and contents for a solid waste application are defined in Rule 1200-1-7-.02(2)(d). The permit application is divided into two parts. Part I consists of forms supplied by the Department of Environment and Conservation with accompanying instructions. Part II, of the permit application, is defined in detail in Rule 1200-1-7-.04(9). It consists of a hydrogeologic report, engineering plans, narrative description, narrative description of the facility and operations, and a closure/post-closure plan.

If upon receiving a permit, the facility does not initiate construction and/or operation within one year of the date of the permit, the permittee may not initiate construction and or operation of the facility unless recertification by the commissioner in writing has been received. The procedure for obtaining recertification is defined in Rule 1200-1-7-.02(2)(e).

(a) Part I

The Part I application process includes: the Solid Waste Part I Application, a Site Map reproducible in local newspapers, and Disclosure Statement.

A copy of the Solid Waste Part I Application and instructions is available on the following pages. Detailed description for processing the permit is found in Rule 1200-1-7-.02(3). The terms of the permit are found in Rule 1200-1-7-.02(4). The regulations regarding the transfer, modification, revocation, reissuance and termination of permits are found in Rule 1200-1-7-.02(5).

A copy of the Disclosure Statement follows the Solid Waste Part I Application.

LANDFILL PERMITTING PROCESS

The following roughly outlines the permitting process for a solid waste landfill in Tennessee.

STEP	STATE	APPLICANT	ESTIMATED TIMEFRAME
1. Part I Application / Preliminary Public Notice			
* Submittal of Part I	X	X	30 days
* Review by SWM	X		
* Issue Preliminary Public Notice			
2. Part II Application (see note)			
A. Hydrogeologic Report			
* Submittal of proposal / work plan		X	3 -6 months
* Review by SWM	X		
* Implementation of work plan	X		
* Preparation and submittal of report		X	
B. Plans and Operations Manual			
* Preparation and submittal of design documents and operations manual		X	1 - 6 months
3. Review for Completeness			
* Review of completeness by SWM Field Office	X		45 days
* State advises applicant of completeness	X		
4. Public Notice of Draft Permit			4 -6 months:
* Review of Part II Application	X		45 day
* Design / application modification		X	mandatory
* Preparation of draft permit	X		public
* Review by permit review committee	X		comment
* Issue notice	X		period
5. Public Hearing (conditional)			30 - 60 days:
* Issue notice of public hearing date	X		15 days notice
* Hold hearing	X	X	
6. Final Permit Decision			
* Summarize and respond to public comments	X		
* Issue, deny, or modify permit	X		30 -90 day
* Public Notice of Final Permit Decision	X		
7. Site Preparation			
* Construction of facilities		X	3 -6 months
* Construction quality assurance / certification	X	X	

Note: Part II Application is typically submitted and reviewed in two stage: 1) Hydrogeologic Report 2) Plans and Operation Manual.

PART I

GENERAL INSTRUCTIONS FOR COMPLETING LANDFILL APPLICATION PACKAGE

1. Read the instructions on the back of the "Solid Waste Part I Application," then complete all applicable sections. Do not use "Ditto Marks" or "Same" in filling in the spaces.

2. A U.S. Geological Survey (U.S.G.S.) Minute topographic map indicating the location of the facility must be included with your Part I application. This map can provide you with the latitude and longitude information required on the application form.

3. The "Disclosure Form" must be filled in and submitted with the Part I application.

4. The Part II application is submitted and reviewed in two stages: 1) Hydrogeologic Report; and 2) Plans and Operation Manual. The regulatory requirements for Part II application are attached.

5. An application fee is required for filing. Check the Fee Schedule for your type of facility. Make Check payable to Treasurer, State of Tennessee; and NOTE THE NAME OF YOUR FACILITY. SEND FEE TO:

   Waste Activity Audit Section
   Attn.: Ms. Teri James
   5th Floor, L & C Tower
   401 Church Street
   Nashville, TN 37243-1535

6. Five (5) copies of the Part II application must be submitted to the appropriate Division of Solid Waste Management Field Office for their review and approval. See map of Tennessee for the field office that has jurisdiction over your proposed facility location. Indicate on your transmittal letter to the field office manager that you have paid your application fee. If you have any questions, please call the field office.

Fee Schedule

1.	Disposal Facility		
	A.	Class I	
		Hydrogeologic	$ 4,000.00
		Design and Construction Plans	$ 6,000.00
	B.	Class II	
		Hydrogeologic	$ 4,000.00
		Design and Construction Plans	$ 6,000.00
	C.	Class III	$ 3,000.00
	D.	Class IV	$ 3,000.00
2.	Major Modifications		$ 2,000.00
3.	Special Waste Approval		$ 250.00

Baled Waste Inspection Fee - Any facility that intends to receive baled waste that was not baled in accordance with a permit issued in accordance with the Solid Waste Management Act, shall pay a $3.00 per bale inspection fee prior to the receipt of the waste.

Transporter Permitting Fee - Every person who transports municipal solid waste that originates or terminates in Tennessee shall pay an annual fee of fifty dollars ($50) per vehicle. Any vehicle of less than five (5) cubic yards capacity is exempt. Municipal solid waste is regulated as per the definition in Public Chapter 451 Section 2(a)(10). A maximum fee of $15,000 per company or municipal corporation shall apply. The fee specified in the paragraph shall be due annually on October 1.

Schedule for Timely Action on Permit Applications:

1. A completeness determination must be reviewed and the applicant notified within the following time frames:

A.	Hydrogeologic Report	30 days
B.	Design and Construction Plans	45 days

2. Permit application shall be acted upon (issued or denied) by the Department within the following time after the application is certified to be complete:

A.	Disposal Facility	
	Class I	270 days
	Class II	270 days
	Class III	240 days
	Class IV	240 days
B.	Major Modification	
	Regulatory Requirement	180 days
	Application:	
	Plans Only	240 days
	Geologic	270 days
C.	Special Waste Approval	30 days

3. The above time periods shall be stayed if:

   A. The applicant requests that review be suspended.

   B. The Department issues a written notice of deficiency and until the applicant adequately addressed said deficiency.

4. Should the Department not issue or deny a permit as specified in subparagraph (b) of this paragraph, the application fee shall be refunded with interest. The Board shall be provided a quarterly update as to the status of all permits.

7. If there are questions concerning the completion of the application, contact your field office or David Moses at (615) 532-0815 in the Central Office in Nashville.

APP/LNF2

INSTRUCTIONS FOR SOLID WASTE PART I APPLICATION

Complete this form for each facility that is disposing of solid waste in Tennessee. If multiple facilities exist or are planned, describe each facility and its wastes on a separate form. **Submit completed documents to the respective field office in your area.**

Facilities beginning operation after the effective date of this rulemaking, must submit this form along with the required information [1200-1-7-.02(2)(d)(vi)].

Line 1 (a) **Facility's full, legal name** - Give the applicant's full, legal name for this site to distinguish it from any other site the applicant or organization may own or operate in Tennessee. **Identification Number** - leave blank for Division usage.

(b) **Mailing address** - Give a complete mailing address for applicant or organization.

Line 2 (a) **Physical location or address of facility** - Give information which will aid the Division in going to the site/facility. Do not give a Post Office Box Number.

(b) Supply the **latitude** and **longitude** of the site with the precision of degrees, minutes and seconds. Latitude and longitude may be found by using a U. S. Geological Survey quadrangle map.

Line 3 **Responsible official name** - Give the name and phone number of the person who the Division may contact for further information about the contents of this form.

Line 4 Manager or Operator name - Give the name and phone number of the manager or person who is responsible for the direction of activities at the site/facility.

Line 5 (a) **Landowner name** - Give the person(s) or organization name(s) and phone number(s) of the immediate owner(s) of the property [attached letter from landowner(s) as required by Rule 1200-1-7-.02(2)(d)(vi)].

(b) **Mailing address** - Give a complete mailing address for landowner.

Line 6 (a) **Zoning authority name** - Give the name and phone number of the zoning authority plus the current zoning status of the property.

(b) **Mailing address** - Give a complete mailing address for the zoning authority.

Line 7 **Type of facility** - check the type of facility to operated at this site.

Line 8 **Site acreage** - Give total acreage of the property.
Fill acreage - Give the acreage within the proposed fill area (footprint).

Line 9 **Type(s) of waste handled** - Check the type(s) of waste to be handled at the facility. If the waste type is not listed, check "other" and briefly describe the source or characteristics of the solid waste.

Line 10 **Amount of waste handled** - Provide an estimate of the daily weight in tons/day and/or volume in cubic yards/day that will be handled at the facility.

Line 11 **Certification** - After all documents have been compiled for submission to the Division, the manager or owner responsible for the site must sign, give his title and the date signed. This signature must be notarized.

Line 12 **Date** - the landowner must sign and date the application.

SOLID WASTE PART I APPLICATION

Tennessee Department of Environment and Conservation
Division of Solid Waste Management

1. a. Facility's full, legal name			**Official use only**
b. Mailing address	City	State	Zip Code
2. a. Physical location or address of facility			County
b. Latitude (degrees, minutes, and seconds)	Longitude (degrees, minutes, and seconds)		
3. Responsible official's name			Phone number with area code ( )
4. Manager's or Operator's name			Phone number with area code ( )
5. a. Landowner's name			Phone number with area code ( )
b. Mailing address	City	State	Zip Code
6. a. Zoning authority's name	Current zoning status		Phone number with area code ( )
b. Mailing address	City	State	Zip Code

7. Type of facility:
☐ Class I ☐ Class II ☐ Class III ☐ Class IV ☐ Class V ☐ Class V

8. Site acreage	Fill acreage

9. Type(s) of waste handled or processed:
☐ Municipal ☐ Industrial ☐ Commercial ☐ Demolition ☐ Medical ☐ Yard Waste
☐ Other _____

10. Amount of waste handled or processed:
Weight _____tons/day Volume _____cubic yards/day

11. I certify under penalty of law that this document and all attachments were under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information.

Date_____ Name of Applicant _____

Signature of Responsible Official _____

Official Title _____

Signature of Notary _____

Date Commission Expires _____

(Notary Seal)

12. Date_____ Name of Landowner _____

Signature of Responsible Official _____

APPLICANT DISCLOSURE STATEMENT

Instructions

1. All applicants for the issuance of a solid waste disposal facility permit and each person listed as a key personnel by the applicant must complete the disclosure form.

2. Answer every question completely. If a question does not apply, enter "Not Applicable" or "N/A"

3. If you need additional space to answer a question, insert additional pages immediately following the page on which the question you are answering appears.

4. Please type or print your answer.

5. The listing of Social Security Numbers on the disclosure forms is voluntary.

6. The following definitions will be used to define terms used in the Disclosure Statement:

   a. Applicant - means any person seeking a permit for a solid waste disposal facility.

   b. Application - means the forms and accompanying documents filed in connection with the applicant's request for a permit.

   c. Business concern - means any corporation, association, firm, partnership, trust, sole proprietorship, or other form of commercial organization.

   d. Debt liability - means bonds, debentures, notes, mortgages and loans of any kind, secured or unsecured, and other similar debt instruments.

   e. Disclosure statement - means a statement submitted to the commissioner by the applicant which contains information concerning the past performance of the applicant(s) in waste management fields and persons owning or controlling or owned and controlled by the applicant.

   f. Employed in a supervisory capacity - refers to any individual, including a foreman, having been delegated authority which:

      1. is delegated in the interest of the employer;
      2. involves the exercise of the individual's independent judgment;
      3. is not merely authority to perform a routine or clerical task; and
      4. is authority to perform or effectively to recommend any one or more of the following actions: hiring, firing, transferring, suspending, laying off, recalling, promoting,

discharging, assigning, rewarding, disciplining, directing, or adjusting grievances of employees whose duties or responsibilities involve, in whole or in part, the management of (including but not limited to the evaluation of, identification of, labeling of, and monitoring of the effects of), handling of, disposal of, transportation of, storage of, or treatment of, solid waste, infectious waste or hazardous waste.

g. Empowered to make discretionary decisions - refers to any individual, including a foreman, who has been delegated authority which:

1. is delegated in the interests of the employer;
2. involves the exercise of that individual's independent judgment;
3. is not merely authority to perform a routine or clerical task; and
4. is authority which relates to any one or more of the following aspects of solid, infectious, or hazardous waste operations; the management of (including but not limited to evaluation of, identification, labeling of, and monitoring of the effects of, handling of, disposal of, transportation of, storage of, or treatment of, solid waste, infectious waste or hazardous waste.

h. Equity - means any ownership interest in a business concern, including sole proprietorship, the shares of a partner, and stock in a corporation.

i. Facility - means any site, location, tract of land, installation or building used, or to be used, for incineration, composting, landfilling, or other methods of disposal of solid wastes, for transfer of solid wastes, for the treatment or disposal of infectious wastes, or for the storage, treatment or disposal of hazardous waste, or any combination of these activities.

j. Key personnel - means any individual:

1. employed by the applicant in a supervisory capacity for the subject facility; or
2. empowered to make discretionary decisions for the subject facility;
means, if the applicant has entered into a contract with another person to operate the subject facility:

1. those employees of the contract or who are employed in a supervisory capacity for the subject facility
2. these employees of the contractor who are empowered to make discretionary decisions for the subject facility.

k. Operator - means the person responsible for the direct control or overall operation of a facility.

l. Owns or Controls - means holds or is able to control the purchase or sale of at least five (5) percent of the equity of a publicly traded corporation or twenty-five (25%) percent of the equity of any other business concern, either directly or through a holding company or subsidiary.

m. Partner - means any person or persons who share profits and liability and have management powers of a partnership.

n. Person - means any person or persons who share profits and liability and have management powers of a partnership.

o. Sole proprietorship - means a form of business, other than a partnership or corporation, in which one person owns all the assets and is solely liable for all the debts of the business.

p. Subject facility - means the facility in the State of Tennessee for which the applicant seeks a permit.

7. Each disclosure statement must be supported by an affidavit attesting to the truth and completeness of the information disclosed. Any individual executing the disclosure statement on behalf of a corporation or other entity must certify that he or she is duly authorized to act on the behalf of the corporation or other entity.

8. The Disclosure Statement(s) is incorporated into and becomes a part of the Permit Application. Failure to disclose or misrepresentation of any relevant fact constitutes cause for permit revocation.

APPLICANT DISCLOSURE STATEMENT

1. _____
APPLICANT'S COMPLETE NAME

_____ _____
STATE OF INCORPORATION (if applicable) FEDERAL TAX I.D. NUMBER

_____
BUSINESS ADDRESS

_____
MAILING ADDRESS

2. Give brief description of the structure of the business (e.g. partnership, sole proprietorship, corporation, association).

3. List the names, addresses, and titles of all officers, directors or partners of the applicant, of any parent or subsidiary corporation if the applicant is a corporation, and of any person owning 10% or more interest in the applicant company.

_____ _____
NAME ADDRESS/ PHONE NUMBER

_____ _____
RELATIONSHIP TO APPLICANT TITLE/ POSITION

_____ _____
NAME ADDRESS/ PHONE NUMBER

_____ _____
RELATIONSHIP TO APPLICANT TITLE/ POSITION

NAME	ADDRESS/ PHONE NUMBER
RELATIONSHIP TO APPLICANT	TITLE/ POSITION
NAME	ADDRESS/ PHONE NUMBER
RELATIONSHIP TO APPLICANT	TITLE/ POSITION
NAME	ADDRESS/ PHONE NUMBER
RELATIONSHIP TO APPLICANT	TITLE/ POSITION

4. List the name and address of all facilities in the field of solid or hazardous waste management in which the applicant business or any of its officers, directors, or partners, holds a 10% or greater interest and the name of the officer, director or partner holding such interest.

COMPANY NAME/ ADDRESS	NAME/ ADDRESS OF PERSON HOLDING INTEREST
COMPANY NAME/ ADDRESS	NAME/ ADDRESS OF PERSON HOLDING INTEREST
COMPANY NAME/ ADDRESS	NAME/ ADDRESS OF PERSON HOLDING INTEREST
COMPANY NAME/ ADDRESS	NAME/ ADDRESS OF PERSON HOLDING INTEREST

5. List names of all key personnel, including titles and positions held.

NAME	ADDRESS/ PHONE NUMBER
RELATIONSHIP TO APPLICANT	TITLE/ POSITION

NAME	ADDRESS/ PHONE NUMBER
RELATIONSHIP TO APPLICANT	TITLE/ POSITION
NAME	ADDRESS/ PHONE NUMBER
RELATIONSHIP TO APPLICANT	TITLE/ POSITION
NAME	ADDRESS/ PHONE NUMBER
RELATIONSHIP TO APPLICANT	TITLE/ POSITION
NAME	ADDRESS/ PHONE NUMBER
RELATIONSHIP TO APPLICANT	TITLE/ POSITION
NAME	ADDRESS/ PHONE NUMBER
RELATIONSHIP TO APPLICANT	TITLE/ POSITION

6. List all permits and licences relating to solid and/or hazardous waste management presently held by the applicant(s), including facility name, location, permit or license number and name of issuing authority or agency.

FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY

FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY
FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY
FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY

7. List all permits and licenses relating to solid and/or hazardous waste management presently held by the applicant(s) within the last ten (10) years not listed previously. Include facility name, location, permit or license number and name of issuing authority or agency.

FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY
FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY
FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY

FACILITY NAME

PERMIT/ LICENSE NO.

FACILITY LOCATION

ISSUING AUTHORITY OR AGENCY

FACILITY NAME

PERMIT/ LICENSE NO.

FACILITY LOCATION

ISSUING AUTHORITY OR AGENCY

8. The name and address of solid and/ or hazardous waste facilities constructed and operated by any parent or subsidiary corporation, if the applicant is a corporation.

FACILITY NAME

FACILITY LOCATION

RELATIONSHIP TO APPLICANT

FACILITY NAME

FACILITY LOCATION

RELATIONSHIP TO APPLICANT

FACILITY NAME

FACILITY LOCATION

RELATIONSHIP TO APPLICANT

FACILITY NAME

FACILITY LOCATION

RELATIONSHIP TO APPLICANT

FACILITY NAME

FACILITY LOCATION

RELATIONSHIP TO APPLICANT

9. List all judicial and/or administrative orders issued for the violations of any state or federal environmental protection law which resulted in a fine or penalty within five (5) year period immediately preceding the submission date of the applicant's permit application. Include in the description:

a. the style of the complaint
b. the case file number
c. the forms in which the complaint was filed
d. the identity of each state or federal agency involved with or name in the complaint
e. the amount of the fine(s) or penalty(s)
f. whether the fine or penalty has been paid
g. the identity and description of each law or regulation violated or alleged to have been violated and upon which fine(s) or penalty(s) is/are based
h. state whether the fine was the result of a settlement or agreed order, an administrative order or a court judgment
i. if litigation is ongoing, describe any orders or judgments entered and describe the current status of litigation
j. explain all corrective action measures performed to correct or mitigate the violations

10. List and explain any revocation, suspension or denial of a license, permit, or equivalent authorization, which was issued within the past ten (10) years by any governmental entity and was issued pursuant to law, rule, or regulation relative to the collection, transportation, treatment, storage, or disposal of solid or hazardous waste. Include the date of the revocation, suspension, or denial and the name of the issuing agency or authority.

11. List and describe all criminal felony convictions entered against the applicant for the violation of any state or federal environmental protection law or regulation within the ten (10) years preceding the submission date of applicant's permit application. Include in the description:

a. the style of the case
b. the case file number
c. the forum in which the conviction was entered
d. the date of judgment
e. the sentence imposed
f. the identity and a description of each law applicant was convicted of violating
g. whether the conviction was the result of a plea agreement of a trial
h. if currently on appeal, the status of appeal

An individual, by executing this document on behalf of a corporation or other entity, certifies that she or he is duly authorized as defined in Rule 1200-1-7-.02(2)(a)7. And 8., to act on behalf of the corporation or other entity and provide the information contained herein.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information.

_____

PRINT NAME **TITLE**

_____

SIGNATURE DATE

STATE OF _____

COUNTY OF _____

Subscribed and sworn to before me by _____ this the

_____ day of _____, 199 ___.

_____

NOTARY PUBLIC

My Commission Expires: _____

Any person who knowingly makes a false statement under oath or makes a false statement on an official document shall be guilty of a Class A misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00) or imprisonment of not greater than eleven (11) months twenty-nine days, or by both fine and imprisonment.

APPLICANT NAME

_____

KEY PERSONNEL DISCLOSURE STATEMENT

1. _____ _____

COMPLETE NAME — SOCIAL SECURITY NUMBER / STATE OF INCORPORATION

_____

BUSINESS LOCATION

_____

MAILING ADDRESS

_____

2. Describe the relationship to the applicant.

_____

_____

_____

_____

_____

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_____

3. List all permits or licenses relating to solid and/or hazardous waste management presently held by person named in item 1.

FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY
FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY
FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY
FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY

4. List all permits or licenses related to solid and/or hazardous waste management held by the person listed in item 1. Within the last five (5) years not previously listed.

FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY
FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY

FACILITY NAME	PERMIT/ LICENSE NO.
FACILITY LOCATION	ISSUING AUTHORITY OR AGENCY

5. List all judicial and/or administrative orders issued for the violations of any state or federal environmental protection law which resulted in a fine or penalty, within five (5) years preceding the submission of this application for violation of any state or federal statute or local ordinance.

a) the style of the complaint

b) the case file number

c) the identity of all parties named in the complaint

d) the forum in which the complaint was filed

e) the identity of each state or federal agency involved with or named in the complaint

f) the amount of the fine(s) or penalty(s)

g) whether the fine or penalty has been paid

h) the identity and description of each law or regulation violated or alleged to have been violated and upon which the fine(s) or penalty(s) is/are based

i) state whether the fine was the result of a settlement or agreed order, an administrative order or a court judgment

j) if litigation is ongoing, describe any orders or judgments entered and describe the current status of litigation

6. Describe all judgments of a criminal conviction of a felony entered against the person named in tem 1. For the violation of any state or federal environmental protection law within the ten (10) years preceding the submission of this application. Include the following information:

a) the style of the case

b) the case file number

c) the forum in which the conviction was entered

d) the date of judgment

e) the sentence imposed

f) the identity and a description of each law applicant was convicted of violating

g) whether the conviction was the result of a plea agreement or a trial

h) if currently on appeal, the status of the appeal

7. List the name and address of all waste sites, waste facilities and solid waste management facilities in which the person named in item 1. has a financial interest, an equitable interest, or in which the person is an officer, director, or manager, and identify the nature of the person's interest or investment.

SITE/ FACILITY NAME

SITE/ FACILITY ADDRESS (location)

TYPE OF INTEREST

NATURE OF INTEREST

SITE/ FACILITY NAME

SITE/ FACILITY ADDRESS (location)

TYPE OF INTEREST

NATURE OF INTEREST

SITE/ FACILITY NAME

SITE/ FACILITY ADDRESS (location)

TYPE OF INTEREST

NATURE OF INTEREST

SITE/ FACILITY NAME

SITE/ FACILITY ADDRESS (location)

TYPE OF INTEREST

NATURE OF INTEREST

SITE/ FACILITY NAME

SITE/ FACILITY ADDRESS (location)

TYPE OF INTEREST

NATURE OF INTEREST

SITE/ FACILITY NAME

SITE/ FACILITY ADDRESS (location)

TYPE OF INTEREST

NATURE OF INTEREST

SITE/ FACILITY NAME

SITE/ FACILITY ADDRESS (location)

TYPE OF INTEREST

NATURE OF INTEREST

SITE/ FACILITY NAME

SITE/ FACILITY ADDRESS (location)

TYPE OF INTEREST

NATURE OF INTEREST

The undersigned hereby affirms or swears under penalty of perjury that the information provided in this statement in complete, true, and accurate.

_____	_____
PRINT NAME	TITLE
_____	_____
SIGNATURE	DATE

STATE OF _____

COUNTY OF _____

Subscribed and sworn to before me by _____ this _____ day of _____, 199 ____.

_____
NOTARY PUBLIC

My Commission Expires: _____

Any person who knowingly makes a false statement on an official document shall be guilty of a Class A misdemeanor and upon conviction thereof shall be punished by a fine not to exceed TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00) or by imprisonment of not greater than ELEVEN (11) MONTHS TWENTY-NINE (29) DAYS or by both fine and imprisonment.

(b) Part II

Part II, of the permit application, is defined in detail in Rule 1200-1-7-.04(9). It consists of a hydrogeologic report, engineering plans, narrative description of the facility and operations, and a closure/post-closure plan.

The Tennessee Division of Solid Waste Management has prepared a technical guidance document to assist in developing hydrogeologic investigation plans for proposed landfill facilities. A copy of the Hydrogeologic Investigation Guidance Document is available on the next page. The Closure/Post Closure Plan Guidance Document, prepared by the Division, is available for review at the end of this chapter.

For further assistance on issues related to construction quality assurance, carbonate rock investigation, and earthquake investigation, please review the Technical Guidance Document prepared by the Tennessee Division of Solid Waste Management.

In order to facilitate the completeness of the Part II application process, a copy of a "Checklist for Evaluation of Completeness for Part II- Application" used by the Division in reviewing the Part II Application, is available on the pages following the guidance document for a hydrogeologic investigation.

PART II

HYDROGEOLOGIC INVESTIGATION GUIDANCE DOCUMENT

PREPARED BY

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE MANAGEMENT
TECHNICAL GUIDANCE DOCUMENT 001

EFFECTIVE DATE January 1, 1993

The following Hydrogeologic Investigation Guidance Document has been prepared by the Tennessee Division of Solid Waste Management. The purpose of the guidance document is to assist staff geologists, consultants, and city/county officials in developing hydrogeologic investigation plans for proposed landfill facilities.

Hydrogeologic investigations for proposed landfill facilities generally require at least two or more phases to complete. During the site selection phase the hydrogeologic investigation may be limited to as few bore holes as necessary to characterize the subsurface conditions. Minimum hydrogeologic requirements have been established by the Department so that a minimum number of bore holes and laboratory tests are provided within the actual foot print of the waste fill areas at the landfill site. However, since site specific conditions actually dictate the level of effort required to provide adequate hydrogeologic information the following requirements may be adjusted.

I. RECOMMENDED MINIMUM DRILLING REQUIREMENTS

(A) Proposed disposal sites shall be drilled on an equivalent triangular grid pattern having a 200 foot spacing between holes. Holes shall be drilled to depth of 20 feet below the bottom of the clay liner or to the top of rock (whichever is shallower).

(B) At least one of the required borings in clause (A) for sites less than ten (10) acres and at least one boring for every additional ten sites of landfill shall be drilled to a depth of at least seventy (70) feet below the top of the proposed clay liner or at least twenty (20) feet into bedrock, whichever is shallower.

(C) A minimum of one hole shall be drilled and sampled at five foot intervals in proposed sediment pond sites to a depth of 20 feet beneath the base of the pond or to bedrock in Karst terrain.

(D) Additional holes may also be required to evaluate potential borrow materials and to evaluate surface and subsurface anomalies that may be revealed during the site investigation.

(E) The Division may vary the minimum requirements where alternate testing provides comparable information.

(F) The Division shall be notified at least one day prior to the date and time of the subsurface investigation.

(G) Borings completed for the purpose of satisfying this section may be converted to piezometers or cased holes to comply with the requirements of groundwater monitoring.

II. LOGGING AND TESTING REQUIREMENTS

Boring logs shall include date of drilling, method of drilling, method of backfilling and sealing of bore holes, textural classification, Standard Penetration Test (SPT) blow counts and descriptions for the entire depth of the boring, the depths to and thickness of any water bearing zones, and static water levels immediately following the boring. Bore holes shall not be left open for more than seven days beyond the date of the initial groundwater level measurements unless the borehole is to be converted to a piezometer. The mean sea level surface elevation at each boring shall be recorded and submitted with the boring log as well as the number and location of all samples. The unified soil classification system shall be used to describe soil types on the boring logs. The Division may establish guidance on the recommended sample description to be utilized.

(A) For the deep boring required under subdivision (1)(B), continuous core samples shall be taken of any bedrock encountered.

(B) A complete grain site analysis, natural moisture content, and Atterberg limit test shall be performed on a representative sample from such significant stratum (air) encountered. A significant stratum shall be defined as a soil layer which, based on appearance (color and texture), can be visually distinguished from other layers. More than one (1) stratum may be represented by a single grain size analysis and Atterberg limit test where alternating strata of approximately identical color and texture are encountered.

(C) For each three (3) acres proposed for landfilling a minimum of one (1) hydraulic conductivity test shall be conducted on a Shelby tube sample at a random sampling interval approved by the Division. The samples shall be taken from within the proposed geologic buffer.

(D) Hydraulic conductivity tests shall be performed as per ASTM D5084 on undisturbed Shelby tube samples as well as on recompacted soils proposed for liner construction.

(E) Other tests such as the Two Stage Boutwell permeability test may be required by the Division in order to further evaluate soil suitability.

(F) All testing and sampling procedures shall be identified and all results shall be identified with respect to boring and depth.

(G) All boring samples shall be collected and maintained until the solid waste facility permit is issued, or until any litigation with regard to the proposed permit is resolved, whichever is later.

Tennessee Department of Environment and Conservation
Division of Solid Waste Management

Regulatory Requirements

for

Part II Application

Date: _____

Facility Name: _____

Type Facility: _____

Regulatory requirements for Part II Application. Provide the information relevant to the class of facility planned.

(a) Hydrogeological Report

1. Certified by registered geologist or qualified engineer

2. Includes descriptions and/or locations of:

(i) Soil sampling and procedures used

(I) Soil classifications (USCS)

(II) Samples of undisturbed soil

(III) Samples of remolded soil

(IV) Description of sampling and analytical procedures used

(V) Conductivity determined on samples collected in Shelby tubes

(VI) Testing procedures to establish integrity of liner or cap

(ii) Water table elevations:

At time of drilling

At least twice more

(iii) Soil boring location and boundary of proposed fill area

(iv) GW* flow map

(v) GW recharge and discharge features

(vi) Springs, wells in 1 mile radius

(vii) Public water supply: 2 mile radius

(viii) Summary of geological and hydrogeological evaluations

* GW = ground water

(b) Engineering Plans

1. Plans drawn at a scale not less than 1" = 100' and contour interval no more than 5'. And show locations of and/or describe:

   (i) Proposed waste disposal areas

   (ii) Existing topography with pertinent features

   (iii) On-site benchmarks

   (iv) GW, SW* monitoring points and compliance boundary

   (v) Soil boring locations

   (vi) Dikes, berms, trenches, excavation contours

   (vii) Borrow and cover material storage area

   (viii) Planned development of site (phases)

   (ix) Run-on/run-off diversions from work areas and facility

   (x) Temporary/permanent erosion control measures

   (xi) Existing/proposed utilities, structures, roads

   (xii) Proposed final contours

   (xiii) 100-year floodplain boundaries

   (xiv) Leachate collection/treatment reservoirs and associated piping

   (xv) Gas migration control devices

2. Detailed diagrams, at a suitable scale, showing:

   (i) Sections of erosion and run-on/run-off control structures

   (ii) Sections of leachate collection/treatment reservoirs

   (iii) Sections of gas migration control devices and structures (if required)

   (iv) GW monitoring well installations

   (v) Sections of soil buffer, liner, leachate collection system (including piping)

(vi) Sections of final cover systems (including required cap)

(vii) Sections of access roads

*SW = surface water

3. Cross sections (2 per operational area, as a minimum)

Scale: 1" = 100' as a minimum showing:

(i) Original ground surface elevations

(ii) Proposed excavation depths

(iii) Proposed final depths

(iv) Soil borings

(v) Configuration of soil buffer, liner, leachate system; including slopes

(vi) Cells and lifts and associated berms and dikes, and on-site roadways

(vii) Configuration of final cover system

(viii) Configurations of any gas migration control features

(c) Operations Manual

1. Owner _____

Responsible Official _____

2. Location of facility _____

Address _____

3. Compliance with buffer zone(s)

4. The facility is not located within 200' of a fault area that had displacement

5. The facility is not located in seismic impact area or zone

6. In unstable area the operator must consider the following:

(i) On site or local soil conditions for different settlement

(ii) On site or local geologic or geomorphic features

(iii) On site or local human-made features (both surface and subsurface)

7. Access to and use of facility

8. Methods and sequence of operation

9. Types and anticipated volumes of waste: (check appropriate type and indicate amount)

Industrial	_____	_____	tons/day
Demolition	_____	_____	cubic yards/day
Municipal	_____		

10. Acres to be filled and acres permitted

11. Waste handling and covering program

(i) Unloading, spreading, compacting

(ii) Frequencies and depths of cover (3 types)

(iii) Soil balance/availability of cover

12. Operating equipment

13. Procedure for controlling and collecting blowing litter

14. Management of erosion control facilities

15. Management of leachate collection facilities

16. Dust control measures and implementation

17. Fire safety precautions

18. Facility services

19. Inspection of liners and cover systems

(i) Any new phase or expansion should be tested and inspected by a P.E.

(ii) Each section should be certified by a P.E.

20. Containment of migration of explosive gases

21. Planned GW monitoring program

(i) Number and location of wells

(ii) Monitoring well construction

(iii) Parameters to be monitored

(iv) Sampling and procedures

(v) How sampling and results will be recorded and reported

22. Engineering statement of site flood frequency

23. Impacts on endangered or threatened species

24. Random inspection program

(d) Closure/Post Closure Care Plan

1. Contents of Plan

(i) Plan identifies steps necessary to completely or partially close the facility at any point during intended operating life

(ii) Identifies steps to completely close at end of intended operating life

(iii) Identifies activities after closure and frequency of activities

(iv) For phased development facilities, plan addresses each parcel separately as well as the whole

2. Plan includes a description of:

(i) How and when facility will be partially and finally closed. Also includes expected year of closure.

(ii) Planned GW and SW monitoring and maintenance activities and frequencies

(iii) Person or office, name and number to contact during post closure

(iv) Itemized estimate of third party cost of performing closure and post closure

(v) Planned uses of property during post-closure period

3. In closure plan, operation addresses closure of active portions and future active portions of facility. In post-closure care, operator addresses post-closure care of closed, active, and future active portions.

APP/LNF3

2. Operations and Management

There are several requirements to consider in operating and managing a disposal facility. Please refer to the Solid Waste Processing and Disposal Regulations (available in Appendix C of this handbook), or contact the appropriate Division at the Department of Environment and Conservation for the most recent copy of the regulations when addressing the requirements for operations and management.

Certain requirements have needed additional guidance issued from the Department of Environment and Conservation in order to successfully implement the regulations during operations and management of a disposal facility. The discussion in this section includes additional guidance issued from the Department for the following areas: (a) storm water discharge, (b) special waste disposal, (c) friable asbestos waste disposal, and (d) medical waste disposal .

(a) Storm Water Discharge

To meet the requirements of Rule 1200-1-7-.04((2)(i) for run-on, run-off and erosion control, the operator must design, construct, operate and maintain a run-on and run-off control system including collection and holding facilities capable of handling the peak flow or discharge from a 24-hour, 25-year storm. Additionally, holding facilities must be designed to detain at least the water volume resulting from a 24-hour, 25-year storm and capable of diverting through emergency spillways at least the peak flow resulting from a 24-hour, 100-year storm. Run-on and run-off must be managed separately from leachate unless otherwise approved by the Commissioner.

According to EPA regulations, 40 CFR Part 122, and Tennessee's National Pollutant Discharge Elimination System (NPDES) storm water runoff program, Rule 1200-4-10-.01 thru 1200-4-10-.06, owners/developers must apply for and obtain a storm water discharge permit for: 1) **construction activities** that disturb five acres of more of land (new and existing disposal facilities), and 2) **industrial activities** resulting in storm water discharge (existing disposal facilities). The definition of a facility engaging in "industrial activity" is provided in the pages that follow entitled, "STORM WATER DISCHARGE ASSOCIATED WITH INDUSTRIAL ACTIVITY."

On April 2, 1992, EPA promulgated regulations stating that municipalities (cities, counties, utility districts) with a population of less than 100,000 are not required to apply for and obtain storm water discharge permits for their municipally owned or operated industrial activities, except for powerplants, airports, and uncontrolled sanitary landfills. An uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runon or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act. However, landfills closed prior to October 9, 1991 are not subject to EPA runon/runoff requirements, and therefore need not submit storm water permit application if they are located in municipalities of less than 100,000 population. Landfills closed after October 9, 1991 and others that meet the above definition would be subject to the storm water permit application requirements.

Rule 1200-4-10-.04 and 1200-4-10-.05 specify the general NPDES permit requirements for existing, new and closed landfills in Tennessee. A copy of the rules can be found in Appendix C of this handbook. The State of Tennessee implements the federal regulations, 40 CFR Part 122, for storm water management.

The Tennessee Division of Water Pollution Control advises municipally-owned landfills (city, county, utility district) in operation with a population of 100,000 or more to complete the **Baseline General Permit to Discharge Storm Water Associated with Industrial Activity**. At least 30 days prior to the start of operation as a landfill, the operator should apply for the industrial storm water general permit. In addition, an annual Stormwater Monitoring Report must be completed and forwarded to the Division. A copy of the Report forms follows the industrial permit.

Owners/developers of landfills under construction (prior to receiving waste), disturbing fives acres or more of land regardless of population, should complete the **General NPDES Permit to Discharge Storm Water Associated with Construction Activity**. Once construction is finished, the construction permit should be terminated. Subsequent opening of cells and routine earth moving associated with the operation of the landfill should be covered under the industrial permit for those owners/developers required to applied.

Copies of the Notices of Intent for: **Baseline General Permit to Discharge Storm Water Associated with Industrial Activity**, and **General NPDES Permit to Discharge Storm Water Associated with Construction Activity** issued by the Tennessee Department of Environment and Conservation, Division of Water Pollution Control, and information pertinent to both activities are available on the pages that follow.

Tennessee Baseline General Permit
for Storm Water Discharges Associated with Industrial Activity
Department Rule 1200-4-10.04
and
Notice of Intent (NOI) Information

NOI: Attached are the form and instructions to be used by Tennessee facilities who wish to be covered under the State's baseline general permit for storm water discharges associated with industrial activity.

Notice of Coverage: Within six weeks of our receiving your NOI, you should receive from us a Notice of Coverage (NOC) that indicates your permit number.

Dates: Federal regulations require that a facility with storm water discharges associated with industrial activity (definition attached) must apply for a permit or request coverage under a promulgated general permit by October 1, 1992. If you have not done so by October 1, we advise submitting a completed NOI form as soon as possible.

Coverage: The Tennessee baseline general permit may cover industrial activities in the EPA definition of November 16, 1990, except mining operations and construction activity.

Permit Conditions: A Storm Water Pollution Prevention Plan must be prepared within 180 days of permit coverage (i.e., by May 1, 1993 for facilities that submit NOI by October 1, 1992). The pollution prevention plan must identify potential sources of pollution and describe and ensure Best Management Practices (BMP's) to eliminate or reduce pollutants in storm water (s/w) discharges. Some plan items are site drainage map, identifying s/w discharge points; pollution prevention committee; employee training; testing outfalls for non-storm water discharges. There are additional pollution prevention plan requirements for SARA Title III Section 313 reporting facilities that report on a "water priority chemical."

Monitoring of Storm Water - Each facility must sample selected outfalls at least once per year (3 aliquots at equally spaced time intervals in the first hour of discharge) for five parameters. Several industry categories monitor for additional chemicals: SARA III Section 313 facilities; Landfills, Land Application Sites and Open Dumps (twice per year sampling); Incinerators and BIF's; Metal Industries (SIC Group 33); Wood Treatment Operations; Battery Reclaimers. Monitoring results to be reported at least once per year.

Notes: On April 2, 1992, EPA promulgated regulations stating that municipalities (cities, counties, utility districts) with a population of less than 100,000 are not required to apply for and obtain storm water discharge permits for their municipally owned or operated industrial activities, except for powerplants, airports, and uncontrolled sanitary landfills.

The Division has also issued a general permit rule for storm water discharges associated with construction activity as defined by the EPA rule of November 16, 1990. A separate NOI is to be used for construction activities.

BASELINE STORMWATER GENERAL PERMIT NOTICE OF INTENT INSTRUCTIONS

Completing This Form: Please type or print in the unshaded areas only. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response.
Unless otherwise specified in the instructions to the forms, each item in each form must be answered. To indicate that each item has been considered, enter "NA" for not applicable if a particular item does not fit the circumstances or characteristics of your facility or activity.

Item I: Give the name, as it is legally referred to, of the person, firm, public organization, or other entity which operates the facility described in this Notice of Intent (NOI). This may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation rather than the plant or site manager. Do not use a colloquial name.

Give the complete mailing address of the office where correspondence should be sent. This often is not the address used to designate the location of the facility or activity.

Give the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility and with the facts reported in this NOI who can be contacted by reviewing offices if necessary.

Item I-A: Indicate the legal status of the operator of the facility by checking a box.

Item I-B: Indicate whether the entity which operates the facility also owns it by checking the appropriate box.

Give the address or location of the facility. If the facility lacks a street name or route number, give the most accurate alternative geographic information (e.g., section number or quarter section number from county records or at intersection of Rts. 425 and 22).

Give the name, title, and work telephone number of a person who is thoroughly familiar with operation of the facility and with the facts reported in this NOI who can be contacted by reviewing offices if necessary.

Item III: Give the latitude and longitude to indicate the facility location. Check the box to indicate required map (8.5" x 11"), with facility and receiving streams highlighted and identified, is attached. The required map must be a copy of a U.S.G.S. topographical, City or County map.

Give the areas of facility property, undeveloped land, impervious surfaces and pavement. Indicate if area is in square feet or acres by checking the appropriate box. Impervious surfaces include pavement, concrete and roof.

Item IV-A: Give the Standard Industrial Code (SIC) for the facility. List the primary SIC code first, etc. The Standard Industrial Classification Manual is published by the U.S. Office of Management and Budget. Additional information may be obtained by contacting your local governing office(s).

Item IV-B: Indicate the nature of the business using keywords only.

Item IV-C: Indicate all activities at the facility by checking the appropriate box(es).

Item V-A: Indicate the types of material stored and/or handled outside by checking the appropriate box(es).

Item V-B: Indicate existing practices used to prevent exposure to storm water material storage, handling or material handling equipment or to minimize contaminated runoff by checking the appropriated box(es).

Item VI-A: Indicate waters receiving the discharge(s) by checking the appropriate box. Storm drain system refers to a municipally owned or operated system. Give the name of the owner if box number one was checked.

Give the approximate distance in miles to the receiving stream or sinkhole. If multiple discharge points are applicable, give the shortest distance from a single discharge point.

Give the number of storm water discharge point(s) and indicate if the number is exact or an estimate by checking a box.

Item VI-B: Waters of the State refers to streams, creeks, rivers, lakes, etc. Maps often show stream names. Give the name(s) of waters of the State that receive your storm water runoff, as follows.

Trace the route of storm water runoff from your facility either via ditch or via a storm drain system to the first stream, creek, etc. If the first stream is unnamed ("unnamed tributary"), determine the name of the stream which the unnamed tributary enters. (If runoff is via a municipally owned storm drain system, contact owner if necessary to determine the receiving stream.) Give name of the receiving stream; e.g., Green Creek or unnamed tributary(ies)to Green Creek.

Item VII: Indicate existing permit information that applies by checking the appropriate box(es) and/or filling in the blank(s).

Item VIII-A: Indicate if existing storm water sampling data is being submitted with NOI.

Item VIII-B: Use this space for additional information or comments to describe the facility.

Item IX: Give all information listed to complete certification. Please make all entries in ink and not with markers or pencil. Federal statutes provide for severe penalties for submitting false information on this NOI form. The NOI form must be signed by a President, Vice President or equivalent, or ranking elected official.

Where to File: The NOI forms should be mailed to the below address as shown on page two of the NOI.

Stormwater NOI Processing
Division of Water Pollution Control
401 Church Street
Department of Environment & Conservation
Nashville, Tennessee 37243-1534

State of Tennessee
Department of Environment & Conservation
Division of Water Pollution Control

NOTICE OF INTENT

for
Baseline General Permit to Discharge
Storm Water Associated with Industrial Activity

I. OWNER/OPERATOR

Name:	A. Owner/Operator Type: (Check one) 01.☐ Federal 02.☐ State 03.☐ City 04.☐ County 05.☐ Management Group 06.☐ Private 99.☐ Other		
Mailing Address:			
City:	State:	Zip:	Phone: ( )
Contact Person:	B. 1.☐ Owner 2.☐ Operator 3.☐ Owner/Operator		

II. FACILITY IDENTIFICATION

Facility Name:	County:		
Street Address:	Contact Person:		
City:	State:	Zip:	Phone: ( )

III. SITE DETAILS

Enter facility location: Latitude: _____ deg. _____ min. _____ sec. Longitude:_____ deg. _____ min. _____ sec. ☐ Check box to indicate required map (8.5"x 11")with facility and receiving streams highlighted and identified is attached.	Area of facility property: _____☐ sqft. ☐acres Area of undeveloped land: _____☐ sqft. ☐acres Area of impervious surfaces:_____☐ sqft. ☐acres Area of pavement: _____☐ sqft. ☐acres

IV. INDUSTRIAL INFORMATION

A. SIC Code(s): List primary SIC code first, etc. These are 4-digit numbers. 1._____ 2._____ 3._____ 4._____	C. Activities at facility: (Check all that apply) 01.☐ Manufacturing 02.☐ Storage/Distribution 03.☐ Vehicle Storage 04.☐ Trucking Terminal 05.☐ Vehicle Maintenance 06.☐ Hazardous Waste TSD 07.☐ Outside Waste Disposal 08.☐ Recycling 09.☐ Wastewater Treatment 10.☐ Land Application 11.☐ Landfill 12.☐ Solid Waste Mgt. Unit 99.☐ Other _____
B. Nature of business (keywords):	

STATE USE ONLY

Date NOI Received	Field Office	☐ Individual Permit Rationale
Date of Coverage	NPDES General Permit No. TNROO _____	Reviewer:

V. MATERIAL HANDLING

A. Types of material stored and/or handled outside: (Check all that apply)

01.☐ Stone, clay, sand	02.☐ Raw supply/finished metal	03.☐ Scrap metal	04.☐ Solvents
05.☐ Paints	06.☐ Petroleum products	07.☐ Wood treating products	08.☐ Pesticides
09.☐ Hazardous wastes	10.☐ Coal	11.☐ Salt or other delcing chemicals	12.☐Plastics
99.☐ Other (Please list.)			

B. Existing practices used to prevent exposure to storm water of material storage, handling or material handling equipment, or to minimize contaminated runoff. (Check all that apply).

01.☐ Oil/water separator	02.☐ Containment	03.☐ Berms (pervious, impervious)	04.☐ Storm water detention
05.☐ Leachate collection	06.☐ Overhead coverage	07.☐ Covering with tarpaulins, etc.	08.☐ Chemical treatment
99.☐ Other (Please list.)			

VI. DISCHARGE POINTS & WATERS RECEIVING THE DISCHARGES

A. Does your facility's storm water discharge directly to: (Check one)

1.☐ Storm drain system Owner of system: (Name) _____

2.☐ Waters of the State (e.g., stream, river, lake) either directly or via ditch, etc.

Approximate distance to receiving stream or sinkhole _____ miles

Number of storm water discharge points _____ ☐ exact or ☐ estimate

B. Name(s) of Waters of the State:

_____

VII. EXISTING PERMITS

A. ☐ NPDES Permit TN _____	B. ☐ RCRA Permit No. _____	C. Air Pollution Control Permit(s) ☐ Yes ☐ No
D. Facility on SARA 313 list ☐ Yes ☐ No	E. Dun and Bradstreet No. _____	

VII. ADDITIONAL INFORMATION

A. ☐ Existing storm water sampling data is submitted. Please indicate methods of sampling.

B. Comments or additional information to describe facility

IX. CERTIFICATION AND SIGNATURE (MUST BE SIGNED BY PRESIDENT, V.P. OR EQUIVALENT, OR RANKING ELECTED OFFICIAL)

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

Printed Name: _____ Title: _____

Signature: Date:

Please submit form to the following address:

Stormwater NOI Processing
Division of Water Pollution Control
401 Church Street
Department of Environment & Conservation
Nashville, Tennessee 37243-1534

STORM WATER DISCHARGE ASSOCIATED WITH INDUSTRIAL ACTIVITY

(Federal Register November 16, 1990, pages 48065, 48066)

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plan. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122. For the categories of industries identified in subparagraphs (i) through (x) of this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage or disposal; shipping and receiving area; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subparagraph (xi), the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)-(xi) include those facilities designated under the provisions of 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this subsection:

i. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi);

ii. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

iii. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

iv. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C or RCRA;

v. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection)including those that are subject to regulation under subtitle D or RCRA;

vi. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but not limited to those classified as Standard Industrial Classification 5015 and 5093;

vii. Steam electric power generating facilities, including coal handling sites;

viii. Transportation facilities classified as Standard Industrial Classifications 40,41,42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance(including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under (i)-(vii) or (ix)-(xi) or this section are associated with industrial activity;

ix. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm land, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

x. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale; and

xi. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25, (and which are not otherwise included within categories (ii)-(x).

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, will, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Further interpretation according to Sierra Club V. Abston Construction Co., Inc. 620 F.2d 41 (5th Cir. 1980):

Simple erosion over the material surface, resulting in the discharge of water and other materials into navigable waters, does not constitute a point source discharge, absent some effort to change the surface, to direct the water flow or otherwise impede its progress***Gravity flow, resulting in a discharge into a navigable body of water, may be part of a point source discharge if the (discharger) at least initially collected or channeled the water and other materials. A point source of pollution may also be present

where (discharges) design spoil piles from discarded overburden such that, during periods of precipitation, erosion of spoil pile walls results in discharges into a navigable body of water by means of ditches, gullies and similar conveyances, even if the (dischargers) have done nothing beyond the mere collection of rock and other materials***Nothing in the Act relieves (dischargers) from liability simply because the operators did not actually construct those conveyances, so long as they are reasonably likely to be the means by which pollutants are ultimately deposited into a navigable body of water. Conveyances of pollution formed either as a result of natural erosion or by material means, and which constitute a component of a ***drainage system, may fit the statutory definition and thereby subject the operators to liability under the "Act."

Sources of Information: Notice of Intent forms may be obtained at the Division's Central Office and at field offices.

Central Office of the Division of Water Pollution Control-

Division of Water Pollution Control Industrial Facilities Section L & C Annex, 6th Floor 401 Church Street Nashville, Tennessee 37243-1534	Contact:	Robert Haley (615) 532-0625

Division inspectors are located at the following field offices:

Memphis - 2500 Mt. Moria Road/Suite E, No. 645/Memphis, TN 38115; phone 901-368-7939
Jackson - 295 Summar Avenue/Jackson, TN 38301; phone 901-423-6600
Nashville - 537 Brick Church Park Drive/Nashville, TN 37243-1550; phone 615-741-7391
Chattanooga - 540 McCallie Ave. Suite 550/Chattanooga State Office Bldg./Chattanooga, TN 37402; phone 615-634-5745
Knoxville - 2700 Middlebrook Pike/Suite 220/Knoxville, TN 37921; phone 423-594-6035
Johnson City - 900 N. State of Franklin Rd./Johnson City, TN 37604-3621; phone 423-928-6487

TENNESSEE STORM WATER MONITORING REPORT

INSTRUCTIONS

1. The purpose of this form is for you to report storm water discharge monitoring results and the status of your storm water pollution prevention plan. For each outfall sampled, this form must be completed. The sampling year is October 1 through September 30. Results must be submitted once per year by November 1.

2. Your NPDES permit number should have been transmitted to you along with a copy of the permit. Facilities covered under the baseline NPDES general permit (Rule 1200-4-10-.04) will have an NPDES number that begins TNR00_ _ _ _.

3. Indicate Facility Name, Address, Location, Contact Person and Phone Number. Normally these will be the same as you submitted on your application or Notice of Intent.

4. Total number of facility outfalls that convey "storm water discharges associated with industrial activity." In order to determine the number of such outfalls, one must be familiar with the EPA definition that is given at 40 CFR 122.26(b)(14).

5. Indicate how many outfalls were sampled, under the terms of your permit, this year. The Tennessee baseline general permit allows a discharger to sample only one of two or more outfalls with substantially similar effluent. See subparagraph (5)(i) of Rule 1200-4-10-.04.

6. Assign three alphanumeric characters as outfall numbers. If the facility has less than 100 outfalls, we recommend using S01, S02, S03, . . . up to S99.

7. Items A, B, C, D, E, F

A	Give the drainage area of the outfall, including only area within the boundary of your facility.
B	Give the percentage of the drainage area on your property that is defined as industrial under the EPA definition.
C, D, &E	These percentages should add up to 100%, reflecting all the different land surfaces within the drainage area.
F	If you sampled one storm event this year, report the total inches of rainfall for that event. If you sampled two (or more) events, report the higher (or highest) total inches of all the storm events sampled.

8. The baseline general permit specifies the parameters for which a facility must monitor. For each outfall sampled, you must analyze for the five parameters preprinted on the front of this form. See paragraph (7) of Rule 1200-4-10-.04 to find if there are additional parameters for which you must monitor.

9. If you must monitor additional parameters at an outfall, list the additional parameters on this form in the space below "pH." If there are more than fit on this form (four), use the ADDENDUM FOR ADDITIONAL PARAMETERS.

10. If a parameter is sampled once, or more than once, during the monitoring year, put the one concentration value, or the maximum value, in the maximum column. If the parameter is sampled more than once, average the values and put the average in the average concentration column. If the parameter is sampled more than once, also put the minimum value in the minimum column.

11. For each parameter you are required to monitor, place the parameter report level in the column labeled REPORT LEVEL. These report levels are given in subparagraph (7)(f) Table 7.1 of the general permit. If a parameter is not shown in the Table 7.1 and is not a priority pollutant, there is no report level for that parameter.

12. When analytical sampling results exceed report levels, transmit one copy of the results to the local Water Pollutant Control Field Office within 30 days of your becoming aware of the results. The once per year report must still be submitted to the Church Street Office listed in Item 13. Local office addresses are given below.

    Memphis - 2500 Mt. Moriah Road/ Suite E, No. 645/ Memphis, TN 38115; phone 901-543-6695
    Jackson - 295 Summar Avenue/ Jackson , TN 38301; phone 901-423-6600
    Nashville - 537 Brick Church Park Drive/ Nashville, TN 37243-1550; phone 615-741-7391
    Chattanooga - 540 McCallie Ave. Suite 550/ Chattanooga, TN 37406-3399; phone 423-634-5745
    Knoxville - 2700 Middlebrook Pike/ Suite 220/ Knoxville, TN 37921; phone 423-594-6035
    Johnson City - 900 N. State of Franklin Rd./ Johnson City, TN 37604-3621; phone 423-928-6497

13. Submit two copies of this annual report to the following address:

    Division of Water Pollution Control
    Attn: Compliance and Enforcement
    6th Floor L & C Annex
    401 Church Street
    Nashville, TN 37243-1534

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
STORM WATER MONITORING REPORT

MONITORING YEAR ___/___/___ TO ___/___/___

FACILITY NAME _____ NPDES PERMIT NUMBER _____

ADDRESS _____ CONTACT PERSON _____

CITY _____ COUNTY _____ PHONE NUMBER ( ) _____

TOTAL NUMBER OF FACILITY OUTFALLS THAT CONVEY "STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY": _____
TOTAL NUMBER OF ABOVE OUTFALLS SAMPLED DURING THE MONITORING YEAR: _____
TOTAL NUMBER OF STORM EVENTS SAMPLED: _____

NOTICE: Read instruction on previous page before completing this form.

PROVIDE THE FOLLOWING INFORMATION FOR EACH OUTFALL SAMPLED THIS YEAR:

A.....DRAINAGE AREA OF OUTFALL
B.....PERCENTAGE OF DRAINAGE AREA DEFINED AS INDUSTRIAL ACTIVITY
C.....PERCENTAGE OF DRAINAGE AREA ON YOUR PROPERTY CONSISTING OF IMPERVIOUS SURFACES (CONCRETE, PAVEMENT, ROOF, PONDS)
D.....PERCENTAGE OF DRAINAGE AREA ON YOUR PROPERTY CONSISTING OF VEGETATION (FOREST, LAWN, FIELD)
E.....PERCENTAGE OF DRAINAGE AREA CONSISTING OF GRAVEL OR OTHER SURFACES
F.....RAINFALL AMOUNT OF THE STORM EVENT SAMPLED; IF TWO OR MORE EVENTS WERE SAMPLED, REPORT THE HIGHER OR HIGHEST AMOUNT.

OUTFALL NO. ▬▬▬ A _____ ☐ SQ FEET ☐ ACRES

B _____ % C _____ % D _____ % E _____ % F _____ INCHES

PARAMETER	QUALITY OR CONCENTRATION			REPORT LEVEL	UNITS	NO. OF SAMPLES	SAMPLE TYPE
	MINIMUM	AVERAGE	MAXIMUM				
BOD, 5-DAY (00310)				50	mg/l		COMP.
TOTAL S. SOLIDS (00530)				200	mg/l		COMP.
NITROGEN, AMMONIA (00610)				4	mg/l		COMP.
OIL AND GREASE (00550)				15	mg/l		GRAB
pH (00400)				4.0-9.0	stand.		GRAB

HAS A STORM WATER POLLUTION PREVENTION PLAN BEEN PREPARED FOR THIS FACILITY? ☐ YES ☐ NO

HAS THE PLAN BEEN SIGNED BY A PERSON WHO MEETS THE SIGNATORY REQUIREMENTS OF THE PERMIT? ☐ YES ☐ NO

HAS THE PLAN BEEN IMPLEMENTED? ☐ YES ☐ NO

HAVE YOUR STORM WATER OUTFALLS BEEN TESTED FOR UNPERMITTED, NON-STORM WATER DISCHARGES? ☐ YES ☐ NO

ARE THERE ANY UNPERMITTED, NON-STORM WATER DISCHARGES PRESENT? ☐ YES ☐ NO
IF SO, ATTACH RESULTS OF YOUR INVESTIGATION.

I CERTIFY UNDER PENALTY OF LAW THAT I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED HEREIN; AND BASED ON MY INQUIRY OF THOSE INDIVIDUALS IMMEDIATELY RESPONSIBLE FOR OBTAINING THE INFORMATION, I BELIEVE THE SUBMITTED INFORMATION IS TRUE, ACCURATE AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT.

NAME/ TITLE PRINCIPAL EXECUTIVE OFFICER		DATE		
TYPED OR PRINTED	SIGNATURE OF PRINCIPAL EXECUTIVE OFFICER OR AUTHORIZED AGENT	YEAR	MONTH	DAY

TENNESSEE STORM WATER MONITORING REPORT - ADDENDUM FOR ADDITIONAL PARAMETERS

INSTRUCTIONS

1. You should use this form only as an addendum to the Tennessee STORM WATER MONITORING REPORT form when you need more space to report monitoring results for an outfall.

2. You will need more space for an outfall only when more than nine parameters are monitored for the outfall. The STORM WATER MONITORING REPORT form has five parameters preprinted on the form (BOD, 5-DAY; TOTAL S. SOLIDS; etc.) and blank lines for four more parameters.

3. Indicate Facility Name, Address, Location, Contact person and Phone Number. These should be exactly the same as you indicated for the outfall on the STORM WATER MONITORING REPORT form.

4. If a parameter is sampled once, or more than once, during the monitoring year, put the one concentration value, or the maximum value, in the maximum column. If the parameter is sampled more than once, average the values and put the average in the average concentration column. If the parameter is sampled more than once, also put the minimum value in the minimum column.

5. For each parameter you are required to monitor, place the parameter report level in the column labeled REPORT LEVEL. These report levels are given in subparagraphs (7)(f) Table 7.1 of the general permit. If a parameter is not shown in the Table 7.1 and is not a priority pollutant, there is no report level for that parameter. Report levels for priority pollutants are listed below.

6. When analytical sampling results exceed report levels, transmit one copy of the results to the local Water Pollution Field Office within 30 days of your becoming aware of the results. The once per year report must still be submitted to the Church Street office listed in Item 7. Local office addresses are given below.

   Memphis - 2500 Mt. Moriah Road/ Suite E, No. 645/ Memphis, TN 38115; phone 901-543-6695
   Jackson - 295 Summar Avenue/ Jackson, TN 38301; phone 901-423-6600
   Nashville - 537 Brick Church Park Drive/ Nashville, TN 37243-1550; phone 615-741-7391
   Chattanooga - 540 McCallie Ave. Suite 550/ Chattanooga, TN 37406-3399; phone 423-634-5745
   Knoxville - 2700 Middlebrook Pike/ Suite 220/ Knoxville, TN 37921; phone 423-594-6035
   Johnson City - 900 N. State of Franklin Rd./ Johnson City, TN 37604-3621; phone 423-928-6487

7. Two copies of this ADDENDUM should be submitted along with two completed copies of the STORM WATER MONITORING REPORT form to the following address:

   Division of Water Pollution Control
   Attn: Compliance and Enforcement
   6th Floor L & C Annex
   401 Church Street
   Nashville, TN 37243-1534

Report Levels for priority pollutants in units of mg/l:

Arsenic, trivalent	0.36	Aldrin	0.003
Cadmium, total	0.004	g-BHC - Lindane	0.002
Chromium, hexavalent	0.016	Chlordane	0.0024
Copper, total	0.018	4-4' -DDT	0.0011
Lead, total	0.082	Dieldrin	0.0025
Mercury, total	0.0024	a - Endosulfan	0.00022
Nickel, total	1.4	b - Endosulfan	0.00022
Selenium, total	0.020	Endrin	0.00018
Silver, total	0.004	Heptachlor	0.00052
Zinc, total	0.117	Heptachlor Epoxide	0.00052
Cyanide	0.022	Toxophane	0.00073
Pentachlorophenol	0.020		
		Other pesticides	0.010
Other volatiles, acid extracables and base neutrals	0.1000	Other priority pollutants	1.0
PCB's; 2,3,7,8-TCDD Dioxin	0.010		

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

STORM WATER MONITORING REPORT

MONITORING YEAR ___/___/___ TO ___/___/___

FACILITY NAME _____ NPDES PERMIT NUMBER _____

ADDRESS _____ CONTACT PERSON _____

CITY _____ COUNTY _____ PHONE NUMBER ( ) _____

Note: Read instructions on previous page before completing this form.

OUTFALL NO. ___ MONITORING RESULTS FOR ADDITIONAL PARAMETERS

PARAMETER	QUALITY OR CONCENTRATION			REPORT LEVEL	UNITS	NO. OF SAMPLES	SAMPLE TYPE
	MINIMUM	AVERAGE	MAXIMUM				

I CERTIFY UNDER PENALTY OF LAW THAT I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED HEREIN; AND BASED ON MY INQUIRY OF THOSE INDIVIDUALS IMMEDIATELY RESPONSIBLE FOR OBTAINING THE INFORMATION, I BELIEVE THE SUBMITTED INFORMATION IS TRUE, ACCURATE AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT.

NAME/ TITLE PRINCIPAL EXECUTIVE OFFICER		DATE
TYPED OR PRINTED	SIGNATURE OF PRINCIPAL EXECUTIVE OFFICER OR AUTHORIZED AGENT	YEAR MONTH DAY

Construction Activity
Storm Water Permitting Requirements
Tennessee Department of Environment and Conservation
Division of Water Pollution Control

According to EPA and Tennessee's National Pollutant Discharge Elimination System (NPDES) storm water runoff program, owner/developers and contractors must now obtain permission to discharge storm water from construction activities that disturb five acres or more of land. To do so, one requests coverage under a general NPDES permit, by submitting a Notice of Intent (NOI) on a State NOI form.

Background: The Tennessee Water Quality Control Act has long required a permit for activities that cause or are likely to cause physical or chemical impact to waters of the State, but the State has had no NPDES or other permitting program of general applicability for sediment and erosion control at construction sites.

On February 4, 1987, the Congress enacted the Clean Water Act of 1987 and thereby set up a schedule for the EPA and NPDES-authorized states like Tennessee to regulate by permit storm water runoff form industrial activity. EPA issued application regulations on November 16, 1990 and included as industrial activity:

> Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale.

Tennessee Requirements: Under Tennessee regulations 1200-4-10-.05, a "developer" requests coverage under construction activity general permit by submitting a Notice of Intent form 15 days prior to the date when site disturbance will begin. Developer is defined as a person who engages in or contracts for, or intends to engage in or contract for, construction activity that disturbs at least five acres of land.

The construction activity general permit requires that a construction site erosion control plan be prepared prior to beginning site disturbance. The plan must address various erosion control practices. Contractors of the developer must sign a statement that they understand the conditions of the permit and that they are responsible for compliance with the permit conditions. Both the plan and contractor's statement must be signed by both developer and contractor(s) band be kept on site or at a nearby office. The permit requires weekly erosion control inspections and maintenance and that a log be kept of these activities.

QUESTIONS, ANSWERS AND EXAMPLES:

Q1. Does this apply only to construction to industrial facilities?

A1. No. Almost any five acres clearing, grading and excavation activities are regulated. Included is construction not only of buildings but also of roads and utility lines. Resurfacing of roads we do not consider clearing, grading or excavation and does not require a permit.

Q2. Who must apply for the permit?

A2. In Tennessee, the "developer," as defined above. This will usually be the owner, but might be a second party who is leasing the land or managing the property or construction.

Q3. Do closed or inactive landfills need to apply for a permit?

A3. Yes. Any landfill, active, inactive or closed, must apply for a permit if it receives, or has received, wastes form the industrial facilities identified under 122.26(b)914)(i)-(ix). To the extent that control measures and best management practices address storm water, the permit may incorporate those control measures.

Q4. Does a landfill that receives only the office waste and/or cafeteria waste from industrial facilities have to apply for an NPDES permit?

A4. No. Only landfills that receive or have received waste from manufacturing portions of industrial facilities need to apply for a permit.

Q5. Are gas stations or repair shops that collect tires or batteries classified in the "recycling" category?

A5. No. Only those facilities classified in SIC codes 5015 (used motor vehicle parts) and 5093 (scrap and waste materials) are in the "recycling" category. This includes facilities such as metal scrap yards, battery reclaimers, salvage yards, and automobile junk yards.

Q6. Are municipal waste collection sites included in category (vi)?

A6. No. Municipal waste collection sites where bottles, cans, and newspapers are collected for recycling purposes are not classified as SIC codes 5015 or 5093.

Q7. At what point does an inactive, closed, or capped landfill cease being an industrial activity?

A7. An inactive, closed or capped landfill is no longer subject to storm water permit application requirements when the permitting authority determines the land use has been altered such that there is no exposure of significant materials to storm water at the site. For example, if an impervious surface (such as a parking lot or shopping center) now covers the closed landfill, the permitting authority could determine that storm water discharges form the area are no longer associated with the previous landfill activity. These determinations must be made by the permitting authority on a case-by-case basis.

Q8. If construction of cells at a landfill disturbs greater than five acres of land, is coverage under EPA's construction general permits required?

A8. No. EPA considers construction of new cells to be routine landfill operations that are covered by the landfill's industrial storm water general permit. However, the storm water

pollution prevention plan for the landfill must incorporate best management practices (BMPs) that address sediment and erosion control. Where a new landfill is being constructed and five more acres are being disturbed, such activity would need to be covered under EPA's construction general permit until the time that initial construction is completed and industrial waste is received. Please not that NPDES authorized States may address this situation differently.

Q9. My company owns a site of 30 acres, and its plans are to provide for construction on (or to develop) the entire site. Immediate plans are to construct on four acres. I will complete the four acres before more land is disturbed. Must I obtain permit coverage for this four acre construction?

A9. Yes, if you expect to develop the entire site and will thereby disturb five or more acres of land, and the four acres (call this phase 1) is part of this development, then you must be covered under permit for runoff from the site, including the initial four acres. Since phase 1 will be completed prior to start of phase 2, you may apply for permit coverage on only phase 1 now, and on phase 2 later. Otherwise, you should submit and NOI for the entire 30 acre site. Note that the general permit requires that construction be phased for large projects.

Q10. On a site of 15 acres, a subdivision developer is doing the construction of roads and utility lines but not buildings. More than five acres of land will be disturbed, if not from roads alone, by building construction. Must the subdivision developer obtain permit coverage?

A10. Yes. The Division's procedure is that the subdivision developer, who is the owner of the site and the primary developer, obtain permit coverage for the entire 15 acre site.

Q11. I have purchased lots within a subdivision development and will be building several houses. The lots are all less than one acre. Must I obtain permit coverage?

A11. If you will have five acres or more disturbed at one time or a plan that involves five acres or more of disturbance, then yes. A site is disturbed until stable perennial vegetation is established on all remaining exposed soil.

Q12. Who must sign the NOI and various reports required by the permit?

A12. In short, the NOI by the developer and the contract's statement "I understand the terms and conditions of Rule 1200-4-10-.05..." by contractors must each be signed by a responsible corporate official, such as president or vice-president, in charge of a principle business function. The erosion control plan, weekly inspection records and any other reports may be signed by a duly authorized representative of the company. The weekly inspection reports may be signed by either the developer or contractor.

Q13. My project involves no only a site disturbance of five acres but also the disturbance or alteration of a stream bed. What permits must I obtain?

A13. Both the NPDES storm water runoff permit and an Aquatic Resource Alteration Permit (ARAP). A 404 Permit form the Corps of Engineers may also be required. Information on the ARAP may be obtained form the Natural Resources Section (NRS) of the Division Water Pollution Control/L & C Annex, 6th Floor NRS/ Nashville, TN 37243-1534 and on the 404 permit form the Corps at P.O. Box 1070/ Nashville, TN 37219-1070.

Q14. Must construction activity conducted by municipalities be covered by permit?

A14. In Tennessee, yes, for municipalities of any size.

Sources of Information: Notice of Intent forms may be obtained at the Division's Central Office and at field offices.

Central Office of the Division of Water Pollution Control-

Division of Water Pollution Control
Industrial Facilities Section
L & C Annex, 6th Floor
401 Church Street
Nashville, Tennessee 37243-1534

Contact: Robert Haley

(615) 532-0625

Information on Erosion and Sediment Control-

A handbook titled Tennessee Erosion and Sediment Control Handbook and dated July, 1992 is available at the above address.

Division inspectors are located at the following field offices:

Memphis - 2500 Mt. Moria Road/Suite E, No. 645/Memphis, TN 38115; phone 901-368-7939
Jackson - 295 Summar Avenue/Jackson, TN 38301; phone 901-423-6600
Nashville - 537 Brick Church Park Drive/Nashville, TN 37243-1550; phone 615-741-7391
Chattanooga - 540 McCallie Ave. Suite 550/Chattanooga State Office Bldg./Chattanooga, TN 37402; phone 615-634-5745
Knoxville - 2700 Middlebrook Pike/Suite 220/Knoxville, TN 37921; phone 423-594-6035
Johnson City - 900 N. State of Franklin Rd./Johnson City, TN 37604-3621; phone 423-928-6487

Tennessee Construction Activity Storm Water Permitting Checklist

One is required to apply if one, as owner, developer or builder, is planning to engage in or contract for construction work where five or more acres of land will be disturbed.

PROCEDURE TO GET PERMITTED

1. "Developer" submits NOI at least 15 days prior to site disturbance. Use State form and attach location map.

2. Prior to beginning of construction, contractor(s) of the developer affirm, by signature understanding of legal liability under the permit. Developer also certifies that the named contractor has been retained. Example form is attached.

3. Prior to beginning construction, both developer and contractor(s) review and sign storm water control plan, agreeing that the plan is workable and meets requirements of the permit. See plan elements below.

4. Construction may begin 15 days after submission of the NOI. One need not wait for notification from the State.

CONSTRUCTION SITE PLAN

- ☐ A written, site-specific construction site storm water control plan.
- ☐ The plan is kept on site or at nearby office.
- ☐ Basic site information must be included in the plan.
  - Description of nature of construction, including timetable
  - Estimate of total area of site and area to be disturbed
  - Estimated increase in impervious area and volume of runoff from one-inch storm
  - Description of fill material
  - Site map indicating: areas of disturbance, cut and fill; drainage patterns and approximate slopes after major grading; storage areas of soils or wastes; locations of outfalls; locations of vegetative erosion controls and of impervious structures (buildings, road, parking lots, etc.) that will be present after construction; locations of wetlands and other surface waters
  - Name(s) of waters that receive storm water discharges
- ☐ Description of construction site planning and post-construction, permanent measures for storm water control (e.g., vegetated swales, natural depressions, detention structures, velocity dissipation devices, etc.) is included.

MANDATORY CONSTRUCTION SITE PRACTICES

- ☐ Clearing and grubbing is held to minimum.
- ☐ Construction is sequenced to minimize exposure time of cleared surface.
- ☐ The construction project, if large, is stage or phased. One phase is stabilized before another begins.
- ☐ Erosion and sediment controls are in place before and during construction period. (Temporary measures may be removed but then replaced.)
- ☐ A specific individual is responsible for erosion and sediment controls on each site.

Name: _____

- ☐ No site disturbance starts more than 20 days prior to grading or earth moving.
- ☐ Grass, sod, straw, mulch, fabric mats, etc. is applied within seven days on area that will remain unfinished for more than 30 calendar days.
- ☐ Permanent, perennial vegetation is applied as soon as practicable after final grading.
- ☐ Berms, channels, sediment traps are in place to divert surface water form flowing through the construction site.
- ☐ Erosion and sediment controls are properly designed, according to size and slope of disturbed or drainage area, to prevent erosion, detain runoff and trap sediment.
- ☐ Pipes or lined channels are provided for discharges from sediment basins and traps.
- ☐ Sediment basins and/or filtration are provided for discharges of muddy water pumped from excavation or work areas.
- ☐ Floating scum, oil or other matter is prevented form contaminating storm water discharges.
- ☐ Storm water discharges are controlled to prevent a color contrast in receiving stream.
- ☐ Other pollution, especially toxics, are kept out of storm water.

WEEKLY INSPECTIONS AND RECORDKEEPING

- ☐ Control measures are checked, and repaired as necessary, at least weekly, but also within 24 hours after a rain of 0.5 inches or more, and daily during wet weather.
- ☐ Records are kept of checks and repairs (logbook). These are kept for at least three years.

CONSTRUCTION ACTIVITY STORM WATER PERMITTING REQUIREMENTS

Contractor's Signature Form

State of Tennessee/Department of Environment and Conservation/Division of Water Pollution Control/Rule 1200-4-10-.05

To be completed by developer:

Developer Name: _____

NOI Submission Date: _____

Project Name: _____

Project Location: _____ County

To be completed by Contractor:

I have agreed to perform construction-related professional services, described as

_____

that will likely impact the nature of storm water runoff from the named construction activity. Erosion control services involve primarily:

- ☐ Prepare erosion control plan
- ☐ Install, maintain erosion and sediment controls
- ☐ Inspection of controls
- ☐ Other _____

I understand the terms and conditions of Rule 1200-4-10-.05 and that I, and my company, as the case may be, are responsible for and legally liable for complying with this Rule and the applicable State and Federal laws. I understand that State or EPA or private actions may be taken against me if the terms and conditions of the Rule are not met.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Company Name: _____

Address: _____

City: _____ State: _____ Phone No. _____

Field Person in Charge: _____ Phone No. _____

Owner/Developer: **I certify that the above has been retained to perform the described construction-related services noted above and as outlined in the referenced NOI.**

Signature: _____ Date: _____

State of Tennessee
Department of Environment & Conservation
Division of Water Pollution Control
NOTICE OF INTENT
for
General NPDES Permit to Discharge
Storm Water Associated with Construction Activity

Completing This Form: The developer shall submit the following information to the Division as a Notice of Intent (NOI). "Developer" means a person who engages in or contracts for, or intends to engage in or contract for, construction activity that disturbs at least five acres of land. The NOI should be submitted 15 days before construction is proposed to begin or by October 1, 1992, whichever is later.

Please type or print in the unshaded areas only. Please make all entries in ink and not with markers or pencil. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. Unless otherwise specified in the instructions to the forms, each item in each form must be answered. To indicate that each item has been considered, enter "NA," for not applicable if a particular item does not fit the circumstances or characteristics of your facility or activity. I additional space is need, attach a separate piece of paper to the NOI form.

I. a) Enter the legal or official name of the construction activity. Do no use a colloquial name. **b)** Give the address, location and county or the construction activity. If the construction activity lacks a street name or route number, give the most accurate geographic information possible to describe the location (e.g., section number or quarter section number from county (records or at intersection of Rts. 425 and 22).

a) Name	
b) Mailing address:	Location: County:

II. a) Give the name of the developer, as it is legally referred to, of the person, firm, public organization, or other entity that heads the construction activity described in this NOI. This may or may not be the same name as listed in I.(a). Do not use a colloquial name. **b)** Give the name, title, and work telephone number of a person who is thoroughly familiar with the construction activity and with the facts reported in the NOI who can be contacted by reviewing offices if necessary. **c)** Give the complete mailing address of the office where correspondence should be sent. This often is not the address used to designated the location of the construction activity. **d)** Indicate the ownership status of the developer responsible for the construction activity by checking a box.

a) Name of the developer:	
b) Contact person:	Title: Phone: ( )
c) Complete mailing address:	
d) Ownership status of the developer:	01.☐ Federal 02.☐ State 03.☐ City 04.☐ County 05.☐ Management Group 06.☐ Private 99.☐ Other

STATE USE ONLY

Date NOI Received:	Field Office	Reviewer:
Date of Coverage:	NPDES General Permit No: TNR10 _____	

III. a) Indicate on a map 8.5" x 11" sized paper with boundaries 1-2 miles outside the site property, with the site and construction area outlined and identified and with the receiving water or receiving storm sewer highlighted and identified. **b)** Indicate waters receiving the discharge(s) by checking the appropriate box. Storm drain system refers to a municipally owned or operated system. Give the name of the owner if box number one was checked. **c)** Waters of the State refers to streams, creeks, rivers, lakes, etc. Give the name(s) of waters of the State that receive your storm water runoff, as follows. Trace the route of storm water runoff from your construction activity site either via ditch or via a the unnamed tributary enters. (If runoff is via a municipally owned storm drain system, contact owner if necessary to determine the receiving stream.) Give name of the receiving stream: e.g., Green Creek, or unnamed tributary(ies) to Green Creek.

a) ☐ Check box to indicate required map with the receiving storm sewer highlighted and identified is attached.
b) Will storm water from the site discharge directly to: (Check one)
c) Name(s) of Waters of the State: _____

IV. a) Give a brief description of the project in the box below. **b)** Give an estimated timetable, including date when contractor will begin and end site disturbance. **c)** give an estimate of the number of acres of the site on which soil will be disturbed. **d)** Check a box to indicate if a site-specific erosion control plan has been prepared for the project. **e)** Reference (for example, by title, document number, ordinance) to approved State or local sediment and erosion plans or storm water management plans and indicate by checking the box (if applicable) that all work will be done to provide compliance with such plans.

a) Project description:
b) Begin date: _____ c) Estimate of acres to be disturbed: _____ acres End date: _____
d) Has a site-specific erosion control plan already been prepared? (Check one) ☐ Yes, a site-specific erosion control plan has been prepared. ☐ No, a site-specific erosion control plan has not been prepared.
e) Reference to any applicable State or local storm water management plans. Give reference: _____ ☐ Work will be done to provide compliance with reference plans. _____

V. CERTIFICATION AND SIGNATURE (MUST BE SIGNED BY PRESIDENT, V.P. OR EQUIVALENT, OR RANKING ELECTED OFFICIAL)

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

Printed Name: _____ Title: _____

Signature: Date:

Please submit form to the following address:

Stormwater NOI Processing
Division of Water Pollution Control
401 Church Street
Department of Environment & Conservation
Nashville, Tennessee 37243-1534

(b) Special Waste Disposal

As specified in Rule 1200-1-7-.01(2), special waste "includes sludges, bulky wastes, pesticide wastes, medical wastes, industrial wastes, hazardous wastes which are not subject to regulations under the Department Rules 1200-1-11-.03 through 1200-1-11-.07, liquid wastes, friable asbestos wastes, combustion wastes, and other solid wastes that are either difficult or dangerous to manage and require extraordinary management. However, discarded automotive tires and dead animals shall not be included in this term.

All Class I-IV facilities disposing of special wastes must have tested this waste according to the Toxic Characteristic Leaching Procedure (TCLP) which replaces the previous EP Toxicity Test and must have received written permission to dispose of such waste from the commissioner, according to Rule 1200-1-7-.01(4). A waste is TCLP toxic if the concentration of any constituent in 40 CFR, Part 261 exceeds the standard assigned to that substance. The TCLP test detects heavy metal, pesticides and a few other organic and inorganic compounds.

A copy of the Waste Evaluation Application Package is available on the following pages. The generator who wishes to process or dispose of special wastes at a facility must complete and forward the forms to the Department for approval. A special waste approval, granted by the Commissioner, does not grant any right of disposal of the special waste at the designated disposal facility. The facility operator may refuse to accept any special waste even if it has been approved by the Commissioner to be disposed of at the facility (Rule 1200-1-7-.01(4)(e)).

Waste Evaluation Application Package
{Rule Reference 1200-1-7-.01(4)}

The following documents are included in this Waste Evaluation Application Package:

1. Waste Evaluation Application
2. Waste Evaluation Fee Worksheet
3. Solid Waste Management Field Office Location Map

INSTRUCTIONS FOR COMPLETING WASTE EVALUATION PROCESS

A separate application, worksheet and fee of $250 must be submitted for each waste stream.

I) Waste Evaluation Application

1. Complete the Waste Evaluation application. ALL topics/questions must be addressed and completed before the application can be evaluated.

2. Attach laboratory analysis of the waste as appropriate and/or applicable Material Safety Data Sheets to the Waste Evaluation Application.

3. Mail the completed Waste Evaluation Application to the proper FIELD OFFICE in the region of your proposed disposal/processing facility as shown on the attached location map with mailing addresses. (Please remember that the fee and the completed fee form are mailed to a separate address as described below.)

II) Waste Evaluation Fee Worksheet

1. Complete the Waste Evaluation Fee Worksheet answering ALL questions.

2. Attach check for $250 made payable to the Treasurer, State of Tennessee.

3. Mail check and Waste Evaluation Fee Worksheet to the address below:

Fee Audit Section
Division of Solid Waste Management
401 Church Street
5th Floor, L&C Tower
Nashville, TN 37243-1535

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE MANAGEMENT
WASTE EVALUATION APPLICATION

PLEASE COMPLETE ALL QUESTIONS

Official Use Only
SPC ID # _____

1. GENERATOR INFORMATION.

(A) Facility Name: _____

Mailing Address: _____

_____

Zip Code: _____

Phone: ( ) _____

(B) Physical Location: _____

County: _____

Phone: ( ) _____

(C) Nature of Business _____

Technical Contact: _____

Title: _____

Phone: ( ) _____

2. UNDER TENNESSEE'S RULES GOVERNING HAZARDOUS WASTE MANAGEMENT, IS THE WASTE:

		YES	NO
A)	IGNITABLE?.....	☐	☐
B)	CORROSIVE?.....	☐	☐
C)	REACTIVE?.....	☐	☐
D)	TCLP HAZARDOUS?.....	☐	☐
E)	IS IT A LISTED HAZARDOUS WASTE?.....	☐	☐

Hazardous Waste Code(s):

RULE 1200-1-11-.03(1)(b) - A person who generates a waste must determine if that waste is a hazardous waste.

3. WASTE CHARACTERIZATION. Attach laboratory reports and/or material safety data sheets to adequately characterize the waste or explain why this is not necessary.

Describe any Special Handling Procedures:

Attachment Included (Y/N) _____

pH (if applicable) _____ Radioactive (Y/N)___

Flash Point (if applicable) _____ Infectious (Y/N)___

Physical State: Solid☐ Liquid☐ Sludge☐ Slurry☐

Color: _____ Percent Solid: _____

4. DESCRIBE HOW WASTE IS GENERATED (Be Specific).

(A)
Rate of Waste "Generation": Quantity _____
Type Units: Tons☐ cy☐ lbs☐ Other _____ (specify)
Frequency of Generation: One Time☐ Daily☐
Weekly☐ Monthly☐ Other☐ _____ (specify)

(B)
Rate of Waste "Generation": Quantity _____
Type Units: Tons☐ cy☐ lbs☐ Other _____ (specify)
Frequency of Generation: One Time☐ Daily☐
Weekly☐ Monthly☐ Other☐ _____ (specify)

(CONTINUED)

4. (continued)

(C) Include a narrative and a flow diagram of the process that generates the waste. Your explanation must describe the **POTENTIAL** contaminants in the waste which should justify your scope of constituents in Item 3. Include attachments as necessary.

Attachment Included (Y/N) _____

5. HOW IS WASTE PRESENTLY MANAGED?

6. DESCRIBE THE TYPE OF CONTAINER USED FOR TRANSPORT OF WASTE.

Drums☐ Roll-Off ☐ Container (dumpster, collector box) ☐ Plastic Bags☐ Truck☐ Other _____

7. PROPOSED DISPOSAL / PROCESSING FACILITY. List only a facility that you have contacted and which has agreed to accept your waste if approved by the Department.

(A) Facility Name: _____

(B) Facility Permit Number: _____

(C) Facility Operator/Contact Name: _____

Phone: (____) _____

8. PROPOSED TRANSPORTER.

Name: _____

Address: _____

Phone: (____) _____

9. I hereby certify that the above information is true and accurate to the best of my knowledge.

Waste Generator's Authorized Signature:	Preparer's Signature (If Different):
Date	Date

Official Use Only	
Reviewer's Signature	Date Reviewed

Send originals with attachments to the Solid Waste Field Office for the region in which the facility listed in Item 7 above is located.

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE MANAGEMENT
WASTE EVALUATION FEE WORKSHEET

1. DATE

Central Office Use Only
SPC ID # _____

2. GENERATOR

(A) Name: _____

Address: _____

_____

Zip Code: _____

Phone: ( ) _____

(B) Contact Person: _____

Title: _____

Phone: ( ) _____

3. Amount Enclosed: $ _____

4. ☐ New Application
☐ Renewal

5. Name and Address of Waste Processing or Disposal Facility

Name: _____

Address: _____

_____

Zip Code: _____

6. Frequency of Disposal:

☐One Time ☐Daily ☐Weekly ☐Monthly ☐Annually ☐Other _____
(specify)

Central Office Use Only

CD Number	Date Received	Amount	Receipt #	Comments

Send original with payment directly to the Central Office.

CN-0932(Rev. 8-95)

RDA 2202

TENNESSEE DEPARTMENT of ENVIRONMENT and CONSERVATION
Division of Solid Waste Management

CENTRAL OFFICE:

Division of Solid Waste Management
Fifth Floor, Life and Casualty Tower
401 Church Street
Nashville, TN 37243-1535
Phone: (615) 532-0780; Fax: (615) 532-0886
Phone: 1-800-237-7018 (in Tennessee only)

FIELD OFFICES:

Mark Thomas
Division of Solid Waste Management
2510 Mt. Moriah, Suite E-645
Perimeter Park
Memphis, TN 38115-1520
Phone: (901) 368-7939; Fax: (901) 368-7979

Randy Harris
Division of Solid Waste Management
362 Carriage House Drive
Jackson, TN 38305-2222
Phone: (901) 661-6200; Fax: (901) 661-6283

Al Majors
Division of Solid Waste Management
Nashville Field Office
3000 Morgan Road
Joelton, TN 37080
Phone: (615) 299-8451; Fax: (615) 299-8749

Barry Atnip
Division of Solid Waste Management
1221 South Willow Avenue
Cookeville, TN 38501
Phone: (615) 432-4015; Fax: (615) 432-6952

Guy Moose
Division of Solid Waste Management
Chattanooga State Office Building
540 McCallie Avenue
Chattanooga, TN 37402
Phone: (423) 634-5745; Fax: (423) 634-6389

Jack Crabtree
Division of Solid Waste Management
2700 Middlebrook Pike, Suite 220
Knoxville, TN 37921-5602
Phone: (423) 594-6035; Fax: (423) 594-6105

Larry Gilliam
Division of Solid Waste Management
2305 Silverdale Road
Johnson City, TN 37601-2161
Phone: (423) 854-5400; Fax (423) 854-5401

(c) Friable Asbestos Waste Disposal

EPA has established asbestos disposal requirements under the National Emissions Standards for Hazardous Air Pollutants NESHAPs (40 CFR part 61, Subpart M) and specifies federal requirements for solid waste disposal under RCRA (40 CFR Part 257). Advance EPA notification of the intended disposal site is required by NESHAPs.

The Division of Solid Waste Management has established policy for the proper disposal of asbestos waste. A copy of the policy and pertinent forms are on the following pages.

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

OFFICE CORRESPONDENCE

DATE: June 1, 1995

TO: Field Office Managers / SW Supervisors

FROM: Tom Tiesler, Director DSWM

SUBJECT: Friable Asbestos Waste Disposal (superseding the September 5, 1990 memo)

I am issuing this policy to promote a consistent application of regulations and policy dealing with asbestos disposal. For a few years we have been issuing a blanket certification letter of approval for asbestos disposal at certain landfills which qualify. This blanket certification is possible because the asbestos waste characteristics vary very little although disposal occurs very frequently. The blanket approval reduces paperwork and reduces staff time involved, and I want to continue that procedure.

Since the NESHAP manifest is required any way, I want to state that the NESHAP manifest or an equivalent manifest is an adequate shipping and receiving record. The DSWM shipping and receiving logs and the 10 day notice forms with shipments are no longer necessary.

Your special waste approval letter for "blanket approval" must incorporate at least the following requirements:

1. The landfill must have a policy which requires the generator to provide them with advance notice of each shipment. The mechanism for this notice should be left up to the landfill and the generator.

2. Each shipment must be accompanied by the NESHAP manifest or an equivalent manifest. The manifest records must be available to DSWM staff for inspection. These manifests will be accepted by the DSWM in lieu of other shipping and receiving records.

3. All eleven Procedures for Disposal of Asbestos Waste, from the 1980 memorandum of agreement with APC must be incorporated directly. A copy of this agreement is attached for your use.

4. Any special provisions for asbestos disposal which have been developed or deemed necessary for that specific landfill site.

[NOTE: Due to the usage of the NESHAP manifest, certain pages are outdated and no longer valid (*Landfill Operator's Log*).

ASBESTOS M.O.U. BETWEEN DAPC AND DSWM
EFFECTIVE 1992

Whereas the Tennessee Department of Environment and Conservation, through the Division of Solid Waste Management (DSWM) is required by Section 68-211-101 et. seq., Tennessee Code Annotated, to regulate the construction, operation, and maintenance of solid waste processing and disposal facilities in order to protect the public health, safety, and welfare and specifically in respect to the agreement the air quality of the State of Tennessee through a comprehensive siting and inspection program of approved disposal facilities: and

Whereas the Tennessee Department of Environment and Conservation, Division of Air Pollution Control (DAPC) has in the Administration of TCA Section 68-201-101 et. seq., developed procedures and standards for the protection of the air quality of the State: and

Whereas the Tennessee Department of Environment and Conservation has a public obligation to maintain a coordinated regulatory program of all regulated environmental functions in the State of Tennessee the standards by which these programs are administered shall be consistent. This agreement shall be the mechanism by which this objective is attained.

Therefore, be it resolved that both divisions mutually understand, agree and approve that the Division of Solid Waste Management is recognized as the agency having authority for the regulation of sanitary landfills in such a manner as to preclude the pollution of the air in the State of Tennessee through the administration of the following activities enumerated, herein.

(Signed 2/9/93 by John W. Walton, Director of Air Pollution Control and Tom Tiesler, Director of Solid Waste Management.)

ASBESTOS M.O.U.
OF 1992

Site Selection

1. The Division of Solid Waste Management (DSWM) will conduct preliminary site reviews in the selection of potential sites for sanitary landfills or special waste sites.

2. DSWM will provide DAPC with location of sites and other information deemed pertinent to proposed sitings, handling, and operating procedures for contaminant waste.

Technical Review

1. DSWM will utilize DAPC established management practices and adhere to the regulations found in Chapter 1200-3-11-.02 of the Tennessee Air Pollution Control Regulations for the disposal of (special air contaminant) wastes at sites approved by DSWM.

2. DSWM will ascertain that the design of a sanitary landfill or special waste site utilizes all adaptable best management practices (BMP's) for emission control of special air contaminant wastes to minimize the potential for degradation of the air quality.

   The BMP's to be reviewed include, but are not restricted to:

   1) Phased site development (minimum specific area).
   2) Timely correct handling procedures, cover, compaction and revegetation.
   3) Soil characteristics, geologic structure for minimum potential of movement and surface water control.
   4) Operators protective equipment.
   5) No visible emissions.
   6) Logs completed (shipping and receiving).

Inspections and Enforcement

1. DSWM will establish site specific requirements for compliance. The compliance shall reflect BMP's and site specific handling as necessitated by special air contaminant waste permit and procedures.

2. A representative of the Division of Air Pollution Control (DAPC) will be able to witness the disposal of ACWM at any time such material is to be transported to and disposed of at the designated landfill accepting the asbestos containing waste material (ACWM). Since it is the responsibility of the DAPC to make visible emission evaluations and since the DAPC representative is cooperation with DSWM will provide this technical support as a means to

achieve mutual compliance with the regulations of both divisions. Any enforcement activity that occurs as a result of a violation of the no visible emissions regulation will be jointly undertaken with the DAPC representative providing expert witness testimony.

3. DSWM will note procedures employed during unloading to insure that signs bearing the correct warning language as specified by the APC Rule 1200-3-11-.02(2)(k)4 are affixed to the vehicle while at the disposal site.

Preliminaries

1. Contact must be established with the appropriate Solid Waste Management representative.

2. The site selected for the material must be registered and approval obtained in writing prior to disposal of the material through the Division of Solid Waste Management. All appropriate agencies and individuals will be presented with this information.

3. Permission from the official responsible for the approved facility must be obtained in writing prior to the disposal of the material. All appropriate agencies and individuals will be presented with this information.

Procedures for Disposal of Asbestos Waste

1. Ten working days advance notice must be given to the DAPC of asbestos removal to allow field personnel to view the removal procedures at the originating site. This can be accomplished by Submittal of Notification of Asbestos Demolition or Renovation (Figure 3 of the DAPCR).

2. The containers for the waste must be in fact leak-tight containers and approved by the Division of Air Pollution Control.

3. The waste should be transported in an enclosed vehicle or on a covered 39-14-503 carrier as described in Tennessee Code Annotated. The waste Shipment Record (figure 4) will be completed and a copy submitted to the Division of Solid Waste Management.

4. Advance notice must be given to the landfill operator prior to receiving the waste, or a routine schedule established such that the operator will have time to prepare an area to receive the waste. Communication procedures should be sufficient between the contractors or plants and landfill operators to allow flexibility. The only required document the DAPC will need to meet its regulatory requirements is (Figure 4) and proof that the records are returned to the waste originator for disposal tracking purposes. Copies of the 10 day notice letter to DAPC are not necessary but can be referenced in a letter to the disposal site. The DAPC will track all notices (Figure 3) received and update, copy or advise DSWM of status on request. When the Waste Shipment Record is not received by the waste generator

confirming disposal the Technical Secretary will upon receipt of such notice contact the DSWM to request their cooperation in tracking the shipment and provide investigatory support off site if needed.

5. Respirators which meet the OSHA requirements for Asbestos must be provided for the landfill employees involved in the disposal process. This is the responsibility of the landfill owner.

   Landfill operators will note procedures employed during unloading of ACWM to insure that signs bearing the correct warning language as specified by the APC Rule 1200-3-11-.02(2)(k)4 are affixed to the vehicle while at the disposal site.

6. The appropriate solid waste and air pollution control representatives will witness the initial disposal to assure proper handling and disposal procedures (if desired by the respective agencies). Following initial disposal, a representative of the DAPC will be able to witness the disposal of ACWM at any time such material is to be transported to and disposed of at the designated landfill accepting the ACWM.

7. The asbestos waste containers must be confined to a specific area, prepared by the landfill operator, at the disposal site to assure proper disposal with minimum complications.

8. The containers of waste must be handled carefully and deliberately such that there will be no rupturing of containers nor visible emissions in the disposal process. When improperly packaged ACWM is observed by the owner or operator of any asbestos waste disposal site to be disposed of both the Technical Secretary and the DSWM must be notified so that independent investigations of the cause for improper packaging can be conducted at both the disposal site by DSWM and at the point of removal.

9. The operator will immediately apply one foot of cover material over the waste and then compact the cover material.

10. Upon completion, the site shall be recorded with the Register of Deeds as a former disposal site containing asbestos.

    The DSWM will notify the DAPC upon receipt of closure so that the DAPC can update the Asbestos notification database to flag this location as no longer being able to accept ACWM for disposal purposes.

11. Specific area used for disposal of asbestos shall be noted on site plan.

Figure 3

TENNESSEE DIVISION OF AIR POLLUTION CONTROL
NOTIFICATION OF ASBESTOS DEMOLITION OR RENOVATION

OPERATOR PROJECT #	POSTMARK	DATE RECEIVED	NOTIFICATION #

I. Type of Notification (O-orig. R- Revised C-cancelled)						
II. Facility Information (Identify Owner, Removal Contractor, Operator)						
Owner Name:						
Address:						
City:			State:		Zip:	
Contact:			Telephone:			
Removal Contractor:						
Address:						
City:			State:		Zip:	
Contact:			Telephone:			
Other Operator:						
Address:						
City:			State:		Zip:	
Contact:			Telephone:			
III. Type of Operation (D-demo. O-ordered Demo. R-renov. E-emer. Revov.)						
IV. Is Asbestos Present? (Yes / No)						
V. Facility Description (Include Building Name, Number and Floor or Room Number)						
Bldg. Name:						
Address:						
City:			State:		Zip:	
Site Location:						
Building Size:	Total Sq. Ft.		# of Floors:		Age in Years:	
Present Use:			Prior Use:			
VI. Procedure and Analytical Method Used to Detect the Presence of Asbestos Material						

VII. Approximate Amount of Asbestos In Work Area Including 1. Regulated ACM to be Removed 2. Category I ACM Not Removed 3. Category II ACM Not Removed	RACM To Be Removed	Nonfriable Asbestos Material				Units of Measurement
		Not to be Removed		To Be Removed		
		Cat I	Cat II	Cat I	Cat II	Unit
Pipes						LnFt Ln m
Surface Area						SqFt Sq m
Vol RACM Off Facility Components						CuFt Cu m

VIII. Scheduled Dates Asbestos Removal	Start:	Complete:	
Scheduled Dates of Preparation	Start:	Complete:	
Days of Week: (circle) All Sun Mon Tue Wed Thu Fri Sat		Hours of Day:	
IX. Scheduled Dates Demo/Renovation	Start:	Complete:	

Continued on Next Page

NOTIFICATION OF DEMOLITION OR RENOVATION (continued)

X. Description of Planned Demolition or Renovation Work, Method(s) to be Used:		
XI. Description of Work Practices and Engineering Controls to be used to Prevent Emissions of Asbestos at the Demolition and Renovation Site:		
XII. Waste Transporter #1		
Name:		
Address:		
City:	State:	Zip:
Contact Person:		Telephone:
Waste Transporter #2		
Name:		
Address:		
City:	State:	Zip:
Contact Person:		Telephone:
XIII. Waste Disposal Site:		
Name:		
Location:		
City:	State:	Zip:
Telephone:		
XIV. If Demolition Ordered by a Government Agency, Please Identity Below:		
Name:	Title:	
Authority:		
Date or Order (MM/DD/YY:	Date Ordered to Begin: (MM/DD/YY):	
XV. For Emergency Renovations		
Date and Hour of Emergency (MM/DD/YY):		
Description of the Sudden , Unexpected Event:		
Explanation of How the Event Caused Unsafe Conditions or Would Cause Equipment Damage or an Unreasonable Financial Burden:		
XVI. Description of Procedures to be Followed in the Event Asbestos is Found or Previously Nonfriable Asbestos Material Becomes Crumbled, Pulverized, or Reduced to Powder.		
XVII. I Certify That an Individual Trained in the Provisions of This Regulation (40 CFR Part 61, Subpart M) Will be On-Site During the Demolition or Renovation and Evidence That Required Training has Been Accomplished by This Person Will be (Required After November 20, 1991). _____ _____ (Signature of Owner/Operator (Date)		
XVIII. I Certify That the Above Information is Correct. _____ _____ (Signature of Owner/Operator (Date)		

Submit Completed Form by U.S. Postal Service / Commercial Delivery Service or Hand Deliver to:
Tennessee Air Pollution Control, Customs House, 701 Broadway, Nashville, TN 37243-1531

INSTRUCTIONS

Waste Generator Section (Items 1-9)

1. Enter the name of the facility at which asbestos waste is generated and the address where the facility is located. In the appropriate spaces, also enter the name of the owner of the facility and the owner's phone number.

2. If a demolition or renovation, enter the name and address of the company and authorized agent responsible for performing the asbestos removal. In the appropriate spaces, also enter the pone number of the operator.

3. Enter the name, address, and physical site location of the waste disposal site (WDS) that will be receiving the asbestos materials. In the appropriate spaces, also enter the phone number of the WDS. Enter "on-site" if the waste will be disposed of on the generator's property. Enter disposal facility permit number.

4. Provide the name and address of the local, State, or EPA regional agency responsible for administering the asbestos NESHAP program.

5. Indicate the types of asbestos waste materials generated. If from a demolition or renovation, indicate the amount of asbestos that is

   - Friable Asbestos Material
   - Nonfriable Asbestos Material

6. Enter the number of containers used to transport the asbestos materials listed in item 4. Also enter one of the following container codes used in transporting each type of asbestos material (specify any other type of container used if not listed below):

   DM - Metal drums, barrels
   DP - Plastic drums, barrels
   BA - 6 mil plastic bags or wrapping

7. Enter the quantities of each type of asbestos material removed in units of cubic meters (cubic yards).

8. Use this space to indicate special transportation, treatment, storage or disposal of Bill of Lading information. If an alternate waste disposal site is designated, note it here. Emergency response telephone numbers or similar information may be included here.

9. The authorized agent of the waste generator must read and then sign and date this certification. The date is the date of receipt by transporter.

   NOTE: The waste generator must retain a copy of this form.

Transporter Section (Items 10 & 11)

10. & 11.

Enter name, address, and telephone number of each transporter used, if applicable. Print or type the full name and title of person accepting responsibility and acknowledging receipt of materials as listed on this waste shipment record for transport. Enter date of receipt and signature.

NOTE: The transporter must retain a copy of this form.

Disposal Site Section (Items 12 & 13)

12. The authorized representative of the WDS must note in this space any discrepancy between waste described on this manifest and waste actually received as well as any improperly enclosed or contained waste. Any rejected materials should be listed and destination of those materials provided. A site that converts asbestos-containing waste material to nonasbestos material is considered a WDS.

13. The signature (by hand) of the authorized WDS agent indicates acceptance and agreement with statements on this manifest except as noted in Item 12. The date is the date of signature and receipt of shipment.

NOTE: The WDS must retain a completed copy of this form. The WDS must also send a completed copy to the operator listed in item 2.

Figure 4

WASTE SHIPMENT RECORD

GENERATOR		
1. Work site name and mailing address	Owner's name	Owner's telephone no.
2. Operator's name and address		Operator's telephone no.
3. Waste disposal site (WDS) name, mailing address, physical site location and disposal facility permit number.		WDS phone no.
4. Name, and address and responsible agency		
5. Description of materials	6. Containers No. Type	7. Total quantity (yd3)
8. Special handling instructions and additional information		
9. OPERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations. Printed/type name & title _____ Signature _____ Month Day Year		
TRANSPORTER		
10. Transporter 1 (Acknowledgment of receipt of materials) Printed/type name & title _____ Signature _____ Month Day Year		
11. Transporter 2 (Acknowledgement of receipt of materials) Printed/type name & title _____ Signature _____ Month Day Year		
DISPOSAL SITE		
12. Discrepancy indication space		
13. Waste disposal site Owner or operator: Certification of receipt of asbestos materials covered by this manifest except as noted in item 12. Printed/type name & title _____ Signature _____ Month Day Year		

LANDFILL OPERATOR'S LOG
for
Asbestos Disposal

1. Description of Asbestos-Containing Wastes:

2. Name/Address of Receiving Sanitary Landfill:

3. Name/Address of Site From Which Removed:

4. Load-by-Load Description:

Load Number	Date Received	Number of Bags	Weight (if necessary)

5. Certification By Sanitary Landfill Operator:

I hereby certify that the above record of waste received is complete and accurate, and that the waste was handled and disposed of as specified in the approval letter.

_____

(d) Medical Waste Disposal

Any waste control site handling medical wastes should be prepared to train their employees to recognize the significance of infectious waste materials and establish an exposure control program, including the provision of personnel equipment which meets or exceeds OSHA guidelines, 29 CFR Part 190.1030. Those members of the waste control staff which have that exposure potential should be provided specific training, protective equipment and appropriate inoculations.

The Tennessee Division of Solid Waste Management has issued a policy pertaining to the disposal of infectious wastes in landfills. The memorandum from the Division explaining the policy is provided on the following page.

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Solid Waste Management
Fifth Floor, L&C Tower
401 Church Street
Nashville, Tennessee 37243-1535

DSWM TECHNICAL POLICY MEMORANDUM SW-88-1

TO: DSWM Staff and Other Interested Persons

FROM: Tom Tiesler, Director

SUBJECT: Special Waste Approval Policy: Disposal of Infectious Wastes in Sanitary Landfills - Revised

The purpose of this memorandum is to set forth restrictions and minimum requirements that must be met in order for this Division to approve the disposal of infectious wastes in sanitary landfills. Our approval is required pursuant to Rule 1200-1-7-.06(3)(a)10 of the Rules Governing the Planning, Construction, Operation, and Maintenance of Solid Waste Processing and Disposal Systems in Tennessee. Unless otherwise authorized in writing by me, Division staff must ensure that at least these restrictions and minimum requirements are included in any special waste approval granted for disposal of infectious waste in a sanitary landfill. Additional or more stringent requirements may also be imposed if the Division Field Office Manager determines they are necessary because of special circumstances.

This revised policy is the result of the regulatory deliberations that this Division and this Department have engaged in over the last several months. It has been developed in conjunction with infectious waste rulemaking efforts of the Divisions of Health Care Facilities and Air Pollution Control. This Technical Policy Memorandum shall, upon my signature, replace DSWM Technical Policy Memoranda SW-86-1 and SW-86-2 which I established in July, 1986. It reflects a change in this Department's approach toward the regulation of infectious wastes as expressed in those previous Memoranda. It is our intent to incorporate the restrictions and requirements set forth in this Memorandum into our non-hazardous solid waste regulations as we re-write those regulations.

The following definition of infectious wastes is to be used in implementing this policy, and is also being used by the Division of Health Care Facilities and the Division of Air Pollution Control in their regulatory efforts:

> "Infectious wastes" means wastes which contain pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in an infectious

disease. For purposes of this policy, the following wastes shall be considered to be infectious wastes:

1. Isolation Wastes - Wastes contaminated by patients who are isolated due to communicable disease, as provided in the U.S. Centers for Disease Control Guidelines for Isolation Precautions in Hospitals, (July 1983).

2. Cultures and Stocks of Infectious Agents and Associated Biologicals - Cultures and stocks of infectious agents, including specimen cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures.

3. Human Blood and Blood Products - Waste human blood and blood products such as serum, plasma, and other blood components.

4. Pathological Wastes - Pathological wastes, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy.

5. Contaminated Sharps - All discarded sharps (e.g., hypodermic needles, syringes, Pasteur pipettes broken glass, scalpel blades) used in patient care or which have come into contact with infectious agents during use in medical, research, or industrial laboratories.

6. Contaminated Animal Carcasses, Body Parts, and Bedding - Contaminated carcasses, body parts (including fluids), and bedding of animals that were intentionally exposed to pathogens in research, in the production of biologicals, or in the in vivo testing of pharmaceuticals.

7. Facility-Specified Infectious Wastes - Other wastes determined to be infectious by a written facility policy.

This Division recommends that all infectious wastes be incinerated, steam sterilized, or otherwise rendered non-infectious prior to disposal in sanitary landfills. However, this Division does believe that infectious wastes can be landfilled without identifiable risk to public health or the environment if certain precautions are taken. Therefore, it shall be the policy of this Division that the following limitations and requirements be included as a minimum in any special waste approval for the landfill disposal of untreated infectious wastes and that they be strictly enforced:

Waste Stream Limitations - As described below, certain categories of infectious wastes may not be disposed of in sanitary landfills or may be so disposed of only after they have been treated or packaged in certain ways:

1. Sharps must be securely packaged in puncture-proof packaging prior to landfilling.

2. Cultures and stocks of infectious agents and associated biologicals must not be landfilled unless and until they have been treated (e.g., autoclaved incinerated) to render them non-infectious. Once they have been properly treated, most such wastes (including those from typical health care institutions) may be approved for landfilling as part of the facility's normal solid waste stream (i.e., without having to comply with the special management requirements established later in this policy memorandum).

3. Human blood and blood products and other body fluids may not be landfilled. This restriction applies to bulk liquids or wastes containing substantive amounts of free liquids, but does not apply to simply blood - contaminated materials such as emptied blood bags, bandages, or "dirty" linens.

4. Recognizable human organs and body parts may not be landfilled.

Operating Restrictions - Infectious wastes must be managed at the landfill in accordance with the following provisions.

1. Infectious wastes must be transported to the landfill separately from other solid wastes and in securely-tied plastic bags or other leak-proof containers.

2. The landfill operator must obtain advance notice prior to receiving a shipment of infectious waste, or a routine delivery schedule must be established, such that the operator will have time to prepare to receive the waste.

3. The landfill operator must confine unloading and disposal operations to a specific area, separate from the normal working face, prepared by him to assure proper disposal with minimum complications.

4. By the end of the operating day, the landfill operator shall have applied at least one foot of cover material over the waste and shall have compacted the emplaced cover material. There should be no compaction of uncovered infectious waste.

It should be noted that this policy does not obligate this Division to allow the disposal of any infectious waste in any landfill. The granting of Division approval for disposal of any special waste in a landfill is a case-by-case determination to be made at the Division Field Office level based on several factors. That approval should be denied or revoked if the Field Office Manager has reason to believe that the above requirements will not be or are not being met.

It should also be noted that this Division's approval does not obligate the landfill operator to accept an infectious waste for disposal. He may refuse to accept such waste or he may impose additional conditions on the infectious waste generator.

4-29-88

Tom Tiesler, Director
Division of Solid Waste Management

Date

3. Closure/Post-Closure

Rule 1200-1-7-.04(8) establishes the closure/post-closure standards for Class I through IV disposal facilities. For Class I and Class II disposal facilities, post-closure care must continue for 30 years after the date of final completion of closure of the facility or facility parcel. For Class III and IV disposal facilities, post-closure care must continue for 2 years after the date of final completion of closure of the facility or facility parcel.

TDEC, Division of Solid Waste Management has issued a guidance document for landfill owners/operators to prepare a Closure/Post-Closure Plan as required by the new solid waste regulations. The guidance document is provided on the pages that follow.

CLOSURE/POST CLOSURE PLAN

GUIDANCE DOCUMENT

This document is to be utilized by owners/operators of land disposal facilities in Tennessee in preparation of Closure/Post Closure (C/PC) Plans as required by the new solid waste regulations.

The first part of this document is an outline which lists the major components to be included in a C/PC Plan.

Guidance on the required content for each component for section makes up the main body of this Document.

Finally, a cost-estimate checklist is included which must be completed and submitted as part of the C/PC Plan. This cost estimate checklist represents a minimum level of cost information, which may be supplemented by additional sheets.

CLOSURE / POST CLOSURE PLAN OUTLINE

I. Introduction

A. Facility Description
B. Operational History (applies only to existing facility)
C. Expected Year of Closure
D. Facility Contact Person

II. Facility Closure

A. Partial Closure - To completely close a facility at any point during its intended operating life.

1. Notify the Division 60 days prior to closure.

2. Submittal of revised plan to address modification of:

a. Contours
b. Drainage
c. Leachate collection (if necessary)
d. Methane collection (if necessary)
e. Other as appropriate . . .

3. Establish vegetative cover.

4. Placement of final cover and grading.

5. Stabilization of borrow areas and other disturbed areas not part of fill.

6. Stabilization of drainage system.

7. Provide system for handling leachate.

8. Provide system for controlling gases.

9. Provide groundwater monitoring system.

10. Obtain certification of closure.

B. Complete Closure - To completely close a facility at the end of its operating life.

1. Placement of final cover

a. If existing facility:

1. Identify which areas of landfill must adhere to new regulations with survey line.

2. Provide plan view of landfill with existing contours of not more than five (5) feet and a scale of 1" = 100.)

3. Explain how will document new final cover standards.

b. If new facility:

1. Explain how final cover standards are to be accomplished.

2. Drainage system

a. If existing facility:

1. Document adequacy of existing system to prevent sedimentation, ponding and cover erosion or method of correcting inadequacy of system.

b. If new facility:

1. Present drainage plan.

3. Establishment of vegetative cover shall include:

a. Seeding
b. Mulching
c. Fertilizing
d. Sodding (if necessary)

4. Provide system for leachate collection (if necessary)

a. Design drawings and calculations
b. Storage and treatment

5. Provide system for gas collection

a. Number and location of monitoring points.

6. Provide closure scheduling

a. Order and itinerary for closing facility.

III. Post Closure Activities

A. Groundwater Monitoring System

1. Establish "compliance monitoring boundary."

2. Show number and location of wells.

3. Provide protocol for sampling and analyses of groundwater.

4. Specify sample intervals and indicator parameters.

B. Provide surface water monitoring plan (if necessary)

C. Provide for leachate monitoring system (if necessary)

1. Locations and number of wells monitoring

2. Schedule for monitoring

D. Provide for gas monitoring system (if necessary)

1. Identify possible conduits of migration

2. Number and location of monitoring points

3. Schedule for monitoring

IV. Cost Estimate

A. Closure Costs

1. Final Cover

a. Top soil
b. Landfill cap
c. Synthetic membrane
d. Geotextile filter fabric

2. Establish vegetative cover

a. Labor
b. Seeding
c. Fertilizing
d. Mulching
e. Number of acres

3. Drainage system

a. Sediment pond
b. Diversion ditch
c. Temporary structures (silt fence, swales)

4. Leachate collection

a. Installation

5. Gas collection

a. Installation

6. Groundwater/surface water monitoring system

a. Installation

7. Total closure costs

B. Post Closure Costs

1. Survey inspection

   a. Transportation
   b. Labor

2. Maintenance of vegetative cover

   a. Transportation
   b. Labor
   c Seeding
   d. Fertilizing
   e. Mulching
   f. Rodent control
   g. Mowing

3. Maintain drainage system

   a. Transportation
   b. Labor
   c. Purging of systems
   d. Repair of gullies or rills

4. Maintenance of monitoring leachate collection system

   a. Treatment of leachate
   b. Maintenance of system

5. Maintenance monitoring gas collection system

   a. Transportation
   b. Labor
   c. Repairs/materials

6. Maintenance/monitoring groundwater/surface water system

   a. Monitoring costs
   b. Inspection and maintenance costs

7. Total post closure costs

   a. Annual
   b. 30 year basis

I. INTRODUCTION

A. Facility Description

This section should include the location, size of facility (acres), and a description of the proposed development of the site (fill progression), especially as it relates to development by phases or parcels. For existing facilities, the number of acres currently filled should also be included.

B. Operational History

This will only apply to existing facilities and should include date current permit was issued, an explanation of any permit extensions or modifications, a description of historical operational problems (e.g., drainage problems, groundwater contamination, encountering rock in excavation) and a description of major special waste types received and their location (e.g., separate trenches for sludge, separate demolition area).

C. Expected Year of Closure

An estimate of the expected year of closure is to be provided. For existing facilities, this estimate should be refined to the nearest month. This estimate should be supported by appropriate justification (i.e., current rate of waste receipt).

D. Facility Contact

The name, address, and phone number of the person or office to contact during the post closure care period is to be provided here.

II. Facility Closure

A. Partial Closure Steps

This section will identify the steps necessary to completely close the facility at any point during its intended operating life. At a minimum this description will include the following steps:

- Notify the Division 60 days prior to closure
- Submittal of plan revisions to address modification of final contours, drainage, leachate collection (if necessary), methane collection (if necessary), and other
- Establishing vegetative cover on closed portions
- Placement of final cover and grading
- Stabilization of borrow areas and other disturbed area not part of fill
- Stabilization of drainage system (e.g., conversion of temporary ditch to permanent one)

- Establish or complete a system for handling leachate (existing facilities must justify why they do no require this system)

- Establish or complete a system for controlling gases (existing facilities must justify why they do not require this system). Methane monitoring will be expected at each facility at a minimum.

- Establish or complete the groundwater monitoring system

- Certification of closure

B. Complete Closure Steps

This section will identify the steps necessary to completely close the facility at the end of its operating life. The steps will essentially be the same as the preceding scenario except that plans revision should not be necessary. In addition, documentation must be included in this section which explains how the Permittee will meet the closure standards of Rule .04(8).

As part of listing the required steps to close the facility, the following types of documentation are to be provided, where applicable:

1. Final cover

For existing facilities new final cover standards have been in effect since March 18, 1990. The Permittee must indicate which areas of the landfill already had final cover in place as of the above date, and submit the following documentation as part of the C/PC Plan.

This "line" must be surveyed and drawn onto a plan view of the landfill at a scale of 1" = 100'. Existing contours must also be shown on this drawing at an interval of not more than five (50 feet. The Permittee must then explain how they will document that new final cover standards have been achieved and will be achieved for the remainder of the site. At a minimum this must include measurements for cover thickness, laboratory analysis for permeability, and a provision for a final contour map at an interval of not more than two feet. The new standards for Class I and Class II facilities require 3 feet of cover and less than 1.66 inches average annual percolation which approximates a permeability of 1 x 10 -7 cm/sec.

2. Drainage System

Existing facilities must show that the current system of drainage ditches, sediment ponds, etc. is adequate to prevent sedimentation in off-site water courses, prevent ponding of water on-site, and prevent erosion of cover material. If problems of this type are recurrent the closure plan must indicate how the Permittee will correct them and include appropriate design drawings and calculations as necessary.

3. Vegetative Cover

The Permittee should list the specific activities (steps) they will perform to establish vegetation including rates of application and scheduling. These steps shall include seeding, mulching, and fertilization at a minimum and may include additional activities such as sodding steeper slopes or drainage ways if necessary.

4. Leachate Collection

If necessary, the Permittee must explain how a leachate collection system will established for the site and include design drawings and calculations as necessary. These steps would also include leachate storage and treatment.

5. Gas Collection

Existing facilities must establish a system for monitoring methane. The number of monitoring points and their construction specifications must be shown. If necessary, a system for collecting and venting gases generated at the facility must be established to include design drawings and specifications.

6. Closure Scheduling

A schedule for completing the steps of final closure must be included as part of this section. All closure activities should be addressed and placed in a logical order of completion with reasonable time frames.

Rule 1200-1-7-.04(7)(8)
Groundwater Monitoring and Maintenance constitute post closure activities that should be addressed in the Closure/Post Closure Plan.

The following paragraphs should provide some guidance for satisfying the requirements set forth in paragraphs seven (7) and eight (8) of Rule 1200-1-7-.04 of the Solid Waste Regulations that pertain to Groundwater Monitoring and Maintenance.

Rule 1200-1-7-.04(7)(a)2 Compliance Monitoring Boundary

This section provides three alternative methods for the establishment of the "compliance monitoring boundary." The "compliance monitoring boundary" is merely the outermost limits that groundwater and soil parameters must be monitored to satisfy the state requirements. The applicant shall indicate which of the three methods is to be used to establish the compliance monitoring boundary in the Closure/Post Closure Plan.

It shall be noted that the term "waste management boundary" used in one of the alternative methods for establishing the compliance monitoring boundary means "a vertical surface located at the hydraulic down gradient limit of the unit where the vertical surface extends down into the uppermost aquifer."

Rule 1200-1-7-.04(7)(a)3 Monitoring System for New and Existing Facilities

This section requires that new and existing facilities must have a least one (1) upgradient and tow (2) downgradient groundwater monitor wells unless otherwise approved by the Commissioner. The purpose of the groundwater monitor system is to determine the quality of background ground water that has not yet been affected by leakage from the facility as well as to determine the groundwater quality that passes the compliance boundary hydraulically downgradient. The Closure/Post Closure Plan should show the number, depth and location of the proposed groundwater monitor wells.

In addition, the groundwater monitor wells must be installed according to specifications with approved materials. The Closure/Post Closure Plan should illustrate the installation procedure and materials that are to be used to construct the monitor wells. A typical drawing of a groundwater monitor well is attached with this guidance document.

It should be understood that for facilities the groundwater monitoring program does not have to be included in the Closure/Post Closure Plan since it is required to be included as part of the Permit Application.

Rule 1200-1-7-.04(7)(a)4 Detection Monitoring Program

The purpose of this section is to provide a protocol for sampling and analyses of the groundwater monitoring program. The Closure/Post Closure Plan must include appropriate procedures and techniques for sample collection, sample preservation and shipment, analytical procedures and chain of custody control. In addition, the Closure/Post Closure Plan should specify groundwater sample intervals and the indicator parameters that are to be determined from the analyses of the samples. The following paragraphs detail the sampling intervals of the samples. The following paragraphs detail the sampling intervals as well as which indicator parameters are to be determined during sample analyses. Each well must be sampled and analyzed for the following parameters on a quarterly schedule for the first year.

I. Ammonia (as N)
II. Calcium

III. Chloride
IV. Iron
V. Magnesium
VI. Manganese, dissolved
VII. Nitrate (as N)
VIII. Potassium
IX. Sodium
X. Sulfate
XI. Chemical Oxygen Demand (COD)
XII. Total Dissolved Solids (TDS)
XIII. Total Organic Carbon (TOC)
XIV. pH

(II) Parameters establishing the groundwater quality:

I. Arsenic
II. Barium
III. Cadmium
IV. Chromium
V. Cyanide
VI. Lead
VII. Mercury
VIII. Selenium
IX. Silver

All monitor wells shall be sampled and analyzed for the following parameters at least once every six months after the first year.

I. Ammonia (as N)
II. Calcium
III. Chloride
IV. Iron
V. Magnesium
VI. Manganese, dissolved
VII. Nitrate (as N)
VIII. Potassium
IX. Sodium
X. Sulfate
XI. Chemical Oxygen Demand (COD)
XII. Total Dissolved Solids (TDS)
XIII. Total Organic Carbon (TOC)
XIV. pH

All monitor wells shall be sampled and analyzed for the following parameters at least once every year after the first year.

Acetone

Acrolein

cis-1,3-Dichloropropene

trans-1,3-Dichloropropene

Acrylonitrile

Benzene

Bromochloromethane

Bromodichloromethane

4-Bromofluorobenzene

Bromoform

Bromomethane

2-Butanone (Methyl ethyl ketone)

Carbon disulfide

Carbon tetrachloride

Chlorobenzene

Chlorodibromomethane

Chloroethane

2-Chloroethyl vinyl ether

Chloroform

Chloromethane

Dibromomethane

1,4-Dichloro-2-butane

Dichlorodifluoromethane

1,1-Dichloroethane

1,2-Dichloroethane

1,4-Difluorobenzene

Ethanol

Ethylbenzene

Ethyl mechacrylate

2-Hexanone

Iodomethane

Methylene chloride

4-Methyl-2-pentanone

1,1-Dichloroethene

trans-1,2-Dichloroethene

Styrene

1,1,2,2-Tetrachloroethane

Toluene

1,1,1-Trichloroethane

1,1,2-Trichloroethane

Trichloroethene

Trichlorofluoromethane

1,2,3-Trichloropropane

Vinyl acetate

Vinyl chloride

Xylene

SURFACE WATER MONITORING

It should also be stated that if a facility has implemented a surface water monitoring program during its active life it will be necessary to continue the surface water during the monitoring program post closure period.

LEACHATE AND GAS MONITORING SYSTEMS

Finally, if a facility has been determined as having a leachate migration or methane gas problem it will be necessary to include monitoring plan in the Closure/Post Closure Plan.

GROUNDWATER MONITORING CHECKLIST

____ Method used to establish "compliance monitoring boundary"

____ Number of groundwater monitor wells (Minimum of one upgradient and two downgradient monitor wells)

____ Depth of wells

____ Location of wells

____ Design of wells

____ Procedure for well installation

____ Sample collection and preservation techniques

____ Sampling intervals

____ Indicator parameters to be analyzed

LEACHATE MONITORING CHECKLIST

____ Number of leachate monitor wells

____ Depth of wells

____ Location of wells

____ Procedure for well installation

____ Sample collection and preservation techniques

____ Sampling intervals

GAS MONITORING CHECKLIST

____ Number of gas vents

____ Location of gas vents

____ Depth of gas vents

____ Methane concentration monitoring frequency

COST ESTIMATE

WORK SHEET A:

CLOSURE ACTIVITIES

NOTES:
1) This worksheet is to be submitted as part of the C/PC Plan.
2) Provide a cost for all activities which apply.
3) Additional cost information may be attached as needed.

1. Establishing final cover:

A. Top soil
   1. Quantity needed (yd3) _____
   2. Excavation unit cost ($/yd3) _____
   3. Excavation cost (1. x 2.) _____
   4. Placement and spreading unit cost ($/yd3) _____
   5. Placement cost (1. x 4.) _____

   ***TOTAL: Top soil (3. + 5.)** _____

B. Landfill cap
   1. On-site Clay
      a. Quantity need (yd3) _____
      b. Excavation unit cost ($/yd3) _____
      c. Excavation cost (a. x b.) _____
      d. Placement/spreading unit cost ($/yd3) _____
      e. Placement cost (a. x d.) _____
      f. Compaction unit cost ($/yd3) _____
      g. Compaction cost (a. x f.) _____

   ***TOTAL: On-site clay (c. + e. + g.)** _____

   2. Off-site clay
      a. Quantity needed (yd3) _____
      b. Purchase unit cost ($/yd3) _____
      c. Purchase cost (a. x b.) _____
      d. Delivery unit cost ($/yd3) _____
      e. Delivery cost (a. x d.) _____
      f. Placement/spreading unit cost ($/yd3) _____
      g. Placement cost (a. x f.) _____
      h. Compaction unit cost ($/yd3) _____
      i. Compaction cost (a. x h.) _____

   ***TOTAL: Off-site clay (c. + e. + g. + i.)** _____

   3. Quality control/testing of clay
      a. Number of sample(s) to be tested _____
      b. Clay testing unit cost ($/sample) _____
      c. Testing cost (a. x b.) _____

   ***TOTAL: Clay testing (c)** _____

C. Synthetic membrane
   1. Quantity needed (yd2) _____
   2. Purchase unit cost ($/yd2) _____
   3. Purchase cost (1. x 2.) _____
   4. Installation unit cost ($/yd2) _____
   5. Installation cost (1. x 4.) _____

   ***TOTAL: Synthetic membrane (3. x 5.)** _____

D. Geotextile filter fabric
   1. Quantity needed (yd2) _____
   2. Purchase unit cost ($/yd2) _____
   3. Purchase cost (1. x 2.) _____
   4. Installation unit cost ($/yd2) _____
   5. Installation cost (1. x 4.) _____
   ***TOTAL: Geotextile filter fabric (3. x 5.)** _____

TOTAL for Establishing final cover (*):
(A + B + C + D) _____

2. Establishing vegetation cover:
   A. Labor ($/acre) _____
   B. Seeding ($/acre) _____
   C. Fertilizing ($/acre) _____
   D. Mulching ($/acre) _____
   E. Number of acres _____

TOTAL for Establishing vegetation cover:
E. x (A. = B. + C. + D) _____

3. Establishing or completing a system to minimize and control erosion/sedimentation:
   A. Sediment pond
      1. Excavation/construction ($) _____
      2. Materials (e.g. pipe, riprap) ($) _____
      ***TOTAL: (1. + 2.)** _____
   B. Diversion ditch
      1. Construction ($) _____
      2. Materials ($) _____
      ***TOTAL: (1. + 2.)** _____
   C. Temporary structures (e.g. silt fence, swales)
      1. Construction ($) _____
      2. Materials ($) _____
      ***TOTAL: (1. + 2.)** _____

TOTAL for establishing or completing a system to minimize and control erosion and sedimentation (*):
(A. + B. + C.) _____

4. Establishing or completing leachate collection removal, and treatment system:

   A. Installation
      1. Number of feet _____
      2. Unit cost ($/feet) _____
      3. Storage tanks ($) _____
      4. Pumps ($) _____

TOTAL for Establishing or completing leachate system:
(1. + 2. + 3. + 4.) _____

5. Establishing or completing a system to collect or vent gases:

   A. Installation
      1. Materials (e.g. piping) _____
      2. Equipment (e.g. pumps) _____
      3. Labor (e.g. drilling) _____

TOTAL for Establishing or completing a system to collect or vent gases:
(1. + 2. + 3.) _____

6. Establishing or completing groundwater/surface water monitoring system:

A. Installation

1.	Number of wells	_____
2.	Drilling cost (1. x 2.)	_____
3.	Materials (e.g. casing) (1. x 3.)	_____
4.	Equipment (e.g. pumps)	_____
5.	Labor	_____

TOTAL for Establishing or completing groundwater monitoring system:
(2. + 3. + 4. + 5.) _____

TOTAL CLOSURE COSTS:
(Sum of TOTALS for Sections 1. thru 6.) _____

COST ESTIMATE

WORK SHEET B:

POST CLOSURE ACTIVITIES

NOTES:
1) This worksheet is to be submitted as part of the C/PC Plan.
2) The facility will be maintained and monitored for 30 years after final closure for Class I and II landfills and 2 years after final closure of Class III and IV landfills.
3) Fill in blanks for all activities which apply.
4) All costs are to be calculated on an ANNUAL BASIS.

1. Surveying inspections to confirm final grade and drainage are maintained:

A.	Transportation	_____
B.	Labor	_____
	TOTAL for Surveying inspections: (A. + B.)	_____

2. Maintain healthy vegetation:

A.	Transportation	_____
B.	Labor	_____
C.	Seeding	_____
D.	Fertilizing	_____
E.	Mulching	_____
F.	Rodent Control	_____
G.	Mowing	_____
	TOTAL for Maintaining healthy vegetation: (A. + B. + C. + D. + E. + F. + G.)	_____

3. Maintain the drainage facilities, sediment ponds and other erosion/sedimentation control measures:

A.	Transportation	_____
B.	Labor	_____
C.	Cleaning out of systems	_____
D.	Repair of gullies or rills	_____
	1. Soil acquisition	
	a. Quantity (yd3)	_____
	b. Purchase unit cost ($/yd3)	_____
	c. Purchase cost (a. x b.)	_____
	d. Delivery unit cost ($/yd3)	_____
	e. Delivery cost (a. x d.)	_____
	Total 1: (c. + e.)	_____
	2. Placement/spreading/compaction	_____
	3. Revegetation	_____
	Total D: (1. + 2. + 3.)	_____

TOTAL for Maintaining drainage: (A. + B. + C. + D.) _____

4. Maintain and monitor the leachate collection, removal and treatment system:

A. Treatment of leachate
   1. On-site
      a. Quantity (yd3) _____
      b. Treatment unit cost ($/yd3) _____
      c. Treatment costs (a. x b.) _____
      d. Sewer discharge unit cost _____
      e. Discharge cost (a. + d.) _____
      Total 1: On-site (c. + e.) _____
   2. Off-site
      a. Quantity (yd3) _____
      b. Hauling unit cost ($/yd3) _____
      c. Hauling costs (a. x b.) _____
      d. Treatment unit cost _____
      e. Treatment cost (a. + d.) _____
      Total 1: Off-site (c. + e.) _____

***TOTAL: (1. or 2. Total)** _____

B. Maintenance of leachate collection system:

   1. Transportation _____
   2. Labor _____
   3. Repairs/Materials (e.g. below) _____
      a. Pumps _____
      b. Cleaning out system _____
      c. Leak detection _____
      d. Other _____
      Total 3: (a. + b. + c. + d.) _____

***TOTAL: (1. + 2. + 3.)** _____

TOTAL for Monitoring and maintaining leachate system (*):
(A. + B.) _____

5. Maintain and monitor the gas collection or venting system:

A. Transportation _____
B. Labor _____
C. Repairs/Materials (e.g. below)
   1. Cleaning _____
   2. Caps _____
   3. Other _____
   Total: (1. + 2. + 3.) _____

TOTAL for Maintaining and monitoring gas control system:
(A. + B. + C.) _____

6. Maintain and monitor the groundwater and/or surface water monitoring system:

A. Monitoring of groundwater systems:

1. Number of wells/springs _____
2. Number of samples/well _____
3. Unit cost of analysis _____
4. Cost of sampling + analysis: (1. + 2. + 3.) _____
5. Labor cost per well _____
6. Labor costs (1. x 5.) _____

***TOTAL A: (4. + 6.)** _____

B. Inspection and maintenance of system:

1. Transportation _____
2. Labor _____
3. Repairs/Materials
   - a. Caps _____
   - b. Tubing _____
   - c. Pumps _____
   - d. Well replacement _____
   - e. Other _____

   Total 3: (a. + b. + c. + d. + e.) _____

***TOTAL B: (1. + 2. + 3.)** _____

TOTAL for Maintaining and monitoring groundwater systems: (*) (A. + B.) _____

TOTAL POST CLOSURE COSTS:

Annual Basis:
(Sum of Sections 1. thru 6.) _____

Inflation Rate Utilized _____

30 Year Basis:
(Annual cost) (Inflation rate) (30 years) _____

NOTE: If desired because of anticipated cost or inflation fluctuations, we recommend submitting a separate sheet with the year-by-year annual costs (30 year breakdown) or maintaining and monitoring facility.

Additional Reading:

ASTM Standards on Groundwater and Vadose Zone Investigations, 2nd. Ed.

Compendium to a Guidance for the Preparation of a Sampling and Analysis Plan, Division of Solid Waste Management.

Handbook of Suggested Practices for the Design and Installation of Ground-Water Monitoring Wells, EPA/600/4-89/034.

"Potential Pitfalls of Subtitle D Groundwater Monitoring," Jeff T. Crate, P.G., Draper Aden Associates, 1995.

Storm Water in Tennessee: A Training Manual for Manufactures, The University of Tennessee, Center for Industrial Services.

Subtitle D Technical Training Manual, Environmental Protection Agency, Region IV.

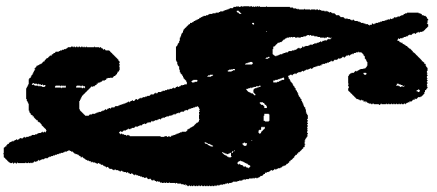
Technical Guidance Document, Tennessee Division of Solid Waste Management, 1994.

Technical Manual for Solid Waste Disposal Facility Criteria, 40 CFR Part 258, USEPA, December 1993, Washington, D.C.

Tennessee Erosion and Sediment Control Handbook: A Guide for Protection of State Waters Through Effective Management Practices During Construction Activities, Tennessee Department of Environment and Conservation, July 1992.

Chapter 10

Financing



FINANCING

The Solid Waste Management of Act of 1991 provides for methods of solid waste accounting and generating revenue to fund solid waste management programs.

A. Revenue Sources and Funding Mechanisms

There are several sources through which counties and other governmental entities may fund their solid waste management operations. In general, these options are cumulative: they may be used singly or in mix-and-match combinations to suit each area's needs. These revenue sources include the following choices:

1. **Tipping Fee** - (T.C.A. 68-211-835(a)). Any county, municipality, or solid waste authority which owns a disposal facility or incinerator may impose a tipping fee on each ton of waste or its volume equivalent. The amount of the fee is determined according to the cost of providing services, and the uniform solid waste accounting system is to be used to arrive at this cost. Revenue raised by the tipping fee is to be used only for solid waste management purposes (T.C.A. 68-211-835(b)).

2. **Host Fee** - (T.C.A. 68-211-835(e)). A county that is host to a solid waste disposal facility or incinerator used by other counties in the same region may impose a surcharge on each ton or volume equivalent processed by that facility. The purpose of the host fee is to encourage the use of regional facilities; these revenues may be used only for solid waste management purposes or to offset costs resulting from hosting the facility.

3. **General Surcharge** - (T.C.A. Section 68-211-835(f)(1)(A)). After approval of the regional solid waste plan, a municipality, county, or solid waste authority may impose of surcharge on each ton of waste received at a facility within that area. Funds collected through this surcharge may be expended for collection or disposal purposes.

4. **Disposal Fee** - (T.C.A. 68-211-835(g)(1)). A county, city, or solid waste authority may collect a users fee which bears a reasonable relationship to the cost of providing disposal services. For that reason a disposal fee may not be imposed on a waste generator who owns the facility for processing its own waste. Disposal fee revenues may be used only to establish and maintain collection and disposal services to which all county residents have access. Upon agreement with the area's electric utility, these fees may be collected as part of the utility's billing process.

   Two types of disposal fee structures exist: flat-rate and variable rate. In a flat rate fee, the user is assessed a constant cost regardless of the amount of waste generated. The traditional means of collecting the flat rate fee is through property taxes, or an annual fee charged to each user or household. However, if each user is assessed a flat monthly charge for service, there is little incentive to change conduct. However, if the service is designed to provide an incentive to either produce less waste or recycle, the system can be used to meet community goals. This system is more commonly called variable rate system or unit pricing.

Variable rate, or unit pricing, is based on the amount of solid waste generated from each user or household rather than a fixed rate. There are several articles comparing the different types of variable rates: Variable Can (utilized mostly by Cities), Prepaid Bag, Tag or Sticker, and Weight-based (also used by Cities). The article by Lisa A. Skumatz, discusses a "Hybrid" system. The Hybrid is a combination of the traditional property tax or flat-rate financing along with an incentive-based bag/tag/sticker system. The advantages of the Hybrid system offers the community some transition from the traditional to a user fee system, and mitigates revenue risk by generating a base level of revenue through traditional financing mechanisms.

Whatever variable rate system is chosen, the fee can be directed to subsidize a portion of the collection and disposal system. With regards to the disposal system, the subsidy can help the community keep the tipping fee for the landfill low enough to attract needed waste volumes, achieving economic flow control.

5. **Property Tax** - (T.C.A. 5-19-108, 5-19-109). A county may levy a general property tax to pay for waste collection and disposal services if these are available to all the county and no municipality provides its own services. If a city in the county furnishes its own waste collection and disposal, then districts must be established so that property taxes are levied only upon the area to be served.

6. **Service Charge** - (T.C.A. 5-19-107). A county may charge users a reasonable fee for providing waste collection services.

7. **Special Assessment** - (T.C.A. 6-2-201(19). A county can collect special assessments from property owners for the collection and disposal of solid waste.

8. **State Loans** - (T.C.A. 68-211-401 through 68-211-417) provides for loans to counties and municipalities for "construction of landfills or energy recovery facilities and/or solid waste resource recovery facilities."

9. **Solid Waste Grants:**

   a) Solid Waste Management Fund - (T.C.A. 68-211-821). The solid waste management fund is designated from revenues generated from the state surcharge (T.C.A. 68-211-835(a)) and the tire predisposal fee (T.C.A. 67-4-1603(b)). From this fund, grants are authorized by law for convenience centers (T.C.A. 68-211-824), recycling equipment (T.C.A. 68-211-825), waste tire storage (T.C.A. 68-211-867(d)), and solid waste education (T.C.A. 68-211-847).

   b) Used Oil Collection Fund - (T.C.A. 68-211-1004). The used oil collection fund is designated from revenues generated from the state fee (T.C.A. 68-211-1007). From this fund, grants are authorized by law for used oil collection programs.

SUMMARY OF SOLID WASTE ASSISTANCE GRANTS

Division of Solid Waste Assistance, 401 Church Street, 14th Floor L & C Tower, Nashville, TN 37243-0455, (615) 532-0091

	RECYCLING EQUIPMENT T.C.A. 68-211-825(a)	WASTE TIRES T.C.A. 68-211-867	USED OIL COLLECTION T.C.A. 68-211-1005	OPTIONAL WASTE TIRE	MATERIALS RECYCLING & PROCESSING FACILITY
Who's Eligible	Counties, Cities, Solid Waste Authorities, Nonprofit Groups	Counties upon submission of Ten (10) Year Solid Waste Plan	Counties, Cities and Other Agencies	Counties	Cities, Counties, Solid Waste Authorities, and Nonprofit Recycling Organizations chartered in Tennessee
Funds Available for FY 1995	$600,000	$974,474	$1,300,000	$2,376,000	$1,200,000
Grant Maximum	$25,000 per grant. Previous awards have been $20,000 per grant.	$15,000 for counties with tire sites constructed prior to 6/30/94. $10,000 for counties constructing sites after 6/30/94. These are also *proposed* amounts. Note: Previous awards have been $5,000 with a maximum of $10,000.	$12,150 per site	Amount per county is based on 1990 population, current generation rate and waste stream. Three options are available.	$400,000 for award to one recipient in each of the grand divisions of the state
Application Period	Applications due 11/30/95	Open	Open	Open	January 22, 1996
Uses of Funds	Competitive grants to purchase recycling equipment such as balers, can crushers, bins, containers, and other items of equipment which improves the efficiency of an existing recycling operation or is needed to establish a new recycling operation.	To construct a site for the temporary storage of waste tires, and to locate and collect tires dumped illegally.	Funds may be used to purchase the following items to establish a used oil collection site and educate the public about proper disposal of used oil: Site Preparation $300 Tank/Container $2,200 Oil Filter Crusher $1,500 Oil Test Kits $150 Only Local Governments may receive: Public Education funds of $1,500 and Oil Burning Equipment $6,500	(1) $.25 per tire or $25 per ton, no tipping fee allowed & state tire shredding service is provided, or (2) $.62 per tire or $62 per ton, may charge tipping fee, but no state provided tire shredding service, must have end-user, or (3) $.25 per tire or $25 per ton + $.62 per tire, no tipping fee allowed, no state provided tire shredding services, must have end-user.	To establish, expand or upgrade a facility for processing recyclable materials from multiple local governments. Must meet minimum building requirements. Funds can be used to modify existing facility, construct exterior improvements, purchase recycling and computer equipment. Cannot construct new building or pay recurring operational costs.

Prepared 12/6/95

SUMMARY OF SOLID WASTE ASSISTANCE GRANTS

Division of Solid Waste Assistance, 401 Church Street, 14th Floor L & C Tower, Nashville, TN 37243-0455, (615) 532-0091

	DEVELOPMENT DISTRICTS T.C.A. 68-211-823(1-2)	CONVENIENCE CENTERS T.C.A. 68-211-824	RECYCLING REBATES T.C.A. 68-211-825(b)	EDUCATION T.C.A. 68-211-847	HOUSEHOLD HAZARDOUS WASTE T.C.A. 68-211-828	SOLID WASTE PLANNING T.C.A. 68-211-801
Who's Eligible	Each of the nine Development Districts (DD)	Counties	Blount, Davidson, Hamilton, Knox, Madison, Montgomery, Rutherford, Shelby, Sullivan, Sumner, and Washington Counties	Counties	Davidson, Hamilton, Knox and Shelby Counties	Each county or Solid Waste Planning Region
Funds Available for FY 1995	$450,000	$4,760,000	$900,000	$1,975,000	$1,500,000	$392,500
Grant Maximum	$50,000 per Development District	$125,000 per county and requires a 10 or 20 percent match based on an economic index. The original award amount was $50,000 per county.	Calculation of rebate amount is based on 1990 census population data, 1989 solid waste figures, and T.C.A. 68-211-825.	Proposed amounts are $10,000 per county. An additional $25,000 may be awarded based on competitive grant application.	$500,000 each	Single county regions $5,000 Two county regions $6,000 Three or more county regions $7,000 per county
Application Period	N/A	Open	11/30/95	Open for $10,000 base grant	4/30/96	Open
Uses of Funds	Funds for DD staff to assist local governments and SW Planning Regions by: providing technical assistance, helping them implement solid waste plans, revising solid waste planning data, assisting them in applying for grants, etc.	To construct at least the minimum number of sites or up-grade existing sites. Allowable costs include land, paving, fencing, shelters for attendants, containers and other basic equipment typically needs. Costs of developing and printing operating manuals is allowed.	To establish new recycling programs/ collection sites, prepare recovered materials for transport and marketing, identifying markets, educational programs, and costs and waste reduction evaluations.	To implement educational programs. Allowable costs include development of educational and informational materials, purchase of key equipment to facilitate educational objectives, and purchase of curriculum materials related to solid waste education.	To establish permanent household hazardous waste collection sites. Allowable costs include costs of land, planning, design and construction of facility, equipment, security, personnel training and educational materials.	To continue providing assistance to the solid waste planning regions in implementing, maintaining and revising their regional solid waste plans.

Prepared 11/2/95

B. Solid Waste Accounting

Special Revenue Fund - (T.C.A. 68-211-874(a)). By July 1, 1992, each county, municipality and solid waste authority must account for solid waste financial activities in a special revenue fund. A uniform financial accounting system and chart of accounts developed by the comptroller of the treasury must be used.

FUND 116
SOLID WASTE/ SANITATION

Statement of Proposed Operations
for the Fiscal Year Ending _____

ACCOUNT NUMBER	DESCRIPTION	AMOUNT
BEGINNING FUND BALANCE		$_____
ESTIMATED REVENUES AND OTHER SOURCES		
	LOCAL TAXES COUNTY PROPERTY TAXES	
40110	Current Property Tax	_____
40120	Trustee's Collections - Prior Year	_____
40130	Circuit/ Clerk & Master Collections - Prior Years	_____
40140	Interest and Penalty	_____
	CHARGES FOR CURRENT SERVICES GENERAL SERVICE CHARGES	
43106	Commercial & Industrial Waste Collection Charge	_____
43107	Residential Waste Collection Charge	_____
43108	Convenience Waste Centers Collection Charge	_____
43109	Transfer Waste Stations Collection Charge	_____
43112	Surcharge - Host Agency	_____

ACCOUNT NUMBER	DESCRIPTION	AMOUNT
	CHARGES FOR CURRENT SERVICES	
	GENERAL SERVICE CHARGES (cont.)	
43113	Surcharge - General	_____
43114	Solid Waste Disposal Fee	_____
	OTHER LOCAL REVENUES	
	RECURRING ITEMS	
44110	Interest Earned	_____
44170	Miscellaneous Refunds	_____
44530	Sale of Equipment	_____
44540	Sale of Property	_____
44990	Other Local Revenue	_____
	STATE OF TENNESSEE	
	GENERAL GOVERNMENT GRANTS	
46170	Solid Waste Grants	_____
	OTHER SOURCES (NON-REVENUE)	
49100	Bond Proceeds	_____
49200	Note Proceeds	_____
49800	Operating Transfers In	_____
	TOTAL REVENUES AND OTHER SOURCES	_____
ESTIMATED EXPENDITURES AND OTHER USES		
	TOTAL EXPENDITURES AND OTHER USES	(_____)
	EXCESS OF REVENUES AND OTHER SOURCES OVER (UNDER) EXPENDITURES AND OTHER USES	_____
ENDING FUND BALANCE		_____

Enterprise Fund - (T.C.A. 68-211-874(a)). By July 1, 1993, any county, municipality or solid waste authority operating a landfill and/or incinerator must account for landfill and/or incinerator financial activities in an enterprise fund. A uniform financial accounting system and chart of accounts developed by the comptroller of the treasury must be used.

An enterprise fund is an independent budget from the general fund budget dedicated for a special activity, such as a local solid waste program. The local government becomes reliant on the revenue it raises through users fees, such as tipping fees or unit pricing, and does not receive financial support from the general fund of the local government.

FUND 207
SOLID WASTE DISPOSAL

Statement of Proposed Operations
for the Fiscal Year Ending _____

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
BEGINNING CASH BALANCE (If the total of the cash column is used to set tipping fees, then enter a zero for beginning cash balance. Assuming the cash in the cash account was donated by another fund, then that cash should not be included when determining a tipping fee.)			$_____
BEGINNING RETAINED EARNINGS		$_____	
ESTIMATED OPERATING REVENUES (Revenues directly related to the fund's primary activities. They consist primarily of user charges for goods and services.)		**REVENUES**	**RECEIPTS**
	CHARGES FOR CURRENT SERVICES		
	GENERAL SERVICE CHARGES		
43103	Sale of Methane Gas	_____	_____
43104	Sale of Electricity	_____	_____
43105	Sale of Steam	_____	_____

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
		REVENUES	**RECEIPTS**
	CHARGES FOR CURRENT SERVICES		
	GENERAL SERVICE CHARGES		
43110	Tipping Fees	_____	_____
43111	Surcharge - State	_____	_____
43113	Surcharge - General	_____	_____
43114	Solid Waste Disposal Fee	_____	_____
	RECURRING ITEMS		
44145	Sale of Recycled Materials	_____	_____
	TOTAL OPERATING REVENUES	_____	_____
ESTIMATED OPERATING EXPENSES (Expenses related directly to the fund's primary activities.)		**EXPENSES**	**DISBURSEMENTS**
	SANITATION SERVICES		
	WASTE DISPOSAL		
55754	LANDFILL OPERATION & MAINTENANCE		
105	Supervisor/ Director	(_____)	(_____)
119	Accountants/ Bookkeepers	(_____)	(_____)
141	Foreman	(_____)	(_____)
142	Mechanic	(_____)	(_____)
143	Equipment Operators	(_____)	(_____)
144	Equipment Operators - Heavy	(_____)	(_____)

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
		EXPENSES	**DISBURSEMENTS**
	SANITATION SERVICES WASTE DISPOSAL		
145	Equipment Operators - Light	(_____)	(_____)
147	Truck Drivers	(_____)	(_____)
149	Laborers	(_____)	(_____)
161	Secretary	(_____)	(_____)
162	Clerical Personnel	(_____)	(_____)
164	Attendants	(_____)	(_____)
187	Overtime Pay	(_____)	(_____)
188	Temporary/ Part Time Personnel	(_____)	(_____)
189	Other Salaries & Wages	(_____)	(_____)
201	Social Security	(_____)	(_____)
202	Handling & Administrative Costs	(_____)	(_____)
204	State Retirement	(_____)	(_____)
205	Employee & Dependent Insurance	(_____)	(_____)
206	Life Insurance	(_____)	(_____)
207	Medical Insurance	(_____)	(_____)
208	Dental Insurance	(_____)	(_____)
209	Disability Insurance	(_____)	(_____)
210	Unemployment Compensation	(_____)	(_____)
211	Local Retirement	(_____)	(_____)

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
		EXPENSES	**DISBURSEMENTS**
	SANITATION SERVICES WASTE DISPOSAL		
212	Employer Medicare	(_____)	(_____)
299	Other Fringe Benefits	(_____)	(_____)
301	Accounting Benefits	(_____)	(_____)
302	Advertising	(_____)	(_____)
306	Bank Charges	(_____)	(_____)
307	Communication	(_____)	(_____)
308	Consultants	(_____)	(_____)
309	Contracts with Government Agencies	(_____)	(_____)
310	Contracts with Other Public Agencies	(_____)	(_____)
312	Contracts with Private Agencies	(_____)	(_____)
317	Data Processing Services	(_____)	(_____)
318	Debt Collection Services	(_____)	(_____)
320	Dues & Memberships	(_____)	(_____)
321	Engineering Services	(_____)	(_____)
322	Evaluation & Testing	(_____)	(_____)
325	Fiscal Agent Charges	(_____)	(_____)
327	Freight Expenses	(_____)	(_____)
328	Janitorial Services	(_____)	(_____)
329	Laundry Services	(_____)	(_____)

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
		EXPENSES	**DISBURSEMENTS**
	SANITATION SERVICES WASTE DISPOSAL		
330	Operating Lease Payments	(_____)	(_____)
331	Legal Services	(_____)	(_____)
333	Licenses	(_____)	(_____)
334	Maintenance Agreements	(_____)	(_____)
335	Maintenance & Repair Services - Buildings	(_____)	(_____)
336	Maintenance & Repair Services - Equipment	(_____)	(_____)
337	Maintenance & Repair Services - Office Equipment	(_____)	(_____)
338	Maintenance & Repair Services - Vehicles	(_____)	(_____)
348	Postal Charges	(_____)	(_____)
349	Printing, Stationary & Forms	(_____)	(_____)
351	Rentals	(_____)	(_____)
353	Tow - In Services	(_____)	(_____)
355	Travel	(_____)	(_____)
359	Disposal Fees	(_____)	(_____)
360	Brokerage Fees - Recyclables	(_____)	(_____)
361	Permits	(_____)	(_____)
362	Penalties	(_____)	(_____)

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
		EXPENSES	**DISBURSEMENTS**
	SANITATION SERVICES WASTE DISPOSAL		
363	Contracts for Landfill Facilities	(_____)	(_____)
364	Contracts for Development Costs	(_____)	(_____)
365	Contracts for Final Cover Costs	(_____)	(_____)
366	Contracts for Postclosure Care Costs	(_____)	(_____)
399	Other Contracted Services	(_____)	(_____)
402	Asphalt	(_____)	(_____)
408	Concrete	(_____)	(_____)
409	Crushed Stone	(_____)	(_____)
410	Custodial Supplies	(_____)	(_____)
411	Data Processing Supplies	(_____)	(_____)
412	Diesel Fuel	(_____)	(_____)
414	Duplicating Supplies	(_____)	(_____)
415	Electricity	(_____)	(_____)
416	Equipment Parts - Heavy	(_____)	(_____)
417	Equipment Parts - Light	(_____)	(_____)
418	Equipment & Machinery Parts	(_____)	(_____)
420	Fertilizer, Lime & Seed	(_____)	(_____)
423	Fuel Oil	(_____)	(_____)
424	Garage Supplies	(_____)	(_____)

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
		EXPENSES	**DISBURSEMENTS**
	SANITATION SERVICES WASTE DISPOSAL		
425	Gasoline	(_____)	(_____)
426	General Construction Materials	(_____)	(_____)
427	Ice	(_____)	(_____)
433	Lubricants	(_____)	(_____)
434	Natural Gas	(_____)	(_____)
435	Office Supplies	(_____)	(_____)
437	Periodicals	(_____)	(_____)
438	Pipe	(_____)	(_____)
439	Pipe - Concrete	(_____)	(_____)
440	Pipe - Metal	(_____)	(_____)
442	Propane Gas	(_____)	(_____)
443	Road Signs	(_____)	(_____)
445	Sand	(_____)	(_____)
446	Small Tools	(_____)	(_____)
450	Tires & Tubes	(_____)	(_____)
451	Uniforms	(_____)	(_____)
452	Utilities	(_____)	(_____)
453	Vehicle Parts	(_____)	(_____)
454	Water & Sewer	(_____)	(_____)

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
		EXPENSES	**DISBURSEMENTS**
	SANITATION SERVICES WASTE DISPOSAL		
455	Wood Products	(_____)	(_____)
456	Gravel & Chert	(_____)	(_____)
457	In-Service/ Staff Development	(_____)	(_____)
458	Daily Cover Material	(_____)	(_____)
459	Drainage Materials	(_____)	(_____)
460	Geotextile Materials	(_____)	(_____)
461	Liner Materials	(_____)	(_____)
462	Wire	(_____)	(_____)
463	Testing	(_____)	(_____)
464	Top Soil	(_____)	(_____)
465	Clay	(_____)	(_____)
466	Synthetic Membrane	(_____)	(_____)
467	Fencing	(_____)	(_____)
468	Chemicals	(_____)	(_____)
499	Other Supplies & Materials	(_____)	(_____)
502	Building & Content Insurance	(_____)	(_____)
503	Excess Risk Insurance	(_____)	(_____)
505	Judgments	(_____)	(_____)
506	Liability Insurance	(_____)	(_____)

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS **EXPENSES**	CASH BASIS ESTIMATED CASH FLOWS **DISBURSEMENTS**
	SANITATION SERVICES WASTE DISPOSAL		
507	Medical Claims	(_____)	(_____)
508	Premiums on Corporate Surety Bonds	(_____)	(_____)
509	Refunds	(_____)	(_____)
510	Trustee's Commission	(_____)	(_____)
511	Vehicle & Equipment Insurance	(_____)	(_____)
512	Withholding Tax	(_____)	(_____)
513	Workmen's Compensation Insurance	(_____)	(_____)
*514	Depreciation (This expense does not decrease cash.)	(_____)	(_____)
515	Liability Claims	(_____)	(_____)
517	Surcharge	(_____)	(_____)
599	Other Charges	(_____)	(_____)

(The following expenditures for equipment, buildings, etc., that do not meet the long-term asset policy to be classified as a long-term. These will be fully expensed in the year as they are purchased.)

701	Administration Equipment	(_____)	(_____)
707	Building Improvements	(_____)	(_____)
708	Communications Equipment	(_____)	(_____)
709	Data Processing Equipment	(_____)	(_____)
711	Furniture & Fixtures	(_____)	(_____)

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
		EXPENSES	**DISBURSEMENTS**
	SANITATION SERVICES WASTE DISPOSAL		
712	Heating & Air Conditioning Equipment	(_____)	(_____)
717	Maintenance Equipment	(_____)	(_____)
719	Office Equipment	(_____)	(_____)
724	Site Development	(_____)	(_____)
727	Surplus Equipment	(_____)	(_____)
733	Solid Waste Equipment	(_____)	(_____)
790	Other Equipment	(_____)	(_____)
791	Other Construction	(_____)	(_____)
799	Other Capital Outlay	(_____)	(_____)
55770	POSTCLOSURE CARE COSTS		
463	Testing	(_____)	(_____)
	(Add any other expenses from the list above.) TOTAL OPERATING EXPENSES	(_____)	
	OPERATING INCOME (LOSS) (An operating loss means that a landfill operation must be subsidized by transfers, selling capital assets or borrowing.)	_____	

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
ESTIMATED NON-OPERATING EXPENSES (Revenues incidental to, or byproducts of, the fund's primary activity.)		**REVENUES**	**RECEIPTS**
	OTHER LOCAL REVENUE RECURRING ITEMS		
44110	Interest Earned	_____	_____
44170	Miscellaneous Refunds	_____	_____
	NONRECURRING ITEMS		
44512*	Gain on Retirement of Debt (Does not increase cash.)	_____	_____
44513*	Gain on Disposal of Property (Does not increase cash.)	_____	_____
44990	Other Local Revenue	_____	_____
	OTHER SOURCES		
49800	Operating Transfers In	_____	_____
	STATE OF TENNESSEE GENERAL GOVERNMENT GRANTS		
46170	Solid Waste Grants	_____	_____
	TOTAL NON-OPERATING REVENUES	_____	

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
ESTIMATED NON-OPERATING EXPENSES (Expenses not directly related to the fund's primary activities.)		**EXPENSES**	**DISBURSEMENTS**
	SANITATION SERVICES WASTE DISPOSAL		
55754	LANDFILL OPERATION & MAINTENANCE		
*519	Loss on Retirement of Debt (Does not decrease cash.)	(_____)	(_____)
*520	Loss on Disposal of Property (Does not decrease cash.)	(_____)	(_____)
603	Interest on Bonds	(_____)	(_____)
604	Interest on Notes	(_____)	(_____)
605	Underwriter's Discount	(_____)	(_____)
606	Other Debt Issuance Charges	(_____)	(_____)
611	Interest on Capitalized Leases	(_____)	(_____)
699	Other Debt Service	(_____)	(_____)
	TOTAL NON-OPERATING EXPENSES	(_____)	
NET INCOME		_____	
	OPTIONAL ADD-BACK OF QUALIFYING DEPRECIATION (Add back depreciation of fixed assets acquired by grants externally restricted for capitol acquisitions & construction.)	_____	

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
	(The following items will increase cash, but due to enterprise fund type accounting, they will decrease an asset on the balance sheet rather than increase a revenue on the statement of revenues, expenses & changes in retained earnings.)		
	SALE OF LONG-TERM ASSETS		_____
	PROCEEDS FROM LONG-TERM LIABILITIES		_____
	(The following items will decrease cash, but due to enterprise type accounting, they will increase an asset on the balance sheet rather than increase an expense on the statement of revenues, expenses & changes in retained earnings.)		
	PURCHASE OF LONG-TERM ASSETS		(_____)
	PAYMENT OF LONG-TERM LIABILITIES		(_____)
12135	Amounts Held in Trust of Closure & Postclosure Care Costs (Reduce cash in bank & increase restricted cash.)		(_____)
12135	Amounts Held in Trust of Closure and Postclosure Care Costs (Payment of expenses in 55770 from restricted cash rather than cash in bank.)		_____
32140	Reserve for Amounts Held in Trust of Closure & Postclosure Care Costs (Reduce retained earnings to reserve corresponding amount in 12135.)	(_____)	
32140	Reserve for Amounts Held in Trust of Closure & Postclosure Care Costs (Increase retained earnings when postclosure expenses are paid out of restricted cash.)	_____	

ACCOUNT NUMBER	DESCRIPTION	ACCRUAL BASIS ESTIMATED OPERATIONS	CASH BASIS ESTIMATED CASH FLOWS
	INCREASE (DECREASE) IN CASH		
	INCREASE (DECREASE) IN RETAINED EARNINGS		
	ENDING CASH BALANCE (A negative cash balance means that there will not be enough cash to cover disbursements of the period.)		
	ENDING RETAINED EARNINGS		

Additional Reading:

Municipal Technical Advisory Service (MTAS) 1995. Finding Money II: The Search Continues . . .

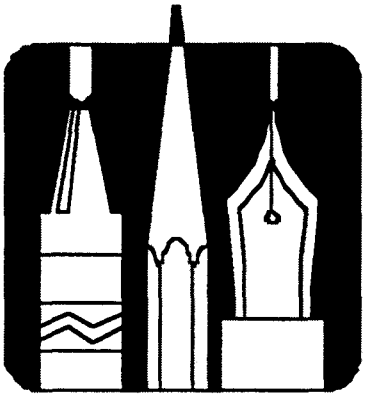
Skumatz, Lisa A. 1993. Variable Rates for Municipal Solid Waste: Implementation Experience, Economics and Legislation. Los Angeles, CA: Reason Foundation.

U.S. Environmental Protection Agency. 1995. Pay-As-You-Throw: Lessons Learned About Unit Pricing. Washington, D.C.: EPA Office of Solid Waste and Emergency Response.

U.S. Environmental Protection Agency. 1991. Unit Pricing: Providing an Incentive to Reduce Municipal Solid Waste. EPA 530-SW-91-005. Washington, D.C.: EPA Office of Solid Waste And Emergency Response.

Chapter 11

Education and Public Information



EDUCATION AND PUBLIC INFORMATION

Education is essential in developing public understanding of, and support for, efforts to better manage solid waste in Tennessee. The Solid Waste Management Act establishes a framework for developing educational and public information programs state-wide, in solid waste regions and within each county.

A. State Program

State-wide solid waste educational and public information programs include: educational and training programs (T.C.A. 68-211-844); curriculum and in-service training (T.C.A. 68-211-845(1) - (3)); awards to schools, universities and colleges for recognition of efforts concerning waste management, source reduction and recycling (T.C.A. 68-211-846, 68-211-848); grants to counties to implement the education component of the regional solid waste plan (T.C.A. 68-211-847). A copy of the announcement from TDEC for the 1996 Environmental Awards can be found at the end of this chapter. A copy of the education grant application follows the TDEC Environmental Awards Announcement.

The Solid Waste Management Act also promotes educational and training programs on a state-wide basis for the following groups:

" (1) Municipal, county and state officials and employees;
(2) Kindergarten through graduate students and teachers;
(3) Businesses that use or could use recycled materials or that produce or could produce projects from recycled materials, and persons who provide support services to those businesses; and
(4) The general public" (T.C.A. 68-211-844).

In addition, the Act promotes the education of children in grades kindergarten through twelve (T.C.A. 68-211-845). The Department of Environment and Conservation contracted with the Waste Management Research and Education Institute (WMREI) at the University of Tennessee to fulfill this requirement.

The Waste Management Research and Education Institute established the Tennessee Solid Waste Education Project (TN SWEP) to assist K-12 educators in incorporating solid waste education into existing Tennessee curriculum. The solid waste education curriculum materials used in the project have been selected from a variety of existing curricula produced by universities, non-profit environmental organizations, the waste management industry, and other states. These materials promote an understanding of the need for integrated solid waste management, emphasizing the progression of waste reduction, reuse, recycling and composting, incineration with energy recovery, and ultimately landfilling.

A team of environmental educators and solid waste professionals has been assembled to provide services to schools, teachers, and state and local solid waste educators. All services will be provided on request basis. Services include:

- sponsoring workshops on solid waste education curriculum materials for educators;
- providing in-service training sessions for teachers on integrated solid waste management, source reduction, recycling and composting, environmental protection, and conservation of materials;
- helping establish peer assistance programs for teachers; and
- publishing a list of curriculum materials relative to solid waste management, source reduction, recycling and composting.

The TN SWEP Project Team consists of:

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B. Solid Waste Regions

Statutory requirements for the ten-year solid waste plans for multi- and single county solid waste regions state that:

> "Each plan submitted by a municipal solid waste region shall include...a description of education initiatives aimed at businesses, industries, schools, citizens, and others, which addresses recycling, waste reduction, collection, and other goals..." (T.C.A. 68-211-815(b)(11)).
>
> "Each solid waste regional plan shall include an education program to assist adults and children to understand solid waste issues, management options and costs, and the value of waste reduction and recycling." (T.C.A. 68-211-842).

Defined in the plan are the regional needs for developing public information and education programs to support solid waste management efforts in the region. Steps taken to meet these identified needs should include: establishing goals and objectives; identifying target groups and audiences; determining content of information to be provided; developing methods to deliver information; analyzing staff and budget needs; developing a funding plan; and, establishing an evaluation and reporting system.

The solid waste management plan also should describe the allocation of responsibility for providing educational programs among the counties, cities, schools or private organizations. As was previously mentioned, a grant is available to counties to implement the education component of the plan.

C. County Program

Local governments developed ten-year solid waste plans which contain a public education component. Details concerning a specific county's educational plans for solid waste may be obtained by contacting the county executive's office or the regional solid waste planning board chairman.

Under T.C.A. 68-211-847, counties may apply for a base education grant up to $10,000 to develop and implement educational programs outlined in the ten-year solid waste regional plans. A copy of the grant is provided at the end of this chapter.

In addition to the education grants, a percentage of the litter grant funds a county receives through the Tennessee Department of Transportation's (TDOT) Litter Grant Program is earmarked for educational purposes. Educating the public is among the five target areas a county may select for the educational component of their litter grant. TDOT has supplied each county with a shopping list of activities for education, however, the Department encourages innovation by the counties as well.

TDOT Litter Grant

Established in May of 1981 by the Legislature as part of Governor Alexander's Safe Growth Program, the Litter Grant was initially devised as a non-matching fund to make monies available to interested counties for litter collection. It has subsequently expanded to incorporate programs for the sole purpose of litter prevention, education and recycling, and currently includes as participants all 95 counties of the State of Tennessee.

Funding for the Litter Grant is provided through the barrels tax (T.C.A. 57-5-201(a)), and a tax imposed on bottled soft drinks (T.C.A. 67-4-402(b)). Monies collected are deposited in the state highway fund for the purpose of funding programs for the prevention and collection of litter and trash.

The Litter Grant runs from July 1 to June 30 and can be used to help pay for salaries, administration, maintenance and operation of equipment. In addition, it is mandated that up to 25% of each grant be designated for three to five educational target areas which are designed to inhibit littering by changing people's behavior. The exact number of educational target areas in which a county is obligated to fulfill is dependent on its population size and total mileage of state highways. The five specific target areas include: public education, student education, media education, government education and business education.

To apply for a grant, county representatives must submit the following information to the Tennessee Department of Transportation:

1. A Resolution passed by the County Commission supporting the grant and naming a responsible party.

2. A written narrative of how the County Commission proposes to pick up litter as well as implement specific litter prevention target areas.

3. A line item budget of expenditure categories with specific amounts relating to them and including litter prevention target areas.

4. A contract executed by the responsible party and the County Attorney.

For additional information, please contact Ward Hopkins, Highway Beautification Office, Tennessee Department of Transportation (615) 741-2877.

ANNOUNCING

THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

1996 ENVIRONMENTAL AWARDS
To Be Awarded 1997

- The 1996 Local Civic Voluntary Effort Award
- The 1996 Agriculture/Forestry Environmental Stewardship Award
- The 1996 K-12 Environmental Awareness Award
- The 1996 Higher Education Environmental Stewardship Awards
  - Internal Achievement
  - External Achievement
- The 1996 Lifetime Environmental Stewardship Award
- The 1996 Local Government Stewardship Award

The Tennessee Department of Environment and Conservation is recognizing the many voluntary efforts throughout our state which improve environmental awareness and increase environmental protection.

The 1996 Environmental Awards will be given based on the criteria on the following pages. The judging panels will be selected by the Department of Environment and Conservation and may include representatives from government, education, industry, citizen advocacy groups, agriculture, technical support groups, academia and news media.

Winners will be recognized at the 1997 Solid and Hazardous Waste Conference.

The 1996 Local Civic Voluntary Effort Award

Purpose: To recognize outstanding local volunteer projects that have improved or protected the environment.

Eligible Nominations: Any project initiated by a local group, organization or individual which has improved or protected the environment by taking action such as identifying local environmental issues, educating the citizenry about the environmental, health and economic ramifications of the issues and possible solutions, and implementing an aggressive public action plan to address the issues. The nomination should include a short description of the nominee.

Judging Criteria:

1. The environmental benefits.
2. The extent that the project represents an innovative approach.
3. Whether the project is continuous or "one time only."
4. The scope of the improvement effort.
5. The increase in the community's environmental awareness.
6. The number of volunteers that were involved.
7. The manner in which the public was engaged.

The 1996 Agriculture/Forestry Stewardship Award

Purpose: To recognize individuals or firms engaged in agricultural or forestry operations that have performed long-term environmental and/or conservation practices for their land resources.

Eligible Nominations: Individuals or corporations involved in agricultural or forestry operations who have completed outstanding management or conservation projects. The nomination should include a short description of the nominee.

Judging Criteria:

1. The environmental benefits (including estimates of the quantity of environmental pollution prevented, the amount of environmental protection, or the amount of environmental enhancement.
2. The extent to which the project represents an innovative approach.
3. The economic or recreational benefits.
4. The level of management or individual commitment to environmental stewardship.
5. The size of the facility, operation, or corporation versus the size of the project.
6. The ability of the project to address multiple environmental, recreational, and economic goals, or a mixture thereof.
7. The history of excellence in environmental stewardship in all environmental areas.

Sample Projects (may include but are not limited to): Soil erosion control, woodlands development, reforestation, wilderness area preservation, recreational development, habitat improvement, watershed and wetlands development or protection, waste minimization, or best management practices which maintain or improve the quality of land and related resources.

The 1996 K-12 Environmental Awareness Award

Purpose: To recognize those schools that have incorporated environmental/conservation awareness and stewardship into their curriculum in an innovative manner. Of particular interest are those programs that go beyond the typical classroom lecture-homework format.

Award Categories (total of six):

1. Elementary
2. Secondary

These categories will be subdivided into small, medium, and large based on the entries received.

Eligible Nominations: Any school (public or private) in grades K-12 that has augmented its standard curriculum by identifying environmental/conservation issues with their students, educating their students or the community at large about these issues, or involving their students or community to effect environmental improvement. The nomination should include a short description of the school and its demographics.

Judging Criteria:

1. The environmental benefits.
2. The extent that the project represents an innovative approach.
3. Whether the project is continuous or "one time only."
4. The educational merits of the program or project.
5. The extent that the program develops environmental stewardship in the students and the community.
6. How the program is integrated within the standard school curriculum.
7. How the local community is involved.

Sample Projects (may include but are not limited to): involving the surrounding community to address a local environmental problem; completing field research (under appropriate supervision) to help federal, state, or local agencies define a local environmental problem more completely; starting or operating a community recycling program; planning and hosting Earth Day activities; or developing an outdoor learning site.

The 1996 Higher Education Environmental Stewardship Awards

Purpose: To recognize institutions of higher learning that promote environmental stewardship.

Award Categories:

1. Internal achievement--recognizes an institution's on-campus efforts to promote environmental stewardship through items such as administrative policy and practice, teaching practices, and special student programs.
2. External Achievement--recognizes an institution's efforts to promote environmental stewardship or accomplish environmental protection external to its campus.

Eligible Nominations: Any post-secondary institution in Tennessee which has promoted environmental stewardship through internal or external efforts, resulting in waste reduction, pollution prevention, increased environmental awareness or other environmental benefits. Projects under the direction of or funded by the Tennessee Department of Environment and Conservation are not eligible.

Judging Criteria--Both Award Categories:

1. The environmental benefits (including, but not limited to, the amount of pollution prevented or waste reduced, amount of environmental enhancement, increase in environmental awareness, or amount of environmental protection provided).
2. The extent that the project is innovative.
3. The economic or recreational benefits.
4. The level of top administration support and leadership.
5. The size of institution versus impacts of efforts.

Additional Criterion for Internal Achievement: How the project promotes an enduring interest in environmental stewardship.

Additional Criterion for External Achievement: How the project involves the community it is designed to assist.

Sample Projects (may include but are not limited to): using environmentally friendly criteria for purchasing/ bidding requirements; implementing campus-wide reuse and recycling; minimizing the use of any toxic or hazardous substances; using native plants and species in landscaping; installing energy efficient systems or those systems that utilize renewable energy sources; incorporating environmental concerns into the curriculum; incorporating environmental issues into scholarship applications or volunteer service programs; installing water conserving instruments and appliances; incorporating natural areas into physical operations or class instruction.

The 1996 Lifetime Environmental Stewardship Award

Purpose: To recognize individuals who have devoted a working lifetime of effective and valuable service to Tennessee's environmental protection, stewardship, and awareness.

Eligible Nominations: Individuals with a working lifetime of environmental involvement of at least 25 years.

Judging Criteria: Notable achievements in areas such as natural resources management, public education, public service, political support, and/or environmental protection and enhancement.

Additional Recognition: An inscribed plaque will be placed in an area that typifies recipient's work. Such an area could be a park the winner helped establish or the seat of government where the individual currently resides.

The 1996 Local Government Stewardship Award

Purpose: To recognize outstanding local government efforts to improve or protect the environment.

Eligible Nominations: Any local government, agency, or entity responsible thereto that have initiated projects such as identifying local environmental issues, educating the citizenry about the environmental, health and economic ramifications of the issues and possible solutions, and implementing an aggressive public action plan to address the issues. Projects under the direction of the Department of Environment and Conservation are not eligible. The nomination include a short description of the entity or agency.

Judging Criteria:

1. The environmental benefits.
2. The extent that the project represents an innovative approach.
3. Whether the project is continuous or "one time only."
4. The increase the community's environmental awareness.
5. The scope of the improvement effort.
6. The number of volunteers that were involved.
7. The manner in which the public was engaged.

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
1996 ENVIRONMENTAL AWARDS

NOMINATION

Award Category: Check only one

_____ The 1996 Agriculture/Forestry Environmental Stewardship Award
_____ The 1996 Higher Education Environmental Stewardship Awards
  _____ Internal Achievement
  _____ External Achievement
_____ The 1996 Lifetime Environmental Stewardship Award
_____ The 1996 Local Civic Voluntary Effort Award
_____ The 1996 Local Government Stewardship Award
_____ The 1996 K-12 Environmental Awareness Award
  _____ Elementary
  _____Secondary Number of students in your school _____

Name of Nominee _____

Contact Person _____

Title _____

Address _____

City _____ State _____ Zip _____

Phone (___) _____ Fax (___) _____

ADDITIONAL INFORMATION

Attach a typewritten description of no more than three (3) pages addressing the specific eligibility requirements and judging criteria for the award for which the nomination is submitted. For any questions regarding this nomination, contact the Division of Pollution Prevention and Environmental Awareness, Tennessee Department of Environment and Conservation, at (615) 532-0760.

Mail the completed nomination to:

1996 Environmental Awards
Department of Environment and Conservation
Division of Pollution Prevention/ Environmental Awareness
8th Floor, L & C Annex
401 Church Street
Nashville, Tennessee 37243-1551

065

RDA S836-1

THE SOLID WASTE MANAGEMENT ACT of 1991
TCA 68-211-847
Solid Waste Education Grants Guidelines
April, 1995

Statutory Authority

TCA 68-211-847: "After a region or county's plan is approved, the state . . . shall award grants for implementing the education program component of the plan from funds available in the solid waste management fund."

Eligibility

Counties may apply for grants under TCA 68-211-847 after the Department has approved their municipal solid waste regional plan. A county may obtain funds to complete educational activities utilizing county staff and resources or the county may subcontract with cities or other agencies to complete solid waste educational activities.

Each county may request and receive a base grant of up to $10,000 to assist in developing and implementing educational programs outlined in the municipal solid waste regional plans.

Grant funds may be used by the county or the county may subcontract with cities or other agencies to develop and/or implement educational programs, develop and distribute informational materials, purchase key equipment to facilitate educational objectives and purchase curriculum materials related to solid waste education.

Amount

The Department has $1,975,000 available for educational grants. Each county may receive a base grant of $10,000.

Application

To apply for the $10,000 base grant, applicants must complete and submit one grant application. The application must include complete information about the activities to be undertaken and give an estimated budget for expenditure of the funds.

The application must be certified and signed by an officer legally authorized to sign for the applicant. An application signed by anyone other than the regularly authorized agent (county executive) must include a resolution from the appropriate governing body giving the signee this authority.

Submission Date

To receive the $10,000 base grant, one application containing original signatures may be submitted at any time.

Award

The Department of Environment and Conservation should announce awards of the educational grants and commit funds to meet the obligation approximately sixty (60) days after completion of the application review process.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SOLID WASTE ASSISTANCE
APPLICATION FOR STATE EDUCATION GRANT

Part I

APPLICANT INFORMATION:

Name of County

Name and telephone number of person to be contacted about the application

Address

( ) Telephone Number

Address

FEIN #

City/ State/ Zip

To the best of my knowledge and belief, all data in this application are true and correct. The document has been duly authorized by the governing body of the applicant.

Typed Name of Authorized Representative

Title

Signature of Authorized Representative

( ) Telephone

Date

Return to:

Department of Environment and Conservation
Division of Solid Waste Assistance
L & C Tower, 14th Floor, 401 Church Street
Nashville, Tennessee 37243-0455

For State Use Only:

Date Received by State

Part II

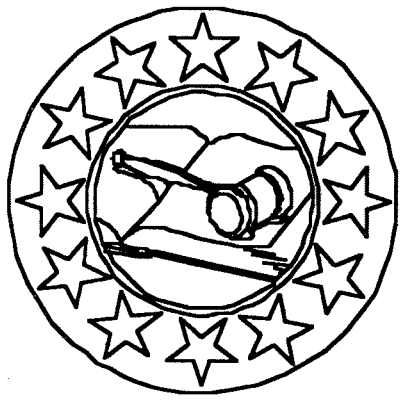
1. The cost categories listed below may be used for either the base grant or for the competitive grants. An example of applicable costs for each cost category is also included. Evaluate how you intend to use the educational grant funds and allocate estimated costs for your planned activities to the allowable cost categories, giving a brief description for each. Please complete the section following this description. This information will be used to prepare the budget of your grant.

Cost Category	**Description/ Detail**
Administrative & Legal Expenses	Postage for residential mailings, advertising, printing, duplicating, etc.
Consulting Fees	Costs for salary, benefits, profits and overhead for services of another agency to complete educational activities described.
Equipment	Equipment needed to develop and implement an educational program including cameras, overhead projectors, recording equipment, computers, etc. Does not include office equipment.
Other	Must list specific item.

COST CATEGORY	DESCRIPTION	AMOUNT
Administrative & Legal Expenses		$
Consulting Fees		$
Equipment		$
Other (Must list specific item)		$

Chapter 12

Tennessee Court Decisions



TENNESSEE COURT DECISIONS

The following are reprints of Tennessee Court decisions related to solid waste management.

SANIFILL OF TENNESSEE, INC., Appellee
v.
TENNESSEE SOLID WASTE DISPOSAL CONTROL BOARD, Appellants

Supreme Court of Tennessee
at Nashville
Filed: October 16, 1995

Signed by Adolpho A. Birch, Jr., Justice

C. Allen High, Chancellor

Davidson County

OPINION

We granted the application for review under Rule 11, Tenn. R. App. P., filed by the Tennessee Solid Waste Disposal Control Board, the defendant in the original action. (FN 1) At issue is whether the Tennessee Solid Waste Disposal Act, T.C.A. 68-211-101 *et seq.* authorizes the Tennessee Department of Environment and Conservation, in the exercise of its permit-issuing process, to restrict the number of counties from which private landfills may receive solid waste.

For the reasons stated below, we conclude that the statute does not confer such authority. Thus, we affirm as modified the judgement of Court of Appeals.

I

A permit was issued to the original owner, William Beckham, to begin operating the subject landfill on June 1, 1990. However, the permit authorized Beckham to receive solid waste form seven counties only: Bedford, Giles, Lincoln, Marshall, Maury, Rutherford, and Williamson.

In 1991, Sanifill of Tennessee, Inc. (Sanifill) purchased the landfill, and the Tennessee Department of Environment and Conservation (the Department) issued a permit on August 16, 1991, to Sanifill which reflected this change of ownership. This permit, however, limited Sanifill to the same seven-county service area as provided in the permit issued to Beckham.

On December 6, 1991, Sanifill sought to increase the number of counties from which it could receive solid waste from seven (as allowed) to forty-eight. The Department's Division of Solid Waste Management (the Division) treated this as a proposal for permit modification and on January 16, 1992, issued public notice that the Division intended to approve the permit modification. (FN2) During the ensuing public comment period, the Marshall County Commission adopted a resolution opposing the proposed expansion of the service area of the landfill. Thereafter, on February 12, 1992, the Division informed Sanifill that it would not further consider Sanifill's request for expansion of the service area until Sanifill obtained approval from the Marshall County Commission.

Sanifill appealed this action to the Tennessee Solid Waste Disposal Board (the Board) seeking a declaratory order; two issues were raised:

(1) Whether T.C.A. 68-211-105(h) (FN3) prohibited the Department from processing the permit modification until the modification had been approved by the Marshall County Commission in accordance with T.C.A. 68-211-701 et seq. (FN4); and

(2) Whether the Tennessee Solid Waste Disposal Act and its implementing regulations allowed the Department to limit the counties from which Sanifill may receive solid waste at its private landfill.

The Board ruled against Sanifill on both issues, finding (1) that T.C.A. 68-211-105(h) prohibited the Department from acting on Sanifill's request to expand its service area until the request had been approved by the Marshall County Commission, and (2) that the Department had the authority to limit the counties from which Sanifill may receive solid waste.

Sanifill petitioned the Davidson County Chancery Court for review of the Board's declaratory order. The trial court reversed the Board's decision on the first issue, finding that the provisions of T.C.A. 68-211-701 et seq. requiring local approval of construction for landfills applied only to new landfills, not to landfills already established. The trial court ruled that Sanifill did not need local approval before seeking the Department's permission to service a larger area. The trial court affirmed the Board's decision on the second issue, holding that the Solid Waste Disposal Act (FN5) contained language broad enough to authorize the Department to restrict Sanifill's service area. The Solid Waste Disposal Control Board, Marshall County, and Sanifill all appealed the decision of the trial court to the Court of Appeals.

The Court of Appeals agreed with the Chancery Court on the first issue, finding unanimously that the provisions of T.C.A. 68-211-701 et seq. did not apply to Sanifill's request to expand its landfill's service area because there would be no "construction of a new landfill" as that phrase is commonly understood. Further review of that issue was not sought by either party.

On the remaining issue, the Court of Appeals held that the Department had the duty and power to regulate and inspect landfills to ensure that they operated within the bounds of the policies and purposes of the Solid Waste Disposal Act and that the Department had the authority to limit the receipt of waste at a given site to an amount which could be safely and expeditiously processed.

However, the intermediate court held that the Department had neither the express nor implied authority to limit the size of the area without a showing that such limitation is necessary to protect the public health and safety. No such showing having been made in this case, the Court of Appeals held that the Department was without authority to regulate the point of origin of waste.

We now consider the Board's appeal from that judgment. As stated, the sole issue is whether the Department, in the exercise of its permit-granting function, has the authority to restrict the source areas from which solid waste may be received by the operator of a private landfill. For the following reasons, we affirm the decision of the Court of Appeals, as herein modified.

II

When reviewing an agency decision, the appropriate standard of review is that set forth in the Administrative Procedures Act:

> The court may reverse or modify the decision (of the agency) if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
>
> (2) In excess of the statutory authority of the agency;
>
> (3) Made upon unlawful procedure;
>
> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
>
> (5) Unsupported by evidence which is both substantial and material in the light of the entire record.
>
> In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

T.C.A. 4-5-322(h). In addition, such review is limited to the record of the case. T.C.A. 4-5-322(g). Findings of fact made by the agency may not be reviewed *de novo* by the trial or appellate courts, and courts should not substitute their judgment for that of the agency as to the weight of the evidence on factual issues. Southern Ry. Co. v. Tennessee Bd. of Equalization, 682 S.W.2d 196, 199 (Tenn. 1984); CF Indus v. Tennessee Pub. Serv. Comm'n, 599 S.W.2d 536 (Tenn. 1980); National Council on Compensation Ins. v. Gaddis, 786 S.W.2d 240, 242 (Tenn. Ct. App. 1989). However, the "substantial and material evidence standard" in T.C.A. 4-5-322(h)(5) requires a searching and careful inquiry that subjects the agency's decision to close

scrutiny. Wayne County v. Solid Waste Disposal Control Bd., 756 S.W.2d 274, 280 (Tenn. Ct. App. 1988). Further, construction of a statute and application of the law to the facts is a question of law that may be addressed by the courts. See Beare Co. v. Tennessee Dept. of Revenue, 858 S.W.2d 906 (Tenn. 1993). The issue of whether the Tennessee statutory scheme expressly or implicitly grants authority to the Department to regulate the service area from which a solid waste disposal facility may receive solid waste is a question of law, not of fact, and this Court's role is to interpret the law under the facts of this case.

Every action taken by an agency must be grounded in an express statutory grant of authority or must arise by necessary implication from an express statutory grant of authority. Tennessee Pub. Serv. Comm'n v. Southern Ry. Co., 554 S.W.2d 612, 613 (Tenn. 1977); Wayne County, 756 S.W.2d at 282. Even though statutes such as the Solid Waste Disposal Act should be construed liberally since they are remedial in nature, the authority they vest in an administrative agency must have its source in the language of the statutes themselves.

III

The Department concedes that the Solid Waste Disposal Act (the Act) does not grant express authority to the Department to limit service areas as part of its function in the issuance of solid waste disposal permits. However, it argues that the power to impose such limitations is implicit in the broad language of the Act. Specifically, it cites the duties of the Department set forth in T.C.A. 68-211-105(a) - 107(a). Those provisions provide, respectively:

> The Department shall exercise general supervision over the construction of solid waste processing facilities and disposal facilities or sites throughout the state. Such general supervision shall apply to all features of construction of solid waste processing facilities and disposal facilities or sites which do or may affect the proper processing or disposal of solid wastes.

T.C.A. 68-211-105(a) (1992 & Supp. 1994);

The Department shall exercise general supervision over the operation and maintenance of solid waste processing facilities and disposal facilities or sites. Such general supervision shall apply to all features of operation and maintenance which do or may affect the public health and safety or the quality of the environment and which do or may affect the proper processing and disposal of solid wastes . . .

T.C.A. 68-211-107(a) (1992).

The Department insists that the language in the above sections provides authority, by necessary implication, to impose service area limitations in the permits it issues. Pursuant to the Department's perceived grant of authority, it promulgated, among others, the following two regulations: "A facility may receive for disposal only those solid wastes it is allowed to manage under the terms of its permit." Tenn. Comp. R. & Regs, tit. VIII. ch. 1200-1-7-.04(2)(k)(1) (1992); and "The permit application must include . . . a narrative which clearly describes the

type and anticipated volumes of solid waste to be disposed of and the sources which generate the waste (including a description of the rural and/or urban service areas if applicable)." Tenn. Comp. R. & Regs, tit. VIII. ch. 1200-1-7-.04(9)(c)(6) (1991). Upon these regulations the Board specifically relies as authority to impose service area limitations in the permit it issues.

For the following reasons, we hold that neither these regulations nor the underlying statutes give the Department such power.

The regulations do not expressly authorize the Department to limit the number of counties from which a landfill may receive solid waste. Moreover, it is a well-established principle of administrative law and procedure that an agency cannot promulgate rules and regulations arrogating power greater than that authorized in the enabling legislation. Nonetheless, we must address the rules the Board cites as authority. First, Rule 1200-1-7-.04(2)(k)(1) provides that a landfill may accept "only those solid waste it is allowed to manage." This phrase refers to types of solid waste, rather than *origin* of the waste.

Second, Rule 1200-1-7-.04(9)(c)(6) provides that a permit applicant must describe "the type and anticipated volumes of solid waste to be disposed of and the sources which generate the waste (including a description of the rural and/or urban service areas if applicable)." This language is not an affirmative grant of power to the Department to do anything; it is simply an item of information which a permit applicant must supply to the Department as it considers the landfill permit application. Furthermore, the term used in Rule 1200-1-7-.04(9)(c)(6) "rural and/or urban service area," is a concept different than "service area" stated in terms of a list of counties.

The Board argues that Rule 1200-1-7-.04(9)(c)(6), by implication, allows service area restrictions to be placed in the permit because statements provided in the application become part of the permit operation plan. We find this argument uncovering because Rule 1200-1-7-.04(9)(c)(6) also requests information regarding volume of waste (a more relevant piece of information), but no such limitation exists in Sanifill's permit. While having the power to act does not mandate action, we find that in the case of regulations affecting private business, every effort must be made to apply regulations consistently and fairly. Thus, if information submitted in the application regarding the operating plan becomes part of the permit, all such information should become part of the permit.

The statutes at issue do not provide implicit power to impose service area restrictions in the permit. It is true, under the statutes, the Department has the implicit power to create rules and regulations as necessary to control *features* of the construction, operation and maintenance "which do or may affect the public health and safety or the quality of the environment and which do or may affect the proper processing and disposal of solid wastes." T.C.A. 68-211-105(a) - 107(a). We hold, however, that the service area is not such a feature. The finding by the Chancery Court and the Board that service area is a "feature" because "it essentially determines the quality and volume of waste that goes into the landfill" is unsupported by substantial and material evidence and is arbitrary and capricious.

As precisely demonstrated by Sanifill's circumstances, the service area bears no necessary correlation to the amount of waste the landfill will receive; that is, the landfill may receive none of the waste, some of the waste, or all of the waste from the area. Furthermore, the total amount of waste generated in an area is not static, so the service area does not even determine the maximum amount of waste which could be received, as the Board argues. Nor does the service area necessarily determine the quality of waste. Within a county, there is likely to be all kinds of waste, including special and hazardous wastes. While the statutes at issue provide fairly broad powers to the Department to regulate landfills, there must be a rational relationship between the regulation imposed and the legitimate goals of the empowering statutes. We find no rational relationship between the service area and the amounts or quality of wastes received; hence, there is no essential relationship between the service area and the legitimate goals of protecting the public health and environment.

The Board contends that this holding jeopardized the Department's other regulations. We have not gone that far. Our holding is that the service area is not a *feature* of the construction, operation, or maintenance of a landfill. However, type of waste, volume of waste, liners, leachate collection and removal systems, and ground water monitoring systems are *features* and, as such, are subject to regulation under the Act.

For all foregoing reasons, we find that the statutes and regulations contain no express or implied authority for the Department to restrict service areas. Accordingly, the judgment of the Court of Appeals is affirmed as modified.

ANDERSON, C.J,
DROWOTA, REID, and WHITE, J.J., concur.

FN1 Marshall County was a defendant in the original action but did not join in the Rule 11 application.

FN2 Tenn. Code Ann. 68-211-106(b) provides the "[d]isposal or processing facilities or sites currently registered with the Department shall not need a new permit unless and until their current registration must be amended to encompass any process modifications or expansions of operations currently allowed." Subsection (f) of that same section provides for public notice of certain matters affecting solid waste disposal. Interested persons may submit written comments to the commissioner. In cases where there is significant public interest in having a hearing on the matter, the commissioner shall hold one in the geographical area affected, after posting public notice of the hearing no less than 15 days in advance. Although the language of this subsection appears to contemplate public notice and hearings only in cases of proposed solid waste disposal or processing facilities, apparently the commissioner felt that the proposed expansions of the service area by Sanifill was a significant event meriting the public notice and hearing requirements of this section.

FN3 Tenn. Code Ann. 68-211-105(h) provides: "The commissioner [of the Department of Environment and Conservation] shall not review or approve any construction for any new landfill for solid waste disposal or for solid waste processing in any county or municipality which has adopted the provisions of 68-211-701 - 68-211-705 and 68-211-707 until such construction has been approved in accordance with the provisions of such sections."

FN4 Tenn. Code Ann. 68-211-701 provides:

> No construction shall be initiated for any new landfill for solid waste disposal or for solid waste processing until the plans for such new landfill have been submitted to and approved by:
>
> (1) The county legislative body in which the proposed landfill is located, if such new construction is located in an unincorporated area;
>
> (2) The governing body of the municipality in which the proposed landfill is located, if such new construction is located in an incorporated area; or
>
> (3) Both the county legislative body of the county in which such proposed landfill is located and the governing body of any municipality which is located within one (1) mile of such proposed landfill.

FN5 Particularly, Tenn. Code Ann. 68-211-107(a).

The CITY OF TULLAHOMA, Tennessee, and the City of Shelbyville, Tennessee, et al, Plaintiffs/Appellants,
v.
BEDFORD COUNTY, Tennessee and Kathy K. Prater, County Clerk of Bedford County, Tennessee, Defendants/Appellees.

No. 17,515.
No. 01-A-01-9503-CH-00086.
Court of Appeals of Tennessee.
July 28, 1995.

William G. Colvin and Phillip E. Fleenor, Chattanooga, TN.

Stephen M. Worsham, Tullahoma, TN.

James W. Dempster, McMinnville, TN.

Robert F. Hazard, Copeland, Conley & Hazard, Tullahoma, TN.

John T. Bobo and Diane M. Segroves, Tullahoma, TN.

OPINION

TODD.

This suit originated on October 25, 1991, when the cities of Tullahoma and Shelbyville, Tennessee, sued Bedford County and its County Clerk for a declaration that Chapter 52 of the 1991 Private Acts was unconstitutional and for an injunction to prevent the collection of a landfill tax authorized thereby. Alternatively, a declaration was sought that the action of the County Commission levying the tax was invalid. The Attorney General of Tennessee was served, but elected not to defend.

The city of McMinnville, Sanifill, Inc., Franklin County, Laidlaw Environmental Services, Batesville Casket Co., Inc., Southern Central Iron & Metal, and Land and Water Action Group were permitted to intervene.

A separate suit of Bedford County and its County Clerk against Sanifill was consolidated with the captioned suit.

On June 27, 1994, the Trial Judge entered partial summary judgment that the private act was constitutional, reserving all other issues.

On December 12, 1994, the Trial Judge entered a final order "pursuant to T.R.C.P. Rule 54" dismissing all suits and taxing costs to City of Tullahoma, Coffee County, City of McMinnville,

Southern Central Iron and Metal, Laidlaw Environmental Services of Chattanooga, Inc., Batesville Casket Company and Franklin County.

Notices of appeal were filed by Laidlaw Environmental Services of Chattanooga, Inc., Batesville Casket Co., Inc., The City of Tullahoma, Coffee County, City of McMinnville, and Southern Central Iron and Metal, who are hereafter designated appellants. The appellees are Bedford County and its County Clerk.

On appeal, appellants present the following issues:

I. Is 1991 Priv. Acts 52 in violation of Tenn. Const. art. I, Sec. 8, and Tenn. Const. art. XI, Sec. 8, because it is in conflict with general state law, which is mandatorily applicable?

A. Is 1991 Priv. Acts 52 in conflict with T.C.A. Sec. 68-211-101, et seq.?

B. Is 1991 Priv. Acts 52 in conflict with T.C.A. Sec. 67-1-602?

II. Is the privilege tax, or tax rate, as authorized by 1991 Priv. Acts 52 and established by the Board of Commissioners of Bedford County, either as originally set, or, as adjusted effective July 1, 1993, arbitrary, capricious, or wholly unreasonable, and thereby unenforceable?

-The Private Act-

On March 28, 1991, Chapter 52 of the Private Acts of 1991, was signed by the governor and became immediately effective by its terms. Pertinent provisions of the Act were as follows:

> An Act relative to the levy of a privilege tax on solid waste disposal at landfills in Bedford County; to provide for its collection and distribution; and to provide for penalties for violations of this act.
>
> * * *
>
> Section 2. The legislative body of Bedford County, by resolution, is authorized to levy a tax for the privilege of disposing of solid waste at a landfill located in Bedford County at a rate not to exceed ten dollars ($10.00) per ton of solid waste.
>
> Section 3. The proceeds received by the county from the tax shall be retained by the county and deposited into the general fund of the county. This tax shall be used by Bedford County to offset expenses realized by the county resulting from a landfill operation within the county, including, but not limited to, road maintenance and repair, the employment of a qualified inspector or inspectors, vehicles, equipment and test services for the purpose of monitoring and inspecting solid waste disposal in Bedford County.

Section 4. Such tax shall be collected by the operator of the landfill prior to authorizing the disposal of the solid waste at the landfill. Such tax shall be collected by such operator from the disposer of the solid waste, and shall be remitted to the county clerk as provided in this act.

* * *

Section 6. The county clerk shall be responsible for the collection of such tax . . .

* * *

Section 12. The county clerk in administering and enforcing the provisions of this act has an additional power, those powers and duties with respect to collecting taxes as provided in Title 67 of Tennessee Code Annotated or otherwise provided by law.

* * *

Section 13. The county legislative body is authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this act, including the form for reports and monitoring and inspection of landfills, vehicles disposing of solid waste, and solid waste for disposal at such landfills to ensure compliance with all laws, rules and regulations governing the operation or maintenance of landfills and solid waste disposal.

-Conflict with Previous General Law-

On March 28, 1991, T.C.A. Sec. 68-211-107 read as follows:

Supervision of operation - Rules and regulations.

(a) The department shall exercise general supervision over the operation and maintenance of solid waste processing facilities and disposal facilities or sites. Such general supervision shall apply to all the features of operation and maintenance which do or may affect the public health and safety or the quality of the environment and which do or may affect the proper processing and disposal of solid wastes. The board is empowered to adopt and enforce rules and regulations governing the operation and maintenance of such facilities, operations, and sites. Municipalities, cities, towns, and local boards of health may adopt and enforce such rules, ordinances and regulations equal to or exceeding those adopted by the commissioner, and consistent with the purposes of this part. For exercising such general supervision, the commissioner is authorized to investigate such facilities, operations and sites as often as the commissioner deems necessary.

(b) Actions taken by the department, commissioner or board in accordance with the provisions of this section shall be conducted in accordance with the provisions of title 13, chapter 18, when the action involves a major energy project, as defined in

Sec. 13-18-102. [Acts 1969, ch. 295, Sec. 7; 1971, ch. 165, Sec. 1; 1980, ch. 899, Sec. 4; 1981, ch. 131, Sec. 33, T.C.A. Secs. 53-4307, 6831-107.] (Emphasis supplied.)

T.C.A. 68-211-602, enacted in 1989 provided as follows:

Purpose.

(a) The general assembly finds that the public health, safety and welfare require comprehensive planning for the disposal of solid waste on a local, regional and state level. The general assembly further finds that whenever economically and technically feasible, solid waste should be reduced at the source or recycled, consistent with market demand for recyclable materials, to decrease the volume of waste which must be disposed of by incineration or landfilling.

(b) The general assembly further finds that some areas of the state have inadequate and rapidly diminishing capacity for disposal of solid waste by landfilling. It is also becoming difficult for many local governments to site and pay for new landfills which comply with existing and proposed environmental regulations. Therefore, the removal of certain materials from the solid waste stream by mulching, composting, recycling, and waste-to energy incineration (resource recovery) will substantially lessen our dependence on landfills as a means of disposing of solid waste, aid in the conservation and recovery o f valuable resources, conserve energy in the process, increase the supply of reusable materials, and reduce substantially the required capacity of resource recovery facilities and contribute to their overall combustion efficiency, thereby resulting in significant cost savings in the planning, construction, and operation of these facilities.

(c) The general assembly therefore declares that to protect the public health, safety and welfare from the short and long term dangers of transportation, processing, treatment, storage and disposal of solid waste, it is advisable to develop a regional planning process to facilitate the safe and responsible disposal of such waste. The general assembly further declares that such planning should promote the use of private enterprise, whenever feasible, to accomplish the objectives of an effective, comprehensive solid waste management plan which will facilitate economic and industrial development through the improvement of the solid waste infrastructure. [Acts 1989, ch. 250, Sec. 2; T.C.A., Sec. 68-31-602.]

Appellants rely upon Art. I, Sec. 8 of the Constitution of Tennessee which provides:

No man to be disturbed but by law. - That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any matter destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

No conflict is seen between the private act and the quoted section of the Constitution.

Appellants also rely upon Article XI Sec. 8 of the Tennessee Constitution which provides in pertinent part as follows:

> General laws only to be passed. - The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; . . .

In Leech v. Wayne County, Tenn.1979, 588 S.W.2d 270, by a vote of 3 to 2, the Supreme Court decided that, where the General Assembly had enacted a permanent provision applicable in nearly 90 counties giving local legislative bodies discretion as to the manner of election of their members, it could not constitutionally make different provisions for two counties without a statement of reasons and without a local referendum.

In City of Alcoa v. Blount County, Tenn.App.1983, 658 S.W.2d 116, this Court held that an act authorizing a (the) board of commissioners of a specified county to create a county planning commission and vesting in that commission all of the authority, duties, and responsibilities assigned to regional planning commissions was unconstitutional because it offended the uniform state-wide policy of creating regional planning commissions without a sufficiently unique situation.

In Tennessee v. Cummings, 166 Tenn. 460, 63 S.W.2d 515 (1933), the Supreme Court held unconstitutional an act applicable only to Hamilton County whereby family members of members of the Quarterly County Court were prohibited from contracting with the county.

In Sandford v. Pearson, 190 Tenn. 652, 231 S.W.2d 336 (1950), there was a general, state-wide beer control law which provided for local option elections to permit manufacture and sale of beer. A private act was passed, which provided for a local option election in Haywood County and:

> That in case a majority of the voters voting in said election shall favor the sale of beer, then the same shall be allowed as now or hereafter provided by general law and under the same restrictions as now or hereafter may be placed thereon.

The Supreme Court held the private act invalid and said:

> The effect of this amendment is to say that if a majority of the voters in Haywood County vote in the affirmative, Haywood County shall come under the general law.
>
> "We see no difference in principle between making the operative efficacy of an act of the Legislature dependent upon the contingency of a favorable vote of the whole constituency of the state (which we have seen cannot be done) and making the efficacy of an act dependent upon the favorable vote of a single county, and there is none . . ."

> "On these grounds we are of the opinion that, under our Constitution, no legislative act can be so framed as that it must derive its efficacy from a popular vote." Wright v. Cunningham, 115 Tenn. 445, 467-468, 91 S.W. 293, 298. Compare Clark v. State ex rel. Bobo, 172 Tenn. 429, 113 S.W. (2d) 374, 782.

Sandford, 190 Tenn. at 656-57.

In Algee v. State, 200 Tenn. 127, 290 S.W.2d 896, a private act permitting justices of the peace of Lake County to serve on the County Board of Education was held unconstitutional because in conflict with general law which declared justices of the peace ineligible.

In Jones v. Haynes, 221 Tenn. 50, 424 S.W.2d 197 (1968), the general law prohibited the sale and use of fireworks except June 20 to July 5 and December 10 through January 2. The private act prohibited the sale and use of fireworks at all times during the year in Fentress County. The Supreme Court held the private act unconstitutional, because the private act did not affect the county in its governmental capacity.

In Ogilvie v. Hailey, 141 Tenn. 392, 210 S.W. 645 (1918), the Supreme Court upheld a private act imposing a privilege tax on pleasure automobiles in Davidson County and said:

> . . . Where a bill is bottomed on the unconstitutionality of a statute, it is the duty of the complaint to point out and state with particularity the details of the supposed conflict of the statute with the organic law . . . Every intendment is in favor of the statute and against the attack, and the complaint must lay his grounds of attack with the precision ordinarily required of a demurrant.

The later decisions of this court and of the Federal supreme court have conceded to the legislature a very wide range of discretion in the matter of classification in police statutes and revenue statutes. The idea is that, if any possible reason can be conceived to justify the classification, it will be upheld. [Citing authorities.]

Ogilvie, 141 Tenn. at 394, 396.

In Knoxteen Theaters, Inc. v. Dance, 186 Tenn. 114, 208 S.W.2d 536 (1948), the Supreme Court upheld a private act applicable only to Knox County levying a tax upon the purchase of theater tickets. The Court said:

> The act is assailed also upon the theory that it confers upon Knox County and Knoxville benefits not made available to any other of the counties or cities of the State and imposes upon those attending amusements in Knox County a burden not so imposed elsewhere in the State and, therefore, violates the constitutional provisions referred to. . . When that reason is assigned for an attack upon the constitutionality of a special act as violative of these constitutional provisions, the issue cannot be determined until after it is ascertained whether the act primarily affects the county or municipality in its governmental or political capacity or whether primarily, rather than as a resulting incident, it affects the

> citizens of the governmental unit involved in their individual relations. This controlling distinction is clearly stated in our case of Darnell v. Shapard, 156 Tenn. 544, 552, 553, 3 S.W. (2d) 661, thus: "The determination of the validity of acts of the Legislature attempting a classification of the counties of the State is largely influenced by the character of the legislation. If an act of the legislature affects particular counties as governmental or political agencies, it is good. It is good if it affects only one county in this capacity. No argument is required to sustain such an act. If, however, an act of the Legislature primarily affects the citizens of particular counties or of one county in their individual relations, then such classification must rest on a reasonable basis, and, if the classification is arbitrary, the act is bad." Attention was again called to this controlling distinction in State ex rel. Bales v. Hamilton County, 170 Tenn. 371, 374, 95 S.W. (2d) 618, 619, in this language: "A distinction is to be drawn, however, between legislation primarily designed to affect the governmental agency as such and legislation designed primarily to affect the employees or citizens of such governmental agency as individuals".

The special act attacked in this case clearly reflects it as a fact that it is "not designed primarily to affect" those attending theaters, etc., in Knox County, but that its primary purpose is to raise revenue for Knox County and its municipalities by the collection of the tax levied by this act. "The collection of taxes is beyond question a governmental function". Southern v. Beeler, Atty. Gen., 183 Tenn. 272, 285, 195 S.W. (2d) 857, 863. The burden of paying the tax is the resulting incident of that primary purpose. It results that under the controlling distinction as restated in Darnell v. Shapard, *supra*, and in State ex rel. Bales v. Hamilton County, *supra*, this act does not offend these constitutional provisions, since it primarily affects Knox County and its municipalities as governmental agencies . . .

Knoxteen, 186 Tenn. at 120-21.

In Sears Roebuck & Co. v. Woods, Tenn.1986, 708 S.W.2d 374, the Supreme Court upheld a use tax upon newspaper advertising supplements although newspapers were exempt from sales and use taxes. The Court said:

> The taxing power of the state is an attribute of sovereignty and exclusively a legislative function. Waterhouse v. Public Schools, 68 Tenn. (9 Baxter) 398, 400 (1876). The legislature alone has the right to determine all questions of time, method, nature, purpose and extent in respect to the imposition of taxes, including the subjects on which the power may be exercised. 84 C.J.S. (Taxation) Sec. 7, pp. 51-55. Among all the institutions of the state, there is no agency vested with authority to restrain the legislative discretion in the exercise of its power in levying taxes. Nashville C. & St.L.Ry. v. Carroll County, 161 Tenn. 581, 33 S.W.2d 69, 70 (1930) . . .

Sears, 708 S.W.2d at 383.

No authority has been cited or found which approves a private act authorizing the legislative body of a single county to levy a particular tax. Nevertheless, under the board pronouncements

above cited, this Court conceives of no reason why a state legislature which has the power to levy a privilege tax in a single county would not have a corresponding power to empower its local arm, the county commission, to levy such a tax.

Appellants insist that the local act is in contravention of the existing general law. The fact that tax on landfill dumping is not mentioned in the general code provisions for privilege taxes does not limit the power of the Legislature to authorize a dumping tax in a particular county. Indeed, the absence of a general privilege tax on dumping obviates any conflict with general law in this respect. The local privilege tax is not in conflict with state mandated "fees," which are not in the same category as taxes.

Appellants assert, but do not particularize the assertion that the regulatory provisions of the private act are in contravention of state law or regulations. The emphasized portion of T.C.A. Sec. 68-211-107, quoted above, specifically preserves the power of local regulation of landfills. There is no showing that the private act encroaches upon the provisions of general law.

Appellants argue that the private act contravenes a subsequent enactment of the Legislature which must be construed as repealing the private act.

By Chapter 451, Public Acts of 1991, approved and effective June 3, 1991, more than 60 days after the March 28 effective date of the private act, the Legislature enacted the "Solid Waste Management Act of 1991, codified as T.C.A. Secs. 68-211-801-875, and the "Solid Waste Authority Act of 1991" codified as T.C.A. Sec. 68-211-901-925.

Appellants do not particularize the details of conceived conflicts, except to state:

> The private act offends this mandatory general law and violates the uniform public policy expressly stated in T.C.A. Sec. 68-211101, et seq.

Appellants conceive that the plan for single county control of waste disposal within a county is in contravention of the "regional control concept" of general legislation. However, it is not shown that the regulation provided in the private act will not fit into the general plan. No reason is cited why a county may not be a "region" to be controlled by its own regional control board.

In summary, this Court finds no grounds for holding the private act unconstitutional.

-Second Issue: Unreasonable Tax or Tax Rate-

Appellants first insist that the tax rate set by the County Commission is arbitrary, capricious or wholly unreasonable.

Initially, the County levied a tax of $5 per ton on sanitary waste and $10 per ton on "special" solid waste. Subsequently, the levy was reduced to 15% of net revenue received by the private landfill.

Appellants assert that the tax "may be duplicative" of fees authorized and imposed under the Solid Waste Management Act. As heretofore asserted, fees and taxes are not the same. A fee is intended to finance a service. A tax is for support of the government generally.

Appellants next assert that the tax is in conflict with T.C.A. Title 68, Chapter 211, but do not particularize the conflict.

Finally, appellants insist that:

> The rate of the tax is shown to have no basis in fact, no relationship to any costs incurred by the County.

There is no citation to the record to support this assertion which will not be considered. Rule 6 Rules of this Court. Moreover, the validity of a tax upon a privilege does not depend upon the relationship between the revenue derived from the tax to the expense of the government incident to the exercise of the privilege.

If the administration of trash disposal control in Bedford County offends its citizens, they have adequate recourse through control of their local government. If it offends the state agencies concerned with trash disposal, such agencies are free to act. It behooves all others to conform to the law affecting their exercise of the privilege in the county, or to conduct their operations elsewhere.

The judgment of the Trial Court is affirmed. Costs of this appeal are assessed against the appellants and their sureties. The cause is remanded to the Trial Court for any necessary further proceedings.

Affirmed and Remanded.

LEWIS and CANTRELL, JJ., concur.

TOWN OF CARTHAGE, TENNESSEE, Town of South Carthage, Tennessee, Plaintiffs/Appellants,
Town of Gordonsville, Tennessee, Joe K. Anderson, David H. Bowman, And L. B. Franklin, Plaintiffs,
v.
SMITH COUNTY, TENNESSEE, Defendant/Appellee.

No. 01-A-01-9308-CH00391.
Court of Appeals of Tennessee.
March 8, 1995.

Appeal from the Chancery Court for Smith County at Carthage, TENNESSEE the Honorable William H. INMAN, Senior Judge.

James B. Dance, Carthage, TN, for plaintiff/appellant Town of Carthage.

Jack W. Robinson, Nashville, TN, for plaintiff Town of Gordonsville.

Jacky O. Bellar, Carthage, TN, for defendant/appellee.

KOCH, Judge.

OPINION

This appeal concerns the legality of the tipping fee Smith County charges for the use of its landfill. Three cities in Smith County filed suit in the Chancery Court for Smith County alleging that the county's decision to require them to pay the tipping fee was unconstitutional and that the county should be enjoined from collecting the fee because it had failed to follow the statutory requirements for constructing and operating a landfill. Following a bench trial, the trial court upheld the tipping fee and declined to enjoin the operation of the landfill even though it found that the county had not complied with the state statutes governing the establishment of local solid waste collection and disposal programs. Two of the cities have appealed. We find that the manner by which Smith County established its landfill complied substantially with applicable state law. Accordingly, we affirm the trial court although on partially different grounds. (FN1)

I.

The City of Carthage operated the only public landfill in Smith County prior to mid-1989. Carthage charged a fee to everyone who disposed of solid waste at its landfill, including Smith County and the cities of Gordonsville and South Carthage. Smith County began negotiating an annual contract with Carthage in 1977, and eventually Smith County's payments equaled seventy percent of Carthage's costs to operate its landfill.

Smith County began planning for its own landfill in the early 1980's because Carthage's landfill was approaching its capacity. In October 1988, it obtained a state operating permit for a new

landfill near the Carthage city limits and eventually spent approximately $260,000 to acquire the site (FN2) and to construct the landfill. The county paid for the development costs using its own capital outlay notes and did not receive financial assistance from any other governmental entity. The landfill opened in May 1989 and is now the only public landfill in Smith County.

Smith County defrays the costs of operating the landfill by charging a tipping fee based on the weight of the solid waste disposed at the landfill. All county residents may use the landfill, and everyone who disposes of solid waste at the landfill, except the county itself, must pay the tipping fee. The normal tipping fee is $20 per ton; however, the county charges Carthage, South Carthage, and Gordonsville only $15 per ton for their residential solid waste. The county has never operated the landfill at a profit. In fact, the tipping fees have only partially offset the county's operating costs, and the county has supplemented the tipping fees with general county revenues.

Smith County had provided solid waste collection and disposal services to all county residents before it opened its landfill. Originally, it placed receptacles throughout the county, collected the solid waste, and then transported it to Carthage's landfill. The county did not charge its residents a separate fee for this service.

In the late 1980's, Smith County replaced the receptacles with six fenced-in convenience stations located throughout the county. (FN3) Residents of Carthage, South Carthage, and Gordonsville generally live closer to one of the convenience stations than do the residents living in the rural parts of the county. The convenience stations are open six days a week during daylight hours. Any county resident may dispose of solid waste at a convenience station without charge, and many city dwellers and the City of Gordonsville have disposed of their solid waste at the county's convenience stations. The county transports the solid waste from the convenience stations to the landfill but does not charge itself a tipping fee.

In addition to the county's convenience centers, Carthage, South Carthage, and Gordonsville provide their residents with curbside garbage collection service. Carthage includes a mandatory fee in all its residents' monthly water bills whether they use the service or not. South Carthage charges only the residents who use its curbside service. Gordonsville does not charge its residents a separate fee for curbside service.

The cities dispose of the solid waste they collect in the county's landfill rather than at its convenience stations. Smith County requires the cities to pay the tipping fee when they dispose of solid waste at the landfill, and these fees have increased the cost of the cities' curbside collection service. Carthage has passed these increased costs on to its residents, but there is no indication that South Carthage and Gordonsville have done the same. Smith County's decision to require Carthage, South Carthage, and Gordonsville to pay the tipping fee is at the heart of the present dispute.

In June 1989, Carthage, South Carthage, and Gordonsville filed suit against Smith County in the Chancery Court for Smith County seeking a declaratory judgment that the county's tipping fee is an unconstitutional tax-shifting device that imposed a heavier tax burden on city residents than

on county residents. The cities also sought to enjoin the county from collecting the tipping fee and to require repayment of the tipping fees already paid on the ground that the county had failed to comply with the statutes governing the establishment and operation of solid waste collection and disposal programs. The mayors of each of the cities later intervened as individual property owners and county taxpayers.

Following a bench trial, the trial court determined that the tipping fee was not a tax and, therefore, that the cities' constitutional arguments based on non-uniform taxation were without merit. The trial court also determined that the county had not complied with Tenn.Code Ann. Sec. 5-19-103 (1991) because it had not adopted a single resolution establishing its solid waste collection and disposal program. The trial court did not, however, direct the county to stop collecting the tipping fee or to refund the fees it had already collected.

II.

We must first decide a procedural issue involving the proper parties to this appeal. Smith County insists that neither Gordonsville nor the mayors of Carthage, South Carthage, and Gordonsville are before the court because they are not named in the notice of appeal. Accordingly, we must decide whether this court has jurisdiction over a party who is not specified as an appellant in the notice of appeal in accordance with Tenn. R.App. P. 3(f).

The timely filing of a notice of appeal is a pivotal event in a civil case. Tenn. R.App. P. 4(a) provides, in part:

> In an appeal as of right to the Supreme Court, Court of Appeals or Court of Criminal Appeals, the notice of appeal required by Rule 3 shall be filed with and received by the clerk of the trial court within 30 days after the date of entry of the judgment appealed from . . .

Compliance with Tenn. R.App. P. 4(a) is mandatory and jurisdictional in civil cases. Jefferson v. Pneumo Servs. Corp., 699 S.W.2d 181, 184 (Tenn. Ct.App.1985); John Barb, Inc. v. Underwriters at Lloyds of London, 653 S.W.2d 422, 424 (Tenn. Ct.App.1983). Parties desiring to appeal who fail to file a timely notice of appeal lose their opportunity to appeal, and the courts may not suspend the rules to excuse parties who have failed to observe the filing requirements. Tenn. R.App. P. 2; Tenn. R.App. P. 4 advisory commission cmt., subdivision (a).

The purpose of a notice of appeal is to signify in a formal way that a party intends to appeal. Tenn. R.App. P. 3 advisory commission cmt., subdivision (f); Tenn. R.App. P. 13 advisory commission cmt., subdivision (a). Tenn. R.App. P. 3(f) governs the contents of the notice. It requires as follows:

> The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment from which relief is sought, and shall name the court to which the appeal is taken. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

Because of the notice of appeal's significance, the Tennessee Rules of Appellate Procedure provide a suggested form, Tenn. R.App. P. app. Form 1, and Tenn. R.App. P. 48 states that use of this form will satisfy all applicable requirements.

The courts, as a general matter, must interpret the appellate rules to secure a just, speedy, and inexpensive determination of every appeal on its merits. Tenn. R.App. P. 1. Tenn. R.App. P. 3(f) also provides specifically that "informality of form or title" should not undermine the validity of a notice of appeal. Accordingly, we must determine whether the absence of a party's name from a notice of appeal is the type of informality that will not affect the party's standing as an appellant.

The United States Supreme Court, construing a rule practically identical to Tenn. R.App. P. 3(f), (FN4) has held that the failure to specify a party in the notice of appeal is not an excusable informality but rather a failure of that party to appeal. Torres v. Oakland Scavenger Co., 487 U.S. 312, 314, 108 S.Ct. 2405, 2407 (1988). The Court reasoned that permitting an appellate court to exercise jurisdiction over a person not specified as an appellant in the notice of appeal would vitiate the mandatory time limits for filing the notice of appeal. Accordingly, the Court concluded that permitting the courts to exercise jurisdiction over unnamed parties after the time for filing the notice of appeal has passed would be equivalent to permitting the courts to extend the time for filing a notice of appeal. Torres v. Oakland Scavenger Co., 487 U.S. at 315, 108 S.Ct. at 2407-08.

Other state courts, construing appellate rules similar to ours have also concluded that appellate courts do not have jurisdiction over appellants who have not been specified in the notice of appeal. Ozark Acoustical Contractors, Inc. v. National Bank of Commerce, 786 S.W.2d 813, 814 (Ark.1990); Manzi v. Montgomery Elevator Co., 865 P.2d 902, 904-05 (Colo. Ct.App.1993); Stewart Properties, Inc. v. Brennan, 807 P.2d 606, 608 (Haw. Ct.App.1991); Cummings v. City Counsel, 551 N.E.2d 46, 49 (Mass.App.Ct.1990); Malone v. Johnson, 866 S.W.2d 935, 940 (Mo. Ct.App.1993) (dicta); Seipelt v. Motorists Mut. Ins. Co., 611 N.E.2d 917, 918 (Ohio Ct.App.1992); Tinker Inv. & Mortgage Corp. v. City of Midwest City, 873 P.2d 1029, 1036 n. 28 (Okla.1994); Ford Motor Credit Co. v. Mills, 418 N.W.2d 14, 16 (Wis. Ct.App.1987).

We find the reasoning of Torres v. Oakland Scavenger Co. to be persuasive and consistent with our decisions construing Tenn. R.App. P. 3 and 4. (FN5) To be considered an appellant, a party must file a timely notice of appeal in its own name, or it must be named as an appellant in a timely joint notice of appeal filed in accordance with Tenn. R.App. P. 16(a). Parties who do neither are simply not before the court as appellants. (FN6)

Gordonsville and the mayors of Carthage, South Carthage, and Gordonsville are not before the court as appellants. Two joint notices of appeal appear in the record. The March 3, 1993 notice of appeal and the accompanying cost bond specify only Carthage, South Carthage, and Gordonsville as the appellants. The second notice of appeal, filed on May 7, 1993, specifies only Carthage and South Carthage as the appellants. The omission of Gordonsville and the mayors of the three cities in the second notice of appeal does not appear to be inadvertent.

Gordonsville was represented by its own attorney at trial. The attorney signed the March 3, 1993 notice of appeal and the cost bond on Gordonsville's behalf but did not sign the May 7, 1993 notice of appeal, the cost bond, or the appellants' brief. The facts that Gordonsville is not specified as an appellant in the second notice of appeal and that its attorney did not sign the second notice of appeal, the cost bond, or the appellants' brief demonstrate Gordonsville's conscious decision, made sometime between the filing of the first and second notices of appeal, to abandon its appeal. Accordingly, Gordonsville is not before the court at this time.

The three mayors were represented by the same lawyers who were representing their respective cities. All three attorneys signed the first notice of appeal and appeal bond specifying only the cities as appellants. The two attorneys representing Carthage and South Carthage signed the second notice of appeal and cost bond that specified only Carthage and South Carthage as appellants. The attorneys' decision, on two occasions, not to specify the mayors as appellants in the notices of appeal or to include them on the cost bond indicates that the mayors decided not to participate individually as appellants. It follows, therefore, that the mayors of Carthage, South Carthage, and Gordonsville are likewise not before the court at this time.

III.

Since none of the cities' mayors are before the court as appellants, we must next examine the cities' standing to challenge the constitutionality and legality of Smith County's tipping fee. While we have determined that the cities may question whether the county's solid waste disposal program complies with state law, we have determined that they do not have standing to challenge the constitutionality of the county's tipping fee because their interests are not among those protected by the constitutional provisions they invoke.

The purpose of inquiring into a party's standing is to determine whether the party has a sufficiently personal stake in the outcome of the proceeding to warrant the exercise of the court's power on its behalf. Metropolitan Air Research Testing Auth. v. Metropolitan Gov't, 842 S.W.2d 611, 615 (Tenn. Ct.App.1992); Browning-Ferris Indus., Inc. v. City of Oak Ridge, 644 S.W.2d 400, 402 (Tenn. Ct.App.1982). To establish standing, a party must demonstrate that: (1) it has sustained a distinct and palpable injury, (2) the injury was caused by the challenged conduct, and (3) the injury is likely to be redressed by a remedy that the court is prepared to give. Tennessee Envtl. Council v. Solid Waste Disposal Control Bd., 852 S.W.2d 893, 896 (Tenn. Ct.App.1992) (requiring an injury likely to be redressed by a favorable opinion); Morristown Emergency & Rescue Squad, Inc. v. Volunteer Dev. Co., 793 S.W.2d 262, 263 (Tenn. Ct.App.1990) (requiring a distinct injury and causation between the injury and the challenged conduct).

Although standing does not depend on the merits of a claim, it often turns on the nature and source of the claim asserted. Metropolitan Air Research Testing Auth. v. Metropolitan Gov't, 842 S.W.2d at 615; Curve Elementary Sch. Parent & Teacher's Org. v. Lauderdale County Sch. Bd., 608 S.W.2d 855, 858 (Tenn. Ct.App.1980) (examining the substantive issues is both appropriate and necessary). Thus, when the claimed injury involves the violation of a statute or constitutional provision, the court must ask whether the interests of the injured party fall within

the zone of interests protected by the statute or constitutional provision in question. See Carter v. Redmond, 142 Tenn. 258, 263, 218 S.W. 217, 218 (1920); Chattanooga Ry. & Light v. Bettis, 139 Tenn. 332, 339, 202 S.W.2d 70, 71-72 (1918).

Smith County may charge tipping fees only if its landfill complies substantially with the applicable state statutes governing local governmental garbage collection and disposal services. Carthage and South Carthage are presently paying tipping fees when they dispose of solid waste at the county's landfill. Thus, they are within the class of persons the statutes are intended to protect, and they will not be required to pay the tipping fee if they are successful in court. Accordingly, Carthage and South Carthage have standing to question whether the county's program complies with the state statutes empowering counties to charge fees to dispose of solid waste in their landfills. Town of Erwin v. Unicoi County, App. No. 03-A-01-9111-CH-00382, slip op. at 3, 17 T.A.M. 1922 (Tenn. Ct.App. April 15, 1992); (FN7) see City of Greenfield v. Butts, 582 S.W.2d 80, 81 (Tenn. Ct.App.1979).

It does not necessarily follow that Carthage and South Carthage have standing to challenge the constitutionality of Smith County's tipping fee under Article 2, Section 28 of the Tennessee Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. These constitutional provisions protect taxpayers from double taxation or from impermissible nonuniform taxation. Thus, in order to have standing, Carthage and South Carthage must be taxpayers.

The city governments of Carthage and South Carthage are exempt from paying Smith County's property tax. Tenn. Const. art. II, Sec. 28; Tenn.Code Ann. Sec. 5-8-103 (1991); Tenn.Code Ann. Sec. 67-5-203(a)(1) (1994). Accordingly, they are not taxpayers, and they are not being taxed twice by being required to pay the same tipping fee that all other users of the landfill are required to pay. The fact that city residents pay county property taxes as well as city fees for curbside garbage pickup does not give the cities standing to raise these constitutional claims. See Dominion Nat'l Bank v. Olsen, 651 S.W.2d 215, 218-19 (Tenn.1983) (holding that banks do not have standing to challenge the constitutionality of a tax paid by their depositors).

IV.

Smith County's solid waste collection and disposal program changed significantly in the late 1980's when the county decided to open and operate its own landfill. Carthage and South Carthage do not take issue with the collection aspects of the county's program but rather with the manner in which the county chose to fund the operation of its landfill. Accordingly, we will confine consideration of the county's compliance with the state law to the opening and operation of the landfill.

A.

Counties are public corporations that are political subdivisions of state government. Tenn.Code Ann. Sec. 5-1-103 (1991); Claiborne County v. Jennings, 199 Tenn. 161, 164, 285 S.W.2d 132, 134 (1955); Maxey v. Powers, 117 Tenn. 381, 397, 101 S.W. 181, 185 (1907). They derive

their power from statutes passed by the General Assembly and may only exercise powers derived explicitly or by necessary implication from state law. Bayless v. Knox County, 199 Tenn. 268, 281, 286 S.W.2d 579, 585 (1955); State ex rel. Citizens of Wilson County v. Lebanon & Nashville Turnpike Co., 151 Tenn. 150, 160, 268 S.W. 627, 630 (1924); State ex rel. Witcher v. Bilbrey, 878 S.W.2d 567, 571 (Tenn. Ct.App.1994).

Providing for the expeditious removal and disposal of solid waste is certainly a governmental function. It affects the health, safety, and welfare of the citizens because proper management of solid waste is essential to protect against health hazards, danger of fire, offensive and unwholesome odors, and the degradation of the environment. See Tenn.Code Ann. Sec. 68-211-102 (1992). Accordingly, the General Assembly has authorized counties to provide solid waste collection and disposal services. See Tenn.Code Ann. Secs. 5-19-101, -116 (1991).

The General Assembly has given counties broad powers to provide solid waste collection and disposal programs, including the power of eminent domain, (FN8) the power to promulgate rules, (FN9) and the power to contract. (FN10) County legislative bodies may oversee their own solid waste collection and disposal programs (FN11) in all or any part of the county, (FN12) or they may place their programs in the hands of a county board of sanitation, (FN13) a county department of sanitation headed by a superintendent, (FN14) or another existing county officer or agency. (FN15) They may also contract for services with other federal, state, or local government agencies, public or private utilities, or private organizations. (FN16)

State law also provides several funding mechanisms for county solid waste collection and disposal programs. Counties may issue bonds to acquire the facility or the equipment. Tenn.Code Ann. Sec. 5-19-111 (1991). In addition, they may fund the operation of the program using a general tax levy, Tenn.Code Ann. Secs. 5-19-108,--109(b)(1) (1991), or they may collect reasonable fees or charges for the services provided. Tenn.Code Ann. Secs. 5-19-107(11), -109(2).

B.

Smith County has provided county-wide solid waste collection and disposal services since at least 1977. The county legislative body has operated the program itself and has not delegated its authority to another county department or agency. A solid waste committee comprised of members of the county legislative body has supervised the program but has routinely obtained the approval of the entire legislative body with regard to significant operational matters, including: (1) the location of the receptacles and convenience stations, (2) equipment purchases, (3) contracts with Carthage for access to the city landfill, (4) the location of the new county landfill, (5) the funding for the acquisition and construction of the new landfill, (6) the funding for the operation of the new landfill, and (7) contracts for the operation of the new landfill.

Discussions between the Smith County Regional Planning Commission and Smith County concerning the need for a new landfill began as early as 1983. Following a study in 1984, the planning commission determined that Smith County needed a new landfill and submitted its recommendations to the Tennessee Department of Health and Environment for approval.

Between 1986 and 1988, the county kept the planning commission fully informed of its decision to construct a landfill and of its efforts to find a suitable location. The county submitted its plans for the new landfill to the Department of Health and Environment in July 1988 and to the planning commission in October 1988. The Department of Health and Environment approved the plans and issued a permit for the landfill on October 26, 1988. In November 1988 and again in January 1989, the Comptroller of the Treasury approved Smith County's decision to issue capital outlay notes to finance the acquisition and construction of the landfill.

C.

Carthage and South Carthage claim that Smith County cannot charge a tipping fee for solid waste deposited at its landfill because the county legislative body has not adopted a single comprehensive resolution establishing the county's solid waste collection and disposal program. They insist that Tenn.Code Ann. Sec. 5-19-103 requires the adoption of a single resolution and that this court has determined as a matter of law that county programs that do not rest on a single resolution are illegal.

Tenn.Code Ann. Sec. 5-19-103 provides, in part:

> For the exercise of the powers conferred by this chapter, a county shall authorize same by resolution adopted by a majority of the county legislative body or other governing body. Such resolution shall provide for the exercise of such powers by either:
>
> (1) Some agency or officer of the county already in existence;
>
> (2) A county sanitation department to be created;
>
> (3) A board established as hereinafter provided; or
>
> (4) Contractual arrangements the county may make between itself and any municipality, any utility or other service district, any private organization or any combination of such entities engaged in garbage and rubbish collection and/or garbage and rubbish disposal services . . .

In addition, Tenn.Code Ann. Sec. 5-19-112 (1991) requires counties to submit a plan for services to the appropriate planning commission prior to enacting a resolution.

The Eastern Section of this court has had occasion to evaluate a county program's compliance with these statutes. The City of Erwin and its mayor filed suit against Unicoi County seeking declaratory and injunctive relief against the county's general tax levy used to fund the county's "drop-off" sites. (FN17) This court affirmed the trial court's decision to enjoin the county from collecting the tax on the ground that "[t]he record does not establish compliance with the statutory mandate to submit the proposed resolution as required by Tennessee Code Annotated Sec. 5-19-112." Town of Erwin v. Unicoi County, *supra*, slip op. at 4. The court based its decision, not on the lack of a single resolution, but rather on Unicoi County's failure to present its plan for services to the planning commission as required by Tenn.Code Ann. Sec. 5-19-112.

The decision in Town of Erwin v. Unicoi County is inapposite here. Smith County repeatedly consulted the planning commission concerning its landfill and obtained not only the commission's approval but also the approval of the Department of Heath and Environment and the Comptroller of the Treasury. The planning commission became involved with the project long before the landfill's construction commenced and has remained involved since the landfill opened. Accordingly, the record demonstrates that Smith County, unlike Unicoi County, has complied with Tenn.Code Ann. Sec. 5-19-112.

The statutes themselves empower the counties to provide solid waste collection and disposal services. Accordingly, county legislative bodies are not required to enact a resolution to authorize themselves to provide the same services they already have the power to provide. The resolution required by Tenn.Code Ann. Sec. 5-19-103 becomes necessary when a county legislative body decides to delegate its power to another county department, agency, or officer or to contract with another entity for its collection and disposal needs. In those circumstances, a resolution prescribes the powers of the department, agency, or officer, describes the scope of the program, and defines the powers retained by the county legislative body.

County legislative bodies that administer their own solid waste programs would be well-advised to enact a single resolution defining their program. A single resolution will enable county residents to understand how the program works, the scope of the services being provided, and the program's funding mechanisms. However, the lack of a single resolution should not undermine the validity of a program such as the one involved in this case where the county legislative body has approved every significant component of the program by majority vote.

V.

Even though the cities lack standing to claim that Smith County's tipping fee violates Article 2, Section 28 of the Tennessee Constitution, we have chosen to address the issue to bring an end to this local dispute. Smith County's tipping fee is consistent with Tenn.Code Ann. Sec. 5-19-107(11) and is not an unconstitutional tax shifting device that causes the property of city residents to be taxed by the county more heavily than the property of rural residents.

Article 2, Section 28 of the Tennessee Constitution requires that property be taxed in a uniform and nondiscriminatory manner. It does not prohibit double taxation where it is plain that the legislature intended that result. Oliver v. King, 612 S.W.2d 152, 153 (Tenn.1981); Stalcup v. City of Gatlinburg, 577 S.W.2d 439, 443 (Tenn.1978). Since the provision relates only to taxes, a particular measure must be a tax in order to run afoul of Tenn. Const. art. II, Sec. 28.

A tax is a revenue raising measure. Memphis Retail Liquor Dealers' Ass'n v. City of Memphis, 547 S.W.2d 244, 245-46 (Tenn.1977). It is an enforced non-voluntary contribution from persons or property to support the government by raising revenues to pay its general debts and liabilities. See City of Knoxville v. Lee, 159 Tenn. 619, 623, 21 S.W.2d 628, 629-30 (1929); 16 Eugene McQuillin, The Law of Municipal Corporations Sec. 44.02 (rev.3d ed.1994).

On the other hand, a fee raises funds to support the government's regulation of a specific activity. Memphis Retail Liquor Dealers' Ass'n v. City of Memphis, 547 S.W.2d at 246. A fee also

defrays or helps defray the government's cost of providing a service or benefit to the party paying the fee. Brewster v. City of Pocatello, 768 P.2d 765, 768 (Idaho 1988); Crocker v. Finley, 459 N.E.2d 1346, 1349-50 (Ill.1984); Emerson College v. City of Boston, 462 N.E.2d 1098, 1105 (Mass.1984).

Fees are generally voluntary and can be avoided simply by not using the service for which the fee is charged. National Cable Television Ass'n v. United States, 415 U.S. 336, 340-41, 94 S.Ct. 1146, 1149 (1974); Executive Aircraft Consulting, Inc. v. City of Newton, 845 P.2d 57, 62 (Kan.1993); Op. Att'y Gen. No. 83-343, slip op. at 3 (Oct. 6, 1983). A fee may be considered a tax if the revenue it raises exceeds the government's cost and expense of providing the service for which the fee is charged. Envirosafe Servs. of Ohio, Inc. v. City of Oregon, 609 N.E.2d 1290, 1294 (Ohio Ct.App.1992).

Courts from other jurisdictions have consistently held that fees similar to Smith County's tipping fee are fees, not taxes. Kern County Farm Bureau v. County of Kern, 23 Cal.Rptr.2d 910, 916 (Ct.App.1993); Kootenai County Property Ass'n v. Kootenai County, 769 P.2d 553, 556-57 (Idaho 1989); City of Jefferson v. Missouri Dep't of Natural Resources, 863 S.W.2d 844, 850 (Mo.1993) (en banc); Jersey City Sewerage Auth. v. Housing Auth., 176 A.2d 44, 46 (N.J.Super. Ct. Law Div.1961), aff'd, 190 A.2d 870, 872 (N.J.1963); Barnhill Sanitation Serv., Inc. v. Gaston County, 362 S.E.2d 161, 166-67 (N.C. Ct.App.1987); Envirosafe Servs. of Ohio, Inc. v. City of Oregon, 609 N.E.2d at 1295. We find these decisions persuasive in this case.

Smith County requires only users of its landfill to pay its tipping fee. The fee is not based on the value of the user's property but rather on the amount of solid waste the user desires to dispose of in the landfill. Accordingly, the fee is for the use of a specific governmental service. Smith County uses the revenues generated by the tipping fees to offset the expenses it incurs to operate the landfill. These revenues do not exceed, and in fact are less than, the county's actual operating costs. All persons using the landfill must pay the fee, but persons desiring to avoid the fee can do so simply by disposing of their solid waste elsewhere. Thus, Smith County's tipping fee is truly a fee for using the landfill; it is not a tax.

The residents of Carthage, South Carthage, and Gordonsville pay more for the collection and disposal of their solid waste than do other county residents. The higher cost stems not from the county's desire to discriminate or to shift the tax burden unfairly to the city dwellers, but from the fact that city dwellers receive more services than do the residents living in the rural part of the county. City dwellers receive curbside service while other county residents must take their solid waste to a convenience station. Curbside service is more costly than convenience stations because it is more labor and equipment intensive. Requiring city dwellers to pay more to receive more services offends no constitutional principle requiring fair and equal taxation.

VI.

We affirm the judgment dismissing the cities' complaint and remand the case to the trial court for whatever further proceedings may be required. We also tax the costs of this appeal in equal proportions to the City of Carthage and the City of South Carthage.

TODD, P.J., and CANTRELL, J., concur.

FN1. This court may affirm a trial court's decision on grounds different from those relied upon by the trial court. Benson v. United States Steel Corp., 225 Tenn. 164, 180, 465 S.W.2d 124, 130 (1971); Sparkle Laundry & Cleaners, Inc. v. Kelton, 595 S.W.2d 88, 94 (Tenn. Ct.App.1979).

FN2. This court considered the contested condemnation proceedings involving the landfill site in Smith County v. Eatherly, 820 S.W.2d 366 (Tenn. Ct.App.1991), cert. denied, --- U.S. ----, 112 S.Ct. 1762 (1992).

FN3. Convenience stations are the minimum level of waste collection and disposal service that counties may provide under state law. Tenn. Comp. R. & Regs. r. 1200-1-7-.10(1)(a), -.10(2)(b)(1993).

FN4. Prior to its amendment in 1993, Fed. R.App. P. 3(c) provided that "[t]he notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal."

FN5. We may look to the decisions of other federal or state courts construing similar rules for helpful guidance in construing our own rule. Continental Casualty Co. v. Smith, 720 S.W.2d 48, 49 (Tenn.1986) (construing analogous federal rules); Howard v. United States, 566 S.W.2d 521, 526 (Tenn.1978) (construing decisions of other federal and state courts); see also Holiday Inns, Inc. v. Olsen, 692 S.W.2d 850, 853 (Tenn.1985) (considering other state courts' construction of uniform laws).

FN6. Appellees, of course, need not file a separate notice of appeal to be considered as "cross-appellants" before the court. See Tenn. R.App. P. 13(a) & advisory commission cmt., subdivision (a).

FN7. No application for permission to appeal was filed in this case.

FN8. Tenn.Code Ann. Sec. 5-19-107(3) (1991).

FN9. Tenn.Code Ann. Sec. 5-19-107(4), (9).

FN10. Tenn.Code Ann. Sec. 5-19-107(7).

FN11. Tenn.Code Ann. Sec. 5-19-105(a), (c) (1991).

FN12. Tenn.Code Ann. Secs. 5-19-107(10), -109 (1991).

FN13. Tenn.Code Ann. Secs. 5-19-103(3), -104(a)(1) (1991).

FN14. Tenn.Code Ann. Secs. 5-19-103(2), -105(b)(1).

FN15. Tenn.Code Ann. Sec. 5-19-103(1).

FN16. Tenn.Code Ann. Secs. 5-19-103(4), -106 (1991).

FN17. Unicoi County's "drop-off" sites were similar to Smith County's receptacles and convenience stations.

Albert HEMONTOLOR, Petitioner/Appellant,
v.
WILSON COUNTY BOARD OF ZONING APPEALS, Respondent/Appellee
and
Mrs. Delane Kolbe, Derrell Reese, Bill Hodges, Miss Millie Burford, and Dr. & Mrs. Robert H. Badger, Respondents/Appellees.

Court of Appeals of Tennessee,
Western Section, at Nashville.
Feb. 18, 1994.

Application for Permission to Appeal Denied by Supreme Court July 18, 1994.

Landowner petitioned for writ of certiorari and mandamus to compel county board of zoning appeals to remove conditions from its approval of application to operate landfill. The Chancery Court, Davidson County, C.K. Smith, Chancellor, denied petition. Landowner appealed. The Court of Appeals, Farmer, J., held that: (1) board arbitrarily and capriciously exceeded its authority by conditioning approval of landfill on landowner's payment for improvements to public road; (2) evidence supported condition for landfill that landowner post bond to satisfy damage from heavy trucks using landfill; and (3) material evidence did not support conditions for landfill that landowner maintain 250-foot buffer, create landscaped berm, and prevent surface water runoff.

Affirmed in part, reversed in part, and remanded.

Thomas C. Binkley, Jeffrey Zager, Trabue, Sturdivant & Dewitt, Nashville, and John William Martin, Lebanon, for petitioner/appellant.

Michael R. Jennings, Lebanon, for respondent/appellee Wilson County Bd. of Zoning Appeals.

William E. Farmer, Lebanon, for respondents/appellees Delane Kolbe, et al.

FARMER, Judge.

OPINION

Appellant, Albert Hemontolor, (Hemontolor) applied to the Wilson County Board of Zoning Appeals (Board) for permission to use his property (**FN1**) as a sanitary landfill. On July 6, 1990, the Board denied the application "based on testimony, private landfill could bring in out-of-state medical waste, road conditions and public safety on roads." [sic] Hemontolor filed a petition for writ of certiorari requesting that the Board be directed to allow him to use his property in such manner. The chancellor granted the petition and ordered the Board to "approve the requested use subject to [Hemontolor] meeting all reasonable conditions as identified by the . . . Board; . ."

Pursuant to the chancellor's decree, the Board approved Hemontolor's application subject to seven conditions. The following five are at issue on this appeal:

(1) That prior to commencement of the operation of the landfill that Cedar Grove Road, the affected parts of Belotes Ferry Rd. and those culverts and bridges expected to be affected by this proposed use be constructed to a standard capable of carrying the heavy truck traffic expected to serve the proposed landfill. This would necessarily involve, to the greatest extent possible, the elimination of blind spots from the many hills and curves along Cedar Grove Road. This construction standard should be to the satisfaction of, and be acceptable to, the Wilson County Road Commission.

(2) That applicant (appear before) the Wilson County Road Commission for a determination of the amount of bond for possible future damage to the road, bridges, and culverts along Cedar Grove Road and that part of Belotes Ferry Road from its intersection with Cedar Grove Road to U.S. Hwy. 231. This bond should then be posted with the Road Commission in sufficient amount to cover the costs of any needed repairs to the road, culverts and bridges caused by this proposed use.

(3) A reasonable buffer of approximately 250' should be maintained along Cedar Grove Road.

(4) A landscaped berm of adequate height to screen this proposed use from Cedar Grove Road should be installed along the margin of Cedar Grove Road, behind the 250' buffer.

(6) The active landfill site should be designed and maintained so as to prevent surface water runoff from leaving the landfill site.

Hemontolor filed a second petition for writ of certiorari and mandamus requesting that the Board be directed to remove these conditions from its approval of his application. (FN2) This appeal is from the chancellor's denial of the petition upon determining that the Board acted with authority in imposing the conditions which were "valid and reasonable."

Hemontolor presents the following issues for our review:

1. Whether the Wilson County Board of Zoning Appeals lacks the statutory authority to condition Albert Hemontolor's lawful use of his property upon the improvement of an off-site, public roadway?

2. Whether mandatory improvement of an off-site, public roadway as a condition to the lawful use of private property is unduly burdensome and therefore unlawful?

3. Whether Section 6.40.04 of the Wilson County Zoning Regulations is unconstitutionally vague?

4. Whether the Administrative Record fails to support the Wilson County Board of Zoning Appeals' imposition of conditions upon Albert Hemontolor's lawful use of his property?

Appellees present the following additional issues:

1. Whether the lower Court erred on April 8, 1991 when it overruled the previous ruling of the Wilson County Board of Zoning Appeals issued on July 6, 1990 wherein the Appeals Board denied the [Hemontolor] request on appeal to use the subject agricultural land for a sanitary landfill?

2. Whether the lower Court erred in failing to join the Wilson County Regional Solid Waste Authority as a party defendant in this matter?

3. Whether the lower Court erred in failing to join the Commissioner of the Tennessee Department of Environment and Conservation as a party defendant in this matter?

4. Whether the lower Court erred in failing to receive additional evidence as permitted by Tennessee Code Annotated Section 27-9-111?

[1] Our scope of review, and that of the trial court, under a common law writ of certiorari, is to determine whether the Board exceeded its jurisdiction, followed unlawful procedure, acted arbitrarily or capriciously or acted without material evidence to support its decision. Massey v. Shelby County Retirement Bd., 813 S.W.2d 462, 464 (Tenn.App.1991); Brooks v. Fisher, 705 S.W.2d 135, 136 (Tenn.App.1985).

Sections 5.20.02-.03 of the Wilson County Zoning Regulations identify "uses" in an agricultural district as those "permitted" and those "permissible on appeal." Section 5.20.03 states:

> The following uses may be permissible on appeal by the [Board] in accordance with provisions contained in Section 6.40 of these Regulations.
>
> R. Sanitary landfill subject to meeting all requirements of a registered solid waste disposal site as defined in Chapter 1200-1-7 of the Rules of the Tennessee Department of Public Health and Environment and any criteria identified by Wilson County officials; (FN3)

Section 6.40.04 identifies the Board's "powers" to include hearing and deciding "requests for special exceptions, such as uses permitted on appeal . . ." Subsection B allows the Board to "require reasonable conditions be met concerning . . . access to property, . . . and any other reasonable requirement the Board deems necessary to protect the surrounding property . . . and shall require a sufficient bond for damage to roads if required by the Road Commission . . ."

[2] We first address the condition that improvements be made to Cedar Grove Road. In effect, this condition requires Hemontolor to either expend the funds for such improvements or forego using his property in the manner desired, and that for which it appears most suitable, until the county makes these improvements. Road superintendent, Val Kelley, testified that the cost to improve the road to sufficiency would be between $750,000 and $1,000,000. The improvement of this road will unquestionably benefit adjacent property owners, many of whom testified as to their discontent with the road's present inadequacies. The Board is limited by its own regulations to impose only "reasonable" conditions. We find nothing reasonable in requiring a private citizen to maintain a public road at his sole expense. Consequently, we hold that the Board arbitrarily and capriciously exceeded its authority in imposing this condition.

[3] The second condition requires Hemontolor to post a bond for possible future damages to the road. As heretofore mentioned, the county zoning regulations authorize the Board to require a sufficient bond "if required by the Road Commission." The chancellor found that Cedar Grove Road "is certainly not adequate to handle double axle type vehicles" and that "the condition of the road now is not adequate for a landfill, for heavy trucks to be operating on this road." We find a preponderance of the evidence to support this finding. Mr. Hemontolor stated that the operation of his property as a sanitary landfill would require the use of "heavy trucks." William Griggs, the designer of the proposed landfill, stated that it would be designed to receive 100 to 175 tons of solid waste disposal per day which would involve ten to twelve "packer" trucks. John Patterson, superintendent of the county landfill, testified that it is visited by approximately 50 to 75 trucks per day. He stated that one-third is of the "pick-up capacity" and two-thirds are trucks 25 to 42 cubic yards. He stated that it would be reasonable for a "fair percentage" of these trucks to visit the proposed landfill, only a short distance away, when in operation. Further, Mr. Kelley testified that base failures on roads indicate "heavy loading."

[4] The question of whether or not there is any material evidence to support the Board's decision is one of law, to be decided by the reviewing court upon an examination of the evidence introduced before the Board. Watts v. Civil Serv. Bd. for Columbia, 606 S.W.2d 274, 277 (Tenn.1980). We hold that the Board's decision to impose condition two is supported by material evidence. The Board may reasonably require Hemontolor to post a bond sufficient to satisfy the damage resulting from heavy trucks traveling to and from the site.

[5] Condition three requires Hemontolor to maintain a 250 foot buffer along Cedar Grove Road. The only testimony on this issue comes from Mr. Griggs who was asked to agree that a 250 foot buffer "is not an unreasonable condition" to which he responded, "I believe it would be . . ." He testified that the state regulations, written by the Division of Solid Waste Management, require a buffer of 100 feet. He stated that these regulations were first presented as proposals to the public for comment. This led to extensive revisions, subsequent public hearings and further revisions before they were ultimately reissued. Griggs continued, "the current regulations are the result of [a two year

process]. And so to take that and say, . . . we don't agree with this number, we're going to change it here, . . . unless there's a site specific reason, I think that the regulations are pretty good." We conclude that the Board's imposition of this condition is not supported by material evidence.

[6] The fourth condition requires "a landscaped berm of adequate height . . ." We find absolutely no evidence introduced before the Board on this matter and, therefore, cannot uphold its imposition.

[7] Condition six requires the prevention of surface water runoff. The only testimony pertaining to this condition was that of Rick Heckle, a geotechnical engineer. When asked whether he discovered anything on the site that would lead to great concern about danger from leaching or run-off from the landfill, he replied, "[n]o more than any typical site. There's no springs or anything of that nature on the site." Heckle also stated that "current regulations are much more stringent, and there are requirements as far as design for the liners, for leachate collection system, for installation of ground water--monitoring wells, any monitoring of leachate from the landfill. All this is governed by the current regulations which are more stringent than the ones the current landfill is operating under." (FN4) We hold that the Board's imposition of condition six is not supported by material evidence.

We reject Appellant's argument that Section 6.40.04 of the zoning regulations is unconstitutionally vague.

[8] Appellees contend that the lower court erred in failing to join the Wilson County Regional Solid Waste Authority (Authority) and the Commissioner of the Tennessee Department of Environment and Conservation (Commissioner) as necessary parties. A motion was filed requesting the joinder of the Authority because "[t]he position of the Hemontolor property allows [Hemontolor] to have access to Dump Road, if the [Authority] would grant an easement across its property. The granting of that easement would allow [Hemontolor] to reach his proposed landfill without using Cedar Grove Road for heavy truck traffic." Appellees moved that the Commissioner be joined because the Tennessee Department of Environment and Conservation was considering issuing a permit for the solid waste facility and had scheduled a public hearing. Further, the department "refuses to consider the access questions which have been a major concern in this litigation . . ."

Hemontolor correctly cites Brewer v. Lawson, 569 S.W.2d 856 (Tenn.App.1978), for the following proposition:

> A proper party is not the same as a necessary or indispensable party. Only a party who will be directly affected by a decree and whose interest is not represented by any other party to the litigation is an indispensable or necessary party, that is, one without which no valid decree may be entered settling the rights between the parties that are before the Court.

Brewer, 569 S.W.2d at 858. We find no error by the trial court in failing to join the aforementioned parties.

[9] Appellees question whether the lower court erred in overruling the initial decision of the Board to deny Hemontolor's application. Appellees apparently argue that the court's decree was not final because the chancellor ruled that the Board's denial constituted "an excess of authority" and made no determination that the Board acted "arbitrarily, capriciously or illegally." Also, they insist that the chancellor made no finding of fact and that a transcript of the initial hearing was not before the trial court. The record does not support this latter contention. The chancellor's decree states that the court reviewed, *inter alia*, the "transcript of the testimony offered at said hearing; . . ." We find no merit in Appellees' argument regarding the express language utilized by the court. As the chancellor's decree constitutes a final judgment from which no appeal was taken, we conclude that our review of this decision is foreclosed. "A judgment of a court having jurisdiction of the persons and subject matter, is conclusive between the parties as to the matter in controversy in the case, and cannot be inquired into or questioned, if unappealed from, unless it was obtained by fraud, accident, or mistake." Crawford v. Crawford, 2 Tenn.Cas. 156 (1876).

[10] The final issue raised by Appellees regards the lower court's refusal to receive additional evidence, specifically the testimony of Barry Sulkin. T.C.A. Sec. 27-9-111(b) provides: "The hearing shall be on the proof introduced before the board or commission contained in the transcript, and upon such other evidence as either party may desire to introduce." Courts have limited the introduction of additional evidence to the question of whether the Board exceeded its jurisdiction or acted illegally, arbitrarily or capriciously. See Watts, 606 S.W.2d at 277; Massey, 813 S.W.2d at 465. Appellees, by offer of proof, established that Mr. Sulkin, an environmental consultant, would testify that Hemontolor had not met all of the state's rules and regulations for operating a sanitary landfill. We find that the evidence sought to be introduced addresses the validity or propriety of the chancery court's initial decision entered April 25, 1991. It does not concern the reasonableness of the conditions imposed by the Board nor does it tend to prove whether the Board's actions were arbitrary or capricious or in excess of its jurisdiction. We hold this issue without merit.

In view of our decision, the remaining issues are pretermitted.

The judgment of the lower court is affirmed in part, reversed in part and remanded. Costs are taxed one-half to Appellant and one-half to Appellees, for which execution may issue if necessary.

TOMLIN, P.J. (W.S.), and HIGHERS, J., concur.

FN1. The record reveals that Hemontolor either owns or holds valid options on this land composed of 159 acres. The property, zoned A-1 Agricultural, consists of three parcels and is located on Cedar Grove Road in Wilson County. It adjoins property currently utilized as a county landfill.

FN2. Delane Kolbe, Derrell Reese, Bill Hodges, Millie Burford, and Dr. and Mrs. Robert Badger were allowed to intervene by order entered January 9, 1992. All are residents of the Cedar Grove Community and own property either adjacent to or near the subject property.

FN3. The chancellor's decree granting Hemontolor's first petition for writ of certiorari was entered April 25, 1991 and states:

"[Hemontolor] has met all of the requirements for the permit as set forth in said Zoning Regulations, and has applied to the State of Tennessee, Department of Health and Environment, for a state permit as provided in Chapter 1200-1-7 . . .

That Wilson County officials have identified no other criteria for the issuance of the permit . . ."

FN4. This testimony occurred at the original hearing before the Board on July 6, 1990. By agreement, the transcript and evidence at this hearing was accepted into the September 6, 1991 proceedings "for the limited purpose of the question that's before [the Board], and that is reasonable conditions."

COMBINED COMMUNICATIONS, INC., d/b/a The Tennessean, and Anne Paine, Petitioners,

v.

The SOLID WASTE REGION BOARD, Respondent.

Court of Appeals of Tennessee,
Middle Section, at Nashville.
Nov. 17, 1993.

OPINION

RULE 7 MOTION FOR STAY AND RESPONSE THERETO

TODD, Presiding Judge.

The petitioner, Combined Communications, Inc., filed this suit against the respondent, Solid Waste Region Board under the Tennessee Public Records Act, T.C.A. Secs. 10-7-503 et seq., to compel the disclosure of a letter received by the Chairman of the Board from the Metropolitan Attorney of Metropolitan Nashville and Davidson County, Tennessee.

The Trial Court ordered disclosure, and the Board appealed to this Court. The Trial Court denied a stay pending appeal, and the Board has applied to this Court for stay pending appeal. Petitioner has responded in opposition to the application.

An appellate court has no lawful right to order a supersedeas to issue unless it is of the opinion from an inspection of the record that there is error in the judgment or decree to be superseded. Sullivan v. Eason, 5 Tenn.App. 137 (1927). However, a stay may be necessary and just where there are doubtful issues and there is real danger of irreparable harm from denial of a stay. T.R.C.P. Rule 62.08; 4-A C.J.S. Appeal & Error Sec. 636, p. 452, n. 96.

The brief supporting the application for stay states that the Board intends to raise the following issues on appeal:

a. Whether the Solid Waste Region Board has the capacity to sue or to be sued.

b. Whether the separation of powers provisions of the Tennessee Constitution require that the document herein sought to be accessed be exempted from the provisions of the Public Records Act.

c. Even if the above constitutional standard is not met, whether the provision of T.C.A. Sec. 10-7-503, as amended by Public Acts 1991, Chapter 369, Section 7, exempt attorney client communications from the disclosure requirements of the Act, as being privileged under state law.

d. Whether requiring disclosure under the Public Records Act of written legal analyses and discussions of government attorneys for their clients violates public policy.

e. Whether an award of attorney's fees in this case was proper.

Said brief discusses only issues relating to attorney-client privilege and award of attorney's fees.

T.C.A. Sec. 10-7-503(a) provides:

> Records open to public inspection - Exceptions.
>
> (a) All state, county and municipal records and all records maintained by the Tennessee performing arts center management corporation, except any public documents authorized to be destroyed by the county public records commission in accordance with Sec. 10-7-404, shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.
>
> The Board insists correctly that the expression "state law" is broader than "statute." "State law" comprehends statutes, court rules and court decisions.

T.R.E. Rule 501 reads as follows:

> Privileges recognized only as provided. - Except as otherwise provided by constitution, statute, common law, or by these or other rules promulgated by the Tennessee Supreme Court, no person has a privilege to:
>
> (1) Refuse to be a witness;
>
> (2) Refuse to disclose any matter;
>
> (3) Refuse to produce any object or writing; or
>
> (4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

T.C.A. Sec. 23-3-105 provides:

> Privileged communications. - No attorney, solicitor or counselor shall be permitted, in giving testimony against a client, or person who consulted him professionally, to disclose any communication made to him as such by such person, during the pendency of the suit, before or afterwards, to his injury . . .

This section embodies the common law principle. Scales v. Kelley, 70 Tenn. 706 (1879).

The above code provision does not exclude all communications between an attorney and his client. Humphreys, Hutcherson & Moseley v. Donovan, M.D., Tenn.1983, 568 F.Supp. 161, aff'd. 6th Cir.1985, 755 F.2d 1211.

Supreme Court Rule 8, D.R. 4-101(B)(1) reads as follows:

> Except when permitted under DR 4-101(C), a lawyer shall not knowingly: Reveal a confidence or secret of his client . . .

In McMannus v. State, 39 Tenn. (2 Head), 214 (1858), the Supreme Court reversed a trial court ruling excluding testimony of an attorney as to a conversation with the accused and said:

> Sound public policy seems to have required the establishment of the rule that facts communicated by a client to his counsel are under the seal of confidence, and cannot be disclosed in proof. It is a rule of protection to the client, more than a privilege to the attorney. The latter is not allowed, if he would, to break this seal of secrecy and confidence. It is supposed to be necessary to the administration of justice, and the prosecution and defense of rights, that the communications between client and their attorneys should be free and unembarrassed by any apprehensions of disclosure, or betrayal. The object of the rule is, that the professional intercourse between attorney and client should be protected by profound secrecy. It is not necessary to the application of this rule, as was held in some of the old cases, now overruled, that a suit should be pending or anticipated, (I Greenl. on Ev. 240, note), nor that there should be a regular retainer or the payment of fees. I Greenl. on Ev. sec. 241. But he must be applied to for advice or aid in his professional character, and that in relation to some act past, or right, or interest in existence. The rule has no reference to cases like the one before us, where abstract legal opinions are sought and obtained on general questions of law, either civil or criminal. In such cases no facts are or need be disclosed implicating the party; and so there is nothing to conceal, of a confidential nature.
>
> If the defendants had perpetrated an act, and applied for legal counsel and advice in relation to it, secrecy would be imposed; but where no act had been done, or if done, not disclosed, and only a general opinion on a question of law was asked, there would be no professional confidence. It would be monstrous to hold, that if counsel was asked and obtained, in reference to a contemplated crime, that the lips of the attorney would be sealed, when the fact might become important to the ends of justice in the prosecution of crime. In such a case the relation cannot be taken to exist. Public policy would forbid it. We presume the rule has never been extended so far, nor will it be.

39 Tenn. pp. 216-217

In Johnson v. Patterson, 81 Tenn. (13 Lea.), 626 (1884), the Supreme Court said:

> . . . Our Code, section 4784 [4748] (new Code,) has embodied but the common law principle in this language: "No attorney or counsel shall be permitted, in giving testimony against a client, or person who consulted him professionally, to disclose any communication made to him as attorney by such person, during the pendency of the suit, before or afterwards, to his injury."

This language excludes all communications, and all facts that come to the attorney in the confidence of the relationship. But there are many transactions between attorney and client, that have no element of confidence in them, of which he is competent to testify. For instance, he may prove his client's handwriting; may prove what money was collected by him, when paid over, and to whom paid: Weeks on Attorney, 277: Greenl. vol. 1, sec. 246.

81 Tenn. pp. 649,650

In Jackson v. State, 155 Tenn. 371, 293 S.W. 539 (1926), the Supreme Court held that advice of an attorney in response to an inquiry about the duties of a postmaster to forward complaints against a mail carrier was not privileged.

In Bryan v. State, Tenn.Cr.App.1992, 848 S.W.2d 72, the appellate court reversed a trial court judgment granting a blanket privilege to all communications between an attorney and client and said:

> The attorney's communications or advice to the client, although not specifically addressed in T.C.A. Sec. 23-3-105, are necessarily included in the privilege, as indicated by McMannus, for the client's protection. However, the privilege would apply in this manner only to the extent that the attorney's communications to a client were specifically based upon a client's confidential communication or would otherwise, if disclosed, directly or indirectly reveal the substance or tenor of a confidential communication. See In re Sealed Case, 737 F.2d 94, 101-102 (D.C.Cir.1984); 8 Wigmore, Evidence (McNaughton Rev.1961) Sec. 2320, pp. 628-629. For example, the privilege does not extend to communications from an attorney to a client when they contain advice solely based upon public information rather than confidential information. See Congoleum Industries, Inc., v. G.A.F. Corp., 49 F.R.D. 82, 85-86 (E.D.Pa.1969), aff'd., 478 F.2d 1398 (3rd Cir.1973). Similarly, if the advice rendered by the attorney was clearly not intended to relate to client confidentiality, such as advice respecting a trial date or the client's presence at trial, the privilege would not apply. See United States v. Gray, 876 F.2d 1411 (9th Cir.1989); United States v. Innella, 821 F.2d 1566 (11th Cir.1987). Likewise, advice given on general questions of law, when no facts are or need be disclosed or inferred which would implicate the client, would not ordinarily be covered by the privilege. See McMannus v. State, *supra*; Jackson v. State, 155 Tenn. 371, 293 S.W. 539, 540 (1927). In this vein, the substance of an attorney's advice to a client of various aspects of the criminal trial process, including the client's constitutional rights, would not necessarily be covered by the privilege. It would depend upon the circumstances.

848 S.W.2d at 80

From the foregoing, this Court concludes that the law of this State does not recognize as privileged a communication from an attorney to his client which does not disclose or suggest the content of any confidential communication from the client to the attorney.

The appellant has filed the subject communication with this Court under seal. An examination of the communication discloses that it is a response to a request for information in the abstract, without any stated set of facts, and that the letter does not in any way disclose any fact communicated by the inquirer, except the desire of the inquirer for the abstract information.

Under these circumstances, the communication from the Metropolitan Attorney to the Board is not privileged or exempt from the provisions of the Public Records Act.

It is not seriously contended that the subject letter is not a public record. Surely, advice received by a public agency from its official legal adviser and preserved for its guidance in performing its public duties, cannot be hidden as private.

The opinions of the Attorney General of the State are regularly published for public information and guidance. It is no less important for opinions upon abstract questions of law by a municipal attorney to municipal agencies, be available to the public.

No argument is made that the advice relates to any pending or anticipated litigation; or that the Board would be in any way prejudiced or hampered in the rightful pursuit of its duties, or that any public interest would be prejudiced by the disclosure of the contents of the subject letter.

At this stage of the appeal, this Court is not of the opinion that there is error in the judgment of the Trial Court, or that irreparable injury or prejudice would result from a denial of stay. Therefore, it would not be proper for this Court to stay the judgment pending appeal.

The final judgment of this Court upon the merits of the appeal, including all issues listed above, is reserved pending receipt and consideration of briefs and oral argument, if requested.

The application for stay is respectfully denied.

LEWIS and CANTRELL, JJ., concur.

TENNESSEE ENVIRONMENTAL COUNCIL, Plaintiff/Appellant,
v.
SOLID WASTE DISPOSAL CONTROL BOARD, Division of Solid Waste Management, Tennessee Department of Health and Environment, Defendants/Appellees.

Court of Appeals of Tennessee,
Middle Section, at Nashville.
Dec. 2, 1992.

No Application for Permission to Appeal was Filed with the Supreme Court. Opinion Published Pursuant to Rule 11.

Organization challenged order of Solid Waste Disposal Board adopting rule regulating commercial hazardous waste management facilities. The Chancery Court, Davidson County, Irvin H. Kilcrease, Jr., Chancellor, affirmed, and organization appealed. The Court of Appeals, Todd, P.J., held that Board substantially complied with rule-making requirements, and its order was to be affirmed, despite its failure to republish rule as altered following original publication and public hearings.

Affirmed and remanded.

Dianna Baker Shew, Farris, Warfield & Kanaday, Nashville, for plaintiff/appellant.

Charles W. Burson, Atty. Gen. and Reporter and Barry Turner, Deputy Atty. Gen., Nashville, for defendants/appellees.

OPINION

TODD, Presiding Judge.

The Tennessee Environmental Council (the Council) has appealed from a judgment of the Trial Court affirming an order of the Tennessee Solid Waste Disposal Board (the Board) adopting Administrative Rule 1200-1-14 regulating commercial hazardous waste management facilities pursuant to T.C.A. Sec. 68-46-107.

The Council asserts that the Board acted illegally by promulgating said rule without disclosing advisory information and opportunity for public notice and comment.

Chapter 552 of the Acts of the 1989 General Assembly, T.C.A. Sec. 68-46-107(d)(10), requires that, on or before January 1, 1990, the Board adopt regulations governing "siting (location) of commercial hazardous waste storage, treatment and disposal facilities in Tennessee." The Act sets out eight factors which the Board must consider in making such regulations.

On July 27, 1989, the Board transmitted to the Secretary of State a notice of rule making proceedings and public hearings, containing the following:

> There will be three (3) public hearings held by the Tennessee Department of Health and Environment, Division of Solid Waste Management, acting on behalf of the Tennessee Solid Waste Disposal Control Board, to consider the adoption and promulgation of rules and amendments of rules pursuant to Part 1 - Hazardous Waste Management Act of 1977 as amended, Tennessee Code Annotated, Sections 68-46-107(d) and 68-46-108. The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204, and will take place at the specified locations and times as follows:

Date	Time	Location
Sept. 5, 1989	7:00 PM	University of Tennessee Agricultural Extension Service Auditorium 309 North Parkway Jackson, TN
Sept. 6, 1989	7:00 PM	Legislative Plaza Room 29 6th Ave. North and Union Avenue Nashville, TN
Sept. 7, 1989	7:00 PM	CityCounty Bldg., Small Assembly Room 400 Main Ave. Knoxville, TN

Summary of Proposed Rules

Proposed are new and revised rules intended to implement T.C.A. Sections 68-46-101 et seq as amended in 1989. Primarily, these rules provide for the siting (permitting) of new commercial facilities for the storage, treatment or disposal of hazardous waste in Tennessee. Further, the proposed rules identify certain criteria to be considered in carrying out such activities through public involvement.

Other Information

The Division has prepared draft rules for public review and comment. Copies of these draft rules are available for review at the Division Field Offices located as follows:

> . . . A limited number of copies are also available for distribution to interested persons. Such copies may be requested by calling or writing Mr. Gerald Ingram at:
>
> Division of Solid Waste Management
> Tennessee Department of Health and Environment
> 4th Floor, Customs House
> 701 Broadway
> Nashville, TN 37219-5403

Oral or written comments are invited at the hearings. In addition, written comments may be submitted to the Division at the above address prior to or after the public hearings. However, such written comments must be received by the Division by 4:30 PM, September 25, 1989 in order to assure consideration. For further information, contact Gerald Ingram at the above address or telephone number.

Said notice was published in 8 newspapers of general circulation throughout the state and by a general press release on August 22, 1989.

The three public meetings were well attended and numerous comments were received. The Council was represented at the Nashville meeting.

As stated in the notice, "draft rules" were available for examination before and during said meetings. However, the "draft rules" were not adopted in the form distributed, but were amended upon consideration of comments received at the meetings and documents received after the meetings including "draft preliminary Federal Environmental Protection Agency Regulations." It was announced at the meetings that additional information would be sought from state and federal sources.

Further public meetings were held on October 4, 1989, November 15-16, 1989, November 28-29, 1989, and December 6, 1989, but without the formal notice through the Secretary of State. Public notice was given of said meetings each of which was attended by the public. Representatives of the Council, attended all meetings except the November 28-29, 1989, meeting. A final draft of regulations was adopted at the December meeting, but was partially disapproved by the Attorney General, which required a further public meeting on June 5, 1990, after public notice. Representatives of the Council and other members of the public were present at the June 5, 1990 meeting, when the Board adopted a revised version of the regulations which received the approval of the Attorney General and became effective on July 28, 1990.

There is no complaint as to compliance with T.C.A. Sec. 4-5-203 in the initiation of the rule making procedure. The complaint is that the Board failed to repeat the publication required by Sec. 4-5-203 when it departed from the text of the "draft rules" mentioned in the above quoted notice as being available at the offices of the Solid Waste Management Division.

In connection with this complaint, Sec. 4-5-203 contains the following provision:

> (B) Nothing in this section shall be construed to preclude an agency from making changes in the rule being proposed after the public hearing, so long as the changes are within the scope of the rulemaking notice filed with the secretary of state.

The section of the notice quoted above entitled "Summary of Proposed Rules" conveyed to the public due notice of the scope of rules to be considered, and the rules which were ultimately adopted do not exceed the scope of the notice.

[1] It would be most unreasonable and inefficient to require an agency to publish the exact text of a proposed rule in order to obtain public reaction thereto and then require a republication and rehearing for every alteration made in the proposed rule before final adoption. Subsection B, quoted above, was enacted for the salutary purpose of avoiding such an unreasonable effect of the statute.

The Council cites authorities requiring "a meaningful opportunity to comment on the proposed regulation," and "a fair opportunity to present their views on the final plan."

The Council was in almost constant attendance at the public meetings of the Board during the consideration of the six successive drafts, including the final draft of the rules. All other members of the public were on notice of the continuing process of formulating the rules and had the privilege and opportunity of attendance and comment.

It is true that, at the September, 1989 meetings, it was announced that comment would be received until September 25, 1989. It is likewise true that additional information and comment was continuously received and considered after September 25, 1989. However, from the initial notice sent to and promulgated by the Secretary of State, the Council and other members of the public were on notice that the process of formulating rules on the stated subject would be an ongoing activity until the final form of the rules should be approved and published. Those who were interested enough to attend the first meeting were so informed; and, at subsequent meetings, those present were reminded and fully informed of the development of the text of the Rules.

[2] The Council does not complain that it was not kept informed. It complains that others, who did not attend subsequent meetings were not alerted by a second publication before adoption of the final draft.

T.C.A. Sec. 4-5-322 provides that:

> A person who is aggrieved by a final decision in a contested (administrative) case is entitled to a judicial review . . .

Since the Council had adequate notice of the administrative proceedings and complains only of possible lack of notice to others, it does not appear that the Council is an "aggrieved party" within the contemplation of Sec. 4-5-322. Tennessee Health Improvement Council v. Tenn. Health Facilities Comm., Tenn.App. 1981, 626 S.W.2d 272.

[3] When a plaintiff's standing is brought into issue, the relevant inquiry is whether the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision. Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976).

[4] A person challenging the actions of an administrative agency must satisfy the requirements of standing to sue. 73A C.J.S. Public Admn. Law and Proc., Sec. 189, p. 201.

[5] When the purposes of procedural requirements have been met, there is no need for the courts to require rigid adherence to formalistic rules. Complaint by a participant who had actual notice and adequate opportunity is precluded. Brown & Williamson Tobacco Corp. v. F.T.C., U.S.C.A. 6th Cir.1983, 710 F.2d 1165 cert. den., 465 U.S. 1100, 104 S.Ct. 1595, 80 L.Ed.2d 127 (1984).

To the same effect are White v. Henry, 199 Tenn. 219, 285 S.W.2d 353 (1955) and Wilgus v. City of Murfreesboro, Tenn.App., 532 S.W.2d 50.

After participating fully in the proceedings before the Board, the Council does not have standing to complain that it was aggrieved that others did not have equal opportunity.

[6] Even if it should be held that the Council has standing to seek review on the ground stated, the action of the Board must be affirmed because it substantially complied with the requirements of the Uniform Administrative Procedures Act.

The Council cites U.S. Life Title Ins. Co. v. Dept. of Commerce and Insurance, Tenn.App. 1989, 770 S.W.2d 537. In that case, the Commissioner of Commerce and Insurance adopted regulations affecting title insurance companies. Notice of a rule-making hearing was mailed to most of the title insurance companies, but two companies were omitted, had no notice of and did not attend the meeting. One of the omitted companies learned of the meeting two days after it occurred and, while the record remained open submitted written objections.

This Court invalidated the rules and said:

> The UAPA's notice requirements were only intended to be minimum requirements. The General Assembly did not desire to supplant or relax the more stringent notice procedures many agencies were already required to follow. Thus, Tenn.Code Ann. Sec. 4-5-203(a)(1) provides that, in addition to publishing notice in the Tennessee Administrative Register, agencies must also provide the notice required by any other statute "applicable to the specific agency or a specific rule or class of rules under consideration."

The Title Insurance Law imposes independent procedural constraints on the commissioner's rulemaking power. Tenn.Code Ann. Sec. 56-35-122 provides, in part, that:

> no such rule or regulation shall take effect until the same shall have been duly filed in the commissioner's office and until and after the expiration of thirty (30) days written notice to all insurance companies doing business in the state of Tennessee and after a hearing, if such shall have been requested in writing by any title insurance company prior to the termination of said thirty-day period.

Substantial compliance with statutory notice requirements is a necessary prerequisite to valid rulemaking proceedings. In light of the importance of adequate notice and the effect the proposed rules have on both the title insurance industry and consumers, we find that the

commissioner failed to prove substantial compliance with Tenn.Code Ann. Sec. 56-35-122. Accordingly, the 1983 amendments to Rule 0780-1-12 are invalid and unenforceable . . .

770 S.W.2d at 540, 543

It is seen that the cited decision was based upon failure to comply with a provision of the Title Insurance Law which is inapplicable to the present case.

The Council cites National Black Media Coalition v. Federal Communications Commission, U.S.C.A., 2nd Cir.1986, 791 F.2d 1016, wherein it was held that the Commission did not give proper notice to interested parties and relied upon inadequately disclosed data to reach its conclusions. In the present case, no question is made as to the adequacy of the initial notice; and T.C.A. Sec. 4-5-203(c)(2)(B), quoted above, validates the modifications within the scope of the notice. Moreover, the repeated public meetings and public discussions of all provisions of the final draft were adequate opportunity to the Council and the public to convey to the Board any desired information and/or argument.

In BASF Wyandotte Corp. v. Costle, U.S.C.A. 1st Cir.1979, 598 F.2d 637, it was held that regulations were not invalid because the final draft was so different from the first draft that interim drafts were not notice, and that use of data by the agency was not violative of the Administrative Procedure Act. The Court said:

> The essential inquiry is whether the commenters have had a fair opportunity to present their views on the contents of the final plan.

598 F.2d at 642.

In Shell Oil Company v. Environmental Protection Agency, U.S.C.A. DC, 1991, 950 F.2d 741, it was held that the Agency failed to give sufficient notice and opportunity for comment in respect to the adoption of a rule which was not "implicit in nor logical outgrowth of proposed rule." In the present case, the final draft was implicit in and a logical outgrowth of the original proposal and the procedure outlined above afforded interested parties ample opportunity for comment and opposition.

In Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency, U.S.C.A. DC, 1987, 824 F.2d 1258, it was held that a regulation was arbitrary and capricious for failure to explain or reconcile two regulatory standards which represented changes in the final draft "not in character with the original scheme" and "not a logical outgrowth of the notice and comment." Such infirmities are not found in the present procedure.

American Federation of Labor v. Donovan, U.S.C.A. DC, 1985, 757 F.2d 330, vacated a part of a rule which was found to be outside the scope of the original notice. In the present case, and under the procedure followed, the final draft was not outside the scope of the original notice. In that case, one of the plaintiffs actively participated in the ongoing proceedings, but there were other plaintiffs who did not. In the present case, the only plaintiff did actively participate.

[7] Administrative rule making does not require that the specific terms of a rule be determined in advance and be finally adopted without modification. It is sufficient if the statutory publication is adequate to inform the public of the subject matter of the rule to be considered and that the public have adequate opportunity to present and support its views as to what rule should be made regarding that subject matter. See Bassett v. State Fish and Wildlife Commission, 27 Or.App. 639, 556 P.2d 1382 (1976); Western Oil & Gas Assn. v. Air Resources Board, 37 Cal.3d 502, 208 Cal.Rptr. 850, 691 P.2d 606 (1984), Rybachek v. E.P.A., 9th Cir.1990, 904 F.2d 1276; California Citizens Bank Assn. v. United States, 9th Cir.1967, 375 F.2d 43, cert. den., 389 U.S. 844, 88 S.Ct. 96, 19 L.Ed.2d 112 (1967); American Transfer & Storage Co. v. Interstate Commerce Commission, 5th Cir.1983, 719 F.2d 1283; Action on Children's Television v. Federal Communications Commission, DC Cir.1977, 564 F.2d, 458.

[8] Interested parties are not entitled to a new publication in order to validate the consideration of additional factual information nor to an opportunity of rebuttal so long as the finished product is within the bounds of the original publication. BASF Wyandotte Corp. v. Costle, *supra*; Rybachek v. E.P.A., *supra*; Chemical Mfr. Assn. v. E.P.A., 5th Cir.1989, 870 F.2d 177; Air Transport Assn. v. C.A.B., DC Cir.1984, 732 F.2d 219; Community Nutrition Ins't. v. Block, DC Cir.1984, 749 F.2d 50.

In the present case, it is uncontroverted that the Council and the public had a fair opportunity to present their views of the final plan.

No fatal flaw is found in the administrative proceedings under review. The judgment of the Trial Court is affirmed. Costs of this appeal are taxed against the appellant and its surety. The cause is remanded to the Trial Court for such further proceedings as may be necessary and proper.

Affirmed and Remanded.

CANTRELL and KOCH, JJ., concur.

TOWN OF ERWIN, et al., Plaintiff-Appellee,
v.
UNICOI COUNTY, Tennessee, Defendant-Appellant.

No. 03A01-9111-CH-00382.
Court of Appeals of Tennessee, Eastern Section.
April 15, 1992.

Unicoi Chancery, Richard Johnson, Judge.

James H. Epps, III., Thomas Judd, Johnson City, for plaintiff-appellee.

Douglas K. Shults, Shults & Shults, Erwin, for defendant-appellant.

OPINION

FRANKS, Judge.

Defendant appeals from the Chancellor's enjoining it from "using property tax revenues for the purpose of collecting and disposing of refuse, until it complies with Tennessee Code Annotated Sec. 5-19-101, et seq. . . ."

Erwin is a town located in Unicoi County and provides weekly curbside garbage collection to its residents, and funds the service through municipal taxes. Unicoi County provides "drop-off" sites to its residents, and one of the sites is located within the town of Erwin. This service is funded through the general tax levy on all county residents.

The town of Erwin and its Mayor, Russell Brackins (**FN1**) sued for declaratory and injunctive relief on the grounds the general levy was contrary to applicable law and imposed a double tax on town residents for garbage service. The parties filed cross-motions for summary judgments on stipulated facts, and the Chancellor held the county's landfill resolution did not meet the statutory requirements of Tennessee Code Annotated Sec. 5-19-103, and *inter alia* enjoined further collection of taxes for that purpose.

Defendant first questions plaintiffs standing and argues the town has not alleged a special injury to create standing. Plaintiffs argue they have an interest in the county's compliance with the statutory scheme to avoid double taxation.

In City of Greenfield v. Butts, 582 S.W.2d 80 (Tenn.App.1979), taxpayers and several municipalities sought relief from a county tax used to repair county roads but not city streets. Since municipal residents had already paid for city street repairs, these plaintiffs sought either a reallocation of county funds or an injunction against the tax. Standing was not litigated, but the status of the parties to this case is analogous.

Taxpayer standing was directly at issue in Wamp v. Chattanooga Housing Auth., 384 F.Supp. 251 (E.D.Tenn.1974), when civic-minded residents challenged the development of a historic area. The Court held that taxpayers may not sue to restrain governmental action without alleging a special injury uncommon to other citizens, but an exception to this rule arises when a taxpayer asserts the assessment or levy is illegal or that public funds are misused. 384 F.Supp. at 255.

In this case, plaintiffs have an interest in determining the statutory scheme applicable to them is followed. The Declaratory Judgment Act at Tenn.Code Ann. Sec. 29-14-103 authorizes this approach as illustrated by City of Greenfield. The stipulations establish a justiciable controversy between the parties as to whether the county has properly exercised its power to tax i.e., whether the method of taxing complies with Tennessee Code Annotated Sec. 5-19-101 et seq.

The Chancellor correctly determined Unicoi County has not properly exercised its powers under Tennessee Code Annotated Sec. 5-19-103.

Tennessee Code Annotated Sec. 5-19-101 authorizes counties to provide garbage collection and/or disposal services as defined in Sec. 5-19-102. To exercise these powers, a county must pass a resolution to offer services through an existing agency, a county sanitation department, a board, or by contract with a municipality, utility, service district or private garbage service. T.C.A. Sec. 5-19-103.

As a condition to the exercise of this power by resolution, Tennessee Code Annotated Sec. 5-19-112 mandates:

> "No county shall adopt the resolution provided for in Sec. 5-19-103 until there shall have been presented to the regional planning commission serving such county a plan of services for a specified area or areas for study and a written report to be rendered within ninety (90) days after such submission unless, by resolution of the county legislative body or other governing body, a longer period is allowed." **(FN2)**

The record contains copies of contracts between Unicoi County and Bumpass Cove Environmental Control and Minerals for garbage disposal from 1972 to 1974. A document dated 1973 purports to be Unicoi County's resolution to provide garbage service by private contract. It appears to have been drafted after the effective date of the 1972 contract. An undated report ties the contracts not to T.C.A. Sec. 5-19-102, but to the Tennessee Solid Waste Disposal Act. The report is not otherwise identified, but affidavits of county employees establish the plaintiff, town, was providing collection service before the landfill contracts were effective and after they expired in 1977. The record does not establish compliance with the statutory mandate to submit the proposed resolution as required by Tennessee Code Annotated Sec. 5-19-112.

On the record before us, the county has not properly exercised its power by resolution to offer collection and disposal services. Its "resolution" is dated after one of the landfill contracts, nor was there otherwise compliance with the statutory requirement.

Accordingly, we do not reach the issue of whether the method of funding is in contravention of T.C.A. Sec. 5-19-108. Since the resolution was initially defective, the county is without authority to continue its present funding for collection and disposing of refuse pursuant to the resolution.

Accordingly, the judgment of the Trial Court is affirmed as to the declaration that the County has not complied with T.C.A. Sec. 5-19-101 et seq., and is enjoined from levying a tax under the existing resolution. The remainder of the Court's judgment is vacated and the cause is remanded for entry of a judgment consistent with this opinion with the costs assessed to appellant.

GODDARD and McMURRAY, JJ., concur.

FN1. The Mayor, Russell Brackins, sued in his personal capacity as a taxpayer.

FN2. Section (d) of this Statute provides:

"In the event there is no such regional planning commission, then the referral shall be to the local planning commission of the largest municipality within the county having such a commission, and, if no municipality within the county has such a planning commission, to the state planning office."

BURNT (Bring Urban Recycling to Nashville Today), et al., Petitioner/Appellants,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, BOARD OF HEALTH, et al., Respondents/Appellees.

No. 01-A-019108CH00292.
Court of Appeals of Tennessee,
Middle Section, at Nashville.
Jan. 29, 1992.

Appealed from the Chancery Court of Davidson County at Nashville; Davidson County No. 90-3090-I, Irvin H. Kilcrease, Jr., Chancellor.

Ronald W. McNutt, Williams and Dinkins, Nashville, for petitioner/appellants.

John L. Kennedy, The Department of Law of the Metropolitan Government of Nashville and Davidson County, Nashville, for respondents/appellees.

OPINION

CANTRELL, Judge.

The only question in this appeal is whether the Board of Health of the Metropolitan Government of Nashville and Davidson County acted illegally or arbitrarily in approving an expansion of the Nashville Thermal Transfer Plant. We affirm the chancellor's decision in the board's favor.

I.

Nashville incinerates part of its municipal waste and garbage at a plant near the downtown area. The heat generated in the burning process is used to make steam. The steam power is used to heat and cool downtown buildings.

In 1988, the Thermal Transfer Corporation sought approval from the board of health for its plans to add a new boiler to the plant. It became clear that the expansion would result in carbon monoxide emissions in an amount sufficient to require either offsetting reductions at other sites or a variance. Thermal applied for the variance and the board conducted several hearings, initially denying the variance because the application did not contain an overall plan for the management of Nashville's solid waste. Thermal finally got approval for the variance on the condition that a mechanical separator be included in the expansion.

Shortly after granting the variance, the health department notified Thermal that the expansion would have to meet some additional requirements proposed by the Environmental Protection

Agency. Although by this time the air quality in Nashville had improved so that a variance was no longer needed, Thermal amended its application, including in it some additional emission control equipment. On June 4, 1990, the health department staff approved Thermal's construction permit.

Interested parties appealed the staff's decision to the board. On August 9, 1990 the board refused to overturn the approval. On November 8, 1990, the board adopted formal findings supporting its decision.

The appellants obtained a common law writ of certiorari from the Chancery Court of Davidson County to review the board's action. The chancellor found the board's decision was supported by substantial and material evidence and dismissed the writ.

II.

Our review of the board's decision, like the chancellor's, is limited to a review of the essential legality of the proceedings; we do not weigh the evidence. Goodwin v. Metropolitan Board of Health, 656 S.W.2d 383 (Tenn.App.1983). We examine the record to determine whether the board acted arbitrarily, illegally, or in excess of its jurisdiction. Hoover Motor Express Co. v. Railroad and Public Utilities Commission, 195 Tenn. 593, 261 S.W.2d 233 (1953).

The appellants assert that the board acted illegally and arbitrarily by not giving due consideration to the social, economic and general welfare factors specified in Section 4-1-20 of the Metropolitan Code. That section provides:

> In the exercise of its powers to prevent, abate and control air pollution, the board shall give due consideration to such pertinent facts and circumstances, including, but not limited to:
>
> (a) The character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of the residents of the metropolitan government area.
>
> (b) The social and economic value of the air pollutants source.
>
> (c) The degree of detrimental effect of the air pollutants upon the achievement of the national ambient air quality standard for such pollutants.
>
> (d) The technical practicability and economic reasonableness of reducing or eliminating the emission of such air pollutants.
>
> (e) The suitability or unsuitability of the air pollutants source to the area in which it is located.

(f) The economic benefit gained by the air pollutants source through any failure to comply with the provisions of this chapter and regulations adopted pursuant to this chapter.

The board's minutes recite that the board did consider the factors set out in Section 4-1-20. Nevertheless, the appellants insist statements made at the hearing by two board members prove the contrary. Both members expressed an opinion that the board's job was to consider the technical factors and not to choose between incineration and recycling.

Based on that factor alone, however, we cannot say that the board abdicated its responsibility. The members' statements themselves are ambiguous and can be read as applying only to a decision on the merits of incineration versus recycling. The statements do not show that the members making them only considered whether the emissions from the expanded plant complied with applicable standards and ignored all other factors. Beyond that, however, there are five board members who signed the findings and conclusions affirming the staff's decision to issue the permit. It should be noted that no member made a motion to overturn the decision. The statements of two board members do not represent a majority of the members entitled to vote. The chairman had already announced to the meeting that it would take three votes to overturn the staff's decision.

Addressing the specific factors listed in Section 4-1-20, we find abundant information in the record on each of them. The board had received information and conducted hearings over a two-year period. The information had been digested and summarized in a series of staff memoranda containing suggestions for board action. Based on that information the board initially denied the requested variance and then, after granting the variance, required Thermal to take more steps to comply with stricter standards.

It is not for the courts to decide how much consideration should be given the evidence in favor of and against expansion of the thermal plant. That prerogative is given exclusively to the board. Its findings and conclusions are supported by material evidence.

The judgment of the court below is affirmed and the cause is remanded to the Chancery Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellants.

TODD, P.J., and LEWIS, J., concur.

TOWN OF DANDRIDGE, Tennessee, Petitioner/Appellee,
v.
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION and Jefferson County, Tennessee,
Respondents/Appellants.

No. 01-A-019110CV00391.
Court of Appeals of Tennessee,
Middle Section, at Nashville.
Jan. 29, 1992.

Appealed from the Circuit Court of Davidson County at Nashville, Davidson County No. 91C-2539; Thomas W. Brothers, Judge.

Gary A. Davis, Ray, Farmer, Eldridge & Hickman, Knoxville, Dianna Shew, Farris, Warfield & Kanaday, Nashville, for Town of Dandridge.

Charles W. Burson, Attorney General & Reporter, Michael D. Pearigen, Deputy Attorney General, Nashville, for Tennessee Department of Environment and Conservation,

T.E. Forgety, Jr., Rainwater, Forgety & Jones, Dandridge, John C. Lyell, II, Jerry C. Shelton, Lyell, Seaman & Shelton, Nashville, for Jefferson County.

OPINION

CANTRELL, Judge.

We granted permission to appeal under Rule 9, Tenn.R.App.Proc. to examine the trial court's holding that it would review de novo the Tennessee Department of Environment and Conservation's grant of a landfill permit to Jefferson County. For the reasons stated herein, we reverse the holding of the trial court.

I.

On August 21, 1991, pursuant to the Tennessee Solid Waste Disposal Control Act, TDEC issued a solid waste disposal permit to Jefferson County for the construction and operation of a new municipal solid waste landfill. Jefferson County's application had been vigorously opposed by the Town of Dandridge because the operation of the proposed landfill would jeopardize the town's water supply.

Dandridge filed a petition for writ of certiorari on September 9, 1991, and amended it to include Jefferson County on October 9, 1991. On October 10, 1991, TDEC filed a motion to dismiss, claiming that the circuit court could not hear the petition because it asked for the statutory writ of

certiorari. The circuit court denied the motion to dismiss and held that the statutory writ of certiorari is appropriate in this case.

II.

Although it is hard to make the distinction from reading the statutes, our courts have held that the writ of certiorari described in Tenn.Code Ann. Sec. 27-8-101 is the common law writ and the writ described in Tenn.Code Ann. Sec. 27-8-102 is a statutory writ. Boyce v. Williams, 215 Tenn. 704, 389 S.W.2d 272 (1965); Cooper v. Williamson County Board of Education, 746 S.W.2d 176 (Tenn.1987). The distinction is important because the court's scope of review is different, depending on which writ is involved. Under the common law writ review is limited to a determination of whether the "inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally." Hoover Motor Express Co. v. Railroad and Public Utilities Commission, 195 Tenn. 593, 261 S.W.2d 233 (1953). Under the statutory writ the review is *de novo*. Cooper v. Williamson County Board of Education, 746 S.W.2d 176 (Tenn.1987).

Without trying to survey all the cases that have recognized the right to review under the statutory writ, we may draw some general conclusions. First, the *de novo* review may be provided by statute. Id.; see also Fentress County Beer Board v. Cravens, 209 Tenn. 679, 356 S.W.2d 260 (1962); Kendrick v. City of Chattanooga, 799 S.W.2d 668 (Tenn.App.1990). In addition, the courts have tended to apply the statutory writ in cases where an administrative agency makes a decision adversely affecting a property right. See Prosterman v. Tennessee State Board of Dental Examiners, 168 Tenn. 16, 73 S.W.2d 687 (1934) (revocation of license); Rhea County v. White, 163 Tenn. 388, 43 S.W.2d 375 (1931) (removal of county school superintendent). In such cases, the administrative agency acts toward the holder of the license or office much as a court would; i.e., performs a function that is essentially judicial in nature.

In contrast, where the administrative agency is performing a function that is essentially legislative or administrative, only a narrow review under the common law writ is available. Hoover Motor Express Co. v. Railroad and Public Utilities Commission, 195 Tenn. 593, 261 S.W.2d 233 (1953); Peoples Bank of Van Leer v. Bryan, 55 Tenn.App. 166, 397 S.W.2d 401 (1965).

We are of the opinion that the decision to grant the solid waste disposal permit involves an essentially administrative function; i.e., the administration and enforcement of the solid waste act. Therefore, the court's power to review that decision is limited to an inquiry as to its essential legality. See Pack v. Royal-Globe Ins. Co., 224 Tenn. 452, 457 S.W.2d 19 (1970); Boyce v. Williams, 215 Tenn. 704, 389 S.W.2d 272 (1965). Therefore, we reverse the lower court's determination that its review of the action of the TDEC is *de novo* under the statutory writ of certiorari.

The cause is remanded to the Circuit Court of Davidson County for further proceedings consistent with this opinion. Tax the costs on appeal to the Town of Dandridge.

TODD and LEWIS, JJ., concur.

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The METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, Petitioner-Appellant,

v.

TENNESSEE SOLID WASTE DISPOSAL CONTROL BOARD, Respondent-Appellee.

Court of Appeals of Tennessee,
Western Section, at Nashville.
Dec. 20, 1991.

Permission to Appeal Denied by Supreme Court March 30, 1992.

Metropolitan government sought judicial review of a decision of the Solid Waste Disposal Control Board, which upheld a decision by the Tennessee Department of Health and Environment (TDHE) assessing penalties for failure to select a suitable site for a new landfill within six months before the completion or fill of an existing site. The Chancery Court, Davidson County, C. Allen High, Chancellor, upheld the penalty. Metropolitan government appealed. The Court of Appeals, Crawford, J., held that the metropolitan government's failure to comply with three orders, and the increasing risk to public health and safety from noncompliance, warranted a civil penalty of $120,000.

Affirmed.

Stephen Nunn, Nashville, for petitioner-appellant.

Charles W. Burson, Atty. Gen. and Reporter and Barry Turner, Assistant Atty. Gen., Nashville, for respondent-appellee.

OPINION

CRAWFORD, Judge.

Metropolitan Government of Nashville and Davidson County (hereinafter Metro) appeals from the order of the chancery court affirming the decision of the Tennessee Solid Waste Disposal Control Board (hereinafter Board) which upheld the assessment against Metro of a civil penalty in the amount of $120,000.00.

On December 7, 1989, the Commissioner of the Tennessee Department of Health and Environment (TDHE) issued his third order against Metro which assessed a contingent civil penalty in the amount of $120,000.00 if Metro failed to submit a suitable site for a new landfill or another environmentally acceptable alternative to TDHE by January 31, 1990.

The penalty was assessed for Metro's violation of T.C.A. Sec. 68-31-104(3) (1987) and Division Rule 1200-1-7. T.C.A. Sec. 68-31-104(3), as pertinent to the issue before us, provides:

> 68-31-104. Unlawful methods of disposal. - It shall be unlawful to:
>
> * * * * * *
>
> (3) Construct, alter, or operate a solid waste processing or disposal facility or site in violation of the rules, regulations, or orders of the commissioner or in such a manner as to create a public nuisance.

Division Rule 1200-1-7, which was promulgated by TDHE pursuant to T.C.A. Sec. 68-31-107, provides in pertinent part as follows:

> Regulations Governing Solid Waste Processing and Disposal in Tennessee. Chapter 1200-1-7:
>
> 20. Future planning - All owners or operators of registered sanitary landfills within the State of Tennessee shall file with the Department, by May 1 of every year, an estimate of the remaining life of their site. The report to include the original, usable acreage of the site and the remaining unused portion at the time of the report. Where measuring facilities are available, an average monthly weight (or volume) estimate of the incoming wastes shall be supplied. The Department shall have the final determination of the accuracy of the estimate.

A feasibility study as provided by Rule 1200-1-7-.04 must be submitted to the Department for a new site, facility or system one year prior to the completion of the existing facility. A suitable site for the new facility shall be selected six months before the existing site is completed. Design and construction plans shall be submitted 90 days prior to the closure of the existing site to assure continued operation in an approved facility site.

The assessment was made pursuant to T.C.A. Sec. 68-31-117 which, as pertinent, provides:

> Civil Penalties.
>
> (a) (1) Any person who violates or fails to comply with any provision of this part or any rule, regulation, or standard adopted pursuant to this part shall be subject to a civil penalty of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) per day for each day of violation.
>
> (2) Each day such violation continues shall constitute a separate violation. In addition, such person shall also be liable for any damages to the state resulting therefrom, without regard to whether any civil penalty is assessed.

(b) Any civil penalty or damages shall be assessed in the following manner:

(1) The commissioner may issue an assessment against any person responsible for the violation or damages. Such person shall receive notice of the assessment by certified mail, return receipt requested;

(2) Any person against whom an assessment has been issued may secure a review of the assessment by filing with the commissioner a written petition setting forth the grounds and reasons for his objections and asking for a hearing in the matter involved before the solid waste disposal control board. Such a hearing shall be a contested case and the provisions of chapter 5 of title 4 shall apply. The solid waste disposal control board shall have the power to enter such orders as in its opinion will best further the purposes of this part;

* * * * * *

(c) In assessing a civil penalty, the following factors may be considered:

(1) The harm done to public health or the environment;

(2) The economic benefit gained by the violators;

(3) The amount of effort put forth by the violator to attain compliance; and

(4) Any unusual or extraordinary enforcement costs incurred by the commissioner.

* * * * * *

[1] On January 8, 1990, Metro appealed the Commissioner's third order and petitioned for a hearing before the Board. After a hearing before the Board, an order was entered upholding the full penalty assessment. Metro filed a petition for judicial review of the Board's order in the Chancery Court for Davidson County pursuant to T.C.A. Sec. 4-5-322 (1991). The chancery court affirmed the Board's order, and initially the only issue for review was whether the chancellor erred in affirming the Board's order. However, in Metro's reply brief, it asserts that the contingent penalty is not authorized by the statute and that therefore the Commissioner lacks subject matter jurisdiction to make such an assessment which renders the assessment void ab initio. We must respectfully disagree with Metro's position. What Metro is actually bringing forth is a question of whether an interpretation of the statute authorizes an assessment which is contingent in

nature. In the first place, we do not have an assessment that was totally contingent in nature and in the second place we do not believe that this raises an issue of subject matter jurisdiction but merely raises an issue of statutory construction. Although subject matter jurisdiction may be raised for the first time on appeal, other issues may not be so raised. We will not consider this issue as presented by Metro.

The criteria for the Court's review of the Board's decision is set out in T.C.A. Sec. 4-5-322(h) (1991) which provides:

* * * * * *

(h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) Unsupported by evidence which is both substantial and material in the light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

[2] In Wayne County v. Solid Waste Disposal Control Board, 756 S.W.2d 274 (Tenn. App. 1988), the Court said:

> The narrower scope of review used to review an agency's factual determination suggests that, unlike other civil appeals, the courts should be less confident that their judgment is preferable to that of the agency. See 2 C. Koch, Administrative Law and Practice Sec. 9.4 (1985). Courts do not review the fact issues *de novo* and, therefore, do not substitute their judgment for that of the agency as to the weight of the evidence, Humana of Tennessee v. Tennessee Health Facilities Comm'n, 551 S.W.2d 664, 667 (Tenn.1977); Grubb v. Tennessee Civil Serv. Comm'n, 731 S.W.2d 919, 922 (Tenn.Ct.App.1987), even when the evidence could support a different result. Hughes v. Board of Comm'rs, 204 Tenn. 298, 305, 319 S.W.2d 481, 484 (1958).

756 S.W.2d at 279.

The present controversy arises out of Metro's operation of a sanitary landfill known as the "Bordeaux" landfill. In September of 1988, TDHE notified Metro that pursuant to Rule 1200-1-7 Metro must, among other things, select a new landfill site six months before the existing Bordeaux site is complete or filled. TDHE was subsequently advised that the remaining life of the Bordeaux landfill had been re-estimated and that it would reach capacity on March 21, 1990. Based upon this estimate, Rule 1200-1-7 required Metro to select a new landfill site on or before September 21, 1989, which is six months prior to the capacity date of March 21, 1990. Metro was notified on several occasions prior to September 21, 1989, that the site selection must be made by that date.

When Metro did not submit a site selection for the new landfill by September 21, 1989, notice of violation was sent to Metro and on September 29, 1989, TDHE served a Commissioner's order upon Metro assessing a penalty of $20,800.00 for Metro's failure to select a site by September 21, 1989. The order provided, however, that if Metro submitted a suitable site or an acceptable alternative plan within 30 days of September 21, 1989, $20,000.00 of the penalty would be forgiven. Metro did not submit a site as required and appealed this order to the Board for a hearing on the last day allowed for such an appeal. On October 31, 1989, a second order was issued by TDHE assessing a civil penalty of $43,200.00 against Metro, with $40,000.00 to be forgiven if Metro submitted a site plan or an alternative plan within 30 days of that order. Metro again failed to do what was required and filed an appeal to the Board of this order.

On December 7, 1989, a consent order between TDHE and Metro was approved and entered by the Board assessing a total penalty of $54,000.00 for the two previously appealed assessments.

Also on December 7, 1989, the Commissioner issued his third order, which is the subject of this appeal, against Metro assessing a civil penalty of $120,000.00, with the provision that the entire amount would be forgiven if Metro submitted a suitable landfill site or other environmentally acceptable plan to TDHE by January 31, 1990.

Before the Board, before the chancery court and before this Court, Metro has conceded that it did not comply with the statute and regulation regarding landfill operation. Metro's argument is premised on the size of the fine and not the fact that it was fined.

The third order was issued December 7, 1989. Metro had previously been assessed with penalties for its failure to comply with the regulation. At the time the third order was issued, it was in noncompliance for 37 days, but nevertheless was allowed until January 31, 1990, to comply and totally eliminate any penalty. The record establishes that Metro made no effective effort to comply with any of the three orders until after January 30, 1990. Proof was also introduced that among the factors considered at the time the third order was issued was the increasing potential risk to the public health and environment by Metro's continuing noncompliance. The potential for harm was actually realized to some extent by the time of the hearing before the Board, when proof was introduced concerning illegal dumping after the closing of the Bordeaux landfill and before operation of a new site.

The legislature established this state's public policy concerning solid waste disposal in T.C.A. Sec. 68-31-102 which provides:

> Public policy. - In order to protect the public health, safety and welfare, prevent the spread of disease and creation of nuisances, conserve our natural resources, enhance the beauty and quality of our environment and provide a coordinated statewide solid waste disposal program, it is declared to be the public policy of the state of Tennessee to regulate solid waste disposal to:
>
> (1) Provide for safe and sanitary processing and disposal of solid wastes;
>
> (2) Develop long-range plans for adequate solid waste disposal systems to meet future demands;
>
> (3) Provide a coordinated statewide program of control of solid waste processing and disposal in cooperation with federal, state, and local agencies responsible for the prevention, control, or abatement of air, water, and land pollution; and
>
> (4) Encourage efficient and economical solid waste disposal systems.

In the case before us, it is clear that Metro was acting contrary to the established public policy by its failure to comply with TDHE's efforts for long-range plans. The record indicates that Metro was given every opportunity and concession but failed to act in conformance with the statute and regulation.

The chancellor's memorandum and order provides:

> This is an action to review a decision of the Tennessee Solid Waste Disposal Control Board upholding a civil penalty assessed against plaintiff.

On December 7, 1989, the Commissioner of the Department of Health in his third order against plaintiff assessed a conditional civil penalty in the amount of $120,000 if plaintiff failed to submit a suitable site for a new landfill by January 31, 1990. Plaintiff missed the deadline. Two earlier orders for the same violations had been settled through the payment of an agreed $54,000 penalty. On January 8, 1990, plaintiff appealed the Commissioner's third order to the Board.

A full contested case hearing was held before the Board on April 11, 1990. The Board decided to approve the civil penalty.

Plaintiff does not contest the fine itself, but only the amount. However, the Court will not substitute its judgment for that of the Board. There is both substantial and material evidence in the record which furnishes a reasonably sound basis for the assessment of the civil penalty. The Board's decision was not arbitrary or capricious, nor characterized by an abuse or unwarranted exercise of discretion.

The decision of the Board is affirmed. Costs assessed to the plaintiff.

We have reviewed the record in its entirety and concur in the decision of the chancellor. Accordingly, the order of the trial court is affirmed and this case is remanded to the trial court for such further proceedings as may be necessary. Costs of appeal are assessed against Metro.

HIGHERS and FARMER, JJ., concur.

TOWN OF DANDRIDGE, Plaintiff-Appellant,
v.
L.D. PATTERSON and wife, Emma Jean Patterson, and Merchants and Planters Bank, Defendants,
and
Jefferson County, Tennessee, Defendant-Appellee.

Court of Appeals of Tennessee,
Eastern Section.
Nov. 13, 1991.

Application for Permission to Appeal Denied by Supreme Court March 16, 1992.

Town sought to exercise its power of eminent domain to condemn easement over real property in which county held option to purchase, to prevent county from constructing and operating solid waste landfill. The Circuit Court, Jefferson County, Rex Henry Ogle, J., denied relief, and town appealed. The Court of Appeals, Goddard, J., held that: (1) county's option contract created legally protected property interest or right that precluded town from condemning property, under intergovernmental immunity doctrine; (2) license feature of option also was legally protected property interest enabling county to invoke doctrine; and (3) that town sought to preserve its water supply did not bring it within exception to doctrine.

Affirmed and remanded.

Gary A. Davis, Knoxville and P. Richard Talley, Dandridge, for appellant.

T.E. Forgety, Jr., Dandridge, for appellee.

OPINION

GODDARD, Judge.

Town of Dandridge ("Dandridge"), Plaintiff, appeals the Circuit Court of Jefferson County's grant of a motion for summary judgment (FN1) in favor of Jefferson County ("County") and L.D. Patterson, et al., Defendants, denying the Plaintiff's condemnation petition. The Plaintiff seeks to exercise its power of eminent domain to condemn an easement over the Patterson's property which the owner had granted an option to the County to purchase for the purpose of constructing and operating a solid waste landfill.

Dandridge insists the Trial Court committed reversible error in holding that the County's unexercised option created such an interest or property right as to allow the County to invoke the intergovernmental immunity doctrine precluding the condemnation action. By its issues on

appeal Dandridge contends that the unexercised option to purchase real property does not create any legal or equitable property interest and that its power of eminent domain is superior to any right which may have been conferred upon the County.

FACTS

In November 1988, the County executed an irrevocable option contract to purchase for the sum of $350,000 certain property owned by the Pattersons, which is the subject of this litigation. (FN2) The option contract gave the County the right to enter upon the property to conduct tests to determine the suitability of the site for a solid waste landfill. All parties agree that the option contract is presently in full force and effect with an expiration date of December 31, 1991.

The option contract was duly recorded in the Register's Office for Jefferson County on August 7, 1990. However, Dandridge had been aware of the option contract since its inception. Further, Dandridge has been aware of the County's continuing investigatory tests.

In May 1989, the County decided to purchase the property provided the engineering work indicated it was feasible to locate a landfill upon the property. The County subsequently expended approximately $126,000 in landfill development activities on the property. After completing the engineering work, the County, on November 21, 1990, applied for a landfill permit from the Tennessee Department of Health and Environment. In March 1991, the State Department issued a tentative or draft permit approving the landfill site "pending consideration of any adverse technical information received during the public comment period" ending on April 29, 1991.

During the interim Dandridge conducted their own geologic survey at an estimated cost of $125,000. The results of the geologic tests found that a landfill located on the Patterson's property would threaten or possibly cause irreparable harm to the ground water supply for the Town of Dandridge's waterworks system. On February 6, 1991, Dandridge filed its condemnation petition seeking to condemn an easement over the Patterson property that would prevent the County from "constructing or operating . . . a solid waste landfill upon the[ ] property". Dandridge concedes the sole purpose for condemning the easement is to prevent the County from locating a landfill site upon the property.

LAW

As stated by the Trial Court, the issue presented for the Court to decide is "not where, when, or if a landfill is to be located on the subject property. The only issue for this Court is whether a condemnation action under the facts and circumstances of this case is proper." (FN3) As such, the Court held that the option contract possessed by the County is a legally protected contractual right creating a property interest which is not subject to condemnation by another governmental entity. For the reasons set forth below, we affirm.

[1] The parties stipulated to the general rule of law that one public entity has no power to condemn the property of another public entity devoted to a public use unless such power

has been specifically conferred upon the condemning governmental entity by the Legislature. Atlanta, K. & N. Ry. Co. v. Southern Ry. Co., 131 Fed. 657 (6th Cir.1904). The rule is commonly referred to as the doctrine of intergovernmental immunity. The State Legislature has not granted a specific power upon Dandridge to condemn the property of another public entity. Therefore, the dispositive issue is whether the unexercised option contract possessed by the County constitutes such a property interest to permit the County to invoke the doctrine of intergovernmental immunity.

[2] Dandridge contends that the general rule followed in the majority of American courts is that an unexercised option to purchase real property does not result in a legal or equitable interest in the property. See generally, Hirlinger v. Hirlinger, 267 S.W.2d 46 (Mo.1954); Phillips Petroleum Co. v. Omaha, 171 Neb. 457, 106 N.W.2d 727 (1960). Dandridge further contends that Tennessee specifically adopted this rule. In Sager v. Rogers, (an unpublished opinion of this Court, filed at Knoxville February 20, 1987), 1987 WL 6718, the question was posed whether an unexercised option to purchase real estate contained in a franchise agreement has priority over a subsequent sales contract concerning the same property. In reaching its holding, the Court recognized the principle that an option creates no interest in land. Id. The Court found where the purchaser had no actual or constructive notice of the option provision the rights of the purchaser are superior.

Most of the pertinent Tennessee cases cited by the litigants concern the equitable interests of purchasers who have acquired real property subject to a lease and option to purchase held by a third party. In these cases the Courts have struggled with the question of whether the purchaser had actual or constructive notice of the unexercised option to determine which competing interest should prevail. See Sager v. Rogers, *supra*; Texas Co. v. Aycock, 190 Tenn. 16, 227 S.W.2d 41 (1950). The question here is not to resolve the dispute between competing equitable interests. Rather, the issue is whether the County has an equitable interest protected from a condemnation suit via the intergovernmental immunity doctrine. Therefore, these cases are not applicable.

Neither Dandridge nor the County has provided, nor has this Court found, any Tennessee precedent specifically addressing the property interest of the holder of an unexercised option to purchase real property involved in a condemnation proceeding. This is a case of first impression in this Court.

Although an option to purchase might not create a present interest in land under some of the cases cited by Dandridge, see, e.g., Lynch v. Burger, 26 Tenn.App. 120, 168 S.W.2d 487 (1942), it is such an interest or right which would preclude Dandridge from proceeding with its condemnation suit.

The County has had the option contract since November 1988. Dandridge had been aware of the contract since its inception. After two years of meetings, negotiations, and tests, in November 1990, the County applied for a tentative permit for the landfill which was issued by the Tennessee Department of Health and Environment in March 1991. Only after the County

applied for the permit did Dandridge commence civil proceedings attempting to prohibit the landfill. Considering the facts presented herein, it is difficult to say that the County does not possess an equitable interest in the property, be it a lease, license or otherwise. The equitable interest thus created vests a valuable and compensable property right in the holder. See In re Governor Mifflin Joint School Auth. Petition, 401 Pa. 387, 164 A.2d 221 (1960) (holder of unexercised option to purchase land held entitled to compensation in condemnation proceeding for value of lost right to purchase property). The County's option contract created a legally protected property interest or right. Therefore, another governmental entity is precluded from condemning the land.

[3] Dandridge further asserts that the option contract held by the County merely grants a nonexclusive right to enter the premises for specific purposes. The right to use, enter and leave property owned by another party does not amount to a real property interest. United States v. Anderson Co., 575 F.Supp. 574 (E.D.Tenn.1983), aff'd, 761 F.2d 1169 (6th Cir.1985) (Tennessee law applied); Union Carbide Corp. v. Alexander, 679 S.W.2d 938 (Tenn.1984). Rather, the interest is possessory. Anderson Co., *supra*. In Anderson Co. the Court characterized the interest as a license to use the property and held that such a license created no real property interest in the land for purposes of assessing State *ad valorem* property taxes against the possessor. Id. Dandridge parallels the option contract to a license to use the premises which confers no property interest upon the holder.

The County contends, *inter alia*, that a license to enter or use real estate coupled with an interest in the property confers more than a possessory right; rather, it amounts to an easement. In Daugherty v. Toomey, 32 Tenn.App. 155, 158, 222 S.W.2d 195, 196 (1949), the Court said:

> "Where the licensee has acted in good faith, and has incurred expense in the execution of it, by making valuable improvements or otherwise, it is regarded in equity as an executed contract and substantially an easement . . ."

Citing 53 C.J.S., Licenses Sec. 90, p. 816. In this instance, the County characterizes the irrevocable option contract coupled with the subsequent investigatory expenditures as a legally protected property interest or right. The County avers that the interest or right created by this license feature would also preclude Dandridge from proceeding with their condemnation suit.

In reliance upon the contract, the County expended approximately $126,000 on the investigatory tests, the engineering work and the contract itself. Admittedly, Dandridge has paid roughly the same amount on geologic surveys. However, the County was properly relying on the license feature of the contract during its expenditures; Dandridge was merely conducting collateral tests with no other contractual or vested interest. As alluded to earlier, the County's option contract constituted a valuable and compensable property right in the land. Therefore, every provision in the executed option contract, including the license feature, is enforceable and reliance thereon legally protected.

This reasoning is in accord with that espoused in Daugherty v. Toomey, *supra*, where the Court noted the inequity of ignoring good faith expenditures in reliance of an executed license. The

County obviously relied upon the option contract in continuing to expend large sums of money to test the feasibility of locating a landfill on the property. The County took every preparatory step required to construct the landfill, administrative, architectural and financial. Therefore, the license feature of the option contract also constitutes a legally protected property interest enabling the County to invoke the intergovernmental immunity doctrine.

[4] Despite the County's aforementioned property interest, Dandridge contends the condemnation action is permissible. Dandridge notes an exception to the general rule that one government cannot condemn the property of another government. Duck River Electric, Etc. v. City of Manchester, 529 S.W.2d 202 (Tenn.1975). In Duck River, the City of Manchester exercised its eminent domain powers to acquire public works property within the city limits. The Tennessee Supreme Court permitted the City of Manchester to acquire so much of the electric system of the public nonprofit electric membership corporation as was within the boundaries of the city. Id. The Court found that since the city could not exclude any person within its boundaries from electrical service, as the electric membership corporation could, its public service was of a higher public use than Duck River's. Dandridge claims the prevention of irreparable harm to the town's water supply is a "higher" public use than the County's location of a landfill.

The Duck River Court premised its decision on the fact that public service corporations are not government entities, rather than an exception to the doctrine of intergovernmental immunity. After noting electric systems are seldom privately owned, the Court characterized such electric membership cooperatives as "manifestly low-grade, volunteer, public service type corporations, inferior in all respects, to municipalities . . ." Duck River, *supra*. Through enacting T.C.A. 7-34-104, the Tennessee Legislature knew that it was authorizing the condemnation by municipalities of such low-grade public service type utility operations engaged in supplying electric current to the public. Id. As such, the Legislature specifically conferred such power upon the City of Manchester. The opinion contains no reference to an exception to the general rule of intergovernmental immunity. The language regarding a higher use is merely dicta. This Court is not bound to follow Dandridge's tortured reasoning which would elevate the Duck River dicta to an exception to the general rule of law. See generally, City of Chattanooga v. State of Georgia, 3 Tenn.App. 42 (1926), (the judiciary will not transgress legislative responsibility in weighing the priorities of public uses concerning government property).

Likewise, this Court will not begin to carve out exceptions to the general rule of intergovernmental immunity premised upon the speculative priority of beneficial uses to the public. The public comment hearing appears to be the proper forum for such a debate.

The County has moved for consideration of post-judgment facts pursuant to Tennessee Rule of Appellate Procedure 14. A motion to consider post-judgment facts generally must be "unrelated to the merits". Advisory Commission's Comment under Rule 14 of the Tennessee Rules of Appellate Procedure. Such consideration lies within the discretion of this Court. Id. The motion concerns the final approval of the landfill site by the Tennessee Department of Health and Environment. Because the facts sought to be considered go to the merits of the controversy, the motion is denied.

For the foregoing reasons the Trial Court is affirmed and the cause remanded for such further action, if any, as is necessary and collection of costs below. Costs of appeal are adjudged against Dandridge and its sureties.

SANDERS, P.J. (E.S.), and FREDERICK D. McDONALD, Special Judge, concur.

FN1. Jefferson County ("County") was not an original party to Dandridge's condemnation proceeding against L.D. Patterson, et al., filed in the Circuit Court of Jefferson County. The Court ordered the County to be joined in the suit to litigate common issues of property interest related to the suit whereupon the County filed a motion for dismissal, or for judgment on the pleadings, or for summary judgment. The motion was properly treated as one for summary judgment pursuant to Tennessee Rule of Civil Procedure 12.03 and disposed of as provided in Rule 56.02.

FN2. Although the property is located within Jefferson County, it is outside the municipal boundaries of the Town of Dandridge.

FN3. The Court properly noted that the interests of Dandridge may be legally protected by other types of proceedings, i.e., the public comment hearing held by the Tennessee Department of Health and Environment.

ANDERSON COUNTY, Tennessee, Plaintiff-Appellee,
v.
REMOTE LANDFILL SERVICES, INC., Defendant-Appellant.

Court of Appeals of Tennessee,
Eastern Section.
Oct. 31, 1991.

Permission to Appeal Denied by Supreme Court March 30, 1992.

County brought an action against a landfill builder seeking to prevent construction of a landfill in the county. The Chancery Court of Anderson County, William E. Lantrip, Chancellor, entered judgment in favor of the county and the builder appealed. The Court of Appeals, Sanders, P.J. (E.S.), held that: (1) construction of the landfill had been approved by the county's governing body, and (2) the county board of commissioners could not summarily disapprove of the construction of the landfill.

Reversed and remanded.

Arthur G. Seymour, Jr., and Robert L. Kahn, Frantz, McConnell & Seymour, and Keith McCord, McCord, Weaver & Troutman, Knoxville, for defendant-appellant.

David A. Stuart, Stuart & Van Riper, Clinton, for plaintiff-appellee.

OPINION

SANDERS, Presiding Judge, Eastern Section.

The Appellant appeals from a chancery decree enjoining it from further development of its sanitary landfill in Anderson County until it receives approval of the governing body of Anderson County, pursuant to T.C.A. Sec. 68-33-103. It is the insistence of the Appellant it had received the required approval of the governing body through its Planning Commission and its Board of Zoning Appeals. We agree with Appellant's insistence, and reverse for the reasons hereinafter set forth.

In 1977 the county legislative body of Anderson County adopted a comprehensive zoning ordinance for Anderson County pursuant to T.C.A. Sec. 13-7-101, et seq. The statute gave the legislative body in each county the right to regulate the use of land in each county which is located outside of municipal corporations. Among the various use zones created in the Anderson County ordinance was "A-1 Agriculture-Forestry District." A number of uses were permitted under the "A-1" District. There were also a number of "use permitted" uses the "A-1" District could be used for. As pertinent here, Paragraph 7.4.C of the ordinance provided: "Special

Exceptions: In the A-1 Agriculture-Forestry District, the following uses and their accessory uses may be permitted subject to review and approval by the Anderson County Board of Zoning Appeals in accordance with the provisions of Article 11, Section 11.5." Among these uses permitted was: "Sanitary landfill operations, subject to the approval of the Anderson County Health Department and the Tennessee Department of Public Health."

Article 11, Section 11.5 of the Ordinance provides:

> "11.5 - Procedure for Authorizing Special Exceptions. The following procedure is established to provide a means for review of a proposed use by the Board of Zoning Appeals. The procedure shall be the same whether review is required by the resolution or whether a review is requested by the Zoning Officer to determine whether a proposed use is potentially dangerous, noxious, or offensive.
>
> > "A. Applications: An application shall be filed with the Board of Zoning Appeals for review. Said application shall show the location and intended uses of the site, the names of the property owners, and existing land uses within one thousand (1,000) feet, maps and documentation required by other relevant provisions of this resolution, and any other information deemed necessary and proper by the Board.
> >
> > "B. Restrictions: In the exercise of its approval, the Board of Zoning Appeals may impose such conditions upon the proposed uses of buildings or land as it may deem advisable in the furtherance of the general purposes of this resolution.
> >
> > "C. Validity of Plans: All approved plans, conditions, restrictions, and rules made a part of the approval of the planning commission shall constitute certification on the part of the applicant that the proposed use shall conform to such regulations at all times.
> >
> > "D. Time Limit: All complete applications reviewed by the Board shall be decided within sixty (60) days of the date of application, and the applicant shall be provided with either a written notice of approval or denial."

The ordinance also created a Board of Zoning Appeals in accordance with the requirements of T.C.A. Sec. 13-7-106, with authority "to hear and decide applications for special exceptions."

Article 10 of the ordinance provided for the "administration and enforcement" of the ordinance. As pertinent here, Section 10.2 provided: "The provisions of this resolution shall be administered by the Anderson County Zoning Office. The Zoning Officer shall administer and enforce this resolution." The Ordinance also gives the Zoning Officer the authority to issue building permits and temporary use permits and to issue "stop work orders." At all times pertinent here, Mr. Leon Waters was the Zoning Officer for Anderson County.

Some time in the latter part of 1988 Mr. Charles N. Whicker, Jr., who was general manager of Defendant-Appellant Remote Landfill Services, Inc. (Remote), became interested in developing

and operating a sanitary landfill on a tract of land in Anderson County. Mr. Whicker went to the Anderson County Zoning Office and asked Mr. Waters what steps he needed to take to get the land zoned for operation of a landfill. Mr. Waters told him the first thing he needed to do was to get the approval of the state.

As pertinent here, T.C.A. Sec. 68-33-101, et seq., known as the Sanitary Landfill Areas Act (SLAA), provided that no landfill area for the disposal of solid waste shall be constructed until the area shall have been approved by the Department of Health and Environment (DHE). After contacting DHE, Remote set out to meet the requirements of DHE to get approval of the area. This required a tremendous amount of geological work and surveys on the property, such as drilling for water levels, soil testing, etc. In December, 1988, Remote received the geological report of preliminary approval by DHE.

In April, 1989, Remote filed an application with the Anderson County Planning Commission (PC) for approval of the area for a landfill. The PC held a public hearing on the application. The PC found Remote had met all the requirements and issued a preliminary permit on May 9, 1989.

Remote then filed an application with the Anderson County Board of Zoning Appeals (BZA) for the landfill site to be approved as a special exception under the Zoning Ordinance. Midge Jessiman, staff planner for the local state planning office, notified BZA that Remote had met all requirements under the Zoning Ordinance and it was appropriate to approve the landfill site as a special exception under the Zoning Ordinance.

On May 22, 1989, BZA unanimously approved the landfill site for use as a landfill as a special exception under the Zoning Ordinance. No appeal was taken from this ruling.

At that time, the Metropolitan Knox Solid Waste Authority, Inc., in Knox County (Knox County Authority) was developing a large incinerator in Knox County to dispose of solid waste. Remote appeared before the Knox County Authority in June, 1989, to solicit approval to receive the incinerator ash and other solid waste for disposal at its landfill site. The Knox County Authority requested that Anderson County verify Remote's local approval. On June 13, 1989, Suzanne T. King, Deputy Zoning Officer for Anderson County, informed the Knox County Authority that Remote had, among other approvals, obtained the necessary approval from BZA, had met the requirements and criteria of Anderson County regarding the construction of the landfill site, and was awaiting final approval from the state.

DHE published notice of a public hearing on the landfill site in February, 1990. Following the public hearing and the expiration of the period for filing written comments, DHE issued a permit to Remote authorizing Remote to construct and operate a landfill facility.

In the early part of 1990 the Board of Commissioners of Anderson County began a series of actions in an attempt to prevent the landfill from being built. At their regular meeting in March they adopted a resolution strongly opposing the landfill. In their resolution they stated they should urge the governor and Anderson County's state legislators to use their influence to take whatever legal action was permitted under state law to prevent the landfill from being operated.

In another resolution they urged that Anderson County legislators have the general assembly pass a private or public act which would prohibit any other landfills from being located in Anderson County. At the meeting of the Board of Commissioners in May, they adopted another resolution saying the landfill "is hereby disapproved." The following are excerpts from the county attorney's explanation of the purpose of the resolution: "The purpose of this resolution is to have the Board of County Commissioners expressly disapprove this landfill site and, hopefully, create an obstacle to having the landfill completed there"; "This resolution alone might be sufficient to stop it, but I would recommend that as a back-up measure we also look at the appropriate amendments to the zoning ordinance"; and "[W]e don't know yet to what extent these efforts are going to be successful in stopping the landfill and--but the idea is to create a variety of barriers and, hopefully, one of which will stop it. . ."

Although on May 22, 1990, Mr. Waters, the Anderson County Zoning Officer, had issued Remote a grading permit for constructing a permanent road into the project, on June 13, 1990, at the request of the Board of Commissioners, he issued a "stop work notice" to Remote.

On June 19, 1990, Anderson County filed a complaint against Remote asking for a declaratory judgment and injunctive relief. The essence of the County's complaint was that Remote never received approval of the governing body of the area in which the landfill site was to be located. The County relied upon T.C.A. Sec. 68-33-103 which, as pertinent here, provides: "No landfill area for the disposal of solid waste materials in this state shall be constructed . . . unless the location of the landfill area shall have been approved by the . . . governing body of the area in which the site is located." The County said, since Remote failed to receive approval from its governing body to place a landfill in the area where the proposed site is located, it should be enjoined from proceeding further. The County prayed for a temporary restraining order, which was issued.

Remote filed a Rule 12, T.R.C.P., motion alleging: "[T]he Complaint fails to state a cause of action for which relief can be granted for the reason that Anderson County and its governing body, having enacted a zoning ordinance as authorized under T.C.A. Sec. 13-7-101, et seq., and having created under said ordinance a Board of Zoning Appeals pursuant to T.C.A. Sec. 13-7-106 with jurisdiction and powers authorized pursuant to T.C.A. Secs. 13-7-107, 13-7-108 and 13-7-109, has already authorized and approved, to the full extent necessary and required by applicable law, the location, site, use and plans for Defendant to operate a sanitary landfill in Anderson County, Tennessee. The Anderson County Board of Zoning Appeals approved the location, site and use at its meeting on May 22, 1989, which approval is final and non-appealable. Defendant's plans for the landfill were approved by the Anderson County Regional Planning Commission on May 9, 1989."

The Rule 12 motion was overruled and Remote filed its answer. In its answer it said that, for the same reasons set forth in its Rule 12, T.R.C.P., motion, the governing body of Anderson County had approved the site for the sanitary landfill and no further approval or consent was required under the provisions of T.C.A. Sec. 68-33-103. It denied the provisions of T.C.A. Sec. 68-33-101, et seq., apply to the Plaintiff because it is unconstitutional, null and void.

As an affirmative defense, the Defendant alleged it had complied with all of the requirements of the Zoning Ordinance and the Zoning Board of Appeals and all of the requirements of DHE to have the area zoned as a landfill site and any attempt by the County or its Board of Commissioners to prevent or deny Defendant's right to operate a landfill facility is illegal, arbitrary, and void.

Upon the trial of the case, the chancellor found: "The enactment of the Zoning Ordinance and its delegation to the Board the authority to grant the special use permit does not constitute the approval required by T.C.A. 68-33-103." He also held T.C.A. Sec. 68-33-101, et seq., was not unconstitutional and that until such time as the Defendant complied with T.C.A. Sec. 68-33-101, et seq.--that is, getting the approval of the governing body of Anderson County for the location of the landfill site--it is enjoined from further construction of a landfill on its property.

The Defendant has appealed, presenting the following issues for review:

1. "Whether Remote's Landfill Site has been approved by the governing body of Anderson County";

2. "Where a county governing body has enacted a Zoning Ordinance approving and permitting land to be used as a landfill and the landfill site has been approved and permitted under the Tennessee Solid Waste Disposal Act, Tenn.Code Ann. Sec. 68-31-101, et seq., does the Sanitary Landfill Areas Act, Tenn.Code Ann. Sec. 68-33-101, et seq., assuming it is constitutional, authorize and empower the county governing body to arbitrarily and without due process, summarily disapprove and 'veto' the use of the land as a sanitary landfill by adopting a simple resolution in contravention of the County Zoning Ordinance?";

3. "Whether the May 21, 1990, Resolution of the Anderson County Board of Commissioners disapproving the Landfill Site denied [sic] Remote due process, is an arbitrary, unreasonable and capricious act, and effectively amended the Zoning Ordinance without compliance with statutory requirements";

4. "Should the expenditure of substantial funds for engineering, testing, and developing plans and specifications for the design and construction of a solid waste disposal facility pursuant to the Tennessee Solid Waste Disposal Act, Tenn.Code Ann. Sec. 68-31-101, et seq., in combination with compliance with the requirements of all local zoning ordinances serve to vest in the Defendant-Appellant the right to use its property as a landfill notwithstanding the subsequent attempt by the governing body of Anderson County to disapprove the use of the land as a landfill pursuant to the Sanitary Landfill Areas Act, Tenn.Code Ann. Sec. 65-33-101, et seq.?;

5. "Is the Sanitary Landfill Areas Act, Tenn.Code Ann. Sec. 68-33-101, et seq., unconstitutional?"

[1] We hold the answer to the first issue to be in the affirmative. Before further discussion of this issue, however, we think it appropriate to point out that the proof in the record, without dispute, showed the Defendant had complied with all of the requirements of the Anderson County Zoning Ordinance and T.C.A. Sec. 68-33-101, et seq., except it had not gone before the governing body of Anderson County to secure additional approval of the landfill site.

In his memorandum opinion, the chancellor said: "The defendant has taken all steps required pursuant to the county's Zoning Ordinance which would authorize the use of defendant's property for a landfill." We concur in this finding. The chancellor, in his opinion, did not say whether the approval of the Anderson County Planning Commission and Board of Zoning Appeals did or did not constitute the approval of the governing body of Anderson County insofar as the Zoning Ordinance was concerned. Instead, he held it "did not constitute the approval required by T.C.A. Sec. 68-33-103." Since the governing body of Anderson County expressly provided in its Zoning Ordinance adopted in 1977 that sanitary landfills could be operated in A-1 Agriculture-Forestry Districts, subject to review and approval by its County Zoning Board of Appeals, we find nothing in T.C.A. Sec. 68-33-103 which would require a second approval by the governing body after the Board of Zoning Appeals had given such approval. There is nothing ambiguous in the wording of T.C.A. Sec. 68-33-103. In simple terms, it says, "No landfill shall be constructed in a county unless its location has been approved by its governing body." Has the governing body of Anderson County approved the location for the landfill? That question answers itself.

The second question which arises is: What would be the purpose in requiring a second approval by the governing body? If there be one, we think it was answered in the case of Sexton v. Anderson County, 587 S.W.2d 663 (Tenn.App.1979) where the court, addressing the enactment of the Anderson County Zoning Ordinance, said:

> By the inclusion of a sanitary landfill as a special exception, obviously the Quarterly County Court did not consider that a landfill per se would be harmful to general health, safety and welfare. If, during the course of operation of a landfill, such conditions develop, a remedy is available to abate such conditions as would be harmful to general health, safety and welfare.

Id. at 665.

[2] To interpret T.C.A. Sec. 68-33-103 as the holding of the court would require would make it in sharp contrast with and contradictory to T.C.A. Sec. 13-7-101, et seq., and Articles 7 and 11 of the Anderson County Zoning Ordinance. In construing statutes and ordinances, courts should, where it is possible, read the statutes and ordinances in such manner as to avoid conflict with other statutes. In the case of Tennessee MFR'D Housing v. Metro Government of Nashville, 798 S.W.2d 254 (Tenn.App.1990) the court, in addressing the construction of statutes and ordinances, said:

> Courts should construe municipal ordinances, including zoning ordinances, using the same rules of construction applicable to statutes.

798 S.W.2d at 260.

In Parkridge Hospital, Inc. v. Woods, 561 S.W.2d 754 (Tenn.1978) the court, in addressing the necessity of reconciling statutes, said:

> It is the duty of the Court in construing statutes to avoid a construction which will place one statute in conflict with another, and the Court should resolve any possible conflict between the statutes in favor of each other, whenever possible, so as to provide a harmonious operation of the laws.

[3] In the case of State ex rel. Browning-Ferris Industries of Tenn., Inc. v. Board of Commissioners of Knox County, 806 S.W.2d 181 (Tenn.App.1990), in addressing the issue of how zoning laws should be construed, the court said:

> Although elemental, it bears restating that the right of a county to enact or amend zoning regulations is based upon powers delegated to it by the state legislature by specific enabling act. (Citations omitted.) Furthermore, inasmuch as zoning laws are in derogation of the common law and operation to deprive a property owner of a use of his land that would otherwise be lawful, they are to be strictly construed by the courts in favor of the property owner. (Citations omitted.)

806 S.W.2d at 187.

[4] We hold it was error for the trial court to find that approval could not be given for the location of the landfill by an administrative agency of the governing body, that is, the Board of Zoning Appeals, but that consent could be given only by the governing body. In addressing this issue, the court, in Houck v. Minton, 187 Tenn. 38, 212 S.W.2d 891 (1948), said:

> There is manifest error in the contention that the governing authority of a city, as to enforcement of some specific police power, must be exercised solely by a legislative council . . . The agencies of government in a municipality vary in number and, singly or collectively, may be a part of its governing authority.

212 S.W.2d at 891.

The court further said: "Our cases are numerous wherein the question of the delegation of police power by the Legislature to subordinate agencies has been approved." Id. at 895.

We also hold it was error for the trial court to fail to find the Planning Commission and the Board of Zoning Appeals did, on behalf of the governing body of Anderson County, approve the landfill location site for the Defendant. It is a well-settled principle of law in this jurisdiction that a governing body may delegate administrative powers to a planning commission or a board of zoning appeals:

> The powers, duties, and authority of particular bodies or officials charged with the administration of the zoning regulations are such as are conferred on them by the controlling legislative provisions. The local legislative body may delegate to the administrative agency full authority to execute the legislative policy, controlled by specified rules of conduct . . .

101A C.J.S. Zoning and Land Planning Sec. 178. (Emphasis ours.) The legislative body of Anderson County "delegate[d] to the administrative agency full authority to execute the legislative policy" as set forth in its ordinance, where it provided, in Article 10, Section 10.2 as follows: "The provisions of this resolution shall be administered by the Anderson County Zoning Office. The Zoning Officer shall administer and enforce this resolution."

[5] In McCallen v. City of Memphis, 786 S.W.2d 633 (Tenn.1990) the court, in addressing the exercise of delegated administrative authority, said: "In order to qualify as an administrative, judicial, or quasi-judicial act, the discretionary authority of the government body must be exercised within existing standards and guidelines." This raises the question of what were the "existing standards and guidelines" set out in the ordinance for the Defendant to get approval for a landfill site at the time it filed its application. The answer to that question is contained in Article 7, Section 7.4(c), which provides: "In the A-1 Agriculture-Forestry District, the following uses [sanitary landfill operations] and their accessory uses may be permitted subject to review and approval by the Anderson County Board of Zoning Appeals . . ." When the Board of Zoning Appeals gave approval to Remote to construct and maintain its landfill in the area applied for, that not only satisfied the requirements of the Zoning Ordinance but also the requirements of T.C.A. Sec. 68-33-103.

[6] The Appellant's second issue is whether the Board of Commissioners of Anderson County was empowered to arbitrarily and summarily disapprove and "veto" the use of Appellant's land as a sanitary landfill. The answer to this issue is in the negative. Even if the Board of Commissioners of Anderson County had retained the right to review the action of the Planning Commission or the Board of Zoning Appeals or had this power been conferred by T.C.A. Sec. 68-33-101, et seq., the Commission would have been without authority to deny permission under the facts in the case at bar.

[7] In view of the trial court's holding that the Defendant had complied with all of the requirements of the Zoning Ordinance and our holding that he has complied with all the requirements of T.C.A. Sec. 68-33-101, et seq., nothing remains to be done except the issuance of a permit, and that cannot be arbitrarily denied. In the case of Harrell v. Hamblen County Quarterly Court, 526 S.W.2d 505 (Tenn.App.1975) this court quoted with approval as follows:

> "Ordinarily the issuance of a building permit is purely an administrative act, and the person charged with its issuance must follow the literal provisions of the zoning ordinance. He is circumscribed by their provisions and absent some cogent reason based on the wording in the ordinance, the granting of a permit is

> required as a matter of course. The granting or withholding of a permit is not a matter of arbitrary discretion. If the applicant complies with the requirements of the ordinance, he is entitled to his permit."

526 S.W.2d at 509.

In the case of State ex rel. Browning-Ferris Industries v. Commissioners of Knox County, 806 S.W.2d 181 (Tenn.App.1990) the court, in addressing this same issue, quoted with approval as follows:

> "The grant or refusal of a permit is to a certain extent within the sound discretion of the board or official authorized to issue it, but the discretion must be exercised reasonably and, if an applicant meets all of the requirements of the zoning regulations and there is no valid ground for denial of the application, the permit should be issued."

101 C.J.S. Zoning, Sec. 224.

"The Law of Zoning and Planning," Chapter 55, Section 3, says:

> "So long as the application is in order and the proposed use of the property complies with applicable municipal ordinances or, where although not complying, the premises has a vested non-conforming status, the applicant is entitled to a permit, and it is the duty of the administrative officer to issue him one."

806 S.W.2d at 193. Also see Merritt v. Wilson City Board of Zoning Appeals, 656 S.W.2d 846 (Tenn.App.1983); Father Ryan High School v. Oak Hill, 774 S.W.2d 184 (Tenn.App.1988); Harrell v. Hamblen County Quarterly Court, 526 S.W.2d 505 (Tenn.App.1975); Sexton v. Anderson County, 587 S.W.2d 663 (Tenn.App.1979).

In view of our holding on these two issues, the other issues are pretermitted.

The decree of the chancellor is reversed and the complaint is dismissed. The case is remanded to the trial court for any further necessary proceedings. The cost of this appeal, together with the cost in the trial court, is taxed to the Appellee.

GODDARD and McMURRAY, JJ., concur.

BROWNING-FERRIS INDUSTRIES OF TENNESSEE, INC.,
Plaintiff-Appellant,
v.
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, Defendant-Appellee.

No. 01-A-019104CH00156.
Court of Appeals of Tennessee,
Middle Section, at Nashville.
Oct. 30, 1991.

Permission to Appeal Denied by Supreme Court Feb. 24, 1992.

Appealed from the Twentieth Judicial District, Part III, Chancery Court for Davidson County, Davidson Equity Docket No. 90-170-III, Robert S. Brandt, Chancellor.

Richard Lodge, Robert E. Cooper, Jr., Bass, Berry & Sims, Nashville, John H. Harris, Jr., Michael F. Rafferty, Harris, Shelton, Dunlap & Cobb, Memphis, for plaintiff-appellant.

Stephen Nunn, Metropolitan Attorney, Nashville, for defendant-appellee.

OPINION

LEWIS, Judge.

Browning-Ferris Industries of Tennessee, Inc. (BFI) appealed from the Chancellor's granting of The Metropolitan Government of Nashville and Davidson County, Tennessee's (Metro) motion for summary judgment.

BFI filed its complaint against Metro and sought an order restraining Metro from enforcing regulations promulgated by Metro effective 2 January 1991 regulating the collection and disposal of solid waste (hereafter referred to as "Flow Control").

Metro answered and sought an injunction ordering BFI to operate in Davidson County, Tennessee in full compliance of the Flow Control regulations. The Chancellor denied both applications.

Subsequently, both parties moved for summary judgment. The Chancellor granted Metro's motion and denied BFI's. BFI by this appeal presents one issue:

> Whether The Metropolitan Government of Nashville and Davidson County ("Metro") acted beyond its authority to exercise exclusive control of the disposal of solid waste "in connection with the construction, financing, operation or maintenance of an energy

production facility" granted by the General Assembly in T.C.A. Sec. 7-54-103(d) by enacting regulations requiring private waste hauling companies to dispose of all solid waste collected within Metro's boundaries at Metro's land fill and its thermal plant and by using revenue raised as a result of these regulations for purposes totally unrelated to an energy production facility?

The facts established by the pleadings and affidavits are as follows:

> Pursuant to Tennessee Code Annotated, Section 7-54-103(d), Metro has the exclusive right to control the collection and disposal of solid waste within its boundaries "in connection with the construction, financing, operation or maintenance of an energy production facility." "Energy production facility" is defined as a "facility for the production, conversion, or transmission of energy from the controlled processing of fossil or other fuels and the production of electricity, steam, or other forms of energy for heating, cooling, manufacturing processes, and other uses . . ." Tenn.Code Ann. Sec. 7-54-101(2).

Metro operates the Nashville Thermal Transfer plant (hereafter Thermal Plant) in Nashville, Davidson County, Tennessee. The Thermal Plant burns solid waste and uses the energy produced to provide heating and cooling to various buildings in Nashville. Metro also operates the Bordeaux Landfill which is located within its boundaries. The "tipping" or disposal fee for disposing of solid waste at Metro's Bordeaux Landfill and at the Thermal Plant is $7.00 per cubic yard.

BFI is involved in the business of the collection, transportation and disposal of solid waste. In addition to collecting and transporting solid waste in Davidson County, BFI operates the Middle Point landfill in Rutherford County, Tennessee through a wholly owned subsidiary. The Middle Point Landfill is registered and permitted as a sanitary Landfill by all applicable federal, state and local authorities. The tipping fee at BFI's Middle Point Landfill is $5.50 per cubic yard. Prior to the promulgation of its Flow Control regulations, Metro entered into an agreement with BFI to use the Middle Point Landfill for the disposal of some of Metro's municipal solid waste.

In December 1990, Metro's acting Public Works Director promulgated regulations entitled "Public Works Regulations on Collection and Disposal of Solid Waste" (the Flow Control regulations) which were to be effective 2 January 1991. The Flow Control regulations empowered Metro's Public Works Director to designate the only approved sites or facilities for disposal of solid waste collected within Metro's boundaries. On 7 January 1991, the director designated the Thermal Plant and the Bordeaux Landfill as the only approved disposal sites. The regulations as applied prohibited BFI from disposing of solid waste collected within Metro's boundaries at sites located outside of Metro's boundaries. The Flow Control regulations, in pertinent part, are as follows:

> Section 2. Scope.
>
> (a) No Person shall engage in business as a Collector, Hauler or Remover of Solid Waste, or shall own or operate any solid waste disposal facility

within the boundaries of the Metropolitan Government, without first securing a License.

(b) Disposal of all Solid Waste collected within the boundaries of the Metropolitan Government shall be at a site or sites determined by the Director to be (a) appropriate under applicable federal, state and local laws and regulations; (b) necessary to provide for safe and sanitary processing and disposal of Solid Waste; and (c) in the interest of efficient, economical operation of the Metropolitan Government's solid waste management system. The Director shall maintain a written register of such sites. Failure to dispose of Solid Waste at site(s) thus identified by the Director shall be cause for revocation or suspension of a License issued pursuant to this regulation.

Public Works Regulation on Collection and Disposal of Solid Waste, at 3.

It is admitted by Metro that revenue raised from tipping or disposal fees at the Bordeaux land fill and the Thermal Plant is used for purposes other than the "construction, financing, operation or maintenance" of the Thermal Plant. Revenue raised at the Thermal Plant from tipping or disposal fees exceeds the Thermal Plant's operation cost and debt service. Disposal fees are not collected from Metro for its waste delivered to the Thermal Plant.

The Chancellor's Memorandum, which we adopt, in pertinent part is as follows:

> The Tennessee General Assembly has enacted a statute which authorizes municipal governments to construct and operate facilities which generate energy from burning solid waste. T.C.A. Sec. 7-54-101, et seq. Section 7-54-103(d) grants to the Metropolitan Government authority to regulate the collection and disposal of solid waste in Davidson County. It provides in pertinent part: "In connection with the construction, financing, operation or maintenance of an energy production facility . . ., a municipality . . . is authorized to exercise exclusive jurisdiction and exclusive right to control the collection and disposal of solid waste within its boundaries." A Metropolitan Government ordinance authorizes the Director of the Department of Public Works to make solid waste rules and regulations. Ordinance Sec. 36-1-43.

Peter Heidenreich issued the regulation which requires a license from the Metropolitan Government to engage in the solid waste disposal business. The regulation also provides that the Director of Public Works shall determine which sites are appropriate for solid waste disposal. Heidenreich's affidavit describes him as Associate Director of the Department of Public Works. The regulation refers to him as the Director. In any event, by letter of January 7, 1991, Heidenreich informed BFI that all the solid waste it collects in Davidson County must be disposed of at the Bordeaux Sanitary Landfill or the Nashville Thermal Transfer Corporation.

BFI does not want to comply with the directive because it can dispose of solid waste it collects at a reduced cost at its own landfill in Rutherford County. The Metropolitan Government wants

BFI to deliver all its waste to one of the two sites because of asserted concern over whether there will be sufficient garbage to burn at the thermal plant.

BFI contends that the regulation is beyond the scope of authority given to Metro by T.C.A. Sec. 7-54-103(d) because portions of the tipping fees collected at the thermal plant and at the Bordeaux Landfill are used for purposes other than "in connection with" the construction, financing, operation or maintenance of an energy production facility.

BFI focuses on T.C.A. Sec. 7-54-103(d) because it is the only part of this code section cited in the regulation. However, this does not preclude the Court from examining T.C.A. Sec. 7-54-101, et seq. in its entirety to ascertain legislative intent and to determine the meaning of the phrase "in connection with." The phrase is used in several places in Title 7, Chapter 54. For example, T.C.A. Sec. 7-54-103(f) allows the Metropolitan Government to pledge "revenues derived from or 'in connection with' " the operation of any energy production facility. This implies that the "in connection with" revenues might be from sources other than those generated by operations of the energy facility. Likewise, use of this phrase in 103(d) allows regulation even though tipping fees are not allocated 100% for plant operations.

Tennessee Code Annotated, Section 7-54-103(d) grants broad powers to a municipality to "control the collection and the disposal of solid waste generated within its boundaries." BFI attempts to place a much too narrow construction on the phrase "in connection with" contained in Code Section 7-54-103(d).

We agree with the Chancellor that the adoption of Flow Control Regulations by Metro is a "reasonable extension of the exclusive right to control" which is expressly given to Metro in Tennessee Code Annotated, Section 7-54-103(d).

BFI insists that Metro may control disposal waste only to the extent it is necessary to have sufficient garbage for use at the Thermal plant.

The statute, taken as a whole, is much broader than that. Metro is granted the "exclusive right to control the collection and disposal of solid waste within its boundaries." Tenn.Code Ann. Sec. 7-54-103(d). To adopt the narrow construction that BFI advocates would frustrate the intention of the legislature.

The Chancellor correctly granted Metro's motion for summary judgment. We therefore affirm and remand the case to the Chancery Court for the enforcement of its decree, the collection of costs which are taxed to BFI, and for any further necessary proceedings.

TODD, P.J., and CANTRELL, J., concur.

SMITH COUNTY, Tennessee, Plaintiff/Appellee,
v.
Patrick H. EATHERLY, et ux., Mary Frances Eatherly,
Defendants/Appellants.

Court of Appeals of Tennessee,
Middle Section, at Nashville.
July 26, 1991.

Permission to Appeal Denied by Supreme Court Dec. 2, 1991.

County condemned property for use as landfill, and property owners requested jury trial on issue of damages. The Circuit Court, Smith County, Bobby Capers, J., awarded judgment on jury verdict and property owners appealed. The Court of Appeals, Koch, J., held that: (1) refusal to qualify county commissioner and chairman of solid waste disposal committee or county executive as experts to elicit their opinions concerning value of property which was being condemned was justified, where both officials equivocated on their ability to give expert opinion about property's value; (2) county commission's deliberations concerning details of condemnation of property and price which county would offer for property which was to be condemned for use as landfill were not relevant in proceeding in which amount of damages was at issue; and (3) evidence supported jury verdict of $98,600 as damages for condemnation of property.

Affirmed and remanded.

Jacky O. Bellar, Carthage, for plaintiff/appellee.

James L. Bass, Bass & Bass, Carthage, for defendants/appellants.

OPINION

KOCH, Judge.

This appeal arises from Smith County's condemnation of property needed for a new landfill. The property owners requested a jury trial on the issue of damages, and a jury in the Circuit Court for Smith County awarded them $98,600. The property owners have appealed, taking issue with the evidentiary foundation of the jury's verdict and with the trial court's exclusion of portions of their proof concerning the value of the property. **(FN1)** We affirm the judgment.

I.

In the late 1980's, the Smith County Commissioners determined that the county was in need of a new landfill and appointed a special committee to search for possible landfill sites. The

committee eventually recommended a 42.71-acre tract of undeveloped farmland owned by Patrick and Mary Frances Eatherly. The property was located less than a mile from the Carthage city limits and was considered suitable for a landfill because it contained both a clay liner and a considerable amount of excess dirt.

In October, 1988, the county commissioners voted to condemn the Eatherlys' property and, on the advice of their appraisers, determined that just compensation for the property was $118,000. The county attorney filed the condemnation petition in November, 1988 and made a formal tender of $118,000 into court. The Eatherlys did not contest the county's right to condemn the property and entered into an agreement allowing the county immediate possession of the property. They did not, however, agree to accept $118,000 for the property and demanded a jury trial on the question of damages.

The proof at trial concerning the fair market value of the property was in conflict. Mr. Eatherly testified that the property was worth $4,100 per acre or $175,111 and presented three other expert witnesses who testified that the property was worth from $130,000 to $170,000. The county, on the other hand, produced three expert witnesses who testified that the property's fair market value was between $75,000 and $80,000. The jury returned a verdict for the Eatherlys in the amount of $98,600.

II.

[1] Initially, the Eatherlys take issue with the trial court's refusal to permit them to qualify two county officials as experts in order to elicit their opinions concerning the value of the property. The trial court had broad discretion concerning the qualification of expert witnesses and their testimony, Shelby County v. Barden, 527 S.W.2d 124, 131 (Tenn.1975); State ex rel. Comm'r, Dept. of Transp. v. Veglio, 786 S.W.2d 944, 947-48 (Tenn.Ct.App.1989). State ex rel. Dept. of Transp. v. Brevard, 545 S.W.2d 431, 436-37 (Tenn.Ct.App.1976), and did not abuse its discretion in this case.

The Eatherlys attempted to call Mr. Leslie Proffitt, a county commissioner and chairman of the solid waste disposal committee, and Mr. C.E. Hackett, the county executive, to give their expert opinions concerning the value of the property. However, both men equivocated concerning their ability to give an expert opinion about the property's value. Mr. Proffitt testified that he was "not really sure" he could give an opinion concerning the value of the property being condemned. Similarly, Mr. Hackett testified that he could not "necessarily" give an opinion concerning the value of property in Smith County in general or the property being condemned in particular.

[2] A trial court may properly decline to qualify a witness as a valuation expert when the witness concedes a lack of expertise in the field of real estate values. Brookside Mills, Inc. v. Moulton, 55 Tenn.App. 643, 653-54, 404 S.W.2d 258, 264 (1965). This is precisely what happened in this case. Both Mr. Hackett and Mr. Proffitt disclaimed any expertise concerning the valuation of real property. Accordingly the trial court did not err by ruling that they could not give an expert opinion concerning the fair market value of the property being condemned.

III.

[3] The Eatherlys also insist that the trial court erred by refusing to permit them to introduce into evidence the minutes of the October, 1988 meeting when the county commission decided to condemn the property. They explained at trial that this evidence was relevant because it "involves the Constitutional right of the defendants to have just compensation for their property."

The minutes, which were tendered in an offer of proof, reveal that twenty-two of the twenty-five county commissioners conducted a lengthy meeting on October 31, 1988, for the purpose of selecting a new landfill site. After considering several possible locations, they selected the Eatherlys' property by a 15 to 7 vote. They were informed that Mr. Eatherly had purchased the property for $59,000 and that he was willing to sell it to the county for $175,070. They were also informed that the two local realtors retained by the county had appraised the property for $118,000 and $123,650. Even though they were concerned about the cost of the land, the county commission eventually directed the county attorney to make a formal tender of $118,000.

The two realtors retained by the county were called at trial and gave opinions concerning the value of the property that were lower than the appraisals they had given to the county commission in December, 1988. The Eatherlys' attorney cross-examined one of the realtors concerning the difference between his two appraisals but never brought up the issue with the second realtor and never sought to put on rebuttal proof concerning the difference between their appraisals.

[4][5] Evidence concerning the amount the county decided to pay into court is irrelevant in a condemnation proceeding. Clinton Livestock Auction Co. v. City of Knoxville, 52 Tenn.App. 614, 617-18, 376 S.W.2d 743, 744-45 (1963); Tenn.Code Ann. Sec. 29-17-701(b) (1980). (FN2) Trial courts have wide latitude to control the admission of valuation evidence in condemnation proceedings. State v. Rascoe, 181 Tenn. 43, 56, 178 S.W.2d 392, 397 (1944). We find no basis for disagreeing with the trial court's conclusion that the county commission's deliberations concerning the details of the condemnation of the property were not relevant.

IV.

[6] As a final matter, the Eatherlys contend that the jury's verdict is contrary to the weight of the evidence and is so low that it indicates the jury's passion, prejudice, or caprice. We disagree.

Appellate courts do not re-weigh the evidence when a party challenges the evidentiary support for a verdict. We take the strongest legitimate view of the evidence favoring the prevailing party, discard all contrary evidence, and allow all reasonable inferences to uphold the jury's verdict, Haga v. Blanc & West Lumber Co., Inc., 666 S.W.2d 61, 63 (Tenn.1984); Crabtree Masonry Co., Inc. v. C. & R. Constr., Inc., 575 S.W.2d 4, 5 (Tenn.1978), and will only set aside a jury's verdict when there is no material evidence to support it. See Tenn.R.App.P. 13(d).

[7] This record contains material evidence supporting the jury's verdict awarding the Eatherlys $98,600 for their property. The property was not within the Carthage city limits and was not adjacent to the interstate highway or other public roads. It did not have public water or sewer lines and was only accessible by a gravel road. The opinions concerning the property's fair market value ranged from $1,750 per acre to $4,100 per acre. Several witnesses testified, however, that they knew of no property in Smith County that had sold for $4,100 per acre and that the highest price they had heard of was $3,100 per acre. The jury valued the property at approximately $2,300 per acre, a price well within the range of testimony. Accordingly, we find that the jury's verdict was supported by the evidence.

V.

We affirm the judgment and remand the case to the trial court for whatever further proceedings are required. We also tax the costs of this appeal, jointly and severally, against Patrick H. Eatherly and Mary Frances Eatherly and their surety for which execution, if necessary, may issue.

TODD, P.J., and LEWIS, J., concur.

FN1. The appellants' brief does not contain the statement of the issues presented for review required by Tenn.R.App.P. 27(a)(4). Instead, it discusses five "assignments of error." Assignments of error were abolished twelve years ago. See Tenn.R.App.P. 3(h).

FN2. Tenn.Code Ann. Sec. 29-17-701(b) provides, in part, that "[s]uch payment to the property owner or into court shall in nowise limit or fix the amount to be allowed under subsequent proceedings in said case."

STATE of Tennessee ex rel. BROWNING-FERRIS INDUSTRIES OF TENNESSEE, INC., Plaintiff/Appellant,
v.
BOARD OF COMMISSIONERS OF KNOX COUNTY, TENNESSEE, and Knox County, Tennessee, Charles W. Burson, the Attorney General of the State of Tennessee,
Defendants/Appellees.

Nos. C.A. 1356, 3-548-87.
Court of Appeals of Tennessee,
Western Section at Knoxville.
Nov. 20, 1990.

Application for Permission to Rehear Denied by Supreme Court Feb. 4, 1991.

Petition to Rehear Denied by Supreme Court, March 18, 1991.

Applicant requested issuance of a writ of mandamus directing county board of commissioners to affirm the action of the Metropolitan Planning Commission (MPC) which approved, with conditions, as a use permitted on review, an application for a permit to operate a sanitary landfill. The Circuit Court, Knox County, William Inman, Chancellor, sitting by designation, denied the request, and applicant appealed. The Court of Appeals, Tomlin, P.J., (W.S.), held that: (1) board's adoption of zoning amendments relative to sanitary landfills was void, and (2) board had no appellate jurisdiction over administrative acts of either MPC or administrative officers in regard to the issuance or denial of building permits, including permits for uses permitted on review by MPC.

Reversed and remanded.

John K. King, Lewis, King, Krieg & Waldrop, Knoxville, for Browning-Ferris Industries of Tennessee, Inc.

Dale C. Workman, Knoxville, Knox County Law Director, for Knox County.

OPINION

TOMLIN, Presiding Judge (Western Section).

Plaintiff, Browning-Ferris Industries of Tennessee, Inc., ("BFI") has appealed from a judgment of the Circuit Court of Knox County. The trial court denied plaintiff's request for issuance of a writ of mandamus (FN1) directing defendants, Knox County Board of Commissioners ("Board" or "Commissioners") to affirm the action of the Metropolitan Planning Commission ("MPC") which approved, with conditions, as a use permitted on review, BFI's application for a permit to

operate a sanitary landfill in Knox County. BFI presents five issues on appeal for our consideration: (1) whether or not the Board was legally constituted to exercise appellate jurisdiction over the action of the MPC in granting the permit for a use permitted on review; (2) whether or not certain amendments to the Knox County Zoning Resolution were adopted in accordance with the statutory requirements for amending a zoning resolution; (3) whether or not by expending substantial funds in reliance upon existing zoning regulations BFI acquired a vested right to develop a sanitary landfill; (4) whether or not the amendments to the zoning resolution as adopted were invalid since they created a de facto total exclusion of an otherwise legitimate land use; and (5) whether or not the state of Tennessee, by a pervasive statutory scheme, has preempted local regulation of landfill construction. For the reasons hereafter stated, we reverse the action of the trial court and remand this case for further proceedings consistent with this opinion.

This controversy was precipitated as a result of BFI's interest in locating a sanitary landfill in East Knox County. The Zoning Resolution for Knox County, as amended through July 15, 1986, was the zoning resolution in force and effect at the time of BFI's application to locate the landfill. The zoning resolution allowed the construction and operation of a sanitary landfill in virtually all of the zoning districts of the county as a "use permitted on review." In other words, this specific use was not granted as a matter of right, but was permissible upon approval of an application for same by the MPC. It is also important to note that this procedure is in no way similar to requesting a variance to the zoning resolution.

In 1986, BFI acquired options to purchase approximately 325 acres of land located along Strawberry Plains Pike and Carter Mill Road to be used for the possible location of a solid-waste sanitary landfill. As required by statute, BFI applied to the Tennessee Department of Health and Environment for a permit to construct and operate a sanitary landfill on the property. The application was filed on October 30, 1986. In conjunction with the application, BFI was required to conduct soil borings and certain other soil tests on the subject property. The resultant information was supplied to the state, which granted geological approval for a major portion of the site on February 4, 1987.

As a result of BFI's applying for a state permit in connection with the landfill project, this public information became known to some interested persons in Knox County. Apparently, as a result of this activity, some commissioners requested that the MPC staff develop guidelines to more stringently govern the location, construction and operation of landfills in Knox County. The MPC staff sought to comply with this request and pursuant thereto submitted for adoption certain proposed amendments to the zoning resolution at the MPC meeting of February 12, 1987. At that meeting a commissioner proposed a moratorium on applications for "use permitted on review" approvals of landfills. Both the proposed landfill amendments and the moratorium on landfill applications were rejected by the Commission.

On February 23, 1987, BFI filed an application with the MPC for a permit to operate a sanitary landfill upon the optioned property, zoned "Agricultural," as a "use permitted on review." BFI's application was approved by the MPC on March 12, 1987. Shortly thereafter, two

environmental groups - "Citizens Against Pollution, Inc." ("CAP") and "Paschal-Carter Memorial Park Association" ("Paschal-Carter") - who had developed an interest in this project, sought to "appeal" MPC's decision by petitioning the Board to review MPC's action.

The "appeal" by these two groups was scheduled to be considered by the Board at its April 20, 1987 meeting. Also on the agenda for consideration by the Board was a set of proposed zoning resolution amendments pertaining to the location, construction and operation of sanitary landfills in the county. Although the amendments considered by the Board in April were somewhat similar to the earlier amendments that were rejected by MPC in February, several substantial changes had been made. The proposed zoning amendments considered at the Board's April meeting were not submitted to the Board until the morning of the scheduled meeting and prior to that time had not been reviewed or recommended by MPC as required by state law.

Before taking up the "appeal" of MPC's approval of BFI's application, the Board considered the zoning amendments. These extensively-modified zoning amendments were passed by the Board, which thereupon proceeded to consider the "appeal." Without approving or reversing the action of the MPC, the Board voted to remand BFI's application to the MPC "for study under the newly adopted sanitary landfill regulations" and to decide whether or not BFI's application met the "new" zoning requirements.

On June 11, 1987, the MPC met and followed the directive of the Board by passing a resolution stating that BFI's application did not meet the "newly adopted zoning regulations for landfill operations." MPC did not take a vote at that meeting to reconsider or reverse its prior act of approving BFI's application. The record also reflects that BFI did not amend, alter, or in any way change the application that had been filed and ultimately approved in March, 1987.

Once again the Board met on July 20, 1987 to consider the "appeal." Bolstered by the finding of the MPC that BFI's application did not meet the newly-adopted zoning regulations, the Board reversed the MPC's approval of BFI's application to operate a sanitary landfill.

I. STATUTORY REQUIREMENTS FOR AMENDING THE ZONING ORDINANCE

BFI contends that the amendments to the zoning resolution relative to landfills adopted by the Board at its April 28, 1987 meeting are invalid in that they were not adopted pursuant to the provisions of either the Knox County Zoning Resolutions or state law. The record reflects that the intergovernmental committee of the Board of Commissioners requested that the MPC staff discuss with the Board the matter of zoning as it related to sanitary landfills. In addition, the Executive Director of the MPC testified that she had been contacted about this specific matter by Commissioners Walker and McMillan in December, 1986. She stated that the two commissioners inquired as to how the zoning worked and what the zoning law required in terms of approving landfills.

During the period December, 1986 to March, 1987, the Knox County Zoning Resolution allowed sanitary landfills as a "use permitted on review" in virtually every zone in Knox County. Sub-section .03 of each section of Article 5, "Zone Regulations," dealt with uses

permitted on review. As to the use here under consideration, in each and every case sub-section .03 provided that a use is permitted on review for a "[s]anitary landfill subject to meeting all requirements of a registered solid waste disposal site as defined in Chapter 1200-1-7 of the Rules of the Tennessee Department of Public Health."

The subject property in the case under consideration is located in an agricultural zone. The regulations for agricultural zones are found in Sec. 5.22 of the Knox County Zoning Resolution. Sub-section 3 of Sec. 5.22 includes the following language, which is not found in most of the other zone regulations:

> USES PERMITTED ON REVIEW. In any agricultural zone the following uses may be permitted by the Metropolitan Planning Commission as a "Use on Review" in accordance with the provisions contained in Section 6.50.

At the instance of the intergovernmental committee of the Board, the MPC staff proceeded to promulgate proposed amendments to the Knox County Zoning Resolution. The principal amendment proposed was the addition of a new section, Sec. 4.70, "Sanitary Landfills," to Article 4, "STANDARDS." Another proposed amendment deleted sanitary landfills as a use permitted on review from some eleven zones. Up to this point the MPC and its staff were proceeding with their amendments in accordance with the accepted procedure as prescribed by state statute and the zoning resolution.

[1] The counties of this state have been given the power and authority to adopt zoning plans by virtue of T.C.A. Sec. 13-7-101, et seq. The power of a county legislative body to amend its zoning resolution is set out in T.C.A. Sec. 13-7-105, which reads in part as follows:

> 13-7-105. Amendments of zoning ordinance provisions - Procedure.
>
> (a) The county legislative body may from time to time amend the number, shape, boundary, area or any regulation of or within any district or districts or any other provision of any zoning ordinance; but any such amendment shall not be made or become effective unless the same be first submitted for approval, disapproval or suggestions to the regional planning commission of the region in which the territory covered by the ordinance is located . . .
>
> (b) [B]efore finally adopting any such amendment, the county legislative body shall hold a public hearing thereon, at least thirty (30) days' notice of the time and place of which shall be given by at least one (1) publication in a newspaper of general circulation in the county. Any such amendment shall be published at least once in the official newspaper of the county or in a newspaper of general circulation in the county.

> Section 6.30, "AMENDMENTS," of the regulations provides that "[t]he regulations, restrictions, boundaries and options set forth in this Resolution may, upon proper application by the property owner or his designated representative, by an appropriate governmental agency, or the County Board of Commissioners, be amended . . . from time to time. . ." Sub-section 2 thereof provides that amendments are to be initiated by filing an application with the MPC. Sub-section 3 provides that upon receiving an application, the MPC is to schedule a public hearing, noting that "[t]he Planning Commission shall consider and make recommendations on all such proposed amendments. . ."

The above outlined amending procedure is in keeping with the general law on the subject. See 82 Am.Jur.2d, Zoning and Planning Sec. 57 (1976); 1 R. Anderson, American Law of Zoning 3rd Sec. 432 (1986).

The proposed amendments to the zoning resolution regarding the regulation of sanitary landfills came before the MPC at its meeting on February 12, 1987. At that time, the political ramifications of BFI's application became more apparent. The specter of a previously-authorized bond issue for the construction of an incinerator in Knox County to dispose of a substantial portion of the county's trash, litter, etc. began to appear. County Commissioner Billy Walker, who represented the eighth district at that time, appeared before the MPC and, according to the minutes thereof, stated that "he would be happy to recommend to the Commission that a study be funded but he felt that once completed, it would be found that Knox County has no site which meets regulations [for sanitary landfills]; bonds had been sold and the money was in the bank for an incinerator." A motion was made to reject the proposed amendments in their entirety. A motion to amend that motion - recommending that the Knox County Board of Commissioners consider a moratorium on landfills - failed. The original motion to reject the landfill amendments was unanimously adopted.

Shortly thereafter, BFI filed its application for a permit for a sanitary landfill on its optioned property as a use permitted on review in an agricultural zone. The MPC met on March 12, 1987, to review BFI's application in accordance with the procedures set forth in Sec. 6.50 of the zoning resolution. At that meeting, Commissioner Joe McMillan, who also represented the eighth district, and who had been identified previously by the executive director of the MPC as being one of the commissioners who had requested MPC's staff to develop more stringent regulations for sanitary landfills, appeared before the commission in opposition to BFI's application. The minutes of MPC's meeting reflect the following comments by Commissioner McMillan:

> Commissioner Joe McMillan, of the Knox County Board of Commissioners and representative of the 8th District, stated they had been fighting landfills for 20 years; apparently the proposed incinerator was the best kept secret in town; it was his hope that this community nor any other would ever have to suffer a landfill again as a landfill was known now; the incinerator was on schedule and bonds had been sold for it with no taxes to be paid by the City of [sic (or)] County; a nine member incinerator authority had been responsible for getting the incinerator package together; there was no garbage crisis in Knoxville or Knox County; the garbage crises was with BFI who just wanted more big bucks. He stated that a letter from the Chestnut Ridge landfill company stated

that they have enough capacity to operate for 9 years handling the present volume of waste; the incinerator would be in operation by 1991; he felt the legislative bodies should stop listening to the Rockefellers and listen to the Little Fellers. He stated this landfill would be detrimental to their community; any burning of plastic causes a carcinogen[ic] reaction but burning in the incinerator would make steam and create electricity which could be sold to the Knoxville Utilities Board; Blount, Anderson and Sevier counties would join in this venture also; he had been to 5 incinerator sites and they were clean enough to have a picnic outside the door; some on the incinerator authority were fearful that a new landfill would kill the possibility of obtaining the incinerator. He asked how one could justify a death or maiming due to carcinogens in the air or water; there were 200 wells and springs in this area; he asked that the citizens be protected.

Following considerable discussion, the MPC approved BFI's application.

Following the "appellate" procedure set forth in Sec. 6.40 of the Zoning Resolution, which we will consider in more detail later, the two previously noted citizens' groups sought to "appeal" the action of the MPC at which time it proposed to consider both the "appeal" and the proposed amendments to the zoning resolution regarding sanitary landfills.

At the April 20, 1987 meeting, the Board elected to consider the proposed amendments to the zoning resolution prior to considering the Citizens' groups' "appeal." As previously noted, the amendments to be considered by the Board were not presented to them until the morning of the meeting. The basic framework of these amendments was the same as when they were considered and ultimately rejected by the MPC at its February meeting. The record reflects, however, that following the rejection of the amendments, both the MPC staff and the Law Department of Knox County made no less than ten changes in the amendments, three of which were described by the Knox County Law Director as "major substantial changes." In making this assessment, the Law Director was referring to the following paragraphs, which were added to the earlier draft.

C. "Site" as used herein shall mean the area approved for use as a sanitary landfill and may be all or a portion of a lot or parcel of property and the area approved may not be identical to the property boundary line or tax parcel boundary.

D. Measurements from the site to meet the required distances set forth shall be from the nearest point in a property line of a parcel containing a use, structure, or natural condition from which a minimum distance is required to the nearest point in the boundary of the site unless these regulations provide measurements to another point.

The Board then adopted these zoning resolution amendments at its April 20th meeting. None of the alterations to the amendments was considered by the MPC prior to adoption by the Board.

Following the adoption of the zoning amendments, the Board considered the citizens' groups' "appeal." Without affirming or rejecting the appeal, the Board remanded BFI's application back

to the MPC with instructions that the MPC evaluate BFI's application in accordance with the provisions of the zoning resolution as then amended. (FN2) At its June 11, 1987 meeting, the MPC once again considered BFI's original application for a sanitary landfill permit. No change or alteration in its original application had been made by BFI. The minutes of MPC reflect that the MPC staff recommended that BFI's application be denied "because the information and materials submitted by the petitioner do not meet the requirements of [the newly adopted] Sec. 4.70 of the Knox County Zoning Resolution."

The minutes also reflect that Commissioner Joe McMillan, whose involvement in this process has already been noted, and who previously had identified himself as the "father" of the solid waste incinerator for Knox County, appeared to encourage the denial of BFI's application. The minutes reflect that Commissioner McMillan stated:

> [T]he plans for a solid waste incinerator were on schedule for August of 1991; he had helped author the new regulations adopted by the Board of Commissioners; he asked that the matter be judged on the new regulations adopted; the water in the area could be affected; there were many springs and wells in the area. He asked that the judgment be that BFI does not meet those newly adopted regulations and that this matter be denied.

After some further discussion, the MPC adopted the following motion:

> THAT IN RESPONSE TO THE REQUEST OF THE COUNTY COMMISSION THAT MPC GO ON RECORD AS MAKING THE JUDGMENT THAT THE PROPOSED BROWNING-FERRIS LANDFILL IN THE CARTER AREA OFF STRAWBERRY PLAINS PIKE DOES NOT MEET THE REQUIREMENTS AS TO LOCATION PASSED BY COUNTY COMMISSION AT ITS APRIL 1987 MEETING.

In dismissing BFI's application for writ of certiorari, the learned chancellor, for whom this Court has great respect, seemingly overlooked BFI's claim of the invalidity of the amendments to the zoning resolution enacted by the Board at its April 20th meeting. Instead, the court dealt only with the Board's alleged noncompliance with the notice provisions of the law. As to this point the court stated:

> The Board of Commissioners held the "appeal" in abeyance pending compliance with the statutory requirements respecting the amendments. While BFI argues that proper notice, etc., was not given of the proposed amendments, the Court believes that a rather substantial compliance appears from the evidence. We see no deprivation of due process rights, and no failure to respect the statutory mandates.

It is clear to this Court that the chancellor purely and simply overlooked what we feel is a glaring defect in the amendment process. This defect rendered the adoption of the zoning amendments null and void.

T.C.A. Sec. 13-7-105 provides with respect to zoning changes by a county legislative body that "any such amendment shall not be made or become effective unless the same be first submitted

for approval, disapproval or suggestions to the regional planning commission of the region in which the territory covered by the ordinance is located . . ." This requirement is incorporated in Sec. 6.30 of the Knox County Zoning Resolution.

Although elemental, it bears restating that the right of a county to enact or amend zoning regulations is based upon powers delegated to it by the state legislature by specific enabling acts. Henry v. White, 194 Tenn. 192, 250 S.W.2d 70 (1951); State ex rel. Lightman v. City of Nashville, 166 Tenn. 191, 60 S.W.2d 161 (1933). Furthermore, inasmuch as zoning laws are in derogation of the common law and operate to deprive a property owner of a use of his land that would otherwise be lawful, they are to be strictly construed by the courts in favor of the property owner. State ex rel. Wright v. City of Oak Hill, 204 Tenn. 353, 321 S.W.2d 557 (1959); Red Acres Improvement Club, Inc. v. Burkhalter, 193 Tenn. 79, 241 S.W.2d 921 (1951). See also State ex rel. SCA Chemical Services v. Sanidas, 681 S.W.2d 557, 562 (Tenn.App.1984).

The Middle Section of this Court in the case of Wilgus v. City of Murfreesboro, 532 S.W.2d 50 (Tenn.App.1975) had occasion to so apply T.C.A. Sec. 13-7-204 (then T.C.A. Sec. 13-704) to a fact situation similar to the case at bar. In Wilgus, a proposed amendment to the zoning ordinance of the City of Murfreesboro was being considered by the Murfreesboro City Council, which amendment had to be passed by the Council on three successive readings. Prior to its enactment on the third and final reading, the area to be rezoned was reduced in size and certain conditions on the use of the property were created by a letter from the city attorney.

Certain property owners brought suit in the Chancery Court for Rutherford County challenging the adoption of the zoning amendment, questioning the validity of the notice of the public hearing, and challenging the modification of the text of the ordinance between the second and third readings. The Middle Section of this Court reversed the chancellor's ruling to the effect that the enactment of the ordinance was invalid because of improper notice. The Court also dealt with the second issue, that the City Council's revision of the proposed zoning amendment required its resubmission to the Planning Commission. While holding that the modification was minor and that it did not create a substantial change requiring resubmission to the Planning Commission, the Court concluded that the provisions regarding resubmission of what is now T.C.A. Sec. 13-7-204 are mandatory. The court stated:

> If a proposed zoning ordinance is amended so substantially that a new proposal is, in effect, created we think it clear that both the state statute and municipal code provision require it to be submitted to the planning commission for its consideration before the municipal legislative body may finally act upon it. To hold otherwise would defeat the clear intent of the statutory requirement that the legislative body have available, before it acts, the recommendations of the commission. We do not suggest, however, that the test for determining whether a proposed zoning ordinance, as amended, must be resubmitted to a planning commission is the same as the test for determining whether a proposed ordinance, as amended, must be passed on three different days because it became a new bill. The purposes of the two requirements are not identical.

> The purpose of requiring submission to the planning commission is to give the legislative body the advantage of the commission's expertise on land use planning with respect to the proposal that it must either adopt or reject. A revision in a proposed zoning ordinance that would not, under Mitchell, create a new bill mandating passage for the requisite number of days under an applicable charter or statute, might nevertheless be so important as to require resubmission of the proposal to the commission. The test is whether the revision is so substantial as to create a strong probability that the commission's recommendation would have been affected by the revision. If the change is both inconsequential and produces no detrimental effects to those who would oppose it, then the revised proposal is not required to be resubmitted.
>
> The lawmaking powers of the municipality being vested in its governing body, there is no requirement that it bide by the commission's suggestions. It is required, however, that it have before it those suggestions when it acts. The statutory requirement is meaningless unless the fundamental considerations created by the terms of the ordinance militating for and against its adoption were actually before the commission. Consideration by the courts of the substantiality of the revision is properly limited to an examination of the face of the ordinance.

Wilgus, 532 S.W.2d at 53-54.

In applying the Wilgus test to the case at bar, we have examined the amendments as adopted, paying particular attention to the revisions that were not submitted to or considered by the MPC. This Court is of the opinion that the eleventh-hour revisions were important and substantial enough to require the resubmission of the proposed amendments to the MPC. Inasmuch as this was not done, we hold that the amendments to the Knox County Zoning Resolution adopted by the Board at its meeting on April 20, 1987 are null and void and of no effect. As a result, the ensuing review and rejection of BFI's application by MPC in June, 1987 is thereby rendered void and constitutes a nullity as well.

II. THE "APPELLATE AUTHORITY" OF THE BOARD

[2] Having determined that the amendments regarding sanitary landfills to the zoning ordinance are invalid, we next consider whether or not the Board has lawful appellate jurisdiction over the granting of a permit for a use permitted on review by the MPC. BFI contends that it does not. After reviewing this record and the applicable law, we agree with BFI.

Following the authorization of a permit for a landfill pursuant to BFI's application, subject to appropriate Tennessee rules and regulations, the two citizens' groups, as already noted, "appealed" to the Board. This appellate process, the Board argues, is purportedly contained in the Knox County Zoning Resolution Sec. 6.40 under the heading "Commissioners' Review." We must, however, look at the placement of this section in its proper context. The preceding section, Sec. 6.30, deals with the process for amending the zoning resolution. The following section, Sec. 6.50, sets forth the procedure for authorizing uses permitted on review by the MPC.

The lead paragraph of Sec. 6.40 reads as follows:

> The Metropolitan Planning Commission shall make a report to the Board of Commissioners upon all such applications approved by it, but before the enactment of any amendment to the Zoning Resolution the Board shall hold a public hearing thereon, at least thirty (30) days notice of the time and place of which shall be published once in a daily newspaper of general circulation in Knox County.

The following section, Sec. 6.40.01, together with four sub-sections, sets forth the method for seeking relief from action of the MPC by the Board. Section 6.40.01 reads as follows:

> Any person, firm, or corporation aggrieved by any decision of the Metropolitan Planning Commission may petition the Board of Commissioners to consider the same. Such petition shall be in writing and shall state with particularity:
>
> A. The name of the owner of the subject property.
>
> B. A description of the subject property, including the county property map number and parcel or lot number.
>
> C. A statement of the petitioner's interest in the matter, including a description of affected property owned by petitioner where petitioner is not the owner of the subject property.
>
> D. A statement of the use or zone desired or opposed, including a summary of the zoning of all property located within three hundred (300) feet of the subject property.

While a reading of the entire section clearly appears to be dealing primarily with the contesting of the action of MPC in enacting or failing to enact an amendment to the zoning resolution, sub-section "D" of Sec. 6.40.01 and sub-section A(2) of Sec. 6.40.03 could lead one to believe that this procedure would be followed insofar as challenging a zoning use. However, it is not the methodology that is in question; rather, it is the right of an appeal concerning a permit granted under these conditions. In the following section, Sec. 6.50, entitled "Procedure for Authorizing Uses Permitted on Review," there is no reference whatsoever to any "appellate" procedure involving the Board of Commissioners. As a matter of fact, the Board is not mentioned at all.

In disposing of this issue, the trial judge said:

> The issue of the authority of the County Commission to function in this manner is somewhat unsettling, since the statutory scheme, T.C.A. 13-7-307, et seq., as contrasted to Section 6.40 of the Zoning Resolution, makes no provision for the retention by the County Commission of supervisory powers over the Planning Commission. Is Section

> 6.40 of the Zoning Resolution valid? We believe so. No case has been cited which holds that a County Commission cannot function in a dual capacity. The dual-capacity role involves no constitutional infirmity, and is not specifically prohibited by statute. One may speculate concerning the minor role assigned to the Board of Adjustment by the County Commission, but insofar as this Court is able to determine no legal infirmity results.

This issue does not challenge whether or not a county legislative body can function in a "dual capacity." What it does contest is whether or not, under the enabling legislation authorizing counties to regulate zoning, a county legislative body, without legislative authority, can set itself up as an appellate review board of an administrative decision. We think not.

We note that in the Tennessee Code, our General Assembly dealt separately and differently with counties and cities insofar as enabling legislation pertaining to zoning is concerned. Part 1 of Chapter 7 pertains to county zoning and is codified as Secs. 13-7-101 through -115. Part 2 encompasses "municipal zoning" and is codified as Secs. 13-7-201 through -210.

There is indeed justification for separate enabling acts pertaining to zoning for counties and municipalities since the two differ vastly governmentally and politically, with cities or municipal corporations having substantially broader rights and powers. In 56 Am.Jur.2d Municipal Corporations Counties, and Other Political Subdivisions Sec. 18, at 83 (1971), the rationale for the different treatment is further explained:

> There is thus a logical basis for drawing a distinction between counties and ordinary municipal corporations. Counties are created by the state in the exercise of its own sovereign power, without the particular solicitation, consent, or concurrence of the people who inhabit them. They owe their creation to statutes which confer upon them all the powers they possess, prescribe their duties, and impose the liabilities to which they are subject. Basically, and to a large extent, the powers and functions of a county have a direct correlation with the effectuation of the general policy of the state and are, in fact, only an instrumentality for the general administration of that policy. Municipal corporations, on the other hand, are more amply endowed with corporate life and functions. They exist under general or special charters conferred at the direct solicitation or by the free consent of the people who compose them and are created chiefly for the interest, advantage, and convenience of their inhabitants.

The courts of this state have historically recognized this difference. In Burnett v. Maloney, 97 Tenn. 697, 712-13, 715-16, 37 S.W. 689, 693 (1896), our Supreme Court stated:

> That there is a wide difference between the powers of municipal and county corporations, under similar Acts of the Legislature, is well supported by reason and authority . . . Dillon, Judge, author of the noted work on Municipal Corporations, said: "Counties owe their creation to the statutes, and the statutes confer on them all the powers which they possess, prescribe all the duties they owe, and impress all the liabilities to which they are subject. Considered with respect to their powers, duties, and liabilities, they stand low

> down in the scale of corporate existence. For this reason they are ranked among what are styled quasi corporations. This designation is employed to distinguish them from private corporations aggregate and from municipal corporations proper, such as cities acting under general or special charters more amply endowed with corporate life and functions, conferred in general at the request of the inhabitants of the municipality, for their peculiar and special advantage and convenience. The decisions of the Courts of every State in the Union, recognizing this distinction, hold incorporated towns and cities to a much more extended liability, and give them more extended power and discretion, than they do counties."

It has been tersely said "the limits of all powers of counties, except those necessarily implied, must be found within the four corners of the statutory provision made by the Legislature." 4 Am. & Eng.Enc.L., 389.

In the later case of Porter v. City of Paris, 184 Tenn. 555, 557, 201 S.W.2d 688, 689 (1947), the Supreme Court again recognized this difference, here emphasizing the broad powers conferred upon municipalities. The Court stated:

> The courts of this State have given sanction to broad powers of regulation and a wide discretion in the exercise of the police power as vested in municipalities.

In Chattanooga v. Norman, 92 Tenn. 73, 78, 20 S.W. 417, 419 [(1892)] the Court, citing with approval from Cooley on Constitutional Limitations, Chapter 16, and cases cited, said: "The police power of a state, or a municipality as an arm of the state, extends to the making of such laws and ordinances as are necessary to secure the safety, health, good order, peace, comfort, protection, and convenience of the state or municipality. It not only permits passage of general laws for the entire state or municipality, but special ones, applicable to particular localities, highways, rivers, streets and limits of a territory or a city; and of these, and the necessity for local application, the lawmaking power is the judge and, if not in violation of a fundamental law, or unreasonable, they are everywhere upheld."

In 20 C.J.S. Counties Sec. 71, at 273 (1990), we find the following:

> In the absence of home rule, a county board possesses and can exercise only such powers, as are expressly conferred on it by the constitution or statutes of the state, or such powers as arise by necessary implication from those expressly granted or such as are requisite to the performance of the duties which are imposed on it by law. (footnotes omitted).

Our research unearthed only one case dealing with an appeal from the action of a local planning commission to the governing body of the governmental entity relative to a use permitted on review. That case is Joseph Co. v. Bailey, coincidentally arising in Knox County, reported in 14 T.A.M. 5-19, 1988 WL 136630. An important distinction should be pointed out immediately, however. While the planning commission involved in the Joseph Co. case was the same planning commission - the MPC - the governmental body to which an appeal was taken from the action of the planning commission denying the landowner's petition for use on review was the

Knoxville City Council. Additionally, no challenge was made as to the authority of the Knoxville City Council to exercise the right of appellate review of the planning commission's actions.

However, the Joseph Co. case does reveal some distinct differences between the Knoxville City Code governing zoning and the Knox County Zoning Resolution as they pertain to uses permitted on review. We quote from Joseph Co.:

> The standards to be followed by the MPC when determining whether to approve a use on review are set forth in Article V, Sec. 3 of the Knoxville City Code. This section provides, in part, as follows:
>
> A. General standards. The planning commission, in the exercise of its administrative judgement, shall be guided by adopted plans and policies, including the "General Plan" and the "One-Year Plan," and by the following general standards:
>
> 1. The use is consistent with adopted plans and policies, including the "General Plan" and the "One-Year Plan."
>
> 2. The use is in harmony with the general purpose and intent of these zoning regulations.
>
> 3. The use is compatible with the character of the neighborhood where it is proposed, and with the size and location of buildings in the vicinity.
>
> 4. The use will not significantly injure the value of adjacent property or by noise, lights, fumes, odors, vibration, traffic, congestion or other impacts detract from the immediate environment.
>
> 5. The use is not of a nature or so located as to draw substantial additional traffic through residential streets.
>
> 6. The nature of development in the surrounding area is not such as to pose a potential hazard to the proposed use or to create an undesirable environment for the proposed use.
>
> Subsection 5 of Article V, Sec. 3 provides:
>
> Automobile wrecking and junk yards: Because of the nature and character of their operations, automobile wrecking, junk, or salvage yards, and similar uses of land can have a decidedly detrimental effect upon surrounding properties. These uses tend to create problems of noise, dust, traffic and health hazards, and may adversely affect property values by their general appearance.

Finally, Article VII, Sec. 5 of the City Code sets forth the procedure for approving or denying a use on review:

> Approval or denial. The planning commission may approve a development plan or use permitted on review where it can be shown that the proposed plan or use is in harmony with the general purpose and intent of the zoning ordinance and with the general plan and one-year plan and is reasonably necessary for the convenience and welfare of the community.

The planning commission may deny a development plan or use permitted on review where the above cannot be shown or where it can be shown that approval would have an adverse impact on the character of the neighborhood in which the site is located.

Whereas a use may be appropriated [sic] in one location and inappropriate in another location in the same zoning district, the planning commission shall be guided by the policies of the general plan and by the one-year plan in the exercise of its administrative judgement about the location and appropriateness of uses permitted on review.

The rationale for planning commission approval, conditions or denial including substantive, factual statements of necessity and appropriateness or of adverse impact shall be included in the minutes of the planning commission meeting where decisions are made.

There is no counterpart in the Knox County Zoning Resolution to the section above quoted from the Knoxville City Code entitled "General Standards." Furthermore, the language, requirements and procedure for approving a use permitted on review in the city code is substantially different from Sec. 6.50, "Procedure for Authorizing Use as Permitted on Review," in the Knox County Zoning Resolution.

Under the Knox County Zoning Resolution, it is the responsibility and duty of the Department of Code Administration and Inspections to issue a building permit to an applicant if the applicant meets all the requirements of the zoning regulations, and there is no valid ground for denying the application. When an application for a use permitted on review is filed with the Knox County Zoning Department, the MPC takes the place of the Department of Code Administration and Inspections in carrying out the administrative step of issuing the permit.

The Executive Director of the MPC testified without contradiction that the use on review process under the Knox County Zoning Resolution is an administrative matter, and that the process is of such a nature that it does not require legislative action and is final unless appealed.

It having been earlier established that a county such as Knox acquires its power to enact zoning regulations from the state, we now examine the enabling legislation authorizing county zoning, codified as T.C.A. Secs. 13-7-101, et seq. Section 13-7-101, entitled, "Grant of Zoning Power," provides in part as follows:

(a) (1) The county legislative body of any county is empowered, in accordance with the conditions and the procedure specified in this part, to regulate, in the portions of such county which lie outside of municipal corporations, the location, height and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes.

T.C.A. Sec. 13-7-101(a)(1) (Supp.1990).

Section 13-7-106 mandates that the legislative body of any county that enacts zoning regulations under the authority of this part of the Code shall create a county board of zoning appeals consisting of at least three or five members. Section 13-7-107 authorizes the county legislative body to set up rules of procedure governing the operation of the Board of Zoning Appeals that are not inconsistent with the provisions of the state enabling act.

Section 13-7-108, entitled "Persons taking appeals," reads as follows:

> Appeals to the board of appeals may be taken by any person aggrieved, or by any officer, department or board of the county affected, by any grant or withholding of a building permit or by any other decision of a building commissioner or other administrative official based in whole or in part upon the provisions of any ordinance under this part.

Section 13-7-109, entitled "Powers of board of appeals" reads as follows in pertinent part:

> The board of appeals shall have the following powers:
>
> (1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by the county building commissioner or any other administrative official in the carrying out or enforcement of any ordinance enacted pursuant to this part;

Nowhere does the enabling legislation regarding zoning reflect that a county legislative body may retain unto itself the right of appellate review of an administrative act of the regional planning commission of the region over which the legislative body has jurisdiction, as the Board seeks to do in this case pursuant to Sec. 6.40 of the Knox County Zoning Resolution. Granted, under 6.40, et seq., the Board does have authority to review amendments to the zoning resolution presented to the MPC. MPC action in this regard is advisory only, and the enabling legislation

mandates that the power to amend or alter a zoning resolution vests in the county legislative authority - the Board of Commissioners.

A case very much in point is that of Harrell v. Hamblen County Quarterly Court, 526 S.W.2d 505 (Tenn.App.1975). In Harrell, the Hamblen Quarterly Court and Hamblen County Planning Commission appealed from a chancery court decree holding that they had acted arbitrarily in denying Harrell and others a permit to construct a mobile home park. Plaintiffs submitted a preliminary plan to the planning commission to develop certain property into a mobile home park. Pursuant to private acts, Hamblen County had established regulations and standards for the creation of mobile home parks outside the city limits of Morristown. According to those regulations, fifteen provisions had to be met in order to qualify for a mobile home park permit.

When the final plans were submitted to the planning commission and a permit requested, the commission denied the application. Following this action by the planning commission, Harrell appealed to the Quarterly County Court, which was sitting as a zoning board of appeals. In this capacity, the quarterly court voted to uphold the ruling of the planning commission. The chancellor found that the planning commission and the quarterly court had acted arbitrarily in denying the permit and directed the planning commission to issue a permit.

On appeal, Hamblen County contended that under the ordinance, the planning commission had the discretion to deny any permit that in its judgment affected the general welfare of the community. The Court disagreed.

In affirming the decree of the chancellor the court relied upon several well-known treatises on zoning, as well as cases from other jurisdictions. The court stated:

> "The grant or refusal of a permit is to a certain extent within the sound discretion of the board or official authorized to use it, but the discretion must be exercised reasonably, and if an applicant meets all of the requirements of the zoning regulations and there is no valid ground for denial of the application, the permit should be issued." 101 C.J.S. Zoning, Sec. 224.

The Law of Zoning and Planning, Chapter 55, Section 3, says:

> "So long as the application is in order and the proposed use of the property complies with applicable municipal ordinances or, where although not complying, the premises has a vested non-conforming status, the applicant is entitled to a permit, and it is the duty of the administrative officer to issue him one."

" 'Ordinarily the issuance of a building permit is purely an administrative act, and the person charged with its issuance must follow the literal provisions of the zoning ordinance. He is circumscribed by their provisions and absent some cogent reason based on the wording in the ordinance, the granting of a permit is required as a matter of course. The granting or withholding of a permit is not a matter of arbitrary discretion. If the applicant complies with the

requirements of the ordinance, he is entitled to his permit. Beckmann v. Talbot, 278 N.Y. 146, 15 N.E.2d 556; Carpenter v. Grab, 257 App.Div. 860, 12 N.Y.S.2d 906; People ex rel. Corn Hill Realty Co. v. Stroebel, 209 N.Y. 434, 103 N.E. 735; McQuillin, Municipal Corporation, 3d Ed., Sec. 26.206 and cases cited. This being so, the respondents must be guided by provisions of the ordinance set forth above.' "

Id. at 509.

We are of the opinion that the Board of Commissioners has no appellate review authority under the Knox County Zoning Resolution over the actions of the MPC or any of its administrative staff in the issuance or denial of a building permit in accordance with the provisions of the Zoning Resolution. This is not to say that an aggrieved party is without legal redress. In our opinion, the enabling legislation and the provisions of Sec. 6.60, entitled "Board of Adjustment and Enforcement," provide an appropriate method for appeal to the Board of Adjustment.

In conclusion, for the reasons stated above, we hold that the attempted amendments to the Knox County Zoning Resolution pertaining to sanitary landfills are invalid, void and of no effect. Furthermore, we hold that the Knox County Board of Commissioners has no appellate jurisdiction over administrative acts of either the MPC or administrative officers in regard to the issuance or denial of building permits, including permits for uses permitted on review by the MPC. To the extent that the Knox County Zoning Resolution purports to provide machinery for the initiating and processing of such appeals, we hold same to be invalid as well.

It follows that the approval granted by the MPC at its meeting of March 12, 1987 of BFI's application for a permit to construct and operate a sanitary landfill upon the condition that it meet all state of Tennessee rules and regulations in obtaining a permit has become and is now final, in accordance with the provisions of Sec. 6.50.05 of the Knox County Zoning Resolution. As a result, BFI is entitled to have the permit issued subject to the conditions imposed by the MPC.

The judgment of the court below is reversed. This cause is remanded to the Circuit Court of Knox County. A permanent injunction is to issue prohibiting the Board of Commissioners from interfering with BFI's application for said permit. In addition, BFI shall be entitled to such other and further relief, injunctive or otherwise, to bring about the issuance of said permit.

Inasmuch as our disposition of these two issues is dispositive of this litigation, all other issues raised by BFI are pretermitted. Costs in this cause on appeal are taxed to the Knox County Board of Commissioners, for which execution may issue if necessary.

HIGHERS and GODDARD, JJ., concur.

FN1. Injunctive relief was also prayed for.

FN2. It is interesting to note that notwithstanding the fact that these amendments were contemplated as being effective on that date, the Law Director for Knox County advised the Board that it had an option as to whether it applied them or not. This was his comment to the Board at its April 20th meeting:

> [I]f you adopt these today, any request for approval of use on review, you may send back to the Commission to apply these new standards. If you want these new standards to apply to any pending matter, you would have to resubmitt [sic] that pending matter to MPC to be considered underneath these standards. Once you adopt the standards, you have a pending request. You may go ahead and consider that request under the current standards or send that back to MPC to have it judged under these new standards.

Electra PRESTON, individually and as personal representative of Roy Dennis Howland, Deceased, and J. Stanley Rogers, Administrator of the Estate of Roy Dennis Howland, Deceased, Plaintiffs-Appellants,

v.

CITY OF MANCHESTER, Tennessee, Gladis Thomas, Holt Specialty Equipment, Inc., Defendants-Appellees.

No. 01-A-01-9002-CV00052.
Court of Appeals of Tennessee,
Middle Section at Nashville.
Aug. 31, 1990.

Permission to Appeal Denied by Supreme Court December 3, 1990.

Coffee Law, Appealed from the Coffee County Circuit Court Gerald L. Ewell, Sr., Judge.

Doyle E. Richardson, Rogers & Richardson, Manchester, for appellants.

Alec Garland, Manchester, Overton Thompson, III, Farris, Warfield & Kanady, Franklin, for defendants City of Manchester and Gladis Thomas.

John T. Bobo, Bobo, Hunt & Bobo, Shelbyville, for defendant Holt Specialty Equipment.

OPINION

TODD, Presiding Judge.

This is an action for damages for wrongful death of Roy Dennis Howland whose body was discovered in a compacted pile of refuse in the Coffee County Landfill on August 24, 1987. The theory of the suit is that the deceased met his death as a result of being present inside a refuse container called a "dumpster" which was maintained by the City of Manchester and the contents of which was mechanically "dumped" into a refuse "compactor truck" owned by the City of Manchester and operated by its employee, Gladis Thomas, where the refuse was mechanically "compacted" thereby crushing the body of deceased.

In addition to the City and its employee, plaintiff sued Holt Specialty Equipment, Inc., the designer and manufacturer of the dumpster from which, it is alleged, deceased was transferred to the compactor truck where he met his death.

Other defendants were sued, but are not involved in the present appeal.

The Trial Court rendered summary judgment of dismissal as to the three above named defendants. The plaintiff, J. Stanley Rogers, Administrator, has appealed and submitted two issues. The first issue concerns the dismissal of the City and its employee, and the second issue concerns the dismissal of the manufacturer.

The allegations of the complaint regarding the negligence of the City and its employee are as follows:

> 11. Plaintiffs allege that defendant, CITY OF MANCHESTER, TENNESSEE, negligently distributed dumpsters without including on the surface of said containers any signs of warning of foreseeable dangers. Plaintiff further alleges that defendant, CITY OF MANCHESTER, TENNESSEE, negligently allowed and condoned the practice of lifting and dumping the contents of the containers without prior inspection as to the suitability of the material for disposal, or the presence of persons such as the decedent in the dumpster. Plaintiffs further aver that defendant, CITY OF MANCHESTER, TENNESSEE, possessed the capacity to lift the dumpsters to the level of the windshield of the truck being used to remove the material and tilt the dumpster in such a way that the driver of the truck could inspect the contents of the dumpster before placing said contents in the truck for compaction and removal.
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> 12. Plaintiffs allege that defendant, CITY OF MANCHESTER, TENNESSEE, improperly trained employees assigned to perform the task of solid waste removal. Plaintiffs further allege that defendant, CITY OF MANCHESTER, TENNESSEE, condoned and encouraged the practice of skipping necessary procedures and taking dangerous shortcuts relative to the task of solid waste removal.
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> 13. Plaintiffs allege that defendant, HOLT SPECIALTY EQUIPMENT, INC., negligently manufactured and distributed solid waste dumpsters without including on the surface of said containers any signs of warning of foreseeable dangers.
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> 14. Plaintiff alleges that defendant, HOLT SPECIALTY EQUIPMENT, INC., negligently failed to instruct defendant CITY OF MANCHESTER, TENNESSEE, its employee defendant, GLADIS THOMAS, and other drivers as to the proper procedure to follow involving inspection before emptying of the containers and failed to place signs on the dumpsters warning the garbage truck driver to visually check contents before dumping.
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> 15. Plaintiffs allege that defendant, HOLT SPECIALTY EQUIPMENT, INC., breached its implied warranty of merchantability and fitness for a particular purpose, Tenn.Code Ann. 47-2-314, and Tenn.Code Ann. 47-2-315.
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> 16. Plaintiffs allege that defendant, HOLT SPECIALTY EQUIPMENT, INC., manufactured and distributed, in a negligent manner, a chattel which was defective and was unreasonably and inherently dangerous.

17. Plaintiffs allege that defendant, GLADIS THOMAS, negligently failed to inspect the contents of the dumpsters he picked up before emptying them into the truck belonging to the CITY OF MANCHESTER, TENNESSEE on August 22, 1987.

18. Plaintiffs allege that defendant, GLADIS THOMAS, negligently failed to sound the horn of the truck he was driving on August 22, 1987, or give any other warning before picking up and emptying the dumpster in which Roy Dennis Howland was situated.

The joint answer of the City and its employee states:

> Gladis Thomas was at all relevant times employed as a driver of a city sanitation truck. The connection of Gladis Thomas with the death of deceased is neither admitted nor denied. Negligence of Gladis Thomas is denied. Deceased assumed the risk of his injury and was contributorily negligent. The death of decedent was due to an independent intervening cause. Under T.C.A. Secs. 29-20-101 and 29-20-310, the city and its employee are immune to suit or their liability is limited by T.C.A. Secs. 29-20-311, 401-403 and 404.

The defendant, Holt Specialty Equipment, Inc. answered, asserting that it was the manufacturer of some, but not all of the dumpsters used by the City and demanding strict proof that the death of deceased was due to a defect in a dumpster manufactured by this defendant. The answer generally denied negligence and proximate cause and asserted the defenses of assumption of risk and contributory negligence.

Holt Specialty Equipment, Inc., moved for summary judgment. The brief in support of the motion contains the following grounds:

> This defendant would respectfully show the Court that there is absolutely nothing in the record upon which to find this defendant liable under any of the theories of liability asserted by the plaintiff, and that, therefore, this defendant is entitled to judgment as a matter of law.

* * * *

It is apparent in this case that any dumpsters manufactured and sold by this defendant to the City of Manchester were neither defective nor unreasonably dangerous, that any lack of written warnings on these dumpsters was not a proximate cause of decedent's death, and that decedent had assumed any risk of injury and was contributorily negligent as a matter of law barring any recovery.

There is nothing in the record of this case showing that any dumpster manufactured by this defendant was defective in any way at the time it left defendant's control as defined by T.C.A. Section 29-28-102(2). Under T.C.A. Section 29-28-105(d) a product is not unreasonably dangerous because of a failure to adequately warn of a danger or hazard that is apparent to the ordinary user.

. . . [T]here can be no duty on the defendants as manufacturers or sellers to warn of the obvious hazard of climbing into a dumpster, or to warn that dumpsters' contents should be inspected before the dumpsters are dumped. This defendant cannot be liable, therefore, for defendant's death on either negligence or strict liability in tort.

. . . There is nothing in the record to support a finding that any dumpster sold by this defendant was defective so as to not be merchantable; i.e. not fit for the ordinary purposes for which such goods are used. There is also nothing in the record to support a finding that a warranty of fitness for particular purpose ever arose, since there is nothing showing any particular purpose for which the City of Manchester was going to utilize such dumpsters or that the City of Manchester relied upon the defendant in any way in selecting the dumpsters for the City's use.

This defendant would submit, therefore, that plaintiff cannot establish any ground of liability, whether in negligence, warranty, or strict liability in tort as to this defendant.

This defendant would further submit that plaintiff is barred from any recovery on the ground that the decedent assumed any risk of injury or was contributorily negligent as a matter of law. According to the deposition of the decedent's grandmother, the garbage truck driver and the Chief of Police, the decedent regularly rummaged in and around dumpsters searching for cans to sell.

* * * *

Based on all of the foregoing, this defendant would submit that it is entitled to judgment in its favor as a matter of law.

The City and its employee moved for summary judgment supported by affidavits and a brief asserting:

1. Statutory immunity. Exception for negligence of employee not applicable because:

   (1) No duty to a trespasser to whom danger was obvious.

   (2) Lack of or inadequate inspection.

2. No duty to a trespasser to whom danger was obvious. No duty to warn of obvious dangers.

3. Contributory negligence and/or assumption of risk.

The defendant Thomas deposed as follows:

Q. When you come up to these dumpsters, do you ever blow your horn?

A. No.

Q. Do the trucks have horns on them?

A. Uh-huh.

Q. So you could have blown it if you wanted to?

A. Uh-huh.

Q. Were you ever instructed to blow your horn?

A. No.

Q. Did you ever think about blowing your horn?

A. No, because most of the time, it makes a terrible racket coming up; and you have to stop and bring your forks down and ease up to it. You bump it a little bit. If there's anybody in it, they'd have time to signal you or something another.

There is also evidence of the following:

> The City maintains dumpster bins and trucks which are capable of lifting the bins and emptying their contents into the trucks. The trucks are equipped with a ram or press by which the refuse received from the dumpsters is compressed for greater efficiency in hauling. The body of deceased was found in a lump of refuse so processed by a City truck operated by the defendant Thomas. On August 22, 1988, Thomas saw deceased at a gas station and store in Manchester. It is possible to use the truck loader to tip a dumpster to examine its contents. Thomas does not remember whether he tipped the dumpsters on the day in question. It is possible to look in a mirror on the truck and observe the contents of the dumpster pour into the truck. There is no evidence that this was or was not done on the occasion in question.

The City formerly employed two men on each truck, and the man on the rear of the truck could see the contents of a dumpster as it was emptied into the truck. When front-end loaders were obtained, this practice was discontinued, and only one man, the driver, was on the truck. At the point where the refuse which surrounded the body of deceased was loaded, all of the dumpsters except two had lightweight plastic lids. The two had spring-loaded steel lids, and one of these lids was difficult to open, required two men to open it from the outside and would be difficult to open from the inside. Hair was found in the spring attached to one of the dumpster lids, but there is no evidence that this was human hairs or that deceased was ever in this particular dumpster. None of the dumpsters had any warning of the danger of entering. Most of the dumpsters had side openings. There is no evidence that the body of deceased was ever in any particular dumpster.

There is evidence that deceased was mentally handicapped.

The Trial Judge entered the following "Memorandum Opinion and Judgment":

The Court is of the opinion that under the Tennessee Governmental Tort Liability Act the City of Manchester and Gladis Thomas are immune from the causes of action alleged in this suit; that even if said defendants were not immune they owed no duty to decedent because he was a trespasser and because the danger was obvious to him, that the decedent was contributorily negligent as a matter of law and that the decedent assumed the risk of his injuries as a matter of law, the result of which is the complaint should be and is hereby dismissed as to the defendant City of Manchester and the defendant Gladis Thomas.

Another order of the Trial Court granted summary judgment of dismissal of Holt Specialty Equipment, Inc., without memorandum or material comment.

Plaintiffs state the issues on appeal as follows:

I. The trial court erred in granting a motion for summary judgment in favor of the defendants City of Manchester, Tennessee and Gladis Thomas since these defendants are not immune under the Tennessee Governmental Tort Liability Act and there were genuine issues of material fact on the issues of contributory negligence and assumption of the risk.

   A. The defendant City of Manchester and Gladis Thomas are not immune under the Governmental Tort Liability Act since this cause of action falls under the exception for negligence in the operation of motor vehicles.

   B. Genuine issues of material fact exist on the issue of contributory negligence and therefore the trial court erred in granting summary judgment on this basis.

   C. There were genuine issues of material facts as to whether all three of the elements of assumption of the risk were met and therefore summary judgment was not appropriate.

II. The trial court erred in granting motion for summary judgment in favor of defendant Holt Specialty Equipment, Inc. since there remain genuine issues of material fact.

   A. The plaintiff's claims based on strict liability are not barred by the findings that the decedent was contributorily negligent as a matter of law.

   B. The plaintiff's claims based on breach of warranty are not barred by the defenses of contributory negligence and assumption of the risk.

The party moving for summary judgment has the burden of showing that there is no genuine issue as to material facts which are determinative of the dispute, and the ruling upon such motion must be made by viewing the record in the light most favorable to the opponent of the motion. Taylor v. Nashville Banner Publishing Co., Tenn.App.1978, 573 S.W.2d 476, cert. den. 441 U.S. 923, 99 S.Ct. 2032, 20 L.Ed.2d 396 (1979).

This Court must therefore determine whether the appellees, or any of them have shown that they, or any of them, are/is entitled to dismissal upon any ground which is supported by uncontradicted evidence. While a defendant's motion for dismissal or directed verdict may properly be based upon deficiencies in evidence presented by plaintiff, the same rule does not apply to a defendant's motion for summary judgment. The reason for this is that, at the trial, the plaintiff has the initial burden of presenting evidence to support a judgment for the plaintiff; but on a pre-trial motion for summary judgment, the movant (in this case the defendants) has the burden of presenting evidence of facts requiring judgment for the movant. After the movant has produced such evidence, and only then, is the opponent required to offer contradictory evidence.

The showing required of a movant to put the burden on the opponent to go forward, may be satisfied by simply pointing out that the record contains answers to interrogatories in which the opponent of the motion admits that he/she has no proof to establish an essential element of the case. See Celotex Corporation v. Catrett, 477 U.S. 317, 91 L.Ed.2d 265, 106 S.Ct. 2548 (1986). No such proof is found in the present record.

Governmental Immunity

T.C.A. Sec. 29-20-201 provides that all governmental entities shall be immune to suit for injury resulting from any of their functions, governmental or proprietary, except as provided in Chapter 20, title 29 of T.C.A.

Section 29-20-202 removes such immunity in respect to injuries resulting from negligent operation of a motor vehicle or other equipment by an employee within the scope of his employment.

Section 29-20-205 removes immunity in respect to negligent acts of all governmental employees within the scope of their employment with certain exceptions, of which the following are pertinent.

(1) Exercise or failure to exercise discretion.

(4) Failure to make or making an inadequate or negligent inspection.

The truck and its loading and compacting devices unquestionably constituted a "motor vehicle or other equipment." Therefore, there is no governmental immunity for the operation of the same.

It is insisted that the driver of the compactor truck exercised discretion as to whether to "tip" the dumpster or to otherwise observe its contents. In the view of this Court, such an act or omission involved the exercise of due care and not discretion.

It is also insisted that the examination of the contents of the dumpster before compacting it constituted an "inspection: or "inadequate inspection". This Court does not agree. The driver of the truck was not a city inspector of refuse, but was burdened with the duty of due care to avoid injuring others in his operation of the truck and equipment thereon.

The complaint does not assert facts which, as a matter of law, establish governmental immunity. The evidence offered in support of the motion for summary judgment does not show uncontradicted facts which as a matter of law establish governmental immunity.

Therefore, the summary judgment in favor of the City cannot be affirmed on the basis of governmental immunity.

The second ground of the motion of the City is that there was no duty to a trespasser because the danger was obvious and no duty to warn for the same reason.

The complaint does not contain assertions which would justify its dismissal on these grounds. Neither the Trial Court nor this Court is justified in taking judicial notice that entering a refuse bin is such an obvious danger that no warning needs to be posted thereon or that the owner of the bin owes no duty to a trespasser therein. There is no evidence in this record to establish conclusively that such an obvious danger existed. Even though the finder of fact might reach such conclusions factually from the evidence in this record, a conclusion of law to this effect is not justified.

The third ground of the City's motion for summary judgment was contributory negligence and assumption of risk.

The complaint does not state facts from which this Court or the Trial Court could conclude as a matter of law that the deceased assumed the risk of entering the bin or was otherwise contributorily negligent. The complaint does not state that the deceased voluntarily entered the bin, although it is alleged that the defendants should have anticipated that he might do so. Such a suggestion is not such an overt statement of fact as to form the basis of a dismissal on motion for summary judgment.

There is evidence from which a finder of fact might properly find that the deceased did not have mental capacity to appreciate the danger of entering a trash bin. Under the present record, the issues of contributory negligence and assumption of risk are fact issues to be determined by the finder of fact after a trial upon the merits and not by the Court as a conclusive matter of law.

It is not the knowledge of danger alone which denies a plaintiff recovery; the issue is whether in the light of knowledge the plaintiff exercised reasonable care for his own safety, i.e. he must not only know the facts which create the danger, but he must comprehend and appreciate the danger.

Haga v. Blanc & West Lbr. Co., Inc., Tenn.1984, 666 S.W.2d 61; Ellithorpe v. Ford Motor Co., Tenn.1973, 503 S.W.2d 5160.

The elements of assumption risk are (1) knowledge of danger, (2) appreciation of that danger, and (3) voluntary exposure to that danger. Rogers v. Garrett, 217 Tenn. 282, 397 S.W.2d 372 (1965).

In negligence cases, contributory negligence is peculiarly an issue for the finder of fact. Haga v. Blanc & West Lbr. Co., Inc., *supra*; Brookins v. The Round Table, Inc., Tenn.1981, 624 S.W.2d 547.

It is only when facts are uncontrovertible and such that all reasonable men must reach the same conclusion thereon that contributory negligence becomes a matter of law for decision by the court. Thomas v. Williamson, 58 Tenn.App. 444, 431 S.W.2d 287 (T1968).

It is seen from the foregoing that the defendants, City of Manchester and its employee, Gladis Thomas, have not sustained their motion for summary judgment, and the judgment granted thereon must be reversed.

The grounds quoted above in support of the motion of the defendant, Holt Specialty Equipment, Inc. for summary judgment are not sufficient to support a summary judgment. Careful scrutiny of said grounds fails to disclose a single affirmative statement supported by evidence. Indeed, the entire theory of the motion appears to be the lack of evidence in the record to support a judgment against the movant. As already explained, a summary judgment is not rendered for lack of evidence but upon uncontradicted evidence supporting such a judgment.

The allegations of negligence on the part of Holt Specialty Equipment, Inc., have been heretofore quoted.

The brief of Holt Specialty Equipment, Inc. cites no evidence that such allegations are untrue, and none is found in the record. Until the movant denies under oath the allegations of adversary's complaint he (the movant) cannot complain of his adversary's failure to support such allegations with evidence.

Accordingly this Court concludes that the record contains insufficient grounds for a summary judgment of dismissal in favor of the defendant, Holt Specialty Equipment, Inc.

Nothing in this opinion is intended to reflect upon the merits of this controversy or the decision which should be ultimately reached in the Trial Court. The disposition of this appeal is based solely upon the pleadings and the evidence in this record and the law applicable thereto.

The judgment of the Trial Court is reversed and the cause is remanded to the Trial Court for further proceedings. Costs of this appeal are adjudged against the appellants, jointly and severally.

Reversed and Remanded.

CANTRELL, J., concurs.

KOCH, J., dissents in separate opinion.

KOCH, Judge, dissenting.

I dissent from the majority's reversal of the summary judgment granted to Holt Specialty Equipment, Inc. ("Holt"). It is the latest in a series of unfortunate decisions misconstruing Tenn.R.Civ.P. 56 solely to avoid following Celotex Corp. v. Catrett, 477 U.S. 242, 106 S.Ct. 2548 (1986). Holt should not be required to spend additional time and money defending against this claim because the plaintiff has been unable to show that she has a strong enough case to take to the jury.

I.

Roy Dennis Howland lived in Manchester with his grandmother, Electra Preston, ever since he was a small boy. After receiving a medical discharge from the Army, he returned to Manchester where he held several unskilled jobs. At the time of his death, he was 43-years-old and unemployed. He obtained spending money by collecting discarded aluminum cans to sell for scrap.

Mrs. Preston last saw her grandson on August 22, 1987 when he left home to make his usual rounds to collect cans. Two days later, his body was found in the Coffee County landfill.

A police investigation concluded that Mr. Howland, despite numerous warnings, had climbed into one of the City of Manchester's dumpsters at the Whispering Pines Shopping Center. A city sanitation worker, unaware of Mr. Howland's presence, had emptied the contents of the dumpster into a city garbage truck and then had emptied the truck at the landfill. Mr. Howland was apparently killed when the contents of the dumpster were compacted with the garbage in the truck.

Mrs. Preston, acting as her grandson's personal representative, filed suit in the Circuit Court for Coffee County against the City of Manchester, the driver of the garbage truck, Holt, the dumpster's manufacturer, the owners of the shopping center, and two merchants who used the dumpster. The case against one of the merchants was nonsuited four months later, and, after filing answers denying liability, the remaining defendants filed motions for summary judgment.

The trial court granted summary judgments to each of the remaining defendants. Mrs. Preston has appealed only the orders granting summary judgments to the city and its employee and to Holt. The majority has now decided that these orders must be vacated. While I concur that the negligence claims against the city and its employee should not have been summarily dismissed, I cannot concur that the summary judgment in favor of the dumpster's manufacturer should meet the same fate.

II.

Mrs. Preston seeks to recover against Holt using negligence, breach of warranty, and products liability theories. Her complaint states that Holt's dumpsters were "death trap[s]" and that Holt knew or should have known that they "attracted rummagers" like Mr. Howland. Accordingly, Mrs. Preston alleges that Holt was negligent in failing to place warning signs on its dumpsters and in failing to instruct the city concerning their proper use. She also alleges that the dumpsters were unreasonably and inherently dangerous and that Holt breached its implied warranties of merchantability and fitness for a particular purpose.

Holt's answer categorically denied liability on every theory of recovery. Its motion for summary judgment was based on five grounds. The first two grounds, contributory negligence and assumption of the risk, focused on Mr. Howland's conduct. The city also relied on these grounds in its motion for summary judgment. Like the majority, I find that the record contains genuine issues as to the facts material to these defenses and, therefore, that neither Holt nor the city were entitled to summary judgments on these two grounds.

The remaining grounds for Holt's summary judgment motion were: (1) that it did not have a duty to place warning signs on its dumpsters; (2) the absence of the proof required by Tenn.Code Ann. Sec. 29-28-105(a) (1980) that the dumpster was defective or dangerous when it left Holt's control; and (3) the absence of proof that the dumpster was not fit for the purposes for which it was intended. The majority has, regrettably, overlooked these grounds. Together, they provide ample basis for granting Holt a summary judgment.

III.

Summary judgments are no longer viewed as disfavored procedural shortcuts. Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S.Ct. 2548, 2555 (1986). They are an integral part of trial practice in Tennessee because they "provide a quick, inexpensive means of concluding cases, on issues as to which there is no dispute regarding material facts. Brookins v. The Round Table, Inc., 624 S.W.2d 547, 550 (Tenn.1981); Evco Corp. v. Ross, 528 S.W.2d 20, 24-25 (Tenn.1975).

A motion for summary judgment tests the merits of a complaint by piercing through the allegations in the pleadings to determine whether the parties have enough evidence to justify the time and expense of a trial. See Advisory Committee Note to 1963 Amendment to Fed.R.Civ.P. 56(e), 6 J. Moore, W. Taggart & J. Wicker, Moore's Federal Practice p 56.01[13] (2d ed. 1988); 10 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure Sec. 2712, at 569-71 (2d ed. 1983); Currie, Thoughts on Directed Verdicts and Summary Judgments, 45 U.Chi.L.Rev. 72, 78 (1977). **(FN1)**

A summary judgment should not be granted if a "genuine issue as to any material fact" exists. See Tenn.R.Civ.P. 56.03. However, there can be no genuine issue for trial unless there is sufficient evidence upon which a jury can return a verdict. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 2511 (1986). Thus, all three sections of this court have now

recognized that a complaint can be dismissed on summary judgment if the plaintiff, after being given a reasonable opportunity, is unable to establish an essential element of its case on which it will have the burden of proof at trial. Stanley v. Joslin, 757 S.W.2d 328, 330 (Tenn.Ct.App.1987); Moman v. Walden, 719 S.W.2d 531, 533 (Tenn.Ct.App.1986). (FN2)

When the party moves for a summary judgment based on its adversary's inability to prove an essential element of its case, the trial court should ask itself whether a fair-minded juror could return a verdict for the non-moving party on the evidence in the record. Anderson v. Liberty Lobby, Inc., 477 U.S. at 251, 106 S.Ct. at 2511-12. If, taking the record as a whole, the answer is "no," there is no genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356 (1986).

The burden of the party seeking a summary judgment has two distinct components. The first is the initial burden of production that requires the moving party to make a prima facie showing that it is entitled to a summary judgment. See 10A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure Sec. 2727 (2d ed. 1983). The second is the ultimate burden of persuasion that always remains with the moving party. If the moving party discharges its initial burden of production, the burden shifts to the non-moving party to demonstrate that a summary judgment should not be granted. See Tenn.R.Civ.P. 56.05; Fowler v. Happy Goodman Family, 575 S.W.2d 496, 498 (Tenn.1978).

The party seeking the summary judgment may discharge its initial burden of production in either of two ways. First, it may submit affirmative evidence that negates an essential element of the non-moving party's claim. Second, it may demonstrate that the non-moving party's evidence is insufficient to establish an essential element of the non-moving party's case. See 10A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure Sec. 2727, at 130-31 (2d ed. 1983); Louis, Federal Summary Judgment Doctrine: A Critical Analysis, 83 Yale L.J. 745, 750 (1974).

Despite this court's broad acceptance of the foregoing principles, the majority has again manufactured three procedural hurdles for summary judgments out of whole cloth. First, they state that "a summary judgment is not rendered for the lack of evidence but upon uncontradicted evidence supporting such a judgment." Second, they assert that "[u]ntil the movant denies under oath the allegations of adversary's complaint he (the movant) cannot complain of his adversary's failure to support such allegations with evidence." Third, they state that persons seeking Celotex-type summary judgments must obtain their adversary's admission of their inability to prove an essential element of their case using interrogatories, depositions, or requests for admissions. Neither Tenn.R.Civ.P. 56 nor the authoritative cases construing it support these assertions.

Celotex Corp. v. Catrett and this court's decisions following it have firmly established that a summary judgment can, in fact, be "rendered for the lack of evidence" if the non-moving party cannot muster sufficient evidence to make out its claim. When a non-moving party fails to establish an essential element of its case, a trial would be useless, and the moving party is entitled to a judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. at 249, 106 S.Ct. at 2510-11.

Likewise, nothing in Tenn.R.Civ.P. 56 requires a party seeking a summary judgment to "deny under oath the allegations of [its] adversary's complaint" or to support its motion with affidavits or other evidentiary materials. Tenn.R.Civ.P. 56.01, 56.02 permit the parties to seek or to defend against summary judgments "with or without supporting affidavits," and Tenn.R.Civ.P. 56.03 empowers the courts to grant summary judgments "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact."

In light of the Rule 56's plain language, the court's are virtually unanimous in holding that a party seeking a summary judgment need not support its motion with affidavits or other evidentiary material. Celotex v. Catrett, 477 U.S. at 323, 106 S.Ct. at 2553; 6 J. Moore, W. Taggart, & J. Wicker, Moore's Federal Practice p 56.11[3], at 56-114 (2d ed. 1988); 10A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure Sec. 2722, at 54-55 (2d ed. 1983).

Parties seeking a Celotex-type summary judgment need not engage in discovery of their own to support their motion. They may carry their burden of demonstrating that their adversary's evidence is insufficient simply by pointing out that the record contains absolutely no evidence establishing an essential element of their adversary's case. Once they do so, the burden of going forward shifts to the non-moving party either to demonstrate how the evidence in the record substantiates their case or to supply the missing evidence.

Mrs. Preston filed her complaint almost one year before Holt filed its motion for summary judgment. Holt's motion clearly put her on notice that it was challenging the sufficiency of her proof. She had sufficient time both before and after Holt's motion was filed to demonstrate her ability to prove the essential elements of her complaint against Holt. Accordingly, I would find Holt's motion to be procedurally sound and would examine the record to determine whether she has been able to muster sufficient evidence to make out any of her claims against Holt.

IV.

Mrs. Preston's allegations regarding Holt's failure to place warning signs on its dumpsters or to instruct the city in their proper use is governed by the Tennessee Products Liability Act of 1978, Tenn.Code Ann. Sec. 29-28-101, -108 (1980). Tenn.Code Ann. Sec. 29-28-102(6) provides that a product liability action includes "all actions based upon . . . breach of or failure to discharge a duty to warn or instruct, whether negligent or innocent." Thus, Mrs. Preston can recover only if she can demonstrate that Holt had a duty either to place signs on its dumpsters warning the public not to climb into the dumpsters or to instruct purchasers on the dumpsters' proper use.

A manufacturer's obligation to give warnings about dangers associated with the use of its product arises only when the product is unreasonably dangerous. Goode v. Tamko Asphalt Prods., Inc., 783 S.W.2d 184, 187 (Tenn.1989). For the purpose of the Tennessee Products Liability Act, a product is "unreasonably dangerous" if it "is dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics." See Tenn.Code Ann. Sec. 29-28-102(8). A product is not unreasonably dangerous "because of a failure to adequately warn of a danger or hazard that is apparent to the ordinary user." See Tenn.Code Ann. Sec. 29-28-105(d).

Thus, the Tennessee Products Liability Act contains an objective standard for determining whether a duty to warn exists. It does not impose upon manufacturers a duty to warn of widely known risks. See Restatement (Second) of Torts Sec. 402A comment j (1976). A manufacturer is entitled to rely on the common sense and good judgment of its foreseeable users and consumers. Pemberton v. American Distilled Spirits Corp., 664 S.W.2d 690, 693 (Tenn.1987). Therefore, whether the danger is widely known is based on the knowledge of the ordinary consumer or user of the product, not the knowledge of the individual plaintiff. Memphis Bank & Trust Co. v. Water Servs., Inc., 758 S.W.2d 525, 528 (Tenn.1988); Smith v. Detroit Marine Eng'g Corp., 712 S.W.2d 472, 476 (Tenn.Ct.App.1985).

The formulation of the scope of one person's duty to another is a task for the courts. Dill v. Gamble Asphalt Materials, 594 S.W.2d 719, 721 (Tenn.Ct.App.1981). Thus, when the facts are undisputed, the existence of a manufacturer's duty to warn should be determined as a matter of law. When the undisputed facts show that the danger is open and obvious, the courts will not impose a duty to warn on the manufacturer. Pemberton v. American Distilled Spirits Corp., 664 S.W.2d at 692-93; Reece v. Lowe's of Boone, Inc., 754 S.W.2d 67, 71 (Tenn.Ct.App.1988).

There are no material factual disputes in this record insofar as Holt's duty to warn is concerned. Mr. Howland's mental acuity is not relevant to this issue because Holt's duty is not measured against Mr. Howland's knowledge or awareness but against the knowledge and awareness of the ordinary user and consumer. Therefore, I would find as a matter of law that a dumpster manufacturer does not have a duty to place signs on its product warning the public of the dangers attendant to climbing or crawling inside a dumpster to search for discarded aluminum cans or for any other reason.

The Georgia Court of Appeals reached a similar conclusion in a case involving a six-year-old child who was killed while playing in a dumpster. The court affirmed a directed verdict in favor of the manufacturer, finding that no proof had been introduced that the dumpster was unreasonably dangerous when used as a trash receptacle or was not reasonably suited for its intended purpose. Greenway v. Peabody Int'l Corp., 163 Ga.App. 698, 294 S.E.2d 541, 547 (1982).

V.

Mrs. Preston also seeks to recover based on Holt's alleged breaches of the implied warranty of merchantability and of the warranty of fitness for a particular purpose. See Tenn.Code Ann. Sec. 47-2-314 (1979); Tenn.Code Ann. Sec. 47-2-315 (Supp.1989).

All the discovery taking place during the year between the time the complaint was filed and the disposition of Holt's summary judgment focused on Mr. Howland and the events of August 22, 1987. Mrs. Preston never attempted to discover or to present evidence of any sort that the dumpster was defective or unreasonably dangerous when it left Holt's control or that it would not pass without objection in the trade or that it was unfit for the ordinary purpose for which such dumpsters are intended.

Actions for breach of the implied warranty of merchantability have been termed "first cousins" to negligence and products liability actions. Two noted experts on the Uniform Commercial Code have noted:

A plaintiff in a merchantability lawsuit must prove that the defendant deviated from the standard of merchantability and that this deviation caused the plaintiff's injury both proximately and in fact. These necessities of proof make the merchantability case a first cousin to a negligence lawsuit. Under 2-314, a plaintiff must prove that (1) a merchant sold goods, (2) which were not "merchantable" at the time of sale, (3) injury and damages to the plaintiff or his property (4) which were caused proximately and in fact by the defective nature of the goods, and (5) notice to seller of injury.

1 J. White & R. Summers, Uniform Commercial Code Sec. 9-7 (3d ed. 1988).

Mrs. Preston failed to demonstrate that she could prove several of these essential elements of her case. She offered no evidence that Holt's dumpsters were unfit for the ordinary purposes for which they were intended or that they did not conform to the quality of other dumpsters on the market. She offered no evidence of industry or government-mandated labelling requirements. In short, she offered no evidence that Holt's dumpster was not merchantable when it was sold. Her claim need not be submitted to the jury without this proof.

The warranty of fitness for a particular purpose in Tenn.Code Ann. Sec. 47-2-315 is even narrower than the implied warranty of merchantability. See 1 J. White & R. Summers, Uniform Commercial Code Sec. 9-10, at 481-82 (3d ed. 1988). In order to recover, a plaintiff must show (1) that seller had reason to know of the buyer's purpose, (2) that the seller had reason to know that the buyer was relying on its skill or judgment in selecting the appropriate goods, and (3) that the buyer did, in fact, rely on the seller's skill or judgment.

Mrs. Preston presented no evidence on any of the essential elements of a claim under Tenn.Code Ann. Sec. 47-2-315. Therefore, her claims based on an alleged breach of a warranty of fitness for a particular purpose should meet the same fate as her claims based on an alleged breach of the implied warranty of merchantability.

VI.

Since Mrs. Preston has failed to demonstrate that she will be able to prove one or more of the essential elements of all of her claims against Holt, I would affirm the trial court's decision to grant Holt a summary judgment.

FN1. Tenn.R.Civ.P. 56 is copied almost verbatim from its federal counterpart. Thus, federal decisions construing Fed.R.App.P. 56 can provide us with helpful guidance in interpreting Tenn.R.Civ.P. 56. Continental Casualty Co. v. Smith, 720 S.W.2d 48, 49 (Tenn.1986); Bowman v. Henard, 547 S.W.2d 527, 530 (Tenn.1977); Marlowe v. First State Bank, 52 Tenn.App. 99, 105, 371 S.W.2d 826, 828-29 (1962).

FN2. See also Laws v. Johnson, Ct.App. No. 209, slip op. at 5 (Tenn.Ct.App. July 17, 1990) (Sanders, P.J.); Lee v. Vines, Shelby Law No. 59, slip op. at 8 (Tenn.Ct.App. Jan. 9, 1990), perm. app. denied, May 14, 1990 (McLemore, Sp.J.); Wheeler v. Stophel & Stophel, Ct.App. No. 889, slip op. at 2 (Tenn.Ct.App. Dec. 29, 1989), perm. app. denied, May 7, 1990 (McDonald, Sp.J.).

WAYNE COUNTY, Tennessee, Respondent-Appellant,
v.
The TENNESSEE SOLID WASTE DISPOSAL CONTROL BOARD,
Respondent-Appellee,
v.
Margaret GALLAHER, Intervenor-Respondent-Appellant.

Court of Appeals of Tennessee,
Middle Section, at Nashville.
May 27, 1988.

Published in Accordance with Tenn.Ct.App.R. 11.

Following determination by the Solid Waste Disposal Control Board that county landfill contributed to contamination of landowners' well, county was directed to close landfill properly and to provide landowners with permanent, uncontaminated supply of water. Upon county's petition for review, the Chancery Court, Davidson County, Irvin H. Kilcrease, Jr., Chancellor, upheld Board's finding that landfill caused contamination of water but determined that Board exceeded its authority by ordering county to supply landowner with uncontaminated water and appeal was taken. The Court of Appeals, Koch, J., held that: (1) evidence supported finding that landfill caused pollution to water; (2) neither Waste Disposal Board nor Commissioner of Health and Environment had authority to grant remedial relief to landowners in form of requiring county to supply water; and (3) though landowners could not seek administrative redress for interference with use and enjoyment of farm, they were entitled to seek such remedies under private nuisance theory in court of competent jurisdiction.

Affirmed.

Charles Jeffrey Barnett, Waynesboro, Richard Lodge, Bass, Berry & Sims, Nashville, for respondent-appellant.

W.J. Michael Cody, Atty. Gen. and Reporter, Frank J. Scanlon, Deputy Atty. Gen., Donna J. Smith, Asst. Atty. Gen., for respondent-appellee.

Gary A. Davis, Knoxville, for intervenor-respondent-appellant.

OPINION

KOCH, Judge.

This appeal arises from a dispute concerning whether the Wayne County landfill is contributing to the contamination of two wells belonging to a neighboring landowner. The Tennessee Solid Waste Disposal Control Board, finding that the landfill was a nuisance and that it contributed to

the contamination, directed the County to close the landfill properly and to provide the neighboring landowner with a permanent, uncontaminated supply of water. The County filed a petition for review in the Chancery Court for Davidson County. The trial court found that there was substantial and material evidence to support the Board's finding that the landfill caused the contamination of its neighbor's well water. It also held that the Board exceeded its authority by ordering the County to supply the landowner with uncontaminated water. Both the County and the landowner have appealed. We affirm the decision of the trial court.

I.

Margaret Gallaher and her husband, Marion, live on a farm in Hardin Hollow near Waynesboro. Mr. Gallaher was born and raised on the property, and the couple has lived there since 1937 along with two of Mr. Gallaher's brothers. The farm house is located near a stream called Banjo Branch, which is fed by springs located further up in Hardin Hollow.

The Gallahers drilled a well in 1955 to supply their house with fresh water. In 1976, they drilled a second well, for their son's use, approximately one half mile further down Hardin Hollow. This well was operated only briefly and was capped off in 1976.

In August, 1976, Wayne County built a solid waste landfill at the head of Hardin Hollow despite objections by the Gallahers and other landowners in the area. The landfill is located on a ridge almost two miles from the Gallahers' house. The ridge is on a higher elevation, and its steeply sloping sides allow the rapid drainage of surface water into the neighboring valleys including Hardin Hollow.

The County experienced problems operating the landfill during the eight years it was open. A former employee of the Division of Solid Waste Management ("Division") who testified for the Gallahers described the landfill as "not much more than a glorified dump" and stated that the County's operation of the landfill was "very poor".

The landfill caused siltation problems in Banjo Branch as early as 1977. Leachate (FN1) began to ooze from the landfill in 1981. In April, 1982, the Division issued a formal order of non-compliance stating that "[a]ll inspections for at least the last five months show three major recurring problems: (1) unsatisfactory cover, (2) leachate, and (3) flies." The County was unable to rectify the leachate problem while the landfill was in operation. It reappeared in 1983 and continued after February, 1984, when the landfill closed because it was full. In November, 1984, the Division approved the final closure of the landfill but warned the County that the potential for erosion and leaching still existed and that additional maintenance would be required to correct these problems.

Mrs. Gallaher stated that her well water and the water in Banjo Branch had been good until the landfill was constructed. After that time, one of the springs feeding the stream became cloudy and algae began to grow on the rocks in the stream near her house. (FN2) In 1980 she began to notice a gradual change in the quality of her water. Her dishwasher and plumbing became corroded and clogged. Her bathroom became "all splotched up," her washing machine "turned red inside," and her dishes "were discolored and smokish." She also noted that the water had a odor like "sulphur or gas or acid or something."

Mrs. Gallaher and those living with her stopped using the water from the well in 1981 after one of her husband's brothers became ill. They started hauling water from a nearby school for all their cooking, drinking and bathing.

Mrs. Gallaher had the water tested in 1983. The Division informed her that her water exceeded the EPA recommended limits for hardness, iron, and sulfates but that these limits related mainly to "acceptable esthetic and taste characteristics." The Division also informed Mrs. Gallaher that it "appeared to be good other than the excess levels of hardness" and that "there does not appear to be any reason to suspect the Wayne County Landfill of contaminating your well."

Relying on this information, Mrs. Gallagher replaced the old plumbing and connected it to the well one half mile away that had not been used since 1976. The water appeared to be good at first. It was clear, but particles appeared when it was allowed to settle. Mr. Gallaher's brother became ill again, and Mrs. Gallaher's skin began to itch and burn when she bathed. After approximately three weeks, the water from the new well was as bad or worse than the water from the old well. The Gallahers stopped using it and went back to hauling water from the school.

The Division tested the water from Mrs. Gallaher's old well in early 1984 and found it to be "very cloudy with rust colored particles." Additional water samples were taken later in 1984 and early 1985 to verify the oil and grease analysis that had already been performed. The chemistry professor who tested these samples stated that an oil film could be seen on the top of the samples and that they smelled "rather like the grease pit at . . . a service station."

The Gallahers complained to the Division in June, 1984 about the effect the landfill was having on their water. After the Division ceased its enforcement activities against the County in November, 1984, the Gallahers filed a complaint with the Tennessee Solid Waste Disposal Control Board ("Board"), requesting that the landfill be monitored more closely and that the County be ordered to provide them with uncontaminated water.

The Board conducted a hearing in April and May, 1985 and issued a Final Decision and Order finding that "[b]ased on the weight of the evidence, it is more likely than not that leachate from the Wayne County landfill is contributing to the contamination of the groundwater supplying the two Gallaher wells." The Board determined that the landfill constituted a nuisance and was violating Rule 1200-1-7-.06(3)(a)16 (Revised 1977) (FN3). It directed the County to close the landfill in a manner satisfactory to the Division and to supply the Gallahers with a safe, uncontaminated drinking water supply.

The County filed a petition to review the Board's decision in the Chancery Court for Davidson County. The trial court found that there was substantial and material evidence to support the Board's findings that the landfill was a nuisance and that it was contributing to the contamination of the Gallahers' water supply. However, while holding that the Board had the authority to direct the County to clean up the contamination caused by the landfill, the trial court determined that the Board did not have the authority to order "the provision of a water supply to a third party whose water is contaminated as a result of violations" of the water quality standards.

II.

The County asserts that the Board's decision was arbitrary and capricious because it "is not supported by any evidence directly demonstrating a causal connection" between the landfill and the contamination in the Gallahers' wells. It's formulation of the issue suggests a broader scope of review of the Board's factual determinations than that required by Tenn.Code Ann. Sec. 4-5-322(h)(5) (Supp.1987). (FN4) Using the Uniform Administrative Procedures Act's standard for reviewing factual determinations, we have determined that there is substantial and material evidence to support the Board's findings of fact.

A.

[1] Courts defer to the decisions of administrative agencies when they are acting within their area of specialized knowledge, experience, and expertise. Southern Ry. v. State Bd. of Equalization, 682 S.W.2d 196, 199 (Tenn.1984); Freels v. Northrup, 678 S.W.2d 55, 57-58 (Tenn.1984); Illinois Cent. Gulf R.R. v. Tennessee Pub. Serv. Comm'n, 736 S.W.2d 112, 117 (Tenn.Ct.App.1987); Griffin v. State, 595 S.W.2d 96, 99 (Tenn.Crim.App.1980). Accordingly, judicial review of an agency's action follows the narrow, statutorily defined standard contained in Tenn.Code Ann. 4-5-322(h) rather than the broad standard of review used in other civil appeals. CF Indus. v. Tennessee Pub. Serv. Comm'n, 599 S.W.2d 536, 540 (Tenn.1980); Metropolitan Gov't of Nashville v. Shacklett, 554 S.W.2d 601, 604 (Tenn.1977); DePriest v. Puett, 669 S.W.2d 669, 673 (Tenn.Ct.App.), cert. denied, 469 U.S. 1034, 105 S.Ct. 505, 83 L.Ed.2d 397 reh. denied, 469 U.S. 1181, 105 S.Ct. 942, 83 L.Ed.2d 954 (1985).

[2] The narrower scope of review used to review an agency's factual determinations suggests that, unlike other civil appeals, the courts should be less confident that their judgment is preferable to that of the agency. See 2 C. Koch, Administrative Law and Practice Sec. 9.4 (1985). Courts do not review the fact issues de novo and, therefore, do not substitute their judgement for that of the agency as to the weight of the evidence, Humana of Tennessee v. Tennessee Health Facilities Comm'n, 551 S.W.2d 664, 667 (Tenn.1977); Grubb v. Tennessee Civil Serv. Comm'n, 731 S.W.2d 919, 922 (Tenn.Ct.App.1987), even when the evidence could support a different result. Hughes v. Board of Comm'rs, 204 Tenn. 298, 305, 319 S.W.2d 481, 484 (1958).

[3] Tenn.Code Ann. Sec. 4-5-322(h)(5) directs the courts to review an agency's factual determinations to determine whether they are supported by "evidence which is both substantial and material in light of the entire record." An agency's factual determination should be upheld if there exists "such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration." Southern Ry. v. State Bd. of Equalization, 682 S.W.2d 196, 199 (Tenn.1984); Sweet v. State Technical Inst., 617 S.W.2d 158, 161 (Tenn.Ct.App.1981).

[4] The "substantial and material evidence" standard contained in Tenn.Code Ann. Sec. 4-5-322(h)(5) is couched in very broad language. What amounts to substantial evidence

is not precisely defined by the statute. In general terms, it requires something less than a preponderance of the evidence, Consolo v. Federal Maritime Comm'n, 383 U.S. 607, 620, 86 S.Ct. 1018, 1026, 16 L.Ed.2d 131 (1966), but more than a scintilla or glimmer. Pace v. Garbage Disposal Dist., 54 Tenn.App. 263, 267, 390 S.W.2d 461, 463 (1965).

[5] Substantial evidence is not limited to direct evidence but may also include circumstantial evidence or the inferences reasonably drawn from direct evidence. Radio Officers Union v. NLRB, 347 U.S. 17, 49, 74 S.Ct. 323, 340, 98 L.Ed. 455 (1954); City of Pompano Beach v. FAA, 774 F.2d 1529, 1540 (11th Cir.1985); Carter-Wallace, Inc. v. Gardner, 417 F.2d 1086, 1093 (4th Cir.1969), cert. denied, 398 U.S. 938, 90 S.Ct. 1842, 26 L.Ed.2d 271 (1970); Lackawanna Refuse Removal, Inc. v. Commonwealth, Dep't of Envt'l Resources, 65 Pa.Commw. 372, 442 A.2d 423, 425 (1982); Board of Firemen's Relief & Retirement Fund Trustees of Houston v. Marks, 150 Tex. 433, 242 S.W.2d 181, 185 (1951).

[6] The general rules governing judicial review of an agency's factual decisions apply with even greater force when the issues require scientific or technical proof. Appellate courts have neither the expertise nor the resources to evaluate complex scientific issues *de novo*. See Thompson Medical Co. v. FTC, 791 F.2d 189, 196 (D.C.Cir.1986), cert. denied, 479 U.S. 1086, 107 S.Ct. 1289, 94 L.Ed.2d 146 (1987). When very technical areas of expertise are involved, they generally defer to agency decisions, Story v. Marsh, 732 F.2d 1375, 1381 (8th Cir.1984); Petrou Fisheries, Inc. v. ICC, 727 F.2d 542, 545 (5th Cir.1984), and will not substitute their judgment for that of the agency on highly technical matters. Community Nutrition Inst. v. Young, 773 F.2d 1356, 1363 (D.C.Cir.1985), cert. denied, 475 U.S. 1123, 106 S.Ct. 1642, 90 L.Ed.2d 187 (1986).

[7] However, the court's deference to an agency's expertise is no excuse for judicial inertia. Bureau of Alcohol, Tobacco & Firearms v. Federal Labor Relations Auth., 464 U.S. 89, 97, 104 S.Ct. 439, 444, 78 L.Ed.2d 195 (1983). Even in cases involving scientific or technical evidence, the "substantial and material evidence standard" in Tenn.Code Ann. Sec. 4-5-322(h)(5) requires a searching and careful inquiry that subjects the agency's decision to close scrutiny. See Crounse Corp. v. ICC, 781 F.2d 1176, 1187 (6th Cir.), cert. denied, 479 U.S. 890, 107 S.Ct. 290, 93 L.Ed.2d 264 (1986); Cranston v. Clark, 767 F.2d 1319, 1321 (9th Cir.1985).

B.

[8] The Board found that the landfill had been poorly operated and improperly closed and that the manner of its operation and closing had caused the formation of leachate. It also determined that the leachate "more likely than not" contributed to the contamination of the ground water supplying the Gallaher's wells and that the contamination "will likely continue" until the landfill is closed properly. Like the trial court, we have determined that there is substantial and material evidence to support these factual determinations.

The evidence is largely undisputed that the landfill was improperly operated, thereby causing leachate to form. The County received numerous citations from the Division during the life of the landfill noting that the waste was being covered improperly, and that leachate was forming and entering the water course. The Division repeatedly ordered the County to correct the problem, and while the County attempted to do so, it was never completely successful. The problem continued after the landfill was closed. Even when the Division discontinued its enforcement action against the County, it warned that the potential for erosion and leaching continued to exist and that additional maintenance would be required. There is no evidence in the record indicating that the County has acted to control or prevent the risk of further erosion and leaching.

There is also substantive evidence that the Gallahers' wells are contaminated and that the source of contamination is the landfill. Mrs. Gallaher's testimony that the quality of her water did not deteriorate until after the landfill had been in operation for several years was unchallenged. The poor quality of the water was demonstrated by testimony describing its appearance, smell and taste, the illness of Mrs. Gallaher's brother-in-law, the burning sensation when she showered, and the effect of the water on her plumbing and appliances. It was also corroborated by proof that the water contained substances, not in naturally occurring quantities, that were also present in the landfill and the leachate.

The County never disputed that the quality of Mrs. Gallaher's water was poor. It insisted, however, that the condition of the water was due to naturally occurring phenomena, not the landfill. To support its position, it presented expert proof that it was geologically "inconceivable" that leachate from the landfill was flowing into the aquifer from which the Gallahers' water comes. However, the Gallahers presented expert geologic proof to the contrary.

[9] Agencies are not bound by the expert opinions presented to them. Dayton Power & Light Co. v. Public Utils. Comm'n, 292 U.S. 290, 299, 54 S.Ct. 647, 652, 78 L.Ed. 1267 (1934). Because of their presumed expertise and knowledge, agencies are accorded wide discretion in determining the weight or probative value to be given the testimony of the expert witness. This is not to say that an agency may arbitrarily dismiss the opinion of an expert and substitute its own unsubstantiated opinion. . . The duty of the agency with regard to crediting or discounting expert evidence is to actually consider the expert's opinion in reaching a final decision.

4 J. Stein, G. Mitchell & B. Mezines, Administrative Law Sec. 28.03, at 28-13--28-16 (1988).

[10] Resolving conflicting evidence is for the agency. Universal Camera Corp. v. NLRB, 340 U.S. 474, 488, 71 S.Ct. 456, 465, 95 L.Ed. 456 (1951); Idaho State Ins. Fund v. Hunnicutt, 110 Idaho 257, 715 P.2d 927, 930-31 (1985); Southern Worcester County Regional Vocational School Dist. v. Labor Relations Comm'n, 386 Mass. 414, 436 N.E.2d 380, 384 (1982); Firemen's and Policemen's Civil Serv. Comm'n v. Brinkmeyer, 662 S.W.2d 953, 956 (Tex.1984). Thus, when conflicts in expert testimony arise, it is the agency's prerogative to resolve them, not the court's. Webb v. Gorsuch, 699 F.2d 157, 160 (4th Cir.1983).

We have reviewed the expert testimony offered by both parties and have determined that it is not so lacking in substance that it should not have been considered and given determinative weight. Therefore, the Board was justified in resolving the conflicting expert testimony in favor of the Gallahers and in basing its findings upon the Gallahers' proof. Based on the entire record, and taking into consideration the proof that fairly detracts from evidence relied upon by the Board, we have determined that the evidence and the inferences drawn from the evidence provide a reasonably sound basis for the Board's action.

III.

The County also insists that the Board exceeded its authority by ordering it to provide the Gallahers with a permanent supply of uncontaminated water. (FN5) The trial court agreed. While the Tennessee Solid Waste Disposal Act ("Act") gives the Board broad authority to take steps to abate acts causing a nuisance to the public in general, we concur with the trial court's determination that the Board does not have the statutory authority to fashion remedies in essentially private nuisance actions. This relief must be found in the courts.

A.

[11][12]Administrative agencies derive their authority from the General Assembly. Thus, their power must be based expressly upon a statutory grant of authority or must arise therefrom by necessary implication. Tennessee Pub. Serv. Comm'n v. Southern Ry., 554 S.W.2d 612, 613 (Tenn.1977); General Portland, Inc. v. Chattanooga-Hamilton County Air Pollution Control Bd., 560 S.W.2d 910, 913 (Tenn.Ct.App.1976). Even though statutes like the Act should be construed liberally because they are remedial, Big Fork Mining Co. v. Tennessee Water Quality Control Bd., 620 S.W.2d 515, 519-20 (Tenn.Ct.App.1981), the authority they vest in an administrative agency must have its source in the language of the statutes themselves. Williams v. American Plan Corp., 216 Tenn. 435, 443, 392 S.W.2d 920, 924 (1965); Madison Loan & Thrift Co. v. Neff, 648 S.W.2d 655, 657 (Tenn.Ct.App.1982).

[13] The courts should give the language of a statute its natural and ordinary meaning in light of the substance of the entire statute. Oliver v. King, 612 S.W.2d 152, 153 (Tenn.1981). Statutes forming a single statutory scheme should be construed together to make the system consistent in all its parts and uniform in its operation. Westinghouse Electric Corp. v. King, 678 S.W.2d 19, 23 (Tenn.1984), app. dismissed, 470 U.S. 1075, 105 S.Ct. 1830, 85 L.Ed.2d 131 (1985); Pritchard v. Carter County Motor Co., 197 Tenn. 222, 224, 270 S.W.2d 642, 643 (1954); Bodin Apparel, Inc. v. Lowe, 614 S.W.2d 571, 573 (Tenn.Ct.App.1980).

B.

The Act was passed in 1969 to "protect the public health, safety and welfare, prevent the spread of disease and creation of nuisances, conserve our natural resources, enhance the beauty and quality of our environment and provide a coordinated statewide solid waste disposal program."

Tenn.Code Ann. Sec. 68-31-102 (1987). As part of this program, Tenn.Code Ann. Sec. 68-31-104(3) (1987) provides that it is unlawful to "[c]onstruct, alter, or operate a solid waste processing or disposal facility or site in violation of the rules, regulations, or orders of the commissioner or in such a manner as to create a public nuisance."

The authority for implementing the Act and for enforcing its provisions rests with the Commissioner of Health and Environment ("Commissioner") and the Board. While there has been some legislative indecision concerning their respective powers, (FN6) the Commissioner presently has the authority to investigate and supervise the construction, alteration, and operation of solid waste disposal facilities and sites. Tenn.Code Ann. Secs. 68-31-105(a) & 107(a) (1987). The Board has the authority to promulgate and enforce regulations pertaining to the same activities. Tenn.Code Ann. Secs. 68-31-105(c), 107, Sec. 111(d) & (f) (1987). The Board's enforcement power is independent from the Commissioner's, and in some circumstances not applicable to this case, the Board has the authority to review and modify the Commissioner's enforcement actions. Tenn.Code Ann. Secs. 68-31-111(f) & 113(a)-(f).

In its original form, the Act's enforcement mechanisms could be triggered only by the Commissioner or the Board. In 1980, Tenn.Code Ann. Sec. 68-31-113(h) was enacted, enabling private parties to file complaints with the Commissioner regarding violations of the Act. This amendment also provided for an appeal to the Board if either party was dissatisfied with the Commissioner's response to the complaint. While Tenn.Code Ann. Sec. 68-31-113(h) does not specifically describe the enforcement remedies available to the Board when private parties file complaints, it is reasonable to infer that the Board's remedial authority is at least as broad as the Commissioner's.

The Act gives the Commissioner six enforcement options, all intended to abate or avoid injuries to the public that could be caused by violations of the Act. The Commissioner may: (1) revoke or deny applications for registration under Tenn.Code Ann. Sec. 68-31-106(d) (1987); (2) disapprove applications for loans or grants under Tenn.Code Ann. Sec. 68-31-109 (1987); (3) issue orders of correction in accordance with Tenn.Code Ann. Sec. 68-31-112 (1987); (4) refer the case for criminal prosecution under Tenn.Code Ann. Sec. 68-31-114 (1987); (5) institute proceedings seeking injunctive relief pursuant to Tenn.Code Ann. Sec. 68-31-115 (1987); and assess civil penalties under Tenn.Code Ann. Sec. 68-31-117 (1987).

In addition to the Commissioner's powers, the Board has the authority to review any order of correction issued by the Commissioner and, when doing so, to "make findings and enter such orders as in its opinion will best further the purposes of this [Act]." Tenn.Code Ann. Sec. 68-31-113(f) (1987). The Board also has the authority, pursuant to Tenn.Code Ann. Sec. 68-31-113(h), to review the Commissioner's response to private complaints. In these situations, the Board's authority extends to the six enforcement options available to the Commissioner.

[14] The Act's remedies are designed to protect the public health and to conserve and enhance the environment. When violations occur, the Act gives the regulators broad authority to stop the violation and to order steps to remedy or mitigate its effects. The Act does not explicitly provide a private right of action for persons who have been damaged as a result

of a violation. Nor does it explicitly empower the Commissioner or the Board to grant or seek legal or equitable relief on behalf of those who have been damaged.

The Board claims that it has the authority to fashion remedies for essentially private wrongs even though the Act does not give it explicit authority to do so. Asserting that the authority is implicit in its authority to abate public nuisances and to issue orders of correction, the Board argues that its interpretation of the Act is reasonable and consistent with the Act's purposes.

Notwithstanding the logic and appeal of the Board's position, it provides an insufficient basis for this Court to engraft remedies onto the Act that were not put there by the General Assembly. It is not our role to determine whether a party's suggested interpretation of a statute is reasonable or good public policy or whether it is consistent with the General Assembly's purpose. We must limit our consideration to whether the power exercised by the Board is authorized by the express words of the statute or by necessary implication therefrom.

We have determined that nothing in the Act expressly gives the Board or the Commissioner the authority to grant remedial relief to private parties. The Commissioner's and the Board's authority to provide relief for injuries to the general interests of the public will not be diminished by their inability to provide private remedies. Accordingly, it is neither necessary nor proper to find the power to redress private wrongs between the lines of the statutes.

C.

[15] Our interpretation of the scope of remedies available under the Act will not leave without recourse those who have sustained a special or peculiar injury from a violation of the Act. The same facts may support claims of both public and private nuisance, although the claims implicate different interests. Armory Park Neighborhood Ass'n v. Episcopal Community Serv., 148 Ariz. 1, 712 P.2d 914, 917 (1985) (en banc); Norton Shores v. Carr, 81 Mich.App. 715, 265 N.W.2d 802, 805 (1978); Maxwell v. Lax, 40 Tenn.App. 461, 469, 292 S.W.2d 223, 226 (1954). See also Prosser, Private Action for Public Nuisance, 52 Va.L.Rev. 997, 1018 (1966); Restatement (Second) of Torts Sec. 821B comment h (1977).

[16][17] A public nuisance is an act or omission that unreasonably interferes with or obstructs rights common to the public. Metropolitan Gov't of Nashville v. Counts, 541 S.W.2d 133, 138 (Tenn.1976); Restatement (Second) of Torts Sec. 821B (1977); W. Keeton, Prosser and Keeton on the Law of Torts Sec. 90 (5th ed. 1984). A private nuisance involves interference with a person's use and enjoyment of land. Haynes v. City of Maryville, 747 S.W.2d 346, 350 (Tenn.Ct.App.1987); Anthony v. Construction Prods., Inc., 677 S.W.2d 4, 7 (Tenn.Ct.App.1984); Restatement (Second) of Torts Sec. 821D (1977).

[18] Conduct causing a public nuisance will also give rise to a private nuisance action when it interferes with the use or enjoyment of private property. Village of Wilsonville v. SCA Servs., Inc., 86 Ill.2d 1, 55 Ill.Dec. 499, 426 N.E.2d 824, 834 (1981); Pottawattamie County v. Iowa Dep't of Envt'l Quality, 272 N.W.2d 448, 453 (Iowa 1978).

The pollution of a person's water supply has been recognized as conduct amounting to a private nuisance. W. Keeton, Prosser and Keeton on the Law of Torts Sec. 87 n. 9 & 10 (5th ed. 1984); Prosser, Private Action for Public Nuisance, 52 Va.L.Rev. 997, 1019 n. 175 (1966). Thus, the Restatement notes:

> The pollution of waters is one form of conduct that may result in a private nuisance . . . when there is interference with another's interest in the private use and enjoyment of land. Pollution may also result in a public nuisance . . . when there is interference with a right common to all members of the public . . .

Restatement (Second) of Torts Sec. 832 comment b (1977).

[19] The Gallahers contend that they have sustained special injuries because of the manner in which the County operated its landfill. They also insist that the County's operation of the landfill has interfered with the use and enjoyment of their farm in a substantial and material way. These assertions would support a claim for damages under a private nuisance theory if they were made in a court of competent jurisdiction. We hold today only that the Gallahers cannot seek administrative redress for interference with the use and enjoyment of their farm. They must seek these remedies in courts where the full range of legal and equitable remedies will be available to them once they have shown that a private nuisance exists. **(FN7)**

IV.

For the reasons stated herein, the judgment of the trial court is affirmed. The case is remanded for whatever further proceedings are necessary. The costs of this appeal are taxed in equal proportions to the Tennessee Solid Waste Disposal Control Board, Wayne County and Margaret Gallaher and their respective sureties for which execution, if necessary, may issue.

TODD, P.J., and CANTRELL, J., concur.

FN1. Leachate was described by one of the Gallahers' expert witnesses as "a black noxious liquid substance with an oily rainbow sheen upon its surface." It is caused by improperly covering the waste in a landfill thereby allowing surface water to penetrate the landfill and mix with the waste.

FN2. The presence of algae in Banjo Branch indicated the presence of "organic enrichment" in the stream that was not an expected natural phenomenon.

FN3. Tenn.Admin.Comp. ch. 1200-1-7-.06(3)(a)16 provides:

> Contamination Control - There shall be no contamination of ground or surface water resulting from deposits of solid wastes or their products of decomposition, nor hazard or nuisance caused by gases or other products generated by the biologically or chemically active waste. Should any liquids or gases which might contaminate ground or surface water or create a hazard or nuisance be released from the registered sanitary landfill, then those measures necessary to eliminate the contamination or nuisance, shall be initiated immediately by the registrant. All gases or liquid waste discharges shall comply with the existing "Water Quality Control Act of 1971" (T.C.A. 70-324, et seq.), and the provisions of "Tennessee Air Quality Control Act" (T.C.A. 53-3408 et seq.). Prior approval should be received from the Department before initiating control procedures which require authorization of the approved operating plant.

FN4. This section states, in part:

> (h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> * * * *
>
> (5) Unsupported by evidence which is both substantial and material in light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment [sic] for that of the agency as to the weight of the evidence on questions of fact.

FN5. Tenn.Code Ann. Sec. 4-5-322(h)(2) (Supp.1987) provides that the reviewing court may reverse or modify an agency's decision if it is "[i]n excess of the statutory authority of the agency."

FN6. Compare Act of May 1, 1980, ch. 899, Sec. 7, 1980 Tenn.Pub.Acts 1334, 1342 with Act of May 16, 1985, ch. 337, Secs. 1, 2, 4, 5, & 6, 1985 Tenn.Pub. Acts 646, 646-47.

FN7. Fashioning appropriate legal and equitable remedies in cases such as this one where the contaminants are already in the soil and the groundwater is far from simple. See Anderson v. W.R. Grace & Co., 628 F.Supp. 1219, 1233-34 (D.Mass.1986); Moore v. Mobile Oil Co., 331 Pa.Super. 241, 480 A.2d 1012, 1019-20 (1984).

ROBERTSON COUNTY, TENNESSEE, Plaintiff-Appellee,
v.
BROWNING-FERRIS INDUSTRIES OF TENNESSEE, INC., and Custom Land Development, Inc., Defendants-Appellants.

No. 89-384-II.
Court of Appeals of Tennessee,
Middle Section, at Nashville.
May 11, 1990.

Application for Permission to Appeal Denied by Supreme Court Nov. 5, 1990.

County filed declaratory judgment action seeking, *inter alia*, declaration that county zoning ordinance prohibiting private sanitary landfills was valid and that solid waste disposal company's intended use of property in county as a landfill was contrary to current zoning. Disposal company counterclaimed seeking declaratory judgment that zoning ordinance was invalid and enjoining county from enforcing zoning ordinance. The Circuit Court, Robertson County, James E. Walton, J., permanently enjoined disposal company from using leased property as sanitary landfill without zoning approval. Disposal company appealed. The Court of Appeals, Lewis, J., held that: (1) county was not authorized to adopt zoning ordinance which totally excluded private sanitary landfills, and (2) providing county with opportunity to amend its zoning ordinance did not deprive disposal company of any vested right to operate a landfill.

Reversed and remanded.

W. Ovid Collins, Jr., C. Bennett Harrison, Jr., W. Gregory Miller, Cornelius & Collins, Nashville, Clyde W. Richert III, Springfield, for plaintiff-appellee.

Frank C. Gorrell, Richard Lodge, Margaret C. Berry, Bass, Berry & Sims, Nashville, for defendants-appellants.

OPINION

LEWIS, Judge.

This is an appeal by defendants, Browning-Ferris Industries of Tennessee, Inc. (BFI) and Custom Land Development, Inc. (Custom), from the trial court's granting of an injunction permanently enjoining BFI from using property leased from Custom "as a sanitary landfill without zoning approval from Robertson County" after finding BFI's "planned use of the real property as a sanitary landfill is in violation of the Robertson County zoning ordinance."

THE CASE

On 6 September 1988, the plaintiff Robertson County, Tennessee (Robertson County) filed a declaratory judgment action in the Circuit Court for Robertson County seeking a declaration that "all pertinent provisions of the Robertson County zoning ordinance are legal and lawful land use regulations," that BFI and Custom's intended use as a sanitary landfill of 400 acres of real property (the property) owned by Custom and leased by Custom to BFI was contrary to "current agricultural zoning" and that such use be "permanently prohibited."

On that same date, BFI and Custom filed a declaratory judgment action in the U.S. District Court for Middle Tennessee in which they sought injunctive relief and a declaration concerning the validity of the Robertson County zoning ordinance. BFI and Custom also removed Robertson County's declaratory judgment suit from the Circuit Court for Robertson County to the U.S. District Court pursuant to 28 U.S.C. Sec. 1441. However, the District Court determined that there were issues of state law that were determinative without reaching the constitutional issues raised by BFI and Custom. The District Court then remanded plaintiff's suit to the Circuit Court for Robertson County.

On remand, BFI answered and filed a counterclaim seeking a declaratory judgment (1) that the zoning ordinance was invalid because it exceeded the County's authority and was contrary to the Tennessee Solid Waste Disposal Act, Tenn.Code Ann. Sec. 68-31-101, et seq. (the Act), (2) that the zoning ordinance was unconstitutional, and (3) for an injunction enjoining the County from enforcing the zoning ordinance and interfering with BFI's operation of a sanitary landfill in Robertson County.

BFI alleged in its counterclaim that under the zoning resolution adopted by Robertson County in 1972 and presently in effect "there is no zoning district in Robertson County in which a sanitary landfill is a permitted use. There is no provision whatsoever in the Zoning Resolution for the construction or operation of a sanitary landfill in Robertson County, even as a special use, variance, or on appeal."

In its answer to BFI's counterclaim, Robertson County admitted, *inter alia*, "that the Zoning Resolution contains no provision for the construction or operation of a sanitary landfill by private parties for profit."

THE FACTS

Robertson County, located in Northern Middle Tennessee, has a population of approximately 40,000 persons.

BFI is a private corporation engaged in the business of collecting and disposing of solid waste. Custom is the owner of 400 acres of land located in an area zoned agricultural which it leased to BFI. BFI and Custom entered into the lease on 2 September 1988.

Robertson County adopted the zoning resolution in 1972. The zoning resolution as adopted did not allow a sanitary landfill, nor has it since been amended to allow one.

Robertson County does own and operate its own landfill. The County's operation of its landfill predates the adoption of the 1972 zoning resolution. Robertson County's landfill is approved by the Tennessee Department of Health and Environment in accordance with the Tennessee Solid Waste Disposal Act. Robertson County is presently expanding its landfill to meet future needs.

Robertson County charges fees for disposing of waste in its landfill and accepts waste from commercial transporters such as BFI and also accepts waste generated in other counties and other states.

In its attempt to construct a landfill on the 400 acres leased from Custom, BFI had engineering studies conducted in order to apply for a permit to construct and operate a sanitary landfill under the provisions of the Tennessee Solid Waste Disposal Act. BFI incurred considerable expense in doing so. BFI also had a traffic study conducted which shows that access roads to the property are more than adequate.

On 17 November 1986, the County Commission of Robertson County held a public hearing at which it considered an amendment to the 1972 zoning resolution. This amendment was recommended by the Robertson County Planning Commission and would have allowed sanitary landfills as a "use permitted on appeal" for land zoned industrial C. The Robertson County Commission rejected the amendment by a vote of 24 to 0.

BFI, with full knowledge that the zoning resolution did not permit a sanitary landfill, applied to the Tennessee Department of Health and Environment for a permit to operate a landfill on the property.

On 18 August 1988, the Department of Health and Environment issued a permit to BFI authorizing it to operate a sanitary landfill on the property.

On 6 September 1988, BFI opened the sanitary landfill on the property and filed its declaratory judgment action in the U.S. District Court at the same time. Also, on 6 September 1988, the trial court issued a temporary restraining order which was served on BFI on the same date. BFI ceased operations of the landfill immediately.

THE ISSUES

We first discuss BFI's issue of "[w]hether the deposition of TDHE employee Tom Tiesler and certain stipulations were irrelevant and the trial court erred in admitting the deposition and stipulations into evidence."

On 23 February 1988, Robertson County filed the deposition of Tom Tiesler, the Director of Solid Waste Management for the State of Tennessee. The deposition was "repeatedly referred to in arguments of counsel for the plaintiff at the trial of this cause on June 27, 1989. No objection

was ever raised by counsel for the defendant to any of this argument." The trial court "considered [it] as part of the record . . . and referred to it in the Memorandum Opinion."

Following the trial, Robertson County moved to reopen the proof. The motion was granted and the deposition of Tom Tiesler was formally admitted into evidence. BFI objected to the "relevancy and materiality of the deposition."

[1][2] It was within the sound discretion of the trial court to reopen the proof and admit into evidence the Tiesler deposition. See Inman v. Aluminum Co. of Am., 697 S.W.2d 350 (Tenn.App.1985); Strickland v. City of Lawrenceburg, 611 S.W.2d 832 (Tenn.App.1980). This Court will not reverse the trial court's admission of evidence absent a showing of abuse of discretion. Miller v. Alman Constr. Co., 666 S.W.2d 466 (Tenn.App.1983). No abuse of discretion in admitting the Tiesler deposition appears in this record.

We are also of the opinion that Mr. Tiesler's testimony is relevant. It was BFI's insistence at trial that the Tennessee Solid Waste Disposal Act had, in effect, given all authority to the Solid Waste Disposal Division of the Tennessee Department of Health and Environment to regulate sanitary landfills. This is contested by Robertson County. Mr. Tiesler's deposition speaks in part to that very point.

We are of the opinion that the evidence concerning the daily average number of vehicles going into the Bordeaux landfill in Davidson County and an incident that occurred at the Bordeaux landfill in 1988 were irrelevant to the issues here. However, the case is de novo in this Court. We have disregarded this evidence in arriving at our decision.

Robertson County, at least to some extent, relies on 1989 Tenn.Pub. Acts Ch. 515. Robertson County adopted its zoning ordinance in 1972. Section 6(b) of Ch. 515 provides that it is not applicable to counties that adopted zoning ordinances prior to 1 October 1988.

Robertson County also argues that pursuant to Tenn.Code Ann. Sec. 5-19-101, et seq., it has the authority to regulate the collection and disposal of waste within the County.

[3] Tennessee Code Annotated Sec. 5-19-101 provides that "[t]he several counties of this state are hereby authorized to provide garbage and rubbish collection services and/or garbage and rubbish disposal services to the entire county or to special districts within the county as provided herein." Id.

Tennessee Code Annotated Sec. 5-19-101 merely allows the county, if it so desires, to provide garbage collection and disposal services. Nothing in the statute authorizes the county to ban private garbage collection and disposal services.

Tennessee Code Annotated Sec. 5-19-101, et seq. is inapposite to the facts in this case.

[4] We next discuss BFI and Custom's issue of "[w]hether the Robertson County zoning ordinance is unlawful" because it totally excludes sanitary landfills anywhere in the county.

"Before the advent of comprehensive zoning laws, (FN1) land uses were controlled mainly under the law of nuisances and restrictive covenants." 82 Am.Jur. 2d Zoning and Planning Sec. 1 (footnotes omitted).

"A municipality, county, or other unit of local government has no inherent power to enact zoning laws, and the power of a local government to accomplish zoning exists only by virtue of authority delegated from the state." Id. at Sec. 7 (1976) (footnotes omitted).

Tennessee counties derive the power to zone "in the portions of such county which lie outside of municipal corporations" from Tenn.Code Ann. Sec. 13-7-101(a)(1).

Counties are not required to zone, but when they do, the zoning "regulations shall be designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the state and of its counties." Tenn.Code Ann. Sec. 13-7-103.

We have reviewed Tenn.Code Ann. Sec. 13-7-101, et seq. (the enabling act) and are convinced that nothing in the enabling act authorizes a county to totally exclude a lawful business from the county. A total prohibition would not be unlawful if it can be shown that the business is one which is particularly objectionable and undesirable and the prohibition appears prima facie to be designed to protect the public interest. That is not the case here.

[5] The general validity and reasonableness of an ordinance is presumed. Beer Board v. Brass A Saloon of Rivergate, Inc., 710 S.W.2d 33, 35-36 (Tenn.1986). However, once the total exclusion of a legitimate business is shown, the presumption is overcome. Moyer's Landfill, Inc. v. Zoning Hearing Bd., 69 Pa.Commw. 47, 450 A.2d 273 (1982); Appeal of Green and White Copter, Inc., 25 Pa.Commw. 445, 360 A.2d 283 (1976). The burden then shifts to the zoning authority to establish that total exclusion is for the "purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the state and [Robertson County]." Tenn.Code Ann. Sec. 13-7-103. See Ottawa County Farms, Inc. v. Township of Polkton, 131 Mich.App. 222, 345 N.W.2d 672 (1983).

We find nothing in the record before us to show that the health, safety, morals, etc. will be promoted by totally excluding sanitary landfills from Robertson County.

The only evidence shows that placement of a solid waste landfill . . . would result in lower average property values of properties not only immediately adjacent to, but also in the general vicinity of, the landfill site. Though the location of a rock quarry, mining use, or automobile junk yard would lower the value of property immediately adjacent to those uses, the property devaluation would not be as regional or, in other words, as wide spread, as that resulting from the placement of a solid waste landfill.

The ordinance insofar as it totally excludes sanitary landfills is invalid. However, BFI's insistence that since it is invalid an injunction should issue "permanently enjoining the County from interfering with [BFI's] operation of a sanitary landfill on the" 400 acres it leases from Custom is without merit.

BFI argues that while courts dislike the possibility of leaving a given area 'unzoned,' invalidation of the Robertson County zoning ordinance would not leave a significant void of regulation in the present case since sanitary landfills are subject to state regulations under the Solid Waste Act and since the Tennessee Department of Health and Environment has already approved BFI's plan and has issued a permit to BFI to operate a sanitary landfill on the property.

In support of its insistence, BFI relies on Ottawa County Farms, Inc. v. Township of Polkton, 131 Mich.App. 222, 345 N.W.2d 672 (1983), a case in which the court held that the county's total exclusion of sanitary landfills was invalid and did not remand the case to allow the township of Polkton to enact a valid ordinance. Id. 345 N.W.2d at 676. In Ottawa, the court found that "invalidation of defendant's ordinance did not leave a significant void of regulation since landfills are subject to state regulation under the Solid Waste Management Act . . ." Id. The court further held that the Michigan Solid Waste Management Act and the regulations of the Department of Natural Resources provided sufficient regulation. Id.

Mr. Tiesler, the Director of the Tennessee Solid Waste Division, testified that he had no knowledge of the Tennessee Department of Health and Environment in its consideration of the Solid Waste Act assessing anything other than possible effects on the environment in deciding whether to issue a sanitary landfill permit.

BFI also argues that remanding this cause allowing the County to amend its ordinance would amount to retroactive zoning and divest it of a vested right.

[6] We respectfully disagree. Robertson County, by being given an opportunity to amend its zoning ordinance, would not deprive BFI of any vested right to operate a landfill.

BFI was fully aware that private sanitary landfills would not be permitted under the Robertson County zoning ordinance. Notwithstanding this knowledge, BFI leased the property from Custom and invested almost three hundred thousand dollars in securing a landfill permit from the state. There is nothing in this record to show that BFI was led to believe that a landfill would be allowed on the agriculturally zoned property. BFI did not have a "vested right" on the basis of its investment. BFI's reliance on Howe Realty Co. v. City of Nashville, 176 Tenn. 405, 141 S.W.2d 904 (1940) and State ex rel. SCA Chem. Waste Serv., Inc. v. Konigsberg, 636 S.W.2d 430 (Tenn.1982) is misplaced.

[7] Zoning decisions are matters for the legislative bodies of Tennessee and not the courts. In Crabtree v. City Auto Salvage Co., 47 Tenn.App. 616, 631-634, 340 S.W.2d 940, 947-948 (1960), this Court stated:

> [I]t must never be forgotten by the Courts that this great power [the power to zone] is lodged in the legislative branch of the government composed of representatives directly elected by the people for the purpose of making laws. Its exercise is not intended for the Courts whose business is to apply existing legal principles.

It seems to us that the relief sought by the complainants and granted by the Chancellor, is a matter of zoning which the Court is asked to declare and enforce. But, as hereinabove indicated the Courts are not equipped to do this, and should not invade the legislative field of zoning which should be left to the representatives charged with that duty.

Id. 340 S.W.2d at 947-48.

[8] Until such time as Robertson County has an opportunity to amend its zoning ordinance, this Court will not indulge in "judicial spot zoning."

In view of our holding, we deem it unnecessary to discuss the constitutional issues raised by BFI and therefore pretermit them.

The judgment of the trial court that Robertson County "may legally exclude all commercial landfills by zoning regulations" is reversed. The injunction issued by the trial court will remain in effect and, on remand, the trial court shall enter an order directing Robertson County to cure the defect in the zoning ordinance by creating a zoning classification for sanitary landfills.

The costs are assessed to Robertson County.

TODD, P.J., and CANTRELL, J., concur.

FN1. Zoning is "the division of a municipality or other local community into districts and the regulation of buildings and structures according to their construction and the nature and extent of their use, or the regulation of land according to its nature and uses. 'Zoning' has also been defined as the legislative division of a community into areas in each of which only certain designated uses of land are permitted so that the community may develop in an orderly manner in accordance with a comprehensive plan." 82 Am.Jur.2d Zoning and Planning Sec. 2 (1976).

Robert L. HUNTER, Plaintiff-Appellant,
v.
TENNESSEE SOLID WASTE DISPOSAL CONTROL BOARD,
Defendant-Appellee.

Court of Appeals of Tennessee,
Middle Section, at Nashville.
Dec. 10, 1986.

Appeal No. 86-185-II

Davidson Equity

Appealed From the Twentieth Judicial District, Part II, for Davidson County, Tennessee

The Honorable C. Allen High, Chancellor

Royce Taylor, Murfreesboro, for plaintiff-appellant.

W.J. Michael Cody, Attorney General and Reporter, Donna J. Smith, Assistant Attorney General, Nashville, for defendants-appellees.

OPINION

LEWIS, Judge.

This case arose out of a dispute between plaintiff, Robert L. Hunter, and the Tennessee Department of Health and Environment (Department) as to whether the operation of plaintiff's business, Chemical Recovery Service Company, was subject to the Tennessee Hazardous Waste Management Act (Act), Tenn.Code Ann. Sec. 68-46-101 et seq. (FN1)

The facts underlying the dispute are not in question. The plaintiff did business as Chemical Recovery Service Company in Smyrna, Tennessee, from no later than July 13, 1981, until October 31, 1984. Plaintiff's business received spent thinners and solvents from chemical companies for recycling. Plaintiff's company distilled these materials, sold the cleansed thinners and solvents to manufacturers and transporters, and sold the grease and oil removed in the distilling process to a chemical company for fuel. Plaintiff admits that the material he recycled and the material generated by the recycling process are hazardous. However, it is clear that he neither discarded nor intended to discard the hazardous materials which his business handled. Plaintiff had filed applications with the Department for the handling of hazardous waste.

On August 31, 1984, the Commissioner of the Department issued a ruling entitled "Civil Penalty and Damages Assessment and Order." The Commissioner found that plaintiff stored, treated,

generated, and transported hazardous waste. The Commissioner assessed fines against the plaintiff for failure to file financial assurances, for failure to file annual reports for 1981 and 1983 as a storage and treatment facility, and for failure to file an annual report as a generator of hazardous waste pursuant to the Tennessee Hazardous Waste Management Regulations.

Plaintiff appealed the decision of the Commissioner to the defendant, Tennessee Solid Waste Disposal Control Board (Board). Following a hearing on January 8, 1985, the Board issued its decision finding that the hazardous material plaintiff stored, treated and generated was not hazardous waste because plaintiff did not discard the material but rather recycled it.

At the request of the Commissioner, the Board reconsidered its decision and, on February 8, 1985, entered a "Reconsidered Final Decision and Order" in which it found that plaintiff generated, stored, and treated hazardous waste. The Board, in its conclusions, stated in part as follows:

> 2. The spent solvents and thinners the Company stores and treats are wastes under Rule 12-1-11-.02(1)(b) and listed hazardous wastes under Rule 12-1-11-. 02(4)(b).
>
> 3. The still bottoms generated by the Company in its treatment of the spent solvents and thinners are also wastes and hazardous wastes under the above cited Rules.
>
> 4. The spent solvents and thinners received by the Company and the still bottoms generated by the Company are wastes because they are materials from industrial and commercial operations which have served their original intended use and sometimes have been discarded within the meaning of Rule 1200-1-11-. 02(1)(b).

The Board ordered plaintiff to pay $33,000 in unpaid fees, to pay a civil penalty assessment of $1,506, and to pay damages of $179.20.

Pursuant to Tenn.Code Ann. Sec. 4-5-322, plaintiff petitioned the Chancery Court for Davidson County for review of the Board's "Reconsidered Final Decision and Order." In the Chancery Court, plaintiff argued that the Board's interpretation of the term "discarded material" in Tenn.Code Ann. Sec. 68-46-104(17) (FN2) conflicted with the plain meaning of the statute.

On December 31, 1985, the Chancellor filed a Memorandum which stated that the Board's interpretation of the term "discarded material" was consistent with the legislative intent. On February 14, 1986, the Chancellor entered a final order affirming the Board's "Reconsidered Final Decision and Order."

Plaintiff has appealed to this Court and presented one issue for our consideration: "Should the Chancery Court have found the Tennessee Solid Waste Disposal Control Board exceeded its authority in defining "wastes" different from T.C.A. 68-46-104."

In Madison Loan & Thrift Co. v. Neff, 648 S.W.2d 655, 657 (Tenn.App.1982), this Court stated:

> "Administrative agencies have only such power as is granted them by statute, and any action which is not authorized by the statutes is a nullity." General Portland, Inc. v. Chattanooga-Hamilton County Air Pollution Control Board, 560 S.W.2d 910, 913 (Tenn.App.1976).

It is a general rule that no intent may be imputed to the legislature in the enactment of a statute other than such as is supported by the face of the statute itself. This rule likewise applies in determining the power of an administrative agency. (citations omitted).

Before being amended in 1984, Tenn.Code Ann. Sec. 68-46-104 provided, in part, as follows:

> (7) "Hazardous waste" means a waste, or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may:
>
> (A) Cause, or significantly contribute to, an increase in serious irreversible or incapacitating reversible, illness; or
>
> (B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
>
> (17) "Waste" means useless, unwanted, or discarded materials in any form(s): gaseous, liquid, solid, or semisolid but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Secs. 69-3-101--69-3-120, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, . . .

Plaintiff argues that the statute defines "waste" to include "discarded materials." He insists that he did not discard the hazardous materials he handled. Therefore, under the statutory definition he was not a handler of hazardous waste subject to the Act and the Board has no authority to interpret "waste" so as to include the materials he handled.

We respectfully disagree.

Tennessee Code Ann. Sec. 68-46-106(a)(1) (1983) empowered the Commissioner to "establish criteria for determining if a substance is a hazardous waste . . ." Tennessee Code Ann. Sec. 68-46-107(e) (1983) empowered the Board "to adopt and enforce rules and regulations and establish technical standards for the construction and operation of hazardous waste storage, treatment or disposal facilities and other functions pertaining to the safe handling of hazardous waste."

Tennessee Code Ann. Sec. 68-48-104(17) defines "waste" as including "discarded materials" but does not define the term "discarded." In accordance with his statutory authority to define

hazardous waste, the Commissioner adopted Rule 1200-1-11-.02(b) of the Tennessee Waste Management Regulations in effect at the time of plaintiff's alleged violations. Rule 1200-1-11-.02(b) then stated:

> Definition of Waste
>
> 1. A "waste" is any garbage, refuse, sludge or any other waste material which is not excluded under part (d)1 of this paragraph.
>
> 2. An "other waste material" is any solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining or agricultural operations, or from community activities which:
>
> * * * *
>
> (ii) Has served its original intended use and sometimes is discarded; . .
>
> 3. A material is "discarded" if it is abandoned (and not beneficially or legitimately used, re-used, reclaimed or recycled) by being subjected to:
>
> (i) Disposal; or
>
> (ii) Burning or incineration, except where the material is being burned as a fuel for the purpose of recovering usable energy; or
>
> (iii) Physical, chemical or biological treatment (other than burning or incineration) in lieu of or prior to disposal.

There is no dispute that the materials plaintiff handled are hazardous and sometimes discarded by industry. Therefore, the Board had to decide whether to determine if a material "sometimes is discarded" by an objective or a subjective standard. Under an objective standard, material would be considered "waste" if the industry-wide practice was to sometimes discard the material. Under the subjective standard, material would be considered waste only if the individual handler sometimes discarded the material. The Board chose to adopt the objective standard.

The Chancellor correctly found the Board's interpretation of "waste" to be consistent with the legislature's intent when it passed the Act. Tennessee Code Ann. Sec. 68-46-102 states that it is the public policy of the state to "[p]rovide a coordinated statewide program of control of hazardous wastes in cooperation with federal, state and local agencies responsible for the prevention, control or abatement of air, water and land pollution, such that adequate control is achieved without unnecessary duplication of regulatory programs."

An objective standard for determining what constitutes hazardous waste allows regulatory officials to easily identify hazardous waste, thereby fulfilling the legislature's intent to "provide a coordinated statewide hazardous waste management program." Moreover, Tenn.Code Ann.

Sec. 68-46-102(2) requires the state to coordinate its hazardous waste program with that of the federal government. As a prerequisite for such coordination, federal law provides that the state regulatory system must be comparable to the corresponding federal program, the EPA. See 42 U.S.C. Sec. 6926. The Board's interpretation of "discarded materials" to include materials sometimes discarded on an industry-wide basis in the ordinary course of business is equivalent to the construction by the EPA, see 45(98) F.R. 33090-33094, thereby allowing for proper coordination of regulatory activities by state and federal authorities.

In Neff v. Cherokee Insurance Co., 704 S.W.2d 1, 6 (Tenn.1886), our Supreme Court stated: "We will not construe one provision of a statutory scheme in a way that 'would operate to impair, frustrate or defeat the object' of a comprehensive regulatory framework." (citation omitted). To define "discarded material" by the subjective standard advocated by the plaintiff would prevent effective regulation of hazardous waste and thereby frustrate the legislative intent behind the Tennessee Hazardous Waste Management Act.

The judgment of the Chancellor is affirmed with costs assessed against the plaintiff and the cause remanded to the Chancery Court for the collection of costs and for any further necessary proceedings.

TODD, P.J. (M.S.), and CANTRELL, J., concur.

FN1. The legislature amended the Act in 1984 and 1986. However, the amendments have no effect on the merits of this case.

FN2. Tennessee Code Ann. Sec. 68-46-104(17) was amended in 1984. However, both before and after the 1984 amendment, the term "discarded material" appeared in the statute. The amendment has no bearing on the merits of this case.

EARTH INDUSTRIAL WASTE MANAGEMENT, INC.,
Petitioner-Appellant,
v.
TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT, DIVISION OF SOLID WASTE MANAGEMENT, SOLID WASTE DISPOSAL CONTROL BOARD, Respondent-Appellee.

Court of Appeals of Tennessee,
Middle Section, at Nashville.
Oct. 31, 1986.

No. 86-138-II

Davidson Equity

Appealed from the Chancery Court of Davidson County, at Nashville, Tennessee

The Honorable Robert S. Brandt, Chancellor

Walter H. Crouch, Waller, Lansden, Dortch & Davis, Nashville, for petitioner-appellant.

Donna J. Smith, Assistant Attorney General, Nashville, for respondent-appellee.

OPINION

CANTRELL, Judge.

Earth Industrial Waste Management, Inc. operates two off-site waste management facilities in the Memphis area. In 1981 in accordance with a legislative mandate, the Solid Waste Disposal Control Board adopted a rule establishing annual fees to be paid by the owners or operators of each hazardous waste facility. Earth Industrial contends that since its facilities are only "interim status" facilities and have not been issued a permit, the legislature excluded its operations from the application of the fee statute. Thus, they argue, the Board exceeded its power in requiring a fee from interim status facilities.

The storage, transportation, treatment, and disposal of hazardous wastes are regulated by the provisions of the "Tennessee Hazardous Waste Management Act", T.C.A. Sec. 68-46-101, et seq. First enacted in 1977, the Act was amended in 1980 to require that persons engaged in the above activities must obtain a permit from the Commissioner of Public Health (for on-site disposal facilities) or the Solid Waste Disposal Control Board (for off-site facilities). The 1980 amendments also empowered the Board to adopt regulations governing the storage, transportation, treatment, or disposal of hazardous waste.

The Board adopted regulations establishing standards for the issuance of permits. To cover the facilities that were already existing and in operation as of the effective date of the regulations, the Board adopted interim operating standards to be observed until a permit could be obtained. The regulation provided:

> "(3) Interim Status.
>
> (a) Qualifying for Interim Status - Any person who owns or operates an "existing hazardous waste management facility" shall have interim status and shall be treated as having been issued a permit to the extent he or she has:
>
> 1. Complied with the requirements of subparagraphs (2)(b) and (2)(d) of this rule governing submission of Part A applications.
>
> 2. When the department determines on examination or reexamination of a Part A application that it fails to meet the standards of these rules it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or operator will then be subject to enforcement for operating without a permit."

VIII Tenn.Adm.Comp., ch. 1200-1-11.07 (3)(a)(1), (2).

Thus, existing facilities could become "interim status" facilities merely by filing an application for a permit. They would then be treated as having been issued a permit.

On November 18, 1980, Earth Industrial filed Part A applications for both of its facilities, and attained "interim status."

In 1981, the legislature amended the Act again to require the payment of fees from certain transporters, storers, treaters and disposers. T.C.A. Sec. 68-46-110 provides in pertinent part:

> "(a) The commissioner shall levy and collect the following fees:
>
> (1) Application fees from applicants for permits to transport, store, treat, or dispose of hazardous waste in the state;
>
> (2) Annual maintenance fees from permitted transporters, storers, treaters, and disposers; . . . "

The Board promulgated rules requiring the payment of annual maintenance fees by all storage facilities, whether interim status or permitted.

Earth Industrial took the position that since the legislature did not mention interim status facilities in T.C.A. Sec. 68-46-110, the Board had no power to require the payment of a

maintenance fee by such facilities. Therefore, Earth Industrial filed a petition with the Board for a declaration that the regulations purporting to subject its storage facilities to annual maintenance fees were beyond the statutory authority of the Commissioner and the Board. After a hearing, the Board held that the regulations were valid and not overbroad. Earth Industrial filed a petition to review in the Chancery Court of Davidson County where the chancellor affirmed the decision of the Board.

The sole question raised on appeal is whether the Board exceeded its authority by adopting a regulation that imposed the annual maintenance fee on interim status operators when the statute only directed the commissioner to levy and collect the fee from "permitted storers" of hazardous waste. T.C.A. Sec. 68-46-110(2). By definition, Earth Industrial argues, an interim status operator is one that does not have a permit.

However, we think that for the purposes of the fee statute, T.C.A. Sec. 68-46-110, Earth Industrial was a "permitted" storer of hazardous waste. We should keep in mind that interim status itself is entirely the creation of the Board. The legislature required all operators to have a permit. By adopting a regulation allowing facilities already in operation to continue to operate until they received a permit the Board in effect granted them a temporary permit. In the same regulation, the Board provided that such a facility "shall be treated as having been issued a permit." We do not think that means "treated as having a permit for all purposes except the payment of fees that other permit holders must pay."

It does not appear from the record that the legislature was aware that a category called interim status existed. Thus, not much significance can be given to the fact that the legislature did not include interim status facilities by name in the fee statute.

The judgment of the court below is affirmed and the cause is remanded to the Chancery Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant.

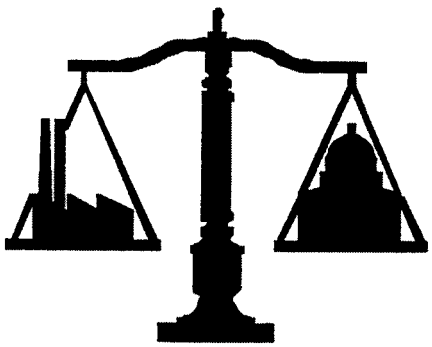
TODD, P.J., (M.S.), and KOCH, J., concur.

Section III

Legal Opinions, Policies, and Guidelines

Chapter 13

Office of the Attorney General



OFFICE OF THE ATTORNEY GENERAL

OPINION NO. 96-074 - APRIL 19, 1996

Requested by: Honorable Doug Gunnels, State Representative.

Signed by: Charles W. Burson, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Elizabeth P. McCarter, Senior Counsel.

Application of Solid Waste Facilities Local Approval Law to Class IV Landfill

****

I. QUESTION

Does the solid waste facilities local approval law, Tenn. Code Ann. s 68-211-701, et seq., apply to the lateral expansion of a Class IV landfill?

II. OPINION

It is the opinion of this office that the solid waste facilities local approval law, Tenn. Code Ann. s 68-211-701, et seq., would apply to the lateral expansion of a Class IV landfill, as long as the landfill is not: (1) a facility that existed on June 2, 1989, when the local approval law went into effect; (2) a privately owned facility that accepts waste generated solely by its owner; or (3) a publicly owned or operated facility.

III. ANALYSIS

In 1989, the General Assembly enacted Tenn. Code Ann. s 68-211-701, et seq. ("Part 7" or "the Jackson Law"), which gives local governing bodies the legislative power to approve or disapprove of the construction of any "new" solid waste facility. As recently amended in 1995, this law provides as follows:

> No construction shall be initiated for any new landfill for solid waste disposal or for solid waste processing until the plans for such new landfill have been submitted to and approved by:
>
> (1) The county legislative body in which the proposed landfill is located, if such new construction is located in an unincorporated area;

(2) Both the county legislative body and the governing body of the municipality in which the proposed landfill is located, if such new construction is located in an incorporated area; or

(3) Both the county legislative body of the county in which such proposed landfill is located and the governing body of any municipality which is located within one (1) mile of such proposed landfill.

Tenn. Code Ann. s 68-211-701. See also 1995 Tenn. Pub. Acts, ch. 5, s 1.

Local governments are under no obligation to adopt the provisions of Part 7. The Jackson Law is entirely optional. A city or county may opt-into the law by a two-thirds vote of its legislative body. Tenn. Code Ann. s 68-211-707(a). It is our understanding that Loudon County, where the subject landfill is located, has adopted the provisions of the Jackson Law.

A plain reading of the statute above, as well as the legislative history, demonstrates that solid waste facilities existing on June 2, 1989, when the Jackson Law took effect, are excluded from the application of the act. Similarly, the law does not apply to the lateral expansion of a facility that existed on June 2, 1989. See Hearings on House Bill 741 Before the House Committee for State and Local Government, May 2, 1989 (statement of Rep. Doug Jackson).

Although the rules of the Tennessee Solid Waste Disposal Control Board classify landfills primarily according to the type of waste accepted, see Tenn. Comp. R. & Regs., ch. 1200-1-7-.01 (3), Part 7 does not really differentiate in this manner. It simply references "landfills," which are defined under the act to mean "any land used for disposal of solid waste by filling and covering." Tenn. Code Ann. s 68-211-702. Consequently, the Jackson Law applies to a Class IV landfill, which, under the board's rules, refers to a facility accepting construction and demolition waste.

The Jackson Law does, however, contain two explicit exemptions that apply to the ownership and operation of landfills. These exemptions are found at Tenn. Code Ann. s 68-211-706, which provides:

(a) The provisions of this part shall not apply to any private landfill which accepts solid waste solely generated by its owner and does not accept county or municipal solid waste or ordinary household garbage.

(b) The provisions of this part shall not apply to any municipal or county owned and/or operated landfill.

Therefore, if the Class IV landfill in question is not publicly owned or operated, and is not privately owned and maintained for the disposal of demolition and construction waste generated on site, the local governing bodies may exercise the authority given them under Part 7 to approve or disapprove its expansion.

Finally, your inquiry peripherally requests a consideration of whether local governments have authority under the Jackson Law to approve the lateral expansion of a Class IV landfill, even if

the ten year solid waste reduction plan for the region in which the landfill is located has not been approved by the State, as contemplated under the Solid Waste Management Act, Tenn. Code Ann. s 68-211-801, et seq. ("Part 8"). It is the opinion of this Office that the State's rejection of a region's solid waste plan under Part 8 has no bearing on the authority that may be exercised by counties and municipalities under the Jackson Law. Under Part 8, once a solid waste regional plan is approved by the State, the regional board would then have local approval authority in accordance with Tenn. Code Ann. s 68-211-814(b)(1)(D). The local governing bodies within the region, however, would still have local approval authority under Part 7.

OPINION NO. 96-063 - APRIL 8, 1996

Requested by: Honorable Joe. F. Fowlkes, State Representative

Signed by: Charles W. Burson, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Elizabeth P. McCarter, Senior Counsel

Power and Operation of Solid Waste Authorities and County Organizations Exercising Control over Collection and Disposal Programs

****

I. QUESTIONS

1. May a county or a solid waste authority create a service district, which excludes municipalities that collect municipal solid waste, and impose a mandatory solid waste disposal fee in accordance with Tenn. Code Ann. s 68-211-835(g) only on households and businesses within the district?

2. May a county impose service charges for solid waste collection and disposal under Tenn. Code Ann. ss 5-19-107 and 5-19-109 on households and business residents regardless of whether or not such households and business residents actually use the service, so long as the service is available? Does the answer to this question differ if the service offered is door-to-door collection as opposed to an available convenience center?

3. May a solid waste authority, by agreement with a county or municipality that participated in the creation of the authority, delegate its designated powers and responsibilities with respect to solid waste collection and disposal back to such county or municipality?

4. May a county or municipality that participated in the creation of a solid waste authority impose a solid waste disposal fee, surcharge or property tax for solid waste collection or disposal purposes within its territory, in addition to any disposal fee or surcharge that the authority may impose?

II. OPINIONS

1. No. The solid waste disposal fees contemplated by Tenn. Code Ann. s 68-211-835(g) would have to be imposed county-wide, because that statute expressly provides that all residents of the county shall have access to the services funded by such fees.

2. It is the opinion of this Office that, while the language in Tenn. Code Ann. ss 5-19-107(11) and 5-19-109 suggests that a county can impose service charges in a special district only on those households and businesses that actually use the service, imposition may depend upon the nature of the service being offered.

3. Yes. Under the provisions of Tenn. Code Ann. ss 68-211-901, et seq., a solid waste authority may delegate collection and disposal responsibilities back to a county or municipality that participated in the authority's creation.

4. It is the opinion of this Office that a county or municipality that participated in creating a solid waste authority can impose a service charge or tax for collection and disposal, in addition to any fees imposed by the solid waste authority, as long as the county or municipality is offering a service different from that already provided by the solid waste authority.

III. ANALYSIS

1. In 1991, the General Assembly passed the Solid Waste Management Act found at Tenn. Code Ann. ss 68-211-801, et seq. ("Part 8"). In accordance with the provisions of Tenn. Code Ann. s 68-211-835(g)(1), counties, municipalities and solid waste authorities are authorized to impose and collect solid waste disposal fees. Unlike the provisions in Tenn. Code Ann. ss 5-19-101, et seq., ("Title 5") affecting county authority over garbage collection and disposal services, however, s 68-211-835(g) of the Solid Waste Management Act of 1991 does not authorize the creation of special service districts within counties or municipalities. It provides that the monies generated from the imposition of the fees under this section may only be used to establish and maintain solid waste collection and disposal services, including convenience centers. Furthermore, it expressly states that "all residents of the county" are to have access to the collection and disposal services that are funded by the fees imposed under this subsection.

Since all residents of the county must have the benefit of the services provided under this statute, it follows that all residents must be subject to the fees supporting such services. This is further supported by the language in s 68-211-835(g)(2), which permits a county or solid waste authority to enter into an agreement with an electric utility to collect the solid waste disposal fee as part of the utility's billing process. We therefore conclude that Tenn. Code Ann. s 68-211-835(g) does not authorize a county or a solid waste authority to create a special service district within a county and impose a disposal fee on that district alone. We note, however, as discussed below in section 2, that Chapter 19 of Title 5 does permit the creation of such service districts and the imposition of a fee therein for collection and disposal.

2. Tenn. Code Ann. s 5-19-107 authorizes counties "to do all things necessary" to provide county-wide or special district solid waste collection and disposal services, including the activities enumerated thereunder in (1) through (12). Tenn. Code Ann. ss 5-19-107(11) and 5-19-109 specifically address the establishment of service "districts" and the imposition of charges for "services rendered" within the district or area. Tenn. Code Ann. s 5-19-109(b)(2) refers to charges levied on "recipients of the services" in the district. While this language suggests that such fees can only be imposed on households and businesses that actually use the service, imposition of the charge may depend upon the nature of the service offered. If the county is providing door-to-door service in a particular district under s 5-19-109, the service charge could only be imposed on those actually using or receiving this service. On the other hand, if the county chooses to provide a convenience center in a service district, there is

probably no way to determine who actually uses the center. Under these circumstances, everyone in the district is a "recipient" of the service because it is accessible and available for everyone's benefit, therefore, the county could impose a service charge on all households and businesses in that district.

3. The Solid Waste Authority Act of 1991, now codified at Tenn. Code Ann. ss 68-211-901, et seq. ("Part 9"), permits the creation of solid waste authorities after the establishment of the solid waste regions required under Tenn. Code Ann. s 68-211-813(a)(1). [FNa1] See Tenn. Code Ann. s 68-211-903. Under Part 9, only counties have the power to establish solid waste authorities. Municipalities are free to join in the creation of a solid waste authority, but only under the conditions agreed upon by the participating governments. Tenn. Code Ann. s 68-211-903(a). In accordance with Tenn. Code Ann. s 68-211-906(8), a solid waste authority may contract with a municipality for the management or operation of any service of the authority, or for "the treatment, processing, storage, transfer or disposal of solid waste." While it may not be logical for a solid waste authority to delegate powers back to the county, or counties, that created it, particularly in a single county region, Tenn. Code Ann. ss 68-211-916(a) and -920 do appear to contemplate agreements between solid waste authorities and counties (and municipalities) for collection and disposal services.

It should be noted that, under Part 9, a solid waste authority may have an exclusive right to control the collection and disposal activities within its boundaries. Tenn. Code Ann. s 68-211-906(b). If such exclusive jurisdiction is approved by the counties and municipalities lying within the territory of the authority, those counties would then effectively relinquish their powers under Tenn. Code Ann. ss 5-19-101, et seq., governing county authority over garbage collection and disposal services, as discussed in section 4, *infra*.

4. The last inquiry requests a consideration of whether a county or city that participated in creating a solid waste authority can impose a solid waste disposal fee, surcharge or property tax, within its respective territory, in addition to any disposal fees imposed by the solid waste authority. This Office has previously opined that a county and the cities lying within the county may charge separate fees for distinct solid waste services. See Op. Tenn. Atty.Gen. 93-49 (July 23, 1993). The same rationale applies to this situation.

The provisions under Title 5 affecting county authority over garbage collection and disposal services empower counties either to charge a fee for such services or to impose a special tax levy. Tenn. Code Ann. ss 5-19-107(11), 5-19-108 and 5-19-109(b). The legislature has extended similar authorization to municipalities in Tenn. Code Ann. s 6-2-201(19). Solid waste authorities established in accordance with the Solid Waste Authority Act of 1991 are not empowered under either Part 8 or Part 9 to levy taxes in order to finance collection and disposal services. They are authorized, however, under Tenn. Code Ann. s 68-211-906(a)(11), to impose fees or "other charges" for the use of the authority's facilities and services.

As indicated above, if a solid waste authority is created in accordance with the provisions of Part 9, it will have exclusive jurisdiction over collection and disposal activities within its boundaries, only if the governing bodies of the counties and municipalities therein concur. Tenn. Code Ann. s 68-211-906(b). In such a case, it would appear, at the very least, that the counties and

municipalities granting such approval would then give up their respective powers over garbage collection and disposal under Tenn. Code Ann. ss 5-19-101, et seq., and s 6-2-201. If, however, the counties and municipalities within the boundaries of the solid waste authority do not grant such exclusive jurisdiction, a county or municipality that participated in creating the solid waste authority could then impose a service charge or levy a tax to finance collection and disposal services, in addition to any fees imposed by the authority, as long as the county or municipality is offering a different service from that already provided by the solid waste authority. For example, if a solid waste authority is providing, and financing, convenience centers pursuant to Tenn. Code Ann. s 68-211-835(g), a county or municipality within the boundaries of the authority could impose fees or levy a tax to finance door to door collection services under either Tenn. Code Ann. ss 5-19-101, et seq., or s 6-2-201, if those are not provided by the solid waste authority. It should also be noted that Tenn. Code Ann. s 68-211-920 expressly provides that when a county or a city with taxing power enters into a contract with a solid waste authority, the county or city "shall provide by resolution for the levy and collection of a tax . . ." to fund the operation of the project required to be paid by either the county or city under the terms of the contract.

OPINION NO. 96-041 - MARCH 13, 1996

Requested by: Honorable Harry J. Tindell, State Representative

Signed by: Charles W. Burson, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Elizabeth P. McCarter, Senior Counsel

Authority and Operation of Single County Solid Waste Regions that Elect not to Create Solid Waste Authorities

****

I. QUESTIONS

1. Is a single county solid waste region, established under the Solid Waste Management Act of 1991, required to create a solid waste authority for the purpose of implementing collection and disposal activities within the region? If not, must a single county solid waste region then choose one of the options contained in Tenn. Code Ann. s 5-19-103, governing county authority over collection and disposal services, or is another choice available under some other statute?

2. If a single county region that elects not to create a solid waste authority chooses one of the solid waste management options outlined in Tenn. Code Ann. s 5-19-103, what is the resulting organization's authority in the following respects:

a) does it extend to the entire region, including municipalities;

b) does it extend to areas beyond garbage collection and disposal, including the requirements for education and waste reduction mandated by the Solid Waste Management Act of 1991;

c) is it responsible for supervising the closure and post closure of landfills;

d) does it have the authority to manage the daily operations of the solid waste program and may it hire a director or manager to provide for all of the requirements of the Solid Waste Management Act of 1991; and

e) if the county elects to contract for collection and disposal services, who is responsible for supervising the contract to insure its compliance with both federal law and the Solid Waste Management Act of 1991?

3. How are conflicts resolved in a single county solid waste region between the solid waste regional board, mandated by the 1991 Act to administer the affairs of the region, and the county organization or structure selected under Tenn. Code Ann. s 5-19-103?

II. OPINIONS

1. Once a single county solid waste region is established under the Solid Waste Management Act of 1991, neither that Act nor the Solid Waste Authority Act of 1991 requires the creation of a solid waste authority to implement the collection and disposal activities within its territory. If a single county solid waste region elects not to create a solid waste authority, and it does not have a pre existing solid waste authority by Private Act, it may then choose one of the operational devices contained in Tenn. Code Ann. s 5-19-103, governing county authority over collection and disposal services, or it may enter into an interlocal agreement to provide such services, as authorized under Tenn. Code Ann. s 12-9-101, et seq.

2.(a) The authority of a single county solid waste region that elects to manage its day to day operational solid waste activities under Tenn. Code Ann. s 5-19-103 generally extends only to areas outside the limits of any municipality lying within the county. But a county is authorized under Chapter 19 of Title 5 and under Tenn. Code Ann. s 12-9-104 to enter into interlocal agreements and contract with municipalities for collection and disposal services.

2.(b) The authority of a single county region that elects to manage its day to day operational solid waste activities under Tenn. Code Ann. s 5-19-103 is initially limited to collection and disposal services, because Chapter 19 of Title 5 contemplates no more than that. But any additional requirements of the Solid Waste Management Act, such as education and waste reduction, may be implemented through delegation to the county by the solid waste regional board mandated under Tenn. Code Ann. s 68-211-813.

2.(c) No. The Tennessee Department of Environment and Conservation is responsible for supervising closure and post closure of landfills.

2.(d) A single county solid waste region that elects to operate its activities under Tenn. Code Ann. s 5-19-101, et seq., has broad authority to manage and supervise all collection and disposal systems within its boundaries, and may hire a director or appoint a superintendent to do the same. But any additional requirements of the Solid Waste Management Act, such as education and waste reduction, could only be implemented through delegation to the county by the solid waste regional board mandated under Tenn. Code Ann. s 68-211-813.

2.(e) Under Tenn. Code Ann. s 5-19-101, et seq., either the county executive or the superintendent, if one is appointed, would have responsibility for supervising the execution of contracts between the county and other entities covering collection and disposal services to insure compliance with the Solid Waste Management Act and any other applicable state or federal law.

3. Where disagreements arise between the regional board and the county over the means of implementation to attain the goals mandated under the 1991 Act, a resolution may depend on the nature of the measures in dispute, since the regional board has discrete functions under Tenn. Code Ann. s 68-211-814. If a specific measure is called for in the regional plan, the county may be prevented from acting inconsistently with the plan, unless a modification to the plan can be agreed upon, or unless the Department finds that the county's proposal is not contrary to the mandates of Part 8.

III. ANALYSIS

1. Alternatives to Part 9 Solid Waste Authorities in Single County Regions

The Solid Waste Management Act of 1991, codified at Tenn. Code Ann. s 68-211- 801, et seq., ("Part 8"), mandates the formation of municipal solid waste regions throughout the state. Neither this Act, however, nor the Solid Waste Authority Act of 1991, codified at Tenn. Code Ann. s 68-211-90, et seq., ("Part 9") requires the creation of solid waste authorities for the purpose of implementing collection and disposal services within the regions. The language in Tenn. Code Ann. s 68-211-903 envisioning the creation of solid waste authorities, after establishment of solid waste regions, is permissive rather than mandatory.

A single county solid waste region may therefore elect not to create a solid waste authority under Part 9 and may continue to administer its solid waste activities through the regional solid waste board established in accordance with Tenn. Code Ann. s 68-211-813(b). With a few exceptions, however, Part 8 does not generally empower the regional board to implement, or engage in, the day to day operations of the region's solid waste program. The regional board's administrative functions are limited to policy making. If a single county region does not want to form a solid waste authority under Part 9, one alternative for implementing and supervising the solid waste management activities of the region is found in Tenn. Code Ann.ss 5-19-101, et seq. ("Title 5"), which pertains to county authority over garbage collection and disposal services. Tenn. Code Ann. s 5-19-103 authorizes the county legislative body to place day to day management of solid waste services in one of the following:

1. Some agency or officer of the county already in existence;
2. A county sanitation department;
3. A county board of sanitation, as provided in s 5-19-104; or
4. Contractual arrangements with any city, utility district or private company

A second alternative that is available to single county solid waste regions for operating their day to day solid waste activities is found in the Interlocal Cooperation Act, codified at Tenn. Code Ann. ss 12-9-101, et seq. These statutes give cities and counties wide latitude with regard to selecting the organization to provide specific services and facilities. A county may therefore enter into an interlocal agreement under s 12-9-104 or an interlocal contract under s 12-9-108 that provides for either the joint performance of collection and disposal services or for performance by a particular local government within the region.

Finally, Part 8 recognizes a third possible alternative for single county regions in the form of a pre-1991 solid waste authority. Under Tenn. Code Ann. s 68-211-813(b)(2), if a single county decides to create its own solid waste region, it may designate a solid waste authority already in existence on July 1, 1991 as the board to administer the activities of the region. This Office has previously opined that this reference to a "solid waste authority" in s 813(b)(2) is not to a Part 9 authority, since neither Part 8 nor Part 9 became effective until July 1, 1991. Rather, it refers to such solid waste authorities as were created by Private Act before July 1, 1991. See Op. Tenn. Atty. Gen. 91-103 (Dec. 23, 1991). Therefore, if a single county region has such a pre-existing

solid waste authority, it may look to the Private Act that created it to determine what powers are given thereunder in terms of managing a solid waste program.

The Solid Waste Management Act of 1991 does require a minimum level of collection and disposal services in each county, including a network of convenience centers. Tenn. Code Ann. s 68-211-851. Under Title 5, a single county region would implement such services through one of the four entities specified in s 5-19-103. Under Tenn. Code Ann. s 12-9-101, et seq., this requirement would simply be incorporated into an interlocal agreement or contract. Regardless of the entity or structure selected under either Tenn. Code Ann. ss 5-19-103 or 12-9-101, et seq., the county's solid waste activities would still have to conform to the solid waste regional plan mandated by Tenn. Code Ann. ss 68-211-814 and 68-211-815.

2. Authority of Single County Solid Waste Regions Operating Under Title 5

You ask further about the extent of a single county region's management authority once it elects to implement its solid waste activities under Tenn. Code Ann. s 5-19-101, et seq., rather than under Part 9.

2.(a) In a single county region, the county's operational and management authority with respect to garbage collection and disposal services would extend only to areas outside the city limits of any municipality lying within the county. Municipalities within the county have statutory authority under Tenn. Code Ann. s 6-2-201(19) to collect and dispose of garbage within city limits. Each government within the region is separately responsible for the collection and disposal of municipal solid waste, although the activities of each should ideally also conform to the region's solid waste plan, as submitted in accordance with Tenn. Code Ann. s 68-211-814. Of course, both Titles 5 and 6 of Tennessee Code Annotated permit counties and cities to enter into contracts with each other or with private entities for refuse collection and disposal. Furthermore, as stated, *supra*, Tenn. Code Ann. s 12-9-104 also allows cities and counties to enter into "interlocal agreements" with regard to the organization to provide collection and disposal services.

2.(b) The authority of a single county region electing to operate its solid waste activities under Tenn. Code Ann. s 5-19-103 is limited to collection and disposal services, because that is all that Chapter 19 of Title 5 expressly contemplates. Part 8, however, requires each solid waste regional plan to incorporate additional activities, including educational initiatives and waste reduction programs. Tenn. Code Ann. s 68-211-815(b). As discussed above, the regional board, which is established in every solid waste region under s 68-211-813(b) to administer its activities, does not have general authority under Part 8 to implement or carry out the day to day collection and disposal activities or educational initiatives required under the regional plan. It is not empowered under the Act to authorize or provide funding for such programs. But it is the opinion of this office that, in the absence of a Part 9 solid waste authority, the solid waste regional board does have, by necessary implication, the authority to delegate those responsibilities and activities to traditional county and city jurisdictions, or to sanitation boards.

2.(c) Neither single county nor multi-county regions have the authority to supervise the closure and post closure of landfills under Tennessee's solid waste disposal statutes. The Department of Environment and Conservation is responsible for such supervision under Tenn. Code Ann. s 68-211-101, et seq. Part 8 merely authorizes solid waste regions to restrict access to landfills and to approve or disapprove permit applications for landfills before the Commissioner makes a final decision. Tenn. Code Ann. ss 68-211-814.

2.(d) Tenn. Code Ann. s 5-19-101, et seq. authorizes counties, through the county legislative body, sanitation board or sanitation department, to supervise and control all collection and disposal systems. Where these powers are exercised by a county sanitation department or sanitation board, the county executive or sanitation board may appoint a superintendent to manage these activities. Tenn. Code Ann. s 5-19-105. The county legislative body also has the authority under s 5-19-107(7) to hire, by contract, a director or manager to supervise refuse collection and disposal within the region. In all cases, the supervision contemplated under Chapter 19 of Title 5 is limited to collection and disposal activities. Any additional undertakings authorized by Part 8, such as the education and waste reduction programs, could only be implemented through delegation to the county by the regional board established under Tenn. Code Ann. s 68-211-813. This may be done through express provision in the regional plan, which must be formulated in compliance with s 68-211-815.

2.(e) If the single county region elects to contract for collection and disposal services, administration and supervision of the contracts would fall to either the county executive under s 5-19-103(4), or the superintendent, if one is appointed, under s 5-19-110. Only the county legislative body, however, has authority to approve these contracts in accordance with Tenn. Code Ann.ss 5-19-103(4) and 5-19-110(d). The county governing body would therefore be initially responsible for insuring that any contracts governing garbage collection and disposal services comply with the mandates of Part 8 and any other applicable state or federal law, and that they are consistent with the regional plan. The county executive or superintendent would then be responsible for insuring that the contracts are carried out in conformity with these mandates.

3. Resolving Conflicts Between the Regional Board and the Title 5 Entity

As discussed above, the regional solid waste board's administrative functions are largely limited to policy making and long range planning. Each regional board must develop a ten year plan for disposal capacity assurance, 25% waste reduction, collection assurance, solid waste education and other aspects of integrated solid waste management. Tenn. Code Ann. ss 68-211-813; -814; -815. The key component to all of this is the regional plan, which provides the road map for all local governments within the region. Under Part 8, this plan must address the specific details laid out in s 68-211-815, must be consistent with the State solid waste plan required under Tenn. Code Ann. s 68-211-601, et seq., and it must be approved by the Tennessee Department of Environment and Conservation ("Department"). Tenn. Code Ann. s 68-211- 814(a)(1). Furthermore, Part 8 contains several provisions referring to implementation of the regional plan, including: s 68-211-815(b)(13) (requiring that the plan contain a timetable for implementation); s 68-211- 861(b) (granting of variances for inability to meet 25% waste reduction goal if good

faith effort to implement regional plan has been made); and s 68-211- 871(b) (requiring submission by the region of an annual progress report on implementation). Finally, the Department retains ultimate enforcement authority for failure to submit an adequate plan or for noncompliance with any provision of Part 8. Tenn. Code Ann. s 68-211-816.

It is certainly conceivable that the means of implementation to attain the goals in the Act may change due to unforseen circumstances, better information or simple expediency. In a single county region that has elected to operate its solid waste program through one of the traditional structures provided in Chapter 19 of Title 5, the county operating authority will have to make judgment calls in the daily operation of the solid waste programs and it must report its progress toward attaining the region's goals to the regional planning board annually. Tenn. Code Ann. s 68-211-871(c). While the county authority cannot not act in a manner inconsistent with the Solid Waste Management Act, as a practical matter, the county may seek a modification to the regional plan, where changed circumstances or efficiency require it, by first gaining the approval of the regional board and, if necessary, the Department, which has the ability to enforce compliance under the Act.

Where disagreements over implementation arise between the regional board and the Title 5 entity concerning an implementation device that is spelled out in the plan, the solution may be somewhat problematic. For example, if the county desires to develop its own landfill and the regional plan only calls for a transfer station with shipment of waste out of county, the county authority would have to obtain approval from the regional board pursuant to the permit review provisions under Tenn. Code Ann. s 68-211-814(b)(1)(D). If the board determines that the county's landfill is inconsistent with the regional plan and rejects the application, the only recourse for the Title 5 entity would be to appeal to the Department, as stated above. If the disagreement concerns a matter that is not outlined in the regional plan, the county would probably have autonomy to pursue its desired objective, as long as it does not conflict with any mandates of the 1991 Act.

OPINION NO. 95-041 - APRIL 18,1995

Requested by: Honorable D.E. Crowe, II.

Signed by: Charles W. Burson, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Barry Turner, Deputy Attorney General.

Solid Waste Management Act of 1991 - Flow Control - Excluding waste from outside region - Constitutionality - Commerce Clause.

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I. QUESTIONS

1. Are the provisions of Tenn. Code Ann. 68-211-814, which authorize "flow control," constitutional under the Commerce Clause of the United States Constitution?

2. Are the provisions of Tenn. Code Ann. 68-211-814, which authorize excluding waste originating outside a solid waste region, constitutional under the Commerce Clause?

3. Is there any way consistent with the Commerce Clause for the State of Tennessee or its political subdivisions to keep out-of-state waste from being imported to private or public landfill disposal facilities?

4. Could states form solid waste disposal compacts and refuse such wastes not in the compacts?

5. If a public solid waste disposal facility contracts with a private party to operate its facility, can the municipality or county restrict the acceptance of wastes from other jurisdictions?

6. Can counties veto solid waste disposal policies or facilities operated by municipalities within the county's jurisdiction?

7. Since the case of Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources was limited to privately owned and operated facilities, may publicly owned and operated facilities limit acceptance of waste to waste generated solely within its own jurisdiction?

8. Can the State prohibit political subdivisions from accepting solid wastes from other states at publicly-owned solid waste facilities?

9. Do the provisions of Tenn. Code Ann. 68-211-701 supersede the provisions of Tenn. Code Ann. 68-213-101 to -106?

10. Is there any provision in the enclosed contract that would allow municipalities to refuse out-of-state waste? If one draws a contract such that it specifies the locations from which

municipalities receive waste, can it restrict waste from any outside location not specifically stated in the contract?

II. OPINIONS

1. It is the opinion of this Office that a solid waste region's exercise of the flow control authority in Tenn. Code Ann. 58-211-814(b)(1)(A) of the Solid Waste Management Act of 1991 would discriminate against interstate commerce. Flow control operates to deprive out-of-state businesses of access to local markets for solid waste processing or disposal services, and in so doing, reserves those markets for local interests. It is also our opinion that such discrimination would contravene the Commerce Clause of the United States Constitution unless the flow control restriction advances some legitimate local interest that cannot be attained by nondiscriminatory means.

2. It is the opinion of this Office that, if necessary to effectuate a solid waste region's plan, the region may exercise the authority in Tenn. Code Ann. 68-211-814(b)(1)(B) to exclude waste originating from other regions within Tennessee. With regard to waste originating outside of Tennessee, it is our opinion that a region, in order to effectuate its plan, may impose nondiscriminatory disposal restrictions, such as annual volume limitations, which may have an incidental effect on commerce in out-of-state waste. We do not think that an annual volume limitation would violate the Commerce Clause as long as it also applied to waste generated within the region. However, if a region acts to exclude waste from outside of Tennessee in order to preserve disposal capacity for regional waste, then it is the opinion of this Office that the region would be discriminating against interstate commerce in violation of the Commerce Clause.

3. The constraints of the Commerce Clause generally do not apply when a state or local government acts as a participant in the market, rather than as a regulator thereof. It is the opinion of this Office that under the "market participant" doctrine, a state or local government may properly purchase a landfill site and favor its own citizens to the exclusion of others in offering waste disposal services. An additional requirement is imposed on such publicly-owned facilities by the Solid Waste Management Act of 1991 in that the exclusion of out-of-state waste must be consistent with a solid waste region's municipal solid waste plan. Tenn. Code Ann. 68-211-817. We are of the opinion that the market participant doctrine will not apply if the government attempts to impose restrictions on commerce outside the market in which it is participating. The doctrine will also not apply if the government, in addition to offering landfill services, acts to "hoard" landfill sites by precluding all other parties, domestic or foreign, from purchasing property upon which to construct a landfill.

4. The Compact Clause of the United States Constitution prohibits a state from entering into a compact with any other state without congressional consent. State compacts which address subjects placed under the control of Congress, such as interstate commerce, require that congressional consent be given in advance of the compact. We are unaware of any federal law authorizing state solid waste compacts whereby member states could refuse waste from states not

in the compact. It is the opinion of this Office that in the absence of advance congressional consent, such a solid waste compact would contravene the Compact Clause of the federal constitution.

5. As stated, *supra*, in response to question 3., under the market participant doctrine a local government may enter the solid waste disposal services market and favor its own residents over others. It is the opinion of this Office that the doctrine requires the government to participate in the market by pursuing its own economic interests in determining with whom and on what terms its facility will deal. As long as the government is participating in the market in that way, it is our opinion that the market participant doctrine does not lose its vitality simply because the government may retain a private party to manage or operate the publicly-owned facility on a day-to-day basis.

6. With regard to matters governed by the Solid Waste Management Act of 1991, municipalities will be subject to the authority of the solid waste region in which they are located. All solid waste regions are administered by a board, and it is our opinion that it is possible under the Act for a majority of the members of a region's board to be representatives of the county or counties comprising the region. We think that municipal solid waste policies will have to be consistent with the solid waste plan approved for the region. After that plan has been approved, existing municipally-owned solid waste disposal facilities within the region will be subject to the provisions of Tenn. Code Ann. 68-211-814(b)(1)(B) regarding continued acceptance of waste from specific sources outside the region. In addition, after approval of a region's solid waste plan, municipal permit applications for new or expanded solid waste disposal facilities will be subject to the provisions of Tenn. Code Ann. 68-211-814(b)(1)(D) and (b)(2) requiring approval of such applications by the region.

7. This question has been answered in the response, *supra*, to question 3.

8. Although a state may exclude out-of-state waste from landfills which it owns under the market participant doctrine, it is the opinion of this Office that the doctrine does not allow the state to prohibit the disposal of out-of- state waste at landfills owned by local governments. In that situation, the state is not the governmental entity that is directly participating in the market for disposal services. Because the state would be acting as a regulator of this market, and not as a participant, it is our opinion that the state's actions would be subject to the constraints of the Commerce Clause.

9. In Op. Tenn. Atty. Gen. 93-27 (April 1, 1993), this Office opined that the Sanitary Landfill Areas Act, Tenn. Code Ann. 68-213- 101 to -106, was an unconstitutional delegation of legislative authority because it did not contain any standards or principles to guide local governing bodies in making their decision to approve or disapprove of solid waste landfill construction. We further opined that the statutory provisions providing for local governmental approval of the construction of solid waste landfills in Tenn. Code Ann. 68-211-701 to -708 did contain guiding standards and principles, and thus, were a valid delegation of legislative authority by the General Assembly.

10. It is the opinion of this Office that a municipality may, under the market participant doctrine, contract with a private entity to operate a municipally-owned disposal facility and restrict the area from which waste is received at the facility by the terms of the contract. The Solid Waste Management Act of 1991 establishes the additional requirement that such restrictions be consistent with the solid waste plan for the region. However, under the market participant doctrine, any restrictions imposed upon interstate commerce by the municipality must be limited to the market in which it is participating. Moreover, it is our opinion that the protections of the doctrine may be lost if the municipality attempts to "hoard" landfill sites by precluding others from establishing landfills of their own.

III. ANALYSIS

I.

In enacting the Solid Waste Management Act of 1991 (SWMA), Tenn. Code Ann. 68-211-801 -874 (1992), the General Assembly intended to provide a comprehensive, integrated, statewide program for the management of solid waste. See Tenn. Code Ann. 68-211-803. The SWMA requires the establishment of "municipal solid waste regions," which "consist of one (1) county or two (2) or more contiguous counties."[1] Tenn. Code Ann. 68-211-813(a) (Supp. 1994). The SWMA also requires each region to have an approved "municipal solid waste plan." Tenn. Code Ann. 68-211-814, -815 (Supp. 1994). The Tennessee Department of Environment and Conservation (TDEC) is responsible for reviewing, and approving or disapproving, a region's solid waste plan. See Tenn. Code Ann. 68-211-814(a)(1) (Supp. 1994).

The SWMA addresses "flow control" by providing that a solid waste region with an approved plan may, "by resolution and subsequent adoption of ordinances by counties and municipalities in the region, . . . regulate the flow of collected municipal solid waste generated within the region."[2] Tenn. Code Ann. 68-211-814(b)(1)(A) (Supp. 1994). As used in this opinion, the term "flow control" refers to laws that require waste within a particular locality to be disposed of at a designated facility within that locality. See Browning-Ferris Industries of Tennessee, Inc. v. Metropolitan Govt. of Nashville and Davidson County, Appeal No. 01-A-01-9104-CH-00156, slip op. at 1 (Tenn. App. Oct. 30, 1991), appeal denied, (Tenn. Feb. 24, 1992). It is the opinion of this Office, as discussed, *infra*, that a solid waste region's exercise of the flow control authority in 68-211-814(b)(1)(A) would result in a discrimination against interstate commerce.

The Commerce Clause of the United States Constitution provides that Congress "shall have power . . . [t]o regulate commerce . . . among the several states." U.S. Const. art. I, s 8, cl. 3. The United States Supreme Court has recognized as a dormant or negative component of the Commerce Clause the principle that, in the absence of express regulation from Congress, the clause limits a state's power to impose burdens upon interstate commerce. Lewis v. B.T. Investment Managers, Inc., 447 U.S. 27, 35, 100 S. Ct. 2009, 2015, 64 L. Ed. 2d 702 (1980);

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1. Pursuant to the SWMA, all solid waste regions were to have been established by December 12, 1992. Tenn. Code Ann. 68-211-813(a) (Supp. 1994).

2. The use of the term "solid waste region" in this opinion includes a "solid waste authority" under the SWMA. See Tenn. Code Ann. 68-211-802(a)(1), -813(b)(2), -814(b)(3) (Supp. 1994).

Hughes v. Oklahoma, 441 U.S. 322, 326, 99 S. Ct. 1727, 1731, 60 L. Ed. 2d 250 (1979). In the context of solid waste, the Supreme Court has held it to be an article of commerce subject to the constraints of the Commerce Clause. City of Philadelphia v. New Jersey, 437 U.S. 617, 622-23, 98 S. Ct. 2532, 2534-35, 57 L. Ed. 2d 475 (1978). This principle was recently reaffirmed by the Court in Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources, 112 S. Ct. 2019, 2023 (1992).

The primary objects of dormant Commerce Clause scrutiny have been state statutes that discriminate against interstate commerce. CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 81, 107 S. Ct. 1637, 1648, 95 L. Ed. 2d 67 (1987). A state statute affirmatively discriminating against interstate commerce, either on its face or in practical effect, is subject to strict scrutiny. Maine v. Taylor, 477 U.S. 131, 138, 106 S. Ct. 2440, 2447, 91 L. Ed. 2d 110 (1986). In order for the statute to survive, the state must show that the statute serves a legitimate local interest which could not be achieved by "available nondiscriminatory means." Hughes, 441 U.S. at 336, 99 S. Ct. at 1736. Moreover, "where simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has been erected." City of Philadelphia, 437 U.S. at 624, 98 S. Ct. at 2535.

In C & A Carbone, Inc. v. Town of Clarkstown, 114 S. Ct. 1677, 1680 (1994), the United States Supreme Court invalidated a municipal flow control ordinance because it discriminated against interstate commerce in violation of the Commerce Clause. The Clarkstown ordinance required "all solid waste to be processed at a designated transfer station before leaving the municipality." Id. at 1680. Carbone operated a recycling center in Clarkstown, which received bulk solid waste, sorted out the recyclables, baled the nonrecyclable waste, and then sought to ship the waste outside the town to other processing facilities. Id. at 1681. Under the ordinance, Carbone was prohibited from shipping the nonrecyclable waste itself, and had to send that waste to the designated transfer station, and "pay a tipping fee on trash that [it had] already sorted." Id.

The Supreme Court began its analysis by noting that although the immediate effects of the Clarkstown ordinance were local in nature - regulating local transport of waste to a site within the local jurisdiction - its economic effects were "interstate in reach." Id. at 1681. Those interstate effects were twofold, according to the Court. First, because all waste, including interstate waste shipped into the town, had to be processed at the designated transfer station before being shipped out, the ordinance drove "up the cost for out-of-state interests to dispose of their waste." Id. Second, even for waste originating within the town, because only the designated local facility was allowed to perform the required waste processing, the ordinance deprived "out- of-state businesses of access to a local market." Id.

The Supreme Court concluded that Clarkstown's flow control ordinance operated to discriminate against interstate commerce. The Court viewed the article of commerce in Carbone as "not so much the solid waste itself, but rather the service of processing and disposing of it." Id. at 1682. So viewed, the Court stated that "the flow control ordinance discriminates, for it allows only the favored operator to process waste that is within the limits of the town." Id. It was asserted that the ordinance, even if discriminatory, was necessary "to ensure the safe and sanitary handling and proper treatment of solid waste." Id. at 1683. Although this was a legitimate local interest, the Court concluded that it could be achieved by nondiscriminatory means. On this point, the Court stated:

> Clarkstown has any number of nondiscriminatory alternatives for addressing the health and environmental problems alleged to justify the ordinance in question. The most obvious would be uniform safety regulations enacted without the object to discriminate.

Id.[3]

It was also asserted that the ordinance was a "financing measure" needed to ensure that the transfer station would be profitable, "so that the local contractor can build it, and Clarkstown can buy it back at nominal cost in five years." Id. at 1684. In rejecting this assertion, the Court noted that "revenue generation [by itself] is not a local interest that can justify discrimination against interstate commerce." Id. In response to Clarkstown's contention that special financing was necessary to ensure the "long-term survival of the designated facility," the Court stated that the town could subsidize the facility through general taxes or municipal bonds. Id.

After Carbone, the validity of a local flow control provision was considered in Waste Management, Inc. of Tennessee v. Metropolitan Govt. of Nashville and Davidson County, No. 3:94-0411 (M.D. Tenn. June 10, 1994) (Report and Recommendation of the Magistrate Judge). At issue in that case was the flow control ordinance enacted by the Metropolitan Government of Nashville and Davidson County (Metro) pursuant to its authority under the Energy Production Facilities Act, Tenn. Code Ann. 7-54-101 to -114 (1992). That Act gives Metro the power to "exercise exclusive jurisdiction and exclusive right to control the collection and disposal of solid waste within its boundaries." Tenn. Code Ann. 7-54-103(d). In denying a request to preliminarily enjoin enforcement of that ordinance, the court distinguished Metro's flow control ordinance from the ordinance invalidated by the Supreme Court in Carbone.

The court noted that Metro's ordinance did not require all waste generated within Metro to be delivered to Metro's Thermal Treatment Plant, but only residential waste. According to the court, 65% of the waste generated in Metro was commercial solid waste, upon which there were no flow control restrictions. Waste Management, slip op. at 23-24. Because Metro's ordinance did not attempt to control the flow of all waste within Metro, the court concluded that the ordinance did not discriminate against interstate commerce, but rather was a "nondiscriminatory municipal regulation that incidentally impacts interstate commerce." Id. at 24.

As discussed, the SWMA provides that a solid waste region with an approved plan may "regulate the flow of collected municipal solid waste generated within the region. Tenn. Code Ann. 68-211-814(b)(1)(A) (Supp. 1994). It is the opinion of this Office that a solid waste region's exercise of the authority in 68-211-814(b)(1)(A) to regulate the flow of all waste generated within the region would discriminate against interstate commerce under the analysis of the United States Supreme Court in Carbone. In that situation, flow control would completely deprive out-of-state businesses "of access to local demand for their [solid waste processing and disposal] services." 114 S. Ct. at 1683.

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3. The Court also stated that Clarkstown could not justify the flow control ordinance "as a way to steer solid waste away from out-of-town disposal sites that it might deem harmful to the environment." Id. Such extraterritorial control of commerce contravenes the Commerce Clause. See Healy v. Beer Institute, Inc., 491 U.S. 324, 336-37, 109 S. Ct. 2491, 2499, 105 L. Ed. 2d 275 (1989).

It is also our opinion that, notwithstanding the Waste Management decision, a solid waste region exercising flow control over less than all of the waste generated within the region would still be discriminating against interstate commerce. Although out-of-state businesses in that situation would not be completely deprived of access to the local market for solid waste processing and disposal services, they would still be deprived of access to that portion of the local market represented by the waste which is subject to flow control by the region.

The Waste Management decision suggests that the discriminatory character of a flow control provision is dependent upon the scope of the restraint. In that case, only 45% of the solid waste generated within Metro was subject to flow control. However, in the context of the Commerce Clause, the Supreme Court has not made distinctions about whether a provision is discriminatory based upon how much commerce is impaired. In Wyoming v. Oklahoma, 112 S. Ct. 789, 800 (1992), the Court invalidated as unconstitutionally discriminatory an Oklahoma statute which "reserve[d] a [10%] segment of the Oklahoma coal market for Oklahoma-mined coal." Oklahoma argued that its law set "aside only a 'small portion' of the Oklahoma coal market, without placing an 'overall burden' on out-of-state coal producers doing business in Oklahoma." 112 S. Ct. at 801.

In rejecting that argument, the Court stated that "[t]he volume of commerce affected measures only the extent of the discrimination; it is of no relevance to the determination of whether a State has discriminated against interstate commerce." Id. (citations omitted). See Carbone, 114 S. Ct. at 1683 (fact that "the flow control ordinance favors a single local proprietor . . . just makes the protectionist effect of the ordinance more acute"); see also Fort Gratiot, 112 S. Ct. at 2025 ("the fact that the Michigan statute allows individual counties to accept waste from out of state [does not] qualify its discriminatory character").

Thus, if a flow control law discriminates against interstate commerce by restricting the access of out-of-state businesses to local markets for solid waste processing and disposal services, as the Supreme Court held in Carbone, then it should not matter whether all or some lesser portion of the market is restricted in terms of the discriminatory effect of the law. Accordingly, it is the opinion of this Office that any exercise of the flow control authority in Tenn. Code Ann. 68-211-814(b)(1)(A) would discriminate against interstate commerce because it would reserve some portion of the local market for local interests, and in so doing, would deprive out-of-state interests of access to that portion of the local market.

State statutes that discriminate against interstate commerce will be upheld only if they serve a legitimate local purpose that cannot "be served as well by available nondiscriminatory means." Maine v. Taylor, 477 U.S. at 138, 106 S. Ct. at 2447. In Maine v. Taylor, the United States Supreme Court sustained, against a Commerce Clause challenge, a state statute that completely prohibited the importation of live baitfish into the State of Maine. The importation ban was held to discriminate against interstate commerce on its face. Id. at 138, 102 S. Ct., at 2447.

Maine asserted that the ban advanced its concern that imported baitfish could expose Maine's fish populations to disease, and its concern that non-native fish inadvertently included in shipments of imported baitfish could disturb the state's aquatic ecology. Id. at 140-41, 102 S. Ct.

at 2448-49. In responding to the argument that those concerns were unfounded, the Supreme Court held that "Maine has a legitimate interest in guarding against imperfectly understood environmental risks, despite the possibility that they may ultimately prove to be negligible." Id. at 148, 102 S. Ct. at 2452.

The Supreme Court also held that there were no available less discriminatory alternatives to the importation ban. This argument focused upon techniques for inspecting shipments of imported baitfish. It was noted that Maine did allow the importation of other freshwater fish "after inspection." Id. at 146, 102 S. Ct. at 2451. Although "sampling and inspection procedures [did not] already exist for baitfish," it was asserted that such could be "easily developed." Id. at 147, 102 S. Ct. at 2452. However, the Court held that the "abstract possibility" of developing acceptable inspection procedures, "particularly when there was no assurance as to their effectiveness," did not make such procedures an available nondiscriminatory alternative. Id.

Thus, the discrimination against interstate commerce effected by an exercise of the flow control authority in Tenn. Code Ann. 68-211-814(b)(1)(A) would contravene the Commerce Clause unless it furthered some legitimate local interest that could not be advanced by nondiscriminatory means. In Carbone, the Supreme Court held that revenue generation was not a local interest sufficient to justify discrimination against interstate commerce. 114 S. Ct. at 1684. The Court also held that the town's legitimate interest in the safe handling and proper treatment of solid waste could be attained by nondiscriminatory alternatives. Id. at 1683. Cf. Fort Gratiot, 112 S. Ct. at 2027 (imported waste did not raise "health or other concerns" different from that presented by Michigan waste). We do not speculate as to any possible local interests not yet considered by the courts that may justify a discriminatory flow control regulation.

II.

The SWMA also provides that a solid waste region may exclude from disposal within the region "waste originating with persons or entities outside the region in order to effectuate the plan." Tenn. Code Ann. 68-211- 814(b)(1)(B) (Supp. 1994). The "plan" referred to is the "municipal solid waste region plan" required by the SWMA. See Tenn. Code Ann. 68-211-815. Thus, the initial requirement for any exclusion of out-of-region waste is that such exclusion must be necessary to effectuate a region's municipal solid waste plan. If the exclusion of out-of-region waste is deemed necessary to effectuate a region's plan, then it is the opinion of this Office that the region may constitutionally exercise the authority in 68-211-814(b)(1)(B) to exclude waste originating from other regions within Tennessee.[4]

With regard to waste originating from outside of Tennessee, it our opinion that 68-211-814(b)(1)(B) does not facially discriminate against interstate commerce. Although a solid waste region may not completely exclude waste originating from outside of Tennessee, a region acting pursuant to 68-211- 814(b)(1)(B), in order to effectuate its solid waste plan, may impose waste disposal restrictions that incidentally affect commerce in out-of-state waste, as

4. One of the elements the solid waste plan must address is "capacity assurance." Tenn. Code Ann. 68-211-815(b)(6). Each solid waste region is required to "develop a plan for a ten-year disposal capacity." Tenn. Code Ann. 68-211-813(c) (Supp. 1994). It is likely that a region may seek to exclude waste from other regions in Tennessee in order to effectuate the ten-year capacity assurance requirements of its plan.

long as such restrictions also apply to waste originating within the region. An example of such a restriction would be an annual volume limitation on all waste which could be disposed of in the region.[5] The United States Supreme Court has indicated that this type of nondiscriminatory waste restriction would not violate the Commerce Clause. See Fort Gratiot, 112 S. Ct. at 2027 ("Michigan could, for example, limit the amount of waste that landfill operators may accept each year").

However, "a State may not accord its own inhabitants a preferred right of access over consumers in other States to natural resources located within its borders." City of Philadelphia, 437 U.S. at 627, 98 S. Ct. at 2537. If 68- 211-814(b)(1)(B) were construed or applied as authorizing a solid waste region to exclude waste originating from outside of Tennessee in order to preserve regional disposal capacity, it would establish a preference for local waste, and in so doing, would allow the region to discriminate against interstate commerce.[6] See Wyoming v. Oklahoma, 112 S. Ct. at 801 (state statute establishing "preference for coal from domestic sources cannot be described as anything other than protectionist and discriminatory"). Such discrimination would violate the Commerce Clause unless justified by a valid local factor unrelated to protectionism. See Maine v. Taylor, 477 U.S. at 147-48, .106 S. Ct. at 2452.

It is our opinion that such a construction or application of 68-211- 814(b)(1)(B) would render it similar in practical effect to the Michigan solid waste law invalidated by the Supreme Court in Fort Gratiot. At issue in Fort Gratiot were statues which provided that a county, as part of its solid waste management planning process, had to authorize the acceptance by any landfill within the county of waste originating outside the county. 112 S. Ct. at 2022. A private landfill in St. Clair County, Michigan wanted to receive out-of-state waste at its facility, but was prohibited from doing so because "the county's management plan [did] not authorize the acceptance of any out-of-county waste." Id.

The Supreme Court held that the Michigan law unambiguously discriminated against interstate commerce. Id. at 2024, 2028. The law in effect allowed the county to use its landfill capacity to favor local waste. Michigan argued that the law was not "economic protectionism," but was a comprehensive health and safety regulation, and a reasonable measure to conserve limited landfill capacity. Id. at 2026. In rejecting that argument, the Supreme Court held that there is "no valid health and safety reason for limiting the amount of waste that a landfill operator may accept from outside the State, but not the amount that the operator may accept from inside the State." Id.

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5. In addition to completely excluding waste originating in other regions in Tennessee, a solid waste region may seek to limit on a yearly basis the volume of all other waste disposed of within the region in order to effectuate its ten-year capacity assurance plan. See Tenn. Code Ann. 68-211-813(c) (Supp. 1994), -815(b)(6). Under a Commerce Clause analysis, it is our opinion that such capacity assurance planning is a legitimate local purpose. See Fort Gratiot, 112 S. Ct. at 2027 ("accurate forecasts about the volume and composition of future waste disposal plan").

6. Under such a construction or application, the effect of 68-211-814(b)(1)(B) on interstate waste may be viewed as similar to its effect on intrastate waste originating outside the region. However, this does not alter the discrimination analysis under the Commerce Clause. The Supreme Court expressly rejected this argument in Fort Gratiot. See 112 S. Ct. at 2024-25 (it is immaterial that domestic waste from outside the county is subjected to the same proscription as waste moving in interstate commerce.)

The Court concluded that Michigan could attain its objective "without discriminating between in- and out-of-state waste." Id. at 2027. One such way, according to the Court, would be to limit the amount of all waste that landfill operators could accept on a yearly basis. Id. The Court also rejected Michigan's argument that the law was valid because some Michigan counties adopted a policy of allowing disposal of out-of-state waste. The Court found that in either case the discriminatory effect on interstate commerce remained and only the scope of the discrimination varied. Id. at 2025.

III.

Despite the limitations discussed, *supra*, on a state's ability to completely exclude waste originating from outside of the state, the United States Supreme Court has recognized that the constraints of the Commerce Clause generally do not apply "when a state or local government enters the market as a participant" rather than a regulator thereof. White v. Massachusetts Council of Const. Employers, Inc., 460 U.S. 204, 208, 103 S. Ct. 1042, 1044-45, 75 L. Ed. 2d 1 (1983), quoting from, Reeves, Inc. v. Stake, 447 U.S. 429, 436, 100 S. Ct. 2271, 2277, 75 L. Ed. 2d 1 (1980). As a participant in the market, the government may "favor its own citizens over others." Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 810, 96 S. Ct. 2488, 2498, 49 L. Ed. 2d 220 (1976). As discussed, *infra*, pursuant to the "market participant" doctrine, a publicly-owned solid waste disposal facility may be able to completely exclude out-of-state waste from disposal in its facility.

The market participant doctrine is extensively discussed in Op. Tenn. Atty. Gen. 89-01 at 5-9 (January 3, 1989), which is attached to this opinion. To that discussion, we add the decision of the Supreme Court in South-Central Timber Development, Inc. v. Wunnicke, 467 U.S. 82, 104 S. Ct.. 2237, 81 L. Ed. 2d 71 (1984). In South-Central Timber, a plurality of the Court struck an Alaskan statute which required that timber taken from state land be processed in Alaska prior to export. The Court found that, while Alaska was a participant in the timber production market, it was using its regulatory powers to impose conditions on the timber processing market. Id. at 98, 104 S. Ct. at 2246. The Supreme Court held that

> [t]he limit of the market-participant doctrine must be that it allows a State to impose burdens on commerce within the market in which it is a participant, but allows it to go no further. The State may not impose conditions, whether by statute, regulation, or contract, that have a substantial regulatory effect outside of that particular market.

Id. at 97, 104 S. Ct. at 2245.

As discussed in Op. Tenn. Atty. Gen. 89-01 at 6-9, the market participant doctrine has been considered in the solid waste context. The doctrine has been applied to sustain exclusions of out-of-state waste by publicly-owned waste disposal facilities.[7] See County Commissioners of

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7. The Supreme Court, however, has not expressly addressed the application of the market participation doctrine in the context of solid waste. City of Philadelphia, 437 U.S. at 627, n.6, 98 S. Ct. at 2537, n. 6 ("we express no opinion about New Jersey's power, consistent with the Commerce Clause, to restrict to state residents access to state-owned [landfill] resources"). See also, Oregon Waste Systems v. Oregon Dept. of Environmental Quality, 114 S. Ct. 1345, 1354, n. 9 (1994) ("we therefore have no occasion to decide whether Oregon could validly accomplish its limited

Charles County v. Stevens, 299 Md. 203, 473 A.2d 12 (1984) (county regulation prohibiting disposal of any waste collected outside the county in public landfills); Lefrancois v. State of Rhode Island, 669 F. Supp. 1204 (D. R.I. 1987) (state statute forbidding disposal of out-of-state waste at state-subsidized landfill); Shayne Bros., Inc. v. District of Columbia, 592 F. SUPP. 1128 (D.D.C. 1984) (District regulation prohibiting disposal in District-operated facilities of solid waste collected outside D.C.); Swin Resource Systems, Inc. v. Lycoming County, 883 F.2d 245 (3rd Cir. 1989) cert. denied, 110 S. Ct. 1127 (1990) (county operated landfill charged higher rate for out-of-county waste and limited the volume of such waste accepted at the facility).

The market participant doctrine has also been recently considered with regard to flow control. In Waste Recycling v. Southeast Alabama Solid Waste Disposal, 814 F. SUPP. 1566 (M.D. Ala. 1993), the district court rejected the claims of three municipalities that their flow control ordinances were not subject to Commerce Clause scrutiny because the municipalities were acting as market participants. The court reasoned that

> [t]he critical question . . . is whether the challenged governmental conduct is more analogous to business activities of traders and manufacturers - in which case the state should be allowed to pursue its own economic interest and determine those with whom it will deal in the private market - or is more analogous to an effort to regulate activities among such parties in the private market - in which case the state's conduct must be subject to commerce clause scrutiny.

Id. at 1572. The ordinances in issue required private businesses to utilize the public facility, provided for enforcement of violations, and prohibited the approval of competing facilities. The court found that these were "not the types of measures which private participants in the marketplace could implement." Id. at 1573. The court held that the ordinances were "clearly and uniquely regulatory and governmental in nature" and, therefore, subject to the Commerce Clause. Id.

In the cases cited, *supra*, where the courts have sustained exclusions of out- of-state waste by publicly-owned landfills, a factor in those rulings was the determination that the market in which the state or local government was held to be a participant was that of landfill services and not landfill sites. Participation in the market for landfill sites could expose a state or local government to traditional Commerce Clause scrutiny if it is viewed as "hoarding" a natural resource. See Op. Tenn. Atty. Gen. 89-01 at 7-9.

In Reeves, the Supreme Court sustained under the market participant doctrine South Dakota's decision to limit sales of cement from its state-owned plant to citizens of the state. See 447 U.S. at 441, 100 S. Ct. at 2279-80 (state, as market participant, may deal "exclusively with its own citizens"). However, the Court suggested that the doctrine may not apply when a state acts to hoard natural resources found within its borders. The Court stated:

> Cement is not a natural resource, like coal, timber, wild game, or

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cost-spreading [for the disposal of out-of-state waste] through the "market participant doctrine").

> minerals. It is the end product of a complex process whereby costly physical plant and human labor act on raw materials. South Dakota has not sought to limit access to the State's limestone or other materials needed to make cement. Nor has it restricted the ability of private firms or sister States to set up plants within its borders . . . Whatever limits exist on a State's ability to invoke the [market participant] exemption to hoard resources which by happenstance are found there, those limits do not apply here.

Id. at 443-44, 100 S. Ct. at 2281 (citations omitted, footnotes omitted).

Based on this language from Reeves, courts have identified an exception to the market participant doctrine for restrictions which limit access to state- owned natural resources found within a state's borders. See Stevens, 473 A.2d at 21, nn. 9 & 10; Lefrancois, 669 F. SUPP. at 1211; Swin, 883 F.2d at 251-52. In Stevens, the court recognized that a state could not circumvent Commerce Clause analysis by hoarding all available landfill property and then forbidding importation of waste into the jurisdiction under the guise of market participation.[8] 473 A.2d at 20.

It is our opinion, that under the market participant doctrine, a state or local government may properly purchase a landfill site and favor its own citizens to the exclusion of others in offering waste disposal services. An additional requirement is imposed on such publicly-owned facilities by the SWMA in that the exclusion of out-of-state waste must be "consistent with [a solid waste] region's [municipal solid waste] plan." Tenn. Code Ann. 68-211-817. It is also our opinion that the market participant doctrine will not apply if, in addition to offering landfill services, the government acts to hoard landfill sites by precluding all parties, "in-state or foreign, from purchasing property upon which to construct a sanitary landfill." Lefrancois, 669 F. SUPP. at 1211.

Although a state may exclude out-of-state waste from landfills which it owns under the market participant doctrine, it is the opinion of this Office that the doctrine does not allow the state to prohibit the disposal of out-of-state waste at landfills owned by local governments. In that situation, the state is not the governmental entity that is directly participating in the market. Because the state would be acting as a regulator of the market, not as a participant, it is our opinion that the state's actions would be subject to the constraints of the Commerce Clause.

Finally, the courts which have applied the market participant doctrine have not differentiated between those facilities which are publicly-owned and those which are also publicly-operated. The Supreme Court in Reeves stated that the relevant inquiry is "whether the challenged 'program constitute[s] direct state participation in the market."' 447 U.S. at 436, n. 7, 100 S. Ct. at 2277, n. 7. See also White, 460 U.S. at 208, 103 S. Ct. at 1044-45. We think that for the market participant doctrine to apply the government must be pursuing its own economic interests

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8. Although the market participant doctrine was not an issue in Carbone, the designated transfer station was to become municipally-owned after five years of private ownership. 114 S. Ct. at 1680. However, even if the facility had been publicly-owned, it may not have mattered as the Supreme Court concluded that Clarkstown's "flow control ordinance . . . hoards solid waste, and the demand to get rid of it , for the benefit of the preferred processing facility." Id. at 1683.

in the market by determining with whom and on what terms its facility will deal. As long as the government is participating in the market in that way, it is our opinion that the market participant doctrine does not lose its vitality simply because the government may retain a private party to manage or operate the publicly-owned facility on a day-to-day basis.

IV.

The Compact Clause of the United States Constitution provides that "[n]o state shall, without consent of congress, . . . enter into any agreement or compact with any other state." U.S. Const., art. I, s 10, cl. 3. Thus, a solid waste compact, whereby member states could refuse waste from states not in the compact, would violate the federal constitution if entered into without congressional consent.

The United States Supreme Court has held that for some state compacts, such as those establishing disputed boundary lines, the consent of Congress can be given subsequent to the compact. See Virginia v. Tennessee, 148 U.S. 503, 521- 22, 13 S. Ct. 728, 735, 37 L. Ed. 537 (1893). Such compacts do not "encroach upon or interfere with the just supremacy of the United States." Id. at 518- 19, 13 S. Ct. at 734. However, state compacts which address "subjects placed under the control of congress, such as commerce," do encroach upon or interfere with federal supremacy. Wharton v. Wise, 153 U.S. 155, 171, 14 S. Ct. 783, 788, 38 L. Ed. 669 (1894). See also Virginia v. Tennessee, 148 U.S. at 519, 13 S. Ct. at 734. For such compacts, the requisite congressional consent must be given "in advance of the compact. Wharton, 153 U.S. at 173, 14 S. Ct. at 788. See also South Carolina v. Georgia, 93 U.S. 4, 23 L. Ed. 782, 783 (1876).

Congress has authorized states to enter into compacts for specific purposes. See, e.g., 33 U.S.C. s 567a (1986) (state compacts for flood and pollution control on rivers). However, we are unaware of any federal law authorizing state solid waste compacts which would allow members to refuse waste from states not in the compact. Such a compact would clearly impinge upon the authority of Congress under the Commerce Clause to regulate interstate commerce. Accordingly, it is the opinion of this Office that in the absence of advance congressional consent, such a solid waste compact would contravene the Compact Clause of the United States Constitution.

V.

With regard to matters governed by the SWMA, municipalities will be subject to the authority of the solid waste region in which they are located.[9] As discussed, *infra*, all solid waste regions are administered by a board, and it is possible for a majority of the members of a region's board to be representatives of the county or counties comprising the region.

The SWMA requires the establishment of solid waste regions; such regions to consist of either one county, or two or more contiguous counties. Tenn. Code Ann. 68-211-813(a) (Supp. 1994).

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9. A municipality which lies within the boundaries of two or more solid waste regions has to determine in which region it shall participate. Tenn. Code Ann. 68-211-813(d) (Supp. 1994).

Each solid waste region is administered by a board, which "shall consist of an odd number, not less than five (5) nor more than fifteen (15) members." See Tenn. Code Ann. 68-211-802(2), -813(b)(1) (Supp. 1994).

For the municipalities within a solid waste region, the SWMA states that only those municipalities providing solid waste collection or disposal services, directly or by contract, "shall be represented on the board." Tenn. Code Ann. 68-211-813(b)(1) (Supp. 1994). The SWMA also provides for rural representation for appointments made to boards after July 1, 1994 in regions consisting of counties with a population of less than 200,000. By December 31, 1998, that rural representation must be at least 30% of the board. Tenn. Code Ann. 68-211-813(b)(3) (Supp. 1994). Each county that is in the region shall have "at least one (1) member on the board." Tenn. Code Ann. 68-211- 813(b)(1) (Supp. 1994). However, the clear implication from this provision is that there can be additional county representatives on the board. Thus, we are of the opinion that it is possible under the SWMA for a majority of a solid waste region board's membership to be representatives of the county or counties in the region.

Solid waste policy for the region will be established through the region's solid waste plan. See Tenn. Code Ann. 68-211-813(c), -815 (Supp. 1994). To the extent that county representatives are a majority of a solid waste region's board, it is possible for those representatives to develop solid waste policy for the region through the region's plan. It is our opinion that the solid waste policies of municipalities within the region would have to be consistent with the policy established in the solid waste plan approved for the region.

For existing solid waste disposal facilities within a region, the SWMA provides that if those facilities were receiving waste from a specific source outside the region prior to July 1, 1991, they may continue to do so. Tenn. Code Ann. 68-211-814(b)(1)(B) (Supp. 1994). It is our opinion that this applies to any existing disposal facility within the region, either municipally-owned or private. The July 1, 1991 date is the effective date of the provisions of 68-211-814 in the SWMA. See 1991 Tenn. Pub. Acts., ch. 541. s 91. Thus, this provision creates "grandfather rights" for those facilities already receiving waste from specific sources outside the region as of the effective date of the SWMA. See Fleet Transport Co., Inc. v. Tennessee Public Service Comm'n, 545 S. W. 2d 4, 7 (Tenn. 1976). However, even a "grandfathered" municipally-owned or private facility may be prohibited by a solid waste region from continuing to accept waste from a specific source outside the region if the region can establish that "the facility's acceptance of that waste significantly impairs the region's ability to effectuate its plan."[10] Tenn. Code Ann. 68-211-814(b)(1)(B) (Supp. 1994).

The SWMA also provides that a solid waste region with an approved plan has the right to "approve any application for a permit for a solid waste disposal facility or incinerator within the region." Tenn. Code Ann. 68-211- 814(b)(1)(D) (Supp. 1994). This includes applications for "construction" of new facilities, or "expansion" of existing facilities. See Tenn. Code Ann. 68-211-814(b)(2)(A) (Supp. 1994). The region must determine that a new or expanded disposal facility is consistent with the region's disposal needs before TDEC can issue a permit for the

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10. As discussed, *supra*, although a region may completely exclude waste originating from other regions within Tennessee if necessary to effectuate its plan, any attempt to restrict waste from outside of Tennessee must be consistent with the Commerce Clause.

facility. Again, it is our opinion that this provision applies to any new or expanded facility, whether municipally- owned or privately-owned. Applications for such facilities may be disapproved if the solid waste region, through its board, determines that the application "is inconsistent with [the region's approved solid waste] plan." Tenn. Code Ann. 68-211-814(b)(2)(B) (Supp. 1994).

VI.

As discussed, *supra*, under the "market participant" doctrine of the Commerce Clause, a publicly-owned solid waste disposal facility may exclude out-of-state waste from disposal in its facility. The SWMA imposes an additional requirement on publicly-owned facilities in that any exclusion of waste from outside the solid waste region, including waste from outside of Tennessee, must be "consistent with the region's plan submitted pursuant to 68-211-814." Tenn. Code Ann. 68-211-817. The provisions in Section XXIX of the contract submitted with this opinion request sufficiently delineate the areas from which the municipally-owned solid waste disposal facility will accept waste for disposal. The contract indicates that the municipality is participating in the market for solid waste disposal services, and is pursuing its own economic interests in determining with whom its facility will deal in this market.

However, under the SWMA, the waste exclusions reflected in the contract must be consistent with the solid waste plan for the region in which this municipality is located. In addition, the market participant doctrine requires that any restrictions imposed upon commerce by the municipality be limited to the market in which it is participating. See South-Central Timber, 467 U.S. at 97, 104 S. Ct. at 2245. Moreover, the protections of the doctrine may be lost if the municipality attempts to "hoard" landfill sites by precluding others from establishing landfills of their own. See Reeves, 447 U.S. at 443-44, 100 S. Ct. at 2281; Stevens, 473 A.2d at 20; Lefrancois, 669 F. SUPP. at 1211.

OPINION NO. 94-054 - APRIL 13, 1994

Requested by: Honorable Gary Odom, State Representative.

Signed by: Charles W. Burson, Attorney General; Michael E. Moore, Solicitor General; and Barry Turner, Deputy Attorney General.

Metropolitan Government of Nashville and Davidson County - Fees on temporary and permanent solid waste disposal facilities.

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I. QUESTIONS

1. Does the Metropolitan Government of Nashville and Davidson County (Metro) have the authority under state law to enact Section 11 of Bill No. 93-821?

2. If Metro has the authority under state law to enact Section 11, does Metro have the authority to collect the fee imposed by Section 11 in the following circumstances:

(a.) from private solid waste haulers who contract directly with the generators of the waste and take it directly to a disposal facility outside Davidson County; or

(b.) from private solid waste haulers who contract directly with the generators of the waste and take it initially to a privately owned transfer station located in Davidson County, for subsequent transportation by a private hauler to a disposal facility outside Davidson County?

3. If Metro has the authority under state law to enact Section 11 of Bill No. 93-821, can Section 11 be applied to a private entity which does not operate a disposal facility within Davidson County?

4. Is a transfer station a "solid waste disposal facility" within the meaning of T.C.A. 68-211 835(f)(1)(A)?

II. OPINIONS

1. It is the opinion of this Office that Metro is authorized to enact Section 11 of Bill no. 93-821 pursuant to the Energy Production Facilities Act, T.C.A. 7-54-101 to -114, which gives Metro broad powers over the collection and disposal of solid waste within its boundaries, including the establishment of disposal fees.

2. (a.) This Office is of the opinion that although Metro may have authority under T.C.A. 7-54 103(e)(1) to establish a fee upon the "collection" of solid waste within its boundaries, Section 11, as written, does not reach the collection of waste generated in Davidson County, which is transported directly to a facility outside of the county for disposal.

2. (b.) It is also the opinion of this Office that Metro has the authority to collect the fees imposed by Section 11 on solid waste collected in Davidson County, which is initially taken to a transfer station in the county, and thereafter transported to a permanent disposal facility outside Davidson County. A transfer station is an "intermediate disposal point" under solid waste regulations promulgated by Metro pursuant to its authority under the Energy Production Facilities Act.

3. It is our opinion that Section 11, as written, only applies to solid waste disposal at temporary or permanent facilities located within Davidson County.

4. We are of the opinion that a transfer station is not a "solid waste disposal facility" within the meaning of T.C.A. 68-211-835(f)(1)(A). The placing of solid waste at a transfer station falls within the "removal" exception in the definition of "solid waste disposal" in T.C.A. 68-211-103(9). However, this does not prevent Metro from regulating a transfer station as an intermediate disposal point pursuant to its solid waste regulations, and collecting the fees imposed by Section 11, as stated in 2.(b).

III. ANALYSIS

On October 19, 1993, the Metro Council passed on third and final reading Bill No. 93-821, which amended several sections of Metro's solid waste ordinances. The bill was signed by the Mayor on October 21, 1993. Section 11 of Bill No. 93-821 amends Article II of Chapter 10.20, which is entitled "Urban Services District - Garbage Collection and Disposal." Section 11 adds a new Section 10.20.330 to Article II, which provides as follows:

> A. Any person enjoying the privilege of providing temporary or permanent disposal of solid waste pursuant to this chapter shall pay to the metropolitan government a fee of two dollars per cubic yard or eight dollars per ton of solid waste or special waste accepted into the facility. The director of public works shall be authorized to promulgate rules and regulations for the operation of the facility and the collection and documentation of such fees, as necessary to carry out the inspection, supervision and enforcement thereof; provided, however, that fees charged pursuant to Section 10.20.287 shall not be affected hereby.
>
> B. Any person enjoying the privileges of providing temporary or permanent disposal of solid waste pursuant to this chapter shall accept waste from private standard pickup trucks at a fee of five dollars per load. No fee shall be paid to the metropolitan government, but a full monthly accounting as to weight, volume and number of trucks shall be furnished to the metropolitan government upon request.

Statutory authority for Metro's solid waste ordinances is found in the Energy Production Facilities Act (the Act), T.C.A. 7-54-101 to - 114. Pursuant to the Act. Metro has established and operates an energy production facility - the Nashville Thermal Plant - which produces energy by processing solid waste. The Act gives Metro the power to "exercise exclusive jurisdiction and exclusive right to control the collection and disposal of solid waste within its boundaries." T.C.A. 7-54-103(d). With regard to solid waste fees, the Act provides that a "municipality is authorized to establish, levy and collect fees, rates or charges in connection with . . . [t]he collection, delivery, sale, purchase or disposal, whether at the site of an energy production facility, a landfill or otherwise, of solid waste." T.C.A. 7-54-103(e)(1). The broad statutory authority to regulate the collection and disposal of solid waste given Metro by the Act was recognized in Browning-Ferris Industries of Tennessee, Inc. v. Metropolitan Govt. of Nashville and Davidson County (BFI), Appeal No. 01-A-01-9104-Ch-00156 (Tenn. App. Oct. 30, 1991), appeal denied, (Tenn. Feb. 24, 1992). In BFI, the Tennessee Court of Appeals upheld Metro's solid waste regulations that designated Metro's then-operating Bordeaux landfill and the Nashville Thermal Plant as the **only** approved sites for disposal of solid waste collected within Metro's boundaries. See slip op. at 3,5-6. Pursuant to the Act, Metro had established fees for the disposal of solid waste at the landfill and the Thermal Plant. The BFI decision confirmed Metro's expansive authority to establish solid waste fees under the Act. Metro's regulations were sustained by the appellate court even though it was admitted that revenues generated from the disposal fees were used for purposes other than the construction, financing, operation or maintenance of the Thermal Plant. See BFI, slip op. at 4-6.

Section 11 of Bill No. 93-821 establishes a fee, to be collected by Metro, upon privately owned temporary or permanent solid waste disposal facilities. See Browning-Ferris Industries, slip op. at 5 (the Act contemplates fee revenues "from sources other than those generated by operations of the energy production facility"). Section 11 also requires such disposal facilities to accept solid waste from private standard pickup trucks, and sets a fee for such truck loads, although that fee is not remitted to Metro. See T.C.A. 7-54-103(d) (the Act is intended to allow a municipality to "displace competition with regulation"). It is the opinion of this Office that Metro has authority pursuant to the Act to establish the fees in Section 11 of Bill No. 93-821. It is also the opinion of this Office that Section 11, as written, does not reach the collection of waste generated in Davidson County, which is transported directly to a facility outside of the county for disposal. Although Metro may have authority under T.C.A. 7-54-103(e)(1) to establish a fee upon the "collection" of solid waste within its boundaries, it is our opinion that Section 11 only addresses the disposal, not the collection, of solid waste at temporary or permanent facilities located within Davidson County.

We are also of the opinion that Section 11 would apply to solid waste collected in Davidson County, which was initially taken to a transfer station in the county, and thereafter transported to permanent disposal facility outside Davidson County. As discussed, *infra*, a transfer station is not a "solid waste disposal" facility under the Tennessee Solid Waste Disposal Act, T.C.A. 68-211-101 to -121, or the Solid Waste Management Act of 1991, T.C.A. 68-211-801 to -874. However, this does not prevent metro, pursuant to its broad authority over the collection and disposal of solid waste under the Energy Production Facilities Act, from regulating a transfer station as a temporary or intermediate disposal facility. In Section I.(i) and (j) of its Public

Works regulation on Collection and Disposal of Solid waste, Metro defines both a "final disposal point" and an "intermediate disposal point" for solid waste:

> (i) "Final Disposal Point" means location to which solid waste is delivered which is intended to be the final, permanent point of disposition, including but not limited to, a landfill or ash landfill.
>
> (j) "Intermediate Disposal Point" means a location to which solid waste is delivered which is intended to be non-permanent, including but not limited to, a transfer station, processing or recycling center, incinerator or any other similar facility.

A transfer station is expressly declared to be an"intermediate disposal point" in Metro's solid waste regulations. Therefore, it is our position that a transfer station located in Davidson County would be a temporary solid waste disposal facility within meaning of Section 11 of Bill No. 93-821, and subject to the fees established therein.

The Solid Waste Management Act of 1991 (SWMA) authorizes a county, municipality or solid waste authority to impose a "surcharge on each ton of municipal solid waste received at a solid waste disposal facility." T.C.A. 68-211-835(f)(1)(A). Such a surcharge can only take effect after a municipal solid waste region has been approved. T.C.A. 68-211-835 (f)(2). See T.C.A. 68-211-813 to -815 (municipal solid waste region plans). Although a transfer station is within the SWMA's definition of a "solid waste management facility," the SWMA does not define a "solid waste management facility." See T.C.A. 68-211-802(a)(21) (a solid waste management facility includes a " facility, the primary purpose of which is the . . . transfer . . . of solid waste"). The SWMA does provide, however, that the definitions in Sec. 68-211-103 of the Tennessee Solid Waste Disposal Act (Solid Waste Act) apply to terms used in the SWMA, unless the term is defined differently in the SWMA, or the context requires otherwise. T.C.A. 68-211-802(b).

The Solid Waste Act defines "solid waste disposal" as "the process of placing, confining, compacting or covering solid waste **except when such solid waste is for reuse, removal, reclamation or salvage**." T.C.A. 68-2111-103(9) (emphasis added). Rules and regulations promulgated pursuant to the Solid Waste Act define a "transfer station" as "a combination of structures, machinery or devices at a place or facility which receives solid waste taken from municipal and private collection vehicles and which is placed in other transportation units fro movement to another solid waste management facility." Tenn. Comp. R. & Regs., Chp. 1200-1-7-.01(2) (March 1990). It is the opinion of this Office that solid waste, which is placed at a transfer station, falls within the "removal" exception in the definition of "solid waste disposal" in Sec. 68-211-103(9). It is also our opinion that this definition applies to the use of the term "solid waste disposal" in Sec. 68-211-835 (f)(1)(A) of the SWMA, and that accordingly, a transfer station is not a solid waste disposal facility under that statute.

OPINION NO. U94-024 - FEBRUARY 24, 1994

T.C.A. Section(s): 68-211-814(b)(1)(B)

Requested by: Representative L. Don Ridgeway.

Signed by: Charles W. Burson, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Barry Turner, Deputy Attorney General.

Solid Waste Planning Region - Authority to exclude waste from other Tennessee regions.

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I. QUESTIONS

1. Does the Benton-Carroll-Henry Solid Waste Planning Region Board have the authority to exercise flow control on waste coming into the Benton-Carroll-Henry Solid Waste Planning Region?

2. At what time can the Region exercise flow control, during the present planning process, or after the plan has been approved by the State Planning Office?

3. If the Planning Region Board has the authority to exercise flow control, does this apply to a privately-owned landfill in the Benton-Carroll-Henry Solid Waste Planning Region?

II. OPINIONS

1. Pursuant to T.C.A. 68-211-814(b)(1)(B) of the Solid Waste Management Act of 1991, the Benton-Carroll-Henry Solid Waste Planning Region is given the authority to exclude from disposal within the region solid waste originating outside the region in order to effectuate the region's solid waste plan. It is the opinion of this Office that, if necessary to effectuate its plan, a region may exercise such authority to exclude waste originating from other regions within Tennessee.

2. It is our opinion that the authority given to solid waste regions in T.C.A. 68-211-814(b)(1)(B) may be exercised only after the region's plan has been approved by the Tennessee Department of Environment and Conservation, which now has the responsibility for administering T.C.A. 68-211-814.

3. It is the opinion of this Office that if it is necessary to effectuate a region's solid waste plan, the region may prevent a privately-owned landfill from accepting for disposal any waste originating from other regions in Tennessee, unless the facility was accepting waste from a specific source in another region within Tennessee prior to July 1, 1991. In that situation, it is

our opinion that the region may not prohibit that facility from continuing to accept that waste, unless "the facility's acceptance of that waste significantly impairs the region's ability to effectuate its plan." T.C.A. 68-211-814(b)(1)(B) (Supp. 1993).

III. ANALYSIS

The Solid Waste Management Act of 1991 (SWMA), T.C.A. 68-211-801-874 (1992), is intended to provide a comprehensive, integrated, statewide program for the management of solid waste. T.C.A. 68-211-803. The SWMA requires the establishment of "municipal solid waste region," which "consist of one or two or more contiguous counties." T.C.A. 68-211-813(a). See also T.C.A. 68-211-802(17). It is our understanding that the Benton-Carroll-Henry Solid Waste Planning Region is a "municipal solid waste region" established pursuant to 68-211-813(a). The SWMA requires each region to prepare and submit a "municipal solid waste plan" to the State Planning Office by July 1, 1994. Such plans are to be approved or disapproved by the State Planning Office within ninety days after their receipt. The SWMA provides that a region's plan shall be approved "if it adequately addresses each element required by 68-211-815."[1] T.C.A. 68-211-814(a)(1) (Supp. 1993).

The questions presented by the request are phrased with regard to the authority of the Benton-Carroll-Henry Solid Waste Planning Region to exercise "flow control" over solid waste coming into the region. Generally, the term "flow control" is used to refer to laws that require waste generated within a particular locality to be disposed of at a facility within that locality. See Waste Recycling, Inc. v. Southeast Alabama Solid Waste Disposal Authority, 814 F. Supp. 1566, 1570 n. 6 (M..D. Ala. 1993); Browning-Ferris Industries of Tennessee, Inc. v. Metropolitan Govt of Nashville and Davidson County, Appeal No. 01-A-01-9104-Ch-00156, slip op. at 1 (Tenn. App. Oct. 30, 1991). The SWMA addresses flow control through the planning process by providing that if "the state planning office approves the plan," a solid waste region or authority may "regulate the flow of collected municipal solid waste generated within the region." T.C.A. 68-211-814(b)(1)(A) (Supp. 1993).

The SWMA also addresses the authority of solid waste regions to exclude from disposal within the region solid waste originating outside the region. Such authority is found in T.C.A. 68-211-814(b)(1)(B) (Supp. 1993), which provides:

> The region or authority may restrict access to any landfills and incinerators which dispose of municipal solid waste by excluding waste originating with persons or entities outside the region in order to effectuate the plan. If a facility within a region has accepted waste from a specific source outside the region prior to July 1, 1991, the region may not prohibit that facility from continuing to accept waste from that source, unless the facility's acceptance of that waste significantly impairs the region's ability to effectuate its plan.

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1. Pursuant to Executive Order No. 54, Governor McWherter transferred the responsibilities of the State Planning Office under 68-211-814 to the Tennessee Department of Environment and Conservation effective January 1, 1994. See Tenn. Exec. Order No. 54 (Gov. McWherter, January 7, 1994); see also T.C.A. 4-4-102.

Although the questions presented use the term "flow control," they actually focus on the ability of the Benton-Carroll-Henry Solid Waste Planning Region to restrict waste coming into the region , which is generated elsewhere in the state. Thus, our analysis addresses the authority of the region under T.C.A. 68-211-814(b)(1)(B) to restrict waste originating from other regions within Tennessee.[2]

It is a settled rule of statutory construction that statutes should be construed so as to render them constitutional. See, e.g., State ex rel. Russell v. LaManna, 498 S.W. 2d 891, 895 (Tenn. 1973). The provisions of 68-211-814(b)(1)(B) give a solid waste region the authority to exclude "waste originating with persons or entities outside the region in order to effectuate the [municipal solid waste] plan." If the exclusion of out-of-region waste is deemed necessary to effectuate a region's plan, then it is the opinion of this Office that the region may constitutionally exercise the authority in T.C.A. 68-211-814(b)(1)(B) to exclude waste originating from other regions within Tennessee.[3]

As noted, the prerequisite for any exercise of authority by a region pursuant to 68-211-8814(b)(1)(B) is that it be necessary "in order to effectuate the [region's solid waste] plan." All such plans, in order to be effective, have to be approved by the Tennessee Department of Environment and Conservation (TDEC). T.C.A. 68-211-814(a)(1) (Supp. 1993); Tennessee Executive Order 554 (Gov. McWherter, January 7, 1994). Failure to submit an adequate plan subjects the region to various sanctions. T.C.A. 68-211-816. In order for a region's exercise of authority " to effectuate the plan," as is required by 68-211-814(b)(1)(B), it is the opinion of this Office that there must be an approved plan already in place. Accordingly, it is our opinion that the authority given to solid waste regions in 68-211-814(b)(1)(B) may be exercised only after the region's plan has been approved by TDEC.

The provisions of 68-211-814(b)(1)(B) authorize a solid waste region or authority to "restrict access to **any** landfills and incinerators" within the region. (Emphasis supplied.) It is the opinion of this Office that the "any landfill" language in the statute would encompass privately-owned landfills. Thus, it is our opinion that, if it is necessary to effectuate its plan, a solid waste region may prohibit a privately-owned landfill from accepting for disposal any waste originating in other regions in Tennessee, unless that facility was accepting waste from a specific source in another Tennessee region prior to July 1, 1991. See T.C.A. 68-211-814(b)(1)(B) (Supp. 1993). The July 1, 1991, date is the effective date of the provisions of 68-211-814 in the SWMA. See 1991 Tenn. Pub. Acts, Ch. 451, Sec. 91. This exception creates "grandfather rights" for those facilities already accepting waste from specific sources in other Tennessee regions as of the effective date of the SWMA. See Fleet Transport Co., Inc. v. Tennessee Public Service Commission, 545 S.W. 2d 4, 7 (Tenn. 1976). However, we are of the opinion that even those grandfathered facilities may be prohibited by a solid waste region from accepting waste from

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2. This opinion does not address the application of T.C.A. 68-211-814(b)(1)(B) to waste originating from outside of Tennessee.

3. One of the elements the solid waste plan must address is "capacity assurance." T.C.A. 68-211-815(b)(6). Each solid waste region is required to "develop a plan for a ten-year disposal capacity." T.C.A. 68-211-813(c). It is likely that a region may seek to exclude waste from other regions in Tennessee in order to effectuate the ten-year capacity assurance requirements of its plan.

those specific Tennessee sources outside the region if the region can establish that "the facility's acceptance of that waste significantly impairs the region's ability to effectuate its plan." T.C.A. 68-211-814(b)(1)(B) (Supp. 1993).

OPINION NO. U94-020 - FEBRUARY 4, 1994

Requested by: Honorable Tommy Burks, State Senator.

Signed by: Charles W. Burson, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Sharon O. Jacobs, Assistant Attorney General.

Senate Bill 1499 - Solid waste permit denial for prior bad acts - Local approval of landfill by referendum - Exceptions - Constitutionality.

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I. QUESTION

Do the provisions of Senate Bill 1499 contain any constitutional infirmities?

II. OPINION

It is the opinion of this Office that several paragraphs in Section 2 of the 1994 Environmental Justice Bill (Senate Bill 1499), which would amend provisions of the Tennessee Solid Waste Disposal Act, may violate due process under the Fourteenth Amendment to the U.S. Constitution, and Article I, Section 8 of the Tennessee Constitution. Section 2 of SB 1499 provides six criteria which, if applicable to solid waste permit applicants or certain designated entities associated with the applicant, require that the permit be denied. These criteria would apply to entities with as little as a five percent ownership interest in a corporate permit applicant. Because such entities may not be in a position to control the operations of a corporate applicant, this requirement does not appear to be reasonably related to the legitimate legislative purpose of SB 1499 and the Solid Waste Act, which is to protect the environment and the public health and safety in the operation of solid waste disposal and processing facilities.

It is also the opinion of this Office that the criteria which require permit denial in subsection (B) of Section 2 concerning individuals under indictment, and the criteria in subsections (D) and (E) of Section 2 concerning past revocation of any permit or past assessment of any fines also appear not to be reasonably related to the legitimate state interest in assuring that solid waste disposal and processing facilities will be operated so as to protect the public health, safety and the environment. Section 2 of SB 1499 contains an exception from the application of the permit denial criteria for facilities that are to be publicly owned and operated. It is our opinion that this exception would be constitutional if supported by a rational basis.

It is our opinion that the provisions in Section 3 of SB 1499 requiring referendum for landfills receiving over 20,000 tons of waste a month neither contravene Article II, Section 3 of the Tennessee Constitution as an impermissible delegation of legislative authority, nor violate due process under the Fourteenth Amendment to the United States Constitution. There are

exceptions to the referendum requirement in Section 3 for publicly owned and operated landfills, and for industrial landfills where 90% or more of the waste is disposed of on-site. It is our opinion that these exceptions would be constitutional if supported by a rational basis. Finally, it is the opinion of this Office that the remaining provisions of Senate Bill 1499 do not appear to facially violate either the Tennessee Constitution or the Constitution of the United States.

III. ANALYSIS

Senate Bill 1499 would amend the Tennessee Solid Waste Disposal Act (Solid Waste Act), T.C.A. 68-211-101 to -121. The Solid Waste Act provides for safe, efficient and environmentally sound solid waste management for the State of Tennessee. (T.C.A. 68-211-102) The proposed amending legislation includes provisions in Section I, which require solid waste facility permit applicants to identify associated entities; Section 2, which provides for permit denial based on prior "bad acts" by the applicant or the associated entity, with an exception for publicly owned and operated facilities; Section 3, which requires local approval by referendum for landfills receiving over 20,000 tons of waste per month, with exceptions for certain landfills; and Section 4, which addresses appeals from final determinations made by the Commissioner of the Tennessee Department of Environment and Conservation (Department) and the Tennessee Solid Waste Disposal Control Board (the Board). As discussed, *infra*, our constitutional analysis focuses upon Sections 2 and 3 of SB 1499. It is our opinion that the remaining provision of SB 1499 do not, on their face, present constitutional concerns.

Permit Denial Criteria

Section 2 amends T.C.A. 68-211-106(h) concerning permit refusal. The proposed amendment provides the Commissioner with specific criteria to be used in the determination of whether a permit applicant, or any entity controlling or controlled by the applicant, has exhibited a "pattern of performance incompatible with assuring protection of the public health, safety and environment of the region." See SB 1499, Section 2 . It contains six factors, any of which if applicable, necessitates permit denial. See SB 1499, Section 2. Although comparable provisions can be found in other environmental permitting statutes,[1] this proposed section includes some broader requirements which may not be rationally related to the state's legitimate interest in assuring that solid waste facilities are operated so as to protect the public health, safety and environment.

When a state regulates in areas pertaining to the public health, safety and welfare, the due process clause of the federal Constitution requires that the means used be rationally related to the objective sought and not arbitrary and capricious. See Nebbia v. New York, 291 U.S. 502, 525, 54 S. Ct. 505, 510-111, 78 L. Ed. 2d 940, 950 (1934). The due process provisions of the Tennessee Constitution also require state law to be reasonably related to a legitimate legislative objective. See Sutphin v. Platt, 720 S.W. 2d 455, 457 (Tenn. 1986); see also State v. Spann, 623 S.W. 2d 272, 273 (Tenn. 1981). The first paragraph in Section 2 of SB 1499 identifies those

1. See Hazardous Waste Management Act of 1983, T.C.A. 68-21-218.

entities to whom the subsequent "bad actor" standards shall apply. Included is any "person owning a five percent or more interest, beneficial or otherwise" in a corporate permit applicant. See SB 1499, Section 2. Although the Securities and Exchange Commission requires registration by any person acquiring more than five percent of a class of stock in a corporation which is traded on a national securities exchange,[2] it is unclear how bad acts of such an individual bear on the compliance of the corporate applicant's past performance in the solid waste or related waste management fields.

If this class of individuals were limited to those shareholders whose five percent interest was a controlling interest, or those with a declared intention of acquiring such an interest, or executing a take-over or merger, then they would be in a position to control the corporation, and their bad acts would be relevant to the state's legitimate interest in protecting the public health, safety and environment in the operation of solid waste facilities. However, as the proposed bill now reads, a permit shall be denied based on the acts of an individual who may not have sufficient authority to control the solid waste operations and environmental compliance of the corporate applicant. It is the opinion of this Office that such a requirement is not rationally related to the legitimate purposes of SB 1499 and the Solid Waste Act.

Subsection (B) in Section 2 prohibits the issuance of a solid waste permit to any of the included entities which have in the last 10 years "been convicted of, subject to a civil judgment for, or currently under indictment for, any offense indicating a lack of business integrity or honesty". Our concerns focus upon the inclusion of those under indictment. Generally, an indictment is a formal accusation. Under the Tennessee law, the purpose of an indictment is to give the defendant notice of the offense charged. Estep v. State, 192 S.W. 2d 706 (1946). Because there is a presumption of innocence while under indictment, denial of a permit based an unproven allegation appears not to be reasonably related to the legitimate purposes of SB 1499 and the Solid Waste Act, and, thus, would violate constitutional due process.

The requirement in subsection (D) of Section 2 that a solid waste permit be denied if any applicant has "in the last ten years, had any permit revoked" appears not to bear a rational relationship to the legitimate legislative purpose sought to be furthered by this law. T.C.A. 68-211-106 (h) specifies that the Commissioner shall refuse a permit if the "past performance **in this or related waste management fields** by the applicant, or persons owning or controlling or owned or controlled by the applicant, indicates a pattern of performance incompatible with assuring protection of the public health, safety and environment of the region." Section 2 of SB 1499 specifies what constitutes such a pattern of performance. Where statutory language is unambiguous, courts are required to give the language of the statute its plain meaning. See O'Neil v. State, 115 Tenn. 427, 90 S.W. 627 (1905); Wingfield v. Crosby, 45 Tenn. (5 Cold.) 241 (1867); State v. Louisville & N.R.R., 139 Tenn. 406, 201 S.W. 738 (1917); Tobin v. Estes, 168

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2. 15 U.S.C. Section 78m(d) requires that such individual must register within 10 days of acquisition with the issuer, the SEC, and the exchange where the stock was traded and must disclose the name of the holder and any beneficiary, the source of the funds used for the purchase, the purpose of the acquisition, the number of shares acquired and the number of shares in which there is a right to acquisition, and the existence of any contracts regarding such stocks including voting rights and proxies. The SEC's registration requirements on minority shareholders who may be on their way to acquiring a controlling interest in a corporation is clearly different from denial of a permit to a corporation based upon "bad acts" of a minority shareholder who has not acquired controlling interest.

Tenn. 403, 79 S.W. 2d 550 (1935); Hedges v. Shipp. 166 Tenn. 451, 62 S.W. 2d 49 (1933). The plain meaning of subsection (D) of Section 2 is that it requires the denial of a solid waste permit to an applicant that has had any type of permit revoked, including permits which are wholly unrelated to environmental compliance in the solid waste or related waste management fields, and which bear no relationship to the likelihood of future adherence to environmental regulations. Limiting the requirement to revocations of permits in the solid waste or related waste management fields would likely suffice for purposes of due process.

Similarly, in subparagraph (E) of Section 2, permit denial is based on the past assessment of **any** fines. In order for this requirement to survive a due process challenge, it must be reasonably related to the legitimate legislative purpose in protecting the public health, safety and environment in the operation of solid waste facilities. It is our opinion that this provision fails to meet this requirement because it mandates permit denial based on past assessment of fines for activities which may have no relationship to, or bearing on, the applicant's ability to comply with waste management requirements. Thus, the permit denial should not be based on the assessment of **any** fines, rather it should be limited to environmental fines assessed in the solid waste or related waste management fields as specified in T.C.A. 68-211-106(h).

The last paragraph in Section 2 of SB 1499 provides for an exception from the application of the permit denial criteria in Section 2(a) - (f) for those solid waste facilities which are owned and operated by a county or municipality. See SB 1499, Section 2. This provision would create an exception from the general application of the law, thus, our constitutional analysis focuses upon equal protection. Because this exception would neither interfere with the exercise of a fundamental right, nor operate to the peculiar disadvantage of any suspect class, there must only be a rational basis to sustain its validity under both the federal and state constitutions. See Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 312, 96 S. Ct. 2566, 49 L. Ed. 2d 651 (1976); City of Memphis V. Int'l Brotherhood of Elec. Workers, 545 S.W. 2d 98, 102 (Tenn. 1976). There must, therefore, be a rational basis for distinguishing between publicly and privately owned and operated solid waste facilities. While such a rational basis may exist, one has not been suggested in the request, thus, this Office is unable to offer an opinion as to whether the exception could survive a constitutional challenge.

Local Referendum Requirements

Section 3 of the SB 1499 applies to new sanitary landfills that plan to receive over 20,000 tons of solid waste per month or existing facilities which plan to increase their volume to over 20,000 tons per month. See SB 1499, Section 3. Following approval by the appropriate authorities, the bill requires operators of such landfills to give public notice of the proposed facility or increase; after which a requisite number of voters may petition the election commission to place a referendum on the ballot at the next primary, general, or county-wide election to determine whether or not the voters approve of locating such a facility in the county, or whether or not the voters approve of allowing an existing facility to expand. See SB 1499, Section 3(a) (4)-(6), (b) (3)-(5).

Article II, Section 3 of the Tennessee Constitution states that the legislative authority of the State is vested in the General Assembly. See Tenn. Const., Art. II, Sec.3. Although the General

Assembly may delegate certain of its powers to governmental agencies and local governing bodies if it establishes basic standards to guide their action, the General Assembly may not delegate its power to make the law. See, e.g., Lobelville v. McCanless, 214 Tenn. 460, 463-64, 381 S.W. 2d 273, 274 (1964); Richardson v. Reese, 165 Tenn. 661, 667, 57 S.W. 2d 797, 799 (1933); Op. Tenn. Atty. Gen. 89-56 (April 17, 1989).

Although the power to make law cannot be delegated, the General Assembly can make a duly-enacted law operative upon the happening of a certain event. That event may be a favorable vote on the people, not in the State as a whole, but in a particular subdivision thereof. Clark v. State ex rel. Bobo, 172 Tenn. 429, 434-35, 113 S.W. 2d 374, 376 (1938). At issue in Clark was "local option" legislation involving the manufacture of liquor, which had been challenged, *inter alia*, as an unconstitutional delegation of legislative authority. In sustaining the law, the Tennessee Supreme Court held that it was complete upon its enactment by the General Assembly. The local referendum authorized by that law, according to the Court, was neither for nor against the enactment, but simply concerned the law's implementation in a particular locality. 172 Tenn. at 436-37. Since the Clark decision, a number of local option provisions are now found in Tennessee law. See, e.g., T.C.A. 4-36-401 (horse racing); T.C.A. 5-8-102 (wheel tax); T.C.A. 7-2-106 (metropolitan form of government); T.C.A. 67-6-705 (sales tax).

A delegation of power by a state legislature may also implicate due process concerns under the Fourteenth Amendment to the United States Constitution. See U.S. Const., Amend. XIV, Sec. 1. Local option legislation, like that upheld in Clark, has withstood due process challenges that they are standardless delegations of legislative authority. See, e.g., Philly's v. Byrne, 732 F. 2d 87 (7th Cir. 1984). Moreover, the United States Supreme Court has held that a popular referendum cannot "be characterized as a delegation of power. Under our constitutional assumptions, all power derives from the people . . . " City of Eastlake v. Forest City Enterprises, 426 U.S. 668, 672, 96 S. Ct. 2358, 2361, 49 L. Ed. 2d 132 (1976). Cf. Chattanooga-Hamilton County Hospital Authority v. City of Chattanooga, 580 S.W. 2d 322, 327 (Tenn. 1979) ("the legislature and the electorate are co-ordinate legislative bodies"). In City of Eastlake, the Court upheld against a federal due process challenge a municipal charter provision permitting voters to decide by referendum whether zoned use of property could be altered. 426 U.S. at 679, 96 S. Ct. at 2365. The power of referendum had been reserved in the state constitution to the people of each municipality in the state. Id. at 673, 96 S. Ct. at 2362. Nevertheless, the state supreme court had held that a popular referendum , because it lacked standards to guide the decision of the voters, allowed the police power to be exercised in an arbitrary and capricious manner in violation of federal due process. Id. at 671-72, 96 S. Ct. at 2361.

In reversing the state court's decision, the Supreme Court held that guiding standards, while relevant to legislative delegations to regulatory agencies and local governing bodies to ensure fidelity to the legislative will, were inapplicable to decision-making by the people through the referendum process. Id. at 675-78, 96 S. Ct. at 2363-64. The Court also contrasted a popular referendum to a standardless delegation of power to a limited group of people in the community, which does present legitimate due process concerns. Id. at 677-78, 96 S. Ct. at 2364. See Washington ex rel. Seattle Title Trust Co. v. Roberge, 278 U.S. 116, 49 S. Ct. 50, 73 L. Ed. 210 (1928); Eubank v. Richmond, 226 U.S. 116, 33 S. Ct. 76, 57 L. Ed. 156 (1912). Cf. Larkin v.

Grendel's Den, 459 U.S. 116, 103 S. Ct. 505, 74 L. Ed.297 (1982) (standardless delegation to disapprove liquor licenses given nearby churches violates Establishment Clause of First Amendment). The Court concluded that the relevant due process inquiry for a referendum was whether "the substantive result of the referendum is arbitrary and capricious, bearing no relation to the police power." 426 U.S. at 676, 96 S. Ct. at 2363. If the referendum result itself is unreasonable, then it is open to challenge in court. Id. at 672, 96 S. Ct. at 2364.

It is the opinion of the Office that the local referendum provided for in Section 3 of SB 1499 is not a delegation of legislative authority in contravention of either Article II, Section 3 of the Tennessee Constitution, or the due process provisions of the Fourteenth Amendment to the United States Constitution. It is our opinion that this legislation is a local option arrangement valid under the analysis of the Tennessee Supreme Court in Clark. The General Assembly has not delegated its power to make the law; rather, this enactment will be complete and valid upon its passage. See SB 1499.

Section 3 of SB 1499 contains exceptions from the referendum requirement for municipal or county owned and operated landfills, and for industrial landfills where 90% or more of the waste is generated on-site. See SB 1499, Section 3(e) and (f). These exceptions from the general referendum requirement present equal protection concerns. However, like the exception in Section 2 of SB 1499, these exceptions require only a rational basis to sustain their validity because they do not interfere with the exercise of a fundamental right, or operate to the peculiar disadvantage of any suspect class. While such rational bases may exist to sustain these exceptions, none have been provided in the request. Therefore, this Office is unable to offer an opinion as to whether the exceptions could survive a constitutional challenge.

Administrative Appeal

The final substantive portion of the bill, Section 4, would replace T.C.A. 68-211-113(d), which bars any administrative appeal and review of the approval of a solid waste facility by the Commissioner. The new section provides for an appeal from any final decision of the Board or the Commissioner in accordance with the Uniform Administrative Procedures Act. See SB 1499, Section 4. The bill fails to identify what type of final decisions may be appealed in accordance with the Uniform Procedures Act. Pursuant to T.C.A. 68-211-113, the Solid Waste Act already provides an administrative appeal to the Solid Waste Board for review of administrative orders; permit denials; the Commissioner's decision in response to a citizen's complaint; and inaction on permit applications by the Department. Therefore, it appears that the purpose of Section 4 is to provide an administrative appeal process for permit approval decisions.[3] It is unclear if Section 4 is attempting to provide an administrative review mechanism for any additional determinations or decisions of the Commissioner, Department or the Board not already addressed by T.C.A. 68-211-113.

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3. Under T.C.A. 68-211-113(d), the only review presently available from the Commissioner's approval of a permit for a solid waste facility is under common law writ of certiorari which is limited to a determination of whether the agency has exceeded the jurisdiction conferred, or is acting illegally." Town of Dandridge v. Tenn. Dept. of Env't and Conserv., No. 9110-CV-00391 (Ct. App. Jan. 29, 1992).

OPINION NO. 93-49 - JULY 23, 1993

Requested by: Honorable Milton H. Hamilton, Jr., State Senator.

Signed by: Charles W. Burson, Attorney General and Reporter; Andy D. Bennett, Deputy Attorney General; and Sharon O. Jacobs, Assistant Attorney General.

Validity of county-wide solid waste disposal fee to defray the cost of operating solid waste convenience centers.

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I. QUESTIONS

1. Whether the Solid Waste Management Act authorizes the Benton County Commission to impose a $3 solid waste disposal fee on all citizens to be collected from all electric meter customers of Benton County to defray the expense of establishing and maintaining solid waste convenience centers in Benton County?

2. Whether the citizens of Camden and Big Sandy are being doubly taxed for solid waste services?

II. OPINIONS

1. It is the opinion of this Office that a county through an electric utility may collect a solid waste disposal fee as part of the utility's billing process to assist the county in defraying the cost of establishing and maintaining solid waste convenience centers.

2. It is the opinion of this Office that the solid waste disposal fee is not a tax; therefore, the citizens of Camden and Big Sandy are not being doubly taxed for solid waste services. The operation of convenience centers is not a service that is identical to the residential solid waste collection and disposal service presently provided by the cities of Camden and Big Sandy for which their residents are charged a monthly sanitation fee. It is our opinion that the county and the cities may charge separate fees for the distinct solid waste services.

III. ANALYSIS

In order to protect the public health, safety and welfare of the citizens of Tennessee, the General Assembly has enacted the Solid Waste Disposal Act, T.C.A. 68-211-101, et seq. Pursuant to T.C.A. 68-211-102, the legislature has found that a statewide solid waste disposal program will provide a coordinated statewide program of control of solid waste processing and disposal in cooperation with federal, state and local agencies responsible for the prevention, control or

abatement of air, water and land pollution, and will encourage efficient and economical solid waste disposal systems.

In 1991 the General Assembly passed the Solid Waste Management Act found at T.C.A. 68-211-801, et seq. Any local government, county, municipality or solid waste authority is authorized to impose and collect a solid waste disposal fee. [T.C.A. 68-211-835(g)(1)] Funds generated from this fee may only be used to establish and maintain solid waste collection and disposal services including convenience centers. A county or municipality or solid waste authority may enter into an agreement with an electric utility to collect the solid waste disposal fee as part of the utility's billing process. This agreement shall be approved by the governing body of the county or municipality entering into the agreement, or in the case of a solid waste authority, the agreement shall be approved by the authority's board of directors. [T.C.A. 68-211-835(g)(2)]

The request indicates that the cities of Camden and Big Sandy provide services to collect solid waste from city residents at their homes or places of business, and to transport the waste to a sanitary landfill for disposal. According to the request, Camden and Big Sandy currently impose a monthly sanitation fee on their residents, which is collected through the resident's sewer bill. We assume that the monthly sanitation fee imposed by Camden and Big Sandy is to defray the cities' costs of providing residential solid waste collection and transport, and to recover the tipping fee paid by the cities when the waste is disposed of at the landfill.

The instant inquiry requests consideration of whether the Benton County Commission has the authority to impose a $3 solid waste disposal fee upon citizens of the county, which would include residents of the cities of Camden and Big Sandy. It is our understanding that this fee will be used to establish and maintain solid waste convenience centers in Benton County. A "convenience center" is defined in the Solid Waste Management Act as "any area which is staffed and fenced that has waste receptacles on site that are open to the public, when an attendant is present, to receive household waste, municipal solid waste and recyclable materials." T.C.A. 68-211-802(a)(4).

Pursuant to T.C.A. 68-211-835(g)(1), a county commission is authorized to impose and collect a solid waste disposal fee. The Solid Waste Management Act of 1991 specifically authorizes any county commission to impose such a fee for the purposes of establishing and maintaining solid waste convenience centers. Moreover, the Act requires, at a minimum, that each county have in place by January 1, 1995, a network of convenience centers available to all residents of the county. T.C.A. 68-211-851 The county may enter into an agreement with an electric utility to collect the solid waste disposal fee as part of the utility's billing process. The request indicates that Benton County fulfilled the statutory requirements when the County Commission agreed to pay for the convenience centers by generating fees. It is the opinion of this Office that the operation of solid waste convenience centers available to all citizens of Benton County is a service distinct from the residential solid waste collection and disposal service presently provided by the cities of Camden and Big Sandy.

Moreover, it is our opinion that the assessment charged by Benton County to defray the costs of establishing and operating these convenience centers is a fee, not a tax. There are many

instances in existing statutes where the legislature has authorized counties to charge a fee for services. One example is found in T.C.A. 5-19-107(11) which authorizes counties providing county-wide or special district garbage and rubbish collection and/or garbage and rubbish disposal service to establish and collect reasonable charges for such services rendered (excluding those covered by a special tax levy).

To understand what is a permissible fee, however, it is necessary to examine applicable caselaw for a definition of a fee or assessment. Because a county has no inherent authority to tax, it can impose an assessment such as the one in the Solid Waste Management Act only if it is clearly a fee or, in the alternative, a tax authorized by the General Assembly. See Kivett v. Runions, 191 Tenn. 62, 231 S.W. 2d 384 (1950). Fees are usually defined in caselaw in the context of whether the assessment is a fee or a tax.

This Office has written several opinions on the distinction between a fee and a tax. This Office has opined that the primary distinction between a tax and a fee is the purpose for which each is imposed. A tax is imposed for the purpose of raising revenue. A fee is imposed for the regulation of some activity under the police power of the governing authority. Op. Tenn. Atty. Gen. 86-75 (March 26, 1986), citing Memphis Retail Liquor Dealers' Assn., Inc. v. City of Memphis, 547 S.W. 2d 244 (Tenn. 1977).

The Office has further opined that the term fee generally refers to a payment made upon the voluntary use of a service. Some charges, however, have been deemed fees even though citizens could not choose to avoid them by rejection of the offered service. Op. Tenn. Atty. Gen. 83-343 (October 6, 1983) citing Holman v. City of Dierks, 233 S.W. 2d 392 (Ark. 1950). In addition, this Office has opined that if an assessment is classified as a fee rather than a tax, it is important that funds collected are kept in a fund separate from general funds and that the funds collected are used only for the purpose for which they are collected. Op. Tenn. Atty. Gen. 86-75 (March 26, 1986).

Several Tennessee cases give insight into the above guidelines. In Memphis Natural Gas Co. V. McCanless, 183 Tenn. 635, 194 S.W. 2d 476 (Tenn. 1946), a case which involved the imposition of an inspection fee on natural gas companies, the Supreme Court of Tennessee held that inspection fees paid by public utilities can be used only for the expense of the administration and supervision of public utilities, and that payment of such expenses is limited by the amount of the special fund to which the fees are paid. The Court further held that it is irrelevant that the amount of the fee is measured by the gross receipts of each company and that the difference between a tax and the above fee is that a tax is an assessment that is paid into the general public treasury and is disbursable for general public expenses. Id. at 483.

T.C.A. 68-211-835(g)(1) specifically provides that all fees collected under the Solid Waste Management Act must be segregated from the general fund and used specifically for the costs of the solid waste services provided. The fees assessed by the Benton County Commission are consistent with the statute since the fees are to pay for the costs incurred by the county to establish and maintain solid waste convenience centers.

It is the opinion of this Office that the citizens of Camden and Big Sandy are not being doubly taxed. The Solid Waste Management Act expressly authorizes Benton County to impose the $3 solid waste disposal fee to pay for the costs of operating solid waste convenience centers. This solid waste disposal fee is not a tax. The operation of convenience centers is not a service identical to the residential solid waste collection and disposal service presently provided by the cities of Camden and Big Sandy for which their residents are charged a monthly sanitation fee. It is our opinion that the county and the cities may charge separate fees for the distinct solid waste services they provide.

OPINION NO. 93-27 - APRIL 1, 1993

T.C.A. Section(s): 68-211-701-708; 68-213-101-106

Requested by: Honorable D.E. Crowe, II, State Senator.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Solicitor General; and Barry Turner, Deputy Attorney General.

Local government approval of solid waste landfills - Tenn. Code Ann. 68-213-101 to -106 and Tenn. Code Ann. 68-211-701 to -708 - Prevailing Law - Constitutionality.

****

I. QUESTIONS

1. Which statutes addressing local government approval of solid waste landfills prevail, the Sanitary Landfill Areas Act, Tenn. Code Ann. 68-213- 101 to -106, or the provisions of Tenn. Code Ann. 68-211-701 to -708?

2. Does Tenn. Code Ann. 68-213-103 apply to Washington County, Tennessee?

3. Do Tenn. Code Ann. 68-213-102(3) and -103 confer authority upon the County Commission of Washington County to approve or disapprove of any landfill in that county?

4. Does Tenn. Code Ann. 68-211-113(d) make clear that the requirement of county governing body approval under the Sanitary Landfill Areas Act is not superseded by the Solid Waste Disposal Act?

5. Does Tenn. Code Ann. 68-211-701(3) require both city and county approval before construction of a landfill in the Johnson City limits?

II. OPINIONS

1. It is the opinion of this Office that the prevailing statutory provisions governing local government approval of the construction of solid waste landfills are Tenn. Code Ann. 68-211-701 to -708 (Landfill Local Approval Law). We are of the opinion that the Sanitary Landfill Areas Act, Tenn. Code Ann. 68-213-101 to -106, is an unconstitutional delegation of legislative authority, because it does not contain any standards or principles to guide local governing bodies in making their decision to approve or disapprove of solid waste landfill construction. In contrast, such guiding standards and principles are found in the Landfill Local Approval Law in the criteria listed in Tenn. Code Ann. 68-211-704(b), and as such, it is our opinion that this law is a valid delegation of legislative authority by the General Assembly.

2.-4. Because we are of the opinion that the Sanitary Landfill Areas Act is unconstitutional, we do not address questions 2 through 4 regarding the interpretation and application of the Act.

5. It is the opinion of this Office that if a solid waste landfill is owned or operated by a municipality or county, the Landfill Local Approval Law does not apply. Tenn. Code Ann. 68-211-706(b). If a private landfill is involved, it is our opinion that Tenn. Code Ann. 68-211-701(2), not Tenn. Code Ann. 68- 211-701(3), is the controlling provision if the landfill is located within the city limits of an incorporated municipality, such as Johnson City. We think that the dual county and municipal approval contemplated by Tenn. Code Ann. 68-211-701(3) applies only when the landfill is located in an unincorporated area of the county, but is still within one mile of the city limits of the municipality.

III. ANALYSIS

The Sanitary Landfill Areas Act, Tenn. Code Ann. 68-213-101 to -106, was enacted by the General Assembly in 1970. See 1970 Tenn. Pub. Acts, ch. 417. The Act addresses local approval of sanitary landfills, and provides as follows:

> No landfill area for the disposal of solid waste materials in this state shall be constructed and no contract between any person or persons for the purpose of constructing or utilizing the same shall be completed or executed unless the location of the landfill area shall have been approved by the department and the governing body of the area in which the site is located. Should the department or the governing body disapprove of the site, no further action shall be taken in regard to the construction of a landfill area at that site.

Tenn. Code Ann. 68-213-103. The "governing body" of the area in which a landfill site is located is defined in the Act as the county "governing body." Tenn. Code Ann. 68-213-102(3).

In 1989, the General Assembly enacted Tenn. Code Ann. 68-211-701 to -708 (Landfill Local Approval Law). See 1989 Tenn. Pub. Acts, ch. 515. These provisions, which also address local approval of solid waste facilities, provide:

> No construction shall be initiated for any new landfill for solid waste disposal or for solid waste processing until the plans for such new landfill have been submitted to and approved by:
>
> (1) The county legislative body in which the proposed landfill is located, if such new construction is located in an unincorporated area.
>
> (2) The governing body of the municipality in which the proposed landfill is located, if such new construction is located in an incorporated area; or

(3) Both the county legislative body of the county in which such proposed landfill is located and the governing body of any municipality which is located within one (1) mile of such proposed landfill.

Tenn. Code Ann. 68-211-701.

Both the Sanitary Landfill Areas Act and the provisions of the Landfill Local Approval Law give local governing bodies the legislative power to approve or disapprove of the construction of a solid waste landfill facility. However, these laws conflict with regard to the statutory requirements imposed by the General Assembly on local government bodies in making that decision. In the Landfill Local Approval Law, the General Assembly has specified eight (8) criteria that "shall be considered" by a local government in evaluating a proposed construction plan for a solid waste landfill. Tenn. Code Ann. 68-211- 704(b). This law also provides for *de novo* judicial review of the local legislative body's determination. See Tenn. Code Ann. 68-211-704(c). In contrast, in the Sanitary Landfill Areas Act, the General Assembly has provided no criteria or standards to guide a local governing body in making its decision to approve or disapprove the construction of a landfill. The General Assembly also failed to provide for any means of judicial review of that decision.

Article II, Section 3 of the Constitution of Tennessee provides that all legislative power in this State shall be exercised by the General Assembly. See Tenn. Const., art. II, s 3. It is our opinion that both the Sanitary Landfill Areas Act and the Landfill Local Approval Law involve a delegation of legislative power by the General Assembly to county and/or municipal governing bodies. In Op. Tenn. Atty Gen. 89-56 (April 17, 1989), this Office addressed the legislative delegation issue in the related context of a statute that required local government approval of the construction of facilities that store, treat, or dispose of hazardous waste.

In that opinion, we first noted that, in the absence of a constitutional prohibition, a legislature may delegate to local governments the power to legislate as to purely local affairs. See Op.Tenn. Atty Gen. 89-56 at 3. We concluded, however, that the decision to construct a hazardous waste facility, while clearly of some local concern, was not a purely, or even a primarily, local affair. See Op.Tenn. Atty Gen. 89-56 at 3-4; see also Tenn. Code Ann. 68-212-102 (purpose of hazardous waste law is to "provide a coordinated statewide hazardous waste management program"). Thus, for the delegation of legislative authority to pass constitutional muster, the local approval provisions had to "establish a sufficient basic standard, a definite and certain policy and rule of action for the guidance of the instrumentality that is to administer the law." Lobelville v. McCandless, 214 Tenn. 460, 463- 64, 381 S.W.2d 273 (1964). We recognized that "[s]o long as [the legislature] 'shall lay down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform, such legislative action is not a forbidden delegation of legislative power.' " Misretta v. United States, 488 U.S. 361, 372, 109 S. Ct. 647, 655, 102 L. Ed. 2d 714 (1989), quoting from, J.W. Hampton, Jr. & Co. v. United States, 276 U.S. 394, 409, 48 S. Ct. 348, 352, 72 L. Ed. 624 (1928).

In applying this analysis to the hazardous waste facility local approval statute, we concluded that the General Assembly had not provided any basic standards or intelligible principles within the

statute, or within the policies and purposes of the Tennessee Hazardous Waste Management Act of 1977, to guide local legislative bodies in reaching their decisions. See Op.Tenn. Atty Gen. 89-56 at 7-8. Thus, local governments were given unfettered power by that statute to disapprove the construction of hazardous waste storage, treatment, or disposal facilities for any reason, or for no reason at all. Accordingly, we opined that the statute was an unconstitutional delegation of legislative authority. Id. at 8.

In applying the analysis from that opinion to the local approval laws under review here, we think that the decision to construct a solid waste disposal landfill is also not a matter of purely local concern. See Tenn. Code Ann. 68- 211-102 (purpose of solid waste law is to "provide a coordinated statewide solid waste disposal program"). The Sanitary Landfill Areas Act, like the hazardous waste local approval law considered in Op.Tenn. Atty Gen. 89-56, does not contain any basic principles or standards for local governing bodies to apply in determining if a sanitary landfill should be constructed. See Tenn. Code Ann. 68-213-103; Op.Tenn. Atty Gen. 89-56 at 2. Because it is lacking in principles or standards to guide local legislative action, it is the opinion of this Office that the Sanitary Landfill Areas Act is an unconstitutional delegation of the legislative power of the General Assembly. Because we are of the opinion that the Sanitary Landfill Areas Act is unconstitutional, we do not address the remaining questions in the request regarding the interpretation and application of the Act.

With regard to the Landfill Local Approval Law, we think that the General Assembly, in the criteria found in Tenn. Code Ann. 68-211-704(b), has established principles and standards sufficient to guide local legislative bodies in deciding whether to approve or disapprove of the construction of a solid waste landfill. Thus, it is the opinion of this Office that the delegation of legislative authority by the General Assembly to local governments in the Landfill Local Approval Law does not contravene Article II, Section 3 of the Tennessee Constitution.

The provisions of Tenn. Code Ann. 68-211-701(3) require local approval of the construction of any new landfill by both the legislative body of the county in which the landfill is located, and the governing body of any municipality located within one (1) mile of the landfill. As an initial matter, we note that the application of this provision, as well as the entire Landfill Local Approval Law, depends upon whether the landfill is privately or publicly owned or operated. Pursuant to Tenn. Code Ann. 68-211-706(b), the Landfill Local Approval Law does not apply to "any municipal or county owned and/or operated landfill."

If a private landfill is involved, it is our opinion that Tenn. Code Ann. 68-211-701(3) does not apply if the landfill is located within the city limits of an incorporated municipality, such as Johnson City. In that situation, the controlling provision would be Tenn. Code Ann. 68-211-701(2), which requires only the approval of the municipality for landfills "located in an incorporated area." It is our opinion that the dual county and municipal approval contemplated by Tenn. Code Ann. 68-211-701(3) applies only when the landfill is located in an unincorporated area of the county, but is still within one mile of the city limits of the municipality.

OPINION NO. 91-103 - DECEMBER 23, 1991

Requested by: James E. Hall, Executive Secretary to the Governor.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Solicitor General; and Michael D. Pearigen, Deputy Attorney General.

Formation of county Solid Waste Authorities pursuant to the Solid Waste Authority Act of 1991.

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I. QUESTION

May a county or counties form a solid waste authority pursuant to 1991 Tenn. Public Acts Ch. 451 prior to formation of municipal solid waste regions under the Solid Waste Authority Act of 1991?

II. OPINION

A solid waste authority may not be created pursuant to the Solid Waste Authority Act of 1991 prior to the formation of a solid waste region pursuant to the Act.

III. ANALYSIS

As we recently had occasion to observe, the Tennessee Solid Waste Management Act of 1991, enacted as 1991 Tenn. Pub. Acts Ch. 451 and codified as T.C.A. 68-31-801, et seq., "constitutes a major and far-reaching overhaul of the regulation of solid waste disposal in Tennessee." Op. Tenn. Atty. Gen. 91-88 (Nov. 7, 1991). Also created by 1991 Tenn. Pub. Acts Ch. 451 was the Solid Waste Authority Act of 1991, T.C.A. 68-31-901, et seq. Though codified as separate acts, the two statutes are interrelated.

Pursuant to T.C.A. 68-31-811(a), the counties and municipalities in each currently-existing development district are constituted as a "municipal solid waste planning district." Each planning district is required to submit, by Sept. 30, 1992, a solid waste "needs assessment" for that district. Id. Thereafter, and by December 12, 1992, "municipal solid waste regions" are to be established by county legislative bodies, such regions to consist of as few as one county[1] or

1. Pursuant to T.C.A. 68-31-813(b)(2), if a single county decides to create its own municipal solid waste region, it may designate as the board provided for in T.C.A. 68-31-813(b)(1) to administer the Region's activities, "a solid waste authority in existence on July 1, 1991." It is apparat, however, that this reference to a "solid waste authority" is not to the solid waste authorities provided for in T.C.A. 68-31-903, discussed *infra*. Neither T.C.A. 68-31-813 nor 68-31-903 became effective until July 1, 1991. See 1991 Tenn. Pub. Acts Ch. 451, Sec. 91. Rather, this reference is evidently to such solid waste authorities as were created prior to July 1, 1991, by Private Act. See, e.g., 1979 Tenn.

two or more contiguous counties. T.C.A. 68-31-813(a)(1).

Under the separate provisions of the Solid Waste Authority Act, a "solid waste authority" may be formed by a single county or combination of counties constituting a municipal solid waste region. T.C.A. 668-31-903. The prerequisites for formation of a solid waste authority include passage of a resolution by the governing body of the county (or counties) desiring to form an authority, as well as approval of such a solid waste authority by all county governing bodies within the municipal solid waste region, regardless of whether all of the counties within the region are to be part of the particular solid waste authority. Id.

It is apparent that the two acts envision a deliberate, cohesive and phased approach to solid waste planning and management, with various planning and governing entities authorized (in some cases mandated) to be created at various times. It is also clear that T.C.A. 68-31-903 envisions the creation of solid waste authorities **only subsequent to** the existence of the municipal solid waste regions provided for in T.C.A. 68-31-813(a)(1). See also T.C.A. 68-31-907.

We are advised by the State Planning Office that no municipal solid waste regions currently exist. It is an elementary principle that governmental entities authorized by the General Assembly may exist at all, and only exercise powers, to the extent authorized and within the limitations established by statute or necessarily implied from the statute's provisions. Bayless v. Knox County, 199 Tenn. 268, 281, 286 S.W. 2d 579, 585 (1956); Knox County ex rel. Kessel v. Knox County Personnel Board, 753 S.W. 2d 357, 359 (Tenn. App. 1988). Accordingly, any attempt to create a solid waste authority pursuant to T.C.A. 68-31-903, prior to the creation of a municipal solid waste region, would be of no effect.

Private Acts Ch. 157 (creating the Resource Authority in Sumner County), as amended by 1980 Tenn. Private Acts Ch. 291 and 1986 Tenn. Private acts Ch. 193.

OPINION NO. 91-88 - NOVEMBER 7, 1991

Requested by: Honorable John Mark Windle, State Representative.

Signed by: Charles W. Burson, Attorney General and Reporter; John Know Walkup, Solicitor General; and Michael D. Pearigen, Deputy Attorney General.

Applicability of fee provisions of the Tennessee Solid Waste Management Act of 1991 to State entities.

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I. QUESTION

Do the provisions of the Tennessee Solid Waste Management Act of 1991, enacted as 1991 Tenn. Pub. Acts Ch. 451, Sections 1-54, which provide for tipping fees, surcharges and solid waste disposal fees, apply to State entities?

II. OPINION

The Tennessee Solid Waste Management Act of 1991, in 1991 Tenn. Pub. Acts Ch. 451, Section 54, contains provisions for a tipping fee on each ton of municipal solid waste received at a municipal solid waste disposal facility or incinerator in order to offset the cost of providing solid waste management services; for an $.85/ton surcharge on each ton of municipal solid waste received at a solid waste disposal facility or incinerator; for a surcharge on each ton of municipal solid waste received at a regional solid waste disposal facility or incinerator in order to offset the cost to the host county and/or municipality of providing solid waste management services; for a surcharge on each ton of municipal solid waste received at a solid waste disposal facility or incinerator in order to offset the cost of solid waste collection or disposal; and for a solid waste disposal fee in order to offset the cost of establishing and maintaining solid waste collection and disposal facilities, including convenience centers. It is the opinion of this Office that State entities are subject to the referenced tipping fees and surcharges for such municipal solid waste as they may dispose of at solid waste disposal facilities or incinerators, and are subject to solid waste disposal facilities or incinerators, and are subject to solid waste disposal fees to the extent that a State entity's solid waste is not disposed of in a solid waste disposal system or resource recovery facility owned by the State.

III. ANALYSIS

The Tennessee Solid Waste Management Act of 1991 (the Act), 1991 Tenn. Pub. Acts Ch. 451, Sections 1-54, was passed by the General Assembly on May 23, 1991, and signed into law by the Governor on June 3, 1991. The Act constitutes a major and far-reaching overhaul of the

regulation of solid waste disposal and recycling in Tennessee. One of the public policies of the State to be furthered by the Act is "to institute and maintain a comprehensive, integrated, state-wide program for solid waste management which will assure that solid waste facilities, whether publicly or privately operated, do not adversely affect the health, safety and well-being of the public and do not degrade the quality of the environment by reason of their location, design, method of operation or other means and which, to the extent feasible and practical, makes maximum utilization of the resources contained in solid waste." Public Chapter 451, Section 3(a). A further goal of the legislation is to "minimize to the greatest extent possible the amount of solid waste which requires collection, treatment, incineration or disposal through source reduction, reuse, composting, recycling and other methods." Id., Sec. 3(b).

Some of the various means by which the goals of the Act are to be accomplished are provisions: regulating baled waste, Id., Sections 6-9; requiring the establishment of municipal solid waste planning districts, Id., Sec. 11, municipal solid waste regions, Id., Sec. 12, and advisory committees, Id, Sec. 12(e) & 18; requiring the development of solid waste capacity assurance and waste reduction plans, Id., Sec. 12(c), 13-17, & 21(b); requiring minimum levels of collection and disposal systems to be available in each county, Id., Sec. 21; requiring owners or operators of municipal solid waste disposal facilities or incinerators to maintain certain records, Id., Sec. 26; establishing a goal of 25% reduction in solid waste disposal at municipal solid waste disposal facilities and incinerators by December 31, 1995, Id., Sec. 25; encouraging recycling, Id., Sec. 27-32; prohibiting the disposal, after January 1, 1995, of whole waste tires, lead-acid batteries or used oil, Id., Sec. 33; and the establishment of the Solid Waste Management Fund whose purpose is to fund various "activities authorized by this act." Id.,Sec.53.

The Act, in Public Chapter 451, Sec. 54, also provides the following funding mechanisms:

> Sec. 54(a)-(b) - A tipping fee on each ton of municipal solid waste received at a municipal solid waste disposal facility or incinerator, imposed by each county, municipality, or solid waste authority owning such facility, in order to offset the cost of providing solid waste management services.
>
> Sec. 54(d) - An $.85/ton surcharge on each ton of municipal solid waste received at a solid waste disposal facility or incinerator, to be imposed by any local government owing such facility and to be remitted to the state treasury for deposit in the Solid Waste Management Fund.
>
> Sec. 54(e) - A surcharge on each ton of municipal solid waste received at a regional solid waste disposal facility or incinerator, to be imposed by a county that is host to such facility in order to offset the cost to the host county and/or municipality of providing solid waste management services.
>
> Sec. 54 (f) - A surcharge on each ton of municipal solid waste received at a solid waste disposal facility or incinerator, imposed by each county, municipality or solid waste authority owning such facility, in order to offset the cost of solid waste collection of disposal.

> Sec. 54(g) - A solid waste disposal fee imposed by a county, municipality or solid waste authority in order to offset the cost of establishing and maintaining solid waste collection and disposal facilities, including convenience centers. Pursuant to Sec. 54(g)(3), this fee shall not be imposed on any generator whose solid waste is managed in its own solid waste disposal system or resource recovery facility.

We are asked to consider whether State entities disposing of municipal solid waste at solid waste disposal facilities or incinerators are subject to these charges.

The basic rule governing this question was succinctly set forth in Keeble v. City of Alcoa, 204 Tenn. 286, 289, 319 S.W. 2d 249, 250 (1958), as follows:

> Tennessee has long been committed to the rule that a state, or political subdivision thereof, is not subject to a statute unless specifically mentioned therein or unless application thereto is necessarily implied.

There is thus a "legally imposed inference of the non-inclusion of the sovereign" in a general statute, which inference requires a finding of non-inclusion "unless the language impels . . . the clear conclusion that the Legislature intended to bind the sovereign." Harrison Const. Co. v. Gibson Cty. Bd. of Ed., 642 S.W. 2d 148, 151 (Tenn. App. 1982). As the Tennessee Court of Appeals has recently reiterated, however, "[a] statute's meaning is to be determined . . . from the act taken as a whole, and viewing the legislation in the light of its general purpose." Loftin v. Langsdon, 813 S.W. 2d 475, 478 (Tenn. App. 1991). The Act does not contain a provision expressly stating its applicability to the State. Compare, e.g., T.C.A. 68-46-207(e).[1] It is significant, however, that the Act's definition of "person" in Public Chapter 451, Sec. 2(a)(12), is stated to have the same meaning as set forth in T.C.A. 68-31-103(5), which provision states, in part, "'Person' means . . . any governmental agency or county of this state . . ." We believe that the Act's applicability to the State can be clearly and necessarily implied from this provision, and from a careful review of the Act's other provisions and the public policies which it is intended to further.

The Supreme Court in Keeble, *supra*, 204 Tenn. at 291, 319 S.W. 2d at 251, indicated that in the absence of a statute's express provision of applicability to the State, a determination as to whether its applicability can be inferred will be guided by "the conditions that brought about the enactment" of the statute and by the State's public policy. In that case, the Court found the State's public policy to prevent a public employer from being forced to enter into a collective bargaining agreement. Id. at 292, 319 S.W. 2d at 251-52. The Court found this "declared public

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1. For example, the Tennessee Hazardous Waste Management Act of 1983 (State Superfund Act), T.C.A. 68-46-201, et seq., is expressly made applicable to the State:

> Each department, agency or instrumentality of the executive, legislative and judicial branches of the . . . state government shall be subject to, and comply with, this part in the same manner and to the same extent, both procedurally and substantively, as any non-governmental entity, including liability under this section.

T.C.A. 68-46-207(e).

policy of this state renders it impossible to imply" a legislative intention in the Tennessee Right to Work Act that said Act apply to employment by the State or its political subdivisions. Id. at 292, 319, S.W. 2d at 252.

The Act was the outgrowth of prior legislation enacted by the 1989 General Assembly as the Tennessee Solid Waste Planning and Recovery Act (Planning and Recovery Act), T.C.A. 68-31-601, et. seq. (1990 Supp.). In the Planning and Recovery Act, the General Assembly made several findings pertinent to this inquiry: "that the public health, safety and welfare require comprehensive planning for the disposal of solid waste on a local, regional and state level," T.C.A. 68-31-602(a); "that some areas of the state have inadequate and rapidly diminishing capacity for disposal of solid waste by landfilling" and that it "is also becoming difficult for many local governments to site and pay for new landfills which comply with existing and proposed environmental regulations." T.C.A. 68-31-602(b). The State Planning Office was directed to establish, by January 1, 1991, a comprehensive state solid waste management plan having as its priority "the reduction of the volume of wastes going to incinerators or landfills." T.C.A. 68-31-603(a).[2]

As previously mentioned, the General Assembly has declared its intent that the Act promote a "**comprehensive, integrated** and **state-wide** program for solid waste management," Public Chapter 451, Sec. 3(a) (emphasis added), with the overall goal of reduction and minimization "to the greatest extent possible" of solid waste. id. at Sec. 3(b). The State's public policy with regard to solid waste is further expressed in the Tennessee Solid Waste Disposal Act, T.C.A. 68-31-101, et seq., which is the State's primary solid waste regulatory statute. As set forth in T.C.A. 68-31-102, solid waste disposal is to be regulated to:

> (1) Provide for safe and sanitary processing and disposal of solid wastes;
>
> (2) Develop long-range plans for adequate solid waste disposal systems to meet future demands;
>
> (3) Provide a coordinated state-wide program of control of solid waste processing and disposal in cooperation with federal, state and local agencies responsible for the prevention, control or abatement of air, water and land pollution; and

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2. The University of Tennessee's Waste Management Research and Education Institute was contracted to provide technical assistance to the State Planning Office in this project and notes in its report, which was provided to each member of the General Assembly prior to passage of the Act, that "all segments of society - personal, corporate and governmental - will have to become convinced of the seriousness of the solid waste problem and be willing to take responsibility for resolving it." UTWMREI, Managing Our Waste: Solid Waste Planning for Tennessee (Report Prepared for the Tennessee State Planning Office) (Feb. 1991), at 11.

Subsequent to the enactment of the Planning and Recovery Act, the State's role and responsibility as a solid waste generator was recognized in Executive Order 31 (Dec. 7, 1989), which established a recycling program in the Executive Branch. The Executive Order stated that "the operations of state government generate substantial amounts of solid waste each year" and noted that the State "spends $300,000 each year for solid waste collection and disposal service." Id. at 1. The Executive Order also expressed the principle that "whenever possible, state government should lead by example rather than mandate action by others." Id. at 2.

(4) Encourage efficient and economical solid waste disposal systems.

"Persons" subject to the Solid Waste Disposal Act are defined by T.C.A. 68-31-103(5) to include the State.

In addition to the conditions surrounding passage of the Act and the State's overall public policy, the central subject addressed by the Act, "municipal solid waste," is defined, in part, to be "**any** garbage, refuse, industrial lunchroom or office waste, household waste, household hazardous waste, yard waste and any other material resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities . . . " Id. at 2(a)(10).[3] In addition, the tipping fee and surcharge provisions of Public Chapter 451, Sec. 54, all speak in terms of a charge on "each ton of municipal solid waste received" by a solid waste disposal facility or incinerator.

Other indicia of legislative intent that the Act be given universal coverage include provisions found in the Tennessee Solid Waste Authority Act of 1991, also enacted by Public Chapter 451, at Sections 55-80 therein. Public Chapter 451, Sec. 60, authorizes counties and municipalities to create solid waste authorities which, among other powers, are authorized to "remove, receive, transport, collect, purchase, transfer or otherwise obtain solid waste for disposal or processing from . . . the State of Tennessee . . ." Id., Sec. 63(a)(6). See also id., Sec. 73.

In sum, the language of the Act, the public policy of the State as expressed in the Act and related solid waste statutes, and the applicability of the Solid Waste Disposal Act to the State all combine to impel the clear conclusion that the General Assembly intended to subject the State to the fee provisions of Public Chapter 451, Section 54. Thus, it is the opinion of this Office that State entities are subject to the referenced tipping fees and surcharges for such municipal solid waste as they may dispose of at solid waste disposal facilities or incinerators, and are subject to solid waste disposal fees to the extent that a State entity's solid waste is not disposed of in a solid waste disposal system or resource recovery facility owned by the State.

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3. Although the statute at issue in Harrison Const. Co., supra, which was found not to apply to the State, spoke of "any contract," see 642, S.W. 2d at 150, the Court also noted that there was a separate statute dealing specifically with State contracts, thus reinforcing the presumption of non-inclusion of the State. Although we do not view the Act's definition of municipal solid waste, as including "any" garbage, etc., to be determinative of this issue, we believe that it, together with other indications of legislative intent expressed in the Act, leads to the necessary inference that the State is included in the Act's coverage.

OPINION NO. U91-92 - JULY 3, 1991

T.C.A. Section(s): 63-31-101 et seq.

Requested by: Honorable John Mark Windle, State Representative.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Solicitor General; and Michael D. Pearigen.

Constitutionality of Private Act exempting a County from compliance with the Tennessee Solid Waste Disposal Act, T.C.A. 63-31-101, et seq.

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I. QUESTION

Can a private act exempt a county in whole or in part from complying with the Tennessee Solid Waste Disposal Act and its implementing regulations?

II. OPINION

A private act may exempt a county from compliance with the regulations only if the exception has a rational basis and relates to a legitimate state purpose. Because we have been provided no specific information about a proposed private act, we are unable to give an opinion on a specific act and set forth herein a general analytical framework.

III. ANALYSIS

A private act that would exempt a county from complying with the Tennessee Solid Waste Disposal Act, T.C.A. 68-31-101, et seq., and its implementing regulations would be by its terms inconsistent with the general law enacted by the legislature. This conflict would lead one county to be singled out for preferential treatment under the law. Such preferential treatment raises questions about whether such a private act would violate the due process and equal protection provisions of the Tennessee Constitution.

With respect to equal protection, the Tennessee Constitution provides in relevant part:

> The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie (immunities) or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

Tenn. Const. art. XI, sec. 8. Article I, section 8 of the Tennessee Constitution guarantees due process rights by providing that no one may be deprived of life, liberty or property except by "the law of the land." Tenn. Const. art. I, sec. 8. These provisions apply to cities and counties in the exercise of their governmental functions as well as to individuals. Brentwood Liquors Corp. of Williamson County v. Fox, 496 S.W. 2d 454, 547 (Tenn. 1973); City of Alcoa v. Blount County, 658 S.W. 2d 166, 118 (Tenn. App. 1983). Both due process and equal protection questions are subject to the same analysis. See Sutphin v. Platt, 720 S.W. 2d 455, 456-57 (Tenn. 1986). The intensity of a reviewing court's scrutiny of a classification created by law varies with the type of rights involved, the class created by the statute and the legislative objective sought to be achieved by the law. Id. at 457.

In order for the proposed private act to survive scrutiny under Article I, section 8 and Article XI, section 8 of the Tennessee Constitution, there must be some rational basis for singling out a particular county for preferential treatment under the private act. See Shelby County Civil Service Merit Bd. v Lively, 692 S.W. 2d 15, 18 (Tenn. 1985); Knoxville's Community Development Corp. v Knox County, 665 S.W. 2d 704 (Tenn. 1984).

Clearly, efficient and environmentally sound solid waste management is a legitimate state function. The Tennessee Solid Waste Disposal Act is designed to regulate solid waste to protect the environment and the health and safety of Tennesseans in accordance with the governmental purposes outlined in Article I, section 1 of the Tennessee Constitution.

Management of solid waste and the operation of landfills, the primary subjects of the Tennessee Solid Waste Disposal Act, do not involve "fundamental rights" or operate to the detriment of a "suspect class." Thus, we believe a private act creating an exception to the general law will be constitutionally valid only if there is a rational basis for singling out one county for preferential treatment and the private act relates to a legitimate state function. See e.g., Op. Tenn. Atty. Gen. 80-145 (Feb. 13, 1980). Because we have not been provided any details about the content of a proposed private act, we are unable to offer an opinion as to whether any specific legislative proposal would have a rational basis.

OPINION NO. 91-32 - APRIL 9, 1991

Requested by: Honorable Jerry W. Cooper, State Senator, and Honorable Lane Curlee, State Representative.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Solicitor General; and Charles L. Lewis, Deputy Attorney General.

Constitutionality of Private Act authorizing levy of a privilege tax on solid waste disposal at landfills in Bedford County (S.B. 1517/ H.B. 1516).

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I. QUESTION

Is Senate Bill No. 1517/ House Bill No. 1516, which would authorize Bedford County to levy a privilege tax on the disposal of solid waste at landfills in that county, constitutional?

II. OPINION

Yes. It is the opinion of this Office that a county, through private act of the Legislature, may impose a privilege tax on the disposal of solid waste at landfills.

III. ANALYSIS

Senate Bill No. 1517 (House Bill No. 1516) would, as a private act, authorize Bedford County to impose a privilege tax on the disposal of solid waste at landfills in that county. The bill is drafted to apply only to Bedford County, by name, and contains the provisions for local ratification (Section 15) required by Article XI, Section 9 of the Tennessee Constitution. The Bill authorizes the county commission of Bedford County to levy tax at a rate not to exceed ten dollars per ton of solid waste.

The instant inquiry requests consideration of the constitutionality of this Bill. The basic guideline for county privilege taxation is that a county can levy only those taxes authorized by general law or private act, and that any private act cannot conflict with the general law. In the instant context, there appears to be no general law authorizing a privilege tax on the disposal of waste at landfills; nor is there any general law preventing such a tax or conflicting with its imposition. Thus it is well within the power of the General Assembly to authorize a county by private act to impose such a tax. As the Supreme Court noted in Large v. City of Elizabethton, 185 Tenn. 156, 163, 203 S.W. 2d 907 (1947), in considering a private act authorizing a governmental function, "The constitutionality of such legislation, although special in its application to a particular municipality, does not come within the prohibition of Article II,

Section 8 of the Constitution, since there is no general act on the subject applicable alike to all municipalities." More specifically, the Supreme Court has on numerous occasions upheld private acts levying particular taxes in only one jurisdiction. See Knoxteen Theaters, Inc. v. Dance, 186 Tenn. 114, 208 S.W. 2d 536 (1948) (tax on theater admission tickets); Adkins v. Robertson County, 621 S.W. 2d 731 (Tenn. 1981) (hotel-motel tax). Thus the limitation of the taxing authority to Bedford County does not offend the Tennessee Constitution.

Other possible objections to the Bill also are without merit. The privilege of disposing of solid waste at a landfill clearly may be established as a taxable privilege by the General Assembly under Article II, Section 28. The power of the Legislature to define and tax privileges is very broad; a privilege has been deemed to be whatever the Legislature chooses to declare to be a privilege and taxes as such. See Hooten v. Carson, 186 Tenn. 282, 209 S.W. 2d 273 (1948). If the legislature may tax the privilege of engaging in the business of selling tangible personal property, as in Hooten, or the privilege of carrying on a corporate business for profit within the state, as in Bank of Commerce & Trust Co. v. Senter, 149 Tenn. 569, 260 S.W. 144 (1924), then surely it may tax the privilege of using a landfill or operating a landfill business. The disposal of waste at a landfill operated by a business or governmental body and meeting certain environmental standards is a readily identifiable privilege.

The Bill would apply uniformly and without discrimination to all landfills operated in Bedford County. The tax would be borne by all persons, natural, corporate or governmental, who exercise the privilege. While taxes are ordinarily presumed to be inapplicable to governmental units, in this Bill all state and local governmental entities are expressly subjected to the tax. Section 1 (3). The clear intent of the Bill to this effect overcomes the usual presumption and certainly creates no constitutional difficulties, it being within the Legislature's power to subject governmental units to general taxation. See Henson v. Monday, 143 Tenn. 418, 224 S.W. 1043 (1920); State v. Hamilton County, 176 Tenn. 519, 144 S.W. 2d 749 (1940). Thus, taken in its entirety, the Bill appears to pose no constitutional difficulties.

Therefore, it is the opinion of this Office that Senate Bill No. 1517/ House Bill No. 1516 comports with all requirements of the Tennessee and United State constitutions.

OPINION NO. 91-30 - APRIL 8, 1991

Requested by: Jim Hall, Executive Assistant to the Governor.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Solicitor General; and Kate Eyler, Deputy Attorney General.

Authorizing County Legislative bodies to impose mandatory fee for solid waste disposal services provided by county.

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I. QUESTIONS

1. Whether the General Assembly may authorize county legislative bodies to impose a mandatory fee on all households and business entities for solid waste disposal services provided by the county for the use of all households and businesses in the form of solid waste collection or convenience centers, recycling centers or equipment related to solid waste collection and disposal.

2. If the General Assembly may authorize such a fee, whether the General Assembly may authorize a county to require that any such fee be collected through electric utility service billing for all households and businesses receiving electric service and through separate billings for any households or business entities not receiving electric service.

II. OPINIONS

1. It is the opinion of this Office that the General Assembly may authorize county legislative bodies to impose a mandatory fee on all households and business entities for solid waste disposal services provided by the county for the use of all households and businesses in the form of solid waste collection or convenience centers, recycling centers or equipment related to solid waste collection and disposal. The legislation must meet certain criteria (set out in the Analysis below) in order to be legally permissible.

2. It is the opinion of this Office that the General Assembly may authorize a county to collect the fee described above either by billing and collecting it directly or by entering into a contract or agreement with a local electric utility to bill and collect the fee. Before the electrical utility can bill and collect the fee, the local electric utility will also have to be authorized to enter into such an agreement if its statute does not already provide such authority.

This Office offers no opinion on the question of whether an electrical utility may be constrained in entering into such an agreement with a county by the provisions of other contracts to which it may be a party, such as contracts with federal government agencies. This Office also offers no

opinion on how or whether such an agreement with the county would have any bearing on the utility's regulations regarding discontinuation of electric service in the event of failure of the consumer to pay the bill.

III. ANALYSIS

In the request for an opinion, it was stated that the State Planning office was required by the Solid Waste Planning Act to report to the 97th General Assembly with a plan for solid waste management in Tennessee. The letter went on to say that the Solid Waste Management Act of 1991, House Bill No. 1252 / Senate Bill No. 1385, is the proposed legislative implementation of the final plan, and that certain issues concerning financing have arisen with respect to this legislation. It is intended that the financing portions of the Solid Waste Management Act of 1991 will be added by amendment later in this legislative session, and representatives of counties have raised issues concerning specific financing mechanisms. We understand that this Office's opinion will be used as guidance for the drafting of the financing amendments.

1. Mandatory Fee for Access to Solid Waste Disposal Services

Whether the Legislature may authorize counties to impose the fee described depends on how the pertinent statute or statutes are drafted and what the intent of the Legislature is in allowing the imposition of the fee. For the purposes of this opinion, we will assume that the law requires counties to establish and maintain solid waste disposal services, such as convenience centers, and that all county residents, households and businesses alike, will have access to these services.

The fee may be permissible if the funds collected are used solely to fund the convenience center and other like services and the amount of the fee collected bears a reasonable relation to the cost of providing the services. The fee should be segregated from the general fund to be used for the purposes for which they were collected.

In addition, the fee should be imposed in furtherance of the regulation of some activity under the police power of county governments, such as the control of the disposal of solid waste for public health purposes, and should so state. The fee might be questioned on the grounds that the fee would not be assessed for voluntary use and because the fee would be assessed against some who do not use the services provided. See, e.g., T.C.A. 5-19-116 (individual permitted to dispose of solid waste from his own household upon his own land provided such disposal does not create a public nuisance or a public health hazard).

There are many instances in existing statutes where the Legislature has authorized counties to charge a fee for services. One example is found in T.C.A. 5-19-107(11) which authorizes counties providing county-wide or special district garbage and rubbish collection and/or garbage and rubbish disposal service to establish and collect reasonable charges for such services rendered (excluding those covered by a special tax levy).

To understand what is a permissible fee however, it is necessary to examine applicable caselaw for a definition of a fee or assessment. Because a county has no inherent authority to tax, it can

impose an assessment such as that proposed only if it is clearly a fee or, in the alternative, a tax authorized by the General Assembly. See Kivett v. Runions, 191 Tenn. 62, 231 S.W. 2d 384 (1950). Fees are usually defined in caselaw in the context of whether the assessment is a fee or a tax.

This Office has written several opinions on the distinction between a fee and a tax. This office has opined that the primary distinction between a tax and a fee is the purpose for which each is imposed. A tax is imposed primarily for the purpose of raising revenue. A fee is imposed for the regulation of some activity under the police power of the governing authority. Op. Tenn. Atty. Gen. 86-75 (March 26, 1986) citing Memphis Retail Liquor Dealers' Assn., Inc. v. City of Memphis, 547 S.W. 2d 244 (Tenn. 1977).

This Office has further opined that the term fee generally refers to a payment made upon the voluntary use of a service. Some charges, however, have been deemed fees even though citizens could not choose to avoid them by rejection of the offered service. Op. Tenn. Atty. Gen. 83-343 (October 6, 1983) citing Holman v. City of Dierks, 233 S.W. 2d 392 (Ark. 1950). In addition, this Office has opined that if an assessment is classified as a fee rather than a tax, it is important that funds collected are kept in a fund separate from general funds and that the funds collected are used only for the purpose for which they are collected. Op Tenn. Atty. Gen. 86-75 (March 26, 1986).

Several Tennessee cases give insight into the above guidelines. In Memphis Natural Gas Co. v. McCanless, 183 Tenn. 635, 194 S.W. 2d 476 (Tenn. 1946), a case which involved the imposition of an inspection fee on natural gas companies, the Supreme Court of Tennessee held that inspection fees paid by public utilities can be used only for the expense of the administration and supervision of public utilities, and that payment of such expenses is limited by the amount of the special fund to which the fees are paid. The Court further held that it is irrelevant that the amount of the fee is measured by the gross receipts of each company and that the difference between a tax and the above fee is that a tax is an assessment that is paid into the general public treasury and is disbursable for general public expenses. Id. at 483.

In Memphis Retail Liquor Dealer's Association v. City of Memphis, 547 S.W. 2d 244, the Supreme Court of Tennessee stated that taxes are distinguished from fees by the objectives for which they are imposed. Memphis had imposed a municipal inspection fee on retailers of alcoholic beverages. The Court upheld the assessment as a fee within the authority of municipalities to supervise and regulate the liquor business. The Court reached this decision despite the fact that the revenue generated by the assessment was over 200 times the cost of the regulation. Id. at 246. The Court found that a fee is not converted into a tax merely because it raises more income than is necessary to pay for the administration and enforcement of the regulations. Id. at 246 citing City of Chattanooga v. Veatch, 202 Tenn. 338, 304 S.W. 2d 326 (1957). The Court did imply, however, that in some instances when the income raised far exceeds the expense involved a fee would be characterized as a tax. A regulatory license fee must bear some reasonable relation to the expenses involved in the regulated activity. Id. at 246 citing Lalumio v. Fasseas, 21 Ill. 2d 135, 171 N.E. 2d 43 (1960). The Court further implied that if the activity regulated had been anything other than the liquor business, an industry that is

recognized as being hurtful to public morals, productive of disorder, and injurious to the public, the fee might have been characterized as a tax. When liquor is involved, the fee involved is actually part of the regulation. Id. at 246 citing Phillips v. City of Mobile, 208 U.S. 472 (1908).

In S & P Enterprises, Inc. v. City of Memphis, 672 S.W. 2d 213 (Tenn. App. 1983), the Tennessee Court of Appeals upheld an assessment on owners of mechanical amusement devices as a fee. The Court found that whether the assessment could be upheld as a fee turned on whether the monies collected had some reasonable relation to the expenses involved in regulatory activity. Id. at 216. The Court further found that the primary purpose of the assessment at issue was to fund police personnel to control the crowds, noise, disorders and gambling associated with amusement devices. The projected revenue from the regulation was $225,000 and the projected cost of the regulation was $227, 000. Id. at 215, 216.

A statute authorizing the imposition of the fee should be drafted with careful attention to the above guidelines. Most importantly, the above cases indicate that the assessment should relate to some regulatory activity of the counties. The fees should be assessed in connection with services provided to those who pay the fee and should relate to the expenses the county incurs in providing the services. The counties should earmark funds collected for their regulatory activities and set the funds aside for those purposes.

2. Billing and Collecting the Fee

Any statute authorizing an electrical utility to bill and collect the county's solid waste disposal fee should be coordinated with existing statutes. Research has revealed that many existing statutes touch on the subject of electrical utilities. A partial listing of these statutes would include the following: T.C.A. 6-51-112 (change of municipal boundaries/electric cooperatives); 7-52-101 through 7-52-310 (Municipal Electric Plant Law of 1935); 7-83-101 through 7-82-609 (Utility District Law of 1937), 65-4-101 et seq. (regulation of public utilities by the Public Service Commission); 65-22-101 et seq; (Light, Heat and Power Companies); 65-23-101 et seq. (State Rural Electrification Authority); 65-25-201 et seq. (Rural Electric and Community Services Cooperatives); 65-34-101 et seq. (geographic territories of electric utility systems); and 67-4-405 (tax on gas, water and electric companies based on a percentage of the gross receipts of the utility derived from intrastate business).

Because the question presented goes to the authority of a county and a utility to enter into a billing agreement, research has been concentrated on general laws granting or affecting the powers and authority of electrical utilities. We have not attempted a complete survey of the public laws and have not consulted the private acts of the state. Thus there may be other statutes which affect the electrical utilities which would be expected to contract with the county for billing and collecting of the county's solid waste disposal fee.

It is also beyond the scope of this opinion and the resources of this office to examine whether any given electrical utility might have contracts that would place constraints on its ability to contract with the county to bill and collect the fee. This Office is aware, however, that electrical utilities contract with the Tennessee Valley Authority for delivery of electrical power. Such

contracts would need to be examined to determine how an agreement to bill and collect the county's solid waste disposal fee might be impacted by the contract.

Another consideration for drafters of the proposed provisions authorizing electrical utilities to bill and collect the fee are the procedures of the electric utilities regarding discontinuation of delivery of electrical service. See, e.g., 16 U.S.C. Section 2601, et seq. (Public Utility Regulatory Policies Act of 1978); T.C.A. 65-32-101 et seq. (in counties having metropolitan form of government); Tenn. Admin. Rules, Public Service Commission, 1220-4-4 (regulations for electric companies subject to jurisdiction of commission). Caselaw indicates that electric service cannot be terminated by a utility except upon good cause and with reasonable notice to the customer, e.g., Smith v. Tri-County Electric Membership Corp., 689 S.W. 2d 181, 184-85 (Tenn. App. 1985), and nonpayment of some types of fees has been considered insufficient to meet "good cause" for these purposes. See Op. Tenn. Atty. Gen. 90-26 (February 27, 1990) (landlord/housing authority could not resort to discontinuation of utility service in order to gain reentry into leased premises).

OPINION NO. 90-53 - APRIL 19, 1990

T.C.A. Section(s): 68-31-701, et seq. (1989 Supp.)

Requested by: Honorable James M. Henry, State Representative.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Solicitor General; and R. Tim Wurz, Assistant Attorney General.

Applicability of T.C.A. 68-31-701. et seq. (1989 Supp.)

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I. QUESTION

Do the provisions of T.C.A. 68-31-701, et seq. (1989 Supp.), apply to an application for a permit for a sanitary landfill for which a tentative approval was public noticed by the Commissioner of the Tennessee Department of Health and Environment on March 9, 1990, if the county commission of the county in which the proposed landfill is to be located did not "opt into" the provisions of T.C.A. 68-31-701, et seq., until March 12, 1990?

II. OPINION

It is the opinion of this Office that the provisions of T.C.A. 68-31-701, et seq., do not apply to an application for a permit for a sanitary landfill for which a tentative approval was public noticed by the Commissioner of the Tennessee Department of Health and Environment on March 9, 1990, if the county commission of the county in which the proposed landfill is to be located did not "opt into" the provisions of T.C.A. 68-31-701, et seq., until March 12, 1990.

III. ANALYSIS

With your request to this Office, you have enclosed a copy of a Public Notice issued by the Tennessee Department of Health and Environment ("TDHE") on March 9, 1990, concerning an application to construct and operate a sanitary landfill in Roane County. You have also enclosed a form resolution that you state was adopted by the Roane County Commission on March 12, 1990, so as to make the provisions of Part 7 of the Tennessee Solid Waste Disposal Control Act, codified at T.C.A. 68-31-701, et seq. (1989 Supp.) ("the Act"), applicable to Roane County as of that date.

Pursuant to T.C.A. 68-31-707(a), a local legislative body must "opt into" the provisions of the Act by approving those provisions by a two-thirds (2/3) vote before those provisions become effective in that particular locality. Those counties or municipalities that choose to be subject to

the provisions of the Act must then consider certain listed criteria in determining whether approve or disapprove the siting of a sanitary landfill within the jurisdictional boundaries of the local governmental unit or within one mile of an affected municipality. T.C.A. 68-31-704. Moreover, "[n]o construction shall be initiated for a new landfill . . . until the plans for such new landfill have been submitted to and approved by" the local legislative body. T.C.A. 68-31-701. The Act was passed by the Tennessee General Assembly as 1989 Tenn. Pub. Acts Ch. 515, 2-7 and 9-13. Pursuant to s 13 of that Public Chapter:

> This act shall take effect upon becoming a law, the public welfare requiring it and shall be only applicable to any application for permit/registration for which a tentative approval/determination has not been public noticed by the commissioner.

In the situation presented in your request to this Office, a Public Notice of the tentative determination on the permit application was issued on March 9, 1990, three days prior to the provisions of the Act becoming effective in Roane County, although several months after the June 2, 1989 effective date of the Act. The question thus arises whether the applicability of the Act is tied to the June 2, 1989 effective date of Public Chapter 515 or to the date on which a particular local governmental body may choose to become subject to the provisions of the Act. For the reasons set forth below, we believe the applicability of the Act is tied to the date on which a particular local governmental body "opts into" those provisions.

Pursuant to s 8 of Public Chapter 515, now codified as T.C.A. 68-31-105(k):

> The commissioner shall not review or approve any construction for any new landfill for solid waste disposal or for solid waste processing in any county or municipality which has adopted the provisions of 68-31-701 - 68-31-705 and 68-31-707 until such construction has been approved in accordance with the provisions of such sections.

The Public Chapter thus establishes two tracks along which applications for construction of solid waste landfills may proceed. If the application for construction of the landfill involves a site in a locality which has chosen to "opt into" the provisions of the Act, the Commissioner of TDHE may not review the application until the local government first approves the application. On the other hand, if the application involves a site in a locality that has not yet "opted into" the Act, the Commissioner may review the application when submitted, issue a public notice regarding that application, and either approve or disapprove that application.

The General Assembly, in addressing the applicability of the Act to landfill applications, determined that applications that had proceeded down the track that does not require prior local governmental approval should, after reaching a particular point in the application process, be allowed to continue on that path. In discussing the time at which the provisions of the Act become effective, the Senate sponsor on the legislation, Senator Riley Darnell, engaged in the following dialogue:

SEN. DARNELL: If they've reached the notice stage in their process, then it won't have any effect. They'll continue just like they were. This bill won't stop that. In other words, it's not going to cut somebody off right in the middle of the process. Once they're at that point, they'll go on under whatever they were doing.

SEN. PATTEN: And also, the particular county or city legislative body would have to adopt this also I guess for it to be effective. Thank you.

Senate Session, Discussion of S.B. 853, H.B. 741 (May 25, 1989) (Tape S-137).

In construing the meaning of a statute, effect must be given to the legislative intent, which is fundamental and paramount. Mercy v. Olsen, 672 S.W. 2d 196, 200 (Tenn. 1984). Moreover, every word and phrase of a statute must be given some meaning. United Canners, Inc. v. King, 696 S.W. 2d 525, 527 (Tenn. 1985). In this instance, in order to give effect to T.C.A. 68-31-105(k)'s recognition of two separate methods of seeking landfill permits, and in order to give effect to the legislative intent that applicants not be "cut ... off right in the middle of the process," we believe a landfill permit application that is public noticed by the Commissioner need not be withdrawn from the process in order to comply with the Act if the locality in which the landfill is to be sited does not choose to "opt into" the Act's provisions until after the permit application has been public noticed by the Commissioner.

OPINION NO. U90-63 - MARCH 29, 1990

T.C.A. Section(s): 39-14-504.

Requested by: Honorable Doug Gunnels, State Representative.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Solicitor General; and R. Tim Wurz, Assistant Attorney General.

Constitutionality of T.C.A. 39-14-504 and of Loudon County Resolution based upon that statute.

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I. QUESTIONS

1. Are there any constitutional objections to the provisions of T.C.A. 39-14-504?

2. Are there any constitutional objections to the Loudon County resolution implementing the provisions of T.C.A. 39-14-504?

II. OPINIONS

1. It is the opinion of this Office that, as opined in Op. Tenn. Atty. Gen. 90-05 (January 11, 1990), the penalty provisions of T.C.A. 39-14-504(d) unconstitutionally delegate the legislative power of the Tennessee General Assembly to county legislative bodies. It is the further opinion of this Office, however, that the remaining provisions of T.C.A. 39-14-504 are, as written, constitutional.

2. It is the opinion of this Office that the Loudon County zoning resolution amendment, if adopted pursuant to the provisions of T.C.A. 13-7-105 and if published in accordance with provisions of T.C.A. 39-14-504(c), is constitutional.

III. ANALYSIS

Pursuant to the provisions of T.C.A. 39-14-504, the Tennessee General Assembly grants to county legislative bodies the power to "impose regulations upon the collection and storage of garbage, litter, refuse and rubbish" in those counties. T.C.A. 39-14-504(a). The statute further provides that county regulations may allow the county to clean up any property not conforming to the regulations and then demand that the costs expended by the county be reimbursed by the offending property owner within sixty (60) days. T.C.A. 39-14-504(b)(1). If the property owner does not so reimburse the county, the county may file with the county register of deeds a lien on

the property in the amount of the unpaid cleanup costs. T.C.A. 39-14-504(b)(1) and (b)(3). If the property owner disputes the amount of the lien filed on the site, however, the matter may be submitted to the local chancery court for resolution. T.C.A. 39-14-504(b)(2). Once the property amount on the lien has been determined, that lien remains on the property until fully satisfied. T.C.A. 39-14-504(b)(3).

Any such resolution adopted by a local governing body shall not take effect until first published in a newspaper of general circulation in the county. T.C.A. 39-14-504(c). Moreover, no adopted county resolution and no provisions of T.C.A. 39-14-504 is to be construed as applying to any business operated pursuant to the Tennessee Solid Waste Disposal Act, T.C.A. 68-31-101, et seq. T.C.A. 39-14-504(e).

Finally, T.C.A. 39-14-504(d) provides that any violation of the provisions of a county resolution adopted pursuant to T.C.A. 39-14-504(a) "shall be punished as a violation of this part in accordance with the provisions of T.C.A. 39-14-502." In turn, T.C.A. 39-14-502 regulates "criminal littering" and provides that such an offense constitutes a Class C misdemeanor, T.C.A. 39-14-502(b), but may also be punished by an order that the offender remove litter or other substances discarded or discharged or by an order that the offender engage in community service related to litter control or recycling. T.C.A. 39-14-502(c).

I.

In your opinion request, you first inquire whether "there are any constitutional objections to" T.C.A. 39-14-504. As you have noted in your request, this Office has previously opined that the penalty provision of T.C.A. 39-14-504(d) "is an unconstitutional delegation of power by the legislature to county legislative bodies, Tenn. Const. art. II, sec. 1, 3 and is violative of the requirement that the law of the land be general, Tenn. Const. art. I, sec. 8." Op. Tenn. Atty. Gen. 90-05 (January 11, 1990). We find no constitutional problems, however, with the other four (4) subsections of T.C.A. 39-14-504.

T.C.A. 39-14-504(a) grants to county legislative bodies the authority to enact resolutions concerning the "collection and storage of garbage, litter, refuse and rubbish." Similarly, T.C.A. 13-7-101(a)(1) empowers county legislative bodies to regulate "uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes." The Tennessee Supreme Court has recognized that such statutes vest county legislative bodies "with broad powers to enact and to amend zoning regulations governing the use of land." Fallin v Knox County Board of Commissioners, 656 S.W. 2d 338, 342 (Tenn. 1983). The grant of authority by the legislature to county legislative bodies in T.C.A. 39-14-504(a) to so regulate local land use matters thus poses no constitutional problems.

The lien provisions of T.C.A. 39-14-504(b) similarly do not, as written, violate any constitutional provision. Moreover, any lien filed upon property pursuant to this provision may be challenged for accuracy in the chancery courts of the State and may be subjected to additional judicial review as provided in the Tennessee Rules of Appellate Procedure.

Subsection (c) of T.C.A. 39-14-504 provides for local publication of any resolution prior to that resolution taking effect. Such publication provides notice to the community of the existence and applicability of the resolution's lien provisions. The amount and type of notice necessary to satisfy constitutional due process requirements is that notice which is reasonably calculated, under all the circumstances, to apprise individuals of the existence of any action or of a requirement with which individuals must comply. See, e.g., Baggett v Baggett, 541 S.W. 2d 407, 410 (Tenn. 1976). It is the opinion of this Office that the statute's requirement that the county legislative body's resolution be published in a newspaper of general circulation in the county is sufficient notice to place individuals on notice of the resolution's existence, terms and applicability.

Pursuant to T.C.A. 39-14-504(e), the provisions of the statute shall not apply to any business operated pursuant to the Tennessee Solid Waste Disposal Act. We do not believe, however, that such a legislative exemption would violate the equal protection provisions of the State or federal constitutions. The Fourteenth Amendment to the United States Constitution and Article I, sec. 8 of the Tennessee Constitution provide that no person shall de denied equal protection of the laws. As stated by the Tennessee Supreme Court in Genesco, Inc. v Woods, 578 S.W. 2d 639 (Tenn. 1979), "The phrase 'equal protection' . . . requires that all persons and entities shall be treated the same under like circumstances and conditions, both as to privileges conferred and liabilities incurred. [Citation omitted.]" The Court continued by recognizing, however, that the equal protection clauses do not require absolute equality, but rather require only that the basis for unequal treatment bear "some relevance to the purpose for which the classification is made." Id., citing Rinaldi v Yeager, 384 U.S. 305, 309, 86 S. Ct. 1497, 1499, 16 L. Ed. 2d 577 (1966).

If a classification in a statute interferes with a fundamental right or operates to the peculiar disadvantage of a suspect class, that classification is subject to strict scrutiny. See, e.g., Massachusetts Board of Retirement v Murgia, 427 U.S. 307, 312, 96 S. Ct. 2562, 2566, 49 L. Ed. 2d 520 (1976). In such cases, the legislation may be upheld against constitutional attack only if it is necessary to promote a compelling state interest, Zablocki v Redhail, 434 U.S. 374, 388, 98 S. Ct. 673, 682, 54 L. Ed. 2d 618 (1978), and only if the means employed are the least intrusive or restrictive available and are necessary to achieve the desired end. Georges v Carney, 546 F. Supp. 469, 473 (N.D. Ill. 1982), aff'd 691 F. 2d 297 (7th Cir. 1982). If, however, classifications are created pursuant to economic regulation not affecting fundamental rights or suspect classes, that legislation can be constitutionally sustained if a rational basis exists for such legislative action. New Orleans v Dukes, 427 U.S. 297, 303, 96 S. Ct. 2513, 2516-17, 49 L. Ed. 2d 511 (1976).

The maintenance and collection of garbage, litter, refuse and rubbish on private property does not involve the exercise of a "fundamental right" or otherwise implicate a "suspect class" of individuals. Thus, if a rational basis exists for the disparate treatment of solid waste disposers permitted under the Tennessee Solid Waste Disposal Act and private citizens storing garbage, litter, refuse or rubbish on their own property, we do not believe that an equal protection challenge to T.C.A. 39-14-504(e) would be sustained by the courts.

Clearly, such a rational basis does exist for the difference in treatment of the two classes of storers of waste material. A person or company operating a solid waste disposal facility pursuant

to T.C.A. 68-31-101, et seq., must comply with the many requirements found in statutes and regulations governing the storage and disposal of solid waste. Those requirements are also designed to protect the environment and the public and impose severe sanctions upon violators of the requirements. Moreover, entities regulated under the Tennessee Solid Waste Disposal Act are engaged in the legitimate business of collecting and storing solid waste. To require that such businesses remove solid waste from their property would defeat the purpose for the very existence of the businesses. For those reasons, it is the opinion of this Office that the Tennessee General Assembly could rationally have decided that operations subject to the requirements of the Tennessee Solid Waste Disposal Act need not also be subject to the county lien resolution authorized by T.C.A. 39-14-504.

II.

You have inquired whether the amendment itself violates any constitutional provisions. Pursuant to T.C.A. 13-7-1-5, county legislative bodies may amend provisions of applicable zoning ordinances if the requirements of that statutory section are met. Because we have been given no background information concerning the passage of the amendment, we assume that the county has complied with all procedural requirements listed in T.C.A. 13-7-105 for amending local zoning resolutions, and has complied with the publication requirement of T.C.A. 39-14-504(c).

T.C.A. 39-14-504(a) provides that regulations imposed upon the collection and storage of garbage, litter, refuse and rubbish by county resolutions must be at least as stringent as the provisions of Part 5 of Title 39 of the Tennessee Code Annotated. We have examined the provisions of the Loudon County zoning resolution amendment. The amendment, for the most part, tracks or paraphrases the language of T.C.A. 39-14-504. In other instances, the county resolution amendment is more stringent than the State statute but does not implicate any constitutional provisions. We believe, therefore, that the amendment, if adopted and published in accordance with statutory requirements, does not contravene provisions of either the State or federal constitutions.

OPINION NO. 90-05 - JANUARY 11, 1990

T.C.A. Section(s): 39-14-504(d).

Requested by: Honorable Clark K. Kirkpatrick, District Attorney General, Second Judicial District.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Solicitor General; and Gordon W. Smith, Assistant Attorney General.

Constitutionality of Tenn. Code Ann. 39-14-504(d) (1989 Supp.).

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I. QUESTION

Is Tennessee Code Annotated 39-14-504(d) (1989 Supp.), which imposes criminal punishment for the violation of regulations adopted by county legislative bodies for the collection and storage of garbage, litter, refuse and rubbish, constitutional?

II. OPINION

Section 39-14-504(d) (1989 Supp.), Tennessee Code Annotated, which imposes criminal punishment for the violation of regulations adopted by county legislative bodies for the collection and storage of garbage, litter, refuse and rubbish, is an unconstitutional delegation of power by the legislature to county legislative bodies (Tennessee Constitution Article II, Sections 1 and 3) and is violative of the requirement that the law of the land be general (Tennessee Constitution Article I, Section 8).

III. ANALYSIS

Section 39-14-504 (1989 Supp.), Tennessee Code Annotated, effective November 1, 1989, provides:

> (a) County legislative bodies may, by resolution, impose regulations upon the collection and storage of garbage, refuse and rubbish. Such regulation shall be at least as stringent as the provisions of this part.
>
> (b) (1) The regulations promulgated in accordance with the provisions of subsection (a) may grant authority for the county to require property owners to conform their property to the regulations by removal of garbage, litter, refuse and rubbish. The county shall send a statement to the owner itemizing the cost of the removal. If the owner fails to

reimburse the county for the cost of the removal within sixty days, the statement shall constitute a lien upon the land. The statement shall constitute a lien upon the property as of the date the notice is filed and shall have priority from the day of the filing of notice, but shall not affect, or have priority over, any valid lien, right, or interest in the property duly recorded, or duly perfected by filing, prior to the filing of the notice and shall not have priority over any real estate tax liens, whether attaching on the property before or after the filing of the notice.

(2) If such property owner is aggrieved by the amount of the lien filed , such owner may submit the matter to the chancery court of the county in which the property is located to determine the appropriate amount of the lien. A decision of that court may be appealed according to the Tennessee Rules of Appellate Procedure.

(3) The lien provided in this section shall be entered in the records of the Register of Deeds of the county in which the property lies. Such lien shall be satisfied to the extent of the value of the consideration received at the time of the transfer of ownership, and if the lien is not fully satisfied at the time of transfer, it shall remain a lien upon the property until it is fully satisfied.

(c) Each resolution adopted in accordance with subsection (a), or the caption and a complete summary of the resolution, shall be published after its final passage in a newspaper of general circulation in the county. No such resolution shall take effect until the publication.

(d) Any violation of the provisions or regulations adopted pursuant to subsection (a) shall be punished as a violation of this part in accordance with the provisions of Section 39-14-502.

(e) No provision in this section shall be construed as applying to any business being operated pursuant to Title 68, Chapter 31.

Section 39-14-502, referred to in subsection (d), above, makes criminal littering a Class C misdemeanor. See T.C.A. 39-14-502 (b) (1989 Supp.).

Article II, Section 1, of the Constitution of Tennessee divides the powers of the state government into the legislative, executive and judicial departments. The legislative authority of the State is vested in the General Assembly and that power may not be delegated indiscriminately to other bodies. See Article II, Section 3, of the Constitution of Tennessee. While the General Assembly may delegate rulemaking and administrative authority to governmental agencies, see e.g. McQueen v. McCanless, 182 Tenn. 453, 460, 187 S.W. 2d 630 (1945), the delegation by the legislature of the power to make laws is unconstitutional. See Richardson v. Reese, 165 Tenn. 661, 667, 57 S.W. 2d 797 (1933).

In the case of Lobelville v. McCanless, 214 Tenn. 460, 463-64, 381 S.W. 2d 273 (1964), the Tennessee Supreme Court adopted a "concise and accurate" test of whether a grant of power by

the legislature is unlawful. The Lobelville Court, citing 16 C.J.S. Constitutional Law, Sec. 133, pp.560-61, held:

> The true distinction is between the delegation of power to make law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law . . .

Id.

Furthermore, Article I, Section 8, of the Constitution of Tennessee provides:

> That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land.

The term, "law of the land," means a general and public law, operating equally upon every member of the community. Jones' Heirs v. Perry, 18 Tenn. (10 Yerg.) 59, 71 (1836). It is well-settled that the legislature cannot enact a law making certain acts a crime only in one county because this would amount to a suspension of the general law in that county. See Jones v. Haynes, 221 Tenn. 50, 54, 424 S.W. 2d 197 (1968); State ex rel. Hamby v. Cummings, 166 Tenn. 460, 464, 63 S.W. 2d 515 (1933).

In State v. Toole, 224 Tenn. 491, 457 S.W. 2d 269 (1970), the Supreme Court held that a statute authorizing counties to regulate and license the maintenance of automobile graveyards and to prescribe fines and other punishments for violations was unconstitutional as violative of the rule against delegation of legislative powers and the requirement that the law of the land be general. The Court stated:

> The State justifies this legislation by citing Wright v. Cunningham, 115 Tenn. 445, 91 S.W. 293 (1905), and Gamble v. State, 206 Tenn. 376, 333 S.W. 2d 816 (1960). Wright v. Cunningham recognized that the legislature might delegate certain powers appropriate to the operation of counties to the quarterly county court. Gamble v. State sustained the validity of a private act applicable to Davidson County authorizing the Davidson County Board of Health to make necessary rules to protect the County's health. In that act the legislature prescribed the fine for the violation of the health rules. Neither of these cases, nor any of the other cases cited by the State relating to municipalities, have anything to do with the question whether the legislature can delegate to a county authority to create crimes.
>
> These citations are aside from the mark not only for the reason mentioned, but, because the problem we have here is not solely one of delegation, it is rather, whether the legislature can authorize a county to declare conduct valid in other counties to be criminal in that county and by this process circumvent not only the rule against delegation of powers peculiarly the province of the legislature (that of creating crimes) but also by this process to circumvent the requirements of Article I, Section 8, that the law of the land be general.

> If, as we held in Jones v. Haynes, 221 Tenn. 50, 424 S.W. 2d 197 (1968), the legislature cannot enact a law making the sale of fireworks a crime in Fentress County alone, because this would amount to a suspension of the general law against inhabitants of that county, it would seem to be an *a fortiori* proposition that the legislature cannot delegate to a count authority to do this in its place and stead.

224 Tenn. at 493-494.

By enacting T.C.A. 39-14-504(d), the Legislature plainly has delegated to county legislative bodies the power to impose by resolution criminal laws regarding the collection and storage of garbage, litter, refuse and rubbish; and this statute would, in effect, suspend the general law against the inhabitants of any county in which such regulations are promulgated. Accordingly, it is the opinion of this office that T.C.A. 39-14-504(d) is violative of Article II, Sections 1 and 3, and Article I, Section 8, of the Constitution of Tennessee.

OPINION NO. U89-148 - DECEMBER 28, 1989

Requested by: Honorable James M. Henry, State Representative.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Solicitor General; and R. Tim Wurz, Assistant Attorney General.

Local government control of infectious waste disposal.

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I. QUESTION

Do local governments retain "veto power" over the disposal of infectious wastes within their jurisdictions after the enactment of 1989 Tenn. Pub. Acts, Ch. 552?

II. OPINION

It is the opinion of this Office that local governments do not retain absolute "veto power" over the disposal of infectious wastes within their jurisdictions after the enactments of 1989 Tenn. Pub. Acts, Ch. 552, and 1989 Tenn. Pub. Acts, Ch. 515.

III. ANALYSIS

The Tennessee Hazardous Waste Management Act of 1977 ("Hazardous Waste Act"), T.C.A. 68-46-101, et seq., includes in its definition of "hazardous waste" such waste that, "because of its . . . infectious characteristics," may cause or significantly contribute to an increase in mortality, serious irreversible illness, incapacitating reversible illness, or may pose a substantial present or potential hazard to humans or to the environment. T.C.A. 68-46-104(7). Thus, waste with certain "infectious characteristics" defined by statute is hazardous waste and should be stored, treated or disposed as hazardous waste in facilities regulated under the Hazardous Waste Act.

The citing of hazardous waste storage, treatment or disposal facilities in Tennessee is no longer subject to an absolute local government "veto" of the location chosen for the proposed facility.[1] Rather, pursuant to the provisions of 1989 Tenn. Pub. Acts, Ch. 552, local governments are afforded the opportunity to evaluate certain statutorily specified criteria and, based upon that evaluation, determine whether they believe that the subject facility should be located within their jurisdictions. See T.C.A. 68-46-108(f)(1) & (2) (1989 Supp.). Any decision by the local

1. In Op. Tenn. Atty. Gen. 89-56 (April 17, 1989) and Op. Tenn. Atty. Gen. 89-57 (April 18, 1989), we opined, respectively, that the local government "vetoes" previously provided for commercial hazardous waste storage, treatment and disposal facilities in T.C.A. 68-46-108(f) and previously provided for commercial hazardous waste landfill facilities in T.C.A. 68-46-219, were unconstitutional.

governmental body is then reviewable by the Commissioner of the Tennessee Department of Health and Environment pursuant to T.C.A. 68-46-108(f)(3) (1989 Supp.).

While the siting of facilities for the storage, treatment or disposal of certain "wastes with infectious characteristics" is regulated under the Hazardous Waste Act, the Tennessee Solid Waste Disposal Control Board has adopted rules that would also regulate the disposal of certain "infectious wastes" under the Tennessee Solid Waste Disposal Act, T.C.A. 68-31-101, et seq.[2] Similarly, however, no absolute local government "veto power" over the disposal in solid waste landfills of such "infectious wastes" still exists under Tennessee law. Pursuant to the provisions of T.C.A. 68-31-701, et seq. (enacted as 1989 Tenn. Pub. Acts, Ch. 515), local governments that opt into that statutory scheme are permitted to evaluate the propriety of siting a solid waste statutorily-listed criteria. See T.C.A. 68-31-704(b). Any local government determination, however, is subject to a *de novo* judicial review before the chancery court in the county in which the landfill is proposed to be located. See T.C.A. 68-31-704(c).

2. Pursuant to these proposed rules, which have not as yet been approved by this Office, certain "infectious wastes" would be treated as "special wastes" that may be disposed in solid waste landfills with the written approval of the Commissioner of the Tennessee Department of Health and Environment. We have been advised, however, that the proposed rules will be the subject of further consideration by the Board at its meeting on January 3, 1990.

OPINION NO. 89-135 - NOVEMBER 1, 1989

Requested by: Honorable Calvin Moore, State Representative.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Solicitor General; and R. Tim Wurz, Assistant Attorney General.

Constitutionality of exemption for municipal or county owned and/ or operated landfills in 1989 Tenn. Pub. Acts Ch. 515, sec. 12.

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I. QUESTIONS

1. Is the exemption in 1989 Tenn. Pub. Acts Ch. 515, s 12, for municipal or county owned and/or operated landfills constitutional?

2. Would the Lawrence County/Lawrenceburg Solid Waste Management Board be exempt under 1989 Tenn. Pub. Acts Ch. 515, s 12, from that Chapter's requirements?

3. Would a municipal or county owned and/or operated landfill be exempt from the requirements of 1989 Tenn. Pub. Acts Ch. 515 even if the municipality or county owning and/or operating the landfill wishes to locate that landfill in a different municipality or county?

II. OPINIONS

1. It is the opinion of this Office that the exemption in 1989 Tenn. Pub. Acts Ch. 515, s 12, for municipal or county owned and/or operated landfills is constitutional.

2. It is the opinion of this Office that the Lawrence County/Lawrenceburg Solid Waste Management Board would be exempt under 1989 Tenn. Pub. Acts Ch. 515, s 12, from that Chapter's requirements if the Board is an arm or agent of either a county or municipality and if the Board is acting within the scope of its authority by owning and/or operating a landfill.

3. It is the opinion of this Office that a municipal or county owned and/or operated landfill would be exempt from the requirements of 1989 Tenn. Pub. Acts Ch. 515 even if the municipality or county owning and/or operating the landfill wishes to locate that landfill in a different municipality or county so long as it uses that landfill for the disposal of its own refuse.

III. ANALYSIS

New statutory provisions enacted as 1989 Tenn. Pub. Acts Ch. 515 (a copy of which is attached) establish a procedure for the approval of applications for the construction of new landfills for

solid waste disposal or processing. Pursuant to the provisions of Public Chapter 515, new landfills for the disposal or processing of solid waste may not be constructed without the approval of the county legislative body and/or the municipal governing body of the locality where the proposed landfill would be located. 1989 Tenn. Pub. Acts Ch. 515, s 3. The legislation provides a detailed plan for the dissemination of notice to the public regarding the proposed landfill application. 1989 Tenn. Pub. Acts Ch. 515, s 4. Additionally, the legislation details eight (8) criteria which must be considered by the local governmental legislative body(ies) in determining whether to approve the application for landfill construction. 1989 Tenn. Pub. Acts. Ch. 515, s 5.

1. The questions presented for analysis involve 1989 Tenn. Pub. Acts Ch. 515, s 12, which provides that "[t]he provisions of this act shall not apply to any municipal or county owned and/or operated landfill." The first inquiry is whether 1989 Tenn. Pub. Acts Ch. 515, s 12, unconstitutionally discriminates against non-county or non-municipal owners and/or operators of landfills for solid waste disposal or processing. The Fourteenth Amendment to the United States Constitution and Article I, s 8 of the Tennessee Constitution provide that no person shall be denied equal protection of the laws. As stated by the Tennessee Supreme Court in Genesco, Inc. v. Woods, 578 S.W. 2d 639, 641 (Tenn.1979):

> The phrase 'equal protection' ... requires that all persons and entities shall be treated the same under like circumstances and conditions, both as to privileges conferred and liabilities incurred. [Citation omitted].

The Court continued by recognizing, however, that these equal protection clauses do not require absolute equality, but rather require only that the basis for unequal treatment bear "some relevance to the purpose for which the classification is made." Id., citing Rinaldi v. Yeager, 384 U.S. 305, 309, 86 S. Ct. 1497, 1499, 16 L. Ed. 2d 577 (1966).

If a classification in a statute interferes with a fundamental right or operates to the peculiar disadvantage of a suspect class, that classification is subject to strict scrutiny. See, e.g., Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 312, 96 S. Ct. 2562, 2566, 49 L. Ed. 2d 520 (1976). In such cases, the legislation may be upheld against constitutional attack only if it is necessary to promote a compelling state interest, Zablocki v. Redhail, 434 U.S. 374, 388, 98 S. Ct. 673, 682, 54 L. Ed. 2d 618 (1978), and only if the means employed are the least intrusive or restrictive available and are necessary to achieve the desired end. Georges v. Carney, 546 F. SUPP. 469, 473 (N.D. Ill.), aff'd 691 F.2d 297 (7th Cir.1982). If, however, classifications are created pursuant to economic regulation not affecting fundamental rights or suspect classes, that legislation can be constitutionally sustained if a rational basis exists for such legislative action. New Orleans v. Dukes, 427 U.S. 297, 303, 96 S. Ct. 2513, 2516-17, 49 L. Ed. 2d 511 (1976).

Neither the ownership nor the operation of a solid waste landfill involves a "fundamental right" or operates to the disadvantage of a "suspect class." Thus, if a rational basis exists for the legislative creation of disparate treatment of private owners/operators of landfills and local government owners/operators of landfills, we do not believe that an equal protection challenge to the legislation would be sustained.

Counties and municipalities in Tennessee are not obligated to own and/or operate sanitary landfills. Pursuant to T.C.A. 5-19-101 and -107, counties are authorized, although not required, to provide "garbage and rubbish" collection and disposal services. Similarly, T.C.A. 6-19-101(19) empowers, but does not require, cities to "collect and dispose of . . . garbage, refuse, or other waste . . ." See also Op. Tenn. Atty. Gen. 87-79 (April 30, 1987). Thus, when counties or municipalities choose to own and/or operate a landfill, they do so through voluntary participation in the marketplace. See generally, e.g., Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 96 S. Ct. 2488, 49 L. Ed. 2d 220 (1976) (discussing "market participant exception" to Commerce Clause), and its progeny. Nevertheless, in choosing to own and/or operate a landfill for the disposal of a county's or municipality's own refuse, that county or municipality may well be exercising a governmental power.

The distinction between governmental and proprietary powers exercised by local governments has been succinctly analyzed by the Tennessee Supreme Court in the case of Gillespie v. Rhea County, 191 Tenn. 487, 235 S.W. 2d 4 (1950). In Gillespie, the Court stated:

> Ordinarily it might be said that when a County or City is exercising its legislative or governmental powers it is doing something with respect to the public duty generally while in the exercise of its private or proprietary powers it is doing something affecting the corporate body alone and not the public generally.

Id. at 491, 235 S.W. 2d at 6. See also Jones v. Haynes, 221 Tenn. 50, 53, 424 S.W. 2d 197, 198 (1968). Furthermore, the Gillespie Court recognized the fact that a local government acts in its governmental or legislative capacity even though a State statute merely authorizes and does not mandate such action. Gillespie, *supra*, 191 Tenn. at 492, 235 S.W. 2d at 6.

There can be no question that counties and municipalities have an interest in ensuring that refuse or garbage collected within their jurisdictions is disposed of in a proper manner and may exercise their governmental powers toward that end. Thus, we believe that the General Assembly could rationally choose to exempt county or municipal owned and/or operated landfills from the requirements of 1989 Tenn. Pub. Acts Ch. 515. By so doing, the legislature could have intended to assist local governments in accomplishing a governmental function by allowing a less onerous means for county or municipal disposal of material that could pose a public health hazard.

This Office is of the opinion that a rational basis exists to exempt county or municipal owned and/or operated landfills from the requirements of 1989 Tenn. Pub. Acts Ch. 515. It is the opinion of this Office that such an exemption is, therefore, constitutional.

2. The next inquiry is whether the Lawrence County/Lawrenceburg Solid Waste Management Board would be exempted from the requirements of Public Chapter 515. In interpreting a statute such as 1989 Tenn. Pub. Acts. Ch. 515, s 12, the words of the legislation are to be given their natural and ordinary meaning without a forced construction that would limit or extend that meaning. See, e.g., State v. Thomas, 635 S.W. 2d 114, 116 (Tenn.1982). Moreover, the principle is well-established in Tennessee law that a county or municipality may act through

agents or committees as may any other corporation. See Beck v. Puckett, 2 Shannon 490, 497 (1877). Thus, if the Lawrence County/Lawrenceburg Solid Waste Management Board is an arm or governmental agent of either a county or municipality and is acting within the scope of its authority in owning and/or operating a landfill for the disposal or processing of solid waste, the exemption provisions of 1989 Tenn. Pub. Acts Ch. 515, s 12, would apply. If, however, the Lawrence County/Lawrenceburg Solid Waste Management Board is not an arm or agent of either a county or a municipality, the provisions of 1989 Tenn. Pub. Acts Ch. 515, s 12, are inapplicable to it.

3. The final inquiry is whether the exemption in 1989 Tenn. Pub. Acts Ch. 515 for counties and municipalities extends to counties and municipalities seeking to locate landfills outside their respective borders. As stated above in the response to Question 1, it is the opinion of this Office that the General Assembly could rationally have determined that counties and municipalities are entitled to special legislative consideration in fulfilling their governmental functions.

Such a rational basis would seem to exist whether the local government chose to fulfill its governmental function to dispose of garbage and refuse inside or outside its jurisdictional boundaries, as long as contracts or arrangements for such disposal are entered into legally. Indeed, several years prior to the adoption of 1989 Tenn. Pub. Acts Ch. 515, this Office opined that the "rather broad powers granted . . . to counties to provide garbage and rubbish disposal service (including sanitary landfills), . . . are without geographic limitation as to where such sanitary landfills may be established and operated."

Op. Tenn. Atty. Gen. 85-31 (Feb. 8, 1985). The exemption for local governments appears rationally related to a legitimate legislative purpose, however, only so long as the county or municipality actually owns and/or operates the landfill in question for disposal of its own refuse.

OPINION NO. 89-126 - SEPTEMBER 29, 1989

Requested by: The Honorable Larry C. Huskey, State Representative.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Chief Deputy Attorney General; and J. Robert Walker, Assistant Attorney General.

Authority of Counties to contract for solid waste disposal services.

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I. QUESTION

Whether or not a Waste Supply Agreement executed by the Cocke County Executive was validly executed and delivered even though it differed in some favorable respects for the county from the form of the agreement previously approved by the Cocke County Commission?

II. OPINION

It is the opinion of this Office that the agreement executed by the Cocke County Executive has not been properly authorized by the Cocke County Commission. Whether or not the county would be estopped to deny the validity of the agreement for equitable considerations depends upon a variety of factors. This Office does not possess a sufficient record of the facts in this matter to make such a judgment.

III. ANALYSIS

On July 18, 1988, the Cocke County Commission voted to accept a waste supply agreement between the county and a private corporation regarding the delivery of solid wastes by Cocke County to a disposal and resource recovery facility to be constructed by the corporation in Cocke County. Subsequent to this action, the Cocke County Executive negotiated with the corporation to modify the agreement in several respects. Although this Office has not reviewed the initial document, it appears that the changes generally benefit Cocke County.

The Cocke County Executive subsequently executed the modified agreement on behalf of Cocke County on August 23, 1988. The modified agreement was not resubmitted to the county commission prior to its execution by the county executive. A similar agreement has been executed on behalf of Sevier County for the disposal of solid wastes delivered by Sevier County to the same facility. The substance of these agreements are discussed in detail in a related opinion. See Op. Tenn. Atty. Gen. 89-127 (Sept. 29, 1989).

A "motion" was made at the Cocke County Commission's meeting on September 19, 1988 to rescind the Commission's prior approval. The motion failed. The county commission subsequently voted on October 17, 1988 and November 21, 1988 against resolutions intended to "dissolve" the contract between Cocke County and the corporation.

As a general rule, the power to make contracts on behalf of a county rests in the county governing body. 10 McQuillin, Municipal Corporations s 29.15 (1981); 20 C.J.S. Counties s 175 (1940). Absent statutory authority, no individual county officer has authority to bind the credit of the county. See Seeber v. Watlington, 192 Tenn. 521, 241 S.W. 2d 553 (1951).

Various statutes provide authority for counties to contract with private operators of solid waste disposal systems. T.C.A. 5-19-103 ("Garbage and Rubbish Collection and Disposal Services"); 7-54-105 ("Energy Production Facilities"); and 7-58-103 ("Resource Recovery and Solid Waste Disposal"). While the language of each of these statutes varies, all require action by the county legislative body for the proper exercise of this authority.

It appears that Cocke County may have relied upon T.C.A. 5-19-103 in negotiating the agreement in question. This statute provides that the county legislative body may, among several alternatives, authorize garbage collection or disposal services by the following means:

> "(4) Contractual arrangements the county may make between itself and any municipality, any utility or other service district, any private organization or any combination of such entities engaged in garbage and rubbish collection and/or garbage and rubbish disposal services. In the event all such county services are to be rendered exclusively by such contractual arrangements, the contracts involved shall be negotiated by the county executive, shall be subject to the approval of the county legislative body or other governing body and may be administered by the county executive without the appointment of a superintendent, as provided for hereafter, being required."

In effect, the contract negotiated pursuant to this statute is subject to the approval of the county legislative body.

The contract under consideration does not comply with 5-19-103(4) insofar as the Cocke County Commission has formally approved a different contract. The fact that the later contract may contain provisions more favorable to Cocke County than the earlier version approved by the county commission does not alter this conclusion. The statute obviously contemplates that the final, negotiated contract be subject to the approval of the county commission. In this instance, changes were negotiated following approval by the county commission. This circumstance simply falls outside the procedure provided by 5-19-103(4).

Of the two remaining statutes cited above, only T.C.A. 7-54-105 appears to have potential application to the present situation. Subsection (a)(5) of that statute provides counties with the power to "[e]nter into contracts with any person or persons providing for . . . the disposal of solid

waste at an energy production facility" provided the requirements of that statute are met. Section 7-54-104(a) further provides that:

> "Any municipality wishing to bring itself under any one (1) or more of the provisions of this chapter may do so by resolution or ordinance of the governing body of such municipality. Such action may be taken during any stage of the construction, acquisition, development or financing of an energy production facility and shall not be impaired or prejudiced by any previous action taken by or on behalf of such municipality."

The clear implication of this statute is that the county governing body must authorize, by affirmative act, the execution of a contract pursuant to 7-54- 105(a)(3).

While the Cocke County Commission has approved an agreement in this case, it is not the agreement ultimately executed by the county executive. Accordingly, the modified agreement executed by the Cocke County Executive does not appear authorized under 7-54-105(a)(3).

It therefore does not appear that the agreement executed by the Cocke County Executive has been properly authorized by the Cocke County Commission. Whether or not the county would be estopped to deny the validity of the agreement for equitable considerations depends upon a variety of factors. See, e.g., City of Lebanon v. Baird, 756 S.W. 2d 236 (Tenn.1988). This Office does not possess a sufficient record of the facts in this matter to make such a judgment.

OPINION NO. 89-07 - JANUARY 24, 1989

Requested by: Honorable Douglas Henry, Jr., State Senator.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Chief Deputy Attorney General; and Donna J. Smith, Assistant Attorney General.

Commissioner's authority to approve landfill site plan.

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I. QUESTION

Does newly-enacted T.C.A. 68-31-105(j) preclude the Commissioner of the Tennessee Department of Health and Environment from approving a landfill site- plan, submitted in accordance with T.C.A. 68-31-105(b), if the proposed site is located within a 100-year flood plain?

II. OPINION

It is the opinion of this Office that T.C.A. 68-31-105(j) and Rule 1200-1-7-.05(3)(c)1 do not preclude the Commissioner from approving a landfill site- plan for a landfill to be located in a 100-year flood plain, so long as the landfill is designed so that it is not subject to flooding and will not pollute the waters of the State.

III. ANALYSIS

Section 68-31-105(j) of the Tennessee Solid Waste Disposal Act, T.C.A. 68- 31-101 et seq., (hereinafter "the Act") provides:

> The Commissioner shall not approve any plan [for location and construction of a sanitary landfill] submitted in accordance with [T.C.A. 68-31-101(b)] unless the applicant has submitted proof satisfactory to the Commissioner that the geological formation of the proposed site and the design of the proposed facility are capable of containing the disposed wastes to prevent the pollution of waters of the state.

In construing this provision, several rules of statutory construction are particularly pertinent. It is well-settled that the meaning of a statutory provision is to be ascertained by looking first at the plain language of that statute. Oliver v. King, 612 S.W. 2d 152, 153 (1981). The language chosen by the legislature must then be construed so as to give effect to the intent of the General Assembly as expressed and to further the purpose of the statute. Westinghouse Electric Corp. v.

King, 678 S.W. 2d 19, 23 (Tenn.1984), appeal dismissed, 470 U.S. 1075, 105 S. Ct. 1830, 85 L. Ed. 2d 131 (1985). T.C.A. 68-31-105(j) plainly provides that the Commissioner can not approve a landfill site location unless he is satisfied that it will not cause pollution, either due to the geological formations of the site or to the site's design, or both. That provision requires that the Commissioner consider two criteria when approving a landfill site: a) the geological formation(s) within which the landfill will be located and b) the site's design. The term "100-year flood plain" is a term of art, not expressly mentioned in the Act. It refers to a geological formation, specifically, those areas susceptible of being inundated by flood water from any source, which flood has a one percent chance of being equalled or exceeded in any given year. See 44 C.F.R. s 59.1. Before rejecting a landfill location in a 100-year flood plain, the Commissioner must consider whether the landfill will be designed and constructed so that it will not cause pollution. If a landfill site is designed in such a manner as to contain the wastes disposed of therein, even if that site is located within a 100-year flood plain, the Commissioner can approve the site.

This construction of T.C.A. 68-31-105(j) is consistent with the purposes and other provisions of the Act. The purposes of the Act include the provision of safe and sanitary processing and disposal of solid waste in order to protect the public health, safety and welfare, prevent the spread of disease and the creation of nuisances. See T.C.A. 68-31-102. Accordingly, landfill sites in Tennessee must be located, designed, and constructed so as to prevent pollution of waters of the state.

Since flooding of landfills can result in the discharge of pollutants, the regulations promulgated pursuant to the Act require that "[n]o [landfill] site shall be subject to flooding". Rule 1200-1-7-.05(3)(c)1, Official Compilation of the Rules and Regulations of the State of Tennessee. So long as a landfill is constructed so that it is not subject to flooding and pollution of waters of the State will not occur, T.C.A. 68-31-105(j) and Rule 1200-1-7-.05(3)(c)1 do not preclude approval of a site located within a 100-year flood plain.

OPINION NO. 89-01 - JANUARY 3, 1989

Requested by: James E. Hall, Special Assistant to the Governor.

Signed by: Charles W. Burson, Attorney General and Reporter; John Knox Walkup, Chief Deputy Attorney General; and R. Tim Wurz, Assistant Attorney General.

Prohibitions/ Restrictions on importation of solid waste.

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I. QUESTIONS

1. What are the parameters of legislation that would prohibit or restrict large-scale importation of solid wastes from other states into Tennessee for disposal without violating the Commerce Clause of the United States Constitution?

2. For what cause, reason, or purpose could the State place special requirements on out-of-state solid wastes (e.g. differential fees or special certifications)?

3. Can local government bodies prohibit importation/disposal of solid waste within their jurisdictions?

II. OPINIONS

1. A statute, regulation, or ordinance may not operate to close completely a governmental body's borders to interstate commerce, absent evidence that the item transported in interstate commerce poses a significantly different threat than a similar item transported only in intrastate commerce. A statute, regulation, or ordinance that does not result in a complete restriction on the flow of interstate commerce may be upheld if it operates evenhandedly and if any incidental burden on interstate commerce is outweighed by legitimate local concerns. Moreover, a government that participates in the market to offer landfill services may prohibit or restrict importation of out-of-state waste at the publicly-owned landfill as long as the government does not attempt to hoard landfill sites in the jurisdiction or unduly restrict the entry of private landfill operators into the landfill services market.

2. Any cause, reason, or purpose offered by a State to justify imposition of special requirements on out-of-state wastes must be significant and substantial enough to outweigh any incidental burdens that the requirements may have on interstate commerce.

3. Local governmental bodies may restrict or prohibit the importation or disposal of solid waste within their jurisdictions only to the extent allowed state governments as discussed in the answer to Question # 1 of this inquiry.

III. ANALYSIS

I.

The Commerce Clause of the United States Constitution, Art. I, s 8, cl. 3, provides that Congress is given the power "[t]o regulate commerce with foreign nations, and among the several states, and with the Indian tribes." The United States Supreme Court has interpreted the Commerce Clause not only to effectuate an affirmative grant of power to the Congress, but also to forbid the individual states from enacting legislation that unnecessarily burdens the free flow of commerce among the states. See, e.g., White v. Massachusetts Council of Constr. Employers, 460 U.S. 204, 213, 103 S. Ct. 1042, 1047, 75 L. Ed. 2d 1 (1983). Consequently, even in the absence of federal legislation on a subject, a state statute that unnecessarily burdens the free interstate flow of items of commerce may be struck down as violative of Art. I, s 8, cl. 3 of the federal constitution. As Justice Cardozo noted in Baldwin v. G.A.F. Seeling, 294 U.S. 511, 523, 55 S. Ct. 497, 500, 79 L. Ed. 1032 (1935), the Constitution, including the Commerce Clause, "was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division."

The leading case and starting point for any discussion regarding the constitutionality of a state's efforts to prohibit importation of out-of-state waste[1] is the 1978 decision in City of Philadelphia v. New Jersey, 437 U.S. 617, 98 S. Ct. 2531, 57 L. Ed. 2d 475 (1978). In City of Philadelphia, the United States Supreme Court ruled definitively that waste is an item of commerce subject to the protections afforded by the Commerce Clause. Id. at 622-23, 98 S. Ct. at 2535. The Court then concluded that a New Jersey statute that forbade, with a few narrow exceptions, all importation of out-of-state waste into New Jersey was an unconstitutional abrogation of the protections afforded by the Commerce Clause. Id. at 627-28, 98 S. Ct. at 2537-38.

In City of Philadelphia, the Court reiterated that "where simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has been erected." Id. at 624, 98

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1. Your inquiry to this Office refers to the importation of "solid wastes". "Solid waste" as defined in T.C.A. 68-31-103(7) as

> any garbage, refuse, including without limitation recyclable materials when they become discarded, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and any other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under sec. 402 of the Federal Water Pollution Control Act (compiled at 33 U.S.C. sec. 1342), as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954 (compiled at 42 U.S.C. sec. 2011 et seq.) as amended.

See also 42 U.S.C. sec. 6903(27) for the similar definition of "solid waste" under the federal statutory scheme for solid waste disposal.

Throughout this opinion, solid waste is sometimes referred to simply as "waste". While the term "waste" as used in this opinion refers to "solid waste", the principles discussed in this opinion are equally applicable to legislation or ordinances affecting the importation of hazardous waste.

S. Ct. at 2535. Where, however, the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will, of course, depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. Pike v. Bruce Church, Inc., 397 U.S. 137, 142, 90 S. Ct. 844, 847, 25 L. Ed. 2d 174 (1970).

In City of Philadelphia, the Supreme Court found that the questioned New Jersey statute operated to slow or stop the flow of commerce into New Jersey solely for protectionist reasons.[2] New Jersey's effort "to isolate itself from a problem common to many states by erecting a barrier against the movement of interstate trade" was thus improper and in violation of the Commerce Clause of the United States Constitution. City of Philadelphia, *supra*, 437 U.S. at 628, 98 S. Ct. at 2538.

Since the Supreme Court's decision in City of Philadelphia, other courts have invalidated similar overtly protectionist measures attempting to close a state's, county's, or municipality's borders to waste generated elsewhere. See, e.g., Industrial Maintenance Service, Inc. v. Moore, 677 F.Supp. 436 (S.D.W.Va.1987) (executive order prohibited importation of out-of-state waste for disposal in West Virginia); Shayne Bros., Inc. v. Prince George's County, Md., 556 F.Supp. 182 (D.Md.1983) (county ordinances prohibited disposal of out- of-state waste in all county landfills); Browning-Ferris, Inc. v. Anne Arundel Cty., 292 Md. 136, 438 A.2d 269 (1981) (county ordinances prohibited the disposal in, or transportation through, the county of hazardous waste not generated in the county); Dutchess Sanitation v. Town of Plattekill, 51 N.Y.2d. 670, 435 N.Y.S.2d 962, 417 N.E.2d 74 (1980) (town ordinance prohibited anyone from out-of-town from depositing within the town any waste that originated out-of-town). In our opinion, an attempt by the State of Tennessee simply to close its borders to any waste generated outside the State and prohibit the disposal of such waste in Tennessee would similarly be held to violate the Commerce Clause of the United States Constitution.

Despite the holding of City of Philadelphia and its progeny, however, certain state or local restrictions on the flow of interstate commerce have been upheld by the courts in the face of constitutional challenges. For example, in Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 96 S. Ct. 2488, 49 L. Ed. 2d 220 (1976), the Supreme Court for the first time recognized a "market participant exception" to the Commerce Clause. Hughes involved a challenge to a Maryland statute under which the state offered a "bounty" to scrap processors for the destruction of automobiles formerly titled in Maryland. Id. at 797, 96 S. Ct. at 2492. Later amendments to the statute imposed more onerous requirements on only out-of-state processors regarding the title documentation necessary to claim the "bounty" offered by the State of Maryland. Id.

Faced with the unequal treatment they received, compared to the treatment received by Maryland scrap processors, out-of-state processors challenged the Maryland statute on Commerce Clause

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2. New Jersey argued that one of the legislative purposes behind paage of the questioned statute was an effort to conserve the remaining landfill space in New Jersey only for New Jersey generated waste. City of Phildelphia, *supra*, 437 U.S. at 625, 98 S.Ct. at 2536.

and Equal Protection Clause grounds. In examining the Commerce Clause contention, the Supreme Court rejected the necessity of engaging in the balancing test spelled out in Pike v. Bruce Church, Inc., *supra*. The Court also rejected the basic premise "that every action by a State that has the effect of reducing in some manner the flow of goods in interstate commerce is potentially an impermissible burden." Hughes, *supra*, 426 U.S. at 805, 96 S. Ct. at 2495. Instead, the Court concluded that Maryland's actions in this matter were not the type of actions with which the Commerce Clause is concerned. Id. The Court held, "Nothing in the purposes animating the Commerce Clause prohibits a State, in the absence of congressional action, from participating in the market and exercising the right to favor its own citizens over others." Id. at 810, 96 S. Ct. at 2498.

The principles of Hughes were reaffirmed by the Supreme Court in Reeves, Inc. v. Stake, 447 U.S. 429, 436-37, 100 S. Ct. 2271, 2277, 65 L. Ed. 2d 244 (1980), and in White v. Massachusetts Council of Constr. Employers, *supra*, 460 U.S. at 208, 103 S. Ct. at 1044-45. In White, the Court recognized

> that when a state or local government enters the market as a participant it is not subject to the restraints of the Commerce Clause. As we said in Reeves, in this kind of case there is "a single inquiry: whether the challenged 'program constituted direct state participation in the market.' "

Id., quoting Reeves, *supra*, 447 U.S. at 436, n. 7, 100 S. Ct. at 2277, n. 7.

In County Comm'rs of Charles Cty. v. Stevens, 299 Md. 203, 473 A.2d 12 (1984), the Maryland Court of Appeals addressed a problem implicating elements of the United States Supreme Court's decisions in both City of Philadelphia v. New Jersey and Hughes v. Alexandria Scrap Corp. At issue in County Comm'rs was a Charles County regulation that prohibited the disposal in public landfills of Charles County of any garbage, trash, or refuse collected outside Charles County. The regulation clearly applied only to disposal in public landfills within the county, not to private landfills. 299 Md. at ___, 473 A.2d at 14. Complicating the situation in Stevens, however, was the fact that the only landfill in Charles County was publicly owned. Id. at ___, 473 A.2d at 13. As a result, the county regulation operated to restrict the flow of all out-of-county waste into Charles County.

In ruling upon the Commerce Clause challenge to the Charles County regulation, the Maryland Court of Appeals concluded that the County, through the regulation, had entered the market for provision of landfill services. Id. at ___, 473 A.2d at 19. The Commerce Clause was not applicable, therefore, to the activities of a market participant. Id. at ___, 473 A.2d at 20-22. The Court found that "[t]he County has not closed its borders to anyone who wishes to construct landfills within the County . . . Nor has it been shown that the County possesses unique access to potential landfill sites." Id. at ___, 473 A.2d at 21. The "limited" participation by the County in the landfill services market was not sufficient, therefore, to constitute a Commerce Clause violation.[3]

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3. In Reeves, Inc. v. Stake, *supra*, the United States Supreme Court intimated that certain actions by a state as a market participant may remove the questioned activity from its exempt status for purpose of Commerce Clause analysis. The Reeves Court implied that state action to limit access to state-owned natural resources found

A similar result to that reached in Stevens was occasioned by the case of Lefrancois v. State of Rhode Island, 669 F.Supp. 1204 (D.R.I. 1987). Lefrancois involved a Rhode Island statute forbidding disposal of out-of-state waste at a state-subsidized landfill which happened to be the only Rhode Island landfill available for disposal of all categories of non-hazardous solid waste. Id. at 1205.

In examining a Commerce Clause challenge to the statute, the District Court recognized that "a State or local government is not subject to the restrictions of the Commerce Clause when it acts as a 'market participant' as opposed to a 'market regulator'." Id. at 1208. The Court also distinguished between market participation in landfill services and landfill sites. While a government may properly purchase a landfill site and offer to its customers the "service of waste processing," a government may not, consistent with the Commerce Clause, hoard the natural resource of landfill sites by precluding all parties, "in- state or foreign, from purchasing property upon which to construct a sanitary landfill open to all waste regardless of origin." Id. at 1211. Because Rhode Island was not attempting to so hoard its natural resources, no Commerce Clause violation was found by the Court.[4] Unlike the New Jersey statute challenged in City of Philadelphia v. New Jersey, *supra*, the Rhode Island statute at issue in Lefrancois did not effectively close "both the market in waste processing,--a service--and the market in landfill sites--a natural resource." Id. at 1212.[5]

Other ordinances banning importation of waste have withstood Commerce Clause challenges to them based upon the emergency situations in which county and local governments found themselves. In Borough of Glassboro v. Gloucester County Bd., 100 N.J. 134, 495 A.2d 49 (1985), *cert. denied sub nom.* City of Philadelphia v. Borough of Glassboro, 474 U.S. 1008, 106 S. Ct. 532, 88 L. Ed. 2d 464 (1985), the plaintiffs challenged the constitutionality of a court order that closed a privately-owned landfill to waste disposal by all but three New Jersey

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fortuitously within a state's borders or a state's effort to insulate itself from other potential market entrants would result in an application of traditional Commerce Clause principles to "protectionist" activities. 447 U.S. at 444-45, 100 S. Ct. at 2281. See also, County Comm'rs of Charles City v. Stevens, *supra*, 299 Md. at ____, 47 A. 2d at 21, nn. 9 & 10.

4. The Court noted that four applications for licenses to construct private landfills in Rhode Island were pending before state authorities at the time of the litigation. Lefrancois, *supra*, 669 F. Supp. at 1211.

5. Similarly, in Shayne Bros., Inc. v. District of Columbia, 592 F. Supp. 1128 (D. D.C. 1984), the Court upheld a District regulation that prohibited disposal in District-operated facilities of solid waste collected outside the city. Even though the District-operated facility was the only such disposal facility in operation, the District had become a "market participant" for purposes of a Hughes-Reeves-White analysis and had undertaken to restrict to residents services only, not resources (i.e., disposal sites). Id. at 1134.

In contrast, the District Court in Shayne Bros., Inc. v. Prince George's County, Md., *supra*, 556 F. Supp. at 184, invalidated a county ordinance that forbade the transporting of out-of-state waste to any dump or landfill in the county. In Prince George's County, as in the District of Columbia, the only available landfills were publicly owned. Unlike the situation in Shayne Bros., Inc. v. District of Columbia, *supra*, however, the Prince George's County ordinance applied the out-of-state dumping ban to all landfills, both public and private, that might be licensed in the county. As a result, the ordinance operated to close the county's borders to all out-of-state waste disposal and did not justify triggering of a "market participant" analysis. 556 F. Supp. at 186. Based upon the holding of City of Philadelphia v. New Jersey, *supra*, the District Court ruled that the county ordinance violated the Commerce Clause of the federal constitution.

counties. Because both New Jersey and Pennsylvania communities were affected by the ban, the Commerce Clause was implicated in the lawsuit.

The Borough of Glassboro Court, however, upheld the order in the face of the constitutional attack. The Court not only found that the order was rationally related to a legitimate state purpose, but also found that the order did not unduly burden interstate commerce. The landfill at issue in Borough of Glassboro had nearly exhausted its available space and, in fact, had already been supplemented with an additional vertical lift to expand the capacity of the landfill. 100 N.J. at ___, 495 A.2d at 51. The three counties permitted by the order to continue using the landfill, unlike other affected communities, had no alternative means of waste disposal available to them. Id. at ___, 495 A.2d at 57. Moreover, use of the landfill by the three communities was only a temporary emergency measure. The communities were further required to establish alternative dumping sites within one year, to make maximum efforts to recycle disposal garbage, and to pay "tipping fees" almost four times the usual fees. Id. at ___, 495 A.2d at 55.

The Borough of Glassboro Court also found persuasive the fact that the dumping ban affected in-state as well as out-of-state communities. Based upon such equal treatment to address an emergency situation, the Court concluded that no Commerce Clause violation had occurred. Id. at ___, 495 A.2d at 56. In fact, the Court noted that an out-of-state community, simply because it is out-of-state, cannot be accorded greater rights under the Commerce Clause than communities within the regulating state. Id.

Finally, the Court held that the minimal burden on interstate commerce imposed by the order was clearly outweighed by the reasonable interests of the three affected communities in having an emergency disposal facility available to them. Id. at ___, 495 A.2d at 58. Even so, the Court cautioned "that only in limited circumstances may a state accord preferential treatment to its own citizens." Id.

A similar waste disposal restriction was examined by the Ninth Circuit Court of Appeals in Evergreen Waste Systems v. Metro. Service Dist., 820 F.2d 1482 (9th Cir.1987). At issue in Evergreen was a Metropolitan Service District ordinance designed to extend the useful life of a single landfill for 6 to 12 months. The ordinance barred out-of-district waste from the landfill whether the waste was generated within Oregon or in another state.

Interestingly, even though the landfill in question in the case was owned and operated by a municipality, the Court did not engage in a "market participant" analysis as used in the Hughes-Reeves-White line of cases. Rather, the Ninth Circuit analyzed the situation before it in light of the tests enunciated in Pike v. Bruce Church, Inc., *supra*. Initially, the Court recognized that because the ordinance affected disposal of out-of-state waste at only one of many available Oregon landfills, the ordinance was not legislation "that overtly blocks the flow of interstate commerce at a State's borders." Evergreen Waste Systems, *supra*, 820 F.2d at 1484, citing City of Philadelphia v. New Jersey, *supra*, 437 U.S. at 624, 98 S. Ct. at 2535.

Because the ordinance was not per se invalid as being an exercise in economic protectionism, the Court engaged in the three-part inquiry enunciated in Pike v. Bruce Church, Inc. and set forth in

our opinion herein, supra, at p. 4, to determine whether a Commerce Clause violation existed. The Ninth Circuit first concluded that the ordinance regulated evenhandedly because " 'evenhandedness' requires simply that out-of-state waste be treated no differently from most Oregon waste." Evergreen Waste Systems, *supra*, 820 F.2d at 1484 (citation omitted) (emphasis added). The Court then easily concluded that the ordinance served a legitimate public purpose and that given the availability of other Oregon landfills for the disposal of out-of-state waste, any incidental burden on interstate commerce that the ordinance may have had was outweighed by that public purpose. Id. at 1485. Consequently, the Ninth Circuit found no Commerce Clause violation resulting from the implementation of the District ordinance.[6]

The preceding discussion of applicable case law outlines the general constitutional parameters of acceptable legislation concerning the importation and disposal of solid waste. As is made clear by the Supreme Court's decision in City of Philadelphia v. New Jersey, *supra*, a state, county, or municipality cannot act to pass protectionist legislation that would completely close the entity's borders to out-of-state waste.[7] City of Philadelphia, *supra*, suggests, however, that a state may, consistent with the Commerce Clause, slow the flow of all waste, both in-state and out-of-state, into its landfills even if interstate commerce is incidentally affected. 437 U.S. at 626, 98 S. Ct. at 2537. See also Al Turi Landfill, Inc. v. Town of Goshen, 556 F.Supp. 231, 236 (S.D.N.Y. 1982), aff'd 697 F.2d 287 (2d Cir.1982); County Comm'rs of Charles Co. v. Stevens, *supra*, 299 Md. at ___, 473 A.2d at 15. Legislation can also be enacted that allows a governmental body, as a "market participant," to purchase a landfill site and provide landfill services only to the local citizenry who, through their tax payments, have become the customers of the landfill services provider. Courts have held consistently that if a state, county, or municipality acts as a "market participant," the strictures of the Commerce Clause are not implicated. Such a "market participant" may not, however, hoard all landfill sites in the jurisdiction or act in a manner that would restrict entry into "the market" by private landfill operators willing to accept waste traveling in interstate commerce.

Generally, non-"market participant" enactments and regulations affecting interstate commerce are subjected by the courts to a multi-faceted analysis. If the statute, ordinance, or regulation is driven by simple economic protectionism, "a virtually per se rule of invalidity has been erected."

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6. The Appellate Division of the Superior Court of New Jersey reached a like result after engaging in a similar analysis in Elizabeth v. State Dept. of Envt'l. Protection, 198 N.J. Super. 41, 486 A. 2d 356 (1984). The Court upheld the constitutionality of a state regulation that directed where certain wastes could be disposed. Although no out-of-county (including out-of-state) waste could be received at one landfill, the regulation did not totally prohibit the importation of waste into New Jersey. Id. at _____, 486 A. 2d at 361. Rather, the regulation "merely designated the disposal sites available to specific solid waste generating districts." Id. As a result, the regulation did not amount to protectionist administration of the laws. Furthermore, the legitimate local concern advanced by the regulation ("avoiding the excessive concentration of solid waste in areas with inadequate disposal capacities") could be found to outweigh any incidental burden on interstate commerce. Id.

7. An exception to this general rule was recognized in City of Philadelphia, *supra*, 437 U.S. at 628-29, 98 S. Ct. at 2538, and reiterated by the United States Supreme Court in Maine v. Taylor, 477 U.S. 131, 151, 196 S. Ct. 2440, 2455, 91 L. Ed. 2d 110 (1986). According to the Maine Court, a state may constitutionally treat articles in interstate commerce differently from in-state articles as long as a legitimate reason, other than the place of origin, exists to do so . In Maine, for example, importation of out-of-state baitfish posed a different threat to Maine's unique fish population than was posed by in-state baitfish. Accordingly, Maine could constitutionally close its borders to baitfish in interstate commerce.

City of Philadelphia, *supra*, 437 U.S. at 624, 98 S. Ct. at 2535. If, however, the governmental directive allows interstate commerce to, in some manner, penetrate the borders of the state, county, or municipality, an analysis is invoked that requires the legitimacy of the local interest in restricting interstate commerce to be balanced against the extent of the burden placed on interstate commerce. Naturally, the more evenhanded the statute or regulation, the more incidental the burden on interstate commerce and the greater the chance that a legitimate local purpose will outweigh that incidental burden. Conversely, as the local enactment becomes more discriminatory in its effect upon interstate commerce, the greater the burden on interstate commerce will be and the greater will be the task of the local government to establish that local interests could not have been promoted by less intrusive means.

As examples, emergency measures scrutinized in Borough of Glassboro, Evergreen, and Elizabeth, *supra*, were validated by the courts, in part because the burdens of the measures fell on items of intrastate commerce as well as on items of interstate commerce. By narrowly tailoring the emergency measures to be implemented, the ordinances and regulations at issue burdened interstate commerce only incidentally and only to the extent as is necessary to effect important, legitimate local interests.

More-broadly drafted attempts to protect a state's resources have, however, been held to discriminate against interstate commerce in violation of the Commerce Clause. For example, reciprocal agreements between states whereby an item of commerce from a foreign state is allowed into the regulating state only if similar items of commerce from the regulating state are allowed into the foreign state, have consistently been found to be unconstitutional. See, e.g., New Energy Co. of Indiana v. Limbach, ___ U.S. ___, 108 S. Ct. 1803, 100 L. Ed. 2d 302 (1988); Sporhase v. Nebraska ex rel. Douglas, 458 U.S. 941, 102 S. Ct. 3456, 73 L. Ed. 2d 1254 (1982); Great Atlantic & Pacific Tea Co. v. Cottrell, 424 U.S. 366, 96 S. Ct. 923, 47 L. Ed. 2d 55 (1976); Hardage v. Atkins, 582 F.2d 1264 (10th Cir.1978). Most courts reaching such conclusions have reasoned that reciprocal agreements, if valid, would allow one state's products to be banned from a regulating state for the simple reason that no reciprocal agreement between states had been entered. The ban would remain in force even though the product from the non-reciprocating state may better serve the interests that the regulating state is attempting to advance. Such agreements would thus place burdens on interstate commerce that far outweigh any local interests the state seeks to foster.

II.

The Supreme Court, in City of Philadelphia v. New Jersey, *supra*, stated clearly that the control of commerce among the several states has been delegated by the United States Constitution to Congress. Even in areas where Congress has failed to act, states may not enact legislation that places an impermissible burden on the free flow of commerce. Any attempt by a state to halt items of commerce at the state's borders for reasons of economic protectionism or isolation from nationwide problems will be invalidated.

The Commerce Clause analysis detailed in Section I. of this opinion does indicate, however, that states may constitutionally place some restrictions on the importation of solid waste. Those

restrictions must not operate to stop the flow of interstate commerce and must impose no more that an incidental burden on commerce. Moreover, whatever burden is placed on interstate commerce must be outweighed by legitimate local interests. Pike v. Bruce Church, Inc., *supra*, 397 U.S. at 142, 90 S. Ct. at 847. Finally, state-imposed restrictions must be the least onerous restrictions that will still allow promotion of the state's interests. Id.

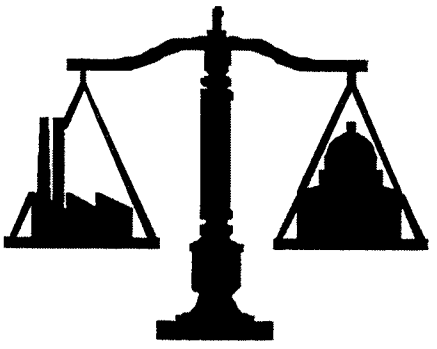
Foremost among acceptable purposes for imposition of special requirements on out-of-state waste are those purposes inextricably tied to the state's position as a sovereign. Thus, a state should be able to enact minimal restrictions on interstate commerce that seek evenhandedly to protect the health, safety, and welfare of its citizens. See, e.g., Borough of Glassboro v. Glowcester County Bd., *supra*, 100 N.J. at ___, 495 A.2d at 55. Conservation of dwindling available landfill space may also justify narrowly-tailored restrictions on the importation of solid waste. See, e.g., Evergreen Waste Systems, Inc. v. Metropolitan Service Dist., *supra*; Elizabeth v. State Dept. of Envt'l Protection, *supra*. The legitimacy of any other purposes for imposing restrictions on importation of out-of-state waste must be examined on a case- by-case basis and be balanced in light of the seriousness of the restrictions selected and the extent of the burden imposed on interstate commerce.

III.

Like states, local governmental bodies may, under certain narrow circumstances, restrict the importation and disposal of solid waste within their jurisdictions. As the Maryland Court of Appeals has noted, however, "[f]or commerce clause purposes, local ordinances have been required to withstand at least the same degree of constitutional scrutiny as state laws." Browning-Ferris, Inc. v. Anne Arundel City., *supra*, 292 Md. at ___, n. 4, 438 A.2d at 271, n. 4 citing Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440, 80 S. Ct. 813, 4 L. Ed. 2d 852 (1960); City of Chicago v. Atchinson T. & S.F. Ry., 357 U.S. 77, 78 S. Ct. 1063, 2 L. Ed. 2d 1174 (1958); City of Chicago v. Willett Co., 344 U.S. 574, 73 S. Ct. 460, 97 L. Ed. 559 (1953). Consequently, in order to prohibit or restrict importation or disposal of solid waste within its borders, a local governmental body must abide by the Commerce Clause principles outlined in the cases discussed in Section I of this opinion.

Chapter 14

County Technical Assistance Service



COUNTY TECHNICAL ASSISTANCE SERVICE

The following are legal opinions provided by attorneys of the County Technical Assistance Service. For the purpose of confidentiality, the names of cities and counties have been omitted, unless cited in an Attorney General's opinion or a court decision.

JUNE 7, 1995

Summary of SB 1205 (HB 1190) as passed by General Assembly.

MEMORANDUM

The following is a listing of powers granted to municipalities that counties have previously not been authorized to exercise, but which counties are granted under SB 1205, HB 1190 as passed by the General Assembly:

1. Make special assessments for local improvements. T.C.A. § 6-2-201(3).
2. Borrow money using special assessments as collateral. T.C.A. § 6-2-201(5)(6).
3. Expend money for all lawful purposes. T.C.A. § 6-2-201(7). Presently, a county may expend money only for purposes specifically authorized or for projects authorized by statute.
4. Acquire, hold or lease property outside of the county or state. T.C.A. §§ 6-2-201(8), 6-54-103. Present authority of counties to hold property outside of county is ambiguous except for airports.
5. Administer trusts for the benefit of the public, within or without the county or state. T.C.A. § 6-2-201(10).
6. Construct, regulate and maintain a marketplace. T.C.A. § 6-2-201(18).
7. Collect special assessments from property owners for collection and disposal of solid waste. T.C.A. § 6-2-201(19).
8. Enforce any ordinance, rule or regulation by fines, forfeitures and penalties, up to $50.00 for one offense. T.C.A. § 6-2-201(28).
9. Investigate, explore, drill and produce natural gas and oil. T.C.A. § 6-54-110.
10. Establish a monetary penalty of $500.00 for each violation of a rule or regulation that the county may adopt under current law.
11. Condemn property outside of county, but within state, subject to approval of the county legislative body of the county where property is to be taken for a public use.

The following powers granted to counties by SB 1205, HB 1190, are powers that generally counties may now exercise to some degree or in some manner, but not as extensively as municipalities, so the following powers are enhanced:

1. Contract and be contracted with. T.C.A. §§ 6-2-201(4),(32). Counties are now limited to express grants of authority to contract, whereas these provisions make it broad and general.

2. Acquire, construct, own, operate and maintain or sell, lease, mortgage, pledge or otherwise dispose of public utilities or any estate or interest therein. T.C.A. § 6-2-201(11). Presently, under general law, counties are limited in the types of utility services they may provide. This provision would allow counties to operate electric or gas utilities, where counties are now limited to water, sewer and solid waste services. See T.C.A. §§ 5-16-101 et seq., 5-19-101 et seq.
3. Grant franchises, including exclusive franchises, and/or make exclusive contracts, to any person, firm or corporation, including municipalities and counties, for public utilities and public services to be furnished in the county for up to 25 years. T.C.A. § 6-2-201(12), (13).
4. Provide and maintain charitable, educational, recreative, curative and corrective institutions, departments, facilities and functions. T.C.A. § 6-2-201(26). This provision would expand the ability of counties to directly administer charitable activities and provide authority for direct operation of hospitals which is currently lacking in general law.
5. Mutual aid agreements regarding law enforcement. T.C.A. § 6-54-307.
6. Mutual assistance in firefighting. T.C.A. § 6-54-601, 602, 603.
7. Regulate and license dogs and cats, establish and operate shelters and other animal control facilities, and capture and dispose of stray animals.

Included in the bill is a statement that it is the intent of the General Assembly that counties not use the powers granted under this bill to inhibit normal agricultural activities. Also, a statement of intent is included stating it is not intended that counties prohibit or impede any municipality in the exercise of their lawful powers.

The bill also provides for the general sessions court or court exercising general sessions jurisdiction to have jurisdiction over the enforcement of resolutions and regulations that the county may adopt under this bill. Also, any county regulatory conflict with a city ordinance or regulation is to be resolved in favor of the municipality within the municipal boundaries.

MAY 11, 1995

T.C.A. Section(s): 5-19-1112, 68-211-851, 68-211-901 et seq.

OPINION

We have been requested to provide an opinion of our office regarding the interaction of Title 68 and Title 5 of Tennessee Code Annotated with respect to site location for convenience centers used in the county solid waste management system. You specifically ask whether each potential site must be reviewed by the regional planning commission prior to action being taken to locate the convenience center.

Tennessee Code Annotated, Title 5, Chapter 19, authorizes counties to provide garbage and rubbish collection and disposal services. T.C.A. § 5-19-101. Chapter 19 of Title 5 deals with county solid waste collection and disposal operations, while Tennessee Code Annotated, Title 68, Chapter 211, Part 8, the Solid Waste Management Act of 1991 (the "1991 Act") deals chiefly with planning for solid management activities on a county and regional basis. The 1991 Act is applicable to all counties and is mandatory in nature. The older statutes codified at Chapter 19 of Title 5 provide permissive authority for counties to act in an operational sense to collect and dispose of municipal solid waste, e.g. common garbage and rubbish. Counties may also conduct solid waste collection and disposal services using other authority, such as a private act, or they may delegate the collection and disposal power to a Solid Waste Authority pursuant to T.C.A. § 68-211-901, et seq. Therefore, since the 1991 Act deals mainly with planning and Chapter 19 of Title 5 deals with operations, these two sets of statutes may both be used as authority for certain actions without conflict. However, it is my opinion that when they conflict, the 1991 Act controls since it is the later law and the more recent expression of legislative intent.

Tennessee Code Annotated, Section 68-211-851, requires counties to assure that one or more municipal solid waste collection and disposal systems are available to meet the needs of county residents. This statute states that "the minimum level of service that the county shall assure is a system consisting of a network of convenience centers throughout the county". This statute also states in pertinent part as follows:

> The department, in consultation with the state planning office, shall also develop regulations to be promulgated by the board for determining the minimum requirements for and number of convenience centers or other forms of collection that a county shall maintain. Such regulations shall consider county population, area, distances to possible convenience center sites, and staffing requirements.

Additionally, T.C.A. § 68-211-851 requires in subsection (b) that the municipal solid waste region submit a plan for the adequate provision of collection services, and subsection (c) mandates the University of Tennessee County Technical Assistance Service (CTAS) to provide assistance to counties for "siting, designing, constructing, upgrading, and developing and maintaining a system of convenience centers which meets the minimum design standards which the department will establish by regulation".

Chapter 19 of Title 5 was enacted by Chapter 201 of the Acts of 1969, and has had some amendments since its enactment. Tennessee Code Annotated, Section 5-19-112(c) states:

> No county shall construct or acquire facilities under this chapter unless plans, including necessary engineering and financing plans, shall have been similarly presented to the planning commission for study and report. (Emphasis added)

It is my understanding that the county conducts its solid waste collection activities under authority of Tennessee Code Annotated, Title 5, Chapter 19. If so, the question of whether or not the local regional planning commission should review plans for a convenience center prior to county action in acquiring the locations and constructing the convenience centers is a very close question in my view. Certainly, case law instructs that statutes enacted at different times which relate to the same subject matter should be read in para materia and harmonized, if possible. Jones v. St.Louis-San Francisco Ry., 728 F.2d 257 (6th Cir.); American City Bank v. Western Auto Supply Co., 631 S.W.2d 410 (Tenn. Ct. App. 1981). If both statutes, T.C.A. §§ 5-19-112 and 68-211-851 were given effect, the planning commission would review the engineering and financing plans prior to county legislative body action, even though their recommendation could conflict with the approved plans of the municipal solid waste regional board. Although this position is certainly arguable, I do not think it is the better view.

Tennessee Code Annotated, Title 5, Chapter 19, does not require convenience centers or deal with them explicitly. Conversely, the 1991 Act, at T.C.A. § 68-211-851, requires convenience centers or a higher level of service in each county. This later statute describes the county requirement in considerable detail, and provides that collection services, including convenience centers, would be part of a plan submitted by the solid waste management region to the state. Further, the later law provides that CTAS provide assistance upon request with respect to convenience centers, including siting and designing the center. The requirement of planning Mr. commission review under T.C.A. § 5-19-112(c) applies to proposed acquisition or construction of facilities "under this chapter". It is my view that the acquisition and construction of convenience centers cannot be fairly stated to be "under" Title 5, Chapter 19, since the plans with respect to acquisition and construction of convenience centers is dealt with under Title 68, Chapter 211, Part 8. If both statutes were to be given effect in this instance, it appears that the planning role of the municipal solid waste regional board would be diminished by the planning commission. Such a result would be inconsistent with the overall scheme of the 1991 Act. The 1991 Act is also much more specific with regard to convenience centers, which are not expressly mentioned in the earlier act. When there is an inconsistency in two statutes, a statute which deals with the subject matter in a more specific manner will prevail over a statute which deals with the subject in a more general manner. Gillis v. Clark Equipment Co., 579 S.W.2d 869 (Tenn. Ct. App. 1978). Also, a later and specific statute will prevail over an earlier statute when the two cannot be reconciled. Grundy County v. Dyer, 546 S.W.2d 577 (Tenn. 1977). It is my view that the two statutes cannot be reconciled through the method of allowing planning commission review without upsetting the role of the municipal solid waste region's board as described in the 1991 Act. Therefore, it is my opinion that the later and more specific statute, T.C.A. § 68-211-851 supersedes the earlier statute, T.C.A. § 5-19-112, in this instance and controls the procedures with respect to convenience centers.

JANUARY 11, 1995

T.C.A. Section(s): 5-19-103 & -107, 68-211-835 & -851.

MEMORANDUM

Question 1. Can the county operate a multiple franchise collection program? Would this be implemented using the recommended collection assurance contracts?

Response: T.C.A. §§ 68-211-851 and 5-19-103 authorize the use of contracts between the county and private companies to provide collection services. The county may divide the county into areas and contract for collection in each area separately. The contract services would be performed for a stated consideration paid by the county with no direct charge to the users, or the county may enter into assurance contracts in which the company agrees to collect in a certain area and charge the customers a price with a maximum set in the contract, but to be paid by the customer, and with further compensation by the county for the assurance of service. These contracts would not be "exclusive franchises" that would legally prevent any other company from collecting municipal solid waste in the area, but the terms of the contract could make the economics difficult if not impossible for another company to operate in the area.

Question 2. Can a county levy a disposal fee to all citizens for convenience centers?

Response: It is my view that the disposal fee authorized by T.C.A. § 68-211-835(g) should not be levied on a per capita basis, that is a certain amount for each man woman and child individually, but on households and business which generate municipal solid waste. This statute states that "all residents of the county shall have access to these services". Therefore, any services provided from revenues generated by this disposal fee should be available to all citizens of the county. City residents may be obliged to pay this disposal fee if the fee proceeds are used for services such as convenience centers which are distinct from the city services. See attached Opinion of the Attorney General No. 93-49.

Question 3. Can a county pass a private act to make non-payment of disposal fee illegal? Why not?

Response: Generally, a private act cannot be used to impose a criminal penalty such as a fine. Such a private act would likely violate Article 1, Section 8 and Article 11, Section 8 of the Tennessee Constitution as being contrary to the general law without a rational basis establishing why one county (here

Johnson) should be treated differently than any other county. Jones v. Haynes, 424 S.W.2d 197 (Tenn. 1968).

Question 4. What is the process a county can take to collect on non-payment cases?

Response: Non-payment would constitute a debt, for which action may be taken under a civil warrant in the general sessions court.

Question 5. Can the county collect non-payment through the annual tax rate?

Response: The property tax is a not related in the statutes to the disposal fee and no general law authority exists to collect a debt to the county by establishing a lien on property automatically as with the property tax lien. It is my opinion that a private act to do this would be contrary to general law and unconstitutional as a violation of Article 11, Section 8 of the Tennessee Constitution.

Question 6. What is the difference between user's fee and disposal fee?

Response: Tennessee Code Annotated, Section 5-19-107, authorizes counties to establish schedules and collect reasonable charges for any services rendered in any area not covered by a special property tax for garbage collection and disposal. This charge may be thought of as a "user's fee" in that a household or business is charged according to actual use of the service. The disposal fee authorized by T.C.A. § 68-211-835 is an amount charged regardless of whether or not the services provided are actually used, or the degree of use, by the persons or businesses paying the fee. There is no "magic" in these two terms, the distinction is simply a matter of how the statutes describe the powers authorized.

Question 7. Can a county void existing collection contracts between the private hauler and the customer in order to implement a county-wide collection program?

Response: No, the county does not have power to void such contracts. However, the county may enter into service contracts which may result in the private contract being uneconomical for the private parties.

Question 8. Can the circuit court levy fines on non-payment of disposal fees?

Response: No authority exists for a "fine" for non-payment of the fee. Such non-payment creates a civil debt and must be pursued as such under the current general law. It may be possible to establish a late charge as part of the basic fee structure. Although this is not express in the statute, it may be argued that it is necessarily implied. This late charge could then (possibly) be recovered along with the base fee in a civil action.

NOVEMBER 30, 1994

T.C.A. Section(s): 5-19-103, 68-211-904.

OPINION

This letter is in response to your inquiry wherein you ask my opinion concerning the legality of two resolutions adopted by the county legislative body regarding the management of municipal solid waste services, and related matters.

I have reviewed the resolution of the county legislative body adopted in 1992 to establish a municipal solid waste planning region. I find nothing illegal or improper in this resolution.

I have also reviewed a copy of the "Official Plan Objectives" of the County Municipal Solid Waste Planning Region which is in resolution form. In the preliminary "Whereas" clauses it states that the planning region is to "administer the daily operations and all aspects of the program, including all facilities, equipment, employees, and all other related activities and operations". I should point out that it is questionable whether a regional board may engage in day-to-day operations unless a solid waste authority is formed by the county legislative body pursuant to Tennessee Code Annotated, Title 68, Chapter 211, Part 9, and the municipal solid waste region's planning board is named as the board for the authority. T.C.A. § 68-211-904. It is arguable that the solid waste regional board may be designated by resolution of the county legislative body to carry out day-to-day operations pursuant to T.C.A. § 5-19-103, a statute which authorizes county legislative bodies to place solid waste operations under "some agency or officer of the county already in existence" as one of four options. However, the regional solid waste board may be single county or multi-county and includes municipal representation, lending weight to the view that this board is not a true "county" agency. Further, such regional boards were not in existence when T.C.A. § 5-19-103 became law. Therefore, although this is a close question in a single county region, it is my opinion that the regional solid waste planning board is not "an agency or officer of the county already in existence" within the meaning of T.C.A. § 5-19-103.

The copy of the latest resolution of the county legislative body which I have reviewed was adopted at a meeting on November 21, 1994. I can find no statutory basis for this resolution. If a county has not formed a solid waste authority under T.C.A. § 68-211- 901, et seq., then the only general law authority to manage day-to-day operational solid waste management activities is found in T.C.A. § 5-19-101 et seq. The county legislative body is authorized by T.C.A. § 5-19-103 to place day-to-day management of municipal solid waste services (defined in these statutes as garbage and rubbish collection and disposal services) in one of the following:

1. Some agency or officer of the county already in existence

2. A county sanitation department (headed by a superintendent appointed by the county executive subject to confirmation by the county legislative body).

3. A board known as the "county board of sanitation" consisting of three persons appointed by the county executive subject to confirmation of the county legislative body.

4. With a municipality, utility district or private company by contract.

The resolution of November 21, 1994 appears to place operational control of solid waste activities with a seven member board with members individually named by the county legislative body. The resolution also states that this board is to provide long range planning for solid waste. I find no statutory authority for such action, either operationally or in planning. The operations must fall within one of the categories noted above, and this resolution does follow any of the four options. Long range planning is placed by general law with the regional solid waste board. T.C.A. § 68-211-813, 814, 815. Therefore, it is my opinion that this resolution of November 21, 1994 is without statutory authority. Counties have only the authority granted to them by statute, either in general law or through private acts. Since this resolution is not based on statutory authority, it is my view that the board named in the resolution is without legal authority to manage the solid waste operations or planning.

OCTOBER 10, 1994

T.C.A. Section(s): 5-19-108 - 109, 68-211-835(g) & -874.

OPINION

Your first question asks whether the county may use monies from the county general fund to pay portions of collection and disposal fees for county residents living outside incorporated municipalities. If the cities provide their own services, then the county has no authority to use money from the county general fund to subsidize collection and disposal for citizens in the remainder of the county. T.C.A. § 5-19-108 states that a county-wide property tax levy cannot be used to fund solid waste services " . . . if any city, town or special district therein, which through its own forces or by contract, provides such services within its boundaries . . . ." Since the county general fund contains property tax money from the entire county, it should not be used to provide services for only a segment of the county.

Your second and third questions concern the issue of how closely tailored the funding scheme must be to those who actually use the services, specifically whether the county may assess the fee against citizens who refuse the benefit. Ideally, those who gain the benefit should also bear the cost, but this may be administratively difficult or impossible. As discussed above, property taxes may be collected for this purpose only from that part of the county outside any municipality which provides for its own collection and disposal. However, if the county is divided into property tax districts, "all property" in the district may be assessed, not just residential property or that which generates solid waste. T.C.A. § 5-19-108.

In addition to property taxation, the county may also impose a user fee to fund solid waste services. Although the service charge authorized by T.C.A. § 5-19-109 specifies that it can be levied only upon "recipients of the services in the district," the power to assess a solid waste disposal fee under Title 68 is stated in broader terms: "In addition to any power authorized by title 5, a county . . . is authorized to impose and collect a solid waste disposal fee . . . . All residents of the county shall have **access** to these services . . . ." T.C.A. § 68-211-835(g)(emphasis added). If these services are provided to city residents, then according to the terms of the statute, the remainder of the county's citizens (those living outside municipal boundaries) must merely have access to them, not actually receive them, for the disposal fee to be imposed.

The fact that a person cannot avoid paying the fee by rejecting the service does not invalidate the fee, a principle referenced in several Attorney General opinions. For example, in upholding the county-wide waste disposal fee imposed in Benton County (and in differentiating it from a tax), the Attorney General's office states, "[s]ome charges, however, have been deemed fees even though citizens could not choose to avoid them by rejection of the offered service." Op. Tenn. Atty. Gen. 93-49 (July 23, 1993). This opinion goes on to cite an earlier one which defends a mandatory fee by arguing that the authorizing statute "does not specifically limit its application to voluntary users of a service." Op. Tenn. Atty. Gen. 83-343 (October 6, 1983). Similarly,

T.C.A. § 68-211-835(g) does not limit its application to voluntary users; in fact, it seems to recognize that not everyone who pays will actually use in the service, requiring only that all who pay should "have access."

However, even though it seems that a solid waste disposal fee does not have to be applied only to voluntary users, as discussed above, it is not clear how broad the scope of the fee's application may be. The same type of logic used above could arguably apply: since the statute does not limit the fee's application to voluntary users or any other specific group, it can therefore be applied to some broader class of people, even though it needs to bear some relationship to the services offered. And, since the statute authorizes collection of the fee through the electric utility company, this authorization may include all those receiving electricity, whether or not they actually generate any solid waste.

The Attorney General's office has addressed a similar issue in a previously cited opinion: as referenced earlier, the Attorney General has opined that a county-wide fee, one that includes residents inside municipal boundaries, is permissible if the county offers a service different from that already provided by the city. Specifically, Benton County could charge a county-wide fee to finance convenience centers even though curbside collection and disposal services were already supplied by the cities. The language reads as follows: "The operation of convenience centers is not a service identical to the residential solid waste collection and disposal service presently provided by the cities . . . for which their residents are charged a monthly sanitation fee. It is our opinion that the county and the cities may charge separate fees for the distinct solid waste services they provide." Op. Tenn. Atty. Gen. 93-49 (July 23, 1993).

Your final question asks about a county's options for collecting solid waste funds. If these services are financed through a property tax, then that would be collected in the same manner as any other property tax; however, it would need to be segregated from other property tax revenues and placed in a separate solid waste fund. T.C.A. § 68-211-874.

Unlike the property tax, a solid waste fee could be collected in several ways. One which has already been discussed is the inclusion of the fee with residents' electric bills, an option authorized in T.C.A. § 68-211-835(g)(2): " . . . a county . . . may enter into an agreement with an electric utility to collect the solid waste disposal fee as a part of the utility's billing process." One possible disadvantage is that it may be difficult to negotiate such an agreement, or that, if negotiated, the cost for the billing service may be large.

Other than the utility billing option, state statutes do not discuss fee collection methods, although since the fee is authorized and since the electric company billing procedure is presented as a permissible alternative, there are presumably other permissible collection methods as well. An arrangement by which a private waste collection company also collects the fees would seem to be ideal from the county's point of view and unobjectionable from a legal standpoint, as long as other statutory requirements are satisfied (*e.g.*, fees bear a reasonable relationship to the costs of providing the service, are placed in a separate revenue fund, and are used only for solid waste collection and disposal). Other counties have set up a system for billing and collecting the fees through an existing county department, usually under the county executive's office, such as accounts and budgets or solid waste, although this method might prove more costly.

A question has come up as to whether solid waste fees could be collected by the county clerk or the trustee. Although there is no authority directly on point, there would seem to be nothing to prevent such a solution as long as the officer agreed to perform the task and was permitted to retain the applicable statutory fees. However, probably neither the county commission nor the county executive could **require** a constitutional officer to render this service since it arguably does not fit into one of the statutorily prescribed duties.

Although you did not ask about these specifically, I would mention that there are other funding measures set out in T.C.A. § 68-211-835. I have also enclosed several summaries of funding possibilities which include those above as well as other statutory options.

JULY 25, 1994

T.C.A. Section: 8-44-101 et seq., 68-211-835, 68-211-903 . . .

OPINION

CTAS attorneys usually do not review county contracts because of time constraints and because of the lack of first hand knowledge regarding the negotiations leading to the agreement. Nevertheless, per your request, I have reviewed the "Incorporation Agreement" and proposed Bylaws relating to the Solid Waste Authority (hereinafter "Authority") sent to me for my suggestions or comments. I have examined the two documents chiefly for conformity with the Solid Waste Management Act of 1991 and the Solid Waste Authority Act of 1991. I have not scrutinized most other elements of the agreement.

My first comment regards the title placed on this agreement. It is my view that this agreement does not constitute an "incorporation" and therefore, I suggest that another name be used. The term "incorporation" would most properly be used to describe the creation of the Authority. Since the Authority is a party to the agreement, it follows that it has already been created pursuant to T.C.A. §68-211-903. If this is not the case, a separate resolution to create the Authority is needed before the agreement between the Authority and the other units of local government is possible. All of my comments that follow will assume that the Authority has been properly established. Therefore, I suggest naming this document the Regional Solid Waste Disposal Agreement or something similar to connote the fact that it basically deals with the disposal of municipal solid waste collected within the region made up of the counties of Chester, McNairy, Hardin and Wayne.

Since the agreement has numerically designated paragraphs, I will note the paragraph number and relate my comments regarding this paragraph. Paragraphs for which I have no suggestion for improvement are not mentioned.

2.1. Since the term "Region" is defined in Schedule 1 as "the land mass composed of the counties of Chester, McNairy, Hardin and Wayne", and since the term "Region" as used in this paragraph appears to refer to the county governments (plus possibly some city governments) of the region, the local governments that are parties to the existing agreement with McNairy County should be listed.

2.2. I find this paragraph unclear as to what opinions, if any, are required as a condition precedent to the operation of the new agreement.

2.3. Since many bills are introduced into Congress and the Tennessee General Assembly with little chance of passage and of which the parties may not be aware, and because contrary to the wording to the paragraph, counties do not directly introduce legislation, I suggest that this paragraph be deleted or reworded to reflect the opinion of the parties that no law prohibits the parties from entering this agreement.

4.3. This paragraph places an obligation on the units of local government to deliver or cause to be delivered to the Authority all Acceptable Solid Waste "generated" within the jurisdiction. It is my strong view that this requirement is beyond the legal capacity of the units of local government to assure. The units of local government may assure transfer of Acceptable Solid Waste that they collect or have collected in their respective jurisdictions. The reason that I am of this opinion regards the legal authority to enact valid "flow control" laws or ordinances. The United States Supreme Court decision in the recent case arising from Town of Clarkstown, New York (a copy of which I have enclosed) which struck down the town's flow control ordinance on federal Commerce Clause grounds makes the Tennessee statutes authorizing local flow control ordinances or resolutions extremely suspect. It is my view that a city or county cannot constitutionally require a private party to dispose of solid waste owned by the private party in the jurisdiction at a designated facility. Therefore, it is my view that cities and counties can only control the disposition of solid waste they collect or have collected pursuant to contract.

4.13. This paragraph would require counties and cities to pass flow control resolutions or ordinances if the Authority adopts a resolution declaring the necessity of flow control. For the reasons stated in 4.3 above, I think this requirement presents a federal constitutional problem unless Congress acts to expressly authorize flow control statutes and local laws. Therefore, I recommend conditioning the power of the Authority to adopt a flow control resolution upon the establishment by Congress of clear authority to act in this manner.

4.15. The authority to impose a surcharge, T.C.A. § 68-211-835, states that the surcharge will be imposed "on each ton of solid waste received at a solid waste disposal facility". Therefore, it is my view that a surcharge, as opposed to a tipping fee, must be uniform and apply to all waste received, from whatever source.

4.16.2. The host county can be designated to receive the surcharge or host fee, but the surcharge should not be exclusively on out of region waste as noted in 4.15 above.

9.7. Several problems may emerge from this paragraph. First, it is arguable under the case law regarding the federal Commerce Clause that if the Authority accepts any out of region waste it may not discriminate against out of state waste. Secondly, it is not clear who would give the State of Tennessee's approval: the General Assembly? the Governor? It would be safer, in my view, to delete this paragraph and rely on 9.6 or expand 9.6 to require member local governments to approve the Authority's action in receiving out of region waste.

9.8 Earmarking all fees from non-member users to be applied to reducing indebtedness could place a financial strain on the system's need for operational and other funds if this became a large component of the total revenue of the Authority.

9.10. The use of the word "incorporation" is probably inappropriate here for reasons noted above. By requiring insurance to be purchased based on "commercial availability" a

board of directors may be forced to purchase insurance at an extremely high cost to cover some types of risks for which the counties may prefer to self-insure. Perhaps adding a waiver from this requirement with the approval of the governing bodies of the member units of local government would avoid uneconomic choices.

9.14. I recommend clarifying the reference to "the State" to "the State of Tennessee".

9.22. I recommend changing the use of the word "incorporation" for the reasons noted earlier in this letter, and referring instead to the execution of this agreement by all parties.

Schedule 1. I would change the definition of Agreement so as to refer to this new agreement as the Regional Solid Waste Disposal Agreement or some other title other than "the incorporation agreement" for reasons discussed earlier.

Bylaws:

Generally. The reference to "incorporation agreement" should be reviewed in light of the earlier discussion.

Generally. References to "corporation" should be changed to Authority since the Authority is a public instrumentality, not a private corporation.

Art. 3. Sec. 5. Public notice of board meetings is required under the Tennessee Open Meetings Act (Sunshine Law). T.C.A. § 8-44-101 et seq.

Art. 3. Sec. 7. As your note indicates, this section should be changed to reflect the statutory requirement that a majority of all of the directors, and not merely a majority of the quorum, is required for the exercise of the powers granted to the board of directors.

Art. 3. Sec. 8. The wording is satisfactory, but for the directors to receive compensation, this must be provided for in the resolution adopted by the counties (and cities, if any) creating the Authority. T.C.A. § 68-211-904.

Art. 4. Sec. 1. The relevant statute, T.C.A. § 68-211-905, authorizes the offices of secretary and treasurer of the Authority be held by the same individual. However, the provision in the Bylaws allowing the same person to serve in more than one office of the Authority besides secretary and treasurer appears to violate the statute.

Art. 9. Sec. 1 The requirement that all actions of the executive committee be ratified by a majority of the directors should refer to a majority of all directors and not a majority of the quorum. It would also be better, in my view, to state that all actions of the executive committee are subject to approval by the full board of directors.

Art. 9. Sec. 4. The provisions allowing the executive committee to meet without public notice probably violates the Tennessee Open Meetings Act (Sunshine Law). T.C.A. §§ 8-44-101 et seq.

Art. 9. Sec. 7. My copy appears to have some words missing, such as "members of the executive committee".

FEBRUARY 26, 1993

T.C.A. Section(s): 29-20-201(b)(2).

OPINION

Your letter asked about possible individual liability of members of the solid waste regional board for actions of the board. I will review the situation based upon state and federal law.

The Tennessee Governmental Tort Liability Act at T.C.A § 29-20-201(b)(2) states:

> All members of boards, commissions, agencies, authorities, and other governing bodies of any governmental entity, created by public or private act, whether compensated or not, shall be immune from suit arising from the conduct of the affairs of such board, commission, agency, authority, or other governing body. Such immunity from suit shall be removed when such conduct amounts to willful, wanton, or gross negligence.

For a member of the regional solid waste board to be liable under state law for harm resulting from a decision of the board that is within the scope of authority of the board, the plaintiff would have to prove that the action caused damage and that the action of the board was willfully, wantonly, or grossly negligent. So long as the board is acting as a planning body, rather than one directing operations, the possibility of personal liability under state law would be remote so long as the members stay within the scope of their authority.

The possible personal liability of members of the board under federal law is difficult to determine. There is much in this body of law relating to hazardous waste of which I am not familiar. I think personal liability would be unlikely so long as the board is acting as a planning body within the scope of the authority granted in the state statutes; nevertheless, I cannot say with confidence that no personal liability is possible. A large body of federal law relating to solid and hazardous waste exists and some actions, not readily foreseeable, could possibly trigger personal liability. However, the board members could definitely be personally liable for actions that discriminate against persons or companies on the basis or race, national origin, gender, age, or disability.

In order to protect board members from liability, the counties of the region could purchase liability insurance to cover the regional solid waste board. It is my view that this could be done by interlocal agreement with one county's insurance policy serving as the operative insurance document.

I regret not being able to relieve all fears that such members may have, but I cannot promise that a person can never be successfully sued for actions taken as a board member; however unlikely this may be.

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DECEMBER 15, 1992

T.C.A. Section(s): 68-211-813.

OPINION

This letter is in response to your inquiry asking whether each county in Tennessee is required to act to establish a solid waste planning region. These regions, administered by a board established by resolution of one or more county legislative bodies, are not for operations - the actual collection or disposal of municipal solid waste, but rather they are to plan on how the region is to meet the state waste reduction goal of 25% (by weight) by December 31, 1995, and to plan to assure disposal capacity for the region's municipal solid waste for a period of at least 10 years. Under current law, the region's plan must be submitted to the state planning office by December 31, 1993.

Tennessee Code Annotated, Section 68-211-813, uses the mandatory "shall" in describing actions the county legislative body is required to take in forming a municipal solid waste region. This statute set December 12, 1992 as the deadline date for forming single or multi-county solid waste regions. If your county has not met this deadline, it is my view that it may still act to form a solid waste region. If a single county region is formed, the statute requires the resolution to state the reason(s) for acting alone instead of participating in a multi-county region. If a county fails to form a municipal solid waste region, it will be in noncompliance with the Solid Waste Management Act of 1991 and will at some point cause the Commissioner of Environment and Conservation to issue a notice of noncompliance, whereupon the county must act or face sanctions pursuant to T.C.A. § 68-211-816. I have enclosed copies of T.C.A. §§ 68-211-813 and 68-211-816 for your review. CTAS has previously sent sample resolutions to all counties in the state.

DECEMBER 2, 1992

T.C.A. Section(s): 68-211-815 . . .

OPINION

This letter is in response to your request for clarification regarding the obligations of each county and municipality in a solid waste region to follow the solid waste plan adopted by the region's board, and approved by the county legislative bodies in the region and the state planning office.

Tennessee Code Annotated, Section 68-211-815 states the essential elements of the plan. How the region will provide for its waste capacity needs for a ten year period and how the region will reduce the amount of solid waste disposed of at landfills and incinerators by twenty-five percent (25%) by weight on a per capita basis are the two essential elements of the plan. The Guidelines for Preparation of a Municipal Solid Waste Regional Plan, prepared by the Tennessee State Planning Office pursuant to T.C.A. § 68-211-813((c) and 68-211-815 requires, at page 53, the regional plan to allocate specific responsibilities for implementing specific elements of the plan to specific jurisdictions. I interpret that to mean municipalities as well as counties. Therefore, it is my view that municipalities as well as counties are obligated to follow the approved regional plan.

In the event that a county or municipality fails to implement the approved regional plan, this would, in my opinion, constitute noncompliance with the Solid Waste Management Act of 1992, and if noncompliance continues for one hundred and eighty (180) days after a warning letter from the Commissioner of Environment and Conservation, then the offending jurisdiction may be subject to sanctions imposed by the Commissioner of Environment and Conservation under provisions of T.C.A. § 68-211-816, of one to five thousand dollars ($1000-$5000) per day of noncompliance. Depending upon the circumstances, the Commissioner may not issue a letter of noncompliance until failure to meet the deadline for meeting the waste reduction goal on December 31, 1995. Tennessee Code Section 68-211-861 provides that failure to meet the waste reduction goals due to noncompliance by a county or municipality will subject the offending jurisdiction to sanctions under T.C.A. § 68-211-816.

Even before the date of December 31, 1995, if a county or municipality acts so as to prevent the implementation of the plan, it would appear that other jurisdictions in the region could petition the chancery court for injunctive relief to stop actions that would cause the plan to fail. The region's board may be also be able to seek injunctive relief, but since no clear statutory authority to do this is given to the region's board, its authority to petition the court is not clear. At least, I would have to do further research to confirm its power to seek injunctive relief.

You may wish to contact the Department of Environment and Conservation or the Tennessee State Planning Office, for additional guidance in these matters. The opinions given by me in this letter are mine alone and have not been reviewed by either of these agencies which are responsible for implementing the Solid Waste Management Act of 1991.

NOVEMBER 12, 1992

T.C.A. Section(s): 8-47-101, 68-211-811.

OPINION

This letter is to confirm our recent telephone conversation. You asked whether the December 12, 1992 deadline date for forming a municipal solid waste planning region pursuant to T.C.A. § 68-211-813 was important to meet as to timing. My response is yes, particularly if a multi-county region is to be formed.

The statute speaks in mandatory terms ("shall") in requiring that the county legislative body pass a resolution to form a municipal solid waste planning region by December 12, 1992. This law places a duty on the members of the county legislative body to act. Failure to perform a mandatory duty may be considered grounds for ouster under T.C.A. § 8-47-101 as neglect in the performance of the duties of the office. Further, substantial delay will result in a letter of noncompliance from the commissioner of conservation and environment, and if the noncompliance is not remedied, sanctions, as listed in T.C.A. § 68-211-816, can be imposed. Although it would be highly unlikely that a small delay of a few days past the deadline would result in an ouster or sanctions, other reasons exist for adopting the resolution by the deadline date. For example, if a multi-county region is to be formed, legal problems concerning the composition of the region may arise where all counties have not passed a resolution by December 12, 1992.

NOVEMBER 3, 1992

T.C.A. Section(s): 68-211-814.

OPINION

This letter is in response to your question regarding whether county commissioners, county executives, city aldermen or mayors, may serve on the regional municipal solid waste planning boards pursuant to T.C.A. § 68-211-814. This statute provides for the county executives and municipal mayors to appoint members to this board subject to approval of their respective legislative or governing bodies. This statute does not authorize the appointment of county executives, mayors, county commissioners, or aldermen, and is silent on the issue.

The Tennessee Supreme Court has held that in the absence of express statutory authorization, a local legislative body cannot elect or appoint one of its own members to an office over which it has the power of election or appointment. State ex rel. v. Thompson, 193 Tenn. 395, 246 S.W. 2d 59 (1952). Therefore, it is my opinion that a county executive or municipal mayor may not appoint himself or herself or a member of the legislative or governing body which must confirm the appointment to the regional municipal solid waste planning board. I have attached opinions of the Attorney General which address similar questions.

JUNE 2, 1992

T.C.A. Section(s): 12-9-108, 68-313-835(g).

OPINION

This letter is in confirmation of our telephone conversation regarding an agreement between the county and the city for solid waste disposal and collection of solid waste disposal fees. It is my understanding that the city agrees to collect the solid waste disposal fees for the entire county.

The county has the authority to impose a solid waste disposal fee by resolution of the county legislative body, and to provide for its collection. Funds generated from such fees may only be used to establish and maintain solid waste collection and disposal services. The amount of the fee is set by resolution of the county legislative body and this amount must bear a reasonable relationship to the cost of providing the solid waste disposal services. These fees must be segregated from the general fund and used only for the purposes for which they are collected. T.C.A. § 68-313-835(g).

The county may enter into an agreement with an electric utility to collect the solid waste disposal fee as a part of the utility's billing process. The agreement must be approved by the county legislative body. Also, the county may agree with a city for the city to provide these services under a contract approved by the governing body of each party to the contract. T.C.A. § 12-9-108. A resolution of the county legislative body which imposed a solid waste disposal fee could also incorporate an agreement with the city for the collection and use of this fee.

A solid waste disposal fee cannot be imposed on any generator of solid waste when the generator's solid waste is managed in a privately owned solid waste disposal system or resource recovery facility owned by the generator. T.C.A. § 68-31-835(g)(3).

JANUARY 24, 1992

T.C.A. Section(s): 68-31-813 & -903.

OPINION

You asked in your recent letter the following question:

> "If the county commissions of two or more counties vote to form a solid waste region, will the cities within these two or more counties have any voice in this decision or must they go along with the will of the involved counties?"

The decision to form a single county or a multi-county region, and which counties join, is a decision of the respective county legislative bodies without formal input from the municipalities which may be involved. T.C.A. § 68-31-813(a)(1). However, any municipality which lies within the boundaries of two (2) or more regions selects by resolution of the municipal governing body in which region it will participate. T.C.A. 68-31-813(d). But, if the municipality lies wholly within the region as agreed upon by the county legislative body or bodies involved, the municipality cannot opt out of the region and must participate on the region's board if the municipality either collects or disposes of municipal solid waste, directly or by contract. T.C.A. § 68-31-813(b)(1).

A municipality may choose not to participate in a solid waste authority. T.C.A. § 68-31-903.

SEPTEMBER 12, 1991

T.C.A. Section(s): 13-7-101 - 115, 68-31-116.

OPINION

This letter is to confirm our telephone conversation yesterday concerning whether the county has any authority to require a company starting a landfill in the county to post a bond. The state through the commissioner of conservation and environment (formerly commissioner of health and environment) does require each operator of a solid waste disposal facility to post a performance bond payable to the state of Tennessee. T.C.A. § 68-31-116. My research does not disclose any similar authority given to counties. However, in the context of county-wide zoning, it may be possible through county zoning regulations to arrive at a bond requirement for certain zoning reclassifications. See T.C.A. §§ 13-7-101 through 13-7-115.

AUGUST 30, 1991

T.C.A. Section(s): No citation.

OPINION

I have reviewed the proposed resolutions that you mailed to me dealing with zoning in the county. Although these resolutions are well drafted, I have a concern about the resolution to rezone a parcel of some 35.3 acres from A-1, Agricultural to the M-2, Special Impact Industrial Zone.

My concern is caused by the map sent to me which indicates the location of the 35.3 acres proposed for rezoning. This area is referred to as the "actual operating site" of the Cedar Ridge Landfill, while the entire area of the landfill is recited as containing approximately 67 acres. In reviewing your county's zoning resolution, I find that Article IV, Section 4.047, Subsection H, General Requirements Applicable to All Uses, prohibits excavation or filling within 100 feet of any boundary of the site and also requires side slopes of excavation and fills in earth, sand, or gravel not to exceed one foot vertical to three feet horizontal with a requirement of blending the side slopes into undisturbed existing surfaces. From the information given to me, it is unclear whether these requirements can be met within the 35.3 acres, as opposed to the 67 acres. Perhaps these requirements can be met within the 35.3 acres, but I recommend that the county commission receive assurance of this by the planning commission prior to county commission approval of these zoning changes.

FEBRUARY 2, 1990

T.C.A. Section(s): No citation.

OPINION

This letter is in response to your request for my view on the differences between HB 1833 (SB 2007) that you introduced earlier, and HB 1844 (SB 2189) that I drafted and which we recently discussed.

HB 1833 in Section 3 imposes a privilege tax on the "importation of solid waste for a fee across county boundaries", but in Section 5 states that this is a privilege tax on operating the business and it measures the tax on the amount of solid waste received by the solid waste facility (the same as HB 1844), not just the amount from out of county. The bill is unclear with respect to whether solid waste from the county that hosts the solid waste disposal facility is taxed.

HB 1844 imposes a tax on the privilege of operating a solid waste disposal facility in the county as a business. The key distinction here is a tax on the privilege of operation of a particular kind of business (HB 1844) versus taxation of the activity of importing a commodity (solid waste) for a fee across county lines (HB 1833). This importation privilege tax may be viewed as a type of tariff levied by a county on a commodity crossing the county line. It is my opinion that such a tax is a burden on interstate commerce in violation of the U.S. Constitution's Commerce Clause (Article 1, Section 8, cl. 3). In New Jersey Bell Tel. Co. v. State Board of Taxes and Assmt., 280 U.S. 338 (1930), the United States Supreme Court held that a state may not impose a fee or tax upon the occupation or privilege of carrying on interstate commerce. This is old settled law. By taxing the business of importing solid waste into the county, the county would be imposing a direct burden on this commerce. HB 1844 seeks to avoid this constitutional problem by levying the tax on the operation of a solid waste disposal business that does not distinguish between in state (or county) or out of state solid waste. It only uses the amount of solid waste received as a measure of the activity of the business which is taxed. Such taxation of business is generally allowed if it does not undertake, by excessive taxation, to obstruct or prohibit the business of interstate commerce. Memphis & L.R.R. V. Nolan, 14 F.532 (W.D. Tenn. 1882). HB 1844 has a cap on the maximum rate to avoid excessive taxation that could lead to a court holding the proposed tax in violation of the Commerce Clause. HB 1833 does not have a cap on the rate that could be levied.

AUGUST 30, 1989

T.C.A. Section(s): 5-19-107(11).

OPINION

This letter is in response to your letter of August 21 wherein you asked whether the county may (under current law) establish a tipping fee through a method similar to that utilized by the city, or to the 911 fee which may be billed/collected by a utility serving county-wide.

Tennessee Code Annotated, Section 5-19-107(11), empowers counties to "establish schedules of and to collect reasonable charges for any services rendered in any district or area which are not covered by the special tax levy . . ." It is my view that this statute requires that the charge can only be made when services are "rendered". Placing a solid waste disposal fee on each user of utility services (such as telephone or electricity) would be a charge not tied to a "rendered" service, and is, in my opinion, unauthorized.

You also asked whether a general law or private act could be used to change this situation. The county's authority to charge a user fee and levy a property tax to fund solid waste collection and disposal is under general law and changing it would require an amendment to the general law. In light of this general law, it is my view that a private act could not grant such authority, as it would be in conflict with the general law in violation of Article 11, Section 8, of the Tennessee Constitution. Please note that the tipping fee for the city relates to a garbage pickup service for all households; but, the county would not be offering such per household (residence) service with which to justify a fee as opposed to a tax. Fees must relate to services rendered to the payor of the fee, otherwise the charge is a tax to provide a service which the taxpayer may or may not utilize. A tax on each household (residence) for garbage collection is not authorized at present, and would be of dubious constitutionality. If such a general law was enacted, it could possibly be upheld as a tax on the privilege of occupancy of a residence, but such a tax has not been tested under the Tennessee Constitution according to my research. The Legislature has power to tax privileges so long as these taxes are not arbitrary, capricious or wholly unreasonable. Hooten v. Carson, 186 Tenn. 282, 209 S.W. 2d 273 (1948). However, it is uncertain as to whether the occupancy of a residence may be deemed a "privilege".

You also asked whether the county may require waste generated within its borders to be delivered to the county recycling center. No such authority exists at present. A private act to require all waste generated in the county to be disposed of at a county facility is probably prohibited under the federal antitrust statutes, although an argument can be made that such a local law should fall under the so called "state action" exception to the federal antitrust laws. 15 U.S.C. § 1, et seq. However, if the General Assembly enacted a general law requiring all waste generated in a county to be disposed of in the generating county, this would appear to be within the "state action" immunity of the federal antitrust laws, and therefore permissible under federal law. Seay Bros., Inc. v. City of Albuquerque, D.C.N.M. 1985, 601 F. Supp. 1518. The General Assembly is invested with a large discretion in the exercise of the police power. 6 Tenn.

Jurisprudence, Constitutional Law, § 106, page 666. The exercise of a state's police power is not rendered unconstitutional merely by the fact that its enforcement works curtailment of private activity, even to the point of prohibition thereof. National City Bank of New York v. Del Sordo, 109 A.2d 631, 16 N.J. 530. Although where existing private activities are prohibited, such as an existing private landfill operation being put out of business, the exercise of the police power may constitute a taking entitling the private party to compensation. Property may be regulated to a certain extent, but if regulation goes too far it will be deemed a taking. Bayside Warehouse Co. v. City of Memphis, 63 Tenn. App. 268, 470 S.W.2d 375 (1971). Therefore, it is my opinion that a general state law requiring all solid waste to be disposed of in government facilities of the county wherein the waste was created would be constitutional and valid, but may require compensation to private parties whose property loses value by this action.

Chapter 15

Municipal Technical Advisory Service

MUNICIPAL TECHNICAL ADVISORY SERVICE

The following are legal opinions provided by attorneys of the Municipal Technical Advisory Service. For the purpose of confidentiality, the names of cities and counties have been omitted, unless cited in an Attorney General's Opinion or a court decision.

NOVEMBER 3, 1995

TCA Section(s): 7-35-201, 7-35-414.

Author: Sidney D. Hemsley, Senior Law Consultant.

OPINION

Your question is, can the city charge a garbage collection fee to a person who chooses not to use the city's garbage collection service? In my opinion, the answer is generally yes. However, the method the city uses to impose the garbage collection fee, reflected in Ordinance No. 156, Sec. XII, is probably fatally defective for two reasons: first, it is beyond the authority of the city; second, it violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The first problem could probably be corrected by either a state statute or charter amendment authorizing a unitary water and garbage collection fee system. The second problem could probably be cured by eliminating the separate water customer and non-water customer classes from the ordinance.

Your fax of October 23 alleges these pertinent facts:

1. That a certain beauty shop in the city does not want to pay the city its $12.00 per month garbage collection fee, choosing instead to transport her garbage to the ___ County landfill.

2. That the City of _____ has a "law" [ordinance] that requires a citizen who uses and pays for city water to use the city's garbage service. Presumably the "law" to which you refer is Sec. 8-209 of the _____ Municipal Code (which apparently was never adopted, but which itself reflects Ord. No.156, sec. XII, which was adopted). That ordinance reads:

   8-209. Collection fee. The above described services and collection of garbage and refuse shall be defrayed by each person, business, or firm, etc., who is using water from the water system of the Town of _____ paying the sum of $1.00 each month for said services and shall be referred to as the Refuse Collection Fee. The user of said water is

> defined as a person, business, or firm who or which has a water meter in his or its name. Any additional units connected to said meter shall pay an additional $1.00 fee for each and every unit, including individual trailers, houses, apartments, cafes, etc.

That ordinance provides for a $1.00 a month garbage collection fee to be paid by water customers. I assume for the purpose of answering your question that the ordinance has been amended to provide for a $12.00 a month garbage collection fee. However, I doubt that the amount is critical to the question.

3. That the city may have discriminated against the beauty shop by not charging certain businesses whose garbage was picked up by private waste haulers the monthly garbage collection fee.

Other facts are alleged in your fax, including the method other cities use to impose a garbage collection fee. I have omitted them because I do not think they have any bearing on your question.

Here let me expand on something I alluded to above: My analysis in this opinion of the ordinances governing water and garbage service rely upon a 1983 copy of the _____ Municipal Code. That code was never adopted, and at least some of the ordinances complied in that code certainly have changed since 1983. However, as I indicated above, because the code section you faxed me and that bears on your question is the same one contained in the 1983 code, I assume it has not substantively changed, except that it must have changed as to the amount of the garbage collection fee.

CAN CITIES IMPOSE GARBAGE COLLECTION FEES ON PERSONS WHO DO NOT USE THE GARBAGE COLLECTION SYSTEM?

The answer is generally yes.

A question similar to yours was addressed by the Hamilton County Circuit Court. There, a Soddy-Daisy city ordinance prescribed a mandatory garbage collection fee, but it exempted residents who could produce a copy of a "current contract with a person or entity properly licensed and permitted to engage in the business of garbage or waste disposal." The circuit court upheld the fee as being both constitutional and within the powers of the city. Based on the memoranda in support of, and opposition to, the city's motion for summary judgment, and the judgment itself, it does not appear that the result would have been any different had the ordinance not exempted residents who had made other acceptable arrangements for garbage pick-up. A copy of the court's judgment (and the motions, briefs and memoranda, etc.) are attached for your use. Although circuit court cases are not the "law" in the sense of appellate court decisions, the city's Memorandum in Support of its Motion for Summary Judgment is well-reasoned.

Cases from other jurisdictions support the Hamilton County Circuit Court.

The California Supreme Court is generally considered a liberal court, highly solicitous of the rights of individuals. Nevertheless, it held in City of Glendale v. Tisdale, 308 P.2d 1 (Calif. 1957) that a city's imposition on residents of a garbage collection charge whether or not they used the garbage collection service was within the police (and taxing) powers of the city. With respect to the former, the defendant claimed that the collection charge was a fee for services, and that a fee for services not rendered constituted an unconstitutional taking of property. Not so said the Court, which declared that:

> The power of the city to pass police regulations on the subject of rubbish being clear, we must look to see if there is any constitutional objection to the charge here imposed. The case is analogous to the requirement by a city that all premises connect with the city sewer system at the expense of the property owners or making a charge therefor even though the premises have other adequate sewer facilities. There is no constitutional objection to such a requirement. [Citations omitted.] And the same is true of a city water system to which premises must connect and pay the rates although they have other water supplies. [Citations omitted.] [4]

In fact, said the Court, the requirement that residents of the city pay a collection charge for garbage services they did not use was less stringent than requirements that they connect to, and use, city water and sewer services.

The weight of additional authority is that it is within the police power of municipalities to impose a unitary water and garbage collection bill, and terminate water service for refusal or failure to pay the garbage collection portion of the bill.

In Cassidy v. City of Bowling Green, 368 S.W.2d 318 (Ct. App. Ky. 1963) the questions were whether the city could require residents who did not use the garbage collection service to pay a monthly service charge for such service, and whether the city could cut off the water of property owners or tenants whose garbage bills were delinquent. The city could do both, answered the Court.

With respect to the first question, the Court said that:

> The evidence is convincing (if any were needed) that exclusive control of garbage disposal in Bowling Green by the City is an essential health measure in the public interest. The right of regulation is clearly within the police power of the City . . . Garbage disposal falls within the same class as sewage disposal. It was long ago established that a city may properly forbid the use of private facilities and compel its inhabitants to use the public system. [Citation omitted.] . . . Since the city may require those owning or occupying property to accept its services, it may

> likewise require them to share the expenses thereof by the payment of reasonable fees. [319-20]

With respect to the second question, the Court said that:

> We are unable to grasp from appellants' brief what constitutional right is being breached by this method of collecting bills. It is shown by this record that for public health and sanitation purposes the City furnishes water service, sewerage service, and garbage disposal service. They are all inter-related and the City is under no obligation to furnish any or all of these services except upon payment of reasonable charges. This public health program, while divided into separate administrative units, is a single program. Any reasonable method of collection is justified and certainly deprives appellants of no constitutional right. [320]

The reasoning of Cassidy was expressly adopted in City of Breckenridge v. Cozart, 478 S.W.2d 162 (Ct. Civ. App. Tex. 1972). That case also expressly rejected Garner v. City of Aurora, 149 Neb. 295, 30 N.W.2d 917 (1948), an earlier case in which the Supreme Court of Nebraska had held that:

> The authorities are uniform to the effect that a public service corporation cannot refuse to furnish its public service because the patron is arrears with it on account of some collateral or independent transaction, not strictly connected with the particular physical service . . .

The reason the court rejected Garner was that:

> Environmental conditions have changed radically since the Aurora case was decided in 1948. Anti-pollution legislation has been enacted at both the federal and state levels. The problem of garbage disposal and waste disposal is of paramount importance. Police power is not static and unchanging. As the affairs of the people and government change and progress, so the police power changes and progresses to meet the needs. [Citation omitted.] [165]

The Court, almost as an afterthought, pointed to a recently enacted Texas statute that expressly provided that a city could suspend the utility service of any person whose garbage collection fee became delinquent. However, that statute appears to have been merely frosting on the cake; the result apparently would have been the same in the absence of the statute.

Finally, in Perez v. City of San Bruno, 616 P.2d 1287 (Calif. 1980) the city turned its garbage collection and disposal services to a private contractor, but required residents - even those who

chose not to use the service - to pay a garbage collection and disposal fee, on the penalty of termination of water service. A California statute authorized cities to adopt a unified billing system for public services and to terminate utility services for refusal or failure to pay the bill. The city terminated the water service of a resident who refused to pay the garbage collection fee. That presented the question (in the California Supreme Court's own words) of:

> [W]hether a municipality providing water, sewer, and garbage disposal services to its citizens and billing therefor by means of a single unified statement may constitutionally resort to the remedy of cessation of water service when a citizen, refusing to pay that component of the unified bill relating to garbage collection and disposal services, but paying the other components thereof, fails to make full and complete payment for municipal services rendered. [1288-89]

It could, held the Court, which also expressly adopted the rationale of the Cassidy and Cozart cases. Expanding on that rationale, the Court continued:

> The city, in the exercise of its police power, provides three municipal utility services - i.e. water service, sewer service, and garbage collection and disposal service - all of which bear a clear and demonstrable relationship to the goal of public health protection. Pursuant to express provisions of state law [Citations omitted.], it has provided by ordinance and city code that these services shall be billed on a unified basis and that upon failure to pay the bill in full water service shall be discontinued. Under applicable constitutional standards these provisions, if procedurally fair (a matter to be considered below), cannot be said to violate the demands of due process if they are 'reasonably related to a proper legislative goal.' [Citations omitted.] The relationship is, we think, manifest: in order to encourage and assure the support of all components of the city's public health and sanitation program, it has made the continuance of all of the offered utility services contingent upon the payment for all. The city, in short has concluded that public health considerations require that all city residents both avail themselves of and provide support for all of the indicated municipal health services rather than picking and choosing among them. Whatever we might think about the advisability or wisdom of such a system, it cannot be gainsaid that it is reasonably related to the proper and legitimate goal sought to be achieved. 'The wisdom of the legislation is not at issue in analyzing its constitutionality, and neither the availability of less drastic remedial alternatives nor the legislative failure to solve all related ills at once will invalidate a statute.' [Citations omitted.] [1296-97]

IS THE _____ CITY ORDINANCE IMPOSING THE GARBAGE COLLECTION FEE ON WATER CUSTOMERS LEGAL?

The answer is that while the city probably has the authority to require a resident who chooses not to take the city's garbage service to pay a fee for such service, the method by which the city has done so is probably illegal.

Ordinance No. 156, Sec. XII, imposes the garbage collection fee on "each person, business, or firm, etc. who is using water from the water system of the Town of _____ . . ." A "user" is defined by the same ordinance as "a person, business or firm who or which has a water meter in his or its name." That ordinance implies that the garbage collection fee be collected as a part of the water bill. However, Sec. 13-112 of the _____ Municipal Code provides that:

> Water and sewer charges shall be collected as a unit; no town employee shall accept payment of water service charges from any customer without receiving at the same time payment of all sewer service charges owed by such customer. Water service may be discontinued for non-payment of the combined water and sewer service bill.

Nothing in that section, nor any other provision of the _____ Municipal Code that I found, indicates that the garbage collection fee is actually a part of the water bill, or that the city could discontinue water service for failure to pay the sewer collection charge. But here let me point out again that I am working with a 1983 municipal code that was never adopted; I do not know what subsequent ordinances may have changed that proposed code.

A state statute in both Cozart and Perez authorized such a fee. There was no such statute in Cassidy, and Cozart suggests the lack of a statute would not have changed the result, both cases essentially being resolved on what the courts considered to be the broad police powers of the cities.

There is no state statute authorizing municipalities to establish a garbage collection and disposal system, let alone impose a garbage collection fee on water customers. However, the police powers contained in the _____ City Charter are probably broad enough to authorize municipalities to do the former, but probably not the latter.

I cannot determine which of Private Acts _____, chapter _____, or Private Acts _____, chapter _____, is the charter of the City of _____, or whether either one or both of those acts repealed the original charter of the city, which was Private Acts _____, chapter _____. However, the enumerated powers of the city contained in all those acts (as either section __ or __) appear to contain identical language. There is no express authority in those enumerated powers, or in any other place in the acts, for the city to establish a garbage collection and disposal system; however, they authorize the city to "prescribe regulations for the good order, peace, health, safety, comfort, convenience and good morals of the town." That language constitutes a grant of police powers to the city. It has been held that police powers need not be express, that cities

have the implied police powers to pass regulations "essential to the object and purposes of a municipal corporation." [Penn Dixie Cement Corporation v. Kingsport, 189 Tenn. 450 225 S.W.2d 270 (1949)]. A garbage collection and disposal system undoubtedly qualifies as a regulation essential to the object and purposes of the City of _____. The financial integrity of such a system depends upon a broad and secure base of customers. For that reason, arguably that implied power would permit the city to impose a garbage collection fee on all residents of the city, even on those who choose not to use the system. In fact, that is one of the major premises of the Memorandum in Support of the motion for Summary Judgment in the Hamilton County Circuit Court case, and the supporting cases cited above.

But in my opinion it is doubtful that the police power extends to the power to require only all water customers to pay the garbage collection fee.

There is no statute authorizing a unitary billing system for water and garbage fees in Tennessee. Section 9 (or 10) of the _____ City Charter does authorize the city "to provide water works to supply the town and inhabitants with water." However, I doubt that provision permits the city to peg the garbage collection fee on the water bill. In fact, I suspect the city does not operate its water system under the charter; more likely it is operated under Tennessee Code Annotated, section 7-35-201et seq. Rates authorized to be charged by municipalities under that statute are to be "just and equitable rates and charges for the use of and the service rendered by such waterworks and /or sewerage system to be paid by the beneficiary of such system." [Tennessee Code Annotated, section 7-35-414] [Emphasis is mine.] That statute appears to require the water rates to be tied only to the services rendered by the water system.

It can be argued that the garbage collection fee derives from a separate rate setting system, that the garbage collection fee is not connected to the setting of water rates under Tennessee Code Annotated, section 7-35-414, that the garbage collection fee's only connection to the water bill is that only water customers pay the fee, and that even if the water and garbage collection fees were collected under a unitary bill system, that system would conform to Cassidy, Cozart, and Perez. However, no matter how the garbage collection fee is sliced, it is assessed only against water customers. On that account alone, I think Ord. No. 156, Sec. XII, falls outside the city's police powers.

In H.L. Messengers, Inc. v. City of Brentwood, 577 S.W.2d 444 (1978), the city passed an ordinance that regulated the distribution of handbills within the city. The city's charter contained a police powers grant which authorized the city:

> To define, prohibit, abate, suppress, prevent, and regulate all acts, practices, conduct, businesses, occupations, callings, trades, use of property, and all other things whatsoever detrimental, or liable to be detrimental to the health, morals, comfort, safety, convenience, or welfare of the inhabitants of the city and to exercise general police power.

The court struck down the ordinance on the ground that it went beyond the limits of the police power. "The right to exercise the police power, " said the Court, "is an attribute of sovereignty, necessary to protect the public safety, health, morals and welfare, and is of vast and undefined extent. In exercising this right, municipalities have wide discretion." However, that power had limits, said the Court, and the ordinance exceeded that power on two grounds:

1. It violated both the First Amendment to the Constitution of the U.S., and Article 1, Sec. 9 of the Tennessee Constitution;

2. There was no connection between the ordinance and the purpose of the ordinance.

With respect to the second ground, the court pointed out that the purpose of the ordinance was to prevent littering. However, while the ordinance prohibited the distribution of commercial handbills, it exempted the distribution of political and religious material. That was a fatal exemption, observed the Court, because:

> With respect to each of these sections containing exemptions in favor of ideological speech, we point out that it is indisputably true that religious tracts or political leaflets cast upon a citizen's property constitutes litter to precisely the same extent as circulars advertising groceries. The exemption not only destroys the indispensable content neutrality of the ordinance, but leaves it standing upon a precarious position from the standpoint of its purposes. [Emphasis is mine.]

The Supreme Court of our sister state of Alabama struck down in Town of Eclectic v. Mays, 547 So.2d 96 (Ala. 1989) an ordinance similar to the one at issue in the City of _____ on similar grounds. There the ordinance provided that all water customers in the town were required to purchase, and to pay for, garbage services from the town, and made it an offense to willfully and intentionally refuse to do so.

Holding that the ordinance violated the Equal Protection Clause of both the U.S. and Alabama Constitutions, the Court reasoned that it impermissibly distinguished between two classes of people: persons who used Eclectic's water system, and those who did not. The purpose of the ordinance was to promote public health by requiring a sanitary means of garbage disposal. That was a reasonable purpose, declared the Court. However, the ordinance's classification between water customers and those who were not water customers did not bear a "fair and substantial relationship to the purpose of the ordinance."

The town made two basic arguments to justify the classification:

1. It was necessary to require all water customers to use the garbage collection system in order to produce sufficient revenue to fund the system.

2. It was not economically feasible for the town to assume the responsibility of billing for garbage services. Under the billing system, those who did not use the water system could choose to use the garbage system; if they did so they were billed by the town clerk rather than the water system.

The Court responded to the first argument by declaring that there was no proof the persons who were not water customers had less garbage than water customers. In fact, the exemption of non-water system customers from the ordinance, "frustrates the very purpose of the ordinance, which was to require sanitary garbage disposal." [106] The Court's response to the second argument was basically the same, apparently on the ground that the choice given to non-water customers operated against a sanitary garbage disposal system. "At best," concluded the Court, "Eclectic's argument justifies its system of billing for garbage service fees."

Even if the City of _____ is legally entitled to impose a garbage collection fee on residents of the city, including those who choose not to use the service, the ordinance fails for precisely the same reasons it failed in Eclectic: It set up an unconstitutional classification of water system users, and it defeats the purpose of the garbage collection and disposal system. [Also see Farmer v. Nashville, 127 Tenn. 509, 156 S.W. 189 (1912).]

In addition, it is clearly the law that the discriminatory application of an ordinance may be illegal under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. However, under state law the discriminatory application of an ordinance may alsorender the ordinance void. [See City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn. 1978).] If the city has exempted some of the water customers from the application of the ordinance, it could be in danger on both counts. I find no provision in the ordinance, or in any other place in the _____ City Code, for exemptions.

SEPTEMBER 20, 1994

TCA Section(s): 59-19-101, 68-211-835(a).

Author: Sidney D. Hemsley, Senior Law Consultant.

I. QUESTION

Is it illegal "double taxation" for the county to charge a tipping fee?

II. OPINION

In my opinion the answer is no.

III. ANALYSIS

Tennessee Attorney General's Opinion 93-49 deals with the question of whether a county-wide solid waste disposal fee to defray the cost of operating solid waste convenience centers is illegal as being double taxation. The facts in that opinion indicate that Benton County proposed to charge a $3 solid waste disposal fee on all county residents, including those within the cities of Camden and Big Sandy. The two cities provided their own garbage collection services, but not convenience centers. The opinion concludes that the proposed fee is legal, reasoning that it is a fee not a tax, and that the Solid Waste Disposal Act authorizes the imposition of a solid waste disposal fee. I think that opinion is correct. But even if the tipping fee is "double taxation" it would probably still be legal because it appears to be authorized by statute.

The term "double taxation" has been recently used to describe various situations where city taxpayers who pay city and county taxes are either denied, or charged extra for, certain county services. The charge of double taxation has most frequently arisen recently in the areas of county garbage and fire services. However, charges of double taxation have found no support in the Tennessee courts where the it is authorized by law. In Greenfield et al. v. Butts, 582 S.W.2d 80 (1979), the plaintiffs complained that they paid county taxes which were not spent on municipal roads. Tough luck, said the Tennessee Court of Appeals, Western Section (review refused by the Tennessee Supreme Court):

> A town resident has the same duty to support county government as does a non-town resident; each is a county resident . . . The extra taxation which a citizen of an incorporated town must pay is to support his municipal government. It has no relation to the duty he owes to contribute to the support of the County Government which affords him equal protection with every other citizen whether they reside within or without a municipality.

The same proposition is supported in a number of other cases, including Albert v. Williamson County, 798 S.W.2d 758 (1990), Williams v. Massachusetts Mutual Life Insurance Co., 221 Tenn. 508, 427 S.W.2d 845 (1968), Stalcup v. City of Gatlinburg, 557 S.W.2d 439 (Tenn. 1978) and several Tennessee Attorney Generals Opinions, including OAG 92-29. For that reason, municipalities must challenge a double taxation scheme on the ground that it is not permitted by statute. [See in addition, OAG 93-53, U93-16 and U92-134].

Two recent chancery court cases are of interest in analyzing your question. It is important to note that trial court cases, including chancery court cases, are not the "law." They cannot be cited as authority to support legal theories as can appellate court cases. However, they are of interest in determining how legal questions might be handled at the local level.

In a recent chancery court case, Town of Carthage v. Smith County, No. 4928, filed February 1, 1993, three towns in Smith County contested a tonnage fee charged by Smith County. Smith County operated a number of convenience centers, all of which were open to both county and city residents. Each of the towns provided curbside garbage collection to their residents, but none provided convenience centers. The Smith County Chancery Court looked at Tennessee Code Annotated, section 59-19-101 et seq. and concluded that counties had the power to provide county-wide garbage services or garbage services to special districts, and to levy a special tax for such services. Because the county had not levied such a special tax levy on all property in the county, as authorized by Tennessee Code Annotated, section 5-19-108 or 109, said the Court, the county was authorized under Tennessee Code Annotated, section 5-19-107 to collect reasonable charges for the garbage services.

Furthermore, continued the Court, the Solid Waste Management Act of 1991, specifically authorized counties to charge a tipping fee. [Tennessee Code Annotated, section 68-211-835(a)]. As did The Tennessee Attorney General in OAG 93-49, the Court declared that the tipping fee was not a tax but a fee, and "This conclusion effectively forecloses the argument respecting double taxation."

In the other chancery court case, City of Shelbyville, et al. v. Bedford County, et al., No. 17519, filed July 14, 1993, the City of Shelbyville sued Bedford County on the ground that the latter's sanitation and fire departments were financed in a manner constituting double taxation not authorized by statute. Both were financed though a tax levy upon all the citizens of the county, including the citizens of Shelbyville. However, Bedford County provided no sanitation or fire services within the City of Shelbyville, and the city had its own sanitation and fire services. Some garbage convenience centers were located near the corporate limits of the city and were open to use by the citizens of the city.

The Court held that Bedford County had not established sanitation or fire service districts as respectively required by Tennessee Code Annotated, section 5-19-109, and Tennessee Code Annotated, section 5-17-101 et seq., and had not levied a tax for those services only within those districts as also required by those statutes.

However, City of Carthage and City of Shelbyville can be distinguished: no tipping fee was involved in the latter. Bedford County was enjoined from imposing taxes on city residents to pay for garbage and fire services; however, I see nothing in that ruling that would prohibit Bedford County from imposing a tipping fee in accordance with Tennessee Code Annotated, section 68-211-835(a).

AUGUST 16, 1994

TCA Section(s): (No Citation).

Author: Sidney D. Hemsley.

OPINION

Container laws and ordinances generally require the purchaser of certain bottled or canned drinks to pay a deposit on the bottles and containers. The State of Tennessee has not enacted such a law, and as far as I can determine no city in Tennessee has passed such an ordinance. There are surprisingly few cases involving container laws and ordinances, but all of those I have found have upheld them. Those cases include two in which the container deposit was enacted by ordinance; the remainder involve container deposits enacted by state law. I have tried below to cover the challenges to the ordinances in considerable detail, and the challenges to the state law where different or peculiar issues were raised that might have some bearing upon a container ordinance. On most of the major issues those two classes of cases differ little.

CONTAINER DEPOSIT ORDINANCES

In Bowie Inn, Inc. v. Bowie, 274 Md. 230, 335 A.2d 679, the Maryland Court of Appeals upheld an ordinance imposing a 5c deposit on soft drink and malt beverage containers against six challenges:

(1) Violation of Due Process under both the U.S. and Maryland Constitutions on the ground that the ordinance bore no real and substantial relationship to the reduction of litter in the city, its ostensible purpose.

The Court rejected this challenge by declaring that, "The exercise of the police power of a state is not subject to judicial review, and the law will not be held void if there are any considerations relating to the public welfare by which it can be supported." [Emphasis is mine] The Court apparently had its own doubts about the wisdom of the ordinance for reasons it did not make clear, but refused to substitute its judgment for the city council's:

> We conclude that, although the petitioners by the evidence presented in the circuit court may have cast some doubt on the wisdom of Ordinance 0-4-71, they have failed to demonstrate that it bears no real and substantial relation to the public health, morals, safety, and welfare of the citizens of Bowie. There is a clear relationship between the mandatory deposit requirements and the object of reducing litter in Bowie. The City Council of Bowie could rationally conclude that the deposit law should motivate consumers to return containers. Moreover, respondents produced evidence of the need for a litter control measure in Bowie and evidence that a similar law had been effective in another state [Oregon].

Even though bottle deposits had not [at that time] been extensively tried, particularly on a municipal level, said the Court, "Here, invalidation of the ordinance would deprive the city council of Bowie any other legislative body contemplating such a law of any opportunity to discover whether the ordinance will be good, bad or indifferent."

(2) Violation of Due Process (apparently only under the U.S. Constitution) on the ground that the definition of "soft drink" in the ordinance was vague.

The plaintiffs argued that it was not clear whether certain beverages such as Gatorade and Metrecal fit within or without the definition of soft drink.

That argument did not impress the Court. The constitutional requirement of the definiteness of a criminal statute was met when it gave a "person of ordinary intelligence fair notice that his conduct is forbidden by the statute." The ordinance at issue met that test. On the unlikely chance that a retailer could not determine what constituted a soft drink, he could ask the agency charged with the enforcement of the ordinance or seek a declaratory judgment.

(3) Violation of Equal Protection under the U.S. Constitution on the ground that it created "an artificial and arbitrary classification" of soft drink and malt beverage containers.

The plaintiffs argued that the ordinance had to treat all beverages the same, that the distinction it made between soft drink and malt beverage containers on one hand, and other beverage containers such as milk cartons and bottles, fruit juice cans, etc. on the other, was arbitrary and capricious.

Not so, said the Court. A classification having some reasonable basis "is for the Legislature, and the courts will not interfere, 'if any state of facts reasonably may be conceived to justify' the classification, and "classification having some reasonable basis does not offend against . . . [the equal protection] clause merely because it is not made with mathematical nicety or because in practice it results in some inequality." Furthermore:

> Legislative bodies are not required by the Equal Protection Clause to attack all aspects of a problem at the same time. The legislative body may select one phase of a problem and apply a remedy there, neglecting for the moment other phases of the problem.

Here, the evidence was that soft drink and malt beverage containers were the principal source of the litter problem, and the Oregon container law had improved roadside litter conditions in that state. It was reasonable for the city council to focus on those particular containers.

(4) Violation of the Commerce Clause of the U.S. on the ground that the benefit produced by the ordinance was negligible when compared to the burden on interstate commerce.

Here the plaintiffs made two arguments. First, the ordinance would increase the cost of doing business for retailers and distributors, and would exclude certain distributors and retailers from the Bowie market; second, that it would lead to the passage of similar but possible conflicting ordinances by other municipalities, counties or states.

With respect to their first argument, the plaintiffs asked the court to apply a "weighing test." Apparently the Court did not feel it was necessary to do so, declaring that the ordinance did not discriminate against interstate commerce as such, but was a regulation of general application, affecting all distributors and retailers in and out of state. But the Court went ahead with an analysis of that argument under that test:

> Assuming that a "weighing test" or "balancing approach" is applicable to a case such as this, we have no hesitancy in concluding that the putative local benefits of the Bowie ordinance clearly outweigh any burden which the ordinance might impose on interstate commerce. The benefit which the ordinance is designed to achieve is a substantially cleaner environment. The losses to Bowie retailers are, as the circuit court found, "speculative." The losses, if any, which distributors will have are even less certain. The distributors and their bottlers can continue to sell all of their products to Bowie merchants. If some products are available only in non-returnable containers, the retailers can continue to sell them. They need only collect a deposit upon sale of the containers and refund that deposit upon return of the containers.

With respect to their second argument, the plaintiffs could point to no case in which any other city, county or state had a law conflicting with the ordinance at issue.

(5) City not authorized by state law or its charter to pass the ordinance.

Citing Dillon's Rule, the plaintiffs argued that the city's charter did not contain an express authorization for the city to pass a waste container ordinance. The Court rejected this argument by pointing to the following state statute granting certain powers to all Maryland municipalities:

> In addition to, but not in substitution of, the powers which have been, or may hereafter be, granted to it, . . . [the legislative body of every incorporated municipality in this state] also shall have the following express ordinance-making powers:
>
> (14) Garbage. - To regulate or prevent the throwing or depositing of any dirt, garbage, trash, or liquids in any public place and to provide for the proper disposal of such material.

That was good enough for the Court to satisfy Dillon's Rule.

(6) State preemption of the matter of deposit requirements on malt beverage containers.

The plaintiffs argued that the comprehensive state regulations governing the sale of alcoholic beverages in Maryland preempted municipal regulation in this area. However, responded the

Court, the ordinance was a waste control and environmental protection measure, not an attempt to regulate the sale of alcohol; therefore, the ordinance did not conflict with the state's regulation of alcoholic beverages. Under the state regulations the comptroller was entitled to make container deposit regulations, but only with respect to manufacturers and wholesalers.

The Missouri Court Appeals of followed Bowie Inn in Mid-State Distributing Company v. City of Columbia, 617 S.W.2d 419 (Mo.App. 1981) in upholding an ordinance that also imposed a 5c container deposit. However, the ordinance in Mid-State required retailers to pay the deposit upon their receipt of the containers, and retailers to refund a 5c deposit upon the return of the containers to their establishments. It did not require retailers to charge a 5c deposit upon the sale of containers, although obviously it contemplated that they would do so. This case is distinguishable from Bowie only to the extent that the Court went into considerably more detail in analyzing the plaintiff's claims.

The plaintiffs challenged the ordinance on essentially the same grounds as arose in Bowie, and the additional grounds that the ordinance was not validly enacted, and was not validly amended. I will not address the latter two grounds because they were peculiar to the law governing the passage and amendment of ordinances in Missouri.

Their first major argument was that the ordinance was an unreasonable, arbitrary and capricious exercise of the city's police power because it lacked a rational relationship to its purpose [the reduction of litter in the city], and produced harsh results and unusual restrictions on private business. It failed in its purpose to reduce litter because beverage containers represented less than 20% of the total litter found in the City of Columbia, people would dispose of the containers rather than return them for a refund, containers purchased outside the city and not subject to the refund would be disposed of in the city, and other containers, including plastic and paper cups, were not subject to the ordinance.

The court applied a "fairly debatable" standard in rejecting that argument. It was not the business of the Court to determine from empirical evidence whether the ordinance would have the desired effect of reducing litter in the city. Citing the U.S. Supreme Court's opinion in State of Minnesota v. Clover Leaf Creamery Company, 449 U.S. 456, 101 S.Ct. 715, 66 L.Ed.2d 659 (1981), in which that Court upheld a law banning plastic nonreturnable milk containers for the stated purposes of promoting resource conservation, proper solid waste disposal, and the conservation of energy. While challenges to legislation on Equal Protection grounds could be based on empirical evidence supporting proposition that the legislation is irrational, the Court said, "they cannot prevail as long as 'it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least fairly debatable."

The plaintiffs presented some sophisticated economic arguments to support their theory that it was beyond the reasonable exercise of the police power to pass ordinances that impose harsh and unusual restrictions on business where other less costly means of litter control are available. Witness from the Coca-Cola Bottling Company of Atlanta and Coca Cola Bottling Company of Mid-America, Inc. testified that the "package mix" would have to be changed, resulting in two additional route trucks and one additional tractor and side-loading trailer at a cost of $116,000,

additional warehouse space at a cost of $122,000, a "bottle float" at a cost of $50,076, and additional shelves or cases for the returnable bottles at a cost of $12,055. Other retailers and distributors testified they would incur similar costs and inconveniences.

But the Court concluded that the actual economic impact of the container regulations was speculative, and that while the ordinance would require "a certain amount of adjustment" on the part of sellers of the covered beverages, there was no evidence that any of the plaintiffs would be put out of business, although some small brands sold in Columbia might withdraw from the market there. Moreover, "if there is a rational relationship between a legislative measure and the evil sought to be remedied, the cost of compliance argument is out of place in a Federal due process analysis." And even if there were other less expensive means of litter control, the legislative body could select which of a variety of approaches it would adopt.

The plaintiffs' second major argument was that the inclusion of beer or other malt beverages and a variety of soft drinks in the ordinance and the exclusion of others violated the equal protection clauses of the U.S. and Missouri Constitutions. Declaring that the plaintiffs could point to no case in which such a classification had been struck down, and citing Bowie, American Can Company v. Oregon Liquor Control Commission, 517 P.2d 691 (1973), and Anchor Hocking Glass Corp. v. Barber, 181 Vt. 206, 105 A.2d 271 (1954) in which similar classifications had been upheld, the Court rejected that argument. In doing so the Court also cited the city's evidence that litter counts showed that non-carbonated soft drink containers represented only a small part of litter, that paper containers had a shorter life, and that such containers were more likely than sealed carbonated beverage containers to be disposed of on premises where purchased. That evidence supported the reasonableness of the ordinance.

The plaintiffs' third major argument was that the ordinance was void for vagueness because it did not sufficiently define "sealed," "biodegradable," and "individual" with respect to a container. However, the Court declared that the prospect of difficulties of interpretation do not invalidate an ordinance or statute. The ordinance at issue clearly covered a large field of containers. Glass bottles and metal cans in which carbonated beverages were sold were sealed, individual, and non-biodegradable containers under the ordinance. Citing Bowie, the Court decided the definition problems could be easily resolved by administrative rule or by amendment.

The plaintiffs' fourth major argument was that a state liquor control law giving to the state supervisor of liquor control the power to prescribe labels on beer packages preempted municipal regulations in that area. That statute did not preclude the City of Columbia from requiring the word "Columbia" to be lettered on containers covered by the ordinance, and was otherwise inconsistent with state law regulating liquor.

Finally, the plaintiffs argued that a portion of both beer and soft drinks sold in the City of Columbia are imported into the state, that some small selling brands would be foreclosed from sale, that returnable containers are not practical for brands which come from long distances, such as foreign beers, that other places having mandatory refund systems had experienced the elimination of slower selling brands, and that strong brands would be burdened by additional

costs. But the Court answered that argument by pointing again to the U.S. Supreme Court's opinion in the Clover Leaf Creamery Case, above:

> Within Minnesota, business will presumably shift from manufacturers of plastic non-returnable containers to producers of paperboard cartons, refillable bottles and plastic pouches, but there is no reason to suspect that the gainers will be Minnesota firms or the losers out of state firms. Indeed two of the three dairies, the sole milk retailer and sole milk container producer challenging the statute in this litigation are Minnesota firms.

In other words, as in Clover Leaf, concluded the Court

> there is nothing to show that the customers for the beverages which may no longer be found in the Columbia retail outlet will shift to intrastate beverages in preference to out-of-state beverages.

For those reasons, the plaintiffs' argument that the ordinance produced a burden on interstate commerce also failed.

[The dissent in Bowie discusses a Michigan Circuit Court case in which that court threw out an Ann Arbor ordinance imposing a container deposit.]

Needless to say, the Tennessee Court has spoken in other contexts on all the issues raised in the cases involving container deposits enacted by ordinance. In other words, there is a body of Tennessee law on each of these issues that in theory would support _____ argument that a container deposit enacted by ordinance satisfies both federal and state law. I have not covered those bodies of law here, but I will be glad to do so. However, let me mention that Section 216 of the _____ City Charter arguably represents state authority to enact a container deposit ordinance. It should also be pointed out that container ordinances passed today have the advantage of having been tested for effectiveness in other jurisdictions over a long period.

STATE CONTAINER DEPOSIT LAWS

A state container deposit law [Oregon] was upheld in American Can Company v. Oregon Liquor Control Commission, 517 P.2d 691 (1973). This case is a virtual mirror image of Bowie and Mid-State except that the challenges and their rejections involve a state container deposit law under which every retailer of beer or carbonated beverages was required to "accept from a consumer any empty beverage containers of the kind, common size and brand sold by the dealer, and to pay the consumer the statutory 'refund value' of the container," which was to be indicated on the container. [I cannot determine from the case what the statutory refund value was]. The distributor had a similar obligation with respect to the retailer.

A similar result for essentially the same reasons was reached in the earlier case of Anchor Hocking Glass Corp. v. Barber, 101 A.2d 271 (1954). However, the plaintiffs also made an additional claim under the 21st Amendment to the U.S. Constitution. That case involved a state

statute [Vermont] that prohibited the sale of beer or ale in nonreturnable glass bottles. Brewers and wholesalers charged retailers a deposit against the return of the bottles and the retailers were required to impose a deposit on purchasers of the bottles.

The 21st Amendment provides that

> The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

The plaintiffs argued that to fall within the 21st Amendment the state statute had to contain the words "import," or "importation;" it did not do so. However, those words were not necessary in this case, said the Court, because it was common knowledge that no ale or beer for resale was brewed in the state, that all such beverages packaged in the nonreturnable bottles was imported into the state. For that reason the statute implied that no such beverages would be imported in nonreturnable containers.

Finally, a container deposit state law [Maine] was not a compensable taking under the Fifth Amendment to the U.S. Constitution and a provision of the Maine Constitution in Maine Beer & Wine Wholesalers v.State, 619 A.2d 94 (Me. 1993). That case involved an amendment to the Maine container deposit law. Under the Court's reading of the original container deposit law, the principal responsibility for the proper disposal of certain beverage containers belonged to the bottlers themselves. The bottling industries were required to pay the minimum refund value for returned containers. However, while the industries were permitted to charge consumers a container deposit to cover the cost of their statutory duty to pay the refunds, that permission did not operate to relive those industries of their responsibility under the statute for the disposal of used containers. In that light, the amendment was drafted in response to address a litter problem the container deposit law did not correct: containers that in spite of the deposit law ended up as litter along roadways and in landfills rather than in the container recycling process. Those "disappearing containers" resulted in a cost to the state, a part of which the amendment thrust upon the industries profiting from the sale of the containers by requiring a percentage of the unrefunded deposits to be remitted to the state.

That amendment was not a physical invasion or confiscation of the industry's property, said the Court, but merely a regulation on its sale of beverage containers by making it financially accountable for those containers not returned.

Although the basic legality of the container law was not an issue in Maine Beer & Wine Wholesalers, that case also stands for the proposition that the container law itself was legal. [Also see Massachusetts Wholesalers of Malt Beverages, Inc. v. Attorney General, 567 N.E.2d 183 (Mass 1991), Commonwealth v. Mass. CRINC, 466 N.E.2d 792 (Mass. 1994) and Russin Beer, Inc. v. Phoenix Beverages, Inc., 556 N.Y.S.2d 454 (Sup. 1990) respecting other aspects of container deposit laws that do not have a direct bearing upon the question of their basic legality.]

JUNE 23, 1994

TCA Section(s): (No Citation.).

Author: Sidney D. Hemsley.

I. QUESTION

Is the city liable for the tipping fee charged by the county landfill for city residents' garbage hauled to the landfill by an independent contractor?

II. OPINION

The answer is, under the facts you related to me, probably not. However, let me suggest that because the bill is only around $140, and in the interest in good city-landfill relations, the city might want to consider paying all or a part of it; a conflict with the county landfill can end up costing the city more than $140 in time and trouble. The city could notify the county landfill that in the future it will not be liable for any tipping fee where an independent contractor picks up city residents' garbage.

III. ANALYSIS

As I understand the facts, the city entered into a contract with a certain person to pick up city residents' garbage. The person the city contracted with was an independent contractor. In other words, the city neither picked up residents' garbage nor had any written or verbal agreement with the county landfill with respect to the tipping fee. It seems to me that the landfill should have collected the tipping fee from the independent contractor; that was a problem between them. Apparently the city did nothing to mislead the landfill regarding the relationship between the independent contractor and the landfill; it was a relationship between those parties and had nothing to do with the city. In fact, upon its collection by the independent contractor, the garbage probably became the contractor's garbage, and he could have disposed of the garbage in any way he saw fit.

I have looked at the interlocal agreement between the governments in _____ County respecting the landfill and find nothing in there that suggests a different answer. In fact, _____ is not even a party to that agreement.

However, there is more at stake here than the question of who is contractually liable for payment of the tipping fee. At some point the city may directly or indirectly need to use the landfill. Good relations with the landfill are probably worth more than $140.

MAY 9, 1994

TCA Section(s): 68-211-801, 05-01-101, 98-211-705.

Author: Sidney D. Hemsley.

I. QUESTIONS

1. Can the county establish a solid waste convenience center inside the city without the city's permission?

2. Can the county prohibit the city from collecting garbage within the city?

3. Can the county prohibit the city from using a certain garbage truck to collect garbage?

II. OPINION

1. Answer: Probably so.

2. The answer appears to be no. However, there may be financial implications for the city to continue to provide garbage service if the city establishes countywide convenience centers or other garbage collection service.

3. The answer might be yes. Presently, the City of _____ provides garbage collection service to city residents, using its own garbage truck.

III. ANALYSIS

1. Under the Solid Waste Management Act, codified at Tennessee Code Annotated, section 68-211-801 et seq. a county, or municipality (or solid waste authority) is authorized to impose and collect a solid waste disposal fee. Funds from such fees are to be used to establish and maintain solid waste collection and disposal services, "including but not limited to , convenience centers. All residents of the county shall have access to these services . . ." [Tennessee Code Annotated, section 68-211-835(g)(1)] That authority is "In addition to any power authorized by title 5." Title 5 to which that statute has reference is Tennessee Code Annotated, section 5-19-101 et seq., which authorizes counties to establish county-wide garbage collection services and to levy certain fees and taxes to finance a county garbage collection and disposal system. However, under that statute, if a municipality provides garbage services, the county-wide tax is unlawful. [Tennessee Code Annotated, section 5-19-108] In other words, even though the City of _____ provides garbage services, Tennessee Code Annotated, section 68-211-835, being supplemental to Tennessee Code Annotated, section 5-19-108, still permits the county to establish convenience centers within the county and to levy a fee for their support.

However, it is not clear under the Solid Waste Management Act whether or not counties are entitled to establish the convenience centers inside the city without the city's permission. It seems likely that they are. Under Tennessee Code Annotated, section 68-211-814, "All residents of the county shall have access to these services." Presumably, the county or solid waste authority would have considerable discretion on how to accomplish county-wide access to convenience centers. In addition, under the Solid Waste Management Act,

> Effective January 1, 1995, each county shall assure that one (1) or more municipal solid waste collection and disposal systems are available to meet the needs of the residents of the county. Such systems shall complement and supplement those provided by any municipality. The minimum level of service that the county shall assure is a system consisting of a network of convenience centers throughout the county. Unless a higher level of service, such as household garbage pickup, is available to residents, a county shall provide directly by contract, or though a solid waste authority, convenience centers which shall meet minimum design standards . . . [Emphasis is mine]

That statute seems to contemplate considerable county authority and discretion to counties to establish convenience centers inside cities. That statute appears to impose an affirmative obligation on counties to provide solid waste disposal and collection system above and beyond those already provided by cities. Where household collection services are available, apparently convenience centers are not required in that territory, but county authority appears broad enough under that statute to provide them anyway.

It is clear that the state has within its power the authority to limit the application of zoning ordinances and other restrictions upon land uses within a municipality. [See Nichols v. Tullahoma Open Door, 640 S.W.2d 13 (Tenn. App. 1982)] Nothing in the Solid Waste Management Act either expressly protects or preempts the application of municipal prohibitions upon convenience centers. (Under Tennessee Code Annotated, section 68-211-705 zoning ordinances with respect to landfill siteing are expressly not preempted.) However, the broad language and purpose of the Solid Waste Management Act imply that municipal zoning or other regulations with respect to convenience centers are preempted to the extent they are inconsistent with the Act. That issue may have to be resolved by litigation.

2. The purpose of the Solid Waste Management Act is very broad. The public policy announced in that Act is . . . to institute and maintain a comprehensive, integrated, statewide program for solid waste management, which will assure that solid waste facilities, whether publicly or privately operated, do not adversely affect the health, safety and well-being of the public and do not degrade the quality of the environment by reason of their location, design, method of operation or other means and which, to the extent feasible and practical, makes maximum utilization of the resources contained in solid waste. [Emphasis is mine] [Tennessee Code Annotated, section 68-211-803]

The definition of "solid waste management" in the Solid Waste Disposal Act is "means the storage, collection, transfer, transportation, treatment, utilization, processing or disposal of solid

waste or any combination of such activities." That language may encompass solid waste collection by whomever and however done. Tennessee Code Annotated, section 68-211-802(20).

Under the Solid Waste Management Act solid waste regions are required by July 1, 1994 to submit their solid waste plans to the state planning office. I assume your county is the solid waste region. I do not know if its plan includes a provision that the county assume the collection of all solid waste within the county, including inside municipalities. I would be surprised if it did. However, on the assumption that it does, I find nothing in the Solid Waste Management Act that authorizes a county (or a solid waste authority) to prohibit a city from collecting solid waste within its boundaries. In fact, Tennessee Code Annotated, section 68-211-814 provides that after approval of the solid waste plan, the region or solid waste authority, by resolution and subsequent adoption of ordinances by counties and municipalities in the region, may also regulate the flow of collected municipal solid waste generated within the region . . .

On first glance, that and additional language in the statute appears to be talking about the flow of waste after it is collected. The region's or authority's power to restrict access to landfills and incinerators that dispose of solid waste appears to apply only to waste generated outside the region. But the definition of "solid waste stream" in the Solid Waste Management Act "means the system through which solid waste and recoverable materials move from the point of discard to recovery or disposal." [Tennessee Code Annotated, section 68-211-802(22)] Arguably, the "flow of collected municipal solid waste" and the "solid waste stream" are the same.

In any event, the regulation of the flow of collected city solid waste by the solid waste region appears to require city approval in the form of an ordinance. Seemingly, then, a city can under the Solid Waste Management Act refuse to adopt the county's solid waste flow control scheme.

But that brings us to something significant about the Solid Waste Management Act that should already be apparent: it contains clear authority for the solid waste region to finance the collection of garbage in the region through tipping and other fees. [Tennessee Code Annotated, section 68-211-835] But that may be the tip of the iceberg. I see no authority in the Solid Waste Management Act for a county to levy a solid waste management tax, but if that Act should be read that broadly, and if the county also levies a countywide tax to support the county garbage collection system, and if cities in the county continue to provide for their own garbage collection, city residents are paying twice for the same service.

There is a separate statute in Tennessee Code Annotated, section 5-19-108 that permits counties to establish countywide garbage collection systems, but it provides that

> Such garbage and rubbish collection and disposal services may be financed in whole or in part by a levy of a tax on all property in the county only if all persons in the county are to be equally served, but such a countywide levy shall be unlawful if any city, town or special district therein, which thorough its own forces or by contract, provides such services within its boundaries, or if any other part of the county is to be excluded from the service area. [Emphasis is mine]

Arguably, that statute is still effective. In fact, as we saw above, the Solid Waste Management Act recognizes it; therefore, the city has an argument that if it provides its own garbage collection service, a countywide tax for garbage collection cannot be levied on city residents.

3. We have seen that under the Solid Waste Management Act control of a city's garbage flow might be contingent upon the passage of an ordinance by an affected municipality. But the same contingency applies to counties (although counties generally act by resolution, not by ordinance). I suspect a county that owned a landfill could pass an ordinance (resolution?) containing reasonable regulations governing the kind of vehicles from which solid waste would be accepted at the landfill.

OCTOBER 6, 1993

TCA Section(s): 59-19-101, 05-19-108 -- 109, 05-19-107, 05-17-101 et seq., 68-37-835(a).

Author: Sidney D. Hemsley.

I. QUESTIONS

1. Is it illegal "double taxation" for the county to charge a tipping fee?

2. Can the city eliminate garbage services?

II. OPINION

1. In my opinion the answer is no.

2. In my opinion, the answer is yes.

III. ANALYSIS

After you called on September 16, I happened to read a recent Tennessee Attorney General's Opinion that has a bearing on your question. OAG Opinion 93-49 deals with the question of whether a county-wide solid waste disposal fee to defray the cost of operating solid waste convenience centers is illegal as being double taxation. The facts in that opinion indicate that Benton County proposed to charge a $3 solid waste disposal fee on all county residents, including those within the cities of Camden and Big Sandy. The two cities provided their own garbage collection services, but not convenience centers. The opinion concludes that the proposed fee is legal, reasoning that it is a fee is not a tax, and that the Solid Waste Disposal Act authorizes the imposition of a solid waste disposal fee. But even if the tipping fee is "double taxation" it would probably still be legal because it appears to be authorized by statute.

The term "double taxation" has been recently used to describe various situations where city taxpayers who pay city and county taxes are either denied, or charged extra for, certain county services. The charge of double taxation has most frequently arisen recently in the areas of county garbage and fire services. However, charges of double taxation have found no support in the Tennessee courts where the it is authorized by law. In Greenfield et al. v. Butts, 582 S.W.2d 80 (1979), the plaintiffs complained that they paid county taxes which were not spent on municipal roads. Tough luck, said the Tennessee Court of Appeals, Western Section (review refused by the Tennessee Supreme Court):

> A town resident has the same duty to support county government as does a non-town resident; each is a county resident . . . The extra taxation which a citizen of an

> incorporated town must pay is to support his municipal government. It has no relation to the duty he owes to contribute to the support of the County Government which affords him equal protection with every other citizen whether they reside within or without a municipality.

The same proposition is supported in a number of other cases, including Albert v. Williamson County, 798 S.W.2d 758 (1990), Williams v. Massachusetts Mutual Life Insurance Co., 221 Tenn. 08, 427 S.W.2d 845 (1968), Stalcup v. City of Gatlinburg, 557 S.W.2d 439 (Tenn. 1978) and several Tennessee Attorney Generals Opinions, including OAG 92-29. For that reason, municipalities must challenge a double taxation scheme on the ground that it is not permitted by statute. [See in addition to the OAG opinions cited, OAG 93-53, U93-16 and U92-134].

Two recent chancery court cases are of interest in analyzing your question. It is important to note that trial court cases, including chancery court cases, are not the "law." They cannot be cited as authority to support legal theories as can appellate court cases. However, they are of interest in determining how legal questions might be handled at the local level.

In a recent chancery court case, Town of Carthage v. Smith County, No. 4928, filed February 1, 1993, three towns in Smith County contested a tonnage fee charged by Smith County. Smith County operated a number of convenience centers, all of which were open to both county and city residents. Each of the towns provided curbside garbage collection to their residents, but none provided convenience centers. The Smith County Chancery Court looked at Tennessee Code Annotated, section 59-19-101 et seq. concluded that counties had the power to provide county-wide garbage services or garbage services to special districts, and to levy a special tax for such services. Because the county had not levied such a special tax levy on all property in the county, as authorized by Tennessee Code Annotated, section 5-19-108 or 109, said the Court, the county was authorized under Tennessee Code Annotated, section 5-19-107 to collect reasonable charges for the garbage services.

Furthermore, continued the Court, the Solid Waste Management Act of 1991, specifically authorized counties to charge a tipping fee. [Tennessee Code Annotated, section 68-211-835(a)]. As did the Tennessee Attorney General in OAG 93-49, the Court declared that the tipping fee was not a tax but a fee, and "This conclusion effectively forecloses the argument respecting double taxation."

In the other chancery court case, City of Shelbyville, et al. v. Bedford County, et al., No. 17519, filed July 14, 1993, the City of Shelbyville sued Bedford County on the grounds that the latter's sanitation and fire departments were financed in a manner constituting double taxation not authorized by statute. Both were financed though a tax levy upon all the citizens of the county, including the citizens of Shelbyville. However, Bedford County provided no sanitation or fire services within the City of Shelbyville, and the city had its own sanitation and fire services. Some garbage convenience centers were located near the corporate limits of the city and were open to use by the citizens of the city.

The Court held that Bedford County had not established sanitation or fire service districts as respectively required by Tennessee Code Annotated, section 5-19-109, and Tennessee Code Annotated, section 5-17-101 et seq., and had not levied a tax for those services only within those districts as also required by those statutes.

However, City of Carthage and City of Shelbyville can be distinguished: no tipping fee was involved in the latter. Bedford County was enjoined from imposing taxes on city residents to pay for garbage and fire services; however, I see nothing in that ruling that would prohibit Bedford County from imposing a tipping fee in accordance with Tennessee Code Annotated, section 68-37-835(a).

I know of no general law or other requirement that a city provide garbage collection services. Generally, municipalities have broad authority to establish various services, but that authority imposes no legal obligation upon them to provide such services. A check of the _____ City Charter reveals permissive, but not mandatory, authority to establish garbage collection services [See sections 1-15 and 2-29] Many municipalities in Tennessee do not provide garbage service.

SEPTEMBER 16, 1993

TCA Section(s): 68-211-101.

Author: Sidney D. Hemsley.

I. QUESTION

1. Can the city charge garbage collection service recipients a garbage collection fee even if they do not use the service?

2. Can the city require garbage collection recipients to use only city garbage collection service?

II. OPINION

The answer to question 1 is yes. The answer to question 2 is not clear, but probably no.

III. ANALYSIS

1. Attached is a Hamilton County Criminal Court case involving the City of Soddy-Daisy. The case includes:

- Motion for Summary Judgment
- Memorandum in Support of the City's Motion for Summary Judgment
- Memorandum in Opposition to the City's Motion for Summary Judgment
- Stipulations
- Judgment
- Supporting exhibits to all of the above, including the city's ordinances in question.

Under Section 8-409, 8-410, and 8-411 Soddy-Daisy residents and commercial businesses were charged a garbage collection fee. Section 8-415 made it an offense for a person not to pay the garbage collection fee (which the city passed on my advice that it would withstand legal challenge). However, note that Section 8-412 permits a resident to exempt himself from the payment of the garbage collection fee upon showing proof that he has a current contract with a person or entity properly licensed and permitted to collect garbage or waste disposal. We will return to that provision when we consider Question 2.

Certain residents (one of whom operated a business within the city subject to the garbage collection fee) refused to pay the garbage collection fee. The court upheld the fee and Section 8-415 which made it an offense not to pay the fee. In my opinion, that ruling was consistent with the law. The Soddy-Daisy case was a trial court decision; technically it is not "law." However, the case gives you an idea of the issues to argue and how a similar ordinance in your city might fare.

2. This question is more difficult. As noted above, the City of Soddy-Daisy didn't require that residents and businesses receive garbage collection services exclusively from the city. There is considerable legal authority for the proposition that a city can provide exclusive garbage collection service. Some of that authority is cited in the Memorandum in Support of the City's motion for Summary Judgment, pages 2-3. However, the Court's Judgment never reached that question; it didn't have to. But that authority is subject to question under the Sherman Antitrust Act.

The U.S. Supreme Court has held that the Sherman Antitrust Act applies to municipalities because, unlike states, they are not sovereign entities. [Lafayette v. Louisiana Power Co., 435 U.S. 389 (1978); Community Communications Co., Inc. v. City of Boulder, 455 U.S. 40 (1982)]. However, the same Court has declared that a municipality can cloak itself in the state's immunity from the Sherman Antitrust Act by demonstrating that its anticompetitive activity was authorized by the state "pursuant to state policy to displace competition with regulation or monopoly public service." [Town of Hallie v. City of Eau Claire, 105 S. Ct. 1713 (1985)].

The state authority can be somewhat nebulous. In Town of Hallie, the Court said that in proving that a state policy to displace completion exists, the municipality need not point to a specific detailed legislative authorization. It need show only that it acted pursuant to a "clearly articulated and affirmatively . . . expressed state policy." It is not even necessary for the legislation to expressly state that it expects the city to engage in conduct that would have an anticompetitive effect. It is only necessary that the anticompetitive effect would be a logical outcome and foreseeable consequence of the authority to regulate. In Town of Hallie, a city had a monopoly on the delivery of water services, even in outlying areas, arising from a state statute that permitted, but did not mandate, that outcome. However, the Court reasoned that it was foreseeable that such permissive legislation would be used by a municipality with an anticompetitive effect.

Unfortunately, there is nothing in general state law or the _____ Charter that appears to represent even nebulous state policy to displace completion in garbage collection by municipalities in general, or _____ in particular. In two or three cases involving municipal monopolies in garbage services the federal courts have held that the municipality did not violate the Sherman Antitrust Act. However, in each of those cases there was at least some state statutory language that logically and forseeably would lead to the anticompetitive outcome in question. [G. Fruge Junk Co. v. City of Oakland, 637 F. Supp. 422 (N.D. Calif. 1986); Savage v. Waste Management, Inc., 623 F. Supp. 1505 (D.C.S.C. 1985); Hybud Equipment Corp. v. City of Akron, 742 F.2d 949 (1984)]. The same is true of cases involving allegations of violations by municipalities of the Sherman Antitrust Act in other areas.

In fact, it appears to me that the Tennessee Solid Waste Disposal Act found at Tennessee Code Annotated, section 68-211-101 kicks the solid waste problem to the counties. It is difficult for me to see how cities can argue that the Act contemplates a municipal monopoly over solid waste collection, unless the regional solid waste plan calls for that foreseeable and logical outcome.

For that reason, I suspect that _____ regulation making the city the exclusive garbage collector is on shaky ground. However, that may not be true if the city amended its charter to provide the city exclusive authority to be the garbage collector. It is not clear under Town of Hallie whether a charter provision rises to the level of a clearly articulated and affirmatively . . . expressed state policy. Arguably it does so at least with respect to the municipality in question because a charter is part of the state law for that municipality.

It is worthwhile to note that under the Local Antitrust Act of 1984, no damages, interest on damages, costs or attorneys fees can be recovered under the antitrust laws from any local government or official or employee acting in an official capacity. Apparently, however, a successful plaintiff would be entitled to injunctive relief against a city and attorneys fees arising from obtaining the injunction. That information may or may not play a part in the question of whether the city wants to go ahead with a regulation making the city the exclusive garbage collector.

FEBRUARY 2, 1993

TCA Section(s): (No Citation).

Author: Sidney D. Hemsley.

I. QUESTION

Can the town refuse to provide door-to-door garbage pick-up in a mobile home park on the ground that the court is a commercial enterprise?

II. OPINION

In my opinion, because the town presently provides door-to-door garbage pick-up for residential customers, the answer is no. However, the town may be able to do the same thing on the ground that mobile homes in mobile home courts are located on private property.

III. ANALYSIS

As I understand the facts, the town provides door-to-door residential garbage pick-up; however, it provides no commercial garbage pick-up of any kind. The door-to-door residential garbage pick-up is presently being provided to residents of mobile home courts.

A large body of law says that generally municipalities can't discriminate in the delivery of municipal services, but does permit discrimination in the delivery of utility services based on reasonable classifications. That body of law appears to carry over into other municipal services, including garbage services. The key to your question is whether it is reasonable to discriminate against mobile home dwellers because the mobile home court courts in which they live are commercial enterprises. Although I can find no cases directly on point, the flavor of the law suggest that the answer is no.

From a commercial enterprise standpoint, the residents of mobile homes stand in practically the same position as most renters of traditional homes. The town provides residential garbage pick-up to the owners of traditional homes and rental home alike. Yet the rental home is no less a commercial enterprise than is the mobile home court. In other words, it's impossible to put mobile home dwellers who rent a mobile home or a mobile home lot in a mobile home court in one class and traditional home dwellers who rent a house in a residential area in another, and to deny the former class garbage pick-up because the mobile home court is a commercial enterprise.

I reviewed in vain a large number of Tennessee garbage ordinances in an effort to find some that specifically set apart mobile home courts for garbage pick-up purposes. Obviously, many garbage ordinances treat commercial and residential commercial garbage pick-up separately.

One such ordinance defined a commercial establishment as one that had to get a business license. Because _____ provides no commercial garbage pick-up, I considered the possibility that the town could adopt that definition and use it as a ground to deny mobile home courts garbage pick-up services. However, that approach doesn't overcome the fundamental fact that such discrimination would still not be based upon a reasonable classification. In fact, even the ordinance containing that definition of commercial establishment wouldn't operate to deny mobile home court dwellers the same garbage pick-up services to which traditional residential dwellers were entitled under the ordinance.

But the town has an argument that discrimination against mobile home dwellers in garbage pick-up services is based on the ground that mobile homes in mobile home courts are located on private property. The classification in that case is arguably reasonable. Generally municipalities don't provide municipal services on private property (even though they may provide considerable services to private property, including utilities), and that practice can be supported by defensible policy reasons. Even the residential garbage pick-up service provided to rental and apartment houses is usually provided via the public streets. However, the town would have to insure that no other kind of residential garbage pick-up service was provided on private property.

Alternatively, it's probably possible for the city to require dumpsters or other central garbage pick-up points to residential customers based on housing density. For example, cities impose such conditions on certain apartment complexes. There is no reason I can see that the same couldn't be done with respect to mobile home courts of certain densities.

MARCH 27, 1992

TCA Section(s): 07-82-302.

Author: Mark Pullen.

OPINION

Recently you approached MTAS with a question about the power of municipalities to collect garbage outside of city limits. After some thought and research I think I may have an answer to your question. In his initial reply Sid Hemsley inferred that he thought the City did not have the power to do this. He based his logic on an analogy to fire departments. After my research I am not so sure this applies. T.C.A. §7-82-302 authorizes the creation and operation of utility districts. Within the body of the statute garbage disposal is listed as a service which a utility district may operate. Subsection (g) of the statute allows incorporated cities and towns of over 5,000 in population operating utility districts to extend water, sewer or other utilities in a territory within five miles of the city limits. I think it is fairly clear by implication that garbage service is a utility a municipality can operate utility. I could not find anything that specifically holds this but it can be inferred from the statute.

In Baton v. Pleasant View Utility District, 592 S.W.2d 578 (Tenn.App. 1979) it was pointed out that a municipality operates its utilities in a proprietary capacity. I can find absolutely no authority that holds garbage pick up is anything but a propriety function. I also believe this is the difference between fire service and garbage pick up since fire protection is regarded as a governmental function and not a proprietary one. See Smiddy v. City of Memphis, 203 S.W.2d 512 (Tenn. 1918).

_____ can be distinguished from municipalities operating utility districts since the governing body operates the utilities under its own authority thus §7-82-302(g) does not directly apply. The City is thus not directly empowered to make garbage pick up outside its limits but there is no legislation prohibiting it from doing such either. It has also been pointed out to me by several of my fellow consultants that many towns simply offer pick up outside city limits and nobody worries about it as long as the customers pay for the service. The combination of all these elements leads me to believe that the City may or may not offer garbage pick up outside of City limits as it so chooses.

DECEMBER 13, 1991

TCA Section(s): 68-31-801 et seq., 6-19-101.

Author: Leslie Shechter.

OPINION

You asked that we look more closely at the manager-commission charter to determine whether there is authority to grant an exclusive contract for garbage collection in _____. I agree that there may at least nebulous authority in the language of this charter to enter into such an agreement. As Mr. Hemsley pointed out, even nebulous state policy to displace competition in garbage collection will avoid Sherman anti-trust problems. In the manager-commission charter, T.C.A. § 6-19-101, subsections (12) and (13) authorize the municipality to make contracts and grant franchises, including **exclusive contracts and franchises** for public utilities and public services. Subsection (19) authorizes the municipality to regulate and license the collection and disposal of garbage.

My concern was that subsection (19) does not specifically provide for the granting of exclusive contracts for such garbage collection and disposal. The issue is whether garbage collection is a public service, so that under subsections (12) and (13) the municipality may grant such contracts and franchises. I believe the answer is yes and that construing these provisions together the municipality could argue the state has expressed a "nebulous policy to displace competition". Blacks Law Dictionary defines public service as:

> " . . . enterprises . . . that serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as . . . gas, water, and electric light companies."

In addition, with the passage of the Solid Waste Management Act of 1991 (T.C.A. § 68-31-801 et seq.) it is arguable that there is now express "state policy to displace competition with regulation or monopoly public service." Town of Hallie v. City of Eau Claire, 441 U.S. (1985) in the area of garbage collection and disposal. That Act provides for regionalization and interlocal cooperation between groups of municipalities and counties which will likely result in monopolization of garbage collection and disposal services.

OCTOBER 14, 1991

TCA Section(s): 5-19-101 et seq., 5-19-108, 68-31-801 et seq., 68-31-835, 68-31-835(g)(1).

Author: Leslie Shechter.

OPINION

You have asked several questions regarding the authority of _____ County to continue taxing the residents _____ of for garbage disposal services, if the City contracts with a private disposal service to dispose of all of its municipal solid waste. In my opinion, absent a private act, _____ County has no authority to tax the residents of _____ for garbage collection or disposal services if it does not, in fact, provide those services. It is further my opinion that _____ County does not have any authority under the newly enacted Solid Waste Bill to impose a surcharge or tax until the development district assessments are completed and the regional solid waste authorities created.

Unless _____ County is operating under a private act giving them authority to tax municipal residents for garbage disposal services, they derive that authority from T.C.A. § 5-19-101 et seq. This statute gives counties authority to provide garbage collection and disposal services, to enter into interlocal cooperation agreements regarding same, and to levy a county-wide tax to finance the service. However, T.C.A.§ 5-19-108 provides as follows:

> "**Tax levy.** - Such garbage and rubbish collection and disposal services may be financed in whole or in part by a levy of a tax on all property in the county only if all persons in the county are to be equally served, but such a county-wide levy shall be unlawful if any city, town . . . therein, which, through its own forces or by contract, provides such services within its boundaries . . ."

Thus, unless an interlocal agreement exists between _____ County and _____ that provides otherwise, _____ County must actually provide collection and disposal service, or it may not tax the residents of _____ as part of the county's property tax levy. Thus, if the City of _____ decides to provide collection and disposal services on its own or under contract with a private entity, and does not continue to accept such service from _____ County, it will not be subject to a property tax to help finance that service.

The next issue is whether the county has the authority under the newly enacted "Solid Waste Management Act of 1991", T.C.A. §68-31-801 et seq., to impose a tax for solid waste disposal when it is not directly providing such service to the municipality. Section 68-31-835 provides for several tipping fees and surcharges that a county may levy if it owns the facility being used, or, once a regional plan is in place. There is also authority for a municipality or a county to:

> "impose and collect a solid waste disposal fee . . . to establish and maintain solid waste collection and disposal services including . . . convenience centers. All residents of the

> county shall have access to these services . . . Such fees shall be segregated from the general fund and . . . be used only for the purposes for which they were collected." T.C.A. §68-31-835(g)(1).

The fee authorized by this paragraph can be collected along with payment of the electric utility bill and, unlike other fees and surcharges listed, could possibly be collected prior to the needs assessments and regional plans being approved.

The Attorney General specifically upheld the imposition of this kind of fee in an opinion dated April 8, 1991. (OAG 91-30). However, this opinion was written prior to the final drafting of the legislation and assumed the fee was to be assessed on a per household or per business entity basis. The final act contains no such limiting language, i.e., we do not know how the fee is to be measured. Thus, while such a fee could theoretically be imposed prior to the regional needs plan being in place, any effort to impose such a fee could probably be successfully challenged as unconstitutional. The legislation is simply too vague.

I am of the opinion that the county may not impose any fee, other than a tipping fee, prior to the approval of the regional plan, unless the Act is amended to clarify the basis for the fee authorized in § 68-31-835 (g)(1). I am further of the opinion that the City of _____ will not be subject to a property tax to finance garbage collection and disposal unless it continues to avail itself of the county's services.

Chapter 16

Tennessee Department of Environment and Conservation

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

The following pages are policy and guidance materials on various subjects developed by the Tennessee Department of Environment and Conservation.

APPLICABILITY OF THE JACKSON LAW

DATE: **August 15, 1995.**

TO: **Tom Tiesler and Frank Victory, Division of Solid Waste Management.**

FROM: **Joe Sanders through Greer Tidwell.**

Because the Department continues to be bombarded with questions about when the Jackson Law applies, our office wants to set some guidelines. Please understand that not every situation can be anticipated and slight factual changes may also cause a change in applicability. Each situation should be carefully reviewed as it arises. Thus, the following is offered as guidance only.

> The "Jackson Law" T.C.A. 68-211-701 et seq. and T.C.A. 68-211-105(h) became law on June 2, 1989. The law provides that "the Commissioner shall not review . . . <u>any construction</u> for any new landfill . . . or for solid waste processing in any county or municipality which has adopted the provisions of 68-211-701 - 68-211-705 and 68-211-707 until such construction has been approved in accordance with the provisions of such sections.
>
> The Department has taken the following positions:
>
> 1. The Jackson Law applies to "new" landfills and "new" solid waste processing facilities.
>
> 2. The Jackson Law does not apply to landfills or solid waste processing facilities that existed on June 2, 1989. A "new" landfill or a "new" solid waste processing facility is one which <u>did not</u> exist on the date the Jackson bill became law (June 2, 1989). A landfill "exists", for purposes of the Jackson Law, once a tentative decision to issue a permit has been made by the Department.
>
> 3. If a facility is an existing facility (one that existed on June 2, 1989), the Jackson Law does not apply to expansion of that facility. A plain reading of the statute as well as legislative history supports the position that existing facilities are forever excluded from applicability of the Jackson Law. Representative Jackson was

clear on this point. On May 2, 1989, Representative Jackson made the following statements to the House Committee for state and local government:

> "The bill would also apply to new sanitary landfills. It does not affect an existing landfill in your district. If they want to expand it, they can. The bill does not apply to that situation."

Later Jackson added:

> "Mr. Chairman, what reduced the fiscal note was taking out involvement of expansion of existing sites by applying the bill only to new landfills, the creation of broad new landfills, that reduced the fiscal note substantially."

4. The Jackson Law applies to modification of a "new" landfill that involves "new construction". However, the Jackson Law does not apply to a modification of a "new" landfill that does not involve "new construction". In the Sanifill, Marshall County, case the Department took the position that whenever a "new" landfill attempted to modify its permit the Jackson Law applied. The Court of Appeals rejected this contention, but it indicated that the Jackson Law would be triggered if the modification involves "new construction". The court defined construction as follows:

> This court construes the word, "construction" as used in the statute to be all of the site preparation required by law and regulation, prior to the beginning of actual receipt and processing of waste. This "construction" took place before the first waste was placed in the subject landfill. There is no evidence or other indication that Sanifill proposes, plans or seeks approval of any enlargement or modification of the existing approved landfill.

The Department did not appeal this portion of the Court's decision and is bound by it. Once a landfill is permitted, the Jackson Law only applies to modifications that involve "enlargement". Thus, the Jackson Law should be applied to lateral expansions of "new" landfills. Such modifications would clearly involve construction as defined by the Court. On the other hand, a vertical extension of a "new" landfill would not involve construction as defined by the Court.

AUTHORITIES FORMED UNDER THE SOLID WASTE AUTHORITY ACT OF 1991 (PART 9)

(Revised January 1995)

What follows are a number of questions frequently asked the Division of Solid Waste Assistance regarding Part 9 Solid Waste Authorities:

1. What are part 9 Solid Waste Authorities?

Part 9 authorities are entities designed to implement regional solid waste programs. They differ from other entities known by similar names as solid waste authorities, commissions, boards, cooperatives, committees etc. formed by county commissions as a result of interlocal agreements or private acts. Part 9 solid waste authorities are specifically formed in accordance with the Solid Waste Authority Act of 1991. This act was passed at the same time as the comprehensive Solid Waste Management Act of 1991 [T.C.A. 68-211-901 et seq.]. The state wanted counties in the newly formed solid waste regions to have the Part 9 solid waste authority option available as a tool as they sought to implement mandates under Solid Waste Management Act. The new Part 9 solid waste authorities respond specifically to the Solid Waste Authority Act which grants their unprecedented autonomy and responsibility in order that regional solid waste management services be expedited, economized and consolidated.

2. How does a Part 9 solid waste authority compare with a solid waste regional planning board formed pursuant to the Solid Waste Management Act of 1991?

In general, solid waste regional planning boards were mandated to develop a ten year plan for disposal capacity assurance, 25% waste reduction, collection assurance, solid waste education and other aspects of integrated solid waste management. Duties and powers of the solid waste regional planning board are spelled out at T.C.A. 68-211-813 to 815. The act is not specific about how often the board should meet but the duties and continuing terms of office indicate that the board's planning duties extend indefinitely and certainly beyond completion of the first ten year solid waste plan. The board must update the plan every five years and submit annual progress reports.

The solid waste region board also has responsibility for administering flow control and permit review policy in the region. **However, if a Part 9 authority is formed in the region, then the Part 9 authority may usurp the board's power to control flow and review permits within the Part 9 authority's jurisdiction [T.C.A. 68-211-814(b)].**

> **Note:** Regions should be aware that flow control within and among states has been the subject of a number of court cases in recent years. Although, the State will continue to defend our flow control statutes and to contend that these laws satisfy commerce clause problems, genuine issues regarding constitutionality exist.

It is important to note that the **same** persons appointed to the solid waste regional planning board may also be appointed to a subsequently formed **Part 9** authority board of directors. Thus,

despite the fact that both must continue to exist and serve its function in regions choosing to form a Part 9 authority, the make-up of both bodies may be the same (or different) at the discretion of the appointing jurisdictions [T.C.A. 68-211-904(a)].

The creation of a solid waste regional planning board is **mandated** by statute and the creation of a Part 9 authority is **optional.** State lawmakers intended that the board and the plan would guide the activities of those entities implementing the plan. Solid waste regional planning boards are not empowered to actually implement plans because they lack the ability to authorize and provide funding for programs. Thus, regional boards recommend appropriate implementation vehicles like traditional county and city jurisdictions, sanitation boards and committees, interlocal agreements, and, of course, Part 9 authorities. A Part 9 authority is one vehicle among several available to implement plans and administer solid waste activities in the region.

A Part 9 authority does not legally have to represent **ALL** the cities and counties in the solid waste region, but the solid waste regional planning board does [T.C.A. 68-211-813; T.C.A. . 68-211-903].

3. What are the advantages and disadvantages of forming a Part 9 solid waste authority?

The Part 9 authority arrangement is not right for every region. Their potential for usefulness varies from situation to situation. The autonomy/control afforded a Part 9 authority in implementing solid waste programs is both the greatest advantage and the greatest disadvantage to forming a Part 9 authority.

ADVANTAGES

Part 9 Authorities are Independent of Governmental Entities: In the past, concern has been expressed that solid waste management policy is often driven by politics and not by fair and practical economic and environmental considerations. The solid waste decision making process often becomes bogged down in controversy and little is accomplished. Forming a Part 9 solid waste authority is seen as one way of removing the solid waste program from the political process and allowing a somewhat independent (appointed as opposed to elected) board of directors to run a fair, efficient program.

Part 9 Authorities Aid Coordination Between Jurisdictions for Integrated Solid Waste Programs: The Part 9 authority is an excellent tool to consolidate and integrate programs between various county and city jurisdictions. This is a very important consideration as solid waste programs have become enormously expensive and it has been shown that public money can be saved by combining services like recycling programs and joint disposal facilities.

DISADVANTAGES

Part 9 Authorities are Potentially Powerful Independent Entities and Somewhat Removed from the Control of County Commissions and City Councils: Local

governments that are uncomfortable with being removed from day to day operational and funding control over solid waste programs should not choose the Part 9 authority option. Traditionally, local governments have held close control over solid waste programs. Many politicians and voters are uneasy with any loss of control in this area. Part 9 authorities are potentially very independent especially if they are both the entity that creates regional solid waste plans AND the entity which implements the plans (Note: regional planning board members and authority directors may be the same persons). **However, several checks exist to help control Part 9 authorities if the need arises. Directors may be removed for reasonable cause and Part 9 authorities may be amended or dissolved altogether.**

In addition to considerations of power and control between local governments and Part 9 authorities, similar issues should be considered with respect to solid waste regional planning boards and Part 9 authorities when membership is not the same. The regional planning board has some degree of control over the Part 9 authority as regional solid waste plans provide the framework for the authority's activities. However, the law allows Part 9 authority directors to usurp flow control and permit review responsibility even though guidelines on both subjects are to be contained in the plan.

4. How is a Part 9 authority formed?

The Solid Waste Authority Act, at T.C.A. 68-211-903(a) outlines several steps:

a. A **county** or counties (in an existing solid waste region) may resolve to create a Part 9 authority. **(Note:** a part 9 authority may consist of **less than all** the counties in a solid waste region.)

b. Any **cities** within the counties desiring to participate **may** (but are not required to) join in creating the Part 9 authority upon terms adopted and agreed on by resolution of the respective **county and city** governing bodies.

c. The public will be allowed to comment on the proposed Part 9 authority. **(Note:** A public hearing is required to be held to receive public comments.)

d. Each **county** government **in the solid waste region** must approve a resolution creating a Part 9 authority in the region.

e. If more than one county or municipality participates in creating a Part 9 authority, an agreement creating the authority shall be approved by the governing body of each **county and city** that is a party to the agreement as part of the resolution creating the Part 9 authority.

f. The resolutions creating the Part 9 authority may be **amended** by the agreement of all of the participating governments to **add or subtract participating governments** or to **dissolve** the Part 9 authority.

g. Creating resolutions shall give the Part 9 authority a **name/identity for the solid waste region.**

h. Any resolutions **creating, amending, or dissolving** a Part 9 authority shall be **certified by the county clerk or municipal clerk or recorder** of the counties and municipalities participating in creating the Part 9 authority and sent to the **Secretary of State of Tennessee.**

5. What should be contained in a resolution creating a Part 9 authority?

In general, the creating resolution of a Part 9 authority should list:

a. The **mission** of the authority,

b. A list of the **participating jurisdictions,**

c. The **name** of the Part 9 authority,

d. And a provision for the establishment of a Part 9 authority **board of directors** to administer the activities of the Part 9 solid waste authority.

The resolution could contain other details the participating jurisdictions consider important such as an expression as to how the authority mission is to be funded, compensation for directors, or a description of flow control and permit review jurisdictions and responsibilities. In addition, any transfer of assets from a county or city to the authority might be outlined in the document.

6. How is a Part 9 authority board of directors to be created?

Membership requirements, compensation, procedures, and duties for Part 9 authority board members are outlined in the Solid Waste Authority Act of 1991 at T.C.A. 68-211 904 and 905:

a. The authority's board of directors may be the same board as that of the municipal solid waste region or it may be a separate board.

b. The board of directors membership shall consist of an odd number between five and fifteen members.

c. Each county and city that is a member of the Part 9 authority is entitled to **at** least one member on the board of directors.

d. The directors shall be appointed by the county executives and/or municipal mayors of the participating counties and cities respectively, whose appointments must be confirmed by the appropriate county commission or city council.

e. The terms of office shall be for **six years** except that initial terms of office will be staggered such that 1/3 of the board will be appointed every two years.

f. Members of county and municipal governing bodies, county, executives, mayors, and local officials and department heads **may be (but are not required to be)** appointed as directors.

g. Directors may receive compensation if provided for in the creating resolution.

h. The directors shall elect officers as directed in T.C.A. 68-211-905(a).

i. Procedure for filling vacancies on the Part 9 board of directors and for removal of directors is outlined at T.C.A. 68-21-905(b).

7. **What are the powers granted a Part 9 authority?**

The concurring vote of a majority of all of the directors shall be necessary for the exercise of any of the powers granted by Part 9 and listed below. In general, Part 9 authorities may:

a. Sue and be sued.

b. Acquire personal and real property and exercise the power of eminent domain order to achieve solid waste planning goals.

c. Enter into contracts.

d. Issue revenue bonds on its own authority. Counties and cities shall not be liable for payment on the bonds unless they agree to such an arrangement.

e. Incur debt, borrow money.

f. Employ agents and pay compensation to employees.

g. Set tipping fees and surcharges.

h. Review permits for new facilities within its jurisdiction.

***T.C.A. 68-211-906, 908, 910, 911, and 912;**
T.C.A. 68-211-835 and 814.

The above represents only a partial list of the powers afforded Part 9 authorities in the Solid Waste Authority Act of 1991 and the Solid Waste Management Act of 1991.

COUNTY-WIDE COLLECTION ASSURANCE
(Revised January 1995)

THE LAW: By January 1, 1996, all Tennessee Counties must assure that one or more municipal solid waste collection and disposal systems is available to meet the needs of the residents of the county. The minimum level of service that the county shall assure is a system consisting of a network of convenience centers throughout the county, unless a higher level of service, such as household garbage pickup, is available to the residents. **[The Solid Waste Management Act of 1991 - T.C.A. 68-211-851(a)]**

REGULATIONS ON MINIMUM LEVELS OF COLLECTION SERVICE PROMULGATED TO SUPPORT THE LAW [Rule 1200-1-7]:

Convenience Centers - Each county shall have at least one convenience center unless a higher level of service is provided. The minimum number of centers shall be established as follows:

1. The service area* in square miles divided by 180, **OR** 2. The service area population divided by 12,000.

   *Service area does not include cities, covered by mandatory collection.

Household collection/ Higher level of Service/ Alternate Systems - A county shall be deemed to have met the minimum level of service if at least 90% of all residents have **access to** household collection. If a county or region proposes an alternative system (household collection or some combination with convenience centers), said system shall be approved by the Commissioner. The proposed system must provide a higher level of service than convenience centers would.

Beginning July 1, 1996, each region or county must report on collection progress. The progress reports shall consider: a survey of roadside dumps, citizen complaints, alternative systems available, and volume of waste received or collected by the existing systems. The Commissioner will use these reports and other information to evaluate collection systems.

Common Questions Asked:

1. **If a county chooses to develop convenience centers in order to assure collection to its citizens, what is the minimum action required?**

The county should use either of two formulas (one based on area and the other on population described above) to determine how many convenience centers are required in the county. Then the county should develop as many as are required, following the Department's guidelines in Rule 1200-1-7 and seeing that the centers are conspicuous and available to all citizens.

This minimum level of convenience center service required by law and regulation will serve as a benchmark to evaluate any alternative systems. When evaluating house-to-house or hybrid collection systems, the Commissioner will look to see that the system in place is a higher level of service than the minimum number of required convenience centers would be.

2. Are counties allowed to build more than the number of convenience centers mandated by law and rule?

Yes, these rules only establish a minimum number of convenience centers required. Additional centers to enhance collection are encouraged. In fact, grant money to establish new convenience centers and to enhance existing convenience center systems is available from the Division of Solid Waste Assistance.

3. What must a county choosing door to door collection over convenience centers do to meet the legal requirements?

1. Counties electing to assure a higher level of service than convenience centers must follow the guidelines set out in the rule above for a higher level of service which states that 90% of all residents must **have access to** household collection.
AND
2. Alternative systems must be approved and evaluated annually by the Commissioner to see that a level of service higher than the minimum required by convenience centers is being achieved. Satisfaction with the service will be evaluated by annual progress reports described above.

4. What are some courses of action a county choosing an alternative (to convenience centers) system may choose?

1. In counties choosing to rely on the services of private door-to-door haulers, the Department will look for enforceable, reasonable contracts for at least some consideration. These contracts between the county and the hauler or haulers may be, but do not have to be contracts for payment of the actual collection service. The contracts may be assurance contracts that guarantee collection availability at a reasonable price in exchange for a minimal fee. Should a citizen seek door-to-door collection at a reasonable price and be denied, then the county would have legal recourse against the hauler under the assurance contract. Verbal assurance or a letter of assistance is not enough.

Bear in mind that a door-to-door collection assurance contract situation is subject to the Department's annual evaluation. If the Commissioner finds that actual collection in the county is not more effective than one might reasonably expect the minimum number of convenience centers to be, then the Department may insist on a more aggressive plan.

An assurance contract is the minimum required, but such a contract may not be of practical use to counties and they may choose more effective means to fulfill the requirements of the law.

Other options that counties have beyond these minimal requirements are:

2. If a county provides the minimum number of convenience centers required by rule, private haulers may operate in the county and the county is not required to have an assurance contract with any hauler as minimum requirements are satisfied.

3. Counties that are willing to provide public collection services may assure collection for citizens door-to-door at a reasonable price as requested and eliminate the need for a contract with private haulers.

4. Some counties may wish to use some type of hybrid system of convenience centers and door to door collection. Such a system might allow citizens some choice and flexibility. Again, in this case, the county must demonstrate to the Department that the service offered is a higher level of service than the minimum number of convenience centers would be and the Commissioner must approve the system.

5. A contract for services between the county and private haulers is certainly permissible and effective.

6. The County Executive may certify annually that 90% of county residents ACTUALLY USE collection services that are practical, reasonable, and legal. These services may include, but are not limited to: (a) the use of house-to-house collection services; (b) the use of registered convenience centers; or, (c) the use of a drop-off site at a Class I municipal solid waste landfill or incinerator. Such a letter of certification to the Commissioner of the Department of Environment and Conservation would eliminate the need for an assurance contract or contracts. The County Executive's certification letter along with information detailing the collection services attested to will be expected in the annual progress reports to the Department as required by statute, beginning in 1996 [T.C.A. 68-211-851(b) and 68-211-871(a) and Rule Chapter 1200-1-7-.10(4)].

5. What financial assistance can the State offer counties choosing an alternate collection service to convenience centers?

Grant funds are not available for door to door collection. Grant money from the solid waste management fund will only be awarded by the State for capital expenses related to convenience centers [T.C.A. 68-211-824]. Matching grants of up to $50,000 are available to counties electing to develop convenience centers.

6. Does State law or policy mandate a 90% participation/subscription rate in counties where door to door collection is offered as the primary option?

No, a 90% participation rate is not mandated, but high participation is certainly encouraged. State regulations require that 90% of county citizens **have access to** collection. It is the State's purpose and intention to encourage collection by insisting that it be reasonably available to all citizens. Counties are given the flexibility to design collection plans that are best suited to their population, geography, and financial resources.

DISPOSAL OF WASTE TIRES

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
401 Church Street
Nashville, TN 37243

MEMORANDUM

TO: All County Executives

FROM: Paul Evan Davis, Director
Division of Solid Waste Assistance

SUBJECT: Fees for Collection and Disposal of Waste Tires

DATE: September 30, 1994

In order to eliminate confusion regarding the issue of counties having the authority to impose fees or surcharges on waste tires greater than the fees imposed on the disposal of other solid waste, the Division has asked for and received a legal opinion from the Office of General Council.

QUESTION

Does a county have the authority to charge additional fees for collection and disposal of waste tires that are not specifically authorized by statute?

ANSWER

A county may not impose any disposal fee, surcharge or processing fee on the collection or disposal of waste tires that is not specifically authorized by statute.

The analysis of this opinion is a multiple page document and is available upon request from our office.

In conclusion, we hope that the issuance of this opinion will assist you with the development of your county's policies. Please contact us should you have any questions or comments.

DM:PED

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL

LEGAL OPINION

DISPOSAL OF WASTE TIRES

QUESTION

Does a county have the authority to charge additional fees for collection and disposal of waste tires that are not specifically authorized by statute?

ANSWER

A county may not impose any disposal fee, surcharge or processing fee on the collection or disposal of waste tires that is not specifically authorized by statute.

ANALYSIS

In addressing the need for collection and disposal of waste tires, the state legislature at T.C.A. §67-4-1603 imposed a pre-disposal fee of one dollar ($1.00) per tire on each retail sale of new tires in this state. T.C.A. §67-4-1604 expressly state that tires shall be subjected to the same tipping fee and other surcharges authorized by §68-211-835 as are imposed on other wastes. It state that a county may not impose any special disposal fee or surcharge on tires in addition to the fee imposed by T.C.A. §67-4-1603. (Emphasis added.) A surcharge is not defined by the statute, however the dictionary defines surcharges as "an additional tax, cost, or impost", Webster's New Collegiate Dictionary (1981).

Counties derive their authority to impose surcharges or disposal fees from T.C.A. §68-211-835. Statutory provisions provide for the establishment of state-wide municipal solid wast planning districts and for regional municipal solid waste advisory committees encompassing all counties within the State. The groups are required to submit a plan for the management of solid waste within their respective regions or counties to the state planning office for approval or disapproval. The plan is to be "formulated in strict compliance with T.C.A. Section 68-211-815". The legislature enumerated in T.C.A. §68-211-815, the specific requirements and contents of each municipal solid waste region plan. There are fifteen (15) enumerated elements to be addressed; including collection capability, disposal capability and costs, costs of collection, disposal, maintenance, contracts and other costs, and revenues, including cost reimbursement fees, appropriations and other revenue sources. T.C.A. Section 68-211-835 addresses the types of fees, the amounts, and the collection and expenditure of the revenues generated by the solid waste management activities. The statute is very detailed and specific.

A tipping fee may be imposed upon each ton of municipal solid waste by each county which owns a municipal solid waste disposal facility or incinerator. The tipping fee shall be set by the governing body of the county. All of the revenues from tipping fees received by counties may only be expended for solid waste management purposes. This section applies to tipping fees collected when the waste is received at the solid waste disposal facility or incinerator. In addition to any tipping fee imposed by the local government, the state legislature provided that a surcharge of eighty-five cents (.85) per ton on each ton of municipal waste received at all solid waste disposal facilities or incinerators be collected and remitted to the states' solid waste management fund.

Specifically, subsections (f) (1) and (g) (1) of T.C.A. §68-211-835 allow a county to impose and collect a solid waste disposal fee (emphasis added). These disposal fees may only be used to establish and maintain solid waste collection and disposal services, "including, but not limited to, convenience centers". (Emphasis added.) The statute mandates that all residents of the county have access to these services. The fees are to be reasonably related to the cost of providing the solid waste disposal services. The fees are to be segregated from the general fund and used only for the purposes for which they were collected. The legislature's well-defined purpose was to ensure that costs do not reasonably exceed the costs of operation and maintenance of the solid waste disposal facilities. Clearly, the express language in T.C.A. Section 67-4-1604 restricting the counties' abilities to impose additional fees for the disposal of waste tires as for other types of municipal solid wastes, with the exception of the pre-disposal tire fee.

The counties have no authority to impose additional fees or surcharges on the disposal of waste tires absent any specific statutory authorization. Additional transportation fees and "processing fees" are not authorized by the Solid Waste Management Act of 1991 and would only be lawful if authorized by other laws.

Issued on this 29th day of September, 1994.

(Signed by Alan M. Leiserson, General Counsel, and Phyllis A. Childs, Assistant General Counsel.)

GUIDANCE ON STATUTORY WASTE REPORTING REQUIREMENTS
(Revised January 1995)

1. Planning [Annual Reports]

Annually (beginning March 1, 1994), each **region** shall submit annual reports to the Department of Environment and Conservation for the preceding calendar year in a format to be determined by the State which will include data on the following:

* **Collection and Transportation** [County-wide assurance]
* **Recycling** [and other methods to achieve the 25% reduction goal]
* **Disposal** [Ten-year, Subtitle D capacity assurance]
* **Public Costs** [including existing and proposed revenue sources to cover costs]
* **Any other information which the board, by rule, may deem relevant to the solid waste planning and management.**

*** [T.C.A. 68-211-871(a)&(b) and 68-211-814(a)(3)]**

A detailed format for regional annual reports due in **March** is available from the Department at year' s end. In general, the Department will be looking for:

* Resolution of any **"Annual Report"** issues identified for a given region in its regional solid waste plan review comments.
* The region will be asked to give an update regarding efforts to achieve the objectives and mandates identified in the statute and in regional solid waste plans. Regions will be asked to report on progress toward milestones and objectives identified in the region's ten year solid waste plan.
* Any changes or updates with regard to the regional solid waste plan should be carefully identified with special attention toward implementation and budgeting of necessary changes.

Note: Should the region have difficulty collecting the necessary information for annual planning reports and/or five-year revisions, the statute allows the region to compel those persons actively engaged in the collection, transportation and disposal of municipal solid waste to provide the necessary information [T.C.A. 68-2111-871(c)&(d)].

2. Planning [Five Year Revisions]

A pervasive plan revision will be required to reflect subsequent developments in the region in 1999 [T.C.A. 68-211-814(a)(2)]. It is anticipated that the five year revisions will be all-encompassing and that the Department will require relevant county commissions to approve the revised plans prior to their formal evaluation by the Department.

3. Recycling

Each person or entity operating a collection site for recyclable materials shall annually report the quantities of recyclable materials collected, by type of material, to the region, which shall report the amount and type of recycled materials collected in the region annually to the State [T.C.A. 68-211-863]. Recycling reporting forms are currently distributed by the Recycling Section of the Division of Solid Waste Assistance. The recycling reporting requirement will be folded into the annual reporting requirement (referred to in item 1 above) in the future.

4. Collection

Effective January 1, 1996, each county shall **assure** that one or more municipal solid waste (and disposal) systems are available to meet the needs of residents of the county [T.C.A. 68-211-851(a)]. Each county or multi-county municipal solid waste region shall submit a plan (or report) for adequate provision of collection services to the State. Such a plan shall identify unmet needs and be updated annually [T.C.A. 68-211-851(b) and 815(b)(2)(B)].

This annual collection report shall be submitted to the State in 1996, and each year thereafter and consider:

* Survey of roadside dumps
* Citizen complaints
* Alternative systems available
* Volume of waste received or collection by the existing systems

Rule Chapter 1200-1-7-.10(4)

A fact sheet regarding county-wide collection assurance and evaluation is available from the Division of Solid Waste Assistance.

IMPLEMENTATION of REGIONAL SOLID WASTE PLANS
(Revised January 1995)

What follows are frequently asked questions regarding the implementation of regional solid waste plans:

1. To what extent are solid waste plans enforceable?

The Solid Waste Management Act of 1991 provides the following tools to enforce solid waste plans:

* Regions must address the requirements as set forth by statute in the region's solid waste plan. (Refer to T.C.A. 68-21-815 and 816) If no plan, or an inadequate plan, is submitted: the Department issues a warning letter; then 90 days after the letter, access to funds are withheld from the Solid Waste Management Fund (e.g., grants and services to the local governments); and 180 days from the warning letter the Commissioner of the Department may impose civil penalties of $1000 to $5000 per day for non-compliance. There are also specific penalties in Section 68-211-816 for violations with regard to problem wastes. Section 68-211-816 also states that civil penalties, may be assessed against counties or regions in non-compliance with the Solid Waste Management Act of 1991.

* Jurisdictions in non-compliance with the 25% waste reduction goal after December of 1995, may apply for a variance to the Division of Solid Waste Assistance (variances are for no more than 5 years). If the variance is denied, the responsible city, county, or authority is subject to Section 68-211-816 sanctions as identified above [(T.C.A. 68-211-861(e)].

* The solid waste regional planning board or Part 9 authority may use permit review to enforce the plan. Under T.C.A. 68-211-814(l)(D) regional planning boards must review any new application for a permit for a Class I disposal facility or incinerator **for consistency with needs identified in the region's solid waste plan only.** This review is a form of local veto designed to give the region some control over its environmental future. This regional review does not replace technical review by the Department of Environment and Conservation which is to take place at the same time.

* Economic incentives are perhaps the best enforcer to encourage cities, counties, regions, and authorities to work together to solve solid waste problems.

2. How can regional solid waste plans be modified?

The Solid Waste Management Act of 1991 states that "plans will be revised to reflect subsequent developments in the region every five years after 1994," [T.C.A. 68-211- 814(a)(2) & (3)]. It

also requires annual progress reports on implementation of the plan (T.C.A. 68-211-871). These are the official mechanisms to reflect changes in the plan.

It is implicit that the means of implementation to attain the goals in the Act (25% waste reduction, ten year disposal capacity, county-wide collection, etc.) may change due to unforeseen circumstances in the name of efficiency and good sense due to better information over time. Those that oversee implementation of certain facets of the plan (counties, cities, authorities, etc.) will make judgment calls in daily operation of solid waste programs. Entities implementing the plan must report their progress toward the region's goals to the solid waste regional planning board annually [T.C.A. 68-211-871(c)]. The board should assimilate this information and any changes in the planning strategy into the annual reports and submit them to the Division of Solid Waste Assistance.

This flexibility in altering planning strategy **does not relieve counties, cities, and/or authorities of their responsibility to achieve the act's mandates** (like the 25% waste reduction goal).

3. Must solid waste regional planning boards continue to exist beyond the plan's submission and approval?

Yes, the regional planning board must update the plan every five years and submit annual progress reports. The board also has responsibility for flow control resolutions and permit review (T.C.A. 68-21-814), unless a Part 9 authority is formed.

4. What is the relationship between Municipal Solid Waste Regional Planning Boards mandated under the Solid Waste Management Act and Solid Waste Authorities formed under the Solid Waste Authority Act (T.C.A. 68-211-901 or Part 9)?

The state intended that the regional planning board and the regional plan would guide the activities of those who implement the plan. A Part 9 authority would be one option to implement the plan and administer solid waste activities in the region. A Part 9 authority does not necessarily have to represent all cities and counties in the region, but the solid waste regional planning board does. If a Part 9 authority is formed in the region, then the Part 9 authority may usurp the regional planning board's power to control flow and review permits within the Part 9 authority's jurisdiction (T.C.A. 68-211-814). Part 9 authority directors and members of the regional planning board may overlap or be the same persons (T.C.A. 68-211-904). A more extensive fact sheet regarding Part 9 authorities is available from the Division of Solid Waste Assistance.

5. To what extent has local government's ability to control waste flow been affected by recent supreme court opinions?

Flow control within and among states has been the subject of a number of court cases in recent years. Of particular concern are the **Ft. Gratiot** case (which would seem to discourage out-of-region bans) and the **Carbone** case (which casts doubt on laws allowing intra-region flow

control to support public facilities). The **Ft. Gratiot** case out of Michigan is of particular concern because the state supreme court ruled the State can not avoid the applicability of the Commerce Clause by curtailing the movement of solid waste through subdivisions (like counties or regions) of the State rather than the State itself.

Pressure has increased for federal action with regard to flow control law. Governor McWherter, the General Assembly, Commissioner Luna, and many other officials from the 50 states have lobbied Congress to specifically allow out-of-state waste bans. Congressional authorization is the only sure way to circumvent the constitutional Commerce Clause argument which generally asserts that States may not interfere with interstate commerce without the specific permission of Congress.

The Solid Waste Management Act of 1991 and the Solid Waste Authority Act of 1991 are Tennessee's attempt to provide local governments with the tools to control flow. Although the State will continue to defend these statutes and contend that these laws satisfy commerce clause problems, genuine issues of constitutionality exist. Strict procedures for imposing intra-region flow control and out-of-region waste bans are included in the Solid Waste Management Act [T.C.A. 68-211-814(b)(1)(A) & (B)] and the Solid Waste Authority Act [T.C.A. 68-211-906 and 907).

Regions are reminded that other methods are available to control waste flow, such as the " market participant exception" (T.C.A. 68-211-817 allowing public owners of landfills to serve their constituency only and ban others), and certain economic incentives.

Permit review is available to regional planning boards or Part 9 authorities after plan approval. Permit review (or local veto) may be viewed as a means to control flow. Plans can establish the nature and volume of waste disposal foreseen in a given region. Regions or authorities may choose to plan for just enough volume to serve the region or, in order to satisfy economic concerns associated with operating a facility, they may plan to import some waste. Permits are accepted or rejected based on the disposal capacity assurance discussion in the plan.

Perhaps the best way to be certain of waste flow is through contracts with private entities and interlocal agreements (between local governments, authorities, etc.). Contracts are always recommended even with a flow control ordinance in force.

POLICY ON PLAN APPROVAL FOR OUT-OF-REGION BANS, FLOW CONTROL, AND PERMIT REVIEW

(1995)

When the Solid Waste Management Act of 1991 was drafted and passed, preservation of Tennessee's natural resources for landfill capacity to be used by Tennessee citizens was of primary concern to the Governor and the General Assembly. With this in mind, they included a provision for out-of-region solid waste bans, a provision for regional flow control, and a provision for regional permit approval. Every effort was made to avoid any infirmity under the commerce clause of the Constitution of the United States.

Courts have ruled that the commerce clause generally asserts that States may interfere with interstate commerce only when the Courts and/or Congress agree it is absolutely necessary in order to protect the health, welfare, and safety of state citizens. State must establish a clear and rational basis in order to justify statutes that arguably impact interstate commerce.

Since this is critically important to the Governor and the Commissioner, the Department intends to do all it can to steer regions toward compliance with the Act and a constitutionally defensible capacity preservation scheme. As the Department reviews out-of-region bans, flow control ordinances, and permit review schemes, we will look for adherence to the 1991 Act and most especially, **a justification or rationale tied to ten-year disposal needs for the region** outlined in the region's solid waste plan. This rationale for effectuating the regional plan is the linchpin of the 1991 Act's planning strategy. Establishing such a rationale will be a pivotal issue as Chapter XIII* of the plan is reviewed by the Department.

In order to minimize the risk of exposing the 1991 Act to constitutional attack and in order to protect the interests of others who seek to benefit from options to preserve capacity in the Act, attempts in regional plans to impose out-of-region bans, flow control, or permit review which ignore or contradict the 1991 Act will be viewed with great scrutiny. Plans including schemes which clearly run counter to the 191 Act will be rejected by the Department.

*** See Chapter XIII (Flow Control and Permit Application Review) of the Guidelines for Preparation of a Municipal Solid Waste Regional Plan.**