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Legal Issues in the Financing of Solid Waste Disposal Facilities

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With the recent imposition of state requirements regarding solid waste management and the Environmental Protection Agency's standards for new sanitary landfills, cities and counties have found that disposing of municipal solid waste has become increasingly costly. Many local governments have attempted to meet these increased costs by shifting from reliance on property taxes for the financing of disposal facilities to reliance on fees. This bulletin discusses the legal aspects of financing solid waste disposal facilities. The first section reviews the financing of solid waste facilities as public enterprises, and the second section examines the fee provisions enacted by the 1991 North Carolina General Assembly.

Financing Public Enterprises

Introduction

For both cities and counties, the operation of solid waste disposal facilities is a public enterprise.[1] This means that the provisions of Article 16 of Chapter 160A and of Article 15 of Chapter 153A of the North Carolina General Statutes (G.S.), and the cases decided thereunder, apply to the financing of solid waste disposal facilities. Pursuant to these statutory provisions, local governments may finance disposal facilities by levying property taxes, borrowing money, accepting grants, imposing fees and charges, or a combination of these financing techniques.[2] To the extent that a local government relies on property taxes to finance a disposal facility, the taxes are of course levied according to the value of the property taxed[3] and need not bear any relationship to the level of solid waste disposal service rendered to the property's owner. The situation is different, however, if fees or charges are imposed on property owners to finance the facility.

Variations in Fees

The statutory provisions regarding variations in fees are almost identical for both cities and counties. G.S. 160A-314(a) provides in part, "Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city." G.S. 153A-277(a) provides in part, "Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of service, and different schedules may be adopted for services provided outside of the county." The key language in both statutes is that which permits local governments to impose different fees for different levels of service. Case law has converted this permissive statutory language to a command: Different fees must be charged for different levels of service.

Courts in North Carolina and other states have long required that when governments provide such services as gas, water, electricity, and solid waste

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1. See N.C. GEN. STAT. § 160A-311(6) for cities and § 153A-274(3) for counties.

2. *Id.* §§ 153A-276, 153A-277, 160A-313, and 160A-314.

3. *Id.* § 105-283.

collection and disposal, they must not discriminate unreasonably in the charges they make for those services. Another way of putting this is that users receiving different levels of service, or service rendered under different conditions, must be charged different rates. Although this requirement sometimes has a statutory basis, as in North Carolina, the courts frequently make no reference, or only a glancing one, to the statute and speak instead as though the requirement has some other ground, as it probably does in the constitutional provision that no person be denied equal protection of the laws.[4] A typical statement of the rule is this:

> The general rule is well established that when a municipality undertakes to furnish a public service, such as the supplying of electricity, gas, or water, to consumers other than itself, it acts in its proprietary, and not in its governmental capacity, and cannot grant free or reduced rates or otherwise make discriminations which would be unlawful if the service were rendered by an individual or private corporation; in other words, the fact that the service is by a municipal plant does not change the rule prohibiting unreasonable discrimination.[5]

A frequently cited North Carolina case—though one involving a private utility—that illustrates the application of the rule is *North Carolina ex rel. Utilities Commission v. Mead Corporation.*[6] Nantahala Power and Light Company, a wholly owned subsidiary of Alcoa, proposed a rate increase for all industrial customers except Alcoa. The North Carolina Supreme Court disallowed the proposed increase, finding it an unreasonable discrimination against the other industrial users. The court said, "There must be substantial differences in service or conditions to justify differences in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service."[7]

Two cases involving services furnished by local governments—water and water and sewer—have applied *Mead Corporation* to strike down rate schedules. In *Town of Taylorsville v. Modern Cleaners*[8] Taylorsville charged a higher rate for the use of sewer service only than for the use of sewer service when town water was also used (combined services). There was no increased cost to the town for providing only the sewer service. The court held that the different rate charged for the sewer service alone was discriminatory. In *Wall v. City of Durham*[9] Durham's water rate structure resulted in the plaintiff's apartment buildings paying a higher charge for using the same amount of water as was consumed by commercial and industrial customers who used a different metering system. The court held that this fee schedule unlawfully discriminated against the plaintiff. Neither case, nor apparently any others, involved a situation in which the *same* rates were charged for *different* levels of service, but the reasoning of both cases, and that of *Mead Corporation*, clearly leads to the conclusion that such an arrangement would be struck down as discriminatory. This point is important to the discussion of use and availability fees in the next section.

The principle of different rates for different services has also been used to *uphold* different charges for solid waste disposal services. In *Barnhill Sanitation Service, Inc. v. Gaston County*[10] Gaston County charged a fee of $1.00 per cubic yard of waste to all commercial, industrial, and municipal haulers depositing waste in the county's landfill, but allowed individual county residents to deposit waste in the landfill at no charge. The plaintiff challenged this fee arrangement on the ground that it unlawfully discriminated against the haulers subject to the $1.00 per ton fee. The court held that the county had established a reasonable classification in imposing the fee. It found that the greater volume of waste deposited by the commercial and municipal haulers—in contrast to the small amount deposited by individual residents—justified the fee charged.

This case illustrates the traditional method of charging for solid waste disposal: a tipping fee based on the weight or volume of waste deposited at the landfill or other disposal facility. This method of charging is relatively easy to calculate, can be used to justify higher charges for greater volumes or tonnages of waste deposited, and is analogous to metered

4. N.C. CONST., art. I, § 19. Another possible constitutional ground in North Carolina is Article I, Section 32, of the N.C. Constitution, which prohibits the giving of "exclusive emoluments or privileges" except for "public services."

5. Annotation, *Discrimination in the Operation of a Municipal Utility*, 50 A.L.R. 126 (1927).

6. 238 N.C. 451, 78 S.E.2d 290 (1953).

7. *Id.* at 462, 78 S.E.2d at 298.

8. 34 N.C. App. 146, 237 S.E.2d 484 (1977).

9. 41 N.C. App. 649, 255 S.E.2d 739, *cert. denied*, 298 N.C. 304, 259 S.E.2d 918 (1979).

10. 87 N.C. App. 532, 362 S.E.2d 161 (1987), *aff'd*, 321 N.C. 742, 366 S.E.2d 856 (1988).

charges for water, gas, and electricity. As will be discussed in the next section, different charges for different levels of service become more difficult to impose when the charge is made against individual households and businesses instead of at the disposal facility.

1991 Solid Waste Fee Amendments

Background

Local governments have historically financed solid waste disposal from tax revenues (primarily the property tax) or from a combination of tax revenues and tipping fees; usually the tipping fees were a supplement to the support from tax revenues and were not set high enough to fully pay the costs of the facility. Local governments recently have become interested in moving most or all of the costs from taxes to fees for several reasons. First, shifting more of the costs to fees means that property owners who use the solid waste facility but pay no property taxes because of an exemption or exclusion—such as churches and schools—pay their fair share of the costs, and relying on fees means that the property tax rate does not have to be increased, a step many governing boards are loath to take. Second, solid waste disposal increasingly is seen as a utility, like sewer and water services, and as with other utilities, those who use more of the service should pay for that additional use; this is not the case if the service is funded from tax revenues. Third, state policy requires local governments to adopt measures to increase the amount of solid waste that is recycled and thereby reduce significantly the volume of waste that must be disposed of at landfills and other facilities. One obvious way local governments can give waste generators an incentive to recycle is to require them to pay a fee for waste that goes to a disposal facility, and the more waste that is burned or buried, the higher the fee.

Responding to the increased interest of local governments in funding solid waste disposal facilities from fees rather than taxes, the 1991 General Assembly enacted several amendments to establish different categories of fees and to make their collection easier. The amendments were to G.S. 153A-292 and -293, and G.S. 160A-314 and -314.1. These statutes are in the public enterprise articles of chapters 153A and 160A, and there is nothing in the amendments to indicate that the rates and charges imposed are not subject to the general provisions regarding different rates for different levels of service. To the contrary, G.S. 160A-314 expressly includes the language regarding different rates for different classes of service. And although similar language is not included in G.S. 153A-292, it must be presumed that the legislature intended that the fees imposed pursuant to that statute are subject to the statutory provisions and the case law discussed in the first section of this bulletin.

Types of Fees Authorized

The 1991 amendments authorize local governments to impose three types of fees: collection fees, use fees, and availability fees.

Collection fees. For municipalities, G.S. 160A-314 does not mention collection fees, but G.S. 160A-314.1 assumes that a fee for collecting solid waste may be charged. There are no express limitations on municipal collection fees other than the "different fees for different classes of service" language of G.S. 160A-314. By contrast, regarding county collection fees, G.S. 153A-292(b) expressly provides that "[t]he fee may not exceed the costs of collection." What this limitation means, apparently, is that a county that elects to charge a collection fee must calculate the total cost of collection, and the sum of the fees charged to each residence or business served must not exceed the total cost. In other words, the county is prohibited from realizing any sort of "profit" from its operations in collecting solid waste. Of course, the elements to be considered in calculating the costs may be subject to different interpretations. In addition to this limitation on county fees not exceeding the costs of collection, both counties and municipalities are subject to the requirements that different levels of collection service must result in different fees. For example, if a municipality charged the same collection fee for collecting from residences and from businesses, the businesses having a much larger volume of waste to collect, the fee schedule would be subject to successful attack because it discriminates against residential customers.

Use fees. The second type of fee authorized is a use fee. G.S. 160A-314 contains no special provision regarding a fee for the use of a city disposal facility that is distinct from general provisions regarding fees for public enterprises. For counties, however, G.S. 153A-292(b) provides as follows:

> The board of county commissioners may impose a fee for the use of a disposal facility provided by the county. The fee for use may not exceed the cost of operating the facility and may be imposed only on those who use the

> facility. A county may not impose a fee for the use of a disposal facility on a city located in the county or a contractor or resident of the city unless the fee is based on a schedule that applies uniformly throughout the county.

This statute contains three limitations on fees. First, the total annual fees may not exceed the annual operating costs of the disposal facility. Second, if the use fee is imposed on a city or on city residents or on a private contractor, it must be "based on a schedule that applies uniformly throughout the county." What does this second limitation mean? The typical use fee is a tipping fee charged at the landfill or other disposal facility of so much per ton or volume of solid waste. If this fee is to be charged to cities who collect waste from city residents, contractors who collect waste for a city, individual city residents, or contractors who collect for county residents in unincorporated areas, then it must be part of a fee schedule that is county-wide and is uniform. This appears to mean that the county use fee must also be charged to county residents (who are not city residents) who bring solid waste to green boxes or other collection sites for transportation and disposal in the landfill and to county residents (who are not city residents) who bring their solid waste directly to the landfill. To meet the uniformity requirement, the fee for residents who use green boxes or transport waste directly to the landfill would have to be approximately the same in terms of weight or volume as the tipping fee charged waste haulers. For example, if the tipping fee is $20.00 a ton, then the fee to a resident for disposing of approximately 100 pounds of solid waste would have to be $1.00. And if the county determines that households of residents who use green boxes generate approximately one ton of waste a year (a determination that a county must make if it makes green boxes available and charges a use fee), then the annual per household fee should be $20.00.

This uniformity requirement, if this interpretation is correct, imposes a significant administrative burden on counties that choose to impose a use fee. First, the county must identify those county residents in unincorporated areas that are not served by a private contractor but use green boxes or other collection centers. Second, if such a county resident begins to be served by a private contractor during the fiscal year covered by the use fee, the county must release or refund a prorated amount of the fee; otherwise, the resident is paying twice for the same service.

The third limitation is that a use fee may only be charged to persons who actually use the disposal facility. When a use fee is charged as a tipping fee or to persons who transport their solid waste directly to the landfill, this limitation presents no difficulty. When, however, the fee is charged to county residents in unincorporated areas who are not served by a private contractor, the administrative problems discussed above arise. And if the fee is billed and collected with property taxes—a billing procedure discussed below—then the fee must be included only on tax bills for occupied property, and this raises the question of when and for how long the property must be occupied.

In addition to the three limitations on use fees imposed by G.S. 153A-292(b), different fees must be charged for different levels of service because these fees are public enterprise charges. This requirement usually presents no problem if the fee is charged as a tipping fee to a city or contract hauler. The city or hauler simply reflects the fee in the charge it makes to the residential or business customers from whom it collects solid waste. If, however, the fee is billed annually with property taxes, monthly with a water bill, or through some other method of direct billing, then there must be some variation in the fee on the basis of the weight or volume of waste. To put it another way, a single, flat use fee applicable to all solid waste generators will not pass legal muster. Ideally, the fee should be graduated on the basis of weight or volume; for example, if a person sends four thirty-gallon bags of garbage to the landfill he pays a fee of $4.00, if he sends six bags, a fee of $6.00, and so on; or if a person sends 500 pounds of solid waste to the landfill he pays a fee of $8.00, if he sends 1000 pounds, $16.00, and so on.[11] There are however, additional costs and certain practical difficulties in carefully measuring the fee against weight or volume for each user of the disposal facility. In view of the costs and difficulties, it seems likely that the courts would uphold a more general classification of fees: one level for residences, another for commercial establishments, and perhaps another for manufacturers.

Availability fees. The third category of fee authorized by the 1991 amendments is an availability fee. The provisions of G.S. 153A-292(b) and G.S. 160A-314.1(a) are almost identical regarding this fee.

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11. For an article discussing different methods of setting solid waste fees, see Glenn E. Morris and Denise Byrd, "Unit Pricing for Solid Waste Collection," *Popular Government* 56 (Fall 1990): 37.

The statutes do not draw a clear line between a use fee and an availability fee. As will be noted below, property owners who "benefit" from a solid waste facility may be charged an availability fee whether they use the facility or not. Local governments are authorized to charge either a use fee or an availability fee or both. The funds accrued from either fee apparently may be used for both current operating costs and capital expenditures because the statutes provide that in determining the costs of "providing and operating a disposal facility, a city [county] may consider solid waste management costs incidental to a city's [county's] handling and disposal of solid waste at its disposal facility." And further, "[a] fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the county [city]." These statutory statements of the costs that may be included apply to both availability and use fees and appear to include both current operating and capital expenditures.

The statutes impose three limitations on local governments that charge availability fees. The first is that the fees may not exceed the costs of providing the facility. These costs must be annualized in some way so that annual fees can be defended. Regarding the costs that may be taken into account, the city and county statutes differ. The county statute, but not the city, includes the costs of the "methods of solid waste management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989."[12] G.S. 130A-309.04(a) sets forth a hierarchy of waste management methods in descending order of preference: waste reduction, recycling and reuse, composting, incineration, and disposal in landfills. This addition to G.S. 153A-292 makes it plain that a county may charge an availability or use fee to finance the construction and operation of recycling and composting facilities as well as disposal facilities such as incinerators and landfills. Cities, on the other hand, may be limited to financing disposal facilities.

The second limitation is that an availability fee may be imposed only "on all improved property in the county [city] that benefits from the availability of the facility." In real property law, an "improvement" is an act that enhances the value or utility of land, and is not necessarily the erection of a structure on land.[13] Thus local governments imposing availability fees must first decide what property is "improved," and this determination can only be made by the tax assessor's office or the land records office from maps, aerial photographs, and appraisal records. In addition to being improved, the property that is assessed an availability fee must benefit from the availability of the facility. While one might argue that as a general matter all property in a city or county benefits from the availability of a solid waste disposal facility, the statutes mark out one category that does not. This is property served by a private contractor who disposes of waste in "a disposal facility provided by a private contractor." This provision does not appear to require that the solid waste collected by the private contractor be disposed of in a privately *owned* facility; if it did, plainer language would have been chosen. Rather, the statute requires only that the waste be disposed of in a facility "*provided* by a private contractor."

In addition to this statutory exclusion, some owners of improved property may argue that their property, even though improved, does not benefit from the existence of the disposal facility and therefore should not be charged an availability fee. Owners of vacant substandard housing, farm buildings, and vacant business buildings may make this argument. The statute gives local governments no guidance concerning how they are to deal with such contentions.

The third limitation is that a local government may not impose an availability fee on property owners whose waste is collected by a city, county, or private contractor for a fee and the fee includes a charge for the availability and use of the local government's disposal facility. This limitation prohibits a local government from including an availability fee in the tipping fee it charges haulers at the landfill, and then making a separate billing of owners of improved property for an availability fee. A question the statute leaves open is whether this prohibition applies if the tipping fee represents only a use fee, and not a combined use and availability fee.

12. Compare N.C. GEN. STAT. § 153A-292(b) (fourth paragraph) with § 160A-314.1(a) (second paragraph).

13. In Pritchard v. Williams, 181 N.C. 46, 106 S.E. 144 (1921), the court defined "permanent improvements" for purposes of an action for betterments as "all improvements of a permanent nature, and which substantially enhanced the value of the property in controversy." In Pamlico County v. Davis, 249 N.C. 646, 107 S.E.2d 306 (1959), this definition was held to include the clearing and ditching of farmland.

A fourth limitation on availability fees is the "different fees for different levels of service" principle discussed in the first section of this bulletin and with regard to use fees. An availability fee is just as much a charge for a public enterprise as a use fee, and a single, flat availability fee is just as repugnant to the statutes and cases banning discriminatory fees as is a flat use fee.

Including Solid Waste Fees on Water Bills

In an off-handed way, Chapter 591 of the 1991 Session Laws amends G.S153A-277(b) and G.S. 160A-314(b) to allow counties and cities to include solid waste fees on water bills. The amendments are off-handed—not direct—because nowhere do the statutes expressly provide for the billing of two or more enterprise services on the same bill. Rather, one must assume from the rest of the amendment that this is what the legislature intended. The rest of the amendment provides that a local government "may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services." Thus a local government may include the charges for solid waste and water on the same bill, and then provide by ordinance that if a partial payment is made on the bill the payment shall first be applied to the solid waste fees. The statutes go on to authorize local governments to discontinue service if an account remains delinquent for more than ten days. Thus, by using this authority, a local government with combined billing could treat the water bill as unpaid—in case of a partial payment—and use the threat of discontinued water service to collect the balance on the bill. It is important to note that before a local government may use this procedure, the governing board must adopt an ordinance specifying the order of application of partial payments.

Billing Solid Waste Fees with Property Taxes

In 1991 G.S. 153A-293 was amended and G.S. 160A-314.1(b) was added to provide the following:

> A county [city] may adopt an ordinance providing that any fee imposed under G.S. 153A-292 [G.S. 160A-314] may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee.

If a local government adopts an ordinance pursuant to the quoted statutes, then the solid waste fee must be an annual fee and must be stated separately on the property tax bill or placed on a separate bill that accompanies the property tax bill.

Because the fees are "payable in the same manner as property taxes," it appears that the fee is charged to the owner of the property as of January 1, the due date is September 1, and the fee becomes delinquent on January 6 following the due date. After the fees become delinquent, the tax collection remedies of levy and attachment and garnishment may be used to enforce their collection. Presumably a solid waste fee is for a fiscal year that begins July 1 preceding the due date and ends the following June 30, as this is the period covered by the property tax with which the solid waste fee is billed.[14] It also appears that the tax collector may accept cash or checks in payment of solid waste fees, and that the G.S. 105-357 penalty for bad checks applies. Partial payments of fees may be accepted. The statute does not provide that the interest on delinquent property taxes runs against delinquent fees. Pursuant to G.S. 153A-277(a) and G.S. 160A-314(a), however, counties and cities have authority to set "penalties" for public enterprise services. The statute does not define what the penalties are, but presumably they are an additional charge, in the nature of interest, against a delinquent account. If a local government bills solid waste fees with property taxes, it should set the penalty at the same level as interest for property taxes so that the total bill, if unpaid, would accrue the same amount of interest (and penalties). Therefore, in its ordinance, a local government should set the penalty schedule at 2 percent for January following the due date and 0.75 percent per month for each succeeding month until the fee is paid.[15]

What property taxpayers are to receive bills for solid waste fees? In the case of an availability fee, all owners of improved property (occupied or unoccupied) that benefits from the existence of a disposal facility should be billed, *except* those whose trash is being collected by a city, county, or private contractor and are paying a fee to the collecting agency that includes an availability charge. This presents an interesting situation where apartments and mobile home parks are concerned. The owner of the improved real estate is, of course, the owner of the

14. *See* N.C. GEN. STAT. §§ 105-360(a), 159-8(b), and 159-13(a).

15. *Id.* § 105-360(a).

apartment building or mobile home park, and that is the person who will receive both the combined tax and solid waste fee bill. But the solid waste fee bill should include a per unit charge for each apartment in the building and each mobile home lot.

In the case of a use fee, all persons who receive a property tax bill, use the disposal facility, and do not pay a use fee through a tipping fee should be billed. This means that renters in a mobile home park, who own their mobile home and are therefore receiving a tax bill for it, will be billed for the use fee, rather than the park owner. If a use fee is charged to an apartment owner, it must be based on the units that are occupied. The same is true of other owners of rental property; a use fee may be charged only against occupied property. The question is, occupied as of what date? January 1, the date on which ownership, value, and taxability are determined for property tax purposes? Or July 1, the beginning of the fiscal year for which the fee is charged? Or September 1, the due date of the fee? The statutes give no guidance on these questions. The best date administratively is probably January 1, because a statement of occupancy can be requested on the tax listing abstract that the property owner submits to the assessor. This date of occupancy, or whatever date is selected, should be specified in the ordinance.

A use fee may be charged only to persons who use the disposal facility. If the fee is billed annually on the property tax bill and the date of occupancy is January 1, as suggested above, what happens when the property becomes vacant during the fiscal year? Is the property owner entitled to a refund or release of the fee for each month the property is unoccupied? Under the current law, the answer appears to be yes. A use fee is a service fee; if the property is not receiving the service, the property owner should not be charged the fee. If the fee has been billed on the tax bill, the owner is entitled to a refund or release for the months of the July 1 to June 30 fiscal year during which the property is unoccupied. A county or city that refuses to grant a release or refund would be imposing discriminatory rates for the service.

Solid waste fees billed on property tax bills will not reach churches and other owners of exempt property. Fees for such owners must be billed separately.

The statutes provide that if a local government's ordinance so provides, the solid waste fee becomes a lien "on the real property described on the bill that includes the fee" and such a delinquent fee may be enforced by foreclosure of the lien. An ordinance that makes such a provision raises a number of questions. First, when does the lien attach to the described property? The statute is silent on this point. The two most likely candidates are January 1, the date the tax lien attaches, and July 1, the beginning of the fiscal year. For reasons of administrative convenience, January 1 appears to be the preferable date. Because the solid waste fee is on the tax bill and the tax lien attaches on January 1, most tax officials would prefer that the liens be treated the same way. If January 1 is chosen, tax officials would not need to be concerned about a transfer of ownership between January 1 and July 1. Selection of January 1 would also mean that lawyers and real estate agents, when land is sold, could prorate the fees on the same basis as property taxes. The ordinance should specify the date the lien attaches, either January 1 or another date. However, specification of a lien date in an ordinance may not save this provision of the statute. It seems entirely likely that if challenged, a court would hold that the absence of a certain date of attachment in the statute vitiates the provision, and local governments should not be left to their unguided discretion to select a date.

Second, to what property does the lien attach? Pursuant to the statute, it attaches to the "property described on the bill." This means that in the case of rental property, if the fee is billed on the owner's property tax bill, it is a lien on the owner's land, along with taxes. This is the result with regard to owners of mobile home parks and apartments, for example.

Conclusion

In some ways this bulletin raises more questions about the 1991 legislation regarding solid waste fees than it answers; this is because the legislation itself does not give local governments clear guidance. Nevertheless a few tentative conclusions and recommendations can be made. First, solid waste fees, whether collection, use, or availability, are charges for a public enterprise. Thus different levels of service, or service under different conditions, must be reflected in different fee schedules. The fees are not taxes, and the various exemptions and exclusions that apply to property taxes do not apply. This means, for example, that churches and other exempt organizations may be billed solid waste fees, and that no discount or exclusion can be given to a particular class of property owners, such as the low-income elderly, unless the discount or exclusion is based on a different level of service. Second, a county that seeks to impose a use fee faces

substantial administrative difficulties. The schedule of fees has to be applied uniformly throughout the county, and the county must identify those persons who use the county's disposal facilities. Finally, an availability fee avoids the administrative difficulties of a use fee, but it presents others. The county must determine what improved property will be subject to the fee, and if the fee is to be billed with property taxes and become a lien on real property, the county must deal with the issue of when the lien attaches.

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