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Local Government Law Bulletin

1993 Solid-Waste Management Legislation

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This bulletin reviews solid-waste management legislation enacted by the 1993 General Assembly. The legislation is identified by the session law chapter numbers, with the original bill numbers in parentheses. Unless otherwise indicated, the acts became effective when ratified and are therefore current law.

Training for Incinerator Operators

Chapter 29 (S 55) amends G.S. 130A-309.25 to require the Department of Environment, Health and Natural Resources (DEHNR) to establish qualifications and training programs for operators of incinerators that burn solid waste. In developing the training programs, the department is directed to establish and consult with ad hoc advisory groups to help coordinate the training requirements with other training programs for incinerator operators.

Landfill Permits

G.S. 130A-294(a)(4) currently provides that DEHNR may not issue a permit for a sanitary landfill unless the governing board of the city or county where the landfill is to be located gives its approval. This statute is very probably unconstitutional because it allows a local government board to veto the establishment of a legitimate business enterprise, even though all relevant environmental permits have been obtained, and it is potentially in violation of the Commerce Clause of the United States Constitution.[1] Chapter 473 (S 1003) makes a bad matter worse by extending the veto authority of G.S. 130A-294(a)(4) to applications for renewal of or substantial amendments to existing landfill permits. A "substantial amendment" is defined as an increase of ten percent or more (1) in the population of the geographic area to be served by the landfill, (2) in the geographic area served by the landfill, or (3) in the quantity of waste disposed of in the landfill; or (4) a change in the categories of waste to be disposed of in the landfill, or (5) any other change the Health Services Commission or DEHNR determines to be substantial. This last element of the definition—"any other change . . . "—increases the odds of the statute's being held unconstitutional because it provides no standards to guide the commission and department in exercising their discretion. As written, the statute is a large and inviting target for a lawsuit by a private owner of a landfill, a lawsuit that would very likely result in the statute's invalidation.

White Goods—Taxation and Management of Disposal

Chapter 471 (S 60) enacts both a new disposal tax on the sale of white goods and new management requirements for discarded white goods. G.S. 130A-290(a)(44) is amended to define white goods as "refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances." Goods falling within this definition are subject to the new tax and the management requirements.

New G.S. 105-187.21 imposes a privilege tax at a flat rate on each new white good sold by a retailer. The tax is $5.00 if the new white good does not contain chlorofluorocarbon refrigerants and $10.00 if it

does. A person who buys at least 50 new white goods of any kind at the same time may obtain a refund equal to 60 percent of the amount of the tax if all of the white goods are to be placed in new or remodeled dwelling units in North Carolina and the dwelling units do not contain the kind of white goods purchased.

The white-goods disposal tax becomes effective January 1, 1994, and expires July 1, 1998. For the first year that the tax is in effect, the Department of Revenue may retain its costs of collecting the tax, not to exceed a total of $225,000. While this tax is in effect, G.S. 130A-309.81(b) prohibits a local government from imposing any charge for the disposal of white goods that is in addition to the fee charged for disposal of any other type of municipal solid waste. The prohibition applies only to an extra charge for disposal of discarded white goods; it does not prohibit an extra fee for collecting white goods in preparation for disposal.

The secretary of revenue is directed to disburse the proceeds of the tax quarterly. Five percent of the proceeds is to be credited to the Solid Waste Trust Fund. Twenty percent is to be credited to a new White Goods Management Account. The remaining 75 percent is to be distributed to the counties on a per-capita basis, and the counties are authorized to use these funds only for the management of discarded white goods.

DEHNR is directed to make grants to local governments (not restricted to counties) from the White Goods Management Account for the management of discarded white goods; however, a local government is eligible for such a grant only if its costs of managing white goods during a six-month period to be determined by the department exceeds the funds it received from the 75 percent distribution. A grant may not exceed the local government's unreimbursed costs of managing white goods during the relevant six-month period.

New G.S. 130A-309.81 requires each county to provide at least one collection site for discarded white goods, to provide for the disposal of discarded white goods, and to provide for the removal of chlorofluorocarbon refrigerants from white goods. Counties may meet these duties through interlocal agreements or through agreements with private firms. Each county must establish written procedures for the management of discarded white goods and include these procedures in its solid-waste management plan. G.S. 130A-309.86 provides that any local ordinances inconsistent with this statute or the regulations adopted pursuant to it are preempted.

G.S. 130A-309.81(b) prohibits disposal of a white good in a landfill, an incinerator, or a waste-to-energy facility. G.S. 130A-309.84 authorizes DEHNR to assess a civil penalty of up to $100 against anyone who, knowing it is unlawful, places a white good in a landfill, an incinerator, or a waste-to-energy facility, or who, knowing it is required, fails to remove chlorofluorocarbon refrigerants from a discarded white good. The penalty may be assessed for each day until the white good is disposed of properly or the refrigerants are removed. The civil penalties are to be credited to the General Fund as nontax revenue. It appears that the preemption provision of G.S. 130A-309.86 would not prevent a county, in its solid-waste management ordinance, from prohibiting disposal of white goods in a landfill, incinerator, or waste-to-energy facility, and imposing a $100 civil penalty for violating the ordinance, since such a provision and penalty are consistent with the statute.

Recycling

Required Participation in Recycling Programs

Chapter 165 (S 53) amends G.S. 153A-136(a)(6) and G.S. 160A-317(b)(3) to authorize counties and cities to require property owners and occupants to participate in recycling programs by separating designated materials prior to disposal. The act specifies that the owners of materials set aside for recycling retain ownership of those materials until they sell, donate, or otherwise transfer the materials to another person, firm, or local government. It further provides that a county or city may not require the owner of recovered materials to transfer them to the local government or its designee.

The effect of these provisions, taken together, is that counties and cities may require the removal of certain materials from waste before it is disposed of but cannot dictate to whom those recovered materials are to be sold or given. Thus the owner of recovered materials may choose to place them in government-provided recycling containers, give them to recycling programs operated by charitable organizations, or sell them to commercial recyclers. All the local government can require is that the materials be removed from other waste that is intended for disposal. The act makes it plain that when the owner of recovered materials places them in receptacles, or delivers them to specified facilities owned or operated by the local government or its designee, then ownership is transferred to the local

government or its designee. For example, placing materials for recycling in a special bin owned by a county's designee constitutes the transfer of ownership of those materials.

Studies of Recycling Markets

Chapter 250 (H 663) amends G.S. 130A-309.14(b) and 130A-309.06 to direct the Department of Commerce to assist the Department of Environment, Health and Natural Resources in analyzing and identifying components of the state's recycling industry and present and potential markets for recyclable materials in North Carolina, other states, and other countries. The act also directs that DEHNR, rather than the Department of Commerce, shall prepare a report by March 1, 1994, and every other year thereafter, assessing the recycling industry and recyclable markets in North Carolina.

State Purchasing Changes

Chapter 197 (S 90) amends G.S. 130A-309.14 to direct the departments of Administration and Transportation to revise their bid procedures and specifications to encourage the "purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products." The act specifically directs the Department of Administration to require the purchase of remanufactured toner cartridges for laser printers "to the extent practicable." The act is effective January 1, 1994.

Chapter 256 (S 58) enacts new G.S. 143-58.2 and -58.3 to direct the secretary of administration and the heads of all state agencies, community colleges, and local school administrative units to take the following actions:

- Purchase and use, to the extent practicable, products with recycled content.
- By January 1, 1995, review and revise bid procedures and purchasing specifications to eliminate any procedures and specifications that discriminate against materials with recycled content and to encourage the purchase of materials with recycled content.
- Report annually, beginning October 1, 1994, to the Office of Waste Reduction, DEHNR, the amounts and types of materials and supplies with recycled content that were purchased during the previous fiscal year.

State agencies, community colleges, and school units are specifically urged to meet the following goals for the purchase of paper and paper products with recycled content:

- By June 30, 1994, at least 10 percent recycled content
- By June 30, 1995, at least 20 percent recycled content
- By June 30, 1996, at least 35 percent recycled content
- By June 30, 1995, and each year thereafter, at least 50 percent recycled content

The Department of Administration is directed to prepare and distribute a list of materials with recycled content that meet the appropriate standards of state agencies, community colleges, and public school units.

Amended G.S. 136-28.8 urges the Department of Transportation to expand its use of recycled material; specifically, it urges the department to use rubber from discarded tires in road pavement and recycled materials in guardrail posts and sign supports. The department is directed to report annually to the Office of Waste Reduction, DEHNR, regarding its use of recycled materials during the previous fiscal year.

New G.S. 143-170.1(a2) requires every public document published by a state agency that is printed on recycled paper to contain a printed statement or symbol indicating that it was printed on recycled paper.

State Agency Reports and Publications

Chapter 448 (S 572) adds new G.S. 130A-309.14(j) to require that every report (undefined) issued by a state agency (including the General Assembly, the General Court of Justice, and The University of North Carolina) —to the extent "economically practicable"—be printed on recycled paper, be capable of being recycled, and be printed on both sides of the page. New G.S. 130A-309.14(a)(5) requires each state agency issuing a report to inform the persons who may be interested in the report of its existence and to deliver the report only to persons who request it and to libraries likely to receive a request for it. Distribution of reports *en masse* is prohibited. New G.S. 130A-309.14A encourages, but does not require, community colleges and nonprofit corporations receiving state funds to prepare reports in accordance with G.S. 130A-309.14(j).

The act also amends G.S. 143-169 to provide that "[e]very publication published at State expense shall be prepared in accordance with the recycling and

reuse requirements set forth in G.S. 130A-309.14(j)." A "publication" is obviously something different from a "report," which is the subject of G.S. 130A-309.14(j), but what it is and how it is different from a "document," which is the subject of G.S. 143-169.2 and -170.2, is unexplained. It is also unclear what publications are "published at State expense." Is, for example, a book offered for sale included? A magazine available to subscribers?

Finally, effective January 1, 1994, the act amends G.S. 143-169.1(a) to provide that the requirement that state agency mailing lists be revised and updated every year does not apply to alumni mailing lists of the constituent institutions of The University of North Carolina.

Regulation of Secondary Metals Recyclers

Chapter 295 (S 1006) amends G.S. 66-10 to remove dealers in scrap metals from the record-keeping provisions of that statute and rewrites G.S. 66-11 to change substantially the record-keeping requirements imposed on scrap-metal dealers. The dealers covered by the new requirements are "secondary metal recyclers." These are defined as persons or firms that, from a fixed location, are engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purposes, or in the business of processing such metals, or in the business of performing the manufacturing process by which such metals are converted into raw materials having an existing or potential economic value. Among the information required to be recorded when a secondary metal recycler purchases regulated metals is weight of the metals purchased; date of the transaction; amount paid for the metals; name and address of the seller; and driver's license number or identification card number of the person delivering the metals for sale. The record must be kept for at least two years following the date of purchase and be available for examination by any law-enforcement officer during regular business hours. Secondary metals recyclers are prohibited from purchasing regulated metals for cash except from a fixed location. None of the requirements of the amended statute apply to purchases of regulated metals from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metals in the ordinary course of its business.

Local governments are expressly prohibited from enacting ordinances that regulate secondary metal recyclers that conflict in any way with this statute.

The act becomes effective December 1, 1993.

Prohibited Wastes in Incinerators

Chapter 290 (S 59) enacts new G.S. 130A-309.10(f1) to prohibit disposal of the following wastes after July 1, 1994, in a permitted incinerator: (1) antifreeze used solely in motor vehicles; (2) aluminum cans; (3) steel cans unless the steel is recoverable at the end of the incineration process; and (4) white goods. These prohibitions do not apply to disposal in an incinerator used only by the generator of the waste, nor to the incineration of antifreeze that cannot be recycled to make it usable as antifreeze in a motor vehicle. New G.S. 130A-309.10(h) is enacted to provide that accidental or occasional disposal of small amounts of prohibited wastes in a landfill or incinerator shall not be construed as a violation of the statute.

Rules of Financial Responsibility

Chapter 273 (S 1164) deletes the exemption in G.S. 130A-294(b) (closure and post-closure financial-responsibility requirements for owners of solid-waste management facilities) for local governments. This deletion makes all financial-responsibility requirements applicable to solid-waste management facilities operated by local governments and was necessary to bring North Carolina into compliance with the new federal regulations on landfill management.

Use of Demolition Asphalt

Chapter 537 of the 1991 Session Laws amended G.S. 130A-294 and 130A-309.09(b) to allow used asphalt or used asphalt mixed with dirt to be used as fill and provided that such material did not have to be disposed of in a permitted landfill or other solid-waste disposal facility. The act was to expire July 1, 1993. Chapter 86 (H 969) removed the expiration date, thereby making this legislation permanent.

Permits for Solid-Waste Management Facilities

Chapter 365 (H 787) amends the permit provisions of G.S. 130A-294(a)(4) to authorize DEHNR to deny a permit for a sanitary landfill or incinerator if the applicant is a unit of local government that has not received approval of a solid-waste management plan pursuant to G.S. 130A-309.09A(b). This authority may not be exercised if the Health Services Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid-waste management plans.

Scrap-Tire Tax

Exemption

Chapter 364 (H 1274) amends former G.S. 130A-309.54(a)[2] and G.S. 105-187.18 to extend the exemption from the 1 percent tire-disposal tax for tires sold to be placed on newly manufactured vehicles back to January 1, 1990, the date the tax was first imposed. The act further authorizes refunds of those taxes already paid if a demand for a refund is made on or before July 1, 1994. Interest at the rate of 5 percent a year is to be allowed on refunds of taxes paid on tires purchased before July 15, 1992.

Temporary Tax

Chapter 548 (H 83) temporarily increases the amount of the scrap-tire tax. Effective October 1, 1993, G.S. 105-187.16 is amended to increase the amount of the tax on new tires to 2 percent of the sales price of the tire if the bead diameter of the tire is less than twenty inches. If the bead diameter is at least twenty inches, the tax remains at 1 percent of the sales price. This change in the tax expires June 30, 1997.

G.S. 105-187.19 is amended to provide that the Department of Revenue may retain up to $225,000 a year of the tax collections as reimbursement for administrative expenses. Five percent of the tax is to be credited to the Solid Waste Management Fund, 27 percent to the Scrap Tire Disposal Account, and 68 percent to be distributed to the counties on a per-capita basis, the funds to be used only for scrap-tire disposal.

DEHNR is authorized to use up to 25 percent of the funds in the Scrap Tire Disposal Account to make grants to local governments to assist in the disposal of scrap tires. A local government is eligible for a grant only if the department determines that in a relevant six-month period the local government's costs of scrap-tire disposal exceeded its per-capita distribution under G.S. 105-187.19. The department may use the remaining revenue to clean up nuisance tire collection sites, and it may use up to $500,000 to fund pilot programs to develop market-based approaches to scrap-tire recycling. Under the initiative of the pilot program, grants of up to $100,000 each may be made to private firms. The authorization for funding pilot programs expires June 30, 1995.

G.S. 130A-309.58(e) is amended to prohibit local governments from charging any additional fees for the disposal of scrap tires, except (1) when the scrap tires are new tires that are being disposed of by the manufacturer because they do not meet the manufacturer's standards; and (2) when the scrap tires are delivered to a local government scrap-tire disposal site without an accompanying certificate required by G.S. 130A-309.58(f) that indicates that the tires originated in a county within North Carolina. Any additional disposal fee may not exceed the cost of disposing of the tires. This provision expires June 30, 1997.

Notes

1. *See* William A. Campbell, *Solid-Waste Management: Local Government Exclusionary Policies*, POPULAR GOVERNMENT 44, 45 (Spring 1990).

2. Defined in new G.S. 130A-290(a)(1b) as "any of the following when used as a liquid heat transfer agent in a mechanical refrigeration system: carbon tetrachloride, chlorofluorocarbons, halons, or methyl chloroform."

3. The act amends former G.S. 130A-309.54(a) because, as enacted in 1989, that statute levied the scrap-tire tax. In 1991, the General Assembly amended G.S. 130A-309.54(a) to transfer the levy of the tax to G.S. 105-187.18.

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