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David M. Lawrence
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1994 Solid-Waste Management Legislation

William A. Campbell

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This bulletin reviews solid-waste management legislation enacted by the 1994 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.

government must have adopted a franchise ordinance pursuant to G.S. 153A-136 or G.S. 160A-319, and the franchise must be granted pursuant to the ordinance. G.S. 130A-294(b1)(3) requires that at a minimum the franchise contain the following three elements: "[a] statement of the population to be served, including a description of the geographic area; [a] description of the volume and characteristics of the waste stream; and [a] projection on the useful life of the landfill."

Local government review of landfill applications

G.S. 130A-294(a)(4) provides that before the Department of Environment, Health, and Natural Resources may issue a permit for a new or expanded sanitary landfill, the county or city in which the landfill is located must approve the landfill permit, renewal of the permit, or a substantial amendment to the permit. Because it contains no standards to guide a local government in making its review and approval, the statute would very likely be held unconstitutional if challenged in court. To remedy this situation, the General Assembly enacted chapter 722 (H 1973) to include standards for the guidance of local governments.

Local government officials should not be misled by the first required element, concerning a description of the geographic area to be served, into assuming that they can accomplish through a franchise a goal such as excluding out-of-county or out-of-state waste that would be unconstitutional if attempted by direct regulation.¹ The imposition of an exclusionary policy through a franchise would appear to be just as invalid as enactment of such a policy through regulation.

The amendment includes two elements: the first requires the local government to franchise the landfill; the second requires the local government to certify that the landfill complies with applicable zoning and other land use regulations. G.S. 130A-294(b1)(3) provides that before an applicant applies to DEHNR for a new sanitary landfill permit, renewal of a permit, or substantial amendment to a permit, the applicant must obtain a franchise for the operation of the landfill from the local government having jurisdiction over the landfill. The local

The second element of the amendment, in G.S. 130A-294(b1)(4), requires the permit applicant to request each local government having jurisdiction "to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed landfill . . . would be consistent with the applicable ordinances." An ordinance must have been in effect for at least ninety days before the request for a determination of consistency is made for it to be used as a basis for the determination. If the local government fails

¹See William A. Campbell, *Solid-Waste Management: Local Government Exclusionary Policies*, 55 *Popular Government*, Spring 1990, p. 44.

to submit a determination of consistency to DEHNR within fifteen days of receiving the request from the applicant, DEHNR is directed to review the permit application without regard to the applicability of local ordinances.

Although G.S. 130A-294(b1)(4) is not entirely clear on this point, it appears that if a local government submits its determination of consistency to DEHNR within the required fifteen days and the determination cites one or more inconsistencies with local ordinances, then DEHNR must condition issuance of the permit on compliance by the applicant with the ordinances before construction or operation is commenced.

Landfills for on-site disposal of land clearing debris

Chapter 580 (S 898) amends G.S. 130A-294(a)(4) to exempt landfills with disposal areas of one-half acre or less for the on-site disposal of land clearing and inert debris from the permit requirements for sanitary landfills and makes them subject to the requirements of new G.S. 130A-301.1. G.S. 130A-301.1 imposes the following requirements on land clearing and inert debris landfills with disposal areas of one-half acre or less:

1. The landfill must be sited more than 50 feet from any boundary of an adjacent property;
2. The owner of the landfill must record a certified copy of a survey showing the exact

location of the landfill and the name of the record owner of the land in the register of deeds' office;

3. Before the owner leases or conveys any tract of land that directly abuts or is contiguous to a landfill, the owner must record a disclosure statement, including a legal description of the property, in the register of deeds' office.

4. No public, commercial, or residential building shall be located within 50 feet of a closed landfill.

The Department of Transportation is exempt from the second and third requirements for the on-site disposal of land clearing and inert debris on highway rights-of-way.

G.S. 130A-301.1 provides no penalties for its violation, so violations are a misdemeanor under the general penalty provisions of G.S. 130A-25.

Disposal fees for white goods

Chapter 745 (H 1725) amends G.S. 130A-309.81 to provide that, effective August 1, 1994, no fee may be charged for the disposal of white goods. The current provision only prohibits the charging of a fee that is in addition to the fee charged for the disposal of other solid waste. This prohibition is to last just under four years. Effective July 1, 1998, G.S. 130A-309.81 is amended to provide that a fee may be charged for the disposal of white goods.