

# LOCAL GOVERNMENT LAW



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## 1996 SOLID WASTE MANAGEMENT LEGISLATION

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This bulletin reviews solid waste management legislation enacted by the 1996 session of the General Assembly. The legislation is identified by the session law chapter numbers, with the original bill numbers in parentheses. Unless stated otherwise, the acts became effective when ratified and are therefore current law.

### Revision of the Solid Waste Management Act of 1989

Clearly the most significant solid waste legislation in the 1996 short session was enactment of chapter 594 ( H 859), which—effective October 1, 1996—extensively revises the Solid Waste Management Act. The changes are discussed under the appropriate headings below.

#### A. Local government plans and responsibilities

Under the original act, counties were required to adopt solid waste management plans and submit the plans to DEHNR for approval. Chapter 594 changes the planning requirements in several respects. First, the act sets a state-wide goal of reducing the solid waste stream on a per capita basis by 40% by June 30, 2001 [G.S. 130A-309.04(c)]. Second, each unit of local government, either on its own or in concert with other units, is required to develop a 10-year solid waste management plan that makes “a good faith effort” to achieve the goal of 40% reduction [G.S. 130A-309.09A(b)]. A local government may request assistance from DEHNR in preparing its plan. Each plan is to be adopted after at least one public hearing and contain the following elements: (1) an evaluation of the solid waste stream in the geographic area covered by the plan; (2) a goal for the reduction of municipal solid waste on a per capita basis of 40% by June 30, 2001, and a goal for further reduction (of an unspecified amount) by June 30, 2006; (3) be designed to achieve the solid waste reduction goals established in the plan; (4) include a description of the process by which the

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plan was developed; (5) include an assessment of current programs and a description of intended actions regarding the following management methods—a) reduction at the source, b) collection, c) recycling and reuse, d) composting and mulching, e) incineration with energy recovery, f) incineration without energy recovery, g) transfer outside the geographic area, h) disposal; (6) include an assessment of current programs and a description of intended actions with respect to—a) education, b) management of special wastes, c) prevention of illegal disposal and management of litter, d) purchase of recycled materials and products manufactured with recycled materials; (7) include a description of the full costs of solid waste management and the methods of financing those costs; and (8) consider the use of facilities and other resources for management of solid waste that may be available through private enterprise [G.S. 130A-309.09A(b)]. Each local plan is no longer required to be approved by DEHNR, but a local government must provide DEHNR with a copy of its plan if DEHNR requests it. Local governments must begin implementing their plans by July 1, 1997 [ch. 594, § 30], and the plans must be updated at least every three years [G.S. 130A-309.09(b)].

In addition to the plans, local governments are directed to establish solid waste reduction programs in place of the previously required recycling programs, and these programs must be designed to meet the goal of a 40% reduction of the waste stream by June 30, 2001, and the unspecified further reduction by June 30, 2006 [G.S. 130A-309.09B(a)]. The detailed requirements regarding recycling programs imposed on local governments are deleted [G.S. 130A-309.09B(c), (d), (e) and (g)].

The penalty imposed on a local government for not preparing a plan or establishing a waste reduction program that meets the statutory requirements is loss of eligibility for grants from the Solid Waste Management Trust Fund, the Scrap Tire Disposal Account, and the White Goods Management Account, and disqualification for receiving proceeds from the scrap tire disposal tax and the white goods disposal tax [G.S. 130A-309.09C(g)]. Although loss of these funds could be significant, the language that would also cause a local government to lose all other funds from DEHNR for which it might be eligible has been deleted.

The act makes a significant shift of emphasis in the requirements of G.S. 130A-309.09A(a). Before amendment, the statute read: "The governing board of a designated local government shall provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas designated to be served by the facility." This language

could be interpreted as imposing a duty on counties—usually—to either operate a disposal facility or contract for its operation to serve all municipalities and unincorporated areas in the county. The amended statute reads: "The governing board of each unit of local government shall assess local solid waste collection services and disposal capacity and shall determine the adequacy of collection services and disposal capacity to meet local needs and to protect human health and the environment." The statute goes on to direct each local government to implement programs to remedy any deficiencies in collection services or disposal capacity. The amended statute plainly does not require a county—or municipality—to provide services for another unit of government.

The requirement of an annual report by local governments to DEHNR on solid waste management is retained, but the date is changed from December 1 to September 1, and the responsibility for submitting the reports is no longer the counties alone but is extended to all units of local government [G.S. 130A-309.09A(d)]. The report is no longer required to contain a description of recycling efforts attempted by the local government, but two new elements are required: information regarding implementation of the local solid waste management plan; and a statement of the costs of solid waste management programs implemented by the unit and the methods of financing those costs [G.S. 130A-309.09A(d)(6) and (7)].

## **B. New exclusions for industrial waste and recovered materials**

Chapter 594 excludes from the general requirements of the act industrial solid waste and recovered materials. "Industrial solid waste" is defined as "waste generated by manufacturing or industrial processes that is not hazardous waste" [G.S. 130A-290(a)(13a)], and it is excluded from the act's definition of "municipal solid waste" if it is managed in a solid waste management facility owned and operated by the generator of the waste [G.S. 130A-290(a)(18a)]. A generator of industrial solid waste that manages the waste on site is required to prepare a 10-year waste management plan, to be updated at least every three years, that contains the following elements: (1) a waste reduction goal established by the generator; (2) options for the management and reduction of wastes evaluated by the generator; and (3) a waste management strategy, including plans for waste reduction and waste disposal, for the 10-year period covered by the plan. Each generator that prepares a plan must file an annual report with DEHNR by August 1 describing implementation of the plan [G.S.

130A-309.09D(c)]. The plans must be prepared by July 1, 1997, and the first annual report is due August 1, 1998 [chapter 594, § 30(b)].

A "recovered material" is defined as "a material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the solid waste stream for sale, use, or reuse." [G.S. 130A-290(a)(24)] In addition, a recovered material must meet the requirements of G.S. 130A-309.05(c), a statute that received only technical amendments and provides that to qualify: (1) a majority of the recovered material at a facility must be sold, used, or reused within one year; (2) the material must not be discharged onto land or into water or air or otherwise enter the environment; and (3) the material must not be a hazardous waste. Waste that qualifies as a recovered material is not subject to regulation as solid waste [G.S. 130A-309.05(c) and 130A-290(a)(35)f].

### C. Financial responsibility requirements

The 1989 act authorized the Commission for Health Services to adopt rules for financial responsibility to ensure that adequate funds were available for closure and post-closure maintenance and monitoring of solid waste management facilities. Chapter 594 directs the commission to adopt these rules and makes it clear that the rules must apply to privately-owned facilities. The rules are to ensure that adequate funds will be available "during the active life of the facility, at closure, and for a period of not less than 30 years after closure even if the owner or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State." [G.S. 130A-294(b)].

### D. Local government fees

The provisions of the 1989 act that authorized local governments to impose solid waste fees have been transferred to chapter 153A for counties and chapter 160A for cities [G.S. 130A-309.08(d), (e), and (f); G.S. 130A-309.09A(a)]. The provisions authorizing local governments to charge different fees for the use of a disposal facility depending on "the amount, characteristics, and form of recyclable materials present in solid waste" are now found in G.S. 153A-292(b) and G.S. 160A-314(a2).

### E. Full cost accounting

The requirement that local governments determine the full cost of solid waste management remains in the law with a few changes. Counties are required to

determine the full cost each year for the preceding year and are to do so according to rules promulgated by the Commission for Health Services, but the deadline for the rules has been deleted and so has the direction that the commission is to examine the feasibility of local governments' using an enterprise fund [G.S. 130A-309.09(a) and (b)]. And as noted above, one of the elements required in a local government's solid waste management plan is an assessment of the full cost of management and the methods of financing those costs [G.S. 130A-309.09A(b)(7)].

### F. Prohibitions on collection and disposal

Two provisions have been added that prohibit the collection and disposal of certain categories of waste. The first provision, [G.S. 130A-309.09A(g)], applies to local governments, and it provides that a local government that either collects or disposes of solid waste in a facility that it owns or operates shall not knowingly collect or dispose of waste that is generated within the boundaries of a local government that by ordinance either prohibits generators or collectors from disposing of that type of waste or requires generators or collectors of municipal solid waste to recycle that type of waste. A similar provision [G.S. 130A-309.09D(a)] applies identical prohibitions to private collectors and owners and operators of management facilities. These statutes will operate, for example, to prohibit a private collector from collecting corrugated cardboard for disposal in a county landfill if the county has banned that type of waste from the landfill. The statute does not specify penalties for violating these prohibitions.

### G. Plastic containers, tires, batteries, and steel cans

No longer are plastic bags provided by retailers for carrying purchased items required to contain a notice that they are recyclable, but all bags must in fact be recyclable [G.S. 130A-309.10(c)(1)]. The requirement that plastic containers contain a code to indicate the plastic resin used in making the product will apply only to rigid plastic containers and will not apply to containers having a capacity of less than eight fluid ounces or more than five gallons [G. S. 130A-309.10(e)].

The prohibition against placing tires in a landfill is amended to apply only to "whole pneumatic rubber coverings," not to solid tires [G.S. 130A-309.10(f)(7) and G.S. 130A-309.58(b)]. Bicycle tires and other tires used on vehicles propelled by human power

(scooters?) are exempted from the scrap tire provisions of the act [G.S. 130A-309.53(7)].

The prohibition against placing lead acid batteries in a landfill or incinerator that is already contained in G.S. 130A-309.70 is simply restated in G.S. 130A-309.10(f)(8) and (f1)(5).

The prohibition against placing steel cans in an incinerator is repealed [G.S. 130A-309.10(f1)(3)].

#### **H. Special white goods provision**

If a local government anticipates that during a particular six-month period the costs it will incur in managing white goods will exceed the revenue it will receive from the White Goods Management Account, and the excess costs are the result of a capital expenditure for the management of white goods or other improvements to the unit's white goods management program, it may obtain a grant from the White Goods Management Account to cover the excess costs [G.S. 130A-309.83(d)].

#### **L. Training requirements for operators of solid waste management facilities**

The deadline for operators of solid waste management facilities to have completed training courses approved by DEHNR has been moved from January 1, 1996, to January 1, 1998. After that date, no person may perform the duties of operator of a solid waste

management facility unless he or she has completed the required course [G.S. 130A-309.25(c)].

#### **Solid Waste Management Division name change**

Effective July 1, 1996, chapter 743 (S 1328) amended G.S. 130A-291 and other relevant statutes to delete "Solid" so that the name of the DEHNR division that administers waste management programs is now the Waste Management Division.

#### **Roofing disposal permits—Cumberland County**

Some cities and counties have found it useful to regulate roof replacement as a means of assuring that roofing materials are disposed of in a manner that is environmentally sound. In 1993, Alamance County obtained a local act (chapter 381) authorizing it, and the cities located therein, to require a building permit for the removal and replacement of roofing if the cost exceeds \$1,500.00. The application for the permit must state the disposal site of the removed roofing materials. Scotland County and the municipalities therein were added to this act in 1995 (Chapter 124). Chapter 732 adds Cumberland County to this list of counties and municipalities.

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