**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑96‑85 SO AS TO ESTABLISH THE SOLID WASTE EMERGENCY FUND, TO PROVIDE FOR THE FUNDING OF THE FUND, TO PROVIDE EXCEPTIONS, TO AUTHORIZE THE RECOVERY OF COSTS BY THE ATTORNEY GENERAL OR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, AND TO AUTHORIZE A REPRESENTATIVE TO INVESTIGATE A WASTE MANAGEMENT SITE AT ANY TIME TO ADDRESS AN EMERGENCY SITUATION; BY AMENDING SECTION 44‑96‑120, RELATED TO THE SOLID WASTE MANAGEMENT TRUST FUND, SO AS TO INCLUDE FUNDING THE SOLID WASTE EMERGENCY FUND IN THE LIST OF AUTHORIZED SOLID WASTE MANAGEMENT TRUST FUND EXPENDITURES; BY AMENDING SECTION 44‑96‑290, RELATING TO SOLID WASTE MANAGEMENT FACILITY PERMITTING, SO AS TO ALLOW THE DEPARTMENT TO LIMIT DEMONSTRATION OF NEED REQUIREMENTS, TO REMOVE LOCAL LAND USE AND ZONING ORDINANCES FROM A CONSTRUCTION PERMIT TO BUILD A NEW SOLID WASTE MANAGEMENT FACILITY OR EXPAND AN EXISTING FACILITY, AND TO REQUIRE A PERSON SEEKING A CONSTRUCTION PERMIT TO PROVIDE DOCUMENTATION OF COMPLIANCE WITH LOCAL LAND USE AND ZONING ORDINANCES; AND BY AMENDING SECTION 44‑96‑360, RELATING TO SOLID WASTE PROCESSING FACILITIES, SO AS TO ESTABLISH CERTAIN CONDITIONS FOR FACILITIES THAT RECYCLE CONSTRUCTION AND DEMOLITION DEBRIS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 96, Title 44 of the 1976 Code is amended by adding:

“Section 44‑96‑85. (A) There is established a Solid Waste Emergency Fund to be administered by the department of Health and Environmental Control.

(1) Beginning the State fiscal year after the effective date of this Section, the department shall transfer two and one‑half percent of the funds remitted quarterly to the Solid Waste Trust Fund pursuant to Sections 44‑96‑160, 44‑96‑170, 44‑96‑180, and 44‑96‑200 to a special sub‑fund designated as the Solid Waste Emergency Fund.

(2) The department shall deposit quarterly payments into the Solid Waste Emergency Fund until the unencumbered balance equals $1,500,000.

(3) When expenditures from the account occur, the department shall, on a quarterly basis, transfer funds in accordance with this section until such time as the unencumbered balance of the fund equals $1,500,000.

(B) The monies in the Solid Waste Emergency Fund may be expended by the department exclusively at the discretion of the director to address a substantial release or threat of substantial release into the environment of any pollutant or other circumstance which may present an imminent and substantial danger to human health and the environment from a solid waste facility regulated under this chapter. The director may authorize the department to take direct emergency actions or enter into a contract to perform emergency actions to protect human health and the environment at solid waste sites.

(C) This subsection does not apply to the release or discharge of a substance which is in compliance with a permit, license, approval, special order, waiver or variance issued under this chapter or under applicable federal statutes or regulations.

(D) The Solid Waste Emergency Fund may not be used to perform routine actions at solid waste sites such as operations, maintenance, monitoring, or remedial actions in which no imminent threat to human health and the environment exists. The department shall take all reasonable efforts to compel a permittee or other responsible party to address the threat before expending funds from the Solid Waste Trust Fund.

(E) The collection or expenditure of funds under this Section are separate from any activities by the department or the federal environmental protection agency acting under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S. Code 9601, et seq.

(F) The Attorney General or the department shall take all reasonable actions to recover costs for expenditures made from the Solid Waste Emergency Fund. The department may seek cost recovery from persons whose willful disregard of this statute or regulations promulgated pursuant to this statute resulted in the need for emergency action. Funds recovered must be deposited into the Solid Waste Emergency Fund.

(G) An authorized representative or employee of the department may enter at all times onto any site, facility, property, and surrounding areas for the purpose of investigating or addressing emergency situations. Notice to the owner or occupant is not required if immediate action is necessary and the delay required to provide this notice may present an imminent and substantial hazard to human health, safety or to the environment.”

SECTION 2. Section 44‑96‑120(A) of the 1976 Code is amended to read:

“(A) There is established a Solid Waste Management Trust Fund to be administered by the Office of Solid Waste Reduction and Recycling to fund:

(1) activities of the department to implement the provisions of this chapter;

(2) research by state‑supported educational institutions or by private entities under contract with state‑supported educational institutions on solid waste management technologies;

(3) activities of the Recycling Market Development Advisory Council including its staff in the amount of one hundred thousand dollars from the Solid Waste Management Trust Fund for fiscal year 1994‑95;

(4) demonstration projects or pilot programs to be conducted by local governments within their jurisdictions, including local governments which contract with private entities to assist in conducting the demonstration projects or pilot programs;

(5) grants to local governments to carry out their responsibilities under this article, pursuant to the provisions of Section 44‑96‑130, including local governments which contract with private entities to assist in carrying out their responsibilities under this article;

(6) grants to school districts and public and private schools to establish waste reduction and recycling education programs; ~~and~~

(7) grants to public and private colleges and universities to establish waste reduction and recycling education programs and demonstration projects; and

(8) the activities of the Solid Waste Emergency Fund through the transfer of funds on a quarterly basis pursuant to the provisions of Section 44‑96‑85.”

SECTION 3. Section 44‑96‑290(E), (F), and (G) of the 1976 Code is amended to read:

“(E) No permit to construct a new solid waste management facility or to expand an existing solid waste management facility may be issued until a demonstration of need is approved by the department, as required by regulation. Facilities which lawfully burn nonhazardous waste for energy recovery up to the normal rate of manufacturing production or which lawfully use or reuse the waste to make a product shall not be excluded from the demonstration of need requirement. No construction of new or expanded solid waste management facilities may be commenced until all permits required for construction have been issued. In determining if there is a need for new or expanded solid waste disposal sites, the department shall not consider solid waste generated in jurisdictions not subject to the provisions of a county or regional solid waste management plan pursuant to this chapter.

The department shall promulgate regulations to implement this section. These regulations must apply to all solid waste management facilities which have not obtained all permits required for construction. This subsection does not apply to inert or cellulosic solid waste facilities which are not commercial solid waste management facilities or to industrial facilities managing solid waste generated in the course of normal operations on property under the same ownership or control as the solid waste management facility if the industrial facility is not a commercial solid waste management facility.

(F) No permit to construct a new solid waste management facility or to expand an existing solid waste management facility within a county or municipality may be issued by the department unless the proposed facility or expansion is consistent ~~with local zoning, land use, and other applicable local ordinances, if any; the proposed facility or expansion is consistent~~ with the local or regional solid waste management plan and the state solid waste management plan; and the host jurisdiction and the jurisdiction generating solid waste destined for the proposed facility or expansion can demonstrate that they are actively involved in and have a strategy for meeting the statewide goal of waste reduction established in this chapter. This subsection must not apply to industrial facilities managing solid waste generated in the course of normal operations on property under the same ownership or control as the waste management facility. However, the facilities shall be consistent with the applicable local zoning and land use ordinances, if any; and provided further, that the industrial facility is not a commercial solid waste management facility.

(G) ~~[Redesignated as (F)‑See 2000 Effect of Amendment note]~~ A permit to construct a new solid waste management facility or to expand an existing solid waste management facility as authorized by this chapter may not be issued until the applicant provides documentation of compliance with local land use and zoning ordinances along with the permit application.”

SECTION 4. Section 44‑96‑360 of the 1976 Code is amended to read:

“Section 44‑96‑360. (A) Not later than eighteen months after this article is effective, the department shall promulgate, in addition to regulations generally applicable to all solid waste management facilities, regulations governing the siting, design, construction, operation, closure, and postclosure activities of facilities which receive solid waste for processing. The department ~~may~~, by regulation, may exempt certain facilities from all or part of the requirements of this section.

(B) All new processing facilities must comply with the requirements of this section. The department shall establish a schedule for existing facilities to come into compliance with the requirements of this section.

(C) The regulations governing solid waste processing facilities ~~shall~~, at a minimum, shall contain the following requirements:

(1) the submission by the permit applicant of the following documents:

(a) an engineering report which ~~must~~, at a minimum, must contain a description of the facility, the process and equipment to be used, the proposed service area, the types and quantities of waste to be processed, and a description of existing site conditions;

(b) complete construction plans and specifications;

(c) a design report;

(d) a personnel training program;

(e) an identification of possible air releases and groundwater and surface water discharges;

(f) a waste control plan describing the manner in which waste from the processing activities will be managed. The plan ~~must~~, at a minimum, must identify the facilities to be approved by the department that will receive the waste and a certification that such facilities have adequate capacity to manage the waste;

(g) a quality assurance and quality control report;

(h) a contingency plan describing the action to be taken in response to contingencies which could occur during operation of the facility;

(i) an operation plan describing how the facility will meet all applicable regulatory requirements;

(j) a draft operation and maintenance manual;

(k) a closure plan; and

(l) a description of the restrictions, if any, that the facility places on the materials it receives for processing and a statement explaining the need for such restrictions;

(2) locational criteria; provided, however, that the department shall grant exemptions from such criteria upon a demonstration by the permit applicant of circumstances which warrant an exemption;

(3) facility design and operational requirements including, but not limited to, access controls, reporting and recordkeeping requirements, receipt and handling of solid waste, process changes, emergency preparedness, and guidelines for identifying items or materials that may not be accepted for processing;

(4) monitoring requirements including, at a minimum, air quality monitoring and analysis, groundwater and surface water quality monitoring and analysis, and product quality testing and analysis;

(5) closure and postclosure requirements;

(6) financial responsibility requirements;

(7) personnel training requirements; and

(8) corrective action requirements.

(D)(1) All unpermitted facilities that recycle construction and demolition debris must register with the department on a form made available by the department no later than sixty days after the effective date of this subsection;

(2) A facility that recycles construction and demolition debris must submit a complete permit application to the department or complete closure in accordance with this section and regulations promulgated pursuant to this section within twelve months of the effective date of this subsection;

(3) A facility that recycles construction and demolition debris must obtain a permit from the department or complete closure in accordance with this section and regulations promulgated pursuant to this section within twenty‑four months of the effective date of this subsection;

(4) A facility that recycles construction and demolition debris is exempt from obtaining a permit if:

(a) all materials accepted at the facility are segregated from solid waste and sorted by material type at the point of generation or at a permitted solid waste management facility;

(b) at least seventy‑five percent of the total weight of each separated material type received during a calendar year and remaining on site from a previous year is used, reused, recycled, or transferred to a different site for use, reuse, or recycling; and

(c) the material is managed in a manner to demonstrate that the recovered material has value and is stored in such a way to protect it from theft, degradation, contamination, or other harm;

(5) A facility that only recycles land clearing debris is not required to obtain a permit pursuant to this section but is subject to all other applicable provisions of this chapter and regulations promulgated pursuant to this chapter;

(6) The department shall require each registered facility that recycles construction and demolition debris to submit an annual report by a date determined by the department. The annual report, at a minimum, must include:

(a) the total amount by weight of each separate recovered material type received at the facility during the calendar year;

(b) the total amount by weight of each recovered material type that remained on site at the close of the previous year;

(c) the total amount by weight of each recovered material that is used, reused, recycled, or transferred to another site for use, reuse, or recycling during the calendar year and the location of the other site; and

(d) the amount of solid waste removed and disposed of during the calendar year and the name and address of the facility where the solid waste was disposed.

(E) Records documenting the activities listed in subsection (D) must be maintained for no less than three years and must be made available upon request by the department.”

SECTION 5. This act takes effect upon approval by the Governor.

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