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Local Solid Waste Management Planning

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Local Solid Waste Management Planning

Reference Number: CTAS-527

In an effort to coordinate and plan for safe, efficient solid waste disposal in the state, the Tennessee General Assembly has enacted several pieces of legislation, which are compiled in Title 68, Chapter 211 of the *Tennessee Code Annotated*. To comply with the requirements of this chapter, all local governments must engage in specified planning and organizational activities. See the Solid Waste Management Act of 1991, T.C.A. §§ 68-211-801 through 68-211-874.

Municipal Solid Waste Regional Board

Reference Number: CTAS-528

To begin implementation of the Solid Waste Management Act, counties were instructed to form solid waste regions (single or multicounty) and establish a solid waste board and advisory committee for each region. The primary function of this board is to make and annually update a plan for a 10-year disposal capacity and to achieve compliance with the waste reduction and recycling goal required by T.C.A. §§ 68-211-861, T.C.A. § 68- 211-813.

The regional boards are established by resolution of the county legislative body or by agreement of each participating county adopted by resolution of each county legislative body in the region and may be modified by agreement of the county legislative bodies. The board consists of an odd number of not fewer than five nor more than 15. Each member county must be represented by at least one board member. Municipalities that provide solid waste collection or disposal services, either directly or by contract, must be represented on the board. However, municipalities entitled to representation may agree to joint or multiple representation by a board member or for a county member to represent one or more municipalities upon agreement of the local governing bodies that share representation. Any such agreement must specify the method of making the shared appointment. Otherwise, members are appointed by the county and municipal mayors of the participating counties and municipalities, subject to confirmation by their respective legislative or governing bodies. Members of county and municipal governing bodies, county and municipal mayors, county and municipal officers and department heads as well as other citizens may be appointed to the board. The county and municipal mayors, and any other authorities, who appoint members must strive to ensure that at least two (2) elected officials serve on each regional board. Members serve terms of six years, except for initial appointments for two, four and six years to create staggered terms. T.C.A. §§ 68-211-861, T.C.A. § 68- 211-813.

Regional areas (and their boards) may be changed only by approval of the county legislative bodies of the counties involved in the change and with the approval of the Tennessee Department of Environment and Conservation, which will review the new or revised plans and receive information regarding the new board members. T.C.A. §§ 68-211-811, 68-211-813. These regional boards are constituted according to the provisions of T.C.A. § 68-211-813. Additionally, each region was required to formulate a plan for collection and disposal of solid waste in the area and submit this plan to the State Planning Office by July 1, 1994.

A regional plan may be revised at any time to reflect subsequent developments in the region subject to approval by the Department of Environment and Conservation. Each municipal solid waste region must submit an annual progress report to the department regarding how this annual activity affects the regional plan over the next 10 years. T.C.A. § 68-211-814.

Plan Requirements

Reference Number: CTAS-529

The plan, and any revised plan, submitted by each region must be consistent with the state solid waste plan and with all relevant state laws and regulations. At a minimum, each plan must contain the following items:

1. Demographic information;
2. A current system analysis of waste streams, collection capability, disposal capability, costs, and revenues;
3. Adoption of the statutorily required uniform financial accounting system;
4. Anticipated growth trends and waste capacity needs for the next 10 years;
5. Anticipated waste capacity needs;
6. Planned capacity assurance, including a descriptions of planned or needed facilities;
7. A recycling plan;

8. A plan for the disposal of household hazardous wastes;
9. Adoption of the statutorily required reporting requirements;
10. A description of waste reduction and recycling activities designed to attain the goal required by T.C.A. § 68-211-861;
11. A description of education initiatives designed to achieve the goals stated in the statute;
12. An evaluation of multicounty solid waste disposal region options with an explanation of the reasons for adopting or failing to adopt a multicounty regional approach;
13. A timetable for implementation of the plan;
14. A description of the responsibilities of each participating jurisdiction;
15. A certification of review and approval of the plan (or revised plan) from the Solid Waste Authority (organized under Chapter 211, Part 9), if such an authority has been formed, or if no such authority has been formed, from the county legislative body of each county in the region;
16. A plan for managing solid waste generated as a result of disasters or emergencies; and
17. Any other information the commissioner of the Department of Environment and Conservation deems relevant.

T.C.A. § 68-211-815.

Solid Waste Authority

Reference Number: CTAS-519

A county or any of the counties in a municipal solid waste region may decide to form a solid waste authority to operate all solid waste systems within the region. (See the Solid Waste Authority Act in T.C.A. §§ 68-211-901 through 68-211-925.) A municipality with most of its territory in the county creating the authority may participate. T.C.A. § 68-211-903. Similarly, the authority can be dissolved by agreement of its participating counties and cities. The board of directors may be composed of the same members as the region's solid waste board, but this is not required. The method of selection, officers required, terms of office, and vacancy procedures are described in T.C.A. §§ 68-211-904, 68-211-905.

The advantage of using a solid waste authority to oversee the region's waste management lies in the authority's broad statutory powers. The solid waste authority is a separate legal entity that may issue bonds, incur debts, enter into contracts, and exercise the power of eminent domain. With the concurrence of the counties and municipalities participating in the solid waste authority, it may exercise exclusive control over the publicly owned solid waste systems within its boundaries. T.C.A. § 68-211-906.

Public Ownership of Solid Waste Facilities

Reference Number: CTAS-530

Counties have several options through which they may fulfill their responsibilities for solid waste management. They may contract with private entities for those services, they may provide services or contract for services through solid waste authorities, or they may provide the services themselves. A county or municipality may apply for a solid waste facility permit. A county may execute a contract of obligation instead of a performance bond to insure proper operation and closure of its publicly owned facilities. T.C.A. § 68-211-116. In addition to equipment for collection and disposal of solid waste, a county may also construct and operate energy recovery and resource recovery facilities which process waste into energy fuels. T.C.A. § 68-211-502.

Flow Control and Regional Approval Options

Reference Number: CTAS-531

State law appears to grant regions and solid waste authorities powers under certain conditions to direct the flow of solid waste generated within the region and to restrict the flow of solid waste into the region for disposal. However, federal court decisions, including U.S. Supreme Court rulings, make the validity of Tennessee statutes on flow control very questionable since the case law strongly indicates they may violate the commerce clause of the U.S. Constitution where regulatory power is exercised to control the flow of waste between private parties. *Fort Gratiot Sanitary Landfill Inc. v. Michigan Dept. of Natural Resources*, 112 S.Ct. 2019 (1992); *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 114 S.Ct. 1677 (1994).

State law also provides that any construction or expansion of solid waste facilities or incinerators within the region must be approved by the board of the region or the (Part 9) solid waste authority if one has

been formed before a permit is issued. The region or solid waste authority is to hold a public hearing after proper notice and may reject the proposal if it is inconsistent with the regional plan. T.C.A. § 68-211-814.

Sanctions

Reference Number: CTAS-532

If any region fails to submit a plan in a timely fashion, submits an inadequate plan, or fails to comply with other provisions of this act, then the commissioner of the Department of Environment and Conservation will impose the following sanctions:

1. On the first instance of noncompliance, the commissioner shall issue a letter of warning indicating the reasons for noncompliance, setting forth the sequence of graduated sanctions for noncompliance and offering technical assistance to remedy the causes of noncompliance.
2. Any noncompliance should be resolved as soon as possible. If noncompliance continues for thirty (30) days after receipt of the warning letter, the noncomplying county or region will lose eligibility for funds from the solid waste management fund, unless the commissioner states in writing that, due to particular circumstances, a longer time is appropriate.
3. If noncompliance continues for sixty (60) days after receipt of the warning letter, then, in addition to any other penalty imposed by law, the commissioner may impose a civil penalty of not more than five thousand dollars (\$5,000) for each day of noncompliance beyond the sixty-day period.

Any civil penalty will be assessed in the same manner as provided in § 68-211-117(b). Any penalty collected pursuant to this section shall be deposited in the solid waste management fund. T.C.A. § 68-211-816.

Operational Requirements

Reference Number: CTAS-533

There are several different sources of authority governing the operation of solid waste disposal facilities, including federal legislation and regulations as well as state law and its implementing rules. In addition to the Solid Waste Management Act, it is important to note the Solid Waste Disposal Act (T.C.A. §§ 68-211-101 through 68-211-124) as well as other relevant sections in Title 68. Furthermore, other governmental entities such as counties, municipalities, and boards of health may also adopt regulations governing solid waste disposal if their standards are at least as stringent as those set out by the state Department of Environment and Conservation and consistent with state and federal law. T.C.A. § 68-211-107.

Minimum Service Levels

Reference Number: CTAS-534

Each county must see that there is at least one solid waste collection and disposal system for the needs of county residents; at a minimum there must be one or more convenience centers, unless a higher level of service, such as household garbage pickup, is provided. The service is to be coordinated with those available from municipalities within the county and may be supplied directly by the county, by contract, or through a solid waste authority. The convenience centers must also comply with regulations developed by the Department of Environment and Conservation. T.C.A. § 68-211-851.

Problem Wastes

Reference Number: CTAS-535

Certain substances are no longer to be placed in a landfill but are to be disposed of through alternative methods. Among these is household hazardous waste. To provide for the safe collection of these household hazardous wastes, the Department of Environment and Conservation must provide, directly or by contract, for the collection of such wastes on designated days in each county. The county or authority is responsible for advertising the location of these units, the days and hours on which they will be available, and examples of hazardous household wastes. Furthermore, the county or solid waste authority must appoint at least one person to represent the county or authority to be present at the site on collection days in order to assist those operating the mobile collection unit. T.C.A. § 68-211-829. Depending on a county's population, competitive grants may be available for a permanent household

hazardous waste collection site. T.C.A. § 68-211-828.

Other examples of wastes prohibited at landfills include whole waste tires, lead-acid batteries, and used oil, all of which will no longer be accepted at any solid waste disposal facility or incinerator. Each county must provide at least one site to receive and store these materials. T.C.A. § 68-211-866. Whole waste tires may not be placed in a landfill. T.C.A. § 68-211-867.

Baled Waste and Inspections

Reference Number: CTAS-536

There are special detailed instructions governing the disposal of baled waste. It may not be placed in a landfill unless (1) that facility is licensed to receive hazardous waste, (2) the waste was baled and certified according to the procedure specified by statute, or (3) the waste was properly verified by the supervisor of the receiving landfill. T.C.A. § 68-211-119. A manifest that gives the nature of the waste, its origin and destination, and the names and addresses of all those in possession of it must accompany the baled waste and be maintained for 30 years. T.C.A. § 68-211-120.

In an effort to prevent processing and disposal of unlawful materials, the operator of each facility must inspect the waste. The inspection should be conducted according to a plan that is approved by the commissioner of environment and conservation and is similar to that for baled waste. T.C.A. § 68-211-119.

Education - Solid Waste Plan

Reference Number: CTAS-537

A component of each region's solid waste plan must be an education program "to assist adults and children to understand solid waste issues, management options and costs, and the value of waste reduction and recycling." T.C.A. § 68-211-842. After a region's plan is approved, the Department of Environment and Conservation may award matching grants for implementing the education program. T.C.A. §68-211-847.

Recycling

Reference Number: CTAS-538

Each county must provide at least one site for the collection of recyclable materials within the county. T.C.A. § 68-211-863. From funds available from the solid waste management fund, the Department of Environment and Conservation is required to provide a matching funds grant program for the purchase of equipment needed to establish or upgrade recycling at a public or not-for-profit recycling collection site.

However, these grants will generally not be granted if there is adequate equipment at privately-owned facilities which serve the same area. The eleven counties which generate the greatest amount of solid waste receive a rebate from the state surcharge on waste disposed in the county in accordance with a formula described in T.C.A. § 68- 211-825. A county may only expend the rebate for recycling purposes and must expend from local funds an amount equal to the amount of the rebate towards this purpose.

Counties which receive recycling rebates are not eligible for the recycling equipment grants.

Reporting Requirements

Reference Number: CTAS-539

Each solid waste region must submit an annual report to the Department of Environment and Conservation. This report is to follow the format prescribed by the department, and must contain solid waste information in the following areas: collection, recycling, transportation, disposal, public costs, and any other information which the department deems relevant. In conjunction with the annual report each region must also submit an annual progress report on the implementation of the region's solid waste disposal plan. T.C.A. § 68-211-871. There are additional reporting requirements for operators of recycling collection centers and for owners and operators of solid waste disposal facilities and incinerators. The owner or operator of a Class 1 disposal facility, incinerator, or transfer station must keep records of all amounts and county of origin of solid waste, measured in tons, received at the facility. T.C.A. §§ 68-211-862, 68-211- 863.

State Revenue, Funding and Grants

Reference Number: CTAS-540

A state fund through which most of the statewide programs are financed is the solid waste management

fund. It is funded in part through a state surcharge of 90 cents on each ton of municipal solid waste received at all facilities or incinerators. T.C.A. § 68-211-835. Additionally, the state solid waste management fund receives revenue from a pre-disposal fee of \$1.35 per tire collected by dealers upon the sale of a each new tire in this state (beginning July 1, 2014 counties can choose to receive \$1.00 of this fee directly from the department of revenue if they choose not to enter into tire grant contracts with TDEC). Counties, municipalities, and solid waste authorities may be able to receive grants from the fund for such activities as planning assistance (T.C.A. § 68-211-823), programs to establish or upgrade statutorily-required convenience centers (T.C.A. § 68-211-824), recycling (T.C.A. § 68-211-825), education (T.C.A. § 68-211-847), and waste tire collection and disposal (T.C.A. § 68-211-867). Additionally, the Department of Environment and Conservation, from available funds in the solid waste management fund, may directly or through contract, investigate and clean-up unpermitted waste tire disposal sites. T.C.A. § 68-211-831.

In 2015 the General Assembly enacted the Tire Environmental Act to establish a fee on each purchase of a new motor vehicle. The fee is administered by TDEC and is intended to be used for tire environmental programs, including local grants, subsidies or loans. This fee does not impact the existing pre-disposal fee on the sale of tires for which counties receive \$1 per tire for the processing of waste tires.

Local Revenue Sources

Reference Number: CTAS-541

In addition to state aid, there are several other sources through which counties and other governmental entities may fund their solid waste management operations. In general, these options are cumulative; they may be used singly or in mix-and-match combinations to suit each area's needs. These revenue sources include the following choices:

1. *Tipping Fee.* Any county, municipality, or solid waste authority that owns a disposal facility or incinerator may impose a tipping fee on each ton of waste or its volume equivalent. The amount of the fee is determined according to the cost of providing services, and the uniform solid waste accounting system is to be used to arrive at this cost. Revenue raised by the tipping fee is to be used only for solid waste management purposes. T.C.A. § 68-211-835(a).
2. *Host Fee.* In order to encourage regional use of solid waste disposal facilities or incinerators, a county that is host to a solid waste disposal facility or incinerator used by other counties in the same region may impose a surcharge on municipal solid waste received at any such solid waste disposal facility or incinerator by resolution of its county legislative bodies in the region. These revenues may be used only for solid waste management purposes or to offset costs resulting from hosting the facility. T.C.A. § 68-211-835(e).
3. *General Surcharge.* After approving the regional solid waste plan, a municipality, county, or solid waste authority may impose a surcharge on each ton of waste received at a disposal facility within that area. Funds collected through this surcharge may be expended for collection or disposal purposes. T.C.A. § 68-211-835(f).
4. *Disposal Fee.* A county, city, or solid waste authority may collect a mandatory user fee that bears a reasonable relationship to the cost of providing disposal services. This fee may be imposed on residences and businesses. A disposal fee may not be imposed on a waste generator who owns the facility for processing its own waste. A county disposal fee may be imposed on municipal residents if the municipal residents have access to the services funded by the disposal fee, such as a convenience center. Op. Tenn. Att'y Gen. 93-49 (July 23, 1993). Disposal fee revenues may be used only to establish and maintain collection and disposal services to which all county residents have access. Upon agreement with the area's electric utility, these fees may be collected as part of the utility's billing process. T.C.A. § 68-211-835(g).
5. *Property Tax.* A county may levy a general county-wide property tax to pay for waste collection and disposal services if all persons in the county are to be equally served, but such a county-wide levy shall be unlawful if any city, town or special district in any city or town, that, through its own forces or by contract, provides such services within its boundaries, or if any other part of the county is to be excluded from the service area. T.C.A. § 5-19-108.
6. *Service Charge.* A county may charge users a reasonable fee for providing waste collection services. T.C.A. § 5-19-107.

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