

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

COMMISSIONER'S MANUAL July 2012

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LCSWDC Creation Agreement (03/01/93, as amended 06/30/07)

CONTRACT SUMMARY

Title: Amended and Restated Loudon County Solid Waste Disposal Agreement

Parties: County of Loudon, The City of Lenoir City and The City of Loudon, all political subdivisions of the State of Tennessee

Date: March 1, 1993

Purpose: Amend Agreement re sanitary landfill site for Loudon County to organize Loudon County Solid Waste Disposal Commission to comply w/ Solid Waste Management Act of 1991 and to incorporate necessary/desirable changes and otherwise restate the agreement governing parties' activities in waste disposal matters in Loudon County.

Agreement:

1. Required participation.

- All parties shall participate in use "Loudon County Sanitary Landfill" for all solid waste collected by the parties that is acceptable by law; exemptions or exceptions to such mandatory participation may be made where Commission deems appropriate.

2. Establishment of Commission:

- (7) members of Commission, six year terms
- (5) members appointed by County Executive, approved by County Commission.
- (1) member appointed by Mayor of Lenoir City, approved by City Council.
- (1) member appointed by Mayor of Loudon, approved by City Council.
- Provision for staggered initial terms (Panels A, B, C, for initial terms of 6, 4 and 2 years, respectively, effective March 1, 1993.)

3. Assets of the Commission:

- All capital assets continue under jurisdiction of new Commission.

4. Purpose and Authority (and Responsibility) of the Commission

A. Overall supervision of landfill, including:

- (1) Establishing policies for operation/management of landfill to include major capital expenditures.
- (2) Raising/lowering of tip fees or other charges.
- (3) Daily operation/management by City of Loudon for 1 year from its opening; Commission to decide after review of arrangement as to continuation of operational agreement, but current operation/management agreement effective until Commission reaches an agreement as to a change.
- (4) Making policy decisions involving unbudgeted purchase of capital items, expenditures of major sums, and obligation of Commission to any contracts for more than 1 year.
- (5) Deciding who/what may use landfill and other Commission-operated disposal facilities.

- B. Periodic review/study of County solid waste disposal problems/ needs; recommendations to parties' governing bodies.
- C. Assumption of all powers/duties of "municipal solid waste region board."

5. **Organizational Rules of the Commission:**

- Commission may generally adopt rules of organization/procedure.
 - A. Commission must meet at least quarterly; may set meeting dates/times.
 - B. Quorum is at least (4) members present; at least (4) affirmative votes required to adopt action.
 - C. Special meetings may be called by Chairman or any (2) parties by giving reasonable notice to all members.
 - D. Notice to public of meetings must be written and delivered to News-Herald.
 - E. Minutes to be kept of Commission meetings.

6. **Monthly Reports**

- Operator prepares monthly reports to parties.

7. **Annual Budget**

- Operator prepares proposed annual budget for Commission's approval.
- Budget for preceding year continues until new budget adopted.

8. **Audits and Records:**

- Required annually.

9. **Duration of Agreement**

- Continues until agreed termination by unanimous vote
- Any party may w/draw any time by forfeiting any rights to remaining assets.

10. **Disposition of Assets:**

- By agreement of parties at termination, subject to ratification of respective governing bodies.

AMENDED AND RESTATED
LOUDON COUNTY SOLID WASTE DISPOSAL AGREEMENT

An Intergovernmental Agreement between the City of Lenoir City, the County of Loudon, and the City of Loudon

THIS AGREEMENT, made and entered into effective the 1st day of March, 1993, by and between the COUNTY OF LOUDON, THE CITY OF LENOIR CITY, and THE CITY OF LOUDON, all political subdivisions of the State of Tennessee;

WHEREAS, by an intergovernmental agreement, dated September 12, 1983, the parties agreed to the procurement and development of a permanent sanitary landfill site for Loudon County; and

WHEREAS, under the agreement Loudon County assumed the responsibility for the procurement of the site, issued capital outlay notes in the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), and by eminent domain, obtained the Hirsch-Powell property on Old State Highway 72 near the Matlock Bend area for the approximate amount of One Hundred Fifty-Three Thousand Dollars (\$153,000.00); and

WHEREAS, during that time, the City of Loudon continued to operate the jointly leased Poplar Springs landfill site previously operated by joint agreement of the parties hereto, and was responsible for the maintaining of the jointly owned assets and the sanitary landfill funds that were derived from the revenues from the operation of the leased landfill; and

WHEREAS, the Matlock Bend sanitary landfill site was constructed and prepared, and at the time of the execution of the subsequent June 1, 1987, agreement (which this agreement amends), the Poplar Springs landfill had been closed and the new site was in operation under the continuing daily operational responsibility of the City of Loudon, as agreed to by the parties; and

WHEREAS, the Solid Waste Disposal Commission formed under this original agreement, has been responsible for the operation of the Matlock Bend Sanitary Landfill since that time, and in recent years has had an operational agreement with Santek Enterprises of Cleveland, Tennessee; and

WHEREAS, it appears that the cost of operating sanitary landfills, or other solid waste disposal methods, because of more stringent regulations, is going to increase in the future, and a joint operation is essential; and

WHEREAS, it now further has been agreed that the Loudon County Solid Waste Disposal Commission, is to be organized as a continuation of the previous Commission, but to comply with the new regulations and laws involving the Solid Waste Management Act of 1991 (T.C.A. 68-211-801 et seq.), wherein Loudon County has been approved as a Solid Waste Planning Region, for which the Loudon County Solid Waste Disposal Commission shall become the Board for the newly created Loudon County Solid Waste Region; and

WHEREAS, the Loudon County Solid Waste Disposal Commission has been responsible for the overall supervision of the landfill, the development of policy, and for all decisions about solid waste management disposal in Loudon County, and these responsibilities, along with the new authority and responsibility that devolves upon the Commission by virtue of the Solid Waste Management Act of 1991, shall continue except as otherwise properly limited by this Agreement; and

WHEREAS, basically the original Intergovernmental Agreement shall continue, but with some changes being desirable and necessary, it is agreed the new operational agreement is stated as follows:

W I T N E S S E T H

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Required Participation: That all parties hereto shall participate in the use of a joint landfill site, called the Loudon County Sanitary Landfill, on Old Highway 72, for all solid waste collected by the parties, which includes, at the least, all residential sanitary waste, and all commercial and industrial sanitary waste, controlled by the parties except for demolition waste and other waste not acceptable by law. However, where deemed appropriate, exemptions or exceptions may be made by the

Commission to the requirement that the landfill must be used by the parties to the Intergovernmental Agreement.

2. Establishment of Commission: There shall be seven (7) members of the Commission. Five (5) shall be appointed by the County Executive and approved by the County Commission, and one (1) member each shall be appointed by the Mayors of the Cities of Lenoir City and Loudon, and approved by the respective City Councils. Members of the Commission shall serve six (6) year terms. The three original slots (appointed by the two Mayors and the County Executive) shall each be for initial six (6) year terms (Panel A); two of the members appointed by the County Executive shall serve an initial four (4) year term (Panel B); and two of the members appointed by the County Executive shall serve an initial two (2) year term (Panel C), all terms to be effective March 1, 1993.

3. Assets of the Commission: All monetary and other capital assets resulting from the previous existing agreement and operation of the Poplar Springs landfill, and all assets accrued in the intervening time, shall continue under jurisdiction of the new Commission.

4. Purpose and Authority of the Commission: The Commission shall have the purpose, authority and responsibility for:

A. The overall supervision of the landfill to include the following:

(1). The establishing of policies for the operation and management of the landfill to include major capital expenditures.

(2). The raising or lowering of tip fees or other charges that might be assessed for the use of the landfill.

(3). The daily operation and management of the landfill will be done by the City of Loudon for a period of one (1) year from the date the new landfill is opened, at which time the arrangement will be reviewed and a decision made by the Solid Waste Disposal Commission as to the continuation of the operational agreement, or as to some other alternative management.

The current operation and management agreement shall remain in effect until such time as a new agreement is reached by the Solid Waste Disposal Commission as to a change.

(4). It is specifically agreed that the unbudgeted purchase of capital items, the expenditures of any major sums of money, and the obligation of the Commission to any contracts for more than one (1) year are policy decisions to be made by the Disposal Commission.

(5). The decision as to what organizations, businesses, and parties may utilize the landfill and any other disposal facilities operated by the Commission shall be under the jurisdiction and discretion of the Commission.

B. The periodic review, and study if necessary, of the solid waste disposal problems and needs of the County, and to make recommendations to the respective governing bodies of the parties to this agreement.

C. Assumes all authority and powers, and the responsibilities, which devolve upon a municipal solid waste region board (T.C.A. 68-211-801 et seq.) by virtue of State law and regulations.

5. Organizational Rules of the Commission: The Commission shall be authorized to adopt its own rules of organization and procedure except as otherwise required herein.

A. The Commission may set its own meeting days, times, and dates, although it is required to meet at least quarterly.

B. A quorum is the personal presence of at least four (4) members, and at least four (4) affirmative votes are required before any action can be adopted.

C. Special meetings may be called by the Chairman or by any two (2) of the parties by giving reasonable notice of the time and place of such meeting to all members.

D. Notice to the public of all meetings shall be given by a written notice delivered to the News-Herald.

E. Minutes shall be kept of all meetings of the Commission.

6. Monthly Reports: The operator of the landfill shall prepare and provide monthly reports to the other parties.

7. Annual Budget: The operator shall prepare a proposed annual budget for presentation to and approval of the Solid Waste Disposal Commission. The budget for the preceding year shall be a continuing document into the subsequent fiscal year until a new budget is adopted.

8. Audits and Records: There shall be an annual audit of the funds of the Commission.

9. Duration of Agreement: The duration of this agreement is indefinite or until otherwise agreed as to termination. Termination requires a unanimous vote. Any one party may withdraw at any time, but shall do so by forfeiting any rights as to the allocation of any assets that might remain.

10. Disposition of Assets: The disposition of assets shall be by agreement of the parties at the time of termination of this agreement, subject to ratification of the respective governing bodies.

11. This Agreement contains amendments from the original Intergovernmental Agreement, and the signatures below indicate approval by the parties to the agreement that this is the restated agreement that shall govern the activities of the parties in waste disposal matters in Loudon County.

IN WITNESS WHEREOF, the duly elected officers of the parties hereto, pursuant to approval from the respective governing bodies, have hereunto set their signatures of each political subdivision, the said agreement to be effective the day and date first above written.

CITY OF LENOIR CITY

COUNTY OF LOUDON

BY:

Donald L. Lane

BY:

Greg M. Miller

ATTEST:

Harold E. Puran
City Recorder

ATTEST:

Philip H. Anderson
County Clerk

CITY OF LOUDON

ATTEST:

BY:

Bernice L. Swiney

Kevin H. Swiney
City Recorder

Resolution 020408-A

FIRST AMENDMENT TO THE AMENDED AND RESTATED LOUDON COUNTY SOLID WASTE DISPOSAL AGREEMENT

THIS FIRST AMENDMENT to the AMENDED AND RESTATED LOUDON COUNTY SOLID WASTE DISPOSAL AGREEMENT, made and entered into effective as of June 30, 2007, by and among the COUNTY OF LOUDON, THE CITY OF LENOIR CITY, and THE CITY OF LOUDON, all political subdivisions of the State of Tennessee;

WHEREAS, by an intergovernmental agreement dated March 1, 1993 (the "1993 Intergovernmental Agreement"), the parties reorganized the Loudon County Solid Waste Disposal Commission as a continuation of the previous commission created by agreement among the parties on September 12, 1983, but to comply with the new regulations and laws involving the Solid Waste Management Act of 1991 (T.C.A. 68-211-801 et seq.); and

WHEREAS, Section 49 of the Comprehensive Governmental Ethics Reform Act of 2006, 2006 Public Chapter 1 (1st Ex. Sess.), (T.C.A. § 8-17-102(b)), requires local government entities that create a corporation or instrumentality by intergovernmental agreement to designate the ethical standards that govern the jointly created instrumentality by amendment to the agreement creating such joint instrumentality or a separate agreement; and

WHEREAS, on February 5, 2007 the County of Loudon adopted the model of ethical standards prepared by County Technical Assistance Service, and the City of Lenoir City and the City of Loudon each subsequently adopted the model of ethical standards prepared by Municipal Technical Assistance Service; and

WHEREAS, on June 12, 2007 the Loudon County Solid Waste Disposal Commission voluntarily adopted the same ethical standards adopted by Loudon County on February 5, 2007 until Loudon County, the City of Lenoir City and the City of Loudon could act to amend the 1993 Intergovernmental Agreement to comply with state law and has subsequently requested Loudon County, the City of Lenoir City and the City of Loudon to amend the 1993 Intergovernmental Agreement to designate the Code of Ethics for Loudon County as the official ethical standards for the Loudon County Solid Waste Disposal Commission.

WITNESSETH

NOW, THEREFORE, IT IS AGREED by and among the parties as follows:

1. Code of Ethics. That the Code of Ethics for Loudon County adopted by Resolution No. 020507-C on February 5, 2007 by the Loudon County Commission is hereby designated as the ethical standards for the Loudon County Solid Waste Disposal Commission and shall apply in the same manner as it applies to other instrumentalities of Loudon County.
2. Amendments. That any future amendments to the Code of Ethics for Loudon County that apply in general to all instrumentalities created by the Loudon County Commission

shall also apply automatically to the Loudon County Solid Waste Disposal Commission unless otherwise expressly provided by the terms of such amendments.

3. Effect. That this First Amendment shall not otherwise affect or alter the terms and provisions of the 1993 Intergovernmental Agreement, which are hereby reaffirmed by the parties to this First Amendment.

IN WITNESS WHEREOF, the duly elected officers of the parties hereto, pursuant to approval from their respective governing bodies, have hereunto set their signatures as officers of the respective political subdivision listed below, this First Amendment to be effective as of the date first above written.

COUNTY OF LOUDON

By: Doyle E. Culp

ATTEST:

Phyllis D. Wampler
County Clerk

CITY OF LENOIR CITY

By: Matt Berobrie

ATTEST:

Maggie Kent
City Recorder

CITY OF LOUDON

By: Bernie R. Silvey

ATTEST:

Stephanie P. Rutter
City Recorder

2.

LCSWDC Bylaws (05/09/06)

**BYLAWS OF THE
LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION**

**ARTICLE I
LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION**

Section 1. NAME

The name of the Commission shall be the Loudon County Solid Waste Disposal Commission.

Section 2. AUTHORITY

The Commission and its authority are established by Loudon County, Lenoir City and the City of Loudon pursuant to an Amended and Restated Loudon County Solid Waste Disposal Agreement dated March 1, 1993 (the "Interlocal Government Agreement") entered into pursuant to the Interlocal Cooperation Act codified at T.C.A. § 12-9-101 et seq. and the Solid Waste Management Act codified at 68-211-801 et seq. These Bylaws are adopted pursuant to Section 5 of the Interlocal Government Agreement.

Section 3. PURPOSE OF THE COMMISSION

The Commission shall have the purposes described in Section 4 of the Interlocal Government Agreement, which shall include:

A. The overall supervision of the Matlock Bend Sanitary Landfill to include the following:

- (1) Establishing policies for the operation and management of the landfill to include major capital expenditures;
- (2). Raising and lowering of tipping fees and other charges assessed for the use of the landfill;
- (3). Daily operation and management of the landfill and the letting and supervision of all operational agreements for the landfill;
- (4). Making all policy decisions relative to purchasing unbudgeted capital items, expending major sums of money, and obligating the Commission to any contracts for more than one year; and
- (5). Making decisions as to what organizations, businesses, and parties may use the landfill and any other disposal facilities operated by the Commission.

B. The periodic review, and study if necessary, of the solid waste disposal problems and needs of Loudon County, and making recommendations to Loudon County, Lenoir City and the City of Loudon related thereto.

C. All responsibilities of a municipal solid waste region board by virtue of state law and applicable regulations.

ARTICLE II MEMBERSHIP

Section 1. MEMBERS OF THE COMMISSION

There shall be seven (7) members of the Commission, who shall be referred to as Commissioners. Five (5) members shall be appointed by the Loudon County Mayor and approved by the Loudon County Commission, and one (1) member shall be appointed by the

Mayors of the cities of Lenoir City and Loudon, and approved by the respective city councils of those cities.

Section 2. TERM OF MEMBERS

The three original Commission members (appointed by the two City Mayors and the County Mayor) shall each serve initial six (6) year terms (Panel A); two of the Commission members appointed by the County Mayor shall each serve initial four (4) year terms (Panel B); and two of the Commission members appointed by the County Mayor shall each serve initial two (2) year terms (Panel C); all initial terms to commence on March 1, 1993. After their respective initial terms, all Commission members shall each serve six (6) year terms and shall be appointed on a staggered basis according to the panel designated above. Commissioners shall continue to serve until their respective successors are appointed.

Section 3. VACANCIES

No vacancy on the Commission shall impair the right of a quorum to exercise all rights and perform all the duties of the Commission. A vacancy shall be filled by the appointing authority of the vacant Commission seat for the unexpired portion of the vacant term.

ARTICLE III
MEETINGS

Section 1. SCHEDULE

Until and unless otherwise established by action of the Commission, the Commission will hold its regular meetings on the second Tuesday of every month at the Loudon County Courthouse Annex located at 101 Mulberry Street in Loudon, Tennessee. The standard meeting time for the Commission shall be 6:30 p.m. Whenever the Commission wishes to change the

time of a regular meeting because of holiday, the anticipated lack of a quorum, or for any other reason, the Commission may by motion duly adopted at any meeting change the time of holding any subsequent regular meeting to any hour and any day that is stated in such motion. In such event, the changed meeting shall be noticed as if it were a special meeting pursuant to Article III, Section 2.

Section 2. SPECIAL MEETINGS

Special meetings may be called by the Chair or by any two (2) Commissioners by giving reasonable notice of the time and place of such meeting to all Commissioners. The notice must be in writing. No business other than that specifically mentioned in the notice for such meeting shall be transacted. The notice for a special meeting may be served by any Commissioner, by any authorized attorney, agent or employee under the direction of the Commission, or by any police officer or any person authorized to serve civil process issued by the courts of the State of Tennessee.

Section 3. NOTICE

Notice to the public of all meetings, including special meetings, shall be given by a written notice delivered to the News-Herald.

Section 4. QUORUM

A quorum is defined as the personal presence of at least four (4) members, and at least four (4) affirmative votes are required before any action can be adopted.

Section 5. RULES OF ORDER

Meetings shall be governed by Robert's Rules of Order.

Section 6. MINUTES

Adequate written minutes shall be kept recording the official acts and proceedings at all meetings of the Commission. Minutes shall be presented for approval or correction at a subsequent meeting and upon approval shall be signed by the Chair or Secretary and filed with the minutes of the Commission, which shall be kept permanently.

ARTICLE IV
OFFICERS

Section 1. OFFICERS, TERM AND ELECTION

The Commission shall elect a Chair, Vice-Chair and Secretary from its membership, who shall each serve for terms of two (2) years each. The Commission shall elect its officers in its first scheduled meeting after March 1st of each odd numbered year.

Section 2. DUTIES OF OFFICERS

A. Chair

The Chair shall have the general and active management of the Commission's business and shall exercise general supervision and direction over all of the affairs of the Commission. Unless another officer or person is designated to execute the instrument, the Chair shall execute on behalf of the Commission all documents, contracts, resolutions, etc., approved by the Commission at its official meetings. The Chair shall insure that a quorum is present at meetings before taking any official action. The Chair shall see that the open meeting law commonly referred to as the "Sunshine Law" is observed.

B. Vice-Chair

The Vice-Chair shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair.

C. Secretary

The Secretary shall be responsible for keeping the minutes of the Commission, shall attest to the authorized execution of any documents approved by the Commission and shall perform such other duties as may be required by the Commission.

Section 3. REMOVAL OF OFFICERS

All officers of the Commission shall serve at the pleasure of the Commission and may be removed at any time during their term by a two-thirds vote of the Commission.

**ARTICLE V
AMENDMENT OF BYLAWS**

An amendment to the Bylaws may be proposed at any regular meeting of the Commission, but shall not be voted on at the meeting at which proposed. At any subsequent regular meeting, the proposed amendment, as originally proposed or as amended, may be adopted by a two-thirds vote of the Commission. When a proposed amendment to the Bylaws receives the negative vote of a majority of the Commission, no further action can be taken on such proposed amendment at that meeting, although the same or a similar amendment may again be proposed at a later meeting.

Adopted: May 9, 2006

3.

LCSWDC Ethics Policy (06/19/07)

2007 POLICY
CODE OF ETHICS
LOUDON COUNTY, TENNESSEE

Section 1. Definitions.

(1) "County" means Loudon County, which includes all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county, and specifically including the county school board, the county election commission, the county health department, and utility districts in the county.

(2) "Officials and employees" means and includes any official, whether elected or appointed, officer, employee or servant, or any member of any board, agency, commission, authority or corporation (whether compensated or not), or any officer, employee or servant thereof, of the county.

(3) "Personal interest" means, for the purpose of disclosure of personal interests in accordance with this Code of Ethics, a financial interest of the official or employee, or a financial interest of the official's or employee's spouse or child living in the same household, in the matter to be voted upon, regulated, supervised, or otherwise acted upon in an official capacity.

Section 2. Disclosure of personal interest in voting matters. An official or employee with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and to be included in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's or employee's vote on the measure. In addition, the official or employee may, to the extent allowed by law, excuse himself or herself from voting on the measure.

Section 3. Disclosure of personal interest in non-voting matters. An official or employee who must exercise discretion relative to any matter other than casting a vote and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on the attached disclosure form and file the disclosure form with the county clerk. In addition, the official or employee may, to the extent allowed by law, excuse himself or herself from the exercise of discretion in the matter.

ADOPTED BY LCSWDC ON 06/19/07

Section 4. Acceptance of gifts and other things of value. An official or employee, or an official's or employee's spouse or child living in the same household, may not accept, directly or indirectly, any gift, money, gratuity, or other consideration or favor of any kind from anyone other than the county:

(1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or

(2) That a reasonable person would understand was intended to influence the vote, official action, or judgment of the official or employee in executing county business.

It shall not be considered a violation of this policy for an official or employee to receive entertainment, food, refreshments, meals, health screenings, amenities, foodstuffs, or beverages that are provided in connection with a conference sponsored by an established or recognized statewide association of county government officials or by an umbrella or affiliate organization of such statewide association of county government officials.

Section 5. Ethics Complaints. A County Ethics Committee (the "Ethics Committee") consisting of five members shall be appointed to one-year terms by the County Mayor with confirmation by the county legislative body, to be appointed each year at the same time as internal committees of the county legislative body. At least three members of the committee shall be members of the county legislative body; one member shall be a constitutional county officer or, should no constitutional county officer be willing to accept appointment, an additional member of the county legislative body; and the remaining member may be either a member of a board, committee, commission, authority, corporation, or other instrumentality governed by this policy, or an additional member of the county legislative body. The Ethics Committee shall convene as soon as practicable after their appointment and elect a chair and a secretary. The records of the Ethics Committee shall be maintained by the secretary and shall be filed in the office of the county clerk, where they shall be open to public inspection.

Questions and complaints regarding violations of this Code of Ethics or of any violation of state law governing ethical conduct should be directed to the chair of the Ethics Committee. Complaints shall be in writing and signed by the person making the complaint, and shall set forth in reasonable detail the facts upon which the complaint is based.

The County Ethics Committee shall investigate any credible complaint against an official or employee charging any violation of this Code of Ethics, or may undertake an investigation on its own initiative when it acquires information indicating a possible violation, and make recommendations for action to end or seek retribution for any activity that, in the Committee's judgment, constitutes a violation of this Code of Ethics. If a member of the Committee is the subject of a complaint, such member shall reclude himself or herself from all proceedings involving such complaint.

The Committee may:

(1) Refer the matter to the County Attorney for a legal opinion and/or recommendations for action;

(2) In the case of an official, refer the matter to the county legislative body for possible public censure if the county legislative body finds such action warranted;

(3) In the case of an employee, refer the matter to the official responsible for supervision of the employee for possible disciplinary action if the official finds discipline warranted;

(4) In a case involving possible violation of state statutes, refer the matter to the district attorney for possible ouster or criminal prosecution;

The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this Code of Ethics. When a violation of this Code of Ethics also constitutes a violation of a personnel policy or a civil service policy, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this Code of Ethics.

Section 6. Applicable State Laws. In addition to the ethical principles set out in this Code of Ethics, state laws also provide a framework for the ethical behavior of county officials and employees in the performance of their duties. Officials and employees should familiarize themselves with the state laws applicable to their office or position and the performance of their duties. To the extent that an issue is addressed by state law (law of general application, public law of local application, local option law, or private act), the provisions of that state law, to the extent they are more restrictive, shall control. Following is a brief summary of selected state laws concerning ethics in county government. For the full text of these statutes, see the Tennessee Code Annotated (T.C.A.) sections indicated.

Campaign finance—T.C.A. Title 2, Chapter 10. Part One (campaign financial disclosure) requires candidates for public office to disclose contributions and contributors to their campaigns. Part Three (campaign contribution limits) limits the total amount of campaign contributions a candidate may receive from an individual and sets limits on the amount a candidate may receive in cash.

Conflict of interest—T.C.A. § 12-4-101 is the general conflict of interest statute that applies in all counties. It prohibits anyone who votes for, lets out, or in any manner supervises any work or contract from having a direct financial interest in that contract, purchase or work, and it requires disclosure of indirect financial interests by public acknowledgment.

Conflict of interest—T.C.A. § 49-6-2003 applies to the department of education in all counties and prohibits direct and indirect conflicts of interest in the sale of supplies for use in public schools.

Conflict of interest—T.C.A. § 5-1-125 applies in all counties and prohibits county officials and employees from purchasing surplus county property except where it is sold by public bid.

Conflict of interest—T.C.A. § 54-7-203 applies in all counties that are governed by the County Uniform Highway Law. It prohibits officials and employees in the highway department and members of the county legislative body from having any personal interest in purchases of supplies, materials, machinery, and equipment for the highway department.

Conflict of interest—T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from having any financial or other personal beneficial interest in any contract or purchase of goods or services for any department or agency of the county.

Conflict of interest—T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits all county officials and employees from having any financial or other personal beneficial interest in the purchase of any supplies, materials or equipment for the county.

Conflict of interest—T.C.A. §§ 5-5-102 and 12-4-101 govern disclosures and abstentions from voting due to conflicts of interest of members of county legislative bodies.

Conflict of interest disclosure statements—T.C.A. § 8-50-501 and the following sections require candidates and appointees to local public offices to file a disclosure statement with the state ethics commission listing major sources of income, investments, lobbying activities, professional services provided, bankruptcies, certain loans, and other information, and to keep these statements up to date.

Gifts—T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from receiving anything of value, directly or indirectly, from anyone who may have or obtain a contract or purchase order with the county.

Gifts—T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits the finance director, purchasing agent, and employees in those departments from accepting anything of value, directly or indirectly, from anyone who furnishes supplies, materials or equipment to the county.

Honoraria—T.C.A. § 2-10-116 prohibits elected officials from accepting an honorarium (including money or anything of value, but not including reimbursement for actual expenses) for an appearance, speech, or article in their official capacity.

Private use of public property—T.C.A. § 54-7-202 applies in counties that are governed by the County Uniform Highway Law. It prohibits the private use of equipment, rock, and other highway materials.

Court sales—T.C.A. § 39-16-405 prohibits judges, clerks of court, court officers, and employees of court, from bidding on or purchasing any property sold through the court for which such person discharges official duties.

Rules of the Supreme Court—Rule 10, Cannon 5 (Code of Judicial Conduct) establishes ethical rules for judges and other court personnel when exercising judicial functions.

Fee statutes—T.C.A. §§ 8-21-101, 8-21-102, and 8-21-103 set out circumstances where fees are authorized, prohibit officials from requiring payment of fees in advance of performance of services except where specifically authorized, and set penalties for charging excessive or unauthorized fees.

Consulting fee prohibition for elected county officials—T.C.A. §§ 2-10-122 and 2-10-124 prohibit officials from receiving compensation for advising or assisting a person or entity in influencing county legislative or administrative action.

Crimes involving public officials—T.C.A. § 39-16-101 and the following sections prohibit bribery, soliciting unlawful compensation, and buying and selling in regard to offices.

Official misconduct—T.C.A. § 39-16-402 applies to public servants and candidates for office and prohibits unauthorized exercise of official power, acting in an official capacity exceeding the servant's power, refusal to perform a duty imposed by law, violating a law relating to the servant's office or employment, and receiving a benefit not provided by law.

Official oppression—T.C.A. § 39-16-403 prohibits abuse of power by a public servant.

Bribery for votes—T.C.A. §§ 2-19-121, 2-19-126, and 2-19-127 prohibit bribery of voters in elections.

Misuse of official information—T.C.A. § 39-16-404 prohibits a public servant from attaining a benefit or aiding another person in attaining a benefit from information which was obtained in an official capacity and is not available to the public.

Ouster law—T.C.A. § 8-47-101 sets out conduct that is punishable by ouster from office, including misconduct in office and neglect of duty.

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Instructions: This form is for reporting personal interests required to be disclosed under Section 3 of the Code of Ethics of this county. Officials and employees are required to disclose personal interests in matters that affect or would lead a reasonable person to infer that it would affect the exercise of discretion of an official or employee.

1. Date of disclosure:

2. Name of official or employee:

3. Office and position:

4. Description of personal interest (describe below in detail):

Signature of official or employee

Witness Signature

Printed name of witness

4.

SANTEK Operation Agreement (07/01/07)

CONTRACT SUMMARY

Title: Sanitary Landfill Operation Agreement,
Matlock Bend Landfill, Loudon County, Tennessee.

Parties: Loudon County Solid Waste Disposal Commission ("Commission")
and Santek Environmental, Inc. ("Santek")

Date: April 5, 1994

Purpose: Accomplish the completion of operations of existing unused cell areas of Phase 1 of the Matlock Bend Landfill, ("Landfill") to close Phase 1 and provide post closure care to Phase 1 and to design, engineer, construct, operate, close, and provide post closure services to Phase 2 of the Landfill for the purpose of receiving and disposing of solid waste generated in the City of Lenoir City, the City of Loudon and the County of Loudon during the next ten (10) years and subsequently.

1. Phase 1 Operation and Closure.

During Agreement, Santek has exclusive right/responsibility to operate unused cell areas of Phase 1 until filled and properly closed and Santek is responsible for final closure of Phase 1 and its post closure care according to the "Phase 1 Post Closure Care Plan" and must test the existing monitoring wells at least semi-annually.

2. Development and Operation of the Site.

(a) Santek shall (at its cost/expense) design Phase 2 observing all TDEC requirements and an enlargement of Phase 2 w/ such additional acreage as may be required for anticipated volume of Waste Materials generated by Commission parties during this agreement. Santek shall submit preliminary plans/specifications for such enlargement to Commission for approval, which plans will be considered approved unless Commission notifies Santek in writing of objections w/in 21 days after receipt of plans. Parties shall cooperate in securing Permit from TDEC to enlarge Phase 2 and in the design of Phase 2 to satisfy such anticipated stream of Waste Materials and to maximize capacity/operational aspects of Phase 2. ... Commission must obtain all necessary land use approvals and Permits... and Santek shall cooperate in obtaining such Permits... Santek shall provide Commission written estimate of costs of assisting Commission in securing the Permit, (w/in 30 days of this agreement), update said estimate, and render progress reports monthly... If Santek's costs of such assistance exceed \$140,000 or material changes are required in plans/specifications which increase Santek's estimated cost more than 5%, parties will negotiate in good faith to increase Santek's fees accordingly.

(b) Upon Commission's securing Permit, Santek shall (at its cost/expense):

- (1) Construct Phase 2
- (2) Furnish sufficient personnel/equipment for appropriate construction of Phase 2.
- (3) Report (to Commission or its designee) at least monthly re status of Phase 2 construction, etc.
- (4) Construct/install appropriate facilities/structures under Permit for proper operation/maintenance of Phase 2.
- (5) Conduct pre-operational activity under Permit for proper operation/maintenance of Phase 2.

- (c) Santek shall operate Phase 2 in accord with Permit and applicable law and shall:
- (1) Place/compact/cover Solid Waste received at Phase 2...efficiently.
 - (2) Operate entry gate and scale to Phase 2; collect/remit cash payments and accounting report to Commission weekly; report daily use records daily; deliver scale tickets weekly.
 - (3) Provide copy of all reports filed w/ TDEC re status of Santek's operations and compliance w/ Permits; maintain on Site copy of such reports and Permits.
 - (4) Report any violations of Permit or applicable law by Santek; report anticipated actions to correct such violations w/in 72 hours of violation notice; furnish all reports of Landfill operation received from TDEC due to inspection of landfill and responses of Santek.
 - (5) Furnish sufficient personnel/equipment for appropriate operation of Landfill, including qualified supervisor whenever landfill is open.
 - (6) Test/analyze groundwater monitoring wells (Permit)
 - (7) Install/maintain/monitor landfill gas collection and control systems (Permit)
 - (8) Maintain all facilities reasonably required for Phase 2 operation in accord w/ Permit or Tenn. Dept. of Health and Environment. Improvements become property of Commission on the Agreement's termination. Santek is not required to fence Landfill.
 - (9) Pay normal/standard charges for Landfill utilities and phone service.
 - (10) Maintain all roads on Site.
 - (11) Provide system for collection/disposal of Phase 2 leachate for \$150,000 or less (i.e. pump and haul or force main system)
 - (12) Preclude scavenging/salvaging operations unless (A) TEDC and Commission approved, (B) normal disposal operations not impeded, (C) Santek directly controls personnel conducting such operations.
 - (13) Preclude open burning w/out Commission approval; but Santek may burn brush/timber associated w/ construction of new landfill areas.
 - (14) Establish citizens oversight committee, but Santek can't bind Commission to any agreement w/ committee and can act only in advisory capacity. Any action/restraint of activity is sole responsibility of Santek unless Commission expressly agrees to it.
 - (15) Perform any other obligation/activity required by Permit and applicable law not specifically delegated to Santek in this Agreement.
 - (16) Report to Commission re compaction/ density achieved/air space used/ remaining in Phase 2 after the preceding July 1-June 30 fiscal year by Sept. 1 of each year of this Agreement. (may be same report provided to TDEC.)
- (d) Commission Responsibilities:
- (1) Billing/collecting all use charges (other than cash paid at Landfill)
 - (2) All off-site utilities for normal operations (except as provided otherwise below)
 - (3) Treatment/disposal of leachate and cost of leachate disposal system exceeding \$150,000, provided Commission's has approved such costs exceeding \$150,000 in writing.
 - (4) Pay state fee imposed on Waste Material received by Landfill...
 - (5) Construct fence around Landfill, in its discretion.
- (e) Unless Commission has exercised its rights to operate Landfill per this Agreement, Santek shall be sole contractor operating Landfill; if Phase 2 is filled and closed during the term,

Santek shall design/construct/operate an extension for Phase 2. If Commission opens new phase to handle Waste Materials not required to be in a Subtitle D Landfill, Santek will design/construct/operate such extension for Phase 2. The operating fee is set forth in Section 5. If during this Agreement, Commission decides to contract out waste reduction services, parties agree to negotiate in good faith for provision thereof, but Commission not precluded from bidding and accepting the bid of any provider...

3. Materials to be Disposed Of.

Santek shall accept (on payment of scheduled fees), all permitted "Waste Materials" consisting of "Solid Waste", "Special Wastes", and "Industrial Waste"... No "hazardous waste" or "liquid waste"... will be accepted nor will toxic, volatile, nuclear or infectious materials, and hard to manage or potentially problematic "special wastes" shall be disposed of in the Landfill only if approved by the Commission and special provisions are made for such disposal and are approved by the Department...

4. Daily Operations.

Santek to keep Landfill open at least 5 ½ days per week between 7:30 a.m. and 3:00 p.m, except for New Years, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas. Santek shall provide all required daily services in operating/constructing uncompleted/unfilled cell areas of the Landfill... Santek shall provide for transportation/sale of recyclable material collected at existing Loudon Co. Convenience Center and cooperate w/ Commission in establishing similar convenience centers for Loudon Co., and provide necessary support for such centers. Santek shall provide Commission (by 1st of each year) cost estimate of transporting/selling recyclable material based upon cost incurred in current year; Commission will reimburse Santek cost that transporting/selling recyclable material reasonably exceeds \$4,000 per year. Commission responsible for collecting, sorting, storing, or monitoring quality of recyclable material. Santek is not responsible for recyclable materials not acceptable to potential customers. Santek may use all soil and materials available at Landfill in operating/constructing uncompleted/unfilled cell areas at no charge.

5. Fees.

Commission to establish tipping fee to be charged to users. Commission pays Santek adjustable operating fee based upon annual tonnage placed in Landfill during fiscal year (excluding Industrial Waste placed in Phase 1 for which Santek receives \$15 per ton and Waste Materials placed in Unlined Phase) as follows: \$30.40/ton on first 54,600 tons; \$27.21/ton on next 13,650 tons; \$27.54/ton on next 13,650 tons; \$24.84/ton on next 13,650 tons; \$24.63/ton on next 13,650 tons; \$23.84/ton on next 13,650 tons;

If Commission opens new phase for Waste Materials not required to be placed in Subtitle D Landfill ("Unlined Phase"), Commission pays Santek adjustable operating fee during each fiscal year as follows: until aggregate tonnage disposed of in Phase 2 and the Unlined Phase is 40,950, \$17.50/ton; \$13.98 on next 13,650 tons; \$11.85 on next 13,650 tons; \$11.36 on next 13,650 tons; \$10.22 on next 13,650 tons; \$9.66 on next 13,650 tons; \$9.27 on tons in excess of 109,000.

Special Wastes shall be disposed of at negotiated tipping fee not less than current operating fee for Phase 2 or Unlined Phase for such Waste Materials.

Commission shall adjust/revise Santek's fee annually (July 1) based upon Municipal Cost Index ... to reflect changes from April 1, 1994 as the base [according to a specified formula]. Santek must send Commission ASAP after July 1 a statement of prior rate, Municipal Cost Index on beginning date and percentage increase.

Santek gets automatic increase in fee equal to: (i) any charge imposed by federal or state gov't or agency, or by any local gov't agency directly related to Landfill which is assessed against Santek, Phase 2, the Permit, or the Commission...which is payable solely b/c of Santek's nature of operations and (ii) any other sales/service taxes...re operation of Phase 2. Fees, surcharges, duties and taxes imposed upon all corporations in general are not basis for automatic increase in Santek's operating fee; fines, penalties, personal property taxes and business licenses are not a fee, surcharge, duty, tax or other charge to increase the fee....

If Santek determines that Phase 2 construction/operation cost will increase b/c of physical site problems and/or changes in law, Santek shall promptly notify Commission in writing and request an increase its operating fee ... and if Commission agrees w/ Santek's requested fee increase, Santek is entitled to such increased fee, but if parties cannot agree to amount of such increase, parties shall negotiate in good faith and if matter isn't resolved w/in 45 days of either party's request for negotiation, either party may initiate mediation and if dispute not resolved w/in 90 days of initiation of mediation procedure, either party may institute litigation on 10 days notice, provided that if any party refuses to participate in mediation on request, the other party may institute litigation before expiration of such period. Any specified mediation procedure tolls any statute of limitations while pending.

If estimated increase in construction cost is 20% more than original estimated construction cost (i.e. \$126,000 per acre X number of acres in Phase 2), Commission doesn't have to pay Santek any increased operating fee exceeding the increased amount Santek is entitled to b/c of the 20% increase in construction cost, but if estimated increase in construction cost is 20% more than Original Estimated Cost, Santek isn't obligated to complete construction of additional cells in Phase 2, and may terminate agreement by filling existing cells by 30 days written notice to Commission.

Santek shall report Landfill usage in previous month including total tons of Waste Material and amount of industrial waste and sludges to Commission w/in 5 days of month's end. Commission shall remit fees due Santek by later of 10th of each month or 5 business days after receipt of such Landfill usage report.

If during any 12 month period less than 43,134 tons of Waste Materials received for Phase 2, Commission will pay Santek difference b/t amount Commission would otherwise have paid Santek if such tonnage had been received and the fee Santek actually received for tons actually placed in Phase 2.

6. Post-Closure Care.

Santek Responsibilities: Post-closure care of Phase 1 in accord w/ Phase 1 Closure-Post Closure Plan and of Phase 2 as cells are filled and closed in accord w/ TDEC approved post-closure plan.

Commission Responsibilities: Providing financial assurance to obtain waiver of post-closure surety bond or obtaining such bond at its own cost/expense. All post-closure care after termination of Agreement.

7. Warranties and Representations by Santek.

Santek is fully qualified, capable, financially equipped to fulfill this Agreement and it will comply w/ all applicable gov't laws/regulations and meet/exceed all standards/requirements of the "1984 MCI Original Plan" now existing and as heretofore modified.

8. Indemnification.

- (a) Santek will indemnify/hold harmless Commission and its agents re any loss by Santek or any claim against Santek due to any act/omission of Santek or its agents/invitees or any condition of the Landfill created/aggravated by Santek or its agents. Santek doesn't have to indemnify Commission for any loss by Commission or any claim against Commission arising from (i) operation/condition of Landfill before Santek assumed its operation, (ii) acts directly attributable to Commission or its agents, (iii) cessation of operations and/or closure of Landfill due to acts not attributable to Santek or its agents or (iv) the slow/gradual release of pollutants from Landfill unless (A) in the case of such gradual release/escape of pollutants from Phase 1 and methane gas from Phase 2, such release/escape was caused by Santek or its agents' acts/omissions which constitute willful or negligent misconduct or (B) in case of gradual release/escape of other pollutants from Phase 2, such release/escape was caused by Santek or its agents' acts/omissions.
- (b) Commission will indemnify/hold harmless Santek and its agents re any loss by Santek or any claim against Santek, arising from (i) operation/use/closure of Landfill by person/entity other than Santek, (ii) Landfill condition existing before Santek began operation thereof (iii) slow/gradual release/escape of pollutants from Landfill unless (A) in the case of such gradual release/escape of pollutants from Phase 1 and methane gas from Phase 2, such release/escape was caused by Santek or its agents' acts/omissions which constitute willful or negligent misconduct or (B) in case of gradual release/escape of other pollutants from Phase 2, such release/escape was caused by Santek or its agents' acts/omissions.

9. Delivery of Waste.

Santek not responsible for pick up/delivery of Waste Materials to Landfill. Commission to use best efforts to cause Lenoir City, Loudon County and Loudon to deliver all residential Waste Material on collection vehicles to Landfill. Title to waste vests as deposited in owner of fee simple estate of Landfill.

10. Term.

April 5, 1994 through March 31, 2004 (unless earlier terminated). Agreement automatically renewed for 1 year after initial 10 year term or any extended 1 year term unless notice given by either party at least 60 days before end of then existing term. Agreement terminates on final revocation of Permit...for operation of Landfill. On final denial of any requested Permit to enlarge Landfill, term is for time needed to fill and complete permitted area of Landfill. If Commission payments under last paragraph of Section 5 aggregately exceed \$500,000 and were at least \$10,000 during preceding year, Commission may terminate Agreement by 60 days notice to Santek. If less than 54,600 tons of Waste Materials are disposed of in 2 consecutive years, Santek may terminate Agreement by 60 days notice to Commission. If Agreement terminated before end of term, Commission shall reimburse Santek unamortized construction costs determined by [specified formula.] Commission has no duty

to develop remaining acreage in Landfill if it believes Santek will terminate Agreement pursuant to this Section 10.

11. Compliance with Laws.

Santek to operate Landfill in compliance w/ Permit and all applicable laws, rules, regulations, specifications and approved operational plans of State of Tennessee. Commission responsible for compliance re portion of Landfill operation for which it has an obligation under this Agreement.

12. Letter of Credit.

Santek shall obtain irrevocable letter of credit for \$125,000...to secure its construction/ operation of Phase 2, which shall provide for Commission to draw against it necessary funds to reimburse "actual costs/expenses" it incurs due to Santek's breach of Agreement, provided Santek receives written notice of such breach and a 15 day cure period, Santek fails to cure, and an affidavit is executed by the Commission Chair specifying the breach, the costs/expenses incurred, that Commission has complied w/ foregoing requirements, and that Commission is entitled to draw against the letter of credit. ...

13. Worker's Compensation and Public Liability Insurance.

Santek shall procure/maintain the following insurance policies, which shall preclude cancellation w/out 10 days prior notice to Commission, and shall name Commission as additional insured to the extent covered losses are caused by Santek or its agents' negligence/ misconduct and shall furnish proof of insurance of to Commission:

- (a) Professional Liability Insurance.
 - At least \$1,000,000 for engineering and design services, but if cost exceeds \$20,000/year, Commission will negotiate in good faith w/ Santek an increase in fee set forth in Section 5 for such cost exceeding \$30,000.
- (b) Worker's Comp Insurance.
 - Contract workers comp on all employees/subcontractors.
 - Provide Commission certification of workers comp insurance by each subcontractor before permitting sub to work on Landfill.
- (c) CGL Insurance, Public Liability and Property Damage Insurance w/ Pollution Exclusion.
 - At least \$1,000,000 per occurrence and in aggregate.
- (d) Auto Insurance.
 - CGL (Auto), \$1,000,000 per person and per accident
 - Property Damage, \$300,000

14. Standard of Performance.

If Santek fails to dispose of Waste Material per this Agreement for more than 3 consecutive days or fails to operate the site for a similar period, Commission may, upon written notice to Santek, take over and operate the Landfill w/ Santek's equipment until such matter is resolved and any operating expenses incurred by Commission in so doing may be deducted from Santek's compensation and any Commission liability to Santek for loss/damage to such equipment is subject to bailee for hire

standard, which exempts ordinary wear and tear liability, and liability of Santek to third persons re Landfill shall cease and Commission shall indemnify Santek against such liability while Commission is operating Landfill... If Santek cannot resume performance after 30 working days, all liability of Commission ceases and Commission can negotiate w/ other contractors re operation of Landfill, but agreement w/ other contractor won't release Santek from liability to Commission for breach... Commission can't to assume operation of Landfill and Santek is not liable to Commission if Santek's failure in performance is due to war...Act of God...or any causes beyond control of Santek and Commission.

15. Landfill Inspection.

Commission or its agent can inspect/audit Landfill whenever necessary to protect Commission's interest. ... Commission also has right, on prior written notice to Santek, to request Santek conduct such procedures and acquire such samples from Permit monitoring points...at such times and in such manner as Commission deems necessary, if such discretionary inspections are at Commission's sole cost/expense and don't interfere w/ Landfill operations. Commission can also review and approve (not unreasonably withheld) all proposed design, construction and operational plans, permit applications or other documents submitted to State or federal agencies...and Santek shall provide all such information requested for review.

16. Santek's Personnel.

- (a) Santek shall assign and identify qualified person(s) to oversee disposal site operations.
- (b) Santek shall abide by all applicable employment laws.
- (c) All Santek employees to receive general and specialized landfill and operational safety training on sustained/continuing basis.
- (d) Periodic safety meetings of all Santek employees; facility to be equipped w/ regularly maintained fire extinguishers.

17. Assignment.

No assignment of rights w/out express consent of Commission; any assignee assumes liability of Santek, but Santek remains primarily liable under Agreement.

18. Financial Statements.

Santek shall cause independent accounting firm to timely prepare Santek's annual financial statements and shall file a copy w/ Commission.

19. Bankruptcy.

Santek bankruptcy/insolvency terminates contract.

20. Number of Copies.

Agreement may be executed in two (2) counterparts w/ same force and effect of original.

21. Law to Govern.

Agreement governed by Tennessee law.

22. **Modification.**

No modification to agreement unless in writing and signed by parties.

23. **Right to Require Performance.**

Commission can't waive right to require performance nor shall Commission's waiver of any breach be a waiver of any succeeding breach.

24. **Point of Contact.**

All dealings b/t Santek and Commission re Landfill shall be directed to Commission Chair or other Commission designee. Commission shall provide Santek copy of all written communications received by Commission from any governing body concerning the disposal site and/or Santek. Santek shall provide Commission Chair copy of all such written communications received by Santek concerning the disposal site. Both parties will deliver or mail such copies w/in 3 days of receipt.

25. **Illegal Provisions.**

Any illegal/unenforceable provisions have no effect on enforceability of remaining provisions.

26. **Notice.**

Hand delivery or certified mailing to either party's business address is sufficient notice for any purpose.

27. **Effective Date.**

Of agreement: April 5, 1994; Santek assumed operational control of Landfill July 15, 1988.

CONTRACT SUMMARY

Title: First Amendment to Sanitary Landfill Operations Agreement,
Loudon County Solid Waste Disposal Commission.

Parties: Loudon County Solid Waste Disposal Commission ("Commission")
and Santek Environmental, Inc. ("Santek")

Date: October 1, 2001

Purpose: Amend the Sanitary Landfill Operation Agreement ("Agreement") concerning the Matlock Bend Landfill ("Landfill") so as to eliminate the minimum waste guarantee and reduce Santek's management fee from a price per ton to a fixed monthly fee and to allow Santek to manage the third module of the Landfill ("Module C") in its entirety beyond the original term of the Agreement.

The terms of the Agreement are revised/amended/supplemented as follows:

1. **Section 5 (Fees)** - first 2 paragraphs modified as follows:

Commission to pay Santek for all waste delivered to Landfill fixed monthly fee of \$115,000, but if amount of solid waste received exceeds 52,500 tons/year ("Tonnage trigger"), Commission shall pay Santek 50% of tipping fee for every ton received above Tonnage trigger ("Additional Fees"). Additional fees to be paid on all tons received over 4,375 tons. Additional fees reviewed quarterly and parties will adjust them based on such evaluation. Santek shall repay Commission any overpayment of additional fees w/in 25 days of each quarter's end. Parties will negotiate in good faith equitable additional compensation to Santek if annual tonnage received exceeds 60,000 tons.

2. **Section 10 (Term)** - first 2 sentences replaced as follows:

Term to continue until Module C filled to capacity, unless terminated earlier per the Agreement. Santek must give Commission 180 days written notice before Module C is at capacity ("Module C Completion"). Agreement automatically renewed for 1 year term after Module C Completion or any extended 1 year term unless notice by either party given at least 60 days before end of then existing term.

3. **Section 2 (Development and Operation of the Site)** - add to end as subsection 2(c)(17):

On/before each quarter until Module C Completion, report to Commission projected remaining life of Module C.

4. **Section 2 (Development and Operation of the Site)** - add to end as subsection 2(f)

At Commission's written request, Santek shall manage simultaneously 2 working phases w/in Module C to accommodate select loads of waste for initial life of next planned module.

5. Agreement remains in full force and effect except as expressly amended by this Amendment.

SANITARY LANDFILL OPERATION AGREEMENT

MATLOCK BEND LANDFILL

LOUDON COUNTY, TENNESSEE

THIS AGREEMENT made and entered into this 5th day of April, 1994 by and between Loudon County Solid Waste Disposal Commission, Loudon County, Tennessee, a Commission duly established by an Intergovernmental Agreement between the City of Lenoir City, the County of Loudon and the City of Loudon, hereinafter referred to as the "Commission," and Santek Environmental, Inc., organized under the laws of the State of Tennessee and having its principal place of business at 1306 South Lee Highway, Cleveland, Tennessee 37311, hereinafter referred to as "Santek."

W I T N E S S E T H

WHEREAS, Santek and the Commission have entered into a Sanitary Landfill Operation Agreement dated July 1, 1988 under the terms of which Santek has operated the Matlock Bend Landfill situated off Highway 72 and adjacent to the city limits of the City of Loudon ("Landfill") as more particularly described on Schedule A attached hereto ("Site"); and

WHEREAS, the City of Lenoir City, the City of Loudon and County of Loudon have created the Commission and delegated to it the responsibility for operating the Landfill for the purpose of receiving and disposing of solid waste generated in the City of Lenoir City, the City of Loudon, and the County of Loudon; and

WHEREAS, the Commission is developing the Landfill in separate phases, and since Phase 1 (as hereinafter defined) is nearly filled, the Commission needs to develop Phase 2 of the Landfill (as hereinafter defined); and

WHEREAS, the Commission issued a request for proposals for design, construction and/or operation of Phase 2 of the Landfill consisting of an additional 17.5 acres which will comply with Subtitle D, and after receipt of bids, the Commission decided to negotiate with Santek, the low bidder; and

WHEREAS, the Commission and Santek have negotiated this Agreement for Santek to complete the operations of the existing unused cell areas of Phase 1 of the Landfill covered by the original 1984 MCI plans of the Landfill as permitted by the State of Tennessee ("Phase 1"), to close Phase 1 and to design, construct and operate Phase 2 consisting of an area of approximately 17.5 acres and such additional acreage as may be required to handle the Waste Materials (hereinafter defined) generated in the City of Lenoir City, the City of Loudon and County of Loudon during the next ten (10) years("Phase 2"); and

WHEREAS, Santek is qualified under the applicable laws, rules, regulations, and ordinances of the State of Tennessee and County of Loudon and the operational plans of the Landfill to operate, close and provide post closure care to Phase 1 as approved by the State of Tennessee Department of Environment and Conservation ("TDEC") from time to time, and to design, engineer,

construct, operate, close and provide post closure services to Phase 2 as approved by the TDEC from time to time.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and of the consideration to be paid by the Commission to Santek and for the services to be rendered by Santek to the Commission, the Commission and Santek hereby agree as follows:

1. Phase 1 Operation and Closure. During the term of this Agreement, Santek shall have the exclusive right and responsibility to operate the unused cell areas of Phase 1 until Phase 1 is filled and closed in accordance with the provisions of this Agreement and the laws, rules, regulations, Permits and approved operational plans of the TDEC. Upon the filling of the unused cell areas of Phase 1, Santek shall be responsible for final closure of Phase 1 and for the post closure care during the term of this Agreement in accordance with the Closure Plan dated November, 1991 and approved by TDEC ("Phase 1 Closure-Post Closure Plan") including the shaping of the slopes, placing of soil on top and seeding and maintaining the slopes and top of Phase 1. Santek shall test the existing monitoring wells semi-annually or more frequently as may be required by law. The existing parameters as set forth in the Phase 1 Closure-Post Closure Plan as of the effective date of this Agreement will be utilized.

2. Development and Operation of the Site.

(a) Upon the effective date of this Agreement, Santek shall at its cost and expense design Phase 2, including completion of existing hydrogeological studies and civil engineering drawings and endangered species and wetlands studies utilizing state-of-the-art liner system techniques required by the TDEC. Santek shall design an enlargement of Phase 2 to include such additional acreage as may be required to receive and dispose of the anticipated volume of Waste Materials which will be generated in the City of Lenoir City, the City of Loudon and the County of Loudon during the term of this Agreement in an efficient and cost effective manner and submit the preliminary plans and specifications for such enlargement to the Commission for its approval, which approval shall not be unreasonably withheld. If the Commission shall have any objections to the preliminary plans and specifications, it shall notify Santek in writing of its objections and specify the action required to satisfy its objections. If the Commission does not notify Santek in writing of any objections within twenty-one (21) days after receipt of the preliminary plans and specifications, such failure to object shall constitute approval. Upon approval of the preliminary plans and specifications of such enlargement by the Commission, Santek and the Commission shall cooperate in securing a permit from TDEC to enlarge Phase 2 in accordance with such approved plans and specifications. Santek and the Commission shall also cooperate fully with each other in the design of Phase 2 to satisfy such

anticipated stream of Waste Materials and maximize the capacity and operational aspects of Phase 2. Alternative design, construction and maintenance criteria, including manufactured bentonite systems and different leachate collection systems, will be considered in the process of completing the application to TDEC for the construction of Phase 2. The Commission shall be responsible for obtaining all necessary land use approvals and permits ("Permits") from the State of Tennessee and other authorities having jurisdiction over the construction and operation of Phase 2, including all fees and charges related thereto. However, Santek shall cooperate fully with the Commission in obtaining such Permits to the extent requested by the Commission, which shall include, but not be limited to, the preparation of necessary hydrogeological studies and civil engineering drawings for the construction of the Phase 2. Within thirty (30) days of the effective date of this Agreement, Santek shall provide to the Commission a written estimate of the costs of assisting the Commission in securing the Permit; and Santek shall update such estimate and render to the Commission a progress report at the end of each month and provide an updated estimate of such cost to the Commission as soon as practicable after the end of each month. In the event Santek's costs of providing the Commission such assistance exceeds \$140,000, or material changes are required in the preliminary or final plans and specifications by applicable government parties which increase Santek's estimated cost of construction of Phase 2 by more than five percent (5%), the parties agree to negotiate in good faith an

increase in the fees payable to Santek to reflect such additional costs.

(b) Upon the Commission's securing the Permit, Santek shall conduct the following activities at its sole cost and expense:

(1) Construct Phase 2 in accordance with the Permit and applicable laws;

(2) Furnish sufficient and appropriate personnel and equipment necessary for the lawful, workmanlike and efficient performance of the construction of Phase 2;

(3) Report to the Commission or its designee, at least monthly, the status of the design, engineering, construction of Phase 2 and any other relevant information reasonably requested by the Commission;

(4) Construct and install the appropriate facilities and other structures required under the Permit for the proper operation and maintenance of Phase 2; and

(5) Conduct any other pre-operational activity as required by the Permit for the proper operation and maintenance of Phase 2.

(c) Upon completion of the construction of Phase 2, Santek shall operate Phase 2 in accordance with the Permit and applicable law including, but not limited to, the following:

(1) Place, compact (to the extent practicable) and cover Solid Waste received at Phase 2 in accordance with the Permits and applicable law in a manner to best achieve

operating efficiencies and maximum obtainable densities, including such techniques as spoils disposal, relocation of roads and the sequencing of space utilization within each major disposal cell;

(2) Operate the entry gate and scale to Phase 2 in accordance with the Permit and applicable law, collect cash payments at the Landfill and pay any funds collected in cash to the Commission on a weekly basis, along with an appropriate accounting report of such funds; maintain daily usage records and report usage showing type and weight to the Commission daily via computer terminal; and deliver scale tickets to the Commission weekly;

(3) Provide to the Commission or its designee a copy of all reports filed with TDEC with respect to the status of Santek's operations and compliance with the Permits and maintain on the Site a copy of such reports as well as a copy of the Permits;

(4) Report to the Chair of the Commission or any other designated representative any violations of the Permit or applicable law with respect to which it has received notice, and with respect to such violations occasioned by acts or omissions of Santek, report all action taken or to be taken to correct such violations within seventy-two (72) hours after receipt of notice of violation and furnish to the Commission all written reports and evaluations of the operation of the

Landfill received by Santek from TDEC as a result of its inspections of the Landfill and the responses of Santek;

(5) Furnish sufficient personnel and all tools, materials and equipment necessary for the lawful, skillful and workmanlike operation of the Landfill including the presence of a experienced and qualified supervisor whenever the Landfill is open for operation;

(6) Test and analyze groundwater monitoring wells in conformance with the Permit;

(7) Install, maintain and monitor Landfill gas collection and control systems in conformance with the Permit;

(8) Maintain buildings, structures, and all other facilities, including the entry gate, scale, fences and other barriers, and other structures and improvements reasonably required for the operation of Phase 2 in accordance with the Permit or by the Tennessee Department of Health and Environment. The permanent structures and other improvements shall become the property of the Commission on the termination of this Agreement. Santek shall not be required to fence the Landfill;

(9) Pay normal and standard charges for all water, electrical power, natural gas, and phone service utilized at the Landfill;

(10) Maintain all roads on the Site;

(11) Provide a system for the collection and disposal of leachate released from Phase 2 at a cost not to

exceed \$150,000. This system may be a collect, pump and haul system or a force main system to the City of Loudon Wastewater Treatment Facility;

(12) Ensure that no scavenging or salvage operations are permitted at the Landfill unless (A) the person doing so has the approval of TDEC and the Commission, (B) such operations do not impede the normal routine disposal operations and (C) such operations are conducted by personnel working under the immediate and direct control of Santek;

(13) Ensure that no open burning is permitted unless specific approval of the Commission has been received. Notwithstanding the foregoing, Santek shall have the right to burn brush and other timber associated with the construction of new areas of the Landfill;

(14) Establish a citizens oversight committee comprised of neighbors to the Landfill and other members of the general public to provide input to the Landfill's development and operation and meet with this committee periodically and host Landfill tours on an as-needed basis. Santek shall have no authority to obligate or bind the Commission to any agreement with the committee including an agreement to take any action or to expend or pay any monies. Santek shall act solely in an advisory capacity. Any action or restraint of activity shall be the sole responsibility of Santek unless the Commission shall expressly agree to it;

(15) Any other obligation or activity required by the Permit as amended from time to time by the parties and applicable law and not specifically delegated to Santek pursuant to the terms hereof; and

(16) On or before September 1 of each year during the term of this Agreement, report to the Commission the compaction and density achieved and air space used during the preceding July 1-June 30 fiscal year as well as the remaining air space capacity of Phase 2 as of the end of such fiscal year. Santek may provide the same report it provides to TDEC in satisfaction of this requirement.

(d) During the term of this Agreement, the Commission shall be responsible for the following:

(1) Billing and collecting all charges (other than cash charges paid at the Landfill) for Landfill usage;

(2) Except as provided in subparagraph (3) below, all off-site utilities to and from the Landfill necessary for normal operations;

(3) The treatment and disposal of leachate released from the Landfill and, to the extent the cost of providing a system to do so exceeds \$150,000, paying for the cost of such system in excess of \$150,000. However, before commencement of construction of systems to treat and dispose of leachate, Santek shall provide to the Commission an estimate of the cost. If such cost does not exceed \$150,000, Santek may proceed without further Commission approval.

However, if the actual cost exceed \$150,000, Santek shall ~~secure the Commission's written approval of such costs.~~

(4) Paying the fee imposed by the State of Tennessee on all Waste Material received by the Landfill, which is currently 85 cents per ton.

(5) If it should decide to do so, constructing a fence around the Landfill.

(e) So long as this Agreement is in full force and effect and the Commission shall not have exercised its rights to operate the Landfill as provided herein, the Commission agrees that Santek shall be the sole contractor operating the Landfill; and in the event Phase 2 is filled and closed prior to the end of the ten (10) year term, Santek shall design, construct and operate an extension in the same manner and upon the same terms and conditions as provided herein for the design, construction and operation of Phase 2. In the event the Commission decides to extend the Landfill by opening a new phase to handle Waste Materials which are not required to be placed in a Subtitle D Landfill, Santek agrees to design, construct and operate such extension in the same manner and upon the same terms and conditions (other than the amount of operating fee payable to Santek by the Commission) as provided herein for the design, construction and operation of Phase 2. The operating fee payable to Santek shall be the amount set forth in Section 5 hereof. In the event that during the term of this Agreement, the Commission decides to contract out waste reduction services, the parties hereto agree to negotiate in good faith with

each other for the provision of such services. However, the Commission shall not be precluded from bidding and accepting the bid of any provider for waste reduction services.

3. Materials to be Disposed Of.

Santek shall accept, upon payment of fees as scheduled, all permitted waste materials ("Waste Materials") consisting of Solid Waste (as defined herein), any Special Wastes (as defined herein) and any Industrial Waste (as defined herein) created within the jurisdiction of Loudon County or any similar waste stream for which the Commission has permitted disposal in the Landfill. "Solid Waste" shall mean (i) all waste defined as solid waste by the Solid Waste Disposal Act or regulations promulgated thereunder and (ii) all waste defined as solid waste by the Division of Solid Waste Management of TDEC having jurisdiction over solid waste generated within Tennessee, except that the term solid waste:

(a) is intended to mean and include only those substances which are normally expected to be disposed of by employing generally accepted sanitary Class I landfill disposal methods;

(b) shall exclude Hazardous Waste and Bio-Medical Waste (other than autoclave biomedical waste; and

(c) shall exclude radioactive waste and any radioactive sewage sludge.

"Special Waste" shall mean waste material that is not characterized as being either Hazardous Waste or Bio-Medical Waste, and is not

normally found in the household waste stream. Special waste is ~~generally comprised of solid wastes that are difficult to handle,~~ and which require special precautions because of the nature of the waste creates waste management problems in normal operations. Examples include asbestos, hospital wastes and sludges. "Industrial Waste" shall be defined to include Waste Materials and Special Wastes of an entity or person who produces more than five (5) tons of such Waste Materials per day. No hazardous waste as defined by the rules of health and environment, DSWN Chapter 1200-1-11 Governing Hazardous Waste Management in Tennessee will be accepted nor will toxic, volatile, nuclear or infectious materials be accepted. No liquid waste will be accepted. Special Wastes (as herein defined) which are hard to manage, or cause or could cause potential problems shall be disposed of in the Landfill only if approved by the Commission and special provisions are made for such disposal and are approved by the Department. Rule 1200-1-7.06 (2) (a) Item #10. Upon notice from the Commission or Commission Chair or the Commission's designated agent, Santek shall deny the entity or person designated in such notice the right to dispose of Waste Materials in the Landfill, whether for non-payment of charges or any other cause.

4. Daily Operations. Santek will keep the Landfill open a minimum of five and one-half (5-1/2) days per week during

the hours from 7:30 a.m. to 3:00 p.m. The Landfill will be closed
for the following holidays:

New Years Day
Memorial Day
July 4
Labor Day
Thanksgiving Day
Christmas Day

Santek shall provide all required daily services in operating and constructing the uncompleted and unfilled cell areas of the Landfill including all required covering operation of the current permit as set forth in the 1984 MCI plan (as existing at the time of this Agreement). Santek shall at its entire expense provide for the transportation and sale of recyclable material collected at the existing Loudon County Convenience Center. Santek shall further cooperate with the Commission in establishing similar convenience centers for use of the residents of Loudon County, and if additional convenience centers are established, Santek agrees to provide the necessary support as is currently being provided at the existing Loudon County Convenience Center. On or before the first of each year, Santek shall provide to the Commission its estimate of such cost of transporting and selling recyclable material based upon the cost incurred in the current year. However, if the cost to Santek of providing such transportation and sale exceeds \$4,000 per year, the Commission agrees to reimburse Santek by the amount the reasonable cost of transporting and selling recyclable material exceeds \$4,000 per year. Santek shall not be responsible for collecting, sorting, storing, or monitoring the quality of recyclable material which shall remain the sole responsibility of

the Commission. Santek shall not be responsible for recyclable materials not acceptable to potential purchasers. All soil and materials available at the Landfill shall be available for use by Santek as part of the services in operating and constructing the uncompleted and unfilled cell areas at no charge or fee adjustment to Santek.

5. Fees. The Commission shall have the sole authority to establish the tipping fee to be charged to users. Except for Industrial Waste placed in Phase 1 for which Santek should receive a fee of \$15 per ton and Waste Materials placed in the Unlined Phase (as herein defined), the Commission agrees to pay to Santek during each July 1 - June 30 ("Fiscal Year") an operating fee, subject to adjustment as hereinafter provided, based upon the amount of annual tonnage placed in the Landfill (excluding Industrial Waste placed in Phase 1 and Waste Materials placed in the Unlined Phase) as follows:

\$30.40 per ton on the first 54,600 tons of Waste Materials disposed of in the Landfill during such Fiscal Year

\$27.21 per ton on the next 13,650 tons of Waste Materials disposed of in the Landfill during such Fiscal Year

\$27.54 per ton on the next 13,650 tons of Waste Materials disposed of in the Landfill during such Fiscal Year

\$24.84 per ton on the next 13,650 tons of Waste Materials disposed of in the Landfill during such Fiscal Year

\$24.63 per ton on the next 13,650 tons of Waste Materials disposed of in the Landfill during such Fiscal Year

\$23.84 per ton on all tons of Waste Materials disposed of in the Landfill during such Fiscal Year in excess of 109,200 tons

In the event the Commission opens a new phase of the ~~Landfill to handle Waste Materials which are not required to be~~ placed in a Subtitle D Landfill ("Unlined Phase"), the Commission agrees to pay to Santek an operating fee during each Fiscal Year, subject to adjustment, as hereinafter provided, based upon the amount of annual tonnage placed in such Unlined Phase determined as follows:

Until the aggregate tonnage of Waste Materials disposed of in Phase 2 and the Unlined Phase during any Fiscal Year amounts to 40,950 tons, \$17.50 per ton

\$13.98 on the next 13,650 tons of Waste Materials disposed of in the Unlined Phase during such Fiscal Year

\$11.85 on the next 13,650 tons of Waste Materials disposed of in the Unlined Phase during such Fiscal Year

\$11.36 on the next 13,650 tons of Waste Materials disposed of in the Unlined Phase during such Fiscal Year

\$10.22 on the next 13,650 tons of Waste Materials disposed of in the Unlined Phase during such Fiscal Year

\$9.66 on the next 13,650 tons of Waste Materials disposed of in the Unlined Phase during such Fiscal Year

\$9.27 per ton on all tons of Waste Materials disposed of in the Unlined Phase during such Fiscal Year in excess of 109,200 tons

If Special Wastes are disposed of at the Landfill, such extraordinary items shall be disposed of at a negotiated tipping fee not less than the operating fee in effect at the time for Phase 2 or Unlined Phase, as the case may be, for the type of Waste Materials being disposed of.

Commencing on July 1, 1996 and on each subsequent anniversary ("Anniversary Date"), the fee payable to Santek shall be adjusted and revised based upon the Municipal Cost Index as

published in the monthly issue of American City and County magazine to reflect changes in effect from April 1, 1994 as the base. in accordance with the following formula:

New rate = [prior rate] x (1 + (Mn-Mi)/Mi)
Where prior rate is equal to the rate in effect at the adjustment date, Mi is the Municipal Cost Index on the designated beginning date of the adjustment period and Mn is the Municipal Cost Index on the adjustment date.

As soon as possible after each Anniversary Date, Santek shall send to the Commission a statement setting out the prior rate, a Municipal Cost Index on a beginning date, a Municipal Cost Index on the adjustment date and the percentage increase.

Santek shall be entitled to an automatic increase in the fee equal to the amount of (i) any fee, surcharge, duty, tax or other charge of any nature imposed by the federal government, any agency thereof, the State of Tennessee, any agency thereof, or by any local government agency which is directly related to the Landfill and which is directed to or assessed against Santek, Phase 2, the Permit, or the Commission, whether as owner or permittee and which is payable solely by reason of the nature of the operations conducted by Santek and (ii) any other sales or service taxes of general application to the operation of Phase 2. Fees, surcharges, duties and taxes imposed upon all corporations in general shall not be the basis for a automatic increase in the operating fee payable to Santek. Fines, penalties, personal property taxes and business licenses shall not be considered to constitute a fee, surcharge, duty, tax or other charge for the

purposes of an increase in the fee. Such fee, surcharge, duty, tax or other charge may be passed through to all users by the Commission in the form of a tipping increase.

If Santek determines that the cost of construction of Phase 2 as permitted will increase by reason of the existence of solid rock or other unanticipated physical site characteristics such as karst terrain or if Santek determines that its cost of operating the Phase 2 will increase by reason of changes (after the date of this Agreement) in federal, state or local environmental or other law or regulations concerning the receipt, transportation, disposal or handling of Waste Material at the Landfill, whether or not such change causes enhancement in the Landfill, Santek shall promptly notify the Commission in writing and request that the Commission's increase its operating fee to reflect the increased construction cost and/or changes in the costs of its operations resulting from such physical problems or changes in law or regulation. If the Commission is in agreement with the amount of increase in operating fee requested by Santek, Santek shall be entitled to receive such increased operating fee. In the event that Santek and the Commission are unable to agree on the amount to be paid by the Commission to Santek by reason of any increase in construction or other similar cost to Santek or by reason of an increase in the operating cost, the parties shall attempt in good faith to resolve any dispute by negotiations. If the matter has not been resolved within forty-five (45) days of either party's request for negotiation, either party may initiate mediation under

the Center for Public Resources ("CPR") Model Procedure for Mediation of Business Disputes in effect on the date of this Agreement. The mutual third party shall be selected from the CPR Panels of Neutrals, with the assistance of CPR, unless the parties otherwise agree. If the dispute has not been resolved by such non-binding means as provided herein with ninety (90) days of the initiation of such procedure, either party may institute litigation on ten (10) days notice to the other party; provided, however, that if one party has requested the other to participate in mediation and the other has failed to participate, the requesting party may initiate litigation before the expiration of such period. Any applicable statute of limitations and defenses based upon the passage of time shall be tolled while the mediation procedures specified in this Section are pending. The parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, if the estimated increase in the cost of construction is twenty percent (20%) more than the original estimated cost of construction, which for the purposes hereof shall be \$126,000 per acre times the number of acres included in Phase 2 ("Original Estimated Cost"), the Commission shall not be obligated to pay to Santek any increase in its operating fee in excess of the amount of increase Santek is entitled to receive as a result of a twenty percent (20%) increase in such construction cost. On the other hand, if the estimated increase in the cost of construction is twenty percent (20%) more than the Original Estimated Cost, Santek shall not be obligated to complete the construction of

additional cells in Phase 2, but may terminate this Agreement upon filling the existing cells by thirty (30) days written notice to the Commission.

Within five (5) days following the end of each month, Santek shall submit a report to the Commission showing the usage of the Landfill including total tons of Waste Material during the previous month as well as the amount of industrial waste and sludges. The Commission shall remit to Santek the fees due to Santek by the later of the 10th of each month or five (5) business days after its receipt of such report.

If in the event that, during any 12-month period less than 43,134 tons of Waste Materials are received for placement in Phase 2 of the Landfill, the Commission agrees to pay to Santek the difference between the amount the Commission would have otherwise paid to Santek if 43,134 tons of Waste Materials had been received for placement in the Phase 2 of the Landfill, and the fee that Santek actually received for the tons of Waste Materials actually placed in Phase 2.

6. Post-Closure Care. During the term of this Agreement, Santek shall perform post-closure care of Phase 1 in accordance with the Phase 1 Closure-Post Closure Plan and of Phase 2 as cells are filled and closed in accordance with the post-closure plan submitted to and approved by TDEC. The Commission shall be responsible for providing the financial assurance in order to obtain a waiver of the post-closure surety bond or shall, at its own cost and expense, obtain a post-closure surety bond as required

by applicable law. After the termination of this Agreement, the Commission shall be solely responsible for all post-closure care.

7. Warranties and Representations by Santek. Santek represents and warrants to the Commission that Santek is fully qualified and capable, and has adequate financial resources, to fulfill and perform all of its obligations under this Agreement, and that it will fully comply with and observe all applicable governmental laws and regulations and meet or exceed all standards and requirements of the aforementioned "1984 MCI Original Plan" in existence upon the date of execution of this Agreement and as heretofore modified.

8. Indemnification.

(a) Santek agrees to indemnify and hold harmless the Commission, its officers, agents and employees from, against, and with respect to any loss, cost or damage suffered by it, or any claim or obligation asserted against it, by reason of or on account of any act or omission of Santek, officers, agents, employees, express invitees or invitees by implication or subcontractors, or on account or by reason of any condition of the Landfill created or aggravated by Santek or any of its officers, agents, employees or subcontractors, provided, however, notwithstanding anything to the contrary herein, Santek shall not have any liability or be responsible for or required to indemnify the Commission for any loss, cost or damage suffered by the Commission or any claim or obligation asserted against the Commission arising from (i) the operation of or condition of the Landfill prior to the date Santek

assumed responsibility for its operation, (ii) actions directly attributable to the Commission, its officers, agents and employees, (iii) the cessation of operations and/or closure of the Landfill by reason of actions which are not attributable to Santek, its officers, agents, employees and subcontractors or (iv) the slow and gradual release or escape of pollutants, including leachates and methane gas from the Landfill unless (A) in the case of the gradual release or escape of pollutants from Phase 1 and methane gas from Phase 2, it is established by competent evidence that such release or escape of pollutants have been caused by the acts or omissions of Santek, its officers, agents, employees or subcontractors which are negligent or constitute wilful misconduct or (B) in the case of the gradual release or escape of pollutants from Phase 2 other than methane gas, it is established by competent evidence that such release or escape of pollutants have been caused by the acts or omissions of Santek, its officers, agents, employees or subcontractors.

(b) The Commission, agrees to indemnify and hold harmless Santek, its officers, agents, employees and subcontractors from, against and with respect to any loss, cost or damage suffered by Santek or any claim or obligation asserted against Santek, arising from (i) the operation, use or closure of the Landfill by any person or entity other than Santek, (ii) a condition existing at the Landfill prior to the date Santek began its operation of the Landfill or (iii) the slow and gradual release or escape of pollutants, including leachates and methane gas from the Landfill

unless (A) in the case of the gradual release or escape of pollutants from Phase 1 and methane gas from Phase 2, it is established by competent evidence that such release or escape of pollutants have been caused by the acts or omissions of Santek, its officers, agents, employees or subcontractors which are negligent or constitute wilful misconduct or (B) in the case of the gradual release or escape of pollutants from Phase 2 other than methane gas, it is established by competent evidence that such release or escape of pollutants have been caused by the acts or omissions of Santek, its officers, agents, employees or subcontractors.

9. Delivery of Waste. During the term of this Agreement, Santek shall not have any responsibility for picking up and delivery Waste Materials to the Landfill. The Commission agrees to use its best efforts to cause the City of Lenoir City, County of Loudon and City of Loudon to deliver all residential Waste Material on its collection vehicles to the Landfill. Title to waste shall vest, as it is deposited, in the owner of the fee simple estate of the Landfill.

10. Term. The Term of this Agreement shall commence upon its effective date and continue for the ten-year period from Apr: 15, 1994 through March 31, 2004, unless earlier terminated as otherwise provided herein. This Agreement shall be automatically renewed for an additional one (1) year term following the end of the initial ten (10) year term or any extended one (1) year term unless notice is given by either party hereto that such party does not intend to extend this Agreement, which notice shall

be given no later than sixty (60) days prior to the end of the then existing term of this Agreement. Upon the final revocation of the Permit issued by TDEC for the operation of Landfill, this Agreement shall terminate. At the same time, upon the final denial of any Permit requested by Santek or the Commission in order to enlarge the Landfill, the term shall be for a period equal to the time necessary to fill and complete the permitted area of the Landfill. In the event that the payments by the Commission to Santek under the provisions of the last paragraph of Section 5 exceed \$500,000 in the aggregate and amount to not less than \$10,000 during the preceding 12-month period, then the Commission shall have the right to terminate this Agreement by sixty (60) days notice to Santek. On the other hand, in the event less than 54,600 tons of Waste Materials are disposed of in the Landfill in each of two consecutive years, Santek shall have the right to terminate this Agreement by sixty (60) days written notice to the Commission. In the event of the termination of this Agreement for any reason prior to the end of its stated term, the Commission shall reimburse Santek for its unamortized construction costs which shall be determined by multiplying the number of lined acres in Phase 2 times \$126,000 per acre and then multiplying the product thereof by the percentage of unfilled capacity in the lined acres of Phase 2. If the Commission believes that this Agreement will be terminated by Santek pursuant to the provisions of this Section 10, the Commission shall have no duty or responsibility to develop the remaining acreage in the Landfill.

11. Compliance with Laws. During the term of this Agreement, Santek shall operate the Landfill in compliance with the Permit and all applicable laws, rules, regulations, specifications and approved operational plans of the State of Tennessee. This shall include but not be limited to Rule 1200-1-7.04 of TDEC and Subpart C of 40 CFR 258. Notwithstanding the foregoing, the Commission shall be responsible for compliance with respect to such portion of the operation of the Landfill for which it has an obligation under this Agreement.

12. Letter of Credit. Santek shall obtain an irrevocable letter of credit to secure the faithful performance of its obligations to construct Phase 2 and its obligation to operate Phase 2. The irrevocable letter of credit shall be provided by a bank licensed by the FDIC and doing business in the State of Tennessee and shall be in an amount equal to \$125,000, with the cost or expense of such letter of credit to be paid by Santek. Such letter of credit shall provide for Commission to draw against the letter of credit such funds as are necessary to reimburse Commission for actual costs or expenses incurred by Commission as the result of a breach of this Agreement provided the Commission shall have incurred cost or expenses as a result of said breach; written notification of such breach shall be given to Santek by certified mail with a return receipt providing Santek with fifteen (15) days to cure said breach; Santek shall fail to cure such breach during the cure period; and an affidavit shall be executed by the Chair of the Commission specifying the breach by Santek, the

costs or expenses incurred by Commission, the fact that all ~~requirements of the preceding have been complied with by Commission~~ and that Commission is entitled to draw against the letter of credit. The Commission shall only be entitled to draw against the letter of credit those actual costs or expenses incurred by the Commission. Actual costs or expenses shall include any penalties paid by Commission directly attributable to acts of Santek, expenses paid to correct any breaches of this Agreement by Santek, expenses paid to correct any matters warranted by Santek and not paid during the warranty period, and rent on any equipment obtained by Commission which is necessary to operate the Landfill and the compensation paid to the operators of such equipment in the event Santek fails or refuses to operate the Landfill during the term of this Agreement (such rent shall be limited to a period reasonably necessary to purchase said equipment by Commission but in no event shall Commission be entitled to reimbursement for rent for more than sixty (60) days). Actual costs or expenses shall not include the cost of purchasing equipment to resume operations of the Landfill by Commission.

13. Worker's Compensation and Public Liability Insurance. Except for professional liability insurance which shall be procured and placed in effect within sixty (60) days after the effective date of this Agreement, Santek shall procure and maintain, at its own cost and expense, the following insurance coverages in the minimum amounts specified below during the term of this Agreement:

(a) Professional Liability Insurance. Professional liability insurance for the engineering and design services provided hereunder in an amount not less than \$1,000,000 provided, however, if the cost of such insurance exceeds \$20,000 per year, the Commission agrees to negotiate in good faith with Santek an increase in fee set forth in Section 5 to cover such cost in excess of \$30,000.

(b) Worker's Compensation Insurance. Contract worker's compensation insurance on all of its employees to be engaged in work under the provisions of this Agreement and for all of its subcontractors. Santek shall provide to the Commission certification of workers compensation insurance by each subcontractor before permitting each subcontractor to begin work on the Landfill.

(c) Comprehensive General Liability Insurance. Comprehensive general liability, public liability and property damage insurance with pollution exclusion in an amount not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate.

(d) Automobile Insurance. Comprehensive automobile liability insurance in an amount not less than \$1,000,000 for injuries, including death, to any one person and not less than \$1,000,000 on account of one accident and automobile property damage insurance in an amount not less than \$300,000.

Santek shall keep the required insurance in full force and effect at all times during the term of this Agreement and any renewals thereof, and Santek shall have the Commission named as an

additional insured of all policies to the extent covered losses are caused by the negligence or willful misconduct of Santek, its employees and servants. Santek shall also cause such policies to contain a provision providing that the coverage may not be cancelled without the insurer giving the Commission ten (10) days prior notice of cancellation. Santek shall effectuate such insurance coverage with insurance companies licensed to transact business in the State of Tennessee. Santek shall further furnish to the Commission a certificate of insurance or a copy of the insurance policies affording such coverage, in order to satisfy the Commission that it has obtained the required insurance coverage.

14. Standard of Performance. Notwithstanding the provisions of Section 12, if Santek fails to dispose of the Waste Material as herein provided for a period in excess of three (3) consecutive working days or fails to operate the site for a similar period, the Commission may, at its option, after sending written notice to Santek, as provided hereinafter, take over and operate the Landfill using any or all of Santek's equipment used in carrying out this Agreement, and the Commission may provide for such operation until such matter is resolved and Santek is again able to operate. Any and all operating expenses incurred by the Commission in so doing may be deducted by it from compensation payable to Santek hereunder. During such period, the liability of the Commission to Santek for loss or damage to such equipment so used shall be that of a bailee for hire, ordinary wear and tear is specifically exempt from such liability, and the liability of

Santek to third persons shall cease and all claims or demands arising out of the operation and/or control of the Landfill shall be directed solely to the Commission. Santek shall not be liable to the Commission, and the Commission shall indemnify and protect Santek against liability to third parties, on account of any act or omission of the Commission or its agents, employees, or sub-contractors, occurring during any period in which the Commission is operating the Landfill under this Section 18 of this Agreement. If Santek is unable for any cause to resume performance at the end of thirty (30) working days, all liability of the Commission under this Agreement shall cease and the Commission shall be free to negotiate with other contractors regarding the operation of the Landfill. If Agreement with another contractor is reached, this shall not release Santek herein of its liability to the Commission of breach of this Agreement. Notwithstanding the foregoing, the Commission shall not be entitled to assume operation of the Landfill and Santek shall not have any liability to the Commission if such failure is due to war, insurrection, riot, Act of God, or any other cause or causes beyond the control of Santek and the Commission.

15. Landfill Inspection. The Commission or its designated agent shall have the right to inspect the Landfill during normal construction and operating hours and at such other times as may be deemed necessary to protect the interests of the Commission. This right to inspect and audit the Landfill includes, but is not limited to the inspection of loads, scales, monitoring

records, records Santek is required to maintain, including injury and environmental incident reports and such other environmental or contractual compliance related records as the Commission deems necessary or as required by applicable regulatory authority. During groundwater or other monitoring, the Commission may have a representative present to inspect Santek's procedures and to receive split samples for independent testing, at Commission's expense. In addition to the foregoing, the Commission shall have the right, on prior written notice to Santek, to request Santek to conduct such procedures and acquire such samples from Permit monitoring points, including groundwater and gas monitoring wells, at such times and in such manner as it deems necessary, provided any such discretionary inspections (not required by Permit) shall not interfere with Landfill operations and shall be at the Commission's sole cost and expense. In order to insure that the Landfill meets or exceeds all contractual obligations, the Commission shall have the right to review and approve (which approval shall not be unreasonably withheld) all proposed design, construction and operational plans, permit applications or other documents that are submitted to State or federal agencies, including requests for modifications, addenda or other additions. Santek shall provide all such information and supporting data requested for review.

16. Santek's Personnel.

(a) Santek shall assign a qualified person or persons to be in charge of its operations at the disposal site and shall inform the Commission of said persons' identity.

(b) Santek agrees to abide by all applicable Federal, State and local laws and regulations pertaining to employment, employee selection, compensation, and associated matters as relates to the operation of the project.

(c) All Santek employees will receive special training in the overall operations of the Landfill as well as in their specialized assignments. This operational training, as well as landfill operational safety training, will be provided on a sustained and continuing basis.

(d) There will be periodic safety meetings of all Santek employees for accident control. The facility will be equipped with fire extinguishers, including a fire extinguisher at the shop. These will be maintained on a regular basis to prevent accidental discharge.

17. Assignment. No assignment of this Agreement or any right occurring under it shall be made in whole or in part by Santek without the express written consent of the Commission. In the event of any assignment the assignee shall assume the liability of Santek, but such assumption shall not release Santek from primary liability for performance of this Agreement and any breach hereof.

18. Financial Statements. Santek shall cause an ~~independent accounting firm to prepare as soon as practicable after~~ the end of each calenday year during the term of this Agreement reviewed financial statements of Santek consisting of a balance sheet and footnotes, and upon receipt of such financial statements, Santek shall file a copy of them with the Commission.

19. Bankruptcy. This Contract shall terminate in the case of bankruptcy, voluntary or involuntary, or insolvency of Santek. In the case of bankruptcy, such termination shall take effect on the day and at the time the bankruptcy is filed.

20. Number of Copies. This Agreement may be executed in two (2) counterparts, all of which shall have the full force and effect of an original for all purposes.

21. Law to Govern. This Agreement shall be governed by the laws of the State of Tennessee, both as to interpretation and performance.

22. Modification. This Agreement constitutes the entire Agreement and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

23. Right to Require Performance. The failure of the Commission at any time to require performance by Santek of any provisions hereof shall in no way affect the right of the Commission thereafter to enforce same. Nor shall waiver by the Commission of any breach of any provision hereof be taken or held

to be a waiver of any succeeding breach of such provisions or as a waiver of any provisions itself.

24. Point of Contact. All dealings, contacts, etc. between Santek and the Commission regarding Landfill matters shall be directed by Santek to the Chair of the Commission or such other person designated by the Commission. Commission shall provide to Santek at Santek's principal office in Bradley County, a copy of all letters, notices, and other written forms of communication received by Commission from the State of Tennessee or any other governing body which documents concern the disposal site and/or Santek. A copy of such documents shall be hand delivered or mailed to Santek with sufficient postage thereon as follows:

Kenneth D. Higgins, President
Santek Environmental, Inc.
1306 South Lee Highway
Cleveland, TN 37311

Santek shall also provide to the Chair of the Commission a copy of all such letters, notices, and other written forms of communication received by Santek which documents concern the disposal site. Both Santek and Commission agree to hand deliver or mail such copies to the other party pursuant to the terms of this section within three (3) days of receipt of such documents.

25. Illegal Provisions. If any provisions of this Agreement shall be declared illegal, void, or unenforceable, the other provisions shall not be affected and shall remain in full force and effect.

26. Notice. A letter addressed and sent by certified United States mail or hand delivered to either party at its

business address shown hereinabove shall be sufficient notice whenever required for any purpose in this Agreement.

27. Effective Date. The effective date of this Agreement is April 5, 1994, and the date which Santek assumed operational control of the Landfill was July 15, 1988.

GOVERNING BODY: Loudon County Solid Waste Disposal Commission

BY: Wayne Folchert
Title: Chair, LCSWD

OPERATOR: Santek Environmental, Inc.

BY: Kenneth D. Higgins
Kenneth D. Higgins
President

ORIGINAL

FIRST AMENDMENT TO SANITARY LANDFILL OPERATIONS AGREEMENT
LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

THIS FIRST AMENDMENT (this "Amendment") is made and entered into as of the 1st day of October, 2001, to the Sanitary Landfill Operation Agreement (the "Agreement") by and between the LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION, a commission duly established by the Intergovernmental Agreement between Lenoir City, the County of Loudon and the City of Loudon (hereinafter referred to as the "Commission") and SANTEK ENVIRONMENTAL, INC., a corporation organized under the laws of the State of Tennessee and having its principal place of business at 650 25th Street, NW, Suite 100, Cleveland, Tennessee, 37311 (hereinafter referred to as "Santek").

W I T N E S S E T H

WHEREAS, the Commission and Santek entered into the Agreement as of April 5, 1994 under the terms of which Santek agreed to operate, close and provide post-closure care to Phase I of the Matlock Bend Landfill ("Landfill"), and to design, engineer, construct, operate, close and provide post closure services to Phase 2 of the Landfill (Phase I and II are collectively, the "Landfill"); and

WHEREAS, Santek has constructed the third module of the Landfill ("Module C"), which has a life expectancy longer than the remaining original term of the Agreement; and

WHEREAS, Santek is will to eliminate the minimum waste guarantee in the Agreement and reduce its management fee from a price per ton to a fixed monthly fee; and

WHEREAS, the Commission is willing to allow Santek to manage Module C in its entirety beyond the original term of the Agreement; and

WHEREAS, the parties desire to amend the Agreement in order to reflect the additional understanding of the parties with respect to such services;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and intending to be legally bound, the parties agree as follows:

1. Section 5 (Fees) of the Agreement is hereby revised by modifying the terms of the first two paragraphs of Section 5 as follows:

As of the date of this Amendment, the Commission agrees to pay Santek for all waste delivered to the Landfill a fixed monthly fee of \$115,000; provided, however, in the event that the amount of solid waste received by the Landfill exceeds 52,500 tons per year ("Tonnage Trigger"), the Commission shall pay Santek an amount equal to fifty percent (50%) of the tipping fee for every ton of waste received by the Landfill above the Tonnage Trigger (the "Additional Fees"). The Additional Fees shall be paid monthly on all tons received by the Landfill over 4,375 tons. The Additional Fees will be reviewed on a quarterly basis and the parties will adjust the Additional Fees based on such evaluation. In the event that Santek has received an overpayment of Additional Fees based on such quarterly evaluation, Santek will pay the Commission an amount equal to such overpayment within twenty-five (25) calendar days of the end of each quarter. If the annual tonnage of solid waste received by the Landfill exceeds 60,000 tons, the Commission and Santek agree to negotiate in good faith additional compensation to Santek in amount equitable under the circumstances.

2. Section 10 (Term) of the Agreement shall be amended by deleting the first two (2) sentences of the Section and replacing those sentences with the following language:

The Term of this Agreement shall commence upon its effective date and continue until Module C is filled to capacity (the "Module C Completion"), unless earlier terminated as provided in the Agreement dated April 5, 1994. Santek agrees to provide the Commission with a one hundred and eighty (180) days written notice prior to module C becoming filled to capacity. This Agreement shall be automatically renewed for an additional one (1) year term following the Module C Completion or any extended one (1) year term unless notice is given by either party hereto that such party does not intend to extend this Agreement, which notice shall be given no later than sixty (60) days prior to the end of the then existing term of this Agreement.

3. Section 2 (Development and Operation of the Site) is hereby amended by adding the following sentence to the end of the provision as Sub-section 2 (c)(17):

On or before the start of each calendar quarter of each year during the term of this Agreement until the Module C Completion, report to the Commission the projected remaining life of Module C.

4. Section 2 (Development and Operation of the Site) is hereby amended by adding the following sentence to the end of the provision as Sub-section 2 (f):

At the Commission's written request, Santek shall manage simultaneously two working phases within Module C of the Landfill to accommodate select loads of waste for the initial lift of the next planned module.

5. Except as expressly amended by the terms of this Amendment, all the terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, This First Amendment to Sanitary Landfill Operations Agreement for the Loudon County Solid Waste Disposal Commission is hereby executed as of the date hereinabove written:

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

BY: Wayne Tolbert
Wayne Tolbert, Chairman

ATTEST:

Secretary

SANTEK ENVIRONMENTAL, INC.
BY: Edward A. Caylor
Edward A. Caylor, President

5.

Solid Waste Management Act of 1991 (T.C.A. 68-211-801, et seq.)

SOLID WASTE MANAGEMENT ACT OF 1991 - SUMMARY

68-211-801. Short title "Solid Waste Management Act of 1991"

68-211-802. **Definitions**

- (1) "Authority" or "solid waste authority"
- (2) "Board"
- (3) "Commissioner"
- (4) "Convenience center"
- (5) "Department"
- (6) "Development district"
- (7) "Household hazardous waste"
- (8) "Household waste"
- (9) "Landfill"
- (10) "Municipal solid waste"
- (11) "Operator"
- (12) "Person"
- (13) "Recovered materials"
- (14) "Recovered materials processing facility"
- (15) "Recyclable materials"
- (16) "Recycling"
- (17) "Region"
- (18) "Solid waste stream"
- (19) "Tire"
- (20) "Transporter"
- (21) "Used oil"
- (22) "Waste tire"
- (23) "Yard waste"

68-211-803. **Public policy**

- (a) Provide statewide program for solid waste management that assures solid waste facilities do not adversely affect health/safety/well-being of public and do not degrade the quality of the environment and makes maximum utilization of the resources in solid waste.
- (b) Educate/encourage generators and handlers of solid waste to minimize solid waste which requires collection, treatment, incineration or disposal through source reduction, reuse, composting, recycling, etc.
- (c) Promote markets for and engage in purchase of goods made from recovered materials and recyclable goods.

68-211-804. **Applicability**

- [Unless otherwise provided], this Act doesn't apply to (1) Hazardous waste... (2) Infectious waste; (3) Radioactive waste; or (4) Industrial waste...

68-211-805. **Liberal construction.**

- So as to effect systematic and efficient means of solid waste disposal, utilization and conservation...

- 68-211-806. [reserved]
- 68-211-807. [reserved]
- 68-211-808. [reserved]
- 68-211-809. [reserved]
- 68-211-810. [reserved]

68-211-811. Municipal solid waste planning district -- District needs assessment

- (a) Counties w/in each development district constitute a municipal solid waste planning district... Needs assessment for municipal solid waste planning district conducted by staff of development district revised every five years.
- (b) Findings of district needs assessment delivered at district-wide meeting to citizens...
- (c) District needs assessment to identify rational waste disposal areas w/in district..

68-211-812. [Repealed in 1996] formerly concerning municipal solid waste planning advisory committees

68-211-813. Municipal solid waste regions -- Board -- Plan for disposal capacity and waste reduction -- Regional municipal solid waste advisory committee

(a)

- (1) Municipal solid waste regions (established by resolution of county legislature after consideration of needs assessment) consist of one county or multiple contiguous counties; if region consists of multiple counties, agreement establishing region must be approved by each participating county legislature.
- (2) Established municipal solid waste regions continue until dissolved and successor region(s) are properly established. New/reconfigured region(s) established by:
 - (A) Legislative approval of dissolution by existing region.
 - (B) Legislative approval of new/reconfigured region by participating new/reconfigured region.
 - (C) Submittal to department of environment and conservation of list of new board members, addresses, phone numbers, terms, and new/revised statutorily compliant plan for new/reconfigured region.
 - (D) Approval of department of environment and conservation of all new/revised plans.
- (3) Existing approved plan effective until new/revised plans approved.

(4) Preferred organization of regions is multi-county...

(b) .

- (1) Resolution establishing region must provide for administrative board of odd number (5-15) with each member county represented by at least one member and each municipality providing solid waste services represented, such board members to be appointed by county executives and municipal mayors. 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 on agreement of all local governments that share representation; such agreement must specify method of appointment for a

member representing more than one local governmental entity. Members of county and municipal governing bodies, county executives, municipal mayors, county and municipal officers and department heads may be appointed to the board on approval by the legislative or governing bodies of the counties and eligible municipalities within the region. Board members' terms are six years or until successors are elected and qualified, but initial board shall have one-third w/ two-year terms and one-third w/ for-year terms, to stagger the terms.

- (2) Any county w/ a solid waste authority, not organized under part 9 and existing July 1, 1991, may designate such authority as the board to administer region activities, if such county is itself a region. Such designation shall be approved by resolution of legislative body of the county and of each municipality that provides solid waste services in the region.
- (3) Appointments to board for municipal solid waste region consisting of counties of less than 200,000 population shall be made so that rural landowners shall have representation on the board...
- (c) Each region shall develop plan for ten-year disposal capacity, achieving 25% waste reduction goal.
- (d) Legislature of municipality w/in two or more regions shall select which region it shall participate.
- (e) Board of each municipal solid waste region shall establish and determine a regional municipal solid waste advisory committee.

68-211-814. Municipal solid waste region plans -- Authority of region or solid waste authority after approval

- (a)
 - (1) Each region shall submit plan, compliant with § 68-211-815, to department of environment and conservation, which plan the department shall approve or disapprove w/in 90 days and if disapproved, department shall detail reasons therefore. Region shall review any disapproved plan and resubmit corrected plan to department w/in 60 days of receiving letter of disapproval.
 - (2) Plan may be revised anytime and shall be revised every 5 years after initial approval and likewise submitted, reviewed and approved or disapproved by the department of environment and conservation
 - (3) Department may require annual progress reports on implementation of plan.
- (b)
 - (1)
 - (A) If commissioner approves plan, region or solid waste authority... may also regulate flow of collected municipal solid waste generated w/in region [provided] the region or authority shows its decision not to use the existing facility is because:
 - (i) facility environmentally unsound/inadequate to meet region's ten-year capacity assurance plan;
 - (ii) (a) costs for such facility's use inconsistent w/ comparable state facilities;

- (b) existing facility operation inconsistent w/ plan; and
 - (iii) waste subject to flow control will be sent only to facilities that meet state and federal regulations
 - (B) To effectuate plan, region or authority may restrict access to landfills and incinerators which dispose of municipal solid waste by excluding waste from non-region persons/entities, unless region accepted waste from specific non-region source before July 1, 1991, unless facility's acceptance significantly impairs region's ability to effectuate the plan.
 - (C) Appeal of final actions of region or authority shall be taken w/in 30 days.
 - (D) After plan approved, region must approve any application for permit for solid waste disposal facility or incinerator w/in region as consistent w/ region's disposal needs before any permit is issued.
- (2)
- (A) Applicant for permit for construction/expansion of solid waste disposal facility or incinerator shall submit copy application to region by time application submitted to commissioner and region shall review application for compliance and conduct public hearing after public notice before making determination. ... Region shall decide on application w/in 90 days after receipt of complete application and immediately notify commissioner of its acceptance/rejection thereof.
 - (B) Region may reject application for new/expanded solid waste disposal facility or incinerator w/in region only upon determining application inconsistent w/ solid waste management plan adopted by county or region and approved by department; region shall document in writing application's inconsistencies w/ plan.
 - (C) Commissioner shall not issue permit where region rejects application unless commissioner finds region's decision arbitrary and capricious and unsupported in region's record.
 - (D) Appeal of final decisions of region ... shall be taken w/in 30 days
 - (E) Region shall provide for reasonable public notice of meetings. ...
- (4) If region formed solid waste authority under part 9, the authority shall approve any permit applications instead of the region.
 - (5) Region or solid waste authority can't impair obligations of contracts entered before region's plan approved.
 - (6) Region or solid waste authority can't restrict movement of recovered materials in, out, or w/in region.
 - (7) Each region shall hold public hearing on proposed/ revised plan before submitting plan...

68-211-815. Municipal solid waste region plans – Contents

- (a) Each plan must be consistent w/ state solid waste plan, w/ any applicable laws, and w/ any department regulation.
- (b) Each plan must include:
 - (1) Demographic information;
 - (2) Current system analysis of:
 - (A) waste streams...
 - (B) collection capability...
 - (C) disposal capability...
 - (D) costs (of collection, disposal, maintenance, contracts, etc.)
 - (E) revenues
 - (3) Uniform financial accounting system
 - (4) Anticipated growth trends (next ten years)
 - (5) Anticipated waste capacity needs;
 - (6) Planned capacity assurance (description of planned or needed facilities)
 - (7) Recycling plan...
 - (8) Household hazardous wastes disposal plan
 - (9) Uniform reporting requirements
 - (10) Waste reduction activity description (25% reduction)
 - (11) Education initiatives description
 - (12) Evaluation of multi-county solid waste disposal region options
 - (13) Plan implementation timetable
 - (14) Responsibilities of participating jurisdictions
 - (15) Certification from region's solid waste authority or county legislative body or bodies (whichever is applicable) that region's plan/revised plan has been reviewed and approved.
 - (16) Other info deemed relevant by commissioner

68-211-816. Municipal solid waste regions -- Failure to submit adequate plan -- Noncompliance with part -- Sanctions and penalties

- (a) Any noncompliance of a municipal solid waste region w/ this part shall cause commissioner to impose, as appropriate the following sanctions:
 - (1) first instance of noncompliance, warning letter to noncompliant county or region indicating reasons for noncompliance, sequence of graduated sanctions, and offer of technical assistance.
 - (2) Continued noncompliance 90 days after warning letter, noncomplying county/region loses eligibility for funds from solid waste management fund.
 - (3) Continued noncompliance 180 days after warning letter, potential additional civil penalty (\$1000--\$5000) for each subsequent day of noncompliance.
- (b) Civil penalties are assessed as in 68-211-117(b); any penalty collected shall be deposited in solid waste management fund.
- (c) Person who violates 68-211-608, 68-211-866(a) or 68-211-867(a) is subject to penalties in 68-211-117.

68-211-817. Publicly owned landfills or incinerators -- Exclusion of certain solid waste

- Publicly owned landfill/incinerator for municipal solid waste disposal may exclude non-region solid waste if exclusion consistent with region's plan...

68-211-818. -- 68-211-820 [Reserved]

- 68-211-821. Solid waste management fund -- Funding -- Transfer of functions to department -
- State-wide comprehensive goals for solid waste management programs**
- (a) Establishes general fund reserve, "solid waste management fund," to fund activities authorized by this part.
 - (b) All appropriations additional to solid waste management fund funded from appropriations otherwise available for solid waste management and related activities... To ensure availability of such funds, the following functions are transferred to the department of environment and conservation:
 - (1) Duties assigned to department of economic and community development...
 - (2) Duties assigned to department of general services...
 - (c) Commissioner shall develop, w/ input of municipal solid waste advisory committee, comprehensive goals for statewide system of solid waste management programs...
- 68-211-822. Annual grants to agencies by department -- Guidance for regional needs assessments and development plans**
- Annual grants from solid waste management fund may be awarded to [specified agencies], which agencies shall render technical assistance as needed to regions, counties and municipalities in development of plan...
- 68-211-823. Initial planning grants -- Annual plan maintenance grants -- Planning assistance grants**
- Department shall award from solid waste management fund:
 - (1) Annual plan maintenance grants to development districts... and
 - (2) Planning assistance grants to each county or solid waste region...
- 68-211-824. Matching grant assistance to establish or upgrade convenience centers**
- Department shall offer matching grant assistance from solid waste management fund to counties, the local share determined according to an economic index, to establish/ upgrade convenience centers... but such funds may not be used for regular operating expenses of a recurring nature.
- 68-211-825. Matching grant program -- Recycling collection site equipment -- State surcharge on tipping fee -- Rebate**
- [See statute]
- 68-211-826. Office of cooperative marketing for recyclables -- Duties**
- (a) Department of economic and community development shall establish from solid waste management fund an office of cooperative marketing for recyclables.
 - (b) Duties of office of cooperative marketing for recyclables:
 - (1) Establishing directory of regional buyers...
 - (2) Establishing directory of recycling programs
 - (3) Collecting information about materials for sale by recycling programs
 - (4) Assisting counties in contract negotiation
 - (5) Creating and operating data base for marketing service
 - (6) Maintaining inventory of available recyclable materials in Tennessee and marketing same.
- 68-211-827. [Repealed in 2002] formerly concerning recycling market advisory council**

68-211-828. Competitive grants for collection of household hazardous waste

- Department shall award from solid waste management fund competitive grants for collection of household hazardous waste at a permanent site to municipalities with population of 100,000 or more in counties with population of 287,000 or more...

68-211-829. Household hazardous wastes -- Mobile collection units

- From solid waste management fund, except as in 68-211-828, department shall ... provide for collection of household hazardous wastes on designated days in each county...

68-211-830. Matching grants for promoting new technologies

- From solid waste management fund, department may award matching grants to persons for new technologies.... Some matching grants shall be on a competitive basis... When recipient is local government, local share determined by department using an economic index...

68-211-831. Investigation and clean-up of unpermitted waste tire disposal sites and other unpermitted solid waste disposal sites

- From solid waste management fund, department may provide for investigation and clean-up of unpermitted waste tire disposal sites and other unpermitted solid waste disposal sites and shall attempt to recover expenditures from person responsible for disposal of such unpermitted waste...

68-211-832. -- 68-211-834 [Reserved]

68-211-835. Tipping fee -- Amount -- Collection -- Expenditure of revenues -- Joint ventures -- Surcharges -- Solid waste disposal fees -- Collection

- (a) Each county, municipality, or solid waste authority owning municipal solid waste disposal facility or incinerator may impose tipping fee on each ton of municipal solid waste or its volume equivalent.... equal to or a portion of the estimated cost of providing solid waste management services for such volume, pursuant to the uniform solid waste accounting system...
- (b) Revenue from tipping fees at publicly owned solid waste disposal facilities expended only for solid waste management purposes.
- (c) When municipal solid waste disposal facility is operated as joint venture...or by an authority, tipping fee...shall be remitted to the participating local governments or authorities for expenditure for solid waste management purposes only.
- (d) (1) Additional surcharge of 75 cents per ton of municipal solid waste at all Class I solid waste disposal facilities or incinerators until June 30, 2004; (2) such surcharge paid into state solid waste management fund.
- (e) County host to solid waste disposal facility/incinerator used by other counties in same region...may impose surcharge on [each ton or volume equivalent of] municipal solid waste received at such facility/incinerator by resolution of region county legislative bodies, and revenue received therefrom shall be expended for solid waste management purposes, or purposes related to offsetting costs incurred and other impacts resulting from the county being host to the facility/incinerator and if any municipality in host county incurs costs from such facility/incinerator, county shall appropriate funds from surcharge revenue for use by municipality to offset such costs.

- (f) (1) Additional to other authorized fees, a county/municipality/solid waste authority may impose: (A) Per ton surcharge for solid waste collection or disposal purposes... (B) a solid waste disposal fee... (2) aforesaid surcharge not effective until regional solid waste plan approved for such county.
- (g)
 - (1) County/municipality/solid waste authority may also impose/collect a reasonable solid waste disposal fee...solely to establish/ maintain solid waste collection and disposal services (i.e. convenience centers) accessible to all county residents, such fees being segregated from the general fund.
 - (2) County/municipality/solid waste authority may enter agreement w/ electric utility to collect solid waste disposal fee as part of utility's billing process if appropriately approved.
 - (3) Solid waste disposal fee shall not be imposed on any generator of solid waste if such waste managed in privately owned system...
 - (4) In any county [specified by population brackets], the solid waste disposal fee...is subject to the same penalty/interest as delinquent property taxes if not paid w/in 30 days after mailed notice of such fees. Unpaid fees, penalty/interest and cost are lien on real estate and improvements thereon upon filing of proper notice w/ appropriate register's office...

68-211-836. -- 68-211-840. [Reserved]

68-211-841. Tennessee municipal solid waste advisory committee

- (a) Tennessee municipal solid waste advisory committee to advise commissioner concerning solid waste management... [The committee shall have 15 members, each representing a particular entity, industry, interest, etc.]...
- (b) Commissioner shall appoint members of committee in consultation w/ state interest groups...
- (c) Members elect chair; majority constitutes quorum
- (d) Details expiration of terms
- (e) Committee vacancy filled by commissioner for unexpired term

68-211-842. Education program – Guidelines

- (a) Each solid waste regional plan shall include education program concerning solid waste issues, the guidelines of such program issued by the commissioner.
- (b) Concerns education program funding

68-211-843. Information clearinghouse -- Regional workshops and conferences

- Commissioner shall establish information clearinghouse and hold workshops regarding source reduction/recycling.

68-211-844. Educational and training programs

- Commissioner shall hold educational/training programs [for specified groups] to assist implementation of solid waste management programs and inform the public about solid waste issues....

68-211-845. Promotion of education concerning solid waste management

- University of Tennessee and commissioner of environment and conservation shall [do specified acts in conjunction] to promote solid waste management education in grades K-12.

68-211-846. Education programs – Awards

- Commissioner shall establish awards for outstanding school-based solid waste/source reduction/recycling education programs.

68-211-847. Matching grants to implement education program

- Department of environment and conservation may award matching grants for region's implementing education program of its approved plan from solid waste management fund; local share determined by department, using economic index...

68-211-848. Recognition of university and college programs -- Awards program

- Commissioner shall develop awards program for university/college programs concerning waste management/source reduction/recycling.

68-211-849. , 68-211-850. [Reserved]

68-211-851. Municipal solid waste collection and disposal systems -- Convenience centers -- Technical assistance

- (a) County shall assure availability of one or more municipal solid waste collection and disposal systems to supplement those provided by any municipality...and county shall assure convenience centers throughout county...
- (b) Each county/region shall submit plan for collection services to the department, identifying unmet needs and updated annually.
- (c) Technical assistance for developing/maintaining system of convenience centers available to county or region on request.
- (d) (1) Counties which maintain public receptacles for municipal solid waste at sites other than convenience center shall submit [specified information] to department. (2) Board (§ 68-211-111) determines requirements for operation/use of such receptacles... (3) Receptacles not in continuous use since Jan. 1, 1996 not permitted.

68-211-852. [Repealed in 1999]

68-211-853. Landfills -- Certification of operators, attendants and participating persons -- Training -- Suspension or revocation of operating license or operator's certification

- (a) ...board shall establish program for certification of operators, attendants and other persons participating in or responsible for operation of any Class I landfill regulated by the department , which shall:
 - (1) Identify persons/positions who must obtain certification
 - (2) Set requirements/term for initial certification and recertification...
 - (3) Establish different levels/requirements of certification...
 - (4) Impose fees for training/certification program, and
 - (5) Require one or more certified attendants on site of Class I landfill during operation hours
- (b) Training required may be conducted by department or another department-approved person.

- (c) Department may suspend/revoke operating license of any landfill regulated by department for noncompliance w/ subsections (a)(1) or (a)(5) above.
- (d) Department may suspend/revoke operator's certification for noncompliance w/ this part or for failure to comply w/ department mandated conditions of operation.

68-211-854. Contracting with private entities

- This part shall not prohibit a county/municipality/solid waste authority from privately contracting for collection/recycling services.

68-211-855. -- 68-211-860. [Reserved]

68-211-861. State waste reduction and diversion goal -- Credit -- Basis for goal -- Sanction for failure to meet goal.

- (a) State goal is 25% reduction in solid waste disposed at Class I municipal solid waste disposal facilities/incinerators...by Dec. 31, 2003 measured from 1995 base year.
- (b) If region doesn't meet 25% waste reduction/diversion goal, department will assess region's program relative to other regions that meet the goal and whether failure is due to factors beyond control of region. This qualitative assessment method shall be developed by the department, approved by the municipal solid waste advisory committee and promulgated in accord with Uniform Administrative Procedures Act.
- (c) County/region can't receive credit toward waste reduction/diversion goal for pre-1985 reductions.
- (d) 25% goal pertains only to facilities that accept municipal solid waste... Waste measurements based on amount entering facility before combustion/landfilling. Waste disposal measurements can't include materials recovered/collected for recycling. Department shall issue method for calculating source reduction/recycling.
- (e) Failure of region to meet 25% reduction/diversion goal or to receive favorable qualitative assessment by department may subject offenders to sanctions; however, if such failure is not attributable to all constituents, commissioner may apply sanctions only to counties/municipalities or solid waste authorities that caused the failure.
- (f) County/region may design own plan/methods, considering local conditions for attaining 25% reduction/diversion goal and such shall be included in the requisite county/regional plan.

68-211-862. Records of origin and amount of solid waste received at transfer stations, disposal facilities, and incinerators -- Exclusion -- Measurement of amount of solid waste received.

- (a) Owner/operator must keep written record of amounts received and county of origin of solid waste, measured in tons, which shall be submitted to the department.
- (b) Methods for measurement in tons: (1) scales at facility (2) scales at location other than facility

68-211-863. Sites for collection of recyclable materials -- Annual reports

- Each county shall provide one or more sites for collection of recyclable materials w/in the county (unless such is already available.)

68-211-864. Technical assistance

- University of Tennessee institute for public service shall provide technical assistance w/ recycling programs on request of county, municipality, authority, or region.

68-211-865. Department of general services -- Additional duties

- Department of general services shall:
 - (1) Expand department's demonstration state office recycling program for paper, aluminum cans, bottles...
 - (2) ...newsprint, plastic bottles, mixed paper and steel cans;
 - (3) Agree to use state inmates to collect/sort/market recyclables at correctional institutions.
 - (4) Demonstrate new uses of recovered materials
 - (5) Recycle surplus state property...which can't be sold for reuse...
 - (6) Revise product specifications to require procurement of recycled products...
 - (7) Encourage state gov't departments to purchase recycled/recyclable products...
 - (8) Encourage county gov'ts to purchase recycled materials from state contracts..
 - (9) Effect procurement contracts which are subject to competitive bidding using [subdivision 6] specifications.

68-211-866. Whole waste tires -- Lead-acid batteries -- Used oil -- When acceptance for disposal prohibited -- Storage sites

- (a) No municipal solid waste disposal facility/incinerator shall accept any whole waste tires, lead-acid batteries or used oil... (but whole waste tires may be incinerated, subject to other applicable laws/regulations.)
- (b) Each county shall provide...at least one site to receive/store waste tires, used auto oils/fluids, and lead-acid batteries, if adequate sites not otherwise available... Operator of such sites shall sell and/or transfer recyclable materials stored at such sites to commercial recycler or regional receiving facility as often as practicable.

68-211-867. Whole, unshredded tires

- (a) Department of environment and conservation shall develop waste tire management program for "beneficial end use"
- (b) "Beneficial end use" includes [specified uses(1-5)]
- (c)
 - (1) Department shall contract for services of mobile tire shredder (using solid waste management fund)...
 - (2) Department may use solid waste management fund to contract w/ approved beneficial end user or its agent for recycling waste tires...
 - (3) Department may provide grants from solid waste management fund to assist counties in locating, collecting and disposing of waste tires...
- (d)
 - (1) Landfill shall not accept whole, unshredded waste tires...
 - (2) County may not dispose of shredded waste tires in landfill...if cost of shredding, transporting, and disposal exceeds cost of beneficial end use...

68-211-868. -- 68-211-870. [Reserved.]

68-211-871. Annual report -- Contents -- Annual progress report -- Sanctions for noncompliance -- Annual reports by recovered materials facilities

- (a) ...each region shall submit annual report to commissioner for preceding calendar year ...including data on (1) collection; (2) recycling; (3) transportation; (4) disposal; (5) public costs; and (6) any other info relevant to solid waste planning and management.

- (b) Commissioner shall also require a region to submit annual progress report on implementation of the approved plan.
- (c) Region may require persons engaged in municipal solid waste management or recycling activities w/in region to provide any info needed for region to comply w/ [these] reporting requirements.
- (d) Region may bring action for mandatory injunction against any person failing to properly report...to compel compliance; region is entitled to recover all costs and attorney's fees from any noncompliant person.
- (e) Recovered materials processing facility shall report annually the quantities of recovered materials processed at the facility to the department or its designee. Department may enter agreements w/ private recycling organizations to facilitate gathering such information...

68-211-872. Solid waste planning and management data base

- Commissioner shall establish statewide data base which can analyze county reports on solid waste generation, collection, recycling, transportation, disposal and costs.

68-211-873. Annual report to governor and general assembly

- ...concerning state's solid waste management system shall be prepared by department.

68-211-874. Accounting for financial activities -- Funds -- Uniform solid waste financial accounting system -- Development -- Approval -- Requirement for state funds

- (a) Each county/solid waste authority/municipality shall account for financial activities related to management of solid waste in special revenue fund or enterprise fund... Any county/solid waste authority/municipality operating landfill and/or incinerator shall account for financial activities related thereto in enterprise fund. Each county, solid waste authority and municipality shall use uniform solid waste financial accounting system and chart of accounts developed by comptroller...
- (b) Comptroller...shall develop uniform financial accounting system conforming to GAAP...
- (c) ...which system is subject to approval of commissioner of finance and administration and which system each county shall establish/maintain upon such approval.
- (d) No state funds for solid waste management shall be released to a county, solid waste authority or municipality unless financial activities related to solid waste management are accounted for in special revenue fund or enterprise fund... No state funds for solid waste management shall be released to a county, solid waste authority or municipality operating landfill/incinerator unless financial activities related thereto are accounted for in an enterprise fund.

- (6) The economic impact on the county, city or both;
- (7) The compatibility with existing development or zoning plans; and
- (8) Any other factor which may affect the public health, safety or welfare.

(c) Judicial review of the legislative body's determination shall be a de novo review before the chancery court for the county in which the landfill is proposed to be located. [Acts 1989, ch. 515, § 5; T.C.A., § 68-31-704.]

NOTES TO DECISIONS

ANALYSIS

- 1. De novo review.
- 2. Notice sufficient.

1. De Novo Review.

Subsection (c) required the reviewing court to consider all evidence presented to the board, plus any relevant evidence presented to the court, and to decide de novo the factual question of whether a fact or facts existed which justified the board in refusing the permit.

Tucker v. Humphreys County, 944 S.W.2d 613 (Tenn. Ct. App. 1996).

2. Notice Sufficient.

Notice requirements of this section and § 68-211-703 were complied with where the first notice of hearing was published two months after the filing of the application, and the final notice was made 11 days before the public hearing. Tucker v. Humphreys County, 944 S.W.2d 613 (Tenn. Ct. App. 1996).

68-211-705. [Repealed.]

Compiler's Notes. Former § 68-211-705 (Acts 1989, ch. 515, § 6; T.C.A. 68-31-705), concerning applicability of zoning ordinances

and plans, was repealed by Acts 1995, ch. 5, § 2.

68-211-706. Applicability — Private, municipal or county landfills. —

(a) The provisions of this part shall not apply to any private landfill which accepts solid waste solely generated by its owner and does not accept county or municipal solid waste or ordinary household garbage.

(b) The provisions of this part shall not apply to any municipal or county owned and/or operated landfill. [Acts 1989, ch. 515, §§ 10, 12; T.C.A., § 68-31-706.]

Attorney General Opinions. Constitutionality, OAC 89-115 (11/1/89).

NOTES TO DECISIONS

1. Severability.

Where private landfill owners and operators are denied equal protection under statute, it is appropriate for courts to sever that section

from statute and uphold constitutionality of remainder. Profill Dev., Inc. v. Dills, 960 S.W.2d 17 (Tenn. Ct. App. 1997).

68-211-707. Applicability — Requirement of local approval. —

(a) The provisions of §§ 68-211-701 — 68-211-705 and this section shall only apply in any county or municipality in which it is approved by a two-thirds (2/3) vote of the appropriate legislative body. The provisions of §§ 68-211-701 — 68-211-705 and this section are for local review and approval and shall be conducted prior to issuance of a permit by the department of environment and conservation or the commissioner.

(b) Any county or municipality which has approved this part by a two-thirds ($\frac{2}{3}$) vote of the appropriate legislative body pursuant to subsection (a) shall have the authority to later reject the provisions of this part by a two-thirds ($\frac{2}{3}$) vote of the appropriate legislative body. If the appropriate legislative body votes by two-thirds ($\frac{2}{3}$) to reject the provisions of this part after having previously voted to approve this part, then the provisions of this part shall no longer apply to such county or municipality. [Acts 1989, ch. 515, § 7; T.C.A., § 68-31-707; Acts 1995, ch. 5, § 3.]

Compiler's Notes. Acts 1995, ch. 5, § 6 made the amendments by Acts 1995, ch. 5 applicable to all permit applications pending on March 15, 1995 and all permit applications filed on or after March 15, 1995.

Section 68-211-705, referred to in (a), was repealed by Acts 1995, ch. 5.

Section to Section References. This section is referred to in § 68-211-105.

NOTES TO DECISIONS

ANALYSIS

1. Construction.
2. County authority.

1. Construction.

Where statutes may be considered complementary and capable of working in conjunction with one another, courts should construe them so as to avoid placing one statute in conflict with another. *Profill Dev., Inc. v. Dills*, 960 S.W.2d 17 (Tenn. Ct. App. 1997).

2. County Authority.

This part does not require that both county and city approve location of proposed solid waste facility within boundaries of incorporated municipality. *Profill Dev., Inc. v. Dills*, 960 S.W.2d 17 (Tenn. Ct. App. 1997).

Local government's failure to opt into Part Seven operates as de facto approval of proposed landfill. *Profill Dev., Inc. v. Dills*, 960 S.W.2d 17 (Tenn. Ct. App. 1997).

68-211-708. [Repealed.]

Compiler's Notes. Former § 68-211-708 (Acts 1989, ch. 515, § 9; 1991, ch. 451, § 85; T.C.A., § 68-31-708; Acts 1994, ch. 784, § 1),

concerning the expiration of §§ 68-211-701 to 68-211-708, was repealed by Acts 1995, ch. 5, § 4.

PART 8—SOLID WASTE MANAGEMENT

68-211-801. Short title. — This part may be known and cited as the "Solid Waste Management Act of 1991." [Acts 1991, ch. 451, § 1; T.C.A., § 68-31-801.]

Compiler's Notes. For transfer of former ch. 13, parts 1-9 of this title to parts 1-9 of this chapter in 1992, see the Compiler's Notes under § 68-211-101.

The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation, effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

Section to Section References. This part is referred to in §§ 49-9-406, 68-211-111, 68-211-903, 68-211-905, 68-211-906, 68-211-910, 68-211-911.

This section is referred to in § 68-211-105.

Law Reviews. A Lawyer's Guide to the New Solid Waste Management Act (Martha M. Gentry and William R. Bruce), 27 No. 6 Tenn. B.J. 32 (1991).

Attorney General Opinions. Validity of county-wide solid waste disposal fee to defray the cost of operating solid waste convenience centers, OAG 93-49 (7/23/93).

Competitive bidding requirements, OAG 97-145 (10/23/97).

NOTES TO DECISIONS

ANALYSIS

1. Construction.
2. Private act invalid.
3. County authority.

1. Construction.

Expiration of part seven of this chapter, originally scheduled upon effective implementation of statewide plan or upon a certain date, was not triggered by passage of § 68-211-801, since no statewide plan was effectively implemented and legislative history showed a clear intent that it not expire. *Profill Dev., Inc. v. Dills*, 960 S.W.2d 17 (Tenn. Cl. App. 1997).

2. Private Act Invalid.

A private act authorizing a county commis-

sion to impose a tax on the privilege of disposing of solid waste at landfills in the county was invalid because it was inconsistent with general laws mandating a comprehensive plan for the control of solid waste in the state. *City of Tullahoma v. Bedford County*, 938 S.W.2d 408 (Tenn. 1997).

3. County Authority.

Resolution of a county accepting authority to approve or disapprove private landfills was valid since there was no evidence that enactment of this part implemented the Solid Waste Planning and Recovery Act (§ 68-211-601 et seq.), so as to cause expiration of the local authority law (§ 68-211-701 et seq.) *Tucker v. Humphreys County*, 944 S.W.2d 613 (Tenn. Cl. App. 1996).

68-211-802. Definitions. — (a) As used in this part, unless the context otherwise requires:

(1) "Authority" or "solid waste authority" means any public instrumentality organized pursuant to the provisions of part 9 of this chapter;

(2) "Board" means a board, established to manage the affairs of a municipal solid waste management region, except in §§ 68-211-119 — 68-211-121, 68-211-852 [repealed], 68-211-853, 68-211-867 and 68-211-871 where "board" means the solid waste disposal control board created in § 68-211-111;

(3) "Commissioner" means the commissioner of environment and conservation;

(4) "Convenience center" means any area which is staffed and fenced that has waste receptacles on site that are open to the public, when an attendant is present, to receive household waste, municipal solid waste and recyclable materials;

(5) "Department" means the department of environment and conservation;

(6) "Development district" means a development district organized pursuant to title 13, chapter 14;

(7) "Household hazardous waste" means solid wastes discarded from homes or similar sources as listed in 40 C.F.R. part 261.4(b)(1), that are either hazardous wastes as listed by the EPA in 40 C.F.R. part 261.33(e) or (f), or wastes that exhibit any of the following characteristics as defined in 40 C.F.R. parts 261.21 — 261.24: ignitability, corrosivity, reactivity and TCLP toxicity;

(8) "Household waste" means any waste material, including garbage, trash and refuse, and yard waste derived from households. Households include single and multiple residences, campgrounds, picnic grounds and day-use recreation areas;

(9) "Landfill" means a facility, permitted pursuant to part 1 of this chapter, where solid wastes are disposed of by burial in excavated pits or trenches or by placement on land and covering with soil or other approved material;

(10) "Municipal solid waste" means any garbage, refuse, industrial lunch-room or office waste, household waste, household hazardous waste, yard waste, and any other material resulting from the operation of residential, municipal,

commercial or institutional establishments and from community activities; provided, that "municipal solid waste" does not include the following:

- (A) Radioactive waste;
 - (B) Hazardous waste as defined in § 68-212-104;
 - (C) Infectious waste;
 - (D) Materials that are being transported to a facility for reprocessing or reuse; provided further, that reprocessing or reuse does not include incineration or placement in a landfill; and
 - (E) Industrial waste which may include office, domestic or cafeteria waste, managed in a privately owned solid waste disposal system or resource recovery facility, if such waste is generated solely by the owner of the solid waste disposal system or resource recovery facility;
- (11) "Operator" means the person who is in charge of the actual, on-site operation of a solid waste management facility during any period of operation;
- (12) "Person" means "person" as defined in § 68-211-103;
- (13) "Recovered materials" means those materials which have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not requiring subsequent separation processing. Such recovered materials are not solid waste;
- (14) "Recovered materials processing facility" means a facility engaged solely in the storage, processing and resale or reuse of recovered materials. A recovered materials processing facility is not a solid waste processing facility;
- (15) "Recyclable materials" means those materials which are capable of being reused or returned to use in the form of raw materials or products, whether or not such materials have been diverted or removed from the solid waste stream;
- (16) "Recycling" means the process by which recovered materials are transformed into new products, including the collection, separation, processing, and reuse of recovered materials either directly or as raw materials for the manufacture of new products;
- (17) "Region" means a municipal solid waste region organized pursuant to § 68-211-813(a);
- (18) "Solid waste stream" means the system through which solid waste and recoverable materials move from the point of discard to recovery or disposal;
- (19) "Tire" means the continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle;
- (20) "Transporter" means a person engaged in the transportation of municipal solid waste collected or to be baled or processed, or disposed of in Tennessee by rail, highway or water, in significant amounts. The amounts deemed significant shall be determined by the board and established by regulation;
- (21) "Used oil" means any oil which has been refined from crude or synthetic, or recovered oil and, as a result of use, storage or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and may be economically recycled or may be burned as fuel;
- (22) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect; and

(23) "Yard waste" means vegetative matter resulting from landscaping, lawn maintenance and land clearing operations other than mining, agricultural and forestry operations.

(b) Unless the context requires otherwise or this section defines a term differently, the definitions set forth in §§ 68-211-103, 68-212-104 and 68-212-303, and in any regulations promulgated pursuant to this chapter and chapter 212 of this title, apply to terms used in this part. [Acts 1991, ch. 451, § 2; T.C.A., § 68-31-802; Acts 1995, ch. 501, § 3; 1996, ch. 846, §§ 3-8, 53; 1997, ch. 221, § 1.]

Compiler's Notes. Former 68-211-852, referred to in this section, was repealed in 1999.
Section to Section References. This section is referred to in §§ 55-8-101, 55-8-158, 55-8-160, 68-211-124.

Cited: Horton v. Carroll County, 968 S.W.2d 841 (Tenn. Ct. App. 1997).

68-211-803. Public policy. — (a) It is declared to be the policy of this state, in furtherance of its responsibility to protect the public health, safety and well-being of its citizens and to protect and enhance the quality of its environment, to institute and maintain a comprehensive, integrated, state-wide program for solid waste management, which will assure that solid waste facilities, whether publicly or privately operated, do not adversely affect the health, safety and well-being of the public and do not degrade the quality of the environment by reason of their location, design, method of operation or other means and which, to the extent feasible and practical, makes maximum utilization of the resources contained in solid waste.

(b) It is further declared to be the policy of this state to educate and encourage generators and handlers of solid waste to reduce and minimize to the greatest extent possible the amount of solid waste which requires collection, treatment, incineration or disposal through source reduction, reuse, composting, recycling and other methods.

(c) It is further declared to be the policy of this state to promote markets for, and engage in the purchase of, goods made from recovered materials and goods which are recyclable. [Acts 1991, ch. 451, § 3; T.C.A., § 68-31-803.]

68-211-804. Applicability. — Unless specifically otherwise provided, this part does not apply to:

(1) Hazardous waste, regulated pursuant to chapter 212 of this title, except household hazardous waste;

(2) Infectious waste;

(3) Radioactive waste; or

(4) Industrial waste, which may include office, domestic or cafeteria waste, managed in a privately owned solid waste disposal system or resource recovery facility, if such waste is generated solely by the owner of the solid waste disposal system or resource recovery facility. [Acts 1991, ch. 451, § 4; T.C.A., § 68-31-804.]

68-211-805. Liberal construction. — The provisions of this part are remedial in nature and shall be liberally construed to effect its purpose of

providing for a systematic and efficient means of solid waste disposal and encouraging the best utilization and conservation of energy and natural resources. [Acts 1991, ch. 451, § 82; T.C.A., § 68-31-805.]

68-211-806 — 68-211-810. [Reserved.]

68-211-811. Municipal solid waste planning district — District needs assessment. — (a) The counties within each development district, as established pursuant to title 13, chapter 14, including all municipalities therein, shall constitute a municipal solid waste planning district. Each district shall submit a district needs assessment for all of the counties within the district to the state planning office by September 30, 1992. The needs assessment for the municipal solid waste planning district shall be conducted by the staff of the development district. Such staff shall coordinate and maintain the plan. The needs assessment shall be revised to reflect subsequent developments in the district by April 1, 1999, and every five (5) years thereafter.

(b) In conjunction with the commissioner, each development district shall sponsor a district-wide meeting to deliver the findings of the district needs assessment to the citizens of the district.

(c) The district needs assessment will identify rational waste disposal areas within the district and include at least the following information:

- (1) Demographic information and projections for a ten-year planning period;
- (2) An analysis of economic activity within the district;
- (3) Characterization of the solid waste stream;
- (4) Projections of solid waste generation for the ten-year planning period;
- (5) Evaluation of the collection systems for every municipality and county within the district;
- (6) Evaluation of existing solid waste capacity and management facilities within the district and evaluation of any planned new or expanded facilities;
- (7) A statement of district goals that are consistent with the state plan;
- (8) An analysis of existing or potential waste flows within the district and between adjacent districts;
- (9) A comparison of projected demands from waste generation and importation of waste with available and projected capacity and an identification of potential shortfalls in capacity; and
- (10) Any additional information as the commissioner may require. [Acts 1991, ch. 451, § 10; T.C.A., § 68-31-811; Acts 1995, ch. 501, § 3; 1996, ch. 846, § 9.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning

office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

68-211-812. [Repealed.]

Compiler's Notes. Former § 68-211-812 (Acts 1991, ch. 451, § 1; T.C.A., § 68-31-812), concerning municipal solid waste planning ad-

visory committees, was repealed by Acts 1996, ch. 846, § 10.

68-211-813. Municipal solid waste regions — Board — Plan for disposal capacity and waste reduction — Regional municipal solid waste advisory committee. — (a)(1) After consideration of the needs assessment is completed, municipal solid waste regions shall be established by resolutions of the respective county legislative bodies by December 12, 1992. A municipal solid waste region shall consist of one (1) county or two (2) or more contiguous counties. If the region consists of more than one (1) county, an agreement establishing the region shall be approved by the legislative body of each county that is a party to the agreement.

(2) Once established, municipal solid waste regions shall continue to exist until dissolved, a successor region or regions established and the requirements of this section are met. A municipal solid waste region may be dissolved and a new region or reconfigured region established upon completion of the following procedure:

(A) The approval of the dissolution of the existing region by resolution of the county legislative body of each county in the existing region;

(B) The approval of the proposed new or reconfigured region by resolution of the county legislative body of each county that is to be a part of the new or reconfigured region;

(C) The submittal to the department of environment and conservation of a list of the new board members, their addresses, phone numbers, terms of office and a new or revised plan for any new or reconfigured region that complies with the requirements of this part; and

(D) The approval of the department of environment and conservation of all of the new or revised plans for all of the new or reconfigured regions.

(3) Each county and region shall continue to follow the existing approved plan until new or revised plans are approved by the department of environment and conservation for each new or reconfigured region.

(4) The preferred organization of the regions shall be multi-county. Any county adopting a resolution establishing a single-county region shall state the reasons for acting alone in the resolution.

(b)(1) The resolution establishing a region for a county or approving an agreement to establish a region with other counties shall provide for the establishment of a board to administer the activities of the region. This board shall consist of an odd number, not less than five (5) nor more than fifteen (15). Each county that is a member of a region shall be represented by at least one (1) member on the board. Municipalities that provide solid waste collection services or provide solid waste disposal services, directly or by contract, shall be represented on the board. The members of the board shall be appointed by the county executives and municipal mayors, respectively, of the counties and eligible municipalities within the region. Municipalities entitled to representation on the board may agree to joint or multiple representation by a board member or for a county member to represent one (1) or more municipalities upon agreement of all local governments who share representation by a board member. Any such agreement shall specify the method of making the appointment for a member representing more than one (1) local governmental entity. Members of county and municipal governing bodies, county executives, municipal mayors, county and municipal officers and department heads may be

appointed to the board. Appointments must be approved by the legislative or governing bodies of the respective counties and eligible municipalities within the region. The members of the board shall serve for terms of six (6) years or until their successors are elected and are qualified by taking an oath of office, except that the initial board shall have approximately one-third ($\frac{1}{3}$) of the members with terms of two (2) years, and approximately one-third ($\frac{1}{3}$) of the members with terms of four (4) years, so as to stagger the terms of office.

(2) Any county that has a solid waste authority, not organized pursuant to part 9 of this chapter and in existence on July 1, 1991, may designate such authority as the board to administer the activities of the region, if such county chooses to be a region unto itself. The legislative body of the county and of each municipality that provides solid waste collection services or solid waste disposal services in the region shall approve such designation by the passage of an appropriate resolution.

(3) Appointments made after July 1, 1994, to the board for a municipal solid waste region consisting of counties having a population less than two hundred thousand (200,000) according to the 1990 federal census or any subsequent federal census shall be made so that rural landowners shall have representation on the board, and by December 31, 1998, at least thirty percent (30%) of the membership shall consist of members who own at least a fifty percent (50%) equitable or fee simple interest in land that is eligible for classification as agricultural, forest or open space land under the terms of the Agricultural, Forest and Open Space Land Act of 1976, as amended.

(c) Each region shall develop a plan for a ten-year disposal capacity, and for achieving a twenty-five percent (25%) waste reduction goal in accordance with § 68-211-861.

(d) The legislative body of any municipality which lies within the boundaries of two (2) or more regions shall select by resolution in which region it shall participate.

(e) Within each municipal solid waste region, the board of the region shall establish a regional municipal solid waste advisory committee whose composition shall be determined by the board. [Acts 1991, ch. 451, § 12; T.C.A., § 68-31-813; Acts 1994, ch. 735, § 1; 1996, ch. 846, §§ 11-13.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

Section to Section References. This section is referred to in §§ 68-211-802, 68-211-903.

Cited: Horton v. Carroll County, 968 S.W.2d 841 (Tenn. Ct. App. 1997).

68-211-814. Municipal solid waste region plans — Authority of region or solid waste authority after approval. — (a)(1) Each region shall submit its plan to the department of environment and conservation by July 1, 1994. The plan shall be formulated in strict compliance with § 68-211-815. After receiving a plan, the department shall approve or disapprove the plan within ninety (90) days. The department shall approve the plan if it adequately addresses each element required by § 68-211-815. If a plan is disapproved, the department shall state in detail the reasons for such disapproval. The region shall review any disapproved plan and shall resubmit a plan which corrects all

deficiencies to the department within sixty (60) days of receiving the letter of disapproval.

(2) The plan may be revised at any time to reflect subsequent developments in the region and shall be revised every five (5) years after the plan's initial approval. Each revised plan shall be submitted to, reviewed by and approved or disapproved by the department of environment and conservation in the same manner as the initial plan.

(3) The department may require annual progress reports on the implementation of a plan from a region.

(b)(1)(A) If the commissioner approves the plan, the region or solid waste authority, if one has been formed pursuant to part 9 of this chapter, by resolution and subsequent adoption of ordinances by counties and municipalities in the region, may also regulate the flow of collected municipal solid waste generated within the region. Prior to the adoption of any resolution declaring the necessity of requiring mandatory flow of municipal solid waste, the region or authority, following one (1) or more public hearings, shall demonstrate in writing to the commissioner that it has considered the utilization of any municipal solid waste management facility in existence within the region on July 1, 1991, which meets the proposed or final federal Resource Conservation and Recovery Act (RCRA) Subtitle D regulations. The region or authority must show that its decision not to use the existing facility is based on the fact that:

(i) Such facility is environmentally unsound or inadequate to meet the region's ten-year capacity assurance plan;

(ii)(a) Costs for the use of such facility are inconsistent with comparable facilities within the state; or

(b) The existing facility is operating in a manner that is inconsistent with the plan; and

(iii) The waste subject to flow control will be sent only to a facility or facilities that meet all state and federal regulations.

(B) The region or authority may restrict access to any landfills and incinerators which dispose of municipal solid waste by excluding waste originating with persons or entities outside the region in order to effectuate the plan. If a facility within a region has accepted waste from a specific source outside the region prior to July 1, 1991, the region may not prohibit that facility from continuing to accept waste from that source, unless the facility's acceptance of that waste significantly impairs the region's ability to effectuate its plan.

(C) Appeal of final actions of the region or authority, including any determinations under subdivision (b)(1), shall be taken by an aggrieved person within thirty (30) days to any chancery court in the region or authority which took such final action.

(D) After the plan is approved, the region must approve any application for a permit for a solid waste disposal facility or incinerator within the region as is consistent with the region's disposal needs before any permit is issued by the commissioner pursuant to this chapter.

(2)(A) An applicant for a permit for construction or expansion of a solid waste disposal facility or incinerator shall submit a copy of the application to

the region at or before the time the application is submitted to the commissioner. The region shall review the application for compliance with the provisions of this section, and shall conduct a public hearing after public notice has been given in accordance with title 8, chapter 44, prior to making the determination provided for in this subdivision. The hearing shall afford all interested persons an opportunity to submit written and oral comments, and the proceeding shall be recorded and transcribed. The region shall render a decision on the application within ninety (90) days after receipt of a complete application. The region shall immediately notify the commissioner of its acceptance or rejection of an application.

(B) The region may reject an application for a new solid waste disposal facility or incinerator or expansion of an existing solid waste disposal facility or incinerator within the region only upon determining that the application is inconsistent with the solid waste management plan adopted by the county or region and approved by the department, and the region shall document in writing the specific grounds on which the application is inconsistent with such plan.

(C) Where a region rejects an application, the commissioner shall not issue the permit unless the commissioner finds that the decision of the region is arbitrary and capricious and unsupported in the record developed before the region.

(D) Appeal of final actions of the region, including any determination under subdivision (b)(2)(B), shall be taken by an aggrieved person within thirty (30) days to the chancery court of Davidson County. The court shall exercise the same review as it would in a case arising under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. For the purposes of this section, an "aggrieved person" is limited to persons applying for permits, persons who own property or live within a three-mile radius of the facility or site that is proposed for permitting, or cities and counties in which the proposed facility is located.

(E) The region shall provide for reasonable public notice of meetings. The region shall be subject to title 10, chapter 7, part 5. The region shall act in accordance with title 8, chapter 44.

(3) If the region has formed a solid waste authority pursuant to part 9 of this chapter, then the authority shall approve any permit applications as provided for in this section instead of the region.

(4) A region or solid waste authority may not impair the obligations of contracts entered into before the date of approval of the region's plan in violation of the Tennessee Constitution, art. I, § 20.

(5) A region or solid waste authority may not restrict the movement of recovered materials into, out of, or within the region.

(6) Before submitting a plan required by this part, each municipal solid waste region shall hold a public hearing on the proposed plan or revised plan. [Acts 1991, ch. 451, § 13; T.C.A., § 68-31-814; Acts 1993, ch. 523, § 4; 1996, ch. 846, §§ 14-18.]

Compiler's Notes. The federal Resource Conservation and Recovery Act, referred to in this section, is codified at 42 U.S.C. § 6901 et seq.

The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

Section to Section References. This section is referred to in §§ 68-211-815, 68-211-817,

68-211-823, 68-211-851, 68-211-861, 68-211-871.

Attorney General Opinions. Constitutionality of (b)(1), OAG 95-41 (4/12/95).

Constitutionality, OAG 95-041 (4/18/95).

1988 Tenn. Priv. Acts, ch. 144 — Restrictions on solid waste disposal — Commerce Clause, OAG 00-033 (2/28/00).

68-211-815. Municipal solid waste region plans — Contents. —

(a) Each plan and revised plan submitted by a municipal solid waste region pursuant to this part shall be consistent with the state solid waste plan, with the provisions of this part, with all other applicable provisions of law and with any regulation promulgated by the department.

(b) At a minimum, each plan and revised plan submitted by a municipal solid waste region shall include the following:

(1) Demographic information;

(2) A current system analysis of:

(A) Waste streams, including data concerning types and amounts generated;

(B) Collection capability, including data detailing the different types of collection systems and the populations and areas which receive and do not receive such services;

(C) Disposal capability, including an analysis of the remaining life expectancy of landfills or other disposal facilities;

(D) Costs, using a full-cost accounting model developed by the commissioner, including costs of collection, disposal, maintenance, contracts and other costs; and

(E) Revenues, including cost reimbursement fees, appropriations and other revenue sources;

(3) Adoption of the uniform financial accounting system required by § 68-211-874;

(4) Anticipated growth trends for the next ten-year period;

(5) Anticipated waste capacity needs;

(6) Planned capacity assurance, including descriptions of planned or needed facilities;

(7) A recycling plan, including a description of current public and private recycling efforts and planned efforts to enhance recycling within the county or region;

(8) A plan for the disposal of household hazardous wastes;

(9) Adoption of uniform reporting requirements as required by this part;

(10) A description of waste reduction activities designed to attain the twenty-five percent (25%) reduction required by § 68-211-861;

(11) A description of education initiatives aimed at businesses, industries, schools, citizens and others, which addresses recycling, waste reduction, collection and other goals of this part;

(12) An evaluation of multi-county solid waste disposal region options with an explanation of the reasons for adopting or failing to adopt a multi-county regional approach;

(13) A timetable for implementation of the plan;

(14) A description of the responsibilities of the various participating jurisdictions;

(15) A certification from the region's part 9 solid waste authority, if such an authority has been formed, or if no such authority has been formed, the county legislative body of each county in the region that they have reviewed and approved of the region's plan and/or revised plan; and

(16) Any other information as the commissioner may deem relevant to the implementation of this part. [Acts 1991, ch. 451, § 14; T.C.A., § 68-31-815; Acts 1995, ch. 501, § 3; 1996, ch. 846, §§ 19-22.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

Section to Section References. This section is referred to in § 68-211-814.

Cited: *Horton v. Carroll County*, 968 S.W.2d 841 (Tenn. Ct. App. 1997).

68-211-816. Municipal solid waste regions — Failure to submit adequate plan — Noncompliance with part — Sanctions and penalties. —

(a) If a municipal solid waste region fails to submit an adequate plan in a timely fashion or if the commissioner does not approve any plan submitted to it, or for any other noncompliance with a provision of this part, then the commissioner shall impose the following sanctions, as appropriate, on the noncompliant county or region:

(1) On the first instance of noncompliance and on written notice from the commissioner, the commissioner shall issue a letter of warning to the noncompliant county or region 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) If noncompliance continues for ninety (90) days after issuance of the warning letter, the noncomplying county or region shall lose eligibility for funds from the solid waste management fund.

(3) If noncompliance continues for one hundred eighty (180) days after issuance of the warning letter, then, in addition to any other penalty imposed by law, the commissioner may impose a civil penalty for each day of noncompliance beyond such one-hundred-eighty-day period of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each day of noncompliance.

(b) Any civil penalty shall 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.

(c) Any person who violates § 68-211-608, § 68-211-866(a) or § 68-211-867(a) shall be subject to the penalties provided for in § 68-211-117. [Acts 1991, ch. 451, § 16; T.C.A., § 68-31-816; Acts 1995, ch. 501, § 3.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and

conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

Section to Section References. This section is referred to in § 68-211-861.

68-211-817. Publicly owned landfills or incinerators — Exclusion of certain solid waste. — A publicly owned landfill or incinerator for disposal of municipal solid waste may exclude solid waste originating outside of the region if such exclusion is consistent with the region's plan submitted pursuant to § 68-211-814. [Acts 1991, ch. 451, § 15; T.C.A., § 68-31-817.]

68-211-818 — 68-211-820. [Reserved.]

68-211-821. Solid waste management fund — Funding — Transfer of functions to department — State-wide comprehensive goals for solid waste management programs. — (a) There is hereby established a general fund reserve to be allocated by the general appropriations act which shall be known as the "solid waste management fund." Moneys from the fund may be expended to fund activities authorized by this part. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this part, and shall not revert to the general fund on any June 30. Any excess revenues on interest earned by such revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from such reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years. In addition to appropriations of solid waste management funds made by the annual appropriations act, at any time during the fiscal year, the commissioner of environment and conservation, subject to the approval of the commissioner of finance and administration, may use any additional funds available from the solid waste management fund to fund activities authorized by this part.

(b) It is the legislative intent that all appropriations which are required for the implementation of this part and which are in addition to the funds available from the solid waste management fund established by this section shall be funded from appropriations which are otherwise available for solid waste management and related activities as appropriated in the general appropriations act. In order to ensure the availability of such funds, the following functions are transferred to the department of environment and conservation, effective July 1, 1991:

(1) Duties assigned to the department of economic and community development, pursuant to §§ 68-211-826 and 68-211-827; and

(2) Duties assigned to the department of general services, pursuant to § 68-211-865(1), (2), (3) and (4). The commissioner of finance and administration is directed to transfer all appropriations, personnel, equipment and other sources allocated to these programs to the department of environment and conservation for the fiscal year 1991-1992.

(c) The commissioner is directed to develop, with the input and advice of the municipal solid waste advisory committee, comprehensive goals for the system of solid waste management programs throughout the state. These goals should address waste avoidance, waste reduction, recycling, composting, and household hazardous waste objectives and should incorporate a strategy of education, technical assistance, and incentives for assuring compliance by all solid waste regions. This program shall be put in place for grants given out after

July 1, 2000; provided, that there is sufficient information available on the waste reduction and diversion activities of the counties at that time. [Acts 1991, ch. 451, §§ 53, 89; T.C.A., § 68-31-821; Acts 1996, ch. 846, § 23; 1999, ch. 384, § 8.]

Section to Section References. This section is referred to in §§ 68-211-822 — 68-211-824, 68-211-827.

68-211-822. Annual grants to agencies by department — Guidance for regional needs assessments and development of plans. — From available funds in the solid waste management fund established by § 68-211-821, the department may award annual grants to the University of Tennessee county technical assistance service, the University of Tennessee municipal technical advisory service, the development districts and the department of economic and community development's division of local planning. Upon receiving such grant funds, these agencies shall render technical assistance to regions, counties and municipalities as needed in the development of the plan required by this part. [Acts 1991, ch. 451, § 17; T.C.A., § 68-31-822; Acts 1992, ch. 693, § 24.]

Code Commission Notes. Former subsections (b) and (c), concerning issuance by the state planning office of guidance for regional needs assessments and development of municipal solid waste regional plans by certain expired dates, were deleted in 1992 as obsolete.

68-211-823. Initial planning grants — Annual plan maintenance grants — Planning assistance grants. — From available funds in the solid waste management fund established in § 68-211-821, the department shall award:

(1) Annual plan maintenance grants to development districts in order to assist such districts in revising data, maintaining district needs assessments, and assisting counties within the district; and

(2) Planning assistance grants to each county or solid waste region in order to assist such counties or regions in developing, revising and maintaining regional plans required by § 68-211-814. [Acts 1991, ch. 451, § 19; T.C.A., § 68-31-823; Acts 1992, ch. 693, § 24; 1996, ch. 846, § 24.]

68-211-824. Matching grant assistance to establish or upgrade convenience centers. — From funds available in the solid waste management fund established by § 68-211-821, the department shall offer matching grant assistance to counties for the purpose of establishing or upgrading convenience centers required by § 68-211-851. Such grant funds may be applied to expenses for land, paving, fencing, shelters for attendants, containers and basic equipment including, but not limited to, balers, crushers, grinders and fencing. Such funds may also be applied to expenditures for developing and printing of operating manuals, but such funds may not be used for regular operating expenses of a recurring nature. The local share of the match shall be determined by the department, using an economic index promulgated by the board based upon factors which include, but are not limited to, per capita income and property values of the county applicant. Counties falling within

the lower one half ($\frac{1}{2}$) of the economic scale on the index shall be eligible for lower matching rates. The board shall promulgate regulations regarding the appropriate index and matching rates. [Acts 1991, ch. 451, § 21; T.C.A., § 68-31-824; Acts 1992, ch. 693, § 24.]

68-211-825. Matching grant program — Recycling collection site equipment — State surcharge on tipping fee — Rebate. — (a) From funds available from the solid waste management fund, the department shall establish a matching grant program for the purchase of equipment needed to ~~establish or upgrade recycling at a public or not-for-profit recycling collection site.~~ Such equipment may include, but is not limited to, containers, balers, crushers and grinders. No grant shall be awarded for the purchase of mechanical processing equipment to be used at a public or not-for-profit recycling collection site if there is adequate mechanical processing equipment at privately owned facilities which serve the relevant geographical area, unless the grant applicant demonstrates to the department's satisfaction that the mechanical processing equipment is an indispensable component of an otherwise eligible grant project and will not be used to compete with a privately owned facility. The local share of the match shall be determined by the department, using an economic index based upon factors which include, but are not limited to, per capita income and property values of the jurisdiction to be served. Areas falling within the lower economic scale on the index shall be eligible for lower matching rates.

(b) For the eleven (11) counties which generate the greatest amount of solid waste as recorded in the University of Tennessee's solid waste management report of February 1991 to the commissioner of environment and conservation, under a technical assistance contract pursuant to part 6 of this chapter, or as subsequently modified by data provided by subsequent annual reports required by § 68-211-871, the state shall grant a rebate against the amount due to the state under the state surcharge on the tipping fee imposed by this part. The state will rebate the amount of a county's credit to the county on an annual basis. The total amount of credits shall not exceed an amount equal to one hundred fifty percent (150%) of the funds allocated for recycling equipment grants. The rebate for any one (1) of the eleven (11) counties shall be determined pursuant to the following formula:

(tons of the county's solid waste)

(total tons of solid waste collected from all eleven (11) counties)

multiplied by

150% of state funds allocated for recycling grants

Such rebate shall be in lieu of recycling equipment grants for these eleven (11) counties. Within a county, the rebate shall be allocated proportionately by population among the municipalities in the county which provide collection or disposal services and the county for the remaining population of the county. A

county or municipality may only expend such rebate for recycling purposes and they must expend from local funds an amount equal to the amount of the rebate towards such purposes. [Acts 1991, ch. 451, § 29; T.C.A., § 68-31-825; Acts 1992, ch. 693, § 24; 1995, ch. 501, § 3; 1996, ch. 846, §§ 25, 26; 1997, ch. 221, § 2.]

Cross-References. Solid waste management fund, § 68-211-821.

68-211-826. Office of cooperative marketing for recyclables — Duties. — (a) From funds available from the solid waste management fund, the department of economic and community development shall establish an office of cooperative marketing for recyclables.

(b) The duties of the office of cooperative marketing for recyclables include:

(1) Preparing and maintaining a directory of regional buyers, which shall include current information on product specifications, markets and price ranges;

(2) Preparing and maintaining a directory of public and private, for profit and nonprofit recycling programs;

(3) Collecting information on the quantity and quality of materials offered for sale by recycling programs;

(4) Assisting counties in contract negotiation;

(5) Creating a data base for and operating an interactive information clearinghouse and marketing service, which shall include pricing information; and

(6) Maintaining an inventory of available quantities, qualities and locations of recyclable materials in Tennessee, and marketing such sites to industries which can utilize available materials. [Acts 1991, ch. 451, § 30; T.C.A., § 68-31-826.]

Cross-References. Solid waste management fund, § 68-211-821.

Section to Section References. This section is referred to in § 68-211-821.

68-211-827. Recycling market advisory council. — From funds available in the solid waste management fund established by § 68-211-821, the commissioner of economic and community development shall appoint and convene a recycling market advisory council to assist the department of economic and community development in identifying markets and to advise the department on the expansion of markets for recyclables. Such council shall include representatives from the for-profit recycling business sector, nonprofit recycling sector, nonprofit or volunteer environmental organizations, and the manufacturing sector. [Acts 1991, ch. 451, § 31; T.C.A., § 68-31-827.]

Compiler's Notes. The recycling market advisory council, created by this section, terminates June 30, 2002. See §§ 4-29-112, 4-29-223.

Section to Section References. This section is referred to in §§ 4-29-223, 68-211-821.

68-211-828. Competitive grants for collection of household hazardous waste. — From funds available from the solid waste management fund, the department shall award competitive grants for collection of household

hazardous waste at a permanent site to municipalities with a population of one hundred thousand (100,000) or more in counties with a population of two hundred eighty-seven thousand seven hundred (287,700) or more according to the 1980 federal census or any subsequent federal census. An eligible municipality may only receive one (1) grant for the establishment of a permanent household hazardous waste collection site; however, if funds are available from the solid waste management fund, the department may award a municipality that has established a permanent household hazardous waste collection site annual grants to assist the municipality in maintaining and/or operating the permanent household hazardous waste collection site. A municipality that receives a grant pursuant to this section shall allow all residents of the county in which the municipality is located to use the permanent household hazardous waste collection site on the same basis as residents of the municipality. The mobile household hazardous waste collection service authorized by § 68-211-829 shall not be provided in a county in which a municipality has established a permanent household hazardous waste collection site through a grant pursuant to this section. [Acts 1991, ch. 451, § 34; T.C.A., § 68-31-828; Acts 1992, ch. 693, § 24; 1996, ch. 846, § 27.]

Cross-References. Solid waste management fund, § 68-211-821.

Section to Section References. This section is referred to in § 68-211-829.

68-211-829. Household hazardous wastes — Mobile collection units.

— From funds available from the solid waste management fund, except as provided in § 68-211-828, the department shall, directly or by contract, provide for the collection of household hazardous wastes on designated days in each county. Each county, or solid waste authority under part 9 of this chapter, if such authority has been created, shall provide a service site and shall advertise in newspapers of general circulation in the county the day or days and hours and location where the household hazardous wastes will be collected. The advertisements shall also identify examples of household hazardous wastes that the mobile unit will receive. The county or solid waste authority shall also furnish at least one (1) person to represent the county or solid waste authority at the service site on the days of collection, who will assist the persons operating the mobile collection unit. [Acts 1991, ch. 451, § 35; T.C.A., § 68-31-829; Acts 1996, ch. 846, § 28.]

Cross-References. Solid waste management fund, § 68-211-821.

68-211-830. Matching grants for promoting new technologies. —

From funds available from the solid waste management fund, the department may award matching grants to persons to promote the development of new technology for solid waste and recovered materials management, the use of solid waste as a fuel substitute, or innovative solid waste management infrastructure development. Such matching grants shall be made on a competitive basis with appropriate criteria for such competition to be established by the commissioner of environment and conservation. When the recipient is a local government, the local share of the match shall be determined by the

department, using an economic index based upon factors which include, but are not limited to, per capita income and property values of the local government. Jurisdictions falling within the lower economic scale on the index shall be eligible for lower matching rates. [Acts 1996, ch. 846, § 29.]

68-211-831. Investigation and clean-up of unpermitted waste tire disposal sites and other unpermitted solid waste disposal sites. — From funds available from the solid waste management fund, the department may, directly or by contract, provide for the investigation and clean-up of unpermitted waste tire disposal sites and other unpermitted solid waste disposal sites. The department shall attempt to recover funds expended from the person responsible for the disposal of the waste tires or solid waste pursuant to § 68-211-117. [Acts 1996, ch. 846, § 30.]

68-211-833, 68-211-834. [Reserved.]

68-211-835. Tipping fee — Amount — Collection — Expenditure of revenues — Joint ventures — Surcharges — Solid waste disposal fees — Collection. — (a) Each county, municipality, or solid waste authority which owns a municipal solid waste disposal facility or incinerator may impose a tipping fee upon each ton of municipal solid waste or its volume equivalent received at such solid waste disposal facility or incinerator. Such a tipping fee shall be set by the governing body of the county or municipality, or by the board of directors of the solid waste authority. This tipping fee shall be collected by the operator of the publicly owned municipal solid waste disposal facility or incinerator and remitted to the owner. The fee imposed may be equal to, or a portion of, the estimated cost of providing solid waste management services on a per ton or volume equivalent. Such full cost shall be determined pursuant to the uniform solid waste accounting system developed by the comptroller of the treasury.

(b) Revenue from tipping fees at publicly owned solid waste disposal facilities and incinerators received by counties, municipalities and solid waste authorities shall be expended only for solid waste management purposes.

(c) When a municipal solid waste disposal facility is operated as a joint venture by more than one (1) city or county, or combination thereof, or by an authority, the tipping fee authorized under this section shall be imposed by the joint operators or authority, and the tipping fee received shall be remitted to the participating local governments or authorities for expenditure for solid waste management purposes only.

(d)(1) In addition to any tipping fee imposed by any local government under this section, there shall also be imposed a surcharge of seventy-five cents (\$0.75) per ton on each ton of municipal solid waste received until June 30, 2004, at all Class I solid waste disposal facilities or transfer stations that are not operated in conjunction with a convenience center or incinerators.

(2) The operator of the municipal solid waste disposal facility, or transfer station that is not operated in conjunction with a convenience center, or incinerator shall collect this surcharge and remit it to the state treasury to be paid into the state solid waste management fund.

(3) When municipal solid waste is delivered to a transfer station that is not operated in conjunction with a convenience center and subsequently delivered to a solid waste disposal facility or incinerator:

(A) The surcharge pursuant to this subsection (d) shall be collected only once with respect to such municipal solid waste; and

(B) The operator of such transfer station shall be responsible for the collection and remittance to the state treasury of the surcharge pursuant to this subsection (d) with respect to such waste only if arrangements satisfactory to the department have not been made for the surcharge pursuant to this subsection (d) to be collected by the operator of the solid waste disposal facility or incinerator and remitted to the state treasury.

(e) 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 formed pursuant to this part 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. The surcharge shall be imposed on each ton or volume equivalent of municipal solid waste so received. The revenue received by a county from the surcharge authorized by this subsection shall be expended for solid waste management purposes, or for purposes related to offsetting costs incurred and other impacts resulting from the county being host to the solid waste disposal facility or incinerator. If any municipality in the host county incurs costs as a result of such a municipal solid waste facility or incinerator, then the county shall appropriate funds derived from the surcharge revenue to the municipality which shall be used by the municipality to offset such costs.

(f)(1) In addition to any fee authorized by title 5, and to any tipping fee imposed by any local government under this section, a county, municipality or solid waste authority is authorized to impose:

(A) A surcharge on each ton of municipal solid waste received at a solid waste disposal facility or incinerator for expenditure for solid waste collection or disposal purposes consistent with this part; and/or

(B) A solid waste disposal fee authorized by subsection (g).

(2) The surcharge authorized to be imposed by a county by subdivision (f)(1)(A) shall not take effect until a regional solid waste plan is approved for such county.

(g)(1) In addition to any power authorized by title 5, a county, municipality or solid waste authority is authorized to impose and collect a solid waste disposal fee. Funds generated from such fees may only be used to establish and maintain solid waste collection and disposal services, including, but not limited to, convenience centers. All residents of the county shall have access to these services. The amount of the fee shall bear a reasonable relationship to the cost of providing the solid waste disposal services. Such fees shall be segregated from the general fund and shall be used only for the purposes for which they were collected.

(2) Subject to any other requirement of law, a county, municipality or solid waste authority may enter into an agreement with an electric utility to collect the solid waste disposal fee as a part of the utility's billing process. The agreement shall be approved by the governing body of the county or municipi-

pality entering into the agreement, or, in the case of a solid waste authority, the agreement shall be approved by the authority's board of directors.

(3) A solid waste disposal fee shall not be imposed on any generator of solid waste when the generator's solid waste is managed in a privately owned solid waste disposal system or resource recovery facility owned by the generator.

(4) In any county having a population of not less than nineteen thousand three hundred (19,300) nor more than nineteen thousand six hundred (19,600) or not less than twenty-two thousand two hundred (22,200) nor more than twenty-two thousand five hundred (22,500) or not less than twenty-three thousand three hundred (23,300) nor more than twenty-three thousand four hundred (23,400) according to the 1990 federal census or any subsequent federal census, the solid waste disposal fee authorized by this subsection shall be subject to the same penalty and interest as delinquent property taxes if not paid within thirty (30) days after notice of such fee is mailed. The unpaid fees, penalty, interest and cost shall be a lien on the real estate and improvements thereon upon filing of a notice with the office of the register of deeds of the county in which the property lies. Such lien shall be in favor of the jurisdiction, second only to liens of the state, county and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. The notice shall identify the debtor, owner of record of the real property, contain the property address, describe the property sufficiently to identify it and recite the amount of the obligation secured by the lien. No sale or transfer, including, but not limited to, a transfer to an heir-at-law, assignee or legatee of such real property may be legally closed and recorded until the lien has been satisfied. The same shall apply if the property is to be made the subject of a contract of sale. Upon the sale or transfer of the real property, the successor, successors or assigns shall be required to withhold a sufficient amount of the purchase money to cover the amount of the fees, interest, penalty and cost. The jurisdiction may collect the delinquent fees, penalty, interest and cost through an action for debt filed in any court of competent jurisdiction. [Acts 1991, ch. 451, § 54; T.C.A., § 68-31-835; Acts 1996, ch. 846, § 31; 1997, ch. 343, § 1; 1998, ch. 817, §§ 1-3; 1999, ch. 384, §§ 1, 2.]

Section to Section References. This section is referred to in §§ 67-4-1604, 68-211-862.

Attorney General Opinions. Applicability of fee provisions of Tennessee Solid Waste Management Act of 1991 to state entities, OAG 91-88 (11/7/91).

Power and operation of solid waste authorities and county organizations, OAG 96-063 (4/8/96).

Use of funds from solid waste disposal surcharge, OAG 99-088 (4/8/99).

Authority of McMinn County to impose host fee on privately owned landfill inside the county, OAG 00-025 (2/15/00).

Authority of county to impose a surcharge on disposal of municipal solid waste at a privately owned disposal facility, OAG 00-053 (3/22/00).

Cited: *City of Tullahoma v. Bedford County*, 938 S.W.2d 408 (Tenn. 1997).

NOTES TO DECISIONS

1. Applicability.

The exemption set forth in subdivision (g)(3) does not apply to the solid waste disposal activities of individual households, and thus a county may impose a monthly fee on all its

rural residents for solid waste disposal services, regardless of whether the services are actually used. *Horton v. Carroll County*, 968 S.W.2d 841 (Tenn. Ct. App. 1997).

68-211-836 — 68-211-840. [Reserved.]**68-211-841. Tennessee municipal solid waste advisory committee. —**

(a) There is hereby established the Tennessee municipal solid waste advisory committee to advise the commissioner concerning solid waste management. The committee shall have fifteen (15) members appointed by the commissioner, at least one (1) of whom is a female, and shall consist of:

(1) One (1) member representing a statewide organization of business interests;

(2) One (1) member representing a statewide organization for environmental concerns;

(3) One (1) member representing the waste management industry;

(4) One (1) member representing the recycling industry;

(5) One (1) member representing the public from each of the three (3) grand divisions of the state;

(6) One (1) member representing development districts;

(7) One (1) member representing municipalities;

(8) One (1) member representing counties;

(9) One (1) member representing the tire industry;

(10) One (1) member representing agriculture;

(11) One (1) member representing environmental air and water quality concerns, recommended by the Tennessee environmental council; and

(12)(A) One (1) member shall be a municipal official from one (1) of the four (4) most populous municipalities in the state according to the 1990 federal census or any subsequent federal census. Such member shall be nominated by the Tennessee Municipal League.

(B) One (1) member shall be a county official from one (1) of the four (4) most populous counties in the state according to the 1990 federal census or any subsequent federal census. Such member shall be nominated by the Tennessee County Services Association.

(C) The municipal official and the county official selected pursuant to subdivisions (a)(12)(A) and (B), respectively, shall alternate among the four (4) municipalities and counties. A municipal or county official shall not be replaced with an official from the same municipality or county until all remaining municipalities and counties are represented. The municipal and county official selected pursuant to subdivisions (a)(12)(A) and (B) shall not be from the same county at the time of their selection. Further appointments after each municipality and each county has had a representative shall also be made in the way and manner provided by this section.

(b) The commissioner shall appoint members of the committee in consultation with statewide organizations representing the various interests on the committee.

(c) The members shall elect a chair from among the members, and a majority of members shall constitute a quorum.

(d)(1) The terms of the following members shall expire December 31, 2001:

(A) The member representing counties;

(B) The member representing the public from the eastern grand division of the state;

- (C) The member representing the public from the western grand division of the state;
 - (D) The member representing the recycling industry; and
 - (E) The member representing development districts.
- (2) The terms of the following members shall expire December 31, 1999:
- (A) The member representing a statewide organization of business interests;
 - (B) The member representing municipalities;
 - (C) The member representing the waste management industry;
 - (D) The member representing a statewide organization for environmental concerns; and
 - (E) The member representing the public from the middle grand division of the state.
- (3) The terms of the following members shall expire December 31, 2000:
- (A) The member representing agriculture;
 - (B) The member representing the Tennessee environmental council;
 - (C) The member representing the tire industry;
 - (D) The member representing the four (4) most populous municipalities; and
 - (E) The member representing the four (4) most populous counties.
- (4) As each member's term expires, such member's successor shall serve a term for four (4) years.
- (e) A vacancy on the committee shall be filled by the commissioner for the member's unexpired term. [Acts 1991, ch. 451, § 18; T.C.A., § 68-31-841; Acts 1995, ch. 501, § 3; 1996, ch. 846, §§ 32, 52; 1999, ch. 384, § 3.]

Compiler's Notes. The Tennessee municipal solid waste advisory committee, created by this section, terminates June 30, 2007. See §§ 4-29-112, 4-29-228.

The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the depart-

ment of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

Cross-References. Grand divisions of the state, title 4, ch. 1, part 2.

Section to Section References. This section is referred to in § 4-29-228.

68-211-842. Education program — Guidelines. — (a) The commissioner shall issue guidelines for the education program element of the municipal solid waste region plan. Each solid waste regional plan shall include 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.

(b) The adult education program shall be funded by at a level no less than four percent (4%) of the waste disposal surcharge collected in fiscal year 1996-97; five percent (5%) of the waste disposal surcharge collected in fiscal year 1997-98; and six percent (6%) of the waste disposal surcharge collected in fiscal year 1998-99. [Acts 1991, ch. 451, § 38; T.C.A., § 68-31-842; Acts 1995, ch. 501, § 3; Acts 1996, ch. 846, § 50.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning

office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

68-211-843. Information clearinghouse — Regional workshops and conferences. — The commissioner shall establish an information clearinghouse to acquire, review, evaluate and distribute a catalog of materials on source reduction and recycling. The commissioner shall also organize and conduct statewide and regional workshops and conferences on solid waste management, source reduction and recycling. [Acts 1991, ch. 451, § 39; T.C.A., § 68-31-843; Acts 1995, ch. 501, § 3.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

68-211-844. Educational and training programs. — The commissioner shall collect, prepare and disseminate information and conduct educational and training programs designed to assist in the implementation of solid waste management programs and inform the public of the relationship between an individual's consumption of goods and services and the generation of different types and quantities of solid waste. The commissioner, in consultation with the department of education, shall prepare the information and programs on a statewide basis for the following groups:

- (1) Municipal, county and state officials and employees;
- (2) Kindergarten through graduate students and teachers;
- (3) Businesses that use or could use recycled materials or that produce or could produce projects from recycled materials, and persons who provide support services to those businesses; and
- (4) The general public. [Acts 1991, ch. 451, § 40; T.C.A., § 68-31-844; Acts 1995, ch. 501, § 3.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

68-211-845. Promotion of education concerning solid waste management. — In order to promote education of children in grades kindergarten through twelve (K-12) concerning solid waste management, source reduction and recycling, the University of Tennessee Waste Management Research and Education Institute, in conjunction with the commissioner of environment and conservation, shall:

- (1) Review, evaluate and publish a list of approved curriculum materials relative to solid waste management, source reduction and recycling;
- (2) Sponsor workshops on the curriculum materials for educators;
- (3) Provide in-service training for teachers on solid waste management, recycling and source reduction, environmental protection and conservation of materials; and
- (4) Establish peer assistance programs for teachers within a solid waste management region. [Acts 1991, ch. 451, § 41; T.C.A., § 68-31-845; Acts 1995, ch. 501, § 3; 1999, ch. 384, § 4.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

68-211-846. Education programs — Awards. — The commissioner shall establish an awards program for outstanding school-based solid waste, source reduction or recycling education programs. [Acts 1991, ch. 451, § 42; T.C.A., § 68-31-846; Acts 1995, ch. 501, § 3.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

68-211-847. Matching grants to implement education program. — After a region's plan is approved, the department of environment and conservation may award matching grants for implementing the education program component of the plan from funds available in the solid waste management fund. The local share of the match shall be determined by the department, using an economic index based upon factors which include, but are not limited to, per capita income and property values of the local government. Jurisdictions falling within the lower economic scale on the index shall be eligible for lower matching rates. [Acts 1991, ch. 451, § 45; T.C.A., § 68-31-847; Acts 1992, ch. 693, § 24; 1996, ch. 846, § 33.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

Cross-References. Solid waste management fund, § 68-211-821.

68-211-848. Recognition of university and college programs — Awards program. — The commissioner shall develop an awards program for recognition of university and college programs concerning waste management, source reduction and recycling. [Acts 1991, ch. 451, § 46; T.C.A., § 68-31-848; Acts 1995, ch. 501, § 3.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

68-211-849, 68-211-850. [Reserved.]

68-211-851. Municipal solid waste collection and disposal systems — Convenience centers — Technical assistance. — (a) Each county shall assure that one (1) or more municipal solid waste collection and disposal systems are available to meet the needs of the residents of the county. Such systems shall complement and supplement those provided by any municipality. The minimum level of service that the county shall assure is a system consisting of a network of convenience centers throughout the county. Unless a higher level of service, such as household garbage pickup, is available to the residents, a county shall provide directly, by contract, or through a solid waste authority, convenience centers which shall meet minimum design standards to be developed by the department and established by regulation. The department shall also develop regulations to be promulgated by the board for determining the minimum requirements for and number of convenience centers or other forms of collection that a county shall maintain. Such

regulations shall consider county population, area, distances to possible convenience center sites, and staffing requirements.

(b) As part of the local plan required by § 68-211-814, each county or multi-county municipal solid waste disposal region shall submit a plan for the adequate provision of collection services to the department. Such plan shall identify unmet needs and shall be updated annually.

(c) If requested, the University of Tennessee county technical assistance service and municipal technical advisory service shall provide technical assistance to a county or region for siting, designing, constructing, upgrading and developing and maintaining a system of convenience centers which meets the minimum design standards which the department will establish by regulation. The county shall develop an operating manual, and the department shall offer training to operators and attendants.

(d)(1) Not later than July 1, 1997, each county which maintains and uses receptacles for the collection of municipal solid waste from the general public at sites separate from a convenience center for the needs of the residents of the county shall submit the following information to the department:

(A) The number of receptacles in the county;

(B) The location of all receptacles;

(C) Collection times for such receptacles;

(D) Operation procedures and security measures adopted and enforced to maintain and service the receptacles and to ensure the protection of public health and safety; and

(E) Such other information required by the department.

(2) The board created pursuant to § 68-211-111 shall promulgate rules and regulations on the requirements for operation and use of such receptacles as it deems necessary to ensure the protection of public health and safety and to provide for the proper management of solid waste disposed in such receptacles. Any county which does not submit the information required by subdivision (1) of this subsection or which violates the rules and regulations of the board created pursuant to § 68-211-111 shall not use such receptacles for such purposes.

(3) The provisions of this subsection shall only apply to counties which had receptacles in use on January 1, 1996. A county which did not have receptacles in use on January 1, 1996, or which subsequent to such date discontinues use of any receptacle permitted under this section, shall be prohibited from installing or maintaining additional receptacles after July 1, 1996. [Acts 1991, ch. 451, § 21; T.C.A., § 68-31-851; Acts 1994, ch. 591, § 1; 1996, ch. 846, § 49.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

Section to Section References. This section is referred to in § 68-211-824.

Cited: *Horton v. Carroll County*, 968 S.W.2d 841 (Tenn. Ct. App. 1997).

68-211-852. [Repealed.]

Compiler's Notes. Former § 68-211-852 (Acts 1991, ch. 451, § 22; T.C.A., § 68-31-852), concerning transporters of municipal solid

waste, registration, fees and development of data, was repealed by Acts 1999, ch. 384, § 5, effective June 14, 1999.

68-211-853. Landfills — Certification of operators, attendants and participating persons — Training — Suspension or revocation of operating license or operator's certification. — (a) By March 19, 1994, or any subsequently designated date for Rule 1200-1-7-.04(1)(b)(3)(ii) to take effect, the board shall, by rule, establish a program for the certification of operators, attendants and other persons participating in or responsible for the operation of any Class I landfill regulated by the department. The department shall:

(1) Identify those persons or positions involved in the operation of a solid waste disposal facility who are required to obtain certification;

(2) Establish the requirements for and term of initial certification and requirements for recertification upon expiration of that term. At a minimum, the department shall require applicants to complete a program of training and pass an examination in order to receive initial certification;

(3) Establish different levels of certification and requirements for certification for different sizes or types of facilities, as the department determines is appropriate;

(4) Impose fees for the operator or attendant training and certification program; and

(5) Require that there be one (1) or more certified attendants on the site of a Class I landfill at all times during the facility's hours of operation.

(b) The training required under subdivision (a)(2) may be conducted by the department or by another person with the approval of the department.

(c) The department may suspend or revoke the operating license of any landfill regulated by the department if persons at the facility fail to obtain certification required under subdivision (a)(1) or for failure to have a certified operator on the site as required under subdivision (a)(5).

(d) The department may suspend or revoke an operator's certification for failure to comply with the provisions of this part, rules promulgated under this part or conditions of operation made applicable to a solid waste disposal facility by the department. [Acts 1991, ch. 451, § 23; T.C.A., § 68-31-853; 1996, ch. 846, §§ 34, 35.]

Section to Section References. This section is referred to in § 68-211-802.

68-211-854. Contracting with private entities. — No provision of this part shall prohibit a county, municipality or solid waste authority from contracting with a private individual or entity for the provision of collection or recycling services in a county, municipality or solid waste authority. [Acts 1991, ch. 451, § 24; T.C.A., § 68-31-854.]

68-211-855 — 68-211-860. [Reserved.]

68-211-861. State waste reduction and diversion goal — Credit — Basis for goal — Sanction for failure to meet goal. — (a) The goal of the state is to reduce by twenty-five percent (25%) the amount of solid waste disposed of at Class I municipal solid waste disposal facilities and incinerators, measured on a per capita basis within Tennessee by weight, by December 31, 2003. As an alternative to calculating the waste reduction and diversion goal

on a per capita basis, regions shall have the option of calculating the goal on an economic growth basis using the method prescribed by the department and approved by the municipal solid waste advisory committee. The goal shall also apply to each municipal solid waste region; provided, that the goal shall not apply to individual disposal facilities or incinerators. The base year from which reductions are to be measured is 1995, unless a region can demonstrate that 1995 data is clearly in error. The method of calculating goals based on economic growth using the method prescribed by the department and approved by the municipal solid waste advisory committee shall be promulgated as a rule in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) If a region does not meet the twenty-five percent (25%) waste reduction and diversion goal, then the department will objectively assess the activities and expenditures of the region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions that meet the goal and whether the failure is due to factors beyond the control of the region. This qualitative assessment method shall be developed by the department and approved by the municipal solid waste advisory committee. The qualitative assessment method prescribed by the department and approved by the municipal solid waste advisory committee shall be promulgated as a rule in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) A county or region may receive credit toward the waste reduction and diversion goal established by this section for documented reductions from recycling and source reduction programs prior to 1995, but no earlier than 1985.

(d) The twenty-five percent (25%) goal pertains only to facilities which accept municipal solid waste for disposal or incineration. Measurements of waste are to be based on the amount of waste entering a disposal facility prior to combustion or landfilling. Measurements of waste disposed of shall not include materials that are recovered or collected for recycling. The department shall issue guidelines concerning, and promulgate by rule, a method for calculating source reduction and recycling.

(e) Failure of the region either to meet the twenty-five percent (25%) waste reduction and diversion goal, or to receive a favorable qualitative assessment of its activities by the department pursuant to subsection (b), may subject the offending counties and municipalities, including any solid waste authority created by such counties and municipalities, to sanctions in the same manner as a region may receive sanctions pursuant to § 68-211-816. In the event the failure of a region to meet its waste reduction and diversion goals is due to the failure of less than all of the constituent counties or municipalities of the region, the commissioner may apply sanctions only to the counties, municipalities or solid waste authorities that have caused the failure.

(f) A county or region has the flexibility to design its own plan and methods which take into account local conditions for attaining the waste reduction and diversion goal set by this section. This plan shall be included as a part of the county or regional plan required by § 68-211-814. [Acts 1991, ch. 451, § 25; T.C.A., § 68-31-861; Acts 1995, ch. 501, § 3; 1996, ch. 846, § 36; 1999, ch. 384, § 6.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).
Section to Section References. This section is referred to in §§ 68-211-813, 68-211-815.

68-211-862. Records of origin and amount of solid waste received at transfer stations, disposal facilities, and incinerators — Exclusion — Measurement of amount of solid waste received. — (a) The owner or operator of each Class I municipal solid waste disposal facility or incinerator or transfer station required to remit a surcharge under § 68-211-835(d) shall be responsible for keeping an accurate written record of all amounts and county of origin of solid waste, measured in tons, received at the facility. This information shall be submitted to the department.

(b) Measurement in tons of solid waste received shall be accomplished by one (1) or more of the following methods:

(1) The provision of stationary or portable scales at the disposal facility or incinerator or transfer station for weighing incoming waste; or

(2) Implementation of contractual or other arrangements for the use of scales at a location other than the disposal facility, incinerator, or transfer station for weighing all waste destined for disposal at the facility. [Acts 1991, ch. 451, § 26; T.C.A., § 68-31-862; Acts 1992, ch. 693, § 24; 1996, ch. 846, §§ 37, 38; 1999, ch. 384, § 7.]

68-211-863. Sites for collection of recyclable materials — Annual reports. — Effective January 1, 1996, each county shall provide directly, by contract or through a solid waste authority, one (1) or more sites for collection of recyclable materials within the county, unless an adequate site for collection of recyclable materials is otherwise available to the residents of the county. [Acts 1991, ch. 451, § 27; T.C.A., § 68-31-863; Acts 1995, ch. 501, § 3; 1996, ch. 846, § 39.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

68-211-864. Technical assistance. — The institute for public service of the University of Tennessee shall provide technical assistance in the design and management of a recycling program to each county, municipality, authority or region which requests assistance. [Acts 1991, ch. 451, § 28; T.C.A., § 68-31-864.]

68-211-865. Department of general services — Additional duties. — In addition to the duties imposed on it by §§ 68-211-603(c) and 68-211-606, the department of general services shall:

(1) Expand to the maximum extent practicable the department's demonstration state office recycling program for paper, aluminum cans and bottles;

(2) Expand such program to the maximum extent practicable to include other kinds of recyclable materials, including, but not limited to, newsprint, plastic bottles, mixed paper and steel cans;

(3) Enter into an agreement with the department of correction to use inmates from state correctional institutions to the maximum extent practicable to collect, sort and market recyclables collected from such program at correctional institutions;

(4) Demonstrate new uses of recovered materials;

(5) Recycle surplus state property to the maximum extent practicable, under the program authorized by this part and under § 12-2-404, which cannot be sold for reuse, notwithstanding the existence of any other provision of law, rules or regulations to the contrary;

(6) Revise product specifications to require, to the extent economically feasible, the procurement of recycled products or products with recycled content;

(7) Encourage all departments of state government to purchase products with recycled content or recyclable products from state contracts;

(8) Encourage county governments to purchase materials with recycled content from state contracts in transactions under title 12, chapter 3, part 10; and

(9) Effect procurement contracts which are subject to competitive bidding using specifications revised according to subdivision (6). [Acts 1991, ch. 451, § 32; T.C.A., § 68-31-865.]

Section to Section References. This section is referred to in § 68-211-821.

68-211-866. Whole waste tires — Lead-acid batteries — Used oil — When acceptance for disposal prohibited — Storage sites. — (a) No municipal solid waste disposal facility or incinerator shall accept for disposal any whole waste tires, lead-acid batteries or used oil when an operator or attendant either knew, or should have known, of the presence of such prohibited materials; provided, that, subject to other applicable law and regulations, whole waste tires may be incinerated.

(b) Each county shall provide directly, by contract or through a solid waste authority at least one (1) site to receive and store waste tires, used automotive oils and fluids, and lead-acid batteries, if adequate sites are not otherwise available in the county for the use of the residents of the county. A single site need not receive all of the items for which collection is required by this section, but all items listed above shall have at least one (1) site for reception and storage in the county. The operator of any such sites provided by a county shall sell and/or cause the transfer of the recyclable materials stored at these sites to a commercial recycler or a regional receiving facility for such wastes as often as is practicable. [Acts 1991, ch. 451, § 33; T.C.A., § 68-31-866.]

Section to Section References. This section is referred to in § 68-211-816.

68-211-867. Whole, unshredded tires. — (a) The department of environment and conservation is directed to develop a program to manage the waste tire program for beneficial end use.

(b) For the purposes of this section, "beneficial end use" includes the following:

- (1) Cement manufacturing;
- (2) Burning of tire-derived fuel in contained industrial boilers for the capture of energy;
- (3) Production of tire-derived fuel, provided the department approves the planned use of the processed tire material;
- (4) The crumbling or pyrolysis of tire material, provided the processor provides for the planned use of the processed tire material under such requirements established by the department; or
- (5) Any use otherwise deemed appropriate by the department of environment and conservation and for which either the board has promulgated rules or the department has developed and published policies; provided, that this section shall not be construed to require or mandate the use of products or materials resulting from waste tires. The board shall not promulgate any rules, and the department shall not establish any policies mandating the use of products or materials resulting from waste tires. It is the specific intent of the general assembly that any use of products resulting from the waste tire program is entirely voluntary on the part of the end user.

(c)(1) From funds available from the solid waste management fund, the department shall contract for services of a mobile tire shredder to operate throughout the state as waste tire disposal needs may require. If the department contracts for the services of a shredder with a county or municipality, such local government may receive a rebate on the state surcharge paid in its locality on the tipping fee authorized by this part for the budget allocation for a shredder.

(2) The department is authorized to use funds available from the solid waste management fund to contract directly with an approved beneficial end user or its designated agent for recycling of waste tires. Each beneficial end user or agent awarded such a contract shall demonstrate to the department's satisfaction the ability to provide collection, management and transportation to its facility of all eligible and available waste tires generated within the area or county specified by the department. Any such contract shall be subject to approval by the county legislative body of each county in whose territory the contract shall be operative. Any such contract shall also require an appropriate performance bond from any entity producing tire-derived fuel or crumbling or pyrolysis of tire material to ensure proper storage, transportation and ultimate sale or disposal of such materials.

(3) From funds available from the solid waste management fund, the department may provide grants to assist counties in locating, collecting and appropriately disposing of waste tires. Any county receiving a grant under this subdivision after July 1, 2000, shall not assess a tipping fee on the waste tires received at a county waste tire collection site so long as the amount of the grant covers the cost of the county's waste tire management program.

(d)(1) A landfill shall not accept whole, unshredded waste tires for disposal. Landfill operators shall segregate whole, unshredded waste tires at landfills and provide a temporary storage area for such tires until transported to an appropriate facility to be used for an approved beneficial end use as defined in

this section, or the tires are shredded and disposed of pursuant to subdivision (d)(2) and regulations promulgated by the board.

(2) A county may not dispose of shredded waste tires in a landfill after July 1, 2002, if the county's net cost for shredding, transporting and disposing of waste tires exceeds the cost of an available beneficial end use. Nothing in this subsection shall prohibit a county from electing to participate in a beneficial end use for waste tires at a cost that exceeds the county's net cost for shredding, transporting and disposing of waste tires in a landfill. [Acts 1991, ch. 451, § 36; T.C.A., § 68-31-867; Acts 1992, ch. 693, § 24; 1996, ch. 846, § 40; 1998, ch. 587, § 1.]

Cross-References. Solid waste management fund, § 68-211-821.
Tipping fee, § 68-211-835.

Section to Section References. This section is referred to in §§ 68-211-802, 68-211-816.

68-211-868 — 68-211-870. [Reserved.]

68-211-871. Annual report — Contents — Annual progress report — Sanctions for noncompliance — Annual reports by recovered materials facilities. — (a) Beginning on March 1, 1994, and annually thereafter, each region shall submit an annual report to the commissioner for the immediately preceding calendar year, in a format to be determined by the commissioner, which will include data on the following:

- (1) Collection;
- (2) Recycling;
- (3) Transportation;
- (4) Disposal;
- (5) Public costs; and

(6) Any other information which the board, by rule, may deem relevant to solid waste planning and management.

(b) After approval of the plan required by § 68-211-814, the commissioner shall require that a region submit an annual progress report on implementation of such plan in conjunction with the annual report required by this section.

(c) The region may require each person actively and regularly engaged in the collection, transportation and disposal of municipal solid waste, or the recovery or recycling of materials, in the county or counties constituting the region to provide any information necessary for the region to comply with the reporting requirements of this section.

(d) The region may bring an action for mandatory injunction in the chancery court against any person failing to properly report in accordance with the provisions of this section in order to compel compliance. The region shall be entitled to recover all costs and attorney's fees from any person failing to comply with the reporting requirements of this section.

(e) Any person operating a recovered materials processing facility shall report annually the quantities of recovered materials processed at that facility, by type of material, directly to the department or its designee, in a manner approved by the department. The department may enter into agreements with private recycling organizations to facilitate the gathering of such information. Such information shall be treated as proprietary information but may be

compiled and reported in cumulative statewide totals, by type of recovered material. Such information may not be released to the public in such a manner as to identify it with an individual recovered materials processing facility. A recovered materials processing facility which fully complies with the reporting requirements of this subsection shall not be subject to the reporting requirements of subsection (c), for information solely related to the operation of the recovered materials processing facility. [Acts 1991, ch. 451, § 49; T.C.A., § 68-31-871; Acts 1995, ch. 501, § 3; 1996, ch. 846, § 41.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning office to the department of environment and

conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

Section to Section References. This section is referred to in §§ 68-211-802, 68-211-825.

68-211-872. Solid waste planning and management data base. — The commissioner shall establish and maintain a statewide solid waste planning and management data base which can aggregate and analyze county reports on waste generation, collection, recycling, transportation, disposal and costs. [Acts 1991, ch. 451, § 50; T.C.A., § 68-31-872; Acts 1995, ch. 501, § 3.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning

office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

68-211-873. Annual report to governor and general assembly. — The department shall prepare an annual report to the governor and general assembly on the state's solid waste management system. [Acts 1991, ch. 451, § 51; T.C.A., § 68-31-873; Acts 1995, ch. 501, § 3.]

Compiler's Notes. The responsibility for administering the Solid Waste Management Act was transferred from the state planning

office to the department of environment and conservation; effective January 1, 1994. See Executive Order No. 54 (January 7, 1994).

68-211-874. Accounting for financial activities — Funds — Uniform solid waste financial accounting system — Development — Approval — Requirement for state funds. — (a) Each county, solid waste authority and municipality shall account for financial activities related to the management of solid waste in either a special revenue fund or an enterprise fund established expressly for that purpose. Any county, solid waste authority or municipality that operates a landfill and/or incinerator shall account for financial activities related specifically to that landfill and/or incinerator in an enterprise fund. Each county, solid waste authority and municipality shall use a uniform solid waste financial accounting system and chart of accounts developed by the comptroller of the treasury.

(b) The comptroller of the treasury is directed to develop a uniform financial accounting system conforming to generally accepted accounting principles for use as required by this section.

(c) Such uniform accounting system shall be subject to the approval of the commissioner of finance and administration. Upon such approval, each county shall establish and maintain the uniform solid waste financial accounting system.

(d) No state funds for solid waste management shall be released to a county, solid waste authority or municipality unless financial activities related to the management of solid waste are accounted for in either a special revenue fund or an enterprise fund established solely for that purpose. No state funds for solid waste management shall be released to a county, solid waste authority or municipality that operates a landfill and/or incinerator unless financial activities related to that landfill and/or incinerator are accounted for in an enterprise fund. [Acts 1991, ch. 451, § 52; T.C.A., § 68-31-874; Acts 1992, ch. 759, §§ 1, 2.]

Section to Section References. This section is referred to in § 68-211-815.

Cited: *City of Tullahoma v. Bedford County*, 938 S.W.2d 408 (Tenn. 1997).

PART 9—SOLID WASTE AUTHORITY ACT OF 1991

68-211-901. Short title. — This part may be known and cited as the "Solid Waste Authority Act of 1991." [Acts 1991, ch. 451, § 58; T.C.A., § 68-31-901.]

Compiler's Notes. For transfer of former ch. 13, parts 1-9 of this title to parts 1-9 of this chapter in 1992, see the Compiler's Notes under § 68-211-101.

Cross-References. Consolidated retirement system, participation by solid waste authority, § 8-35-243.

Section to Section References. This part is referred to in §§ 8-35-243, 68-211-111.

Attorney General Opinions. Power and operation of solid waste authorities, OAG 96-063 (4/8/96).

Competitive bidding requirements, OAG 97-145 (10/23/97).

NOTES TO DECISIONS

1. Private Act Invalid.

A private act authorizing a county commission to impose a tax on the privilege of disposing of solid waste at landfills in the county was invalid because it was inconsistent with gen-

eral laws mandating a comprehensive plan for the control of solid waste in the state. *City of Tullahoma v. Bedford County*, 938 S.W.2d 408 (Tenn. 1997).

68-211-902. Definitions. — (a) As used in this part, unless the context otherwise requires:

(1) "Authority" or "solid waste authority" means any public instrumentality organized pursuant to the provisions of this part;

(2) "Bonds" or "revenue bonds" means bonds, notes, interim certificates or other obligations of an authority issued pursuant to this part, or pursuant to any other law, as supplemented by, or in conjunction with, this part;

(3) "Contracting party" or "other contracting party" means any party to a sale contract or loan agreement except the authority;

(4) "Governing body" means the body in which the general legislative powers of a municipal corporation are vested and, in the case of counties, means the legislative body of the respective counties;

(5) "Person" means person as defined in § 68-211-103;

(6) "Project" means any solid waste disposal facility or resource recovery facility, or any combination thereof;

(7) "Resource recovery facility" means land, rights in land, buildings, facilities and equipment suitable or necessary for the recovery or production of energy or energy producing materials in any form resulting from the controlled

processing or disposal of solid waste or the systematic separation, extraction and recovery of recyclable materials from the solid waste stream, including facilities or systems for the storage, conversion or transportation thereof;

(8) "Revenue" means all rents, fees and other charges received by the authority for use of its projects, facilities and services including, without limitation, all amounts received for the collection, transportation, disposal or processing of solid waste, the operation of any project, or the sale, storage, distribution or transportation of energy, energy producing materials or other materials or commodities by the authority;

(9) "Solid waste" means solid waste as defined in § 68-211-103;

(10) "Solid waste facility" means land, rights in land, buildings, facilities and equipment suitable or necessary for collecting, receiving, transferring, placing, confining, compacting, treating or covering solid waste or for processing solid waste by, without limitation, incinerating, composting, separating, grinding, shredding, reducing or otherwise modifying the characteristics or properties thereof, including all property, real and personal, appurtenant thereto or connected with such work; and

(11) "State of Tennessee" means the state of Tennessee and, unless otherwise indicated by the context, any agency, authority, branch, bureau, commission, corporation, department or instrumentality thereof now or hereafter existing.

(b) The definition of a term in subsection (a) applies to each grammatical variation of the term. [Acts 1991, ch. 451, § 59; T.C.A., § 68-31-902; 1996, ch. 846, §§ 42-44.]

Section to Section References. This section is referred to in § 68-211-902.

Cited: Horton v. Carroll County, 968 S.W.2d 841 (Tenn. Ct. App. 1997).

68-211-903. Solid waste authority — Creation — Resolutions — Agreements among creating counties and municipalities — Name. —

(a) A county or any of the counties in a municipal solid waste region may create a solid waste authority, by resolution of the respective county governing bodies; provided, that opportunity shall be provided for public comment on such resolution. Any municipality, the majority of the territory of which lies within a county that is creating or participating with other counties in creating an authority, may join in creating the authority upon such terms as may be agreed upon and adopted by resolution of the respective county and municipal governing bodies. If more than one (1) county or municipality participates in creating an authority, an agreement creating the authority shall be approved by the governing body of each county and municipality that is a party to the agreement as part of the resolution creating the authority. The resolutions creating the authority may be amended by the agreement of all of the participating governments to add or subtract participating governments or to dissolve the authority. The creating resolutions shall give the authority a name which shall identify it with the county or region. This name shall be used by the authority unless the name is amended by resolution approved by all participating counties and municipalities. Any resolutions creating, amending or dissolving an authority shall be certified by the county clerk or municipal

jurisdiction, second only to liens of the state, county and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. The notice shall identify the debtor, owner of record of the real property, contain the property address, describe the property sufficiently to identify it and recite the amount of the obligation secured by the lien. No sale or transfer, including, but not limited to, a transfer to an heir-at-law, assignee or legatee of such real property may be legally closed and recorded until the lien has been satisfied. The same shall apply if the property is to be made the subject of a contract of sale. Upon the sale or transfer of the real property, the successor, successors or assigns shall be required to withhold a sufficient amount of the purchase money to cover the amount of the fees, interest, penalty and cost. The jurisdiction may collect the delinquent fees, penalty, interest and cost through an action for debt filed in any court of competent jurisdiction. [Acts 1991, ch. 451, § 54; T.C.A., § 68-31-835; Acts 1996, ch. 846, § 31; 1997, ch. 343, § 1; 1998, ch. 817, §§ 1-3; 1999, ch. 384, §§ 1, 2; 2002, ch. 720, §§ 1, 2.]

Compiler's Notes. For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Amendments. The 2002 amendment, in (d), deleted "or transfer stations that are not operated in conjunction with a convenience center" following "facilities" in (1), deleted ", or transfer station that is not operated in conjunction with a convenience center," following "facility" in (2), and deleted former (3) which read: "When municipal solid waste is delivered to a transfer station that is not operated in conjunction with a convenience center and subsequently delivered to a solid waste disposal facility or incinerator:

"(A) The surcharge pursuant to this subsection (d) shall be collected only once with respect to such municipal solid waste; and

"(B) The operator of such transfer station shall be responsible for the collection and remittance to the state treasury of the surcharge pursuant to this subsection (d) with respect to such waste only if arrangements satisfactory to the department have not been made for the surcharge pursuant to this subsection (d) to be collected by the operator of the solid waste disposal facility or incinerator and remitted to the state treasury."

Effective Dates. Acts 2002, ch. 720, § 3. July 1, 2002.

NOTES TO DECISIONS

2. Jurisdiction.

The chancery court was the proper forum for action against resident for delinquent solid

waste disposal fee pursuant to T.C.A. § 68-211-835. *City of Bolivar v. Goodrum*, 49 S.W.3d 290 (Tenn. Ct. App. 2000).

68-211-866. Whole waste tires — Lead-acid batteries — Used oil — When acceptance for disposal prohibited — Storage sites.

Attorney General Opinions. A county may not refuse to accept waste tires based on the failure of the tire dealer to pay the one dollar

pre-disposal fee assessed by upon the retail sale of the tire when it was new, OAG 00-154 (10/10/00).

PART 10—USED OIL COLLECTION

68-211-1010. Deduction granted to distributors paying fees.

Attorney General Opinions. If, after applying the accounting method provided for in T.C.A. § 68-221-1010(a)(2), a water system or

wastewater facility is in a deficit position and is referred to the water and wastewater financing board, the board must continue using that

county from the surcharge authorized by this subsection (e) shall be expended for solid waste management purposes, or for purposes related to offsetting costs incurred and other impacts resulting from the county being host to the solid waste disposal facility or incinerator. If any municipality in the host county incurs costs as a result of such a municipal solid waste facility or incinerator, then the county shall appropriate funds derived from the surcharge revenue to the municipality which shall be used by the municipality to offset such costs.

(f)(1) In addition to any fee authorized by title 5, and to any tipping fee imposed by any local government under this section, a county, municipality or solid waste authority is authorized to impose:

(A) A surcharge on each ton of municipal solid waste received at a solid waste disposal facility or incinerator for expenditure for solid waste collection or disposal purposes consistent with this part; and/or

(B) A solid waste disposal fee authorized by subsection (g).

(2) The surcharge authorized to be imposed by a county by subdivision (f)(1)(A) shall not take effect until a regional solid waste plan is approved for such county.

(g)(1) In addition to any power authorized by title 5, a county, municipality or solid waste authority is authorized to impose and collect a solid waste disposal fee. Funds generated from such fees may only be used to establish and maintain solid waste collection and disposal services, including, but not limited to, convenience centers. All residents of the county shall have access to these services. The amount of the fee shall bear a reasonable relationship to the cost of providing the solid waste disposal services. Such fees shall be segregated from the general fund and shall be used only for the purposes for which they were collected.

(2) Subject to any other requirement of law, a county, municipality or solid waste authority may enter into an agreement with an electric utility to collect the solid waste disposal fee as a part of the utility's billing process. The agreement shall be approved by the governing body of the county or municipality entering into the agreement, or, in the case of a solid waste authority, the agreement shall be approved by the authority's board of directors.

(3) A solid waste disposal fee shall not be imposed on any generator of solid waste when the generator's solid waste is managed in a privately owned solid waste disposal system or resource recovery facility owned by the generator.

(4) In any county having a population of not less than nineteen thousand three hundred (19,300) nor more than nineteen thousand six hundred (19,600) or not less than twenty-two thousand two hundred (22,200) nor more than twenty-two thousand five hundred (22,500) or not less than twenty-three thousand three hundred (23,300) nor more than twenty-three thousand four hundred (23,400) according to the 1990 federal census or any subsequent federal census, the solid waste disposal fee authorized by this subsection (g) shall be subject to the same penalty and interest as delinquent property taxes if not paid within thirty (30) days after notice of such fee is mailed. The unpaid fees, penalty, interest and cost shall be a lien on the real estate and improvements thereon upon filing of a notice with the office of the register of deeds of the county in which the property lies. Such lien shall be in favor of the

Compiler's Notes. The bracketed language in subdivision (b)(1) is set out to reflect the repeal of 68-211-827 by Acts 2002, ch. 776.

Section to Section References. This section is referred to in §§ 68-211-822 — 68-211-824.

68-211-827. [Repealed.]

Compiler's Notes. Former § 68-211-827 (Acts 1991, ch. 451, § 31; T.C.A., § 68-31-827), concerning the recycling market advisory council, was repealed by Acts 2002, ch. 776, § 2, effective July 1, 2002. Acts 2002, ch. 776, § 3,

provided that notwithstanding the provisions of § 4-29-112, or any other law to the contrary, the recycling market advisory council, created by repealed § 68-211-827, terminated and ceased all activities on July 1, 2002.

68-211-835. Tipping fee — Amount — Collection — Expenditure of revenues — Joint ventures — Surcharges — Solid waste disposal fees — Collection. — (a) Each county, municipality, or solid waste authority which owns a municipal solid waste disposal facility or incinerator may impose a tipping fee upon each ton of municipal solid waste or its volume equivalent received at such solid waste disposal facility or incinerator. Such a tipping fee shall be set by the governing body of the county or municipality, or by the board of directors of the solid waste authority. This tipping fee shall be collected by the operator of the publicly owned municipal solid waste disposal facility or incinerator and remitted to the owner. The fee imposed may be equal to, or a portion of, the estimated cost of providing solid waste management services on a per ton or volume equivalent. Such full cost shall be determined pursuant to the uniform solid waste accounting system developed by the comptroller of the treasury.

(b) Revenue from tipping fees at publicly owned solid waste disposal facilities and incinerators received by counties, municipalities and solid waste authorities shall be expended only for solid waste management purposes.

(c) When a municipal solid waste disposal facility is operated as a joint venture by more than one (1) city or county, or combination thereof, or by an authority, the tipping fee authorized under this section shall be imposed by the joint operators or authority, and the tipping fee received shall be remitted to the participating local governments or authorities for expenditure for solid waste management purposes only.

(d)(1) In addition to any tipping fee imposed by any local government under this section, there shall also be imposed a surcharge of seventy-five cents (75¢) per ton on each ton of municipal solid waste received until June 30, 2004, at all Class I solid waste disposal facilities or incinerators.

(2) The operator of the municipal solid waste disposal facility or incinerator shall collect this surcharge and remit it to the state treasury to be paid into the state solid waste management fund.

(3) [Deleted by 2002 amendment.]

(e) 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 formed pursuant to this part 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. The surcharge shall be imposed on each ton or volume equivalent of municipal solid waste so received. The revenue received by a

PART 8—SOLID WASTE MANAGEMENT

68-211-821. Solid waste management fund — Funding — Transfer of functions to department — State-wide comprehensive goals for solid waste management programs. — (a) There is hereby established a general fund reserve to be allocated by the general appropriations act which shall be known as the "solid waste management fund." Moneys from the fund may be expended to fund activities authorized by this part. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this part, and shall not revert to the general fund on any June 30. Any excess revenues on interest earned by such revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from such reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years. In addition to appropriations of solid waste management funds made by the annual appropriations act, at any time during the fiscal year, the commissioner of environment and conservation, subject to the approval of the commissioner of finance and administration, may use any additional funds available from the solid waste management fund to fund activities authorized by this part.

(b) It is the legislative intent that all appropriations which are required for the implementation of this part and which are in addition to the funds available from the solid waste management fund established by this section shall be funded from appropriations which are otherwise available for solid waste management and related activities as appropriated in the general appropriations act. In order to ensure the availability of such funds, the following functions are transferred to the department of environment and conservation, effective July 1, 1991:

(1) Duties assigned to the department of economic and community development, pursuant to §§ 68-211-826 and 68-211-827 [repealed]; and

(2) Duties assigned to the department of general services, pursuant to § 68-211-865(1), (2), (3) and (4). The commissioner of finance and administration is directed to transfer all appropriations, personnel, equipment and other sources allocated to these programs to the department of environment and conservation for the fiscal year 1991-1992.

(c) The commissioner is directed to develop, with the input and advice of the municipal solid waste advisory committee, comprehensive goals for the system of solid waste management programs throughout the state. These goals should address waste avoidance, waste reduction, recycling, composting, and household hazardous waste objectives and should incorporate a strategy of education, technical assistance, and incentives for assuring compliance by all solid waste regions. This program shall be put in place for grants given out after July 1, 2000; provided, that there is sufficient information available on the waste reduction and diversion activities of the counties at that time. [Acts 1991, ch. 451, §§ 53, 89; T.C.A., § 68-31-821; Acts 1996, ch. 846, § 23; 1999, ch. 384, § 8.]

6.

County Purchasing Act of 1957 (T.C.A. 5-14-101 et seq.)

special or local acts creating central accounting systems, fiscal procedures, and director of accounts and budgets. [Acts 1957, ch. 313, § 10; T.C.A., § 5-1311.]

CHAPTER 14

COUNTY PURCHASING

SECTION.

PART 1—COUNTY PURCHASING LAW OF 1957

- 5-14-101. Short title.
- 5-14-102. Local approval.
- 5-14-103. Purchasing agent — Appointment — Compensation — Staff.
- 5-14-104. Purchasing agent — Office.
- 5-14-105. Purchasing agent — Powers and duties.
- 5-14-106. County purchasing commission.
- 5-14-107. Rules and regulations.
- 5-14-108. Purchases, sales, etc. — Bidding, auctions.
- 5-14-109. Purchases — Certification of adequate funding.
- 5-14-110. Emergency purchases.
- 5-14-111. Written orders and contracts.

SECTION.

- 5-14-112. Purchasing standards and specifications.
- 5-14-113. Liability of county.
- 5-14-114. Conflicts of interest — Illegal payments.
- 5-14-115. Application to schools, etc.
- 5-14-116. Construction of part.

PART 2—COUNTY PURCHASING LAW OF 1983

- 5-14-201. Short title.
- 5-14-202. Application of part.
- 5-14-203. Limits on purchases.
- 5-14-204. Bidding.
- 5-14-205. Expenditures under \$5,000.
- 5-14-206. Stricter requirements — Regulations.

PART 1—COUNTY PURCHASING LAW OF 1957

5-14-101. Short title. — This part shall be known as the "County Purchasing Law of 1957." [Acts 1957, ch. 312, § 1; T.C.A., § 5-1401.]

Cross-References. Applicability to county election commission, administrator of elections, or any county election official, § 2-12-210.

Centralized purchasing procedure to be utilized, § 8-22-107.

County financial management system, purchasing provisions, §§ 5-21-118 — 5-21-120.

Public contracts, title 12, ch. 4.

Section to Section References. This chapter is referred to in §§ 7-57-503, 49-2-1261.

This part is referred to in §§ 5-14-202, 49-2-1261.

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Counties, § 27.

Comparative Legislation. County purchasing laws:

Ala. Code § 11-12-1 et seq.

Ark. Code § 14-22-101 et seq.

Ga. O.C.G.A. § 50-5-100 et seq.

Ky. Rev. Stat. Ann. § 66.470.

Mo. Rev. Stat. § 50.753 et seq.

N.C. Gen. Stat. § 143-128.

Va. Code § 15.1-103 et seq.

NOTES TO DECISIONS

1. In General.

This part contains what the general assembly clearly regards as the essentials of compet-

itive bidding applicable to county governing entities and county officials. State ex rel. Leech v. Wright, 622 S.W.2d 807 (Tenn. 1981).

Collateral References. 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 532 et seq.

20 C.J.S. Counties § 185 et seq.
Counties § 111 et seq.

5-14-102. Local approval. — (a) This part shall be local in effect and shall become effective in a particular county upon the contingency of a two-thirds

(~~2~~) vote of the county legislative body or other governing body of the county approving this law, or upon the contingency of the majority of the voters casting votes in any election held for this purpose approving this law.

(b)(1) The procedure for elections held for the purpose of approving this law shall be that the county election commission shall call and conduct an election within thirty (30) days after receiving a petition signed by ten percent (10%) of the qualified voters of the county, stating that they favor this law and requesting that an election be held in the county on the subject.

(2) The number of qualified voters in the county is deemed to be the total number of votes cast for all candidates for governor in the last general election, or upon a resolution of the county legislative body, or other governing body, duly certified to the election commission, requesting such an election.

(3) In such an election, the propositions to be voted upon shall be stated on the ballot on separate lines in the following manner: "For the County Purchasing Law of 1957" and "Against the County Purchasing Law of 1957." [Acts 1957, ch. 312, § 2; impl. am. Acts 1972, ch. 740, § 7; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A., § 5-1402.]

5-14-103. Purchasing agent — Appointment — Compensation — Staff. — (a) The county executive of such county shall appoint, with the approval of the county legislative body or other governing body, a purchasing agent who shall be a county employee.

(b) A purchasing agent shall be qualified by training and experience to perform the purchasing agent's duties in a proficient manner and in accordance with generally recognized principles of governmental purchasing and in accordance with the provisions of this part.

(c)(1) Before assuming the purchasing agent's duties, a purchasing agent shall execute a corporate surety bond, the amount of which shall be established by the county executive at not less than ten thousand dollars (\$10,000) nor more than twenty-five thousand dollars (\$25,000).

(2) The bond shall be prepared in accordance with the provisions of title 8, chapter 19, approved by the county legislative body, recorded in the office of the county register of deeds and transmitted to the comptroller of the treasury for safekeeping.

(3) The premium for such bond shall be paid from the county general fund.

(d) The compensation of the purchasing agent, which shall not be in excess of compensation allowed county officials in accordance with §§ 8-24-101 and 8-24-102, shall be set annually by the county legislative body or other governing body; and the amount of such compensation, the compensation of such clerks and assistants as may be needed, and the other necessary expenses of this office shall be provided for by annual appropriation made by the county legislative body or other governing body from the county general fund.

(e) The purchasing agent has the power, in accordance with such regulations as may be established by the county executive, to appoint and remove the purchasing agent's assistants, to prescribe their duties, and to fix their salaries within the limits of the annual appropriation made therefor. [Acts 1957, ch. 312, § 3; impl. am. Acts 1978, ch. 934, §§ 7, 16, 36; T.C.A., § 5-1403; Acts 1998, ch. 677, § 4.]

Cross-References. County financial management system, finance director as purchasing agent, § 5-21-118.

5-14-104. Purchasing agent — Office. — (a) Necessary office space and equipment for the use of the purchasing agent shall be provided and maintained at the county seat of such county.

(b) Such office shall be open for business during the usual hours observed by other officials of the county government. [Acts 1957, ch. 312, § 14; T.C.A., § 5-1404.]

5-14-105. Purchasing agent — Powers and duties. — The county purchasing agent has exclusive power and it is the purchasing agent's duty to:

(1) Contract for and purchase all supplies, materials, equipment and contractual services required by each and every official, agency, office, department or employee of the county government, or which is supported by, or under control of, the county government and which expends or encumbers any of the county's funds. No other official, employee or agent of the county or of any of its departments or agencies shall be authorized to contract for or purchase any such materials, supplies, equipment or contractual services;

(2) Arrange for the rental of machinery, buildings or equipment when the rents are to be paid out of funds belonging to the county or any department, institution or agency thereof; and no other official, employee or agent of the county shall have the right or power to make any contract for such rental;

(3) Transfer materials, supplies and equipment to or between county departments and agencies as may be needed for the proper and efficient administration of the county government; and

(4) Have charge of any central storeroom or central mailing room or similar services which may hereafter be established for the efficient and economical handling of the county's business. [Acts 1957, ch. 312, § 4; T.C.A., § 5-1405.]

5-14-106. County purchasing commission. — (a) A county purchasing commission is hereby created.

(b)(1) The commission shall consist of five (5) members, one (1) of whom shall be the county executive; the remaining four (4) shall be appointed by the county executive with the approval of the county governing body.

(2) The members of the commission need not be members of the county governing body.

(c) Such commission shall elect its own chair and shall meet from time to time as it may deem necessary for the discharge of its duties.

(d) It is the duty of the commission to assist the purchasing agent in the determination of overall purchasing policies and in the establishing and promulgation, in accordance with this part, of rules, regulations and procedures to be followed in the making of purchases and contracts for purchase for the county, but the actual administration of such activity shall be the sole responsibility of the purchasing agent. [Acts 1957, ch. 312, § 5; impl. am. Acts 1978, ch. 934, §§ 16, 36; T.C.A., § 5-1406.]

5-14-107. Rules and regulations. — The county purchasing agent, with the assistance of the county purchasing commission, shall adopt, promulgate,

and may from time to time amend, rules and regulations for the purchase of supplies, materials, equipment and contractual services and specifically for the following purposes:

(1) Authorizing in writing any department, official or agency of the county government to make purchases in the open market for immediate delivery in emergencies, defining such emergencies, describing the manner in which such emergency purchases shall be made and promptly afterward reported to the county purchasing agent;

(2) Prescribing the manner in which supplies, materials and equipment shall be requisitioned, purchased, delivered, stored and distributed, and providing that such shall be conducted in accordance with the provisions of this part;

(3) Prescribing the dates for submitting requisitions and estimates, the future period they are to cover, the form in which they are to be submitted, the manner of their authentication, and their revision by the county purchasing agent;

(4) Prescribing the manner of inspecting all deliveries of supplies, materials and equipment, and of making or procuring chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(5) Requiring periodical and special reports by county departments, agencies, and employees of stocks of surplus, unusable or obsolete supplies and equipment on hand and prescribing the form of such reports;

(6) Providing for the transfer to or between county departments and agencies of supplies and equipment on hand, which are surplus with one (1) department or agency, but which may be needed by another or others, and for the disposal by sale, after receipt of competitive bids, of supplies, materials and equipment which are obsolete or unusable;

(7) Determining whether a deposit or bond is to be submitted with a bid on a purchase contract or sale, and if required, prescribing the amount and form thereof, and providing that such surety shall be forfeited if the successful bidder refuses to enter into contract ten (10) days after the award;

(8) Prescribing the manner in which invoices for supplies, materials, equipment and contractual services delivered to any and all departments, agencies and offices of the county shall be submitted, examined and approved;

(9) Providing for all other such matters as may be necessary to give effect to the foregoing rules and to the provisions of this part; and

(10) Prescribing the manner in which public auctions for the sale of county-owned property, real or personal, which has become surplus, obsolete or unusable shall be conducted. [Acts 1957, ch. 312, § 4; T.C.A., § 5-1405; Acts 1984, ch. 647, § 1.]

Textbooks. Tennessee Jurisprudence, 8
Tenn. Juris., Counties, § 27.

5-14-108. Purchases, sales, etc. — Bidding, auctions. — (a)(1) All purchases of and contracts for purchases of supplies, materials, equipment and contractual services, and all contracts for the lease or rental of equipment, and

all sales of county-owned property which has become surplus, obsolete or unusable, shall be based wherever possible on competitive bids.

(2) Contracts for legal services, auditing services by certified public accountants, and similar services by professional persons or groups of high ethical standards shall not be based upon competitive bids but shall be awarded on the basis of recognized competence and integrity.

(3) Bids need not be required for services for which the rate or price is fixed by a public authority authorized by law to fix such rates or prices.

(4) The prohibition in this subsection against competitive bidding shall not prohibit the county from interviewing eligible persons or groups to determine the capabilities of such persons or groups.

(b) The county may purchase materials, supplies, commodities and equipment from any federal, state or local governmental unit or agency, without conforming to the competitive bidding requirements of this part.

(c)(1) If the amount of the expenditure or sale is estimated to exceed five hundred dollars (\$500), sealed bids shall be solicited, unless the county legislative body by resolution establishes a higher amount not to exceed five thousand dollars (\$5,000).

(2) The county legislative body by resolution may exempt perishable commodities from the requirements of sealed or competitive bidding when such items are purchased in the open market.

(3) The county purchasing agent shall solicit sealed bids by public notice inserted at least once in a newspaper of county-wide circulation, five (5) days prior to the final date for submitting bids or by posting notices on a public bulletin board in the county courthouse.

(4) The county purchasing agent shall also, when deemed necessary or desirable, solicit sealed bids by sending requests by mail to prospective suppliers.

(5) All such notices shall include a general description of the commodities or contractual services to be purchased or property to be sold, and shall state where bid blanks and specifications may be obtained and the time and place of opening bids.

(d)(1) All purchases or sales in amounts that do not require bid solicitation pursuant to subsection (c) may be made by the county purchasing agent in the open market without newspaper notice, but shall whenever possible be based upon at least three (3) competitive bids.

(2) Requisitions for items estimated to cost an amount such as to require public newspaper notice shall not be subdivided in order to circumvent the requirement for public newspaper notice as herein provided.

(3) All sales by the purchasing agent shall be made to the highest responsible bidder.

(e) Bids on purchases shall in all cases be based on such standards as may be adopted and promulgated by the county purchasing agent and approved by the county purchasing commission.

(f) All open market purchase orders or contracts made by the county purchasing agent or in extreme emergencies by any county department or agency shall be awarded to the lowest and best bidder, taking into consideration the qualities of the articles to be supplied, their conformity with

specifications, their suitability to the requirements of the county government, and the delivery terms. Any or all bids may be rejected for good cause.

(g) All bids taken under the requirements of this part, and all other documents, including purchase orders, pertaining to the award of contracts on such bids, shall be preserved for a period of five (5) years.

(h) If all bids received on a pending contract are for the same unit price or total amount, the county purchasing agent shall have authority to reject all bids and to purchase the required supplies, materials, equipment or contractual services in the open market; provided, that the price paid in the open market does not exceed the bid price.

(i) All sealed bids received shall be opened publicly at the time and place fixed in the advertisement. Each bid, with the name and address of the bidder, shall be entered on a record, and each record with the names of the bidders, the amounts of their bids, and the name of the successful bidder indicated thereon, shall, after the award or contract or order, be open to public inspection.

(j) All contracts shall be approved as to form by the county attorney, and the original copy of each long-term contract shall be filed with the county clerk.

(k) No purchase shall be made or purchase order or contract of purchase issued but in consequence of a written requisition for the supplies, materials, equipment or contractual services required, which requisition shall be signed by the head of the department, office or agency of the county requiring such articles or services. Original copies of all such requisitions shall be kept on file in the office of the county purchasing agent.

(l) No purchase shall be made or purchase order or contract of purchase issued for tangible personal property or services by county officials or employees, acting in their official capacity, from any firm or individual whose business tax or license is delinquent.

(m)(1) The county purchasing agent is authorized to purchase and contract to purchase materials, supplies, equipment and contractual services on a fiscal year basis, but no commitment shall be made which extends beyond the end of the current fiscal year for which appropriations have been made by the county legislative body, except such commitments as are authorized by resolution of the county legislative body.

(2) In the determination of the county's annual needs of certain commodities and/or services, the county purchasing agent may request the various departments, offices and agencies of the county government to anticipate their needs for the remainder of the fiscal year and to issue their requisitions based upon such estimates.

(n)(1) Perishable commodities, at the election of the local governing body, may be exempted from the requirements of public advertisements and competitive bidding when such items are purchased in the open market.

(2) A record of all such purchases shall be made by the purchasing agent and shall specify the amount paid, the items purchased, and from whom the purchase was made.

(3) A report of such purchases shall be made to the chief executive officer and the governing body of the county at frequencies specified by the governing body.

(4) Fuel and fuel products may be purchased in the open market without public newspaper notice, but shall whenever possible be based on at least three

(3) competitive bids. Fuel and fuel products may be purchased from the department of general services' contract where available.

(5) This subsection shall apply to any county having a population of not less than seventy-seven thousand seven hundred (77,700) nor more than seventy-seven thousand eight hundred (77,800), according to the 1980 federal census or any subsequent census, if it is approved by a two-thirds ($\frac{2}{3}$) vote of the county legislative body of any county to which it may apply.

(o)(1) All sales of county-owned property, real or personal in nature, which has become surplus, obsolete or unusable shall be made by public auction as defined in §§ 47-2-328 and 62-19-101 or by sealed bid under this section, in the discretion of the purchasing agent or responsible official.

(2) The county purchasing agent shall give public notice of such auction by inserting at least once in a newspaper of county-wide circulation or by posting on a public bulletin board in the county courthouse at least five (5) days prior to the date of such auction, a notice specifying the auction date, time, place, property to be sold and terms of such auction. [Acts 1957, ch. 312, § 7; 1963, ch. 367, § 1; 1975, ch. 53, § 1; 1977, ch. 119, §§ 1, 2; 1977, ch. 288, § 1; impl. am. Acts 1978, ch. 934, §§ 7, 22, 36; modified; T.C.A., § 5-1408; Acts 1984, ch. 604, § 1; 1984, ch. 647, §§ 2-5; 1984, ch. 822, § 1; 1984, ch. 895, §§ 1, 2; 1988, ch. 770, §§ 1, 2; 1995, ch. 179, § 1.]

Code Commission Notes. Acts 1977, ch. 288, § 1 amended this section as it applies to any county of 63,500 to 65,000 (Blount County only).

Compiler's Notes. Acts 1998, ch. 938, §§ 1-3 provides: "There is created a task force to study the issue of permitting a system of open bids in the purchasing procedures of municipal, county and state governments, including the use of the Internet as a medium for advertising for and receiving open bids. The task force shall consist of ten (10) members, as follows: one (1) member of the house of representatives and one (1) member of the senate to be appointed by the respective speakers; the commissioner of general services or the commissioner's designee; the comptroller of the treasury or the comptroller's designee; the director of county audit of the office of the comptroller of the treasury; one (1) person having technical knowledge of information services and the internet, to be appointed by the information systems council; one (1) person appointed by the Tennessee city manager's association; two (2) persons appointed by the Tennessee association of public purchasing, one (1) to be a municipal purchasing officer and one (1) to be a county purchasing officer; and one (1) person from the private sector to be appointed by the governor. The task force shall study the bidding and purchasing processes of municipal, county and state governments and the statutory language establishing such procedures, and shall make recommendations as to

whether any or all of such governmental units would benefit from allowing a system of open bids advertised for and received through the medium of the Internet. The commissioner of general services shall convene the first meeting of the task force. At its first meeting the task force shall elect a chair, a vice chair and such other officers as the task force may find necessary and appropriate. The institute for public service of the University of Tennessee and the fiscal review committee shall furnish staff assistance to the task force, if requested. Members of the task force shall serve without compensation, except that any member of the task force who is not a state or local government employee shall be reimbursed for all travel expenses incurred as a result of his or her duties with the task force in accordance with the provisions of the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter. The task force shall report its findings and recommendations to the chairs of the commerce committees, the finance, ways and means committees and the state and local government committees of the senate and house of representatives no later than February 1, 1999, at which time the task force shall cease to exist."

Cross-References. Purchases of lubricating motor oil, § 12-3-531.

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Counties, § 27.

NOTES TO DECISIONS

1. In General.

This part contains what the general assembly of this state clearly regards as the essentials of competitive bidding applicable to county

governing entities and county officials. State ex rel. Leech v. Wright, 622 S.W.2d 807 (Tenn. 1981).

5-14-109. Purchases — Certification of adequate funding. — Except in emergencies, no order for delivery on a contract or open market order for supplies, materials, equipment or contractual services for any county department or agency shall be awarded unless it shall be first certified by the director of accounts and budgets, or other county official or employee in charge of the central accounting records of the county that the unencumbered balance in the appropriation chargeable with such purchase in excess of all unpaid obligations, is sufficient to defray the entire cost of such order or contract. [Acts 1957, ch. 312, § 8; T.C.A., § 5-1409.]

5-14-110. Emergency purchases. — (a) The county purchasing agent may authorize any department or agency of the county government to purchase in the open market, without filing requisition or estimate, any supplies, materials or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work; but such emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs.

(b)(1) Such direct emergency purchases, however, may only be made by department or agency heads at times when the office of the county purchasing agent is closed.

(2) At all other times, only the county purchasing agent shall make these purchases.

(3) A report of such emergency purchase, when made by a department or agency head, together with a record of the competitive bids secured and upon which it was based, shall be submitted in writing to the county purchasing agent before the close of the next working day following the date of such purchase, by the head of the county department or agency concerned, together with a full and complete account of the circumstances of such emergency.

(4) Such report shall be kept on file and shall be open to public inspection. [Acts 1957, ch. 312, § 9; T.C.A., § 5-1410.]

5-14-111. Written orders and contracts. — (a) Each purchase order or contract issued or executed pursuant to the provisions of this chapter shall be evidenced by a written order signed by the county purchasing agent, which shall give all significant details respecting such order or contract.

(b) A copy of such order shall be furnished the vendor, one (1) copy shall be furnished to the county accounting department, and at least two (2) copies shall be retained in the office of the county purchasing agent, one (1) of such copies to be filed in numerical order and the other alphabetically. [Acts 1957, ch. 312, § 11; T.C.A., § 5-1411.]

5-14-112. Purchasing standards and specifications. — (a) It is the duty of the county purchasing agent to:

(1) Classify the requirements of the county government for supplies, materials and equipment;

(2) Adopt as standards the smallest number of quantities, sizes and varieties of such supplies, materials and equipment consistent with the successful operation of the county government; and

(3) Prepare, adopt and promulgate written specifications describing such standards.

(b)(1) In the preparation and revision of such standards, the county purchasing agent shall seek the advice, assistance and cooperation of the county departments and agencies concerned, to ascertain their precise requirements.

(2) Each specification adopted for any commodity shall, insofar as possible, satisfy the requirements of the majority of the county departments and agencies which use the same. [Acts 1957, ch. 312, § 12; T.C.A., § 5-1412.]

5-14-113. Liability of county. — The county shall be liable for the payment of all purchases of supplies, materials, equipment and contractual service made in accordance with the provisions of this chapter, but shall not be liable for the payment of such purchases made contrary to its provisions. [Acts 1957, ch. 312, § 13; T.C.A., § 5-1413.]

5-14-114. Conflicts of interest — Illegal payments. — (a) Neither the county purchasing agent, nor members of the county purchasing commission, nor members of the county legislative body, nor other officials of the county, shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or contractual services used by or furnished to any department or agency of the county government.

(b) Nor shall any such persons accept or receive, directly or indirectly, from any person, firm or corporation to which any contract or purchase order may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation.

(c) A violation of this section is a Class D felony. [Acts 1957, ch. 312, § 10; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A., § 5-1414; Acts 1989, ch. 591, § 18.]

Cross-References. Penalty for Class D felony, § 40-35-111.

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Counties, § 27.

Attorney General Opinions. Acceptance of gifts from contracting companies, OAG 94-73 (6/16/94).

5-14-115. Application to schools, etc. — (a) The provisions of this part shall not apply to county school funds for any purpose, the county board of education and the county superintendent, unless approved by the commissioner of education.

(b) Upon request by a majority vote of the local board of education and with the approval of such commissioner, applicability of the provisions of this part as it applies to county school funds shall cease to be effective. [Acts 1957, ch. 312, § 14a; T.C.A., § 5-1415; Acts 1982, ch. 809, § 1.]

5-14-116. Construction of part. — This part is not exclusive and shall not prevent the adoption of amendments to existing special or local purchasing laws, or the enactment of special or local purchasing acts. [Acts 1957, ch. 312, § 15; T.C.A., § 5-1416.]

PART 2—COUNTY PURCHASING LAW OF 1983

5-14-201. Short title. — This part shall be known and may be cited as the "County Purchasing Law of 1983." [Acts 1983, ch. 451, § 1.]

Cross-References. County financial management system, purchasing provisions, §§ 5-21-118 — 5-21-120.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

Section to Section References. This part is referred to in § 7-86-121.

5-14-202. Application of part. — This part applies to all purchases by authorized officials in all counties using or encumbering county funds, except that this part does not apply to purchases:

- (1) Made from county highway funds pursuant to § 54-7-113;
- (2) Made from county education funds pursuant to § 49-2-203;
- (3) Made by any county which has adopted either the County Purchasing Law of 1957, compiled in part 1 of this chapter, or the County Financial Management System of 1981, compiled in chapter 21 of this title;
- (4) Made by any county governed by a private act regarding purchasing if such private act provides for advertisement and competitive bidding before a purchase is made and if the dollar amount for each purchase requiring advertisement and competitive bidding is five thousand dollars (\$5,000) or some lesser amount;
- (5) Made under the provisions of § 12-3-1001;
- (6) Made by any county having a population of seven hundred thousand (700,000) or more according to any federal census and governed by a private act regarding purchasing, if such private act provides for advertisement and competitive bidding before a purchase is made and if the dollar amount for each purchase requiring advertisement and competitive bidding is five thousand dollars (\$5,000) or some lesser amount;
- (7) From nonprofit corporations, such as the Local Government Data Processing Corporation, whose purpose is to provide goods or services specifically to counties; or
- (8) Made by a county with a population of not less than two hundred thousand (200,000) according to any federal census, so long as the county through county or metropolitan government charter, private act, or ordinance or establishes a procedure regarding purchasing that provides for advertisement and competitive bidding and sets a dollar amount for each purchase requiring advertisement and competitive bidding; and provided that purchases of less than the dollar amount requiring advertisement and competitive bidding shall, wherever possible, be based upon at least three (3) competitive bids. [Acts 1983, ch. 451, § 2; 1990, ch. 820, § 1; 1995, ch. 179, §§ 2, 3.]

PART 2—LOCAL OPTION BUDGETING LAW OF 1993

5-12-201. Short title — Applicability.

Attorney General Opinions. Local Option Budgeting Law and Private Act, OAG 00-059 (4/3/00).

5-12-210. Adoption of budget, tax rate and appropriation resolution.

Attorney General Opinions. Local Option Budgeting Law and Private Act, OAG 00-059 (4/3/00).

5-12-215. Impoundment power to prevent deficit operation — Override — Applicability.

Attorney General Opinions. Local Option Budgeting Law and Private Act, OAG 00-059 (4/3/00).

CHAPTER 13

COUNTY FISCAL PROCEDURE LAW OF 1957

5-13-104. Fiscal procedure system.

Cross-References. County executive as county financial officer, §§ 5-6-108 — 5-6-112.

CHAPTER 14

COUNTY PURCHASING

PART 1—COUNTY PURCHASING LAW OF 1957

5-14-101. Short title.

Cited: State v. Whitehead, 43 S.W.3d 921 (Tenn. Crim. App. 2000).

5-14-102. Local approval.

Cited: State v. Whitehead, 43 S.W.3d 921 (Tenn. Crim. App. 2000).

5-14-105. Purchasing agent — Powers and duties.

Attorney General Opinions. Authority of juvenile court to assess fees for services provided to the juvenile, OAG 99-147 (7/30/99).

5-14-108. Purchases, sales, etc. — Bidding, auctions.

Cross-References. Advisory committee for use of the Internet, title 12, ch. 3, part 11. Electronic bidding, invitations to bid, requests for proposals and other solicitations, § 12-3-704.

5-14-114. Conflicts of interest — Illegal payments.

Attorney General Opinions. T.C.A. § 5-14-114(a) does not prohibit county commissioners from being directly or indirectly interested in a spouse's full-time employment contract with the county because such a contract is not a "contract or purchase order ... for contractual services" within the meaning of the statute, OAG 00-152 (10/6/00).

A county commissioner who works part-time as an independent contractor for a department of county government is prohibited from being directly or indirectly interested in county supply and service contracts, OAG 00-152 (10/6/00).

NOTES TO DECISIONS**1. Constitutionality.**

While T.C.A. § 5-14-114 is not unconstitutionally vague, it is violative of equal protection guaranties. *State v. Whitehead*, 43 S.W.3d 921 (Tenn. Crim. App. 2000).

There is no fundamental right to a financial or "personal beneficial" interest in county contracts; moreover, the class of citizens to which T.C.A. § 5-14-114 applies is not discrete, and in consequence, is not suspect. *State v. Whitehead*, 43 S.W.3d 921 (Tenn. Crim. App. 2000).

The legislature's classification of a county official's conflict of interest with regard to a county contract as a Class D felony in only those counties adopting the County Purchasing Law of 1957 was purely arbitrary and could not withstand the defendant's equal protection challenge. *State v. Whitehead*, 43 S.W.3d 921 (Tenn. Crim. App. 2000).

CHAPTER 17**COUNTY-WIDE FIRE DEPARTMENTS****SECTION.**

5-17-101. Formation.
5-17-102. Powers and duties.

SECTION.

5-17-103. County fire chief.
5-17-104. Budget.

5-17-101. Formation. — (a) The county legislative body or other governing body of any county is authorized to form a new agency to be known as the county-wide fire department for the purpose of providing fire protection services to all of the county.

(b) The powers and duties of the county-wide fire department may be delegated by the county legislative body or other governing body to an existing agency.

(c)(1) The governing body of any county, which now has or may hereafter have a metropolitan form of government as defined by § 7-1-101, is authorized to form a new agency to be known as the county-wide fire department, or to extend fire protection services of an existing agency or department to all or any part thereof of the general services district outside the urban services district in the manner and to the extent hereafter prescribed.

(2) In counties governed by metropolitan government, the powers and duties of the agency or department affording fire protection outside the urban services district shall be vested in that agency in which the charter of the

7.

Lenoir City Procurement Law

PURCHASING PROCEDURES

CITY OF LENOIR CITY, TENNESSEE

ADOPTED: NOVEMBER 11, 1991
AMENDED: SEPTEMBER 23, 1996
AMENDED: FEBRUARY 24, 1997
AMENDED: SEPTEMBER 8, 1997
AMENDED: JUNE 14, 1999
AMENDED: March 26, 2001

FOREWORD

This manual has been developed so that the City of Lenoir City, Tennessee, (hereinafter referred to as "CITY"), may obtain the most efficient purchasing operation possible. By clarification of the procedures to be used, both the using department and the purchasing department should benefit by decreasing time to obtain materials, equipment, and services required to carry on departmental operations.

The primary function of the Purchasing Department is to provide assistance to all departments within CITY by securing the best materials, supplies, equipment and service at the lowest possible cost consistent with the quality needed for the proper operation of each department. One purpose of this manual is to explain CITY policies in respect to purchasing, serving as a general framework within which decisions can be made and as a guide to a consistent purchasing operation. To have a good purchasing program, all CITY employees directly or indirectly associated with the purchasing function must work as a team to promote the best interest of CITY in obtaining the maximum value for each dollar of expenditure.

As revisions or additions to this manual become necessary, new pages will be sent to all recipients of the manual, who are requested to maintain it in an up-to-date fashion.

If there are any questions regarding this manual, please contact the Purchasing Agent.

Requests for additional copies of the manual should be addressed to the same office.

CITY OF LENOIR CITY, TENNESSEE

By: _____

Charles T. Eblen, Mayor

PURCHASING PROCEDURES

CITY OF LENOIR CITY,

TENNESSEE

The City Administrator shall act as Purchasing Agent for the City of Lenoir City, Tennessee, with power, except as set out in these procedures, to purchase materials, supplies, equipment; secure leases and lease-purchases; and dispose of and transfer surplus property for the proper conduct of the CITY business. All contracts, leases, and lease-purchase agreements extending beyond the end of any fiscal year must have prior approval of the governing body. If there is no City Administrator, the Recorder/Treasurer shall act as Purchasing Agent.

The Purchasing Agent shall have the authority to make purchases, leases, and lease purchases of less than Ten Thousand Dollars (\$10,000.00)² singly or in the aggregate during any fiscal year, and except as otherwise provided herein, shall require three (3) competitive bids or quotations, either verbal or written, whenever possible prior to each purchase. Competitive bids or quotations for the purchase of items which cost less than One Thousand Dollars (\$1,000) are desirable but not mandatory. All competitive bids or quotations received shall be recorded and maintained in the office of the Purchasing Agent for a minimum of Two (2) years after audit. When requisitions are required, the competitive bids or quotations received shall be listed upon that document prior to the issuance of the purchase order. Awards shall be made to the lowest responsible bidder.

² Amended June 14, 1999 from \$5,000 to \$10,000

A description of all projects or purchases, except as herein provided, which require the expenditure of CITY funds of One Thousand Dollars (\$1,000³) or more but less than Twenty Thousand Dollars (\$20,000.00), except motor vehicles, a vehicle capable of carrying⁴ passengers and licensed to operate on public roads, shall be prepared by the Purchasing Agent. After the determination that adequate funds are budgeted and available for a purchase, the Purchasing Agent will advertise for bids of proposals. The award of purchases, lease, or lease-purchases of Five Thousand Dollars (\$5,000) or more but less than Twenty Thousand Dollars (\$20,000) shall be made by the Purchasing Agent to the lowest responsible bidder. For purchases of Twenty Thousand Dollars (\$20,000) or more, and for all motor vehicles, bid proposals will be submitted to the City Council for authorization to call for bids or proposals. After advertising, the bid award shall be made by the City Council.

Purchases amounting to Five Thousand Dollars (\$5,000) or more, which do not require public advertising and sealed bids of proposals, may be allowed only under the following circumstances and, except as otherwise provided herein, when such purchases are approved by the governing body:

- (1) Sole source of supply or proprietary products as determined after complete search by using department and the Purchasing Agent, with City Council approval.

³ Amended March 26, 2001 from \$5,000 to \$1,000

⁴ Amended September 8, 1997 to define a motor vehicle.

- (2) Emergency expenditures with subsequent approval of the Purchasing Agent.
- (3) Investments in or purchases from the pooled investment fund established pursuant to TCA 9-17-105 (State Investment Pool).
- (4) Purchases from instrumentalities created by two (2) or more cooperating governments.
- (5) Purchases from non-profit corporations whose purpose or one of whose purposes is to provide goods or services specifically to municipalities.
- (6) Purchases, leases, or lease-purchases of real property.
- (7) Purchases, leases, or lease-purchases, from any federal, state, or local governmental unit or agency, of second-hand articles or equipment or other materials, supplies, commodities, and equipment.
- (8) Purchases through other unites of governments as authorized by the Municipal Purchase law of 1983.
- (9) Purchases directed through or in conjunction with the State Department of General Services.
- (10) Purchases from Tennessee State Industries.
- (11) Professional Service Contracts as provided in
TCA 29-20-407.
- (12) Tort Liability Insurance as provided in TCA
12-4-407.

(13) Purchases of fuels, fuel projects, or perishable commodities.

The Purchasing Agent shall be responsible for compliance with these procedures and the Municipal Purchasing law of 1983, as amended, including required records and reports, as if they were set out herein and made a part hereof and within definitions of words and phrases from the law as herein defined.

8. To assist in preparation of specifications and to maintain specification and historical performance files.
9. To prepare and advertise request for bids and maintain bid files.
10. To keep items in stores in sufficient quantities to meet normal requirements of CITY for a reasonable length of time within space availability.
11. To investigate and document complaints about merchandise and services for future reference.
12. To transfer or dispose of surplus property.

Using Department's Responsibility

1. To allow ample lead time for the Purchasing Department to process the requisition and issue the purchase order, while permitting the supplier time to deliver the needed items.
2. To prepare a complete and accurate description of materials to be purchased.
3. To assist the Purchasing Department by suggesting sources of supply.
4. To plan purchases in order to eliminate avoidable emergencies.
5. To initiate specification preparation as items to be bid.
6. To inspect merchandise upon receipt, and complete a receiving report noting any discrepancies in types, numbers, condition, or quality of goods.
7. To advise Purchasing Department of defective merchandise or dissatisfaction with vendor performance.
8. To advise Purchasing Department of surplus property.

METHODS

PURCHASE REQUISITION

Purpose

The purchase requisition serves to inform the Purchasing Department of the needs of the using department and to correctly define the material or service requested. A requisition is required for purchases, requesting price information, initiating a bid request, and for requesting governing body approval on major expenditures.

When Prepared

Requisitions shall be prepared far enough in advance to enable the Purchasing Department to obtain competitive prices and to allow sufficient time for the vendor to make delivery. If the requisition is \$150.00 or more, a purchase order is required.

Who Prepares the Requisition

Requisitions shall originate in the using department and be signed by the requisitioner and the department head. The department head shall file with the Purchasing Department a certified memorandum listing those who are authorized to sign a requisition.

How to Prepare

A properly processed purchase requisition must contain the following information:

- (a) Date Issued - the date the requisition is prepared.

- (b) Date Wanted - state a definite delivery date. "AT ONCE, ASAP, AND RUSH" are vague instructions and do not give the Purchasing Department sufficient information. Prepare far enough in advance to avoid emergencies.
- (c) Requisition Number - place the sequential number in this area if your department keeps a numerical requisition file.
- (d) Department - the complete name of the using department.
- (e) Requisitioner - signature of the person initiating the purchase request.
- (f) Department Head - signature of the department head.

- (g) Suggested Vendors - if there are more than four (4) suggested vendors, the department head should list on a separate sheet.
- (h) To Be Delivered To - Be specific. If vague or indefinite, confusion may result in costly delays.
- (i) Item No. - numerical order of items listed.
- (j) Quantity - the number required.
- (k) Unit - dozen, lineal fee, gallons, etc.
- (l) Description - Give a clear description of the items desired as to size, color, type, etc. If the purchase is of a technical nature, specification should be attached to the requisition. If the item cannot be described without a great amount of detail, a brief description should be given, followed by a trade name and model number of an acceptable item "or approved equal". Requisitions must not give specifications that will favor one supplier to the exclusion of any others.

NOTE: Incomplete information in this area will result in the requisition being returned to the using department for clarification.

- (m) Account to be Charged - complete budgetary code.
- (n) Unit Price - price for each individual item.
- (o) Amount - a total of quantity times unit price.

Routing of Requisitions

Prepare three copies of the purchase requisition. Send the original and one copy to the Purchasing Department and retain the third copy in departmental files. After the Purchasing Department has received at least three (3) quotations or bids and determined total cost of the merchandise, the cost will be listed on the original and one copy of the requisition; these copies shall be forwarded to the finance officer. The finance officer shall certify, by signature, that the proper account has been charged and the availability of budgetary and cash funds. The original requisition shall then be returned to the Purchasing Department and the copy filed in the office of the finance officer.

General Information

A requisition must be completed before a purchase is made, except as otherwise provided herein.

The Purchasing Department will obtain prices for any needed item after receipt of a departmental requisition. All requests for prices will be processed in this manner.

Suggested vendors will be of great assistance to the Purchasing Department and will be given full consideration. This information will allow the Purchasing Department to process the requisition more rapidly.

Approximate cost of items will enable Purchasing to determine if bids are required.

If a requisition is incomplete or improperly prepared, the Purchasing Department shall return it to the using department for completion. An incomplete requisition could cause unnecessary delays.

THE REQUISITIONER SHALL NOT SPLIT ORDERS TO CIRCUMVENT ANY PROVISION OF THE CHARTER, THIS MANUAL, OR ANY POLICY ESTABLISHED BY CITY NOR SHALL REQUISITIONS BE SUBMITTED FOR THE SOLE PURPOSE OF USING UP BUDGETARY BALANCES.

Expediting Orders

If a company is awaiting a purchase order to process a rush order, the words EXPEDITE IMMEDIATELY must be placed in the body of the requisition. The Purchasing Department will then contact the vendor and supply a purchase order number. This process will be the exception rather than the rule.

Insufficient Funds

If it is determined by the finance officer that the account lacks a sufficient budget, it will be referred to the Purchasing Agent, who will notify the Department Head.

PURCHASE ORDER

Purpose

A purchase order authorizes the seller to ship and invoice the materials and services as specified. Purchase orders shall be written so that they are clear, concise, and complete. This will prevent misunderstandings and unnecessary correspondence with suppliers.

When Prepared

Purchase orders are issued only after an acceptable requisition has been submitted and after approval of the Purchasing Agent and the finance officer. No purchase order will be issued until the finance officer has certified adequate budgetary and cash balances to make the purchase, except as otherwise provided herein.

If the requisition is \$150.00 or more, a purchase order is required.

Who Issues the Purchase Order

The Purchasing Department only shall issue purchase orders, except as otherwise provided herein. The using department will not enter into negotiations with suppliers for the purchase of equipment, supplies, materials, services, or other items, except under the emergency purchase procedures and as otherwise provided herein.

How Purchase Orders are Handled

The Purchase Order is made from the approved Requisition and is prepared in three (3) copies: white, blue, yellow.

- a. White Copy is mailed to the vendor to be used as authority to furnish CITY the materials or services indicated.
- b. Blue Copy is sent to the Finance Officer and the proper account encumbered by the amount of the Purchase Order.
- c. Yellow Copy is retained by the Purchasing Agent and filed as a record of outstanding orders. When paid, the yellow copy will be marked properly and put in a completed file in numerical order.

Cancellations

The Purchasing Department must initiate all cancellations and will issue a purchase order to the next best vendor or renew the purchasing process.

MATERIAL RECEIVING

REPORT

Purpose

The material Receiving Report form is designed to notify the Purchasing Agent and the Finance Officer that item of a particular order has been received.

When prepared

This form is completed immediately upon receipt of materials, supplies, or services.

Who Prepares

The person receiving the merchandise.

How to Prepare

A properly prepared Material Receiving Report must contain the following information:

- a. Purchase Order Number - the number from the purchase order on which the items were ordered.
- b. From - name of vendor.
- c. Material Received By - person receiving the item.
- d. Date Received - date the goods are received.
- e. Quantity - number of items received.
- f. Description - brief statement describing item(s).
- g. Price - unit price from the purchase order.

- h. Per - unit measure (foot, lb., etc.).
- i. Amount - amount equal to quantity times unit cost.
- j. Freight Charge - amount (if any) charged for delivery.

When any item(s) is not in satisfactory condition, a statement to the condition of the item(s) shall be made in the description column. No statement as to condition in this column shall certify that the item(s) is in satisfactory condition.

DEPARTMENTAL PURCHASE

ORDERS

Purpose

Departmental Purchase Orders allow the using department to handle small purchases without processing a requisition through the Purchasing Department.

When Used

Departmental Purchase Orders are to be used for the purchase of items which cost \$4,000.00 or less.

Who Prepares the Departmental Order

The department head may fill out a Departmental Purchase Order. The Purchasing Department shall keep a list of persons who are authorized to sign a Departmental Purchase Order for a department head.

How to Prepare

A properly prepared Departmental Purchase Order will contain the following information:

- a. Number (No.) - Assigned by the Purchasing Department.
- b. Date - the date the order was prepared.
- c. Dept. - ordering department.
- d. Vendor - firm or person from whom purchase is being made.
- e. Vendor's Address - address of vendor.

- f. Quantity - the amount ordered of each item described.
- g. Description - brief description of item(s) to be purchased.
- h. Account to be Charged - complete budgetary code of using department.
- i. Price - amount equal to quantity times unit cost.
- j. Purchase Authorized By - signature and title of department head.

- k. Articles or Service Received - signature of person receiving articles or service and date received.

Routing

A Departmental Purchase Order is a three-part form consisting of the following:

- a. White Copy is mailed to the vendor to be used as authority to furnish CITY the materials or services indicated.
- b. Blue Copy is sent to the Finance Officer and the proper account encumbered by the amount of the Purchase Order.
- c. Yellow Copy is retained by the Purchasing Agent and filed as a record of outstanding orders. When paid, the yellow copy will be marked properly and put in a completed file in numerical order.

General Information

The department head shall be responsible for holding expenditures within budgetary appropriations and attempt to secure at least three (3) quotations for those items which cost \$5,000 or less.

These purchase orders will be numbered and issued to the using department by the Purchasing Department.

It is the responsibility of the department head, considering price and quality, to determine the best source of supply. All local sources should be considered before a purchase is made. The Purchasing Department will assist in vendor selection upon request.

UNDER NO CIRCUMSTANCES MAY MULTIPLE FORMS BE USED,
IF THE PURCHASE IS OVER THE DOLLAR LIMIT, IN AN EFFORT
TO AVOID FILLING OUT A PURCHASE REQUISITION.

REQUEST FOR BID

The Request for Bid form shall be used when deemed necessary by the Purchasing Agent. The Bid Number (#) shall be that number assigned to the firm or individual to which the Request for Bid is forwarded.

SUMMARY OF BIDS

The Summary of Bids form shall be used by the Purchasing Department to record quotations. This form shall contain the bids for each purchase and be attached to the pink copy of the purchase order when filled.

EMERGENCY PURCHASES

Purpose

Emergency purchases are to be made by departments only when normal functions and operations of the department would be hampered by submitting a requisition in the regular manner, or where property, equipment, or life are endangered through unexpected circumstances and materials, services, etc., and are needed immediately.

By Whom Made

Emergency purchases, either verbal or written, may be made directly by the using department without competitive bids, provided sufficient appropriation has been made to cover such occasions and necessary approvals have been secured.

Who Authorizes

The department head may authorize an emergency purchase.

How To Make

After determining that a true emergency exists, the following procedure should be used:

- (a) Notify the Purchasing Department of the need and nature of the emergency. The Purchasing Department will give verbal approval and issue a purchase order number. This number will be referenced on the requisition referred to in Step (d)-1.
- (b) Using department shall at all times use sound judgment in making emergency purchases of

materials and supplies and for labor on equipment at the best possible price. Orders should be placed with vendors with whom the using department has had previous satisfactory experience.

- (c) Suppliers shall furnish sales tickets, delivery slips, invoices, etc., for the supplies or services rendered. Terms of the transactions, indicating price and other date, shall be shown.
- (d) Upon completion of the purchase, on the same or following business day, the using department shall perform the following:
 - (1) Present to the Purchasing Department a completed requisition stating a description of the emergency and approval by the department head. The

words "Confirming Emergency Purchase" shall be marked plainly on the requisition, along with the purchase order number used.

- (2) The sales ticket, delivery slips, invoices, and Material Receiving Report confirming the purchase must be attached to the emergency requisition form.
 - (3) The Purchasing Department will issue the vendor a purchase order marked "Confirmation".
- (e) If an emergency should occur during a time when the Purchasing Department normally is closed, the using department will follow the above procedure with the exception of Step (a). The evidence of purchase, such as sales slip, counter receipt, delivery slip, invoice, etc., which the supplier normally furnishes, shall be attached to the completed and approved requisition form and be forwarded to the Purchasing Department, along with a Material Receiving Report.
- (f) The person authorizing the emergency purchase shall prepare a report to the chief executive officer and the governing body, as soon as possible, specifying the amount paid, the item(s) purchased, from who the purchase(s) was made, and the nature of the emergency.

General Information

EMERGENCY PURCHASES ARE COSTLY AND SHOULD BE KEPT TO A MINIMUM. Avoiding emergency orders will ultimately save CITY money.

SEALED BIDS OF

PROPOSALS

Sealed bids are required on purchases of \$4,500 or more. Advertisement of bids in a local newspaper of general circulation must be not less than five (5) days before bid opening date.

PURCHASING

DEPARTMENT'S RESPONSIBILITY

1. Prepare bid requests.
2. Establish date and time for bid opening.
3. Select possible sources of supply.
4. Prepare specifications (unless of a technical nature; i.e., architectural, engineering, etc.) using department's input and assistance.
5. Mail bid requests and advertise as appropriate. If hand delivered, an appropriate receipt of the bid request should be signed by the vendor.
6. Receive and open bids.
7. Evaluate bids using department's assistance.
8. Prepare bids and make recommendation on award to governing body for approval.
9. Process purchase order after governing body approval.
10. Maintain all specification and bid data files.

16. Santek's Personnel.

(a) Santek shall assign a qualified person or persons to be in charge of its operations at the disposal site and shall inform the Commission of said persons' identity.

(b) Santek agrees to abide by all applicable Federal, State and local laws and regulations pertaining to employment, employee selection, compensation, and associated matters as relates to the operation of the project.

(c) All Santek employees will receive special training in the overall operations of the Landfill as well as in their specialized assignments. This operational training, as well as landfill operational safety training, will be provided on a sustained and continuing basis.

(d) There will be periodic safety meetings of all Santek employees for accident control. The facility will be equipped with fire extinguishers, including a fire extinguisher at the shop. These will be maintained on a regular basis to prevent accidental discharge.

17. Assignment. No assignment of this Agreement or any right occurring under it shall be made in whole or in part by Santek without the express written consent of the Commission. In the event of any assignment the assignee shall assume the liability of Santek, but such assumption shall not release Santek from primary liability for performance of this Agreement and any breach hereof.

3. Bid Opening Schedule - The Purchasing Department is responsible for setting bid opening dates and times.
4. Telephone Bids - The Purchasing Department will not accept any bid by telephone.
5. Bid Form - The Purchasing Department sends duplicate copies of bid request forms to each bidder, thereby enabling the bidder to return one and maintain a file copy. Bids will not be accepted on any vendor letterhead, vendor bid form, or other substitutions unless special permission is granted by the Purchasing Department.

6. Unsigned Bids - Failure of a vendor representative to sign a bid proposal removes that bid from consideration. A typed official's name will not be acceptable without that person's written signature.

7. Acceptance of Bids - CITY reserves the right to reject any or all bids, to waive any irregularities in a bid, to make awards to more than one bidder, to accept any part or all of a bid, or to accept that bid (or bids) which in the judgment of the governing body is in the best interest of CITY.

8. Shipping Charges - Bids are to include all shipping charges to the point of delivery. Bids will only be considered on the basis of delivered price, except as otherwise authorized by the governing body.

9. Sample Product Policy - The Purchasing Department may request a sample product as a part of a bid. if this is stated on the bid proposal form, the vendor is required to comply with this request or have the bid removed from consideration.

10. Approved Equal Policy - Specifications furnished in the request for bid are intended to establish a desired quality or performance level or other minimum requirements which will provide the City with the best product available at the lowest possible price.

When a brand name and/or model is designated, it signifies the minimum quality acceptable. If an alternate is offered, the bidder must include the brand name or model to be furnished, along with complete specifications and descriptive literature, and, if requested a

sample for testing. Other than designated brands and/or models approved as "equal to" designated products shall receive equal consideration.

11. Alternate Bids - Should it be found, after bids have been opened, that a product has been offered with alternate specification and that this product would prove to be satisfactory and more economical for the City to use, all bids for that item may be rejected and specifications re-drawn to allow all bidders an equal opportunity to submit bids on the alternate item.

12. Vendor Identification - Potential suppliers are selected from existing vendor files, using department's suggestions, and any and all sources available to locate vendors related to a specific product or service. New suppliers are added to the bid list as they are identified.

13. Tie Bids - A tie bid is one in which two or more vendors bid identical items at the same unit cost.

Tie bids may be determined by one of the following factors:

- (1) Discount allowed
- (2) Delivery schedule
- (3) Previous vendor performance
- (4) Vendor location
- (5) Trade-in value offered

14. Cancellation of Invitation for Bid or Request for Proposal - An invitation for bid, a request for proposal, or other solicitations may be canceled, or any or all bids or proposals may be rejected in part as may be specified in the solicitation when it is in the best interest of CITY. The reasons therefor shall be made a part of the bid or proposal file.

15. Public Advertisement - In addition to publication in a newspaper of general circulation as required by law, the Purchasing Agent may make any other efforts deemed appropriate to notify all prospective bidders of the invitation to bid. This may be accomplished by delivery, verbally, by mail, or by posting the Invitation to Bid in a public place. It is not required that specifications be included in the Invitation to Bid; however, this notice should state clearly the purchase that is to be made.

16. Sealed Bids and Sealed Proposals

"(1) 'Although the formal sealed bid process should remain a standard in public purchasing, there is a place for competitive negotiation.' (State and Local Government Purchasing, The Council of State Governments (1975) at 2.2). Competitive sealed bidding, as defined in this Code, is the preferred method of procurement. The competitive sealed proposal method (similar

to competitive negotiation) is available for use when competitive sealed bidding is not practicable.

"Both methods utilize price and product competition, but to different degrees and in different manners. The use of functional or performance specifications is allowed under both methods to facilitate consideration of alternative means of meeting [State] needs, with evaluation, where appropriate, on the basis of total or life cycle costs. The methodology and the ranking or relative importance of the criteria to be used in the evaluation process under either method must be fully disclosed in the solicitation. Only criteria disclosed in the solicitation may be used to evaluate the items bid or proposed.

"The two methods of source selection differ in the following ways

"(a) Under competitive sealed bidding, subjective factors may be used only to determine if the supply, service, or construction item bid meets the purchase description. Under competitive sealed proposals, subjective factors may be used to determine not only if the items being offered meet the purchase description but may also be used to evaluate competing proposals. The effect of this different use of subject evaluation is that under competitive sealed bidding, once the subject evaluation is completed, award is made on a purely objective basis to the lowest responsive and responsible bidder. Under competitive sealed proposals,

the quality of competing products may be compared and tradeoffs made between price and quality of the items offered (all as set forth in the solicitation). Award under competitive sealed proposals is then made to the responsible offer or whose proposal is most advantageous to the [State] needs.

"(b) Competitive sealed bidding and competitive sealed proposals also differ in that, under competitive sealed bidding, no change in bids is allowed once they have been opened, except for correction of errors in limited circumstances. The competitive sealed proposal method, on the other hands, permits discussions after proposals have been opened to allow clarification and changes in proposals provided that adequate precautions are taken to treat each offer or fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerors."

(Source: A Model Procurement Code for State and Local Governments - Coordinating Committee's Tentative Draft. American Bar Association, July, 1978. Pages 54 & 55).

OTHER ASPECTS TO BE

CONSIDERED IN BID AWARD

In addition to price, the following aspects also will be considered in the award of a bid:

- (1) The ability of the bidder to perform the contract or provide the material or service required.
- (2) Whether the bidder can perform the contract or provide the material or service promptly or within the time specified, without delay or interference.
- (3) The character, integrity, reputation, experience, and efficiency of the bidder.
- (4) The previous and existing compliance, by the bidder, with laws and ordinances relating to the contract or service.
- (5) The ability of the bidder to provide future maintenance and service for the use of the subject contract.
- (6) Terms and conditions stated in bid.
- (7) Compliance with specifications or request for proposal.

NON-PERFORMANCE

POLICY

Failure of a bidder to complete a contract, bid, or purchase order in the specified time agree upon, or failure to provide the service, materials, or supplies required by such contract, bid, or purchase order, or failure to honor a quoted price on services, materials, or supplies on a contract, bid, or purchase order may result in one or more of the following actions:

- (a) Removal of a vendor from bid list for a period to be determined by the governing body.
- (b) Allowing the vendor to find the needed item for the City from another supplier at no additional cost to the City.
- (c) Allowing the City to purchase the needed service, materials, or supplies from another source and charge the vendor for any difference in cost resulting from this purchase.
- (d) Allowing monetary settlement.

DELINQUENT DELIVERY

Once the Purchasing Department has issued a purchase order, no follow-up work is done unless the using department advises the item has not been received. Upon this notification, the Purchasing Department will initiate action, either written or verbal as time allows, to investigate the delay. The using department will be advised of any further problems or a revised delivery date.

CONTRACTUAL PURCHASES

Such materials, supplies, or services which are constantly needed for CITY operations will be taken on a formal bid and will be awarded by the governing body for a contract period determined to be in the best interest of CITY. This procedure shall be used in cases where the amount of the purchase of said materials, supplies, or services will be \$20,000 or more with the fiscal year. For amounts below \$20,000 the award will be made by the Purchasing Agent.

ITEMS COVERED BY

WARRANTY OR GUARANTEE

The CITY acquires many items which have a warranty or guarantee for a certain length of time, such as tires, batteries, water heaters, roofs, and equipment.

Before these items are repaired or replaced, the Purchasing Agent should be consulted to see if the item is covered by such warranty or guarantee.

The Purchasing Agent shall maintain an active current file with complete information on such warranties or guarantees. All warranties must be remitted to the Purchasing Agent with the invoice indicating date of receipt.

SIGNATURES

Contracts, applications for title, tax exemption certificates, agreements, and contracts for the City shall not be signed by any CITY employee unless authorized in writing by the Purchasing Agent or by action of the governing body.

TRADE-INS

List of equipment to be used as trade-in shall accompany the request and specifications. The list includes the model, year, serial numbers, and other pertinent data.

SALE OF SURPLUS

PROPERTY

When a department head determines that there is surplus equipment or material within the department, he or she shall notify the Purchasing Agent in writing of any such equipment or materials. The Purchasing Agent will determine the best method of disposal of those items with an estimated value of less than One Hundred Dollars (\$100) and instruct the department head as to the disposal method. Items with an estimated value of One Hundred Dollars (\$100) or more shall be advertised and bids received by the Purchasing Agent after approval by the governing body. Such equipment or material shall be sold to the highest bidder. However, the Purchasing Agent may transfer surplus equipment or material from one department to another. The finance officer shall be notified of any such transfer or sales. With approval of the governing body, equipment or material may be sold at public auction or sold at wholesale auto ⁵

⁵ Amended September 21, 1996 to add or wholesale auto auction.

TESTING

When deemed necessary, the Purchasing Agent may cause to be inspected all deliveries of supplies, materials, equipment, or contractual services to determine their performance with the specifications set forth in an order or contract.

The Purchasing Agent may require chemical and physical test of materials submitted with bids and delivery samples, or after products have been delivered, to determine their quality in conformance with specifications. In the performance of such tests, the Purchasing Agent may make use of laboratory facilities of any outside laboratory.

GENERAL INFORMATION

1. Preference to local dealers. In the purchasing of supplies, materials, equipment, and services for CITY's requirements, preference shall be given to those dealers having stores or warehouses within Lenoir City; price, quality, delivery and service being equal.
2. Federal excise tax. CITY is exempt from the payment of excise taxes imposed by the federal government, and suppliers should be requested to deduct the amount of such taxes from their bids, quotations, and invoices.
3. Standardization requirements. Important economies can be effected through standardizing supplies and materials that can be purchased in large amounts. Thus, department heads should adopt as standards the minimum number of quantities, sizes, and varieties of commodities consistent with successful operation. Where practical, materials and supplies should be purchased on the basis of requirements for a six-month period.
4. Inspection of deliveries. No invoices for supplies, materials, or equipment shall be accepted for payment until such supplies, materials, etc., have been received and inspected by the department head.
5. Correspondence with suppliers. Copies of any correspondence with suppliers concerning prices, adjustments, and defective merchandise shall be forwarded to the Purchasing Agent. All invoices, bills of lading, delivery tickets, and other papers pertaining to purchases shall be sent to the Purchasing Agent.

6. Claims. The Purchasing Agent shall prosecute all claims for shortages, breakages, or other complaints against either shipper or carrier in connection with shipments.
7. Public inspection of records. The Purchasing Agent shall keep a complete record of all quotations, bids, and purchase orders. Such records shall be open to public inspection.
8. Prohibition of contracts with municipal officers. State laws governing doing business with officers of CITY are:

TCA § 6-54-107. Interest of officer in municipal contracts prohibited. (a) No person holding office under any municipal corporation shall, during the time for which he was elected or appointed, be capable of contracting with such corporation for the performance of any work which is to be paid for out of the treasury. Nor shall such person be capable of holding or having any other direct interest in such a contract. "Direct interest" means any contract with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling Interest" shall include the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.

(b) No officer in a municipality shall be indirectly interested in any contract to which the municipality is a party unless the officer publicly acknowledges his interest and recuses himself from any of his duties which include the consideration of, voting on, or overseeing the particular contract. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole

supplier of goods or services in a municipality.
(See TCA 6-54-108 for penalty).

TCA § 12-4-101. Personal interest of officer prohibited. (a) It shall not be lawful for any officer, committeeman, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development districts, utility districts, human resource agencies, and other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official himself or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" shall include the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.

(b) It shall not be lawful for any officer, committeeman, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development districts, utility districts, human resource agencies, and other political subdivisions created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges his interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county. (See TCA 12-4-102 for penalty).

9. Designee. When a position such as Purchasing Agent, Finance Officer, or Department Head is

mentioned herein, their assistants or designees are included as if they also were written thereafter; provided that persons holding these positions have designated others to carry out such duties.

10. Definitions. (Municipal Purchasing Law of 1983 as Amended).
 - A. Customarily purchased - That which is regularly purchased under specific circumstances which would be considered reasonable and appropriate. (Example: After two (2) consecutive years; then, not required after two (2) consecutive years of not attaining the total amount of \$5,000).
 - B. Like Items - Those items that are similar and may be purchased at the lowest common denominator, such as size, color, etc.
 - C. Lot - A single grouping of like items to be purchased at one time.
 - D. Single Source of Supply - The availability of only one vendor for a product or service within a reasonable marketable distance of the City.
 - E. Proprietary Product - A brand-name product made and marketed by one having the exclusive right to manufacture and sell.
 - F. Within the Limits of the Approved Budget - Purchases must be held within appropriation limits in those funds requiring budgets either by law, regulation, or policy. Appropriation limits do not apply to those nonexpendable funds not requiring budgets; such as enterprise funds, intergovernmental service funds, and nonexpendable trust funds.

11. Performance and Bid Bonds. Performance and bid bonds as may be deemed appropriate by the Purchasing Agent or the governing body.

8.

City of Loudon Procurement Law

CHARTER FOR THE CITY OF LOUDON, TENNESSEE

CHAPTER NO. 74¹

House Bill No. 1040

By Stafford, O'Brien

Substituted for: Senate Bill No. 1186

By Koella

AN ACT to amend the Charter of the City of Loudon, Tennessee, the same being Chapter 229, Private Acts of 1927, as amended.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE THAT:

SECTION 1. The Charter of the City of Loudon, Tennessee, the same being Chapter 229, Private Acts of 1927, as amended, is hereby amended in its entirety to read as follows:

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I. Corporate Capacity	C-2
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¹Chapter 229, Private Acts of Tennessee for 1927, as amended, is the Charter of the City of Loudon. However, the Charter, as amended, was completely rewritten by Chapter 74, Private Acts of 1975, which is the act set out here as amended through the 2003 Session of the Tennessee General Assembly. No changes have been made in the 1975 act as set out here except that a table of contents has been added and its amendments have been incorporated.

resolution transfer part or all of any unencumbered appropriation balance from one Department, Office, or Agency to another.

SECTION 10. Lapsing of appropriations. Every appropriation shall lapse at the end of the fiscal year to the extent that it has not been expended or encumbered.

SECTION 11. Incurrence and discharge of obligations. No payment shall be made or obligation incurred against any appropriation unless the Manager or an officer designated by him first certifies that an appropriation has been made for that purpose and that there is unexpended and unencumbered in the appropriation for that purpose an amount sufficient to meet the obligation or to make the expenditure. However, except where prohibited by law, nothing herein shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year.

SECTION 12. Borrowing. The Council, for the sole purpose of meeting the necessary expenses within appropriations, is authorized to borrow money in the amount not to exceed 50 per cent of the anticipated revenues for the current fiscal year. Such notes shall mature during the current fiscal year and shall be paid from budgeted revenues.

SECTION 13. Accounting records and audits. There shall be installed and maintained adequate accounting records in accordance with generally accepted principles of municipal accounting. The same account titles shall be used throughout the accounting records, the budget and financial statements. Constant and comprehensive budgetary control shall be maintained. An audit of the financial affairs of the City shall be required by action of City Council and same be made after the end of each fiscal year by a public accountant skilled in such work. Any taxpayer may file a bill in chancery court to compel the Council to have the audit made if such accountant has not been employed within one month after the end of the fiscal year.

SECTION 14. Competitive bidding and purchasing procedures. The Manager shall be responsible for all city purchasing, but he may delegate his duty to any subordinate appointed by him. Competitive prices for all purchases and public improvements shall be obtained whenever practicable and in accordance with regulations established by ordinance, and the purchases made from or the contract awarded to the lowest bidder, provided that the city shall have the power to reject any and all bids. Formal sealed bids shall be obtained in all transactions involving the expenditure of two thousand dollars (\$2,000.00) or more, and the transaction shall be submitted to and approved by the council;

provided, that in cases where the council indicates by formal unanimous resolution of those present at the meeting, based upon the written recommendation of the Manager, that it is clearly to the advantage of the city not to contract with competitive bidding, it may authorize noncompetitive contracts. Purchasing and contract procedures not prescribed by this charter or other law may be established by ordinance.

ARTICLE X

TAXATION

SECTION

1. Assessment and levy.
2. Due and delinquent dates; penalties and interest.
3. Collection of delinquent taxes.
4. Publication of notice to taxpayers.
5. Institution of suits to enforce tax liens.
6. Statutory lien.

SECTION 1. Assessment and levy. All property within the City not exempt by general law shall be assessed for taxation upon the same principles established in regard to state and county taxation. Assessments made by the county tax assessor may be adopted by the City.

SECTION 2. Due and delinquent dates; penalties and interest. Property taxes shall be payable on and after October 1 in the year for which assessed and shall become delinquent on March 1 following. The Council by ordinance shall fix penalties and interest on delinquent taxes.

SECTION 3. Collection of delinquent taxes. All taxes delinquent for 30 days may be collected by distress warrants and sale of personal property, and the delinquent tax list in the hands of the collector shall have the force and effect of a judgment and execution from a court of record.

SECTION 4. Publication of notice to taxpayers. In February of each year there shall be published once a week for two consecutive weeks a notice to taxpayers informing them the date after which penalties and interest on property taxes will be due.

SECTION 5. Institution of suits to enforce tax liens. Before March 1 of the second year following the year for which assessed, the Recorder shall certify to the City Attorney the list of all real estate upon which municipal taxes remain due and unpaid, or which is liable for sale for other taxes and assessments, and said Attorney shall proceed at once to file suits in the

9.

Interlocal Cooperation Act



1 of 12 DOCUMENTS

TENNESSEE CODE ANNOTATED
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*** CURRENT THROUGH THE 2010 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 31, 2011 FOR THE TENNESSEE SUPREME COURT ***

Title 12 Public Property, Printing And Contracts
Chapter 9 Interlocal Cooperation

GO TO THE TENNESSEE ANNOTATED STATUTES ARCHIVE DIRECTORY

Tenn. Code Ann. § 12-9-101 (2011)

12-9-101. Short title.

This chapter may be cited as the "Interlocal Cooperation Act."

HISTORY: Acts 1967, ch. 350, § 2; T.C.A., § 12-801.

NOTES: Cross-References.

Agreements with other states concerning medical laboratories, §§ 68-29-102, 68-29-133.

Cooperation between departments of state government, § 4-4-112.

Garbage services, cooperation with county, title 5, ch. 19.

Housing of convicted felons by counties, § 41-8-106.

Interlocal cooperation, ambulance services, § 7-61-104.

Interlocal cooperation, counties with contiguous counties, § 5-1-114.

Interlocal cooperation, counties with municipalities, § 5-1-113.

Interlocal cooperation, fire fighting, municipalities, title 6, ch. 54, part 6.

Interlocal cooperation, home mortgages, § 7-60-217.

Interlocal cooperation, joint building inspectors, municipalities not exceeding 25,000 population, § 6-54-116.

Interlocal cooperation on transportation systems, title 7, chapter 56.

Joint educational facilities and services, title 49, ch. 2, part 13.

Joint municipal and county park and recreation systems, § 11-21-112.

Municipal police powers, mutual aid agreements, § 6-54-307.

Section to Section References.

This chapter is referred to in §§ 5-16-103, 5-17-101, 6-56-302, 7-39-312, 7-39-319, 7-56-105, 7-86-105, 11-14-308, 11-21-112, 29-20-107, 29-20-207, 29-20-401, 41-12-121, 50-6-701, 50-6-702, 50-6-705, 58-8-103, 64-7-101, 65-36-104, 65-36-107, 68-29-102, 68-29-133.

This part is referred to in §§ 9-21-105, 42-3-104, 58-8-112.

Law Reviews.

Selected Tennessee Legislation of 1986, 54 *Tenn. L. Rev.* 457 (1987).

Attorney General Opinions.

Interlocal agreements under *T.C.A. §§ 12-9-101 et seq.*, OAG 06-081 (5/1/06).

Comparative Legislation.

Interlocal cooperation:

Ark. Code § 25-20-101 et seq.

Ga. O.C.G.A. § 36-69A-1 et seq.

Ky. Rev. Stat. Ann. § 65.210 et seq.

Miss. Code Ann. § 17-13-1 et seq.

N.C. Gen. Stat. § 160A-460 et seq.

NOTES TO DECISIONS

1. Legislative Intent.

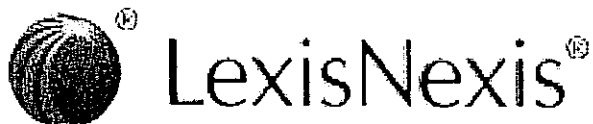
1. Legislative Intent.

This chapter provides no substantive rights or obligations but is simply a procedural statute which enables political subdivisions to combine efforts to achieve common goals. The legislature's failure to include an exculpatory clause does not imply that the legislative branch intended to impose liability on political subdivisions which join together under this chapter. *Foster Wheeler Energy Corp. v. Metropolitan Knox Solid Waste Authority, Inc.*, 970 F.2d 199, 1992 U.S. App. LEXIS 16712 (6th Cir. Tenn. 1992), rehearing denied, 970 F.2d 199, 1992 U.S. App. LEXIS 20940 (6th Cir. 1992).

Collateral References.

Counties 20 et seq.

Municipal Corporations 52 et seq.



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*** CURRENT THROUGH THE 2010 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 31, 2011 FOR THE TENNESSEE SUPREME COURT ***

Title 12 Public Property, Printing And Contracts
Chapter 9 Interlocal Cooperation

GO TO THE TENNESSEE ANNOTATED STATUTES ARCHIVE DIRECTORY

Tenn. Code Ann. § 12-9-102 (2011)

12-9-102. Purpose.

It is the purpose of this chapter to permit local governmental units the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

HISTORY: Acts 1967, ch. 350, § 1; T.C.A., § 12-802.



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*** CURRENT THROUGH THE 2010 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 31, 2011 FOR THE TENNESSEE SUPREME COURT ***

Title 12 Public Property, Printing And Contracts
Chapter 9 Interlocal Cooperation

GO TO THE TENNESSEE ANNOTATED STATUTES ARCHIVE DIRECTORY

Tenn. Code Ann. § 12-9-103 (2011)

12-9-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Local government entity" means any city, town, municipality, county, including any county having a metropolitan form of government, local education agency, development district, utility district, human resource agency or other political subdivision of this state;

(2) "Local government joint venture entity" means any entity created pursuant to this chapter, including, but not limited to, a self-insurance pool, trust, joint venture, nonprofit organization, or any other type of organization that is sponsored, owned, operated, or governed by two (2) or more local government entities as a separate and specific activity;

(3) "Public agency" means:

(A) Any political subdivision of this state;

(B) Any private incorporated fire department and industrial fire department not supported by public funds or which are only partially supported by public funds;

(C) Any incorporated rescue squad that is not supported by public funds or that is only partially supported by public funds;

(D) Any agency of the state government or of the United States; and

(E) Any political subdivision of another state; and

(4) "State" means a state of the United States.

HISTORY: Acts 1967, ch. 350, § 3; T.C.A., § 12-803; Acts 1983, ch. 45, § 2; 1995, ch. 17, § 1; 2006, ch. 923, § 1.

NOTES: Section to Section References.

This section is referred to in § 7-39-312.



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GO TO THE TENNESSEE ANNOTATED STATUTES ARCHIVE DIRECTORY

Tenn. Code Ann. § 12-9-104 (2011)

12-9-104. Interlocal agreements.

(a) (1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state, including those provided in § 6-54-307 or § 68-221-1107(b), may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency. The authority for joint or cooperative action of political subdivisions shall apply to powers, privileges or authority vested in, funded by, and/or under the control of their governing bodies and relative to which the governing bodies may make other types of contracts. No joint or cooperative agreement shall be entered into affecting or relating to the constitutional or statutory powers, privileges or authority of officers of political subdivisions, or of agencies of political subdivisions with a separate governing board and having powers granted by statute independent of the governing body. Notwithstanding any provision of the law to the contrary, any municipality may enter into an agreement with the sheriff, court of general sessions, and the governing body of any county in which it is located to provide for the enforcement of the municipality's ordinances according to the provisions of §§ 8-8-201(34) and 16-15-501. The agreement between the municipality and the county governing body shall be limited to provide that the cost of such enforcement will be borne by the municipality where the court costs paid over to the county, as provided by § 16-15-501, are not adequate.

(2) Agencies of political subdivisions that have governing boards separate from the governing bodies of the political subdivisions may make agreements for joint or cooperative action with other such agencies and with other public agencies. The power to make joint or cooperative agreements includes any power, privilege or authority exercised or that may be exercised by each of the agencies that is a party to the agreement. Agreements between agencies of political subdivisions that have separate governing boards and other such agencies and agreements between such agencies and public agencies shall substantially conform to the requirements of this chapter. The governing bodies of such political subdivisions shall require agreements made by their agencies pursuant to this chapter to be submitted to the governing body for approval before the agreements take effect.

(b) Any two (2) or more public agencies may enter into agreements with one another for joint or cooperative action

pursuant to the provisions of this chapter. Appropriate action of the governing bodies of the participating public agencies by resolution or otherwise pursuant to law shall be necessary before any such agreement may enter into force.

(c) Any such agreement shall specify the following:

(1) Its duration;

(2) The precise organization, composition and nature of any separate legal or administrative entity or entities created thereby, which may include, but is not limited to, a corporation not for profit, together with the powers delegated to such a corporation;

(3) Its purpose or purposes;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for such undertaking;

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(6) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity or entities to conduct the joint or cooperative undertaking, the agreement shall, in addition to the requirements of subdivisions (c)(1)-(6), contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented; and

(2) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

(e) (1) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that, to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity or entities created by an agreement made hereunder, those performances may be offered in satisfaction of the obligation or responsibility.

(2) (A) Notwithstanding the provisions of title 9, chapter 21, including § 9-21-105 and § 9-21-107 to the contrary, a separate legal or administrative entity, created by interlocal agreement between two (2) or more political subdivisions of the state acting pursuant to this chapter, is not empowered to:

(i) Assess, levy, or collect ad valorem taxes;

(ii) Issue general obligation bonds; or

(iii) Exercise the power of eminent domain.

(B) However, to the extent that the participating political subdivisions possess such powers, the political subdivisions may exercise such powers on behalf and for the benefit of the separate legal or administrative entity.

(f) Financing of joint projects by agreement shall be as provided by law.

HISTORY: Acts 1967, ch. 350, § 4; 1973, ch. 88, § 3; 1973, ch. 355, § 3; T.C.A., § 12-804; Acts 1981, ch. 289, § 3; 1982, ch. 930, § 2; 1984, ch. 890, § 1; 1985, ch. 84, §§ 1-4; 1986, ch. 698, § 1; 1990, ch. 921, § 2; 1991, ch. 91, § 1;

1992, ch. 880, § 2; 1993, ch. 401, § 1; 2004, ch. 849, § 2.

NOTES: Cross-References.

Mutual aid agreements, § 6-54-307.

Section to Section References.

This section is referred to in §§ 6-54-118, 9-21-105, 7-39-312, 16-15-501, 29-20-401, 65-36-107.

Law Reviews.

Eminent Domain -- Moving Expense -- A Condemnor in Tennessee Is Required to Pay Moving Expense for Fixtures and Chattels Upon Condemnation, 2 *Mem. St. U.L. Rev.* 205.

Attorney General Opinions.

General sessions court judge acting as city court judge, OAG 98-0171 (8/28/98).

County authority to provide crushed stone to entities outside county, OAG 99-058 (3/10/99).

Several utility districts may establish a not for profit corporation as part of an interlocal cooperative agreement for a joint exercise of their powers; whether a district is authorized to support the activities in which the corporation will engage depends on whether its support is necessary or requisite to its authority to own, operate, develop, and maintain a utility district, OAG 03-017 (2/19/03).

Drug task forces are able to own real property in their own name as long as this is allowed by the particular interlocal agreement establishing the task force, OAG 05-038 (3/29/05).

NOTES TO DECISIONS

1. Legislative Intent. 2. Liability. 3. "Separate Legal Entity." 4. Director of Joint Undertaking.

1. Legislative Intent.

This chapter provides no substantive rights or obligations but is simply a procedural statute which enables political subdivisions to combine efforts to achieve common goals. The legislature's failure to include an exculpatory clause does not imply that the legislative branch intended to impose liability on political subdivisions which join together under this chapter. *Foster Wheeler Energy Corp. v. Metropolitan Knox Solid Waste Authority, Inc.*, 970 F.2d 199, 1992 U.S. App. LEXIS 16712 (6th Cir. Tenn. 1992), rehearing denied, 970 F.2d 199, 1992 U.S. App. LEXIS 20940 (6th Cir. 1992).

2. Liability.

This chapter prohibits counties or municipalities from shielding themselves from liability by interposing a cooperation agreement where there is a pre-existing legal obligation which arises from state law, imposing no new rights or obligations on counties or municipalities independent of other sources of state law. *Foster Wheeler Energy Corp. v. Metropolitan Knox Solid Waste Authority, Inc.*, 970 F.2d 199, 1992 U.S. App. LEXIS 16712 (6th Cir. Tenn. 1992), rehearing denied, 970 F.2d 199, 1992 U.S. App. LEXIS 20940 (6th Cir. 1992).

3. "Separate Legal Entity."

Because the 19th judicial district drug task force was not a separate legal entity, but a joint undertaking of several

counties and cities, it was not a "person" amenable to suit under 42 U.S.C. § 1983. *Timberlake v. Benton*, 786 F. Supp. 676, 1992 U.S. Dist. LEXIS 2549 (M.D. Tenn. 1992).

4. Director of Joint Undertaking.

A suit nominally brought against an official as director of a joint undertaking is in fact a suit against the cities and counties comprising the joint undertaking if the official functions as a final policymaker for it. *Timberlake v. Benton*, 786 F. Supp. 676, 1992 U.S. Dist. LEXIS 2549 (M.D. Tenn. 1992).



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Tenn. Code Ann. § 12-9-105 (2011)

12-9-105. Status of agreements -- Parties to actions.

In the event that an agreement entered into pursuant to this chapter is between or among one (1) or more public agencies of this state and one (1) or more public agencies of another state or of the United States, the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

HISTORY: Acts 1967, ch. 350, § 5; T.C.A., § 12-805; Acts 1984, ch. 890, § 2.



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Tenn. Code Ann. § 12-9-106 (2011)

12-9-106. Approval or disapproval.

In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by such state officer or agency as to all matters within such officer's or agency's jurisdiction.

HISTORY: Acts 1967, ch. 350, § 6; T.C.A., § 12-806; Acts 1984, ch. 890, § 3.



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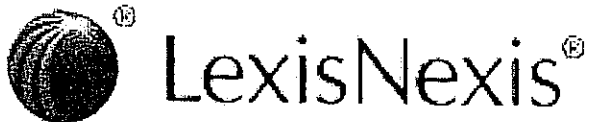
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Tenn. Code Ann. § 12-9-107 (2011)

12-9-107. Appropriations -- Furnishing of property, personnel and service.

Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

HISTORY: Acts 1967, ch. 350, § 7; T.C.A., § 12-807.



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Tenn. Code Ann. § 12-9-108 (2011)

12-9-108. Interlocal contracts for performance of services.

Any one (1) or more public agencies may contract with any one (1) or more public agencies to perform any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform; provided, that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties. Contracts entered into pursuant to this section need not conform to the requirements set forth in this chapter for contracts for joint undertakings.

HISTORY: Acts 1967, ch. 350, § 8; T.C.A., § 12-808; Acts 1984, ch. 890, § 4.

NOTES: Section to Section References.

This section is referred to in § 7-39-312.



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Tenn. Code Ann. § 12-9-109 (2011)

12-9-109. Contracts under other laws unaffected.

Nothing in this chapter shall prohibit any public agency from contracting with other public agencies under the provisions of existing statutory or charter authority.

HISTORY: Acts 1967, ch. 350, § 9; T.C.A., § 12-809.



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Tenn. Code Ann. § 12-9-110 (2011)

12-9-110. Contracts for conveyance of property.

(a) Any one (1) or more public agencies may contract with any one (1) or more public agencies for the conveyance or transfer of property, real or personal, if:

(1) The public agency or agencies receiving the conveyance or transfer utilizes the property for a public purpose;
and

(2) The governing body of each public agency that is a party to the contract authorizes such conveyance or transfer and determines that the terms and conditions set forth are appropriate.

(b) Any public agency utilizing the authority of this section shall not be required to declare such property surplus prior to the conveyance or transfer, and shall also be exempt from contrary requirements in any budget or purchasing act, public or private.

HISTORY: Acts 2005, ch. 336, § 1.



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Tenn. Code Ann. § 12-9-111 (2011)

12-9-111. Filing of interlocal agreements forming local government joint venture.

Any interlocal agreement entered into by local government entities that creates a local government joint venture entity shall be filed in the office of the comptroller of the treasury within ninety (90) days of execution of the agreement. Any interlocal agreement entered into by local government entities of this state that created a local government joint venture entity that is in effect on June 20, 2006, shall be filed with the office of the comptroller of the treasury within one hundred twenty (120) days of June 20, 2006.

HISTORY: Acts 2006, ch. 923, § 2.



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Tenn. Code Ann. § 12-9-112 (2011)

12-9-112. Annual statement on interlocal agreements that create local government joint venture entity.

(a) Any local government joint venture entity shall, during the term of the agreement, file an annual statement with the office of the comptroller of the treasury. The statement shall set forth the names of all parties to the agreement, the annual revenue and expenses of any entity created under the agreement and the other information required by the comptroller.

(b) The comptroller of the treasury may develop guidelines in furtherance of the administration of this section.

HISTORY: Acts 2006, ch. 923, § 2; 2007, ch. 207, § 1.

10.

Key Statutory References

KEY STATUTORY REFERENCES

1. Interlocal Cooperation Act (T.C.A. 12-9-101 et seq.)
2. Solid Waste Management Act of 1991 (T.C.A. 68-211-801 et seq.)
3. Tennessee Governmental Tort Liability Act (T.C.A. 29-20-101)
4. Immunity from Suit of Members of Governmental Boards (T.C.A. 29-20-201)
5. Open Meetings Law (T.C.A. 8-44-101 et seq.)
6. Open Records Law (T.C.A. 10-7-503(a)/10-7-301(6) and 10-7-504 (confidential records)
7. Interest of Officers in Municipal Contracts Prohibited (T.C.A. 6-54-107 and T.C.A. 12-4-101)
8. Procurement Laws
 - a) County Purchasing Law of 1957 (T.C.A. 5-14-101 et seq.)
 - b) Municipal Purchasing Law of 1983 (T.C.A. 6-56-301)
 - c) Exemptions of Professional Services from Competitive Bidding (T.C.A. 12-4-106(a) and 5-14-108(a)(2))
 - d) No Bidding Required on Tort Liability Insurance (T.C.A. 29-20-407)
 - e) Payment and Performance Bond Requirements (T.C.A. 62-6-119)
 - f) Contractors Licensing Law Required to be Included in Bid Proposals (T.C.A. 62-6-119(a))
 - g) Bid Bond Requirements for Construction Managers (T.C.A. 62-6-129)

11.

LCSWDC Audit Report (06/30/11)

Financial Statements

LOUDON COUNTY SOLID WASTE
DISPOSAL COMMISSION

Year Ended June 30, 2011

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INDEPENDENT ACCOUNTANTS' AUDIT REPORT

Board of Commissioners
Loudon County Solid Waste Disposal Commission
Loudon, Tennessee

We have audited the accompanying statement of net assets of Loudon County Solid Waste Disposal Commission as of June 30, 2011 and the related statement of revenue, expenses and change in net assets and statement of cash flows for the year then ended. These financial statements are the responsibility of the organization's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to in the first paragraph present fairly, in all material respects, the financial position of Loudon County Solid Waste Disposal Commission as of June 30, 2011, and the changes in its financial position and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

Management's discussion and analysis on pages 3 to 5 is not a required part of the basic financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit this information and express no opinion on it.

Our audit was performed for the purpose of forming an opinion on the financial statements that collectively comprise Loudon County Solid Waste Disposal Commission's basic financial statements. The accompanying schedule of expenditures of state awards is presented for the purpose of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated, in all material respects, in relation to the basic financial statements taken as a whole. The accompanying other supplementary information listed in the table of contents is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we express no opinion on it.

In accordance with *Government Auditing Standards*, we have also issued our report dated March 19, 2012 on our consideration of Loudon County Solid Waste Disposal Commission's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Mitchell Emert & Hill

March 19, 2012

Loudon County Solid Waste Disposal Commission
Management's Discussion and Analysis
June 30, 2011

Introduction

This discussion and analysis is intended to be an introduction to the financial statements and notes that follow this section and should be read in conjunction with them. The Loudon County Solid Waste Disposal Commission ("LCSWDC") is a governmental agency created by Loudon County, the City of Lenoir City and the City of Loudon to operate and manage the Matlock Bend Landfill in Loudon, Tennessee. The Commission also serves as the Municipal Solid Waste Region Board for the Loudon County Solid Waste Region under the Solid Waste Management Act of 1991.

Financial Statement Review

The financial statements herein are comprised of the statement of net assets, the statement of revenue, expenses and changes in net assets, the statement of cash flows and the accompanying notes to the financial statements.

Financial Highlights as of June 30:

The statement of net assets presents information on all LCSWDC's assets and liabilities. Current assets as well as other assets and liabilities are reported in order of their liquidity. The table below presents the significant components of net assets:

Condensed statements of net assets

	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>
Assets:				
Current and other	\$ 2,440,755	\$ 2,445,039	\$ 2,796,660	\$ 2,563,062
Capital	<u>1,029,249</u>	<u>836,530</u>	<u>271,704</u>	<u>273,508</u>
Total assets	<u>3,470,004</u>	<u>3,281,569</u>	<u>3,068,365</u>	<u>2,836,570</u>
Liabilities:				
Current	23,332	52,329	6,047	15,357
Long-term	<u>3,664,938</u>	<u>3,219,386</u>	<u>2,976,979</u>	<u>2,736,065</u>
Total liabilities	<u>3,688,270</u>	<u>3,271,715</u>	<u>2,983,026</u>	<u>2,751,422</u>
Net assets:				
Invested in capital assets	1,029,249	836,530	271,704	273,508
Unrestricted (deficit)	<u>(1,247,515)</u>	<u>(826,676)</u>	<u>(186,365)</u>	<u>(188,360)</u>
Total net assets	<u>(218,266)</u>	<u>9,854</u>	<u>85,339</u>	<u>85,148</u>
Total liabilities and net assets	<u>\$ 3,470,004</u>	<u>\$ 3,281,569</u>	<u>\$ 3,068,365</u>	<u>\$ 2,836,570</u>

**Loudon County Solid Waste Disposal Commission
Management's Discussion and Analysis (continued)
June 30, 2011**

The statement of revenue, expenses and changes in net assets presents LCSWDC's results of operations. The table below is a condensed statement of revenue and expenses:

Condensed statements of revenue, expenses and changes in net assets

	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>
Operating revenue	\$ 324,133	\$ 261,592	\$ 316,829	\$ 882,570
Operating expenses	(571,914)	(376,646)	(364,848)	(974,543)
Depreciation and amortization	<u>(5,831)</u>	<u>(4,304)</u>	<u>(4,304)</u>	<u>(4,304)</u>
Net operating (loss)	(253,611)	(119,358)	(52,323)	(96,277)
Non-operating income	<u>25,492</u>	<u>43,873</u>	<u>52,515</u>	<u>115,909</u>
Change in net assets	<u>\$ (228,120)</u>	<u>\$ (75,485)</u>	<u>\$ 191</u>	<u>\$ 19,632</u>

Results of Operations

LCSWDC shows a negative change in net assets due primarily to an increase in the utilized capacity of the landfill, which in turn required a larger adjustment to the estimated liability for closure and post closure costs than in previous years. The increased utilization of the landfill during the year resulted in a \$203,145 increase to the estimated liability for closure and post closure costs over the previous year's estimated costs of \$242,407. This increase in the estimated costs was offset by a \$7,877 positive variance in other operating expenses for the year to net an increase in total operating expenses of \$195,268 for the year.

One of the causes of the increased estimate of closure and post closure operating costs was a slope failure at the landfill that occurred in November of 2010 (see Item I in the Notes to the Financial Statements for additional information regarding such failure), which required the landfill's operator to rebuild the failed slope and add stabilizing fill material. These remedial measures used up some of the landfill's remaining capacity (thereby increasing the accrued expense for the estimated closure and post closure costs) without any corresponding increase in operating revenues for the used capacity. The Commission is currently reviewing the effects of the slope failure on its reported results of operations and is continuing to monitor the negative change in net assets for any trends and needed changes in operations. As of June 30, 2011, the Commission completed its third full year of operations under its 20-year operations contract that commenced on October 1, 2007 and provides for the turn-key operation of Mallock Bend Landfill by the operator instead of the Commission.

The Statement of Cash Flows in the accompanying financial statements is presented using the direct method. This method outlines the sources and uses of cash as it relates to operating income. In addition, included in the Statement of Cash Flows are classifications for non-capital related financing, capital related financing and investing activities.

Loudon County Solid Waste Disposal Commission
Management's Discussion and Analysis (continued)
June 30, 2011

Capital Assets

Capital asset levels increased from the prior year due to the purchase of land adjoining the landfill in the amount of \$198,549.

Request for Information

Questions concerning this report or other requests for additional information should be directed to Steve Field, Chairman at (865) 576-1057 or at his office located at 100 River Road, #106, Loudon, Tennessee 37774.

Respectfully submitted,

Steve Field,
Chairman

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

STATEMENT OF NET ASSETS

June 30, 2011

ASSETS

CURRENT ASSETS

Cash		\$ 2,397,087
Accounts receivable		36,260
Grants receivable		3,284
Interest receivable		425
Prepaid expenses		<u>3,700</u>

TOTAL CURRENT ASSETS 2,440,755

CAPITAL ASSETS

Land	\$ 983,033	
Landfill facilities	116,611	
Machinery and equipment	<u>101,793</u>	
	1,201,437	
Accumulated depreciation	<u>(172,189)</u>	<u>1,029,249</u>

TOTAL ASSETS \$ 3,470,004

LIABILITIES AND NET ASSETS

CURRENT LIABILITIES

Accounts payable		\$ 23,332
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LONG-TERM LIABILITIES

Estimated closure/postclosure care cost		3,664,938
---	--	-----------

NET ASSETS

Invested in capital assets	\$ 1,029,249	
Unrestricted	<u>(1,247,515)</u>	<u>(218,266)</u>

TOTAL LIABILITIES AND NET ASSETS \$ 3,470,004

See the accompanying notes to the financial statements.

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

STATEMENT OF REVENUE, EXPENSES AND CHANGE IN NET ASSETS

Year Ended June 30, 2011

OPERATING REVENUE

Surcharge-host agency		\$ 158,748
Surcharge-closure/post closure security fees		<u>165,385</u>

TOTAL OPERATING REVENUE 324,133

OPERATING EXPENSES

Salaries and wages:		
Board of Commissioners compensation		3,600

Contracted services:

Engineering services	\$ 13,833	
Legal services	42,624	
Accounting and auditing	5,775	
Property maintenance	<u>1,425</u>	63,657

Fees:

Landfill facilities operation	481,071	
Trustee's commissions	<u>3,111</u>	484,182

Supplies and materials:

Office supplies		29
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Other expenses:

Contributions to City of Loudon for debt service	15,000	
Insurance	2,375	
Property taxes	915	
Staff development	1,100	
Travel	<u>1,055</u>	20,445

Depreciation

5,831

TOTAL OPERATING EXPENSES 577,745

(LOSS) FROM OPERATIONS (253,611)

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION
STATEMENT OF REVENUE, EXPENSES AND CHANGE IN NET ASSETS
 (continued)

Year Ended June 30, 2011

NONOPERATING REVENUE		
State grant - tire disposal	19,957	
Interest	<u>5,535</u>	<u>25,492</u>
CHANGE IN NET ASSETS		(228,120)
NET ASSETS AT THE BEGINNING OF THE YEAR		<u>9,854</u>
NET ASSETS AT THE END OF THE YEAR		<u>\$ (218,266)</u>

See the accompanying notes to the financial statements.

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

STATEMENT OF CASH FLOWS

Year Ended June 30, 2011

CASH PROVIDED(USED) BY OPERATING ACTIVITIES

Cash received from customers	\$ 311,132
Cash paid to employees	(3,600)
Cash paid to suppliers	<u>(155,459)</u>

NET CASH PROVIDED BY OPERATING ACTIVITIES	152,073
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CASH PROVIDED(USED) BY NONCAPITAL AND RELATED FINANCING ACTIVITIES

State grant - tire disposal	22,001
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CASH PROVIDED(USED) BY CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of property and equipment	(198,549)
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CASH PROVIDED(USED) BY INVESTING ACTIVITIES

Interest received	<u>5,754</u>
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NET (DECREASE) IN CASH	(18,722)
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CASH AT THE BEGINNING OF THE YEAR	<u>2,415,809</u>
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CASH AT THE END OF THE YEAR	<u><u>\$ 2,397,087</u></u>
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LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

STATEMENT OF CASH FLOWS
(continued)

Year Ended June 30, 2011

**RECONCILIATION OF (LOSS) FROM OPERATIONS
TO NET CASH PROVIDED(USED)
BY OPERATING ACTIVITIES**

(Loss) from operations		\$ (253,611)
Adjustments to reconcile (loss) from operations to net cash provided by operating activities:		
Depreciation	\$ 5,831	
(Increase) in:		
Accounts receivable	(13,002)	
Prepaid expenses	(3,700)	
Increase(decrease) in:		
Accounts payable	(28,997)	
Estimated closure/postclosure care cost	445,552	405,684
	<u>445,552</u>	<u>405,684</u>
NET CASH PROVIDED BY OPERATING ACTIVITIES		<u>\$ 152,073</u>

See the accompanying notes to the financial statements.

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

NOTES TO THE FINANCIAL STATEMENTS

June 30, 2011

NOTE A - DESCRIPTION OF ORGANIZATION

Loudon County Solid Waste Disposal Commission (the Commission) has been delegated the authority and responsibility for operating the Matlock Bend landfill (the Landfill) under the Amended and Restated Loudon County Solid Waste Disposal Agreement dated March 1, 1993, as amended. This agreement was entered into pursuant to state laws requiring the creation of municipal solid waste regions. In addition to specific powers relative to the operation and management of the Landfill, the Commission is granted all the powers and duties of a municipal solid waste region board as set forth in T.C.A. §68-211-813, et seq.

The Commission's seven member board is appointed by the Loudon County mayor (5 members) and the mayors of City of Loudon (1 member) and Lenoir City (1 member).

The Commission has contracted with a company to operate the Landfill. This company is responsible for the operation of Phase II/IV of the Landfill and the closure and postclosure of Phases I and II/IV during the term of the contract, which expires on September 30, 2027 and is subject to two additional one-year extensions in favor of the Commission. Phase I of the Landfill was closed during the year ended June 30, 1996 and closure was approved by the State of Tennessee Department of Environment and Conservation during fiscal year ended June 30, 1998. Phase III was never developed.

NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting

The Commission uses the accrual basis of accounting. Revenue is recognized when earned and measurable, and expenses are recognized when the liability is incurred. Surcharge revenue and revenue for closure and postclosure security fees are classified as operating revenue. All other revenue is reported as nonoperating revenue. Operating expenses are those expenses that are essential to the primary operations. All other expenses are reported as nonoperating expenses.

The Commission follows all pronouncements of the Governmental Accounting Standards Board (GASB) and pronouncements of the Financial Accounting Standards Board (FASB) issued on or before November 30, 1989. The Commission has not elected to follow FASB pronouncements issued after November 30, 1989.

GASB Statement No. 34, *Basic Financial Statements-and Management's Discussion and Analysis-for State and Local Governments* establishes standards for external financial reporting for state and local governments and requires that resources be classified for accounting reporting purposes into the following three net asset groups:

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

NOTES TO THE FINANCIAL STATEMENTS

(continued)

June 30, 2011

Invested in capital assets

This category includes capital assets, net of accumulated depreciation and outstanding principal balances of debt attributable to the acquisition, construction, or improvement of those assets. The Commission had no debt as of June 30, 2011. Invested in capital assets at June 30, 2011 has been calculated as follows:

Capital assets	\$ 1,201,437
Accumulated depreciation	<u>(172,189)</u>
	<u>\$ 1,029,249</u>

Restricted

This category includes net assets whose use is subject to externally imposed stipulations that can be fulfilled by actions of the Commission pursuant to those stipulations or that expire by the passage of time. The Commission had no restricted net assets as of June 30, 2011.

Unrestricted

This category includes net assets that are not subject to externally imposed stipulations and that do not meet the definition of "restricted" or "invested in capital assets". Unrestricted net assets may be designated for specific purposes by action of management or the Board of Commissioners or may otherwise be limited by contractual agreements with outside parties. The Commission had a deficit of unrestricted net assets of \$1,247,515 as of June 30, 2011. The deficit was due to liabilities exceeding assets, except for capital assets, at June 30, 2011.

Accounts Receivable

Accounts receivable which are deemed uncollectible based upon a periodic review of the accounts are charged to revenue. At June 30, 2011, no allowance for uncollectible accounts was considered necessary.

Property and Equipment

Property and equipment is recorded at cost. Depreciation is computed using the straight-line method over the estimated useful lives, which range from five to thirty years.

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

NOTES TO THE FINANCIAL STATEMENTS

(continued)

June 30, 2011

NOTE C - CASH AND CASH EQUIVALENTS

Investments that have maturities of three months or less at the date of purchase are classified as cash equivalents. Cash and investments are stated at cost which approximates market value. Cash represents money on deposit in various banks.

State of Tennessee law authorizes the Commission to invest in obligations of the United States or its agencies, nonconvertible debt securities of certain federal agencies, other obligations guaranteed as to principal and interest by the United States or any of its agencies, secured certificates of deposit and other evidences of deposit in state and federal banks and savings and loan associations, and the state treasurer's local government investment pool.

All deposits with financial institutions in excess of Federal Deposit Insurance Corporation (FDIC) limits are required to be secured by one of two methods. Excess funds can be deposited with a financial institution that participates in the State of Tennessee Bank Collateral Pool. For deposits with financial institutions that do not participate in the State of Tennessee Bank Collateral Pool, state statutes require that all deposits be collateralized with collateral whose market value is equal to 105 percent of the uninsured amount of the deposits.

The Commission's cash and investments at June 30, 2011 are held by the Loudon County Trustee in the Commission's name and are entirely insured through the Federal Deposit Insurance Corporation or the State of Tennessee Bank Collateral Pool.

Cash received by the Commission for closure and postclosure security fees was \$594,099 as of June 30, 2011. Management intends to use this cash to partially satisfy the closure/post-closure costs described in Note G.

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

NOTES TO THE FINANCIAL STATEMENTS
(continued)

June 30, 2011

NOTE D - CAPITAL ASSETS

Capital assets activity for the year ended June 30, 2011 was as follows:

	<u>Balance</u> <u>7/1/10</u>	<u>Additions</u>	<u>Retirements</u>	<u>Balance</u> <u>6/30/11</u>
<u>Capital assets not being depreciated</u>				
Land	\$ 784,484	\$ 198,549	\$ 0	\$ 983,033
<u>Capital assets being depreciated</u>				
Landfill facilities	116,611	0	0	116,611
Machinery and equipment	<u>101,793</u>	<u>0</u>	<u>0</u>	<u>101,793</u>
	218,404	0	0	218,404
<u>Accumulated depreciation</u>				
Landfill facilities	(64,565)	(5,831)	0	(70,396)
Machinery and equipment	<u>(101,793)</u>	<u>0</u>	<u>0</u>	<u>(101,793)</u>
	<u>(166,358)</u>	<u>(5,831)</u>	<u>0</u>	<u>(172,189)</u>
	<u>\$ 836,530</u>	<u>\$ 192,718</u>	<u>\$ 0</u>	<u>\$ 1,029,249</u>

NOTE E - RISK MANAGEMENT

The Commission is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters. The Landfill operator, on behalf of the Commission carries commercial insurance for various risks of loss, including general liability coverage. Settled claims resulting from these risks have not exceeded commercial insurance coverage in any of the past three fiscal years.

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

NOTES TO THE FINANCIAL STATEMENTS

(continued)

June 30, 2011

NOTE F - COMMITMENTS

The Commission has completed three full years of operations under its operations contract with its operator dated as of July 1, 2007, which provides for the turnkey operations of the Landfill by the Commission's existing operator, Santek Environmental, Inc. (Santek), commencing on October 1, 2007. The prior operations agreement dated April 5, 1994 was amended on June 19, 2007 to provide for the termination of that contract effective September 30, 2007. The current operations agreement provides for a twenty-year term ending on September 30, 2027 and also grants the Commission the right, at its option, to extend the operations contract for two additional one-year extensions. Under the previous contract, the Commission received all tipping fee revenue and contracted with Santek to operate the Landfill. In accordance with the current agreement, Santek receives all revenue for tipping fees, pays operating costs of the Landfill, and pays a host fee and closure/postclosure fees to the Commission.

NOTE G - CLOSURE AND POSTCLOSURE CARE COST

State and federal laws and regulations require a final cover to be placed on the Landfill site when it stops accepting waste and to perform certain maintenance and monitoring functions at the site for a minimum of thirty years after closure. Phase I of the Landfill was closed during the year ended June 30, 1996. However, state certification of closure was not approved until the year ended June 30, 1998.

Although closure and postclosure care costs will be paid only near or after the date that the Landfill stops accepting waste, the Commission reports a portion of these closure and postclosure care costs as an operating expense in each period based on Landfill capacity used as of the date of the statement of net assets. Landfill facilities operation expense reported in the accompanying financial statements consists of \$35,519 paid for professional services and \$445,552 for the current year increase in the estimated liability for closure and postclosure costs.

At June 30, 2011, the estimated liabilities for closure and postclosure care costs were as follows:

Phase I	\$ 702,581
Phase II/IV	<u>2,962,357</u>
	<u>\$ 3,664,938</u>

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

NOTES TO THE FINANCIAL STATEMENTS

(continued)

June 30, 2011

The liabilities were estimated based on information provided by the State of Tennessee Department of Environment and Conservation when the corresponding cells of the Landfill were initially permitted. Closure and postclosure costs related to Phase I were recognized by the Commission in prior periods based on Landfill capacity as of the date of each statement of net assets. The liability for Phase II/IV represents the estimated cumulative amount of closure and postclosure care costs reported to date based on the use of 43% of the estimated capacity of the Landfill for that phase. The Commission will recognize the remaining estimated cost of \$3,926,845 as the remaining permitted capacity of the Landfill is filled. These amounts are based on what it would cost to perform all closure and postclosure care in 2011. The Commission expects to close Phase II/IV of the Landfill in August of 2030 (assuming 80,000 tons of waste per year). Actual costs of closure and postclosure may vary based on inflation, deflation, technology, or applicable laws and regulations.

Loudon County, Tennessee (the County) has entered into a Contracts in Lieu of Performance Bond with the State of Tennessee Department of Environment and Conservation for Phase I (dated February 24, 1994) and for Phase II/IV (dated September 1, 1997), which are amended from time to time. In the event the County fails to perform closure and postclosure care requirements pursuant to all applicable laws, statutes, rules and regulations as such laws, rules, statutes and regulations may be amended, the contracts pledge future revenues of the County, disbursed from the State of Tennessee to the County, up to the amount of \$7,591,783 (covering all phases of the Landfill) as of June 30, 2011, for closure and postclosure care.

NOTE H - CONTRIBUTIONS TO CITY OF LOUDON, TENNESSEE

The Commission makes contributions to City of Loudon, Tennessee not to exceed \$15,000 per year, for a period of twenty years to defray the cost associated with the retirement of debt incurred by City of Loudon, Tennessee to extend utility service lines to the Landfill. The amount reported as an expense for the year ended June 30, 2011 was \$15,000. The loan payments commenced in March 2002 and are expected to end in February 2022.

SUPPLEMENTARY INFORMATION

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

BOARD OF COMMISSIONERS

June 30, 2011

Chairman
Vice-Chairman
Secretary/Treasurer
Member
Member
Member
Member

Steve Field
William Waldrop
John Watkins
Ted Sitzlar
Robert Harrison
Aprell Patterson
Jim Akins

See the accompanying independent accountants' audit report.

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

EXPENDITURES OF STATE AWARDS

Year Ended June 30, 2011

<u>Project Number</u>	<u>Program Name</u>	<u>State Grantor</u>
Z-08-212957-02	Waste Tire Option Grant	State of Tennessee Department of Environment and Conservation

See the accompanying independent accountants' audit report.

<u>Receivable July 1, 2010</u>	<u>Receipts</u>	<u>Expenditures</u>	<u>Receivable June 30, 2011</u>
<u>\$ 5,328</u>	<u>\$ 22,001</u>	<u>\$ 19,957</u>	<u>\$ 3,284</u>

INDEPENDENT ACCOUNTANTS' REPORT ON INTERNAL CONTROL
OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER
MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED
IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

Board of Commissioners
Loudon County Solid Waste Disposal Commission
Loudon, Tennessee

We have audited the financial statements of Loudon County Solid Waste Disposal Commission as of and for the year ended June 30, 2011 and have issued our report thereon dated March 19, 2012. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America.

Internal Control over Financial Reporting

Management of Loudon County Solid Waste Disposal Commission is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered Loudon County Solid Waste Disposal Commission's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing an opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Loudon County Solid Waste Disposal Commission's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of Loudon County Solid Waste Disposal Commission's internal control over financial reporting.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of Loudon County Solid Waste Disposal Commission's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether Loudon County Solid Waste Disposal Commission's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended solely for the information and use of management and governmental regulatory agencies and is not intended to be and should not be used by anyone other than these specified parties.

Mitchell Emert + Hill

March 19, 2012

12.

Miscellaneous

12a.

Kennerly, Montgomery & Finley Engagement Letter Dated 11/21/2003

KENNERLY, MONTGOMERY & FINLEY, P.C.

ATTORNEYS AT LAW

P.O. BOX 442

KNOXVILLE, TENNESSEE 37901-0442

www.kennerlylawyers.com

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FOURTH FLOOR
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KNOXVILLE, TENNESSEE 37902

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JACK M. TALLENT, II
G. WENDELL THOMAS, JR.
STEVEN E. SCHMIDT
AN H. TRAMMELL
DULTER GILBERT
HUNTER CAGLE
ROBERT H. GREEN
WILLIAM S. LOCKETT, JR.
REBECCA BRAKE MURRAY
JAMES N. GORE, JR.
JAY ARTHUR GARRISON
TERRILL L. ADKINS
KENNETH W. WARD
JAMES A. HOLIFIELD, JR.
KRISTI D. MCKINNEY
CHRISTINA J. THORNTON
ROB QUILLIN
E. RICHARDS BRABHAM, III
JANA S. DOVGAN

November 21, 2003

Steve Field, Chairman
Loudon County Solid Waste
Disposal Commission
100 River Road #106
Loudon, Tennessee 37774

Re: Engagement as General Counsel

Dear Mr. Field:

We are honored by the recent decision of the Loudon County Solid Waste Disposal Commission of Loudon County, Tennessee (the "Commission") to retain this firm as the Commission's general counsel. This letter will outline the proposed terms and conditions of our representation of the Commission with respect to its legal affairs.

The scope of our representation is to serve as general counsel to the Commission, subject to the terms of this letter and such specific directives as may be issued from time to time by the Commission or the Commission's Chairman (the "Chairman"). We will represent the Commission at its regular monthly meetings and any specially called meetings unless our attendance is not required as directed by the Commission or the Chairman. We will review each month's meeting agenda, as well as those agendas for specially called meetings, for possible legal issues and advise the Chairman accordingly. We will also review the Commission's meeting minutes prior to their approval by the Commission. We will also respond to individual questions and inquiries from the Commission and the Commission's officers related to their responsibilities or duties with the Commission and on other related Commission matters. We will also endeavor to advise the Commission on such matters of general law that may adversely affect the responsibilities and duties of the Commission and its officers as such issues come to our attention.

We will also undertake from time to time such additional assignments concerning the Commission or its affairs as the Commission or its Chairman may direct, including without limitation assignments regarding interpretation of federal or state laws or the effect of these laws on the operations and affairs of the Commission. We will also be responsive to the Chairman, who may assign to us such research, case review or other legal and administrative assignments

Steve Field, Chairman

November 21, 2003

Page 2 of 3

concerning the Commission's operations and affairs as he deems necessary, and we will endeavor to keep the Chairman advised of any legal issues that we become aware of that may adversely affect the proper operation and administration of the Commission. Finally, we will be responsive to direct contacts from Commission customers, contract vendors and governmental bodies who have oversight or other responsibilities related to the Commission when such matters are assigned to us by the Commission or the Chairman. However, until assigned to us, we will refer direct contacts from such entities and individuals to the Chairman or the Commission, as appropriate.

I will be serving as the principal attorney with regard to the Commission's representation and may be assisted from time to time by G. Wendell Thomas, Jr., who is a shareholder in our firm with considerable experience in commercial litigation and government law. Our secretary is Diana Smiddy, and I encourage you to contact her should Wendell or I not be available. While in most instances either Wendell or I will handle the work for the Commission, there may be times when questions or assignments arise that require that we consult with other attorneys in the office who have more experience in that particular area of law. In such situations, I will consult with the Chairman before substantial time is spent with another attorney. In assignments that involve substantial research, we may also, from time to time, utilize associates or law clerks in our office when doing so will be more economical for the Commission because of lower billing rates.

We will provide monthly statements including itemized descriptions of all work performed and expenses incurred. Our statements will be based upon the hourly rates shown on the enclosed fee schedule, which are effective as of January 1, 2003. Our hourly rates are customarily reviewed in December of each year, and, if appropriate, adjusted as of the first of the calendar year. I do not anticipate any increases in our hourly rates at this time for 2004. Should it become necessary to utilize the services of any other attorneys and/or paralegals, their time will be billed at their hourly rates in effect when the services are performed. We reserve the right to charge our hourly rate for travel time spent on behalf of the Commission when it occurs during normal business hours.

Our statements will also list all out-of-pocket expenses incurred on the Commission's behalf, such as photocopying, computer assisted research, travel expenses and secretarial overtime.

In the event that our statements are not paid in a timely fashion, we reserve the right to withdraw from further representation of the Commission's interests on notice to the Commission of our intent to do so.

The monthly statements are intended to keep the Commission advised of the work we are doing and its cost. Upon receipt of a statement, we encourage the Commission and its Chairman to discuss with us any questions or comments concerning our services or our charges.

Because of our current relationship with the Commission, we do not anticipate that our handling of legal matters for the Commission will involve a conflict of interest with any other

Steve Field, Chairman

November 21, 2003

Page 3 of 3

firm client. However, if such a conflict should arise, we will advise and consult with the Commission regarding the appropriate action to be taken in order to resolve the conflict.

The Commission is free to terminate our representation at any time by providing us notice of its desire to do so. If this arrangement is agreeable to the Commission, please sign the enclosed copy of this letter and return it to us in the envelope provided for that purpose.

We appreciate your confidence in this firm and look forward to working with you and the Commission in the future.

Sincerely,

KENNERLY, MONTGOMERY & FINLEY, P.C.

By C. Coulter Gilbert
C. Coulter Gilbert

CCG/dls

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enclosure

cc: LCSWDC Commissioners

AGREED AND ACCEPTED THIS 13 day of January, ~~2003~~ ²⁰⁰⁴ SMF

Loudon County Solid Waste Disposal Commission of
Loudon County, Tennessee

By Steve Field
Steve Field, Chairman

12b.

News Herald Contact Information

NEWS HERALD MEETING NOTICE INSTRUCTIONS FOR
Loudon County Solid Waste Disposal Commission ("LCSWDC")
Revised: January 10, 2013

All meeting notices for LCSWDC should be emailed to:

cindy.white@news-herald.net and sara.thompson@news-herald.net

Including the following language:

Cindy or Sara:

Kennerly, Montgomery & Finley, P.C. serves as general counsel to the Loudon County Solid Waste Disposal Commission ("LCSWDC") and in that capacity requests the News-Herald's publication of the attached meeting notice in the classified section of the [Day of the Week], [Month and Date] and [Day of the Week, [Month and Date] editions of the News-Herald, under the appropriate subsection for meeting notices. The invoice and publisher's affidavit for the meeting notice should be sent to the LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION (not Loudon County) c/o:

**Kevin C. Stevens, Esq.
Kennerly, Montgomery & Finley, P.C.
P.O. Box 422
Knoxville, TN 37901**

The Commission would also appreciate the newspaper's inclusion of this upcoming public meeting in any listing of public meetings that are posted in the paper as a public service to your readers.

We also request that the notice be printed in the Community Calendar, which is free of charge.

If you have any questions, please reply to this email.

Thank you and please let us know if you have any questions regarding this request for publication or the attached meeting notice ad.

13.

Calendar

14.

Address and Contact Information

**LOUDON COUNTY
SOLID WASTE DISPOSAL COMMISSION**

(Revised 8-14-12)

COMMISSIONER CONTACT INFORMATION

<p>Work: Steve Field, Chairman Loudon County Solid Waste Disposal Commission Loudon County Annex 101 Mulberry Street, Suite 102 Loudon, TN 37774</p>	<p>WORK PHONE: 865-576-1057 HOME PHONE: 865-986-9516 FAX: 865-458-6508 EMAIL: sm_field@bellsouth.net Home: Steve Field, Chairman 1240 Donna Drive Lenoir City, Tennessee 37771 (Loudon County Appointee – 5th District)</p>
<p>Robert Harrison, Secretary/Treasurer Post Office Box 767 Loudon, Tennessee 37774 (Loudon City Appointee – 1st District)</p>	<p>WORK PHONE: 865-740-5711 HOME PHONE: 865-458-5711 EMAIL: rharrison@ccim.net Mobile: 865-740-5711</p>
<p>Aprell Patterson, Commissioner 130 Riverpoint Drive Lenoir City, Tennessee 37772 (Loudon County Appointee – 6th District)</p>	<p>WORK PHONE: 865-241-2568 HOME PHONE: 865-988-3587 EMAIL: alacocoa@earthlink.net</p>
<p>Jim Akins, Commissioner 315 E 3rd Avenue Lenoir City, Tennessee 37771 (Lenoir City Appointee – 2nd District)</p>	<p>WORK PHONE: HOME PHONE: 865-986-6755 EMAIL RAKINSA@BELLSOUTH.NET MOBILE: 865-356-7437</p>
<p>Ted Sitzlar, Commissioner 25800 Highway 72 N Loudon, Tennessee 37774 (Loudon County Appointee – 1st District)</p>	<p>HOME PHONE: 865-458-9402 EMAIL: sitzman01@aol.com Mobile: [REDACTED]</p>
<p>Bill Waldrop, Vice Chairman 112 Tigitsi Lane Loudon, Tennessee 37774 (Loudon County Appointee – 7th District)</p>	<p>HOME PHONE: 865-458-0506 FAX: 865-458-0504 EMAIL: wrwaldrop@aol.com Mobile: 865-809-1111</p>
<p>John D. Watkins, Commissioner 299 Edwards School Road Loudon, Tennessee 37774 (Loudon County Appointee – 4th District)</p>	<p>HOME PHONE: 865-458-5292 EMAIL: riesling4@aol.com Mobile: 865-776-0243</p>

**LOUDON COUNTY
SOLID WASTE DISPOSAL COMMISSION**

(Revised 8-14-12)

ADVISORS AND CONSULTANTS

<p>LEGAL: Jon H. Peyton, Esq. Kevin C. Stevens, Esq. Kennerly, Montgomery & Finley, P.C. Post Office Box 442 Knoxville, Tennessee 37901-0442</p> <p>OR 550 Main Street, 4th Floor Knoxville, Tennessee 37902</p>	<p>WORK PHONE: 865-546-7311 FAX: 865-524-1771 EMAIL: jpeyton@kmfpc.com kstevens@kmfpc.com</p>
<p>LANDFILL OPERATOR: Cheryl Dunson, Vice President of Marketing Santek Waste Services, Inc. 650 25th Street, NW, Suite 100 Cleveland, Tennessee 37311-1353</p>	<p>WORK PHONE: 423-303-7107 EMAIL: Cheryl@santekenviro.com</p>
<p>TECHNICAL ASSISTANCE: Kim Raia County Technical Assistance Service 101B Student Services Building Knoxville, TN 37996-0213</p>	<p>WORK PHONE: 865.974.6434 MOBILE: (865) 384-6691 EMAIL: KIM.RAIA@TENNESSEE.EDU</p>

COMMISSIONER CONTACT NOTES

Aprell Patterson, Commissioner	FIRST CHOICE FOR CONTACT IS WORK PHONE: 865-241-2568. LEAVE A MESSAGE. THIS IS THE ONLY WAY TO CONTACT HER ON DAY OF MEETING.
Ted Sitzlar, Commissioner	MOBILE IS NOT FOR PUBLIC USE Mobile: [REDACTED]
John D. Watkins, Commissioner	FIRST PRIORITY FOR CONTACT IS HOME PHONE: 865-458-5292 DOES NOT CARRY MOBILE AT ALL TIMES.