



January 26, 2023

Delivered via Electronic Mail

Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL
aemc@adem.alabama.gov

**Re: Request to speak at the February 10, 2023 meeting of the
Environmental Management Commission**

Dear Commissioners:

On behalf of the Environmental Defense Alliance, I request the opportunity to make a presentation to the Commission at its February 10, 2023 meeting on the topic described below.

TOPIC:

ADEM's authority to regulate the land disposal of stumps, logs, tree limbs, brush, yard trimmings, leaves or other vegetative debris

DESCRIPTION:

ADEM mistakenly claims it lacks authority to regulate the land disposal of stumps, logs, tree limbs, brush, yard trimmings, leaves or other vegetative debris unless regulated wastes are included in the disposal. ADEM has existing authority to regulate the land disposal of stumps, logs, tree limbs, brush, yard trimmings, leaves or other vegetative debris and needs to exercise that authority to protect human health and the environment.

ADEM'S CLAIMS:

“Vegetative debris, including but not limited to stumps, logs, limbs, brush, and leaves are not considered regulated solid wastes . . .”

Source: Mem. from Michael J. Cruise, Land Division, ADEM to Unnamed Persons, *Disaster Debris Management and Disposal Guidance*, (09/13/2022)

“Vegetative wastes (stumps, leafs, branches, etc...) are not considered to be regulated by the Department and you do not need a permit to dispose of this type waste on your property.”

Source: Unauthorized Waste Dump and Scrap Tire Sites Removals and Response Unit, ADEM, *Solid Waste Management* (09/2021)

“The site was being used for the disposal of vegetative matter (leaves, limbs, trees, shrubs and similar materials). That use is not a regulated activity (like the disposal of household wastes) and is not subject to regulatory oversight.”

Source: ADEM, *Information Regarding St. Clair County Fire Near Moody* (12/22/2022)

“The site was being used for the disposal of vegetative matter (leaves, limbs, trees, shrubs and similar materials). That use is not a regulated activity (unlike the disposal of household wastes, which is regulated) and is not subject to state regulatory oversight or permits.”

Source: ADEM, *Putting Out St. Clair County Fire Remains No. 1 Priority* (12/29/2022)

“[LeFleur] also said the department was hampered by the fact that “green waste” landfills, like the one that is on fire, are not subject to the same oversight as the kind of landfills that accept household trash or construction and demolition waste.”

Source: Pillion, Dennis, AL.com, *Moody landfill fire likely ‘a crime scene,’ top county official says* (01/10/2023)

“If it’s not a regulated entity, the only time that we can get involved in their operation is when there is a complaint that we investigate,” LeFleur said. “And if there is some violation, such as the unauthorized disposal of regulated waste, then we can be involved.”

Source: Pillion, Dennie, AL.com, *Residents near Alabama landfill fire demand more from ‘the ADEM people’* (01/06/2023)

ADEM’S EXISTING AUTHORITY:

The Solid Wastes and Recyclable Materials Management Act (attached hereto) provides that “solid waste” includes any “discarded material.” Ala. Code 1975 § 22-27-2(34). The Legislature did not define the words “discarded material” in the Act. “A fundamental principle of statutory construction is that [w]hen a term is not defined in a statute, the commonly accepted definition of the term should be applied.” *Ex parte Am. Cast Iron Pipe Co.*, No. 1200500, 2022 Ala. LEXIS 88, at *10, 2022 WL 4395533, at * ___ (Ala. Sept. 23, 2022) (internal quotation marks and citations omitted). Courts often look to dictionaries for the commonly accepted meaning of statutory language. *Id.*, 2022 Ala. LEXIS 88, at *10-11. *See State v. City of Birmingham*, 299 So. 3d 220, 227 (Ala. 2019) (Courts regularly look to dictionary definitions to ascertain the plain meaning of words used in a statute.).

The Oxford English Dictionary defines “material” as “[m]atter (not precisely characterized); that which constitutes the substance of a thing (physical or non-physical); a physical substance; a material thing.” Material, n., *OED Online*, Oxford University Press, December 2022, www.oed.com/view/Entry/114923 (accessed Jan. 23, 2023). Stumps, logs, tree limbs, brush, yard trimmings, leaves and other vegetative debris are plainly “material.” The Oxford English Dictionary defines “discarded” as “[t]hat has been rejected, cast aside, or abandoned as no longer needed or wanted.” Discarded, adj., *OED Online*, Oxford University Press, December 2022, www.oed.com/view/Entry/53664 (accessed Jan. 23, 2023). Stumps, logs, tree limbs, brush, yard trimmings, leaves and other vegetative debris that are abandoned or disposed of are plainly “discarded.” Thus, stumps, logs, tree limbs, brush, yard trimmings, leaves and other vegetative debris that are abandoned or disposed of are “discarded material” and, therefore, “solid waste.” When the language of a statute is plain and unambiguous, there is no room for construction. *Gulf Shores City Bd. of Educ. v. Mackey*, No. 1210353, 2022 Ala. LEXIS 123, at *19, 2022 WL 17843037, at *__ (Ala. Dec. 22, 2022) (citing *Ex parte Pfizer, Inc.*, 746 So. 2d 960, 964 (Ala. 1999)).

ADEM has interpreted the statutory term “discarded material” in ADEM Admin. Code r. 335-13-1-.03(37). There, ADEM has defined the term “discarded material” as “material thrown away, abandoned, disposed of, or otherwise given up without intent to reuse, recycle or reclaim.” This interpretation is consistent with the ordinary and commonly understood meaning of “discarded material” as revealed by the definitions in the Oxford English Dictionary. A court accepts an administrative interpretation of the statute by the agency charged with its administration, if that interpretation is reasonable. *Ala. Ins. Guar. Ass’n v. Ass’n of Gen. Contrs. Self-Insurer’s Fund*, 80 So. 3d 188, 204 (Ala. 2010).

The Solid Wastes and Recyclable Materials Management Act requires that all “solid waste” be disposed of in “a permitted landfill or permitted incineration . . .”. Ala. Code 1975 § 22-27-10(a). Thus, the disposal of stumps, logs, tree limbs, brush, yard trimmings, leaves and other vegetative debris in or on land must be in a permitted landfill.

In various statements, including some quoted above, ADEM has said that stumps, logs, tree limbs, brush, yard trimmings, leaves and other vegetative debris are not regulated “solid wastes” and/or that the disposal of such wastes on land is not required to be in a permitted landfill. “Although a court should give deference to an agency’s interpretation of an agency rule or a statute implemented by the agency, that deference has limits. When it appears that the agency’s interpretation is unreasonable or unsupported by the law, deference is no longer due.” *Chesnut v. Bd. of Zoning Adjustment*, 208 So. 3d 624, 640 (Ala. 2016) (quoting *Ala. Dep’t of Revenue v. Am. Equity Inv. Life Ins. Co.*, 169 So. 3d 1069, 1074 (Ala. Civ. App. 2015)). See *Ala. Bd. of Exam’rs of Landscape Architects v. Bostick*, 211 So. 3d 825, 834 (Ala. 2016) (“[W]here the language of the statute . . . is plain, this Court will not blindly follow an administrative agency’s interpretation, but will interpret the statute to mean exactly what it says”). “The correct rule is that an administrative interpretation of the governmental department for a number of years is entitled to favorable consideration by the courts; but this rule of construction is to be laid aside where it seems reasonably certain that the administrator’s interpretation has been erroneous and that a different construction is required by the language of the statute.” *Boswell v. Abex Corp.*, 294 Ala. 334, 336, 317 So. 2d 317, 318 (1975). The ADEM statements that stumps, logs, tree limbs, brush, yard trimmings, leaves and other vegetative debris are not regulated “solid wastes” and/or that the disposal of such wastes on land is not required to be in a permitted landfill are not reasonable interpretations of the Solid Wastes and Recyclable Materials Management Act or ADEM Admin. Code r. 335-13-1-.03(37) and are not

supported by the language of those provisions. Therefore, no deference to ADEM's interpretation is due.

No provision of the Solid Wastes and Recyclable Materials Management Act excludes stumps, logs, tree limbs, brush, yard trimmings, leaves and other vegetative debris from the definition of "solid waste." Indeed, the definition of "solid waste" contains several express exclusions but not one for stumps, logs, tree limbs, brush, yard trimmings, leaves and other vegetative debris. The omission of an exclusion for stumps, logs, tree limbs, brush, yard trimmings, leaves and other vegetative debris precludes an interpretation that excludes those wastes. It is not for the Executive Branch or Judicial Branch to supply omitted exclusions in a statute. Such is the province of the Legislative Branch. *See, e.g., Ex parte Jones Mfg. Co.*, 589 So. 2d 208, 210 (Ala. 1991) ("An administrative agency cannot usurp legislative powers or contravene a statute."); *Christopher v. Christopher*, 145 So. 3d 60, 66 (Ala. 2013) ("Courts, however, may not interpret statutes to compensate for omissions."). Moreover, no provision in the Solid Wastes and Recyclable Materials Management Act exempts stumps, logs, tree limbs, brush, yard trimmings, leaves and other vegetative debris from the requirement that "solid waste" be disposed of in "a permitted landfill or permitted incineration." To the extent that ADEM has interpreted the Solid Wastes and Recyclable Materials Management Act to provide such an exemption, the interpretation is erroneous, inconsistent with the Act, and an usurpation of legislative power.

With regard to the disposal of solid wastes, ADEM shall exercise such regulatory control over the management of solid wastes as may be necessary to enforce the requirements of ADEM, and ADEM, acting through the Environmental Management Commission, may adopt such rules and regulations as may be needed to meet the requirements of Solid Wastes and Recyclable Materials Management Act. Ala. Code 1975 §§ 22-27-7 & 22-22A-5(2).

ADEM, acting through the Environmental Management Commission, may adopt rules to implement the Solid Wastes and Recyclable Materials Management Act. Ala. Code 1975 §§ 22-27-12(1) & 22-22A-5(2).

ADEM, acting through the Environmental Management Commission, may adopt rules establishing requirements and restrictions for the management of solid waste, excluding the collection and transportation of nonhazardous and nonmedical solid waste. The rules may include factors such as the characteristics of the solid waste, the potential for contamination of soils or ground and surface waters, the design and operation of management facilities, the financial capabilities of the applicant, soil and geological considerations, human health, and other environmental considerations. Ala. Code 1975 §§ 22-27-12(2) & 22-22A-5(2).

The department may condition the issuance of a permit for any solid waste management facility upon the facility being consistent with applicable rules as are necessary to carry out the intent of the Solid Wastes and Recyclable Materials Management Act and ADEM's responsibilities under the Act. Permits shall be issued for a period of time based on design life of the facility and may include renewal periods as determined by rules and not inconsistent with federal law. Ala. Code 1975 § 22-27-12(2).

ADEM may issue permits, notices, and orders, specify the terms and conditions of permits or notices, conduct inspections, require that records be established and maintained, direct the abatement of unauthorized dumps or other public nuisances involving solid waste, and implement the rules and standards adopted pursuant to this article. Ala. Code 1975 § 22-27-12(3).

ADEM may require postclosure activities be conducted in accordance with the Alabama Uniform Covenants Act and the corresponding rules developed by ADEM. Ala. Code 1975 § 22-27-12(4).

ADEM may require that solid waste management facilities identify the volumes and types of solid waste to be managed and the counties and state where such solid waste will be generated. Ala. Code 1975 § 22-27-12(5).

ADEM may enter upon, during reasonable hours, all solid waste management and materials recovery facilities owned and operated by persons subject to the Solid Wastes and Recyclable Materials Management Act to inspect, investigate, obtain samples, monitor, or observe the transfer, treatment, storage, or disposal of solid waste and recovered materials, and to examine or copy records to determine compliance with the Solid Wastes and Recyclable Materials Management Act and the rules promulgated under the Act. Ala. Code 1975 § 22-27-12(6).

ADEM shall require that operators of all public solid waste management facilities be certified. ADEM shall, by rule or regulation adopted by the Environmental Management Commission, establish qualifications for certification programs, to include variance procedures for existing programs which meet the qualifications and taking into account the types of solid waste management facilities. Ala. Code 1975 §§ 22-27-12(7) & 22-22A-5(2).

A collection of solid wastes dumped or placed on any property not having a permit from ADEM is an “unauthorized dump.” Ala. Code 1975 § 22-27-2(38).

An “unauthorized dump” is a public nuisance per se, a menace to public health, and a violation of the Solid Wastes and Recyclable Materials Management Act. Ala. Code 1975 § 22-27-10(b).

An “unauthorized dump” may be enjoined through an action in the circuit court. Ala. Code 1975 § 22-27-10(b).

Any person who participates in the creation or operation of an unauthorized dump, or contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with the Solid Wastes and Recyclable Materials Management Act and rules of ADEM. Ala. Code 1975 § 22-27-10(b).

Any person committing a violation of the Solid Wastes and Recyclable Materials Management Act shall be liable for all costs of abatement of any pollution and correction of any public nuisance caused by the violation. Ala. Code 1975 § 22-27-11(a).

ADEM may issue administrative orders under Ala. Code 1975 § 22-22A-5 or initiate civil actions as it deems necessary against any person in the enforcement of the Solid Wastes and Recyclable Materials Management Act, or any regulation promulgated or permit issued under the Act. Ala. Code 1975 § 22-27-11(b).

ADEM may institute suit against any person for a violation of law or, whenever a public nuisance is threatened or exists, for an injunction to restrain a violation of the Solid Wastes and Recyclable Materials Management Act or the rules, standards, or orders adopted or issued under the Act. Ala. Code 1975 § 22-27-11(c).

ADEM is authorized to issue administrative orders assessing civil penalties of up to \$25,000 for each violation of the Solid Wastes and

Recyclable Materials Management Act, not to exceed \$250,000. Each day such violation continues shall constitute a separate violation. Ala. Code 1975 § 22-22A-5(18)a. & c.

ADEM and the Attorney General are authorized to commence a civil action in the circuit court to recover civil penalties of up to \$25,000 for each violation of the Solid Wastes and Recyclable Materials Management Act. Each day such violation continues shall constitute a separate violation. Ala. Code 1975 § 22-22A-5(18)b.

ADEM, the Attorney General, or District Attorney is authorized to commence a civil action in the circuit court to enjoin a threatened or continuing violation of the Solid Wastes and Recyclable Materials Management Act. Ala. Code 1975 § 22-22A-5(19).

The State, on relation of the Attorney General or District Attorney, is authorized to commence an action for an injunction to restrain any and all violations of the Solid Wastes and Recyclable Materials Management Act, or to restrain any public nuisance or detriment to public health. Ala. Code 1975 § 22-27-11(d).

Any person violating any provision of the Solid Wastes and Recyclable Materials Management Act shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$50.00 nor more than \$200.00, and, if the violation or failure or refusal to obey or comply with such provision of the Act is a continuing one, each day's violation shall constitute a separate offense and shall be punished accordingly. Ala. Code 1975 § 22-27-7.

REQUESTS FOR COMMISSION INTERVENTION

The Environmental Management Commission is authorized to select (and dismiss) a Director of ADEM. Ala. Code 1975 § 22-22A-6(a)(1). The

Commission is authorized “[t]o advise the [D]irector on environmental matters which are within [ADEM’s] scope of authority.” Ala. Code 1975 § 22-22A-6(a)(1). The Commission is authorized “[t]o establish, adopt, promulgate, modify, repeal, and suspend any rules, regulations, or environmental standards for [ADEM].” The Alliance requests that the Commission:

Advise the Director to withdraw and cease all claims that ADEM lacks authority to regulate the land disposal of stumps, logs, tree limbs, brush, yard trimmings, leaves or other vegetative debris.

Advise the Director to identify the location and operator of all land disposal sites where stumps, logs, tree limbs, brush, yard trimmings, leaves or other vegetative debris are, or have been, disposed without an ADEM permit; ascertain the volume of waste disposed below and above land surface at each disposal site; ascertain the depth below land surface or height above land surface of any intermediate layer of soil or other non-flammable alternative material and the thickness thereof at each disposal site that might serve as a fire break; and determine the fire control preparedness plans, personnel, equipment, and other resources readily available at each disposal site.

Advise the Director to conduct an inspection of every land disposal site where stumps, logs, tree limbs, brush, yard trimmings, leaves or other vegetative debris are, or have been disposed without a permit to determine if they present a threat to human health or the environment.

Advise the Director to order the operators of all land disposal sites where stumps, logs, tree limbs, brush, yard trimmings, leaves or other vegetative debris are, or have been, disposed without a valid and effective permit issued by ADEM to immediately cease disposal until permitted.

Advise the Director to order closure of any land disposal site where stumps, logs, tree limbs, brush, yard trimmings, leaves or other vegetative debris are, or have been, disposed without a permit if they present a threat to human health or the environment.

Advise the Director to consider what effective enforcement actions ADEM may take against Environmental Landfill, Inc. under the Solid Wastes and Recyclable Materials Management Act and Alabama Environmental Management Act, including actions that would result in removal of the stumps, logs, tree limbs, brush, yard trimmings, leaves or other vegetative debris or accomplish the safe and secure closure of the unauthorized dump; recover costs of abatement of any pollution and correction of any public nuisance caused by any violation of the Solid Wastes and Recyclable Materials Management Act; seek administrative or judicial civil penalties against Environmental Landfill, Inc. ; cooperate with the Attorney General or District Attorney to impose criminal liability on Environmental Landfill, Inc. and to enjoin or restrain continuing violation of the Solid Wastes and Recyclable Materials Management Act by Environmental Landfill, Inc.

Initiate rulemaking for the land disposal of stumps, logs, tree limbs, brush, yard trimmings, leaves or other vegetative debris.

Sincerely,



David A. Ludder
Attorney for the Environmental Defense
Alliance

cc: Attorney General Steve Marshall (via steve.marshall@alabamaag.gov)
District Attorney Lyle Harmon (via lyle.harmon@stclairda.com)

§ 22-27-1. Short title

This article shall be known as the "Solid Wastes and Recyclable Materials Management Act."

History:

Acts 1969, No. 771, p. 1373, §1; Act 2008-151, p. 244, §1.

§ 22-27-2. Definitions

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) AGENCY. Any controlling agency, public or private, elected, appointed, or volunteer utilizing methods approved by the health department or the department for the purpose of controlling and supervising the collection or management of solid wastes or recyclable materials.
- (2) ALTERNATIVE COVER. Material other than earth used to cover a landfill or sanitary landfill. An alternative cover shall be approved by the Department of Environmental Management in compliance with federal law and United States Environmental Protection Agency rules or guidance to achieve a level of performance equal to or greater than earthen cover material.
- (3) ASHES. The solid residue from burning of wood, coal, coke, or other combustible material used for heating, from incineration of solid wastes, or for the production of electricity at electric generating plants.
- (4) COAL COMBUSTION BY-PRODUCTS. Fly ash, bottom ash, boiler slag, or flue gas emission control by-products which result primarily from the combustion of coal or other fossil fuels at electric generating plants.
- (5) COMPOSTING OR COMPOST PLANT. An officially controlled method or operation whereby putrescible solid wastes are broken down through microbic action to a material offering no hazard or nuisance factors to public health or well-being.
- (6) DEPARTMENT. The Alabama Department of Environmental Management.
- (7) DIRECTOR. The Director of the Alabama Department of Environmental Management or his or her designee.
- (8) DISCHARGE. The accidental or intentional spilling, leaking, pumping, emitting, emptying, or dumping of solid waste, including leachate, into or on any land or water.
- (9) DISPOSAL. The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including, but not limited to, ground waters.

(10) FACILITY. All contiguous land, structures, and other appurtenances used for the processing, treatment, storage, or disposal of solid waste, or the recovery of recyclable materials from solid waste, whether or not authorized or permitted, including, but not limited to, waste disposal areas and waste disposed therein.

(11) FINANCIAL ASSURANCE. A financial arrangement by the owner or operator of a municipal solid waste landfill which guarantees the availability of funds which may be used to close, provide post-closure care, or conduct corrective action at that facility if the owner or operator fails to properly execute his or her responsibilities under this article and any rules adopted by the department for closure, post-closure care, or corrective action and the terms of any permit issued for operation of that facility.

(12) GARBAGE. Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products and excepting such materials that may be serviced by garbage grinders and handled as household sewage.

(13) GENERATION. The act or process of producing solid waste. Solid waste shall be considered to be generated at the point that waste materials are first discarded or collected, regardless of any subsequent materials recovery or recycling.

(14) HAZARDOUS WASTES. Those wastes defined in, and regulated under, the Alabama Hazardous Waste Management and Minimization Act of 1978, as amended.

(15) HEALTH DEPARTMENT. An approved county or district health department, including the Alabama State Department of Public Health and the affected state and county health department.

(16) HEALTH OFFICER. The state or affected county health officer or his or her designee.

(17) HOUSEHOLD WASTE. Any solid waste, including, but not limited to, garbage, trash, and sanitary waste in septic tanks derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreational areas. Sanitary waste in septic tanks shall be considered as household waste only when it is disposed in a landfill or unauthorized dump and its inclusion as a household waste shall in no way prohibit or supersede the authority of the board or the department to regulate onsite sewage systems or the management of sanitary waste in septic tanks.

(18) **INCINERATOR.** A device designed to burn that portion of garbage and rubbish which will be consumed at temperatures generally ranging 1,600 degrees Fahrenheit or over. The unburned residue from an incinerator, including metal, glass, and the like shall be called ashes.

(19) **INDUSTRIAL SOLID WASTE.** Solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Chapters 22 to 30, inclusive, of this title.

(20) **INNOCENT LANDOWNER.** An owner of real property upon which there is located an unauthorized dump and who meets all of the following conditions:

a. The solid waste was disposed of on the property after the owner acquired title to the property or the waste was disposed of before the owner acquired title to the property and the owner lacked actual knowledge of the waste after conducting reasonable due diligence or title was acquired by bequest or devise.

b. The owner did not have knowledge that the waste was being disposed of on the property or the owner took steps, including, but not limited to, posting signs to prevent disposal on the property.

c. The owner did not participate in or consent to the disposal of solid waste on the property.

d. The owner did not receive any financial benefit from the disposal of solid waste on the property.

e. Title to the property was not transferred to the owner for the purpose of evading liability for operating an unauthorized dump.

f. The person or persons responsible for disposing of the solid waste on the property, in doing so, were not acting as an agent for the owner.

(21) **LANDFILL.** A method of compaction and earth or alternative cover of solid wastes other than those containing garbage or other putrescible wastes, including, but not limited to, tree limbs and stumps, demolition materials, incinerator residues, and like materials not constituting a health or nuisance hazard, where cover need not be applied on a per day used basis.

(22) **MATERIALS RECOVERY FACILITY.** A solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of those materials. A materials recovery facility shall be deemed to be a solid waste treatment facility.

(23) **MEDICAL WASTE.** A solid waste or combination of solid wastes which because of its infectious characteristics may either:

- a. Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.
- b. Pose a substantial present hazard or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.

(24) **MUNICIPAL SOLID WASTE LANDFILL.** A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile. A municipal solid waste landfill may also receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, industrial solid waste, construction/demolition waste, and rubbish. A municipal solid waste landfill is a sanitary landfill.

(25) **PERSON.** An individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, agent, agency, association, state, municipality, commission, political subdivision of a state, an interstate body, or other private or public legal entity.

(26) **PRIVATE SOLID WASTE MANAGEMENT FACILITY.** A solid waste management facility that is operated exclusively by and for a private solid waste generator for the purpose of accepting solid waste generated on-site or by the permittee.

(27) **PUBLIC SOLID WASTE MANAGEMENT FACILITY.** A solid waste management facility that accepts solid waste from the public generally or for a fee or any solid waste management facility that is not a private solid waste management facility.

(28) **RECOVERED MATERIALS.** Those materials which have known recycling potential; which can be feasibly recycled; which have been diverted or removed from the solid waste stream for recycling, whether or not requiring subsequent separation and processing; and which have a substantial portion that is consistently used in the manufacture of products which may otherwise be produced from raw or virgin materials. Recovered materials shall not include solvents or materials, except sawdust, bark, and paper materials that are destined for incineration, energy recovery, or any use which constitutes disposal. Recovered materials shall only be those materials for which during the calendar year, commencing on January 1, the amount of material recycled or diverted from the solid waste stream for recycling and transferred to a different site for recycling equals at least 75

percent by weight or volume of the amount of that material accumulated at the beginning of the period.

(29) **RECOVERED MATERIALS PROCESSING FACILITY.** A facility primarily engaged in the storage, processing, and resale or reuse of recovered materials. A recovered materials processing facility is not a solid waste management facility; however, any solid waste resulting from the operation of a facility shall be subject to all applicable laws and regulations relating to solid waste and shall be deemed to be generated for purposes of reporting pursuant to solid waste reduction goals, at the point of collection of the recovered materials from which the solid waste resulted. A recovered material processing facility shall provide notification to the department according to rules adopted by the department.

(30) **RECYCLABLE MATERIALS.** Those materials which are capable of being recycled, whether or not the materials have been diverted or removed from the solid waste stream.

(31) **RECYCLING.** Any process by which materials are collected, separated, stored, recovered, or processed and reused or returned to use in the form of raw materials or products, but does not include the use of materials as a fuel, or for any use which constitutes disposal.

(32) **RUBBISH.** Nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, metal cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures, not less than 1,600 degrees Fahrenheit.

(33) **SANITARY LANDFILL.** A controlled area of land upon which solid waste is deposited and is compacted and covered with earth or an alternative cover each day as deposited, with no on-site burning of wastes, and so located, contoured, and drained that it will not constitute a source of water pollution as determined by the department.

(34) **SOLID WASTE.** Any garbage, rubbish, construction or demolition debris, ash, or sludge from a waste treatment facility, water supply plant, or air pollution control facility, and **any other discarded materials**, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or community activities, or materials intended for or capable of recycling, but which have not been diverted or removed from the solid waste stream. The term "solid waste" does not include recovered materials, solid or dissolved materials in

domestic sewage, solid or dissolved material in irrigation return flows, or industrial discharges which are point sources subject to the National Pollutant Discharge Elimination System permits under the Federal Water Pollution Control Act, as amended, or the Alabama Waste Pollution Control Act, as amended; or source, special, nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended. Also excluded from this definition are land applications of crop residues, animal manure, and ash resulting exclusively from the combustion of wood during accepted agricultural operations, waste from silvicultural operations, or refuse as defined and regulated pursuant to the Alabama Surface Mining Act of 1969, Article 1, commencing with Section 9-16-1, of Chapter 16 of Title 9.

(35) **SOLID WASTE DISPOSAL FACILITY.** Any landfill or part of a facility where final deposition of solid waste occurs and at which waste may remain after closure.

(36) **SOLID WASTE MANAGEMENT.** The systematic control of solid waste, including its storage, processing, treatment, recovery of materials from solid waste, or disposal.

(37) **SOLID WASTE MANAGEMENT FACILITY.** Any solid waste volume reduction plant, transfer station, material recovery facility, or other facility, the purpose of which is the storage, treatment, utilization, processing, disposal, or recovery of materials from solid waste, or any combination thereof.

(38) **UNAUTHORIZED DUMP.** Any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the department.

Abandoned automobiles, large appliances, or similar large items of solid waste shall be considered an unauthorized dump within the meaning of this article. The careless littering of a relatively few, smaller individual items such as tires, bottles, cans, and the like shall not be considered an unauthorized dump, unless the accumulation of solid waste poses a threat to human health or the environment. An unauthorized dump shall also mean any solid waste disposal site which does not meet the regulatory provisions of this article.

History:

Amended by Act 2020-30, §1, eff. 6/1/2020. Acts 1969, No. 771, p. 1373, §1; Acts 1982, No. 82-612, p. 1111, §11(f); Act 2005-302, 1st Sp. Sess., p. 596, §1; Act 2008-151, p. 244, §1; Act 2011-258, §1.

§ 22-27-3. Authority of local governing bodies as waste collections and disposal; household exemptions; state regulatory program

(a) Generally.

(1) The county commission or municipal governing body may, and is hereby authorized to, make available to the general public collection and disposal facilities for solid wastes in a manner acceptable to the department. The county commission or municipal governing body may provide such collection or disposal services by contract with private or other controlling agencies and may include house-to-house service or the placement of regularly serviced and controlled bulk refuse receptacles within reasonable (generally less than eight miles) distance from the farthest affected household and the wastes managed in a manner acceptable to the department.

(2) Any county commission or municipal governing body providing services to the public under this article shall have the power and authority by resolution or ordinance to adopt rules and regulations providing for mandatory public participation in and subscription to such system of services. Such governing body may, in its discretion, submit the question of requiring such mandatory public participation to a vote of the qualified electors of the county or municipality as the case may be. If such governing body submits the question to the voters, then the governing body shall also provide for holding and canvassing the returns of the election and for the giving notice thereof for two consecutive weeks in a paper of general circulation in the county. Every person, household, business, industry, or property generating solid wastes, garbage, or ash as defined in this section shall participate in and subscribe to such system of service unless granted a certificate of exception as provided in subsection (g). Provided, however, any individual, household, business, industry, or property generating solid wastes that were sharing service for a period of at least 6 months may continue to share service without filing for a certificate of exception. In the event such person, household, business, industry, or property owner who has not been granted a certificate of exception refuses to participate in and subscribe to such system of service, the county commission or municipal governing body may in addition to any other remedy provided in this article bring an appropriate civil action in circuit court to compel such participation and subscription. Except as provided in subsection (g), any person, firm, or corporation violating such rules and regulations shall be in violation of this article and shall be punished as provided in Section 22-27-7.

(3) Any household whose sole source of income is Social Security benefits shall be granted an exemption from the payment of any fees required under this article, provided the household seeking to claim the exemption shall

Ala. Code 22-27-3 Authority of local governing bodies as waste collections and disposal; household exemptions; state regulatory program (Code Of Alabama (2022 Edition))

present proof of income to the county health officer no later than the first billing date of any year in which the exemption is desired. The county health officer or his designee shall forward the exemption request and proof of income to the solid waste officer or municipal governing body upon receipt. The exemption shall apply only so long as the household's sole source of income is Social Security and shall be requested each year in which the exemption is desired. Additionally, the Legislature may, by local law, authorize the county commission to grant additional exemptions to households whose total income does not exceed 75 percent of the federal poverty level. Any person who knowingly provides false or misleading information in order to obtain an exemption shall be subject to the provisions of Section 22-27-7.

(4) No county commission shall provide solid waste collection and disposal services within the corporate limits of a municipality without the express consent of the municipal governing body of such municipality nor shall any municipality provide solid waste collection and disposal services outside its corporate limits without the express consent of the county commission of the county in which it is situated.

(5) Any county providing door-to-door solid waste collection shall not reduce such service unless and until a letter has been sent to each resident or property or business owner receiving door to door service stating that such service will be reduced or changed and allowing at least 60 days for any resident, business owner, or property owner to call for a public hearing and for the county or municipality to hold such public hearing upon request.

(6) Any provision of this article to the contrary notwithstanding, no person, household, business, industry, or property owner shall be required to pay any solid waste collection exemption or disposal fee chargeable under this article unless solid waste collection and disposal services for which such charge was made were actually made available to such person, household, business, industry, or property owner.

(b) Solid waste officer. As used in this article, solid waste officer shall mean any county official or county employee or any official or employee of a solid waste disposal authority authorized under Section 11-89A-1 et seq. designated by the county commission to exercise the authority and perform the duties delegated by this article to such official and such officer shall have the same powers of enforcement against persons violating this article as do license inspectors with regard to persons violating revenue laws as provided under Section 40-12-10 (i), (j), (k), and (n).

(c) As used in this article, the terms "solid wastes", "garbage", and "ash" do not include any drilling discharges from oil or natural gas operations.

Ala. Code 22-27-3 Authority of local governing bodies as waste collections and disposal; household exemptions; state regulatory program (Code Of Alabama (2022 Edition))

(d) Garbage disposal. Garbage and rubbish containing garbage shall be disposed of by sanitary landfill, approved incineration, composting, or by other means now available or which may later become available as approved by the department. The method chosen and used shall also meet the requirements of the health department for sanitation and the protection of public health.

(e) Burning. No garbage or rubbish containing garbage or other putrescible materials or hazardous wastes shall be burned except in approved incinerators meeting the necessary temperature requirements and air pollution controls as now established or as may later be established. The open burning of rubbish shall be permitted only under sharply controlled circumstances where sanitary landfill or landfill is not feasible and not in proximity to sanitary landfill or landfill operations where spread of fire to these operations may be a hazard in the opinion of the department.

(f) Haulage. Trucks or other vehicles engaged in the business of hauling garbage and rubbish shall be so covered, secured, or sealed that there will be no loss during haulage to cause littering of streets and highways, or cause a nuisance or hazard to the public health.

(g) Exception.

(1) A person, household, business, industry, or any property owner may store, haul, and dispose of his or her own solid wastes on his or her land or otherwise, provided such storage, haulage, or disposal is accomplished pursuant to a certificate of exception as provided in this subsection. In order to obtain a certificate of exception, an application, an application fee, and plan must be filed with the county health officer or his or her designee in the case of household solid waste or with the department in the case of solid waste from business or industry, setting out the proposed method of storing, hauling, and disposing of solid waste so as to comply with rules and regulations adopted by the state or county boards of health or the department as appropriate and not create a public nuisance or hazard to the public health. The certification of exception application fee shall be established by the State Board of Health or the department, as the case may be, except that with regard to an individual household such fee shall be ten dollars (\$10). The proceeds from such application fees are hereby appropriated to the State Board of Health or the department, as the case may be, to be used for the administration of this article. The county health officer or his or her designee or the department as appropriate shall investigate such application and plan and issue a certificate of exception within the time set by the State Board of Health or the department, as the case may be (not to exceed sixty days in the case of an individual household), if such proposal will, in such officer's or designee's or the department's

Ala. Code 22-27-3 Authority of local governing bodies as waste collections and disposal; household exemptions; state regulatory program (Code Of Alabama (2022 Edition))

judgment, comply with such rules and regulations and adequately prevent a public nuisance or hazard to public health. A certificate of exception granted under authority of this section shall be valid for the period established by the department, except that in the case of an individual household such period shall not exceed one year. The county health officer or his or her designee or the department shall notify the county commission or municipal governing body in writing of the intention to grant a certificate of exception and no such certificate of exception shall be granted for an individual household without prior written approval of the county commission or municipal governing body as the case may be.

(2) Notwithstanding any other provision of this chapter to the contrary, no exception, exception fee, or any other review, approval, or payment shall be required of any generator for the collection, handling, or disposal of its own solid waste using facilities or equipment owned by the generator, its corporate parent, affiliate, or subsidiary and duly permitted for such use by the Alabama Department of Environmental Management or its successor in function.

(h) Coal combustion by-products. Upon the adoption and implementation of a federal regulatory program to govern the disposal of coal combustion by-products pursuant in whole or in part to Subtitle D of the Solid Waste Disposal Act, 42 U.S.C. §6941 et seq., the department is authorized to develop and adopt rules as necessary to implement a state regulatory program consistent with the federal requirements. Until such federal program requirements take effect, the disposal of coal combustion by-products shall be subject to the applicable requirements of this article; provided, however, that a facility permitted by the department pursuant to Chapter 22 of this title as of May 25, 2011, and thereafter may continue to operate without additional authorization by the department until federal requirements under the Solid Waste Disposal Act take effect. To the extent permissible under the federal program, the department shall allow beneficial uses of coal combustion by-products as an alternative to disposal as part of any adopted state program.

History:

Acts 1969, No. 771, p. 1373, §2; Acts 1971, No. 2247, p. 3604, §1; Acts 1982, No. 82-612, p. 1111, §11(f); Acts 1989, No. 89-630, p. 1231, §1; Acts 1997, No. 97-636, p. 1159, §1; Act 2011-258, §1.

§ 22-27-4. Hazardous wastes; unauthorized dumps; vermin controls

(a) Hazardous wastes. Hazardous wastes shall be managed in accordance with the provisions of Sections 22-30-1 through 22-30-24, and the rules promulgated thereunder.

(b) Unauthorized dumps. The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined, and enforced upon and regulated as provided in this article generally, and Section 22-27-11, specifically.

(c) Vermin controls. Rodents and insects of public health importance, including, but not limited to, rats, flies, and mosquitoes shall be controlled in a manner consistent with the administrative rules of the Board of Health and the department, and the closure of any unauthorized dump where deemed necessary by the health officer and the department, shall be accompanied by an adequate vermin eradication program to prevent the spread of vermin to nearby properties.

History:

Acts 1969, No. 771, p. 1373, §3; Acts 1982, No. 82-612, p. 1111, §11(f); Act 2008-151, p. 244, §1.

Ala. Code 22-27-5 Establishment of charges, fees, etc., mutual agreements or contracts; licensing of private or corporate agencies; permits and bonds; nonpayment; expense of certain excess amounts (Code Of Alabama (2022 Edition))

§ 22-27-5. Establishment of charges, fees, etc., mutual agreements or contracts; licensing of private or corporate agencies; permits and bonds; nonpayment; expense of certain excess amounts

(a) Fees, etc.; mutual agreements or contracts. The county commission or municipality undertaking the responsibility for providing services to the public under this article may establish fees, charges, and rates and may collect and disburse funds within cooperating areas or districts, inside or outside the corporate limits of municipalities or inside or outside of county boundaries, for the specific purpose of administering this article and providing and operating a solid waste program. Also, the county commission or public authority may enter into mutual agreements or contracts with the government bodies of other counties, municipalities, corporations, or individuals, where deemed to be mutually economical and feasible, to jointly or individually collect, haul, and/or dispose of solid wastes generated within the cooperating area. All contracts or mutual agreements under this article shall be subject to review by the health officer, and all such contracts and agreements shall be subject to cancellation upon 30 days' notice from the health officer with the concurrence of the department, any time the contracts or agreements fail to be in the best interest of the health, safety, and welfare of the citizens residing in the affected area.

(b) Private or corporate agencies. Individuals, corporations, partnerships, or other agencies engaging in the collection and disposal of solid wastes are subject to this article. Governing bodies may assign territories or approve or disapprove disposal sites, with the concurrence of the health department, and shall establish and collect annual license fees from such firms and set rate schedules if a service fee is charged. In addition to any other approvals which are necessary for any contract between private or corporate agencies and governmental entities for the disposal of solid wastes, approval of the department shall be obtained.

(c) Permits and bonds. Under subsection (b), no license shall be granted or fee collected without a permit issued by the state or county health department, renewable annually at the time licenses are due. A permit shall be based upon performance and may be revoked for cause, including failure to perform under the provisions of this article and regulations adopted under authority of this article. No license shall be granted without the posting of a performance bond satisfactory to the governing body. All solid waste disposal sites except those which have certificates of exception shall have a permit from the department.

(d) Financial assurance. No permit for transportation of garbage by out-of-state transporters, for disposal of such garbage in a sanitary landfill in this

Ala. Code 22-27-5 Establishment of charges, fees, etc., mutual agreements or contracts; licensing of private or corporate agencies; permits and bonds; nonpayment; expense of certain excess amounts (Code Of Alabama (2022 Edition))

state, shall be issued unless financial assurance is posted by the transporter with the health department.

The financial assurance shall be in an amount not less than two hundred fifty thousand dollars (\$250,000) and must guarantee that the garbage does not contain any regulated hazardous waste, infectious waste, or explosive materials or debris. The financial assurance shall be provided in accordance with acceptable financial assurance instruments which include, but are not limited to, an escrow account, performance bond, or letter of credit. The health department shall adopt rules specifying the terms and conditions of financial assurance instruments, as appropriate.

(e) Nonpayment of fees, etc. Any county commission or municipality establishing fees, charges, and rates pursuant to subsection (a) may adopt resolutions or ordinances providing that if the fees, charges, or rates for the services furnished by the county commission or municipality, or licensee of either, under this chapter, shall not be paid within 30 days after the same shall become due and payable, the county commission or municipality may, at the expiration of the 30-day period, suspend the services or may proceed to recover the amount of any delinquency with interest in a civil action, or both.

(f) Notwithstanding subsection (a), any county or municipality that is providing solid waste services under this article that has a solid waste reserve account in excess of one million dollars (\$1,000,000) may expend excess amounts over one million dollars (\$1,000,000) in the solid waste reserve account for any lawful purposes in the best interest of the county or municipality.

History:

Amended by Act 2021-348, §1, eff. 8/1/2021. Acts 1969, No. 771, p. 1373, §5; Acts 1971, No. 2247, p. 3604, §2; Acts 1979, No. 79-668, p. 1176; Acts 1982, No. 82-612, p. 1111, §§11(f), 14(a)(7); Acts 1988, No. 88-655, p. 1052; Acts 1988, 1st Ex. Sess., No. 88-858, p. 346.

§ 22-27-5.1. Tipping fee for use of certain county landfills

(a) Notwithstanding any other provision of law, any county having a population of 25,000 inhabitants or less, according to the 1990 federal decennial census, which voluntarily operates a landfill as defined in Section 22-27-2(8), may charge a tipping fee for use of the county landfill. The county may deposit any or all of the tipping fee in the county general fund to be used for county general purposes. This section shall not be construed to grant any solid waste disposal authority or unit of local government the authority to impose a tipping fee on the processing, treatment, or disposal of solid waste at a privately-owned or privately-operated solid waste facility.

(b) The provisions of this section are remedial and shall be given retroactive effect for any time period for any county to which this section applies and which has operated a county landfill for inert solid waste.

History:

Act 98-610, p. 1342, §§1, 2.

§ 22-27-5.2. Solid waste landfill moratorium

(a)

(1) Notwithstanding any provision of law, until May 31, 2014, neither the department nor any state or local agency may grant any new permits to a new public solid waste landfill facility which is intended to receive waste not generated by the permittee.

(2) The moratorium period is necessary in order to allow the department and the Alabama Department of Public Health to review their duties and responsibilities pursuant to the Solid Wastes and Recyclable Materials Management Act. As appropriate, following this review, the department, with input from the Alabama Department of Public Health, shall make recommendations for necessary legislation or undertake rulemaking to implement enhancement identified during the review period.

(3) For the purpose of evaluating solid waste landfill management issues facing the state and to allow for the update of the state's comprehensive solid waste management plan to identify and provide for the state's solid waste management needs, there is imposed a moratorium on the issuance by the department of any new permits for new public solid waste landfills which are intended to receive wastes not generated by the permittee as further qualified in subsection (b). The moratorium shall not apply to industrial landfills receiving waste generated in-state only by the permittee.

(b) The moratorium restriction provided in subsection (a) applies only to any proposed public solid waste landfill facility that has not received its final approval within the department solid waste landfill permitting process and shall include proposed facilities which will meet, upon completion, any of the following criteria regarding capacity, site acreage, or location.

(1) A proposed capacity in excess of 1,500 tons per day.

(2) A proposed capacity of 2,000 cubic yards per day or more.

(3) A site consisting of 500 acres or more.

(4) When combined with existing or proposed public solid waste landfill facilities located within the same county or counties or within 20 miles thereof, a capacity or site which exceeds the minimum amounts set forth in subdivision (1), (2), or (3).

(5) A proposed capacity by a new public solid waste landfill which will be more than that reasonably anticipated in the foreseeable future as identified in the local solid waste management plan for the communities located

within the county in which the facility is to be located or within 20 miles of the facility.

(c) The director may waive the limitation imposed by this moratorium for a particular facility upon a finding based upon a joint recommendation by the State Health Officer and the respective host government. The request for waiver shall be initiated by resolution of the governing body of the jurisdiction which recognizes a potential crisis in solid waste management by public solid waste landfills in the jurisdiction. The resolution shall be adopted at a public meeting of the governing body following publication of at least one notice in a newspaper of general circulation in the area at least 10 days prior to the meeting. The resolution shall request the State Health Officer and the respective host government to determine if the situation poses a threat to human health or the environment within the jurisdiction based upon substantive criteria to be established jointly by the department, the State Health Officer, and the respective host government. In the event the State Health Officer and the host government so certify, the moratorium may be waived and the director may issue a permit for the limited purpose of serving the service area or jurisdiction identified.

History:

Amended by Act 2012-434, §1, eff. 5/15/2012. Act 2011-297, §§1 - 3.

§ 22-27-6. Authority to adopt resolution or ordinance; rules and regulations; noncompliance as public nuisance; citation; court proceedings

(a) The county commission may by resolution or ordinance provide for the orderly collection of fees charged under the provisions of this article. Such commission may establish periodic payment systems and is authorized to purchase necessary supplies and materials and employ personnel necessary to effectuate any such periodic payment system. Such periodic payment system may be effected by the county through negotiation with any one or more public or private utilities providing service in the county for the periodic billing of such fees and the collection thereof on behalf of the county by one or more such utilities. Any delinquency in any such payment shall constitute a violation of this article and entitle the county to pursue any remedy provided in this article. The county may agree to pay reasonable compensation to any such utility for its services in connection with the collection and payment to the county of all such sums so collected. The county commission shall adopt such rules and regulations as it deems necessary to implement the provisions of this article.

(b) Whenever the solid waste officer shall find that any person, household, business, industry or any property owner has failed to subscribe to the county solid waste collection program and pay the required solid waste collection and disposal fees or has failed to obtain a certificate of exception in violation of this article such failure shall constitute a public nuisance. The solid waste officer shall thereupon cite such delinquent to appear before the solid waste officer within 10 days at the courthouse of the county in which the citation is issued and to show cause why subscription has not been made, such fees have not been paid or an exemption has not been obtained and, at the same time, shall file with the county commission a copy of such citation showing service on the delinquent. Should such delinquent appear timely before the solid waste officer and cannot give satisfactory proof that he has obtained a certificate of exception such officer shall cause the delinquent to subscribe to the solid waste collection and disposal program and pay the required fees. If such delinquent shall fail or refuse to subscribe to such program and pay such fees, the solid waste officer shall institute or cause to be instituted proceedings as provided in Section 22-27-7 against such delinquent before any court having jurisdiction of such offense. Should such delinquent fail to appear before the solid waste officer within the time allowed such officer shall institute or cause to be instituted proceedings as provided in Section 22-27-7 against such delinquent before any court having jurisdiction of such offense.

History:

**Ala. Code 22-27-6 Authority to adopt resolution or ordinance;
rules and regulations; noncompliance as public nuisance;
citation; court proceedings (Code Of Alabama (2022 Edition))**

Acts 1969, No. 771, p. 1373, §4; Acts 1989, No. 89-630, p. 1231, §2.

§ 22-27-7. Supervision and regulatory control; rules and regulations; penalty for violation of article

With regard to the collection of solid wastes, the Health Department shall exercise such supervision over equipment, methodology and personnel in the management of solid wastes as may be necessary to enforce sanitary requirements, and the state and county boards of health may adopt such rules and regulations as may be needed to specify methodology and procedures to meet the requirements of this article. With regard to the disposal of solid wastes, the department shall exercise such regulatory control over the management of solid wastes as may be necessary to enforce the requirements of the department, and the department may adopt such rules and regulations as may be needed to meet the requirements of this article. Any person violating any provision of this article or any rule or regulation made pursuant to this article shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$50.00 nor more than \$200.00, and, if the violation or failure or refusal to obey or comply with such provision of this article or such rule or regulation is a continuing one, each day's violation shall constitute a separate offense and shall be punished accordingly. Any person, firm or corporation granted an exception under subsection (g) of Section 22-27-3 who or which fails to carry out and comply with the provisions of the proposals embodied in the application and plan upon which a certificate of exception was issued to him or it shall be guilty of a misdemeanor and shall be punished as provided in this section. Any person, firm or corporation which has not been issued a certificate of exception under subsection (g) of Section 22-27-3 and which utilizes the Solid Waste Disposal System of any county or municipality and which fails to pay the fee, rate or charge established by the county commission or municipal governing body therefor shall be guilty of a misdemeanor and shall be punished as provided in this section. All citations to violators of this article shall be served by any lawful officer or by the Solid Waste Officer.

History:

Acts 1969, No. 771, p. 1373, §6; Acts 1971, No. 2247, p. 3604, §3; Acts 1982, No. 82-612, p. 1111, §11(f); Acts 1989, No. 89-630, p. 1231, §3.

§ 22-27-8. Financial assurance

(a) All persons having or requesting a permit for the operation of a municipal solid waste landfill shall establish and maintain financial assurance for proper closure, post-closure care, or corrective action in the form and amount the department specifies by regulation. This requirement is applicable to all municipal solid waste landfills required by federal law or regulations to demonstrate such assurance.

(b) All municipal solid waste landfills permitted or to be permitted by the department shall submit financial assurance forms and supporting documents to the department, and such forms and documents shall establish that there is funding to the appropriate levels required by department regulation. The financial assurance mechanism shall be maintained for the life of the municipal solid waste landfill, and for a period of not less than 30 years after closure, unless the owner or operator demonstrates to the director that a period less than 30 years is sufficient to protect human health and the environment and the director approves this demonstration, or the solid waste is removed and the department determines that no waste or contamination remains at the site. The department may extend post-closure care or corrective action periods for longer than 30 years when necessary to protect human health and the environment.

(c) The financial assurance and requirements established by the department pursuant to this section shall in all respects comply with Environmental Protection Agency rules and regulations regarding closure, post-closure care, or corrective action for a municipal solid waste landfill. In no event shall the department require financial assurance or other requirements pursuant to this section which are more stringent than the Environmental Protection Agency requirements in effect at the time.

(d) The department may adopt rules necessary to implement this section.

History:

Act 2005-302, 1st Sp. Sess., p. 596, §2.

**§ 22-27-9. Authority of Department of Environmental
Management and Department of Public Health**

(a) The Department of Environmental Management shall be the agency with primary regulatory authority over the management of solid waste in the state, except for the collection and transportation of nonhazardous and nonmedical solid waste. **The department may exercise the regulatory authority over the permitting and operation of solid waste management facilities necessary to enforce the requirement and purposes of this article.**

(b) The Alabama Department of Public Health shall have primary regulatory authority over the collection and transportation of solid waste, excluding medical waste and hazardous waste, the management of sanitary waste in septic tanks, excluding landfill disposal, and the management of collection activities including, but not limited to, the provision of collection services by county and municipal governing bodies, participation in local collection systems, the temporary retainment of solid waste on the generator's own property, not constituting storage, and any containers, or container systems used in the collection of solid waste, such as bulk refuse receptacles, dumpsters, roll-off containers, and household collection carts. The State Board of Health may adopt rules necessary to enforce the requirements of this article.

(c) The State Health Officer and the Director of the Alabama Department of Environmental Management shall ensure that their responsibilities under this article are consistently and equitably applied.

History:

Act 2008-151, p. 244, §2.

§ 22-27-10. Control of unauthorized dumping; open burning; construction with other rights and remedies

(a) Solid waste shall be collected, transported, disposed, managed, or any combination thereof, according to the requirements of this article, and the rules of the department or the health department, as authorized by this article, and if disposed of in this state, shall be disposed in a permitted landfill or permitted incineration, or reduced in volume through composting, materials recovery, or other existing or future means approved by and according to the requirements of the department, under authorities granted by this article.

(b) The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article. In addition to other remedies which are available, an unauthorized dump may be enjoined through an action in the circuit court having jurisdiction over the property in which the violation occurred. In addition to any fines, penalties, and other remedies set forth herein, any person who participates in the creation or operation of an unauthorized dump, or contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with this article and rules of the department. If those who created, operated, or contributed to an unauthorized dump do not remove or close the unauthorized dump, the landowner shall also be responsible for the removal or otherwise the closure of the unauthorized dump. An innocent landowner, as further detailed by department rules, shall have access to the Solid Waste Fund to pay for reasonable or actual costs of investigation, required cleanup, and closure of the dump, subject to a ranking system established by the department through rules. Landowners shall cooperate with local governments or the department, or both, in stopping unauthorized dumping and removing the waste or otherwise closing an unauthorized dump in accordance with this article, and where applicable, the rules of the department. Innocent landowners who do not participate in the creation or operation of an unauthorized dump, and who have not contributed to the unauthorized dump, shall not be liable for any fines, costs, actions, punishments, sanctions, or penalties under this article if they are part of the site ranking system established in accordance with department rules to use the Solid Waste Fund to remove the waste or otherwise close the unauthorized dump in accordance with this article and rules of the department with reasonable diligence after written notice. Unless excepted, each landowner shall be liable for applicable fines, penalties, and sanctions under this article if he or she fails to remove the waste or otherwise close the unauthorized dump with reasonable diligence after written notice. It shall be unlawful for any person to fail to comply with

Ala. Code 22-27-10 Control of unauthorized dumping; open burning; construction with other rights and remedies (Code Of Alabama (2022 Edition))

an administrative order from the department or, unless excepted, to knowingly or intentionally abandon an unauthorized dump without either removing the waste or otherwise closing the unauthorized dump in accordance with this article and the rules of the department. The sale or lease of land does not constitute an abandonment within the meaning of this section, however, the purchaser or lessee shall not be considered an innocent landowner.

(c) Open burning at a solid waste management facility is prohibited except as necessary to respond to emergencies and pursuant to a restricted burning approval issued by the department. Approved open burning operations must also comply with all applicable federal, state, and local air pollution control laws and regulations.

(d) The permittee shall be responsible for the compliance of a permitted facility with all applicable rules notwithstanding the performance of compliance-related duties by independent contractors or agents.

(e) No provision of this article and no rule promulgated under the authority of this article shall be construed to be a limitation on any of the following:

(1) The power of a municipality or county to declare, prohibit, or abate public nuisances; provided no municipality, county, or solid waste authority utilizes or adopts definitions related to any of the subjects or activities contained within this article that are not consistent with the definitions contained in Section 22-27-2, as may be amended from time to time.

(2) The power of the Attorney General to bring an action in the name of the State of Alabama to enforce this article, including, but not limited to, enjoining any public nuisance.

(3) The power of any state agency in the enforcement or administration of any law it is specifically permitted or required to enforce or administer.

(4) The right of any person to maintain at any time any appropriate action for relief against any private nuisance.

(f) Nothing contained in this article shall be construed in any way to abridge or alter civil or criminal rights of action or remedies now or hereafter existing. No provision of this article, or the granting of any permit under this article, or any act done by virtue of this article, shall be construed as prohibiting the state, counties, municipalities, or its citizens in the exercise of their rights from proceeding to suppress public nuisances, to abate any pollution now or hereafter existing, or to enforce any law. Nothing in this

**Ala. Code 22-27-10 Control of unauthorized dumping; open
burning; construction with other rights and remedies (Code Of
Alabama (2022 Edition))**

article shall be construed in any way to alter or abridge that authority granted under Chapter 3A of Title 11.

History:

Act 2008-151, p. 244, §2.

**§ 22-27-11. Violations; penalties; administrative orders;
injunctive relief**

(a) Any violation of this article, any rule promulgated under the authority of this article, any order issued under the authority, or any term or condition of any permit issued under the authority of this article is unlawful. In addition to any penalties lawfully assessed, any person committing a violation shall be liable for all costs of abatement of any pollution and correction of any public nuisance caused by the violation.

(b) The department may issue administrative orders under Section 22-22A-5 or initiate civil actions, or both, as it deems necessary against any person in the enforcement of this article, or any regulation promulgated or permit issued under the authority of this article.

(c) In addition to any other remedies provided in this article, the department or the health department may institute suit against any person for a violation of law or, whenever a public nuisance is threatened or exists, for an injunction to restrain a violation of this article or the rules, standards, or orders adopted or issued under this article.

(d) In addition to any other remedies provided in this article, upon relation of the Attorney General or any district attorney, an action may be brought in a court of competent jurisdiction for an injunction to restrain any and all violations of this article, or the rules promulgated under this article, or to restrain any public nuisance or detriment to public health.

(e) Except as otherwise provided by law, other than administrative orders and notices issued by the department or the health department to enforce this article, all citations to violators of this article shall be served by any law enforcement officer or by the solid waste officer.

History:

Act 2008-151, p. 244, §2.

§ 22-27-12. Powers of department

The department may do the following:

- (1) Adopt rules to implement this article.
- (2) Adopt rules establishing requirements and restrictions for the management of solid waste, excluding the collection and transportation of nonhazardous and nonmedical solid waste. The rules may include factors such as the characteristics of the solid waste, the potential for contamination of soils or ground and surface waters, the design and operation of management facilities, the financial capabilities of the applicant, soil and geological considerations, human health, and other environmental considerations. With respect to solid waste disposal or materials recovery facilities, the rules may also include factors such as the quantity, nature, and origin of solid wastes and recovered materials to be managed. The department may condition the issuance of a permit for any solid waste management or materials recovery facility upon the facility being consistent with applicable rules as are necessary to carry out the intent of this article and the department's responsibilities under this article. Permits shall be issued for a period of time based on design life of the facility and may include renewal periods as determined by rules and not inconsistent with federal law.
- (3) Issue permits, notices, and orders, specify the terms and conditions of permits or notices, conduct inspections, require that records be established and maintained, direct the abatement of unauthorized dumps or other public nuisances involving solid waste, and implement the rules and standards adopted pursuant to this article.
- (4) Require postclosure activities be conducted in accordance with the Alabama Uniform Covenants Act and the corresponding rules developed by the department.
- (5) Require that solid waste management facilities identify the volumes and types of solid waste to be managed and the counties and state where such solid waste will be generated.
- (6) Enter upon, during reasonable hours, all solid waste management and materials recovery facilities owned and operated by persons subject to this chapter to inspect, investigate, obtain samples, monitor, or observe the transfer, treatment, storage, or disposal of solid waste and recovered materials, and to examine or copy records to determine compliance with this article and the rules promulgated under this article.

(7) No later than April 15, 2010, require that operators of all public solid waste management facilities be certified. The department shall, by rule or regulation, establish qualifications for certification programs, to include variance procedures for existing programs which meet the qualifications and taking into account the types of solid waste management facilities.

(8) Promote, initiate, conduct, and support research, demonstration projects, and investigations and participate in all state agency research programs pertaining to solid waste handling, disposal, materials recovery, and energy recovery systems.

(9) Promulgate rules to ban certain wastes from landfilling or incineration in order to protect the public health and environment and to promote recycling.

(10) Regulate the management, including collection and transportation of all medical waste, until such time as the United States Environmental Protection Agency may establish specific rules which are applicable within the state for infectious waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, et seq., as amended.

(11) Do any and all other actions not inconsistent with this article or other state law which it deems necessary and proper for the effective enforcement of this article and the rules promulgated pursuant to it.

History:

Act 2008-151, p. 244, §2.

§ 22-27-13. Search warrants

The department or any appropriate law enforcement agency may apply for, and any judge of a court of record may issue, an appropriate search warrant necessary to achieve the purposes of this article within the court's territorial jurisdiction. The warrant shall be issued upon probable cause.

History:

Act 2008-151, p. 244, §2.

§ 22-27-14. Commencement of actions

Notwithstanding any other law to the contrary, actions to correct any violations of this article, the rules promulgated under this article, or for civil or criminal penalties under this article shall be commenced within a period of four years from the date the offense is discovered by the department or other enforcing agency or person.

History:

Act 2008-151, p. 244, §2.

§ 22-27-15. Establishment and review of reduction goals

(a) No later than October 15, 2009, the department shall establish, by rule, a goal for the percentage, on a statewide basis only, of the reduction in the amount of household and commercial solid waste and the time frames for that reduction. Reduction, by means including, but not limited to, recycling, source reduction, waste minimization, reuse, and composting shall be determined at public solid waste disposal or incineration facilities on a statewide, per capita basis. In order to evaluate the statewide efforts, the department shall adopt rules for the determination of the base year data, and reporting requirements by local governing bodies and public solid waste disposal or incineration facilities, to include both the quantity and origin of the solid waste disposed or incinerated at such facilities. Notwithstanding anything herein to the contrary, the reduction goals shall emphasize activities prior to the delivery of solid waste to public solid waste disposal or incineration facilities, unless reduction activities are provided on the site of the solid waste disposal or incineration facility under an agreement between the generator or collector of the solid waste and the solid waste disposal facility.

(b) Every three years after the implementation of subsection (a), the director shall review the solid waste reduction activities of the state and determine whether the reduction goal established pursuant to this section should be modified by future rulemaking.

(c) In determining the minimum solid waste reduction goals, the department may consider factors such as local collection and disposal costs, solid waste composition, the population density of counties or municipalities, and the distance to available markets for recovered materials.

History:

Act 2008-151, p. 244, §2.

§ 22-27-16. Ownership and disposition of recovered materials

Notwithstanding any other law or any provision of this article to the contrary, a generator of recovered materials owns those materials until such time as the generator may voluntarily relinquish ownership of those materials. The generator may not be prohibited from selling, conveying, or arranging for the transportation of recovered materials to a recycler or recovered materials processing facility for reuse or recycling, nor preventing a recycling company, recovered materials processing facility, or nonprofit entity from buying, accepting, collecting, or transporting recovered materials from a buy-back center, drop-box, or from any generator of recovered materials.

History:

Act 2008-151, p. 244, §2.

**§ 22-27-17. Disposal fees; disposition of funds; exemptions;
review of records; biennial report**

(a) Beginning on October 1, 2008, the following disposal fees are levied upon generators of solid waste who dispose of solid waste at solid waste management facilities permitted by the department subject to this chapter, which shall be collected in accordance with subsection (b):

(1) One dollar (\$1) per ton for all waste disposed of in a municipal solid waste landfill.

(2) One dollar (\$1) per ton or twenty-five cents (\$0.25) per cubic yard for all waste disposed of in public industrial landfills, construction and demolition landfills, non-municipal solid waste incinerators, or composting facilities, which receive waste not generated by the permittee.

(3) Twenty-five cents (\$0.25) per cubic yard for all waste disposed of in a private solid waste management facility, not to exceed one thousand dollars (\$1,000) per calendar year.

(4) Regulated solid waste that may be approved by the department as alternate cover materials in landfills shall be assessed the disposal fees applicable in subdivisions (1) and (2).

(5) Regulated solid waste received from out-of-state for disposal at public solid waste facilities permitted by the department shall be assessed the same disposal fees applicable in subdivisions (1) and (2), to be collected by the operator of the solid waste facility and remitted in accordance with subsection (b).

(b) Unless exempted under subsection (f), operators of permitted solid waste disposal facilities shall assess the disposal fees levied in subsection (a) on generators of all waste as the waste is delivered to solid waste facilities and shall collect and remit the disposal fees on all wastes received at the facility to the Department of Revenue on a quarterly basis not later than the 20th day of January, April, July, and October. Any sums collected from a generator that purports to be collected due to this section shall be paid to the Department of Revenue. The owner or operator shall certify to the Department of Revenue the volumes of solid waste received for disposal. The Department of Revenue may retain one percent of the solid waste fees collected as an administrative collection allowance. All owners and operators collecting the solid waste fee established in this section may retain four percent of the total solid waste fees collected at their facility as an administrative collection allowance.

**Ala. Code 22-27-17 Disposal fees; disposition of funds;
exemptions; review of records; biennial report (Code Of Alabama
(2022 Edition))**

(c) The Department of Revenue shall transfer each month all funds collected from this section less its administrative collection allowance as follows:

(1) Twenty-five percent of fees collected shall be paid to the State Treasury to the credit of the Alabama Recycling Fund (ARF), which is hereby created, to be used by the department exclusively to provide grants to local governments, authorities, and nonprofit organizations for use in developing, implementing, and enhancing local recycling, reuse and waste minimization projects and programs. Such grants shall be awarded annually by the department in accordance with rules adopted pursuant to this article. The ARF is authorized to receive funding from other sources including interest generated by the fund, grants, allotments, and contributions whether public or private.

(2) Twenty-five percent of the fees collected shall be paid to the State Treasury to the credit of the Solid Waste Fund (SWF), which is hereby created, to be used by the department to pay the costs of remediation, abatement, removal, or other actions related to the closure of unauthorized dumps and landfills, including, but not limited to, equipment, labor, supplies, materials, and professional services. The funds shall be disbursed according to rules adopted by the department and shall be carried out in accordance with any applicable state contracting requirements. The SWF is authorized to receive funding from other sources including interest generated by the fund, grants, allotments, and contributions, whether public or private.

(3) Forty-five percent of the fees collected shall be paid to the State Treasury to the credit of the Alabama Department of Environmental Management to be used exclusively to pay the costs of performing its duties under this article and to fund educational programs administered by the department on solid waste management, waste minimization, and recycling.

(d) Where operators of solid waste facilities have entered into fixed-price contracts for disposal of solid waste prior to April 15, 2008, the disposal fee collected by the solid waste facilities pursuant to subsection (b) shall not be considered part of the contract price for disposal.

(e) A waste hauler who has entered into a contract for transportation and disposal of solid waste which is in effect on April 15, 2008, may recover amounts paid as a disposal fee pursuant to subsection (a) from the entity with whom the waste hauler has contracted under the procedure set out herein.

(1) On September 1, 2008, and each September 1 thereafter during the term of the contract, the waste hauler shall report to the entity with whom it has

**Ala. Code 22-27-17 Disposal fees; disposition of funds;
exemptions; review of records; biennial report (Code Of Alabama
(2022 Edition))**

contracted the total tonnage transported under the terms of the contract in the previous three-month period or, at the option of the waste hauler, the previous 12-month period.

(2) The amount reported pursuant to subdivision (1) shall be converted into a monthly average tonnage, and the waste hauler may thereafter collect from the entity an amount equal to the average tonnage amount transported multiplied by the monthly disposal fee paid by the waste hauler pursuant to subsection (a).

(3) Effective October 1, 2008, the rates assessed to each customer serviced pursuant to the contract shall be adjusted in an amount equal to each customer's share of the amount paid to the waste hauler pursuant to subdivision (2).

(4) This subsection shall only apply to contracts in effect on April 15, 2008, and shall not apply to the renewal of an existing contract or to a contract executed on or after April 15, 2008.

(f) The following persons are exempt from payment of fees required by this article:

(1) Operators of industrial boilers, furnaces, and other processing equipment that burn solid waste generated on site for the purpose of fuel replacement or energy recovery and which are permitted by the department or by a local air pollution control agency.

(2) Operators of composting facilities which are owned by the Alabama Department of Corrections and which receive only wastes generated by Alabama Department of Corrections facilities and institutions or those composting facilities otherwise exempt from permitting as provided in rules promulgated by the department.

(3) Operators of industrial boilers, furnaces, and other processing equipment that burn scrap tires for the purpose of fuel replacement or energy recovery and are registered with the department as provided in rules promulgated by the department.

(4) Scrap tire processors who receive and process scrap tires and who are permitted by or registered with the department as provided in rules promulgated by the department, except that a solid waste disposal facility permitted as a scrap tire processor shall collect the fee on all waste disposed of in its landfill.

(g) The department or the Department of Revenue may review or audit all records of wastes received for disposal at each solid waste disposal facility to

**Ala. Code 22-27-17 Disposal fees; disposition of funds;
exemptions; review of records; biennial report (Code Of Alabama
(2022 Edition))**

determine compliance with this article. Further, the Department of Revenue shall perform the following duties:

- (1) Collect and administer the fees imposed in this chapter in accordance with Chapter 2A of Title 40.
- (2) Impose appropriate interest on any disposal fees paid after the due date in accordance with Section 40-1-44.
- (3) Promulgate and enforce rules to effectuate the reporting, collection, and payment of disposal fees established by this article. All rules promulgated shall have the same force and effect of law.
- (4) Share information, data, reports, or documentation related to the collection and administration of the disposal fees imposed by this article with the department for the purpose of administering this article, notwithstanding any provisions of law requiring confidentiality.
- (h) All fees, interest, or other income distributed under this section shall only be used for the purposes specified in this chapter. Any unexpended funds during a budget year shall be carried over to the subsequent budget year and added to the subsequent year's distribution.
- (i) The department shall, on or before January 20, 2011, and biennially thereafter, transmit a report to the Alabama Environmental Management Commission, the Legislature, and the Governor concerning the implementation of this article for the preceding two fiscal years. Each biennial report shall include the following information:
 - (1) The amount of solid waste disposed of at solid waste facilities in the state.
 - (2) The amount of disposal fees collected under this article.
 - (3) How funds generated by this article were expended for the previous fiscal years.
 - (4) The activities and accomplishments of the department in implementing this article.

History:

Act 2008-151, p. 244, §2.

§ 22-27-18. Solid Waste Fund; Alabama Recycling Fund

(a) There are established separate special revenue trust funds in the State Treasury to be known as the Solid Waste Fund (SWF) and the Alabama Recycling Fund (ARF). These funds shall be used for the purposes set forth in this article and for no other governmental purposes, nor shall any portion hereof ever be available to borrow from by any branch of government, it being the intent of the Legislature that these funds and their increments shall remain intact and inviolate for the purposes set out in this article. Any interest or earnings on the funds shall be credited only to the funds.

(b) The funds shall be audited annually by the Department of Examiners of Public Accounts.

(c) No funds shall be withdrawn or expended from the funds created in subdivision (a) except as budgeted and allotted according to Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and only in amounts as stipulated in the general appropriations act or other appropriation acts.

History:

Act 2008-151, p. 244, §2.