



County Technical Assistance Service

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Environment

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Environment

Reference Number: CTAS-161

Solid Waste Management, Collection and Disposal

Reference Number: CTAS-524

One of the more important functions of county government is solid waste disposal. There are three (3) sources of legislative authority that may provide the framework for these services: T.C.A. Title 5, Chapter 19, T.C.A. Title 68, Chapter 211, and, in some cases, private acts, county charter or consolidated government charter.

Title 5, Chapter 19

Reference Number: CTAS-525

Counties are authorized to provide garbage and rubbish collection and disposal services to the entire county or to special districts within the county and are also granted the power to do all things necessary to carry out these functions. T.C.A. §§ 5-19-101, 5-19-107. This authority is exercised through resolution by the county legislative body and carried out by an existing agency, a county sanitation department, or a county board of sanitation appointed by the county mayor and confirmed by the county legislative body.

Also, a county may contract with a private company or another governmental entity to provide these services for county residents. T.C.A. § 5-19-104. If a municipality within the county furnishes garbage (solid waste) collection and disposal services, the county must establish service districts outside the municipality to fund this county service if the property tax is a source of funding for the county solid waste services.

T.C.A. § 5-19-108. If the county services are provided within special service districts, they are funded by user fees, or a property tax levied only within the district served, or a combination of the two. T.C.A. § 5-19-109. Plans for collection and disposal services must be submitted to the regional planning commission for study before they are carried out. T.C.A. § 5-19-112. The county must inspect these facilities at least once every quarter, and the commissioner of health may also investigate and make recommendations for improvement. T.C.A. §§ 5-19-113, 5-19-114.

County Board of Sanitation

Reference Number: CTAS-526

One of the options given to counties for management of solid waste operations is through a county board of sanitation. T.C.A. § 5-19-103. Such a board may be established by resolution of the county legislative body and consists of three members appointed by the county mayor subject to confirmation of the county legislative body. The members of this board serve for terms of three years except for the initial appointments for one, two and three years to create a staggered system. Members of this board may be compensated according to a resolution of the county legislative body. T.C.A. § 5-19-104. This board has general supervision and control of the acquisition, improvement, operation and maintenance of all solid waste collection and disposal systems operated by the county. If this board is established, then it appoints a superintendent to be in charge of daily solid waste management operations. T.C.A. § 5-19-105.

Local Solid Waste Management Planning

Reference Number: CTAS-527

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

Municipal Solid Waste Regional Board

Reference Number: CTAS-528

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

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

Regional areas (and their boards) may be changed only by approval of the county legislative bodies of the counties involved in the change and with the approval of the Tennessee Department of Environment and Conservation, which will review the new or revised plans and receive information regarding the new board members. T.C.A. §§ 68-211-811, 68-211-813. These regional boards are constituted according to the provisions of T.C.A. § 68-211-813. Additionally, each region was required to formulate a plan for collection and disposal of solid waste in the area and submit this plan to the State Planning Office by July 1, 1994. A regional plan may be revised at any time to reflect subsequent developments in the region subject to approval by the Department of Environment and Conservation. Each municipal solid waste region must submit an annual progress report to the department regarding how this annual activity affects the regional plan over the next 10 years. T.C.A. § 68-211-814.

Plan Requirements

Reference Number: CTAS-529

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

1. Demographic information;
2. A current system analysis of waste streams, collection capability, disposal capability, costs, and revenues;
3. Adoption of the statutorily required uniform financial accounting system;
4. Anticipated growth trends and waste capacity needs for the next 10 years;
5. Anticipated waste capacity needs;
6. Planned capacity assurance, including a descriptions of planned or needed facilities;
7. A recycling plan;
8. A plan for the disposal of household hazardous wastes;
9. Adoption of the statutorily required reporting requirements;
10. A description of waste reduction and recycling activities designed to attain the goal required by T.C.A. § 68-211-861;
11. A description of education initiatives designed to achieve the goals stated in the statute;
12. An evaluation of multicounty solid waste disposal region options with an explanation of the reasons for adopting or failing to adopt a multicounty regional approach;
13. A timetable for implementation of the plan;

14. A description of the responsibilities of each participating jurisdiction;
15. A certification of review and approval of the plan (or revised plan) from the Solid Waste Authority (organized under Chapter 211, Part 9), if such an authority has been formed, or if no such authority has been formed, from the county legislative body of each county in the region;
16. A plan for managing solid waste generated as a result of disasters or emergencies; and
17. Any other information the commissioner of the Department of Environment and Conservation deems relevant.

T.C.A. § 68-211-815.

Solid Waste Authority

Reference Number: CTAS-519

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

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

Public Ownership of Solid Waste Facilities

Reference Number: CTAS-530

Counties have several options through which they may fulfill their responsibilities for solid waste management. They may contract with private entities for those services, they may provide services or contract for services through solid waste authorities, or they may provide the services themselves. A county or municipality may apply for a solid waste facility permit. A county may execute a contract of obligation instead of a performance bond to insure proper operation and closure of its publicly owned facilities.

T.C.A. § 68-211-116. In addition to equipment for collection and disposal of solid waste, a county may also construct and operate energy recovery and resource recovery facilities which process waste into energy fuels. T.C.A. § 68-211-502.

Flow Control and Regional Approval Options

Reference Number: CTAS-531

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

State law also provides that any construction or expansion of solid waste facilities or incinerators within the region must be approved by the board of the region or the (Part 9) solid waste authority if one has been formed before a permit is issued. The region or solid waste authority is to hold a public hearing after proper notice and may reject the proposal if it is inconsistent with the regional plan. T.C.A. § 68-211-814.

Sanctions

Reference Number: CTAS-532

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

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

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

Operational Requirements

Reference Number: CTAS-533

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

Minimum Service Levels

Reference Number: CTAS-534

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

Problem Wastes

Reference Number: CTAS-535

Certain substances are no longer to be placed in a landfill but are to be disposed of through alternative methods. Among these is household hazardous waste. To provide for the safe collection of these household hazardous wastes, the Department of Environment and Conservation must provide, directly or by contract, for the collection of such wastes on designated days in each county. The county or authority is responsible for advertising the location of these units, the days and hours on which they will be available, and examples of hazardous household wastes. Furthermore, the county or solid waste authority must appoint at least one person to represent the county or authority to be present at the site on collection

days in order to assist those operating the mobile collection unit. T.C.A. § 68-211-829. Depending on a county's population, competitive grants may be available for a permanent household hazardous waste collection site. T.C.A. § 68-211-828.

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

Baled Waste and Inspections

Reference Number: CTAS-536

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

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

Education - Solid Waste Plan

Reference Number: CTAS-537

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

Recycling

Reference Number: CTAS-538

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

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

Reporting Requirements

Reference Number: CTAS-539

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

county of origin of solid waste, measured in tons, received at the facility. T.C.A. §§ 68-211-862, 68-211-863.

State Revenue, Funding and Grants

Reference Number: CTAS-540

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

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

Local Revenue Sources

Reference Number: CTAS-541

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

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

unlawful if any city, town or special district in any city or town, that, through its own forces or by contract, provides such services within its boundaries, or if any other part of the county is to be excluded from the service area. T.C.A. § 5-19-108.

6. **Service Charge.** A county may charge users a reasonable fee for providing waste collection services. T.C.A. § 5-19-107.

Landfill Approval by County - "Jackson Law"

Reference Number: CTAS-542

The so-called "Jackson Law" is an optional general law that may be adopted by a county or municipal legislative body by a two-thirds (2/3) majority vote. If adopted, it provides that no new construction will be initiated for a landfill without the approval of the county legislative body unless the landfill only accepts waste generated by its owner and all such waste is generated in the same county as the landfill. Additionally, if such proposed construction is in an incorporated area or within one mile of an incorporated area, the governing body of the municipality must also approve before construction can be initiated. T.C.A. § 68-211-701. Public notice and public hearings are required before the vote of the legislative body. T.C.A. § 68-211-703. This law states criteria that must be considered by the legislative body in determining whether or not to approve the construction. Judicial review of the legislative body's determination may be had before the chancery court for the county in which the landfill is to be located. T.C.A. § 68-211-704. The Tennessee Court of Appeals upheld a decision by the Davidson County Chancery Court that exclusion of county and municipal landfills from application of the Jackson Law as provided in T.C.A. § 68-211-706(b) is unconstitutional as a violation of the equal protection clause since there is no rational basis for this discrimination against private landfills. However, the Court applied the doctrine of elision (removal of offending provision, exemption of public landfills) and upheld the remainder of the act. *Profill Development, Inc. v. Dills*, 960 S.W.2d 17 (Tenn. App. 1977).

In 2013, the Jackson Law was amended to increase the scope of the law to include a change in classification of a landfill to a classification with higher standards. However, this amendment provides that it only applies if independently approved by a two-thirds vote of the county legislative body if the county adopted the Jackson Law prior to May 13, 2013.

In a statute separate from the "Jackson Law," municipalities must obtain the approval of the county legislative body at two consecutive regularly scheduled meetings before the municipality may exercise the power of eminent domain to obtain property to be used as a landfill for solid waste disposal outside of the corporate limits of the municipality. T.C.A. § 68-211-122.

Hazardous Waste and Hazardous Substances

Reference Number: CTAS-544

Hazardous waste storage facilities, treatment facilities and disposal facilities throughout the state are under the supervision of Tennessee's Department of Environment and Conservation. T.C.A. § 68-212-107.

Before the state issues a permit for a facility for the storage, treatment, or disposal of hazardous waste, it must give public notice of the application and, within 45 days of that notice, hold a public community meeting concerning the permit application. The county legislative body, the municipal governing body, if any, where the facility is proposed, and the governing body of any municipality located within one mile of the proposed facility must be represented at the meeting; failure to participate is deemed a waiver. The county legislative body or other governing bodies may make reports summarizing issues they feel are appropriate. If the governing body chooses to make a report, it must include a decision to accept, reject, or modify the application. The report must be submitted within 90 days of the community meeting.

The decision announced in this report is to be based on the factors listed in T.C.A. § 68-212-108. The commissioner of environment and conservation may then affirm the decision or may modify or reverse it if the decision is based upon improper factors. T.C.A. § 68-212-108. The local governing body may seek judicial review of an adverse determination. T.C.A. § 68-212-111.

There are statutory incentives available to counties in which commercial facilities for the disposal of hazardous waste are located. There is a "responsible waste disposal incentive fund" which, if funded by the legislature, is available to counties meeting the eligibility requirements. T.C.A. § 68-212-210. Furthermore, any local government receiving these funds may levy an additional fee, not to exceed statutory

maximums, on the disposal of hazardous wastes at facilities within its jurisdiction. T.C.A. § 68-212-211. The county also has limited monitoring and inspection authority at these sites. T.C.A. § 68-212-208.

In addition to state legislation on hazardous substance management, there are federal provisions with which county governments must comply if they deal with hazardous materials. Local governments should also be aware that landfills containing hazardous waste may be subject to Superfund cleanup requirements.

Finally, every employer (including counties) must comply with all of the requirements of the federal hazard communication standard codified in 29 CFR 1910.1200. Along with these standards, state law under T.C.A. § 50-3-2001 requires employers where certain hazardous chemical are used to: (1) provide employee training programs; (2) report the chemicals to the fire chief; (3) place appropriate signage on buildings containing the chemical; (4) maintain list of the chemicals present; and (5) notify new or newly assigned employees about the workplace chemical list before working in an area containing the hazardous chemicals.

Underground Storage Tanks

Reference Number: CTAS-545

A statewide program, in conjunction with a national effort, is in effect to protect the public and the environment from leaking underground petroleum storage tanks. All owners, including counties, of underground tanks for the storage of petroleum products are subject to the program specifications. Among other requirements, owners must prevent leaks and protect their tanks from corrosion and they must notify the commissioner of environment and conservation and the United States Environmental Protection Agency of the existence of the tank. A fund has been created to help pay for leak cleanups. Owners must contribute fees to this fund, and the proceeds of an environmental assurance fee (four tenths cent per gallon of petroleum products imported into this state or manufactured in this state) are deposited into this fund. T.C.A. § 68-215-101 *et seq.* An owner/operator of a tank must pay all outstanding fees, interest and penalties in order to receive a certificate for the tank. A certificate is necessary to lawfully receive petroleum products into the tank. All applications for the payment of costs of cleanup must be received by the Division of Underground Storage Tanks within one (1) year of the performance of the tasks covered by that application in order to be eligible for reimbursement. Any person who knowingly causes or allows a release of petroleum into the environment commits a Class E felony, punishable by fine only. T.C.A. § 68-215-120.

Public Water Supplies and Wastewater Treatment

Reference Number: CTAS-553

The Department of Environment and Conservation is responsible for supervising the construction, maintenance, and operation of public water supply and sewerage systems throughout the state. T.C.A. § 68-221-101 *et seq.* The Tennessee Safe Drinking Water Act of 1983, T.C.A. § 68-221-701 *et seq.*, provides the state water quality control board with extensive powers to adopt rules and regulations regarding public water systems and public water supplies. T.C.A. § 68-221-704. This Chapter also deals with wastewater treatment, construction and financing of facilities, and the creation of authorities and boards governing the operation and regulation of these facilities. One of these acts is The Wastewater Treatment Works Construction Grant Act of 1984, codified in T.C.A. § 68-221-801 *et seq.* This act provides financial assistance to encourage local governments to construct wastewater treatment facilities. T.C.A. § 68-221-802.

Other sections deal with subsurface sewage disposal systems and set minimum standards with which these systems must comply. T.C.A. § 68-221-401 *et seq.* Subsurface sewage disposal systems are also under the general supervision of the state Department of Environment and Conservation, and therefore are subject to rules, regulations, and standards established by the commissioner of that department.

However, county health departments are authorized to enter into agreements with the commissioner to implement the requirements of this part, provided that the county's staff and resources are adequate to comply with the standards of the act. T.C.A. § 68-221-403.

Electricity may not be furnished to newly constructed houses or establishments unless the official electrical inspector verifies that the new construction is served by a public sewerage system or that the builder has applied for a permit for a subsurface sewage disposal system. T.C.A. § 68-221-414. Any

county with a countywide building permit program is exempt from the requirements of this Section if it certifies to the commissioner of environment and conservation that its program requires a subsurface sewage disposal system permit before a building permit can be obtained. Any county that subsequently adopts a countywide building permit program will become exempt if it meets the requirements of this section. T.C.A. § 68-221-414. Also, a representative of the commissioner of environment and conservation (county health officer) must approve subdivision plats with parcel of less than five acres when subsurface sewage disposal is to be used. T.C.A. § 68-221-407.

Urban-Type Public Facilities

Reference Number: CTAS-554

Counties are authorized to establish, construct, install, acquire, operate, and maintain urban-type public facilities. These include pipelines, docks, and water treatment systems, as well as operations to dispose of wastewater, sewage, garbage, and other waste matter. T.C.A. § 5-16-101. In order to exercise this authority, the county legislative body, by resolution, may designate an existing agency, create a public works department, or establish a board of public utilities to oversee the project. The composition of this board varies depending on the county's population (T.C.A. § 5-16-103), although a superintendent with specific statutory powers and duties is its head. T.C.A. §§ 5-16-104, 5-16-105. The statute also provides for bond issues (T.C.A. § 5-16-106), and addresses the relationship between cities and counties in the operation of these facilities. T.C.A. §§ 5-16-107, 5-16-110, 5-16-111. Before the county legislative body can authorize any of these services, it must submit plans to the regional planning commission for study. T.C.A. § 5-16-112.

Storm Water Management

Reference Number: CTAS-555

Many counties, particularly those in urbanized areas, are required to establish a program for storm water management in order to comply with the mandates of the Environmental Protection Agency's (EPA) Storm Water Management program. The Storm Water Program is a series of regulations promulgated by the EPA. The purpose of these regulations is to implement amendments to the Clean Water Act, National Pollutant Discharge Elimination System (NPDES) Storm Water Program. The Storm Water Program is designed to regulate and clean up runoff that is entering water bodies from storm sewer systems, construction sites, and industrial sources.

According to the EPA Office of Water Quality, the quality of waters in the United States has improved dramatically since the passage of the Clean Water Act; however, degraded waterbodies still exist. According to the 1996 National Water Quality Inventory, approximately 40 percent of surveyed U.S. waterbodies are still impaired by pollution and do not meet EPA standards. A major source of the pollution found in our rivers, lakes and streams is runoff. The purpose of the storm water program is to regulate and clean up that runoff.

Phase I

Reference Number: CTAS-556

Storm Water Phase I regulations were promulgated by the EPA in 1990. Phase I uses a permit system set up under the NPDES to regulate storm water discharges from three sources:

1. Medium and large municipal separate storm sewer systems (MS4s) serving populations of 100,000 or greater;
2. Construction activity disturbing five acres of land or more; and
3. Ten categories of industrial activity.

Phase II Coverage

Reference Number: CTAS-557

Phase II of the program expands Phase I by requiring additional parties to implement programs and practices to control polluted runoff again by using NPDES permits. The Phase II Final Rule automatically covers two groups on a nationwide basis:

1. Operators of small municipal separate storm sewer systems (MS4s) located in "urbanized areas." (As a practical matter, a small MS4 is any MS4 not covered in Phase I.); and
2. Operators of small construction activities that disturb from one to five acres of land.

Further, small MS4s outside of urban areas, construction activity affecting less than one acre and any other storm water discharges may be covered if the NPDES permitting authority or the EPA decides they need to be regulated.

For the most part, the authority to issue permits for storm water discharges has been delegated to the states. (In a few cases, the EPA retains the authority.) In Tennessee, anyone needing an NPDES permit applies to the Tennessee Department of Environment and Conservation (TDEC) for the permit.

How to Comply with Phase II

Reference Number: CTAS-558

An operator of a small municipal separate storm sewer system has to apply to TDEC for a permit to discharge storm water and has to implement a series of storm water discharge "best management practices." These practices include the following:

1. An operator must develop, implement and enforce a storm water management program designed to reduce the discharge of pollutants from its MS4 to the "maximum extent practicable," to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act.
2. An operator's program must include six minimum control measures: (1) public education and outreach; (2) public participation/involvement; (3) illicit discharge detection and elimination; (4) construction site runoff control; (5) post-construction runoff control; and, (6) pollution prevention/good housekeeping.
3. An operator must also identify its best management practices and measurable goals in its permit application. An evaluation and assessment of those goals and practices must be included in periodic reports to the NPDES permitting authority.

Deadlines and Important Dates

Reference Number: CTAS-559

The Tennessee Department of Environment and Conservation began issuing general permits for small MS4s and small construction activity on December 9, 2002. Counties automatically covered in the program obtain permit coverage within 90 days of permit issuance. After obtaining permit coverage, operators of small MS4s must fully implement storm water management programs by the end of the first permit term, typically a five-year period

Authority to Comply and Regulatory Powers

Reference Number: CTAS-560

In 1993, the Tennessee General Assembly passed a series of statutes to help larger municipalities comply with Phase I of the storm water regulations. These statutes are found in Title 68, Chapter 221, Part 11, of the *Tennessee Code Annotated*. They were intended to facilitate compliance with the environmental regulations by authorizing municipalities to regulate storm water discharges, establish a system of drainage facilities, and fix and require payment of fees for the privilege of discharging storm water. The statutes also authorized municipalities to construct and operate a system of drainage facilities for storm water management and flood control. "Municipality," as defined under that law, included only incorporated cities or towns, metropolitan governments, or special districts of the state that had a population of at least 75,000.

In 2001, the General Assembly passed Public Chapter 119 to expand the definition of municipality under these Tennessee storm water management statutes to include more local governments. T.C.A. § 68-221-1102. Since Phase II of the EPA storm water regulations will affect a significant number of cities and counties that were not under Phase I, the intent of the act was to give those cities and counties the ability to exercise the authority that larger municipalities had under T.C.A. § 68-221-1101 *et seq.* The bill accomplishes this by removing the population limitations from the law and by including "county" within the definition of "municipality."

Under the storm water management statutes, counties are authorized to:

1. Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the municipality, whether owned and operated by the county or not;
2. Adopt any rules and regulations deemed necessary to accomplish the purposes of this part, including adopting a system of fees for services and permits;
3. Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;
4. Review and approve plans and plats for storm water management in proposed subdivisions and commercial developments;
5. Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;
6. Suspend or revoke permits when it is determined that the permit holder has violated any applicable ordinance, resolution, or condition of the permit;
7. Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
8. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources or storm water contamination, whether public or private.

T.C.A. § 68-221-1105 (as amended by Acts of 2001 Public Chapter 119).

It is important to note that as the law currently reads, county authority over storm water discharge may be exercised only outside of municipal boundaries.

In counties that are not in the state's computer assisted appraisal system, the county trustee is authorized to bill and collect storm water fees for the county as a designated item on the ad valorem tax notice issued by the trustee. Municipalities in these counties are authorized to contract with the county to have their storm water fees collected in the same manner. T.C.A. § 68-221-1107.

Air Pollution Control

Reference Number: CTAS-561

Under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the Tennessee Air Pollution Control Act, T.C.A. § 68-201-101, *et seq.*, certain counties may be required by the Tennessee Air Pollution Control Board to implement a motor vehicle inspection and maintenance program in order to attain or maintain compliance with national ambient air standards if

- (a) the county has been designated by the United States Environmental Protection Agency as a nonattainment county and has more than 50,000 registered vehicles, or
- (b) is a former nonattainment county with more than 50,000 registered vehicles that is under a maintenance plan designed to continue to meet the national ambient air standards, or
- (c) the county contributes significantly to nonattainment in another county and has more than 60,000 registered motor vehicles.

The Air Pollution Control Board may issue waivers consistent with federal and state law. Also, such a program may exist in counties for which the county legislative body has adopted a resolution that establishes an inspection and maintenance program consistent with the programs required by the state. All counties implementing a vehicle inspection and maintenance program may only charge fees that are directly related to the county's cost of establishing and maintaining the program. Such programs must follow rules established by the Tennessee Air Pollution Control Board. Inspections will occur annually in conjunction with vehicle registration renewal. 2004 Public Chapter 926; T.C.A. §§ 55-4-128, 55-4-130.

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