

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 784  
SENATE BILL 111

AN ACT TO IMPROVE THE MANAGEMENT OF SOLID WASTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-290 as amended by Section 11 of Chapter 168 and by Section 5 of Chapter 742 of the 1989 Session Laws reads as rewritten:

**"§ 130A-290. Definitions.**

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

- (1) 'CERCLA/SARA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.
- (2) 'Closure' means the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment.
- ~~(2)~~(3) 'Commercial' when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.
- (4) 'Construction' or 'demolition' when used in connection with 'waste' or 'debris' means solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.
- (5) 'Designated local government' means a unit of local government which holds a permit issued by the Department pursuant to G.S. 130A-291(b) to operate a solid waste management facility.
- ~~(3)~~(6) 'Disposal' means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.
- ~~(4)~~(7) 'Garbage' means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

- ~~(5)~~(8) 'Hazardous waste' means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:
- a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
  - b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
- ~~(6)~~(9) 'Hazardous waste facility' means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.
- ~~(7)~~(10) 'Hazardous waste generation' means the act or process of producing hazardous waste.
- ~~(8)~~(11) 'Hazardous waste disposal facility' means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.
- ~~(9)~~(12) 'Hazardous waste management' means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.
- ~~(10)~~(13) 'Hazardous waste management program' means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.
- ~~(14)~~ 'Inert debris' means solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.
- ~~(15)~~ 'Land-clearing debris' means solid waste which is generated solely from land-clearing activities.
- ~~(11)~~(16) 'Landfill' means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.
- ~~(12)~~(17) 'Manifest' means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.
- ~~(12a)~~(18) 'Medical waste' means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations §

261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of 'solid waste' in this section.

- (13)(19) 'Natural resources' means all materials which have useful physical or chemical properties which exist, unused, in nature.
- (14)(20) 'Open dump' means a solid waste disposal site which is not a sanitary landfill.
- (21) 'Operator' means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or periods of operation during any part of the day.
- (15)(22) 'Person' means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.
- (23) 'Processing' means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.
- (24) 'Recovered materials' means those materials which have known recycling potential, can be feasibly recycled, and have been diverted or removed from the solid waste stream for sale, use, or reuse by separation, collection, or processing.
- (16)(25) 'RCRA' means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.
- (26) 'Recyclable material' means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.
- (17)(27) 'Recycling' means the any process by which recovered resources are transformed into new products so that the original products lose their identity-solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.
- (18)(28) 'Refuse' means all nonputrescible waste.
- (19)(29) 'Resource recovery' means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.
- (20)(30) 'Reuse' means a process by which resources are reused or rendered usable.
- (21)(31) 'Sanitary landfill' means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.

- ~~(22)~~(32) 'Septage' means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids and sludge of human or domestic origin which is removed from a septic tank system.
- ~~(23)~~(33) 'Septage management firm' means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community sanitary sewage systems that treat or dispose septage.
- ~~(24)~~(34) 'Sludge' means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.
- ~~(25)~~(35) 'Solid waste' means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:
- a. Fecal waste from fowls and animals other than humans;
  - b. Solid or dissolved material in:
    1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters;
    2. Irrigation return flows; and
    3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;
  - c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;

- d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).
- e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.
- ~~(26)~~(36) 'Solid waste disposal site' means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.
- ~~(27)~~(37) 'Solid waste generation' means the act or process of producing solid waste.
- ~~(28)~~(38) 'Solid waste management' means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.
- ~~(29)~~(39) 'Solid waste management facility' means land, personnel and equipment used in the management of solid waste.
- (40) 'Special wastes' means solid wastes that can require special handling and management, including white goods, whole tires, used oil, lead-acid batteries, and medical wastes.
- ~~(30)~~(41) 'Storage' means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.
- ~~(31)~~(42) 'Treatment' means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. 'Treatment' includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.
- ~~(32)~~(43) 'Unit of local government' means a county, city, town or incorporated village.
- (44) 'White goods' includes inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.
- (45) 'Yard trash' means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

(b) Unless a different meaning is required by the context, the following definitions shall apply throughout G.S. 130A-309.15 through G.S. 130A-309.17:

- (1) 'Public used oil collection center' means:
  - a. Automotive service facilities or governmentally sponsored collection facilities, which in the course of business accept for disposal small quantities of used oil from households; and
  - b. Facilities which store used oil in aboveground tanks, which are approved by the Department, and which in the course of business accept for disposal small quantities of used oil from households.
- (2) 'Reclaiming' means the use of methods, other than those used in rerefining, to purify used oil primarily to remove insoluble contaminants, making the oil suitable for further use; the methods may include settling, heating, dehydration, filtration, or centrifuging.
- (3) 'Recycling' means to prepare used oil for reuse as a petroleum product by rerefining, reclaiming, reprocessing, or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil.
- (4) 'Rerefining' means the use of refining processes on used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefining may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.
- (5) 'Used oil' means any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and is economically recyclable.
- (6) 'Used oil recycling facility' means any facility that recycles more than 10,000 gallons of used oil annually."

Sec. 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2A. Nonhazardous Solid Waste Management.

**"§ 130A-309.01. Title.**

This Part may be cited as the Solid Waste Management Act of 1989.

**"§ 130A-309.02. Applicability.**

This Part shall apply to solid waste other than hazardous waste and sludges.

**"§ 130A-309.03. Findings, purposes.**

(a) The General Assembly finds that:

- (1) Inefficient and improper methods of managing solid waste create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances.
- (2) Problems of solid waste management have become a matter statewide in scope and necessitate State action to assist local governments in

- improving methods and processes to promote more efficient methods of solid waste collection and disposal.
- (3) The continuing technological progress and improvements in methods of manufacture, packaging, and marketing of consumer products have resulted in an ever-mounting increase of the mass of material discarded by the purchasers of the products, thereby necessitating a statewide approach to assisting local governments around the State with their solid waste management programs.
  - (4) The economic growth and population growth of our State have required increased industrial production together with related commercial and agricultural operations to meet our needs, which have resulted in a rising tide of unwanted and discarded materials.
  - (5) The failure or inability to economically recover material and energy resources from solid waste results in the unnecessary waste and depletion of our natural resources; such that, maximum resource recovery from solid waste and maximum recycling and reuse of the resources must be considered goals of the State.
  - (6) Certain solid waste, due to its quantity; concentration; or physical, chemical, biological, or infectious characteristics; is exceptionally hazardous to human health, safety, and to the environment; such that exceptional attention to the transportation, disposal, storage, and treatment of the waste is necessary to protect human health, safety, and welfare; and to protect the environment.
  - (7) This Part should be integrated with other State laws and rules and applicable federal law.
- (b) It is the purpose of this Part to:
- (1) Regulate in the most economically feasible, cost-effective, and environmentally safe manner the storage, collection, transport, separation, processing, recycling, and disposal of solid waste in order to protect the public health, safety, and welfare; enhance the environment for the people of this State; and recover resources which have the potential for further usefulness.
  - (2) Establish and maintain a cooperative State program of planning, technical assistance, and financial assistance for solid waste management.
  - (3) Require counties and municipalities to adequately plan and provide efficient, environmentally acceptable solid waste management programs; and require counties to plan for proper hazardous waste management.
  - (4) Require review of the design, and issue permits for the construction, operation, and closure of solid waste management facilities.
  - (5) Promote the application of resource recovery systems that preserve and enhance the quality of air, water, and land resources.

- (6) Ensure that exceptionally hazardous solid waste is transported, disposed of, stored, and treated in a manner adequate to protect human health, safety, and welfare; and the environment.
- (7) Promote the reduction, recycling, reuse, or treatment of solid waste, specifically including hazardous waste, in lieu of disposal of the waste.
- (8) Promote methods and technology for the treatment, disposal, and transportation of hazardous waste which are practical, cost-effective, and economically feasible.
- (9) Encourage counties and municipalities to utilize all means reasonably available to promote efficient and proper methods of managing solid waste and to promote the economical recovery of material and energy resources from solid waste, including contracting with persons to provide or operate resource recovery services or facilities on behalf of the county or municipality.
- (10) Promote the education of the general public and the training of solid waste professionals to reduce the production of solid waste, to ensure proper disposal of solid waste, and to encourage recycling.
- (11) Encourage the development of waste reduction and recycling as a means of managing solid waste, conserving resources, and supplying energy through planning, grants, technical assistance, and other incentives.
- (12) Encourage the development of the State's recycling industry by promoting the successful development of markets for recycled items and by promoting the acceleration and advancement of the technology used in manufacturing processes that use recycled items.
- (13) Give the State a leadership role in recycling efforts by granting a preference in State purchasing to products with recycled content.
- (14) Require counties to develop and implement recycling programs so that valuable materials may be returned to productive use, energy and natural resources conserved, and the useful life of solid waste management facilities extended.
- (15) Ensure that medical waste is transported, stored, treated, and disposed of in a manner sufficient to protect human health, safety, and welfare; and the environment.
- (16) Require counties, municipalities, and State agencies to determine the full cost of providing storage, collection, transport, separation, processing, recycling, and disposal of solid waste in an environmentally safe manner; and encourage counties, municipalities, and State agencies to contract with private persons for any or all the services in order to assure that the services are provided in the most cost-effective manner.

**"§ 130A-309.04. State solid waste management policy and goals.**

(a) It is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills and to assist units of local government with



solid waste management. In furtherance of this State policy, there is established a hierarchy of methods of managing solid waste, in descending order of preference:

- (1) Waste volume reduction at the source;
- (2) Recycling and reuse;
- (3) Composting;
- (4) Incineration with energy production;
- (5) Incineration for volume reduction;
- (6) Disposal in landfills.

(b) It is the policy of the State to encourage research into innovative solid waste management methods and products and to encourage regional solid waste management projects.

(c) It is the goal of this State that at least twenty-five percent (25%) of the total waste stream be recycled by 1 January 1993.

(d) In furtherance of the State's solid waste management policy, each State agency shall develop a solid waste management plan for any waste which it generates which is consistent with the solid waste management policy of the State.

(e) Each county, either individually or in cooperation with others, shall, in cooperation with its municipalities, develop a comprehensive county solid waste management plan and submit the plan to the Department for approval. County solid waste management plans shall be updated and submitted for approval at least once every two years. A county solid waste management plan shall be consistent with the State's comprehensive solid waste plan. In counties where a municipality operates the major solid waste disposal facility, the comprehensive solid waste plan may be prepared by the municipality, with the approval of the county and in cooperation with the other municipalities. Each county's comprehensive solid waste management plan shall include provisions which address the State's recycling goal. Each county's plan shall take into consideration facilities and other resources for management of solid waste which may be available through private enterprise. This section shall be construed to encourage the involvement and participation of private enterprise in solid waste management. The Department shall develop a form designed to elicit pertinent information regarding a county's solid waste management plan. The Department shall provide assistance in the preparation of county plans upon request.

**"§ 130A-309.05. Regulated wastes; certain exclusions.**

(a) Notwithstanding other provisions of this Article, the following waste shall be regulated pursuant to this Part:

- (1) Medical waste; and
- (2) Ash generated by a solid waste management facility from the burning of solid waste.

(b) Ash generated by a solid waste management facility from the burning of solid waste shall be disposed of in a properly designed solid waste disposal area that complies with standards developed by the Department for the disposal of the ash. The Department shall work with solid waste management facilities which burn solid waste to identify and develop methods for recycling and reusing incinerator ash or treated ash.

(c) Recovered materials are not subject to the provisions of this Part if:

- (1) A majority of the recovered materials at a facility are sold, used, or reused within one year;
- (2) The recovered materials or the products or by-products of operations that process recovered materials are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water so that the products or by-products or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters including groundwaters, or otherwise enter the environment or pose a threat to public health and safety; and
- (3) The recovered materials are not hazardous waste and have not been recovered from solid waste which is defined as hazardous waste under G.S. 130A-290.

**"§ 130A-309.06. Additional powers and duties of the Department.**

(a) In addition to other powers and duties set forth in this Part, the Department shall:

- (1) Develop a comprehensive solid waste management plan consistent with this Part by 1 March 1991. The plan shall be developed in consultation with units of local government and shall be updated at least every three years. In developing the State solid waste management plan, the Department shall hold public hearings around the State and shall give notice of these public hearings to all units of local government and regional planning agencies.
- (2) Provide guidance for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the State.
- (3) Encourage coordinated local activity for solid waste management within a common geographical area.
- (4) Provide planning, technical, and financial assistance to units of local government and State agencies for reduction, recycling, reuse, and processing of solid waste and for safe and environmentally sound solid waste management and disposal.
- (5) Cooperate with appropriate federal agencies and private organizations in carrying out the provisions of this Part.
- (6) Promote and assist the development of solid waste reduction, recycling, and resource recovery programs which preserve and enhance the quality of the air, water, and other natural resources of the State.
- (7) Maintain a directory of recycling and resource recovery systems in the State and provide assistance with matching recovered materials with markets.
- (8) Manage a program of grants for programs for recycling and special waste management, and for programs which provide for the safe and proper management of solid waste.

- (9) Provide for the education of the general public and the training of solid waste management professionals to reduce the production of solid waste, to ensure proper processing and disposal of solid waste, and to encourage recycling and solid waste reduction.
- (10) Develop descriptive literature to inform units of local government of their solid waste management responsibilities and opportunities.
- (11) Conduct at least one workshop each year in each region served by a council of governments.

(b) The Department may refuse to issue a permit to an applicant who by past conduct in this State has repeatedly violated related statutes, rules, orders, or permit terms or conditions relating to any solid waste management facility and who is deemed by the Department to be responsible for the violations. For the purpose of this subdivision, an applicant includes the owner or operator of the facility, or, if the owner or operator is a business entity, the parent of the subsidiary corporation, a partner, a corporate officer or director, or a stockholder holding more than fifty percent (50%) of the stock of the corporation.

(c) The Department shall prepare by 1 March 1991, and every year thereafter, a report on the status of solid waste management efforts in the State. The scope of the report shall be determined by the resources available to the Department for its preparation and, to the extent possible, shall include:

- (1) A comprehensive analysis, to be updated in each report, of solid waste generation and disposal in the State projected for the 20-year period beginning on 1 July 1991.
- (2) The total amounts of solid waste generated, recycled, and disposed of and the methods of solid waste recycling and disposal used during the calendar year prior to the year in which the report is published.
- (3) An evaluation of the development and implementation of local solid waste management programs and county and municipal recycling programs.
- (4) An evaluation of the success of each county or group of counties in meeting the municipal solid waste reduction goal established in G.S. 130A-309.09(d).
- (5) Recommendations concerning existing and potential programs for solid waste reduction and recycling that would be appropriate for units of local government and State agencies to implement to meet the requirements of this Part.
- (6) An evaluation of the markets for recycled materials and the success of State, local, and private industry efforts to enhance the markets for such materials.
- (7) Recommendations to the Governor and the General Assembly to improve the management and recycling of solid waste in the State.

**"§ 130A-309.07. State solid waste management plan.**

The State solid waste management plan shall include, at a minimum:

- (1) Procedures and requirements to ensure cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate, including the establishment of joint agencies pursuant to G.S. 160A-462.
- (2) Provisions for the continuation of existing effective regional resource recovery, recycling, and solid waste management facilities and programs.
- (3) Planning guidance and technical assistance to counties and municipalities to aid in meeting the municipal solid waste reduction goals established in G.S. 130A-309.09(d).
- (4) Planning guidance and technical assistance to counties and municipalities to assist the development and implementation of recycling programs.
- (5) Technical assistance to counties and municipalities in determining the full cost for solid waste management as required in G.S. 130A-309.08.
- (6) Planning guidance and technical assistance to counties and municipalities to assist the development and implementation of programs for alternative disposal, processing, or recycling of the solid wastes prohibited from disposal in landfills pursuant to G.S. 130A-309.10 and for special wastes.
- (7) A public education program, to be developed in cooperation with the Department of Public Instruction, units of local government, other State agencies, and business and industry organizations, to inform the public of the need for and the benefits of recycling solid waste and reducing the amounts of solid and hazardous waste generated and disposed of in the State. The public education program shall be implemented through public workshops and through the use of brochures, reports, public service announcements, and other materials.

**"§ 130A-309.08. Determination of cost for solid waste management; local solid waste management fees.**

(a) Within one year of the effective date of this section or within one year after rules are adopted by the Commission, whichever occurs later, each county and each municipality shall determine the full cost for solid waste management within the service area of the county or municipality for a one-year period as specified by rules adopted by the Commission, and shall update the full cost determination every year thereafter. The Commission shall establish by rule the method for units of local government to use in calculating full cost. Rule making shall be initiated and at least one public hearing shall be held by 1 March 1990. In developing the rule, the Commission shall examine the feasibility of the use of an enterprise fund process by units of local government in operating their solid waste management systems.

(b) Within one year after the completion of the cost determination required by subsection (a) of this section, each municipality shall establish a system to inform, no less than once a year, residential and nonresidential users of solid waste management services within the municipality's service area of the user's share, on an average or

individual basis, of the full cost for solid waste management as determined pursuant to subsection (a) of this section. Counties shall provide the information required of municipalities only to residential and nonresidential users of solid waste management services within the county's service area that are not served by a municipality. Municipalities shall include costs charges to them or persons contracting with them for disposal of solid waste in the full cost information provided to residential and nonresidential users of solid waste management services. Counties and municipalities are encouraged to operate their solid waste management systems through use of an enterprise fund.

(c) For purposes of this section, 'service area' means the area in which the county or municipality provides, directly or by contract, solid waste management services. The provisions of this section shall not be construed to require a person operating under a franchise contract or other agreement to collect or dispose of solid waste within the service area of a county or municipality to make the calculations or to establish a system to provide the information required under this section, unless such person agrees to do so as part of such franchise contract or other agreement.

(d) In order to assist in achieving the municipal solid waste reduction goal and the recycling provisions of G.S. 130A-309.09 a county or a municipality which owns or operates a solid waste management facility may charge solid waste disposal fees which may vary based on a number of factors, including the amount, characteristics, and form of recyclable materials present in the solid waste that is brought to the county's or the municipality's facility for processing or disposal.

(e) In addition to all other fees required or allowed by law, a county or a municipality, at the discretion of its governing board, may impose a fee for the services the county or municipality provides with regard to the collection, processing, or disposal of solid waste, to be used for developing and implementing a recycling program.

(f) This section does not prohibit a county, municipality, or other person from providing grants, loans, or other aid to low-income persons to pay part or all of the costs of such persons' solid waste management services.

**"§ 130A-309.09. Local government solid waste responsibilities.**

(a) The governing board of a designated local government shall provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas designated to be served by the facility. Pursuant to this section and notwithstanding any other provision of this Chapter, designated local governments may adopt ordinances governing the disposal in facilities which they operate of solid waste generated outside of the area designated to be served by such facility. Such ordinances shall not be construed to apply to privately operated disposal facilities located within the boundaries of a designated local government. In accordance with this section, municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by the municipality or county, any other municipality or county, or by any other person. Counties and municipalities may charge reasonable fees for the handling and disposal of solid waste at their facilities. The fees charged to municipalities without facilities at a solid waste management facility specified by the county shall not be greater than the fees charged to

other users of the facility except as provided in G.S. 130A-309.08(d). Solid waste management fees collected on a countywide basis shall be used to fund solid waste management services provided throughout the county.

(b) Each designated local government shall initiate a recyclable materials recycling program by 1 July 1991. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. The following requirements shall apply:

- (1) Construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site.
- (2) At a minimum, a majority of marketable materials identified pursuant to G.S. 130A-309.14(b) must be separated from the solid waste stream prior to final disposal at a solid waste disposal facility and must be offered for recycling if the separation and collection of these materials is economically feasible and markets for such materials exist in such proximity as to make transportation of such materials to such markets economically feasible.
- (3) Units of local government are encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.

(c) Each designated local government shall ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through joint agencies established pursuant to G.S. 160A-462 or other means provided by law. Nothing in a county's solid waste management or recycling program shall affect the authority of a municipality to franchise or otherwise provide for the collection of solid waste generated within the boundaries of the municipality.

(d) A designated local government's solid waste management and recycling program shall be designed to provide for sufficient reduction of the amount of solid waste generated within the county and the municipalities within its boundaries in order to meet goals for the reduction of municipal solid waste prior to the final disposal or incineration of the waste at a solid waste disposal facility. The goals shall provide, at a minimum, that the amount of municipal solid waste that would be disposed of in the absence of municipal solid waste recycling efforts undertaken within the county and the municipalities within its boundaries is reduced by at least twenty-five percent (25%) of the total waste stream by 1 January 1993. In determining whether the municipal solid waste reduction goal established by this subsection has been achieved, no more than one-half of the goal may be met with yard trash, white goods, construction and demolition debris, and tires that are removed from the total amount of municipal solid waste that would be disposed of in the absence of municipal solid waste recycling efforts.

(e) As used in this section, 'municipal solid waste' includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash, but does not include solid waste from industrial, mining, or agricultural operations.

(f) The Department may reduce or modify the municipal solid waste reduction goal that a designated local government is required to attempt to achieve pursuant to subsection (d) of this section if the designated local government demonstrates to the Department that:

- (1) The achievement of the goal set forth in subsection (d) would have an adverse effect on the financial obligations of a designated local government incurred prior to the effective date of this section that are directly related to a waste-to-energy facility owned or operated by or on behalf of the designated local government; and
- (2) The designated local government cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility. The goal shall not be waived entirely and may only be reduced or modified to the extent necessary to alleviate the adverse effects of achieving the goal on the financial viability of a designated local government's waste-to-energy facility. Nothing in this subsection shall exempt a designated local government from developing and implementing a recycling program pursuant to this Part.

(g) In order to assess the progress in meeting the goal established in subsection (d) of this section, each designated local government shall, by 1 October 1990, and each year thereafter, report to the Department its annual solid waste management program and recycling activities. The report by the designated local government must include:

- (1) A description of its public education program on recycling;
- (2) The amount of solid waste disposed of at solid waste disposal facilities, by type of waste such as yard trash, white goods, clean debris, tires, and unseparated solid waste;
- (3) The amount and type of materials from the solid waste stream that were recycled;
- (4) The percentage of the population participating in various types of recycling activities instituted;
- (5) The percent reduction each year in municipal solid waste disposed of at solid waste disposal facilities;
- (6) A description of the recycling activities attempted, their success rates, the perceived reasons for failure or success, and the recycling activities which are ongoing and most successful; and
- (7) In its first report, a description of any recycling activities implemented prior to 1 July 1991.

(h) A county or municipality may enter into a written agreement with other persons, including persons transporting solid waste, to undertake to fulfill some or all of the county's or municipality's responsibilities under this section.

(i) In the development and implementation of a curbside recyclable materials collection program, a county or municipality shall enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and the franchisee fail to reach an agreement within 60 days from the initiation of negotiations, the county or municipality may solicit proposals from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposals, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of any franchise agreement for the collection of solid waste within a service area of the county or municipality.

(j) In developing and implementing recycling programs, counties and municipalities shall give consideration to the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling on either a for-profit or nonprofit basis. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their responsibilities under this Part.

(k) A county or county and the municipalities within the county's or counties' boundaries may jointly develop a recycling program, provided that the county and each municipality must enter into a written agreement to jointly develop a recycling program. If a municipality does not participate in jointly developing a recycling program with the county within which it is located, the county may require the municipality to provide information on recycling efforts undertaken within the boundaries of the municipality in order to determine whether the goals for municipal solid waste reduction are being achieved.

(l) It is the policy of the State that a county or counties and its or their municipalities may jointly determine, through a joint agency established pursuant to G.S. 160A-462 or by requesting the passage of special legislation, which local governmental agency shall administer a solid waste management or recycling program.

(m) The designated local government shall provide written notice to all units of local government within the designated local government when recycling program development begins and shall provide periodic written progress reports to the units of local government concerning the preparation of the recycling program.

(n) Nothing in this section shall be construed to prevent the governing board of any county or municipality from providing by ordinance or regulation for solid waste management standards which are stricter or more extensive than those imposed by the State solid waste management program and rules and orders issued to implement the State program.



(o) Nothing in this Part or in any rule adopted by any agency shall be construed to require any county or municipality to participate in any regional solid waste management until the governing board of the county or municipality has determined that participation in such a program is economically feasible for that county or municipality. Nothing in this Part or in any special or local act or in any rule adopted by any agency shall be construed to limit the authority of a municipality to regulate the disposal of solid waste located within its boundaries or generated within its boundaries so long as a facility for any such disposal has been approved by the Department, unless the municipality is included within a solid waste management program created under a joint agency or special or local act. If bonds had been issued to finance a solid waste management program in reliance on State law granting to a designated local government the responsibility for the solid waste management program, nothing herein shall permit any governmental agency to withdraw from the program if the agency's participation is necessary for the financial feasibility of the project, so long as the bonds are outstanding.

(p) Nothing in this Part or in any rule adopted by any State agency pursuant to this Part shall require any person to subscribe to any private solid waste collection service.

(q) To effect the purposes of this Part, counties and municipalities are authorized, in addition to other powers granted pursuant to this Part:

- (1) To contract with persons to provide resource recovery services or operate resource recovery facilities on behalf of the county or municipality.
- (2) To indemnify persons providing resource recovery services or operating resource recovery facilities for liabilities or claims arising out of the provision or operation of such services or facilities that are not the result of the sole negligence of the persons providing the services or operating the facilities.
- (3) To contract with persons to provide solid waste disposal services or operate solid waste disposal facilities on behalf of the county or municipality.

(r) On and after 1 July 1991, each operator of a solid waste management facility owned or operated by or on behalf of a county or municipality, except existing facilities which will not be in use one year after the effective date of this section, shall weigh all solid waste when it is received.

(s) In the event the power to manage solid waste has been granted to a special district or other entity by special act or joint agency, any duty or responsibility or penalty imposed under this Part on a county or municipality shall apply to such special district or other entity to the extent of the grant of the duty or responsibility or imposition of such penalty. To the same extent, such special district or other entity shall be eligible for grants or other benefits provided pursuant to this Part.

(t) In addition to any other penalties provided by law, a unit of local government that does not comply with the requirements of subsections (b) and (d) shall not be eligible for grants from the Solid Waste Management Trust Fund, and the Department

may notify the State Treasurer to withhold payment of all or a portion of funds payable to the unit of local government by the Department from the General Fund or by the Department from any other State fund, to the extent not pledged to retire bonded indebtedness, unless the unit of local government demonstrates that good faith efforts to meet the requirements of subsections (b) and (d) have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries.

**"§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain special wastes in landfills prohibited.**

(a) After 1 January 1990, no beverage shall be sold or offered for sale within the State in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

(b) After 1 October 1991, no person shall distribute, sell, or offer for sale in this State, any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons (CFC). Producers of containers or packing material manufactured with chlorofluorocarbons (CFC) are urged to introduce alternative packaging materials which are environmentally compatible.

(c) (1) After 1 January 1991, no plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the bag is composed of material which is recyclable. Notice of recyclability shall be printed on each bag.

(2) After 1 January 1993, no plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the Secretary certifies that not less than twenty-five percent (25%) of such bags are being recycled.

(d) (1) After 1 October 1991, no person shall distribute, sell, or offer for sale in this State any polystyrene foam product which is to be used in conjunction with food for human consumption unless such product is composed of material which is recyclable.

(2) After 1 October 1993, no person shall distribute, sell, or offer for sale in this State any polystyrene foam product which is to be used in conjunction with food for human consumption unless the Secretary certifies that not less than twenty-five percent (25%) of such products are being recycled.

(e) After 1 July 1991, no person shall distribute, sell, or offer for sale in this State any plastic container product unless the product has a molded label indicating the plastic resin used to produce the plastic container product. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangulated arrows. The three arrows shall form an equilateral triangle with the common point of each line forming each angle of the triangle at the midpoint of each arrow and rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow.

The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The label shall appear on the bottom of the plastic container product and be clearly visible. Plastic beverage containers having a capacity of less than 16 fluid ounces, nonsolid food liquid containers having a capacity of less than 16 fluid ounces, and rigid plastic containers having a capacity of less than eight fluid ounces are exempt from the requirements of this subsection. The numbers and letters shall be as follows:

- (1) For polyethylene terephthalate, the letters 'PETE' and the number 1.
- (2) For high density polyethylene, the letters 'HDPE' and the number 2.
- (3) For vinyl, the letter 'V' and the number 3.
- (4) For low density polyethylene, the letters 'LDPE' and the number 4.
- (5) For polypropylene, the letters 'PP' and the number 5.
- (6) For polystyrene, the letters 'PS' and the number 6.
- (7) For any other, including multi-material containers, the letters 'OTHER' and the number 7.

(f) In accordance with the following schedule, no person shall knowingly dispose of the following special wastes in landfills:

- (1) Lead-acid batteries, after 1 January 1991. Lead-acid batteries also shall not be disposed of in any waste-to-energy facility after 1 January 1991. To encourage proper collection and recycling, all persons who sell lead-acid batteries at retail shall accept used lead-acid batteries as trade-ins for new lead-acid batteries.
- (2) Used oil, after 1 October 1990.
- (3) Yard trash, after 1 January 1993, except in landfills classified for such use under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
- (4) White goods, after 1 January 1991.

(g) Prior to the effective dates specified in this section, the Department shall identify and assist in developing alternative disposal, processing, or recycling options for the solid waste identified in this section.

**"§ 130A-309.11. Compost standards and applications.**

(a) In order to protect the State's land and water resources, compost produced, utilized, or disposed of by the composting process at solid waste management facilities in the State must meet criteria established by the Department.

(b) Within six months after the effective date of this section, the Department shall initiate rule making to establish standards for the production of compost. Rules shall be adopted not later than 24 months after the initiation of rule making. Such rules shall include:

- (1) Requirements necessary to produce hygienically safe compost products for varying applications.
- (2) A classification scheme for compost based on:

- a. The types of waste composted, including at least one type containing only yard trash;
  - b. The maturity of the compost, including at least three degrees of decomposition for fresh, semi-mature, and mature; and
  - c. The levels of organic and inorganic constituents in the compost.
- (c) The compost classification scheme shall address:
- (1) Methods for measurement of the compost maturity.
  - (2) Particle sizes.
  - (3) Moisture content.
  - (4) Average levels of organic and inorganic constituents, including heavy metals, for such classes of compost as the Department establishes, and the analytical methods to determine those levels.
- (d) Within six months after the effective date of this section, the Department shall initiate rule making to prescribe the allowable uses and application rates of compost. Rules shall be adopted not later than 24 months after the initiation of rule making. Such rules shall be based on the following criteria:
- (1) The total quantity of organic and inorganic constituents, including heavy metals, allowed to be applied through the addition of compost to the soil per acre per year.
  - (2) The allowable uses of compost based on maturity and type of compost.
- (e) If compost is produced which does not meet the criteria prescribed by the Department for agricultural and other use, the compost must be reprocessed or disposed of in a manner approved by the Department, unless a different application is specifically permitted by the Department.

**"§ 130A-309.12. Solid Waste Management Trust Fund.**

- (a) The Solid Waste Management Trust Fund is created and is to be administered by the Department for the purposes of:
- (1) Funding activities of the Department to promote waste reduction and recycling including but not limited to public education programs and technical assistance to units of local government;
  - (2) Funding research on the solid waste stream in North Carolina;
  - (3) Funding activities related to the development of secondary materials markets;
  - (4) Providing funding for demonstration projects as provided by this Part; and
  - (5) Providing funding for research by The University of North Carolina and independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools as provided by this Part.
- (b) The Solid Waste Management Trust Fund shall consist of:
- (1) Funds appropriated by the General Assembly;
  - (2) Contributions and grants from public or private sources; and
  - (3) Ten percent (10%) of the proceeds of the scrap tire disposal fee imposed pursuant to G.S. 130A-309.55 and G.S. 130A-309.56.

(c) The Department shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Environmental Review Commission as to the condition of the Solid Waste Management Trust Fund and as to the use of all funds allocated from the Solid Waste Management Trust Fund. Quarterly reports required under this subsection shall be made not later than 60 days after the last day of each calendar quarter beginning with the quarter ending 31 December 1989.

**"§ 130A-309.13. [Reserved.]**

**"§ 130A-309.14. Duties of State agencies.**

(a) It shall be the duty of each State agency, the General Assembly, the General Court of Justice, and The University of North Carolina, by 1 January 1992, to:

- (1) Establish a program in cooperation with the Department and the Department of Administration, for the collection of all recyclable aluminum and wastepaper materials generated in State offices throughout the State, including, at a minimum, high-grade office paper and corrugated paper.
- (2) Provide procedures for collecting and storing recyclable materials, containers for storing materials, and contractual or other arrangements with buyers of the recyclable materials.
- (3) Evaluate the amount of recyclable wastepaper material recycled and make all necessary modifications to the recycling program to ensure that all recyclable wastepaper materials are effectively and practically recycled.
- (4) Establish and implement, in cooperation with the Department and the Department of Administration, a solid waste reduction program for materials used in the course of agency operations. The program shall be designed and implemented to achieve maximum feasible reduction of solid waste generated as a result of agency operations.

(b) The Department of Economic and Community Development shall assist and encourage the recycling industry in the State. Assistance and encouragement of the recycling industry shall include:

- (1) Identifying and analyzing, in cooperation with the Department, components of the State's recycling industry and present and potential markets for recyclable materials in this State, other states, and foreign countries;
- (2) Providing information on the availability and benefits of using recycled materials to businesses and industries in the State; and
- (3) Distributing any material prepared in implementing this section to the public, businesses, industries, units of local government, or other organizations upon request.

(c) By 1 March 1991, and every other year thereafter, the Department of Economic and Community Development shall prepare a report assessing the recycling industry and recyclable materials markets in the State.

(d) The Department of Economic and Community Development shall investigate the potential markets for composted materials and shall submit its findings to the

Department for the waste registry informational program administered by the Department in order to stimulate absorption of available composted materials into such markets.

(e) On or before 1 March 1991, the Department of Economic and Community Development shall report to the General Assembly its findings relative to:

- (1) Potential markets for composted materials, including private and public sector markets;
- (2) The types of materials which may legally and effectively be used in a successful composting operation; and
- (3) The manner in which the composted materials should be marketed for optimum use.

(f) All State agencies, including the Department of Transportation, and the Department of Administration, and units of local government, are required to procure compost products when they can be substituted for, and cost no more than, regular soil amendment products, provided the compost products meet all applicable State standards, specifications, and rules. This product preference shall apply to, but not be limited to, the construction of highway projects, road rights-of-way, highway planting projects, recultivation and erosion control programs, and other projects.

(g) The Department of Public Instruction, with the assistance of the Department and The University of North Carolina, shall develop, distribute, and encourage the use of guidelines for the collection of recyclable materials and for solid waste reduction in the State system of education. At a minimum, the guidelines shall address solid waste generated in administrative offices, classrooms, dormitories, and cafeterias. The guidelines shall be developed by 1 January 1991.

(h) In order to orient students and their families to the recycling of waste and to encourage the participation of schools, communities, and families in recycling programs, the school board of each school district in the State shall make available an awareness program in the recycling of waste materials. The program shall be provided at both the elementary and secondary levels of education.

(i) The Department of Public Instruction is directed to develop, from funds appropriated for environmental education, curriculum materials and resource guides for a recycling awareness program for instruction at the elementary, middle, and high school levels.

**"§ 130A-309.15. Prohibited acts regarding used oil.**

(a) No person may knowingly:

- (1) Collect, transport, store, recycle, use, or dispose of used oil in any manner which endangers the public health or welfare.
- (2) Discharge used oil into sewers, drainage systems, septic tanks, surface waters, groundwaters, watercourses, or marine waters.
- (3) Dispose of used oil in landfills in the State unless such disposal has been approved by the Department.
- (4) Mix used oil with solid waste that is to be disposed of in landfills.
- (5) Mix used oil with hazardous substances that make it unsuitable for recycling or beneficial use.

(b) A person who violates subsection (a) of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S. 14-3.

(c) A person who disposes of used oil in a landfill where such used oil has been mixed with other solid waste which may be lawfully disposed of in such landfill, and who is without knowledge that such solid waste has been mixed with used oil, is not guilty of a violation under this section.

(d) Used oil shall not be used for road oiling, dust control, weed abatement, or other similar purposes that have the potential to release used oil into the environment.

**"§ 130A-309.16. Public education program regarding used oil collection and recycling.**

The Department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil and shall:

- (1) Encourage persons who annually sell at retail, in containers for use off the premises, more than 500 gallons of oil to provide the purchasers with information on the locations of collection facilities and information on proper disposal practices.
- (2) Establish, maintain, and publicize a used oil information center that disperses materials or information explaining local, State, and federal laws and rules governing used oil and informing the public of places and methods for proper disposal of used oil.
- (3) Encourage the voluntary establishment of used oil collection and recycling programs and provide technical assistance to persons who organize such programs.
- (4) Encourage the procurement of recycled automotive, industrial, and fuel oils and oils blended with recycled oils for all State and local government uses. Recycled oils procured under this section shall meet equipment manufacturer's specifications.

**"§ 130A-309.17. Registration of persons transporting, collecting, or recycling used oil; fees; reports and records.**

(a) The following persons shall register annually with the Department pursuant to rules of the Department on forms prescribed by it:

- (1) Any person who transports over public highways more than 500 gallons of used oil per week.
- (2) Any person who maintains a collection facility that receives more than 6,000 gallons of used oil annually. For purposes of registration, the amount received does not include used oil delivered to collection centers by individuals that change their own personal motor oil.
- (3) Any facility that recycles more than 10,000 gallons of used oil annually.

(b) An electric utility which generates during its operation used oil that is then reclaimed, recycled, or rerefined by the electric utility for use in its operations is not required to register or report pursuant to this section.

(c) An on-site burner which only burns a specification used oil generated by the burner is not required to register or report pursuant to this section, provided that the burning is done in compliance with any air permits issued by the Department.

(d) The Department may prescribe a fee for the registration required by this section in an amount which is sufficient to cover the cost of processing applications but which does not exceed twenty-five dollars (\$25.00).

(e) The Department shall require each registered person to submit, no later than 1 July of each year, a report which specifies the type and quantity of used oil transported, collected, and recycled during the preceding calendar year.

(f) Each registered person who transports or recycles used oil shall maintain records which identify:

- (1) The source of the materials transported or recycled;
- (2) The quantity of materials received;
- (3) The date of receipt; and
- (4) The destination or end use of the materials.

(g) The Department shall perform technical studies to sample used oil at facilities of representative used oil transporters and at representative recycling facilities to determine the incidence of contamination of used oil with hazardous, toxic, or other harmful substances.

(h) Any person who fails to register with the Department as required by this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S. 14-3.

(i) The proceeds from the registration fees imposed by this section shall be deposited into the Solid Waste Management Trust Fund.

**"§ 130A-309.18. Regulation of used oil as hazardous waste.**

Nothing in this Part shall prohibit the Department from regulating used oil as a hazardous waste in a manner consistent with applicable federal law and this Article.

**"§ 130A-309.19. Coordination with other State agencies.**

The Department of Transportation shall study the feasibility of using recycled oil products in road construction activities and shall report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives annually, beginning 1 January 1991, on the results of its study.

**"§ 130A-309.20. Public used oil collection centers.**

(a) The Department shall encourage the voluntary establishment of public used oil collection centers and recycling programs and provide technical assistance to persons who organize such programs.

(b) All State agencies and businesses that change motor oil for the public are encouraged to serve as public used oil collection centers.

(c) A public used oil collection center must:

- (1) Notify the Department annually that it is accepting used oil from the public; and
- (2) Annually report quantities of used oil collected from the public.

(d) No person may recover from the owner or operator of a used oil collection center any costs of response actions resulting from a release of either used oil or a



hazardous substance against the owner or operator of a used oil collection center if such used oil is:

- (1) Not mixed with any hazardous substance by the owner or operator of the used oil collection center;
- (2) Not knowingly accepted with any hazardous substances contained therein;
- (3) Transported from the used oil collection center by a certified transporter pursuant to G.S. 130A-309.23; and
- (4) Stored in a used oil collection center that is in compliance with this section.

(e) Subsection (d) of this section applies only to that portion of the public used oil collection center used for the collection of used oil and does not apply if the owner or operator is grossly negligent in the operation of the public used oil collection center. Nothing in this section shall affect or modify in any way the obligations or liability of any person under any other provisions of State or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances. For purposes of this section, the owner or operator of a used oil collection center may presume that a quantity of no more than five gallons of used oil accepted from any member of the public is not mixed with a hazardous substance, provided that the owner or operator acts in good faith.

**"§ 130A-309.21. Incentives program.**

(a) The Department is authorized to establish an incentives program for individuals who change their own oil to encourage them to return their used oil to a used oil collection center.

(b) The incentives used by the Department may involve the use of discount or prize coupons, prize drawings, promotional giveaways, or other activities the Department determines will promote collection, reuse, or proper disposal of used oil.

(c) The Department may contract with a promotion company to administer the incentives program.

**"§ 130A-309.22. Grants to local governments.**

(a) The Department shall develop a grants program for units of local government to encourage the collection, reuse, and proper disposal of used oil. No grant may be made for any project unless the project is approved by the Department.

(b) The Department shall consider for grant assistance any unit of local government project that uses one or more of the following programs or any activity that the Department feels will reduce the improper disposal and reuse of used oil:

- (1) Curbside pickup of used oil containers by a unit of local government or its designee.
- (2) Retrofitting of solid waste equipment to promote curbside pickup or disposal of used oil at used oil collection centers designated by the unit of local government.
- (3) Establishment of publicly operated used oil collection centers at landfills or other public places.

- (4) Providing containers and other materials and supplies that the public can utilize in an environmentally sound manner to store used oil for pickup or return to a used oil collection center.
- (5) Providing incentives for the establishment of privately operated public used oil collection centers.

(c) Eligible projects shall be funded according to provisions established by the Department; however, no grant may exceed twenty-five thousand dollars (\$25,000).

(d) The Department shall initiate rule making on or before 1 January 1991, necessary to carry out the purposes of this section.

**"§ 130A-309.23. Certification of used oil transporters.**

(a) Any person who transports over public highways after 1 January 1992, more than 500 gallons of used oil in any week must be a certified transporter or must be employed by a person who is a certified transporter.

(b) The Department of Transportation shall develop a certification program for transporters of used oil, and shall issue, deny, or revoke certifications authorizing the holder to transport used oil. Certification requirements shall help assure that a used oil transporter is familiar with appropriate rules and used oil management procedures.

(c) The Department of Transportation shall adopt rules governing certification, which shall include requirements for the following:

- (1) Registration and annual reporting pursuant to G.S. 130A-309.17.
- (2) Evidence of familiarity with applicable State laws and rules governing used oil transportation.
- (3) Proof of liability insurance or other means of financial responsibility for any liability which may be incurred in the transport of used oil.

**"§ 130A-309.24. Permits for used oil recycling facilities.**

(a) Each person who intends to operate, modify, or close a used oil recycling facility shall obtain an operation or closure permit from the Department prior to operating, modifying, or closing the facility.

(b) By 1 January 1992, the Department shall develop a permitting system for used oil recycling facilities after reviewing and considering the applicability of the permit system for hazardous waste treatment, storage, or disposal facilities.

(c) Permits shall not be required under this section for the burning of used oil as a fuel, provided:

- (1) A valid air permit issued by the Department is in effect for the facility; and
- (2) The facility burns used oil in accordance with applicable United States Environmental Protection Agency regulations, local government regulations, and the requirements and conditions of its air permit.

(d) No permit is required under this section for the use of used oil for the beneficiation or flotation of phosphate rock.

**"§ 130A-309.25. Training of operators of solid waste management facilities.**

(a) The Department shall establish qualifications for, and encourage the development of training programs for, operators of landfills, coordinators of local recycling programs, and other solid waste management facilities.

(b) The Department shall work with accredited community colleges, vocational technical centers, State universities, and private institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be trained as operators of solid waste management facilities.

(c) A person may not perform the duties of an operator of a solid waste management facility after 1 January 1996, unless he has completed an operator training course approved by the Department. An owner of a solid waste management facility may not employ any person to perform the duties of an operator unless such person has completed an approved solid waste management facility operator training course.

(d) The Commission may adopt rules and minimum standards to effectuate the provisions of this section and to ensure the safe, healthy, and lawful operation of solid waste management facilities. The Commission may establish, by rule, various classifications for operators to address the need for differing levels of training required to operate various types of solid waste management facilities due to different operating requirements at the facilities.

**"§ 130A-309.26. Regulation of medical waste.**

(a) As used in this section:

- (1) 'Sharps' means needles, syringes, and scalpel blades.
- (2) 'Treatment' means any process, including steam sterilization, chemical treatment, incineration, and other methods approved by the Commission which changes the character or composition of medical waste so as to render it noninfectious.

(b) It is the intent of the General Assembly to protect the public health by establishing standards for the safe packaging, storage, treatment, and disposal of medical waste. The Commission shall adopt and the Department shall enforce rules for the packaging, storage, treatment, and disposal of:

- (1) Medical waste at facilities where medical waste is generated;
- (2) Medical waste from the point at which the waste is transported from the facility where it was generated;
- (3) On-site and off-site incineration of medical waste; and
- (4) The off-site transport, storage, treatment or disposal of medical waste.

(c) No later than 1 August 1990, the Commission shall adopt rules necessary to protect the health, safety, and welfare of the public and to carry out the purpose of this section. Such rules shall address, but need not be limited to, the packaging of medical waste, including specific requirements for the safe packaging of sharps and the segregation, storage, treatment, and disposal of medical wastes at the facilities in which such waste is generated.

**"§ 130A-309.27. Landfill escrow account.**

(a) As used in this section:

- (1) 'Owner or operator' means, in addition to the usual meanings of the term, any owner of record of any interest in land on which a landfill is or has been sited, and any person or corporation which owns a majority interest in any other corporation which is the owner or operator of a landfill.

(2) 'Proceeds' means all funds collected and received by the Department, including interest and penalties on delinquent fees.

(b) Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law.

(c) The owner or operator of a landfill shall establish a fee, or a surcharge on existing fees or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill. However, the disposal of solid waste by persons on their own property is exempt from the provisions of this section.

(1) The revenue-producing mechanism must produce revenue at a rate sufficient to generate funds to meet State and federal landfill closure requirements.

(2) The revenue shall be deposited in an interest-bearing escrow account to be held and administered by the owner or operator. The owner or operator shall file with the Department an annual audit of the account. The audit shall be conducted by a certified public accountant and shall be filed no later than 31 December of each year. Failure to collect or report this revenue, except as allowed in subsection (d), is a noncriminal violation, punishable by a fine of not more than five thousand dollars (\$5,000) for each offense. The owner or operator may make expenditures from the account and its accumulated interest only for the purpose of landfill closure and, if such expenditures do not deplete the fund to the detriment of eventual closure, for planning and construction of resource recovery or landfill facilities. Any moneys remaining in the account after paying for proper and complete closure, as determined by the Department, shall, if the owner or operator does not operate a landfill, be deposited by the owner or operator into the general fund of the unit of local government.

(3) The revenue generated under this subsection and any accumulated interest thereon may be applied to the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with State and federal landfill closure requirements. The application or pledge may be made directly in the proceedings authorizing the bonds or in an agreement with an insurer of bonds to assure the insurer of this additional security.

(d) An owner or operator may establish proof of financial responsibility with the Department in lieu of the requirements of subsection (c). This proof may include surety bonds, certificates of deposit, securities, letter of credit, corporate guarantee, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with landfill closure requirements. The owner or operator shall estimate the costs to the satisfaction of the Department.

(e) This section does not repeal, limit, or abrogate any other law authorizing units of local government to fix, levy, or charge rates, fees, or charges for the purpose of complying with State and federal landfill closure requirements.

(f) The Commission shall adopt rules to implement this section.

**"§ 130A-309.28. University research.**

Research, training, and service activities related to solid and hazardous waste management conducted by The University of North Carolina shall be coordinated by the Board of Governors of The University of North Carolina through the Office of the President. Proposals for research contracts and grants; public service assignments; and responses to requests for information and technical assistance by the State and units of local government, business, and industry shall be addressed by a formal process involving an advisory board of university personnel appointed by the President and chaired and directed by an individual appointed by the President. The Board of Governors of The University of North Carolina shall consult with the Department in developing the research programs and provide the Department with a copy of the proposed research program for review and comment before the research is undertaken. Research contracts shall be awarded to independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools on the same basis as those research contracts awarded to The University of North Carolina. Research activities shall include the following areas:

- (1) Methods and processes for recycling solid and hazardous waste;
- (2) Methods of treatment for detoxifying hazardous waste; and
- (3) Technologies for disposing of solid and hazardous waste."

Sec. 3. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2B. Scrap Tire Disposal Act.

**"§ 130A-309.51. Title.**

This Part may be cited as the 'North Carolina Scrap Tire Disposal Act.'

**"§ 130A-309.52. Findings; purpose.**

(a) The General Assembly finds that:

- (1) Scrap tire disposal poses a unique and troublesome solid waste management problem.
- (2) Scrap tires are a usable resource that may be recycled for energy value.
- (3) Uncontrolled disposal of scrap tires may create a public health and safety problem because tire piles act as breeding sites for mosquitoes and other disease-transmitting vectors, pose substantial fire hazards, and present a difficult disposal problem for landfills.
- (4) A significant number of scrap tires are illegally dumped in North Carolina.
- (5) It is in the State's best interest to encourage efforts to recycle or recover resources from scrap tires.
- (6) It is desirable to allow units of local government to control tire disposal for themselves and to encourage multicounty, regional approaches to scrap tire disposal and collection.
- (7) It is desirable to encourage reduction in the volume of scrap tires being disposed of at public sanitary landfills.

(b) The purpose of this Part is to provide statewide guidelines and structure for the environmentally safe disposal of scrap tires to be administered through units of local government.

**"§ 130A-309.53. Definitions.**

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

- (1) 'Collection site' means a site used for the storage of scrap tires.
- (2) 'Disposal fee' is any amount charged by a tire collector, tire processor, or unit of local government in exchange for accepting scrap tires.
- (3) 'In-county scrap tire' means any scrap tire brought for disposal from inside the county in which the collection or processing site is located.
- (4) 'Out-of-county scrap tire' means any scrap tire brought for disposal from outside the county in which the collection or processing site is located.
- (5) 'Processing site' means a site actively used to produce or manufacture usable materials, including fuel, from scrap tires. Commercial enterprises processing scrap tires shall not be considered solid waste management facilities insofar as the provisions of G.S. 130A-294(a)(4) and G.S. 130A-294(b) are concerned.
- (6) 'Scrap tire' means a tire that is no longer suitable for its original, intended purpose because of wear, damage, or defect.
- (7) 'Tire' means a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle as defined in G.S. 20-4.01(23).
- (8) 'Tire collector' means a person who owns or operates a site used for the storage, collection, or deposit of more than 50 scrap tires.
- (9) 'Tire hauler' means a person engaged in the picking up or transporting of scrap tires for the purpose of storage, processing, or disposal.
- (10) 'Tire processor' means a person who engages in the processing of scrap tires or one who owns or operates a tire processing site.
- (11) 'Tire retailer' means a person who engages in the retail sale of a tire in any quantity for any use or purpose by the purchaser other than for resale.

**"§ 130A-309.54. Scrap tire disposal fee.**

(a) A fee is imposed on the privilege of selling or using new motor vehicle tires in this State. This fee is in addition to all other taxes and fees imposed.

(b) The definitions in G.S. 105-164.3 apply to G.S. 130A-309.55 and G.S. 130A-309.56, except the term 'sale' does not include a lease or rental.

(c) The fees imposed by G.S. 130A-55 and G.S. 130A-56 shall be used by each county for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60.

(d) The fees imposed by G.S. 130A-55 and G.S. 130A-56 shall be administered in the same manner as the tax imposed by Article 5 of Chapter 105 of the General Statutes. All other provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes shall apply to this Part to the extent they are not inconsistent with the

provisions of this Part. However, the exemptions and exclusions under G.S. 105-164.13 and G.S. 105-164.3(19) and the lower rates of tax imposed have no effect on the scrap tire disposal fee. The refund provisions under G.S. 105-164.14(a), (b), and (c) do not apply. The Secretary of Revenue may administer, enforce, collect and distribute the scrap tire disposal fee. The administrative interpretation made by the Secretary of Revenue with respect to the North Carolina Sales and Use Tax Act applies to the scrap tire disposal fee to the extent they are not inconsistent.

**"§ 130A-309.55. Fee upon sale.**

(a) Beginning 1 January 1990, a scrap tire disposal fee shall be imposed upon the retail sale of each new motor vehicle tire at the rate of one percent (1%) of the sales price for each new tire sold. This fee shall be imposed upon the tire retailer's net taxable sales and shall be paid and collected in the same manner as the State's sales tax under Article 5 of Chapter 105 of the General Statutes. The fee is not subject to the general sales tax under Article 5 of Chapter 105 of the General Statutes. The scrap tire disposal fee does not apply to recapped tires or to the lease or rental of tires.

(b) Ten percent (10%) of the proceeds of the scrap tire disposal fee shall be deposited on a quarterly basis in the Solid Waste Management Trust Fund. The Secretary of Revenue shall distribute the remainder of the net proceeds of the scrap tire disposal fee quarterly among the counties on a per capita basis according to the most recent annual population estimates certified by the Office of State Budget and Management to the Secretary of Revenue.

**"§ 130A-309.56. Fee for use.**

(a) Beginning 1 January 1990, all persons shall be required to pay a scrap tire disposal fee for the use of new motor vehicle tires in this State. This fee shall be imposed at the rate of one percent (1%) of the cost price of each new tire.

(b) Where a fee under G.S. 130A-309.55 has already been paid on the purchase of a new motor vehicle tire, then that fee shall be credited against the fee imposed by this section. Where a fee substantially similar to the fee under G.S. 130A-309.55 has been paid in another state, then that fee shall be credited against the fee imposed by this section.

(c) The fee imposed by this section shall be paid and collected in the same manner as the tax imposed under G.S. 105-164.6.

(d) Ten percent (10%) of the proceeds of the scrap tire disposal fee shall be deposited on a quarterly basis in the Solid Waste Management Trust Fund. The Secretary of Revenue shall distribute the remainder of the net proceeds of the scrap tire disposal fee quarterly among the counties on a per capita basis according to the most recent annual population estimates certified by the Office of State Budget and Management to the Secretary of Revenue.

**"§ 130A-309.57. Scrap tire disposal program.**

(a) The owner or operator of any scrap tire collection site shall, within six months after the effective date of this section, provide the Department with information concerning the site's location, size, and the approximate number of scrap tires that are accumulated at the site and shall initiate steps to comply with subsection (b) of this section.

- (b) On or after 1 July 1990:
- (1) A person may not maintain a scrap tire collection site or a scrap tire disposal site unless the site is permitted.
  - (2) It is unlawful for any person to dispose of scrap tires in the State unless the scrap tires are disposed of at a scrap tire collection site or at a tire disposal site, or disposed of for processing at a scrap tire processing facility.
- (c) By 1 January 1990, the Commission shall adopt rules to carry out the provisions of this section. Such rules shall:
- (1) Provide for the administration of scrap tire collector and collection center permits and scrap tire disposal site permits, which may not exceed two hundred fifty dollars (\$250.00) annually;
  - (2) Set standards for scrap tire processing facilities and associated scrap tire sites, scrap tire collection centers, and scrap tire collectors; and
  - (3) Authorize the final disposal of scrap tires at a permitted solid waste disposal facility provided the tires have been cut into sufficiently small parts to assure their proper disposal.
- (d) A permit is not required for:
- (1) A tire retreading business where fewer than 1,000 scrap tires are kept on the business premises;
  - (2) A business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,000 of these tires are kept on the business premises; or
  - (3) A retail tire-selling business which is serving as a scrap tire collection center if fewer than 1,000 scrap tires are kept on the business premises.
- (e) The Department shall encourage the voluntary establishment of scrap tire collection centers at retail tire-selling businesses, scrap tire processing facilities, and solid waste disposal facilities, to be open to the public for the deposit of used and scrap tires. The Department may establish an incentives program for individuals to encourage them to return their used or scrap tires to a scrap tire collection center.

**"§ 130A-309.58. Disposal of scrap tires.**

- (a) Each county is responsible for providing for the disposal of scrap tires located within its boundaries in accordance with the provisions of this Part and any rules issued pursuant to this Part. The following are permissible methods of scrap tire disposal:
- (1) Incinerating;
  - (2) Retreading;
  - (3) Constructing crash barriers;
  - (4) Controlling soil erosion when whole tires are not used;
  - (5) Chopping or shredding;
  - (6) Grinding into crumbs for use in road asphalt, tire derived fuel, and as raw material for other products;
  - (7) Slicing vertically, resulting in each scrap tire being divided into at least two pieces;
  - (8) Sludge composting;



- (9) Using for agriculture-related purposes;
- (10) Chipping for use as an oyster cultch as approved by rules adopted by the Marine Fisheries Commission;
- (11) Cutting, stamping, or dyeing tires;
- (12) Pyrolizing and other physico-chemical processing;
- (13) Hauling to out-of-State collection or processing sites; and
- (14) Monofilling split, ground, chopped, sliced, or shredded scrap tires.

(b) The Commission may adopt rules approving other permissible methods of scrap tire disposal. Landfilling of whole scrap tires is prohibited.

(c) Units of local government may enter into joint ventures or other cooperative efforts with other units of local government for the purpose of disposing of scrap tires. Units of local government may enter into leases or other contractual arrangements with units of local government or private entities in order to dispose of scrap tires.

(d) Each county is responsible for developing a description of scrap tire disposal procedures. These procedures shall be included in any solid waste management plan required by the Department under this Article. Further, any revisions to the initial description of the scrap tire disposal procedures shall be forwarded to the Department.

(e) A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may charge a disposal fee for the disposal of in-county scrap tires and such disposal fees shall be assessed only to the extent that the cost per tire of disposal exceeds the scrap tire disposal fees received by the county during the preceding 12-month period, divided by the number of tires disposed of within the county according to the tire disposal procedures during that period. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires from tire manufacturers, retreaders not engaged in the retail sale of new tires, and any others subject to the scrap tire disposal fee, regardless of where such scrap tires originated, and such fees shall not exceed the cost of disposal for such tires. The unit of local government or contracting party also may charge a disposal fee for the disposal of out-of-county and out-of-State scrap tires at the county's site.

(f) Every tire retailer or other person disposing of scrap tires shall complete and sign a certification form prescribed by the Department and distributed to each county, certifying that the tires were collected in the normal course of business for disposal, the county in which the tires were collected, and the number of tires to be disposed of. This form also shall be completed and signed by the tire hauler, certifying that the load contains the same tires that were received from the tire retailer or other person disposing of scrap tires. The tire hauler shall present this certification form to the tire processor or tire collector at the time of delivery of the scrap tires for disposal, collection, or processing. Copies of these certification forms shall be retained for a minimum of three years after the date of delivery of the scrap tires.

(g) The provisions of subsection (f) of this section do not apply to tires that are brought for disposal in quantities of five or less by someone other than a tire collector, tire processor, or tire hauler.

**"§ 130A-309.59. Registration of tire haulers.**

(a) Before engaging in the hauling of scrap tires in this State, any tire hauler must register with the Department whereupon the Department shall issue to the tire hauler a scrap tire hauling identification number. A tire retailer licensed under G.S. 105-164.29 and solely engaged in the hauling of scrap tires received by it in connection with the retail sale of replacement tires is not required to register under this section.

(b) Each tire hauler shall furnish its hauling identification number on all certification forms required under G.S. 130A-309.58(f). Any tire retailer engaged in the hauling of scrap tires and not required by subsection (a) of this section to be registered shall supply its merchant identification number on all certification forms required by G.S. 130A-309.58(f).

**"§ 130A-309.60. Nuisance tire collection sites.**

(a) On or after 1 July 1990, if the Department determines that a tire collection site is a nuisance, it shall notify the person responsible for the nuisance and request that the tires be processed or removed within 90 days. If the person fails to take the requested action within 90 days, the Department shall order the person to abate the nuisance within 90 days. If the person responsible for the nuisance is not the owner of the property on which the tire collection site is located, the Department may order the property owner to permit abatement of the nuisance. If the person responsible for the nuisance fails to comply with the order, the Department shall take any action necessary to abate the nuisance, including entering the property where the tire collection site is located and confiscating the scrap tires, or arranging to have the scrap tires processed or removed.

(b) When the Department abates the nuisance pursuant to subsection (a) of this section, the person responsible for the nuisance shall be liable for the actual costs incurred by the Department for its nuisance abatement activities and its administrative and legal expenses related to the abatement. The Department may ask the Attorney General to initiate a civil action to recover these costs from the person responsible for the nuisance. Nonpayment of the actual costs incurred by the Department shall result in the imposition of a lien on the owner's real property on which the tire collection site is located.

(c) This section does not apply to any of the following:

- (1) A retail business premises where tires are sold if no more than 500 scrap tires are kept on the premises at one time;
- (2) The premises of a tire retreading business if no more than 3,000 scrap tires are kept on the premises at one time;
- (3) A premises where tires are removed from motor vehicles in the ordinary course of business if no more than 500 scrap tires are kept on the premises at one time;
- (4) A solid waste disposal facility where no more than 60,000 scrap tires are stored above ground at one time if all tires received for storage are processed, buried, or removed from the facility within one year after receipt;
- (5) A site where no more than 250 scrap tires are stored for agricultural uses; and

(6) A construction site where scrap tires are stored for use or used in road surfacing and construction of embankments.

(d) The descending order of priority for the Department's abatement activities under subsection (a) of this section is as follows:

(1) Tire collection sites determined by the Department to contain more than 1,000,000 tires;

(2) Tire collection sites which constitute a fire hazard or threat to public health;

(3) Tire collection sites in densely populated areas; and

(4) Any other tire collection sites that are determined to be a nuisance.

(e) This section does not change the existing authority of the Department to enforce any existing laws or of any person to abate a nuisance.

(f) As used in this section, 'nuisance' means an unreasonable danger to public health, safety, or welfare or to the environment.

**"§ 130A-309.61. Preemption.**

This Part preempts any local ordinance regarding the disposal of scrap tires to the extent that any local ordinance is inconsistent with this Part or rules adopted pursuant to this Part. A unit of local government may not charge any fees for the disposal of scrap tires except as authorized by this Part.

**"§ 130A-309.62. Fines and penalties.**

Any person who knowingly hauls or disposes of a tire in violation of this Part or the rules adopted pursuant to this Part shall be assessed a civil penalty of fifty dollars (\$50.00) per violation. Each tire hauled or disposed of in violation of this Part or rules adopted pursuant to this Part constitutes a separate violation."

Sec. 4. Effective with respect to acts committed on or after the effective date of this act, G.S. 90-113.4A is repealed.

Sec. 5. G.S. 120-70.44 is amended by adding a new sentence at the end thereof to read:

"Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly."

Sec. 6. Article 2 of Chapter 136 of the General Statutes is amended by adding a section to read:

**"§ 136-285. Use of recyclable materials in construction.**

(a) It is the intent of the General Assembly that the Department of Transportation continue to expand its current use of recovered materials in its construction programs.

(b) The General Assembly declares it to be in the public interest to find alternative ways to use certain recyclable materials that currently are part of the solid waste stream and that contribute to problems of declining space in landfills. To determine the feasibility of using recyclable materials for highway construction, the Department shall undertake a literature search to evaluate the potential for using:

- (1) Ground rubber from tires in road resurfacing or subbase materials; and
- (2) Recycled mixed-plastic materials for guard rail posts, right-of-way fence posts, and sign supports.

(c) As a part of its scheduled projects, the Department may conduct such additional research as it determines to be warranted, which may include demonstration projects, on the use of recyclable materials in highway construction.

(d) The Department shall review and revise existing bid procedures and specifications for the purchase or use of products and materials to eliminate any procedures and specifications that explicitly discriminate against products and materials with recycled content, except where the procedures and specifications are necessary to protect the health, safety, and welfare of the people of this State.

(e) The Department shall review and revise its bid procedures and specifications on a continuing basis to encourage the use of products and materials with recycled content and shall, in developing new procedures and specifications, encourage the use of products and materials with recycled content.

(f) All agencies shall cooperate with the Department in carrying out the provisions of this section."

Sec. 7. Effective with respect to acts committed on or after the effective date of this act, G.S. 14-399.1 is repealed.

Sec. 7.1. Chapter 491 of the 1989 Session Laws is repealed.

Sec. 8. Effective with respect to acts committed on or after the effective date of this act, G.S. 14-399 reads as rewritten:

**"§ 14-399. Littering.**

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

- (1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or
- (2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is ~~so~~ blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) ~~As used in this section, the word 'litter' shall be defined as any rubbish, waste material, cans, refuse, garbage, trash, debris, dead animals or discarded materials of~~

~~every kind and description; the word 'vehicle' shall be defined as in G.S. 20-4.01(49); and the word 'watercraft' shall be defined as any boat or vessel used for transport upon or across the water.~~

~~(d) A violation of this section is a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00) for the first offense. Any second or subsequent offense is punishable by a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00). In lieu of a fine or any portion thereof, or in addition to a fine, any violation of this section may also be punished by a term of community service.~~

~~(e) Wildlife protectors, as defined in G.S. 113-128(9), are authorized to enforce the provisions of this section.~~

(c) Any person who violates this section in an amount not exceeding 15 pounds or 27 cubic feet and not for commercial purposes is guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00) for the first offense. Any second or subsequent offense is punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). Notwithstanding the foregoing, any person who violates this section by disposing, in any manner, of litter not exceeding 15 pounds or 27 cubic feet not for commercial purposes upon a beach is guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for a first or any subsequent offense. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds or 27 cubic feet, but not exceeding 500 pounds in weight or 100 cubic feet in volume, and not for commercial purposes, is guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). In addition, the court shall require the violator to pick up litter or perform other community service commensurate with the offense committed. Further, if the violation involves the use of a motor vehicle, upon a finding of guilt, regardless of whether adjudication is withheld or of whether imposition of sentence is withheld, deferred, or suspended, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to G.S. 58-30.4 for a finding of guilt under this subsection.

(e) Any person who violates this section in an amount exceeding 500 pounds or 100 cubic feet or in any quantity for commercial purposes, or dumps litter which is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class J felony. In addition, the court may order the violator to:

- (1) Remove, or render harmless, the litter that he dumped in violation of this section;
- (2) Repair or restore property damaged by, or pay damages for any damage arising out of, his dumping litter in violation of this section; or

- (3) Perform community public service relating to the removal of litter dumped in violation of this section or to the restoration of an area polluted by litter dumped in violation of this section.
- (f) A court may enjoin a violation of this section.
- (g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds or more than 100 cubic feet of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.
- (h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars (\$200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.
- (i) For the purpose of the section, unless the context requires otherwise:
- (1) 'Aircraft' means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.
  - (2) 'Commercial vehicle' means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.
  - (3) 'Law enforcement officer' means any officer of the North Carolina Highway Patrol, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, 'law enforcement officer' means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);
  - (4) 'Litter' means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. 'Litter' does not include political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.
  - (5) 'Vehicle' has the same meaning as in G.S. 20-4.01(49); and

(6) 'Watercraft' means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

Sec. 9. G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission ~~for~~ ~~of~~ of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

#### Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
All other moving violations	2
<u>Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1</u>	

The ~~above~~ above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

- Overloads
- Over length
- Over width

- Over height
- Illegal parking
- Carrying concealed weapon
- Improper plates
- Improper registration
- Improper muffler
- Public drunk within a vehicle
- Possession of alcoholic beverages
- Improper display of license plates or dealers' tags
- Unlawful display of emblems and insignia
- Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

Sec. 10. It is the intent of the General Assembly to monitor progress in the State with respect to solid waste management. In particular, the General Assembly will



evaluate progress toward the solid waste management goals established in G.S. 130A-309.04 and will consider increasing the recycling goal as appropriate. If the General Assembly determines that there is inadequate progress in meeting the solid waste management goals established for the State, the General Assembly will consider additional requirements and incentives, including economic incentives to encourage recycling and discourage landfilling, and additional methods of financing needed improvements in the solid waste management program at both the State and local levels.

Sec. 11. (a) The Secretary of Administration, in cooperation with the Department of Environment, Health, and Natural Resources and with input from other interested parties having expertise in solid waste management, shall review existing procurement procedures and specifications for the purchase of paper and paper products to determine the economic and technological feasibility of using paper and paper products with recycled content.

(b) The Secretary of Administration shall report his findings and recommendations regarding the use of paper and paper products with recycled content to the Governor, the Environmental Review Commission, and the General Assembly by 1 May 1990.

(c) All State agencies and units of local government shall cooperate with the Secretary of Administration in carrying out the provisions of this section.

Sec. 12. The Department of Transportation shall report to the Governor, the Environmental Review Commission, and the General Assembly by 1 January 1991 as to its findings and recommendations regarding the use of recyclable materials in highway construction.

Sec. 13. Neither the definition of "medical waste" nor any other provision of this act shall be construed to require that rules or standards adopted by the Commission for Health Services for the management of infectious and noninfectious medical waste be identical or similar.

Sec. 14. All scrap tires located in North Carolina shall be disposed of in accordance with the provisions of the North Carolina Scrap Tire Disposal Act as enacted by this act beginning 1 March 1990.

Sec. 15. The Department of Revenue may retain the actual costs of administering the fees collected by the Department under the North Carolina Scrap Tire Disposal Act as enacted by Section 3 of this act.

Sec. 16. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement this act by using such funds as may be otherwise appropriated to the agency for the implementation of this act and this act shall not be construed to obligate any State agency to implement the provisions of this act beyond the extent to which such funds are appropriated.

Sec. 17. This act shall become effective 1 October 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.