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DEVELOPMENTS IN STATE LEGISLATION

*Editor's Synopsis: This summary of recently enacted and pending state environmental legislation is organized by topic. Citations to the South Carolina Code Annotated have been included where available.**

THE SOUTH CAROLINA STATE LEGISLATURE ENACTED THE FOLLOWING ENVIRONMENTAL LEGISLATION IN 1995:

I. DRYCLEANING FACILITY DISCHARGE REHABILITATION AND RESTORATION TRUST FUND

S.C. CODE ANN. § 44-56-420 (Law. Co-op. Supp. 1995). This Act establishes a fund for the rehabilitation of drycleaning sites which were contaminated by the release of drycleaning solvents (Stoddard and Perchlomethylene). The Act also creates an insurance pool for the purpose of defraying the cost of remediation. Drycleaners, wholesale suppliers, and uniform rental and linen supply companies that have operated as drycleaning facilities are solely responsible for contributing the resources to establish and administer the Fund.

II. TAX CREDITS ALLOWED FOR OPERATING A QUALIFIED RECYCLING FACILITY

S.C. CODE ANN. § 12-6-3460 (Law. Co-op. Supp. 1995). This Act allows credits against the corporate income tax, corporate license tax, sales and use tax, local option sales and use tax, and similar taxes for a taxpayer constructing or operating a qualified recycling facility (QRF). A QRF is defined as a facility used to manufacture products for sale composed of at least fifty percent post-consumer waste material by weight or volume. The minimum level of investment for a QRF must be at least \$300 million incurred by the fifth calendar year after the year in which the taxpayer begins construction or operation of the facility.

A taxpayer who constructs or operates a QRF may receive credits in the amount of thirty percent of the taxpayer's investment in recycling property during the taxable year. Credits can be used to reduce corporate income taxes, corporate license taxes, sales or use taxes imposed by the state or any political subdivision of the state, or similar taxes. Any unused credit for a taxable year may be carried forward to subsequent taxable years until the credit is exhausted.

* The information contained in this summary was provided by Deborah Davis Hottel, an attorney with the McNair Firm in Columbia, South Carolina. The material is updated through February 27, 1996.

III. LOCATION OF SOLID WASTE LANDFILLS IN SPARTANBURG COUNTY

S.C. Act No. 185 of 1995. This Act provides that no solid waste landfill in Spartanburg County may be located within 3,000 feet of an aquaculture farm or facility.

IV. RELOCATION OF FOLLY BEACH PUBLIC OYSTER GROUND

S.C. Act No. 154 of 1995. This Act relocates the Folly Beach Public Oyster Ground and prohibits private docks in that area.

V. DISSOLUTION OF BACK SWAMP WATERSHED CONSERVATION DISTRICT

S.C. CODE ANN. § 48-11-210 (Law. Co-op. Supp. 1995). This Act deletes the provision for Back Swamp Watershed Conservation District in Lee County and repeals the act which authorized the creation of the district. The district has never implemented a project or work of improvement.

VI. AMENDMENTS TO THE SAFE WATER DRINKING ACT AMENDMENTS

General Appropriations Bill, Part IB, Section 30.22, *reprinted in* 1995 S.C. Acts 1296. At the present time, the Department of Health and Environmental Control (DHEC) is authorized to collect a fee from each public water system to comply with the Federal Safe Drinking Water Act. This provision amends the authorization to decrease the fees collected by ten percent.

VII. SUPERB FUND ADMINISTRATION

S.C. CODE ANN. §§ 44-2-20, -40, -50(B), -60(A), and -120 (Law. Co-op. Supp. 1995). This provision affects SUPERB Fund administration as follows:

A. The Department of Health and Environmental Control (DHEC) will have sole control over the administration of both the SUPERB Account and the SUPERB Financial Responsibility Fund.

B. Funds from the SUPERB Financial Responsibility Fund can only be used to compensate third party victims of an accidental release of petroleum products for bodily injury and property damage. Payment from the Fund for punitive damages is excluded. The provision protects DHEC and the State from liability for the payment of claims from a source other than the Fund if the Fund has inadequate funds to pay

claims. Furthermore, this provision also establishes a procedure for notification of claims against the Fund and allows DHEC to intervene in claims to protect the Fund. The Fund has a \$2 million cap and requires transfers from the SUPERB Account to the Fund only if the balance of the Fund falls below \$2 million.

C. A report date is changed from March 10, 1995 to March 10, 1996.

D. The provision further requires DHEC to submit risk-based corrective action regulations to the General Assembly.

E. No person shall place petroleum products in an unregistered underground storage tank.

F. DHEC is authorized to promulgate regulations for contractor certification.

G. An appeals process will be provided for owners and operators of underground fuel storage tanks who have been denied access to the SUPERB Account.

VIII. SECURITY INTEREST EXEMPTION

S.C. CODE ANN. § 44-2-80 (Law. Co-op. Supp. 1995). Lenders holding security interests in petroleum-contaminated property are not liable for remediation providing they do not participate in the management of the underground storage tank and are not otherwise engaged in petroleum production, refinement, or marketing. This provision applies also to foreclosures.

Additionally, subsequent innocent purchasers of the contaminated property will not be liable for remediation under the following circumstances:

A. the site is SUPERB qualified;

B. the tanks had been removed at the time of sale;

C. the purchaser does not have or has not had any familial, financial, or related interest with the person who previously owned or operated the underground storage tanks; and

D. the purchaser allows access to the storage tank's owner or operator or DHEC to perform site rehabilitation activities.

X. BARNWELL EXTENSION AND FEE

S.C. CODE ANN. § 48-48-140 (Law. Co-op. Supp. 1995). This provision authorizes the continued operation of the Barnwell facility until another disposal facility is available to South Carolina generators or when the permitted capacity of the Barnwell facility is met. It also provides for the following:

A. a tax of \$235 per cubic foot of low-level radioactive waste;

B. revenues from the facility to be deposited into a separate and distinct fund known as the South Carolina Education Assistance Endowment Fund;

C. acceptance of low-level radioactive waste from all states;

D. prohibits general waste from North Carolina from disposal at the Barnwell facility if a new regional facility, to be located in North Carolina, is not operational

by January 1996;

E. all information possessed by a state agency on the Barnwell facility and its operations is subject to the Freedom of Information Act, S.C. CODE ANN. §§ 30-4-10 to -110 (Law. Co-op. 1991 & Supp. 1995); and

F. South Carolina will withdraw from the Southeast Compact but has established a process through which South Carolina can negotiate a new compact.

THE FOLLOWING LEGISLATION HAS BEEN PASSED BY ONE HOUSE OF THE SOUTH CAROLINA GENERAL ASSEMBLY AND IS BEING CONSIDERED IN THE OTHER HOUSE:

I. AMENDMENTS TO THE ADMINISTRATIVE PROCEDURES ACT

H.R. 3581, 111th Leg., 1st Sess. (S.C. 1995). This Bill amends the Administrative Procedures Act, S.C. CODE ANN. §§ 1-23-10 to -660 (Law. Co-op. 1986 & Supp. 1995) as follows:

A. a provision to address the "Regulation by Policy" issue by expanding the definition of "regulation" to include tests, methods, criteria, or guidance that explains existing statutory or regulatory requirements used in permitting or licensing matters;

B. a provision to require a narrative preamble and the text of the proposed regulation, rather than a synopsis of the proposed regulation, in notices of public hearing published in the *State Register*;

C. a provision that requires an agency, when filing a statement of need and reasonableness in its notice of a public hearing, to base the determination of need and reasonableness on an analysis of the cost-benefit criteria;

D. a provision qualifying the "need and reasonableness" finding that must be made by the presiding official at the public hearing to require that it also be based on the cost-benefit criteria;

E. a provision which requires that both the preliminary and the final assessment reports include a determination of need and reasonableness of the regulation; and

F. a provision that an agency cannot withdraw a regulation for any reason after submittal to the General Assembly except upon written notification by a committee that the committee could not approve the regulation in the form submitted.

II. SOUTH CAROLINA ENVIRONMENTAL AUDIT AND DISCLOSURE ACT OF 1995

H.R. 3624, 111th Leg., 1st Sess. (S.C. 1995). This Bill, as amended, establishes an environmental audit privilege, which protects the confidentiality of communications relating to voluntary internal environmental audits. Under the provisions of this Bill, an "environmental audit" is a voluntary, internal evaluation of a facility or activities at such facilities regulated under environmental law, or of compliance programs or

management systems related to the facility or activity if designed to identify and prevent noncompliance with these laws. Environmental audit reports, and information derived from them, are privileged and inadmissible as evidence in a legal action including civil, criminal, and administrative proceedings. This Bill permits the owner or operator of the facility to expressly waive this privilege. Also, individuals who voluntarily disclose noncompliance with environmental laws receive immunity from civil and administrative penalties.

III. EXTENSION OF SALES TAX EXEMPTION TO MACHINERY USED FOR RECYCLING

H.R. 3710, 111th Leg., 1st Sess. (S.C. 1995). This Bill would extend the sales tax exemption allowed manufacturing machinery to machinery used for recycling. Recycling is defined as any process by which 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, including composting, for sale. According to the Statement of Estimated Fiscal Impact provided by the South Carolina Department of Revenue and Taxation, this Bill would reduce state sales and use tax revenue by \$1,250,000 per year. An estimated \$25,000,000 of equipment would be exempted annually.

IV. VEHICLE STOPPING, STANDING OR PARKING OUTSIDE OF A BUSINESS

H.R. 3871, 111th Leg., 1st Sess. (S.C. 1995). This Bill would permit a vehicle used solely for collecting municipal solid waste or recovered materials to stop or stand on a road, street, or highway for the purpose of collecting solid waste or recovered materials. Vehicles would be required to have flashing hazard lights when engaged in stopping or standing to collect solid waste or recovered materials.

