

**GEORGIA COMPREHENSIVE SOLID WASTE MANAGEMENT ACT OF 1990**

**AS AMENDED THROUGH 2004**

**An Abstract from**

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**Conservation and Natural Resources**

**Georgia Department of Natural Resources  
Environmental Protection Division  
Land Protection Branch  
4244 International Parkway, Suite 104  
Atlanta, Georgia 30354  
404/362-2537**

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## **§ 12-8-20. Short title**

This part shall be known and may be cited as the "Georgia Comprehensive Solid Waste Management Act."

## **§ 12-8-21. Declaration of policy; legislative intent**

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

b) It is further declared to be the policy of the State of Georgia to educate and encourage generators and handlers of solid waste to reduce and minimize to the greatest extent possible the amount of solid waste which requires collection, treatment, or disposal through source reduction, reuse, composting, recycling, and other methods and to promote markets for and engage in the purchase of goods made from recovered materials and goods which are recyclable.

c) It is the intent of the General Assembly that every effort be undertaken to reduce on a state-wide per capita basis the amount of municipal solid waste being received at disposal facilities during fiscal year 1992 by 25 percent by July 1, 1996; provided, however, that counties and municipalities that establish an annual measurement of municipal solid waste being received at disposal facilities prior to the end of fiscal year 1992 shall be given credit for reductions achieved based on that measurement period prior to fiscal year 1992; provided, further, that municipal solid waste received at any waste to energy facility which was in operation on January 1, 1991, is exempted from this subsection.

d) It is further the intent of the General Assembly that the director of the Environmental Protection Division of the Department of Natural Resources shall be the official charged with primary responsibility for the solid waste management program. The director, in exercising any authority granted in this part, shall conform to and implement the policies outlined in this part and shall at all times coordinate his activities with those of other state agencies and local political jurisdictions so as to achieve a unified and effective solid waste management program in the state.

e) It is further intended by the General Assembly that the director of the Environmental Protection Division of the Department of Natural Resources shall, in exercising any authority granted in this part, recognize that the states which share common borders with Georgia also share the vital natural resources of clean air, clean surface waters, and clean ground waters which flow across those common borders and that, therefore, those bordering states have a mutual interest with Georgia to manage solid waste in a manner that does not threaten to contaminate the shared natural resources. The director shall also recognize, however, that such mutual interest may not exist between Georgia and states which do not share common borders and natural resources with it. Therefore, the director is instructed to be particularly mindful of the need to monitor, inspect, and regulate closely that solid waste generated from sources located in states not sharing common borders and natural resources with Georgia.

f) It is further the intent of the General Assembly that every effort be undertaken to ensure the proper management of scrap tires from the point of generation to the ultimate point of reuse, recycling, or disposal and that every effort be made to ensure that, where possible, they be reused or recycled rather than being disposed.

g) It is further the intent of the General Assembly to provide a frame of reference for the state and all counties, municipal corporations, and solid waste management authorities in the state relating to the handling of yard trimmings. The productivity of the soils of Georgia requires that nature's way of recycling vegetative matter be respected and followed and that such essential building materials are no longer wasted by being

buried in landfills but are returned to the soil. The General Assembly, therefore, adopts and recommends the following hierarchy for handling yard trimmings:

- (1) Naturalized, low-maintenance landscaping requiring little or no cutting;
- (2) Grass cycling by mowing it high and letting it lie;
- (3) Stacking branches into brush piles for use as wildlife habitats and for gradual decomposition into the soil;
- (4) Composting on the site where the material was grown, followed by incorporation of the finished compost into the soil at that site;
- (5) Chipping woody material on the site where such material was generated;
- (6) Collecting yard trimmings and transporting them to another site to be chipped or composted for later use; and
- (7) Chipping woody material for later use as fiber fuel.

## **§ 12-8-22. Definitions**

As used in this article, the term:

(1) "Affected county" means, in addition to the county in which a facility is or is proposed to be located, each county contiguous to the host county and each county and municipality within a county that has a written agreement with the facility to dispose of solid waste.

(1.1) "Biomedical waste" means pathological waste, biological waste cultures and stocks of infectious agents and associated biologicals, contaminated animal carcasses (body parts, their bedding, and other wastes from such animals), sharps, chemotherapy waste, discarded medical equipment and parts, not including expendable supplies and materials which have not been decontaminated, as further defined in *Rule 391-3-4-.15* of the board, and other such waste materials.

(2) "Board" means the Board of Natural Resources of the State of Georgia.

(3) "Certificate" means a document issued by a college or university of the University System of Georgia or other organization approved by the director stating that the operator has met the requirements of the board for the specified operator classification of the certification program.

(4) "Closure" means a procedure approved by the division which provides for the cessation of waste receipt at a solid waste disposal site and for the securing of the site in preparation for postclosure.

(4.1) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

(5) "Composting" means the controlled biological decomposition of organic matter into a stable, odor-free humus.

(6) "Contaminant" means any physical, chemical, biological, or radiological substance or matter.

(7) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(8) "Disposal facility" means any facility or location where the final deposition of solid waste occurs and includes but is not limited to landfilling and solid waste thermal treatment technology facilities.

(9) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(10) "Financial responsibility mechanism" means a mechanism designed to demonstrate that sufficient funds will be available to meet specific environmental protection needs of solid waste handling facilities. Available financial responsibility mechanisms include but are not limited to insurance, trust funds, surety bonds, letters of credit, personal bonds, certificates of deposit, financial tests, and corporate guarantees as defined in 40 C.F.R. Part 264 Subpart H -- Financial Requirements.

- (11) "Generator" means any person in Georgia or in any other state who creates solid waste.
- (12) "Hazardous constituent" means any substance listed as a hazardous constituent in regulations promulgated pursuant to the federal act by the administrator of the United States Environmental Protection Agency which are in force and effect on February 1, 1992, codified as Appendix VIII to 40 C.F.R. Part 261 -- Identification and Listing of Hazardous Waste.
- (12.1) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes or operations that is not a hazardous waste regulated under Part 1 of Article 3 of this chapter, the "Georgia Hazardous Waste Management Act." Such waste includes, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel products; leather and leather products; nonferrous metal and foundry products; organic chemicals; plastics and resins; pulp and paper; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textiles; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.
- (13) "Label" means a code label described in paragraphs (3) and (4) of subsection (b) of *Code Section 12-8-34*.
- (14) "Landfill" means an area of land on which or an excavation in which solid waste is placed for permanent disposal and which is not a land application unit, surface impoundment, injection well, or compost pile.
- (15) "Leachate collection system" means a system at a landfill for collection of the leachate which may percolate through the waste and into the soils surrounding the landfill.
- (16) "Manifest" means a form or document used for identifying the quantity and composition and the origin, routing, and destination of special solid waste during its transportation from the point of generation, through any intermediate points, to the point of disposal, treatment, or storage.
- (17) "Materials recovery facility" means a solid waste handling facility that provides for the extraction from solid waste of recoverable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.
- (17.1) "Multijurisdictional solid waste management plan" means a comprehensive solid waste plan adopted pursuant to *Code Section 12-8-31.1* covering two or more jurisdictions.
- (18) "Municipal solid waste" means any solid waste derived from households, including garbage, trash, and sanitary waste in septic tanks and means solid waste from single-family and multifamily residences, hotels and motels, bunkhouses, campgrounds, picnic grounds, and day use recreation areas. The term includes yard trimmings and commercial solid waste but does not include solid waste from mining, agricultural, or silvicultural operations or industrial processes or operations.
- (19) "Municipal solid waste disposal facility" means any facility or location where the final deposition of any amount of municipal solid waste occurs, whether or not mixed with or including commercial or industrial solid waste, and includes, but is not limited to, municipal solid waste landfills and municipal solid waste thermal treatment technology facilities.
- (20) "Municipal solid waste landfill" means a disposal facility where any amount of municipal solid waste, whether or not mixed with or including commercial waste, industrial waste, nonhazardous sludges, or small quantity generator hazardous waste, is disposed of by means of placing an approved cover thereon.
- (21) "Operator" means the person stationed on the site who is in responsible charge of and has direct supervision of daily field operations of a municipal solid waste disposal facility to ensure that the facility operates in compliance with the permit.
- (22) "Person" means the State of Georgia or any other state or any agency or institution thereof and any municipality, county, political subdivision, public or private corporation, solid waste authority, special district empowered to engage in solid waste management activities, individual, partnership, association, or other entity in Georgia or any other state. This term also includes any officer or governing or managing body of any municipality, political subdivision, solid waste authority, special district empowered to engage in solid waste

management activities, or public or private corporation in Georgia or any other state. This term also includes employees, departments, and agencies of the federal government.

(23) "Postclosure" means a procedure approved by the division to provide for long-term financial assurance, monitoring, and maintenance of a solid waste disposal site to protect human health and the environment.

(24) "Private industry solid waste disposal facility" means a disposal facility which is operated exclusively by and for a private solid waste generator for the purpose of accepting solid waste generated exclusively by said private solid waste generator.

(25) "Recovered materials" means those materials which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

(26) "Recovered materials processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered materials. Such term shall not include a solid waste handling facility; provided, however, any solid waste generated by such facility shall be subject to all applicable laws and regulations relating to such solid waste.

(27) "Recycling" means 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.

(27.1) "Regional landfill or regional solid waste disposal facility" means a facility owned by a county, municipality, authority, or special district empowered to engage in solid waste management activities, or any combination thereof, which serves two or more or any combination of counties, municipalities, or special solid waste districts.

(27.2) "Regional solid waste management plan" means a comprehensive solid waste plan adopted pursuant to *Code Section 12-8-31.1* covering two or more counties and may include one or more municipal corporations within those counties.

(28) "Retreadable casing" means a scrap tire suitable for retreading.

(29) "Rigid plastic bottle" means any rigid plastic container with a neck that is smaller than the container body with a capacity of 16 ounces or more and less than five gallons.

(30) "Rigid plastic container" means any formed or molded part comprised predominantly of plastic resin, having a relatively inflexible finite shape or form, and intended primarily as a single-service container with a capacity of eight ounces or more and less than five gallons.

(31) "Scrap tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

(32) "Scrap tire carrier" means any person engaged in picking up or transporting scrap tires for the purpose of removal to a scrap tire processor, end user, or disposal facility.

(33) "Solid waste" means any garbage or refuse; sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material including solid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and community activities, but does not include recovered materials; solid or dissolved materials in domestic sewage; solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under *33 U.S.C. Section 1342*; or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923).

(34) "Solid waste handling" means the storage, collection, transportation, treatment, utilization, processing, or disposal of solid waste or any combination of such activities.

(35) "Solid waste handling facility" means any facility the primary purpose of which is the storage, collection, transportation, treatment, utilization, processing, or disposal, or any combination thereof, of solid waste.

(36) "Solid waste thermal treatment technology" means any solid waste handling facility the purpose of which is to reduce the amount of solid waste to be disposed of through a process of combustion, with or without the process of waste to energy.



(37) "Special solid waste" means any solid waste not otherwise regulated under Part 1 of Article 3 of this chapter, known as the "Georgia Hazardous Waste Management Act," and regulations promulgated under such part originating or produced from or by a source or generator not subject to regulation under *Code Section 12-8-24*.

(38) "Tire" means a continuous solid or pneumatic rubber covering designed for encircling the wheel of a motor vehicle and which is neither attached to the motor vehicle nor a part of the motor vehicle as original equipment.

(39) "Tire retailer" means any person engaged in the business of selling new replacement tires.

(40) "Tire retreader" means any person actively engaged in the business of retreading scrap tires by scarifying the surface to remove the old surface tread and attaching a new tread to make a usable tire.

(41) "Waste to energy facility" means a solid waste handling facility that provides for the extraction and utilization of energy from municipal solid waste through a process of combustion.

(42) "Yard trimmings" means leaves, brush, grass clippings, shrub and tree prunings, discarded Christmas trees, nursery and greenhouse vegetative residuals, and vegetative matter resulting from landscaping development and maintenance other than mining, agricultural, and silvicultural operations.

#### **§ 12-8-23. Powers and duties of board**

In the performance of its duties the board shall have and may exercise the power to:

(1) Adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this part as the board may deem necessary to provide for the control and management of solid waste to protect the environment and the health of humans. Such rules and regulations may be applicable to the state as a whole or may vary from area to area or may vary by waste characteristics, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this part. The rules and regulations may include, but shall not be limited to, the following:

(A) Rules and regulations governing and controlling solid waste handling, including measures to ensure that solid waste management practices are regulated, governed, and controlled in the public interest;

(B) Rules and regulations prescribing the procedure to be followed in applying for permits and requiring the submission of such plans, specifications, verifications, and other pertinent information deemed relevant in connection with the issuance of such permits;

(C) Rules and regulations concerning the establishment of permits by rule;

(D) Rules and regulations establishing the use of a manifest during the generation and handling of special solid waste;

(E) Rules and regulations governing and controlling the handling of special solid waste and biomedical waste;

(F) Rules and regulations establishing criteria and a system of priorities for the distribution of any state funds as may be made available through a grant-in-aid program to assist financially local governmental agencies or authorities in the planning, implementing, maintaining, or operating of solid waste handling systems which are consistent with local and regional solid waste management plans;

(G) Rules and regulations establishing procedures and requirements for the postclosure care of all solid waste disposal facilities, including but not limited to corrective action of releases, ground-water monitoring, and maintenance of final cover;

(H) Rules and regulations establishing the criteria for approval, time periods for coverage, and other terms and conditions for the demonstration of financial responsibility required by this part and for the implementation of financial responsibility instruments;

(I) Rules and regulations establishing qualifications for municipal solid waste disposal facility operators and certification of such operators through colleges or universities of the University System of Georgia or other organizations as may be determined acceptable by the board;

(J) Rules and regulations regulating the generation, collection, processing, and disposal of scrap tires and governing the investigation and cleanup of sites where scrap tires have been disposed regardless of the date when such disposal occurred; and

(K) Rules and regulations further defining what shall or shall not constitute "recovered materials"; and

(2) Take all necessary steps to ensure the effective enforcement of this part.

#### **§ 12-8-23.1. Powers and duties of director**

(a) The director shall have and may exercise the following powers and duties:

(1) To exercise general supervision over the administration and enforcement of this part and all rules and regulations, orders, or permits promulgated or issued under this part;

(2) To encourage, participate in, or conduct studies, reviews, investigations, research, and demonstrations relating to solid waste management practices as he deems advisable and necessary;

(3)(A) To issue all permits contemplated by this part, stipulating in each permit the conditions or limitations under which such permit is to be issued, and to deny, revoke, transfer, modify, suspend, or amend such permits.

(B) To refuse to grant such permit if the director finds by clear and convincing evidence that the applicant for a permit or, in the case of a corporation, partnership, or association, an officer, director, manager, or shareholder of 5 percent or more of stock or financial interest in said corporation, partnership, or association:

(i) Has intentionally misrepresented or concealed any material fact in the application submitted to the director;

(ii) Has obtained or attempted to obtain the permit by misrepresentation or concealment;

(iii) Has been convicted by final judgment, and all appeals have been exhausted, in the State of Georgia or any federal court of any felony involving moral turpitude within the three years immediately preceding the application for a permit;

(iv) Has been convicted of any violations of any environmental laws punishable as a felony in any state or federal court within the five years preceding the application for a permit;

(v) Has knowingly, willfully, and consistently violated the prohibitions specified in *Code Section 12-8-30.7*; or

(vi) Has been adjudicated in contempt of any court order enforcing any federal environmental laws or any environmental laws of the State of Georgia within the five years preceding the application for a permit;

(4) To make investigations, analyses, and inspections to determine and ensure compliance with this part, the rules and regulations promulgated under this part, and any permits or orders which the director may issue;

(5) To enter into such contracts as may be required or necessary to effectuate this part or the rules and regulations promulgated under this part;

(6) To prepare, develop, amend, modify, submit, and implement any comprehensive plan or program sufficient to comply with this part or any applicable federal act, or both, for the control, regulation, and monitoring of solid waste management practices in this state and to enforce such plan or program;

(7) To advise, consult, cooperate, and contract on solid waste management matters with other agencies of this state, political subdivisions of this state, and other designated organizations, authorities, or entities and, with the approval of the Governor, to negotiate and enter into agreements with the governments of other states and the United States and their several agencies, subdivisions, or designated organizations or entities;

(8) To issue, amend, modify, or revoke orders as may be necessary to ensure and enforce compliance with this part and all rules or regulations promulgated under this part;

(9) To institute, in the name of the division, proceedings of mandamus, injunction, or other proper administrative, civil, or criminal proceedings to enforce this part, the rules and regulations promulgated under this part, or any orders or permits issued under this part;

(10) To accept, receive, administer, and disburse grants from public or private sources for the purpose of the proper administration of this part or for the purpose of carrying out any of the duties, powers, or responsibilities under this part;

(11) To grant variances in accordance with this part and the rules and regulations promulgated under this part, provided that such variances are not inconsistent with any applicable federal act and rules or regulations promulgated under such federal act;

(12) To require any person who is engaged in solid waste handling subject to the permit by rule provisions of this part to notify the division in writing, within a reasonable number of days which the director shall specify, of the location and general description of such activity, identify the solid waste handled, and give any other information which may be deemed relevant, under such conditions as the director may prescribe;

(13) To render technical assistance to state, regional, and local governments and others in the planning and operation of solid waste handling;

(14) To develop criteria and a system of priorities for the distribution of any state funds as may be available through a state grant-in-aid program to assist financially local governments and authorities in the planning, implementing, maintaining, or operating of solid waste handling systems which are consistent with local and regional solid waste management plans prepared in accordance with the requirements of this part;

(15) To approve or disapprove projects for which loans or grants are made under any state or federal act to any municipality, county, authority, or agency of the state for the purpose of solid waste handling; provided, however, the financial review and approval or disapproval for a loan will be made by the Georgia Environmental Facilities Authority;

(16) To develop environmental standards for solid waste management planning to assist local governments, authorities, and corporations in the preparation of local and regional plans prepared in accordance with the requirements of this part;

(17) To advise and consult, cooperate, and contract with other agencies of this state, authorities, political subdivisions of this state, and other designated agencies, entities, persons, and corporations and with the governments of other states and the United States and their several agencies, subdivisions, or designated organizations and entities on matters concerning educating the public on all aspects of proper solid waste management;

(18) To collect and disburse all fees and funds authorized or imposed by this article;

(19) To collect fees related to the sale of new replacement tires and with such fees administer such programs as may be necessary to ensure that scrap tires are regulated from the point of generation to the point of ultimate disposal to protect public health and the environment; and

(20) To exercise all incidental powers necessary to carry out the purposes of this part.

(b) The powers and duties described in subsection (a) of this Code section may be exercised and performed by the director through such duly authorized agents and employees as he deems necessary and proper.

#### **§ 12-8-24. Permits for solid waste or special solid waste handling, disposal, or thermal treatment technology facility; inspection of solid waste generators**

(a) No person shall engage in solid waste or special solid waste handling in Georgia or construct or operate a solid waste handling facility in Georgia, except those individuals exempted from this part under *Code Section 12-8-30.10*, without first obtaining a permit from the director authorizing such activity.

(b)(1) No permit for a biomedical waste thermal treatment technology facility shall be issued by the director unless the applicant for such facility demonstrates to the director that a need exists for the facility for waste generated in Georgia by showing that there is not presently in existence within the state sufficient disposal facilities for biomedical waste being generated or expected to be generated within the state. For purposes of this part, "biomedical waste thermal treatment technology facility" means any facility that exists for the purpose of reducing the amount of biomedical waste disposed of through a process of combustion, with or without the process of converting such waste to energy.

(2) Paragraph (1) of this subsection shall not apply to any biomedical waste thermal treatment technology facility which is operated exclusively by a private biomedical waste generator on property owned by the private biomedical waste generator for the purpose of accepting biomedical waste exclusively from the private biomedical waste generator so long as the operation of the biomedical waste thermal treatment technology facility does not adversely affect the public health or the environment. After commencement of operation by a private biomedical waste generator of a biomedical waste thermal treatment technology facility which is permitted by but not included in a local or regional solid waste management plan, amendment of the local or regional solid waste management plan shall be required for any biomedical waste which is no longer to be disposed of by the private biomedical waste generator in its own biomedical waste thermal treatment technology facility prior to any substantial reduction in the amount of biomedical waste produced by the private biomedical waste generator and accepted by its own biomedical waste thermal treatment technology facility or the closure of such facility.

(c) On or after March 30, 1990, any permit for the transportation of municipal solid waste from a jurisdiction generating solid waste to a municipal solid waste disposal facility located in another county shall be conditioned upon the jurisdiction generating solid waste developing and being actively involved in, by July 1, 1992, a strategy for meeting the state-wide goal of waste reduction by July 1, 1996.

(d) If the director determines that such activity will result in any violation of this part or any rule or regulation promulgated pursuant to this part, he shall deny the permit; otherwise, he shall issue the permit, specifying on the permit the conditions under which such activity shall be conducted; provided, however, that a public hearing shall be held by the governing authority of the county or municipality in which the municipal solid waste or special solid waste handling shall occur not less than two weeks prior to the issuance of any permit under this Code section and notice of such hearing shall be posted at the proposed site and advertised in a newspaper of general circulation serving the county or counties in which the proposed activity will be conducted at least 30 days prior to such hearing.

(e)(1) The director may suspend, modify, or revoke any permit issued pursuant to this Code section if the holder of the permit is found to be in violation of any of the permit conditions or any order of the director or fails to perform solid waste handling in accordance with this part or rules promulgated under this part. The director may modify any permit issued pursuant to this Code section in accordance with rules promulgated by the board. All modifications of existing permits shall be classified by the board as either major or minor modifications. All modifications of existing permits to allow vertical or horizontal expansion of existing disposal facilities, except a facility operated by a utility regulated by the Public Service Commission, shall be classified as major permit modifications and shall not be granted by the director sooner than three years from the date any such facility commenced operation; provided, however, that a permit may be modified by the director to allow a vertical or horizontal expansion one time within three years from the date the facility commenced operation so long as the capacity of the facility is not increased more than 10 percent.

(2) Prior to the granting of any major modification of an existing solid waste handling permit by the director, a public hearing shall be held by the governing authority of the county or municipality in which the municipal solid waste facility or special solid waste handling facility requesting the modification is located not less than two weeks prior to the issuance of any permit under this Code section and notice of such hearing shall be posted at the site of such facility and advertised in a newspaper of general circulation serving the county or counties in which such facility is located at least 30 days prior to such hearing.

(3) Except as otherwise provided in this part, major modifications shall meet the siting and design standards applicable to new permit applications in effect on the date the modification is approved by the director; provided, however, that a facility may be granted a variance by the director from those standards when vertically expanded unless such variance is inconsistent with federal laws and regulations; provided,

further, that the director shall not grant a variance from the provisions of subparagraph (B), (C), (D), or (E) of paragraph (4) of this subsection.

(4) No vertical expansions shall be approved under this subsection unless:

(A) The owner or operator demonstrates compliance with all standards not varied by the director;

(B) The owner or operator has installed a surface and ground-water monitoring system approved by the division under currently promulgated rules and has submitted the initial sampling results to the division;

(C) The owner or operator has implemented or installed a methane gas monitoring program or system approved by the division under currently promulgated rules and has submitted the initial sampling results to the division;

(D) The owner or operator has a closure and postclosure care plan approved by the division under currently promulgated rules;

(E) Where noncompliance with the standards for surface water, ground water, or methane gas has been determined, the owner or operator has a schedule and corrective action plan approved by the division for returning the site to compliance within six months of the director's approval of the corrective action plan. If the owner or operator cannot demonstrate that the site can be returned to compliance within said six-month period, the director shall not issue a permit to expand the site vertically but shall order the facility to prepare a final closure plan, including the cessation of waste receipt within six months of the final effective date of the order; and

(F) Where noncompliance with the standards for surface water, ground water, or methane gas may be determined and the permit has not been transferred to another person, the owner or operator has a remedial modification plan providing for the evacuation of all previously disposed waste from a permitted, unlined expansion site and redisposal of such waste into a conforming facility with a composite liner and leachate collection system. If noncompliance is determined, the director shall order the owner or operator to prepare a corrective action plan, which must be approved by the division, and such corrective action must be completed within the compliance time frame determined by the division. If the owner or operator cannot demonstrate that the site can be returned to compliance within such division compliance time frame, the director shall order the facility to prepare a final closure plan, including the cessation of waste receipt within 12 months of the final effective date of the order.

(5) Modifications for vertical expansions issued under this Code section may be restricted in duration, but in no case shall be effective beyond July 1, 1998, for municipal solid waste landfills not having liners and leachate collection systems.

(6) The owner or operator of any site not having a liner and leachate collection system which is vertically expanded and which subsequently fails to demonstrate compliance with all applicable surface water, ground-water, or methane gas standards shall demonstrate to the satisfaction of the director, through a corrective action plan, that the site has been or can be returned to compliance within six months of the director's approval of the corrective action plan. If the owner or operator fails to demonstrate to the satisfaction of the director that compliance has been attained or can be attained, the director shall notify the owner or operator, ordering cessation of the acceptance of waste for disposal, remediation of noncompliance, and implementation of the final closure plan, to include a final date for closure.

(f) In the event of the modification, suspension, amendment, or revocation of a permit, the director shall serve written notice of such action on the permit holder and shall set forth in such notice the reason for such action.

(g) Prior to the issuance of any permit for a solid waste handling facility or the granting of any major modification of an existing solid waste handling permit, the director shall require written verification to be furnished by the applicant that the proposed facility complies with local zoning or land use ordinances, if any; and after July 1, 1992, that the proposed facility is consistent with the local, multijurisdictional, or regional solid waste management plan developed in accordance with standards promulgated pursuant to this part subject to the provisions of *Code Section 12-8-31.1* and that the host jurisdiction and all jurisdictions generating solid waste destined for the applicants' facility can demonstrate that they are part of an approved

solid waste plan developed in accordance with standards promulgated pursuant to this part and are actively involved in and have a strategy for meeting the state-wide goal of waste reduction by July 1, 1996. Prior to the issuance of any permit for a solid waste handling facility or the granting of any major modification of an existing solid waste handling permit that will handle solid waste from jurisdictions outside Georgia, the out-of-state solid waste generating jurisdictions shall provide documentation that they have a strategy for and are actively involved in meeting planning requirements and a waste reduction goal that are substantially equivalent to the planning requirements and waste reduction goal contained in this part.

(h) No permit for a disposal facility shall be issued to any regional solid waste management authority created under Part 2 of this article, the "Regional Solid Waste Management Authorities Act," until local and regional solid waste management plans consistent with this part have been developed for all jurisdictions participating in such authority and such plans are found to be consistent with the state solid waste management plan pursuant to subsection (d) of *Code Section 12-8-31.1*.

(i) No permit shall be issued for a new solid waste thermal treatment technology facility unless the applicant meets or exceeds standards adopted by the board which shall be consistent with and at least as stringent as the Federal New Source Performance Standards for new municipal waste combustors outlined in regulations pursuant to the federal Clean Air Act, *42 U.S.C. Section 1857*, et seq., as amended, and *42 U.S.C. Section 7401*, et seq., as amended.

(j) The director or his designee is authorized to inspect any generator in Georgia to determine whether that generator's solid waste is acceptable for the intended handling facility. The division may require any generator in Georgia to cease offering solid waste for handling if such solid waste is not acceptable under standards promulgated by the board, and the division may prohibit the handling of such solid waste until waste management procedures acceptable to the division are developed. Such prohibition shall continue in effect until the waste management procedure for handling is approved in writing by the division. Any generator or handler in Georgia which does not comply with a prohibition made under this subsection shall be in violation of this part.

#### **§ 12-8-24.1. Certification of municipal solid waste disposal facility operators**

(a) After July 1, 1992, no person shall perform the duties of a municipal solid waste disposal facility operator without being duly certified under this Code section.

(b) After July 1, 1992, no municipal solid waste disposal facility shall be operated in Georgia unless the operator is certified under this Code section. All inspectors of municipal solid waste disposal facilities shall be certified to inspect the same.

(c) The division is authorized to cooperate with the University System of Georgia or with any other appropriate organization approved by the director to develop a certification program which conforms with the requirements of this part. The division may classify all municipal solid waste disposal facilities required to have operators certified under this part with due regard to the size, type, character of the solid waste to be disposed of, and other physical conditions affecting such municipal solid waste disposal facilities according to the skill, knowledge, and experience that the operator in responsible charge must have to operate the facilities successfully so as to protect the public health and welfare and prevent environmental problems.

(d) Any certificate granted under this Code section shall be renewable as provided by rules of the board.

(e) The division shall approve all examinations and courses to be used in determining the knowledge, ability, and judgment of applicants for certification under this Code section.

(f) Upon application, a certificate may be issued without examination in a comparable classification to any person who holds a valid current certificate in any state, territory, or possession of the United States or any other country, provided that the requirements for certification of operators under which the person's certificate was issued do not conflict with this part and are of a standard not lower than that specified by regulations adopted under this part and provided, further, that reciprocal privileges are granted to certified operators of this state.

(g) The director may investigate the actions of any operator and may revoke or suspend the certificate of an operator when the director finds that the operator has practiced fraud or deception; that reasonable care or

judgment or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly.

**§ 12-8-24.2. Public hearing prior to entering contract regarding landfill**

The governing authority of any county or municipal corporation and the directors or managers of any local authority or special district shall hold a public hearing before entering into a contract for the sale, lease, or management of a landfill or solid waste disposal facility owned by such county, municipal corporation, local authority, or special district. The party responsible for holding such a public hearing shall cause notice of the hearing to be posted at the site of the landfill or facility and to run in a newspaper of general circulation serving the county, municipal corporation, local authority, or special district not less than 30 nor more than 45 days prior to the date of the hearing.

**§ 12-8-25. Sites in certain counties within one-half mile of adjoining county**

(a)(1) Except as otherwise provided in subsection (b) of this Code section, to encourage cooperation between the various counties, from March 15, 1988, through April 1, 1990, no permit shall be issued for a solid waste disposal facility in any county having a population of more than 350,000 according to the United States decennial census of 1980 or any future such census if any part of the site is within one-half mile of an adjoining county without the applicant's first receiving the express approval of the governing authority of that adjoining county; provided, however, that the director may permit such a facility if the applicant provides evidence that no alternative sites or methods are available in that jurisdiction for the handling of its solid waste. This paragraph shall apply to all permit applications that are pending or made on or after March 15, 1988, and to all permits issued prior to May 1, 1988, which permits are the subject of an appeal or judicial review and such appeal or judicial review is in process.

(2) Except as otherwise provided in subsection (b) of this Code section, until after April 1, 1990, no permit shall be issued to a private applicant for a solid waste disposal facility in any county of this state having a population of more than 350,000 according to the United States decennial census of 1980 or any future such census if any part of the site is within two miles of an adjoining county without the applicant's first receiving express approval of the governing authority of the adjoining county. As used in this paragraph, the term "private applicant" means any private person, firm, corporation, or other private entity, and the term does not mean or include the United States government or any agency thereof, the State of Georgia or any agency, institution, or public authority thereof, or any county or municipality of this state. As used in this paragraph, the term "solid waste disposal facility" shall not mean or include any solid waste disposal facility which incorporates waste to energy processing, recycling, activities associated with the recycling process, or any combination of the foregoing.

(3) Except as otherwise provided in subsection (b) of this Code section, to encourage cooperation among the various cities and counties, after April 4, 1997, no permit shall be issued for a municipal solid waste disposal facility in any city or county if any part of the site is within one-half mile of the boundaries of such city or county adjoining any city or county in this state without the applicant's first receiving the express approval of the governing authority of that adjoining city or county; provided, however, that the director may permit such a facility if the applicant provides evidence that no alternative sites or methods are available in that jurisdiction or in any adjoining jurisdiction of the affected city and county for the handling of its solid waste. This paragraph shall apply to all permit applications that are pending on or made after April 4, 1997, and to all permits issued prior to such date, which permits are the subject of an appeal or judicial review and such appeal or judicial review is in process.

(b) The consent of an adjoining city or county as provided in subsection (a) of this Code section shall not be required either by new permit or by modification of an existing permit when the expansion of an existing municipal solid waste disposal facility is granted by the director or when the ownership, direct or indirect, of an existing municipal solid waste disposal facility is transferred.

#### **§ 12-8-25.1. Sites within 5,708 yards of national historic site**

In order to preserve historic sites and their natural and built environments, no permit shall be issued for a solid waste disposal facility within 5,708 yards of the geographic center of any of the three sites currently designated in Georgia as a National Historic Site; provided, however, that the director may permit a solid waste disposal facility at such a site if the applicant provides evidence that no alternative sites or methods are available in that jurisdiction for the handling of its solid waste. This Code section shall apply to all permit applications made on or after July 1, 1988, and to all permits issued prior to July 1, 1988, which permits are the subject of an appeal or judicial review and such appeal or judicial review is in process.

#### **§ 12-8-25.2. Sites within two miles of significant ground-water recharge area**

No permit shall be issued for a municipal solid waste landfill if any part of the site is within two miles of an area that has been designated by the director as a significant ground-water recharge area unless such municipal solid waste landfill will have a liner and leachate collection system and meets any other requirements as may be established by rules and regulations of the board or pursuant to other geological considerations as may be determined appropriate by the director.

#### **§ 12-8-25.3. Further restrictions on sites within significant ground-water recharge area or near military air space used as bombing range**

(a) Notwithstanding the provisions of *Code Section 12-8-25.2*, no permit shall be issued for a municipal solid waste landfill which accepts solid waste generated from outside the county in which such landfill is located or, in the case of a regional landfill, from outside any of the counties or special districts empowered to engage in solid waste management activities constituting such region if any part of such site is within any area that has been designated by the director as a significant ground-water recharge area.

(b) In addition to the provisions of subsection (a) of this Code section, in the case of a regional municipal solid waste landfill where any part of such site is within any area that has been designated by the director as a significant ground-water recharge area, no permit shall be issued for such regional landfill unless the boundaries of the counties or special districts empowered to engage in solid waste management activities are contiguous and such counties or special districts have entered into a joint contract for the collection and disposal of solid waste.

(c) No permit or modification of an existing permit shall be issued for land application of untreated municipal sewage sludge located in an area designated by Hydrologic Atlas 18 prepared by the Department of Natural Resources as a significant ground-water recharge area including, but not limited to, those areas designated as probable areas of thick soils.

(d) Notwithstanding any other provision of law or any administrative regulation or action to the contrary, no permit shall be issued for a municipal solid waste landfill within two miles of a federally restricted military air space which is used for a bombing range. The provisions of this subsection shall apply to all permit applications pending on or after July 1, 1997, and to all permits denied prior to such date which are the subject of an appeal or judicial review pending on such date.

#### **§ 12-8-25.4. Limits on the number of solid waste facilities within given area**

(a) As provided for in *Code Section 12-8-21*, it is the policy of the State of Georgia to assure that solid waste facilities do not adversely affect the health, safety, and well-being of the public and do not degrade the quality of the environment. The General Assembly finds that an excessive concentration of solid waste facilities in any one community can adversely affect the health, safety, well-being, and environment of that community and impose an onus on the community without any reciprocal benefits to the community. The purpose of this Code section is to provide a limited degree of protection against any given community becoming an involuntary host to an excessive concentration of solid waste facilities.

(b) No permit shall be issued under *Code Section 12-8-24* for any solid waste handling facility other than a material recovery facility or compost facility or for any solid waste disposal facility other than a private industry



solid waste disposal facility if any part of the premises proposed for permitting would lie within any geographic area which can be shown to meet the following criteria:

(1) The geographic area is in the shape of a circle with a two-mile radius, the centerpoint of which circle may be any point within the premises proposed for permitting; and

(2) The circular geographic area already includes all or a portion of three or more landfills within that portion of its territory which is within this state (including the landfill proposed for permitting in the case of a proposed expansion).

(c) For the purposes of the criteria specified in subsection (b) of this Code section, the term "landfill" shall include:

(1) Any active landfill permitted under authority of the state under this part or any prior general law of the state; and

(2) Any inactive landfill so permitted under this part or any prior general law, which landfill ceased receiving waste on or after June 29, 1989, and is either in closure or postclosure status, provided that such a landfill which has completed postclosure care status shall no longer be included but for purposes of subsection (b) of this Code section the count of landfills shall not include any permit by rule inert waste landfill or any private industry solid waste disposal facility; and in counting landfills each existing landfill site shall be counted only once even if such landfill site has previously been expanded under a new or existing permit, provided the facilities under each new or existing permit are the same type landfill, are owned by the same person, and are contiguous or if not contiguous are separated only by the width of a public road.

(d) Subsection (b) of this Code section shall apply with respect to: (1) the permitting of a proposed horizontal expansion requiring a permit or a major modification of an existing permit; and (2) the permitting of a new site requiring a new permit; provided, however, that a permit for a vertical expansion not to exceed 5 million tons capacity may be granted if all permitted landfills wholly or partially in the two-mile radius circular geographic area are in compliance with state and federal laws and regulations and any applicable remedial plans have been implemented.

(e) The board may by rule authorize an exemption from this Code section for one or more areas in the state if the board determines that compliance with this Code section is not reasonably practicable in such area or areas because of a high water table in such area or areas which limits the land area suitable for facility siting.

#### **§ 12-8-25.5. Locating disposal facility near private recreational camp**

No permit shall be issued for any new municipal solid waste disposal facility if any part of the premises proposed for permitting is within one mile of any private recreational camp operated primarily for use by persons under 18 years of age and which camp has been so operated at its location for 25 years or more.

#### **§ 12-8-26. Public meetings on site selection; notice; decision**

(a) Any county, municipality, group of counties, or authority beginning a process to select a site for a municipal solid waste disposal facility must first call at least one public meeting to discuss waste management needs of the local government or region and to describe the process of siting facilities to the public. Notice of this meeting shall be published within a newspaper of general circulation serving such county or municipality at least once a week for two weeks immediately preceding the date of such meeting. A regional solid waste management authority created under Part 2 of this article must hold at least one meeting within each jurisdiction participating in such authority, and notice for these meetings must be published within a newspaper of general circulation serving each such jurisdiction at least once a week for two weeks immediately preceding the date of such meeting.

(b) The governing authority of any county or municipality taking action resulting in a publicly or privately owned municipal solid waste disposal facility siting decision shall cause to be published within a newspaper of general circulation serving such county or municipality a notice of the meeting at which such siting decision is to be made at least once a week for two weeks immediately preceding the date of such meeting. Such notice shall state the time, place, and purpose of the meeting and the meeting shall be conducted by the governing

authority taking the action. A siting decision shall include, but is not limited to, such activities as the final selection of property for landfilling and the execution of contracts or agreements pertaining to the location of municipal solid waste disposal facilities within the jurisdiction, but shall not include zoning decisions.

**§ 12-8-27. Standards for handling special solid waste; transportation manifest; fees; inspection; prohibition of waste generated out-of-state; certification**

Reserved. Repealed by Ga. L. 1993, p. 399, § 7, effective April 5, 1993.

[Repealed]

**§ 12-8-27.1. Solid waste trust fund**

(a) There shall be established the solid waste trust fund. The director shall serve as trustee of the solid waste trust fund. The moneys deposited in such fund pursuant to this Code section, *Code Section 12-8-27*, *Code Section 12-8-30.6*, and *Code Section 12-8-40.1* may be expended by the director, with the approval of the board, for the following purposes:

(1) To take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of contaminants from a disposal facility;

(2) To take preventive or corrective actions where the release of contaminants presents an actual or potential threat to human health or the environment and where the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to closure and postclosure care of a disposal facility and provisions for providing alternative water supplies;

(3) To take such actions as may be necessary to monitor and provide postclosure care of any disposal facility, including preventive and corrective actions, without regard to the identity or solvency of the owner thereof, commencing five years after the date of completing closure; and

(4) To take such actions as may be necessary to implement the provisions of a scrap tire management program in this state, particularly as may be related to the cleanup of scrap tire disposal piles and facilities, regulation of scrap tire carriers and other handlers, and disbursement of grants and loans to cities, counties, and other persons as may be necessary to implement fully the provisions of this part.

(b) If the director determines that a solid waste or special solid waste handling facility has been abandoned, that the owner or operator thereof has become insolvent, or that for any other reason there is a demonstrated unwillingness or inability of the owner or operator to maintain, operate, or close the facility, to carry out postclosure care of the facility, or to carry out corrective action required as a condition of a permit to the satisfaction of the director, the director may implement the applicable financial responsibility mechanisms. The proceeds from any applicable financial responsibility mechanisms shall be deposited in the solid waste trust fund.

(c) The determination of whether there has been an abandonment, default, or other refusal or inability to perform and comply with closure, postclosure, or corrective action requirements shall be made by the director.

(d) Any interest earned upon the corpus of the solid waste trust fund shall not become a part thereof but shall be paid over to the division to be utilized by the division for administration of the state solid waste management program. Any funds not expended for this purpose in the fiscal year in which they are generated shall be deposited into the state treasury. Nothing in this Code section shall be construed so as to allow the division to retain any funds required by the Constitution of Georgia to be paid into the state treasury. The division shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, known as the "Budget Act"; provided, however, that the division shall be exempt from the provisions of *Code Section 45-12-92*, which requires payment into the state treasury of moneys collected by state agencies.

## **§ 12-8-27.2. Financial responsibility**

(a) No solid waste handling facility shall be operated or maintained by any person unless adequate financial responsibility has been demonstrated to the director to ensure the satisfactory maintenance, closure, and postclosure care of such facility or to carry out any corrective action which may be required as a condition of a permit. The available financial responsibility mechanisms shall be expansive with adequate variety and flexibility to allow the owner or operator to meet its financial obligations. The owner or operator shall be allowed to use combined financial responsibility mechanisms for a single facility and shall be allowed to use combined financial responsibility mechanisms for multiple facilities, utilizing actuarially sound risk-spreading techniques. The director shall require the demonstration of financial responsibility prior to issuing a permit for any solid waste handling facility.

(b) The provisions of this Code section shall not apply to any county, municipality, authority, or special district empowered to engage in solid waste management activities which operates or maintains a solid waste handling facility unless and until such times as federal regulations require counties, municipalities, or special districts to demonstrate financial responsibility for such facilities.

## **§ 12-8-28. Lead acid vehicle batteries**

(a) After January 1, 1991, no person may place a used lead acid vehicle battery in mixed municipal solid waste or discard or otherwise dispose of a lead acid vehicle battery except by delivery to a battery retailer or wholesaler, to a secondary lead smelter, or to a collection or recovered materials processing facility that accepts lead acid vehicle batteries.

(b) After January 1, 1991, no battery retailer shall dispose of a used lead acid vehicle battery except by delivery to the agent of a battery wholesaler or a secondary lead smelter, to a battery manufacturer for delivery to a secondary lead smelter, or to a collection or recovered materials processing facility that accepts lead acid vehicle batteries.

(c) After January 1, 1991, any person selling lead acid vehicle batteries at retail or offering lead acid vehicle batteries for retail sale in this state shall:

(1) Accept, at the point of transfer, lead acid vehicle batteries from customers for recycling; and

(2) Post written notice, which must be at least 8 1/2 inches by 11 inches in size and must contain the universal recycling symbol and the following language:

"IT IS ILLEGAL TO PUT A MOTOR VEHICLE BATTERY IN THE GARBAGE. RECYCLE YOUR USED BATTERIES. STATE LAW REQUIRES US TO ACCEPT MOTOR VEHICLE BATTERIES FOR RECYCLING."

(d) After January 1, 1991, any person selling lead acid vehicle batteries at wholesale or offering lead acid vehicle batteries for sale at wholesale must accept, at the point of transfer, lead acid vehicle batteries from customers.

## **§ 12-8-29. Investigations by director; actions to enforce article**

The director shall have the authority to investigate any apparent violation of this part and to take any action authorized under this part as he deems necessary and may institute proceedings of mandamus or other proper legal proceedings to enforce this part.

### **§ 12-8-29.1. Authority to enter property for inspection and investigation**

The director or his duly authorized representatives shall have the power to enter at reasonable times upon any private or public property for the purpose of inspection and investigation of conditions relating to solid waste handling in this state.

## **§ 12-8-29.2. Confidentiality of information obtained by director or agents**

(a) Any information relating to secret processes, devices, or methods of manufacture or production, or quantities and sources of recovered materials being privately processed, obtained by the director or his agents in the administration of this part shall be kept confidential.

(b) In the event the employment of the director or his agents with the department terminates for any reason, the confidentiality requirement outlined in subsection (a) of this Code section shall continue to apply to such persons. Any person who violates this subsection shall be guilty of a misdemeanor. Such criminal penalty shall be in addition to such civil remedies as may be available to any party.

## **§ 12-8-30. Director's order for corrective action**

Whenever the director has reason to believe that a violation of any provision of this part or any rule or regulation adopted pursuant to this part has occurred, he shall attempt to obtain a remedy with the violator or violators by conference, conciliation, or persuasion. In the case of failure of such conference, conciliation, or persuasion to effect a remedy to such violation, the director may issue an order directed to such violator or violators. The order shall specify the provisions of this part or rule or regulation alleged to have been violated and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any order issued by the director under this part shall be signed by the director. Any such order shall become final unless the person or persons named therein request in writing a hearing no later than 30 days after such order is served on such person or persons.

### **§ 12-8-30.1. Emergency orders**

Whenever the director finds that an emergency exists requiring immediate action to protect the public health, safety, or well-being, the director, with the concurrence of the Governor, may issue an order declaring the existence of such an emergency and requiring that such action be taken to meet the emergency as the director specifies. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but shall be afforded a hearing within 48 hours.

### **§ 12-8-30.2. Hearings and review of actions and orders**

All hearings on and review of contested matters and orders and all hearings on and review of any other enforcement actions or orders under this part shall be provided and conducted in accordance with subsection (c) of *Code Section 12-2-2*.

### **§ 12-8-30.3. Judgment in accordance with director's order**

The director may file in the superior court of the county wherein the person under order resides or, if such person is a corporation, in the county wherein the corporation maintains its principal place of business or, in any case, in the county wherein the violation occurred or in which jurisdiction is appropriate a certified copy of an unappealed final order of the director or of a final order of the director affirmed upon appeal or modified on any review or appeal from which no further review is taken or allowed, whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in an action duly heard and determined by such court.

### **§ 12-8-30.4. Injunctive relief**

Whenever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute any violation of this part, the director may apply to the superior court of the county where such person resides, or, if such person is a nonresident of the state, to the superior court of the county where such person is engaged in or is about to engage in such act or practice, for an order restraining and enjoining such act or practice. Upon a showing by the director that such person has engaged

in or is about to engage in any such act or practice, a temporary or permanent injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy at law.

#### **§ 12-8-30.5. Attorney General's duties**

It shall be the duty of the Attorney General or his representative to represent the director in all actions in connection with this part.

#### **§ 12-8-30.6. Civil penalties for violations; procedures**

(a) Any person, provided that person is a public authority or a city or county government located within the boundaries of Georgia, violating any provision of this part or rules or regulations adopted pursuant to this part or intentionally or negligently failing or refusing to comply with any final or emergency order of the director issued as provided in this part shall be liable for a civil penalty not to exceed \$1,000.00 for such violation and for an additional civil penalty not to exceed \$500.00 for each day during which such violation continues. Any person other than a public authority or a city or county government located within the boundaries of Georgia violating any provision of this part or intentionally or negligently failing or refusing to comply with any final or emergency order of the director issued as provided in this part shall be liable for a civil penalty not to exceed \$25,000.00 per day for each day during which such violation continues.

(b) Whenever the director has reason to believe that any person has violated any provision of this part or any rule or regulation effective under this part or has failed or refused to comply with any final order or emergency order of the director, he may upon written request cause a hearing to be conducted before an administrative law judge appointed by the board. Upon finding that said person has violated any provision of this part or any rule or regulation effective under this part or has failed or refused to comply with any final order or emergency order of the director, the administrative law judge shall issue his decision imposing civil penalties as provided in this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with subsection (c) of *Code Section 12-2-2*.

(c) In rendering a decision under this Code section imposing civil penalties, the administrative law judge shall consider all factors which are relevant, including, but not limited to, the following:

(1) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;

(2) The character and degree of impact of the violation or failure to comply on the natural resources of the state, especially any rare or unique natural phenomena;

(3) The conduct of the person incurring the civil penalty in promptly taking all feasible steps or procedures necessary or appropriate to comply or to correct the violation or failure to comply;

(4) Any prior violations or failures to comply by such person with regard to statutes, rules, regulations, or orders administered, adopted, or issued by the director;

(5) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure to comply;

(6) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure; and

(7) The character and degree of intent with which the conduct of the person incurring the civil penalty was carried out.

(d) All civil penalties recovered by the director as provided in this Code section shall be paid into the solid waste trust fund established pursuant to the provisions of *Code Section 12-8-27.1*.

#### **§ 12-8-30.7. Unlawful acts**

It shall be unlawful for any person to engage in solid waste handling except in such a manner as to conform to and comply with this part and all applicable rules, regulations, and orders established under this part.

#### **§ 12-8-30.8. Penalties for violations**

(a) Any person who:

(1) Knowingly transports or causes to be transported any solid waste as defined in this part to a facility which does not have a permit, which does not have a variance pursuant to this part, or which is not subject to an order of the director which specifically authorized continued operation of such facility;

(2) Knowingly treats, processes, stores, or disposes of any solid waste as defined in this part:

(A) Without a permit or an order of the director allowing such treatment, processing, storage, or disposal of solid waste;

(B) In knowing violation of any material condition or requirement of such permit or order; or

(C) In knowing violation of any material condition or requirement of any applicable regulations or standards adopted by the board in accordance with *Code Section 12-8-23*;

(3) Knowingly omits material, information, or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this part or regulations promulgated pursuant to this part;

(4) Knowingly processes, stores, treats, transports, disposes of, or otherwise handles any solid waste as defined in this part, and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with this part; or

(5) Knowingly transports without a manifest or causes to be transported without a manifest, any solid waste required by this part to be accompanied by a manifest shall, upon conviction, be subject to a fine of not more than \$50,000.00 for each day of violation or imprisonment for not less than one nor more than two years or, in the case of a violation of paragraph (1) or (2) of this subsection, three years, or both. If conviction is for a violation committed after a first conviction of such person under this subsection, the maximum punishment under the respective paragraphs shall be doubled with respect to both fine and imprisonment.

(b) An organization may be convicted for the criminal acts set forth in subsection (a) of this Code section if an agent of the organization performs the conduct which is an element of the criminal act set forth in subsection (a) of this Code section and the agent's action is authorized, requested, commanded, or recklessly tolerated by the board of directors of the organization or by a managerial official who is acting within the scope of such official's employment on behalf of the organization.

#### **§ 12-8-30.9. Powers of local governmental bodies and state not limited by this part**

No provision of this part and no rule, regulation, or ruling of the board or the director shall be construed to be a limitation:

(1) On the power of a municipality, county, authority, or special district to adopt and enforce additional regulations, not in conflict with this part, imposing further conditions, restrictions, or limitations with respect to the handling or disposal of municipal solid waste;

(2) On the power of a municipality, county, authority, or special district to declare, prohibit, and abate nuisances;

(3) On the power of the Attorney General, at the request of the director or upon his own volition, to bring an action in the name of the State of Georgia; or

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

#### **§ 12-8-30.10. Exemption for private individuals**

This part shall not apply to any individual disposing of solid waste originating from his own residence onto land or facilities owned by him when disposal of such waste does not hereby adversely affect the public health.

#### **§ 12-8-31. State solid waste management plan**

(a) By January 1, 1991, the division, jointly with the Department of Community Affairs and in cooperation with the Georgia Environmental Facilities Authority and local government officials, shall develop a state solid waste management plan.

(b) The state solid waste management plan shall be submitted to the Governor's Development Council and shall serve as the guide for the development of local plans and regional plans for solid waste management.

(c) The state solid waste management plan shall include but not be limited to:

(1) A general analysis of solid waste management practices currently in use, management alternatives and technologies available, and their application;

(2) Procedures and strategies for meeting state goals and objectives for waste reduction;

(3) Minimum standards and procedures to be met by local and regional solid waste management plans, including the assurance of adequate solid waste handling capability and capacity for the subsequent ten-year period which shall specifically include adequate collection capability;

(4) A procedure for informing the public annually of the locally incurred costs of solid waste management;

(5) Procedures for ensuring cooperative efforts on solid waste management planning by the state, regional development centers, local governments, groups of local governments, and private companies, including a description of the means by which the state will encourage local governments to pursue regional approaches;

(6) A description of public and private alternatives for the provision of solid waste management services;

(7) A description of the respective roles of agencies in the implementation of a state-wide public information education program on solid waste management which emphasizes grass roots participation of all age levels;

(8) Methods of assuring public participation in the planning and decision-making processes; and

(9) Methods for assuring implementation of the state solid waste management plan.

(d) In monitoring and reporting on the implementation success of the state solid waste management plan required under this Code section, the Department of Community Affairs, with the cooperation of the division and the Georgia Environmental Facilities Authority, beginning in January, 1992, shall report annually to the Governor and the General Assembly on the status of solid waste management in Georgia. The annual report shall include but not be limited to:

(1) The status of local and regional solid waste planning in Georgia;

(2) The number and types of solid waste handling facilities in Georgia;

(3) The remaining permitted capacity of each permitted solid waste handling facility;

(4) The number and types of solid waste grants made to local governments;

(5) The number and types of solid waste loans made to local governments;

(6) A compilation and analysis of solid waste management data provided by cities and counties in their annual reports;

(7) A statement of progress achieved in meeting the goal established in subsection (c) of *Code Section 12-8-21*;

- (8) A statement of progress achieved in solid waste management education;
- (9) Any revisions in the state solid waste management plan which are deemed necessary; and
- (10) Recommendations for improving the management of solid waste in this state.

**§ 12-8-31.1. Local, multijurisdictional, or regional solid waste plans**

(a) Each city and county in Georgia shall develop or be included in a comprehensive solid waste management plan not later than July 1, 1993. Said plan may be developed independently as a local plan or jointly with other jurisdictions as a multijurisdictional or regional solid waste plan and shall conform to the plan development procedures developed and promulgated by the Department of Community Affairs under the provisions of Chapter 13 of Title 50.

(b) The local, multijurisdictional, or regional solid waste plan shall, at a minimum, provide for the assurance of adequate solid waste handling capability and capacity within the planning area for at least ten years from the date of completion of the plan which shall specifically include an adequate collection and disposal capability; shall enumerate the solid waste handling facilities as to size and type; and shall identify those sites which are not suitable for solid waste handling facilities based on environmental and land use factors.

(c) The review process for local, multijurisdictional, and regional solid waste management plans shall be in such form as developed and promulgated by the Department of Community Affairs under the provisions of Chapter 13 of Title 50. The regional development center for each geographical location in which a local, multijurisdictional, or regional plan applies shall confirm that the local, multijurisdictional, or regional plan is consistent with the state solid waste management plan.

(d) Effective January 1, 1992, each city and county shall report annually to the Department of Community Affairs on the status of solid waste management in the jurisdiction. Such reports may be individual or collective in nature or, in lieu of local reports, a regional report may be filed by any of the several regional development centers for political jurisdictions within their region. The annual report shall include but not be limited to:

- (1) The amount of solid waste collected, processed, and disposed of in the area;
- (2) The progress on the reduction in solid waste, as evidenced by the solid waste received at disposal facilities, which are not exempt from subsection (c) of *Code Section 12-8-21*, in the planning area since the previous reporting period and total cumulative progress made toward meeting the 25 percent reduction goal;
- (3) The remaining permitted capacity of disposal facilities;
- (4) Recycling and composting activities in existence;
- (5) Public information and education activities during the reporting period; and
- (6) Any other pertinent information as may be required.

(e) After July 1, 1992, no permit, grant, or loan shall be issued for any municipal solid waste disposal facility or any solid waste handling equipment or recycling equipment used in conjunction therewith in a county or region which is not consistent with a local, multijurisdictional, or regional solid waste management plan. Each application for a permit, grant, or loan issued after July 1, 1992, shall include the following:

- (1) Certification that the facility for which a permit is sought complies with local land use and zoning requirements, if any;
- (2) Verification that the facility for which a permit is sought meets the ten-year capacity needs identified in the local, multijurisdictional, or regional solid waste management plan; and
- (3) Demonstration that the host jurisdiction and all jurisdictions generating solid waste destined for the applicant's facility are part of an approved solid waste management plan developed in accordance with standards promulgated pursuant to this part, and are actively involved in, and have a strategy for, meeting the state-wide goal for reduction of solid waste disposal by July 1, 1996.

(f) This Code section shall not apply to:



(1) Any solid waste disposal facility which is operated exclusively by a private solid waste generator on property owned by the private solid waste generator for the purpose of accepting solid waste exclusively from the private solid waste generator so long as the operation of the solid waste disposal facility does not adversely affect the public health or the environment. After commencement of operation by a private solid waste generator of a solid waste disposal facility which is permitted but not included in a local or regional solid waste management plan, an amendment into a local or regional solid waste management plan shall be required for any solid waste which is to be no longer disposed of by the private solid waste generator in its own solid waste disposal facility prior to any substantial reduction in the amount of solid waste accepted by the solid waste disposal facility or its closure; or

(2) Effective September 1, 1994, any privately owned solid waste handling facility seeking a permit or major modification of an existing permit where the host local governing authority has failed either to submit or make a good faith effort, as determined by the Department of Community Affairs, to submit a local solid waste management plan or to be included in a multijurisdictional or regional solid waste management plan; provided, however, that the permit applicant continues to be obligated to demonstrate that all generating jurisdictions from which waste will be received are part of an approved solid waste management plan developed in accordance with standards promulgated pursuant to this part and have a strategy to meet and are actively engaged in meeting the state-wide goal of reducing waste by 25 percent by July 1, 1996.

(g) Effective July 1, 1991, it shall be the responsibility of the owner or operator of each municipal solid waste disposal facility to keep an accurate written record of all amounts of solid waste measured in tons received at the facility. Measurement in tons of solid waste received shall be accomplished by one or more of the following methods:

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

(2) Implementation of contractual or other arrangements for the use of scales at a location other than the disposal facility for weighing all waste destined for disposal at the facility; or

(3) Implementation of contractual or other arrangements for the use of scales at a location other than the disposal facility to weigh representative samples of the solid waste received at the disposal facility on a basis which is sufficiently frequent to estimate accurately the amount of solid waste received at the disposal facility.

#### **§ 12-8-32. Permits for regional solid waste disposal facilities**

(a) Prior to submission of an application to the division for a permit for a regional solid waste disposal facility, conflicts as defined in Articles 1 and 2 of Chapter 8 of Title 50 shall follow the mediation procedures developed by the Department of Community Affairs pursuant to Articles 1 and 2 of Chapter 8 of Title 50. Upon the submission of any application to the division for any municipal solid waste disposal facility for which a permit other than a permit by rule is required by the division, the permit applicant shall within 15 days of the date of submission of the application publicize the submission by public notice and in writing as follows:

(1) If the application is for a facility serving no more than one county, the public notice shall be published in a newspaper of general circulation serving the host county, and each local government in the county and the regional development center shall further be notified in writing of the permit application;

(2) If the application is for a facility serving more than one county, the public notice shall be published in a newspaper of general circulation serving each affected county, and each local government within said counties and the regional development center shall be further notified in writing of the permit application; and

(3) The public notice shall be prominently displayed in the courthouse of each notified county.

(b) The division shall review the application and supporting data, make a determination as to the suitability or unsuitability of the proposed site for the intended purpose, and notify the applicant and the host local government if different from the applicant in writing of its determination.

(c) Upon receipt from the division of notice that the proposed site is suitable for the intended purpose, the applicant shall within 15 days of receipt of such notification publicize the fact by public notice as outlined in paragraphs (1), (2), and (3) of subsection (a) of this Code section. Further, within 45 days of receipt of such notification from the division, the host local government for the proposed site shall as outlined in paragraphs

(1), (2), and (3) of subsection (a) of this Code section advertise and hold a public meeting to inform affected residents and landowners in the area of the proposed site and of the opportunity to engage in a facility issues negotiation process.

(d) Following notification of the applicant of the proposed site's suitability, the division may continue to review the applicant's permit application but the director shall not take any action with respect to permit issuance or denial until such time as the local notification and negotiation processes described in this Code section have been exhausted.

(e) The division shall not be a party to the negotiation process described in this Code section, nor shall technical environmental issues which are required by law and rules to be addressed in the permitting process be considered negotiable items by parties to the negotiation process.

(f) Within 30 days following a public meeting held in accordance with subsection (c) of this Code section, a facility issues negotiation process shall be initiated by the host local government upon receipt of a written petition by at least 25 affected persons, at least 20 of whom shall be registered voters of or landowners in the host jurisdiction. Multiple petitions may be consolidated into a single negotiating process. For the purposes of this subsection, the term "affected person" means a registered voter of the host local government or of a county contiguous to such host local government or a landowner within the jurisdiction of the host local government.

(g) Within 15 days following receipt of such written petition, the host local government shall validate the petition to ensure that the petitioners meet the requirements of this Code section.

(h) Within 15 days following the validation of the written petition to negotiate, the host local government shall notify the petitioners by publication as provided in paragraphs (1), (2), and (3) of subsection (a) of this Code section; shall notify the permit applicant if different from the host local government, the division, and the regional development center that the negotiation process is being initiated; and shall set a date for a meeting with the citizens facility issues committee, the host local government, and the permit applicant not later than 30 days following validation of such written petition to negotiate.

(i) The petitioning persons shall select up to ten members, at least eight of whom shall be registered voters or landowners in the host local government, to serve on a citizens facility issues committee to represent them in the negotiation process. The membership of the citizens facility issues committee shall be chosen within 15 days following the validation of such written petition pursuant to this Code section.

(j) The negotiation process shall be overseen by a facilitator named by the host local government, after consultation with the citizens facility issues committee, from a list provided by the Department of Community Affairs. The function of the facilitator shall be to assist the petitioners, the host local government, and the permit applicant, if different from the host local government, through the negotiation process. The cost, if any, of the facilitator shall be borne by the permit applicant.

(k) Beginning with the date of the first negotiation meeting called in accordance with subsection (h) of this Code section, there shall be no fewer than three negotiation meetings within the following 45 day period unless waived by consent of the parties. Such negotiation meetings shall be presided over by the facilitator named in subsection (j) of this Code section and shall be for the purpose of assisting the petitioners, the host local government, and the permit applicant, if different from the host local government, to engage in nonbinding negotiation.

(l) Minutes of each meeting and a record of the negotiation process shall be kept by the host local government.

(m) All issues except those which apply to environmental permit conditions are negotiable. Environmental permit conditions are not negotiable. Issues which may be negotiated include but are not limited to:

- (1) Operational issues, such as hours of operation;
- (2) Recycling efforts that may be implemented;
- (3) Protection of property values;
- (4) Traffic routing and road maintenance; and

(5) Establishment of local advisory committees.

(n) At the end of the 45 day period following the first negotiation meeting, the facilitator shall publish a notice of the results, if any, of the negotiation process in the same manner as provided in paragraphs (1), (2), and (3) of subsection (a) of this Code section and shall include the date, time, and place of a public meeting to be held within ten days after publication at which the input of persons not represented by the citizens facility issues committee may be received.

(o) The negotiated concessions reached by the negotiating parties shall be reduced to writing and executed by the chairman of the citizens facility issues committee and the chief elected official of the host local government and shall be adopted by resolution of the host local government.

(p) If the negotiating parties fail to reach consensus on any issue or issues, the permit applicant may nonetheless proceed to seek a permit from the division. The facilitator shall notify the division in writing that the negotiating parties have failed to reach consensus.

(q) If the negotiating parties reach consensus on negotiated issues, the permit applicant may proceed to seek a permit from the division. The facilitator shall notify the division in writing that the negotiating parties have reached consensus.

(r) Negotiated concessions shall not be construed as environmental permit conditions.

(s) Upon receipt of a written notification from the facilitator that the parties to negotiation have reached consensus or have failed to reach consensus on negotiated issues, and upon written notification from the permit applicant that he wishes to pursue permitting of the solid waste disposal facility for which an application has been filed, the director shall proceed to process the permit in accordance with *Code Section 12-8-24*.

**§ 12-8-33. Recycling Market Development Council**

(a) Effective July 1, 1990, there is created a 15 member Recycling Market Development Council to be appointed as follows:

(1) Seven members appointed by the Governor representing the paper, glass, aluminum, plastic, and ferrous and nonferrous metals industries and trade associations which are active in recycling;

(2) One member who is an elected or appointed municipal official to be appointed by the Governor;

(3) One member who is an elected or appointed member of a county governing authority to be appointed by the Governor;

(4) One member appointed by the Speaker of the House of Representatives;

(5) One member appointed by the President of the Senate; and

(6) One representative each from the Department of Administrative Services; the Department of Economic Development; the Department of Community Affairs; and the Department of Natural Resources.

(b) The council shall meet as necessary and shall determine what actions, if any, are needed to facilitate the development and expansion of markets for recovered materials in Georgia and shall prepare an annual report with recommendations to the Governor and General Assembly.

(c) The council shall function for a period of five years from its establishment, at which time it shall either be reauthorized or shall stand abolished.

**§ 12-8-33.1. Improper disposal of computer equipment; Computer Equipment Disposal and Recycling Council created; compensation; powers and duties**

(a) The General Assembly finds that improper disposal of computer equipment may present serious environmental threats. Computer equipment contains quantities of lead, mercury, and other heavy metals which when improperly disposed of can lead to environmental contamination. There is a rapidly growing stream of used computer equipment which should be recycled or disposed of in an appropriate manner. There is a shortage of existing programs and resources dedicated to such recycling and proper disposal.

(b) There is created the Computer Equipment Disposal and Recycling Council. The Council shall consist of three members appointed by the Governor, two members appointed by the Lieutenant Governor, and two members appointed by the Speaker of the House of Representatives. Each member of the council shall serve at the pleasure of the appointing authority. The initial meeting of the council shall be at the call of the Governor, and the council shall thereafter elect its own officers and meet at the call of the chairperson or any three members.

(c) The council shall be attached for administrative purposes to the Department of Natural Resources which shall provide appropriate staff and facilities as needed by the council. The members of the council shall not be compensated for their service on the council but may be reimbursed from funds appropriated or otherwise available to the Department of Natural Resources for their actual and reasonable expenses incurred in performing their duties as members of the council.

(d) The council shall have the following powers and duties:

- (1) To investigate problems and concerns related to the disposal and recycling of computer equipment;
- (2) To issue reports of its findings and recommendations as may be appropriate;
- (3) To advise the General Assembly and state agencies with respect to legislative, regulatory, or other actions within its area of expertise;
- (4) To accept and expend for its purposes any funds granted to the council by any agency of state or federal government or through private donations; and
- (5) To develop and assist in the establishment of pilot programs and ongoing programs for the recycling and proper disposal of computer equipment.

(e) This council shall stand abolished on July 1, 2005.

#### **§ 12-8-34. Labeling rigid plastic containers or bottles**

(a) On and after January 1, 1991, it shall be unlawful to manufacture for use in Georgia or offer for sale in Georgia any rigid plastic container or rigid plastic bottle which is not labeled in accordance with subsection (b) of this Code section.

(b) On and after January 1, 1991, any rigid plastic container or rigid plastic bottle manufactured for use in Georgia or offered for sale in Georgia shall be labeled with a code molded into the plastic product which indicates the resin used to produce the bottle or container. Such coding shall conform with the following:

(1) Rigid plastic containers or rigid plastic bottles with basecups or other components of the secondary material may, if the materials are compatible in recycling systems, carry the code of the basic material (even when the basic code is applied to the basecup of the secondary material); otherwise "7-other" is appropriate.

(2) The label code shall consist of a number placed inside a triangle and letters placed below the triangle as required by paragraph (3) of this subsection. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer 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;

(3) The numbers and letters used on labels described in this Code section and their interpretations shall be as follows:

- "1-PETE" (polyethylene terephthalate)
- "2-HDPE" (high-density polyethylene)
- "3-V" (vinyl)
- "4-LDPE" (low-density polyethylene)
- "5-PP" (polypropylene)
- "6-PS" (polystyrene)
- "7-OTHER" (all other resins and layered multimaterial)

**§ 12-8-35. Review of purchases and purchasing specifications, practices, and procedures by commissioner of administrative services**

(a) The commissioner of administrative services shall:

(1) By July 1, 1990, commence a review of all goods and products purchased to determine what percentage of state purchases contain recycled materials, which review shall be completed by December 31, 1991, and, upon completion of his review, file a report of his findings with the General Assembly and the Governor; and

(2) By July 1, 1990, commence a review of the purchasing specifications, practices, and procedures of the State of Georgia, paying particular attention to any procedures and specifications which concern or impact the purchase of recovered materials or goods or products made from recovered or recyclable materials, which review shall be completed by December 31, 1991, and, upon completion of his review, file a report to the Governor and the General Assembly with recommendations for procedures and specifications for state purchasing which promote the increased purchase of goods or products made from recovered materials and goods or products which are recyclable; provided, however, that the commissioner of administrative services shall not propose any procedure or specification which would be economically infeasible or which would cause the state to sacrifice quality or performance standards or would unduly restrict free and open competition among vendors.

(b) In conducting any review required under this Code section, the commissioner of administrative services shall consider those specifications adopted or recommended by the United States government pursuant to 40 C.F.R. Parts 248, 249, 250, 252, and 253.

**§ 12-8-36. State agency recycling and collection programs**

(a) The Georgia Building Authority is authorized to establish and coordinate a state-wide recycling program for state agencies and to establish, engage in, contract for, or otherwise allow or arrange for a collection program for recovered materials generated as a result of agency operations including, but not limited to, aluminum, high-grade office paper, and corrugated paper and for the mulching or composting of yard trimmings. The Georgia Building Authority is authorized to establish procedures for the collection and storage of such materials from any property or building utilized by the state or any agency thereof and to enter into contractual or other arrangements for the transportation, disposition, or sale of such materials. Proceeds generated from such sale shall be used by the Georgia Building Authority for the purpose of offsetting the costs and expenses of administering and implementing the recycling program.

(b) Nothing in this part shall prohibit any state agency from engaging in, contracting for, or otherwise allowing or arranging for its own recycling program for recovered materials generated as a result of its own agency operations.

**§ 12-8-37. Financial aid from federal government or other sources**

The director shall be the state representative to receive and administer financial aid from the federal government or other public or nonprofit sources for purposes of solid waste management.

**§ 12-8-37.1. State grants authorized**

(a) The state is authorized to make grants, as funds are available, to any county, municipality, or any combination of the same, or to any public authority, agency, commission, or institution, to assist such governmental or public body in the construction of solid waste handling systems which are consistent with local and regional solid waste management plans prepared in accordance with the requirements of this part.

(b) The director shall administer all funds granted by the state pursuant to this Code section.

(c) The corpus of the solid waste trust fund established in *Code Section 12-8-27.1* may be used to make grants and loans to cities and counties, any combination of cities and counties, authorities, state agencies, or

the Georgia Recycling Market Development Council for the cleanup of solid waste disposal facilities, including those used for the disposal of scrap tires; for the development and implementation of solid waste enforcement programs for the abatement of illegal dumping of solid waste; for the funding of grants or loans, in accordance with procedures developed by the division; for the implementation of innovative technologies for the recycling and reuse of solid waste, including without limitation scrap tires; and for educational and other efforts to promote waste reduction, recycling, and recycling market development.

**§ 12-8-38. Funds generated by division; use for operation and maintenance; deposit of unexpended funds**

Notwithstanding any other provision of law, the department is authorized to retain all miscellaneous funds generated by the division for use in the operation and maintenance of that area. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury, provided that nothing in this Code section shall be construed so as to allow the department to retain any funds required by the Constitution of Georgia to be paid into the state treasury; provided, further, that the department shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except *Code Section 45-12-92*, prior to expending any such miscellaneous funds.

**§ 12-8-39. Cost reimbursement fees; surcharges**

(a) Effective January 1, 1992, each city or county which operates a municipal solid waste disposal facility is authorized and required to impose a cost reimbursement fee upon each ton of municipal solid waste or the volume equivalent of a ton, as determined by rules of the division, for each ton of municipal solid waste received at a municipal solid waste disposal facility regardless of its source. The fee imposed may be equal to, or a portion of, the true cost of providing solid waste management services on a per ton or volume equivalent as determined pursuant to the forms, rules, and procedures developed by the Department of Community Affairs as required by *Code Section 12-8-39.2*.

(b) A minimum of \$1.00 per ton or volume equivalent of the cost reimbursement fee specified in this Code section which is received by the city or county, if implemented after March 30, 1990, shall be paid into a local restricted account and shall be used for solid waste management purposes only.

(c) Effective January 1, 1992, when a municipal solid waste disposal facility is operated as a joint venture by more than one city or county or combination thereof, by a special solid waste district, or by an authority, the cost reimbursement fee specified in this Code section shall be imposed by the joint operators, district, or authority and the cost reimbursement fee received shall be administered as outlined in subsection (b) of this Code section and shall be remitted into a restricted account established by the participating local governments.

(d) Effective January 1, 1992, when a municipal solid waste disposal facility is operated by private enterprise, the host local government is authorized and required to impose a surcharge of \$1.00 per ton or volume equivalent in addition to any other negotiated charges or fees which shall be imposed by and paid to the host local government for the facility and shall be used to offset the impact of the facility, public education efforts for solid waste management, the cost of solid waste management, and the administration of the local or regional solid waste management plan; provided, however, that such surcharges may be used for other governmental expenses to the extent not required to meet the above or other solid waste management needs.

(e) After July 1, 1992, owners or operators of any solid waste disposal facility other than an inert waste landfill as defined in regulations promulgated by the board or a private industry solid waste disposal facility shall assess and collect on behalf of the division from each disposer of waste a surcharge of 50 cent(s) per ton of solid waste disposed. From July 1, 2003, through June 30, 2008, said surcharge shall be 65 cent(s) per ton of solid waste disposed. After July 1, 2008, said surcharge shall be 75 cent(s) per ton of solid waste disposed. Two percent of said surcharges collected may be retained by the owner or operator of any solid waste disposal facility collecting said surcharge to pay for costs associated with collecting said surcharge. Surcharges assessed and collected on behalf of the division shall be paid to the division on July 1, 1993, for

the period July 1, 1992, through December 31, 1992. All subsequent payments shall be due on the first day of July of each year for the preceding calendar year.

(f) All surcharges required by subsection (e) of this Code section shall be paid to the division for transfer into the state treasury to the credit of the general fund. The division shall collect such fees until the unencumbered principal balance of the hazardous waste trust fund equals or exceeds \$25 million, at which time the division shall not collect any further such surcharges until the unencumbered balance in such fund equals or is less than \$12.5 million, at which time the division shall resume collection of such surcharges at the beginning of the next calendar year following the year in which such event occurs. The director shall provide written notice to all permitted solid waste disposal facilities at the time he receives notice that the unencumbered balance of such trust fund equals or exceeds \$25 million or equals or is less than \$12.5 million.

(g) Unless the requirement for the surcharge required by subsection (e) of this Code section is reimposed by the General Assembly, no such surcharge shall be collected after July 1, 2013.

(h) The division shall advertise to the public the surcharges imposed pursuant to subsection (e) of this Code section in accordance with rules promulgated by the board.

#### **§ 12-8-39.1. Program for reduction of municipal solid waste on per capita basis**

Effective July 1, 1992, each city or county as a part of its solid waste management plan shall have in effect a program to reduce on a per capita basis the amount of municipal solid waste, as evidenced by the solid waste received at disposal facilities, which are not exempt from subsection (c) of *Code Section 12-8-21*, within its jurisdiction consistent with the goal established in subsection (c) of *Code Section 12-8-21*.

#### **§ 12-8-39.2. Reports of costs of solid waste management services**

Effective January 1, 1992, each city and county shall be required to report to the Department of Community Affairs the total annual cost of providing solid waste management services and to disclose this information to the public. The Department of Community Affairs shall develop the forms, rules, and procedures necessary for cities and counties to meet the requirements of this Code section.

#### **§ 12-8-39.3. Authorization to enforce collection of taxes, fees, or assessments**

(a) Any city, county, or authority which operates a solid waste handling facility or provides solid waste collection services or both and which levies and collects taxes, fees, or assessments to accomplish the purposes of this part shall be further authorized to enforce by ordinance or resolution the collection of taxes, fees, or assessments due a city, county, or authority in the same manner as authorized by law for the enforcement of the collection and payment of state taxes, fees, or assessments. Any such ordinance or resolution enacted by a county governing authority may provide that the tax commissioner or tax collector of such county shall be the officer charged with the enforcement of its provisions.

(b) The provisions of this Code section shall apply to any taxes, fees, or assessments due a county, city, or authority under any ordinance or resolution in effect on July 1, 1992, or adopted thereafter.

#### **§ 12-8-40. Exemption for livestock-feeding facility**

This article shall not apply to any individual, corporation, partnership, or cooperative disposing of livestock-feeding facility waste from facilities with a maximum total capacity of 1,000 cattle or 5,000 swine, provided that if such individual, corporation, partnership, or cooperative shall provide an approved waste disposal system which is capable of properly disposing of the runoff from a "ten-year storm," such individual shall be further exempt regardless of total per head capacity. Nothing in this part shall limit the right of any person to use poultry or other animal manure for fertilizer.

#### **§ 12-8-40.1. Tire disposal restrictions**

(a) Effective July 1, 1990, each city, county, or solid waste management authority shall have the right to impose certain restrictions on scrap tires originating in or which may ultimately be disposed of in its area of jurisdiction. These restrictions may include but are not limited to:

(1) A ban on the disposal of scrap tires at solid waste disposal facilities within its control; and

(2) A requirement that scrap tires be recycled, shredded, chopped, or otherwise processed in an environmentally sound manner prior to disposal at solid waste disposal facilities owned or operated by the city, county, or authority.

(b) After December 31, 1994, no person may dispose of scrap tires in a solid waste landfill unless the scrap tires are shredded, chopped, or chipped in accordance with standards established by the board and:

(1) The director finds that the reuse or recycling of scrap tires is not economically feasible; or

(2) The scrap tires are received from a municipal solid waste collector holding a valid solid waste collection permit under authority of this part and who transports fewer than ten scrap tires at any one time; or

(3) The scrap tires are received from a person transporting fewer than five scrap tires in combination with the person's own solid waste for disposal.

(c)(1) No person shall collect or transport scrap tires for the purpose of processing or disposal or purport to be in the business of collecting or transporting scrap tires unless the person has a scrap tire carrier permit issued by the division.

(2) As a condition of holding a permit to collect scrap tires, each permitted person shall:

(A) Report to the division in such manner and with such frequency as the division shall require the number of scrap tires transported and the manner of disposition;

(B) Maintain financial assurance in accordance with subsection (l) of this Code section; and

(C) Submit such other data as is determined by the board to be reasonably necessary to protect public health and the environment.

(d) Subsection (c) of this Code section shall not apply to:

(1) A municipal solid waste collector holding a valid solid waste collection permit under authority of this part whose primary business is the collection of municipal solid waste;

(2) A private individual transporting the individual's own scrap tires to a scrap tire processor or end user or for proper disposal;

(3) A company transporting the company's own scrap tires to a scrap tire processor or end user or for proper disposal; and

(4) The United States, the State of Georgia, any county, municipality, or public authority.

(e) After July 1, 1992, any person who generates scrap tires shall:

(1) Notify the division of such activities, requesting the issuance of an identification number, which number shall be used on scrap tire shipment manifests;

(2) Have the scrap tires collected and transported by persons in compliance with subsection (c) of this Code section;

(3) Maintain receipts indicating the disposition of the scrap tires;

(4) Maintain receipts indicating the permit number and name of the scrap tire carrier to whom the tires were given;

(5) Maintain receipts indicating the disposal site or processing facility where the scrap tires were taken including the date of such disposal and the number of scrap tires; and



(6) Provide such other information as the board shall require and for such period of time as the board deems appropriate.

(f) No person may store more than 100 scrap tires anywhere in this state. Any person storing in excess of 100 scrap tires shall be deemed to be in violation of this part.

(g) Subsection (f) of this Code section shall not apply to:

(1) A solid waste disposal site permitted by the division if the permit authorizes the storage of scrap tires prior to their disposal;

(2) A tire retailer with not more than 3,000 scrap tires in storage;

(3) A tire retreader with not more than 1,500 scrap tires in storage so long as the scrap tires are of the type the retreader is actively retreading;

(4) An auto salvage yard with not more than 500 scrap tires in storage; and

(5) A scrap tire processor approved by the division so long as the number of scrap tires in storage do not exceed the quantity approved by the division.

(h)(1) Beginning July 1, 1992, a fee is imposed upon the retail sale of all new replacement tires in this state of \$1.00 per tire sold. The fee shall be collected by retail dealers at the time the retail dealer sells a new replacement tire to the ultimate consumer; provided, however, that a Georgia tire distributor who sells tires to retail dealers must collect such fees from any retail dealer who does not have a valid scrap tire generator identification number issued by the division. The fee and any required reports shall be remitted not less than quarterly on such forms as may be prescribed by the division. The division is authorized to contract with the Department of Revenue to, and the Department of Revenue is authorized to, collect such fees on behalf of the division. All fees received shall be deposited into the state treasury to the account of the general fund in accordance with the provisions of *Code Section 45-12-92*. All moneys deposited into the solid waste trust fund shall be deemed expended and contractually obligated and shall not lapse to the general fund.

(2) In collecting, reporting, and paying the fees due under this subsection, each distributor or retailer shall be allowed the following deductions, but only if the amount due was not delinquent at the time of payment:

(A) A deduction of 3 percent of the first \$3,000.00 of the total amount of all fees reported due on such report; and

(B) A deduction of one-half of 1 percent of that portion exceeding \$3,000.00 of the total amount of all fees reported due on such report.

(3) The tire fees authorized in this subsection shall cease to be collected on June 30, 2005. The director shall make an annual report to the House Committee on Natural Resources and the Environment and the Senate Natural Resources Committee regarding the status of the scrap tire program.

(i)(1) The division may abate any threat or potential threat to public health or the environment created or which could be created by scrap tires or other scrap tire materials by removing or processing the scrap tires or other scrap tire materials. Before taking any action to abate the threat or potential threat, the division shall give any person having the care, custody, or control of the scrap tires or materials or owning the property upon which the scrap tires or materials are located notice of the division's intentions and order the responsible party to abate the threat or potential threat in a manner approved by the division. Such order shall be issued in accordance with *Code Section 12-8-30*.

(2) If the responsible party is unable or unwilling to comply with such order or if no person who has contributed or is contributing to the scrap tires or scrap tire materials which are to be abated can be found, the director may undertake cleanup of the site utilizing funds from the solid waste trust fund.

(3) The division or its contractors may enter upon the property of any person at such time and in such manner as deemed necessary to effectuate the necessary corrective action to protect human health and the environment.

(4) Neither the State of Georgia nor the solid waste trust fund established in *Code Section 12-8-27.1* shall be liable for any loss of business, damages, or taking of property associated with the corrective action.

(5) The division may bring an action or proceeding against the property owner or the person having possession, care, custody, or control of the scrap tires or other scrap tire materials to enforce the corrective action order issued under *Code Section 12-8-30* and recover any reasonable and necessary expenses incurred by the division for corrective action, including administrative and legal expenses. The division's certification of expenses shall be prima-facie evidence that the expenses are reasonable and necessary. Notwithstanding any other provision of this subsection, any generator of scrap tires who is identified as being a contributor to the materials which are the object of the abatement and who can document that he or she has fully complied with this part and all rules promulgated pursuant to this part in disposing of such scrap tires shall not be liable for any of the cost of recovery actions of the abatement.

(6) Nothing in this part shall affect the right of any municipality or county to abate or clean up scrap tires or scrap tire materials which are a threat or potential threat to human health or the environment. The division may reimburse such local governments for such actions in accordance with procedures approved by the board.

(j) Except for the purposes of scrap tire corrective actions, the provisions of this Code section do not apply to:

(1) Tires with a rim size less than 12 inches;

(2) Tires from:

(A) Any device moved exclusively by human power; or

(B) Any device used exclusively for agricultural purposes, except a farm truck; or

(3) A retreadable casing while under the control of a tire retreader or while being delivered to a retreader.

(k) The director shall be authorized to order the cessation of operation of any scrap tire carrier who is found not to be operating in compliance with this part or rules adopted pursuant to this part and the seizure of all property used in such unlawful operations; provided, however, that the scrap tire carrier shall be afforded a hearing within 48 hours before an administrative law judge of the Department of Natural Resources upon such order of the director.

(l)(1) A performance bond or letter of credit shall be provided to the director by a scrap tire carrier prior to issuance of a permit for collecting scrap tires to ensure compliance with the provisions of this part.

(2) The bond or letter of credit required in this subsection shall be:

(A) Conditioned upon compliance with this part, any rules adopted pursuant to this part, and the carrier's permit; and

(B) In such amount as determined by the director necessary to ensure compliance, but in any event not to exceed \$10,000.00.

(3) Such performance bond or letter of credit shall be payable to the director and issued by an insurance company authorized to issue such bonds in this state or from a bank or other financial institution authorized to issue irrevocable letters of credit.

(4) Upon a determination by the director that a scrap tire carrier has failed to meet the provisions of this part, rules promulgated pursuant to this part, or its permit, the director may, after written notice of such failure:

(A) Forfeit or draw that amount of such bond or letter of credit that the director determines necessary to correct the violation;

(B) Expend such amount for such purposes; and

(C) Require the replacement of that amount of such bond or letter of credit forfeited or drawn upon.

(5) Any moneys received by the director in accordance with paragraph (4) of this subsection shall be deposited into the solid waste trust fund established in *Code Section 12-8-27.1*.

#### **§ 12-8-40.2. Yard trimmings disposal restrictions**

(a) Effective September 1, 1996, each city, county, or solid waste management authority shall impose restrictions on yard trimmings which are generated in or may ultimately be disposed of in its area of jurisdiction. These restrictions shall include but are not limited to:

- (1) A requirement that yard trimmings not be placed in or mixed with municipal solid waste;
- (2) A ban on the disposal of yard trimmings at municipal solid waste disposal facilities having liners and leachate collection systems or requiring vertical expansion within its jurisdiction;
- (3) A requirement that yard trimmings be sorted and stored for collection in such a manner as to facilitate collection, composting, or other handling; and
- (4) A requirement that yard trimmings be sorted and stockpiled or chipped, composted, used as mulch, or otherwise beneficially reused or recycled to the maximum extent feasible.

(b) Prior to September 1, 1996, each city, county, and solid waste authority is authorized but not required to impose restrictions on yard trimmings which are generated or may ultimately be disposed of in its area of jurisdiction. Such restrictions may include, but are not limited to, the restrictions stated in paragraphs (1) through (4) of subsection (a) of this Code section.

(c) The Board of Natural Resources is authorized to develop guidelines to assist local governing authorities and others in the orderly stockpiling of yard trimmings at suitable sites, the chipping and composting of yard trimmings, and the distribution of the products resulting from such chipping and composting.

#### **§ 12-8-40.3. Disposal of shingles containing asphalt**

It shall be unlawful to dispose of any roofing shingles which contain asphalt except in construction and demolition or municipal solid waste landfills.

#### **§ 12-8-41. Department to provide permits**

The department shall provide by rule or regulation for the regulation and permitting of any land disposal site that receives septic tank waste from more than one septic tank pumping and hauling business; provided, however, that no such permit shall be issued except on the written approval of the governing authority of each county in which such site is wholly or partially located. No such site which was not in operation on January 1, 2002, shall receive septic tank waste on or after July 1, 2002, unless a permit has been issued by the department.