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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

HAAS TRUCKING, INC.

APPELLANT

VERSUS

CAUSE NUMBER: 2009-TS-00373

HANCOCK COUNTY SOLID WASTE AUTHORITY

APPELLEE

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ON APPEAL FROM THE  
CIRCUIT COURT OF HANCOCK COUNTY, MISSISSIPPI

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**APPELLEE'S BRIEF**

(ORAL ARGUMENT REQUESTED)

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. The representations are made in order that the Court may evaluate whether the decision of the Circuit Court of Hancock County was in error.

1. Haas Trucking, Inc.
2. R. Hayes Johnson, Esq., Attorney for Haas Trucking, Inc
3. Boudin's Environmental Services, LLC, Appellant
4. James T. McCafferty, Esq., Attorney for Appellant
5. DK Aggregates, LLC
6. Shannon Ladner, Esq., Attorney for DK Aggregates, LLC
7. Russell S. Gill, Esq., Attorney for DK Aggregates, LLC
8. Russell S. Gill, P.L.L.C., Attorney for DK Aggregates, LLC
9. Hancock County Solid Waste Authority, Appellee
10. Members/Directors of the HCSWA
11. W.C. Fore/Hardie
12. Henley Construction
13. Buckland, LLC
14. Weldon Frommeyer
15. King Construction, Inc.
16. Ronald J. Artigues, Jr., Attorney for Appellee
17. Patrick W. Kirby, Attorney for Appellee
18. Butler, Snow, O'Mara, Stevens & Cannada, PLLC

Respectfully submitted this the 23<sup>rd</sup> day of October, 2009.

Hancock County Solid Waste Authority  
Appellee

BY:

Patrick W. Kirby  
Ronald J. Artigues, Jr.  
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## **STATEMENT OF THE ISSUES**

The sole issue presented for consideration by this Court is:

Whether the Hancock County Solid Waste Authority's decision to revise its proposed Plan Amendment #6 to the Hancock County Solid Waste Management Plan, was unsupported by substantial evidence; was arbitrary or capricious; was beyond the agency's scope or powers; or violated the constitutional or statutory rights of any aggrieved party.

## **STATEMENT OF THE CASE**

### **Nature of the Case and Course of Proceedings Below**

This is an appeal from a decision of the Hancock County Solid Waste Authority (the "Authority"), subsequently affirmed by the Circuit Court of Hancock County, to revise its proposed Plan Amendment #6 to its Solid Waste Management Plan. Appellant, Haas Trucking, Inc. ("Haas") was one of the applicants under consideration to operate a Class I rubbish site and had been included in a previous version of proposed Plan Amendment #6, as was Boudin Environmental Services, LLC ("Boudin"), who has filed an Amicus Curiae Brief in support of Haas' appeal. Aggrieved by the Authority's decision to revise its proposed Plan Amendment, which excluded Haas and Boudin, Haas filed its Bill of Exceptions and subsequently, this appeal.

### **Statement of the Facts**

In response to the need for a new Class I rubbish site in Hancock County, the Authority published a Notice in the newspaper that the Authority was accepting applications for a Class I rubbish site in Hancock County. The Authority accepted applications, including that of the Appellant, Haas. The Authority retained the services of Compton Engineering, Inc. to review the applications and prepare a proposed Plan Amendment #6 to the Hancock County Solid Waste Management Plan. Compton completed the proposed Plan Amendment #6 in July 2006. In compliance with statutory plan amendment requirements, the Authority held a public hearing on November 1, 2006 to allow public comment with regard to the proposed Plan Amendment #6. (Miss. Code Ann. § 17-17-227(5)). (R.E. 30 - 34). On or about December 21, 2006, the Authority submitted the proposed Plan Amendment #6 to the Mississippi Department of Environmental Quality (MDEQ). This proposed Plan Amendment included eight (8) new Class I rubbish sites, in addition to the site already operational in Hancock County. The sites included in this proposed Amendment were as follows:

1. Boudin Upgrade to Class I Rubbish
2. W.C. Fore/Hardie Upgrade to Class I Rubbish
3. Henley Site #1 Upgrade to Class I Rubbish
4. Buckland, LLC Class I Rubbish
5. Weldon Frommeyer Class I Rubbish
6. DK Aggregates Class I Rubbish
7. King Construction Class I Rubbish
8. Haas Trucking, Inc. Class I Rubbish

(R.E. 17).

After its review of the proposed Plan Amendment #6, MDEQ responded with a letter to the Authority dated February 26, 2007, which stated, "MDEQ believes that the request by the Authority fails to support the need for 8 new Class I rubbish disposal sites in Hancock County." (R.E. 52 - 53). To assist the Authority in reconsidering and revising its proposed amendment, MDEQ offered the services of its retained engineering firm, Neel-Schaffer Engineering (Neel-Schaffer), which was assisting other coastal counties in assessing their future solid waste needs. (R.E. 52 - 53). At its March 6, 2007, meeting, the Authority voted in favor of accepting MDEQ's offer of technical assistance under MDEQ's contract with Neel-Schaffer. (R.E. 60). Neel-Schaffer subsequently conducted an assessment of Hancock County's solid waste needs.

In a meeting on June 21, 2007, Randy Meador of Neel-Schaffer presented a briefing by way of PowerPoint to the Authority regarding proposed Plan Amendment #6. (R.E. 77 - 96). Neel-Schaffer identified three (3) sites, along with nine (9) pre-positioned emergency sites, that in his opinion, would be adequate to meet Hancock County's "Rubbish Site Needs." (R.E. 87). The potential sites recommended by Neel-Schaffer were the Allied Waste Site (Site 1), the King Site (Site 2) and the DK Site (Site 3). (R.E. 87). The Allied Site was recommended based on the fact that it is an existing, permitted Class I rubbish site. The King and DK sites were recommended based on other objectives. (R.E. at 87). Both the King and the DK sites were noted to be accessible from major transportation corridors and to have existing capacity. The King Site was noted to be "Located in southern part of the County near centers of waste



generation” and to be a “Convenient location for citizens, business and industry.” (R.E. 89.). The main attribute of the DK Site was that it is “Strategically located for regional initiatives from an economic development factor.” (R.E. 89).

Neither the Haas Site nor the Boudin Site were among the sites recommended by Neel-Schaffer based on its study of all applicants. The information provided by Neel-Schaffer to the Authority was well documented, thorough and certainly constitutes “substantial evidence” on which the Authority was justified in relying in making its decision.

After debate among the Authority’s Directors at the July 12, 2007, meeting and again at the August 21, 2007, meeting, the Authority ultimately voted to “accept and adopt the recommendation of Neel-Schaffer to revise proposed Plan Amendment #6 as previously submitted to MDEQ and to re-submit a revised proposed Plan Amendment #6 consistent with the recommendation to include the ‘King Site’ as a Class I rubbish site within the solid waste plan and to proceed with the amendment and submission of Plan Amendment #6 (by Neel-Schaffer) to MDEQ.” (R.E. 102 - 103). As stated in the text of the Order, the Authority’s decision was based on the following reasons: 1) accessibility of the King Site from major transportation corridors and its existing capacity; 2) location of the site in the southern part of the County which is near the centers of waste generation; 3) the convenient location of the site for citizens, business and industry, and 4) the presence of land area of approximately 380 acres for expansion and accommodation of other solid waste activities, etc. (R.E. 103). The Authority further based its action on “all of the factors included in the written report of Neel-Schaffer which is part of the Authority’s minutes from a prior meeting; the two verbal presentations to the Authority by Neel-Schaffer at prior meetings; and the questions and answers provided during the discussion period by MDEQ at this meeting.” (R.E. 103). As such, the Authority’s decision was made based upon evidence presented to them by engineers educated and experienced in assessing solid waste

needs in South Mississippi, as well as several other substantive, critical factors. Based on the record of proceedings before the Authority on this issue, no decision could be less arbitrary or less capricious.

#### **SUMMARY OF THE ARGUMENT**

The Authority's decision to revise proposed Plan Amendment #6 to its Solid Waste Management Plan was supported by substantial evidence, including the fact that the King Site is accessible from major transportation corridors, has existing capacity, is located in the southern part of the County near centers of waste generation, and is conveniently located for citizens, business and industry. The Authority's decision was neither arbitrary nor capricious, nor was it contrary to the overwhelming weight of the evidence. On the contrary, the evidence before the Board, including evidence provided by professional engineers experienced in assessing solid waste needs, supported the Board's decision to revise proposed Plan Amendment #6 to Hancock County's Solid Waste Management Plan.

## ARGUMENT

### A. Standard of Review.

The standard of review applicable to the case *sub judice* is a deferential one as to the Authority's factual findings as to necessary Class I rubbish sites. In fact, the well established test requires affirmance of the Authority's factual determinations if they were deemed to be based upon substantial evidence, since the instant case addresses an appeal from an administrative agency. *Wilkinson County Board of Supervisors v. Quality Farms, Inc.*, 767 So.2d 1007, 1010 (Miss. 2000) (citing *Barnes v. Board of Supervisors*, 553 So.2d 508, 511 (Miss. 1989)). Thus, "[t]he decision of an administrative agency is not to be disturbed unless the agency order was unsupported by substantial evidence; was arbitrary or capricious; was beyond the agency's scope or powers; or violated the constitutional or statutory rights of the aggrieved party." *Id.* (quoting *Board of Law Enforcement Officers Standards & Training v. Butler*, 672 So.2d 1196, 1199 (Miss. 1996)). See also *Hooks v. George County*, 748 So.2d 678, 680 (Miss. 1999). By law in Mississippi, a decision that is "fairly debatable" is not arbitrary, capricious, discriminatory, illegal or unsupported by substantial evidence. *Gillis v. City of McComb*, 860 So. 2d 833, 836 (Miss. Ct. App. 2003). In fact, "fairly debatable" is the antithesis of arbitrary and capricious. *Saunders v. City of Jackson*, 511 So. 2d 902, 906 (Miss. 1987).

In reviewing a decision by local governing authorities, a court must treat the Board "as untethered and free when using 'their own common knowledge and familiarity' in the disputed matter, in addition to the testimony and debate provided at the hearing." *Mayor and Board of Aldermen v. Hudson*, 744 So. 2d 448, 451 (Miss. App. Ct. 2000) (quoting *Faircloth v. Lyles*, 592 So. 2d 941, 943 (Miss. 1991)). An appellate court cannot re-weigh the facts, or substitute its judgment for that of the administrative agency. *Mississippi Comm'n on Env'tl. Quality v. Chickasaw County Board of Supervisors*, 621 So. 2d 1211, 1216 (Miss. 1993). An appellate

court will not reverse a Board's decision as long as the record of the proceedings contains sufficient evidence to support that decision. *Citizens Ass'n for Responsible Development, Inc. v. Conrad Yelvington Distributors, Inc.*, 859 So. 2d 361, 367 (Miss. 2003) (citing *Faircloth*, 592 So. 2d at 945).

The Mississippi Supreme Court has also held that the scope of this Court's appellate review is limited to an examination of the record to determine whether credible evidence exists to support the decision of the governing body. *City of Jackson v. Froshour*, 530 So.2d 1348, 1354-55 (Miss. 1988); *City of Meridian v. Johnson*, 593 So. 2d 35, 38 (Miss. 1992); *City of Meridian v. Hill*, 447 So. 2d 641, 643-44 (Miss. 1984); *City of Jackson Police Dept. v. Ruddick*, 243 So.2d 566, 567 (Miss. 1971); *City of Hattiesburg v. Jackson*, 108 So. 2d 596, 599 (Miss. 1959); *City of Meridian v. Davidson*, 53 So. 2d 48, 52-54, 60 (Miss. 1951). The evidence that must underlie an agency's findings may be "something less than a preponderance" but it is "more than a scintilla or glimmer." *Mississippi Department of Environmental Quality v. Weems*, 653 So. 2d 266, 280-81 (Miss. 1993). An appeal from the local governing body by way of bill of exceptions is an appeal to an appellate court, and the circuit court is bound by the record made before the Board, or other authority. *Thornton v. Wayne County Election Commission*, 272 So.2d 298, 302 (Miss. 1973). See also *Stewart v. City of Pascagoula*, 206 So.2d 325 (Miss. 1968).

The action of a Board carries a presumption of validity, casting the burden of proof upon the individual or other entity asserting its invalidity. *Faircloth*, 592 So. 2d at 943. Therefore, a rebuttable presumption exists in favor of the administrative agency's decision, and the burden of proof to show otherwise is on the party challenging that decision. *Id* at 945.

**B. The Authority's decision DID follow statutory procedure.**

Haas' argument that the Authority's decision did not follow statutory procedure is without merit. The facts are clear that the Authority submitted its proposed Plan Amendment #6 to the MDEQ as required by state law and the agency's own *Evaluation Criteria and Guidance for Modifying a Local Solid Wast Management Plan* established pursuant to statute. Haas argues that the MDEQ "acted outside of the boundaries of statutory and regulatory law" when it reviewed the proposed Plan Amendment #6 submitted by the Authority and when MDEQ, through its staff, wrote to the Authority requesting that the Authority re-evaluate the determination of need as to the number of Class I rubbish sites proposed in the plan amendment. Contrary to Haas' argument, MDEQ's review of the proposal and subsequent request to the Authority is exactly what is contemplated by the statutory and regulatory law pertinent to this matter.

State law governing the Mississippi Commission on Environmental Quality ("MCEQ") found at Miss. Code Ann. § 17-17-225 mandates that the MCEQ "shall establish criteria for the evaluation of local non-hazardous solid waste management plans." (emphasis added). In compliance with this statute, the MCEQ established its "*Evaluation Criteria For Local Solid Waste Management Plans*" ("*Evaluation Criteria*") which became effective on July 1, 1992, and were subsequently amended on December 16, 2004. The Commission further published its *Guidance for Modifying a Local Solid Wast Management Plan* ("*Guidance*") effective September 2006. A copy of the *Evaluation Criteria and Guidance* is attached hereto as Appendix "A" along with Mississippi Commission of Environmental Quality MCEQ-1: Regulations Regarding the Delegation of Authority from MCEQ to MDEQ.

The *Guidance* requires that, "Once approved by resolution, the local government should submit a formal request to the Department to modify the local plan." See *Guidance* at Step 5.

Among other requirements, the *Evaluation Criteria* require that the requested Plan amendment include a “demonstration of need.” See *Evaluation Criteria*. The *Guidance* is clear that the proposed Plan Amendment must be submitted to the Department, not to the Commission. The Authority’s proposed Plan Amendment #6 was submitted to MDEQ as required.

It is at this point that Haas would have the Department merely accept the proposed Plan Amendment from the Authority, shuttle it down the hall and place it before the MCEQ for decision. However, the statutory and regulatory law requires the Department, again, not the MCEQ, to review and evaluate the proposed Plan Amendment. Step 6 of the *Guidance*, aptly titled “**Department Review and Request for Hearing**”, requires the Department to “review the submitted request” and its “supporting documents.” It is this review by the Department, mandated by the *Guidance*, that prompted the February 26, 2007, correspondence from MDEQ to the Authority “requesting that the Authority re-evaluate the local solid waste capacity needs.” (R.E. 52 – 53.) The Department’s review determined that the Authority’s request for plan modification was not complete in several aspects, including the “determination of need” requirement. This review and determination by the MDEQ that the Authority’s request was incomplete is exactly what the pertinent statute, the *Evaluation Criteria* and the *Guidance* require. See *Guidance* at Step 6. In addition, Miss. Code Ann. § 49-2-13(j) specifically authorizes the MDEQ, through its executive director, to issue orders in accordance with Miss. Code Ann § 17-17-227. See Regulation MCEQ-1. The February 26, 2007, letter from the MDEQ further offered the Authority the assistance of the Neel-Schaffer Engineering Firm which could perform an independent technical review of the County’s solid waste needs to assist the Authority in this matter. (R.E. 52 – 53.) On March 6, 2007, MDEQ again wrote to the Authority outlining the technical deficiencies contained in its proposed Plan Amendment #6. (R.E. 54 – 58.) In response to MDEQ’s letters, the Authority voted to “request technical assistance from

MDEQ under its contract with Neel-Schaffer.” (R.E. 60.) Contrary to Haas’ argument that the MDEQ or its staff acted outside of the scope of statutory and regulatory law, the action of MDEQ in reviewing the proposal of the Authority and recommending that it correct the noted deficiencies in the proposed plan amendment is in perfect compliance with both the letter and spirit of statutory and regulatory law pertinent to the evaluation of local non hazardous solid waste management plans in Mississippi. Therefore, Haas’ assignment of error in this regard is without merit.

It is important to note that Haas’ criticism of this process is that MDEQ/MCEQ did not follow statutory and regulatory procedure. However, the actions of MDEQ/MCEQ are not under review in this matter. Neither MCEQ nor MDEQ have been made parties to this action. The issue before this Court is whether the decision of the Authority to revise proposed Plan Amendment #6, affirmed by the Circuit Court of Hancock County, was unsupported by substantial evidence; was arbitrary or capricious; was beyond the agency’s scope or powers; or violated the constitutional or statutory rights of the aggrieved party. *Wilkinson County Board of Supervisors v. Quality Farms, Inc.*, 767 So.2d 1007, 1010 (Miss. 2000). Haas’ argument that the Authority’s decision to revise proposed Plan Amendment #6 did not follow statutory procedure is without merit.

**C. The Authority’s decision was not barred by *res judicata*.**

Next, Haas argues that the decision of the Authority to revise its proposed Plan Amendment #6 was barred by *res judicata*. The Mississippi Supreme Court has repeatedly stated that

The common law doctrine of *res judicata*, including the subsidiary one of collateral estoppel, is designed to prevent the relitigation by the same parties of the same claims or issues. The reasons behind the doctrine, as developed in the courts, are fully applicable to some administrative proceedings, partially applicable to some, and not at all applicable to others. The doctrine is best applied to an *adjudication* of past facts. (emphasis supplied).

*City of Jackson v. Holliday*, 149 So. 2d 525, 527 (1963). While the Authority acknowledges that the doctrine of *res judicata* applies to some administrative proceedings, the submission of a proposed Plan Amendment to MDEQ/MCEQ is not a final decision nor an adjudication of past facts to which the doctrine can properly be applied. *Res judicata* and collateral estoppel apply only where an administrative agency, acting in a fact finding capacity, makes a ruling, usually in the form of an order adjudicating the rights of at least two parties. *Davis v. Attorney General*, 935 So. 2d 856, 864 (2006); *Hood v. Miss. Dept. of Wildlife Conserv.*, 571 So. 2d 263, 269, fn.5. (1990). In this matter, the Authority accepted applications, including that of the Appellant, Haas Trucking, Inc. The Authority then retained the services of Compton Engineering, Inc. to review the applications and prepare a proposed Plan Amendment #6 to the Hancock County Solid Waste Management Plan. The Authority was not acting in a fact finding capacity and no facts were adjudicated. The Authority then submitted its proposed Plan Amendment #6 to MDEQ for approval according to law. No ruling or final order was issued by the Authority. The Authority simply authorized submission of the proposal to MDEQ. The proposal of a Solid Waste Plan Amendment is in the nature of a legislative, and not an adjudicative, action of an administrative body. Such actions have general applicability and do not serve to adjudicate individual rights. The Appellant misconstrues the type of administrative action involved in this case and, therefore, has misapplied the doctrine of *res judicata* to it.

Haas has produced no authority to suggest that the ratification of a proposed Plan Amendment by the Authority for submission to and approval of MDEQ/MCEQ is an adjudication of fact or final decision of the Authority. To the contrary, the applicable statutory law is abundantly clear that any solid waste plan is subject to approval by MCEQ. Any such plan is not final in its jurisdiction until the plan is approved. As Haas pointed out in its Trial Court brief, "State law provides that any local solid waste plan must be approved by the



Commission on Environmental Quality prior to becoming effective for the jurisdiction for which it was adopted.” Miss. Code Ann. § 17-17-227(6). Because the proposed Plan Amendment that included the Haas Site was never approved by MCEQ, it never became effective in this jurisdiction. *Res Judicata* cannot attach to an order that never became effective in the jurisdiction for which it was adopted. As such, this assignment of error has no merit.

In *Rankin Utility Co. v. Mississippi Public Service Commission*, 585 So. 2d 705 (1991), the Court recognized the limitations of the doctrine of *res judicata* in matters such as this. In that case, the Court held that because the PSC has continuous jurisdiction over the utility rates and can enter an order rescinding or amending a prior decision, *res judicata* is inapplicable. Likewise in this matter, because the proposed Plan Amendment #6 was subject to the review and approval of MDEQ/MCEQ, *res judicata* is inapplicable. The applicable law, Miss. Code Ann. § 17 – 17- 227, allows the MCEQ to approve, disapprove or order revisions to any proposed plan. As such, *res judicata* cannot attach to a proposal that can be approved, disapproved or modified by a higher authority. Haas’ assertion that the initial proposed Plan Amendment #6 attained the status of an adjudication of facts is without merit.

**D. The Authority’s decision was supported by substantial evidence.**

It cannot be disputed that the Authority’s decision to revise proposed Plan Amendment #6 was based on the following evidence set out in the Authority’s minutes: 1) accessibility of the King Site from major transportation corridors and its existing capacity for growth, as needed; 2) location of the site in the southern part of the County which is near the centers of waste generation; 3) the convenient location of the site for citizens, business and industry, and 4) the presence of land area of approximately 380 acres for expansion and accommodation of other solid waste activities, etc. (R.E. 103). The Authority further based its action on “all of the factors included in the written report of Neel-Schaffer which is part of the Authority’s minutes

from a prior meeting; the two verbal presentations to the Authority by Neel-Schaffer at prior meetings; and the questions and answers provided during the discussion period by MDEQ at this meeting.” (R.E. 103).

The standard of review to be applied to the Authority’s action here is deferential and boils down to a single issue: whether the Authority’s decision was supported by substantial evidence. *Wilkinson County Board of Supervisors*, 767 So.2d at 1010 (Miss. 2000). An appellate court cannot re-weigh the facts, or substitute its judgment for that of the agency. *Mississippi Comm’n on Env’tl. Quality*, 621 So. 2d at 1216 (Miss. 1993). An appellate court will not reverse a Board’s decision as long as the record of the proceedings contains sufficient evidence to support the decision. *Citizens Ass’n for Responsible Development, Inc.*, 859 So. 2d at 367 (Miss. 2003). As such, the bottom line question is, “Was the Authority’s decision to revise proposed Plan Amendment #6 supported by substantial evidence?” The answer to that question must be a resounding “Yes.”

The facts in the record are clear. In response to the need for a new Class I rubbish site in Hancock County, the Authority accepted applications, including that of Haas. Compton Engineering was retained to review the applications and prepare a proposed Plan Amendment to Hancock County’s Solid Waste Management Plan. The initial proposed Plan Amendment included the Haas Site as well as seven (7) other sites. (R.E. 17). On or about December 21, 2006, the Authority submitted that proposed Plan Amendment to MDEQ.

MDEQ responded with a letter dated February 26, 2007 which stated, “MDEQ believes that the request by the Authority fails to support the need for 8 new Class I rubbish disposal sites in Hancock County.” (R.E. 52 - 53). To assist the Authority, MDEQ offered the services of its retained engineering firm, Neel-Schaffer Engineering (Neel-Schaffer), who was assisting other coastal counties in assessing future solid waste needs. (R.E. 53). Neel-Schaffer was to provide

“an independent technical review of this matter resulting in capacity recommendations for the Authority’s consideration.” *Id.* The Authority voted in favor of accepting MDEQ’s offer of assistance. (R.E 60).

Neel-Schaffer conducted a study of all of the proposed sites. Based on this study, Neel-Schaffer made recommendations to the Authority. (R.E. 77 - 96). Neel-Schaffer identified three (3) sites, along with nine (9) pre-positioned emergency sites, that could meet Hancock County’s “Rubbish Site Needs.” (R.E. 87). The potential sites recommended by Neel-Schaffer were the Allied Waste Site (Site 1), the King Site (Site 2) and the DK Site (Site 3). (R.E. 87). The Allied Site was recommended based on the fact that is an existing, permitted Class I rubbish site. The King and DK sites were recommended based on other objectives. (R.E. at 89). Both the King and the DK sites were noted to be accessible from major transportation corridors and to have existing capacity. The King Site was noted to be “Located in southern part of the County near centers of waste generation” and to be a “Convenient location for citizens, business and industry.” (R.E. at 89.). The DK Site was noted to be “Strategically located for regional initiatives from an economic development factor.” (R.E. at 89). While the Authority took Neel-Schaffer’s recommendation regarding the DK Site into consideration, it has yet to decide whether it will include a regional facility in future proposed amendments to Hancock County’s Solid Waste Plan.

After debate, the Authority ultimately voted to “accept and adopt the recommendation of Neel-Schaffer to revise Plan Amendment #6 as previously submitted to MDEQ and to re-submit Plan Amendment #6 consistent with that recommendation to include the ‘King Site’ as a Class I rubbish site within the solid waste plan and to proceed with the amendment and submission of Plan Amendment #6 (by Neel-Schaffer) to MDEQ.” (R.E. at 102 -103). This Order clearly lays out substantial reasons/evidence upon which the Authority’s decision was based. These reasons

include, 1) accessibility of the King Site from major transportation corridors and its existing capacity; 2) location of the site in the southern part of the County which is near the centers of waste generation; 3) the convenient location of the site for citizens, business and industry, and 4) the presence of land area of approximately 380 acres for expansion and accommodation of other solid waste activities, etc. (R.E. 89).

The record is clear in this matter that the decision of the Authority to include the King Site as a Class I rubbish site in the revised proposed Plan Amendment #6 was supported by the substantial evidence cited above. This evidence resulted from the Authority's careful consideration of and ultimate concurrence with a study conducted by and presented to the Authority by professional engineers educated and experienced in assessing the solid waste needs of Mississippi's coastal counties in the aftermath of Hurricane Katrina. (R.E. 53). While it is clear that Haas is unhappy with the outcome, it cannot deny the substantial evidence in the record that supports the Authority's decision to revise proposed Plan Amendment #6. Significantly, Haas points out in its Trial Court brief the debate among the Authority's Directors at its July 12, 2007, meeting and again at its August 21, 2007, meetings. Haas' own argument highlights the fact that the issue before the Authority was "fairly debatable." A decision that is "fairly debatable" is not arbitrary, capricious, discriminatory, illegal or unsupported by substantial evidence. Gillis, 860 So. 2d at 836 (Miss. Ct. App. 2003).

**E. The Authority's decision was neither arbitrary nor capricious.**

The facts are, as previously discussed, that, by letter dated February 26, 2007, MDEQ informed the Authority that MDEQ believed the proposed Plan Amendment #6 did not support the need for eight (8) new Class I rubbish sites in Hancock County. (R.E. 52 - 53). The MDEQ letter further suggested that the Authority re-evaluate the local solid waste capacity needs. *Id.* In an attempt to assist the Authority in this regard, MDEQ offered the services of its retained

engineers, Neel-Schaffer, to perform an "independent technical review of this matter resulting in capacity recommendations for the Authority's consideration." (R.E. 52 - 53). The Authority voted to accept MDEQ's offer of assistance at its March 6, 2007, meeting. (R.E. 60).

At the Authority's June 21, 2007, meeting, Randy Meador of Neel-Schaffer presented the findings of its study. (R.E. 77 - 96). Neel-Schaffer identified three (3) sites, along with nine (9) pre-positioned emergency sites, that in its expert opinion would serve to satisfy Hancock County's "Rubbish Site Needs." (R.E. at 26). The potential sites recommended by Neel-Schaffer were the Allied Waste Site (Site 1), the King Site (Site 2) and the DK Site (Site 3). (R.E. 87).

The Neel-Schaffer study showed the King Site to be accessible from major transportation corridors and to have existing capacity. The study further found that the King Site was located in the southern part of the County near centers of waste generation and to be a convenient location for citizens, business and industry." (R.E. 89). The Authority listed these factors as some of the reasons for its selection of the King Site. (R.E. 102 - 103).

Based on this evidence and after vigorous debate, the Authority voted to "accept and adopt the recommendation of Neel-Schaffer to revise proposed Plan Amendment #6 as previously submitted to MDEQ and to re-submit Plan Amendment #6 consistent with that recommendation to include the 'King Site' as a Class I rubbish site within the solid waste plan and to proceed with the amendment and submission of Plan Amendment #6 (by Neel-Schaffer) to MDEQ." (R.E. at 102 -103).

The evidence before the Authority was substantial. An "independent technical review" was conducted by professional engineers both educated and experienced in assessing solid waste needs in South Mississippi. The Authority "accepted and adopted" the recommendation of Neel-Schaffer to include the King Site as a Class I rubbish site in the revised Plan Amendment #6 to

the Hancock County Solid Waste Plan. There can be nothing arbitrary and capricious about authorizing an independent technical review of the matter by professionals qualified to conduct such a review. There can be nothing arbitrary and capricious about accepting and adopting the recommendations of this independent study. At the very least, the facts and recommendations presented to the Authority by Neel-Schaffer make the Authority's decision "fairly debatable." A decision that is "fairly debatable" is not arbitrary, capricious, discriminatory, illegal or unsupported by substantial evidence. *Gillis v. City of McComb*, 860 So. 2d 833, 836 (Miss. Ct. App. 2003). "Fairly debatable" is the antithesis of arbitrary and capricious. *Saunders v. City of Jackson*, 511 So. 2d 902, 906 (Miss. 1987). Consequently, Haas's argument that the Authority's decision was arbitrary and capricious is without merit.

### CONCLUSION

Contrary to the assertions made by Haas in this matter, the Authority's decision to revise proposed Plan Amendment #6, to include only one (1) new Class I rubbish site and to exclude some of the other permit applicants was supported by substantial evidence. MDEQ offered the services of its retained engineers, Neel-Schaffer, to assist the Authority. Neel-Schaffer conducted a study of the sites. The Neel-Schaffer study found that the King Site is accessible from major transportation corridors, has existing capacity, is located in the southern part of the County near centers of waste generation, and is conveniently located for citizens, business and industry. The Authority based its decision on these substantial factors. Because the Authority's decision was support by substantial evidence, including the Neel-Schaffer recommendation, it should not be disturbed on appeal.

Respectfully submitted, this, the 23<sup>RD</sup> day of October, 2009.

Hancock County Solid Waste Authority

APPELLEE

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**CERTIFICATE OF SERVICE**

I, Patrick W. Kirby, hereby certify that I have delivered a true and correct copy of the above and foregoing Appellant's Brief, via United States Mail, to:

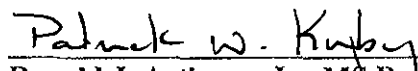
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I further certify that I have caused to be delivered by United States Mail, first class, postage prepaid, the original and four (4) copies of this Brief along with a copy of this brief on digital media, to:

Kathy Gillis, Clerk  
Mississippi Supreme Court  
P.O. Box 249  
Jackson, Mississippi 39205-0249

SO CERTIFIED, this, the 23<sup>rd</sup> day of October, 2009.

  
\_\_\_\_\_  
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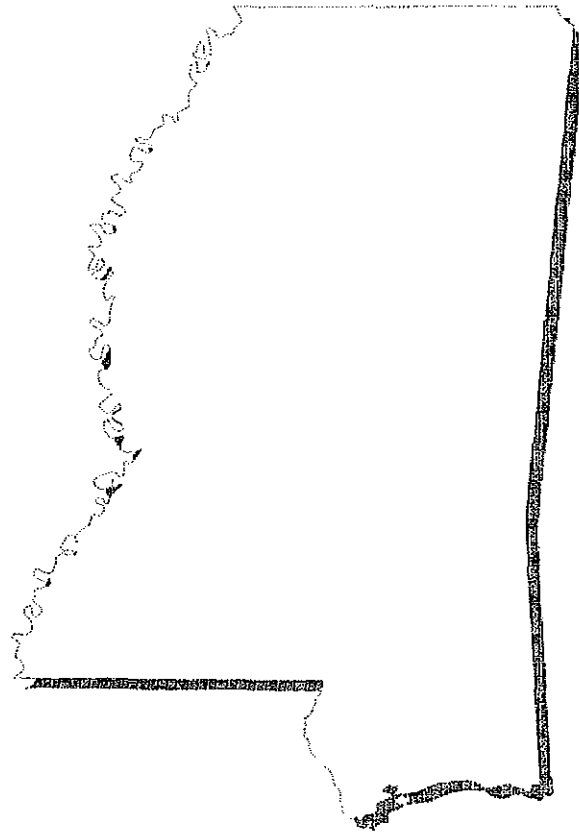
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# APPENDIX “A”



# **EVALUATION CRITERIA FOR LOCAL SOLID WASTE MANAGEMENT PLANS**

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## **STATE OF MISSISSIPPI**

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**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF POLLUTION CONTROL  
P. O. Box 10385  
Jackson, Mississippi 39289-0385**

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**Effective July 1, 1992  
Amended: December 16, 2004**

**EVALUATION CRITERIA FOR  
LOCAL SOLID WASTE MANAGEMENT PLANS  
(EFFECTIVE: JULY 1, 1992)  
(AMENDED: DECEMBER 16, 2004)**

**I. AUTHORITY AND SCOPE**

The Mississippi Solid Waste Planning Act of 1991 requires that every county, either individually or in cooperation with others, in cooperation with municipalities within the county, shall prepare, adopt, and submit to the Commission on Environmental Quality for review and approval a local nonhazardous solid waste management plan for the county. The act also requires the commission to establish criteria for the evaluation of local nonhazardous solid waste plans. These criteria are adopted pursuant to Section 17-17-225 of the act, and include the following:

- (a) The unit of local government's demonstration of the understanding of its nonhazardous solid waste management system, including the sources, composition, and quantities of nonhazardous solid waste generated within the planning area and transported into the planning area for management, and existing and planned nonhazardous solid waste management capacity, including remaining available capacity;
- (b) The adequacy of the local strategy for achieving the twenty-five percent (25%) waste minimization goal;
- (c) The reasonableness of the projections of nonhazardous solid waste generated within the planning area; and
- (d) The adequacy of plans and implementation schedules for providing needed nonhazardous solid waste management capacity.

**II. DEFINITIONS**

"Contiguous Property" – shall mean any property sharing a common border or point with a property where a new or expanded solid waste management facility is proposed. A property shall also meet this definition if the property would otherwise be contiguous except for separation by a street, highway, railroad line or other similar transit or utility right-of-way or other property owned by the applicant.

"Minor Modification" shall mean an amendment or addition to an approved plan, which is an administrative change or which does not involve or result in a significant change in the manner of solid waste management in the planning area. A minor modification would also include the addition or expansion of solid waste facilities, which do not require solid waste management permits or which are noncommercial, on-site and captive to wastes generated solely by the owner of the facility. A minor modification would not include: the addition of a new or expanded commercial solid waste management facility (facility); a significant change in the operation of an existing facility; a change in the service area for an existing facility; or any other significant change in the manner in which solid wastes are managed in the planning area.

### III. EVALUATION CRITERIA

#### A. UNDERSTANDING OF THE SOLID WASTE MANAGEMENT SYSTEM

1. Each plan must clearly demonstrate that it has accounted for residential, commercial, and industrial nonhazardous wastes, and any special wastes which may be a problem unique to that area.
2. Each plan must clearly demonstrate that it has determined the composition of nonhazardous solid waste currently disposed in facilities receiving household solid waste.
  - (a) The composition of residential waste shall be determined by at least two sampling events conducted in the planning area, one representative of an incorporated area, and the other representative of the unincorporated area. Sampling events shall be repeated at least every five (5) years.
  - (b) Large quantities of industrial waste should be added into the overall waste composition.
  - (c) The composition of solid waste should be categorized into at least the following components:
    - (1) Cardboard/corrugated paper
    - (2) Newsprint
    - (3) Other paper
    - (4) Plastic
    - (5) Metals (ferrous, aluminum, etc)
    - (6) Glass
    - (7) Wood/yard waste
    - (8) Food waste
    - (9) Textiles/other organics (rubber, leather, etc.)
3.
  - (a) Each plan must clearly demonstrate that it has determined the quantity of nonhazardous solid waste currently generated in the planning area and transported into the planning area, including residential, commercial, and industrial wastes, and any special wastes which may be a problem unique to that area.
  - (b) The quantity must be determined by actual measurements or records of representative samples of solid wastes generated in the planning area and transported into the planning area.
4. Each plan must clearly demonstrate that it has inventoried all existing facilities managing municipal solid waste, and that each facility has been generally described in terms of the type waste received, the operational history, the environmental suitability of the site, and the remaining available permitted capacity of each facility.
  - (a) At a minimum, the facilities inventoried must include all facilities authorized by the Mississippi Department of Environmental Quality, including public and private landfills, landfarms, and processing facilities.

- (b) For any existing facilities receiving household solid waste which plan to discontinue operations before October 9, 1993,
    - (1) the environmental suitability may be generally addressed by declaring the facility unsuitable for long-term use, and
    - (2) the operational history may be generally addressed in terms of length of operations and types of wastes received.
  - (c) For any existing facilities receiving household solid waste which plan to continue operations after October 9, 1993, or which may be later evaluated for long-term use,
    - (1) the environmental suitability should be generally addressed with a discussion of those features and characteristics which make it favorable for long-term use, and
    - (2) the operational history should be generally addressed in terms of length of operations, types of waste received, and past enforcement actions taken against the facility.
  - (d) For any existing facilities receiving wastes other than household solid wastes, the plan should determine the long-term plans of the facility and its role in helping to meet the solid waste needs of the planning area.
5. Each plan must clearly demonstrate that solid waste collection services are provided for all areas within the plan.
  6. Each plan must demonstrate the commitment of the county or planning authority to identifying and cleaning up all known open dumps within the planning area through the utilization of local enforcement authority.
  7. Each plan must describe its proposed system for waste tire management within the planning area. A clear understanding of the extent of the waste tire problem in the area shall be demonstrated by an estimation of the quantity of waste tires generated in the planning area and an inventory of waste tire collection sites or dumps in the area. The plan must contain an implementation schedule for starting up its proposed system.

## **B. ADEQUACY OF LOCAL STRATEGY FOR WASTE MINIMIZATION**

Each plan must contain an adequate local strategy for achieving a 25% waste minimization goal. The strategy shall contain specific programs or actions toward meeting the goal, such as policies promoting waste education, education programs, recycling or composting projects, and a schedule for implementation.

### **C. REASONABLENESS OF SOLID WASTE PROJECTIONS**

Each plan must demonstrate that the projections of solid waste generated over the planning period are adequate to meet the needs of the area. Such projections shall be based upon reasonably expected population projections over the next 20 years, and may also include any anticipated commercial or industrial growth. Any solid waste projected to be transported into the planning area from outside the planning area shall also be accounted for in any projections.

### **D. ADEQUACY OF PLANS AND IMPLEMENTATION SCHEDULES**

1. Each plan shall include a list of existing solid waste management facilities and also any additional planned facilities needed to meet the projected solid waste management needs of the planning area.
  - (a) Existing facilities shall be specifically identified, including all municipal solid waste landfills and other commercial landfills, rubbish disposal facilities, compost facilities, transfer stations, industrial disposal facilities and other solid waste management facilities. The role of each existing facility in meeting the intermediate and long-term needs of the planning area shall be described.
  - (b) Planned solid waste management facilities, whether new or expansions of existing facilities, which are expected to meet the solid waste needs shall be identified in the plan specifically as to the type, the name of the facility, the location, the size, and expected ownership and service area. Any plan, which does not identify the specific location of such facilities, must be modified to include such information, before an application for a permit is submitted to the Department.
  - (c) A proposed new or modified plan shall include a demonstration that owners of contiguous property to any planned new or expanded solid waste management facility, except land application facilities, are sent notice in writing of the proposed facility and of the specific facility information described in Part D.1.b above. Written notification shall be sent by certified mail to the landowner's address as indicated on county tax records. The notice shall be sent no later than the date of issuance of the public notice, required by Miss. Code Ann. Section 17-17-227, and shall contain a copy of the subject public notice. The demonstration provided to the Department should include copies of the signed receipts of certified mail delivery or a copy of any returned certified mail item, that is refused or otherwise undeliverable.
2. Each plan shall include a specific schedule for implementation.
3. For any publicly-owned facilities, the plan shall include an estimation of the costs of such facilities. If any local government entity or regional authority plans to contract with the private sector for use of privately-owned facilities, an estimation of the total contractual costs shall be made.
4. Each plan shall identify the proposed method of financing any public expenditures for solid waste management services.

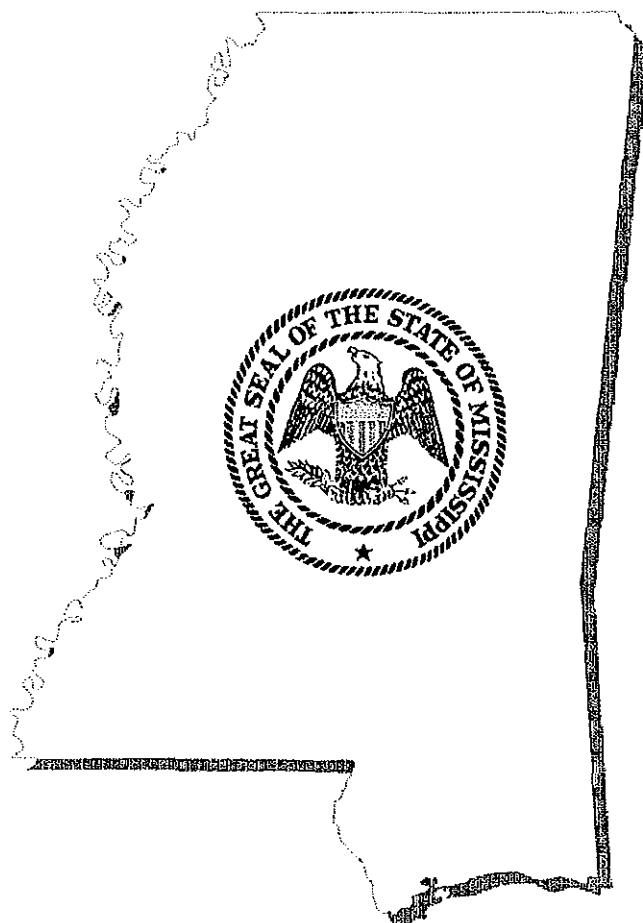
#### IV. APPROVAL/DISAPPROVAL BY COMMISSION

- A. If the Commission determined that a plan has met the criteria specified herein, it shall by order, approve the plan.
- B.
  - 1. If the Commission determines that one or more of the criteria herein has not been fully met, but that Section III. D. of this criteria has been met in relation to the residential and commercial solid waste needs of the planning area, it may by order conditionally approve the plan. The Commission shall include in the order the conditions, upon which the plan is approved, including a list of deficiencies, which prevent the plan from becoming fully approved and a schedule for correcting those deficiencies.
  - 2. Should the county or planning authority fail to correct the deficiencies listed by the Commission within the established schedule, the Commission may take any enforcement action which it is authorized by law to administer, or it may, by order, rescind its conditional approval.
  - 3. Upon correction of the deficiencies listed with any conditional approval, the Commission shall fully approve the plan.
- C. If the Commission determines that the plan fails to meet the criteria of Section III.D with respect to residential and commercial waste needs, or that other criteria herein have not been met, it may, by order, disapprove the plan. The Commission shall include in the order a statement outlining the deficiencies in the plan and shall direct the county or planning authority to submit a revised plan that remedies those deficiencies. Any person found by the Commission to be in violation of said order shall be subject to civil penalties pursuant to Miss. Code Ann. Section 17-17-29.
- D. No new plan or modification to an approved plan shall be approved or conditionally approved by the Commission, until it has been duly ratified in accordance with Paragraph (5) of Miss. Code Ann. Section 17-17-227 and Section III.D of these Regulations, except where the action involves a minor modification to the plan.

In the case of a minor modification to an approved plan, ratification of the modified plan shall be approved in accordance with Paragraph 5 of Miss. Code Ann. Section 17-17-227 and Section III.D of these Regulations except as described below:

- 1. A minor modification may be approved without the mandatory public notice and public hearing requirements and the adjacent county notice procedures described in Part 5.(a) of Paragraph 5 of Miss. Code Ann. Section 17-17-227.
- 2. A minor modification may be approved by the local government without the notification to the contiguous property owners as required by Section III.D.1.c of these regulations.

# **GUIDANCE FOR MODIFYING A LOCAL SOLID WASTE MANAGEMENT PLAN**



**SEPTEMBER 2006**



**Mississippi Department of Environmental Quality  
Solid Waste Policy, Planning and Grants Branch**

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### Attachments:

Forms for Local Government Use:

*Request for Amendment Form (and Submittal Checklist)*

Forms for Applicant Use:

*Applicant Request Form*



## **Introduction**

State law requires that local governments develop a 20-year solid waste management plan for the solid wastes managed in their jurisdictions and submit these plans for the approval of the Mississippi Commission on Environmental Quality (Commission). These local governments may include counties, cities, solid waste management authorities, or solid waste management districts. Each local government should annually review and update the approved local plan to assess the adequacy of existing solid waste management programs and capacity, to evaluate the need for new or expanded solid waste management programs and services, and to ensure the progression of planned implementation schedules.

Potential modifications to the local plan may originate from entities such as private individuals, commercial businesses, local industrial facilities, or the local government. Typical modifications may include the addition of a new or expanded commercial solid waste management facility, a significant change in the operation or the service area of an existing facility, or any other significant change in the manner of solid waste management in the planning area. In these cases, the seven steps outlined in this document describe the procedures that must be completed in order to modify an approved local solid waste management plan.

In instances where a proposed modification to the local plan does not involve or result in a significant change in the manner of solid waste management in the planning area, a "minor modification" may be considered. A minor modification would also include the addition or expansion of facilities which are noncommercial, on-site, and captive to wastes generated solely by the owner of the facility or which do not require solid waste management permits from the Mississippi Environmental Quality Permit Board. In the case of a minor amendment, the local government may choose to forego the public participation and notification portion of the process (Step 3). Local governments are encouraged to consult the Mississippi Department of Environmental Quality (Department) prior to processing a proposed amendment as a minor modification.

## **Step 1: Preliminary Actions for Initiating a Modification to the Local Plan**

Generally, the following actions should occur in order to properly initiate the process to modify the local plan:

### **a) Submittal of a Formal Request**

Any entity seeking to modify the local solid waste management plan to include the addition of a new or expanded commercial solid waste management facility, modify the operations or the service area of an existing facility, or otherwise significantly change the manner of solid waste management within the planning area must first submit a formal request to the local government. Such a request should be made on the attached *Applicant Request Form* and should address, at minimum, the information required on the form. The entity making the request should also submit a copy of this request form to the Department at the time of submittal to the local government. The local government may request additional information

not on the form from the persons making the request in order to assist the local officials in their decision-making process.

**b) Preliminary Review and Consideration by the Local Government**

The local government should review and duly consider requests for the proposed modification of the local plan. Typically, this review considers such issues as the need for the facility; the consistency of the proposed modification with the goals and implementation schedules of the approved plan; local siting issues such as zoning, land use, and environmental justice; and other potential issues considered significant by the local government.

*Demonstration and Determination of Need:*

According to Miss. Code Ann. Section 17-17-227, each local solid waste management plan must include a determination of need by the local government for any new or expanded solid waste management facility proposed for inclusion in the plan. The determination of need must include, at minimum, the following items:

- i. Verification that the proposed facility meets needs identified in the approved local nonhazardous solid waste management plan which shall take into account quantities of municipal solid waste generated and the design capacities of existing facilities;
- ii. Certification that the proposed facility complies with local land use and zoning requirements, if any;
- iii. Demonstration, to the extent possible, that the operation of the proposed facility will not negatively impact the waste reduction strategy of the local government submitting the plan;
- iv. Certification that the proposed service area of the proposed facility is consistent with the local nonhazardous solid waste management plan; and
- v. A description of the extent to which the proposed facility is needed to replace other facilities.

To facilitate the local government's consideration and decision on the need for a new or expanded solid waste management facility the applicant shall prepare a demonstration of need that addresses each of the components described above (see attached Applicant Request Form). The local government may require additional information from the applicant to further develop or supplement this demonstration of need or may collect information from other sources.

If the local government determines that a facility should receive further consideration for inclusion into the local plan based on their review, then the local government shall develop a preliminary determination of need from the applicant's demonstration and other collected information. This preliminary determination of need shall be incorporated into the draft pages of the plan as described in Step 2 and shall be presented for review and comment during the public participation process.

### *Local Siting Issues:*

When zoning issues and land use issues are being considered, the Department encourages the local government to resolve potential issues such as the rezoning of a property prior to beginning the process to amend the solid waste management plan. In some instances, the local government also may evaluate the potential for environmental justice issues to exist with the proposed siting of a new solid waste management facility. In cases where environmental justice may be a potential issue, the Department encourages the local government to place added emphasis on the local public participation process and the meaningful involvement of the local community during the planning amendment process.

### *Other Issues:*

The local government also may consider other potential issues. These may include operational concerns such as traffic, noise, odor, past performance/compliance history, or other similar issues. The Department encourages the local government to consider any potential issues early in the planning process so that these issues may be adequately addressed during the public participation process.

If the preliminary review and consideration convinces the local government that the proposed modification should be further considered, then the local government should complete Steps 2-7 of this guidance to properly modify the local plan. Alternatively, if a local government determines that the proposed modification is not needed or is otherwise inconsistent with the approved local plan, then the requested modification may be denied and the process halted at the local level. In this case, no public notices, hearings, or other actions are required by State law, however, the Department would request that the local government advise the Department of the denial of the proposed amendment.

## **Step 2: Preparing Written Modifications to the Plan**

In order to further consider a proposed modification to the plan and continue the amendment process, the local government must prepare a written description of the proposed solid waste management facility, existing facility modification, or other proposed change. This description must be prepared as modified pages intended for insertion or replacement in the official copies (hard copy and electronic copy if available) of the local plan maintained by the local government and the Department. For new or expanded solid waste management facilities, the facility description must also include a preliminary determination of need as developed by the local government from the information in the demonstration of need provided by the applicant (see Items i.-v. in Step 1.b).

The modified page(s) should be developed for insertion into the existing local plan at the most appropriate or logical place in the plan. For example, when adding a new solid waste management facility, the facility description might be most appropriately added or inserted into the "Comprehensive Inventory of Local Solid Waste Management Facilities" section or some similar section. Likewise, any additional tables, appendices, or other sections in the plan that include information regarding the proposed facility should also be revised. If adding new

information to the plan causes the existing content of a page to extend to the next page, then revised pages for the entire chapter following the revision may need to be submitted. However, it is only necessary to submit those pages that change from the existing approved plan.

When adding a new solid waste facility or expanding or modifying an existing facility in the plan, the facility description must include the following information:

- a. the type of facility (e.g. municipal landfill, class II rubbish site, transfer station, etc.);
- b. the type of waste(s) proposed to be managed;
- c. the name of the owner and operator of the facility;
- d. the proposed size of the facility including proposed disposal area and total property area;
- e. the proposed location of the facility including Section, Township, and Range;
- f. the physical address of the facility;
- g. a description of the specific service area from which the waste proposed for acceptance at the facility will be generated. The approved service area should generally be defined by the cities, counties, or states from which the waste may originate or by some specified radius (in miles) from the facility boundary or another selected boundary; and
- h. a preliminary determination of need as developed by the local government from information in of the demonstration of need provided by the applicant (Items i.-v.).

### **Step 3: Public Participation and Notifications**

The local government must conduct a public participation process that provides for the meaningful involvement of the general public. At minimum, the local government must develop a public notice which describes the proposed planning modification, establishes a public comment period, specifies where documents relating to the proposed modification may be reviewed by the public, provides a mechanism for receiving written comments, and provides notice of the mandatory public hearing where additional comments may be received. The documents to be made available for public review should generally include, at minimum; copies of the Applicant Request Form and the applicant's demonstration of need, copies of the existing plan, copies of the modified pages of the plan, and a copy of the public notice. Additionally, the local government must notify each adjacent county of the proposed modifications. Also, in instances where a new or expanded solid waste management facility is proposed for inclusion in the plan, the local government must ensure that contiguous landowners receive proper notification of the proposed facility.

#### **a) Public Notice**

A detailed public notice must be published at least twice in a newspaper of general circulation in the county where a facility is located (or proposed to be located). Such a notice may need to be published in more than one newspaper if the modification involves multiple counties in a regional plan. The notice should be conspicuously displayed in the newspaper. The public notice should, at a minimum:

1. indicate the name and mailing address of the person or company making the request for the proposed modification;

2. describe the proposed modification in detail. For a new or existing facility, the notice must include:
  - the type(s) of solid wastes to be managed,
  - proposed size of the facility including total property acreage and proposed waste disposal/management acreage;
  - the location of the facility including the physical address and the Section, Township, and Range of the site, and
  - the geographical service area for the facility from which wastes are to be received.
3. specify the location where the documents relating to the proposed modification are available for review by the public;
4. establish a 30-day comment period and a mechanism or process for submitting comments related to the proposed modification; and
5. include the date, time, and place of the scheduled public hearing concerning the proposed modification.

**b) Public Hearing**

A public hearing must be held by the local government to provide local citizens an opportunity to verbally express their comments or concerns regarding the proposed planning modification. Such a hearing may be held during a regularly scheduled meeting of the local government and should allow attendees ample time to voice their comments concerning the proposed modification. However, when a significant degree of public interest is anticipated, the Department recommends that public hearings be held after normal business hours. Should there be a significant number of commentators present at a hearing, the local government may consider extending the comment period after the hearing for the submittal of additional written comments concerning the issue, especially if some attendees do not have time to speak. If any written or verbal comments are received, the local government should establish an appropriate time period after the hearing for review and consideration of the expressed comments before making a final decision on the proposed modification. However, the local government must act on the proposed amendment within ninety (90) days of the public hearing (Step 4).

**c) Notifications to Adjacent Counties**

According to State law, the local government must notify in writing the Board of Supervisors of each adjacent county of the proposed modifications to the plan. In instances where the adjacent county receiving the notification is part of a regional authority, the Department encourages the local government to also notify the governing body of the regional authority. This notification should be sent at the time of publication of the public notice and should include the information included in the public notice (Step 3.a) or an actual copy of the public notice. Additionally, any other information pertaining to the proposed modifications should be made available for their review upon request.

#### **d) Notifications to Contiguous Landowners**

When a proposed modification to the plan includes a new or expanded solid waste management facility (except land application facilities), the local government must ensure that the owners of contiguous property are notified in writing. Contiguous property shall include any property sharing a common border or point with a property where a new or expanded solid waste management facility is proposed. A property shall also be considered contiguous if the properties are separated by a street, highway, railroad line or other similar transit or utility right-of-way or other property owned by the applicant.

Written notification shall be sent by certified mail to the contiguous landowner's address as indicated on county tax records. This notice may be sent by either the applicant or the local government, but must be sent no later than the first date of publication of the public notice and must contain a copy of the subject public notice (Step 3.a). Documentation of these notices must be provided to the Department by the local government and must include copies of the signed receipts of certified mail delivery or a copy of any returned certified mail item that is refused or otherwise undeliverable.

Proof of publication and a copy of the public notice should be submitted to the Department as described in Step 5. Additionally, a summary statement of all comments received or a transcript of the public hearing should be submitted. Finally, when written or verbal public comments are received, the local government should develop a brief written statement that describes how such comments were ultimately considered and what actions, if any, were taken to alter the proposed modification based on these comments. If no written or verbal public comments were received, then the local government should also indicate that in writing.

Applicants should be aware that the local government may choose to approve, alter, or deny proposed modifications based upon information or comments received during the public participation process. For instance, based on public comments at the public hearing, the local government might choose to restrict the proposed service area or to reduce the proposed disposal acreage. If the request is denied, no additional actions are required, but the Department would request that the local government advise the Department of the denial of the proposed amendment.

#### **Step 4: Formal Resolution**

Following the 30-day comment period and associated public hearing, the local government should act upon the request to modify the plan. This action may consider the originally proposed modification or a new version of the proposed modification that has been altered based upon public comments, the desires and needs of the local government, or other information considered during the process.

If the local government acts to approve a proposed amendment, then a formal resolution memorializing that approval must be adopted within 90 days of the public hearing date. In certain instances, when a regional plan is modified, the Department should be consulted to determine if resolutions may be required of multiple counties. Upon completion, a signed and

certified copy of the resolution(s) and a formal request for approval of the proposed amendment should be submitted to the Department. In general, the resolution should memorialize each step of the planning amendment process, including relevant dates. Additionally, the local government should incorporate appropriate language in the resolution to address how public comments were received and considered, to formally express their concurrence with the results and findings of the demonstration of need, and to formally request that the Department review and consider the proposed modification.

The local government also may act to deny the proposed amendment due to the consideration of public comments or other information received during the public participation phase of the amendment process. If the request is denied, no additional actions are required, but the Department would request that the local government advise the Department of the denial of the proposed amendment.

### **Step 5: Submittal Requirements**

Once approved by resolution, the local government should submit a formal request to the Department to modify the local plan. The submittal should include two copies of the following:

- a. the completed *Local Government Request Form* and/or cover letter requesting that the Department consider the proposed modifications to the local plan;
- b. the original and any revised copies of the *Applicant Request Form* signed by the applicant and including the demonstration of need and any additional documents or supplemental information (Steps 1.a);
- c. the revised page(s) of the plan including relevant facility information and a description of the determination of need for any new or expanded facility (Step 2);
- d. the public notice including certified proof of publication (Step 3.a);
- e. the summary statement of public comments received and/or a transcript of the public hearing (Step 3.b). Where public comments were received, this should also include a written statement describing how these comments were ultimately considered;
- f. the letters notifying adjacent counties of the modifications (Step 3.c);
- g. for new or expanded facilities, the letters to contiguous property owners and copies of the signed certified mail delivery receipts or of any returned certified mail item that is refused or otherwise undeliverable (Step 3.d); and
- h. the signed and certified final resolution by the local government approving the proposed modifications and confirming that the determination of need for any new or expanded facilities has been considered and approved by the local government (Step 4).

### **Step 6: Department Review and Request for Hearing**

The Department will review the submitted request from the local government for modification of the approved plan and the previously described supporting documents. Upon determining that the request is complete, the Executive Director of the Department may approve the modification under the delegation of the Commission or the Department may make a recommendation to the Commission for their consideration regarding the proposed modification. Generally, the Commission will consider and act upon any controversial matters or any matters involving a new

or expanded municipal solid waste landfill. The resulting action on the proposed modification will be recognized through the issuance of an Administrative Order to the local government approving or denying the proposed change in the local plan.

Any person or interested party may request that a hearing be conducted regarding the issuance of the Administrative Order in accordance with Section 49-17-41 of the 1972 Mississippi Code Annotated within thirty (30) days of the issuance date of the Administrative Order acting upon the planning modification. The request must be made in writing to the Executive Director of the Department at the address in the contact information section of this document.

### **Step 7: Maintaining an Official Copy of the Approved Local Plan**

Upon receipt of the Administrative Order confirming the approval of the proposed amendment by the Commission, the local government should replace the affected pages of the approved plan (the hard copy and electronic copy, if available) with the revised pages of the plan as approved. This action should assist the local government with properly completing future amendments or planning reviews by ensuring that the approved plan is up to date and that the local copy of the plan is consistent with the copy on file with the Department.

### **Minor Modifications to the Local Plan**

If a proposed modification to the local plan does not involve or result in a significant change in the manner of solid waste management in the planning area, then the local government may consider a minor modification to the plan. Minor modifications allow the local government, at its discretion, to forego the notification and public participation portion of the amendment process as described in Step 3. The remaining steps of the process must be completed as described in this document. Local governments are strongly encouraged to consult the Department prior to processing a proposed modification as a minor amendment.

Minor modifications include the addition or expansion of facilities which are noncommercial, on-site, and captive to wastes generated solely by the owner of the facility or which do not require solid waste management permits. Minor amendments would *not* include the addition of a new or expanded commercial solid waste management facility, a significant change to the operation of an existing facility, a change to the service area for an existing facility, or any other significant change in the manner of solid waste management in the planning area.

### **Contact Information**

Questions regarding any of the procedures described herein as well as any information submitted in adherence with these procedures should be addressed to the Solid Waste Policy, Planning and Grants Branch of the Mississippi Department of Environmental Quality at (601) 961-5171 or at P.O. Box 2261, Jackson, Mississippi 39225. This and other associated documents pertaining to solid waste management and planning may be found on the web at:

[http://www.deq.state.ms.us/MDEQ.nsf/page/SW\\_Home?OpenDocument](http://www.deq.state.ms.us/MDEQ.nsf/page/SW_Home?OpenDocument)



## LOCAL GOVERNMENT REQUEST FORM (AND CHECKLIST) TO AMEND THE LOCAL SOLID WASTE MANAGEMENT PLAN

*This form may serve as the formal request of the local government to MDEQ for consideration of the proposed amendment to the local solid waste management plan. The form should be completed and signed by the appropriate government official(s) and may be submitted in lieu of a cover letter. (please type)*

Name of Local Government: \_\_\_\_\_

Title of Local Plan: \_\_\_\_\_

Description of Proposed Modification: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As the local governing body responsible for solid waste management planning, we hereby formally submit to the Mississippi Department of Environmental Quality the following information and documentation regarding the proposed modification to the local solid waste management plan described above. The submitted information includes, at a minimum, the following:

- ☐ 1. Formal request for amendment (this form or cover letter)
- ☐ 2. Two copies of the completed Applicant Request Form, including the demonstration of need and any additional documents or supplemental information
- ☐ 3. Two copies of the revised/insertion pages of the plan describing all relevant facility information, including a description of the local government's determination of need for a new or expanded facility
- ☐ 4. Two copies of the public participation documentation and notifications, including:
  - \_\_\_\_\_ Public notice, including certified proof of publication
  - \_\_\_\_\_ Public hearing transcript and/or summary statement of comments received and statement describing how any public comments were ultimately considered
  - \_\_\_\_\_ Notification(s) to adjacent counties
  - \_\_\_\_\_ Notification(s) to contiguous landowners, including certified mail receipts, for any new or expanded facility
- ☐ 5. Two copies of the signed and certified formal resolution approving the proposed modification(s), including a description of public comments considered and the local government determination of need

We have duly reviewed and considered all information and public comments received regarding this matter in accordance with state law and are hereby requesting that the Commission on Environmental Quality approve this proposed amendment to the plan. We hereby certify by signature of our authorized representative that the above information has been included and submitted with this formal request to modify the local solid waste management plan.

Name of Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Title of Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_



**Solid Waste Policy, Planning & Grants Branch**  
**Mississippi Department of Environmental Quality**  
P. O. Box 2261, Jackson, MS 39225  
Phone: (601) 961-5171 / Fax: (601) 961-5785



## APPLICANT REQUEST FORM FOR AMENDMENT TO THE LOCAL SOLID WASTE MANAGEMENT PLAN

*This form should be completed by any persons seeking to locate a new/expanded solid waste management facility or to modify the existing operations or service area of a facility. The completed form should be submitted to the appropriate local government officials for consideration as a proposed amendment to the approved local plan. Be advised that local officials may request or require additional information in order to assist in their decision-making process. A copy of this request form should also be forwarded to the MDEQ at the address shown on the second page of this form at the time it is submitted to the local government.*

1. Name of Applicant: \_\_\_\_\_
2. Address of Applicant: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
3. Contact Person: \_\_\_\_\_ Telephone No.: \_\_\_\_\_
4. Name of Facility: \_\_\_\_\_
5. Indicate type of facility:

_____ Municipal Solid Waste Landfill	_____ Transfer Station
_____ Industrial/Other Landfill	_____ Processing Facility
_____ Class I Rubbish Site	_____ Composting Facility
_____ Class II Rubbish Site	_____ Land Application Site(s)
_____ Waste Tire Facility (describe) _____	
_____ Other facility (describe) _____	
6. Will the proposed facility be Commercial or Non-Commercial? \_\_\_\_\_  
*[Note: A commercial facility means any facility which manages solid waste for compensation or which accepts solid waste from more than one generator not owned by the facility owner.]*
7. Physical address of facility: \_\_\_\_\_  
\_\_\_\_\_
8. Section: \_\_\_\_\_ Township: \_\_\_\_\_ Range: \_\_\_\_\_ County: \_\_\_\_\_
9. Attach topographic quadrangle map depicting the location of the proposed site separately.
10. Name of Landowner: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone No. of Landowner: \_\_\_\_\_
11. Request Type: ☐ New Facility      ☐ Expansion of Existing Facility  
☐ Other Modification (describe) \_\_\_\_\_
12. Proposed size of the facility: (a) proposed disposal/waste management in area (in acres): \_\_\_\_\_  
(b) total property area (in acres): \_\_\_\_\_
13. Describe the wastes to be received at the site. If wastes are to be received from a single or limited source(s), please include the industry's name(s) or other source's name(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

--continues on back--

## APPLICANT REQUEST FORM (continued)

14. Provide a description of the proposed service area. Generally, the service area should be described either in terms of the cities, counties, or states from which the wastes will originate or by some radius (in miles) from the facility boundary or another selected boundary (e.g. county line): \_\_\_\_\_

15. Does the applicant currently own or operate any other solid waste management facilities within the proposed service area?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, what are the name and types of facilities and their locations: \_\_\_\_\_

16. According to Miss. Code Ann. Section 17-17-227, each local solid waste management plan must include a determination of need by the local government submitting the plan for any proposed new or expanded solid waste management facility. To assist in this determination, a demonstration of need should generally be prepared by the applicant and provided to the local government for review and consideration. The demonstration should be attached to this form as a separate sheet and must include each of the following items:

- i. Verification that the proposed facility meets needs identified in the approved local nonhazardous solid waste management plan which shall take into account quantities of municipal solid waste generated and the design capacities of existing facilities;
- ii. Certification that the proposed facility complies with local land use and zoning requirements, if any;
- iii. Demonstration, to the extent possible, that the operation of the proposed facility will not negatively impact the waste reduction strategy of the local government submitting the plan;
- iv. Certification that the proposed service area of the proposed facility is consistent with the local nonhazardous solid waste management plan; and
- v. A description of the extent to which the proposed facility is needed to replace other facilities.

17. Certification

To the best of my knowledge and belief, I certify that the information provided in this application, including attachments, is true, accurate, and correct. I further certify that I possess the authority to request this solid waste plan amendment.

\_\_\_\_\_  
Name of authorized representative (Please type or print)

\_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
Title of authorized representative (Please type or print)

\_\_\_\_\_  
Date

Solid Waste Policy, Planning and Grants Branch  
Mississippi Department of Environmental Quality  
P. O. Box 2261, Jackson, MS 39225  
Telephone No. (601) 961-5171 / Fax No. (601) 961-5785

**MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY  
REGULATION MCEQ-1:  
REGULATIONS REGARDING THE DELEGATION OF AUTHORITY FROM THE  
MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY  
TO THE EXECUTIVE DIRECTOR OF THE  
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Adopted May 24, 2001  
Amended March 27, 2003**

## **I. Introduction**

Statutes regarding environmental and natural resources issues in Mississippi grant the Mississippi Commission on Environmental Quality ("Commission") broad discretion to delegate many of its statutory authorities to the Executive Director of the Mississippi Department of Environmental Quality ("MDEQ"). Since the creation of the Commission and its predecessor bodies, the Mississippi Air and Water Pollution Control Commission and the Mississippi Commission on Natural Resources, the Commission has delegated certain authorities to the Executive Director by agency action reflected in the minutes of the Commission. The Commission now consolidates these delegations, adds additional delegations, and promulgates these delegations as a regulation pursuant to the Mississippi Administrative Procedures Law.

The chart below describes specific delegations of authority and lists the most pertinent statutory authorization for the delegation. The Commission, however, also is given a broad general authority to delegate its authority by Miss. Code Ann. § 49-17-17(o). That section authorizes the Commission "to delegate in such manner as it sees fit the duties and powers relating to air and water quality and pollution control to the agency members presently engaged in the several fields of water or air control or pollution." Miss. Code Ann. § 49-17-17(n) authorizes the Commission to "exercise all incidental powers necessary to carry out the purposes of Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47." The Commission interprets these statutes to allow the delegation of authority to the Executive Director to perform all actions within the jurisdiction of the Commission required to protect the quality and quantity of the state's water resources and the quality of the state's ambient air and to regulate solid nonhazardous and hazardous waste within the State. This delegation authority by definition allows delegation of authorities related to the three offices of MDEQ created by statute: The Office of Geology and Energy Resources, the Office of Land and Water Resources, and the Office of Pollution Control. See Miss. Code Ann. § 49-2-7.

The Commission also interprets these statutes as allowing the delegation to the Executive

Director of authorities necessary to perform the day-to-day functions of MDEQ through the Office of Administrative Services, as created by Miss. Code Ann. § 49-2-17. Additionally, Miss. Code Ann. § 53-7-19(p) allows the Commission to authorize the director "to discharge or exercise any power or duty granted to the commission by the provisions" of the Surface Mining and Reclamation Law.

This regulatory action is not intended to revoke any authorization previously granted to the Executive Director and not listed in this regulation.

The delegation of authority to the Executive Director does not require the Executive Director to exercise the authority delegated. The Executive Director may determine, on a case-by-case basis, that a decision within his or her authority to make should be referred to the Commission for consultation and/or decision.

## II. Delegations

The Commission delegates the following powers to the Executive Director of MDEQ:

DELEGATION	AUTHORITY*
<ul style="list-style-type: none"> <li>to employ qualified professional personnel and technical and clerical staff as may be required for the operation of the department</li> </ul>	49-2-13(e)
<ul style="list-style-type: none"> <li>to organize the administrative units of the department and alter such organizational structure and reassign responsibilities as he may deem necessary to carry out the policies of the commission within the limits of Section 49-2-7</li> </ul>	49-2-13(c)
<ul style="list-style-type: none"> <li>to delegate the authority to sign Commission orders to the Head of the Office of Pollution Control, the Head of the Office of Geology and Energy Resources, the Head of the Office of Land and Water Resources, and the General Counsel of MDEQ, to the extent that the Executive Director is allowed to issue orders pursuant to Miss. Code Ann. § 49-2-13(j)</li> </ul>	49-2-13(j)
<ul style="list-style-type: none"> <li>to issue orders in accordance with</li> </ul>	17-17-227, 49-2-13(j)

Section 17-17-227 approving or denying in whole or in part solid waste management plans and/or amendments thereof,

- to issue administrative orders: 49-2-13(j)
- to prohibit, control or abate discharges of contaminants and wastes into the air and waters of the state
- to require appropriate remedial measures to prevent, control or abate air and water pollution or to cause the proper management of solid wastes
- to impose penalties which the respondent agrees to pay
- to require compliance with permits and regulations
- to issue emergency orders pursuant to Section 49-17-27
- to execute all orders required by the brownfields statute that are not specifically required by statute and/or regulation to be issued by the full Commission 49-35-11(4); 49-2-13(j)
- to issue cease pumping orders and orders conditioning permitted water withdrawals 51-3-7; 49-2-13(j)
- to issue cease and desist orders to surface mining operators who are mining without the required permit or notice of intent to mine or who are otherwise operating in violation of Mississippi law 53-7-19(l), (m); 49-2-13(j)
- to make preliminary determinations necessary to file suit, file suit, conduct litigation, and settle all litigation matters on behalf of the Commission 49-2-9(e) and (f), 49-2-13(k), 49-17-17(c) and (o), 49-17-44.1

- to enter into all contracts, grants and cooperative agreements allowed by 49-2-9(e)
- to delegate signature authority for agency contracts, purchase orders, travel reimbursement authorizations, requisitions, personnel forms, and similar documents to the Head of the Office of Administrative Services and/or to the Division Chiefs within that Office 49-2-17; 49-17-17(n), (o)
- to grant continuances for scheduled formal hearings; to issue nondispositive rulings regarding contested matters (such as, scheduling orders and decisions on interlocutory motions), and to stay pending evidentiary hearing the effectiveness of a commission order upon a showing of good cause by any party 49-2-5(3); 49-2-13(j)
- to issue asbestos certifications and approve asbestos abatement training programs 37-138-9; 49-2-13(j)
- to issue UST certifications to individuals authorized to install, alter and/or close USTs 49-17-429; 49-2-13(j)
- to issue landfill (solid waste) operator certifications 21-27-211; 49-2-13(j)
- to issue wastewater operator certifications and approve wastewater training programs 21-27-207; 49-2-13(j)
- to issue water well driller licences 51-5-1(1) and (5); 49-2-13(j)
- to issue lead certifications and approve lead-based paint activities training programs 49-17-507; 49-2-13(j)

- to issue waste tire transporter certificates 17-17-407(b); 49-2-13(j)
- to requisition and use funds in the Pollution Emergency Fund, Solid Waste Corrective Action Trust Fund, and all other Funds created by Title 17 and Title 49 and within the jurisdiction of the commission for the statutory purposes allowed by the Code 49-17-43(d) and 49-17-68; 17-17-63; et al.
- to discharge or exercise any power or duty granted to the commission by the provisions of the Surface Mining and Reclamation Law 53-7-19(p)
- to negotiate state land mineral lease terms and present negotiated terms to the commission for approval in noncompetitive lease situations 29-7-3
- to execute division orders covering oil, gas and other minerals and approve applications for seismic surveys 29-7-3
- to execute reciprocity agreements with other states whose lead based paint program requirements meet or exceed the Commission's requirements 49-17-507(i) and 49-17-531
- to waive the late penalty for failure to pay UST fee upon sufficient demonstration that failure to pay timely was unavoidable due to financial hardship or otherwise beyond the control of the owner 49-17-421
- to compile and publish compilations of the regulations of the Commission and Permit Board 49-17-23
- to issue permit transfers of all permits required by the Surface 53-7-19(p)



## Mining and Reclamation Law

- to make determinations regarding the feasibility of establishing community sewerage systems upon the submission by the developer of a preliminary design and feasibility study 41-67-4
- to approve and award Local Governments Solid Waste Assistance Grants (Competitive Grants and Non-Competitive Grants), Local Governments Waste Tire Collection and Clean Up Grants, Local Government Tire Derived Products Grants, Incentive Waste Tire Recycling and Research Grants, Local Government Planning Grants, Right Way To Throw Away Grants (Local Hazardous Waste Amnesty/Collection Event Grants); and Pollution Prevention/Recycling Grants otherwise allowed by law 49-17-17(n), (o)

\*Authorities listed in this section are not exclusive and are in addition to authorities listed in Section I., above.