

1 SB80
2 125989-1
3 By Senator Marsh
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 01-MAR-11

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8 SYNOPSIS: Under current law, the disposal of fly ash
9 waste, bottom ash waste, boiler slag waste, and
10 flue gas emission control wastes resulting
11 primarily from the combustion of coal or other
12 fossil fuels at electric generating plants is
13 exempt from regulation as a solid waste.

14 This bill would remove this exemption and
15 authorize the regulation of those substances as
16 solid waste.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 To amend Sections 22-27-2 and 22-27-3, Code of
23 Alabama 1975, relating to solid waste disposal; to remove an
24 existing exemption from regulation for fly ash waste, bottom
25 ash waste, boiler slag waste, and flue gas emission control
26 wastes which result primarily from the combustion of coal or

1 other fossil fuels at electric generating plants and authorize
2 the regulation of those substances as a solid waste.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 22-27-2 and 22-27-3, Code of
5 Alabama 1975, are amended to read as follows:

6 "§22-27-2.

7 "For the purpose of this article, the following
8 terms shall have the meanings respectively ascribed to them by
9 this section:

10 "(1) AGENCY. Any controlling agency, public or
11 private, elected, appointed, or volunteer utilizing methods
12 approved by the health department or the department for the
13 purpose of controlling and supervising the collection or
14 management of solid wastes or recyclable materials.

15 "(2) ASHES. The solid residue from burning of wood,
16 coal, coke, or other combustible material used for heating ~~or,~~
17 from incineration of solid wastes, ~~but excepting solid~~
18 ~~residue, the storage or disposition of which is controlled by~~
19 ~~other agencies~~ or for the production of electricity at
20 electric generating plants.

21 "(3) COAL COMBUSTION BY-PRODUCTS. Fly ash, bottom
22 ash, boiler slag, or flue gas emission control by-products
23 which result primarily from the combustion of coal or other
24 fossil fuels at electric generating plants.

25 "~~(3)~~ (4) COMPOSTING OR COMPOST PLANT. An officially
26 controlled method or operation whereby putrescible solid
27 wastes are broken down through microbic action to a material

1 offering no hazard or nuisance factors to public health or
2 well-being.

3 "~~(4)~~ (5) DEPARTMENT. The Alabama Department of
4 Environmental Management.

5 "~~(5)~~ (6) DIRECTOR. The Director of the Alabama
6 Department of Environmental Management or his or her designee.

7 "~~(6)~~ (7) DISCHARGE. The accidental or intentional
8 spilling, leaking, pumping, emitting, emptying, or dumping of
9 solid waste, including leachate, into or on any land or water.

10 "~~(7)~~ (8) DISPOSAL. The discharge, deposit,
11 injection, dumping, spilling, leaking, or placing of any solid
12 waste into or on any land or water so that the waste or any
13 constituent thereof may enter the environment or be emitted
14 into the air or discharged into any waters, including, but not
15 limited to, ground waters.

16 "~~(8)~~ (9) FACILITY. All contiguous land, structures,
17 and other appurtenances used for the processing, treatment,
18 storage, or disposal of solid waste, or the recovery of
19 recyclable materials from solid waste, whether or not
20 authorized or permitted, including, but not limited to, waste
21 disposal areas and waste disposed therein.

22 "~~(9)~~ (10) FINANCIAL ASSURANCE. A financial
23 arrangement by the owner or operator of a municipal solid
24 waste landfill which guarantees the availability of funds
25 which may be used to close, provide post-closure care, or
26 conduct corrective action at that facility if the owner or
27 operator fails to properly execute his or her responsibilities

1 under this article and any rules promulgated by the department
2 for closure, post-closure care, or corrective action and the
3 terms of any permit issued for operation of that facility.

4 ~~"(10)~~ (11) GARBAGE. Putrescible animal and vegetable
5 wastes resulting from the handling, preparation, cooking, and
6 consumption of food, including wastes from markets, storage
7 facilities, handling and sale of produce and other food
8 products and excepting such materials that may be serviced by
9 garbage grinders and handled as household sewage.

10 ~~"(11)~~ (12) GENERATION. The act or process of
11 producing solid waste. Solid waste shall be considered to be
12 generated at the point that waste materials are first
13 discarded or collected, regardless of any subsequent materials
14 recovery or recycling.

15 ~~"(12)~~ (13) HAZARDOUS WASTES. Those wastes defined
16 in, and regulated under, the Alabama Hazardous Waste
17 Management and Minimization Act of 1978, as amended .

18 ~~"(13)~~ (14) HEALTH DEPARTMENT. An approved county or
19 district health department, including the Alabama State
20 Department of Public Health and the affected state and county
21 health department.

22 ~~"(14)~~ (15) HEALTH OFFICER. The state or affected
23 county health officer or his or her designee.

24 ~~"(15)~~ (16) HOUSEHOLD WASTE. Any solid waste,
25 including, but not limited to, garbage, trash, and sanitary
26 waste in septic tanks derived from households, including
27 single and multiple residences, hotels and motels, bunkhouses,

1 ranger stations, crew quarters, campgrounds, picnic grounds,
2 and day-use recreational areas. Sanitary waste in septic tanks
3 shall be considered as household waste only when it is
4 disposed in a landfill or unauthorized dump and its inclusion
5 as a household waste shall in no way prohibit or supersede the
6 authority of the board or the department to regulate onsite
7 sewage systems or the management of sanitary waste in septic
8 tanks.

9 "~~(16)~~ (17) INCINERATOR. A device designed to burn
10 that portion of garbage and rubbish which will be consumed at
11 temperatures generally ranging 1,600 degrees Fahrenheit or
12 over. The unburned residue from an incinerator, including
13 metal, glass, and the like shall be called ashes.

14 "~~(17)~~ (18) INDUSTRIAL SOLID WASTE. Solid waste
15 generated by manufacturing or industrial processes that is not
16 a hazardous waste regulated under Chapters 22 to 30,
17 inclusive, of this title.

18 "~~(18)~~ (19) INNOCENT LANDOWNER. An owner of real
19 property upon which there is located an unauthorized dump and
20 who meets all of the following conditions:

21 "a. The solid waste was disposed of on the property
22 after the owner acquired title to the property or the waste
23 was disposed of before the owner acquired title to the
24 property and the owner lacked actual knowledge of the waste
25 after conducting reasonable due diligence or title was
26 acquired by bequest or devise.

1 "b. The owner did not have knowledge that the waste
2 was being disposed of on the property or the owner took steps,
3 including, but not limited to, posting signs to prevent
4 disposal on the property.

5 "c. The owner did not participate in or consent to
6 the disposal of solid waste on the property.

7 "d. The owner did not receive any financial benefit
8 from the disposal of solid waste on the property.

9 "e. Title to the property was not transferred to the
10 owner for the purpose of evading liability for operating an
11 unauthorized dump.

12 "f. The person or persons responsible for disposing
13 of the solid waste on the property, in doing so, were not
14 acting as an agent for the owner.

15 "~~(19)~~ (20) LANDFILL. A method of compaction and
16 earth cover of solid wastes other than those containing
17 garbage or other putrescible wastes, including, but not
18 limited to, tree limbs and stumps, demolition materials,
19 incinerator residues, and like materials not constituting a
20 health or nuisance hazard, where cover need not be applied on
21 a per day used basis.

22 "~~(20)~~ (21) MATERIALS RECOVERY FACILITY. A solid
23 waste management facility that provides for the extraction
24 from solid waste of recyclable materials, materials suitable
25 for use as a fuel or soil amendment, or any combination of
26 those materials. A materials recovery facility shall be deemed
27 to be a solid waste treatment facility.

1 "~~(21)~~ (22) MEDICAL WASTE. A solid waste or
2 combination of solid wastes which because of its infectious
3 characteristics may either:

4 "a. Cause, or significantly contribute to, an
5 increase in mortality or an increase in serious irreversible
6 or incapacitating reversible illness.

7 "b. Pose a substantial present hazard or potential
8 hazard to human health or the environment when improperly
9 treated, stored, transported, disposed, or otherwise managed.

10 "~~(22)~~ (23) MUNICIPAL SOLID WASTE LANDFILL. A
11 discrete area of land or an excavation that receives household
12 waste and that is not a land application unit, surface
13 impoundment, injection well, or waste pile. A municipal solid
14 waste landfill may also receive other types of solid wastes,
15 such as commercial solid waste, nonhazardous sludge,
16 conditionally exempt small quantity generator waste,
17 industrial solid waste, construction/demolition waste, and
18 rubbish. A municipal solid waste landfill is a sanitary
19 landfill.

20 "~~(23)~~ (24) PERSON. An individual, trust, firm, joint
21 stock company, corporation (including a government
22 corporation), partnership, agent, agency, association, state,
23 municipality, commission, political subdivision of a state, an
24 interstate body, or other private or public legal entity.

25 "~~(24)~~ (25) PRIVATE SOLID WASTE MANAGEMENT FACILITY.
26 A solid waste management facility that is operated exclusively

1 by and for a private solid waste generator for the purpose of
2 accepting solid waste generated on-site or by the permittee.

3 ~~"(25)~~ (26) PUBLIC SOLID WASTE MANAGEMENT FACILITY. A
4 solid waste management facility that accepts solid waste from
5 the public generally or for a fee or any solid waste
6 management facility that is not a private solid waste
7 management facility.

8 ~~"(26)~~ (27) RECOVERED MATERIALS. Those materials
9 which have known recycling potential; which can be feasibly
10 recycled; which have been diverted or removed from the solid
11 waste stream for recycling, whether or not requiring
12 subsequent separation and processing; and which have a
13 substantial portion that is consistently used in the
14 manufacture of products which may otherwise be produced from
15 raw or virgin materials. Recovered materials shall not include
16 solvents or materials, except sawdust, bark, and paper
17 materials that are destined for incineration, energy recovery,
18 or any use which constitutes disposal. Recovered materials
19 shall only be those materials for which during the calendar
20 year, commencing on January 1, the amount of material recycled
21 or diverted from the solid waste stream for recycling and
22 transferred to a different site for recycling equals at least
23 75 percent by weight or volume of the amount of that material
24 accumulated at the beginning of the period.

25 ~~"(27)~~ (28) RECOVERED MATERIALS PROCESSING FACILITY.
26 A facility primarily engaged in the storage, processing, and
27 resale or reuse of recovered materials. A recovered materials

1 processing facility is not a solid waste management facility;
2 however, any solid waste resulting from the operation of a
3 facility shall be subject to all applicable laws and
4 regulations relating to solid waste and shall be deemed to be
5 generated for purposes of reporting pursuant to solid waste
6 reduction goals, at the point of collection of the recovered
7 materials from which the solid waste resulted. A recovered
8 material processing facility shall provide notification to the
9 department according to rules adopted by the department.

10 ~~"(28)~~ (29) RECYCLABLE MATERIALS. Those materials
11 which are capable of being recycled, whether or not the
12 materials have been diverted or removed from the solid waste
13 stream.

14 ~~"(29)~~ (30) RECYCLING. Any process by which materials
15 are collected, separated, stored, recovered, or processed and
16 reused or returned to use in the form of raw materials or
17 products, but does not include the use of materials as a fuel,
18 or for any use which constitutes disposal.

19 ~~"(30)~~ (31) RUBBISH. Nonputrescible solid wastes,
20 excluding ashes, consisting of both combustible and
21 noncombustible wastes. Combustible rubbish includes paper,
22 rags, cartons, wood, furniture, rubber, plastics, yard
23 trimmings, leaves, and similar materials. Noncombustible
24 rubbish includes glass, crockery, metal cans, metal furniture,
25 and like materials which will not burn at ordinary incinerator
26 temperatures, not less than 1,600 degrees Fahrenheit.

1 "~~(31)~~ (32) SANITARY LANDFILL. A controlled area of
2 land upon which solid waste is deposited and is compacted and
3 covered with compacted earth each day as deposited, with no
4 on-site burning of wastes, and so located, contoured, and
5 drained that it will not constitute a source of water
6 pollution as determined by the department.

7 "~~(32)~~ (33) SOLID WASTE. Any garbage, rubbish,
8 construction or demolition debris, ash, or sludge from a waste
9 treatment facility, water supply plant, or air pollution
10 control facility, and any other discarded materials, including
11 solid, liquid, semisolid, or contained gaseous material
12 resulting from industrial, commercial, mining, or agricultural
13 operations or community activities, or materials intended for
14 or capable of recycling, but which have not been diverted or
15 removed from the solid waste stream. The term "solid waste"
16 does not include ~~any materials referenced in subsection (c) of~~
17 ~~Section 22-27-3,~~ recovered materials, solid or dissolved
18 materials in domestic sewage, solid or dissolved material in
19 irrigation return flows, or industrial discharges which are
20 point sources subject to the National Pollutant Discharge
21 Elimination System permits under the Federal Water Pollution
22 Control Act, as amended, or the Alabama Waste Pollution
23 Control Act, as amended; or source, special, nuclear, or
24 by-product materials as defined by the Atomic Energy Act of
25 1954, as amended. Also excluded from this definition are land
26 applications of crop residues, animal manure, and ash
27 resulting exclusively from the combustion of ~~fossil fuels or~~

1 wood during accepted agricultural operations, waste from
2 silvicultural operations, or refuse as defined and regulated
3 pursuant to the Alabama Surface Mining Act of 1969, Article 1,
4 commencing with Section 9-16-1, of Chapter 16 of Title 9.

5 "~~(33)~~ (34) SOLID WASTE DISPOSAL FACILITY. Any
6 landfill or part of a facility where final deposition of solid
7 waste occurs and at which waste may remain after closure.

8 "~~(34)~~ (35) SOLID WASTE MANAGEMENT. The systematic
9 control of solid waste including its storage, processing,
10 treatment, recovery of materials from solid waste, or
11 disposal.

12 "~~(35)~~ (36) SOLID WASTE MANAGEMENT FACILITY. Any
13 solid waste volume reduction plant, transfer station, material
14 recovery facility, or other facility, the purpose of which is
15 the storage, treatment, utilization, processing, disposal, or
16 recovery of materials from solid waste, or any combination
17 thereof.

18 "~~(36)~~ (37) UNAUTHORIZED DUMP. Any collection of
19 solid wastes either dumped or caused to be dumped or placed on
20 any public or private property, whether or not regularly used,
21 and not having a permit from the department. Abandoned
22 automobiles, large appliances, or similar large items of solid
23 waste shall be considered an unauthorized dump within the
24 meaning of this article. The careless littering of a
25 relatively few, smaller individual items such as tires,
26 bottles, cans, and the like shall not be considered an
27 unauthorized dump, unless the accumulation of solid waste

1 poses a threat to human health or the environment. An
2 unauthorized dump shall also mean any solid waste disposal
3 site which does not meet the regulatory provisions of this
4 article.

5 "§22-27-3.

6 "(a) Generally. (1) The county commission or
7 municipal governing body may, and is hereby authorized to,
8 make available to the general public collection and disposal
9 facilities for solid wastes in a manner acceptable to the
10 department. The county commission or municipal governing body
11 may provide such collection or disposal services by contract
12 with private or other controlling agencies and may include
13 house-to-house service or the placement of regularly serviced
14 and controlled bulk refuse receptacles within reasonable
15 (generally less than eight miles) distance from the farthest
16 affected household and the wastes managed in a manner
17 acceptable to the department.

18 "(2) Any county commission or municipal governing
19 body providing services to the public under this article shall
20 have the power and authority by resolution or ordinance to
21 adopt rules and regulations providing for mandatory public
22 participation in and subscription to such system of services.
23 Such governing body may, in its discretion, submit the
24 question of requiring such mandatory public participation to a
25 vote of the qualified electors of the county or municipality
26 as the case may be. If such governing body submits the
27 question to the voters, then the governing body shall also

1 provide for holding and canvassing the returns of the election
2 and for the giving notice thereof for two consecutive weeks in
3 a paper of general circulation in the county. Every person,
4 household, business, industry, or property generating solid
5 wastes, garbage, or ash as defined in this section shall
6 participate in and subscribe to such system of service unless
7 granted a certificate of exception as provided in subsection
8 (g). Provided, however, any individual, household, business,
9 industry, or property generating solid wastes that were
10 sharing service for a period of at least 6 months may continue
11 to share service without filing for a certificate of
12 exception. In the event such person, household, business,
13 industry, or property owner who has not been granted a
14 certificate of exception refuses to participate in and
15 subscribe to such system of service, the county commission or
16 municipal governing body may in addition to any other remedy
17 provided in this article bring an appropriate civil action in
18 circuit court to compel such participation and subscription.
19 Except as provided in subsection (g), any person, firm, or
20 corporation violating such rules and regulations shall be in
21 violation of this article and shall be punished as provided in
22 Section 22-27-7.

23 "(3) Any household whose sole source of income is
24 Social Security benefits shall be granted an exemption from
25 the payment of any fees required under this article, provided
26 the household seeking to claim the exemption shall present
27 proof of income to the county health officer no later than the

1 first billing date of any year in which the exemption is
2 desired. The county health officer or his designee shall
3 forward the exemption request and proof of income to the solid
4 waste officer or municipal governing body upon receipt. The
5 exemption shall apply only so long as the household's sole
6 source of income is social security and shall be requested
7 each year in which the exemption is desired. Additionally, the
8 Legislature may, by local law, authorize the county commission
9 to grant additional exemptions to households whose total
10 income does not exceed 75% of the federal poverty level. Any
11 person who knowingly provides false or misleading information
12 in order to obtain an exemption shall be subject to the
13 provisions of Section 22-27-7.

14 "(4) No county commission shall provide solid waste
15 collection and disposal services within the corporate limits
16 of a municipality without the express consent of the municipal
17 governing body of such municipality nor shall any municipality
18 provide solid waste collection and disposal services outside
19 its corporate limits without the express consent of the county
20 commission of the county in which it is situated.

21 "(5) Any county providing door-to-door solid waste
22 collection shall not reduce such service unless and until a
23 letter has been sent to each resident or property or business
24 owner receiving door to door service stating that such service
25 will be reduced or changed and allowing at least 60 days for
26 any resident, business owner, or property owner to call for a

1 public hearing and for the county or municipality to hold such
2 public hearing upon request.

3 "(6) Any provision of this article to the contrary
4 notwithstanding, no person, household, business, industry, or
5 property owner shall be required to pay any solid waste
6 collection exemption or disposal fee chargeable under this
7 article unless solid waste collection and disposal services
8 for which such charge was made were actually made available to
9 such person, household, business, industry, or property owner.

10 "(b) Solid waste officer. As used in this article,
11 solid waste officer shall mean any county official or county
12 employee or any official or employee of a solid waste disposal
13 authority authorized under Section 11-89A-1 et seq. designated
14 by the county commission to exercise the authority and perform
15 the duties delegated by this article to such official and such
16 officer shall have the same powers of enforcement against
17 persons violating this article as do license inspectors with
18 regard to persons violating revenue laws as provided under
19 Section 40-12-10 (i), (j), (k), and (n).

20 "(c) ~~Fly ash, etc.~~ As used in this article, the
21 terms "solid wastes", "garbage", and "ash" do not include ~~fly~~
22 ~~ash waste, bottom ash waste, boiler slag waste, or flue gas~~
23 ~~emission control waste which result primarily from the~~
24 ~~combustion of coal or other fossil fuels at electric~~
25 ~~generating plants, nor shall such terms include any drilling~~
26 discharges from oil or natural gas operations.

1 "(d) Garbage disposal. Garbage and rubbish
2 containing garbage shall be disposed of by sanitary landfill,
3 approved incineration, composting, or by other means now
4 available or which may later become available as approved by
5 the department. The method chosen and used shall also meet the
6 requirements of the health department for sanitation and the
7 protection of public health.

8 "(e) Burning. No garbage or rubbish containing
9 garbage or other putrescible materials or hazardous wastes
10 shall be burned except in approved incinerators meeting the
11 necessary temperature requirements and air pollution controls
12 as now established or as may later be established. The open
13 burning of rubbish shall be permitted only under sharply
14 controlled circumstances where sanitary landfill or landfill
15 is not feasible and not in proximity to sanitary landfill or
16 landfill operations where spread of fire to these operations
17 may be a hazard in the opinion of the department.

18 "(f) Haulage. Trucks or other vehicles engaged in
19 the business of hauling garbage and rubbish shall be so
20 covered, secured, or sealed that there will be no loss during
21 haulage to cause littering of streets and highways, or cause a
22 nuisance or hazard to the public health.

23 "(g) Exception. (1) A person, household, business,
24 industry, or any property owner may store, haul, and dispose
25 of his or her own solid wastes on his or her land or
26 otherwise, provided such storage, haulage, or disposal is
27 accomplished pursuant to a certificate of exception as

1 provided in this subsection. In order to obtain a certificate
2 of exception, an application, an application fee, and plan
3 must be filed with the county health officer or his or her
4 designee in the case of household solid waste or with the
5 department in the case of solid waste from business or
6 industry, setting out the proposed method of storing, hauling,
7 and disposing of solid waste so as to comply with rules and
8 regulations adopted by the state or county boards of health or
9 the department as appropriate and not create a public nuisance
10 or hazard to the public health. The certification of exception
11 application fee shall be established by the State Board of
12 Health or the department, as the case may be, except that with
13 regard to an individual household such fee shall be ten
14 dollars (\$10). The proceeds from such application fees are
15 hereby appropriated to the State Board of Health or the
16 department, as the case may be, to be used for the
17 administration of this article. The county health officer or
18 his or her designee or the department as appropriate shall
19 investigate such application and plan and issue a certificate
20 of exception within the time set by the State Board of Health
21 or the department, as the case may be (not to exceed sixty
22 days in the case of an individual household), if such proposal
23 will, in such officer's or designee's or the department's
24 judgment, comply with such rules and regulations and
25 adequately prevent a public nuisance or hazard to public
26 health. A certificate of exception granted under authority of
27 this section shall be valid for the period established by the

1 department, except that in the case of an individual household
2 such period shall not exceed one year. The county health
3 officer or his or her designee or the department shall notify
4 the county commission or municipal governing body in writing
5 of the intention to grant a certificate of exception and no
6 such certificate of exception shall be granted for an
7 individual household without prior written approval of the
8 county commission or municipal governing body as the case may
9 be.

10 "(2) Notwithstanding any other provision of this
11 chapter to the contrary, no exception, exception fee, or any
12 other review, approval, or payment shall be required of any
13 generator for the collection, handling, or disposal of its own
14 solid waste using facilities or equipment owned by the
15 generator, its corporate parent, affiliate, or subsidiary and
16 duly permitted for such use by the Alabama Department of
17 Environmental Management or its successor in function.

18 "(h) Coal combustion by-products. Upon the adoption
19 and implementation of a federal regulatory program to govern
20 the disposal of coal combustion by-products pursuant in whole
21 or in part to Subtitle D of the Solid Waste Disposal Act, 42
22 U.S.C. §6941 et seq., the department is authorized to develop
23 and adopt rules as necessary to implement a state regulatory
24 program consistent with the federal requirements. Until such
25 federal program requirements take effect, the disposal of coal
26 combustion by-products shall be subject to the applicable
27 requirements of this article; provided, however, that a

1 facility permitted by the department pursuant to Chapter 22 of
2 this title as of the effective date of the act adding this
3 subsection and thereafter may continue to operate without
4 additional authorization by the department until federal
5 requirements under the Solid Waste Disposal Act take effect.
6 To the extent permissible under the federal program, the
7 department shall allow beneficial uses of coal combustion
8 by-products as an alternative to disposal as part of any
9 adopted state program."

10 Section 2. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.