



## Regulation 61-107.17

# SWM: Demonstration-of-Need

**Effective Date June 26, 2009**

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**Division of Mining & Solid Waste Management**

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DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
 CHAPTER 61  
 Statutory Authority: 1976 Code Sections 44-96-10 *et seq.*

**R.61-107.17 Solid Waste Management: Demonstration-of-Need**

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**A. Applicability.**

1. This regulation establishes the criteria for the demonstration-of-need for the construction of new and the expansion of existing commercial Class Two solid waste landfills, commercial Class Three solid waste landfills, commercial solid waste incinerators, and commercial solid waste processing facilities that process waste destined for disposal at Class Three solid waste landfills. Any solid waste management facility type listed herein that no longer has a valid permit to operate prior to the effective date of this regulation and attempts to reopen after the effective date of this regulation shall be considered a new facility and shall be required to demonstrate need pursuant to this regulation. Any existing facility that requests a change in classification or commercial status shall be considered a new facility and required to demonstrate need pursuant to this regulation. Commercial Class Three solid waste landfills permitted to accept only industrial waste that request approval to accept municipal solid waste shall be considered a new facility and required to demonstrate need pursuant to Sections C and D of this regulation.

2. This regulation does not apply to:

a. Class Two solid waste landfills, Class Three solid waste landfills, solid waste incinerators, or solid waste processing facilities that accept only waste generated in the course of normal operations on property under the same ownership or control as the solid waste management facility if the facility is classified as a non-commercial solid waste management facility. All other solid waste management facilities for the purpose of demonstrating need shall be considered commercial facilities;

b. Facilities that handle hazardous waste as defined by the Resource Conservation and Recovery Act (RCRA) and R.61-79, Hazardous Waste Management Regulations, and infectious waste as defined by R.61-105, Infectious Waste Management Regulations;

c. Air curtain incinerators that receive only wood waste and yard trash;

d. The processing of waste at the source of generation; and,

B. Definitions for the Purposes of this Regulation.

e. The processing of waste at permitted Class Three solid waste landfills destined for disposal at the landfill.

**B. Definitions for the Purposes of this Regulation.**

1. “Class Two solid waste landfills” means those landfills as described in Part IV, Section A of Regulation section 61-107.19. Solid Waste Management: Solid Waste Landfills and Structural Fill.

2. “Class Three solid waste landfills” means those landfills as described in Part V, Subpart A of Regulation section 61-107.19.

3. “Commercial solid waste management facility” means for the purposes of this regulation, all solid waste management facilities with the exception of non-commercial facilities.

4. “County or Regional Solid Waste Management Plan” means a solid waste management plan prepared, approved, and submitted by either a single county or a region, i.e., a group of counties, pursuant to the Solid Waste Policy and Management Act, S.C. Code Section 44-96-80 (1976, as amended).

5. “Consistency determination” means for the purposes of this regulation, a Department decision that a proposed solid waste project is or is not consistent with:

a. State and County/Region Solid Waste Management Plans;

b. Local zoning and land-use ordinances and regulations based on due consideration of written documentation from an appropriate local government official verifying that applicable local requirements have been met;

c. All other applicable local ordinances; and,

d. Buffer requirements pursuant to the appropriate Department regulation, e.g. Regulation sections 61-107.19, Part IV.B.1.a for Class Two solid waste landfills; 61-107.19, Part V, Subpart B.258.18.a for Class Three solid waste landfills; 61-107.12.E.8 for Solid Waste Incinerators; and 61-107.6.E.8 for Solid Waste Processors.

6. “Department” means the South Carolina Department of Health and Environmental Control.

7. “Disposal rate” means the total amount, either by tonnage or volume, of waste received at the solid waste disposal facility on a fiscal year (July 1 – June 30) basis.

8. “Expand” or “Expansion” means any increase in the permitted volumetric capacity of an existing solid waste management facility.

9. “Non-commercial solid waste management facility” means a facility that manages only solid waste that is generated in the course of normal operations on property under the same ownership or control as the solid waste management facility.

10. “Planning area” means the area around a solid waste management facility that is used for determining the need for new and expansions of existing facilities.

## C. Demonstration-of-Need Requirements.

11. "Region" means a group of counties which is planning to or has prepared, approved, and submitted a regional solid waste management plan to the Department pursuant to S.C. Code Section 44-96-80 (1976, as amended).

12. "Solid waste" means any garbage, refuse, or sludge from a waste treatment plant, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. This term does not include solid or dissolved material in domestic sewage, recovered materials, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1964, as amended. Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

13. "Solid waste incinerators" means any engineered device used in the process of controlled combustion of solid waste for the purpose of reducing the volume, and/or reducing or removing the hazardous potential of the waste charged by destroying combustible matter leaving the noncombustible ashes, material and/or residue. For the purposes of this regulation, solid waste pyrolysis facilities, waste-to-energy facilities burning solid waste used for energy recovery, and air curtain incinerators that burn only wood waste and yard trash are not included in this definition.

14. "Solid waste management facilities" means Class Two solid waste landfills, Class Three solid waste landfills, solid waste incinerators, and solid waste processing facilities that process waste destined for disposal at Class Three solid waste landfills.

15. "State Solid Waste Management Plan" means the plan which the Department of Health and Environmental Control is required to submit to the General Assembly and to the Governor pursuant to S.C. Code Section 44-96-60 (1976, as amended).

16. "Solid waste processing facility" means those facilities as defined in Regulation section 61-107.6, Solid Waste Management: Solid Waste Processing Facilities.

## C. Demonstration-of-Need Requirements.

1. No permit to construct a new or to expand the volume or capacity of an existing commercial Class Two solid waste landfill, Class Three solid waste landfill, solid waste incinerator, or solid waste processing facility that processes waste destined for disposal at a Class Three solid waste landfill shall be issued until a final demonstration-of-need and a consistency determination are approved by the Department. In determining whether there is a need for new or expanded solid waste management facilities listed in Section C.2, or in determining increases in annual disposal rates, the Department will consider only solid waste generated in jurisdictions subject to the provisions of a county or regional solid waste management plan pursuant to S.C. Code Ann. 44-96-80. Any increase in the disposal rate shall not require a demonstration-of-need as long as the requested increase in disposal rate is less than the maximum disposal rate as determined by Section D.3.

2. Need shall be demonstrated for the following commercial solid waste management facilities:

a. Class Two solid waste landfills;

## D. Demonstration-of-Need Application Process.

- b. Class Three solid waste landfills;
  - c. Solid waste incinerators; and,
  - d. Solid waste processing facilities that process waste destined for disposal at Class Three solid waste landfills.
3. Planning Area. The following planning areas shall be used by the Department for determining if the demonstration-of-need has been met for commercial facilities pursuant to this regulation:

Commercial Solid Waste Management Facility	Size of Planning Area Around Solid Waste Management Facility
Class Two solid waste landfills	20-mile radius
Class Three solid waste landfills	75-mile radius
Solid waste incinerators	75-mile radius
Solid waste processing facilities	75-mile radius

4. Requests for demonstration-of-need will be reviewed by the Department in the order in which they are received. If a request for demonstration-of-need is not accompanied by a request for a consistency determination pursuant to Section B.5 of this regulation, and need is demonstrated, the location for the proposed facility will be reserved for sixty (60) days. Failure to submit a consistency request within sixty (60) days of submittal of a demonstration-of-need request will result in termination of the reservation of the location for the proposed facility.

5. Demonstration-of-need determinations issued by the Department may be terminated, upon written notification by the Department, if either of the following occurs:

- a. Failure to show evidence of diligent pursuit of the appropriate solid waste permit or any related necessary approval, including proof of property control, within one hundred twenty (120) days of the applicant's submittal of the demonstration-of-need request; or,
- b. The Department denies the permit application.

6. Where, prior to the effective date of this regulation, the Department made determinations required under Part I.D.1.a. of South Carolina Regulation 61-107.19, such determinations shall remain applicable and become the agency's final determination subject to the appeal provision in Section F of this regulation and any applicable public notice and application requirements. All demonstration of need determinations are subject to termination criteria outlined in Sections C.4 and C.5 of this regulation regardless of when the determination was made.

## D. Demonstration-of-Need Application Process.

1. Prior to submitting a permit application to the Department for a new or expansion of an existing Class Two solid waste landfill, Class Three solid waste landfill, solid waste incinerator, or solid waste processing facility that processes waste destined for disposal at a Class Three solid waste landfill, the applicant shall submit to the Department a demonstration-of-need request that includes the following information:

D. Demonstration-of-Need Application Process.

- a. The name of the facility. This name will be used in future correspondence to identify the facility;
  - b. Applicant contact information to include the following:
    - (1) Name of applicant;
    - (2) Address;
    - (3) Telephone number;
    - (4) Fax number; and,
    - (5) E-mail address (optional);
  - c. The geographical coordinates of the facility using the geographic center of the incinerator or processing facility as the reference point, or the geometric center of the landfill footprint as the reference point, as well as a brief description of the location. For expansions, the reference point shall be the center of the facility as assigned by the Department. Use either latitude/longitude coordinate system in degrees, minutes and seconds (preferred) or the Universal Transverse Mercator (UTM) coordinate system. Describe the method for determining coordinates;
  - d. The type facility, i.e., Class Two solid waste landfill, Class Three solid waste landfill, solid waste incinerator, or solid waste processing facility;
  - e. The annual disposal rate or throughput, as applicable, in tons/year (specify the desired annual tonnage within the applicable limits);
  - f. The name of the host county/region; and,
  - g. The applicant's signature.
2. In determining if there is a need for a new or expansion of an existing solid waste management facility, the Department will use the following criteria:
- a. Where there are at least two (2) commercial solid waste management facilities of the same type within the planning area, no new capacity shall be allowed. Landfills in post-closure shall not be considered in determining need.
  - b. The Department reserves the right to review additional factors in determining need on a case-by-case basis.
3. In determining the maximum allowable yearly disposal rate for Class Three or Class Two solid waste landfills, the Department will use the following criteria:
- a. Each new Class Three solid waste landfill permitted after the effective date of this regulation shall be initially allowed up to a maximum yearly disposal rate equal to the total amount of solid waste generated in the planning area for disposal in Class Three landfills as follows, unless otherwise provided in section C.6:
    - (1) 100 percent of the host county; and,

D. Demonstration-of-Need Application Process.

(2) 50 percent of each county, other than the host county, that falls wholly or partially within the 75-mile radius that does not have a Class Three landfill that accepts municipal solid waste located in that county.

(3) Solid waste generated in counties, other than the host county, that have at least one Class Three Landfill, is not counted in this calculation.

b. Each new Class Two solid waste landfill permitted after the effective date of this regulation shall be initially allowed up to a maximum yearly disposal rate equal to the total amount of solid waste generated in the planning area for disposal in Class Two Landfills as follows, unless otherwise provided in section C.6:

(1) 100 percent of the host county; and,

(2) 30 percent of each county, other than the host county, that falls wholly or partially within the 20-mile planning radius.

c. An existing Class Three solid waste landfill operating within 20 percent of the permitted yearly disposal rate stated in the current permit, as documented in the most recently published S.C. Solid Waste Management Annual Report when the request is made, may submit a request for an increase in the permitted yearly disposal rate and will be allowed to increase the maximum yearly disposal rate based on the following:

(1) A Class Three landfill that has a permitted annual disposal rate greater than 30 percent of the total amount of waste generated in all jurisdictions subject to the provisions of a county or regional plan pursuant to S.C. Code Ann. 44-96-80 that is destined for disposal in Class Three Landfills shall not receive any increase in its yearly annual disposal rate;

(2) A Class Three Landfill that has a permitted annual disposal rate less than or equal to 30 percent pursuant to Section D.3.c(1) shall receive the lesser of either: (a) 150,000 tons or (b) the increase in waste generated by all jurisdictions that are subject to the provisions of a county or regional plan pursuant to S.C. Code Ann. 44-96-80 for disposal at Class Three Landfills, since the last increase in the permitted annual disposal rate at said landfill, as reported in the most recently published S.C. Solid Waste Management Annual Report when the request is made.

d. An existing Class Two solid waste landfill operating within 20 percent of the permitted yearly disposal rate stated in the current permit, as documented in the most recently published S.C. Solid Waste Management Annual Report when the request is made, shall be allowed to increase the maximum yearly disposal rate based on the following:

(1) The lesser of either: (a) 50,000 tons or (b) the increase in waste generated in the planning area for disposal at Class Two landfills, since the last increase in the permitted annual disposal rate for said landfill, as reported in the most recently published S.C. Solid Waste Management Annual Report when the request is made or,

(2) A variance to the permitted annual disposal rate may be granted for a specified term, corresponding to the need, in the event of an emergency or documented large project with a specified term, as determined solely by the Department. This temporary increase in annual disposal rate, if granted, is not considered by the Department when determining if a facility is within 20 percent of its permitted annual disposal rate.



D. Demonstration-of-Need Application Process.

e. In determining the amount of solid waste destined for disposal and solid waste generation amounts, the Department will use figures reflecting the previous fiscal year amount of solid waste as reported in the most recently published S.C. Solid Waste Management Annual Report, when the request is made, for the appropriate waste, (eg. Class Two, Class Three, etc.). Annual disposal rates for facilities permitted prior to the effective date of this regulation shall not be reduced pursuant to Section D of this regulation.

4. The maximum allowable yearly throughput of a solid waste processing facility that processes waste destined for disposal at a Class Three solid waste landfill shall be equal to the total amount of solid waste destined for disposal that is generated in the host county and 50 percent of the waste generated in each county other than the host county, that falls wholly or partially within the 75-mile planning radius.

5. The yearly throughput for a solid waste incinerator shall be based on the manufacturer's design of the incinerator but shall not exceed 600 tons per day.

6. Variance in regard to demonstration of need. The Department shall grant a variance to the requirements of D.2 for Class Two and Class Three solid waste landfills according to the following conditions:

a. An operating Class Two or Class Three landfill shall receive a variance to construct a replacement Class Two or Class Three landfill at its permitted annual rate of disposal provided it meets all of the following conditions:

(1) For a Class Three landfill only, the primary business of the landfill since it began operation has been the disposal of "household waste" and "commercial waste" as defined in S.C. Regulation section 61-107.19.

(2) The landfill has a permit issuance date on or before the effective date of this Regulation.

(3) The landfill exhausts its permitted capacity at its current location (see 6.e below for timing).

(4) For the purpose of considering the location of a replacement facility under this section, the location for the replacement facility must be within the facility's existing planning area, provided that, if the planning area includes a portion of a county, the entire county will be considered to be part of the planning area. A Class Two or Class Three landfill, once replaced as provided for in Section D. 6.a., is no longer eligible to receive a variance for replacement under this section.

b. A Class Two or Class Three landfill shall receive a variance to expand the volume of an existing facility.

c. A facility receiving a variance under this section must meet the requirements of S.C. Regulation section 61-107.19 prior to receiving a permit.

d. No variance under this section will be granted to a facility that is under a unilateral administrative order issued by the Department until the issues associated with said order have been resolved.

## G. Severability.

e. An eligible facility shall apply to the Department for a variance to replace or expand the volume of an existing facility prior to exhausting: (1) its permitted capacity, or (2) the operational life of the facility. A facility shall not operate under an expansion variance and a replacement variance simultaneously, with the exception of a reasonable transition period as determined by the Department. A reasonable transition period is considered to be approximately one hundred eighty (180) calendar days.

7. The Department will advise the applicant and the host county or region in writing of its demonstration-of-need determination. Notice of the Department's demonstration-of-need determination for Class Two and Three landfills must be given in accordance with S.C. Regulation section 61-107.19.

## E. Violations and Penalties.

A violation of this regulation or violation of any permit, order, or standard subjects the person to the issuance of a Department order, or a civil or criminal enforcement action in accordance with S.C. Code Section 44-96-450 (1976, as amended). In addition, the Department may impose reasonable civil penalties not to exceed ten thousand dollars (\$10,000.00) for each day of violation of the provisions of this regulation, including violation of any order, permit or standard.

## F. Appeals.

1. A Demonstration-of-need determination may be appealed at the time such determination is issued and may not be raised as part of an appeal of a decision on the permit.

2. A Department decision involving a demonstration-of-need may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1; and Title 1, Chapter 23.

## G. Severability.

Should any section, paragraph, sentence, word, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.