

The Commission convenes in emergency session to consider requests for stays pending appeal lodged by Petitioners Fulton Sanitary Landfill and Lee County Landfill. The underlying facts are extraordinary and must be described to appreciate the context of the Commission's ruling on this issue.

The landfill permits issued by the Department to both Fulton Sanitary Landfill and the Lee County Landfill contain conditions stating that the permits will expire on October 9, 1993. When these conditions were added, the October 9 date coincided with the date set by EPA for the closure of all municipal solid waste landfills that could not meet more stringent regulations. After these conditions were added to the Petitioners' permits, EPA extended the deadline for closure of landfills receiving less than 100 tons of waste per day by six months. Apparently, the Petitioners and the local governments that depend on these landfills for their waste disposal services assumed that the EPA extension, not the express permit conditions, governed the closure date of these particular landfills.

Within the last week, the Department apprised the Petitioners of its position that the October 9, 1993, closure date set out in their permit controlled. Both Petitioners requested a minor modification of their permits to allow for the additional six months of operation allowed by the EPA extension. By letters dated October 4 and October 5, 1993, the Director denied these requests, concluding that a six-month extension of operation authority could not be considered a "minor" -- i.e., routine or inconsequential -- modification of the permits. Fulton Sanitary Landfill and Lee County Landfill appealed this decision, and seek relief during the pendency of their appeal to prevent the imminent closure of their landfills.

Aside from the merits of the Department's decisions and the timeliness of the Petitioners' requested permit modification, the Commission must also consider the effect that imminent closure of these landfills will have on those municipalities that depend upon these facilities. A.C.A. §8-4-205(c)(6)(C), as amended by Act 165 of 1993, authorizes the Commission to issue, lift, or modify a stay pending appeal to prevent "substantial prejudice to any party." Given the circumstances of this appeal, the Commission considers those municipalities served by these landfills to be indispensable parties that may unexpectedly be deprived of a municipal waste disposal site. To prevent prejudice to these public interests, the Commission concludes that relief pending the resolution of this appeal is appropriate.

Also, the Commission concludes that the issues present in these appeals justifies relief pending adjudicatory resolution. The Petitioners' appeals raise the issue of whether a unique EPA

compliance extension preempts specific state permit conditions. The Petitioners and their customers assumed it did while the Department contends that the permit conditions were unaffected by a subsequent federal action. This widespread misunderstanding also justifies maintaining the status quo until this legal question is resolved.

For these reasons, the Commission hereby stays for the duration of the pending appeal proceedings the effect of the Director's Denial of the Petitioner's Request for a Minor Permit Modification. In other words, the Fulton Sanitary Landfill and the Lee County Landfill may continue solid waste disposal operations until final resolutions of these appeals are achieved by the Commission or the Department.

COMMISSIONERS

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| <u>[Signature]</u> | H. Watkins, III |
| <u>[Signature]</u> | J. Hill |
| ABSENT | B. Mobley |
| ABSENT | J. Mobley |
| <u>[Signature]</u> | J. Pascale |
| <u>[Signature]</u> | E. Waddell |
| <u>[Signature]</u> | R. Wilbourn |
| <u>[Signature]</u> | N. Williams |
| <u>[Signature]</u> | S. Wilson <i>Allen Carter</i> |
| <u>[Signature]</u> | W. Wright |
| <u>[Signature]</u> | R. Young |
| ABSENT | S. Nichols |

[Signature]
Chairman

SUBMITTED BY: WEAVER PASSED: OCT 7, 1993