

RESOLUTION

We, the undersigned members of the Jasper County Legislative Delegation, at a duly noticed meeting of the delegation, debated the following **three propositions**:

1. Whether the South Carolina Department of Health & Environmental Control ("DHEC") should exercise jurisdiction at Able Contracting, Inc.'s Recovered Material Processing Facility in Jasper County (the "Facility") once the Environmental Protection Agency (the "EPA") relinquishes its jurisdiction and: a) as soon as possible thereafter remove material from the Facility, at an estimated cost of \$3.548 million, until the 117,000 cubic yards of material left onsite by the EPA has been reduced to 25,185 cubic yards in order to address the threat of spontaneous re-ignition of fires; and b) remove the remaining material at an estimated cost of \$964,000 when that amount has been appropriated to DHEC in the FY 2020-2021 state budget, along with an accompanying proviso.
2. Whether Gov. Henry McMaster, in the FY 2020-2021 Executive Budget he submits to the South Carolina General Assembly, should include a \$4.512 million appropriation to: a) reimburse DHEC for the \$3.548 million it expends to reduce the material at the Facility from 117,000 cubic yards to 25,185 cubic yards; and b) fund the additional \$964,000 DHEC needs to remove the remaining material, and whether the General Assembly should include that appropriation in the budget, with an appropriate proviso.
3. Whether the Attorney General for the State of South Carolina and the United States Attorney for South Carolina should pursue legal proceedings to recover all public funds, both state and federal, expended in connection with extinguishing the fires at the Facility and removing the material.

Further, in connection therewith, that after this debate we made the following **findings of fact**:

- A. In 2014, the owner of the Facility notified DHEC of its operation as a Recovered Material Processing Facility, which it said would recycle 75 percent of the material it received.
- B. Prior to the amendments to the South Carolina Solid Waste Policy & Management Act (the "Waste Management Act") enacted in 2018, operations like the Facility did not require a permit and often lacked safeguards to protect public health and the environment.
- C. The 2018 amendments to the Waste Management Act required all unpermitted Construction and Demolition Recycling facilities that receive mixed material, including the Facility, to register with DHEC, eventually obtain Construction and Demolition Recycling permit, and adopt basic safeguards.

- D. As a result of these changes, the Facility was required to register as a Construction and Demolition Recycling facility with DHEC by July 3, 2018, and the Facility submitted this registration in July 2018.
- E. The Facility was required to obtain a Construction and Demolition Debris permit by May 3, 2020; in May 2019, the owner of the Facility submitted a permit application, but that application was withdrawn in August 2019.
- F. The Facility contains approximately four acres of stockpiled material and is located near fast-growing residential areas and environmentally sensitive watersheds.
- G. On July 3, 2019, DHEC issued a Cease Accepting Material Letter to the owner of the Facility, noting the presence of fires and requesting plans to extinguish the fires.
- H. On July 8, 2019, the owner of the Facility claimed DHEC lacked authority to stop it from accepting material at the Facility and said the fires were "a result of a lightening (sic) strike" that were "being actively and effectively managed."
- I. On July 22, 2019, the (Charleston) *Post & Courier* accurately described the situation at the Facility in a story that began with these introductory paragraphs:

"OKATIE — Outside this small town between Hilton Head and Beaufort, a 60-foot mountain of stinking construction debris has piled up at a recycling center, infuriating nearby residents and businesses.

"The undulating mounds are impressive both in size and smell. The pile is so large that it towers over nearby telephone poles. Its contents spill across the land in waves, breaching a wall on one side where a tall and dying tree stands in the way.

"During a visit to the Able Contracting site Friday, workers had stationed a large red hose near one of the peaks, and a urine-colored stream flowed down the debris-strewn slopes. The effluent babbled like a brook, but the stench was anything but bucolic, a heavy, sulfurous odor that residents say makes the area nearly uninhabitable at times."

- J. On July 26, 2019, the *Island Packet* and the *Beaufort Gazette* accurately described the situation at the Facility in a story that began with these introductory paragraphs:

"The towering mound of trash at a recycling facility in Ridgeland is on fire. Still.

"At night, plumes of smoke constantly billow from deep within the pile of debris, covering the air with thick layers of smog. During the day, the smell of the burning debris — a sulfuric, intoxicating odor — travels for miles. The smoke and smell have riled neighbors and attracted environmental regulators worried about potential health risks.

"As fire and environmental officials douse the mound and investigate for toxins, they warn visitors to wear a mask. People shouldn't be breathing this air, they say."

- K. On July 31, 2019, DHEC issued an Emergency Order declaring the fires at the Facility had "created an imminent and substantial danger to human health and the environment."
- L. On August 2, 2019, Jasper County issued a Declaration of Local Emergency ordering that residents on Schinger Avenue voluntarily evacuate and make arrangements for alternative housing.
- M. On August 5, 2019, Chandler Lloyd, president of the owner of the Facility, signed an affidavit attesting to the fact that Able Contracting, Inc., as owner, was unable to continue fighting the fires due to a lack of financial resources.
- N. Under the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), if a hazardous substance, as defined in the Act, is present along with a risk of exposure to the public, federal resources can be used to mitigate the exposure.
- O. DHEC requested assistance from the EPA to extinguish the fires and collect air and water samples, and in early August, the EPA exercised jurisdiction at the Facility.
- P. The EPA's monitoring of air quality at the Facility revealed the presence of elevated levels of acrolein in the smoke from the fires, which allowed the EPA to expend federal resources to extinguish the fire.
- Q. The EPA's monitoring of runoff water from the pile revealed elevated concentrations of metals and volatile organic compounds, which threaten nearby watersheds for the Okatie and New rivers.
- R. In assessing how to extinguish the fires, the EPA determined such had resulted from spontaneous combustions caused by sheer mass and that firefighting activities, along with dousing the fires with water, would thus involve removing material from the Facility.

- S. As of August 31, 2019, approximately 7,187 tons of material had been removed, but the EPA has said it will relinquish jurisdiction of the Facility and stop removing material in mid-to-late September 2019.
- T. Approximately 117,000 cubic yards of material will remain at the Facility when the EPA relinquishes jurisdiction and stops removing material.
- U. DHEC estimates it will cost \$3.548 million to reduce material from 117,000 cubic yards to 25,185 in order to address the threat of spontaneous re-ignition and it currently has the legal authority to expend funds for this purpose in that such is necessary to prevent an immediate threat to public health and the environment.
- V. DHEC has said it is ready, willing and able to exercise jurisdiction at the Facility when the EPA relinquishes it and that it has the authority to draw upon existing accounts to pay the estimated \$3.548 million in order to reduce material at the site from 117,000 cubic yards to 25,185.
- W. DHEC recently made \$2 million and \$1.5 million grants to Berkeley County to remove tires from the Viva Moncks Corner facility, and spending \$3.548 million to reduce material at the Facility from 117,000 cubic yards to 25,185 as soon as possible is also warranted as an emergency action to prevent imminent harm to public health and the environment.
- X. DHEC estimates it will cost an additional \$964,000 to remove additional material from the Facility from 25,185 cubic yards to zero (i.e., complete material removal) and the agency desires a proviso in the 2020-2021 state budget that: 1) directs the agency to undertake the complete removal of material from the Facility; and 2) allows the appropriated \$964,000 to be used to reimburse costs for removal of all material.
- Y. In order to fully and completely protect public health and the environment, it is critical that all of the material be removed and the Facility shut down as soon as possible.
- Z. Both CERCLA and the Waste Management Act authorize the federal and state governments, respectively, to commence legal actions to recover public funds expended in order to extinguish the fires and remove the material.

NOW THEREFORE, after consideration of the stated propositions in light of the recited findings of fact, it is hereby **RESOLVED** that:

1. DHEC should exercise jurisdiction at the Facility once the EPA relinquishes its jurisdiction and thereafter remove material from the Facility, at an estimated cost of \$3.548 million, until the 117,000 cubic yards of material onsite is reduced to 25,185, such being an authorized emergency action that is necessary to prevent an immediate threat to public health and the environment; thereafter, DHEC should remove the remaining material once an additional \$964,000 is appropriated in the 2020-2021 state budget, along with a proviso that: 1) directs the agency to undertake the complete removal of material; and 2) allows the appropriated \$964,000 to be used to reimburse costs for such removal.
2. Gov. Henry McMaster, in his FY 2020-2021 Executive Budget, should include a \$4.512 million appropriation to: a) reimburse DHEC for the \$3.548 million it expends to reduce the material at the Facility from 117,000 cubic yards to 25,185; and b) fund the additional \$964,000 DHEC needs to remove the remaining material, and the General Assembly should include that appropriation in the state budget, with an appropriate proviso.
3. The Attorney General for the State of South Carolina and the United States Attorney for South Carolina should pursue legal proceedings to recover all public funds expended in connection with extinguishing the fires at the Facility and removing all of the material.

AND IT IS HEREBY SO RESOLVED on this 11th day of September, 2019.

Tom Davis
State Senator for District 46

Margie Bright Matthews
State Senator for District 45

William G. Herbkersman
State Representative for District 118

W. Weston Newton
State Representative for District 120

Shedron D. Williams
State Representative for District 122