S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

October 18, 2012

Opinion No. 12-97

Definition of Municipal Solid Waste

QUESTION

Does the definition of "municipal solid waste" in Tenn. Code Ann. § 68-211-802(a)(10) include "construction/demolition wastes" as defined by Tenn. Comp. R. & Regs. 0400-11-01-.01(2)?

OPINION

Yes.

ANALYSIS

The Solid Waste Management Act of 1991 (SWMA), codified at Tenn. Code Ann. §§ 68-211-801 to -874, is designed to provide a comprehensive and integrated statewide program for solid waste management. Tenn. Code Ann. § 68-211-803. The Tennessee Solid Waste Disposal Act (TSWDA), codified at Tenn. Code Ann. §§ 68-211-101 to -124, authorizes the Tennessee Department of Environment and Conservation (TDEC) to supervise and control all aspects of solid waste disposal, including the permitting, operation, and maintenance of solid waste disposal facilities or landfills. *See* Tenn. Code Ann. §§ 68-211-102 and -105 to -107. In addition the TSWDA establishes the Solid Waste Disposal Control Board which is authorized, among other things, to promulgate rules and regulations to ensure the proper administration of the TSWDA. Tenn. Code Ann. § 68-211-111(a) & (d).

This opinion request concerns the breadth of the definition of "municipal solid waste" found in Tenn. Code Ann. § 68-211-802(a)(10) of the SWMA, which provides as follows:

> 'Municipal solid waste' means any garbage, refuse, industrial lunchroom or office waste, household waste, household hazardous waste, yard waste, and any other material resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities; provided that 'municipal solid waste' does not include the following:

(A) Radioactive waste;

(B) Hazardous waste as defined in § 68-212-104;

(C) Infectious waste;

(D) Materials that are being transported to a facility for reprocessing or reuse; provided further, that reprocessing or reuse does not include incineration or placement in a landfill; and

(E) Industrial waste which may include office, domestic or cafeteria waste, managed in a privately owned solid waste disposal system or resource recovery facility, if such waste is generated solely by the owner of the solid waste disposal system or resource recovery facility.

The term "construction/demolition wastes" is defined separately in the regulations promulgated by the Solid Waste Disposal Control Board. Tenn. Comp. R & Reg. 0400-11-01-.01(2) defines "construction/demolition wastes" as

> wastes, other than special wastes, resulting from construction, remodeling, repair and demolition of structures and from road building. Such wastes include but are not limited to bricks, concrete and other masonry materials, soil, rock and lumber, road spoils, rebar, paving material.

The language in the initial clause of the statutory definition of "municipal solid waste" is quite broad insofar as it includes, among other things, any "garbage" or "refuse." These two terms are not defined in either the SWMA or the regulations. In such cases courts will resort to dictionary definitions to determine the meaning of a word. *State v. Edmondson*, 231 S.W.3d 925, 928 (Tenn. 2007); *State v. Clark*, 355 S.W.3d 590, 593 (Tenn. Crim. App. 2011). The term "garbage" is generally defined as "unwanted or useless material," and "refuse" is generally defined as "the worthless or useless part of something." Webster's New Collegiate Dictionary 469, 965 (1981). Thus, the words "garbage" and "refuse" as used within the statute would encompass waste derived from the demolition of a building or the construction of a building. *See also State v. White*, 362 S.W.3d 503, 507 (Tenn. 2004) (stating general rule of statutory construction that courts will apply the plain meaning of words used in a statute in their normal and accepted use, "without a forced interpretation that would limit or expand the statute's application").

Moreover, this Office has been advised by TDEC that its Division of Solid Waste Management has historically interpreted the statutory definition of "municipal solid waste" in the SWMA to include construction and demolition waste. The delineation of categories of waste is important to the solid waste management program established by SWMA and TSWDA because the category will govern at what type of facility waste can be disposed. *See* Tenn. Comp R. & Reg. 0400-11-01-.01(3). The regulations promulgated by the Solid Waste Disposal Control Board contain four classifications of disposal facilities and delineate specific requirements for each class. Tenn. Comp. R. & Reg. 0400-11-.01(3) provides:

Classification of Disposal Facilities

(a) Class I Disposal Facility refers to a sanitary landfill which serves a municipal, institutional, and/or rural population and is used or to be used for disposal of domestic wastes, commercial wastes, institutional wastes, municipal solid wastes, bulky wastes, landscaping and land clearing wastes, industrial wastes, construction/demolition wastes, farming wastes, shredded automotive tires, dead animals, and special wastes.

(b) Class II Disposal Facility refers to a landfill which receives waste which is generated by one or more industrial or manufacturing plants and is used or to be used for the disposal of solid waste generated by such plants, which may include industrial wastes, commercial wastes, institutional wastes, farming wastes, bulky wastes, landscaping and land clearing wastes, construction/demolition wastes, and shredded automotive tires. Additionally a Class II disposal facility may also serve as a monofill for ash disposal from the incineration of municipal solid waste.

(c) Class III Disposal Facility refers to a landfill which is used or to be used for the disposal of farming wastes, landscaping and land clearing wastes, demolition/construction waste, shredded automotive tires, and/or certain wastes having similar characteristics and approved in writing by the Department.

(d) Class IV Disposal Facility refers to a landfill which is used or to be used for the disposal of demolition/construction wastes, shredded automotive tires, and certain wastes having similar characteristics and approved in writing by the Department.

Each classified facility is subject to different fee charges for persons utilizing the facility. The provisions of the SWMA authorize the owners of municipal solid waste disposal facilities to impose tipping fees upon each ton of municipal solid waste received at the facility and also require them to impose a surcharge of ninety cents on each ton of municipal solid waste received at a Class I disposal facility, which is then remitted to the state treasury. Tenn. Code Ann. §§ 68-211-835(a) and (d). Thus, the fee structure for disposal of municipal solid waste is higher than that for other types of waste. TDEC has advised this Office that TDEC has historically interpreted the SWMA and the Board's regulations to impose the surcharge under Tenn. Code Ann. § 68-211-835(d) on construction and demolition waste when it is disposed of at a Class I facility.

In sum, the expansive definition of "municipal solid waste" found in Tenn. Code Ann. § 68-211-802(a)(10) of the SWMA would include "construction/demolition waste." This interpretation of the term "municipal solid waste" is reinforced by SWMA's long-standing inclusion of "construction/demolition waste" within the broader term of "municipal solid waste," given that under both Tennessee and federal law the construction of a statute by the agency charged with the enforcement or administration of that statute is afforded persuasive weight by

the courts. *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984); *Nashville Mobilphone Co., Inc. v. Atkins*, 536 S.W.2d 335, 340 (Tenn. 1976).

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

ELIZABETH P. McCARTER
Senior Counsel

Requested by:

The Honorable Mike Harrison
State Representative
206-A War Memorial Building
Nashville, Tennessee 37243