

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-262
HOUSE BILL 209

AN ACT TO AMEND CERTAIN FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO OWNERS AND OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES TO (1) AUTHORIZE THE USE OF A CORPORATE FINANCIAL TEST AS AN ALLOWABLE MECHANISM TO ESTABLISH THE FINANCIAL ASSURANCE NECESSARY FOR CLOSURE, POST-CLOSURE MAINTENANCE AND MONITORING, AND ANY CORRECTIVE ACTION THAT MAY BE REQUIRED AT THE FACILITY; (2) DECREASE THE MINIMUM AMOUNT OF FINANCIAL ASSURANCE THAT MUST BE ESTABLISHED TO COVER COSTS FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY; AND (3) AUTHORIZE THE USE OF A TRUST FUND PAY-IN PERIOD AS AN ALLOWABLE MECHANISM TO ESTABLISH THE FINANCIAL ASSURANCE NECESSARY FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-295.2 reads as rewritten:

"§ 130A-295.2. Financial responsibility requirements for applicants and permit holders for solid waste management facilities.

...

(f) The applicant and permit holder for a solid waste management facility shall establish financial assurance by a method or combination of methods that will ensure that sufficient funds for closure, post-closure maintenance and monitoring, and any corrective action that the Department may require will be available during the active life of the facility, at closure, and for any post-closure period of time that the Department may require even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State. Rules adopted by the Commission ~~may~~ shall allow a business entity that is an applicant for a permit or a permit holder to establish financial assurance through insurance, irrevocable letters of credit, trusts, surety bonds, corporate financial tests, or any other financial ~~device~~, device as allowed pursuant to 40 Code of Federal Regulations § 258.74 (July 1, 2010 Edition), or any combination of the foregoing shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used. Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department. Where a corporate financial test is used that is substantially similar to that allowed under 40 Code of Federal Regulations § 258.74 (July 1, 2010 Edition), the assets shall be presumed both to be readily accessible by the Department and not otherwise accessible to the permit holder.

...

(h) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill shall establish financial assurance sufficient to cover a minimum of ~~three~~ two million dollars (~~\$3,000,000~~) (\$2,000,000) in costs for potential assessment and corrective



action at the facility. The Department may require financial assurance in a higher amount and may increase the amount of financial assurance required of a permit holder at any time based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill, the location of the landfill, potential receptors of releases from the landfill, and inflation. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(i) The Commission may adopt rules under which a unit of local government and a solid waste management authority created pursuant to Article 22 of Chapter 153A of the General Statutes may meet the financial responsibility requirements of this section by either a local government financial test or a capital reserve fund requirement.

(j) In addition to the other methods by which financial assurance may be established as set forth in subsection (f) of this section, the Department may allow the owner or operator of a sanitary landfill permitted on or before August 1, 2009, to meet the financial assurance requirement set forth in subsection (h) of this section by establishing a trust fund which conforms to the following minimum requirements:

- (1) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a State or federal agency.
- (2) A copy of the trust agreement shall be placed in the facility's operating record.
- (3) Payments into the trust fund shall be made annually by the owner or operator over a period not to exceed five years. This period is referred to as the pay-in period.
- (4) Payments into the fund shall be made in equal annual installments in amounts calculated by dividing the current cost estimate for potential assessment and corrective action at the facility, which shall not be less than two million dollars (\$2,000,000) in accordance with subsection (h) of this section, by the number of years in the pay-in period.
- (5) The trust fund may be terminated by the owner or operator only if the owner or operator establishes financial assurance by another method or combination of methods allowed under subsection (f) of this section.
- (6) The trust agreement shall be accompanied by a formal certification of acknowledgement."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 2:00 p.m. this 23rd day of June, 2011