

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1973*
Committee Substitute Favorable 6/15/94
Corrected Copy 6/16/94

Short Title: Local Govt. Review Landfill Permit.

(Public)

Sponsors:

Referred to:

June 1, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE STANDARDS FOR USE BY LOCAL GOVERNMENTS IN THE REVIEW OF APPLICATIONS FOR PERMITS OR FOR SUBSTANTIAL AMENDMENTS TO PERMITS FOR SANITARY LANDFILLS IN ORDER TO ENSURE THAT LOCAL GOVERNMENT REVIEW OF PERMIT APPLICATIONS MEETS CONSTITUTIONAL REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-294(a)(4) reads as rewritten:

"(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. ~~No~~ The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit shall be granted for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission for Health Services, without the Department receiving the prior approval for the sanitary landfill for which the application the new permit, renewal of the permit, or substantial amendment to the permit from the county where it is to be located, except if it is to be located within the corporate limits or extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, of a city as defined in G.S. 160A-1(2), from the city where it is to be located or whose jurisdiction it is in, except as provided in subdivision (3) of subsection (b1) of this section. No

1 permit shall be granted for a solid waste management facility having
2 discharges which are point sources until the Department has referred
3 the complete plans and specifications to the Environmental
4 Management Commission and has received advice in writing that the
5 plans and specifications are approved in accordance with the
6 provisions of G.S. 143-215.1. If the applicant is a unit of local
7 government, and has not submitted a solid waste management plan that
8 has been approved by the Department pursuant to G.S. 130A-
9 309.09A(b), the Department may deny a permit for a sanitary landfill
10 or a facility that disposes of solid waste by incineration, unless the
11 Commission has not adopted rules pursuant to G.S. 130A-309.29 for
12 local solid waste management plans. In any case where the
13 Department denies a permit for a solid waste management facility, it
14 shall state in writing the reason for denial and shall also state its
15 estimate of the changes in the applicant's proposed activities or plans
16 which will be required for the applicant to obtain a permit.

17 b. The issuance of permits for sanitary landfills operated by local
18 governments is exempt from the environmental impact
19 statements required by Article 1 of Chapter 113A of the
20 General Statutes, entitled the North Carolina Environmental
21 Policy Act of 1971. All sanitary landfill permits issued to local
22 governments prior to July 1, 1984, are hereby validated
23 notwithstanding any failure to provide environmental impact
24 statements pursuant to the North Carolina Environmental Policy
25 Act of 1971;".

26 Sec. 2. G.S. 130A-294(b1) reads as rewritten:

27 "(b1) (1) For purposes of this subsection and subdivision (4) of
28 subsection (a) of this section, a 'substantial amendment' means
29 either:

30 a. An increase of ten percent (10%) or more in:

31 1. The population of the geographic area to be served by
32 the sanitary landfill;

33 2. The quantity of solid waste to be disposed of
34 in the sanitary landfill; or

35 3. The geographic area to be served by the sanitary landfill.

36 b. A change in the categories of solid waste to be disposed of in
37 the sanitary landfill or any other change to the application for a
38 permit or to the permit for a sanitary landfill that the
39 Commission or the Department determines to be substantial.

40 (2) Within 10 days after receiving an application for a permit, for the
41 renewal of a permit, or for a substantial amendment to a permit for a
42 sanitary landfill, the Department shall notify the clerk of the board of
43 commissioners of the county or counties in which the sanitary landfill
44 is proposed to be located or is located and, if the sanitary landfill is

1 proposed to be located or is located within a city, the clerk of the
2 governing board of the city, that the application has been filed and
3 shall file a copy of the application with the clerk. Prior to the issuance
4 of a permit, the renewal of a permit, or a substantial amendment to a
5 permit, the board of commissioners of the county or counties in which
6 the sanitary landfill is proposed to be located or is located or, if the
7 sanitary landfill is proposed to be located or is located in a city, the
8 governing board of the city shall conduct a public hearing when
9 sufficient public interest exists. The board of commissioners of the
10 county or counties in which the sanitary landfill is proposed to be
11 located or is located or, if the sanitary landfill is proposed to be located
12 or is located in a city, the governing board of the city shall provide
13 adequate notice to the public of the public hearing and shall specify the
14 procedure to be followed at the public hearing.

15 (3) An applicant for a new permit, the renewal of a permit, or a substantial
16 amendment to a permit for a sanitary landfill shall request each local
17 government having jurisdiction over any part of the land on which the
18 sanitary landfill and its appurtenances are located or to be located to
19 issue a determination as to whether the local government has in effect
20 a zoning or subdivision ordinance applicable to the sanitary landfill
21 and whether the proposed sanitary landfill, or the existing sanitary
22 landfill as it would be operated under the renewed or substantially
23 amended permit, would be consistent with the ordinance. In order to
24 serve as a basis for the denial of the application for the new permit, the
25 application for renewal of the permit, or application to substantially
26 amend the permit for a sanitary landfill, any ordinance or zoning
27 classification affecting the real property designated in the permit
28 application shall have been in effect not less than 90 days prior to the
29 date of the application. The request to the local government shall be
30 accompanied by a copy of the permit application and shall be delivered
31 to the clerk of the local government personally or by certified mail.
32 The determination shall be verified or supported by affidavit signed by
33 the chief administrative officer, the chief administrative officer's
34 designee, clerk, or other official designated by the local government to
35 make the determination and, if the local government states that the
36 sanitary landfill as it would be operated under the new, renewed, or
37 substantially amended permit is inconsistent with a zoning or
38 subdivision ordinance, shall include a copy of the ordinance and the
39 specific reasons for the determination of inconsistency. A copy of any
40 such determination shall be provided to the applicant when it is
41 submitted to the Department. The Department shall not act upon an
42 application for a permit under this section until it has received a
43 determination from each local government requested to make a
44 determination by the applicant. Unless the local government makes a

1 subsequent determination of consistency with all ordinances cited in
2 the determination or the sanitary landfill as it would be operated under
3 the new, renewed, or substantially amended permit is determined by a
4 court of competent jurisdiction to be consistent with the cited
5 ordinances, the Department shall attach as a condition of the permit a
6 requirement that the applicant, prior to construction or operation of the
7 sanitary landfill under the permit, comply with all lawfully adopted
8 local ordinances, including those cited in the determination, that apply
9 to the sanitary landfill at the time of construction or operation of the
10 sanitary landfill. If a local government fails to submit a determination
11 to the Department as provided by this subsection within 15 days after
12 receipt of the request, the Department shall proceed to consider the
13 permit application without regard to local zoning and subdivision
14 ordinances. This subsection shall not be construed to limit any
15 opportunity a local government may have to comment on a permit
16 application under any other law or rule. This subsection shall not
17 apply to any facility with respect to which local ordinances are subject
18 to review under either G.S. 104E-6.2 or G.S. 130A-293."

19 Sec. 3. This act is effective upon ratification.