

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 36
Committee Substitute Favorable 4/26/07

Short Title: Haz. Materials Task Force Recommendations.

(Public)

Sponsors:

Referred to:

January 30, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE OVERSIGHT OF HAZARDOUS WASTE
3 FACILITIES, AS RECOMMENDED BY THE GOVERNOR'S HAZARDOUS
4 MATERIALS TASK FORCE.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. REGULATORY RECOMMENDATIONS**

8
9 **REQUIRE APPLICANTS FOR PERMITS FOR COMMERCIAL HAZARDOUS**
10 **WASTE FACILITIES TO DEMONSTRATE FINANCIAL**
11 **RESPONSIBILITY FOR CORRECTIVE ACTION AND FOR SCREENING**
12 **FOR POTENTIAL OFF-SITE MIGRATION OF CONTAMINATION IN THE**
13 **EVENT OF A RELEASE OF HAZARDOUS WASTE OR HAZARDOUS**
14 **WASTE CONSTITUENTS INTO THE ENVIRONMENT**

15
16 **SECTION 1.1.(a)** Part 2 of Article 9 of Chapter 130A of the General
17 Statutes is amended by adding a new section to read:

18 **"§ 130A-295.04. Financial responsibility requirements for applicants for a permit**
19 **and permit holders for hazardous waste facilities.**

20 (a) In addition to any other financial responsibility requirements for solid waste
21 management facilities under this Part, the applicant for a permit or a permit holder for a
22 hazardous waste facility shall establish financial assurance that will ensure that
23 sufficient funds are available for facility closure, post-closure maintenance and
24 monitoring, any corrective action that the Department may require, and to satisfy any
25 potential liability for sudden and nonsudden accidental occurrences, even if the
26 applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do
27 business, or maintain assets in the State.

28 (b) To establish sufficient availability of funds under this section, the applicant
29 for a permit or a permit holder for a hazardous waste facility may use insurance,

1 financial tests, third-party guarantees by persons who can pass the financial test,
2 guarantees by corporate parents who can pass the financial test, irrevocable letters of
3 credit, trusts, surety bonds, or any other financial device, or any combination of the
4 foregoing, shown to provide protection equivalent to the financial protection that would
5 be provided by insurance if insurance were the only mechanism used.

6 (c) The applicant for a permit or a permit holder for a hazardous waste facility,
7 and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent,
8 including any joint venturer with a direct or indirect interest in the applicant, permit
9 holder, or parent, shall be a guarantor of payment for closure, post-closure maintenance
10 and monitoring, any corrective action that the Department may require, and to satisfy
11 any potential liability for sudden and nonsudden accidental occurrences arising from the
12 operation of the hazardous waste facility.

13 (d) In addition to any other financial assurance requirements for hazardous waste
14 management facilities under this section, an applicant for a permit or a permit holder for
15 a commercial hazardous waste facility shall establish financial assurance that will
16 ensure that sufficient funds are available for corrective action and for off-site screening
17 for potential migration of contaminants in the event of a release of hazardous waste or
18 hazardous waste constituents into the environment in an amount approved by the
19 Department. The applicant for a permit or a permit holder may not use a financial test or
20 captive insurance to establish financial assurance under this subsection.

21 (e) The Department may require an applicant for a permit for a hazardous waste
22 facility to provide cost estimates for facility closure, post-closure maintenance and
23 monitoring, and any corrective action that the Department may require to the
24 Department. The Department may require an applicant for a permit for a commercial
25 hazardous waste facility to provide cost estimates for off-site screening for potential
26 migration of contaminants in the event of a release of hazardous waste or hazardous
27 waste constituents into the environment.

28 (f) Assets used to meet the financial assurance requirements of this section shall
29 be in a form that will allow the Department to readily access funds for the purposes set
30 out in this section. Assets used to meet financial assurance requirements of this section
31 shall not be accessible to the permit holder except as approved by the Department.

32 (g) The Department may provide a copy of any filing that an applicant for a
33 permit or a permit holder for a hazardous waste facility submits to the Department to
34 meet the financial responsibility requirements under this section to the State Treasurer.
35 The State Treasurer shall review the filing and provide the Department with a written
36 opinion as to the adequacy of the filing to meet the purposes of this section, including
37 any recommended changes.

38 (h) In order to continue to hold a permit for a hazardous waste facility, a permit
39 holder must maintain financial responsibility as required by this Part and must provide
40 any information requested by the Department to establish that the permit holder
41 continues to maintain financial responsibility.

42 (i) An applicant for a permit or a permit holder for a hazardous waste facility
43 shall satisfy the Department that the applicant or permit holder has met the financial

1 responsibility requirements of this Part before the Department is required to otherwise
2 review the application.

3 (j) The Commission may adopt rules regarding financial responsibility in order
4 to implement this section."

5 **SECTION 1.1.(b)** G.S. 130A-294(b) reads as rewritten:

6 "(b) The Commission shall adopt and the Department shall enforce rules to
7 implement a comprehensive statewide solid waste management program. The rules shall
8 be consistent with applicable State and federal law; and shall be designed to protect the
9 public health, safety, and welfare; preserve the environment; and provide for the
10 greatest possible conservation of cultural and natural resources. Rules for the
11 establishment, location, operation, maintenance, use, discontinuance, recordation,
12 post-closure care of solid waste management facilities also shall be based upon
13 recognized public health practices and procedures, including applicable epidemiological
14 research and studies; hydro geological research and studies; sanitary engineering
15 research and studies; and current technological development in equipment and methods.
16 The rules shall not apply to the management of solid waste that is generated by an
17 individual or individual family or household unit on the individual's property and is
18 disposed of on the individual's property.

19 ~~The Commission shall adopt rules for financial responsibility to ensure the~~
20 ~~availability of sufficient funds for closure and post closure maintenance and monitoring~~
21 ~~at solid waste management facilities, and for any corrective action the Department may~~
22 ~~require during the active life of a facility or during the closure and post closure periods.~~
23 ~~The rules may permit demonstration of financial responsibility through the use of a~~
24 ~~letter of credit, insurance, surety, trust agreement, financial test, or guarantee by~~
25 ~~corporate parents or third parties who can pass the financial test. The rules shall require~~
26 ~~that an owner or operator of a privately owned solid waste management facility~~
27 ~~demonstrate financial responsibility by a method or combinations of methods that will~~
28 ~~ensure that sufficient funds for closure, post closure maintenance and monitoring, and~~
29 ~~any corrective action that the Department may require will be available during the~~
30 ~~active life of the facility, at closure, and for a period of not less than 30 years after~~
31 ~~closure even if the owner or operator becomes insolvent or ceases to reside, be~~
32 ~~incorporated, do business, or maintain assets in the State."~~

33 **SECTION 1.1.(c)** G.S. 130A-290(a) is amended by adding a new
34 subdivision to read:

35 "(8a) 'Hazardous waste constituent' has the same meaning as in 40 Code of
36 Federal Regulations § 260.10 (1 July 2006)."

37 **SECTION 1.1.(d)** G.S. 130A-294(b2) reads as rewritten:

38 "(b2) The Department may require an applicant for a permit or a permit holder
39 under this Article to satisfy the Department that the applicant, applicant or permit
40 holder, and any parent, subsidiary, or other affiliate of the applicant, applicant, permit
41 holder, or parent, parent, including any joint venturer with a direct or indirect interest in
42 the applicant, permit holder, or parent:

1 (1) ~~Is financially qualified to carry out the activity for which the permit is~~
2 ~~required.~~Has established financial responsibility as required by
3 G.S. 130A-295.02.

4"

5 **SECTION 1.1.(e)** G.S. 130A-294(j) is repealed.

6 **SECTION 1.1.(f)** G.S. 130A-308(a) reads as rewritten:

7 "(a) Standards adopted under G.S. 130A-294(c) and a permit issued under
8 G.S. 130A-294(c) shall require corrective action for all releases of hazardous waste or
9 constituents from any solid waste management unit at a treatment, storage, or disposal
10 facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste
11 was placed in such unit. Permits issued under G.S. 130A-294(c) which implement
12 Section 3005 of RCRA (42 U.S.C. § 6925) shall contain schedules of compliance for
13 ~~such~~ corrective action ~~(where such if~~ corrective action cannot be completed prior to
14 issuance of the ~~permit)~~ permit and ~~assurances of financial responsibility~~ establishment of
15 financial assurance for completing ~~such~~ corrective action. Notwithstanding any other
16 provision of this section, this section shall apply only to units, facilities, and permits that
17 are covered by Section 3004(u) of RCRA (42 U.S.C. § 6924(u)). Notwithstanding the
18 foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by
19 this section."

20 **SECTION 1.1.(g)** The catch line of G.S. 130A-310.9 reads as rewritten:

21 "**§ 130A-310.9. Voluntary remedial actions; ~~maximum financial responsibility;~~**
22 **limitation of liability; agreements; implementation and oversight by**
23 **private engineering and consulting firms.**"

24 **SECTION 1.1.(h)** This section becomes effective 1 October 2007.

25
26 **REQUIRE APPLICANTS FOR PERMITS FOR HAZARDOUS WASTE**
27 **FACILITIES TO SEEK INPUT FROM LOCAL GOVERNMENT AND**
28 **EMERGENCY RESPONSE AGENCIES ON THEIR CONTINGENCY**
29 **PLANS FOR THE FACILITIES**

30
31 **SECTION 1.2.(a)** G.S. 130A-295 is amended by adding four new
32 subsections to read:

33 "(d) At least 120 days prior to submitting an application, an applicant for a permit
34 for a hazardous waste facility shall provide to the county in which the facility is located,
35 to any municipality with planning jurisdiction over the site of the facility, and to all
36 emergency response agencies that have a role under the contingency plan for the facility
37 all of the following information:

38 (1) Information on the nature and type of operations to occur at the
39 facility.

40 (2) Identification of the properties of the hazardous waste to be managed
41 at the facility.

42 (3) A copy of the draft contingency plan for the facility that includes the
43 proposed role for each local government and each emergency response
44 agency that received information under this subsection.

1 (4) Information on the hazardous waste locations within the facility.

2 (e) Within 60 days of receiving the information, each local government and
3 emergency response agency that receives information under subsection (d) of this
4 section shall respond to the applicant in writing as to the adequacy of the contingency
5 plan and the availability and adequacy of its resources and equipment to respond to an
6 emergency at the facility that results in a release of hazardous waste or hazardous waste
7 constituents into the environment according to the role set forth for the local
8 government or emergency response agency under the contingency plan.

9 (f) An applicant for a permit for a hazardous waste facility shall include
10 documentation that each local government and emergency response agency received the
11 information required under subsection (d) of this section, the written responses the
12 applicant received under subsection (e) of this section, and verification by each that its
13 resources and equipment are available and adequate to respond to an emergency at the
14 facility in accordance with its role as set forth in the contingency plan. If the applicant
15 does not receive a timely verification from a local government or emergency response
16 agency notified under subsection (d) of this section, the Department shall verify the
17 adequacy of resources and equipment for emergency response during the course of
18 review of the permit application, taking into account any contracts entered into by the
19 applicant for such emergency response resources.

20 (g) At each two-year interval after a permit for a hazardous waste facility is
21 issued, the permit holder shall verify that the resources and equipment of each local
22 government and emergency response agency are available and adequate to respond to an
23 emergency at the facility in accordance with its role as set forth in the contingency plan
24 and shall submit this verification to the Department."

25 **SECTION 1.2.(b)** This section is effective when it becomes law and applies
26 to applications pending on the date this section becomes effective. An applicant shall
27 provide the information required under G.S. 130A-295(d), as enacted by this section, as
28 it relates to an application pending on the date this section becomes effective within 30
29 days after this section becomes effective.

30
31 **REQUIRE OPERATORS OF COMMERCIAL HAZARDOUS WASTE**
32 **FACILITIES TO MAINTAIN CERTAIN INFORMATION AT AN OFF-SITE**
33 **LOCATION AND MAKE THESE ACCESSIBLE TO THE DEPARTMENT**
34 **OF ENVIRONMENT AND NATURAL RESOURCES, LOCAL**
35 **GOVERNMENT, AND EMERGENCY RESPONSE AGENCIES THAT**
36 **HAVE A ROLE UNDER CONTINGENCY PLANS**

37
38 **SECTION 1.3.(a)** G.S. 130A-295.01 is amended by adding a new
39 subsection to read:

40 "(c) The owner or operator of a commercial hazardous waste facility shall
41 maintain a record of information at an off-site location that identifies the generators of
42 the waste and the quantity, type, location, and hazards of the waste at the facility and
43 shall make this information available in a form and manner to be determined by the
44 Department, accessible to the Department, to the county in which the facility is located,

1 to any municipality with planning jurisdiction over the site of the facility, and to
2 emergency response agencies that have a role under the contingency plan for the
3 facility."

4 SECTION 1.3.(b) This section becomes effective 1 October 2007.

5
6 **REQUIRE AN APPLICANT FOR A PERMIT FOR A COMMERCIAL**
7 **HAZARDOUS WASTE FACILITY TO NOTIFY PERSONS WHO RESIDE**
8 **OR OWN PROPERTY LOCATED WITHIN ONE-FOURTH MILE OF THE**
9 **PROPOSED FACILITY THAT AN APPLICATION HAS BEEN FILED,**
10 **REQUIRE PERMIT HOLDERS TO PROVIDE PERIODIC NOTICE TO**
11 **THESE PERSONS THAT INCLUDES INFORMATION CONCERNING THE**
12 **EMERGENCY RESPONSE PLAN FOR THE FACILITY, AND REQUIRE**
13 **THAT DOCUMENTATION OF THESE NOTICES BE PROVIDED TO THE**
14 **DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

15
16 SECTION 1.4.(a) G.S. 130A-295.01 is amended by adding four new
17 subsections to read:

18 "(d) Within 10 days of filing an application for a permit for a commercial
19 hazardous waste facility, the applicant shall notify every person who resides or owns
20 property located within one-fourth mile of any property boundary of the facility that the
21 application has been filed. The notice shall be by mail to residents and by certified mail
22 to property owners, or by any other means approved by the Department, shall be in a
23 form approved by the Department, and shall include all of the following:

24 (1) The location of the facility.

25 (2) A description of the facility.

26 (3) The hazardous and nonhazardous wastes that are to be received and
27 processed at the facility.

28 (4) A description of the emergency response plan for the facility.

29 (e) The permit holder for a commercial hazardous waste facility shall publish a
30 notice that includes the information set out in subsection (d) of this section annually
31 beginning one year after the permit is issued. The notice shall be published in a form
32 and manner approved by the Department in a newspaper of general circulation in the
33 community where the facility is located.

34 (f) The permit holder for a commercial hazardous waste facility shall provide the
35 information set out in subdivisions (1) through (4) of subsection (d) of this section by
36 mail to the persons described in subsection (d) of this section at the midpoint of the
37 period for which the permit is issued.

38 (g) Each commercial hazardous waste facility applicant and permit holder shall
39 provide documentation to demonstrate to the Department that the requirements set out
40 in subsections (d) through (f) of this section have been met."

41 SECTION 1.4.(b) This section becomes effective 1 October 2007.

42
43 **REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL**
44 **RESOURCES TO CONSIDER, WHEN DETERMINING THE FREQUENCY**

1 **OF INSPECTIONS AT COMMERCIAL HAZARDOUS WASTE**
2 **FACILITIES, CHANGES IN SENSITIVE LAND USE OR POPULATION**
3 **DENSITY THAT OCCURRED DURING THE PREVIOUS YEAR IN THE**
4 **AREA LOCATED WITHIN ONE-FOURTH MILE OF ANY PROPERTY**
5 **BOUNDARY OF SUCH FACILITIES**

6
7 **SECTION 1.5.(a)** G.S. 130A-295.01 is amended by adding a new
8 subsection to read:

9 "(e) No later than 31 January of each year, the owner or operator of a commercial
10 hazardous waste facility shall report to the Department any increase or decrease in the
11 number of sensitive land uses and any increase or decrease in estimated population
12 density based on information provided by the local government that has planning
13 jurisdiction over the site on which the facility is located that occurred during the
14 previous calendar year in the area located within one-fourth mile of any property
15 boundary of the facility. Changes shall be recorded in the operating record of the
16 facility. As used in this subsection, 'sensitive land use' includes residential housing,
17 places of assembly, places of worship, schools, day care providers, and hospitals.
18 Sensitive land use does not include retail businesses."

19 **SECTION 1.5.(b)** G.S. 130A-295.02(j) reads as rewritten:

20 "(j) For purposes of this subsection, special purpose commercial hazardous waste
21 facilities include: a facility that manages limited quantities of hazardous waste; a facility
22 that limits its hazardous waste management activities to reclamation or recycling,
23 including energy or materials recovery or a facility that stores hazardous waste
24 primarily for use at such facilities; or a facility that is determined to be low risk under
25 rules adopted by the Commission pursuant to this subsection. The Commission shall
26 adopt rules ~~establishing to determine whether a commercial hazardous waste facility is a~~
27 ~~special purpose commercial hazardous waste facility and to establish classifications of~~
28 ~~special purpose commercial hazardous waste facilities. reasonable times and frequencies~~
29 ~~for the presence of a resident inspector on less than a full time basis at special purpose~~
30 ~~commercial hazardous waste facilities. Rules adopted pursuant to this subsection. The~~
31 ~~rules to determine whether a commercial hazardous waste facility is a special purpose~~
32 ~~commercial hazardous waste facility and to establish classifications of special purpose~~
33 ~~commercial hazardous waste facilities shall establish classifications of special purpose~~
34 ~~hazardous waste facilities~~ be based on factors including, but not limited to, the size of
35 the facility, the type of treatment or storage being performed, the nature and volume of
36 waste being treated or stored, the uniformity, similarity, or lack of diversity of the waste
37 streams, the predictability of the nature of the waste streams and their treatability,
38 whether the facility utilizes automated monitoring or safety devices that adequately
39 perform functions that would otherwise be performed by a resident inspector, the fact
40 that reclamation or recycling is being performed at the facility, and the compliance
41 history of the facility and its operator. ~~Special purpose commercial hazardous waste~~
42 ~~facilities shall be subject to inspection at all times during which the facility is in~~
43 ~~operation, undergoing any maintenance or repair, or undergoing any test or calibration.~~
44 Based on the foregoing factors and any increase or decrease in the number of sensitive

1 land uses over time or in estimated population density over time reported pursuant to
2 G.S. 130A-295.01(e), rules ~~Rules~~ adopted pursuant to this subsection shall establish
3 times and frequencies for the presence of a resident inspector on less than a full-time
4 basis at special purpose commercial hazardous waste facilities and specify a minimum
5 number of additional inspections at special purpose hazardous waste facilities. ~~during~~
6 ~~such times as the facility is subject to inspection.~~ Special purpose commercial hazardous
7 waste facilities that utilize hazardous waste as a fuel source shall be inspected a
8 minimum of 40 hours per week, unless compliance data for these facilities can be
9 electronically monitored and recorded off-site by the Department. The Department,
10 considering the benefits provided by electronic monitoring, shall determine the number
11 of hours of on-site inspection required at these facilities. The Department shall maintain
12 records of all inspections at special purpose commercial hazardous waste facilities. Such
13 records shall contain sufficient detail and shall be arranged in a readily understandable
14 format so as to facilitate determination at any time as to whether the special purpose
15 commercial hazardous waste facility is in compliance with the requirements of this
16 subsection and of rules adopted pursuant to this subsection. Notwithstanding any other
17 provision of this section, special purpose commercial hazardous waste facilities shall be
18 subject to inspection at all times during which the facility is in operation, undergoing
19 any maintenance or repair, or undergoing any test or calibration."

20 **SECTION 1.5.(c)** This section is effective when it becomes law.
21

22 **REQUIRE COMMERCIAL HAZARDOUS WASTE FACILITIES TO PROVIDE**
23 **SECURITY AND SURVEILLANCE AT THE FACILITY 24 HOURS A DAY,**
24 **SEVEN DAYS A WEEK IN ORDER TO MONITOR SITE CONDITIONS**
25 **AND TO CONTROL ENTRY TO THE SITE OF THE FACILITY**
26

27 **SECTION 1.6.(a)** G.S. 130A-295.01 is amended by adding a new
28 subsection to read:

29 "(f) The owner or operator of a commercial hazardous waste facility shall provide
30 a security and surveillance system at the facility 24 hours a day, seven days a week in
31 order to continuously monitor site conditions and to control entry. The security and
32 surveillance system shall be capable of promptly detecting unauthorized access to the
33 facility; monitoring conditions; identifying operator errors; and detecting any discharge
34 that could directly or indirectly cause a fire, explosion, or release of hazardous waste or
35 hazardous waste constituents into the environment or threaten human health. The
36 requirements of this subsection may be satisfied either by employing trained facility
37 personnel or by providing an electronic security and surveillance system which may
38 include television, motion detectors, heat-sensing equipment, combustible gas monitors,
39 or any combination of these, as approved by the Department."

40 **SECTION 1.6.(b)** This section becomes effective 1 October 2007.
41

42 **REQUIRE PERMITS FOR COMMERCIAL HAZARDOUS WASTE**
43 **FACILITIES TO BE SUBJECT TO RENEWAL AT LEAST EVERY FIVE**
44 **YEARS**

1
2 **SECTION 1.7.(a)** G.S. 130A-295.01 is amended by adding a new
3 subsection to read:

4 "(g) The Department shall not issue a permit for a commercial hazardous waste
5 facility for a period of more than five years. A permit holder for a commercial
6 hazardous waste facility who intends to apply for renewal of the permit shall submit an
7 application for the renewal of the permit at least one year before the permit expires
8 unless the Department approves a shorter period of time."

9 **SECTION 1.7.(b)** This section is effective when it becomes law.

10
11 **AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL**
12 **RESOURCES TO REGULATE FACILITIES AT WHICH HAZARDOUS**
13 **WASTE IS STORED FOR MORE THAN 24 HOURS BUT LESS THAN 10**
14 **DAYS AND DIRECT THE DEPARTMENT TO STUDY THE NEED FOR**
15 **FURTHER REGULATION OF THESE FACILITIES**

16
17 **SECTION 1.8.(a)** G.S. 130A-290(a) is amended by renumbering
18 subdivision (13a) as (13b) and by adding a new subdivision to read:

19 "(13a) 'Hazardous waste transfer facility' means a facility or location where a
20 hazardous waste transporter stores hazardous waste for a period of
21 more than 24 hours but less than 10 days."

22 **SECTION 1.8.(b)** G.S. 130A-290(a)(9) reads as rewritten:

23 "(9) 'Hazardous waste facility' means a facility for the collection, storage,
24 processing, treatment, recycling, recovery, or disposal of hazardous
25 waste. Hazardous waste facility does not include a hazardous waste
26 transfer facility that meets the requirements of 40 Code of Federal
27 Regulations § 263.12 (1 July 2006)."

28 **SECTION 1.8.(c)** Part 2 of Article 9 of Chapter 130A of the General
29 Statutes is amended by adding a new section to read:

30 **"§ 130A-295.05. Hazardous waste transfer facilities.**

31 (a) A hazardous waste transporter shall register every hazardous waste transfer
32 facility the transporter uses in North Carolina with the Department and shall obtain a
33 hazardous waste transfer facility identification number for each hazardous waste
34 transfer facility.

35 (b) The Department shall issue a hazardous waste transfer facility identification
36 number for a hazardous waste transfer facility to a hazardous waste transporter if the
37 hazardous waste transporter provides all of the following information regarding the
38 transfer facility at the time of registration:

39 (1) The location of the hazardous waste transfer facility.

40 (2) The identification number issued by the Department for the hazardous
41 waste transporter.

42 (3) The name of the owner of the property on which the hazardous waste
43 transfer facility is located.

1 (c) Except during transportation emergencies as determined by the Department,
2 the temporary storage, consolidation, or commingling of hazardous waste may occur
3 only at a hazardous waste transfer facility that has been issued a facility identification
4 number by the Department.

5 (d) A hazardous waste transporter shall conduct all operations at any hazardous
6 waste transfer facility in compliance with the requirements of 40 Code of Federal
7 Regulations Part 263 (1 July 2006), 49 U.S.C. § 5101, et seq., and any laws, regulations,
8 or rules enacted or adopted pursuant to these federal laws. Except as preempted under
9 49 U.S.C. § 5125, a hazardous waste transporter shall also conduct all operations at any
10 hazardous waste transfer facility in compliance with all applicable State laws or rules.

11 (e) A hazardous waste transporter shall retain all records that are required to be
12 maintained for a hazardous waste transfer facility for at least three years."

13 **SECTION 1.8.(d)** The Department of Environment and Natural Resources
14 shall study the need for further regulation of hazardous waste transfer facilities, as
15 defined in G.S. 130A-290(a)(13a), as enacted by subsection (a) of this section, including
16 whether to require these facilities to obtain a permit under Part 2 of Article 9 of Chapter
17 130A of the General Statutes, pay permit fees, provide contingency plans, and
18 demonstrate financial responsibility. The Department of Environment and Natural
19 Resources shall report its findings and recommendations, including any legislative
20 proposals to the Environmental Review Commission on or before 15 February 2008.

21 **SECTION 1.8.(e)** This section becomes effective 1 October 2007.

22
23 **REQUIRE COMMERCIAL HAZARDOUS WASTE FACILITIES TO INSTALL**
24 **AND MAINTAIN ON-SITE WIND MONITORS**

25
26 **SECTION 1.9.(a)** G.S. 130A-295.01 is amended by adding a new
27 subsection to read:

28 "(h) The operator of a commercial hazardous waste facility shall install an on-site
29 wind monitor approved by the Department. The wind monitor required shall be located
30 so that the real-time wind direction can be determined from a remote location in the
31 event of a release of hazardous waste or hazardous waste constituents into the
32 environment."

33 **SECTION 1.9.(b)** This section becomes effective 1 October 2007.

34
35 **PROVIDE THAT A LOCAL ZONING OR LAND-USE ORDINANCE IS**
36 **PRESUMED TO BE VALID AND ENFORCEABLE TO THE EXTENT THE**
37 **ZONING OR LAND-USE ORDINANCE IMPOSES REQUIREMENTS,**
38 **RESTRICTIONS, OR CONDITIONS THAT ARE GENERALLY**
39 **APPLICABLE TO DEVELOPMENT; AND REQUIRE THE OFFICE OF**
40 **THE GOVERNOR TO SEEK THE ADVICE OF LOCAL UNITS OF**
41 **GOVERNMENT REGARDING THE ADEQUACY OF CURRENT**
42 **CRITERIA THE SECRETARY MUST CONSIDER WHEN DECIDING**
43 **WHETHER TO PREEMPT THESE LOCAL ORDINANCES**
44

1 **SECTION 1.10.(a)** G.S. 130A-293 reads as rewritten:

2 "**§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid;**
3 **petition to preempt local ordinance.**

4 (a) It is the intent of the General Assembly to maintain a uniform system for the
5 management of hazardous waste and to place limitations upon the exercise by all units
6 of local government in North Carolina of the power to regulate the management of
7 hazardous waste by means of special, local, or private acts or resolutions, ordinances,
8 property restrictions, zoning regulations, or otherwise. Notwithstanding any authority
9 granted to counties, municipalities, or other local authorities to adopt local ordinances,
10 including but not limited to those imposing taxes, fees, or charges or regulating health,
11 environment, or land use, any local ordinance that prohibits or has the effect of
12 prohibiting the establishment or operation of a hazardous waste facility that the
13 Secretary has preempted pursuant to subsections (b) through (f) of this section, shall be
14 invalid to the extent necessary to effectuate the purposes of this Chapter. To this end, all
15 provisions of special, local, or private acts or resolutions are repealed that:

- 16 (1) Prohibit the transportation, treatment, storage, or disposal of hazardous
17 waste within any county, city, or other political subdivision.
18 (2) Prohibit the siting of a hazardous waste facility within any county,
19 city, or other political subdivision.
20 (3) Place any restriction or condition not placed by this Article 9 ~~of~~
21 ~~Chapter 130A of the General Statutes~~ upon the transportation,
22 treatment, storage, or disposal of hazardous waste, or upon the siting
23 of a hazardous waste facility within any county, city, or other political
24 subdivision.
25 (4) In any manner are in conflict or inconsistent with the provisions of this
26 Article. ~~Article 9 of Chapter 130A of the General Statutes.~~

27 (a1) No special, local, or private ~~acts or resolutions~~ act or resolution enacted or
28 taking effect hereafter may be construed to modify, amend, or repeal any portion of this
29 Article 9 of Chapter 130A of the General Statutes unless it expressly provides for such
30 by specific references to the appropriate section of this ~~Part~~ Article. Further to this end,
31 all provisions of local ordinances, including those regulating land use, adopted by
32 counties, municipalities, or other local authorities that prohibit or have the effect of
33 prohibiting the establishment or operation of a hazardous waste facility are invalidated
34 to the extent preempted by the Secretary pursuant to this ~~Section~~ section.

35 (b) When a hazardous waste facility would be prevented from construction or
36 operation by a county, municipal, or other local ordinance, the operator of the proposed
37 facility may petition the Secretary to review the matter. After receipt of a petition, the
38 Secretary shall hold a hearing in accordance with the procedures in subsection (c) of this
39 section and shall determine whether or to what extent to preempt the local ordinance to
40 allow for the establishment and operation of the facility.

41 (c) When a petition described in subsection (b) of this section has been filed with
42 the Secretary, the Secretary shall hold a public hearing to consider the petition. The
43 public hearing shall be held in the affected locality within 60 days after receipt of the
44 petition by the Secretary. The Secretary shall give notice of the public hearing by:

1 (1) Publication in a newspaper or newspapers having general circulation in
2 the county or counties where the facility is or is to be located or
3 operated, once a week for three consecutive weeks, the first notice
4 appearing at least 30 days prior to the scheduled date of the hearing;
5 and

6 (2) First class mail to persons who have requested notice. The Secretary
7 shall maintain a mailing list of persons who request notice in advance
8 of the hearing pursuant to this section. Notice by mail shall be
9 complete upon deposit of a copy of the notice in a post-paid wrapper
10 addressed to the person to be notified at the address that appears on the
11 mailing list maintained by the Board, in a post office or official
12 depository under the exclusive care and custody of the United States
13 Postal Service.

14 (c1) Any interested person may appear before the Secretary at the hearing to offer
15 testimony. In addition to testimony before the Secretary, any interested person may
16 submit written evidence to the Secretary for the Secretary's consideration. At least 20
17 days shall be allowed for receipt of written comment following the hearing.

18 (d) A local zoning or land-use ordinance is presumed to be valid and enforceable
19 to the extent the zoning or land-use ordinance imposes requirements, restrictions, or
20 conditions that are generally applicable to development, including, but not limited to,
21 setback, buffer, and stormwater requirements, unless the Secretary makes a finding of
22 fact to the contrary. The Secretary shall determine whether or to what extent to preempt
23 local ordinances so as to allow for the establishment and operation of the facility no
24 later than 60 days after conclusion of the hearing. The Secretary shall preempt a local
25 ordinance only if the Secretary makes all ~~five~~ of the following findings:

26 (1) That there is a local ordinance that would prohibit or have the effect of
27 prohibiting the establishment or operation of a hazardous waste
28 facility.

29 (2) That the proposed facility is needed in order to establish adequate
30 capability to meet the current or projected hazardous waste
31 management needs of this State or to comply with the terms of any
32 interstate agreement for the management of hazardous waste to which
33 the State is a party and therefore serves the interests of the citizens of
34 the State as a whole.

35 (3) That all legally required State and federal permits or approvals have
36 been issued by the appropriate State and federal agencies or that all
37 State and federal permit requirements have been satisfied and that the
38 permits or approvals have been denied or withheld only because of the
39 local ordinance.

40 (4) That local citizens and elected officials have had adequate opportunity
41 to participate in the siting process.

42 (5) That the construction and operation of the facility will not pose an
43 unreasonable health or environmental risk to the surrounding locality
44 and that the facility operator has taken or consented to take reasonable

1 measures to avoid or manage foreseeable risks and to comply to the
2 maximum feasible extent with applicable local ordinances.

3 (d1) If the Secretary does not make all ~~five of the findings set out above, under~~
4 subsection (d) of this section, the Secretary shall not preempt the challenged local
5 ordinance. The Secretary's decision shall be in writing and shall identify the evidence
6 submitted to the Secretary plus any additional evidence used in arriving at the decision.

7 (e) The decision of the Secretary shall be final unless a party to the action files a
8 written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by
9 G.S. 7A-29 and this section, within 30 days of the date of the decision. The record on
10 appeal shall consist of all materials and information submitted to or considered by the
11 Secretary, the Secretary's written decision, a complete transcript of the hearing, all
12 written material presented to the Secretary regarding the location of the facility, the
13 specific findings required by subsection (d) of this section, and any minority positions
14 on the specific findings required by subsection (d) of this section. The scope of judicial
15 review shall be that the court may affirm the decision of the Secretary, or may remand
16 the matter for further proceedings, or may reverse or modify the decision if the
17 substantial rights of the parties may have been prejudiced because the agency findings,
18 inferences, conclusions, or decisions are:

- 19 (1) In violation of constitutional provisions;
- 20 (2) In excess of the statutory authority or jurisdiction of the agency;
- 21 (3) Made upon unlawful procedure;
- 22 (4) Affected by other error of law;
- 23 (5) Unsupported by substantial evidence admissible under
24 G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as
25 submitted; or
- 26 (6) Arbitrary or capricious.

27 (e1) If the court reverses or modifies the decision of the agency, the judge shall set
28 out in writing, which writing shall become part of the record, the reasons for the
29 reversal or modification.

30 (f) In computing any period of time prescribed or allowed by this procedure, the
31 provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

32 (g) Repealed by Session Laws 1989, c. 168, s. 13."

33 **SECTION 1.10.(b)** The Office of the Governor shall seek the advice of units
34 of local government to determine if the criteria that the Secretary of Environment and
35 Natural Resources considers in determining whether or to what extent to preempt local
36 ordinances pursuant to G.S. 130A-293, as amended by subsection (a) of this section,
37 should be further amended. The Office of the Governor shall report its findings and
38 recommendations, including any legislative proposals to the Environmental Review
39 Commission on or before 1 March 2008.

40 **SECTION 1.10.(c)** This section is effective when it becomes law.

41

42 **PART II. CLARIFYING, CONFORMING, AND TECHNICAL CHANGES**

43

44 **SECTION 2.1.(a)** G.S. 130A-294(c) reads as rewritten:

1 (c) The Commission shall adopt and the Department shall enforce rules
2 ~~concerning governing~~ the management of hazardous waste. These rules shall establish a
3 complete and integrated regulatory scheme in the area of hazardous waste ~~management~~
4 management, implement this Part, and shall provide for: shall:

5 (1) ~~Establishing~~ Establish criteria for hazardous waste, ~~identifying~~ identify
6 the characteristics of hazardous waste ~~and listing~~ waste, and list
7 particular hazardous ~~waste;~~ waste.

8 (1a) ~~Establishing~~ Establish criteria for hazardous constituents, ~~identifying~~
9 identify the characteristics of hazardous ~~constituents—~~ and
10 ~~listing~~ constituents, and list particular hazardous
11 ~~constituents;~~ constituents.

12 (2) ~~Record-keeping~~ Require record keeping and reporting by generators
13 and transporters of hazardous waste and owners and operators of
14 hazardous waste ~~facilities;~~ facilities.

15 (3) ~~Proper~~ Require proper labeling of hazardous waste
16 ~~containers;~~ containers.

17 (4) ~~Use of~~ Require use of appropriate containers for hazardous
18 ~~waste;~~ waste.

19 (5) ~~A~~ Require maintenance of a manifest system to assure that all
20 hazardous waste is designated for treatment, storage or disposal at a
21 hazardous waste facility to which a permit has been ~~issued;~~ issued.

22 (6) ~~Proper~~ Require proper transportation of hazardous ~~waste;~~ waste.

23 (7) ~~Treatment,~~ Develop treatment storage and disposal standards of
24 performance and techniques to be used by hazardous waste
25 ~~facilities;~~ facilities.

26 (8) ~~Location,~~ Develop standards regarding location, design, ownership and
27 construction of hazardous waste facilities; provided, however, that no
28 hazardous waste disposal facility or polychlorinated biphenyl disposal
29 facility shall be located within 25 miles of any other hazardous waste
30 disposal facility or polychlorinated biphenyl disposal ~~facility;~~ facility.

31 (9) ~~Plans~~ Require plans to minimize unanticipated damage from treatment,
32 storage or disposal of hazardous waste; and a plan or plans providing
33 for the establishment and/or operation of one or more hazardous waste
34 facilities in the absence of adequate approved hazardous waste
35 facilities established or operated by any person within the ~~State;~~ State.

36 (10) ~~Proper~~ Require proper maintenance and operation of hazardous waste
37 facilities, including requirements for ownership by any person or the
38 State, require demonstration of financial responsibility (~~including~~
39 ~~requirements for sufficient availability of funds for facility closure and~~
40 ~~post closure monitoring and corrective measures through the use of a~~
41 ~~letter of credit, insurance, surety, trust agreement, financial test, or~~
42 ~~financial test and corporate guarantee~~), in accordance with this section
43 and G.S. 130A-295.04, provide for training of personnel, and provide

- 1 for continuity of operation and procedures for establishing and
 2 maintaining hazardous waste ~~facilities;~~facilities.
- 3 (11) ~~Monitoring by~~Require owners or operators of hazardous waste
 4 ~~facilities;~~to monitor the facilities.
- 5 (12) ~~Inspection~~Authorize or require inspection or copying of records
 6 required to be ~~kept;~~kept by owners or operators.
- 7 (13) ~~Obtaining and analyzing~~Provide for collection and analysis of
 8 hazardous waste samples and samples of hazardous waste containers
 9 and labels from generators and transporters and from owners and
 10 operators of hazardous waste ~~facilities;~~facilities.
- 11 (14) ~~A~~Develop a permit system governing the establishment and operation
 12 of hazardous waste ~~facilities;~~facilities.
- 13 (15) ~~Additional~~Develop additional requirements as necessary for the
 14 effective management of hazardous ~~waste;~~waste.
- 15 (16) ~~The~~Require the operator of the hazardous waste disposal facility ~~shall~~
 16 to maintain adequate insurance to cover foreseeable claims arising
 17 from the operation of the facility. The Department shall determine
 18 what constitutes an adequate amount of ~~insurance;~~insurance.
- 19 (17) ~~The~~Require the bottom of a hazardous waste disposal facility ~~shall to~~
 20 be at least 10 feet above the seasonal high water table and more when
 21 necessary to protect the public health and the ~~environment;~~
 22 and environment.
- 23 (18) ~~The~~Require the operator of a hazardous waste disposal facility ~~shall to~~
 24 make monthly reports to the board of county commissioners of the
 25 county in which the facility is located on the kinds and amounts of
 26 hazardous wastes in the facility."

27 **SECTION 2.1.(b)** G.S. 130A-295.01 reads as rewritten:

28 "**§ 130A-295.01. Additional requirement for commercial hazardous waste**
 29 **~~treatment~~ facilities.**

30 (a) As used in this section:

- 31 (1) "Commercial hazardous waste ~~treatment~~ facility" means any hazardous
 32 waste ~~treatment facility which~~facility that accepts hazardous waste
 33 from the general public or from another person for a fee, but does not
 34 include any facility owned or operated by a generator of hazardous
 35 waste solely for his own use, and does not include any facility owned
 36 by the State or by any agency or subdivision thereof solely for the
 37 ~~treatment management~~ of hazardous waste generated by agencies or
 38 subdivisions of the ~~State;~~State.
- 39 (2) "New", when used in connection with "facility", refers to a planned or
 40 proposed facility, or a facility ~~which~~that has not been placed in
 41 operation, but does not include facilities ~~which~~that have commenced
 42 operations as of ~~June 22, 1987;~~22 June 1987, including facilities
 43 operated under interim ~~status;~~status.

- 1 (3) "Modified", when used in connection with "permit", means any change
2 in any permit in force on or after ~~June 22, 1987,~~ 22 June 1987 ~~which~~
3 that would either expand the scope of permitted operations, or extend
4 the expiration date of the permit, or otherwise constitute a ~~major~~-Class
5 2 or Class 3 modification of the permit as defined in ~~Title 40, Part~~
6 270.41 of the 40 Code of Federal Regulations § 270.41 (1 July 2006).
7 (~~1 July 1986~~); and
- 8 (4) "7Q10 conditions", when used in connection with "surface water,"
9 refers to the minimum average flow for a period of seven consecutive
10 days that has an average occurrence of once in 10 years as referenced
11 in 15 NCAC 2B .0206(a)(3) as adopted ~~February 1,~~ 1 February 1976.
- 12 (b) No permit for any new commercial hazardous waste ~~treatment~~- facility shall
13 be issued or become effective, and no permit for a commercial hazardous waste
14 ~~treatment~~- facility shall be modified, until the applicant has satisfied the Department that
15 such facility meets, in addition to all other applicable requirements, the following
16 requirements:
- 17 (1) The facility shall not discharge directly a hazardous or toxic substance
18 into a surface water that is upstream from a public drinking water
19 supply intake in North Carolina, unless there is a dilution factor of
20 1000 or greater at the point of discharge into the surface water under
21 7Q10 conditions.
- 22 (2) The facility shall not discharge indirectly through a publicly owned
23 treatment works (POTW) a hazardous or toxic substance into a surface
24 water that is upstream from a public drinking water supply intake in
25 North Carolina, unless there is a dilution factor of 1000 or greater,
26 irrespective of any dilution occurring in a wastewater treatment plant,
27 at the point of discharge into the surface water under 7Q10 conditions.
- 28 (c) through (h) (Reserved.)"

29 **SECTION 2.1.(c)** This section is effective when it becomes law.

30 **PART III. RECOMMENDATIONS FOR OTHER STATUTORY CHANGES**

31 **AUTHORIZE STATE MEDICAL ASSISTANCE TEAMS AND THE** 32 **EPIDEMIOLOGY SECTION OF THE DIVISION OF PUBLIC HEALTH OF** 33 **THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO SEEK** 34 **REIMBURSEMENT FOR ALL REASONABLE DEPLOYMENT COSTS** 35 **INCURRED IN RESPONSE TO THE RELEASE OF HAZARDOUS** 36 **MATERIAL OR HAZARDOUS WASTE INTO THE ENVIRONMENT**

37 **SECTION 3.1.(a)** G.S. 166A-27 reads as rewritten:

38 **"§ 166A-27. Action for the recovery of costs of hazardous materials emergency**
39 **response.**

40 (a) A person who causes the release of a hazardous material requiring the
41 activation of a regional response team shall be liable for all reasonable costs incurred by
42

1 the regional response team in responding to and mitigating the incident. The Secretary
2 shall invoice the person liable for the hazardous materials release, and, in the event of
3 nonpayment, may institute an action to recover those costs in the superior court of the
4 county in which the release occurred.

5 (b) A person who causes the release of a hazardous material that results in the
6 activation of one or more State Medical Assistance Teams (SMATs) or the
7 Epidemiology Section of the Division of Public Health of the Department of Health and
8 Human Services shall be liable for all reasonable costs incurred by each team or the
9 Epidemiology Section that responds to or mitigates the incident. The Secretary of
10 Health and Human Services shall invoice the person liable for the hazardous materials
11 release and, in the event of nonpayment, may institute an action to recover those costs in
12 the superior court of the county in which the release occurred."

13 **SECTION 3.1.(b)** Article 1 of Chapter 130A of the General Statutes is
14 amended by adding a new section to read:

15 **"§ 130A-20.01. Action for the recovery of costs of hazardous materials emergency**
16 **medical response.**

17 A person who causes the release of a hazardous material that results in the activation
18 of one or more State Medical Assistance Teams (SMATs) or the Epidemiology Section
19 of the Division of Public Health of the Department of Health and Human Services shall
20 be liable for all reasonable costs incurred by each team or the Epidemiology Section that
21 responds to or mitigates the incident. The Secretary of Health and Human Services shall
22 invoice the person liable for the hazardous materials release and, in the event of
23 nonpayment, may institute an action to recover those costs in the superior court of the
24 county in which the release occurred."

25 **SECTION 3.1.(c)** This section is effective when it becomes law and applies
26 to civil actions filed on or after that date.

27
28 **CLARIFY THAT MUNICIPAL 911 DATA HAS THE SAME**
29 **CONFIDENTIALITY AS COUNTY 911 DATA AND THAT DATA**
30 **CONTAINED IN A REVERSE 911 EMERGENCY NOTIFICATION**
31 **SYSTEM IS CONFIDENTIAL**

32
33 **SECTION 3.2.(a)** G.S. 132-1.5 reads as rewritten:

34 **"§ 132-1.5. 911 database.**

35 Automatic number identification and automatic location identification information
36 that consists of the name, address, and telephone numbers of telephone subscribers
37 which-subscribers, or the e-mail addresses of subscribers to an electronic emergency
38 notification or reverse 911 system, that is contained in a county or municipal 911
39 database-database, or in a county or municipal telephonic or electronic emergency
40 notification or reverse 911 system, is confidential and is not a public record as defined
41 by Chapter 132 of the General Statutes if that information is required to be confidential
42 by the agreement with the telephone company by which the information was obtained.
43 Dissemination of the information contained in the 911-911, electronic emergency
44 notification or reverse 911 system, or automatic number and automatic location

1 database is prohibited except on a call-by-call basis only for the purpose of handling
2 emergency calls or for training, and any permanent record of the information shall be
3 secured by the public safety answering points and disposed of in a manner which will
4 retain that security except as otherwise required by applicable law."

5 **SECTION 3.2.(b)** This section is effective when it becomes law.

6
7 **PART IV. STUDIES**

8
9 **ESTABLISH A TASK FORCE TO REVIEW THE STATE BUILDING CODE**
10 **TO ENSURE THAT THE CODE ADDRESSES THE NEEDS AND SAFETY**
11 **OF THE CITIZENS OF THE STATE WITH RESPECT TO THE**
12 **REGULATION OF FACILITIES THAT STORE, TREAT, OR DISPOSE OF**
13 **HAZARDOUS MATERIALS; TO MANDATE THE NORTH CAROLINA**
14 **BUILDING CODE COUNCIL TO AMEND THE STATE BUILDING CODE**
15 **TO IMPLEMENT ANY RECOMMENDATIONS OF THE TASK FORCE;**
16 **AND TO ALLOW STATE AND LOCAL FIRE INSPECTORS TO IDENTIFY**
17 **ALL RISKS ASSOCIATED WITH HAZARDOUS MATERIALS**

18
19 **SECTION 4.1.(a)** Task Force Established. – There is established the
20 Regulation of Hazardous Materials Facilities Task Force.

21 **SECTION 4.1.(b)** Definitions. – As used in this section "hazardous
22 material" means hazardous materials, as defined in G.S. 166A-21, hazardous waste, as
23 defined in G.S. 130A-290, hazardous substances, as defined in G.S. 143-215.77, and
24 hazardous chemicals, as defined in G.S. 95-174.

25 **SECTION 4.1.(c)** Membership. – The Task Force shall consist of 15
26 members as follows:

- 27 (1) The Secretary of Environment and Natural Resources or the
28 Secretary's designee.
- 29 (2) The Commissioner of Insurance or the Commissioner's designee.
- 30 (3) Three persons appointed by the General Assembly upon
31 recommendation of the Speaker of the House of Representatives, one
32 of whom shall be a member of the North Carolina Association of Fire
33 Marshals and one of whom shall be a fire marshal or inspector from
34 the western region of the State.
- 35 (4) Three persons appointed by the General Assembly upon
36 recommendation of the President Pro Tempore of the Senate, one of
37 whom shall be a member of the North Carolina Fire Chiefs
38 Association and one of whom shall be a fire marshal or inspector from
39 the eastern region of the State.
- 40 (5) A member from one of the seven North Carolina Regional Response
41 Teams for Hazardous Materials Response appointed by the Governor.
- 42 (6) A fire marshal or inspector from the central region of the State
43 appointed by the Governor.

- 1 (7) Two members of the Building Code Council appointed by the Chair of
2 the Council.
- 3 (8) A person who is engaged in an industrial manufacturing process that
4 uses hazardous chemicals, hazardous materials, or hazardous
5 substances or that generates hazardous waste appointed by the
6 President of the Manufacturers and Chemical Industry Council of
7 North Carolina.
- 8 (9) An owner or operator of a commercial hazardous waste facility
9 appointed by the Governor.
- 10 (10) A member of the general public appointed by the Governor.

11 **SECTION 4.1.(d)** Appointments. – Appointments to the Task Force shall be
12 made no later than 1 September 2007. A vacancy in the Task Force or as chair of the
13 Task Force resulting from the resignation of a member or otherwise shall be filled in the
14 same manner in which the original appointment was made.

15 **SECTION 4.1.(e)** Chair; Quorum; Meetings. – The President Pro Tempore
16 of the Senate and the Speaker of the House of Representatives shall each designate one
17 member to serve as cochair of the Task Force. The cochairs shall call the initial meeting
18 of the Task Force on or before 1 October 2007. A majority of the members of the Task
19 Force shall constitute a quorum. The Task Force may meet in the Legislative Building
20 or the Legislative Office Building upon the approval of the Legislative Services
21 Commission.

22 **SECTION 4.1.(f)** Duties of Task Force. – The Task Force shall study issues
23 related to the treatment, storage, and disposal of hazardous materials and shall review
24 all current fire code regulations regarding the commercial treatment, storage, and
25 disposal of hazardous materials to ensure that the Code addresses the needs and safety
26 of the citizens of the State. In particular, the Task Force shall:

- 27 (1) Review the facts and issues related to the Environmental Quality
28 Industrial Services facility fire in Apex, North Carolina, on 5 October
29 2006. The Task Force shall review the investigation report and
30 determine whether the fire could have been prevented by additional, or
31 more specific, State regulations.
- 32 (2) Analyze all fire inspection or investigation reports of fires that have
33 occurred at commercial facilities that treat, store, or dispose of
34 hazardous materials within the past 10 years and determine if there is a
35 trend in violations.
- 36 (3) Review the current State Building Code with respect to allowable
37 hazardous materials quantities and determine if the State Building
38 Code should be amended to provide for an additional classification of
39 mixed waste or unidentifiable materials.
- 40 (4) Analyze the current definitions of high hazard facilities and high
41 hazardous Group H classifications in the State Building Code and
42 determine whether commercial facilities that treat, store, or dispose of
43 hazardous materials should be classified so that mixed wastes and
44 unidentifiable materials can be easily identified.

- 1 (5) Review the current annual fire inspection process at permitted
2 commercial hazardous waste facilities, as defined in
3 G.S. 130A-295.01, that are treatment, storage, and disposal facilities to
4 determine how the annual fire inspection can be conducted in
5 collaboration with the inspection and permitting process of the
6 Department of Environment and Natural Resources.
- 7 (6) Review the sprinkler requirements for Hazardous Materials Facilities
8 (Section 903.2.4) of the State Building Code and determine whether
9 sprinkler design criteria and coverage should be amended.
- 10 (7) Review the fire alarm requirements for Hazardous Materials Facilities
11 (Section 907.2.5) of the State Building Code and determine whether
12 the relevant facilities should have a full fire alarm system or, in the
13 alternative, full staffing as recommended by the Department of
14 Environment and Natural Resources. If the Task Force determines that
15 relevant facilities should have full staffing, the Task Force shall
16 recommend the level of knowledge and training that should be
17 required of the staff.
- 18 (8) Determine when any rules recommended by the Task Force should
19 become effective for existing commercial hazardous waste facilities.

20 **SECTION 4.1.(g)** Expenses of Members. – Members of the Task Force shall
21 receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1,
22 138-5, or 138-6, as appropriate.

23 **SECTION 4.1.(h)** Staff. – Upon the prior approval of the Legislative
24 Services Commission, the Legislative Services Officer may assign professional and
25 clerical staff and other services and supplies, as needed for the Task Force to carry out
26 its duties in an effective manner.

27 **SECTION 4.1.(i)** Cooperation by Government Agencies. – The Task Force
28 may call upon any department, agency, institution, or officer of the State or any political
29 subdivision thereof for facilities, data, or other assistance.

30 **SECTION 4.1.(j)** Report. – The Task Force shall submit a report of its
31 findings and recommendations, including legislative proposals, to the 2008 Regular
32 Session of the 2007 General Assembly, the Governor, the North Carolina Building Code
33 Council, and the Environmental Review Commission on or before 1 April 2008. The
34 Task Force shall terminate upon filing its report.

35 **SECTION 4.1.(k)** North Carolina Building Code Council to Adopt Rules. –
36 The North Carolina Building Code Council shall adopt rules or amend the State
37 Building Code to implement the recommendations of the Regulation of Hazardous
38 Materials Facilities Task Force. In particular, the Building Code Council shall adopt
39 rules or amend the State Building Code to require that hazardous materials are classified
40 and identified in a manner that provides State and local inspectors with sufficient
41 information to identify all potential risks to the citizens of the State.

42 **SECTION 4.1.(l)** This section becomes effective 1 July 2007.
43

1 **STUDY POTENTIAL SOURCES OF PERMANENT FUNDING FOR THE**
2 **STATE MEDICAL ASSISTANCE TEAMS**

3
4 **SECTION 4.2.(a)** The Department of Crime Control and Public Safety and
5 the Department of Health and Human Services shall jointly identify and evaluate
6 sources of permanent funding for State Medical Assistance Teams in light of the
7 uncertain future availability of federal and local funding. The Department shall jointly
8 report its findings and recommendations, including any legislative proposals, to the
9 Fiscal Research Division on or before 1 January 2008.

10 **SECTION 4.2.(b)** This section is effective when it becomes law.

11
12 **PART V. OTHER RECOMMENDATIONS**

13
14 **REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL**
15 **RESOURCES TO ESTABLISH A DIGITAL INFORMATION EXCHANGE**
16 **SYSTEM FOR A HAZARDOUS CHEMICALS INVENTORY DATABASE**

17
18 **SECTION 5.1.(a)** The Division of Information Technology Services of the
19 Department of Environment and Natural Resources, in collaboration with the Division
20 of Emergency Management of the Department of Crime Control and Public Safety,
21 shall establish a Tier II Hazardous Chemicals Inventory Database and Web-based
22 access application that will accept uploads of Tier II data from local government
23 systems acting as partners in the project and from the University of Texas at Dallas
24 E-Plan repository until all Tier II hazardous chemical inventory is in the database. The
25 database shall include data on sites listed in the planned Toxic Release Inventory
26 exchange and the Department's existing Facilities Registry System. The Facilities
27 Registry System is a database of facilities for which the Department has environmental
28 concerns, including facilities that are subject to an environmental permit for water, air,
29 waste, land quality, wetlands, public water supply, wastewater treatment, and other
30 environmental permits. The database shall be connected via Web services to the North
31 Carolina Exchange Node. The purposes of this database are to provide a one-stop,
32 real-time information source for all hazardous and toxic materials release sites and all
33 sites that are subject to an environmental permit in order to enhance the operational
34 effectiveness of the Department of Environment and Natural Resources, the Division of
35 Emergency Management of the Department of Crime Control and Public Safety, first
36 responders and emergency management officials, local government officials, and any
37 others with a role in emergency management or planning; to remove the burden of data
38 reentry in multiple systems; to reduce the dependence on paper submissions for Tier II
39 reporting; to extend the Network for the Exchange Node community; and to reuse
40 information already deployed at the Department. The Tier II Hazardous Chemicals
41 Inventory Database and Web-based access application shall be maintained by the
42 Division of Emergency Management of the Department of Crime Control and Public
43 Safety.

44 **SECTION 5.1.(b)** This section becomes effective 1 July 2007.

1
2 **REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO**
3 **DEVELOP A MODEL PLAN FOR PUBLIC HEALTH RESPONSE TO**
4 **EVENTS WITH A POTENTIAL FOR CHEMICAL, BIOLOGICAL, OR**
5 **RADIOLOGICAL CONTAMINATION**
6

7 **SECTION 5.2.(a)** The Occupational and Environmental Epidemiology
8 Branch of the Division of Public Health of the Department of Health and Human
9 Services shall contract with an industrial hygienist who shall develop a model plan for
10 public health response to events with a potential for chemical, biological, or radiological
11 contamination. The plan shall address all stages of the contamination event. The
12 contract shall provide for the services of the industrial hygienist for up to 18 months.
13 The contract shall require the industrial hygienist to:

- 14 (1) Develop a model plan and a training program that provides for training
15 in all North Carolina counties.
16 (2) Analyze existing environmental data related to the hazardous waste
17 facilities in the State, develop a statement of need for the integration of
18 that data, and recommend any additional tests that may be needed,
19 including tests to establish background levels of selected hazardous
20 materials.
21 (3) Initiate and facilitate a staff-level work group of federal, State, and
22 local response personnel to provide continuity and to assist with the
23 development of best practice response protocols.

24 **SECTION 5.2.(b)** This section becomes effective 1 July 2007.
25

26 **AUTHORIZE THE BOARD OF GOVERNORS OF THE UNIVERSITY OF**
27 **NORTH CAROLINA TO ESTABLISH AN INSTITUTE FOR DISASTER**
28 **STUDIES AND AUTHORIZE THE UNIVERSITY OF NORTH CAROLINA**
29 **TO STUDY THE EMISSION AND TRANSPORT OF POLLUTANTS AT**
30 **FIRES AT COMMERCIAL HAZARDOUS WASTE FACILITIES AND THE**
31 **HEALTH AND ECONOMIC IMPACTS OF SUCH FIRES**
32

33 **SECTION 5.3.(a)** The Board of Governors of The University of North
34 Carolina may establish a multidisciplinary, interinstitutional, basic and applied research
35 program that applies state-of-the-art concepts and technologies to address disaster
36 research questions and to assist the campuses within The University of North Carolina
37 to develop crisis management and crisis communications systems that will help
38 individual campuses to better prepare in the event of a disaster.

39 **SECTION 5.3.(b)** The University of North Carolina may study the emission
40 and transport of pollutants at fires at commercial hazardous waste facilities, as defined
41 in G.S. 130A-295.01, and may study the human health and economic impacts of fires at
42 commercial hazardous waste facilities.

43 **SECTION 5.3.(c)** This section becomes effective 1 July 2007
44

1 **PART VI. MISCELLANEOUS PROVISIONS**

2
3 **EFFECT OF HEADINGS**

4
5 **SECTION 6.1.** The headings to the parts and sections of this act are a
6 convenience to the reader and are for reference only. The headings do not expand,
7 limit, or define the text of this act.

8
9 **SEVERABILITY CLAUSE**

10
11 **SECTION 6.2.** If any section or provision of this act is declared
12 unconstitutional or invalid by the courts, it does not affect the validity of this act as a
13 whole or any part other than the part so declared to be unconstitutional or invalid.

14
15 **EFFECTIVE DATES**

16
17 **SECTION 6.3.** Except as otherwise provided in this act, this act is effective
18 when it becomes law.