

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

2

SENATE BILL 716*
House Committee Substitute Favorable 7/27/07

Short Title: Solid Waste Management Amends. 2007.

(Public)

Sponsors:

Referred to:

March 14, 2007

A BILL TO BE ENTITLED

1
2 AN ACT TO: (1) EXTEND THE MORATORIUM ON THE CONSIDERATION OF
3 PERMIT APPLICATIONS AND ISSUANCE OF PERMITS FOR THE
4 CONSTRUCTION OF NEW LANDFILLS IN THE STATE TO 1 SEPTEMBER
5 2008; (2) TO REPEAL THE EXEMPTION FOR SANITARY LANDFILLS
6 OPERATED BY LOCAL GOVERNMENTS FROM THE REQUIREMENTS FOR
7 ENVIRONMENTAL IMPACT STATEMENTS UNDER THE NORTH
8 CAROLINA ENVIRONMENTAL POLICY ACT OF 1971; (3) CLARIFY THE
9 CIRCUMSTANCES UNDER WHICH AN APPLICATION FOR A SOLID
10 WASTE MANAGEMENT PERMIT MAY BE DENIED; (4) PROVIDE THAT
11 SOLID WASTE MANAGEMENT PERMITS ARE NOT TRANSFERABLE; (5)
12 INCREASE THE PENALTIES THAT MAY BE IMPOSED FOR SOLID WASTE
13 VIOLATIONS; (6) REQUIRE THAT AN APPLICANT FOR A PERMIT AND A
14 PERMIT HOLDER ESTABLISH FINANCIAL RESPONSIBILITY TO ENSURE
15 THE AVAILABILITY OF SUFFICIENT FUNDS FOR PROPER DESIGN,
16 CONSTRUCTION, OPERATION, MAINTENANCE, CLOSURE, AND
17 POST-CLOSURE MONITORING AND MAINTENANCE OF A SOLID WASTE
18 MANAGEMENT FACILITY; (7) CLARIFY AND EXPAND THE SCOPE OF
19 ENVIRONMENTAL COMPLIANCE REVIEW REQUIREMENTS; (8) CLARIFY
20 THAT A PARENT, SUBSIDIARY, OR OTHER AFFILIATE OF THE
21 APPLICANT OR PARENT, INCLUDING ANY BUSINESS ENTITY OR JOINT
22 VENTURER WITH A DIRECT OR INDIRECT INTEREST IN THE APPLICANT
23 IS SUBJECT TO FINANCIAL RESPONSIBILITY AND ENVIRONMENTAL
24 COMPLIANCE REVIEW; (9) PROVIDE FOR SITING OF COMBUSTION
25 PRODUCTS LANDFILLS IN AREAS THAT HAVE BEEN FORMERLY USED
26 FOR THE STORAGE OR DISPOSAL OF COMBUSTION PRODUCTS FROM
27 COAL-FIRED GENERATING UNITS AT THE SAME FACILITY THAT
28 GENERATED THE COMBUSTION PRODUCTS, AND TECHNICAL
29 REQUIREMENTS FOR THESE LANDFILLS; (10) CLARIFY THE

1 CIRCUMSTANCES UNDER WHICH A UNIT OF LOCAL GOVERNMENT
2 MAY COLLECT A SOLID WASTE AVAILABILITY FEE; (11) AUTHORIZE
3 UNITS OF LOCAL GOVERNMENT TO HIRE LANDFILL LIAISONS; (12)
4 DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL
5 RESOURCES TO DEVELOP A PROPOSED RECYCLING PROGRAM FOR
6 FLUORESCENT LAMPS; (13) DIRECT THE ENVIRONMENTAL REVIEW
7 COMMISSION TO STUDY ISSUES RELATED TO THE FRANCHISE OF
8 SOLID WASTE MANAGEMENT FACILITIES BY UNITS OF LOCAL
9 GOVERNMENT, TRANSPORTATION OF SOLID WASTE BY RAIL AND
10 BARGE, AND SITING AND TECHNICAL STANDARDS FOR SOLID WASTE
11 MANAGEMENT FACILITIES; AND (14) MAKE RELATED CLARIFYING,
12 CONFORMING, AND TECHNICAL CHANGES.

13 Whereas, North Carolina has experienced severe problems from widespread
14 flooding during the past five years; and

15 Whereas, large areas of the State have also experienced severe drought
16 conditions during the past five years; and

17 Whereas, groundwater is the source of drinking water for approximately half
18 the population of the State; and

19 Whereas, groundwater pollution is increasing due to contamination from a
20 variety of sources; and

21 Whereas, depletion of certain large groundwater aquifers in the State has been
22 documented in recent years; and

23 Whereas, protection and enhancement of water quality in the State's rivers
24 and coastal estuaries is the declared public policy of the State; and

25 Whereas, North Carolina is home to many rare and endangered species of
26 plants and animals; and

27 Whereas, the State has established many parks, natural areas, and wildlife
28 refuges to protect habitats for migrating birds and other species; and

29 Whereas, many fragile ecosystems exist in the State which are in need of
30 further study and protection; and

31 Whereas, the State recognizes that ecosystems transcend state borders, and
32 that changes affecting the State's water, air, natural habitats, and scenic resources also
33 have impacts outside the State; and

34 Whereas, it is the policy of the State to ensure the continued public enjoyment
35 of the natural attractions of the State; and

36 Whereas, improperly sited, designed, or operated landfills have the potential
37 to cause serious environmental damage, including groundwater contamination; and

38 Whereas, it is essential that the State study the siting, design, and operational
39 requirements for landfills for the disposal of solid waste in areas susceptible to flooding
40 from natural disasters, areas with high water tables, and other environmentally sensitive
41 areas in order to protect public health and the environment; and

42 Whereas, it is critical to the protection of public health and the environment
43 to adequately staff the State solid waste program to review permit applications, ensure

1 compliance with State solid waste management laws and rules, and provide technical
2 assistance on solid waste management issues; and

3 Whereas, it is the policy of the State to promote methods of solid waste
4 management that are alternatives to disposal in landfills; and

5 Whereas, S.L. 2006-244 directed the Environmental Review Commission,
6 with the assistance of the Division of Waste Management of the Department of
7 Environment, to study issues related to solid waste; and

8 Whereas, the Environmental Review Commission met at least six times after
9 the 2006 legislative session to discuss items related to solid waste; and

10 Whereas, bills have been introduced in the House of Representatives and the
11 Senate during the 2007 Regular Session to address issues related to landfills and
12 management of solid waste that have been the subject of intense discussion by members
13 of the General Assembly and a stakeholder working group; and

14 Whereas, the numerous and complex issues involved are the subject of an
15 extensive and on-going stakeholder negotiation process; and

16 Whereas, additional time is needed to study and resolve various issues related
17 to solid waste management issues; Now, therefore,

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.(a)** Section 2 of S.L. 2006-244 reads as rewritten:

20 **"SECTION 2.** Moratorium Established. – There is hereby established a moratorium
21 on consideration of applications for a permit and on the issuance of permits for new
22 landfills in the State. The purposes of this moratorium are to allow the State to study
23 solid waste disposal issues in order to protect public health and the environment. The
24 Department of Environment and Natural Resources shall not consider a permit
25 application nor issue a permit for a new landfill for the disposal of construction or
26 demolition waste, municipal solid waste, or industrial solid waste for a period beginning
27 on 1 August 2006 and ending on ~~1 August 2007~~, 1 September 2008."

28 **SECTION 1.(b)** This section becomes effective 1 August 2007.

29 **SECTION 2.(a)** G.S. 130A-294, as amended by S.L. 2007-107, reads as
30 rewritten:

31 **"§ 130A-294. Solid waste management program.**

32 (a) The Department is authorized and directed to engage in research, conduct
33 investigations and surveys, make inspections and establish a statewide solid waste
34 management program. In establishing a program, the Department shall have authority
35 to:

- 36 (1) Develop a comprehensive program for implementation of safe and
37 sanitary practices for management of solid waste;
- 38 (2) Advise, consult, cooperate and contract with other State agencies, units
39 of local government, the federal government, industries and
40 individuals in the formulation and carrying out of a solid waste
41 management program;
- 42 (3) Develop and adopt rules to establish standards for qualification as a
43 "recycling, reduction or resource recovering facility" or as "recycling,
44 reduction or resource recovering equipment" for the purpose of special

1 tax classifications or treatment, and to certify as qualifying those
2 applicants which meet the established standards. The standards shall
3 be developed to qualify only those facilities and equipment exclusively
4 used in the actual waste recycling, reduction or resource recovering
5 process and shall exclude any incidental or supportive facilities and
6 equipment;

- 7 (4) a. Develop a permit system governing the establishment and
8 operation of solid waste management facilities. A landfill with a
9 disposal area of 1/2 acre or less for the on-site disposal of land
10 clearing and inert debris is exempt from the permit requirement
11 of this section and shall be governed by G.S. 130A-301.1. The
12 Department shall not approve an application for a new permit,
13 the renewal of a permit, or a substantial amendment to a permit
14 for a sanitary landfill, excluding demolition landfills as defined
15 in the rules of the Commission, except as provided in
16 subdivisions (3) and (4) of subsection (b1) of this section. No
17 permit shall be granted for a solid waste management facility
18 having discharges that are point sources until the Department
19 has referred the complete plans and specifications to the
20 Environmental Management Commission and has received
21 advice in writing that the plans and specifications are approved
22 in accordance with the provisions of G.S. 143-215.1. If the
23 applicant is a unit of local government, and has not submitted a
24 solid waste management plan that has been approved by the
25 Department pursuant to G.S. 130A-309.09A(b), the Department
26 may deny a permit for a sanitary landfill or a facility that
27 disposes of solid waste by incineration, unless the Commission
28 has not adopted rules pursuant to G.S. 130A-309.29 for local
29 solid waste management plans. In any case where the
30 Department denies a permit for a solid waste management
31 facility, it shall state in writing the reason for denial and shall
32 also state its estimate of the changes in the applicant's proposed
33 activities or plans that will be required for the applicant to
34 obtain a permit.

- 35 ~~b. The issuance of permits for sanitary landfills operated by local~~
36 ~~governments is exempt from the environmental impact~~
37 ~~statements required by Article 1 of Chapter 113A of the~~
38 ~~General Statutes, entitled the North Carolina Environmental~~
39 ~~Policy Act of 1971. All sanitary landfill permits issued to local~~
40 ~~governments prior to July 1, 1984, are hereby validated~~
41 ~~notwithstanding any failure to provide environmental impact~~
42 ~~statements pursuant to the North Carolina Environmental Policy~~
43 ~~Act of 1971;~~

- 1 c. The Department shall deny an application for a permit for a
2 solid waste management facility if the Department finds that:
3 1. Construction or operation of the proposed facility would
4 be inconsistent with or violate rules adopted by the
5 Commission.
6 2. Construction or operation of the proposed facility would
7 result in a violation of water quality standards adopted
8 by the Environmental Management Commission
9 pursuant to G.S. 143-214.1 for waters, as defined in
10 G.S. 143-213.
11 3. Construction or operation of the facility would result in
12 significant damage to ecological systems, natural
13 resources, cultural sites, recreation areas, or historic sites
14 of more than local significance. These areas include, but
15 are not limited to, national or State parks or forests;
16 wilderness areas; historic sites; recreation areas;
17 segments of the natural and scenic rivers system; wildlife
18 refuges, preserves and management areas; areas that
19 provide habitat for threatened or endangered species;
20 primary nursery areas and critical fisheries habitat
21 designated by the Marine Fisheries Commission; and
22 Outstanding Resource Waters designated by the
23 Environmental Management Commission.
24 4. Construction or operation of the proposed facility would
25 substantially limit or threaten access to or use of public
26 trust waters or public lands.
27 5. The proposed facility would be located in a natural
28 hazard area, including a floodplain, a landslide hazard
29 area, or an area subject to storm surge or excessive
30 seismic activity, such that the facility will present a risk
31 to public health or safety.
32 6. There is a practical alternative that would accomplish the
33 purposes of the proposed facility with less adverse
34 impact on public resources, considering engineering
35 requirements and economic costs.
36 7. The cumulative impacts of the proposed facility and
37 other facilities in the area of the proposed facility would
38 violate the criteria set forth in sub-sub-subdivisions 2.
39 through 5. of this sub-subdivision.
40 8. Construction or operation of the proposed facility would
41 be inconsistent with the State solid waste management
42 policy and goals as set out in G.S. 130A-309.04 and with
43 the State solid waste management plan developed as
44 provided in G.S. 130A-309.07.

1 9. The cumulative impact of the proposed facility, when
2 considered in relation to other similar impacts of
3 facilities located or proposed in the community, would
4 have a disproportionate adverse impact on a minority or
5 low-income community protected by Title VI of the
6 federal Civil Rights Act of 1964.

7 (4a) ~~No permit shall be granted for any public or private sanitary landfill to~~
8 ~~receive solid non-radioactive waste generated outside the boundaries~~
9 ~~of North Carolina to be deposited, unless such waste has previously~~
10 ~~been inspected by the solid waste regulatory agency of that nation,~~
11 ~~state or territory, characterized in detail as to its contents and certified~~
12 ~~by that agency to be non-injurious to health and safety. The~~
13 ~~Commission shall adopt rules to implement this subsection.~~

14 (5) Repealed by Session Laws 1983, c. 795, s. 3.

15 (5a) Designate a geographic area within which the collection,
16 transportation, storage and disposal of all solid waste generated within
17 said area shall be accomplished in accordance with a solid waste
18 management plan. Such designation may be made only after the
19 Department has received a request from the unit or units of local
20 government having jurisdiction within said geographic area that such
21 designation be made and after receipt by the Department of a solid
22 waste management plan which shall include:

- 23 a. The existing and projected population for such area;
24 b. The quantities of solid waste generated and estimated to be
25 generated in such area;
26 c. The availability of sanitary landfill sites and the environmental
27 impact of continued landfill of solid waste on surface and
28 subsurface waters;
29 d. The method of solid waste disposal to be utilized and the energy
30 or material which shall be recovered from the waste; and
31 e. Such other data that the Department may reasonably require.

32 (5b) Authorize units of local government to require by ordinance, that all
33 solid waste generated within the designated geographic area that is
34 placed in the waste stream for disposal be collected, transported, stored
35 and disposed of at a permitted solid waste management facility or
36 facilities serving such area. The provisions of such ordinance shall not
37 be construed to prohibit the source separation of materials from solid
38 waste prior to collection of such solid waste for disposal, or prohibit
39 collectors of solid waste from recycling materials or limit access to
40 such materials as an incident to collection of such solid waste;
41 provided such prohibitions do not authorize the construction and
42 operation of a resource recovery facility unless specifically permitted
43 pursuant to an approved solid waste management plan. If a private
44 solid waste landfill shall be substantially affected by such ordinance

1 then the unit of local government adopting the ordinance shall be
2 required to give the operator of the affected landfill at least two years
3 written notice prior to the effective date of the proposed ordinance.

4 (5c) Except for the authority to designate a geographic area to be serviced
5 by a solid waste management facility, delegate authority and
6 responsibility to units of local government to perform all or a portion
7 of a solid waste management program within the jurisdictional area of
8 the unit of local government; provided that no authority over or control
9 of the operations or properties of one local government shall be
10 delegated to any other local government.

11 (5d) Require that an annual report of the implementation of the solid waste
12 management plan within the designated geographic area be filed with
13 the Department.

14 (6) ~~The Department is authorized to charge~~ Charge and collect fees from
15 operators of hazardous waste disposal facilities. The fees shall be used
16 to establish a fund sufficient for each individual facility to defray the
17 anticipated costs to the State for monitoring and care of the facility
18 after the termination of the period during which the facility operator is
19 required by applicable State and federal statutes, regulations or rules to
20 remain responsible for post-closure monitoring and care. In
21 establishing the fees, consideration shall be given to the size of the
22 facility, the nature of the hazardous waste and the projected life of the
23 facility.

24 (7) Establish and collect annual fees from generators and transporters of
25 hazardous waste, and from storage, treatment, and disposal facilities
26 regulated under this Article as provided in G.S. 130A-294.1.

27 (a1) A permit for a solid waste management facility may be transferred only with
28 the approval of the Department.

29 (b) The Commission shall adopt and the Department shall enforce rules to
30 implement a comprehensive statewide solid waste management program. The rules shall
31 be consistent with applicable State and federal law; and shall be designed to protect the
32 public health, safety, and welfare; preserve the environment; and provide for the
33 greatest possible conservation of cultural and natural resources. Rules for the
34 establishment, location, operation, maintenance, use, discontinuance, recordation,
35 post-closure care of solid waste management facilities also shall be based upon
36 recognized public health practices and procedures, including applicable epidemiological
37 research and studies; hydrogeological research and studies; sanitary engineering
38 research and studies; and current technological development in equipment and methods.
39 The rules shall not apply to the management of solid waste that is generated by an
40 individual or individual family or household unit on the individual's property and is
41 disposed of on the individual's property.

42 ~~(b0) The Commission shall adopt rules for financial responsibility to ensure the~~
43 ~~availability of sufficient funds for closure and post closure maintenance and monitoring~~
44 ~~at solid waste management facilities, and for any corrective action the Department may~~

1 require during the active life of a facility or during the closure and post-closure periods.
2 The rules may permit demonstration of financial responsibility through the use of a
3 letter of credit, insurance, surety, trust agreement, financial test, or guarantee by
4 corporate parents or third parties who can pass the financial test. The rules shall require
5 that an owner or operator of a privately owned solid waste management facility
6 demonstrate financial responsibility by a method or combinations of methods that will
7 ensure that sufficient funds for closure, post-closure maintenance and monitoring, and
8 any corrective action that the Department may require will be available during the
9 active life of the facility, at closure, and for a period of not less than 30 years after
10 closure even if the owner or operator becomes insolvent or ceases to reside, be
11 incorporated, do business, or maintain assets in the State.

12 (b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of
13 this section, a "substantial amendment" means either:

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

- 15 1. The population of the geographic area to be served by
16 the sanitary landfill;
- 17 2. The quantity of solid waste to be disposed of in the
18 sanitary landfill; or
- 19 3. The geographic area to be served by the sanitary landfill.

20 b. A change in the categories of solid waste to be disposed of in
21 the sanitary landfill or any other change to the application for a
22 permit or to the permit for a sanitary landfill that the
23 Commission or the Department determines to be substantial.

24 (2) A person who intends to apply for a new permit, the renewal of a
25 permit, or a substantial amendment to a permit for a sanitary landfill
26 shall obtain, prior to applying for a permit, a franchise for the
27 operation of the sanitary landfill from each local government having
28 jurisdiction over any part of the land on which the sanitary landfill and
29 its appurtenances are located or to be located. A local government may
30 adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319. A
31 franchise granted for a sanitary landfill shall include all of the
32 following:

- 33 a. A statement of the population to be served, including a
34 description of the geographic area.
- 35 b. A description of the volume and characteristics of the waste
36 stream.
- 37 c. A projection of the useful life of the sanitary landfill.
- 38 d. An explanation of how the franchise will be consistent with the
39 jurisdiction's solid waste management plan required under
40 G.S. 130A-309.09A, including provisions for waste reduction,
41 reuse, and recycling.
- 42 e. The procedures to be followed for governmental oversight and
43 regulation of the fees and rates to be charged by facilities

- 1 subject to the franchise for waste generated in the jurisdiction of
2 the franchising entity.
- 3 f. A facility plan for the sanitary landfill that shall include the
4 ~~exact~~—boundaries of the proposed facility, proposed
5 development of the facility site in five-year operational phases,
6 the boundaries of all waste disposal units, final elevations and
7 capacity of all waste disposal units, the amount of waste to be
8 received per day in tons, the total waste disposal capacity of the
9 sanitary landfill in tons, a description of environmental controls,
10 and a description of any other waste management activities to
11 be conducted at the facility. In addition, the facility plan shall
12 show the proposed location of soil borrow areas, leachate
13 facilities, and all other facilities and infrastructure, including
14 ingress and egress to the facility.
- 15 (2a) A local government may elect to award a preliminary franchise. If a
16 local government elects to award a preliminary franchise, the
17 preliminary franchise shall contain, at a minimum, all of the
18 information described in sub-subdivisions a. through e. of subdivision
19 (2) of this subsection plus a general description of the proposed
20 sanitary landfill, including the approximate number of acres required
21 for the proposed sanitary landfill and its appurtenances and a
22 description of any other solid waste management activities that are to
23 be conducted at the site.
- 24 (3) Prior to the award of a franchise for the construction or operation of a
25 sanitary landfill, the board of commissioners of the county or counties
26 in which the sanitary landfill is proposed to be located or is located or,
27 if the sanitary landfill is proposed to be located or is located in a city,
28 the governing board of the city shall conduct a public hearing. The
29 board of commissioners of the county or counties in which the sanitary
30 landfill is proposed to be located or is located or, if the sanitary landfill
31 is proposed to be located or is located in a city, the governing board of
32 the city shall provide at least 30 days' notice to the public of the public
33 hearing. The notice shall include a summary of all the information
34 required to be included in the franchise, and shall specify the
35 procedure to be followed at the public hearing. The applicant for the
36 franchise shall provide a copy of the application for the franchise that
37 includes all of the information required to be included in the franchise,
38 to the public library closest to the proposed sanitary landfill site to be
39 made available for inspection and copying by the public.
- 40 (4) An applicant for a new permit, the renewal of a permit, or a substantial
41 amendment to a permit for a sanitary landfill shall request each local
42 government having jurisdiction over any part of the land on which the
43 sanitary landfill and its appurtenances are located or to be located to
44 issue a determination as to whether the local government has in effect

1 a franchise, zoning, subdivision, or land-use planning ordinance
2 applicable to the sanitary landfill and whether the proposed sanitary
3 landfill, or the existing sanitary landfill as it would be operated under
4 the renewed or substantially amended permit, would be consistent with
5 the applicable ordinances. The request to the local government shall be
6 accompanied by a copy of the permit application and shall be delivered
7 to the clerk of the local government personally or by certified mail. In
8 order to serve as a basis for a determination that an application for a
9 new permit, the renewal of a permit, or a substantial amendment to a
10 permit for a sanitary landfill is consistent with a zoning, subdivision,
11 or land-use planning ordinance, an ordinance or zoning classification
12 applicable to the real property designated in the permit application
13 shall have been in effect not less than 90 days prior to the date the
14 request for a determination of consistency is delivered to the clerk of
15 the local government. The determination shall be verified or supported
16 by affidavit signed by the chief administrative officer, the chief
17 administrative officer's designee, clerk, or other official designated by
18 the local government to make the determination and, if the local
19 government states that the sanitary landfill as it would be operated
20 under the new, renewed, or substantially amended permit is
21 inconsistent with a franchise, zoning, subdivision, or land-use planning
22 ordinance, shall include a copy of the ordinance and the specific
23 reasons for the determination of inconsistency. A copy of the
24 determination shall be provided to the applicant when the
25 determination is submitted to the Department. The Department shall
26 not act upon an application for a permit under this section until it has
27 received a determination from each local government requested to
28 make a determination by the applicant; provided that if a local
29 government fails to submit a determination to the Department as
30 provided by this subsection within 15 days after receipt of the request,
31 the Department shall proceed to consider the permit application
32 without regard to a franchise, local zoning, subdivision, and land-use
33 planning ordinances. Unless the local government makes a subsequent
34 determination of consistency with all ordinances cited in the
35 determination or the sanitary landfill as it would be operated under the
36 new, renewed, or substantially amended permit is determined by a
37 court of competent jurisdiction to be consistent with the cited
38 ordinances, the Department shall attach as a condition of the permit a
39 requirement that the applicant, prior to construction or operation of the
40 sanitary landfill under the permit, comply with all lawfully adopted
41 local ordinances cited in the determination that apply to the sanitary
42 landfill. This subsection shall not be construed to affect the validity of
43 any lawfully adopted franchise, local zoning, subdivision, or land-use
44 planning ordinance or to affect the responsibility of any person to

1 comply with any lawfully adopted franchise, local zoning, subdivision,
 2 or land-use planning ordinance. This subsection shall not be construed
 3 to limit any opportunity a local government may have to comment on a
 4 permit application under any other law or rule. This subsection shall
 5 not apply to any facility with respect to which local ordinances are
 6 subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

- 7 (5) As used in this subdivision, "coal-fired generating unit" and
 8 "investor-owned public utility" have the same meaning as in
 9 G.S. 143-215.107D(a). Notwithstanding subdivisions (a)(4), (b1)(3),
 10 or (b1)(4) of this section, no franchise shall be required for a sanitary
 11 landfill used only to dispose of waste generated by a coal-fired
 12 generating unit that is owned or operated by an investor-owned utility
 13 subject to the requirements of G.S. 143-215.107D.

14 (b2) The Department ~~may~~ shall require an applicant for a permit or a permit holder
 15 under this Article to satisfy the Department that the applicant or permit holder, and any
 16 parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including
 17 any joint venturer with a direct or indirect interest in the applicant, permit holder, or
 18 parent:

- 19 (1) Is financially qualified to carry out the activity for which the permit is
 20 required. An applicant for a permit and permit holders for solid waste
 21 management facilities that are not hazardous waste facilities shall
 22 establish financial responsibility as required by
 23 ~~G.S. 130A-294(b0)~~ G.S. 130A-295.2. An applicant for a permit and
 24 permit holders for hazardous waste facilities shall establish financial
 25 responsibility as required by G.S. 130A-295.04.
- 26 (2) Has substantially complied with the requirements applicable to any
 27 ~~solid waste management~~ activity in which the applicant
 28 permit holder, or a parent, subsidiary, or other affiliate of the applicant,
 29 permit holder, or parent, or a joint venturer with a direct or indirect
 30 interest in the applicant, has previously engaged and has been in
 31 substantial compliance with federal and state laws, regulations, and
 32 rules for the protection of the environment.environment as provided in
 33 G.S. 130A-295.3.

34 (b3) An applicant for a permit or a permit holder under this Article shall satisfy the
 35 Department that the applicant has met the requirements of subsection (b2) of this
 36 section before the Department is required to otherwise review the application. ~~In order~~
 37 ~~to continue to hold a permit under this Article, a permittee must remain financially~~
 38 ~~qualified and must provide any information requested by the Department to demonstrate~~
 39 ~~that the permittee continues to be financially qualified.~~

40"

41 **SECTION 2.(b)** This section becomes effective 1 August 2007 and applies
 42 to any application for a permit for a solid waste management facility that is pending on
 43 that date.

44 **SECTION 3.(a)** G.S. 130A-18 reads as rewritten:

1 **"§ 130A-18. Injunction.**

2 (a) If a person shall violate any provision of this ~~Chapter or Chapter~~, the rules
3 adopted by the Commission or rules adopted by a local board of health, or a condition
4 or term of a permit or order issued under this Chapter, the Secretary or a local health
5 director may institute an action for injunctive relief, irrespective of all other remedies at
6 law, in the superior court of the county where the violation occurred or where a
7 defendant resides.

8 (b) The Secretary of Environment and Natural Resources and a local health
9 director shall have the same rights enumerated in subsection (a) of this section to
10 enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this
11 Chapter."

12 **SECTION 3.(b)** This section becomes effective 1 August 2007 and applies
13 to violations that occur on or after that date.

14 **SECTION 4.(a)** G.S. 130A-22(a) reads as rewritten:

15 "(a) The Secretary of Environment and Natural Resources may impose an
16 administrative penalty on a person who violates Article 9 of this Chapter, rules adopted
17 by the Commission pursuant to Article 9, or any term or condition of a permit or order
18 issued under Article 9. Each day of a continuing violation shall constitute a separate
19 violation. The penalty shall not exceed ~~five thousand dollars (\$5,000)~~ fifteen thousand
20 dollars (\$15,000) per day in the case of a violation involving nonhazardous waste. The
21 penalty shall not exceed ~~twenty-five thousand dollars (\$25,000)~~ thirty-two thousand five
22 hundred dollars (\$32,500) per day in the case of a first violation involving hazardous
23 waste as defined in G.S. 130A-290 or involving the disposal of medical waste as
24 defined in G.S. 130A-290 in or upon water in a manner that results in medical waste
25 entering waters or lands of the State; and shall not exceed fifty thousand dollars
26 (\$50,000) per day for a second or further violation involving the disposal of medical
27 waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical
28 waste entering waters or lands of the State. The penalty shall not exceed ~~twenty-five~~
29 ~~thousand dollars (\$25,000)~~ thirty-two thousand five hundred dollars (\$32,500) per day
30 for a violation involving a voluntary remedial action implemented pursuant to
31 G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b).
32 If a person fails to pay a civil penalty within 60 days after the final agency decision or
33 court order has been served on the violator, the Secretary of Environment and Natural
34 Resources shall request the Attorney General to institute a civil action in the superior
35 court of any county in which the violator resides or has his or its principal place of
36 business to recover the amount of the assessment. Such civil actions must be filed
37 within three years of the date the final agency decision or court order was served on the
38 violator."

39 **SECTION 4.(b)** This section becomes effective 1 August 2007 and applies
40 to violations that occur on or after that date.

41 **SECTION 5.(a)** G.S. 130A-22 is amended by adding a new subsection to
42 read:

43 "(j) The Secretary of Environment and Natural Resources may also assess the
44 reasonable costs of any investigation, inspection, or monitoring associated with the

1 assessment of the civil penalty against any person who is assessed a civil penalty under
2 this section."

3 **SECTION 5.(b)** This section becomes effective 1 August 2007 and applies
4 to violations that occur on or after that date.

5 **SECTION 6.(a)** Part 2 of Article 9 of Chapter 130A of the General Statutes
6 is amended by adding a new section to read:

7 **"§ 130A-295.2. Financial responsibility requirements for applicants and permit**
8 **holders for solid waste management facilities.**

9 (a) As used in this section:

10 (1) 'Financial assurance' refers to the ability of an applicant or permit
11 holder to pay the costs of assessment and remediation in the event of a
12 release of pollutants from a facility, closure of the facility in
13 accordance with all applicable requirements, and post-closure
14 monitoring and maintenance of the facility.

15 (2) 'Financial qualification' refers to the ability of an applicant or permit
16 holder to pay the costs of proper design, construction, operation, and
17 maintenance of the facility.

18 (3) 'Financial responsibility' encompasses both financial assurance and
19 financial qualification.

20 (b) The Commission may adopt rules governing financial responsibility
21 requirements for applicants for permits and for permit holders to ensure the availability
22 of sufficient funds for the proper design, construction, operation, maintenance, closure,
23 and post-closure monitoring and maintenance of solid waste management facilities and
24 for any corrective action the Department may require during the active life of a facility
25 or during the closure and post-closure periods.

26 (c) The Department may provide a copy of any filing that an applicant for a
27 permit or a permit holder submits to the Department to meet the financial responsibility
28 requirements under this section to the State Treasurer. The State Treasurer shall review
29 the filing and provide the Department with a written opinion as to the adequacy of the
30 filing to meet the purposes of this section, including any recommended changes.

31 (d) The Department may, in its sole discretion, require an applicant for a permit
32 to construct a facility to demonstrate its financial qualification for the design,
33 construction, operation, and maintenance of a facility. The Department may require an
34 applicant for a permit for a solid waste management facility to provide cost estimates
35 for site investigation; land acquisition, including financing terms and land ownership;
36 design; construction of each five-year phase, if applicable; operation; maintenance;
37 closure, and post-closure monitoring and maintenance of the facility to the Department.
38 The Department may allow an applicant to demonstrate its financial qualifications for
39 only the first five-year phase of the facility. If the Department allows an applicant for a
40 permit to demonstrate its financial qualification for only the first five-year phase of the
41 facility, the Department shall require the applicant or permit holder to demonstrate its
42 financial qualification for each successive five-year phase of the facility when applying
43 for a permit to construct each successive phase of the facility.

1 (e) If the Department requires an applicant for a permit or a permit holder for a
2 solid waste management facility to demonstrate its financial qualification, the applicant
3 or permit holder shall provide an audited, certified financial statement. An applicant
4 who is required to demonstrate its financial qualification may do so through a
5 combination of cash deposits, insurance, and binding loan commitments from a
6 financial institution licensed to do business in the State and rated AAA by Standard &
7 Poor's, Moody's Investor Service, or Fitch, Inc. If assets of a parent, subsidiary, or other
8 affiliate of the applicant or a permit holder, or a joint venturer with a direct or indirect
9 interest in the applicant or permit holder, are proposed to be used to demonstrate
10 financial qualification, then the party whose assets are to be used must be designated as
11 a joint permittee with the applicant on the permit for the facility.

12 (f) The applicant and permit holder for a solid waste management facility shall
13 establish financial assurance by a method or combination of methods that will ensure
14 that sufficient funds for closure, post-closure maintenance and monitoring, and any
15 corrective action that the Department may require will be available during the active life
16 of the facility, at closure, and for any post-closure period of time that the Department
17 may require even if the applicant or permit holder becomes insolvent or ceases to reside,
18 be incorporated, do business, or maintain assets in the State. Rules adopted by the
19 Commission may allow a business entity that is an applicant for a permit or a permit
20 holder to establish financial assurance through insurance, irrevocable letters of credit,
21 trusts, surety bonds, or any other financial device, or any combination of the foregoing
22 shown to provide protection equivalent to the financial protection that would be
23 provided by insurance if insurance were the only mechanism used. Assets used to meet
24 the financial assurance requirements of this section shall be in a form that will allow the
25 Department to readily access funds for the purposes set out in this section. Assets used
26 to meet financial assurance requirements of this section shall not be accessible to the
27 permit holder except as approved by the Department.

28 (g) In order to continue to hold a permit under this Article, a permit holder must
29 maintain financial responsibility and must provide any information requested by the
30 Department to establish that the permit holder continues to maintain financial
31 responsibility. A permit holder shall notify the Department of any significant change in
32 the: (i) identity of any person or structure of the business entity that holds the permit for
33 the facility; (ii) identity of any person or structure of the business entity that owns or
34 operates the facility; or (iii) assets of the permit holder, owner, or operator of the
35 facility. The permit holder shall notify the Department within 30 days of a significant
36 change. A change shall be considered significant if it has the potential to affect the
37 financial responsibility of the permit holder, owner, or operator, or if it would result in a
38 change in the identity of the permit holder, owner, or operator for purposes of either
39 financial responsibility or environmental compliance review. Based on its review of the
40 changes, the Department may require the permit holder to reestablish financial
41 responsibility and may modify or revoke a permit, or require issuance of a new permit.

42 (h) [Reserved for future codification purposes.]

43 (i) The Commission may adopt rules under which a unit of local government and
44 a solid waste management authority created pursuant to Article 22 of Chapter 153A of

1 the General Statutes may meet the financial responsibility requirements of this section
2 by either a local government financial test or a capital reserve fund requirement."

3 **SECTION 6.(b)** G.S. 130A-309.27 reads as rewritten:

4 "**§ 130A-309.27. Landfill escrow account. Joint and several liability.**

5 (a) As used in this section:

6 (1) "Owner or operator" means, in addition to the usual meanings of the
7 term, any owner of record of any interest in land on which a landfill is
8 or has been sited, ~~and any person or corporation which~~ business entity
9 that owns a majority interest in any other corporation which is the
10 owner or operator of a landfill, landfill, and any person designated as a
11 joint permittee pursuant to G.S. 130A-295.2(e).

12 (2) "Proceeds" means all funds collected and received by the Department,
13 including interest and penalties on delinquent fees.

14 (b) Every owner or operator of a landfill is jointly and severally liable for the
15 improper operation and closure of the landfill, as provided by law.

16 (c) ~~The owner or operator of a landfill shall establish a fee, or a surcharge on~~
17 ~~existing fees or other appropriate revenue producing mechanism, to ensure the~~
18 ~~availability of financial resources for the proper closure of the landfill. However, the~~
19 ~~disposal of solid waste by persons on their own property is exempt from the provisions~~
20 ~~of this section.~~

21 (1) ~~The revenue producing mechanism must produce revenue at a rate~~
22 ~~sufficient to generate funds to meet State and federal landfill closure~~
23 ~~requirements.~~

24 (2) ~~The revenue shall be deposited in an interest bearing escrow account~~
25 ~~to be held and administered by the owner or operator. The owner or~~
26 ~~operator shall file with the Department an annual audit of the account.~~
27 ~~The audit shall be conducted by a certified public accountant and shall~~
28 ~~be filed no later than 31 December of each year. Failure to collect or~~
29 ~~report this revenue, except as allowed in subsection (d), is a~~
30 ~~noncriminal violation, punishable by a fine of not more than five~~
31 ~~thousand dollars (\$5,000) for each offense. The owner or operator may~~
32 ~~make expenditures from the account and its accumulated interest only~~
33 ~~for the purpose of landfill closure and, if such expenditures do not~~
34 ~~deplete the fund to the detriment of eventual closure, for planning and~~
35 ~~construction of resource recovery or landfill facilities. Any moneys~~
36 ~~remaining in the account after paying for proper and complete closure,~~
37 ~~as determined by the Department, shall, if the owner or operator does~~
38 ~~not operate a landfill, be deposited by the owner or operator into the~~
39 ~~general fund of the unit of local government.~~

40 (3) ~~The revenue generated under this subsection and any accumulated~~
41 ~~interest thereon may be applied to the payment of, or pledged as~~
42 ~~security for, the payment of revenue bonds issued in whole or in part~~
43 ~~for the purpose of complying with State and federal landfill closure~~
44 ~~requirements. The application or pledge may be made directly in the~~

1 proceedings authorizing the bonds or in an agreement with an insurer
2 of bonds to assure the insurer of this additional security.

3 (d) An owner or operator may establish proof of financial responsibility with the
4 Department in lieu of the requirements of subsection (c). This proof may include surety
5 bonds, certificates of deposit, securities, letter of credit, corporate guarantee, or other
6 documents showing that the owner or operator has sufficient financial resources to
7 cover, at a minimum, the costs of complying with landfill closure requirements. The
8 owner or operator shall estimate the costs to the satisfaction of the Department.

9 (e) This section does not repeal, limit, or abrogate any other law authorizing units
10 of local government to fix, levy, or charge rates, fees, or charges for the purpose of
11 complying with State and federal landfill closure requirements.

12 (f) The Commission shall adopt rules to implement this section."

13 **SECTION 6.(c)** This section becomes effective 1 August 2007 and applies
14 to any application for a permit for a solid waste management facility that is pending on
15 that date.

16 **SECTION 7.(a)** Part 2 of Article 9 of Chapter 130A of the General Statutes
17 is amended by adding a new section to read:

18 "**§ 130A-295.3. Environmental compliance review requirements for applicants and**
19 **permit holders.**

20 (a) For purposes of this section, "applicant" means an applicant for a permit and
21 a permit holder and includes the owner or operator of the facility, and, if the owner or
22 operator is a business entity, applicant also includes: (i) the parent, subsidiary, or other
23 affiliate of the applicant; (ii) a partner, officer, director, member, or manager of the
24 business entity, parent, subsidiary, or other affiliate of the applicant; and (iii) any person
25 with a direct or indirect interest in the applicant, other than a minority shareholder of a
26 publicly traded corporation who has no involvement in management or control of the
27 corporation or any of its parents, subsidiaries, or affiliates.

28 (b) The Department shall conduct an environmental compliance review of each
29 applicant for a new permit, permit renewal, and permit amendment under this Article.
30 The environmental compliance review shall evaluate the environmental compliance
31 history of the applicant for a period of five years prior to the date of the application and
32 may cover a longer period at the discretion of the Department. The environmental
33 compliance review of an applicant may include consideration of the environmental
34 compliance history of the parents, subsidiaries, or other affiliates of an applicant or
35 parent that is a business entity, including any business entity or joint venturer with a
36 direct or indirect interest in the applicant, and other facilities owned or operated by any
37 of them. The Department shall determine the scope of the review of the environmental
38 compliance history of the applicant, parents, subsidiaries, or other affiliates of the
39 applicant or parent, including any business entity or joint venturer with a direct or
40 indirect interest in the applicant, and of other facilities owned or operated by any of
41 them. An applicant for a permit shall provide environmental compliance history
42 information for each facility, business entity, joint venture, or other undertaking in
43 which any of the persons listed in this subsection is or has been an owner, operator,

1 officer, director, manager, member, or partner, or in which any of the persons listed in
2 this subsection has had a direct or indirect interest as requested by the Department.

3 (c) The Department shall determine the extent to which the applicant, or a parent,
4 subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or
5 indirect interest in the applicant, has substantially complied with the requirements
6 applicable to any activity in which any of these entities previously engaged, and has
7 substantially complied with federal and State laws, regulations, and rules for the
8 protection of the environment. The Department may deny an application for a permit if
9 the applicant has a history of significant or repeated violations of statutes, rules, orders,
10 or permit terms or conditions for the protection of the environment or for the
11 conservation of natural resources as evidenced by civil penalty assessments,
12 administrative or judicial compliance orders, or criminal penalties.

13 (d) A permit holder shall notify the Department of any significant change in its
14 environmental compliance history or other information required by G.S. 130-295.2(g).
15 The Department may reevaluate the environmental compliance history of a permit
16 holder and may modify or revoke a permit or require issuance of a new permit."

17 **SECTION 7.(b)** G.S. 130A-309.06(b) is repealed.

18 **SECTION 7.(c)** This section becomes effective 1 August 2007 and applies
19 to any application for a permit for a solid waste management facility that is pending on
20 that date.

21 **SECTION 8.(a)** G.S. 130A-290(a) is amended by adding three new
22 subdivisions to read:

23 "(2a) "Coal-fired generating unit" means a coal-fired generating unit, as
24 defined by 40 Code of Federal Regulations § 96.2 (1 July 2001
25 Edition), that is located in this State and has the capacity to generate
26 25 or more megawatts of electricity.

27 (2b) "Combustion products" means residuals, including fly ash, bottom ash,
28 boiler slag, mill rejects, and flue gas desulfurization residue produced
29 by a coal-fired generating unit.

30 (2c) "Combustion products landfill" means a facility or unit for the disposal
31 of combustion products, where the landfill is located at the same
32 facility with the coal-fired generating unit or units producing the
33 combustion products, and where the landfill is located wholly or partly
34 on top of a facility that is, or was, being used for the disposal or
35 storage of such combustion products, including, but not limited to,
36 landfills, wet and dry ash ponds, and structural fill facilities."

37 **SECTION 8.(b)** Part 2 of Article 9 of Chapter 130A of the General Statutes
38 is amended by adding a new section to read:

39 **§ 130A-295.4. Combustion products landfills.**

40 (a) The definitions set out in G.S. 130A-290(a) apply to this section.

41 (b) The Department may permit a combustion products landfill to be constructed
42 partially or entirely within areas that have been formerly used for the storage or disposal
43 of combustion products at the same facility as the coal-fired generating unit that
44 generates the combustion products, provided the landfill is constructed with a bottom

1 liner system consisting of three components in accordance with this section. Of the
2 required three components, the upper two components shall consist of two separate
3 flexible membrane liners, with a leak detection system between the two liners. The third
4 component shall consist of a minimum of two feet of soil underneath the bottom of
5 those liners, with the soil having a maximum permeability of 1×10^{-7} centimeters per
6 second. The flexible membrane liners shall have a minimum thickness of thirty
7 one-thousandths of an inch (0.030"), except that liners consisting of high-density
8 polyethylene shall be at least sixty one-thousandths of an inch (0.060") thick. The lower
9 flexible membrane liner shall be installed in direct and uniform contact with the
10 compacted soil layer. The Department may approve an alternative to the soil component
11 of the composite liner system if the Department finds, based on modeling, that the
12 alternative liner system will provide an equivalent or greater degree of impermeability.

13 (c) An applicant for a permit for a combustion products landfill shall develop and
14 provide to the Department a response plan, which shall describe the circumstances
15 under which corrective measures are to be taken at the landfill in the event of the
16 detection of leaks in the leak detection system between the upper two liner components
17 at amounts exceeding an amount specified in the response plan (as expressed in average
18 gallons per day per acre of landfill, defined as an Action Leakage Rate). The response
19 plan shall also describe the remedial actions that the landfill is required to undertake in
20 response to detection of leakage in amounts in excess of the Action Leakage Rate. The
21 Department shall review the response plan as a part of the permit application for the
22 landfill. Compliance with performance of the landfill to prevent releases of waste to the
23 environment may be determined based on leakage rate rather than monitoring well
24 data."

25 **SECTION 8.(c)** G.S. 130A-295.5, 130A-295.6, and 130A-295.7 are
26 reserved for future codification purposes.

27 **SECTION 8.(d)** This section becomes effective 1 August 2007. Any permit
28 issued for a combustion products landfill as described in this section shall, for purposes
29 of this bill, be considered to have been permitted on property described in a solid waste
30 management facility permit that is in effect on 1 August 2007.

31 **SECTION 9.(a)** G.S. 153A-292(b) reads as rewritten:

32 "(b) The board of county commissioners may impose a fee for the collection of
33 solid waste. The fee may not exceed the costs of collection.

34 The board of county commissioners may impose a fee for the use of a disposal
35 facility provided by the county. The fee for use may not exceed the cost of operating the
36 facility and may be imposed only on those who use the facility. The fee for use may
37 vary based on the amount, characteristics, and form of recyclable materials present in
38 solid waste brought to the facility for disposal. A county may not impose a fee for the
39 use of a disposal facility on a city located in the county or a contractor or resident of the
40 city unless the fee is based on a schedule that applies uniformly throughout the county.

41 The board of county commissioners may impose a fee for the availability of a
42 disposal facility provided by the county. A fee for availability may not exceed the cost
43 of providing the facility and may be imposed on all improved property in the county
44 that benefits from the availability of the facility. A county may not impose an

1 availability fee on property whose solid waste is collected by a county, a city, or a
2 private contractor for a fee if the fee imposed by a county, a city, or a private contractor
3 for the collection of solid waste includes a charge for the availability and use of a
4 disposal facility provided by the county. Property served by a private contractor who
5 disposes of solid waste collected from the property in a disposal facility provided by a
6 private contractor that provides the same services as those provided by the county
7 disposal facility is not considered to benefit from a disposal facility provided by the
8 county and is not subject to a fee imposed by the county for the availability of a disposal
9 facility provided by the county. To the extent that the services provided by the county
10 disposal facility differ from the services provided by the disposal facility provided by a
11 private contractor in the same county, the county may charge an availability fee to cover
12 the costs of the additional services provided by the county disposal facility.

13 In determining the costs of providing and operating a disposal facility, a county may
14 consider solid waste management costs incidental to a county's handling and disposal of
15 solid waste at its disposal facility, including the costs of the methods of solid waste
16 management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of
17 1989. A fee for the availability or use of a disposal facility may be based on the
18 combined costs of the different disposal facilities provided by the county."

19 **SECTION 9.(b)** G.S. 160A-314.1(a) reads as rewritten:

20 "(a) In addition to a fee that a city may impose for collecting solid waste or for
21 using a disposal facility, a city may impose a fee for the availability of a disposal
22 facility provided by the city. A fee for availability may not exceed the cost of providing
23 the facility and may be imposed on all improved property in the city that benefits from
24 the availability of the facility. A city may not impose an availability fee on property
25 whose solid waste is collected by a county, a city, or a private contractor for a fee if the
26 fee imposed by a county, a city, or a private contractor for the collection of solid waste
27 includes a charge for the availability and use of a disposal facility provided by the city.
28 Property served by a private contractor who disposes of solid waste collected from the
29 property in a disposal facility provided by a private contractor that provides the same
30 services as those provided by the city disposal facility is not considered to benefit from
31 a disposal facility provided by the city and is not subject to a fee imposed by the city for
32 the availability of a disposal facility provided by the city. To the extent that the services
33 provided by the city disposal facility differ from the services provided by the disposal
34 facility provided by a private contractor in the same city, the city may charge an
35 availability fee to cover the costs of the additional services provided by the city disposal
36 facility.

37 In determining the costs of providing and operating a disposal facility, a city may
38 consider solid waste management costs incidental to a city's handling and disposal of
39 solid waste at its disposal facility. A fee for the availability or use of a disposal facility
40 may be based on the combined costs of the different disposal facilities provided by the
41 city."

42 **SECTION 9.(c)** This section becomes effective 1 August 2007.

43 **SECTION 10.(a)** G.S. 153A-136 is amended by adding two new subsections
44 to read:

1 "(e) A county that has planning jurisdiction over any portion of the site of a
2 sanitary landfill may employ a local government landfill liaison. No person who is
3 responsible for any aspect of the management or operation of the landfill may serve as a
4 local government landfill liaison. A local government landfill liaison shall have a right
5 to enter public or private lands on which the landfill facility is located at reasonable
6 times to inspect the landfill operation in order to:

7 (1) Ensure that the facility meets all local requirements.

8 (2) Identify and notify the Department of suspected violations of
9 applicable federal or State laws, regulations, or rules.

10 (3) Identify and notify the Department of potentially hazardous conditions
11 at the facility.

12 (f) Entry pursuant to subsection (e) of this section shall not constitute a trespass
13 or taking of property."

14 **SECTION 10.(b)** Chapter 160A of the General Statutes is amended by
15 adding a new section to read:

16 **"§ 160A-325. Local government landfill liaison.**

17 (a) A city that has planning jurisdiction over any portion of the site of a sanitary
18 landfill may employ a local government landfill liaison. No person who is responsible
19 for any aspect of the management or operation of the landfill may serve as a local
20 government landfill liaison. A local government landfill liaison shall have a right to
21 enter public or private lands on which the landfill facility is located at reasonable times
22 to inspect the landfill operation in order to:

23 (1) Ensure that the facility meets all local requirements.

24 (2) Identify and notify the Department of suspected violations of
25 applicable federal or State laws, regulations, or rules.

26 (3) Identify and notify the Department of potentially hazardous conditions
27 at the facility.

28 (b) Entry pursuant to this section shall not constitute a trespass or taking of
29 property."

30 **SECTION 10.(c)** This section becomes effective 1 August 2007.

31 **SECTION 11.(a)** G.S. 130A-290(a), as amended by S.L. 2007-107, is
32 amended by renumbering subdivision (1a) as (1b), renumbering subdivision (1b) as
33 (1c), renumbering subdivision (1c) as (1d), and by adding a new subdivision to read:

34 "(1a) 'Business entity' has the same meaning as in G.S. 55-1-40(2a)."

35 **SECTION 11.(b)** G.S. 130A-290(a), as amended by S.L. 2007-107, is
36 amended by renumbering subdivision (21a) as (21b) and by adding a new subdivision to
37 read:

38 "(21a) 'Pre-1983 landfill' means any land area, whether publicly or privately
39 owned, on which municipal solid waste disposal occurred prior to 1
40 January 1983 but not thereafter, but does not include any landfill used
41 primarily for the disposal of industrial solid waste."

42 **SECTION 11.(c)** This section becomes effective 1 August 2007.

43 **SECTION 12. [Reserved.]**

44 **SECTION 13. [Reserved.]**

1 **SECTION 14.(a)** The Commission for Health Services shall review rules
2 governing the design, construction, operation, maintenance, closure, and post-closure
3 monitoring and maintenance of solid waste management facilities to determine whether
4 changes are required to protect public health, safety, welfare, and the environment; to
5 improve the performance of solid waste management facilities; to take advantage of
6 technological advances in landfill design, construction, operation, maintenance, and
7 closure; and to provide additional protection to environmentally sensitive areas of the
8 State. The Commission shall adopt rules necessary to minimize impacts from solid
9 waste management facilities on public health, safety, welfare, and the environment.
10 These rules shall:

- 11 (1) Establish standards for the collection, control, and utilization or
12 destruction of landfill gasses at municipal solid waste landfills.
- 13 (2) Establish standards for the design, construction, operation,
14 maintenance, closure, and post-closure monitoring and maintenance of
15 bioreactor landfills.
- 16 (3) Establish criteria for development of bird and wildlife management
17 plans.
- 18 (4) Incorporate measures necessary to minimize impacts to natural,
19 historic, and cultural resources, including, but not limited to, wetlands,
20 critical fisheries habitat, parks, recreation areas, cultural and historic
21 sites, and potential water supplies.

22 **SECTION 14.(b)** This section is effective when it becomes law.

23 **SECTION 15.(a)** G.S. 130A-295.01(g), as enacted by Section 1.7 of S.L.
24 2007-107, is recodified as G.S. 130A-295.01(c).

25 **SECTION 15.(b)** G.S. 130A-295.01(c), as enacted by Section 1.3 of S.L.
26 2007-107, is recodified as G.S. 130A-295.01(d).

27 **SECTION 15.(c)** Subsections (d), (e), (f), and (g) of G.S. 130A-295.01, as
28 enacted by Section 1.4 of S.L. 2007-107, read as rewritten:

29 "~~(d)~~(e)

- 30 (1) Within 10 days of filing an application for a permit for a commercial
31 hazardous waste facility, the applicant shall notify every person who
32 resides or owns property located within one-fourth mile of any
33 property boundary of the facility that the application has been filed.
34 The notice shall be by mail to residents and by certified mail to
35 property owners, or by any other means approved by the Department,
36 shall be in a form approved by the Department, and shall include all of
37 the following:
 - 38 ~~(1)~~a. The location of the facility.
 - 39 ~~(2)~~b. A description of the facility.
 - 40 ~~(3)~~c. The hazardous and nonhazardous wastes that are to be received
41 and processed at the facility.
 - 42 ~~(4)~~d. A description of the emergency response plan for the facility.
- 43 ~~(e)~~(2) The permit holder for a commercial hazardous waste facility shall
44 publish a notice that includes the information set out in ~~subsection~~

1 ~~(d)~~subdivision (1) of this section ~~subsection~~ annually beginning one
2 year after the permit is issued. The notice shall be published in a form
3 and manner approved by the Department in a newspaper of general
4 circulation in the community where the facility is located.

5 ~~(f)~~(3) The permit holder for a commercial hazardous waste facility shall
6 provide the information set out in ~~subdivisions (1) through (4)~~
7 subdivision (1) of this subsection ~~(d) of this section~~ by mail to the
8 persons described in subdivision (1) of this subsection ~~(d) of this~~
9 ~~section~~ at the midpoint of the period for which the permit is issued.

10 ~~(g)~~(4) Each commercial hazardous waste facility applicant and permit holder
11 shall provide documentation to demonstrate to the Department that the
12 requirements set out in ~~subsections (d) through (f) of this section~~
13 subdivisions (1), (2), and (3) of this subsection have been met."

14 **SECTION 15.(d)** G.S. 130A-295.01(e), as enacted by Section 1.5 of S.L.
15 2007-107, is recodified as G.S. 130A-295.01(f).

16 **SECTION 15.(e)** G.S. 130A-295.01(f), as enacted by Section 1.6 of S.L.
17 2007-107, is recodified as G.S. 130A-295.01(g).

18 **SECTION 15.(f)** Subdivisions (6) and (7) of subsection (f) of Section 4.1 of
19 S.L. 2007-107 read as rewritten:

20 "(6) Review the sprinkler requirements ~~for Hazardous Materials Facilities~~
21 ~~(Section 903.2.4)~~ under Section 903.2.4 of the State Building Code for
22 facilities used to collect, store, process, treat, recycle, recover, or
23 dispose of hazardous substance, as defined in 29 Code of Federal
24 Regulations § 1910.120(a)(3) (1 July 2006 Edition), and determine
25 whether sprinkler design criteria and coverage should be amended.

26 (7) Review the fire alarm requirements for ~~Hazardous Materials Facilities~~
27 ~~(Section 907.2.5)~~ under Section 903.2.4 of the State Building Code
28 and determine whether the relevant facilities used to collect, store,
29 process, treat, recycle, recover, or dispose of hazardous substance, as
30 defined in 29 Code of Federal Regulations § 1910.120(a)(3) (1 July
31 2006 Edition), should have a full fire alarm system or, in the
32 alternative, full staffing as recommended by the Department of
33 Environment and Natural Resources. If the Task Force determines that
34 relevant facilities should have full staffing, the Task Force shall
35 recommend the level of knowledge and training that should be
36 required of the staff."

37 **SECTION 16.** The Division of Waste Management and the Division of
38 Pollution Prevention and Environmental Assistance of the Department of Environment
39 and Natural Resources shall jointly develop a proposal for a recycling program for
40 fluorescent lamps. The program will be developed so as to ensure that substantially all
41 of the mercury contained in fluorescent lamps will be recovered so as to facilitate a
42 phaseout of incandescent lamps without damage to public health and the environment
43 from the increased use of mercury lamps as replacements for fluorescent lamps. The
44 Department of Environment and Natural Resources shall report its findings and

1 recommendations, including legislative proposals and cost estimates, to the
2 Environmental Review Commission on or before 1 March 2008.

3 **SECTION 17.** The Environmental Review Commission shall study issues
4 related to the franchise of solid waste management facilities by units of local
5 government and siting and technical standards for solid waste management facilities.
6 The Environmental Review Commission, with the assistance of the Department of
7 Justice, shall study issues related to the transportation of solid waste by rail or barge,
8 including the extent to which regulation of the transportation of solid waste by rail or
9 barge by state governments may be preempted by federal law. The Environmental
10 Review Commission shall report its findings and recommendations, including any
11 legislative proposals, to the 2008 Regular Session of the General Assembly.

12 **SECTION 18.** If any section or provision of this act is declared
13 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
14 provision does not affect the validity of this act as a whole or any part of this act other
15 than the part declared to be unconstitutional or invalid.

16 **SECTION 19.** Except as otherwise provided in this act, this act is effective
17 when it becomes law.