

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 209

**Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
6/13/11**

Short Title: Amend SW Financial Assurance Rqmts.

(Public)

Sponsors:

Referred to:

March 3, 2011

1 **A BILL TO BE ENTITLED**

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

14 The General Assembly of North Carolina enacts:

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

16 **"§ 130A-295.2. Financial responsibility requirements for applicants and permit holders
17 for solid waste management facilities.**

18 ...

19 (f) The applicant and permit holder for a solid waste management facility shall
20 establish financial assurance by a method or combination of methods that will ensure that
21 sufficient funds for closure, post-closure maintenance and monitoring, and any corrective
22 action that the Department may require will be available during the active life of the facility, at
23 closure, and for any post-closure period of time that the Department may require even if the
24 applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business,
25 or maintain assets in the State. Rules adopted by the Commission ~~may~~shall allow a business
26 entity that is an applicant for a permit or a permit holder to establish financial assurance
27 through insurance, irrevocable letters of credit, trusts, surety bonds, corporate financial tests, or
28 any other financial device, device as allowed pursuant to 40 Code of Federal Regulations §
29 258.74 (July 1, 2010 Edition), or any combination of the foregoing shown to provide protection
30 equivalent to the financial protection that would be provided by insurance if insurance were the
31 only mechanism used. Assets used to meet the financial assurance requirements of this section
32 shall be in a form that will allow the Department to readily access funds for the purposes set out
33 in this section. Assets used to meet financial assurance requirements of this section shall not be
34 accessible to the permit holder except as approved by the Department. Where a corporate
35 financial test is used that is substantially similar to that allowed under 40 Code of Federal



* H 2 0 9 - V - 2 *

1 Regulations § 258.74 (July 1, 2010 Edition), the assets shall be presumed both to be readily
2 accessible by the Department and not otherwise accessible to the permit holder.

3 ...
4 (h) To meet the financial assurance requirements of this section, the owner or operator
5 of a sanitary landfill shall establish financial assurance sufficient to cover a minimum of three
6 two million dollars (\$3,000,000)(\$2,000,000) in costs for potential assessment and corrective
7 action at the facility. The Department may require financial assurance in a higher amount and
8 may increase the amount of financial assurance required of a permit holder at any time based
9 upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in
10 the landfill, the location of the landfill, potential receptors of releases from the landfill, and
11 inflation. The financial assurance requirements of this subsection are in addition to the other
12 financial responsibility requirements set out in this section.

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

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

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

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