

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE BILL 1492**  
**Agriculture/Environment and Natural Resources Committee Substitute Adopted**  
**7/23/07**  
**Finance Committee Substitute Adopted 7/25/07**  
**Fourth Edition Engrossed 7/28/07**

Short Title: Solid Waste Management Act of 2007.

(Public)

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Sponsors:

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Referred to:

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March 27, 2007

A BILL TO BE ENTITLED

1  
2 AN ACT TO: (1) CLARIFY THE CIRCUMSTANCES UNDER WHICH AN  
3 APPLICATION FOR A SOLID WASTE MANAGEMENT PERMIT MAY BE  
4 DENIED; (2) PROVIDE THAT SOLID WASTE MANAGEMENT PERMITS ARE  
5 NOT TRANSFERABLE; (3) INCREASE THE PENALTIES THAT MAY BE  
6 IMPOSED FOR SOLID WASTE VIOLATIONS; (4) REQUIRE THAT AN  
7 APPLICANT FOR A PERMIT AND A PERMIT HOLDER ESTABLISH  
8 FINANCIAL RESPONSIBILITY TO ENSURE THE AVAILABILITY OF  
9 SUFFICIENT FUNDS FOR PROPER DESIGN, CONSTRUCTION, OPERATION,  
10 MAINTENANCE, CLOSURE, AND POST-CLOSURE MONITORING AND  
11 MAINTENANCE OF A SOLID WASTE MANAGEMENT FACILITY; (5)  
12 REQUIRE THAT AN OWNER OR OPERATOR OF A SANITARY LANDFILL  
13 ESTABLISH FINANCIAL ASSURANCE SUFFICIENT TO COVER A  
14 MINIMUM OF THREE MILLION DOLLARS IN COSTS FOR POTENTIAL  
15 ASSESSMENT AND CORRECTIVE ACTION AT THE FACILITY, IN  
16 ADDITION TO OTHER FINANCIAL RESPONSIBILITY REQUIREMENTS; (6)  
17 CLARIFY AND EXPAND THE SCOPE OF ENVIRONMENTAL COMPLIANCE  
18 REVIEW REQUIREMENTS; (7) CLARIFY THAT A PARENT, SUBSIDIARY,  
19 OR OTHER AFFILIATE OF THE APPLICANT OR PARENT, INCLUDING ANY  
20 BUSINESS ENTITY OR JOINT VENTURER WITH A DIRECT OR INDIRECT  
21 INTEREST IN THE APPLICANT IS SUBJECT TO FINANCIAL  
22 RESPONSIBILITY AND ENVIRONMENTAL COMPLIANCE REVIEW; (8)  
23 PROVIDE FOR SITING OF COMBUSTION PRODUCTS LANDFILLS IN  
24 AREAS THAT HAVE BEEN FORMERLY USED FOR THE STORAGE OR  
25 DISPOSAL OF COMBUSTION PRODUCTS FROM COAL-FIRED  
26 GENERATING UNITS AT THE SAME FACILITY THAT GENERATED THE

1 COMBUSTION PRODUCTS, AND TECHNICAL REQUIREMENTS FOR  
2 THESE LANDFILLS; (9) SPECIFY ADDITIONAL TECHNICAL  
3 REQUIREMENTS FOR SOLID WASTE MANAGEMENT FACILITIES; (10)  
4 REQUIRE THAT ALL APPLICANTS FOR PERMITS FOR SANITARY  
5 LANDFILLS CONDUCT AN ENVIRONMENTAL IMPACT STUDY; (11)  
6 REQUIRE THAT CERTAIN APPLICANTS FOR SOLID WASTE  
7 MANAGEMENT FACILITY PERMITS CONDUCT A TRAFFIC STUDY; (12)  
8 CLARIFY THE CIRCUMSTANCES UNDER WHICH A UNIT OF LOCAL  
9 GOVERNMENT MAY COLLECT A SOLID WASTE AVAILABILITY FEE; (13)  
10 AUTHORIZE UNITS OF LOCAL GOVERNMENT TO HIRE LANDFILL  
11 LIAISONS; (14) ESTABLISH FEES APPLICABLE TO PERMITS FOR SOLID  
12 WASTE MANAGEMENT FACILITIES TO SUPPORT THE SOLID WASTE  
13 MANAGEMENT PROGRAM; (15) ESTABLISH A SOLID WASTE DISPOSAL  
14 TAX TO BE IMPOSED ON THE DISPOSAL OF MUNICIPAL SOLID WASTE  
15 IN LANDFILLS IN THE STATE AND ON THE TRANSFER OF MUNICIPAL  
16 SOLID WASTE FOR DISPOSAL OUTSIDE THE STATE IN ORDER TO  
17 PROVIDE FUNDS FOR THE ASSESSMENT AND REMEDIATION OF  
18 PRE-1983 LANDFILLS AND FOR OTHER PURPOSES; (16) ESTABLISH A  
19 COMPUTER EQUIPMENT MANAGEMENT PROGRAM; (17) DIRECT THE  
20 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO  
21 DEVELOP A PROPOSED RECYCLING PROGRAM FOR FLUORESCENT  
22 LAMPS; (18) DIRECT THE ENVIRONMENT REVIEW COMMISSION TO  
23 STUDY ISSUES RELATED TO THE FRANCHISE OF SOLID WASTE  
24 MANAGEMENT FACILITIES BY UNITS OF LOCAL GOVERNMENT AND  
25 THE TRANSPORTATION OF SOLID WASTE BY RAIL AND BARGE; AND  
26 (19) MAKE RELATED CLARIFYING, CONFORMING, AND TECHNICAL  
27 CHANGES.

28 The General Assembly of North Carolina enacts:

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

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

41 c. The Department shall deny an application for a permit for a  
42 solid waste management facility if the Department finds that:

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

1 facilities located or proposed in the community, would  
2 have a disproportionate adverse impact on a minority or  
3 low-income community protected by Title VI of the  
4 federal Civil Rights Act of 1964.

5 ~~(4a) No permit shall be granted for any public or private sanitary landfill to~~  
6 ~~receive solid non-radioactive waste generated outside the boundaries~~  
7 ~~of North Carolina to be deposited, unless such waste has previously~~  
8 ~~been inspected by the solid waste regulatory agency of that nation,~~  
9 ~~state or territory, characterized in detail as to its contents and certified~~  
10 ~~by that agency to be non-injurious to health and safety. The~~  
11 ~~Commission shall adopt rules to implement this subsection.~~

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

13 (5a) Designate a geographic area within which the collection,  
14 transportation, storage and disposal of all solid waste generated within  
15 said area shall be accomplished in accordance with a solid waste  
16 management plan. Such designation may be made only after the  
17 Department has received a request from the unit or units of local  
18 government having jurisdiction within said geographic area that such  
19 designation be made and after receipt by the Department of a solid  
20 waste management plan which shall include:

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

30 (5b) Authorize units of local government to require by ordinance, that all  
31 solid waste generated within the designated geographic area that is  
32 placed in the waste stream for disposal be collected, transported, stored  
33 and disposed of at a permitted solid waste management facility or  
34 facilities serving such area. The provisions of such ordinance shall not  
35 be construed to prohibit the source separation of materials from solid  
36 waste prior to collection of such solid waste for disposal, or prohibit  
37 collectors of solid waste from recycling materials or limit access to  
38 such materials as an incident to collection of such solid waste;  
39 provided such prohibitions do not authorize the construction and  
40 operation of a resource recovery facility unless specifically permitted  
41 pursuant to an approved solid waste management plan. If a private  
42 solid waste landfill shall be substantially affected by such ordinance  
43 then the unit of local government adopting the ordinance shall be

1 required to give the operator of the affected landfill at least two years  
2 written notice prior to the effective date of the proposed ordinance.

3 (5c) Except for the authority to designate a geographic area to be serviced  
4 by a solid waste management facility, delegate authority and  
5 responsibility to units of local government to perform all or a portion  
6 of a solid waste management program within the jurisdictional area of  
7 the unit of local government; provided that no authority over or control  
8 of the operations or properties of one local government shall be  
9 delegated to any other local government.

10 (5d) Require that an annual report of the implementation of the solid waste  
11 management plan within the designated geographic area be filed with  
12 the Department.

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

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

26 (a1) A permit for a solid waste management facility is not transferable.

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

40 ~~(b0) The Commission shall adopt rules for financial responsibility to ensure the~~  
41 ~~availability of sufficient funds for closure and post-closure maintenance and monitoring~~  
42 ~~at solid waste management facilities, and for any corrective action the Department may~~  
43 ~~require during the active life of a facility or during the closure and post-closure periods.~~  
44 ~~The rules may permit demonstration of financial responsibility through the use of a~~

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

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

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

13 1. The population of the geographic area to be served by  
14 the sanitary landfill;

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

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

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

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

31 a. A statement of the population to be served, including a  
32 description of the geographic area.

33 b. A description of the volume and characteristics of the waste  
34 stream.

35 c. A projection of the useful life of the sanitary landfill.

36 d. An explanation of how the franchise will be consistent with the  
37 jurisdiction's solid waste management plan required under  
38 G.S. 130A-309.09A, including provisions for waste reduction,  
39 reuse, and recycling.

40 e. The procedures to be followed for governmental oversight and  
41 regulation of the fees and rates to be charged by facilities  
42 subject to the franchise for waste generated in the jurisdiction of  
43 the franchising entity.

1 f. A facility plan for the sanitary landfill that shall include the  
2 ~~exact~~—boundaries of the proposed facility, proposed  
3 development of the facility site in five-year operational phases,  
4 the boundaries of all waste disposal units, final elevations and  
5 capacity of all waste disposal units, the amount of waste to be  
6 received per day in tons, the total waste disposal capacity of the  
7 sanitary landfill in tons, a description of environmental controls,  
8 and a description of any other waste management activities to  
9 be conducted at the facility. In addition, the facility plan shall  
10 show the proposed location of soil borrow areas, leachate  
11 facilities, and all other facilities and infrastructure, including  
12 ingress and egress to the facility.

13 (2a) A local government may elect to award a preliminary franchise. If a  
14 local government elects to award a preliminary franchise, the  
15 preliminary franchise shall contain, at a minimum, all of the  
16 information described in sub-subdivisions a. through e. of subdivision  
17 (2) of this subsection plus a general description of the proposed  
18 sanitary landfill, including the approximate number of acres required  
19 for the proposed sanitary landfill and its appurtenances and a  
20 description of any other solid waste management activities that are to  
21 be conducted at the site.

22 (3) Prior to the award of a franchise for the construction or operation of a  
23 sanitary landfill, the board of commissioners of the county or counties  
24 in which the sanitary landfill is proposed to be located or is located or,  
25 if the sanitary landfill is proposed to be located or is located in a city,  
26 the governing board of the city shall conduct a public hearing. The  
27 board of commissioners of the county or counties in which the sanitary  
28 landfill is proposed to be located or is located or, if the sanitary landfill  
29 is proposed to be located or is located in a city, the governing board of  
30 the city shall provide at least 30 days' notice to the public of the public  
31 hearing. The notice shall include a summary of all the information  
32 required to be included in the franchise, and shall specify the  
33 procedure to be followed at the public hearing. The applicant for the  
34 franchise shall provide a copy of the application for the franchise that  
35 includes all of the information required to be included in the franchise,  
36 to the public library closest to the proposed sanitary landfill site to be  
37 made available for inspection and copying by the public.

38 (4) An applicant for a new permit, the renewal of a permit, or a substantial  
39 amendment to a permit for a sanitary landfill shall request each local  
40 government having jurisdiction over any part of the land on which the  
41 sanitary landfill and its appurtenances are located or to be located to  
42 issue a determination as to whether the local government has in effect  
43 a franchise, zoning, subdivision, or land-use planning ordinance  
44 applicable to the sanitary landfill and whether the proposed sanitary

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

1 to limit any opportunity a local government may have to comment on a  
2 permit application under any other law or rule. This subsection shall  
3 not apply to any facility with respect to which local ordinances are  
4 subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

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

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

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

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

38 ...."

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

42 **SECTION 2.(a)** G.S. 130A-18 reads as rewritten:

43 "**§ 130A-18. Injunction.**

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

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

11 **SECTION 2.(b)** This section becomes effective 1 August 2007 and applies  
12 to violations that occur on or after that date.

13 **SECTION 3.(a)** G.S. 130A-22(a) reads as rewritten:

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

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

40 **SECTION 4.(a)** G.S. 130A-22 is amended by adding a new subsection to  
41 read:

42 "(j) The Secretary of Environment and Natural Resources may also assess the  
43 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 4.(b)** This section becomes effective 1 August 2007 and applies  
4 to violations that occur on or after that date.

5 **SECTION 5.(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) To meet the financial assurance requirements of this section, the owner or  
43 operator of a sanitary landfill shall establish financial assurance sufficient to cover a  
44 minimum of three million dollars (\$3,000,000) in costs for potential assessment and

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

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

12 **SECTION 5.(b)** G.S. 130A-309.27 reads as rewritten:

13 **"§ 130A-309.27. Landfill escrow account. Joint and several liability.**

14 (a) As used in this section:

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

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

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

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

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

33 ~~(2) The revenue shall be deposited in an interest bearing escrow account~~  
34 ~~to be held and administered by the owner or operator. The owner or~~  
35 ~~operator shall file with the Department an annual audit of the account.~~  
36 ~~The audit shall be conducted by a certified public accountant and shall~~  
37 ~~be filed no later than 31 December of each year. Failure to collect or~~  
38 ~~report this revenue, except as allowed in subsection (d), is a~~  
39 ~~noncriminal violation, punishable by a fine of not more than five~~  
40 ~~thousand dollars (\$5,000) for each offense. The owner or operator may~~  
41 ~~make expenditures from the account and its accumulated interest only~~  
42 ~~for the purpose of landfill closure and, if such expenditures do not~~  
43 ~~deplete the fund to the detriment of eventual closure, for planning and~~  
44 ~~construction of resource recovery or landfill facilities. Any moneys~~

1 remaining in the account after paying for proper and complete closure,  
2 as determined by the Department, shall, if the owner or operator does  
3 not operate a landfill, be deposited by the owner or operator into the  
4 general fund of the unit of local government.

5 (3) The revenue generated under this subsection and any accumulated  
6 interest thereon may be applied to the payment of, or pledged as  
7 security for, the payment of revenue bonds issued in whole or in part  
8 for the purpose of complying with State and federal landfill closure  
9 requirements. The application or pledge may be made directly in the  
10 proceedings authorizing the bonds or in an agreement with an insurer  
11 of bonds to assure the insurer of this additional security.

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

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

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

22 **SECTION 5.(c)** This section becomes effective 1 August 2007 and applies  
23 to any application for a permit for a solid waste management facility that is pending on  
24 that date. The provisions of G.S. 130A-295.2(h), as enacted by this section, apply to the  
25 owner or operator of a sanitary landfill when the permit is next subject to renewal after  
26 1 August 2009.

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

29 **"§ 130A-295.3. Environmental compliance review requirements for applicants and**  
30 **permit holders.**

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

39 (b) The Department shall conduct an environmental compliance review of each  
40 applicant for a new permit, permit renewal, and permit amendment under this Article.  
41 The environmental compliance review shall evaluate the environmental compliance  
42 history of the applicant for a period of five years prior to the date of the application and  
43 may cover a longer period at the discretion of the Department. The environmental  
44 compliance review of an applicant may include consideration of the environmental

1 compliance history of the parents, subsidiaries, or other affiliates of an applicant or  
2 parent that is a business entity, including any business entity or joint venturer with a  
3 direct or indirect interest in the applicant, and other facilities owned or operated by any  
4 of them. The Department shall determine the scope of the review of the environmental  
5 compliance history of the applicant, parents, subsidiaries, or other affiliates of the  
6 applicant or parent, including any business entity or joint venturer with a direct or  
7 indirect interest in the applicant, and of other facilities owned or operated by any of  
8 them. An applicant for a permit shall provide environmental compliance history  
9 information for each facility, business entity, joint venture, or other undertaking in  
10 which any of the persons listed in this subsection is or has been an owner, operator,  
11 officer, director, manager, member, or partner, or in which any of the persons listed in  
12 this subsection has had a direct or indirect interest as requested by the Department.

13 (c) The Department shall determine the extent to which the applicant, or a parent,  
14 subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or  
15 indirect interest in the applicant, has substantially complied with the requirements  
16 applicable to any activity in which any of these entities previously engaged, and has  
17 substantially complied with federal and State laws, regulations, and rules for the  
18 protection of the environment. The Department may deny an application for a permit if  
19 the applicant has a history of significant or repeated violations of statutes, rules, orders,  
20 or permit terms or conditions for the protection of the environment or for the  
21 conservation of natural resources as evidenced by civil penalty assessments,  
22 administrative or judicial compliance orders, or criminal penalties.

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

27 **SECTION 6.(b)** G.S. 130A-309.06(b) is repealed.

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

31 **SECTION 7.(a)** G.S. 130A-290(a) is amended by adding three new  
32 subdivisions to read:

33 "(2a) "Coal-fired generating unit" means a coal-fired generating unit, as  
34 defined by 40 Code of Federal Regulations § 96.2 (1 July 2001  
35 Edition), that is located in this State and has the capacity to generate  
36 25 or more megawatts of electricity.

37 (2b) "Combustion products" means residuals, including fly ash, bottom ash,  
38 boiler slag, mill rejects, and flue gas desulfurization residue produced  
39 by a coal-fired generating unit.

40 (2c) "Combustion products landfill" means a facility or unit for the disposal  
41 of combustion products, where the landfill is located at the same  
42 facility with the coal-fired generating unit or units producing the  
43 combustion products, and where the landfill is located wholly or partly  
44 on top of a facility that is, or was, being used for the disposal or

1 storage of such combustion products, including, but not limited to,  
2 landfills, wet and dry ash ponds, and structural fill facilities."

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

5 **"§ 130A-295.4. Combustion products landfills.**

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

7 (b) The Department may permit a combustion products landfill to be constructed  
8 partially or entirely within areas that have been formerly used for the storage or disposal  
9 of combustion products at the same facility as the coal-fired generating unit that  
10 generates the combustion products, provided the landfill is constructed with a bottom  
11 liner system consisting of three components in accordance with this section. Of the  
12 required three components, the upper two components shall consist of two separate  
13 flexible membrane liners, with a leak detection system between the two liners. The third  
14 component shall consist of a minimum of two feet of soil underneath the bottom of  
15 those liners, with the soil having a maximum permeability of  $1 \times 10^{-7}$  centimeters per  
16 second. The flexible membrane liners shall have a minimum thickness of thirty  
17 one-thousandths of an inch (0.030"), except that liners consisting of high-density  
18 polyethylene shall be at least sixty one-thousandths of an inch (0.060") thick. The lower  
19 flexible membrane liner shall be installed in direct and uniform contact with the  
20 compacted soil layer. The Department may approve an alternative to the soil component  
21 of the composite liner system if the Department finds, based on modeling, that the  
22 alternative liner system will provide an equivalent or greater degree of impermeability.

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

35 **SECTION 7.(c)** This section becomes effective 1 August 2007. Any permit  
36 issued for a combustion products landfill as described in this section shall, for purposes  
37 of this bill, be considered to have been permitted on property described in a solid waste  
38 management facility permit that is in effect on 1 August 2007.

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

41 **"§ 130A-295.5. Traffic study required for certain solid waste management**  
42 **facilities.**

43 (a) An applicant for a permit for a sanitary landfill or for a transfer station shall  
44 conduct a traffic study of the impacts of the proposed facility. The Department shall

1 include as a condition of a permit for a sanitary landfill or for a transfer station a  
2 requirement that the permit holder mitigate adverse impacts identified by the traffic  
3 study. The study shall include all of the following at a minimum:

- 4 (1) Identification of routes from the nearest limited access highway used  
5 to access the proposed facility.
- 6 (2) Daily and hourly traffic volumes that will result along each approach  
7 route between the nearest limited access highway and the proposed  
8 facility.
- 9 (3) A map identifying land uses located along the identified approach  
10 routes, including, but not limited to, residential, commercial, industrial  
11 development, and agricultural operations. The map shall identify  
12 residences, schools, hospitals, nursing homes, and other significant  
13 buildings that front the approach routes.
- 14 (4) Identification of locations on approach routes where road conditions  
15 are inadequate to handle the increased traffic associated with the  
16 proposed facility and a description of the mitigation measures  
17 proposed by the applicant to address the conditions.
- 18 (5) A description of the potential adverse impacts of increased traffic  
19 associated with the proposed facility and the mitigation measures  
20 proposed by the applicant to address these impacts.
- 21 (6) An analysis of the impact of any increase in freight traffic on railroads  
22 and waterways.

23 (b) An applicant for a permit for a sanitary landfill or for a transfer station may  
24 satisfy the requirements of subsection (a) of this section by obtaining a certification  
25 from the Division Engineer of the Department of Transportation that the proposed  
26 facility will not have a substantial impact on highway traffic."

27 **SECTION 8.(b)** This section becomes effective 1 August 2007 and applies  
28 to any application for a permit for a solid waste management facility that is pending on  
29 that date. The section shall not apply to:

- 30 (1) An amendment, modification, or other change to a permit for a landfill  
31 issued on or before 1 June 2006.
- 32 (2) A permit for a horizontal or vertical expansion of the landfill permitted  
33 on or before 1 June 2006.
- 34 (3) A permit to construct a new landfill within the facility boundary  
35 identified in the facility plan of a landfill permitted on or before 1 June  
36 2006.
- 37 (4) A permit to operate a new landfill if a permit to construct the new  
38 landfill was issued on or before 1 June 2006.
- 39 (5) A permit for a sanitary landfill used only to dispose of waste generated  
40 by a coal-fired generating unit that is owned or operated by an  
41 investor-owned utility subject to the requirements of  
42 G.S. 143-215.107D.

- 1 (6) A permit for a sanitary landfill determined to be necessary by the  
2 Secretary of Environment and Natural Resources in order to respond to  
3 an imminent hazard to public health or a natural disaster.

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

6 **"§ 130A-295.6. Additional requirements for sanitary landfills.**

7 (a) The Department shall conduct a study of the environmental impacts of any  
8 proposed sanitary landfill. The study shall meet all of the requirements set forth in  
9 G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. If an environmental impact  
10 statement is required, the Department shall publish notice of the draft environmental  
11 impact statement and shall hold a public hearing in the county where the landfill will be  
12 located no sooner than 30 days following the public notice. The Department shall  
13 consider the study of environmental impacts and any mitigation measures proposed by  
14 the applicant in deciding whether to issue or deny a permit. An applicant for a permit  
15 for a sanitary landfill shall pay all costs incurred by the Department to comply with this  
16 subsection including the costs of any special studies that may be required.

17 (b) The Department shall require a buffer between any perennial stream or  
18 wetland and the nearest waste disposal unit of a sanitary landfill of at least 200 feet. The  
19 Department may approve a buffer of less than 200 feet, but in no case less than 100 feet,  
20 if it finds all of the following:

21 (1) The proposed sanitary landfill or expansion of the sanitary landfill will  
22 serve a critical need in the community.

23 (2) There is no feasible alternative location that would allow siting or  
24 expansion of the sanitary landfill with 200-foot buffers.

25 (c) A waste disposal unit of a sanitary landfill shall not be constructed within:

26 (1) A 100-year floodplain, except as authorized by variance granted under  
27 G.S. 143-215.54A(b). This subdivision does not apply to land removed  
28 from a 100-year floodplain designation pursuant to: (i) 44 Code of  
29 Federal Regulations Part 72 (1 October 2006 Edition) as a result of  
30 man-made alterations within the floodplain, such as the placement of  
31 fill; modification of a channel; construction or modification of a  
32 bridge, culvert, levee, or similar measure; or construction of single or  
33 multiple residential or commercial structures on single or multiple lots;  
34 and (ii) 44 Code of Federal Regulations Part 70 (1 October 2006  
35 Edition) as a result of floodplain map correction made by a letter of  
36 map amendment.

37 (2) A wetland.

38 (d) The Department shall not issue a permit to construct any waste disposal unit  
39 of a landfill that would be located within:

40 (1) Five miles of the outermost boundary of a National Wildlife Refuge.

41 (2) One mile of the outermost boundary of a State gameland.

42 (3) Two miles of the outermost boundary of a component of the State  
43 Parks System.

1       (e) A sanitary landfill for the disposal of construction and demolition debris  
2 waste shall be constructed with a liner system that consists of a flexible membrane liner  
3 over two feet of soil with a maximum permeability of  $1 \times 10^{-5}$  centimeters per second.  
4 The flexible membrane liner shall have a minimum thickness of thirty one-thousandths  
5 of an inch (0.030"), except that a liner that consists of high-density polyethylene shall  
6 be at least sixty one-thousandths of an inch (0.060") thick. The flexible membrane liner  
7 shall be installed in direct and uniform contact with the soil layer. The Department may  
8 approve an alternative to the soil component of the liner system if the Department finds,  
9 based on modeling, that the alternative liner system will provide an equivalent or greater  
10 degree of impermeability.

11       (f) A sanitary landfill, other than a sanitary landfill for the disposal of  
12 construction and demolition debris waste, shall be constructed so that the  
13 post-settlement bottom elevation of the liner system, or the post-settlement bottom  
14 elevation of the waste if no liner system is required, is a minimum of four feet above  
15 both the seasonal high groundwater table and the bedrock datum plane contours. A  
16 sanitary landfill for the disposal of construction and demolition debris waste shall be  
17 constructed so that the post-settlement bottom elevation of the flexible membrane liner  
18 component of the liner system is a minimum of four feet above both the seasonal high  
19 groundwater table and the bedrock datum plane contours.

20       (g) A permit holder for a sanitary landfill shall develop and implement a waste  
21 screening plan. The plan shall identify measures adequate to ensure compliance with  
22 State laws and rules and any applicable local ordinances that prohibit the disposal of  
23 certain items in landfills. The plan shall address all sources of waste generation. The  
24 plan is subject to approval by the Department.

25       (h) The following requirements apply to any sanitary landfill for which a liner is  
26 required:

- 27       (1) A geomembrane base liner system shall be tested for leaks and damage  
28 by methods approved by the Department that ensure that the entire  
29 liner is evaluated.
- 30       (2) A leachate collection system shall be designed to return the head of the  
31 liner to 30 centimeters or less within 72 hours. The design shall be  
32 based on the precipitation that would fall on an empty cell of the  
33 sanitary landfill as a result of a 25-year-24-hour storm event. The  
34 leachate collection system shall maintain a head of less than 30  
35 centimeters at all times during leachate recirculation. The Department  
36 may require the operator to monitor the head of the liner to  
37 demonstrate that the head is being maintained in accordance with this  
38 subdivision and any applicable rules.
- 39       (3) All leachate collection lines shall be designed and constructed to  
40 permanently allow cleaning and remote camera inspection. All  
41 leachate collection lines shall be cleaned at least once a year, except  
42 that the Department may allow leachate collection lines to be cleaned  
43 once every two years if: (i) the facility has continuous flow  
44 monitoring; and (ii) the permit holder demonstrates to the Department

1           that the leachate collection lines are clear and functional based on at  
2           least three consecutive annual cleanings. Remote camera inspections  
3           of the leachate collection lines shall occur upon completion of  
4           construction, at least once every five years thereafter, and following  
5           the clearing of blockages.

6           (4) Any pipes used to transmit leachate shall provide dual containment  
7           outside of the disposal unit. The bottom liner of a sanitary landfill shall  
8           be constructed without pipe penetrations.

9           (i) The Department shall not issue a permit for a sanitary landfill that authorizes:

10           (1) A capacity of more than 55 million cubic yards of waste.

11           (2) A disposal area of more than 350 acres.

12           (3) A maximum height, including the cap and cover vegetation, of more  
13           than 250 feet above the mean natural elevation of the disposal area."

14           **SECTION 9.(b)** This section becomes effective 1 August 2007 and applies  
15 to any application for a permit for a solid waste management facility that is pending on  
16 that date. To the extent that G.S. 130A-295.6, as enacted by this section, imposes  
17 requirements that are more stringent than those in effect prior to 1 August 2007, the  
18 more stringent requirements do not apply to:

19           (1) An amendment, modification, or other change to a permit for a landfill  
20           issued on or before 1 June 2006.

21           (2) A permit for a horizontal or vertical expansion of the landfill permitted  
22           on or before 1 June 2006.

23           (3) A permit to construct a new landfill within the facility boundary  
24           identified in the facility plan of a landfill permitted on or before 1 June  
25           2006.

26           (4) A permit to operate a new landfill if a permit to construct the new  
27           landfill was issued on or before 1 June 2006.

28           (5) A permit for a sanitary landfill used only to dispose of waste generated  
29           by a coal-fired generating unit that is owned or operated by an  
30           investor-owned utility subject to the requirements of  
31           G.S. 143-215.107D.

32           (6) A permit for a sanitary landfill determined to be necessary by the  
33           Secretary of Environment and Natural Resources in order to respond to  
34           an imminent hazard to public health or a natural disaster.

35           **SECTION 10.(a)** G.S. 153A-292(b) reads as rewritten:

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

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

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

17 In determining the costs of providing and operating a disposal facility, a county may  
18 consider solid waste management costs incidental to a county's handling and disposal of  
19 solid waste at its disposal facility, including the costs of the methods of solid waste  
20 management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of  
21 1989. A fee for the availability or use of a disposal facility may be based on the  
22 combined costs of the different disposal facilities provided by the county."

23 **SECTION 10.(b)** G.S. 160A-314.1(a) reads as rewritten:

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

41 In determining the costs of providing and operating a disposal facility, a city may  
42 consider solid waste management costs incidental to a city's handling and disposal of  
43 solid waste at its disposal facility. A fee for the availability or use of a disposal facility

1 may be based on the combined costs of the different disposal facilities provided by the  
2 city."

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

4 **SECTION 11.(a)** G.S. 153A-136 is amended by adding two new subsections  
5 to read:

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

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

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

15 (3) Identify and notify the Department of potentially hazardous conditions  
16 at the facility.

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

19 **SECTION 11.(b)** Chapter 160A of the General Statutes is amended by  
20 adding a new section to read:

21 **§ 160A-325. Local government landfill liaison.**

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

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

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

31 (3) Identify and notify the Department of potentially hazardous conditions  
32 at the facility.

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

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

36 **SECTION 12.** [Reserved.]

37 **SECTION 13.(a)** G.S. 130A-290(a), as amended by S.L. 2007-107, is  
38 amended by renumbering subdivision (1a) as (1b), renumbering subdivision (1b) as  
39 (1c), renumbering subdivision (1c) as (1d), and by adding a new subdivision to read:

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

41 **SECTION 13.(b)** G.S. 130A-290(a), as amended by S.L. 2007-107, is  
42 amended by renumbering subdivision (21a) as (21b) and by adding a new subdivision to  
43 read:

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

5           **SECTION 13.(c)** This section becomes effective 1 August 2007.

6           **SECTION 14.(a)** Chapter 130A of the General Statutes is amended by  
7 adding a new section to read:

8           "§ 130A-295.8. Fees applicable to permits for solid waste management facilities.

9           (a) The Solid Waste Management Account is established as a nonreverting  
10          account within the Department. All fees collected under this section shall be credited to  
11          the Account and shall be used to support the solid waste management program  
12          established pursuant to G.S. 130A-294.

13          (b) As used in this section:

14           (1) 'New permit' means any of the following:

15           a. An application for a permit for a solid waste management  
16           facility that has not been previously permitted by the  
17           Department. The term includes one site suitability review, the  
18           initial permit to construct, and one permit to operate the  
19           constructed portion of a phase included in the permit to  
20           construct.

21           b. An application that proposes to expand the boundary of a  
22           permitted waste management facility for the purpose of  
23           expanding the permitted activity.

24           c. An application that includes a proposed expansion to the  
25           boundary of a waste disposal unit within a permitted solid waste  
26           management facility.

27           d. An application for a substantial amendment to a solid waste  
28           permit, as defined in G.S. 130A-294.

29           (2) 'Permit amendment' means any of the following:

30           a. An application for a permit to construct and one permit to  
31           operate for the second and subsequent phases of landfill  
32           development described in the approved facility plan for a  
33           permitted solid waste management facility.

34           b. An application for the five-year renewal of a permit for a  
35           permitted solid waste management facility or for a permit  
36           review of a permitted solid waste management facility.

37           c. Any application that proposes a change in ownership or  
38           corporate structure of a permitted solid waste management  
39           facility.

40           (3) 'Permit modification' means any of the following:

41           a. An application for any change to the plans approved in a permit  
42           for a solid waste management facility that does not constitute a  
43           'permit amendment' or a 'new permit'.

- 1                    b. A second or subsequent permit to operate for a constructed  
2                    portion of a phase included in the permit to construct.
- 3            (c) An applicant for a permit shall pay an application fee upon submission of an  
4            application according to the following schedule:
- 5            (1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year  
6            of solid waste, New Permit – \$25,000.
- 7            (2) Municipal Solid Waste Landfill accepting less than 100,000 tons/year  
8            of solid waste, Amendment – \$15,000.
- 9            (3) Municipal Solid Waste Landfill accepting less than 100,000 tons/year  
10           of solid waste, Modification – \$1,500.
- 11           (4) Municipal Solid Waste Landfill accepting 100,000 tons/year or more  
12           of solid waste, New Permit – \$50,000.
- 13           (5) Municipal Solid Waste Landfill accepting 100,000 tons/year or more  
14           of solid waste, Amendment – \$30,000.
- 15           (6) Municipal Solid Waste Landfill accepting 100,000 tons/year or more  
16           of solid waste, Modification – \$3,000.
- 17           (7) Construction and Demolition Landfill accepting less than 100,000  
18           tons/year of solid waste, New Permit – \$15,000.
- 19           (8) Construction and Demolition Landfill accepting less than 100,000  
20           tons/year of solid waste, Amendment – \$9,000.
- 21           (9) Construction and Demolition Landfill accepting less than 100,000  
22           tons/year of solid waste, Modification – \$1,500.
- 23           (10) Construction and Demolition Landfill accepting 100,000 tons/year or  
24           more of solid waste, New Permit – \$30,000.
- 25           (11) Construction and Demolition Landfill accepting 100,000 tons/year or  
26           more of solid waste, Amendment – \$18,500.
- 27           (12) Construction and Demolition Landfill accepting 100,000 tons/year or  
28           more of solid waste, Modification – \$2,500.
- 29           (13) Industrial Landfill accepting less than 100,000 tons/year of solid  
30           waste, New Permit – \$15,000.
- 31           (14) Industrial Landfill accepting less than 100,000 tons/year of solid  
32           waste, Amendment – \$9,000.
- 33           (15) Industrial Landfill accepting less than 100,000 tons/year of solid  
34           waste, Modification – \$1,500.
- 35           (16) Industrial Landfill accepting 100,000 tons/year or more of solid waste,  
36           New Permit – \$30,000.
- 37           (17) Industrial Landfill accepting 100,000 tons/year or more of solid waste,  
38           Amendment – \$18,500.
- 39           (18) Industrial Landfill accepting 100,000 tons/year or more of solid waste,  
40           Modification – \$2,500.
- 41           (19) Tire Monofill, New Permit – \$1,750.
- 42           (20) Tire Monofill, Amendment – \$1,250.
- 43           (21) Tire Monofill, Modification – \$500.
- 44           (22) Treatment and Processing, New Permit – \$1,750.

- 1           (23) Treatment and Processing, Amendment – \$1,250.
- 2           (24) Treatment and Processing, Modification – \$500.
- 3           (25) Transfer Station, New Permit – \$5,000.
- 4           (26) Transfer Station, Amendment – \$3,000.
- 5           (27) Transfer Station, Modification – \$500.
- 6           (28) Incinerator, New Permit – \$1,750.
- 7           (29) Incinerator, Amendment – \$1,250.
- 8           (30) Incinerator, Modification – \$500.
- 9           (31) Large Compost Facility, New Permit – \$1,750.
- 10          (32) Large Compost Facility, Amendment – \$1,250.
- 11          (33) Large Compost Facility, Modification – \$500.
- 12          (34) Land Clearing and Inert, New Permit – \$1,000.
- 13          (35) Land Clearing and Inert, Amendment – \$500.
- 14          (36) Land Clearing and Inert, Modification – \$250.

15          (d) A permitted solid waste management facility shall pay an annual permit fee  
16 on or before 1 August of each year according to the following schedule:

- 17           (1) Municipal Solid Waste Landfill – \$3,500.
- 18           (2) Post-Closure Municipal Solid Waste Landfill – \$1,000.
- 19           (3) Construction and Demolition Landfill – \$2,750.
- 20           (4) Post-Closure Construction and Demolition Landfill – \$500.
- 21           (5) Industrial Landfill – \$2,750.
- 22           (6) Post-Closure Industrial Landfill – \$500.
- 23           (7) Transfer Station – \$750.
- 24           (8) Treatment and Processing Facility – \$500.
- 25           (9) Tire Monofill – \$500.
- 26           (10) Incinerator – \$500.
- 27           (11) Large Compost Facility – \$500.
- 28           (12) Land Clearing and Inert Debris Landfill – \$500.

29          (e) The Department shall determine whether an application for a permit for a  
30 solid waste management facility that is subject to a fee under this section is complete  
31 within 90 days after the Department receives the application for the permit. A  
32 determination of completeness means that the application includes all required  
33 components but does not mean that the required components provide all of the  
34 information that is required for the Department to make a decision on the application. If  
35 the Department determines that an application is not complete, the Department shall  
36 notify the applicant of the components needed to complete the application. An applicant  
37 may submit additional information to the Department to cure the deficiencies in the  
38 application. The Department shall make a final determination as to whether the  
39 application is complete within the later of: (i) 90 days after the Department receives the  
40 application for the permit less the number of days that the applicant uses to provide the  
41 additional information; or (ii) 30 days after the Department receives the additional  
42 information from the applicant. The Department shall issue a draft permit decision on an  
43 application for a permit within one year after the Department determines that the  
44 application is complete. The Department shall hold a public hearing and accept written

1 comment on the draft permit decision for a period of not less than 30 or more than 60  
2 days after the Department issues a draft permit decision. The Department shall issue a  
3 final permit decision on an application for a permit within 90 days after the comment  
4 period on the draft permit decision closes. The Department and the applicant may  
5 mutually agree to extend any time period under this subsection. If the Department fails  
6 to act within any time period set out in this subsection, the applicant may treat the  
7 failure to act as a denial of the permit and may challenge the denial as provided in  
8 Chapter 150B of the General Statutes."

9       **SECTION 14.(b)** This section becomes effective on 1 August 2007 and  
10 applies to any application for a permit for a solid waste management facility that is  
11 pending on that date, except that during the period 1 August 2007 through 1 August  
12 2008 the Department shall determine whether an application or a permit for a solid  
13 waste management facility is complete within 270 days after the Department receives  
14 the application for the permit.

15       **SECTION 15.(a)** Subchapter I of Chapter 105 of the General Statutes is  
16 amended by adding a new Article to read:

17                               "Article 5G.

18                               "Solid Waste Disposal Tax.

19 **"§ 105-187.60. Definitions.**

20       The definitions set out in G.S. 105-164.3 and G.S. 130A-290 apply to this Article.

21 **"§ 105-187.61. Tax imposed.**

22       (a) Tax Rate. – An excise tax is imposed on the disposal of municipal solid waste  
23 and construction and demolition debris in any landfill permitted pursuant to Article 9 of  
24 Chapter 130A of the General Statutes at a rate of one dollar and fifty cents (\$1.50) per  
25 ton of waste. An excise tax is imposed on the transfer of municipal solid waste and  
26 construction and demolition debris to a transfer station permitted pursuant to Article 9  
27 of Chapter 130A of the General Statutes for disposal outside the State at a rate of one  
28 dollar and fifty cents (\$1.50) per ton of waste.

29       (b) Tax Liability. – The excise tax imposed by this section is due on municipal  
30 solid waste and construction and demolition debris received from third parties and on  
31 municipal solid waste and construction and demolition debris disposed of by the owner  
32 or operator. The tax is payable by the owner or operator of each landfill and transfer  
33 station permitted under Article 9 of Chapter 130A of the General Statutes.

34 **"§ 105-187.62. Administration.**

35       The owner or operator of each landfill and transfer station permitted pursuant to  
36 Article 9 of Chapter 130A of the General Statutes shall maintain scales designed to  
37 determine waste tonnage that are approved by the Department of Agriculture and  
38 Consumer Services. Each owner or operator shall record waste tonnage at the time the  
39 waste is received and maintain other records as required by the Secretary of Revenue.  
40 An owner or operator may add the amount of the solid waste disposal tax due to the  
41 charges made to a third party for disposal of municipal solid waste or construction and  
42 demolition debris. The tax imposed by this Article is payable and a return is due to be  
43 filed in the same manner as required under G.S. 105-164.16 for sales and use tax.

44 **"§ 105-187.63. Use of tax proceeds.**

1 From the taxes received pursuant to this Article, the Secretary may retain the costs  
2 of collection, not to exceed two hundred twenty-five thousand dollars (\$225,000) a year,  
3 as reimbursement to the Department. The Secretary shall credit taxes received pursuant  
4 to this Article, less the cost of collection, as follows:

- 5 (1) Sixty-seven percent (67%) to the Inactive Hazardous Sites Cleanup  
6 Fund established by G.S. 130A-310.11.
- 7 (2) Thirty-three percent (33%) to the Solid Waste Management Trust Fund  
8 established by G.S. 130A-309.12."

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

11 **"§ 130A-295.9. Solid waste disposal tax; use of proceeds.**

12 It is the intent that the proceeds of the solid waste disposal tax imposed by Article  
13 5G of Chapter 105 of the General Statutes shall be used only for the following purposes:

- 14 (1) Funds credited pursuant to G.S. 105-187.63(1) to the Inactive  
15 Hazardous Sites Cleanup Fund shall be used by the Department of  
16 Environment and Natural Resources to fund the assessment and  
17 remediation of pre-1983 landfills. Up to seven percent (7%) of the  
18 proceeds of the tax under this subdivision may be used to fund staff to  
19 administer contracts for the assessment and remediation of pre-1983  
20 landfills.
- 21 (2) Funds credited pursuant to G.S. 105-187.63(2) to the Solid Waste  
22 Management Trust Fund shall be used by the Department of  
23 Environment and Natural Resources to fund grants to State agencies  
24 and units of local government to initiate or enhance local recycling  
25 programs. Up to seven percent (7%) of the net proceeds of the tax  
26 under this subdivision may be used by the Department to administer  
27 this Part."

28 **SECTION 15.(c)** G.S. 130A-310.6 is amended by adding four new  
29 subsections to read:

30 "(c) The Secretary shall use funds allocated to the Department under  
31 G.S. 130A-295.9(1) to assess pre-1983 landfills, to determine the priority for  
32 remediation of pre-1983 landfills, and to develop and implement a remedial action plan  
33 for each pre-1983 landfill that requires remediation. Environmental and human health  
34 risks posed by a pre-1983 landfill may be mitigated using a risk-based approach for  
35 assessment and remediation.

36 (d) The Secretary shall not seek cost recovery for assessment and remedial action  
37 performed under subsection (c) of this section at a pre-1983 landfill from any otherwise  
38 potentially responsible party if the Secretary develops and implements a remedial action  
39 plan for that pre-1983 landfill and if the potentially responsible party cooperates with  
40 assessment of the site and implementation of control and mitigation measures at any site  
41 which the potentially responsible party owns or over which the potentially responsible  
42 party exercises control, including, but not limited to, granting access to the site,  
43 allowing installation of monitoring wells, allowing installation and maintenance of  
44 improvements to the landfill cap, allowing installation of security measures, agreeing to

1 record and implement land-use restrictions, and providing access to any records  
2 regarding the pre-1983 landfill. The Secretary shall develop and implement remedial  
3 action plans for pre-1983 landfills in the order of their priority determined as provided  
4 in subsection (c) of this section. The Secretary shall not develop or implement a  
5 remedial action plan for a pre-1983 landfill unless the Secretary determines that  
6 sufficient funds will be available from the Inactive Hazardous Sites Cleanup Fund to  
7 pay the costs of development and implementation of a remedial action plan for that  
8 pre-1983 landfill.

9 (e) A unit of local government that voluntarily undertakes assessment or  
10 remediation of a pre-1983 landfill may request that the Department reimburse the costs  
11 of assessment of the pre-1983 landfill and implementation of measures necessary to  
12 remediate the site to eliminate an imminent hazard. The Department shall provide  
13 reimbursement under this subsection if the Department finds all of the following:

14 (1) The unit of local government undertakes assessment and remediation  
15 under a plan approved by the Department.

16 (2) The unit of local government provides a certified accounting of costs  
17 incurred for assessment and remediation.

18 (3) Each contract for assessment and remediation complies with the  
19 requirements of Articles 3D and 8 of Chapter 143 of the General  
20 Statutes.

21 (4) Remedial action is limited to measures necessary to abate the  
22 imminent hazard.

23 (f) The Department may undertake any additional action necessary to remediate  
24 a pre-1983 landfill based on the priority ranking of the site under subsection (c) of this  
25 section."

26 **SECTION 15.(d)** G.S. 130A-310.11 reads as rewritten:

27 **"§ 130A-310.11. Inactive Hazardous Sites Cleanup Fund created.**

28 (a) There is established under the control and direction of the Department the  
29 Inactive Hazardous Sites Cleanup Fund. This fund shall be a revolving fund consisting  
30 of any monies appropriated for such purpose by the General Assembly or available to it  
31 from grants, taxes, and other monies paid to it or recovered by or on behalf of the  
32 Department. The Inactive Hazardous Sites Cleanup Fund shall be treated as a  
33 nonreverting special trust fund and shall be credited with interest by the State Treasurer  
34 pursuant to G.S. 147-69.2 and G.S. 147-69.3.

35 (b) Funds credited to the Inactive Hazardous Sites Cleanup Fund pursuant to  
36 G.S. 130A-295.9 shall be used only as provided in G.S. 130A-309.295.9(c)."

37 **SECTION 15.(e)** This section becomes effective 1 July 2008.

38 **SECTION 16.(a)** The Commission for Health Services shall review rules  
39 governing the design, construction, operation, maintenance, closure, and post-closure  
40 monitoring and maintenance of solid waste management facilities to determine whether  
41 changes are required to protect public health, safety, welfare, and the environment; to  
42 improve the performance of solid waste management facilities; to take advantage of  
43 technological advances in landfill design, construction, operation, maintenance, and  
44 closure; and to provide additional protection to environmentally sensitive areas of the

1 State. The Commission shall adopt rules necessary to minimize impacts from solid  
2 waste management facilities on public health, safety, welfare, and the environment.  
3 These rules shall:

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

15 **SECTION 16.(b)** This section is effective when it becomes law.

16 **SECTION 17.1.(a)** Article 9 of Chapter 130A of the General Statutes is  
17 amended by adding a new Part to read:

18 "Part 2E. Discarded Computer Equipment Management.

19 **"§ 130A-309.90. Findings.**

20 The General Assembly makes the following findings:

- 21 (1) The computer equipment waste stream is growing rapidly in volume  
22 and complexity and can introduce toxic materials into solid waste  
23 landfills.
- 24 (2) It is in the best interests of the citizens of this State to have convenient,  
25 simple, and free access to recycling services for discarded computer  
26 equipment.
- 27 (3) Collection programs operated by local government and nonprofit  
28 agencies are an efficient way to divert discarded computer equipment  
29 from disposal and to provide recycling services to all citizens of this  
30 State.
- 31 (4) The development of local and nonprofit collection programs is  
32 hindered by the high costs of recycling and transporting discarded  
33 computer equipment.
- 34 (5) No other system currently exists, either provided by electronics  
35 manufacturers, retailers, or others, to adequately serve all citizens of  
36 the State and to divert large quantities of discarded computer  
37 equipment from disposal.
- 38 (6) Manufacturer responsibility is an effective way to ensure that  
39 manufacturers of computer equipment take part in a solution to the  
40 electronic waste problem.
- 41 (7) The recycling of discarded computer equipment recovers valuable  
42 materials for reuse and will create jobs and expand the tax base of the  
43 State.

44 **"§ 130A-309.91. Definitions.**

1        As used in this Part, the following definitions apply:

- 2            (1) Business entity. – Defined in G.S. 55-1-40(2a).
- 3            (2) Computer equipment. – Any desktop central processing unit, any  
4 laptop computer, the monitor or video display unit for a computer  
5 system, and the keyboard, mice, and other peripheral equipment.  
6 Computer equipment does not include a printing device such as a  
7 printer, a scanner, a combination print-scanner-fax machine, or other  
8 device designed to produce hard paper copies from a computer; an  
9 automobile; a television; a household appliance; a large piece of  
10 commercial or industrial equipment, such as commercial medical  
11 equipment, that contains a cathode ray tube, a cathode ray tube device,  
12 a flat panel display, or similar video display device that is contained  
13 within, and is not separate from, the larger piece of equipment, or other  
14 medical devices as that term is defined under the federal Food, Drug,  
15 and Cosmetic Act.
- 16            (3) Discarded computer equipment. – Computer equipment that is solid  
17 waste.
- 18            (4) Discarded computer equipment collector. – A municipal or county  
19 government, nonprofit agency, or retailer that accepts discarded  
20 computer equipment from the public.
- 21            (5) Manufacturer. – A person who manufactures computer equipment sold  
22 under its own brand or label; sells under its own brand or label  
23 computer equipment produced by other suppliers; imports into the  
24 United States computer equipment that was manufactured outside of  
25 the United States; or owns a brand that it licenses to another person for  
26 use on computer equipment. Manufacturer includes a business entity  
27 that acquires another business entity that manufactures or has  
28 manufactured computer equipment.
- 29            (6) Orphan discarded computer equipment. – Any discarded computer  
30 equipment for which a manufacturer cannot be identified or for which  
31 the manufacturer is no longer in business and has no successor in  
32 interest.
- 33            (7) Retailer. – A person who sells computer equipment in the State to a  
34 consumer. Retailer includes a manufacturer of computer equipment  
35 that sells directly to a consumer through any means, including  
36 transactions conducted through sales outlets, catalogs, the Internet, or  
37 any similar electronic means, but does not include a person who sells  
38 computer equipment to a distributor or retailer through a wholesale  
39 transaction.

40 **"§ 130A-309.92. Responsibility for recycling discarded computer equipment.**

41        In addition to the specific requirements of this Part, discarded computer equipment  
42 collectors and manufacturers share responsibility for the recycling of discarded  
43 computer equipment and the education of citizens of the State as to recycling  
44 opportunities for discarded computer equipment.

1 **"§ 130A-309.93. Requirements for manufacturers.**

2 (a) Registration and Fee Required. – Each manufacturer of computer equipment,  
3 before selling or offering for sale computer equipment in North Carolina, shall register  
4 with the Department and, at the time of registration, shall pay an initial registration fee  
5 of ten thousand dollars (\$10,000) to the Department. A computer equipment  
6 manufacturer that has registered shall pay an annual renewal registration fee of one  
7 thousand dollars (\$1,000) to the Department. The annual renewal registration fee shall  
8 be paid each year no later than the first day of the month in which the initial registration  
9 fee was paid. The proceeds of these fees shall be credited to the Computer Equipment  
10 Management Account. A manufacturer of computer equipment that sells 1,000 items of  
11 computer equipment or less per year is exempt from the requirement to pay the  
12 registration fee and the annual renewal fee imposed by this subsection.

13 (b) Manufacturer Label Required. – A manufacturer shall not sell or offer to sell  
14 computer equipment in this State unless a visible, permanent label clearly identifying  
15 the manufacturer of that device is affixed to the equipment.

16 (c) Computer Equipment Recycling Plan. – Each manufacturer of computer  
17 equipment shall develop and submit to the Department a plan for reuse or recycling of  
18 discarded computer equipment in the State produced by the manufacturer. The  
19 manufacturer shall submit a proposed plan to the Department within 120 days of  
20 registration as required by subsection (a) of this section. The plan shall:

- 21 (1) Describe any direct take-back program to be implemented by the  
22 manufacturer, including mail-back programs and collection events.
- 23 (2) Provide that the manufacturer will take responsibility for discarded  
24 computer equipment it manufactured.
- 25 (3) Include a detailed description as to how the manufacturer will  
26 implement and finance the plan.
- 27 (4) Provide for environmentally sound management practices to transport  
28 and recycle discarded computer equipment.
- 29 (5) Describe the performance measures that will be used by the  
30 manufacturer to document recovery and recycling rates for discarded  
31 computer equipment. The calculation of recycling rates shall include  
32 the amount of discarded computer equipment managed under the  
33 manufacturer's program divided by the amount of computer equipment  
34 sold by the manufacturer in North Carolina.
- 35 (6) Describe in detail how the manufacturer will provide for transportation  
36 of discarded computer equipment at no cost from discarded computer  
37 equipment collectors.
- 38 (7) Describe in detail how the manufacturer will fully cover the costs of  
39 processing discarded computer equipment received from discarded  
40 computer equipment collectors.
- 41 (8) Include a public education plan on the laws governing the recycling  
42 and reuse of discarded computer equipment under this Part and on the  
43 methods available to consumers to comply with those requirements.

1       (d) Computer Equipment Recycling Plan Revision. – A manufacturer may  
2 prepare a revised plan and submit it to the Department at any time as the manufacturer  
3 considers appropriate in response to changed circumstances or needs. The Department  
4 may require a manufacturer to revise or update a plan if the Department finds that the  
5 plan is inadequate or out-of-date.

6       (e) Payment of Costs for Plan Implementation. – Each manufacturer is  
7 responsible for all costs associated with the development and implementation of its  
8 plan. A manufacturer shall not collect a charge for the management of discarded  
9 computer equipment at the time the equipment is discarded.

10       (f) Joint Computer Equipment Recycling Plans. – A manufacturer may fulfill the  
11 requirements of this section by participation in a joint recycling plan with other  
12 manufacturers. A joint plan shall meet the requirements of subsection (c) of this section.

13       (g) Annual Report. – Each manufacturer shall submit a report to the Department  
14 by 1 February of each year that includes all of the following for the previous calendar  
15 year:

16           (1) A description of the collection and recycling services used to recover  
17 the manufacturer's products.

18           (2) The quantity and type of computer equipment sold by the  
19 manufacturer to retail consumers in this State.

20           (3) The quantity and type of discarded computer equipment collected by  
21 the manufacturer for recovery in this State for the preceding calendar  
22 year.

23           (4) Any other information requested by the Department.

24 **"§ 130A-309.94. Requirements for discarded computer equipment collectors.**

25 Each discarded computer equipment collector shall ensure that discarded computer  
26 equipment received by the collector is consolidated at central locations, properly stored,  
27 and either held for pickup by a manufacturer or delivered to a facility designated by a  
28 manufacturer.

29 **"§ 130A-309.95. Responsibilities of the Department.**

30 In addition to its other responsibilities under this Part, the Department shall:

31           (1) Develop and maintain a current list of manufacturers that are in  
32 compliance with the requirements of G.S. 130A-309.93 and provide  
33 the current list to the Office of Information Technology Services each  
34 time that the list is updated.

35           (2) Develop and implement a public education program on the laws  
36 governing the recycling and reuse of discarded computer equipment  
37 under this Part and on the methods available to consumers to comply  
38 with those requirements. The Department shall make this information  
39 available on the Internet and shall provide technical assistance to  
40 manufacturers to meet the requirements of G.S. 130A-309.93(c)(8).  
41 The Department shall also provide technical assistance to units of local  
42 government on the establishment and operation of discarded computer  
43 equipment collection centers and in the development and  
44 implementation of local public education programs.

1           (3) Maintain the confidentiality of any information that is required to be  
2           submitted by a manufacturer under this Part that is designated as a  
3           trade secret, as defined in G.S. 66-152(3) and that is designated as  
4           confidential or as a trade secret under G.S. 132-1.2.

5 **"§ 130A-309.96. Computer Equipment Management Account.**

6           The Computer Equipment Management Account is created as a nonreverting  
7           account within the Department. Funds in the Account shall be used by the Department  
8           to implement the provisions of this Part.

9 **"§ 130A-309.97. Enforcement.**

10           This Part may be enforced as provided by Part 2 of Article 1 of this Chapter.

11 **"§ 130A-309.98. Annual report.**

12           No later than 1 April of each year, the Department shall submit a report on the  
13           recycling of discarded computer equipment in the State under this Part to the  
14           Environmental Review Commission. The report must include an evaluation of the  
15           recycling rates in the State for discarded computer equipment, a discussion of  
16           compliance and enforcement related to the requirements of this Part, and any  
17           recommendations for any changes to the system of collection and recycling of discarded  
18           computer equipment or other electronic devices."

19           **SECTION 17.1.(b)** The Department shall include in the annual report for 1  
20 April 2011, as required by G.S. 130A-309.98, as enacted by Section 17.1(a) of this act,  
21 an analysis of the feasibility and advisability of deleting the exclusion of printing  
22 devices from the definition of computer equipment as set out in G.S. 130A-309.91, as  
23 enacted by Section 17.1(a) of this act.

24           **SECTION 17.2.** G.S. 130A-309.09A(b)(6) reads as rewritten:

25           "(6) Include an assessment of current programs and a description of  
26           intended actions with respect to:

- 27           a. Education with the community and through the schools.
- 28           b. Management of special wastes.
- 29           c. Prevention of illegal disposal and management of litter.
- 30           d. Purchase of recycled materials and products manufactured with  
31           recycled materials.
- 32           e. For each county and each municipality with a population in  
33           excess of 25,000, collection of discarded computer equipment,  
34           as defined in G.S. 130A-309.91."

35           **SECTION 17.3.** G.S. 130A-309.10(f) is amended by adding a new  
36 subdivision to read:

37           "(14) Discarded computer equipment, as defined in G.S. 130A-309.91."

38           **SECTION 17.4.** G.S. 130A-309.10(f1) is amended by adding a new  
39 subdivision to read:

40           "(7) Discarded computer equipment, as defined in G.S. 130A-309.91."

41           **SECTION 17.5.** Part 4 of Article 3D of Chapter 147 of the General Statutes  
42 is amended by adding a new section to read:

43 **"§ 147-33.104. Purchase by State agencies and governmental entities of certain**  
44 **computer equipment prohibited.**

1 (a) The exemptions set out in G.S. 147-33.80 do not apply to this section.

2 (b) No State agency, political subdivision of the State, or other public body shall  
3 purchase computer equipment, as defined in G.S. 130A-309.91, from any manufacturer  
4 determined not to be in compliance with the requirements of G.S. 130A-309.93 as  
5 determined from the list provided by the Department of Environment and Natural  
6 Resources pursuant to G.S. 130A-309.95(1).

7 (c) The Office of Information Technology Services shall make the list available  
8 to political subdivisions of the State and other public bodies. A manufacturer that is not  
9 in compliance with the requirements of G.S. 130A-309.93 shall not sell or offer for sale  
10 computer equipment to the State, a political subdivision of the State, or other public  
11 body."

12 **SECTION 17.6.(a)** Part 2E of Article 9 of Chapter 130A of the General  
13 Statutes, as enacted by Section 17.1(a) of this act, becomes effective as follows:

- 14 (1) G.S.130A-309.90 becomes effective 1 January 2008.
- 15 (2) G.S.130A-309.91 becomes effective 1 January 2008.
- 16 (3) G.S.130A-309.92 becomes effective 1 January 2008.
- 17 (4) G.S.130A-309.93(a) becomes effective 1 January 2008.
- 18 (5) G.S.130A-309.93(b) becomes effective 1 January 2008.
- 19 (6) G.S.130A-309.93(c) becomes effective 1 October 2008.
- 20 (7) G.S.130A-309.93(d) becomes effective 1 October 2008.
- 21 (8) G.S.130A-309.93(e) becomes effective 1 January 2008.
- 22 (9) G.S.130A-309.93(f) becomes effective 1 January 2008.
- 23 (10) G.S.130A-309.93(g) becomes effective 1 February 2010.
- 24 (11) G.S.130A-309.94 becomes effective 1 January 2009.
- 25 (12) G.S.130A-309.95(1) becomes effective 1 January 2008.
- 26 (13) G.S.130A-309.95(2) becomes effective 1 January 2008.
- 27 (14) G.S.130A-309.95(3) becomes effective 1 January 2008.
- 28 (15) G.S.130A-309.96 becomes effective 1 January 2008.
- 29 (16) G.S.130A-309.97 becomes effective 1 January 2008.
- 30 (17) G.S.130A-309.98 becomes effective 1 April 2010.

31 **SECTION 17.6.(b)** Section 17.2 of this act becomes effective 1 January  
32 2008. Sections 17.3 and 17.4 of this act become effective 1 January 2011. Section 17.5  
33 of this act becomes effective 1 July 2008. Subsection (b) of Section 17.1 of this act,  
34 Section 17.6 of this act, and any other provision of this act for which an effective date is  
35 not specified become effective 1 January 2008.

36 **SECTION 18.(a)** G.S. 130A-295.01(g), as enacted by Section 1.7 of S.L.  
37 2007-107, is recodified as G.S. 130A-295.01(c).

38 **SECTION 18.(b)** G.S. 130A-295.01(c), as enacted by Section 1.3 of S.L.  
39 2007-107, is recodified as G.S. 130A-295.01(d).

40 **SECTION 18.(c)** Subsections (d), (e), (f), and (g) of G.S. 130A-295.01, as  
41 enacted by Section 1.4 of S.L. 2007-107, read as rewritten:

42 "~~(d)~~(e)

- 43 (1) Within 10 days of filing an application for a permit for a commercial  
44 hazardous waste facility, the applicant shall notify every person who

1 resides or owns property located within one-fourth mile of any  
2 property boundary of the facility that the application has been filed.  
3 The notice shall be by mail to residents and by certified mail to  
4 property owners, or by any other means approved by the Department,  
5 shall be in a form approved by the Department, and shall include all of  
6 the following:

7 ~~(1)~~a. The location of the facility.

8 ~~(2)~~b. A description of the facility.

9 ~~(3)~~c. The hazardous and nonhazardous wastes that are to be received  
10 and processed at the facility.

11 ~~(4)~~d. A description of the emergency response plan for the facility.

12 ~~(e)~~(2) The permit holder for a commercial hazardous waste facility shall  
13 publish a notice that includes the information set out in ~~subsection~~  
14 ~~(d)~~subdivision (1) of this ~~section~~subdivision annually beginning one  
15 year after the permit is issued. The notice shall be published in a form  
16 and manner approved by the Department in a newspaper of general  
17 circulation in the community where the facility is located.

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

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

27 **SECTION 18.(d)** G.S. 130A-295.01(e), as enacted by Section 1.5 of S.L.  
28 2007-107, is recodified as G.S. 130A-295.01(f).

29 **SECTION 18.(e)** G.S. 130A-295.01(f), as enacted by Section 1.6 of S.L.  
30 2007-107, is recodified as G.S. 130A-295.01(g).

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

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

39 (7) Review the fire alarm requirements ~~for Hazardous Materials Facilities~~  
40 ~~(Section 907.2.5) under Section 903.2.4~~ of the State Building Code  
41 and determine whether the ~~relevant~~ facilities used to collect, store,  
42 process, treat, recycle, recover, or dispose of hazardous substance, as  
43 defined in 29 Code of Federal Regulations § 1910.120(a)(3) (1 July  
44 2006 Edition), should have a full fire alarm system or, in the

1 alternative, full staffing as recommended by the Department of  
2 Environment and Natural Resources. If the Task Force determines that  
3 relevant facilities should have full staffing, the Task Force shall  
4 recommend the level of knowledge and training that should be  
5 required of the staff."

6 **SECTION 19.** The Division of Waste Management and the Division of  
7 Pollution Prevention and Environmental Assistance of the Department of Environment  
8 and Natural Resources shall jointly develop a proposal for a recycling program for  
9 fluorescent lamps. The program will be developed so as to ensure that substantially all  
10 of the mercury contained in fluorescent lamps will be recovered so as to facilitate a  
11 phaseout of incandescent lamps without damage to public health and the environment  
12 from the increased use of mercury lamps as replacements for fluorescent lamps. The  
13 Department of Environment and Natural Resources shall report its findings and  
14 recommendations, including legislative proposals and cost estimates, to the  
15 Environmental Review Commission on or before 1 March 2008.

16 **SECTION 20.** The Environmental Review Commission shall study issues  
17 related to the franchise of solid waste management facilities by units of local  
18 government. The Environmental Review Commission, with the assistance of the  
19 Department of Justice, shall study issues related to the transportation of solid waste by  
20 rail or barge, including the extent to which regulation of the transportation of solid  
21 waste by rail or barge by state governments may be preempted by federal law. The  
22 Environmental Review Commission shall report its findings and recommendations,  
23 including any legislative proposals, to the 2008 Regular Session of the General  
24 Assembly.

25 **SECTION 21.** If any section or provision of this act is declared  
26 unconstitutional or invalid by the courts, the unconstitutional or invalid section or  
27 provision does not affect the validity of this act as a whole or any part of this act other  
28 than the part declared to be unconstitutional or invalid.

29 **SECTION 22.** Except as otherwise provided in this act, this act is effective  
30 when it becomes law.