

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1973\*

Committee Substitute Favorable 6/15/94

Corrected Copy 6/16/94

Senate Local Government and Regional Affairs Committee Substitute Adopted 6/30/94

Short Title: Local Govt. Review Landfill Permit.

(Public)

Sponsors:

Referred to:

June 1, 1994

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

1 provided in subdivision (3) of subsection (b1) of this section. No  
2 permit shall be granted for a solid waste management facility having  
3 discharges which are point sources until the Department has referred  
4 the complete plans and specifications to the Environmental  
5 Management Commission and has received advice in writing that the  
6 plans and specifications are approved in accordance with the  
7 provisions of G.S. 143-215.1. If the applicant is a unit of local  
8 government, and has not submitted a solid waste management plan that  
9 has been approved by the Department pursuant to G.S. 130A-  
10 309.09A(b), the Department may deny a permit for a sanitary landfill  
11 or a facility that disposes of solid waste by incineration, unless the  
12 Commission has not adopted rules pursuant to G.S. 130A-309.29 for  
13 local solid waste management plans. In any case where the  
14 Department denies a permit for a solid waste management facility, it  
15 shall state in writing the reason for denial and shall also state its  
16 estimate of the changes in the applicant's proposed activities or plans  
17 which will be required for the applicant to obtain a permit.

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

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

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

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

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

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

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

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

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

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

16 (3) An applicant for a new permit, the renewal of a permit, or a substantial  
17 amendment to a permit for a sanitary landfill shall obtain, prior to  
18 applying for a permit, a franchise for the operation of the sanitary  
19 landfill from each local government having jurisdiction over any part  
20 of the land on which the sanitary landfill and its appurtenances are  
21 located or to be located. A local government shall adopt a franchise  
22 ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise  
23 granted for a sanitary landfill shall include:

24 a. A statement of the population to be served, including a  
25 description of the geographic area.

26 b. A description of the volume and characteristics of the waste  
27 stream.

28 c. A projection on the useful life of the landfill.

29 (4) An applicant for a new permit, the renewal of a permit, or a substantial  
30 amendment to a permit for a sanitary landfill shall request each local  
31 government having jurisdiction over any part of the land on which the  
32 sanitary landfill and its appurtenances are located or to be located to  
33 issue a determination as to whether the local government has in effect  
34 a franchise, zoning, subdivision, or land-use planning ordinance  
35 applicable to the sanitary landfill and whether the proposed sanitary  
36 landfill, or the existing sanitary landfill as it would be operated under  
37 the renewed or substantially amended permit, would be consistent with  
38 the applicable ordinances. The request to the local government shall  
39 be accompanied by a copy of the permit application and shall be  
40 delivered to the clerk of the local government personally or by  
41 certified mail. In order to serve as a basis for a determination that an  
42 application for a new permit, the renewal of a permit, or a substantial  
43 amendment to a permit for a sanitary landfill is consistent with a  
44 zoning, subdivision, or land-use planning ordinance, an ordinance or

1            zoning classification applicable to the real property designated in the  
2            permit application shall have been in effect not less than 90 days prior  
3            to the date the request for a determination of consistency is delivered  
4            to the clerk of the local government. The determination shall be  
5            verified or supported by affidavit signed by the chief administrative  
6            officer, the chief administrative officer's designee, clerk, or other  
7            official designated by the local government to make the determination  
8            and, if the local government states that the sanitary landfill as it would  
9            be operated under the new, renewed, or substantially amended permit  
10           is inconsistent with a franchise, zoning, subdivision, or land-use  
11           planning ordinance, shall include a copy of the ordinance and the  
12           specific reasons for the determination of inconsistency. A copy of the  
13           determination shall be provided to the applicant when the  
14           determination is submitted to the Department. The Department shall  
15           not act upon an application for a permit under this section until it has  
16           received a determination from each local government requested to  
17           make a determination by the applicant; provided that if a local  
18           government fails to submit a determination to the Department as  
19           provided by this subsection within 15 days after receipt of the request,  
20           the Department shall proceed to consider the permit application  
21           without regard to a franchise, local zoning, subdivision, and land-use  
22           planning ordinances. Unless the local government makes a subsequent  
23           determination of consistency with all ordinances cited in the  
24           determination or the sanitary landfill as it would be operated under the  
25           new, renewed, or substantially amended permit is determined by a  
26           court of competent jurisdiction to be consistent with the cited  
27           ordinances, the Department shall attach as a condition of the permit a  
28           requirement that the applicant, prior to construction or operation of the  
29           sanitary landfill under the permit, comply with all lawfully adopted  
30           local ordinances cited in the determination that apply to the sanitary  
31           landfill. This subsection shall not be construed to affect the validity of  
32           any lawfully adopted franchise, local zoning, subdivision, or land-use  
33           planning ordinance or to affect the responsibility of any person to  
34           comply with any lawfully adopted franchise, local zoning, subdivision,  
35           or land-use planning ordinance. This subsection shall not be construed  
36           to limit any opportunity a local government may have to comment on a  
37           permit application under any other law or rule. This subsection shall  
38           not apply to any facility with respect to which local ordinances are  
39           subject to review under either G.S. 104E-6.2 or G.S. 130A-293."

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