

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 722
HOUSE BILL 1973

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 provided in subdivisions (3) and (4) of subsection (b1) of this section.~~ No permit shall be granted for a solid waste management facility having discharges which are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S.

130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required for the applicant to obtain a permit.

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

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

- "(b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a 'substantial amendment' means either:
 - a. An increase of ten percent (10%) or more in:
 - 1. The population of the geographic area to be served by the sanitary landfill;
 - 2. The quantity of solid waste to be disposed of in the sanitary landfill; or
 - 3. The geographic area to be served by the sanitary landfill.
 - b. A change in the categories of solid waste to be disposed of in the sanitary landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.
- (2) Within 10 days after receiving an application for a permit, for the renewal of a permit, or for a substantial amendment to a permit for a sanitary landfill, the Department shall notify the clerk of the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located and, if the sanitary landfill is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed and shall file a copy of the application with the clerk. Prior to the issuance of a permit, the renewal of a permit, or a substantial amendment to a permit, the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public hearing when sufficient public interest exists. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located

or is located in a city, the governing board of the city shall provide adequate notice to the public of the public hearing and shall specify the procedure to be followed at the public hearing.

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

- a. A statement of the population to be served, including a description of the geographic area.
- b. A description of the volume and characteristics of the waste stream.
- c. A projection on the useful life of the landfill.

(4) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall request each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the renewed or substantially amended permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit

is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293."

Sec. 3. This act is effective upon ratification and applies to applications submitted on or after the effective date.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives