

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1973*
Committee Substitute Favorable 6/15/93

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
provided in subdivision (3) of subsection (b1) of this section. ~~No~~
permit shall be granted for a solid waste management facility having

1 discharges which are point sources until the Department has referred
2 the complete plans and specifications to the Environmental
3 Management Commission and has received advice in writing that the
4 plans and specifications are approved in accordance with the
5 provisions of G.S. 143-215.1. If the applicant is a unit of local
6 government, and has not submitted a solid waste management plan that
7 has been approved by the Department pursuant to G.S. 130A-
8 309.09A(b), the Department may deny a permit for a sanitary landfill
9 or a facility that disposes of solid waste by incineration, unless the
10 Commission has not adopted rules pursuant to G.S. 130A-309.29 for
11 local solid waste management plans. In any case where the
12 Department denies a permit for a solid waste management facility, it
13 shall state in writing the reason for denial and shall also state its
14 estimate of the changes in the applicant's proposed activities or plans
15 which will be required for the applicant to obtain a permit.

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

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

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

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

30 1. The population of the geographic area to be served by
31 the sanitary landfill;

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

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

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

39 (2) Within 10 days after receiving an application for a permit, for the
40 renewal of a permit, or for a substantial amendment to a permit for a
41 sanitary landfill, the Department shall notify the clerk of the board of
42 commissioners of the county or counties in which the sanitary landfill
43 is proposed to be located or is located and, if the sanitary landfill is
44 proposed to be located or is located within a city, the clerk of the

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

14 (3) An applicant for a new permit, the renewal of a permit, or a substantial
15 amendment to a permit for a sanitary landfill shall request each local
16 government having jurisdiction over any part of the land on which the
17 sanitary landfill and its appurtenances are located or to be located to
18 issue a determination as to whether the local government has in effect
19 a zoning or subdivision ordinance applicable to the sanitary landfill
20 and whether the proposed sanitary landfill, or the existing sanitary
21 landfill as it would be operated under the renewed or substantially
22 amended permit, would be consistent with the ordinance. In order to
23 serve as a basis for the denial of the application for the new permit, the
24 application for renewal of the permit, or application to substantially
25 amend the permit for a sanitary landfill, any ordinance or zoning
26 classification affecting the real property designated in the permit
27 application shall have been in effect not less than 90 days prior to the
28 date of the application. The request to the local government shall be
29 accompanied by a copy of the permit application and shall be delivered
30 to the clerk of the local government personally or by certified mail.
31 The determination shall be verified or supported by affidavit signed by
32 the chief administrative officer, the chief administrative officer's
33 designee, clerk, or other official designated by the local government to
34 make the determination and, if the local government states that the
35 sanitary landfill as it would be operated under the new, renewed, or
36 substantially amended permit is inconsistent with a zoning or
37 subdivision ordinance, shall include a copy of the ordinance and the
38 specific reasons for the determination of inconsistency. A copy of any
39 such determination shall be provided to the applicant when it is
40 submitted to the Department. The Department shall not act upon an
41 application for a permit under this section until it has received a
42 determination from each local government requested to make a
43 determination by the applicant. Unless the local government makes a
44 subsequent determination of consistency with all ordinances cited in

1 the determination or the sanitary landfill as it would be operated under
2 the new, renewed, or substantially amended permit is determined by a
3 court of competent jurisdiction to be consistent with the cited
4 ordinances, the Department shall attach as a condition of the permit a
5 requirement that the applicant, prior to construction or operation of the
6 sanitary landfill under the permit, comply with all lawfully adopted
7 local ordinances, including those cited in the determination, that apply
8 to the sanitary landfill at the time of construction or operation of the
9 sanitary landfill. If a local government fails to submit a determination
10 to the Department as provided by this subsection within 15 days after
11 receipt of the request, the Department shall proceed to consider the
12 permit application without regard to local zoning and subdivision
13 ordinances. This subsection shall not be construed to limit any
14 opportunity a local government may have to comment on a permit
15 application under any other law or rule. This subsection shall not
16 apply to any facility with respect to which local ordinances are subject
17 to review under either G.S. 104E-6.2 or G.S. 130A-293."

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