GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

CHAPTER 944
HOUSE BILL 1545

AN ACT TO CONSOLIDATE THE REGULATION OF WASTEWATER COLLECTION, TREATMENT, AND DISPOSAL SYSTEMS DESIGNED TO DISCHARGE BELOW THE GROUND SURFACE.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 11 of Chapter 130A of the General Statutes reads as rewritten:

"ARTICLE 11.

~~Sanitary Sewage Systems.~~
Wastewater Systems."

Sec. 2. G.S. 130A-333 reads as rewritten:

"**§ 130A-333. Purpose.**

The General Assembly finds and declares that continued installation, at a rapidly and constantly accelerating rate, of septic tank systems and other types of ~~sanitary sewage~~ wastewater systems in a faulty or improper manner and in areas where unsuitable soil and population density adversely affect the efficiency and functioning of these systems, has a detrimental effect on the public health and environment through contamination of land, groundwater and surface waters. Recognizing, however, that ~~sewage~~ wastewater can be rendered ecologically safe and the public health protected if methods of ~~sewage~~ wastewater collection, treatment and disposal are properly regulated and recognizing that ~~sanitary sewage~~ wastewater collection, treatment and disposal will continue to be necessary to meet the needs of an expanding population, the General Assembly intends to ensure the regulation of ~~sewage~~ wastewater collection, treatment and disposal systems so that these systems may continue to be used, where appropriate, without jeopardizing the public health."

Sec. 3. G.S. 130A-334 reads as rewritten:

"**§ 130A-334. Definitions.**

The following definitions shall apply throughout this Article:

(1) 'Construction' means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.

(2) Repealed by Session Laws 1985, c. 462, s. 18.

(2a) 'Industrial process wastewater' means any water-carried waste resulting from any process of industry, manufacture, trade, or business.

(3) 'Location' means the initial placement for occupancy of a residence, place of business or place of public assembly.

(3a) 'Maintenance' means normal or routine maintenance including replacement of broken pipes, cleaning, or adjustment to an existing ~~sanitary sewage~~ wastewater system.

(4),(5) Repealed by Session Laws 1985, c. 462, s. 18.

(6) 'Place of business' means a store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building or any other place where people work.

(7) 'Place of public assembly' means a fairground, auditorium, stadium, church, campground, theater or any other place where people assemble.

(8) 'Public or community ~~sewage~~ wastewater system' means a single system of ~~sewage~~ wastewater collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility.

(9) 'Relocation' means the displacement of a residence or place of business from one site to another.

(9a) 'Repair' means the extension, alteration, replacement, or relocation of existing components of a ~~sanitary sewage~~ wastewater system.

(10) 'Residence' means a private home, dwelling unit in a multiple family structure, hotel, motel, summer camp, labor work camp, manufactured home, institution or any other place where people reside.

(11) ~~'Sanitary sewage system' means a complete system of sewage collection, treatment and disposal including approved privies, septic tank systems, connection to public or community sewage systems, sewage reuse or recycle systems, mechanical or biological treatment systems, or other such systems.~~

~~Properly managed chemical toilets used only for human waste at mass gatherings, construction sites and labor work camps are considered sanitary sewage systems.~~

(12) 'Septic tank system' means a subsurface ~~sanitary sewage~~ wastewater system consisting of a settling tank and a subsurface disposal field.

(13) 'Sewage' means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.

(14) 'Wastewater' means any sewage or industrial process wastewater discharged, transmitted, or collected from a residence, place of business, place of public assembly, or other places into a wastewater system.

(15) 'Wastewater system' means a system of wastewater collection, treatment, and disposal including approved privies, septic tank

systems, connection to public or community wastewater systems, wastewater reuse or recycle systems, mechanical or biological treatment systems, other such systems, or chemical toilets used only for human waste."

Sec. 4. G.S. 130A-335 reads as rewritten:

"**§ 130A-335. ~~Sanitary sewage~~ Wastewater collection, treatment and disposal; rules.**

(a) A person owning or controlling a residence, place of business or a place of public assembly shall provide a ~~sanitary sewage~~ wastewater system. A ~~sanitary sewage~~ wastewater system may include components for collection, treatment and disposal of ~~sewage~~wastewater.

(b) ~~Any public or community sanitary sewage system and any sanitary sewage system which is designed to discharge effluent to the land surface or surface waters shall be approved by the Department under rules adopted by the Environmental Management Commission. All other sanitary sewage~~ wastewater systems shall be ~~approved~~ regulated by the Department under rules adopted by the Commission ~~for Health Services.~~ except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

(1) Wastewater systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(c) A ~~sanitary sewage~~ wastewater system subject to approval under rules of the Commission shall be reviewed and approved under rules of a local board of health in the following circumstances:

(1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning ~~sanitary sewage~~ wastewater systems; and

(2) The local board of health has adopted by reference the ~~sanitary sewage~~ wastewater system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public health; and

(3) The Department has found that the rules of the local board of health concerning ~~sanitary sewage~~ wastewater collection, treatment and disposal systems are at least as stringent as ~~the Commission's rules,~~ rules adopted by the Commission and are sufficient and necessary to safeguard the public health.

(d) The Department may, upon its own motion, upon the request of a local board of health or upon the request of a citizen of an affected county, review its findings under subsection (c) of this section.

The Department shall review its findings under subsection (c) of this section upon modification by the Commission of the ~~Commission's sanitary sewage system rules.~~

rules applicable to wastewater systems. The Department may deny, suspend, or revoke the approval of local board of health ~~sanitary sewage~~ wastewater system rules upon a finding that the local ~~sewage~~ wastewater rules are not as stringent as ~~the Commission's rules,~~ rules adopted by the Commission, are not sufficient and necessary to safeguard the public health, or are not being enforced. Suspension and revocation of approval shall be in accordance with G.S. 130A-23.

(e) The rules of the Commission and the rules of the local board of health shall address at least the following: ~~Sewage~~ Wastewater characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation, operation, maintenance and performance of ~~sanitary sewage~~ wastewater collection, treatment and disposal systems; Soil morphology and drainage; Topography and landscape position; Depth to seasonally high water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject to frequent flooding, streams, lakes, swamps and other bodies of surface or groundwaters; Density of ~~sanitary sewage~~ wastewater collection, treatment and disposal systems in a geographical area; Requirements for issuance, suspension and revocation of permits; and Other factors which affect the effective operation and performance of ~~sanitary sewage~~ wastewater collection, treatment and disposal systems. The rules regarding required design capacity and required design volume for ~~sanitary sewage~~ wastewater systems shall provide that exceptions may be granted upon a showing that a system is adequate to meet actual daily water consumption.

(f) The rules of the Commission and the rules of the local board of health shall classify ~~sanitary~~ systems of ~~sewage~~ wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, standards for operation and ownership requirements for each classification of ~~sanitary~~ systems of ~~sewage~~ wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules or this Article. The permits shall be valid for a period prescribed by the rules, except that improvement permits shall be valid for a period of five years, and may be renewed upon a showing satisfactory to the Department or the local health department that the system is in compliance with the current rules and this Article. The period of time for which the permit is valid and a statement that the permit is subject to revocation if site plans or the intended use change shall be displayed prominently on both the application form for the permit and the permit.

(g) Prior to denial of an improvement permit, the local health department shall advise the applicant of possible site modifications or alternative systems, and shall provide a brief description of those systems. When an improvement permit is denied, the local health department shall issue the site evaluation in writing stating the reasons for the unsuitable classification. The evaluation shall also inform the applicant of the right to an informal review by the Department, the right to appeal under G.S. 130A-24,

and to have the appeal held in the county in which the site for which the improvement permit was requested is located.

(h) It shall be unlawful to discharge sewage or other waste from chemical or portable toilets used for human waste ~~at places of public assembly, construction sites, or labor camps~~ except into a ~~sanitary sewage~~ wastewater system which has been approved by the Department."

Sec. 5. G.S. 130A-336 reads as rewritten:

"**§ 130A-336. Improvement permit required.**

(a) No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved ~~sanitary sewage~~ wastewater system unless an improvement permit is obtained from the local health department. This requirement shall not apply to a residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

(b) The local health department shall issue an improvement permit authorizing work to proceed and the installation or repair of a ~~sanitary sewage~~ wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with this Article and rules adopted pursuant to this Article. No person shall commence or assist in the installation, construction, or repair of a ~~sanitary sewage system, other than a connection to an approved public or community sewage system or maintenance of a sanitary sewage system,~~ wastewater system unless an improvement permit has been obtained from the Department or the local health department. No improvement permit shall be required for maintenance of a wastewater system. The Department and the local health department may impose conditions on the issuance of an improvement permit.

(c) Unless the Commission otherwise provides by rule, plans, and specifications for all wastewater systems designed for the collection, treatment, and disposal of industrial process wastewater shall be reviewed and approved by the Department prior to the issuance of an improvement permit by the local health department."

Sec. 6. G.S. 130A-337 reads as rewritten:

"**§ 130A-337. Inspection; operation permit or certificate of completion required.**

(a) No ~~sanitary~~ system of ~~sewage~~ wastewater collection, treatment and disposal shall be covered or placed into use by any person until an inspection by the local health department has determined that the system has been installed or repaired in accordance with any conditions of the improvement permit, the rules and this Article.

(b) Upon determining that the system is properly installed or repaired and that the system is capable of being operated in accordance with the conditions of the improvement permit, the rules, this Article and any conditions to be imposed in the operation permit, the local health department shall issue an operation permit authorizing the residence, place of business or place of public assembly to be occupied and for the system to be placed into use. However, if the system is limited to a single septic tank system without a pump or other appurtenances serving a single one-family dwelling, then a certificate of completion shall be issued instead of an operation permit; also, if the system is limited to a single septic tank system without a pump or other

appurtenances serving a single residence other than a one-family dwelling, or serving a place of business or a place of public assembly and having a design daily flow of not more than 480 gallons, then a certificate of completion shall be issued instead of an operation permit. A certificate of completion shall be issued when the septic tank system is properly installed or repaired and is capable of being operated in accordance with the conditions of the improvement permit, the rules and this Article.

(c) Upon determination that an existing ~~sanitary sewage~~ wastewater system has a valid operation permit or a valid certificate of completion and is operating properly in a manufactured home park, the local health department shall issue authorization in writing for a manufactured home to be connected to the existing system and to be occupied. Notwithstanding G.S. 130A-336, an improvement permit is not required for the connection of a manufactured home to an existing system with a valid operation permit or a valid certificate of completion in a manufactured home park.

(d) No person shall occupy a residence, place of business or place of public assembly, or place a ~~sanitary sewage~~ wastewater system into use or reuse for a residence, place of business or place of public assembly until an operation permit or a certificate of completion has been issued or authorization has been obtained pursuant to G.S. 130A-337(c)."

Sec. 7. G.S. 130A-341 reads as rewritten:

"**§ 130A-341. Consideration of a site with existing fill.**

Upon application to the local health department, a site that has existing fill, including one on which fill material was placed prior to July 1, 1977, and that has sand or loamy sand for a depth of at least 36 inches below the existing ground surface, shall be evaluated for an on-site ~~sewage~~ wastewater system. The Commission ~~for Health Services~~ shall adopt rules to implement this section."

Sec. 8. G.S. 130A-342 reads as rewritten:

"**§ 130A-342. Aerobic systems.**

(a) Individual aerobic sewage treatment plants that are approved and listed in accordance with the standards adopted by the ~~the~~ National Sanitation Foundation, Inc. for Class I sewage treatment plants as set out in Standard 40, as amended, shall be permitted under rules promulgated by the ~~Commission for Health Services.~~ Commission. The Commission ~~for Health Services~~ may establish standards in addition to those set by the National Sanitation Foundation, Inc.

(b) A permitted plant shall be operated and maintained by a certified wastewater treatment facility operator employed by or under contract to the county in which the plant is located.

(c) The performance of individual aerobic treatment plants is to be documented by the counties and sent to the Department of Environment, Health, and Natural Resources."

Sec. 9. G.S. 130A-343 reads as rewritten:

"**§ 130A-343. Experimental and innovative systems permitted.**

(a) The Commission ~~for Health Services~~ shall adopt rules for the approval and permitting of experimental and innovative ~~sanitary sewage~~ wastewater systems. The rules shall address the criteria to be considered prior to issuing a permit for such a

system, requirements for preliminary design plans and specifications that must be submitted, methodology to be used, standards for monitoring and evaluating the system, research evaluation of the system, the plan of work for monitoring system performance and maintenance, and any additional matters the Commission ~~for Health Services~~ deems appropriate.

(b) The Commission ~~for Health Services~~ shall adopt rules governing the operation and maintenance of experimental and innovative ~~sanitary sewage~~ wastewater systems approved and permitted under subsection (a) of this section."

Sec. 10. G.S. 130A-39 reads as rewritten:

"**§ 130A-39. Powers and duties of a local board of health.**

(a) A local board of health shall have the responsibility to protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.

(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Health Services or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Health Services or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading and permitting of food and lodging facilities as listed in Part 6 of Article 8 of this Chapter and a local board of health may adopt rules concerning ~~sanitary sewage~~ wastewater collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters ~~and which are not public or community systems~~ only in accordance with G.S. 130A-335(c).

(c) The rules of a local board of health shall apply to all municipalities within the local board's jurisdiction.

(d) Not less than 10 days before the adoption, amendment or repeal of any local board of health rule, the proposed rule shall be made available at the office of each county clerk within the board's jurisdiction, and a notice shall be published in a newspaper having general circulation within the area of the board's jurisdiction. The notice shall contain a statement of the substance of the proposed rule or a description of the subjects and issues involved, the proposed effective date of the rule and a statement that copies of the proposed rule are available at the local health department. A local board of health rule shall become effective upon adoption unless a later effective date is specified in the rule.

(e) Copies of all rules shall be filed with the secretary of the local board of health.

(f) A local board of health may, in its rules, adopt by reference any code, standard, rule or regulation which has been adopted by any agency of this State, another state, any agency of the United States or by a generally recognized association. Copies of any material adopted by reference shall be filed with the rules.

(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent

of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, ~~'Sanitary Sewage Systems,'~~ 'Wastewater Systems,' and services performed pursuant to Part 10, Article 8 of this Chapter, 'Public Swimming Pools.' Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

Sec. 11. G.S. 130A-22 reads as rewritten:

"**§ 130A-22. Administrative penalties.**

(a) The Secretary may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars ($5,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day in case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(b) The Secretary may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars ($25,000) for each day the violation continues.

(c) The Secretary may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a ~~sewage~~ wastewater collection, treatment and disposal system with a design daily flow of

no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a ~~sewage~~ wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(c1) The Secretary may impose a monetary penalty on a vendor who violates rules adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary determines that disqualification would result in hardship to participants in the Women, Infants, and Children (WIC) program. The penalty shall be calculated using the following formula: multiply five percent (5%) times the average dollar amount of the vendor's monthly redemptions of WIC food instruments for the 12-month period immediately preceding disqualification, then multiply that product by the number of months of the disqualification period determined by the Secretary.

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary shall consider the degree and extent of the harm caused by the violation and the cost of rectifying the damage.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties under this section.

(g) The Secretary may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of the administrative penalty whenever a person:

(1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.

(h) A local health director may impose an administrative penalty on any person who willfully violates the ~~sewage~~ wastewater collection, treatment, and disposal rules of the local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed upon a permit issued under the approved local rules. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. The local health director shall establish and recover the amount of the administrative penalty in accordance with subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a ~~sewage~~ wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a ~~sewage~~ wastewater

collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling. A person contesting a penalty imposed under this subsection shall be entitled to an administrative hearing and judicial review in accordance with G.S. 130A-24. A local board of health shall adopt rules concerning the imposition of administrative penalties under this subsection."

Sec. 12. G.S. 143-215.1 is amended by adding a new subsection to read:

"(a1) The Department shall regulate wastewater systems under rules adopted by the Commission for Health Services pursuant to Article 11 of Chapter 130A of the General Statutes except as otherwise provided in this subsection. No permit shall be required under this section for a wastewater system regulated under Article 11 of Chapter 130A of the General Statutes. The following wastewater systems shall be regulated by the Department under rules adopted by the Commission:

(1) Wastewater systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater."

Sec. 13. G.S. 153A-274 reads as rewritten:

"**§ 153A-274. Public enterprise defined.**

As used in this Article, 'public enterprise' includes:

(1) Water supply and distribution systems,

(2) ~~Sewage collection~~ Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems,

(3) Solid waste collection and disposal systems and facilities,

(4) Airports,

(5) Off-street parking facilities,

(6) Public transportation systems,

(7) Structural and natural stormwater and drainage systems of all types."

Sec. 14. G.S. 160A-311 reads as rewritten:

"**§ 160A-311. Public enterprise defined.**

As used in this Article, the term 'public enterprise' includes:

(1) Electric power generation, transmission, and distribution systems;

(2) Water supply and distribution systems;

(3) ~~Sewage collection~~ Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without;

(5) Public transportation systems;

(6) Solid waste collection and disposal systems and facilities;
(7) Cable television systems;
(8) Off-street parking facilities and systems;
(9) Airports;
(10) Structural and natural stormwater and drainage systems of all types."

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 1992.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives