

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH80636-LD-154A (03/24)

Short Title: Sanitary Landfill Permit Timetables.

(Public)

Sponsors: Representative Gibson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH TIMETABLES FOR THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACT ON AN APPLICATION FOR A NEW PERMIT, THE RENEWAL OF A PERMIT, OR A SUBSTANTIAL AMENDMENT TO A PERMIT FOR A SANITARY LANDFILL AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-295.2. Permit review and determination timetables for sanitary landfills.

(a) An application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall consist of three parts: a notice of intent to apply for a permit for a sanitary landfill; an administrative application; and a technical application. Nothing in this section shall prohibit an applicant from submitting more than one part at one time.

(b) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall submit to the Department a notice of intent to apply for a permit for a sanitary landfill. The notice of intent shall contain information specified by the Department. The Department shall within 30 working days of receipt notify the applicant by certified mail, return receipt requested, of the approval or disapproval of the applicant's notice of intent. If the notice of intent is not complete, the Department shall state in writing the information necessary to complete the notice of intent, and the 30-day time period shall be tolled until such time as the applicant responds. The Department shall notify the applicant of the approval or disapproval of the applicant's notice of intent by certified mail, return receipt requested. If the Department disapproves a notice of intent to apply for a solid waste permit, it shall state in writing its reasons for the disapproval.

1 (c) The applicant for a new permit, the renewal of a permit, or a substantial
2 amendment to a permit for a sanitary landfill shall submit an administrative application
3 for a sanitary landfill consistent with the notice of intent to apply for a permit for a
4 sanitary landfill. The administrative application shall contain information specified by
5 the Department. The Department shall within 60 working days of receipt notify the
6 applicant by certified mail, return receipt requested, of the approval or disapproval of
7 the applicant's administrative application. If the administrative application is not
8 complete, the Department shall state in writing the information necessary to complete
9 the administrative application, and the 60-day time period shall be tolled until such time
10 as the applicant responds. The Department shall notify the applicant of the approval or
11 disapproval of the applicant's administrative application by certified mail, return receipt
12 requested. If the Department disapproves an administrative application for a sanitary
13 landfill, it shall state in writing its reasons for the disapproval.

14 (d) The applicant for a new permit, the renewal of a permit, or a substantial
15 amendment to a permit for a sanitary landfill shall submit a technical application for a
16 sanitary landfill consistent with the administrative application. The technical application
17 shall contain information specified by the Department. The Department shall within 90
18 working days of receipt notify the applicant by certified mail, return receipt requested,
19 of the approval or disapproval of the applicant's technical application. If the technical
20 application is not complete, the Department shall state in writing the information
21 necessary to complete the technical application, and the 90-day time period shall be
22 tolled until such time as the applicant responds. The Department shall notify the
23 applicant of the approval or disapproval of the applicant's technical application by
24 certified mail, return receipt requested. If the Department disapproves a technical
25 application for a sanitary landfill, it shall state in writing its reasons for the disapproval.

26 (e) The permit review process for a new permit, the renewal of a permit, or a
27 substantial amendment to a permit for a sanitary landfill, from the date of receipt of the
28 notice of intent to the date the Department issues a draft permit to construct a sanitary
29 landfill, or denies the application, shall not exceed 210 calendar days, unless the
30 Department and applicant agree otherwise.

31 (f) If the Department does not request additional information or notify the
32 applicant of the disapproval of the notice of intent or administrative application for a
33 sanitary landfill within the time periods specified in this section, that portion of the
34 application under review shall be deemed complete and approved, unless the
35 Department and applicant agree otherwise.

36 (g) During construction of a liner system in a sanitary landfill, the Department
37 shall periodically conduct inspections to verify that construction is being made in
38 accordance with rules adopted by the Department and conditions contained in the
39 permit. Except as otherwise provided in this section, the permittee shall not commence
40 installation of any synthetic liner prior to a final inspection of any soil liner. The
41 Department shall respond to any request for an inspection within two working days of
42 the request. If the Department fails to inspect within two working days, the permittee
43 may proceed to the next phase of construction, including installation of a synthetic liner,
44 after submitting certification from a professional engineer licensed under Chapter 89C

1 of the General Statutes that construction has been completed in accordance with
2 applicable regulations and permit conditions. All inspections conducted for the
3 Department shall be performed by a professional engineer licensed under Chapter 89C
4 of the General Statutes.

5 (h) An applicant who is issued a permit to construct or expand a sanitary landfill,
6 when the expansion results in substantial additional capacity, shall be issued a permit to
7 operate in the areas included under the construction permit without further action when:

8 (1) The applicant submits a certification by a professional engineer
9 licensed under Chapter 89C of the General Statutes that the liner
10 system and facilities are constructed in accordance with the approved
11 plans and specifications.

12 (2) A professional engineer for the Department inspects the facility and
13 verifies in writing within 10 days of the submission of the engineer
14 certification that the facility has been developed according to plans and
15 that necessary equipment is available to operate the facility.

16 (3) The required financial responsibility for closure has been established
17 in an amount determined under rules developed under
18 G.S. 130A-294(b).

19 (i) The official date of receipt for documents associated with an application for a
20 new permit, the renewal of a permit, or a substantial amendment to a permit for a
21 sanitary landfill shall be the date the document is stamped received by the Division of
22 Waste Management. The applicant shall have the burden of establishing that the
23 application is in compliance with this section and rules adopted pursuant to this section.

24 (j) The time periods under this section shall not run starting from the date the
25 Department mails or hand delivers a notice of deficiency until the date the Division of
26 Waste Management stamps as received a complete response to the deficiencies. If a
27 notice of deficiency is sent to an applicant, the applicant shall have 180 calendar days to
28 respond to the notice of deficiency. Failure to respond to a notice of deficiency within
29 180 calendar days shall be grounds for denial of the permit.

30 (k) The Department shall waive the permit fee for a new permit, the renewal of a
31 permit, or a substantial amendment to a permit for a sanitary landfill for any permit not
32 acted upon, either favorably or unfavorably, in accordance with the timetables
33 established under this section. The approach of an impending deadline for action on a
34 permit pursuant to these timetables shall not be a reason for denial of the permit;
35 however, nothing in this section requires the Department to issue a permit that would
36 violate this Part or the rules adopted pursuant to this Part.

37 (l) The Department may adopt rules to implement this section."

38 **SECTION 2.** G.S. 130A-294(a)(4) reads as rewritten:

39 "(4) a. Develop a permit system governing the establishment and
40 operation of solid waste management facilities. A landfill with a
41 disposal area of 1/2 acre or less for the on-site disposal of land
42 clearing and inert debris is exempt from the permit requirement
43 of this section and shall be governed by G.S. 130A-301.1. The
44 Department shall not approve an application for a new permit,

1 the renewal of a permit, or a substantial amendment to a permit
2 for a sanitary landfill, excluding demolition landfills as defined
3 in the rules of the Commission, except as provided in
4 subdivisions (3) and (4) of subsection (b1) of this
5 ~~section~~ section and G.S. 130A-295.2. No permit shall be
6 granted for a solid waste management facility having discharges
7 that are point sources until the Department has referred the
8 complete plans and specifications to the Environmental
9 Management Commission and has received advice in writing
10 that the plans and specifications are approved in accordance
11 with the provisions of G.S. 143-215.1. If the applicant is a unit
12 of local government, and has not submitted a solid waste
13 management plan that has been approved by the Department
14 pursuant to G.S. 130A-309.09A(b), the Department may deny a
15 permit for a sanitary landfill or a facility that disposes of solid
16 waste by incineration, unless the Commission has not adopted
17 rules pursuant to G.S. 130A-309.29 for local solid waste
18 management plans. In any case where the Department denies a
19 permit for a solid waste management facility, it shall state in
20 writing the reason for denial and shall also state its estimate of
21 the changes in the applicant's proposed activities or plans that
22 will be required for the applicant to obtain a permit.

- 23 b. The issuance of permits for sanitary landfills operated by local
24 governments is exempt from the environmental impact
25 statements required by Article 1 of Chapter 113A of the
26 General Statutes, entitled the North Carolina Environmental
27 Policy Act of 1971. All sanitary landfill permits issued to local
28 governments prior to July 1, 1984, are hereby validated
29 notwithstanding any failure to provide environmental impact
30 statements pursuant to the North Carolina Environmental Policy
31 Act of ~~1974~~ 1971."

32 **SECTION 3.** G.S. 130A-294(b1) reads as rewritten:

- 33 "(b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of
34 this section, a "substantial amendment" means either:
35 a. An increase of ten percent (10%) or more in:
36 1. The population of the geographic area to be served by
37 the sanitary landfill;
38 2. The quantity of solid waste to be disposed of in the
39 sanitary landfill; or
40 3. The geographic area to be served by the sanitary landfill.
41 b. A change in the categories of solid waste to be disposed of in
42 the sanitary landfill or any other change to the application for a
43 permit or to the permit for a sanitary landfill that the
44 Commission or the Department determines to be substantial.

- 1 (2) Within 10 days after receiving ~~an application for a permit~~ notice of
2 intent to apply for a new permit, for the renewal of a permit, or for a
3 substantial amendment to a permit for a sanitary landfill, the
4 Department shall notify the clerk of the board of commissioners of the
5 county or counties in which the sanitary landfill is proposed to be
6 located or is located and, if the sanitary landfill is proposed to be
7 located or is located within a city, the clerk of the governing board of
8 the city, that the application has been filed and shall file a copy of the
9 application with the clerk. Prior to the ~~issuance of a permit~~, Department
10 approving a notice of intent to apply for a new permit, the renewal of a
11 permit, or a substantial amendment to a ~~permit~~, permit for a sanitary
12 landfill, the board of commissioners of the county or counties in which
13 the sanitary landfill is proposed to be located or is located or, if the
14 sanitary landfill is proposed to be located or is located in a city, the
15 governing board of the city shall conduct a public hearing when
16 sufficient public interest exists. The board of commissioners of the
17 county or counties in which the sanitary landfill is proposed to be
18 located or is located or, if the sanitary landfill is proposed to be located
19 or is located in a city, the governing board of the city shall provide at
20 least 15 days before the hearing adequate notice to the public of the
21 public hearing and shall specify the procedure to be followed at the
22 public hearing.
- 23 (3) An applicant submitting a notice of intent to apply for a new permit,
24 the renewal of a permit, or a substantial amendment to a permit for a
25 sanitary landfill shall obtain, prior to ~~applying for a permit~~, submitting
26 the notice of intent to apply for a permit, a franchise for the operation
27 of the sanitary landfill from each local government having jurisdiction
28 over any part of the land on which the sanitary landfill and its
29 appurtenances are located or to be located. A local government shall
30 adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319
31 prior to the submittal by an applicant of ~~an application~~ notice of intent
32 to apply for a new permit, the renewal of a permit, or a substantial
33 amendment to a permit for a sanitary landfill. A franchise granted for a
34 sanitary landfill shall include:
35 a. A statement of the population to be served, including a
36 description of the geographic area.
37 b. A description of the volume and characteristics of the waste
38 stream.
39 c. A projection on the useful life of the landfill.
- 40 (4) An applicant for a new permit, the renewal of a permit, or a substantial
41 amendment to a permit for a sanitary landfill shall request each local
42 government having jurisdiction over any part of the land on which the
43 sanitary landfill and its appurtenances are located or to be located to
44 issue a determination as to whether the local government has in effect

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

1 planning ordinance or to affect the responsibility of any person to
2 comply with any lawfully adopted franchise, local zoning, subdivision,
3 or land-use planning ordinance. This subsection shall not be construed
4 to limit any opportunity a local government may have to comment on a
5 permit application under any other law or rule. This subsection shall
6 not apply to any facility with respect to which local ordinances are
7 subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

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

15 **SECTION 4.** There is appropriated from the General Fund to the
16 Department of Environment and Natural Resources the sum of fifty thousand dollars
17 (\$50,000) for the 2006-2007 fiscal year for the cost to the Department of implementing
18 this act.

19 **SECTION 5.** Section 4 of this act becomes effective July 1, 2006. The
20 remaining sections of this act become effective January 1, 2007, and apply to
21 applications for a new permit, the renewal of a permit, or a substantial amendment of a
22 permit for a sanitary landfill issued or denied on or after that date.