

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 2870

Short Title: Sanitary Landfill Permit Timetables.

(Public)

Sponsors: Representative Gibson.

Referred to: Rules, Calendar, and Operations of the House.

May 30, 2006

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH TIMETABLES FOR THE DEPARTMENT OF
2 ENVIRONMENT AND NATURAL RESOURCES TO ACT ON AN
3 APPLICATION FOR A NEW PERMIT, THE RENEWAL OF A PERMIT, OR A
4 SUBSTANTIAL AMENDMENT TO A PERMIT FOR A SANITARY LANDFILL
5 AND TO APPROPRIATE FUNDS.
6

7 The General Assembly of North Carolina enacts:

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

10 **"§ 130A-295.2. Permit review and determination timetables for sanitary landfills.**

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

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

28 (c) The applicant for a new permit, the renewal of a permit, or a substantial
29 amendment to a permit for a sanitary landfill shall submit an administrative application

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

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

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

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

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

1 Department shall be performed by a professional engineer licensed under Chapter 89C
2 of the General Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (3) An applicant submitting a notice of intent to apply for a new permit,
22 the renewal of a permit, or a substantial amendment to a permit for a
23 sanitary landfill shall obtain, prior to ~~applying for a permit,~~submitting
24 the notice of intent to apply for a permit, a franchise for the operation
25 of the sanitary landfill from each local government having jurisdiction
26 over any part of the land on which the sanitary landfill and its
27 appurtenances are located or to be located. A local government shall
28 adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319
29 prior to the submittal by an applicant of ~~an application~~a notice of intent
30 to apply for a new permit, the renewal of a permit, or a substantial
31 amendment to a permit for a sanitary landfill. A franchise granted for a
32 sanitary landfill shall include:

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

38 (4) An applicant for a new permit, the renewal of a permit, or a substantial
39 amendment to a permit for a sanitary landfill shall request each local
40 government having jurisdiction over any part of the land on which the
41 sanitary landfill and its appurtenances are located or to be located to
42 issue a determination as to whether the local government has in effect
43 a franchise, zoning, subdivision, or land-use planning ordinance
44 applicable to the sanitary landfill and whether the proposed sanitary

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

1 or land-use planning ordinance. This subsection shall not be construed
2 to limit any opportunity a local government may have to comment on a
3 permit application under any other law or rule. This subsection shall
4 not apply to any facility with respect to which local ordinances are
5 subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

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

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

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