



ADOPTED

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 119

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

Page 1 of 3

H119-ARI-45 [v.4]

Comm. Sub. [YES]
Amends Title [YES]
H119-PCS90127-SB-45

Date June 16, 2011

Senator Vaughan

1 moves to amend the bill on page 2, lines 11 through 12,
2 by rewriting those lines to read:

3
4 "PROGRAMS; (22) CONFORM THE STATUTORY DEFINITION OF "SOLID WASTE"
5 TO FEDERAL LAW; AND (23) TO AMEND CERTAIN FINANCIAL ASSURANCE
6 REQUIREMENTS APPLICABLE TO HAZARDOUS WASTE FACILITIES.";

7
8 and on page 20, line 41,
9 by rewriting that line to read:

10
11 "SECTION 23.(a) G.S. 130A-295.04 reads as rewritten:
12 "§ 130A-295.04. Financial responsibility requirements for applicants for a permit and
13 permit holders for hazardous waste facilities.

14 (a) In addition to any other financial responsibility requirements for solid waste
15 management facilities under this Part, the applicant for a permit or a permit holder for a
16 hazardous waste facility shall establish financial assurance that will ensure that sufficient funds
17 are available for facility closure, post-closure maintenance and monitoring, any corrective
18 action that the Department may require, and to satisfy any potential liability for sudden and
19 nonsudden accidental occurrences, and subsequent costs incurred by the Department in
20 response to an incident at a facility, even if the applicant or permit holder becomes insolvent or
21 ceases to reside, be incorporated, do business, or maintain assets in the State.

22 (b) To establish sufficient availability of funds under this section, the applicant for a
23 permit or a permit holder for a hazardous waste facility may use insurance, financial tests,
24 third-party guarantees by persons who can pass the financial test, guarantees by corporate
25 parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any
26 other financial device, or any combination of the foregoing, shown to provide protection
27 equivalent to the financial protection that would be provided by insurance if insurance were the
28 only mechanism used.

29 (c) The applicant for a permit or a permit holder for a hazardous waste facility, and any
30 parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any
31 joint venturer with a direct or indirect interest in the applicant, permit holder, or parent, shall be
32 a guarantor of payment for closure, post-closure maintenance and monitoring, any corrective



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H119-ARI-45 [v.4]

Page 2 of 3

1 action that the Department may require, and to satisfy any potential liability for sudden and
2 nonsudden accidental occurrences arising from the operation of the hazardous waste facility.

3 ~~(d) In addition to any other financial assurance requirements for hazardous waste
4 management facilities under this section, an applicant for a permit or a permit holder for a
5 commercial hazardous waste facility shall establish financial assurance that will ensure that
6 sufficient funds are available for corrective action and for off site screening for potential
7 migration of contaminants in the event of a release of hazardous waste or hazardous waste
8 constituents into the environment in an amount approved by the Department. The applicant for
9 a permit or a permit holder may not use a financial test or captive insurance to establish
10 financial assurance under this subsection.~~

11 ~~(e) The Department may require an applicant for a permit for a hazardous waste facility
12 to provide cost estimates for facility closure, post-closure maintenance and monitoring, and any
13 corrective action that the Department may require to the Department. The Department may
14 require an applicant for a permit for a commercial hazardous waste facility to provide cost
15 estimates for off-site screening for potential migration of contaminants in the event of a release
16 of hazardous waste or hazardous waste constituents into the environment.~~

17 (f) Assets used to meet the financial assurance requirements of this section shall be in a
18 form that will allow the Department to readily access funds for the purposes set out in this
19 section. Assets used to meet financial assurance requirements of this section shall not be
20 accessible to the permit holder except as approved by the Department. Compliance with the
21 financial assurance requirements set forth in Subpart H of Part 264 of 40 Code of Federal
22 Regulations (July 1, 2010 edition) shall be sufficient to meet the requirements of this
23 subsection.

24 (g) The Department may provide a copy of any filing that an applicant for a permit or a
25 permit holder for a hazardous waste facility submits to the Department to meet the financial
26 responsibility requirements under this section to the State Treasurer. The State Treasurer shall
27 review the filing and provide the Department with a written opinion as to the adequacy of the
28 filing to meet the purposes of this section, including any recommended changes.

29 (h) In order to continue to hold a permit for a hazardous waste facility, a permit holder
30 must maintain financial responsibility as required by this Part and must provide any
31 information requested by the Department to establish that the permit holder continues to
32 maintain financial responsibility.

33 (i) An applicant for a permit or a permit holder for a hazardous waste facility shall
34 satisfy the Department that the applicant or permit holder has met the financial responsibility
35 requirements of this Part before the Department is required to otherwise review the application.

36 ~~(j) The Commission may adopt rules regarding financial responsibility in order to
37 implement this section."~~

38 **SECTION 23.(b)** The Commission shall adopt rules regarding financial
39 responsibility in order to implement Section 23.(a) of this act. Such rules, however, shall not
40 exceed or be more stringent than requirements for financial responsibility for applicants for a
41 permit and permit holders for hazardous waste facilities provided by federal regulation or law.

42 **SECTION 24.** Except as otherwise provided, this act is effective when it
43 becomes".

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Page 3 of 3

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SIGNED *Don Vayten*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 50-0 FAILED _____ TABLED _____
Sarah Clapp
6.16.11

ADOPTED