

A BILL TO BE ENTITLED  
THE SOLID WASTE MANAGEMENT ACT OF 2007

Whereas, it is the declared public policy of the state to protect and enhance the water quality of the State's rivers and coastal estuaries; and

Whereas, it is the policy of the State to ensure the continued public enjoyment of the natural attractions of the State; and

Whereas, the ownership of solid waste facilities has taken new form in recent years; and

Whereas, the potential exists for the state of North Carolina and local government to incur costs from an environmental release from a landfill; and

Whereas, there have been substantial and beneficial changes in technology, materials, processes, and engineering practices in the field of solid waste management; and

Whereas, North Carolina should set a high standard in solid waste management practices and there is a desire to immediately improve solid waste management in North Carolina by implementing changes that account for the substantial and beneficial changes in technology, materials, processes and engineering practices in the field of solid waste management.

Now therefore the General Assembly of North Carolina enacts:

**SECTION 1.(a). Financial qualifications for solid waste facility owners.**

G.S. 130A-290 is amended by adding a new definition:

“(1aa) ”Business entity” has the same meaning as in G.S. 55-1-40 (2a).”

**SECTION 1.(b).**

G.S. 130A-294(b2) is amended as follows:

“(b2) The Department may require an applicant for a permit under this Article to satisfy the Department that the applicant, and any parent, subsidiary, or other affiliate of the applicant or parent, and including any joint venturer with a direct or indirect financial or equity interest in the applicant:

(1) Is financially qualified to carry out the activity for which the permit is required.

The applicant shall demonstrate financial qualifications adequate to ensure proper design, construction, operation, maintenance, and closure of the facility. The applicant shall also demonstrate financial qualifications sufficient to obtain the financial assurance required under subpart (b) of this section. The initial demonstration of financial qualification for the design, construction, and closure of the facility may be limited to the first five-year phase of construction for which a permit to construct is sought. The applicant may be required to demonstrate financial qualification for each successive five-year phase of design, construction and operation of the facility when applying for a permit to construct each successive phase of the facility. The applicant shall provide cost estimates for site investigation; land acquisition, including financing terms and land ownership; design of the facility; construction of the first five-year phase of the facility, operation of the facility; closure of the facility; and the cost of providing financial assurance required under subpart (b) of this section. The applicant shall provide an audited, certified, financial statement and a combination of cash deposits, insurance policies, and binding letters of loan commitments from a triple A or higher rated financial institution licensed to do business in North Carolina sufficient to cover the anticipated costs. Where assets of a parent, subsidiary or other affiliate of the applicant or a joint venturer with a

Feb. 16, 2007

RWS

direct or indirect financial or equity interest in the applicant is proposed to be used to determine the financial qualifications of the applicant, then that party must be listed on the permit of the facility. The applicant must show the ability to obtain financial assurance required under this Chapter and rules adopted by the Commission. A letter of intent to provide financial assurance provided by a North Carolina registered provider of at least triple A credit rating shall suffice for adequate demonstration

## **SECTION 2. Financial assurance for assessment and corrective actions.**

G.S. 130A-294(b) is amended as follows:

“ (b) The Commission shall adopt and the Department shall enforce rules to implement a comprehensive statewide solid waste management program. The rules shall be consistent with applicable State and federal law; and shall be designed to protect the public health, safety, and welfare; preserve the environment; and provide for the greatest possible conservation of cultural and natural resources. Rules for the establishment, location, operation, maintenance, use, discontinuance, recordation, post-closure care of solid waste management facilities also shall be based upon recognized public health practices and procedures, including applicable epidemiological research and studies; hydrogeological research and studies; sanitary engineering research and studies; and current technological development in equipment and methods. The rules shall not apply to the management of solid waste that is generated by an individual or individual family or household unit on the individual's property and is disposed of on the individual's property.

The Commission shall adopt rules for financial responsibility to ensure the availability of sufficient funds for closure and post-closure maintenance and monitoring at solid waste management facilities and for any corrective action the Department may require during the active life of a facility or during the closure and post-closure periods. To meet the financial responsibility requirements of this section for potential assessment and corrective action, the owner or operator of a sanitary landfill shall provide financial assurance sufficient to cover a minimum of \$3,000,000.00 in costs. The Department may require financial assurance in a higher amount and may adjust the amount of financial assurance required upward after initial permit issuance, based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill, the location of the landfill, potential receptors of releases from the landfill, and inflationary factors. This amount is in addition to any financial assurance required for closure of the facility and for routine post-closure care. The rules may permit demonstration of financial responsibility through the use of a letter of credit, insurance, surety, trust agreement, financial test, or guarantee by corporate parents or third parties who can pass the financial test. The rules shall require that an owner or operator of a privately owned solid waste management facility demonstrate financial responsibility by a method or combinations of methods that will ensure that sufficient funds for closure, post-closure maintenance and monitoring, and any corrective action that the Department may require will be available during the active life of the facility, at closure, and for a period of not less than 30 years after closure even if the owner or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State. The financial assurance shall be in a form that allows the Department to access the financial assurance for the purposes enumerated in this section and may not be accessed by the permit holder except as approved by the Department. Financial assurance for potential releases of contaminants shall be demonstrated prior to issuance of new permits and within six months of the effective date of this section for existing permits.

## **SECTION 3 HISTORY OF ENVIRONMENTAL COMPLIANCE**

### **SECTION 3a.**

G.S. 130A-309.06(b) is amended as follows:

Feb. 16, 2007

RWS

“ (b) The Department may refuse to issue a permit to an applicant who by past conduct ~~in this State has repeatedly violated related~~ statutes, rules, orders, or permit terms or conditions relating to ~~any solid waste management facility~~ environmental protection and who is deemed by the Department to be responsible for the violations. For the purpose of this subdivision, an applicant includes the owner or operator of the facility, or, if the owner or operator is a business entity, the parent, subsidiary or other affiliate of the applicant, the parent of the subsidiary corporation, a partner, a corporate officer, or director, or a stockholder holding more than fifty percent (50%) of the stock of the corporation, member, manager, and any person with a direct or indirect financial or equity interest in the applicant, other than a minority shareholder of a publicly traded corporation who has no involvement in management or control of the corporation or any of its subsidiaries or affiliates.

### **SECTION 3b.**

G.S. 130A-294(b2)(2) is amended as follows:

(2) Has substantially complied with the requirements applicable to any ~~solid waste~~ activity in which the ~~applicant~~ applicant, or a parent, subsidiary or other affiliate of the applicant or parent, or a joint venturer with a direct or indirect financial or equity interest in the applicant, has previously engaged and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment. In determining whether the applicant and its affiliates have substantially complied with environmental laws in previous activities, the Department may consider the environmental compliance history of:

- a. Officers, directors, managers, members, and partners in the applicant business entity;
- b. All persons with a direct or indirect financial or equity interest in the applicant;
- c. Officers, directors, managers, members, and partners in any business entity which has a direct or indirect financial or equity interest in the applicant;
- d. Officers, directors, managers, members and partners in any business entity which is a parent, subsidiary or other affiliate of the applicant.

The applicant shall provide environmental compliance history information for each facility, business, business entity, joint venture or other undertaking in which any of the persons listed above is or has been an owner, operator, officer, director, manager, member, or partner, or in which any of the persons listed above has had a direct or indirect financial or equity interest, as requested by the Department.”

### **SECTION 4. Sanitary landfill owner defined.**

G.S. 130A-309.27(a)(1) is amended as follows:

“(1) "Owner or operator" means, in addition to the usual meanings of the term, any owner of record of any interest in land on which a landfill is or has been sited, and any person or ~~corporation~~ business entity which owns, directly or indirectly, a ~~majority~~ financial or equity interest in any other ~~corporation~~ business entity which is the owner or operator of a landfill, except that a minority shareholder of a publicly traded corporation who has no involvement in management or control of the corporation or any of its subsidiaries or affiliates shall not be considered an owner or operator solely on the basis of his stock holdings.”

### **SECTION 5. Violation of permits**

G.S. 130A-18 (a) is amended as follows:

Feb. 16, 2007

RWS

“(a) If a person shall violate any provision of this Chapter; ~~or the rules adopted by the Commission~~ or rules adopted by a local board of health; or a condition or term of a permit or order issued under this Chapter, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter. (1983, c. 891, s. 2; 1997-443, s. 11A.61; 2001-474, s. 20; 2006-255, s. 13.4.)

G.S. 130A-22(a) is amended as follows:

“(a) The Secretary of Environment and Natural Resources 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 term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ten thousand dollars (\$10,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day in the 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. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). 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 of Environment and Natural Resources 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.

G.S. 130A-22 is amended by the addition of a new paragraph (j) which reads as follows:

“(j) The Secretary of Environment and Natural Resources may also assess a person who is assessed a civil penalty under this section the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty.”

## **SECTION 6. Notice of change of ownership.**

G.S. 130A-294 is amended by adding a new subsection to read:

“( ) Solid waste management permits are not transferable. The person holding a permit for a solid waste management facility shall notify the Department of any significant change in the structure of the business entity that owns or operates the facility; the identity of any person or business entity previously identified as an owner or operator of the facility pursuant to G.S. 130A-309.27(a)(1); or in the financial assets identified in the financial qualification of the owner or operator. Notice to the Department shall be provided within 30 days. A change shall be considered significant if it has the potential to effect the financial qualifications of the permit holder or if it would result in a change in the identity of the owners or operators for purposes of either financial qualification or environmental compliance review. The Department may require new

Feb. 16, 2007

RWS

financial qualification and environmental compliance reviews based those changes and may modify, revoke or require issuance of a new permit based on the outcome of the reviews.”

## **SECTION 7. Transportation of nonhazardous solid waste.**

G.S. 130a-294(a) is amended by adding a new subdivision to read:

“( ) Waste containers used for transport of solid waste by railway or barge, including the barge or railcar if the waste is not containerized, shall:

- (1) be designed, constructed, loaded, operated, secured and maintained so as to prevent the escape of wastes, liquids, and odors and to prevent the loss or spillage of wastes in the event of an accident.
- (2) be stacked safely and be secured to prevent accidents during transportation, loading and unloading.
- (3) be completely enclosed or covered.
- (4) be certified as having passed the following test to show that it is watertight, when it is placed in service and at least once every six months thereafter while it remains in service:
  - (i) have a minimum internal head of 24 inches of water applied to the container in an upright position for at least 15 minutes during which the container shall remain free from the escape of water.
  - (ii) be visually inspected for damage on all sides, plus the top and bottom and must have no visible holes, gaps or structural damage affecting its integrity or performance.

Owners of all containers shall keep a record of testing of each container for three years and provide copies of those records to persons who lease or handle the container. Such records shall be available to the Department for inspection at any receiving facility permitted by the Department.

The entry of liquids into a container; escape, loss or spillage of wastes or liquids from a container; or escape of odors from a container during transportation, holding and storage operations or in the event of an accident, shall be a violation of this subsection.”

## **SECTION 8. Traffic study required.**

G.S. 130A-294(a) is amended by adding a new subsection to read:

“( ) No application for a permit for a new solid waste management facility that is proposed to accept greater than 100,000 tons of waste per year shall be considered until a traffic study is completed. The study shall at a minimum include the following:

- a. Identification of routes from the nearest limited access highway used to access the proposed facility and daily and hourly traffic volumes that will result along each approach route;
- b. A map identifying land uses located along the identified approach routes, including but not limited to residential, commercial, and industrial development; agricultural operations; and identification of residences, schools, hospitals, nursing homes and other significant buildings fronting the roadways. Describe potential adverse impacts of increased facility traffic volumes and describe mitigation measures.
- c. Identification of locations on approach routes where road conditions are inadequate to handle the increased traffic associated with the proposed facility. Describe potential mitigation measures.

The Department shall condition any permit issued for a solid waste management facility to provide mitigation of adverse impacts identified from the traffic study. The Commission may adopt rules to implement this section.”

## **SECTION 9. Local government landfill liaison**

G.S. 153A/160A (for counties/municipalities) is amended by adding a new subsection to read:

“( ) A local government that has planning jurisdiction over the site of a solid waste management facility with a service area greater than or equal to a 100 mile radius may employ a local government landfill liaison. The landfill liaison shall be a certified landfill manager in accordance with G.S. 130A-309.06. The landfill liaison may enter the landfill facility at reasonable times and inspect the landfill operation for purposes of :

- a. ensuring that the facility meets all local requirements
- b. identifying and notifying the Department of potential violations of landfill requirements; and
- c. identifying and notifying the Department of potentially hazardous conditions.

The landfill liaison may not direct the operation of the facility.”

## **SECTION 10. Independent engineer perform construction quality assurance**

G.S. 130A-294 is amended by adding a new subsection as follows:

“( ) The owner of a sanitary landfill shall employ a project engineer to inspect the construction of sanitary landfill units, landfill leachate handling facilities and landfill appurtenances. The project engineer shall be licensed to practice engineering in the State of North Carolina and must be independent of both the landfill owner and any person engaged in the design or construction of the landfill. The project engineer is responsible for observing, documenting and certifying that construction of the solid waste management facility units, leachate handling facilities and landfill appurtenances conforms to the plan approved by the Department, the permit to construct, and the rules adopted by the Commission. The project engineer or the engineer’s representative shall be at the site at all times during the initial construction phase of the containment and leachate collection systems, shall observe and perform all required systems audits of the quality control inspections and shall ensure proper implementation of the design and permit requirements. All certifications must bear the seal and signature of the professional engineer and the date of certification.”

## **SECTION 11(a) Minimum standards for new landfills and for landfill expansions onto previously unpermitted property .**

G.S. 130A-294 is amended by adding a new subsection as follows:

“( ) The following standards shall apply to landfill facilities permitted after the effective date of this section and lateral expansions of landfill facilities onto property that was not included in a landfill permit issued prior to the effective date of this section:

(1) Municipal Solid Waste landfill units shall be constructed with double liners and must include a leak detection system between the liners and a low permeability layer under the secondary liner.

(2) Construction and Demolition landfill units shall be constructed with a composite liner system consisting of two components. The upper component shall consist of a flexible membrane liner and the lower component shall consist of a minimum of two feet of compacted soil with a maximum permeability of  $1 \times 10^{-7}$  centimeters per second. The liner shall be a minimum of 30 mil in thickness, except that a liner composed of high density polyethylene shall be a minimum of 60 mil in thickness. The liner shall be installed in direct and uniform contact with the compacted soil layer. The Department may approve an alternate liner system if the Department finds, based on modeling, that the alternate liner system will provide equivalent or greater impermeability.

Feb. 16, 2007

RWS

(3) Sanitary landfill units shall be constructed so that the post-settlement bottom elevation of the liner system, or the post-settlement bottom elevation of the waste if no liner system is required, is a minimum of five feet above the seasonal high groundwater table and the bedrock datum plane contours established during the hydrogeologic investigation phase of the permit process.

(4) Sanitary landfill units and lateral expansions of existing units shall establish a minimum buffer distance between the waste boundary and streams or wetlands of 200 feet. The Department may approve a buffer that is less than 200 feet, but in no case less than 100 feet, upon finding that both of the following apply:

- a. The proposed landfill or landfill expansion will serve a critical need in the community.
- b. No feasible location exists that would allow for siting or expansion of the landfill in compliance with the requirement for 200 foot buffers.

(5) Sanitary landfill units shall not be placed in the 100-year flood plain or in lands reclaimed from previously designated 100-year flood plains.

[We need to harmonize (5) with the floodplain statutes – G.S. 143-215.54 and 143-215.54A. G.S. 143-215.54(c) prohibits solid waste disposal facilities, hazardous waste management facilities, salvage yards and chemical storage facilities in the 100-year floodplain, but 143-215.54A(b) allows the local government to issue a variance from that prohibition. We have not yet decided whether to keep the variance option and if so whether it should be at the state or local level.]

**Section 11(b) Standards for landfill units that received a permit to construct after effective date**

G.S. 130A-294 is amended by adding a new subsection to read:

“( ) The following criteria shall apply to all lined sanitary landfill units permitted on or after the effective date of this section.

- (1) Any required leachate collection system shall be designed to return the head on the liner to one foot (30 cm) or less, within 72 hours, from a design storm of 25 year-24 hour falling on an empty cell. The leachate collection system shall maintain a head of less than one foot (30 cm) at all times during leachate recirculation. The operator may be required to monitor head on the liner to demonstrate that the head is being maintained in accordance with the rules and this section.
- (2) All geomembrane base liner systems used in sanitary landfill units shall be tested for leaks and damage, by methods approved by the Department, to ensure that the liner is 100% evaluated.
- (3) All leachate collection lines shall be designed and constructed to permanently allow remote camera inspection and cleaning. All leachate lines shall be cleaned and shall be remotely inspected by camera on an annual basis. The documentation of the camera inspection and the annual cleaning shall be placed in the facility operating record and provided to the Department upon request.
- (4) All pipes used to transmit leachate shall provide dual containment outside of the lined disposal unit. New units and lateral expansions shall be constructed without pipe penetrations of the bottom liner, whether for leachate, stormwater or gas.

The Commission may adopt rules as needed to implement this section.”

**SECTION 11(c) Improve landfill standards.**

Feb. 16, 2007

RWS

The Commission shall review rules relating to the siting, construction and design of solid waste facilities to determine whether changes are required to protect the public health and environment; to improve the performance of solid waste management facilities; to take advantage of technological advances in landfill construction, maintenance and design; and to provide additional protection to environmentally sensitive areas of the state. The Commission shall enact rules necessary to minimize impacts to the environment and protect public health. These rules shall:

- (1) Establish standards for the collection, control and utilization or destruction of landfill gasses at municipal solid waste landfills;
- (2) Establish standards for the construction, operation, and maintenance of bioreactor landfills;
- (3) Establish criteria for development of bird and wildlife management plans; and
- (4) Incorporate measures necessary to minimize impacts to natural, historic and cultural resources, including but not limited to wetlands, critical fisheries habitat, parks, recreation areas, cultural and historic sites, and potential water supplies.

#### **SECTION 11(d) Waste screening.**

G.S. 130A-294 is amended by adding a new subsection to read:

“( ) Solid waste management facilities [permitted after the effective date of this section] shall have a waste screening plan approved by the Department. The plan shall identify measures adequate to ensure compliance with state laws, rules and applicable local ordinances that ban specific types of waste from disposal in solid waste landfills. The plan shall address all sources of waste generation.”

#### **SECTION 12a.**

G.S. 130A-294 (4)(b) is amended as follows:

“The issuance of permits for sanitary landfills operated by local governments is exempt from the environmental impact statements required by Article 1 of Chapter 113A of the General Statutes, entitled the North Carolina Environmental Policy Act of 1971 unless the sanitary landfill will exceed any of the following thresholds:

1. The landfill will receive more than 300,000 tons of solid waste per year.
2. The landfill will have the capacity to dispose of more than 15,000,000 cubic yards of solid waste.
3. The landfill has a proposed service area equal to or greater than a 100 mile radius.

All sanitary landfill permits issued to local governments prior to July 1, 1984, are hereby validated notwithstanding any failure to provide environmental impact statements pursuant to the North Carolina Environmental Policy Act of 1971;”

#### **Section 12b Note: should apply to pending applications.**

G.S. 130A-294 is amended by adding a new subsection to read:

“( ) An applicant for a permit to construct a sanitary landfill shall conduct a study of environmental impacts if the landfill will exceed any of the following thresholds:

1. The landfill will receive more than 300,000 tons of solid waste per year.
2. The landfill will have the capacity to dispose of more than 15,000,000 cubic yards of solid waste.
3. The landfill will have a proposed service area equal to or greater than a 100 mile radius.

The study of environmental impacts shall meet all of the requirements for an environmental impact statement under G.S. 113A-4 and rules adopted by the Department of Administration to implement the statute. In addition to information required for an adequate environmental impact statement under G.S. 113A-4, the study shall address: the need for additional waste disposal capacity; consistency with North Carolina’s solid waste management plan; the applicant’s ability to ensure compliance with state law affecting



Feb. 16, 2007

RWS

solid waste disposal (including bans on disposal of certain types of waste in landfills); and an alternative sites analysis. The Department shall publish notice of the draft environmental impact statement and shall hold a public hearing in the county where the landfill will be located no sooner than 30 days following the public notice. The Department shall consider the study of environmental impacts and mitigation measures proposed by the applicant in making the decision to issue or deny a permit.”

### **SECTION 13. Amendments to Franchise Authority**

**Hold for language**

### **SECTION 14 Denial of Permits for Solid Waste Facilities**

G.S. 130A-294 is amended by addition of a new subsection to read:

“( ) The Department shall deny an application for a permit for a solid waste facility upon finding:

- (1) That construction or operation of the facility will violate water quality standards for groundwater or surface waters, including wetlands, adopted by the Environmental Management Commission.
- (2) That construction or operation of the facility will result in loss or significant reduction of continued long-range productivity that would jeopardize a renewable resource of more than local concern, including but not limited to watersheds or aquifers that are sources of public water supply.
- (3) That construction or operation of the facility will result in significant damage to fragile or historic areas and other areas containing environmental or natural resources of more than local significance. These areas include, but are not limited to national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges, preserves and management areas; areas that provide habitat for threatened or endangered species; primary nursery areas and critical fisheries habitat designated by the Marine Fisheries Commission; and Outstanding Resource Waters designated by the Environmental Management Commission.
- (4) That construction or operation of the facility will jeopardize public rights to access or use public trust waters.
- (5) That the facility will be located in a natural hazard area, such as a floodplain or an area subject to excessive seismic activity, such that the facility will present a risk to public health or safety.
- (6) In any case, that the proposed facility is inconsistent with rules adopted by the Commission for Health Services.
- (7) In any case, that the proposed facility is inconsistent with ordinances adopted by the local government that has planning jurisdiction over the site of the proposed facility.
- (8) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on public resources.
- (9) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through (5) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.”

### **SECTION 15 Permit fees.**

Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

#### **“§ 130A-293.1. Fees applicable to permits for solid waste management facilities.**

- (a) It is the intent of the General Assembly that the fees collected pursuant to this section shall be used to support the Department’s solid waste management program.

Feb. 16, 2007

RWS

(b) The Solid Waste Management Account is established as a non-reverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used for personnel and other resources necessary to do any one or more of the following:

- (1) Provide a high level of professional review of permit applications for solid waste landfills and other solid waste management facilities;
- (2) Provide timely review of permit applications;
- (3) Improve monitoring of solid waste management facilities;
- (4) Increase compliance activities related to solid waste management facilities; and
- (5) Review and update rules governing the construction and operation of solid waste landfills to recognizing advances in technology and research to better protect public health and the environment.

(c) Applicants for permits shall pay an application fee according to the following schedule:

- (1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste- New Permit-\$25,000
- (2) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste- Amendment -\$15,000
- (3) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste – Modification - \$1,500
- (4) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste - New Permit - \$50,000
- (5) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste – Amendment - \$30,000
- (6) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste – Modification - \$3,000
- (7) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste-New Permit-\$15,000
- (8) CONSTRUCTION AND DEMOLITION Landfill accepting less than 100,000 tons/year of solid waste-Amendment -\$9,000
- (9) CONSTRUCTION AND DEMOLITION Landfill accepting less than 100,000 tons/year of solid waste – Modification - \$1,500
- (10) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste - New Permit - \$30,000
- (11) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste – Amendment - \$18,500
- (12) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste – Modification - \$2,500
- (13) Industrial Landfill accepting less than 100,000 tons/year of solid waste-New Permit-\$15,000
- (14) Industrial Landfill accepting less than 100,000 tons/year of solid waste-Amendment - \$9,000
- (15) Industrial Landfill accepting less than 100,000 tons/year of solid waste Modification - \$1,500
- (16) Industrial Landfill accepting 100,000 tons/year or more of solid waste New Permit - \$30,000
- (17) Industrial Landfill accepting 100,000 tons/year or more of solid waste Amendment - \$18,500

Feb. 16, 2007

RWS

(18) Industrial Landfill accepting 100,000 tons/year or more of solid waste Modification - \$2,500

(19) Tire Monofill New Permit - \$1,750

(20) Tire Monofill Amendment - \$1,250

(21) Tire Monofill Modification - \$500

(22) Treatment and Processing New Permit - \$1,750

(23) Treatment and Processing Amendment \$1,250

(24) Treatment and Processing Modification \$500

(25) Transfer Stations New Permit - \$5,000

(26) Transfer Stations Amendment - \$3,000

(27) Transfer Station Modification - \$500

(28) Incinerator New Permit - \$1,750

(29) Incinerator Amendment - \$1,250

(30) Incinerator Modification - \$500

(31) Large Compost Facility New Permit - \$1,750

(32) Large Compost Facility Amendment - \$1,250

(33) Large Compost Facility Modification - \$500

(34) Land Clearing and Inert New Permit - \$1,000

(35) Land Clearing and Inert Amendment - \$500

(36) Land Clearing and Inert Modification -\$250

(d) The application permit fee under this section shall be paid upon submission of the permit application.

(e) A permitted solid waste management facility shall pay an annual permit fee on or before August 1 of each year according to the following schedule:

1. Municipal Solid Waste Landfill \$3,500

2. Post Closure Municipal Solid Waste Landfill \$1,000

3. Construction and Demolition Landfill \$2,750

4. Post Closure Construction and Demolition Landfill \$500

5. Industrial Landfill \$2750

6.. Post Closure Industrial Landfill \$500

7. Transfer Station \$750

8. Treatment and Processing Facility \$500

9. Tire Monofill \$500

10. Incinerators \$500

11. Large Compost Facility \$500

12. Land Clearing and Inert Debris Landfill \$500

(f) As used in this section, the following definitions apply:

(1) 'New permit' means all of the following:

- a. An application for a new solid waste management facility not previously permitted by the Department. It includes one site suitability review, the initial permit to construct and one permit to operate the constructed portion of a phase included in the permit to construct.
- b. An application that proposes to expand the boundary of a permitted waste management facility for the purpose of expanding the permitted activity.
- c. Any application that includes a proposed expansion to the boundary of a waste disposal unit within an existing permitted solid waste management facility.

- d. An application for a substantial amendment to a solid waste permit, as defined in G.S. 130A 294(b1).
- (2) 'Permit amendment' means all of the following:
  - a. An application for a permit to construct and one permit to operate for the second and subsequent phases of landfill development depicted in the approved facility plan for an existing solid waste management permit.
  - b. An application for a renewal or a permit review every five years after issuance of the existing solid waste management facility permit, as required by rule.
  - c. Any application that proposes a change in ownership or corporate structure of a permitted solid waste management facility
- (3) 'Permit modification' means all of the following:
  - a. an application for any change to the plans approved in the existing permit for a solid waste management facility that does not constitute a 'permit amendment' or a 'new permit'.
  - b. a second or subsequent permit to operate for a constructed portion of a phase included in the permit to construct.

#### **SECTION 16. Waste disposal surcharge.**

[Note: DWM proposed to recodify an existing definition of “parent” and then insert the new definition of “orphan landfill” where the definition of “parent” now appears to keep the terms being defined in alphabetical order. I don’t know whether that works or not as a matter of legislative drafting.]

G.S. 130A-290(a)(21a) is recodified as G.S. 130A-290(a)(21b).

#### **SECTION 17.**

G.S. 130A-290(a)(21a) is amended to read:

"(21a) Orphan landfill' means any area, whether publicly or privately owned, that was operated as a landfill for the disposal of municipal solid waste generated by the local citizenry and general public, that ceased to receive any waste after December 31, 1982, and for which assessment and remediation is needed in order to protect public health and the environment, but does not include any landfill used primarily for waste disposal from industrial sources."

#### **SECTION 18.**

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

"§ 130A-309.08A. Solid waste disposal fee; use of proceeds.

(a) Fee Imposed. – A fee of two dollars (\$2.00) per ton of waste is imposed on the disposal of municipal solid waste or construction or demolition debris in any landfill permitted pursuant to this Part. A fee of two dollars (\$2.00) per ton of waste is imposed on the transfer of solid waste to a transfer station permitted pursuant to this Part for disposal outside the State.

(b) Determination and Payment of Fee. – The owner or operator of each landfill and transfer station permitted pursuant to this Part shall maintain scales, designed to determine waste tonnage, that are approved by the Department of Agriculture and Consumer Services. Each owner or operator shall record waste tonnage at the time the waste is received and calculate and record the fees due under this section for each

Feb. 16, 2007

RWS

quarter of the calendar year on forms approved by the Department. Each owner or operator shall provide the completed forms, report the total number of tons of waste received and pay the fees due for each quarter of the calendar year to the Department no later than the 15th day of the following calendar month. The Department shall credit all fees received pursuant to this section to the Inactive Hazardous Sites Cleanup Fund established by G.S. 130A-310.11.

(c) Use of Proceeds. – The Department shall use the proceeds of the fees imposed by this section for the following purposes:

- (1) Assessment and remediation of orphan landfills.
- (2) Assessment and remediation of inactive hazardous substance or waste disposal sites for which a private party is or may be responsible if the private party cannot be identified or located or if the private party is unable or refuses to assume responsibility for the assessment or remediation.
- (3) Up to fifteen percent (15%) of the proceeds may be used to fund staff to administer contracts for the assessment and remediation of orphan landfills and of inactive hazardous substance or waste disposal sites pursuant to subdivisions (1) and (2) of this subsection.
- (4) Up to ten percent (10%) of the proceeds may be used for grants to units of local government to support redevelopment of brownfields.
- (5) Up to ten percent (10%) of the proceeds may be used by the Department to provide the State's share of the cost of assessment and remediation of sites in the State that are listed on the federal National Priorities List sites."

#### **SECTION 19.**

G.S. 130A-310.6 is amended by adding a new subsection to read:

"(c) The Secretary is authorized to develop and implement a remedial action plan for orphan landfills. Environmental and human health risks posed by an orphan landfill may be mitigated using a risk-based approach for assessment and remediation. The Secretary shall not seek cost recovery for work performed under this subsection at orphan landfills from any otherwise potentially responsible party provided that that party cooperates with assessment of the site and implementation of control and mitigation measures at the site, including but not limited to granting access to the site, allowing installation of monitoring wells, allowing installation and maintenance of improvements to the landfill cap, allowing installation of security measures, agreeing to record and implement land use restrictions, and providing access to any records regarding the orphan landfill."

#### **SECTION 20**

G.S. 130A-310.11 reads as rewritten:

"§ 130A-310.11. Inactive Hazardous Sites Cleanup Fund created.

(a) There is established under the control and direction of the Department the Inactive Hazardous Sites Cleanup Fund. This fund shall be a revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, taxes, fees and other monies paid to it or recovered by or on behalf of the Department. The Inactive Hazardous Sites Cleanup Fund shall be treated as a nonreverting special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(b) Funds credited to the Inactive Hazardous Sites Cleanup Fund pursuant to G.S. 130A-309.8A shall be used only as provided in G.S. 130A-309.08A(c)."

**SECTION 21.** The Health Services Commission may adopt rules to implement this act.

DRAFT: NOT FOR DISTRIBUTION

Feb. 16, 2007

RWS

**SECTION 22.** Section X of this act becomes effective TO BE DETERMINED