

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-550
SENATE BILL 1492**

AN ACT TO: (1) CLARIFY THE CIRCUMSTANCES UNDER WHICH AN APPLICATION FOR A SOLID WASTE MANAGEMENT PERMIT MAY BE DENIED; (2) PROVIDE THAT SOLID WASTE MANAGEMENT PERMITS ARE NOT TRANSFERABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; (3) INCREASE THE PENALTIES THAT MAY BE IMPOSED FOR SOLID WASTE VIOLATIONS; (4) REQUIRE THAT AN APPLICANT FOR A PERMIT AND A PERMIT HOLDER ESTABLISH FINANCIAL RESPONSIBILITY TO ENSURE THE AVAILABILITY OF SUFFICIENT FUNDS FOR PROPER DESIGN, CONSTRUCTION, OPERATION, MAINTENANCE, CLOSURE, AND POST-CLOSURE MONITORING AND MAINTENANCE OF A SOLID WASTE MANAGEMENT FACILITY; (5) REQUIRE THAT AN OWNER OR OPERATOR OF A SANITARY LANDFILL ESTABLISH FINANCIAL ASSURANCE SUFFICIENT TO COVER A MINIMUM OF THREE MILLION DOLLARS IN COSTS FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT THE FACILITY, IN ADDITION TO OTHER FINANCIAL RESPONSIBILITY REQUIREMENTS; (6) CLARIFY AND EXPAND THE SCOPE OF ENVIRONMENTAL COMPLIANCE REVIEW REQUIREMENTS; (7) CLARIFY THAT A PARENT, SUBSIDIARY, OR OTHER AFFILIATE OF THE APPLICANT OR PARENT, INCLUDING ANY BUSINESS ENTITY OR JOINT VENTURER WITH A DIRECT OR INDIRECT INTEREST IN THE APPLICANT IS SUBJECT TO FINANCIAL RESPONSIBILITY AND ENVIRONMENTAL COMPLIANCE REVIEW; (8) PROVIDE FOR SITING OF COMBUSTION PRODUCTS LANDFILLS IN AREAS THAT HAVE BEEN FORMERLY USED FOR THE STORAGE OR DISPOSAL OF COMBUSTION PRODUCTS FROM COAL-FIRED GENERATING UNITS AT THE SAME FACILITY THAT GENERATED THE COMBUSTION PRODUCTS, AND TECHNICAL REQUIREMENTS FOR THESE LANDFILLS; (9) SPECIFY ADDITIONAL TECHNICAL REQUIREMENTS FOR SOLID WASTE MANAGEMENT FACILITIES; (10) REQUIRE THAT ALL APPLICANTS FOR PERMITS FOR SANITARY LANDFILLS CONDUCT AN ENVIRONMENTAL IMPACT STUDY; (11) REQUIRE THAT CERTAIN APPLICANTS FOR SOLID WASTE MANAGEMENT FACILITY PERMITS CONDUCT A TRAFFIC STUDY; (12) CLARIFY THE CIRCUMSTANCES UNDER WHICH A UNIT OF LOCAL GOVERNMENT MAY COLLECT A SOLID WASTE AVAILABILITY FEE; (13) AUTHORIZE UNITS OF LOCAL GOVERNMENT TO HIRE LANDFILL LIAISONS; (14) ESTABLISH FEES APPLICABLE TO PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES TO SUPPORT THE SOLID WASTE MANAGEMENT PROGRAM; (15) ESTABLISH A SOLID WASTE DISPOSAL TAX TO BE IMPOSED ON THE DISPOSAL OF MUNICIPAL SOLID WASTE IN LANDFILLS IN THE STATE AND ON THE TRANSFER OF MUNICIPAL SOLID WASTE FOR DISPOSAL OUTSIDE THE STATE IN ORDER TO PROVIDE FUNDS FOR THE ASSESSMENT AND REMEDIATION OF PRE-1983 LANDFILLS AND FOR OTHER PURPOSES; (16) ESTABLISH A COMPUTER EQUIPMENT MANAGEMENT PROGRAM; (17) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO

DEVELOP A PROPOSED RECYCLING PROGRAM FOR FLUORESCENT LAMPS; (18) DIRECT THE ENVIRONMENT REVIEW COMMISSION TO STUDY ISSUES RELATED TO THE FRANCHISE OF SOLID WASTE MANAGEMENT FACILITIES BY UNITS OF LOCAL GOVERNMENT AND THE TRANSPORTATION OF SOLID WASTE BY RAIL AND BARGE; AND (19) MAKE RELATED CLARIFYING, CONFORMING, AND TECHNICAL CHANGES.

Whereas, North Carolina has experienced severe problems from widespread flooding during the past five years; and

Whereas, large areas of the State have also experienced severe drought conditions during the past five years; and

Whereas, groundwater is the source of drinking water for approximately half the population of the State; and

Whereas, groundwater pollution is increasing due to contamination from a variety of sources; and

Whereas, depletion of certain large groundwater aquifers in the State has been documented in recent years; and

Whereas, protection and enhancement of water quality in the State's rivers and coastal estuaries is the declared public policy of the State; and

Whereas, North Carolina is home to many rare and endangered species of plants and animals; and

Whereas, the State has established many parks, natural areas, and wildlife refuges to protect habitats for migrating birds and other species; and

Whereas, many fragile ecosystems exist in the State which are in need of further study and protection; and

Whereas, the State recognizes that ecosystems transcend state borders, and that changes affecting the State's water, air, natural habitats, and scenic resources also have impacts outside the State; and

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

Whereas, improperly sited, designed, or operated landfills have the potential to cause serious environmental damage, including groundwater contamination; and

Whereas, it is essential that the State study the siting, design, and operational requirements for landfills for the disposal of solid waste in areas susceptible to flooding from natural disasters, areas with high water tables, and other environmentally sensitive areas in order to protect public health and the environment; and

Whereas, it is critical to the protection of public health and the environment to adequately staff the State solid waste program to review permit applications, ensure compliance with State solid waste management laws and rules, and provide technical assistance on solid waste management issues; and

Whereas, it is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills; and

Whereas, S.L. 2006-244 directed the Environmental Review Commission, with the assistance of the Division of Waste Management of the Department of Environment, to study issues related to solid waste; and

Whereas, the Environmental Review Commission met at least six times after the 2006 legislative session to discuss items related to solid waste; and

Whereas, bills have been introduced in the House of Representatives and the Senate during the 2007 Regular Session to address issues related to landfills and management of solid waste that have been the subject of intense discussion by members of the General Assembly and a stakeholder working group;

Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 130A-294, as amended by S.L. 2007-107, reads as rewritten:

"§ 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

- (1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;
- (2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;
- (3) Develop and adopt rules to establish standards for qualification as a "recycling, reduction or resource recovering facility" or as "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;
- (4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.
b. ~~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. 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;

c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:

1. Construction or operation of the proposed facility would be inconsistent with or violate rules adopted by the Commission.
2. Construction or operation of the proposed facility would result in a violation of water quality standards adopted by the Environmental Management Commission pursuant to G.S. 143-214.1 for waters, as defined in G.S. 143-213.
3. Construction or operation of the facility would result in significant damage to ecological systems, natural resources, cultural sites, recreation areas, or historic sites 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. Construction or operation of the proposed facility would substantially limit or threaten access to or use of public trust waters or public lands.
5. The proposed facility would be located in a natural hazard area, including a floodplain, a landslide hazard area, or an area subject to storm surge or excessive seismic activity, such that the facility will present a risk to public health or safety.
6. There is a practical alternative that would accomplish the purposes of the proposed facility with less adverse impact on public resources, considering engineering requirements and economic costs.
7. The cumulative impacts of the proposed facility and other facilities in the area of the proposed facility would violate the criteria set forth in sub-sub-subdivisions 2. through 5. of this sub-subdivision.
8. Construction or operation of the proposed facility would be inconsistent with the State solid waste management policy and goals as set out in G.S. 130A-309.04 and with the State solid waste management plan developed as provided in G.S. 130A-309.07.
9. The cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964.

(4a) ~~No permit shall be granted for any public or private sanitary landfill to receive solid non-radioactive waste generated outside the boundaries of North Carolina to be deposited, unless such waste has previously~~

~~been inspected by the solid waste regulatory agency of that nation, state or territory, characterized in detail as to its contents and certified by that agency to be non injurious to health and safety. The Commission shall adopt rules to implement this subsection.~~

(5) Repealed by Session Laws 1983, c. 795, s. 3.

(5a) Designate a geographic area within which the collection, transportation, storage and disposal of all solid waste generated within said area shall be accomplished in accordance with a solid waste management plan. Such designation may be made only after the Department has received a request from the unit or units of local government having jurisdiction within said geographic area that such designation be made and after receipt by the Department of a solid waste management plan which shall include:

- a. The existing and projected population for such area;
- b. The quantities of solid waste generated and estimated to be generated in such area;
- c. The availability of sanitary landfill sites and the environmental impact of continued landfill of solid waste on surface and subsurface waters;
- d. The method of solid waste disposal to be utilized and the energy or material which shall be recovered from the waste; and
- e. Such other data that the Department may reasonably require.

(5b) Authorize units of local government to require by ordinance, that all solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, or prohibit collectors of solid waste from recycling materials or limit access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

(5c) Except for the authority to designate a geographic area to be serviced by a solid waste management facility, delegate authority and responsibility to units of local government to perform all or a portion of a solid waste management program within the jurisdictional area of the unit of local government; provided that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.

(5d) Require that an annual report of the implementation of the solid waste management plan within the designated geographic area be filed with the Department.

(6) ~~The Department is authorized to charge~~ Charge and collect fees from operators of hazardous waste disposal facilities. The fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes, regulations or rules to remain responsible for post-closure monitoring and care. In

establishing the fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility.

- (7) Establish and collect annual fees from generators and transporters of hazardous waste, and from storage, treatment, and disposal facilities regulated under this Article as provided in G.S. 130A-294.1.

(a1) A permit for a solid waste management facility may be transferred only with the approval of the Department.

(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.

~~(b0) 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. 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.~~

(b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a "substantial amendment" means either:

- a. An increase of ten percent (10%) or more in:
 1. The population of the geographic area to be served by the sanitary landfill;
 2. The quantity of solid waste to be disposed of in the sanitary landfill; or
 3. The geographic area to be served by the sanitary landfill.
- b. A change in the categories of solid waste to be disposed of in the sanitary landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.

- (2) A person who intends to apply for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government may adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319. A

franchise granted for a sanitary landfill shall include all of the following:

- a. A statement of the population to be served, including a description of the geographic area.
 - b. A description of the volume and characteristics of the waste stream.
 - c. A projection of the useful life of the sanitary landfill.
 - d. An explanation of how the franchise will be consistent with the jurisdiction's solid waste management plan required under G.S. 130A-309.09A, including provisions for waste reduction, reuse, and recycling.
 - e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.
 - f. A facility plan for the sanitary landfill that shall include the ~~exact~~ boundaries of the proposed facility, proposed development of the facility site in five-year operational phases, the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the proposed location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility.
- (2a) A local government may elect to award a preliminary franchise. If a local government elects to award a preliminary franchise, the preliminary franchise shall contain, at a minimum, all of the information described in sub-subdivisions a. through e. of subdivision (2) of this subsection plus a general description of the proposed sanitary landfill, including the approximate number of acres required for the proposed sanitary landfill and its appurtenances and a description of any other solid waste management activities that are to be conducted at the site.
- (3) Prior to the award of a franchise for the construction or operation of a sanitary landfill, the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public hearing. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall provide at least 30 days' notice to the public of the public hearing. The notice shall include a summary of all the information required to be included in the franchise, and shall specify the procedure to be followed at the public hearing. The applicant for the franchise shall provide a copy of the application for the franchise that includes all of the information required to be included in the franchise, to the public library closest to the proposed sanitary landfill site to be made available for inspection and copying by the public.
- (4) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall request each local government having jurisdiction over any part of the land on which the

sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the renewed or substantially amended permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

- (5) As used in this subdivision, "coal-fired generating unit" and "investor-owned public utility" have the same meaning as in G.S. 143-215.107D(a). Notwithstanding subdivisions (a)(4), (b1)(3),

or (b1)(4) of this section, no franchise shall be required for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.

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

- (1) Is financially qualified to carry out the activity for which the permit is required. An applicant for a permit and permit holders for solid waste management facilities that are not hazardous waste facilities shall establish financial responsibility as required by ~~G.S. 130A-294(b0)~~ G.S. 130A-295.2. An applicant for a permit and permit holders for hazardous waste facilities shall establish financial responsibility as required by G.S. 130A-295.04.
- (2) Has substantially complied with the requirements applicable to any ~~solid waste management~~ activity in which the ~~applicant~~ applicant or permit holder, or a parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, or a joint venturer with a direct or indirect 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~~ environment as provided in G.S. 130A-295.3.

(b3) An applicant for a permit or a permit holder under this Article shall satisfy the Department that the applicant has met the requirements of subsection (b2) of this section before the Department is required to otherwise review the application. ~~In order to continue to hold a permit under this Article, a permittee must remain financially qualified and must provide any information requested by the Department to demonstrate that the permittee continues to be financially qualified.~~

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SECTION 1.(b) This section becomes effective 1 August 2007 and applies to any application for a permit for a solid waste management facility that is pending on that date.

SECTION 2.(a) G.S. 130A-18 reads as rewritten:

"§ 130A-18. Injunction.

(a) If a person shall violate any provision of this ~~Chapter or Chapter~~, 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."

SECTION 2.(b) This section becomes effective 1 August 2007 and applies to violations that occur on or after that date.

SECTION 3.(a) G.S. 130A-22(a) reads as rewritten:

"(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 ~~five thousand dollars (\$5,000)~~ fifteen thousand dollars (\$15,000) per day in the case of a violation involving nonhazardous waste. The

penalty shall not exceed ~~twenty five thousand dollars (\$25,000)~~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 ~~twenty five thousand dollars (\$25,000)~~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."

SECTION 3.(b) This section becomes effective 1 August 2007 and applies to violations that occur on or after that date.

SECTION 4.(a) G.S. 130A-22 is amended by adding a new subsection to read:

"(j) The Secretary of Environment and Natural Resources may also assess the reasonable costs of any investigation, inspection, or monitoring associated with the assessment of the civil penalty against any person who is assessed a civil penalty under this section."

SECTION 4.(b) This section becomes effective 1 August 2007 and applies to violations that occur on or after that date.

SECTION 5.(a) Part 2 of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-295.2. Financial responsibility requirements for applicants and permit holders for solid waste management facilities.

(a) As used in this section:

- (1) 'Financial assurance' refers to the ability of an applicant or permit holder to pay the costs of assessment and remediation in the event of a release of pollutants from a facility, closure of the facility in accordance with all applicable requirements, and post-closure monitoring and maintenance of the facility.
- (2) 'Financial qualification' refers to the ability of an applicant or permit holder to pay the costs of proper design, construction, operation, and maintenance of the facility.
- (3) 'Financial responsibility' encompasses both financial assurance and financial qualification.

(b) The Commission may adopt rules governing financial responsibility requirements for applicants for permits and for permit holders to ensure the availability of sufficient funds for the proper design, construction, operation, maintenance, closure, and post-closure monitoring and maintenance of 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.

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

(d) The Department may, in its sole discretion, require an applicant for a permit to construct a facility to demonstrate its financial qualification for the design, construction, operation, and maintenance of a facility. The Department may require an applicant for a permit for a solid waste management facility to provide cost estimates for site investigation; land acquisition, including financing terms and land ownership; design; construction of each five-year phase, if applicable; operation; maintenance; closure; and post-closure monitoring and maintenance of the facility to the Department. The Department may allow an applicant to demonstrate its financial qualifications for only the first five-year phase of the facility. If the Department allows an applicant for a permit to demonstrate its financial qualification for only the first five-year phase of the facility, the Department shall require the applicant or permit holder to demonstrate its financial qualification for each successive five-year phase of the facility when applying for a permit to construct each successive phase of the facility.

(e) If the Department requires an applicant for a permit or a permit holder for a solid waste management facility to demonstrate its financial qualification, the applicant or permit holder shall provide an audited, certified financial statement. An applicant who is required to demonstrate its financial qualification may do so through a combination of cash deposits, insurance, and binding loan commitments from a financial institution licensed to do business in the State and rated AAA by Standard & Poor's, Moody's Investor Service, or Fitch, Inc. If assets of a parent, subsidiary, or other affiliate of the applicant or a permit holder, or a joint venturer with a direct or indirect interest in the applicant or permit holder, are proposed to be used to demonstrate financial qualification, then the party whose assets are to be used must be designated as a joint permittee with the applicant on the permit for the facility.

(f) The applicant and permit holder for a solid waste management facility shall establish financial assurance by a method or combination 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 any post-closure period of time that the Department may require even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State. Rules adopted by the Commission may allow a business entity that is an applicant for a permit or a permit holder to establish financial assurance through insurance, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used. Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department.

(g) In order to continue to hold a permit under this Article, a permit holder must maintain financial responsibility and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility. A permit holder shall notify the Department of any significant change in the: (i) identity of any person or structure of the business entity that holds the permit for the facility; (ii) identity of any person or structure of the business entity that owns or operates the facility; or (iii) assets of the permit holder, owner, or operator of the facility. The permit holder shall notify the Department within 30 days of a significant change. A change shall be considered significant if it has the potential to affect the financial responsibility of the permit holder, owner, or operator, or if it would result in a change in the identity of the permit holder, owner, or operator for purposes of either financial responsibility or environmental compliance review. Based on its review of the changes, the Department may require the permit holder to reestablish financial responsibility and may modify or revoke a permit, or require issuance of a new permit.

(h) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill shall establish financial assurance sufficient to cover a minimum of three million dollars (\$3,000,000) in costs for potential assessment and corrective action at the facility. The Department may require financial assurance in a higher amount and may increase the amount of financial assurance required of a permit holder at any time 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 inflation. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(i) The Commission may adopt rules under which a unit of local government and a solid waste management authority created pursuant to Article 22 of Chapter 153A of the General Statutes may meet the financial responsibility requirements of this section by either a local government financial test or a capital reserve fund requirement."

SECTION 5.(b) G.S. 130A-309.27 reads as rewritten:

"§ 130A-309.27. ~~Landfill escrow account.~~Joint and several liability.

(a) As used in this section:

- (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 which business entity~~ that owns a majority interest in any other corporation-business entity which is the owner or operator of a landfill-landfill, and any person designated as a joint permittee pursuant to G.S. 130A-295.2(e).
- (2) "Proceeds" means all funds collected and received by the Department, including interest and penalties on delinquent fees.

(b) Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law.

~~(c) The owner or operator of a landfill shall establish a fee, or a surcharge on existing fees or other appropriate revenue producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill. However, the disposal of solid waste by persons on their own property is exempt from the provisions of this section.~~

- ~~(1) The revenue producing mechanism must produce revenue at a rate sufficient to generate funds to meet State and federal landfill closure requirements.~~
- ~~(2) The revenue shall be deposited in an interest bearing escrow account to be held and administered by the owner or operator. The owner or operator shall file with the Department an annual audit of the account. The audit shall be conducted by a certified public accountant and shall be filed no later than 31 December of each year. Failure to collect or report this revenue, except as allowed in subsection (d), is a noncriminal violation, punishable by a fine of not more than five thousand dollars (\$5,000) for each offense. The owner or operator may make expenditures from the account and its accumulated interest only for the purpose of landfill closure and, if such expenditures do not deplete the fund to the detriment of eventual closure, for planning and construction of resource recovery or landfill facilities. Any moneys remaining in the account after paying for proper and complete closure, as determined by the Department, shall, if the owner or operator does not operate a landfill, be deposited by the owner or operator into the general fund of the unit of local government.~~
- ~~(3) The revenue generated under this subsection and any accumulated interest thereon may be applied to the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with State and federal landfill closure~~

~~requirements. The application or pledge may be made directly in the proceedings authorizing the bonds or in an agreement with an insurer of bonds to assure the insurer of this additional security.~~

~~(d) An owner or operator may establish proof of financial responsibility with the Department in lieu of the requirements of subsection (c). This proof may include surety bonds, certificates of deposit, securities, letter of credit, corporate guarantee, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with landfill closure requirements. The owner or operator shall estimate the costs to the satisfaction of the Department.~~

~~(e) This section does not repeal, limit, or abrogate any other law authorizing units of local government to fix, levy, or charge rates, fees, or charges for the purpose of complying with State and federal landfill closure requirements.~~

~~(f) The Commission shall adopt rules to implement this section."~~

SECTION 5.(c) This section becomes effective 1 August 2007 and applies to any application for a permit for a solid waste management facility that is pending on that date. The provisions of G.S. 130A-295.2(h), as enacted by this section, apply to the owner or operator of a sanitary landfill when the permit is next subject to renewal after 1 August 2009.

SECTION 6.(a) Part 2 of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-295.3. Environmental compliance review requirements for applicants and permit holders.

(a) For purposes of this section, "applicant" means an applicant for a permit and a permit holder and includes the owner or operator of the facility, and, if the owner or operator is a business entity, applicant also includes: (i) the parent, subsidiary, or other affiliate of the applicant; (ii) a partner, officer, director, member, or manager of the business entity, parent, subsidiary, or other affiliate of the applicant; and (iii) any person with a direct or indirect 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 parents, subsidiaries, or affiliates.

(b) The Department shall conduct an environmental compliance review of each applicant for a new permit, permit renewal, and permit amendment under this Article. The environmental compliance review shall evaluate the environmental compliance history of the applicant for a period of five years prior to the date of the application and may cover a longer period at the discretion of the Department. The environmental compliance review of an applicant may include consideration of the environmental compliance history of the parents, subsidiaries, or other affiliates of an applicant or parent that is a business entity, including any business entity or joint venturer with a direct or indirect interest in the applicant, and other facilities owned or operated by any of them. The Department shall determine the scope of the review of the environmental compliance history of the applicant, parents, subsidiaries, or other affiliates of the applicant or parent, including any business entity or joint venturer with a direct or indirect interest in the applicant, and of other facilities owned or operated by any of them. An applicant for a permit shall provide environmental compliance history information for each facility, business entity, joint venture, or other undertaking in which any of the persons listed in this subsection is or has been an owner, operator, officer, director, manager, member, or partner, or in which any of the persons listed in this subsection has had a direct or indirect interest as requested by the Department.

(c) The Department shall determine the extent to which the applicant, or a parent, subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or indirect interest in the applicant, has substantially complied with the requirements applicable to any activity in which any of these entities previously engaged, and has substantially complied with federal and State laws, regulations, and rules for the protection of the environment. The Department may deny an application for a permit if the applicant has a history of significant or repeated violations of statutes, rules, orders,

or permit terms or conditions for the protection of the environment or for the conservation of natural resources as evidenced by civil penalty assessments, administrative or judicial compliance orders, or criminal penalties.

(d) A permit holder shall notify the Department of any significant change in its environmental compliance history or other information required by G.S. 130-295.2(g). The Department may reevaluate the environmental compliance history of a permit holder and may modify or revoke a permit or require issuance of a new permit."

SECTION 6.(b) G.S. 130A-309.06(b) is repealed.

SECTION 6.(c) This section becomes effective 1 August 2007 and applies to any application for a permit for a solid waste management facility that is pending on that date.

SECTION 7.(a) G.S. 130A-290(a) is amended by adding three new subdivisions to read:

"(2a) "Coal-fired generating unit" means a coal-fired generating unit, as defined by 40 Code of Federal Regulations § 96.2 (1 July 2001 Edition), that is located in this State and has the capacity to generate 25 or more megawatts of electricity.

(2b) "Combustion products" means residuals, including fly ash, bottom ash, boiler slag, mill rejects, and flue gas desulfurization residue produced by a coal-fired generating unit.

(2c) "Combustion products landfill" means a facility or unit for the disposal of combustion products, where the landfill is located at the same facility with the coal-fired generating unit or units producing the combustion products, and where the landfill is located wholly or partly on top of a facility that is, or was, being used for the disposal or storage of such combustion products, including, but not limited to, landfills, wet and dry ash ponds, and structural fill facilities."

SECTION 7.(b) Part 2 of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-295.4. Combustion products landfills.

(a) The definitions set out in G.S. 130A-290(a) apply to this section.

(b) The Department may permit a combustion products landfill to be constructed partially or entirely within areas that have been formerly used for the storage or disposal of combustion products at the same facility as the coal-fired generating unit that generates the combustion products, provided the landfill is constructed with a bottom liner system consisting of three components in accordance with this section. Of the required three components, the upper two components shall consist of two separate flexible membrane liners, with a leak detection system between the two liners. The third component shall consist of a minimum of two feet of soil underneath the bottom of those liners, with the soil having a maximum permeability of 1×10^{-7} centimeters per second. The flexible membrane liners shall have a minimum thickness of thirty one-thousandths of an inch (0.030"), except that liners consisting of high-density polyethylene shall be at least sixty one-thousandths of an inch (0.060") thick. The lower flexible membrane liner shall be installed in direct and uniform contact with the compacted soil layer. The Department may approve an alternative to the soil component of the composite liner system if the Department finds, based on modeling, that the alternative liner system will provide an equivalent or greater degree of impermeability.

(c) An applicant for a permit for a combustion products landfill shall develop and provide to the Department a response plan, which shall describe the circumstances under which corrective measures are to be taken at the landfill in the event of the detection of leaks in the leak detection system between the upper two liner components at amounts exceeding an amount specified in the response plan (as expressed in average gallons per day per acre of landfill, defined as an Action Leakage Rate). The response plan shall also describe the remedial actions that the landfill is required to undertake in response to detection of leakage in amounts in excess of the Action Leakage Rate. The

Department shall review the response plan as a part of the permit application for the landfill. Compliance with performance of the landfill to prevent releases of waste to the environment may be determined based on leakage rate rather than monitoring well data."

SECTION 7.(c) This section becomes effective 1 August 2007. Any permit issued for a combustion products landfill as described in this section shall, for purposes of this bill, be considered to have been permitted on property described in a solid waste management facility permit that is in effect on 1 August 2007.

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

"§ 130A-295.5. Traffic study required for certain solid waste management facilities.

(a) An applicant for a permit for a sanitary landfill or for a transfer station shall conduct a traffic study of the impacts of the proposed facility. The Department shall include as a condition of a permit for a sanitary landfill or for a transfer station a requirement that the permit holder mitigate adverse impacts identified by the traffic study. The study shall include all of the following at a minimum:

- (1) Identification of routes from the nearest limited access highway used to access the proposed facility.
- (2) Daily and hourly traffic volumes that will result along each approach route between the nearest limited access highway and the proposed facility.
- (3) A map identifying land uses located along the identified approach routes, including, but not limited to, residential, commercial, industrial development, and agricultural operations. The map shall identify residences, schools, hospitals, nursing homes, and other significant buildings that front the approach routes.
- (4) Identification of locations on approach routes where road conditions are inadequate to handle the increased traffic associated with the proposed facility and a description of the mitigation measures proposed by the applicant to address the conditions.
- (5) A description of the potential adverse impacts of increased traffic associated with the proposed facility and the mitigation measures proposed by the applicant to address these impacts.
- (6) An analysis of the impact of any increase in freight traffic on railroads and waterways.

(b) An applicant for a permit for a sanitary landfill or for a transfer station may satisfy the requirements of subsection (a) of this section by obtaining a certification from the Division Engineer of the Department of Transportation that the proposed facility will not have a substantial impact on highway traffic."

SECTION 8.(b) This section becomes effective 1 August 2007 and applies to any application for a permit for a solid waste management facility that is pending on that date. The section shall not apply to:

- (1) An amendment, modification, or other change to a permit for a landfill issued on or before 1 June 2006.
- (2) A permit for a horizontal or vertical expansion of the landfill permitted on or before 1 June 2006.
- (3) A permit to construct a new landfill within the facility boundary identified in the facility plan of a landfill permitted on or before 1 June 2006.
- (4) A permit to operate a new landfill if a permit to construct the new landfill was issued on or before 1 June 2006.
- (5) A permit for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an

investor-owned utility subject to the requirements of G.S. 143-215.107D.

- (6) A permit for a sanitary landfill determined to be necessary by the Secretary of Environment and Natural Resources in order to respond to an imminent hazard to public health or a natural disaster.

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

"§ 130A-295.6. Additional requirements for sanitary landfills.

(a) The Department shall conduct a study of the environmental impacts of any proposed sanitary landfill. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. If an environmental impact statement is required, 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 any mitigation measures proposed by the applicant in deciding whether to issue or deny a permit. An applicant for a permit for a sanitary landfill shall pay all costs incurred by the Department to comply with this subsection including the costs of any special studies that may be required.

(b) The Department shall require a buffer between any perennial stream or wetland and the nearest waste disposal unit of a sanitary landfill of at least 200 feet. The Department may approve a buffer of less than 200 feet, but in no case less than 100 feet, if it finds all of the following:

- (1) The proposed sanitary landfill or expansion of the sanitary landfill will serve a critical need in the community.
- (2) There is no feasible alternative location that would allow siting or expansion of the sanitary landfill with 200-foot buffers.

(c) A waste disposal unit of a sanitary landfill shall not be constructed within:

- (1) A 100-year floodplain or land removed from a 100-year floodplain designation pursuant to 44 Code of Federal Regulations Part 72 (1 October 2006 Edition) as a result of man-made alterations within the floodplain such as the placement of fill, except as authorized by variance granted under G.S. 143-215.54A(b). This subdivision does not apply to land removed from a 100-year floodplain designation (i) as a result of floodplain map corrections or updates not resulting from man-made alterations of the affected areas within the floodplain, or (ii) pursuant to 44 Code of Federal Regulations Part 70 (1 October 2006 Edition) by a letter of map amendment.

(2) A wetland, unless the applicant or permit holder can show all of the following, as to the waste disposal unit:

a. Where applicable under section 404 of the federal Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed waste disposal unit is available which does not involve wetlands is clearly rebutted;

b. Construction of the waste disposal unit will not do any of the following:

1. Cause or contribute to violations of any applicable State water quality standard.
2. Violate any applicable toxic effluent standard or prohibition under section 307 of the federal Clean Water Act.
3. Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the federal Endangered Species Act of 1973.

4. Violate any requirement under the federal Marine Protection, Research, and Sanctuaries Act of 1972.
- c. Construction of the waste disposal unit will not cause or contribute to significant degradation of wetlands.
- d. To the extent required under section 404 of the federal Clean Water Act or applicable State wetlands laws, any unavoidable wetlands impacts will be mitigated.

(d) The Department shall not issue a permit to construct any disposal unit of a sanitary landfill if, at the time the application is determined to be complete under G.S. 130A-295.8(e), any portion of the proposed waste disposal unit would be located within:

- (1) Five miles of the outermost boundary of a National Wildlife Refuge.
- (2) One mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306.
- (3) Two miles of the outermost boundary of a component of the State Parks System.

(e) A sanitary landfill for the disposal of construction and demolition debris waste shall be constructed with a liner system that consists of a flexible membrane liner over two feet of soil with a maximum permeability of 1×10^{-5} centimeters per second. The flexible membrane liner shall have a minimum thickness of thirty one-thousandths of an inch (0.030"), except that a liner that consists of high-density polyethylene shall be at least sixty one-thousandths of an inch (0.060") thick. The flexible membrane liner shall be installed in direct and uniform contact with the soil layer. The Department may approve an alternative to the soil component of the liner system if the Department finds, based on modeling, that the alternative liner system will provide an equivalent or greater degree of impermeability.

(f) A sanitary landfill, other than a sanitary landfill for the disposal of construction and demolition debris waste, 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 four feet above both the seasonal high groundwater table and the bedrock datum plane contours. A sanitary landfill for the disposal of construction and demolition debris waste shall be constructed so that the post-settlement bottom elevation of the flexible membrane liner component of the liner system is a minimum of four feet above both the seasonal high groundwater table and the bedrock datum plane contours.

(g) A permit holder for a sanitary landfill shall develop and implement a waste screening plan. The plan shall identify measures adequate to ensure compliance with State laws and rules and any applicable local ordinances that prohibit the disposal of certain items in landfills. The plan shall address all sources of waste generation. The plan is subject to approval by the Department.

(h) The following requirements apply to any sanitary landfill for which a liner is required:

- (1) A geomembrane base liner system shall be tested for leaks and damage by methods approved by the Department that ensure that the entire liner is evaluated.
- (2) A leachate collection system shall be designed to return the head of the liner to 30 centimeters or less within 72 hours. The design shall be based on the precipitation that would fall on an empty cell of the sanitary landfill as a result of a 25-year-24-hour storm event. The leachate collection system shall maintain a head of less than 30 centimeters at all times during leachate recirculation. The Department may require the operator to monitor the head of the liner to demonstrate that the head is being maintained in accordance with this subdivision and any applicable rules.

- (3) All leachate collection lines shall be designed and constructed to permanently allow cleaning and remote camera inspection. All leachate collection lines shall be cleaned at least once a year, except that the Department may allow leachate collection lines to be cleaned once every two years if: (i) the facility has continuous flow monitoring; and (ii) the permit holder demonstrates to the Department that the leachate collection lines are clear and functional based on at least three consecutive annual cleanings. Remote camera inspections of the leachate collection lines shall occur upon completion of construction, at least once every five years thereafter, and following the clearing of blockages.
- (4) Any pipes used to transmit leachate shall provide dual containment outside of the disposal unit. The bottom liner of a sanitary landfill shall be constructed without pipe penetrations.
- (i) The Department shall not issue a permit for a sanitary landfill that authorizes:
 - (1) A capacity of more than 55 million cubic yards of waste.
 - (2) A disposal area of more than 350 acres.
 - (3) A maximum height, including the cap and cover vegetation, of more than 250 feet above the mean natural elevation of the disposal area."

SECTION 9.(b) This section becomes effective 1 August 2007 and applies to any application for a permit for a solid waste management facility that is pending on that date. To the extent that G.S. 130A-295.6, as enacted by this section, imposes requirements that are more stringent than those in effect prior to 1 August 2007, the more stringent requirements do not apply to:

- (1) An amendment, modification, or other change to a permit for a landfill issued on or before 1 June 2006.
- (2) A permit for a horizontal or vertical expansion of the landfill permitted on or before 1 June 2006.
- (3) A permit to construct a new landfill within the facility boundary identified in the facility plan of a landfill permitted on or before 1 June 2006.
- (4) A permit to operate a new landfill if a permit to construct the new landfill was issued on or before 1 June 2006.
- (5) A permit for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.
- (6) A permit for a sanitary landfill determined to be necessary by the Secretary of Environment and Natural Resources in order to respond to an imminent hazard to public health or a natural disaster.

SECTION 10.(a) G.S. 153A-292(b) reads as rewritten:

"(b) The board of county commissioners may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

The board of county commissioners may impose a fee for the use of a disposal facility provided by the county. The fee for use may not exceed the cost of operating the facility and may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. A county may not impose a fee for the use of a disposal facility on a city located in the county or a contractor or resident of the city unless the fee is based on a schedule that applies uniformly throughout the county.

The board of county commissioners may impose a fee for the availability of a disposal facility provided by the county. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the county that benefits from the availability of the facility. A county may not impose an availability fee on property whose solid waste is collected by a county, a city, or a

private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the county. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the county disposal facility is not considered to benefit from a disposal facility provided by the county and is not subject to a fee imposed by the county for the availability of a disposal facility provided by the county. To the extent that the services provided by the county disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same county, the county may charge an availability fee to cover the costs of the additional services provided by the county disposal facility.

In determining the costs of providing and operating a disposal facility, a county may consider solid waste management costs incidental to a county's handling and disposal of solid waste at its disposal facility, including the costs of the methods of solid waste management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the county."

SECTION 10.(b) G.S. 160A-314.1(a) reads as rewritten:

"(a) In addition to a fee that a city may impose for collecting solid waste or for using a disposal facility, a city may impose a fee for the availability of a disposal facility provided by the city. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the city that benefits from the availability of the facility. A city may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the city. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the city disposal facility is not considered to benefit from a disposal facility provided by the city and is not subject to a fee imposed by the city for the availability of a disposal facility provided by the city. To the extent that the services provided by the city disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same city, the city may charge an availability fee to cover the costs of the additional services provided by the city disposal facility.

In determining the costs of providing and operating a disposal facility, a city may consider solid waste management costs incidental to a city's handling and disposal of solid waste at its disposal facility. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the city."

SECTION 10.(c) This section becomes effective 1 August 2007.

SECTION 11.(a) G.S. 153A-136 is amended by adding two new subsections to read:

"(e) A county that has planning jurisdiction over any portion of the site of a sanitary landfill may employ a local government landfill liaison. No person who is responsible for any aspect of the management or operation of the landfill may serve as a local government landfill liaison. A local government landfill liaison shall have a right to enter public or private lands on which the landfill facility is located at reasonable times to inspect the landfill operation in order to:

- (1) Ensure that the facility meets all local requirements.
- (2) Identify and notify the Department of suspected violations of applicable federal or State laws, regulations, or rules.
- (3) Identify and notify the Department of potentially hazardous conditions at the facility.

(f) Entry pursuant to subsection (e) of this section shall not constitute a trespass or taking of property."

SECTION 11.(b) Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-325. Local government landfill liaison.

(a) A city that has planning jurisdiction over any portion of the site of a sanitary landfill may employ a local government landfill liaison. No person who is responsible for any aspect of the management or operation of the landfill may serve as a local government landfill liaison. A local government landfill liaison shall have a right to enter public or private lands on which the landfill facility is located at reasonable times to inspect the landfill operation in order to:

- (1) Ensure that the facility meets all local requirements.
- (2) Identify and notify the Department of suspected violations of applicable federal or State laws, regulations, or rules.
- (3) Identify and notify the Department of potentially hazardous conditions at the facility.

(b) Entry pursuant to this section shall not constitute a trespass or taking of property."

SECTION 11.(c) This section becomes effective 1 August 2007.

SECTION 12.(a) G.S. 130A-290(a), as amended by S.L. 2007-107, is amended by renumbering subdivision (1a) as (1b), renumbering subdivision (1b) as (1c), renumbering subdivision (1c) as (1d), and by adding a new subdivision to read:

"(1a) 'Business entity' has the same meaning as in G.S. 55-1-40(2a)."

SECTION 12.(b) G.S. 130A-290(a), as amended by S.L. 2007-107, is amended by renumbering subdivision (21a) as (21b) and by adding a new subdivision to read:

"(21a) 'Pre-1983 landfill' means any land area, whether publicly or privately owned, on which municipal solid waste disposal occurred prior to 1 January 1983 but not thereafter, but does not include any landfill used primarily for the disposal of industrial solid waste."

SECTION 12.(c) This section becomes effective 1 August 2007.

SECTION 13.(a) Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-295.8. Fees applicable to permits for solid waste management facilities.

(a) The Solid Waste Management Account is established as a nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used to support the solid waste management program established pursuant to G.S. 130A-294.

(b) As used in this section:

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

- a. An application for a permit for a solid waste management facility that has not been previously permitted by the Department. The term 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. An application that includes a proposed expansion to the boundary of a waste disposal unit within a permitted solid waste management facility.
- d. An application for a substantial amendment to a solid waste permit, as defined in G.S. 130A-294.

(2) 'Permit amendment' means any 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 described in the approved facility plan for a permitted solid waste management facility.
 - b. An application for the five-year renewal of a permit for a permitted solid waste management facility or for a permit review of a permitted solid waste management facility.
 - c. Any application that proposes a change in ownership or corporate structure of a permitted solid waste management facility.
- (3) 'Permit modification' means any of the following:
- a. An application for any change to the plans approved in a 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.
- (c) An applicant for a permit shall pay an application fee upon submission of an application 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.
 - (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 Station, New Permit – \$5,000.
- (26) Transfer Station, 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) A permitted solid waste management facility shall pay an annual permit fee on or before 1 August 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 – \$2,750.
- (6) Post-Closure Industrial Landfill – \$500.
- (7) Transfer Station – \$750.
- (8) Treatment and Processing Facility – \$500.
- (9) Tire Monofill – \$500.
- (10) Incinerator – \$500.
- (11) Large Compost Facility – \$500.
- (12) Land Clearing and Inert Debris Landfill – \$500.

(e) The Department shall determine whether an application for a permit for a solid waste management facility that is subject to a fee under this section is complete within 90 days after the Department receives the application for the permit. A determination of completeness means that the application includes all required components but does not mean that the required components provide all of the information that is required for the Department to make a decision on the application. If the Department determines that an application is not complete, the Department shall notify the applicant of the components needed to complete the application. An applicant may submit additional information to the Department to cure the deficiencies in the application. The Department shall make a final determination as to whether the application is complete within the later of: (i) 90 days after the Department receives the application for the permit less the number of days that the applicant uses to provide the additional information; or (ii) 30 days after the Department receives the additional information from the applicant. The Department shall issue a draft permit decision on an application for a permit within one year after the Department determines that the application is complete. The Department shall hold a public hearing and accept written comment on the draft permit decision for a period of not less than 30 or more than 60 days after the Department issues a draft permit decision. The Department shall issue a final permit decision on an application for a permit within 90 days after the comment period on the draft permit decision closes. The Department and the applicant may mutually agree to extend any time period under this subsection. If the Department fails to act within any time period set out in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided in Chapter 150B of the General Statutes."

SECTION 13.(b) This section becomes effective on 1 August 2007 and applies to any application for a permit for a solid waste management facility that is pending on that date, except that during the period 1 August 2007 through 1 August 2008 the Department shall determine whether an application or a permit for a solid waste management facility is complete within 270 days after the Department receives the application for the permit.

SECTION 14.(a) Subchapter I of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 5G.

"Solid Waste Disposal Tax.

"§ 105-187.60. Definitions.

The definitions set out in G.S. 105-164.3 and G.S. 130A-290 apply to this Article.

"§ 105-187.61. Tax imposed.

(a) Tax Rate. – An excise tax is imposed on the disposal of municipal solid waste and construction and demolition debris in any landfill permitted pursuant to Article 9 of Chapter 130A of the General Statutes at a rate of two dollars (\$2.00) per ton of waste. An excise tax is imposed on the transfer of municipal solid waste and construction and demolition debris to a transfer station permitted pursuant to Article 9 of Chapter 130A of the General Statutes for disposal outside the State at a rate of two dollars (\$2.00) per ton of waste.

(b) Tax Liability. – The excise tax imposed by this section is due on municipal solid waste and construction and demolition debris received from third parties and on municipal solid waste and construction and demolition debris disposed of by the owner or operator. The tax is payable by the owner or operator of each landfill and transfer station permitted under Article 9 of Chapter 130A of the General Statutes.

"§ 105-187.62. Administration.

The owner or operator of each landfill and transfer station permitted pursuant to Article 9 of Chapter 130A of the General Statutes 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 maintain other records as required by the Secretary of Revenue. An owner or operator may add the amount of the solid waste disposal tax due to the charges made to a third party for disposal of municipal solid waste or construction and demolition debris. The tax imposed by this Article is payable and a return is due to be filed in the same manner as required under G.S. 105-164.16 for sales and use tax.

"§ 105-187.63. Use of tax proceeds.

From the taxes received pursuant to this Article, the Secretary may retain the costs of collection, not to exceed two hundred twenty-five thousand dollars (\$225,000) a year, as reimbursement to the Department. The Secretary shall credit or distribute taxes received pursuant to this Article, less the cost of collection, as follows:

- (1) Fifty percent (50%) to the Inactive Hazardous Sites Cleanup Fund established by G.S. 130A-310.11.
- (2) Thirty-seven and one-half percent (37.5%) to units of local government that provide solid waste management services directly to residents within the political boundaries of the unit of local government as determined by the Department of Environment and Natural Resources, distributed on a per capita basis as described in G.S. 105-472(b)(1). Funds distributed under this subdivision shall be used by a unit of local government solely for solid waste management programs and services. As used in this subdivision, "unit of local government" includes a regional solid waste management authority established under Article 22 of Chapter 153A of the General Statutes.
- (3) Twelve and one-half percent (12.5%) to the Solid Waste Management Trust Fund established by G.S. 130A-309.12."

SECTION 14.(b) Part 2A of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-295.9. Solid waste disposal tax; use of proceeds.

It is the intent that the proceeds of the solid waste disposal tax imposed by Article 5G of Chapter 105 of the General Statutes shall be used only for the following purposes:

- (1) Funds credited pursuant to G.S. 105-187.63(1) to the Inactive Hazardous Sites Cleanup Fund shall be used by the Department of Environment and Natural Resources to fund the assessment and remediation of pre-1983 landfills. Up to seven percent (7%) of the funds credited under this subdivision may be used to fund staff to administer contracts for the assessment and remediation of pre-1983 landfills.
- (2) Funds credited pursuant to G.S. 105-187.63(3) to the Solid Waste Management Trust Fund shall be used by the Department of Environment and Natural Resources to fund grants to State agencies and units of local government to initiate or enhance local recycling programs and to provide for the management of difficult to manage solid waste, including abandoned mobile homes and household hazardous waste. Up to seven percent (7%) of the funds credited under this subdivision may be used by the Department to administer this Part."

SECTION 14.(c) G.S. 130A-310.6 is amended by adding four new subsections to read:

"(c) The Secretary shall use funds allocated to the Department under G.S. 130A-295.9(1) to assess pre-1983 landfills, to determine the priority for remediation of pre-1983 landfills, and to develop and implement a remedial action plan for each pre-1983 landfill that requires remediation. Environmental and human health risks posed by a pre-1983 landfill may be mitigated using a risk-based approach for assessment and remediation.

(d) The Secretary shall not seek cost recovery from a unit of local government for assessment and remedial action performed under subsection (c) of this section at a pre-1983 landfill. The Secretary shall not seek cost recovery for assessment and remedial action performed under subsection (c) of this section at a pre-1983 landfill from any other potentially responsible party if the Secretary develops and implements a remedial action plan for that pre-1983 landfill. If any potentially responsible party fails to cooperate with assessment of a site and implementation of control and mitigation measures at any site which the potentially responsible party owns or over which the potentially responsible party exercises control through a lease or other property interest, the Secretary may seek cost recovery for assessment and remedial action. Cooperation with assessment of a site and implementation of control and mitigation measures includes, but is 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 pre-1983 landfill. Nothing in this section shall alter any right, duty, obligation, or liability between a unit of local government and a third party. Nothing in this section shall alter any right, duty, obligation, or liability between any other potentially responsible party and a unit of local government, a third party, or, except as provided in this subsection, to the State.

(e) The Secretary shall develop and implement remedial action plans for pre-1983 landfills in the order of their priority determined as provided in subsection (c) of this section. The Secretary shall not develop or implement a remedial action plan for a pre-1983 landfill unless the Secretary determines that sufficient funds will be available from the Inactive Hazardous Sites Cleanup Fund to pay the costs of development and implementation of a remedial action plan for that pre-1983 landfill.

(f) A unit of local government that voluntarily undertakes assessment or remediation of a pre-1983 landfill may request that the Department reimburse the costs of assessment of the pre-1983 landfill and implementation of measures necessary to remediate the site to eliminate an imminent hazard. The Department shall provide reimbursement under this subsection if the Department finds all of the following:

- (1) The unit of local government undertakes assessment and remediation under a plan approved by the Department.
- (2) The unit of local government provides a certified accounting of costs incurred for assessment and remediation.
- (3) Each contract for assessment and remediation complies with the requirements of Articles 3D and 8 of Chapter 143 of the General Statutes.
- (4) Remedial action is limited to measures necessary to abate the imminent hazard.

(g) The Department may undertake any additional action necessary to remediate a pre-1983 landfill based on the priority ranking of the site under subsection (c) of this section."

SECTION 14.(d) 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, 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-295.9 shall be used only as provided in G.S. 130A-309.295.9(c)."

SECTION 14.(e) This section becomes effective 1 July 2008.

SECTION 15.(a) The Commission for Health Services shall review rules governing the design, construction, operation, maintenance, closure, and post-closure monitoring and maintenance of solid waste management facilities to determine whether changes are required to protect public health, safety, welfare, and the environment; to improve the performance of solid waste management facilities; to take advantage of technological advances in landfill design, construction, operation, maintenance, and closure; and to provide additional protection to environmentally sensitive areas of the State. The Commission shall adopt rules necessary to minimize impacts from solid waste management facilities on public health, safety, welfare, and the environment. These rules shall:

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

SECTION 15.(b) This section is effective when it becomes law.

SECTION 16.1.(a) Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2E. Discarded Computer Equipment Management.

"§ 130A-309.90. Findings.

The General Assembly makes the following findings:

- (1) The computer equipment waste stream is growing rapidly in volume and complexity and can introduce toxic materials into solid waste landfills.
- (2) It is in the best interests of the citizens of this State to have convenient, simple, and free access to recycling services for discarded computer equipment.
- (3) Collection programs operated by local government and nonprofit agencies are an efficient way to divert discarded computer equipment from disposal and to provide recycling services to all citizens of this State.
- (4) The development of local and nonprofit collection programs is hindered by the high costs of recycling and transporting discarded computer equipment.
- (5) No other system currently exists, either provided by electronics manufacturers, retailers, or others, to adequately serve all citizens of the State and to divert large quantities of discarded computer equipment from disposal.
- (6) Manufacturer responsibility is an effective way to ensure that manufacturers of computer equipment take part in a solution to the electronic waste problem.
- (7) The recycling of discarded computer equipment recovers valuable materials for reuse and will create jobs and expand the tax base of the State.

"§ 130A-309.91. Definitions.

As used in this Part, the following definitions apply:

- (1) Business entity. – Defined in G.S. 55-1-40(2a).
- (2) Computer equipment. – Any desktop central processing unit, any laptop computer, the monitor or video display unit for a computer system, and the keyboard, mice, and other peripheral equipment. Computer equipment does not include a printing device such as a printer, a scanner, a combination print-scanner-fax machine, or other device designed to produce hard paper copies from a computer; an automobile; a television; a household appliance; a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the federal Food, Drug, and Cosmetic Act.
- (3) Discarded computer equipment. – Computer equipment that is solid waste.
- (4) Discarded computer equipment collector. – A municipal or county government, nonprofit agency, or retailer that accepts discarded computer equipment from the public.
- (5) Manufacturer. – A person who manufactures computer equipment sold under its own brand or label; sells under its own brand or label computer equipment produced by other suppliers; imports into the United States computer equipment that was manufactured outside of the United States; or owns a brand that it licenses to another person for use on computer equipment. Manufacturer includes a business entity that acquires another business entity that manufactures or has manufactured computer equipment.
- (6) Orphan discarded computer equipment. – Any discarded computer equipment for which a manufacturer cannot be identified or for which

the manufacturer is no longer in business and has no successor in interest.

- (7) Retailer. – A person who sells computer equipment in the State to a consumer. Retailer includes a manufacturer of computer equipment that sells directly to a consumer through any means, including transactions conducted through sales outlets, catalogs, the Internet, or any similar electronic means, but does not include a person who sells computer equipment to a distributor or retailer through a wholesale transaction.

"§ 130A-309.92. Responsibility for recycling discarded computer equipment.

In addition to the specific requirements of this Part, discarded computer equipment collectors and manufacturers share responsibility for the recycling of discarded computer equipment and the education of citizens of the State as to recycling opportunities for discarded computer equipment.

"§ 130A-309.93. Requirements for manufacturers.

(a) Registration and Fee Required. – Each manufacturer of computer equipment, before selling or offering for sale computer equipment in North Carolina, shall register with the Department and, at the time of registration, shall pay an initial registration fee of ten thousand dollars (\$10,000) to the Department. A computer equipment manufacturer that has registered shall pay an annual renewal registration fee of one thousand dollars (\$1,000) to the Department. The annual renewal registration fee shall be paid each year no later than the first day of the month in which the initial registration fee was paid. The proceeds of these fees shall be credited to the Computer Equipment Management Account. A manufacturer of computer equipment that sells 1,000 items of computer equipment or less per year is exempt from the requirement to pay the registration fee and the annual renewal fee imposed by this subsection.

(b) Manufacturer Label Required. – A manufacturer shall not sell or offer to sell computer equipment in this State unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to the equipment.

(c) Computer Equipment Recycling Plan. – Each manufacturer of computer equipment shall develop and submit to the Department a plan for reuse or recycling of discarded computer equipment in the State produced by the manufacturer. The manufacturer shall submit a proposed plan to the Department within 120 days of registration as required by subsection (a) of this section. The plan shall:

- (1) Describe any direct take-back program to be implemented by the manufacturer, including mail-back programs and collection events.
- (2) Provide that the manufacturer will take responsibility for discarded computer equipment it manufactured.
- (3) Include a detailed description as to how the manufacturer will implement and finance the plan.
- (4) Provide for environmentally sound management practices to transport and recycle discarded computer equipment.
- (5) Describe the performance measures that will be used by the manufacturer to document recovery and recycling rates for discarded computer equipment. The calculation of recycling rates shall include the amount of discarded computer equipment managed under the manufacturer's program divided by the amount of computer equipment sold by the manufacturer in North Carolina.
- (6) Describe in detail how the manufacturer will provide for transportation of discarded computer equipment at no cost from discarded computer equipment collectors.
- (7) Describe in detail how the manufacturer will fully cover the costs of processing discarded computer equipment received from discarded computer equipment collectors.

(8) Include a public education plan on the laws governing the recycling and reuse of discarded computer equipment under this Part and on the methods available to consumers to comply with those requirements.

(d) Computer Equipment Recycling Plan Revision. – A manufacturer may prepare a revised plan and submit it to the Department at any time as the manufacturer considers appropriate in response to changed circumstances or needs. The Department may require a manufacturer to revise or update a plan if the Department finds that the plan is inadequate or out-of-date.

(e) Payment of Costs for Plan Implementation. – Each manufacturer is responsible for all costs associated with the development and implementation of its plan. A manufacturer shall not collect a charge for the management of discarded computer equipment at the time the equipment is discarded.

(f) Joint Computer Equipment Recycling Plans. – A manufacturer may fulfill the requirements of this section by participation in a joint recycling plan with other manufacturers. A joint plan shall meet the requirements of subsection (c) of this section.

(g) Annual Report. – Each manufacturer shall submit a report to the Department by 1 February of each year that includes all of the following for the previous calendar year:

- (1) A description of the collection and recycling services used to recover the manufacturer's products.
- (2) The quantity and type of computer equipment sold by the manufacturer to retail consumers in this State.
- (3) The quantity and type of discarded computer equipment collected by the manufacturer for recovery in this State for the preceding calendar year.
- (4) Any other information requested by the Department.

"§ 130A-309.94. Requirements for discarded computer equipment collectors.

Each discarded computer equipment collector shall ensure that discarded computer equipment received by the collector is consolidated at central locations, properly stored, and either held for pickup by a manufacturer or delivered to a facility designated by a manufacturer.

"§ 130A-309.95. Responsibilities of the Department.

In addition to its other responsibilities under this Part, the Department shall:

- (1) Develop and maintain a current list of manufacturers that are in compliance with the requirements of G.S. 130A-309.93 and provide the current list to the Office of Information Technology Services each time that the list is updated.
- (2) Develop and implement a public education program on the laws governing the recycling and reuse of discarded computer equipment under this Part and on the methods available to consumers to comply with those requirements. The Department shall make this information available on the Internet and shall provide technical assistance to manufacturers to meet the requirements of G.S. 130A-309.93(c)(8). The Department shall also provide technical assistance to units of local government on the establishment and operation of discarded computer equipment collection centers and in the development and implementation of local public education programs.
- (3) Maintain the confidentiality of any information that is required to be submitted by a manufacturer under this Part that is designated as a trade secret, as defined in G.S. 66-152(3) and that is designated as confidential or as a trade secret under G.S. 132-1.2.

"§ 130A-309.96. Computer Equipment Management Account.

The Computer Equipment Management Account is created as a nonreverting account within the Department. Funds in the Account shall be used by the Department to implement the provisions of this Part.

"§ 130A-309.97. Enforcement.

This Part may be enforced as provided by Part 2 of Article 1 of this Chapter.

"§ 130A-309.98. Annual report.

No later than 1 April of each year, the Department shall submit a report on the recycling of discarded computer equipment in the State under this Part to the Environmental Review Commission. The report must include an evaluation of the recycling rates in the State for discarded computer equipment, a discussion of compliance and enforcement related to the requirements of this Part, and any recommendations for any changes to the system of collection and recycling of discarded computer equipment or other electronic devices."

SECTION 16.1.(b) The Department shall include in the annual report for 1 April 2011, as required by G.S. 130A-309.98, as enacted by Section 16.1(a) of this act, an analysis of the feasibility and advisability of deleting the exclusion of printing devices from the definition of computer equipment as set out in G.S. 130A-309.91, as enacted by Section 16.1(a) of this act.

SECTION 16.2. G.S. 130A-309.09A(b)(6) reads as rewritten:

- "(6) Include an assessment of current programs and a description of intended actions with respect to:
- a. Education with the community and through the schools.
 - b. Management of special wastes.
 - c. Prevention of illegal disposal and management of litter.
 - d. Purchase of recycled materials and products manufactured with recycled materials.
 - e. For each county and each municipality with a population in excess of 25,000, collection of discarded computer equipment, as defined in G.S. 130A-309.91."

SECTION 16.3. G.S. 130A-309.10(f) is amended by adding a new subdivision to read:

"(14) Discarded computer equipment, as defined in G.S. 130A-309.91."

SECTION 16.4. G.S. 130A-309.10(f1) is amended by adding a new subdivision to read:

"(7) Discarded computer equipment, as defined in G.S. 130A-309.91."

SECTION 16.5. Part 4 of Article 3D of Chapter 147 of the General Statutes is amended by adding a new section to read:

"§ 147-33.104. Purchase by State agencies and governmental entities of certain computer equipment prohibited.

- (a) The exemptions set out in G.S. 147-33.80 do not apply to this section.
(b) No State agency, political subdivision of the State, or other public body shall purchase computer equipment, as defined in G.S. 130A-309.91, from any manufacturer determined not to be in compliance with the requirements of G.S. 130A-309.93 as determined from the list provided by the Department of Environment and Natural Resources pursuant to G.S. 130A-309.95(1).

(c) The Office of Information Technology Services shall make the list available to political subdivisions of the State and other public bodies. A manufacturer that is not in compliance with the requirements of G.S. 130A-309.93 shall not sell or offer for sale computer equipment to the State, a political subdivision of the State, or other public body."

SECTION 16.6.(a) Part 2E of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 16.1(a) of this act, becomes effective as follows:

- (1) G.S. 130A-309.90 becomes effective 1 January 2009.
- (2) G.S. 130A-309.91 becomes effective 1 January 2009.
- (3) G.S. 130A-309.92 becomes effective 1 January 2009.
- (4) G.S. 130A-309.93(a) becomes effective 1 January 2009.
- (5) G.S. 130A-309.93(b) becomes effective 1 January 2009.
- (6) G.S. 130A-309.93(c) becomes effective 1 October 2009.

- (7) G.S. 130A-309.93(d) becomes effective 1 October 2009.
- (8) G.S. 130A-309.93(e) becomes effective 1 January 2009.
- (9) G.S. 130A-309.93(f) becomes effective 1 January 2009.
- (10) G.S. 130A-309.93(g) becomes effective 1 February 2011.
- (11) G.S. 130A-309.94 becomes effective 1 January 2010.
- (12) G.S. 130A-309.95(1) becomes effective 1 January 2009.
- (13) G.S. 130A-309.95(2) becomes effective 1 January 2009.
- (14) G.S. 130A-309.95(3) becomes effective 1 January 2009.
- (15) G.S. 130A-309.96 becomes effective 1 January 2009.
- (16) G.S. 130A-309.97 becomes effective 1 January 2009.
- (17) G.S. 130A-309.98 becomes effective 1 April 2011.

SECTION 16.6.(b) Section 16.2 of this act becomes effective 1 January 2009. Sections 16.3 and 16.4 of this act become effective 1 January 2012. Section 16.5 of this act becomes effective 1 July 2009. Subsection (b) of Section 16.1 of this act, Section 16.6 of this act, and any other provision of this act for which an effective date is not specified become effective 1 January 2009.

SECTION 17. The Division of Waste Management and the Division of Pollution Prevention and Environmental Assistance of the Department of Environment and Natural Resources shall jointly develop a proposal for a recycling program for fluorescent lamps. The program will be developed so as to ensure that substantially all of the mercury contained in fluorescent lamps will be recovered so as to facilitate a phaseout of incandescent lamps without damage to public health and the environment from the increased use of mercury lamps as replacements for fluorescent lamps. The Department of Environment and Natural Resources shall report its findings and recommendations, including legislative proposals and cost estimates, to the Environmental Review Commission on or before 1 March 2008.

SECTION 18. The Environmental Review Commission shall study issues related to the franchise of solid waste management facilities by units of local government. The Environmental Review Commission, with the assistance of the Department of Justice, shall study issues related to the transportation of solid waste by rail or barge, including the extent to which regulation of the transportation of solid waste by rail or barge by state governments may be preempted by federal law. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the 2008 Regular Session of the General Assembly.

SECTION 19. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 20. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:35 p.m. this 31st day of August, 2007