

PROPOSED COMMITTEE SUBSTITUTE S1492-CSRTxf-6 [v.12]

A BILL TO BE ENTITLED

1
2 AN ACT TO: (1) CLARIFY THE CIRCUMSTANCES UNDER WHICH AN
3 APPLICATION FOR A SOLID WASTE MANAGEMENT PERMIT MAY BE
4 DENIED; (2) SPECIFY TECHNICAL REQUIREMENTS FOR SOLID WASTE
5 CONTAINERS; (3) PROVIDE THAT SOLID WASTE MANAGEMENT
6 PERMITS ARE NOT TRANSFERABLE; (4) INCREASE THE PENALTIES
7 THAT MAY BE IMPOSED FOR SOLID WASTE VIOLATIONS; (5) REQUIRE
8 THAT AN APPLICANT FOR A PERMIT AND A PERMIT HOLDER
9 ESTABLISH FINANCIAL RESPONSIBILITY TO ENSURE THE
10 AVAILABILITY OF SUFFICIENT FUNDS FOR PROPER DESIGN,
11 CONSTRUCTION, OPERATION, MAINTENANCE, CLOSURE, AND
12 POST-CLOSURE MONITORING AND MAINTENANCE OF A SOLID WASTE
13 MANAGEMENT FACILITY; (6) REQUIRE THAT AN OWNER OR OPERATOR
14 OF A SANITARY LANDFILL ESTABLISH FINANCIAL ASSURANCE
15 SUFFICIENT TO COVER A MINIMUM OF THREE MILLION DOLLARS IN
16 COSTS FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT
17 THE FACILITY, IN ADDITION TO OTHER FINANCIAL RESPONSIBILITY
18 REQUIREMENTS; (7) CLARIFY AND EXPAND THE SCOPE OF
19 ENVIRONMENTAL COMPLIANCE REVIEW REQUIREMENTS; (8) CLARIFY
20 THAT A PARENT, SUBSIDIARY, OR OTHER AFFILIATE OF THE
21 APPLICANT OR PARENT, INCLUDING ANY BUSINESS ENTITY OR JOINT
22 VENTURER WITH A DIRECT OR INDIRECT INTEREST IN THE APPLICANT
23 IS SUBJECT TO FINANCIAL RESPONSIBILITY AND ENVIRONMENTAL
24 COMPLIANCE REVIEW; (9) SPECIFY ADDITIONAL TECHNICAL
25 REQUIREMENTS FOR SOLID WASTE MANAGEMENT FACILITIES; (10)
26 REQUIRE THAT ALL APPLICANTS FOR PERMITS FOR SANITARY
27 LANDFILLS CONDUCT AN ENVIRONMENTAL IMPACT STUDY; (10)
28 REQUIRE THAT CERTAIN APPLICANTS FOR SOLID WASTE

1 MANAGEMENT FACILITY PERMITS CONDUCT A TRAFFIC STUDY; (12)
2 CLARIFY THE CIRCUMSTANCES UNDER WHICH A UNIT OF LOCAL
3 GOVERNMENT MAY COLLECT A SOLID WASTE AVAILABILITY FEE; (13)
4 AUTHORIZE CERTAIN UNITS OF LOCAL GOVERNMENT TO HIRE
5 LANDFILL LIAISONS; (14) ESTABLISH FEES APPLICABLE TO PERMITS
6 FOR SOLID WASTE MANAGEMENT FACILITIES TO SUPPORT THE SOLID
7 WASTE MANAGEMENT PROGRAM; (15) ESTABLISH A SOLID WASTE
8 DISPOSAL FEE TO BE IMPOSED ON THE DISPOSAL OF MUNICIPAL SOLID
9 WASTE IN LANDFILLS IN THE STATE AND ON THE TRANSFER OF
10 MUNICIPAL SOLID WASTE FOR DISPOSAL OUTSIDE THE STATE IN
11 ORDER TO PROVIDE FUNDS FOR THE ASSESSMENT AND REMEDIATION
12 OF PRE-1983 LANDFILLS AND OTHER PURPOSES; (16) ESTABLISH THE
13 NORTH CAROLINA PRODUCER RESPONSIBILITY PROGRAM FOR THE
14 RECYCLING OF DISCARDED COMPUTER EQUIPMENT; (17) DIRECT THE
15 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO
16 DEVELOP A PROPOSED RECYCLING PROGRAM FOR FLUORESCENT
17 LAMPS; (18) DIRECT THE ENVIRONMENT REVIEW COMMISSION TO
18 STUDY ISSUES RELATED TO THE FRANCHISE OF SOLID WASTE
19 MANAGEMENT FACILITIES BY UNITS OF LOCAL GOVERNMENT; AND
20 (19) MAKE RELATED CLARIFYING, CONFORMING, AND TECHNICAL
21 CHANGES.

22 The General Assembly of North Carolina enacts:

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

25 "**§ 130A-294. Solid waste management program.**

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

- 30 (1) Develop a comprehensive program for implementation of safe and
31 sanitary practices for management of solid waste;
- 32 (2) Advise, consult, cooperate and contract with other State agencies, units
33 of local government, the federal government, industries and
34 individuals in the formulation and carrying out of a solid waste
35 management program;
- 36 (3) Develop and adopt rules to establish standards for qualification as a
37 "recycling, reduction or resource recovering facility" or as "recycling,
38 reduction or resource recovering equipment" for the purpose of special
39 tax classifications or treatment, and to certify as qualifying those
40 applicants which meet the established standards. The standards shall
41 be developed to qualify only those facilities and equipment exclusively
42 used in the actual waste recycling, reduction or resource recovering
43 process and shall exclude any incidental or supportive facilities and
44 equipment;

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(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.

- 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;

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Deleted: 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;

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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.

(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:

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Deleted: 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.¶

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- 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) 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.

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

4 (8) Regulate containers used to transport solid waste by railway or barge
5 as provided in G.S. 130A-295.4.

6 (a2) A permit for a solid waste management facility is not transferable.

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

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

- 23 a. An increase of ten percent (10%) or more in:
24 1. The population of the geographic area to be served by
25 the sanitary landfill;
26 2. The quantity of solid waste to be disposed of in the
27 sanitary landfill; or
28 3. The geographic area to be served by the sanitary landfill.

29 b. A change in the categories of solid waste to be disposed of in
30 the sanitary landfill or any other change to the application for a
31 permit or to the permit for a sanitary landfill that the
32 Commission or the Department determines to be substantial.

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

- 42 a. A statement of the population to be served, including a
43 description of the geographic area.

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Deleted: 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.

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- 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 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

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1 franchise shall provide a copy of the application for the franchise that
2 includes all of the information required to be included in the franchise,
3 to the public library closest to the proposed sanitary landfill site to be
4 made available for inspection and copying by the public.

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

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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 ~~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-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 activity in which the 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 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. . . ."

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

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

5 "**§ 130A-18. Injunction.**

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

11 (b) The Secretary of Environment and Natural Resources and a local health
12 director shall have the same rights enumerated in subsection (a) of this section to
13 enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this
14 Chapter."

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

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

18 (a) The Secretary of Environment and Natural Resources may impose an
19 administrative penalty on a person who violates Article 9 of this Chapter, rules adopted
20 by the Commission pursuant to Article 9, or any ~~term or condition of a permit or~~ order
21 issued under Article 9. Each day of a continuing violation shall constitute a separate
22 violation. The penalty shall not exceed ~~fifteen thousand dollars (\$15,000)~~ per day in the
23 case of a violation involving nonhazardous waste. The penalty shall not exceed
24 ~~thirty-two thousand five hundred dollars (\$32,500)~~ per day in the case of a first
25 violation involving hazardous waste as defined in G.S. 130A-290 or involving the
26 disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner
27 that results in medical waste entering waters or lands of the State; and shall not exceed
28 fifty thousand dollars (\$50,000) per day for a second or further violation involving the
29 disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner
30 that results in medical waste entering waters or lands of the State. The penalty shall not
31 exceed ~~thirty-two thousand five hundred dollars (\$32,500)~~ per day for a violation
32 involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a
33 violation of the rules adopted pursuant to G.S. 130A-310.12(b). If a person fails to pay a
34 civil penalty within 60 days after the final agency decision or court order has been
35 served on the violator, the Secretary of Environment and Natural Resources shall
36 request the Attorney General to institute a civil action in the superior court of any
37 county in which the violator resides or has his or its principal place of business to
38 recover the amount of the assessment. Such civil actions must be filed within three
39 years of the date the final agency decision or court order was served on the violator."

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

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

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

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

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

9 **"§ 130A-295.2. Financial responsibility requirements for applicants and permit**
10 **holders for solid waste management facilities.**

11 (a) As used in this section:

12 (1) 'Financial assurance' refers to the ability of an applicant or permit
13 holder to pay the costs of assessment and remediation in the event of a
14 release of pollutants from a facility, closure of the facility in
15 accordance with all applicable requirements, and post-closure
16 monitoring and maintenance of the facility.

17 (2) 'Financial qualification' refers of the ability of an applicant or permit
18 holder to pay the costs of proper design, construction, operation, and
19 maintenance of the facility.

20 (3) 'Financial responsibility' encompasses both financial assurance and
21 financial qualification.

22 (b) The Commission shall adopt rules governing financial responsibility
23 requirements for applicants for permits and for permit holders to ensure the availability
24 of sufficient funds for the proper design, construction, operation, maintenance, closure,
25 and post-closure monitoring and maintenance of solid waste management facilities and
26 for any corrective action the Department may require during the active life of a facility
27 or during the closure and post-closure periods.

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

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

1 financial qualification for each successive five-year phase of the facility when applying
2 for a permit to construct each successive phase of the facility.

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

14 (f) The applicant and permit holder for a solid waste management facility shall
15 establish financial assurance by a method or combination of methods that will ensure
16 that sufficient funds for closure, post-closure maintenance and monitoring, and any
17 corrective action that the Department may require will be available during the active life
18 of the facility, at closure, and for any post-closure period of time that the Department
19 may require even if the applicant or permit holder becomes insolvent or ceases to reside,
20 be incorporated, do business, or maintain assets in the State. Rules adopted by the
21 Commission may allow a business entity that is an applicant for a permit or a permit
22 holder to establish financial assurance through insurance, irrevocable letters of credit,
23 trusts, surety bonds, or any other financial device, or any combination of the foregoing
24 shown to provide protection equivalent to the financial protection that would be
25 provided by insurance if insurance were the only mechanism used. Assets used to meet
26 the financial assurance requirements of this section shall be in a form that will allow the
27 Department to readily access funds for the purposes set out in this section. Assets used
28 to meet financial assurance requirements of this section shall not be accessible to the
29 permit holder except as approved by the Department.

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

1 (h) To meet the financial assurance requirements of this section, the owner or
2 operator of a sanitary landfill shall establish financial assurance sufficient to cover a
3 minimum of three million dollars (\$3,000,000) in costs for potential assessment and
4 corrective action at the facility. The Department may require financial assurance in a
5 higher amount and may increase the amount of financial assurance required of a permit
6 holder at any time based upon the types of waste disposed in the landfill, the projected
7 amount of waste to be disposed in the landfill, the location of the landfill, potential
8 receptors of releases from the landfill, and inflation. The financial assurance
9 requirements of this subsection are in addition to the other financial responsibility
10 requirements set out in this section.

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

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

16 "**§ 130A-309.27. Joint and several liability.**

17 (a) As used in this section:

18 (1) "Owner or operator" means, in addition to the usual meanings of the
19 term, any owner of record of any interest in land on which a landfill is
20 or has been sited, and any person or business entity, including a parent,
21 subsidiary, or other affiliate of the person or business entity, and a
22 joint venturer with a direct or indirect interest in the person or business
23 entity whose assets are used to demonstrate the financial responsibility
24 of the applicant or permit holder.

25 (2) "Proceeds" means all funds collected and received by the Department,
26 including interest and penalties on delinquent fees.

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

29
30 **SECTION 5.(c)** This section becomes effective 1 August 2007 and applies
31 to any application for a permit for a solid waste management facility that is pending on
32 that date, except that G.S. 130A-295.2(h), as enacted by this section, becomes effective
33 1 February 2008 with respect to permit holders of permits that are in effect on 1 August
34 2007.

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

37 "**§ 130A-295.3. Environmental compliance review requirements for applicants and**
38 **permit holders.**

39 (a) For purposes of this section, "applicant" means an applicant for a permit and
40 a permit holder and includes the owner or operator of the facility, and, if the owner or
41 operator is a business entity, applicant also includes: (i) the parent, subsidiary, or other
42 affiliate of the applicant; (ii) a partner, officer, director, member, or manager of the
43 business entity, parent, subsidiary, or other affiliate of the applicant; and (iii) any person
44 with a direct or indirect interest in the applicant, other than a minority shareholder of a

Deleted: Landfill escrow account.

Deleted: corporation which

Deleted: owns a majority interest in any other corporation which is the owner or operator of a landfill.

Deleted: (c)

Deleted: 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)

Deleted: The revenue-producing mechanism must produce revenue at a rate sufficient to generate funds to meet State and federal landfill closure requirements.¶
(2)

Deleted: 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)

Deleted: 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)

Deleted: 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 ...

Deleted: 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.¶ ...

Deleted: The Commission shall adopt rules to implement this section.

1 publicly traded corporation who has no involvement in management or control of the
2 corporation or any of its parents, subsidiaries, or affiliates.

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

21 (c) The Department shall determine the extent to which the applicant, or a parent,
22 subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or
23 indirect interest in the applicant, has substantially complied with the requirements
24 applicable to any activity in which any of these entities previously engaged, and has
25 substantially complied with federal and state laws, regulations, and rules for the
26 protection of the environment. The Department may deny an application for a permit if
27 the applicant has a history of significant or repeated violations of statutes, rules, orders,
28 or permit terms or conditions for the protection of the environment or for the
29 conservation of natural resources as evidenced by civil penalty assessments,
30 administrative or judicial compliance orders, or criminal penalties.

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

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

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

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

41 **"§ 130A-295.4. Requirements for containers used to transport solid waste by**
42 **railway or barge.**

43 (a) A waste container used to transport solid waste by railway or barge, including
44 a railcar or barge if the waste is not containerized, shall be completely enclosed or

1 covered and designed, constructed, loaded, operated, secured, and maintained so as to
2 prevent the escape of wastes, liquids, and odors, accidents during loading,
3 transportation, unloading, and the loss or spillage of wastes and liquids in the event of
4 an accident.

5 (b) A waste container used to transport solid waste by railway or barge shall be
6 certified as watertight when it is placed into service and at least once every six months
7 thereafter while it remains in service. In order to be certified as watertight, a waste
8 container shall:

9 (1) Have a minimum internal head of 24 inches of water applied to the
10 container in an upright position for at least 15 minutes during which
11 the container shall remain free from the escape of water.

12 (2) Be visually inspected for damage on all sides, plus the top and bottom
13 and must have no visible holes, gaps, or structural damage affecting
14 the container's integrity or performance.

15 (c) The owner of a container used to transport solid waste by railway or barge
16 shall maintain a record of the tests of the container required by subsection (b) of this
17 section for three years, provide a copy of the record to any person who leases or handles
18 the container, and make the record available to the Department for inspection.

19 (d) The entry of liquids into a container used to transport solid waste by railway
20 or barge, including a railcar or barge if the waste is not containerized, while the waste is
21 being transported, held, or stored, or in the event of an accident, is a violation of this
22 Article.

23 (e) The escape, loss, or spillage of wastes or liquids from a container used to
24 transport solid waste by railway or barge, including a railcar or barge if the waste is not
25 containerized, while the waste is being transported, held, or stored, or in the event of an
26 accident, is a violation of this Article.

27 (f) The escape of odors from a container used to transport solid waste by railway
28 or barge, including a railcar or barge if the waste is not containerized, while the waste is
29 being transported, held, or stored, or in the event of an accident, is a violation of this
30 Article."

31 **SECTION 7.(b)** This section is effective 1 August 2007 and applies to any
32 application for a permit for a solid waste management facility that is pending on that
33 date.

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

36 **"§ 130A-295.5. Traffic study required for certain solid waste management**
37 **facilities.**

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

43 (1) Identification of routes from the nearest limited access highway used
44 to access the proposed facility.

Deleted:

- (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."

SECTION 8.(b) This section is 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 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 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 on land removed from the 100-year floodplain designation pursuant to 44 Code of Federal Regulations Part

1 72 (1 October 2006 Edition), except as authorized by variance granted
2 under G.S. 143-215.54A(b).

3 (2) A wetland or converted wetland. For purposes of this section,
4 "converted wetland" means land that has been drained, dredged, filled,
5 leveled, cleared of woody vegetation or otherwise altered in a manner
6 that results in removal, impairment, or reduction of the natural flow
7 and circulation of water if the land was a wetland before the alteration.

8 (3) Five miles of the outermost boundary of a National Wildlife Refuge.

9 (4) One mile of the outermost boundary of a State gameland.

10 (5) Two miles of the outermost boundary of a component of the State
11 Parks System.

12 (d) A landfill for the disposal of municipal solid waste shall be constructed with a
13 liner system consisting of three components. The upper components shall consist of two
14 flexible membrane liners, with a leak detection system between the two flexible
15 membrane liners. The lower component shall consist of a minimum of two feet of soil
16 with a maximum permeability of 1×10^{-7} centimeters per second. The flexible
17 membrane liners shall have a minimum thickness of 30 one-thousandths of an inch,
18 except that liners consisting of high density polyethylene shall be at least 60
19 one-thousandths of an inch thick. The lower flexible membrane liner shall be installed
20 in direct and uniform contact with the compacted soil layer. The Department may
21 approve an alternative to the soil component of the composite liner system if the
22 Department finds, based on modeling, that the alternative liner system will provide an
23 equivalent or greater degree of impermeability.

24 (e) A sanitary landfill for the disposal of construction and demolition debris
25 waste shall be constructed with a liner system that consists of a flexible membrane liner
26 over two feet of soil with a maximum permeability of 1×10^{-5} centimeters per second.
27 The flexible membrane liner shall have a minimum thickness of 30 one-thousandths of
28 an inch, except that a liner that consists of high density polyethylene shall be at least 60
29 one-thousandths of an inch thick. The flexible membrane liner shall be installed in
30 direct and uniform contact with the soil layer. The Department may approve an
31 alternative to the soil component of the liner system if the Department finds, based on
32 modeling, that the alternative liner system will provide an equivalent or greater degree
33 of impermeability.

34 (f) A sanitary landfill, other than a sanitary landfill for the disposal of
35 construction and demolition debris waste, shall be constructed so that the
36 post-settlement bottom elevation of the liner system, or the post-settlement bottom
37 elevation of the waste if no liner system is required, is a minimum of four feet above
38 both the seasonal high groundwater table and the bedrock datum plane contours. A
39 sanitary landfill for the disposal of construction and demolition debris waste shall be
40 constructed so that the post-settlement bottom elevation of the flexible membrane liner
41 component of the liner system is a minimum of four feet above both the seasonal high
42 groundwater table and the bedrock datum plane contours.

43 (g) A permit holder for a sanitary landfill shall develop and implement a waste
44 screening plan. The plan shall identify measures adequate to ensure compliance with

1 State laws and rules, and any applicable local ordinances that prohibit the disposal of
2 certain items in landfills. The plan shall address all sources of waste generation. The
3 plan is subject to approval by the Department.

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

6 (1) A geomembrane base liner system shall be tested for leaks and damage
7 by methods approved by the Department that ensure that the entire
8 liner is evaluated.

9 (2) A leachate collection system shall be designed to return the head of the
10 liner to 30 centimeters or less within 72 hours. The design shall be
11 based on the precipitation that would fall on an empty cell of the
12 sanitary landfill as a result of a 25-year-24-hour storm event. The
13 leachate collection system shall maintain a head of less than 30
14 centimeters at all times during leachate recirculation. The Department
15 may require the operator to monitor the head of the liner to
16 demonstrate that the head is being maintained in accordance with this
17 subdivision and any applicable rules.

18 (3) All leachate collection lines shall be designed and constructed to
19 permanently allow cleaning and remote camera inspection. All
20 leachate collection lines shall be cleaned at least once a year, except
21 that the Department may allow leachate collection lines to be cleaned
22 once every two years if: (i) the facility has continuous flow
23 monitoring; and (ii) the permit holder demonstrates to the Department
24 that the leachate collection lines are clear and functional based on at
25 least three consecutive annual cleanings. Remote camera inspections
26 of the leachate collection lines shall occur upon completion of
27 construction, at least once every five years thereafter, and following
28 the clearing of blockages.

29 (4) Any pipes used to transmit leachate shall provide dual containment
30 outside of the disposal unit. The bottom liner of a sanitary landfill shall
31 be constructed without pipe penetrations.

32 (i) The Department shall not issue a permit for a sanitary landfill that authorizes:

33 (1) A capacity of more than 55 million cubic yards of waste.

34 (2) A disposal area of more than 350 acres.

35 (3) A maximum height, including the cap and cover vegetation, of more
36 than 250 feet above the mean natural elevation of the disposal area."

37 **SECTION 9.(b)** This section is effective 1 August 2007 and applies to any
38 application for a permit for a solid waste management facility that is pending on that
39 date. To the extent that subsections (a) through (f) and (i) of G.S. 130A-295.4, as
40 enacted by this section, impose requirements that are more stringent than those in effect
41 prior to 1 August 2007, the more stringent requirements of those subsections do not
42 apply to property described in a solid waste management facility permit that is in effect
43 on 1 August 2007.

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

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

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

10 The board of county commissioners may impose a fee for the availability of a
11 disposal facility provided by the county. A fee for availability may not exceed the cost
12 of providing the facility and may be imposed on all improved property in the county
13 that benefits from the availability of the facility. A county may not impose an
14 availability fee on property whose solid waste is collected by a county, a city, or a
15 private contractor for a fee if the fee imposed by a county, a city, or a private contractor
16 for the collection of solid waste includes a charge for the availability and use of a
17 disposal facility provided by the county. Property served by a private contractor who
18 disposes of solid waste collected from the property in a disposal facility provided by a
19 private contractor that provides the same services as those provided by the county
20 disposal facility is not considered to benefit from a disposal facility provided by the
21 county and is not subject to a fee imposed by the county for the availability of a disposal
22 facility provided by the county. To the extent that the services provided by the county
23 disposal facility differ from the services provided by the disposal facility provided by a
24 private contractor in the same county, the county may charge an availability fee to cover
25 the costs of the additional services provided by the county disposal facility.

26 In determining the costs of providing and operating a disposal facility, a county may
27 consider solid waste management costs incidental to a county's handling and disposal of
28 solid waste at its disposal facility, including the costs of the methods of solid waste
29 management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of
30 1989. A fee for the availability or use of a disposal facility may be based on the
31 combined costs of the different disposal facilities provided by the county."

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

33 "(a) In addition to a fee that a city may impose for collecting solid waste or for
34 using a disposal facility, a city may impose a fee for the availability of a disposal
35 facility provided by the city. A fee for availability may not exceed the cost of providing
36 the facility and may be imposed on all improved property in the city that benefits from
37 the availability of the facility. A city may not impose an availability fee on property
38 whose solid waste is collected by a county, a city, or a private contractor for a fee if the
39 fee imposed by a county, a city, or a private contractor for the collection of solid waste
40 includes a charge for the availability and use of a disposal facility provided by the city.
41 Property served by a private contractor who disposes of solid waste collected from the
42 property in a disposal facility provided by a private contractor that provides the same
43 services as those provided by the city disposal facility is not considered to benefit from
44 a disposal facility provided by the city and is not subject to a fee imposed by the city for

1 the availability of a disposal facility provided by the city. To the extent that the services
2 provided by the city disposal facility differ from the services provided by the disposal
3 facility provided by a private contractor in the same city, the city may charge an
4 availability fee to cover the costs of the additional services provided by the city disposal
5 facility.

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

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

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

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

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

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

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

29 **"§ 160A-325. Local government landfill liaison.**

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

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

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

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

44 **SECTION 12.** [Reserved.]

1 **SECTION 13.(a)** G.S. 130A-290(a), as amended by S.L. 2007-107, is
2 amended by renumbering subdivision (1a) as (1b), renumbering subdivision (1b) as
3 (1c), renumbering subdivision (1c) as (1d), and by adding a new subdivision to read:

4 "(1a) 'Business entity' has the same meaning as in G.S. 55-1-40(2a)."

5 **SECTION 13.(b)** G.S. 130A-290(a), as amended by S.L. 2007-107, is
6 amended by renumbering subdivision (21a) as (21b) and by adding a new subdivision to
7 read:

8 "(21a) 'Pre-1983 landfill' means any land area, whether publicly or privately
9 owned, on which municipal solid waste disposal occurred prior to 1
10 January 1983 but not thereafter, but does not include any landfill used
11 primarily for the disposal of industrial solid waste."

12 **SECTION 13.(c)** This section becomes effective 1 August 2007.

13 **SECTION 14.(a)** Chapter 130A of the General Statutes is amended by
14 adding a new section to read:

15 "§ 130A-295.8. Fees applicable to permits for solid waste management facilities.

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

20 (b) As used in this section:

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

- 22 a. An application for a permit for a solid waste management
23 facility that has not been previously permitted by the
24 Department. The term includes one site suitability review, the
25 initial permit to construct, and one permit to operate the
26 constructed portion of a phase included in the permit to
27 construct.
- 28 b. An application that proposes to expand the boundary of a
29 permitted waste management facility for the purpose of
30 expanding the permitted activity.
- 31 c. An application that includes a proposed expansion to the
32 boundary of a waste disposal unit within a permitted solid waste
33 management facility.
- 34 d. An application for a substantial amendment to a solid waste
35 permit, as defined in G.S. 130A-294.

36 (2) 'Permit amendment' means any of the following:

- 37 a. An application for a permit to construct and one permit to
38 operate for the second and subsequent phases of landfill
39 development described in the approved facility plan for a
40 permitted solid waste management facility.
- 41 b. An application for the five-year renewal of a permit for a
42 permitted solid waste management facility or for a permit
43 review of a permitted solid waste management facility.

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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.

- 1 (17) Industrial Landfill accepting 100,000 tons/year or more of solid waste.
- 2 Amendment – \$18,500.
- 3 (18) Industrial Landfill accepting 100,000 tons/year or more of solid waste.
- 4 Modification – \$2,500.
- 5 (19) Tire Monofill, New Permit – \$1,750.
- 6 (20) Tire Monofill, Amendment – \$1,250.
- 7 (21) Tire Monofill, Modification – \$500.
- 8 (22) Treatment and Processing, New Permit – \$1,750.
- 9 (23) Treatment and Processing, Amendment – \$1,250.
- 10 (24) Treatment and Processing, Modification – \$500.
- 11 (25) Transfer Station, New Permit – \$5,000.
- 12 (26) Transfer Station, Amendment – \$3,000.
- 13 (27) Transfer Station, Modification – \$500.
- 14 (28) Incinerator, New Permit – \$1,750.
- 15 (29) Incinerator, Amendment – \$1,250.
- 16 (30) Incinerator, Modification – \$500.
- 17 (31) Large Compost Facility, New Permit – \$1,750.
- 18 (32) Large Compost Facility, Amendment – \$1,250.
- 19 (33) Large Compost Facility, Modification – \$500.
- 20 (34) Land Clearing and Inert, New Permit – \$1,000.
- 21 (35) Land Clearing and Inert, Amendment – \$500.
- 22 (36) Land Clearing and Inert, Modification – \$250.
- 23 (d) A permitted solid waste management facility shall pay an annual permit fee
- 24 on or before 1 August of each year according to the following schedule:
- 25 (1) Municipal Solid Waste Landfill – \$3,500.
- 26 (2) Post-Closure Municipal Solid Waste Landfill – \$1,000.
- 27 (3) Construction and Demolition Landfill – \$2,750.
- 28 (4) Post-Closure Construction and Demolition Landfill – \$500.
- 29 (5) Industrial Landfill – \$2,750.
- 30 (6) Post Closure Industrial Landfill – \$500.
- 31 (7) Transfer Station – \$750.
- 32 (8) Treatment and Processing Facility – \$500.
- 33 (9) Tire Monofill – \$500.
- 34 (10) Incinerator – \$500.
- 35 (11) Large Compost Facility – \$500.
- 36 (12) Land Clearing and Inert Debris Landfill – \$500.
- 37 (e) The Department shall determine whether an application for a permit for a
- 38 solid waste management facility that is subject to a fee under this section is complete
- 39 within 90 days after the Department receives the application for the permit. A
- 40 determination of completeness means that the application includes all required
- 41 components but does not mean that the required components provide all of the
- 42 information that is required for the Department to make a decision on the application. If
- 43 the Department determines that an application is not complete, the Department shall
- 44 notify the applicant of the components needed to complete the application. An applicant

1 may submit additional information to the Department to cure the deficiencies in the
2 application. The Department shall make a final determination as to whether the
3 application is complete within the later of: (i) 90 days after the Department receives the
4 application for the permit less the number of days that the applicant uses to provide the
5 additional information; or (ii) 30 days after the Department receives the additional
6 information from the applicant. The Department shall issue a draft permit decision on an
7 application for a permit within one year after the Department determines that the
8 application is complete. The Department shall hold a public hearing and accept written
9 comment on the draft permit decision for a period of not less than 30 or more than 60
10 days after the Department issues a draft permit decision. The Department shall issue a
11 final permit decision on an application for a permit within 90 days after the comment
12 period on the draft permit decision closes. The Department and the applicant may
13 mutually agree to extend any time period under this subsection. If the Department fails
14 to act within any time period set out in this subsection, the applicant may treat the
15 failure to act as a denial of the permit and may challenge the denial as provided in
16 Chapter 150B of the General Statutes."

17 **SECTION 14.(b)** This section becomes effective on 1 August 2007 and
18 applies to any application for a permit for a solid waste management facility that is
19 pending on that date, except that during the period 1 August 2007 through 1 August
20 2008 the Department shall determine whether an application or a permit for a solid
21 waste management facility is complete within 270 days after the Department receives
22 the application for the permit.

23 **SECTION 15.(a)** Subchapter I of Chapter 105 of the General Statutes is
24 amended by adding a new Article to read:

25 **"Article 5G.**

26 **"Solid Waste Disposal Tax.**

27 **"§ 105-187.60. Definitions.**

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

29 **"§ 105-187.61. Tax imposed.**

30 A tax is imposed on the disposal of municipal solid waste and construction and
31 demolition debris in any landfill permitted pursuant to Article 9 of Chapter 130A of the
32 General Statutes at a rate of two dollars and fifty cents (\$2.50) per ton of waste. A tax is
33 imposed on the transfer of municipal solid waste and construction and demolition debris
34 to a transfer station permitted pursuant to Article 9 of Chapter 130A of the General
35 Statutes for disposal outside the State at a rate of two dollars and fifty cents (\$2.50) per
36 ton of waste.

37 **"§ 105-187.62. Administration.**

38 The owner or operator of each landfill and transfer station permitted pursuant to
39 Article 9 of Chapter 130A of the General Statutes shall maintain scales designed to
40 determine waste tonnage that are approved by the Department of Agriculture and
41 Consumer Services. Each owner or operator shall record waste tonnage at the time the
42 waste is received on a form approved by the Department and shall calculate and record
43 the tax due under this Article for each calendar month on a form approved by the
44 Department. Each owner or operator shall report the number of tons of waste received

1 and pay the tax due for each calendar month to the Department no later than the
2 fifteenth day of the following calendar month.

3 **"§ 105-187.63. Use of tax proceeds.**

4 The Secretary shall credit all taxes received pursuant to this Article, less the
5 allowance to the Department of Revenue for administrative expenses, to the Inactive
6 Hazardous Sites Cleanup Fund established by G.S. 130A-310.11. The Secretary may
7 retain the costs of collection, not to exceed two hundred and twenty-five thousand
8 (\$225,000) a year, as reimbursement to the Department. **SECTION 15.(b)** Part 2A of
9 Article 9 of Chapter 130A of the General Statutes is amended by adding a new section
10 to read:

11 **"§ 130A-295.9. Solid waste disposal tax; use of proceeds.**

12 The Department shall use the proceeds of the solid waste disposal tax imposed by
13 Article 5G of Chapter 105 of the General Statutes only for the following purposes:

- 14 (1) One dollar and five cents (\$1.05) per ton of waste disposed or
15 transferred to the Division of Waste Management of the Department of
16 Environment and Natural Resources to fund the assessment and
17 remediation of pre-1983 landfills. Up to fifteen percent (15%) of the
18 proceeds of the tax under this subdivision may be used to fund staff to
19 administer contracts for the assessment and remediation of pre-1983
20 landfills.
- 21 (2) One dollar and five cents (\$1.05) per ton of waste disposed or
22 transferred, less the allowance to the Department of Revenue for
23 administrative expenses under G.S. 105-187.64, to the Division of
24 Waste Management of the Department of Environment and Natural
25 Resources to fund grants to State agencies and units of local
26 government to initiate or enhance local recycling programs. Up to
27 fifteen percent (15%) of the net proceeds of the tax under this
28 subdivision may be used by the Department to administer this Part.
- 29 (3) Forty cents (\$0.40) per ton of waste disposed or transferred to the
30 Litter Prevention Account established by G.S. 136-125.1 to fund
31 programs to reduce litter in the State."

32 **SECTION 15.(c)** G.S. 130A-310.6 is amended by adding four new
33 subsections to read:

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

40 (d) The Secretary shall not seek cost recovery for assessment and remedial action
41 performed under subsection (c) of this section at a pre-1983 landfill from any otherwise
42 potentially responsible party if the Secretary develops and implements a remedial action
43 plan for that pre-1983 landfill and if the potentially responsible party cooperates with
44 assessment of the site and implementation of control and mitigation measures at any site

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1 which the potentially responsible party owns or over which the potentially responsible
2 party exercises control, including, but not limited to, granting access to the site,
3 allowing installation of monitoring wells, allowing installation and maintenance of
4 improvements to the landfill cap, allowing installation of security measures, agreeing to
5 record and implement land-use restrictions, and providing access to any records
6 regarding the pre-1983 landfill. The Secretary shall develop and implement remedial
7 action plans for pre-1983 landfills in the order of their priority determined as provided
8 in subsection (c) of this section. The Secretary shall not develop or implement a
9 remedial action plan for a pre-1983 landfill unless the Secretary determines that
10 sufficient funds will be available from the Inactive Hazardous Sites Cleanup Fund to
11 pay the costs of development and implementation of a remedial action plan for that
12 pre-1983 landfill.

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

18 (1) The unit of local government undertakes assessment and remediation
19 under a plan approved by the Department.

20 (2) The unit of local government provides a certified accounting of costs
21 incurred for assessment and remediation.

22 (3) Each contract for assessment and remediation complies with the
23 requirements of Articles 3D and 8 of Chapter 143 of the General
24 Statutes.

25 (4) Remedial action is limited to measures necessary to abate the
26 imminent hazard.

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

30 **SECTION 15.(d)** G.S. 130A-310.11 reads as rewritten:

31 **"§ 130A-310.11. Inactive Hazardous Sites Cleanup Fund created.**

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

39 (b) Funds credited to the Inactive Hazardous Sites Cleanup Fund pursuant to
40 G.S. 130A-295.9 shall be used only as provided in G.S. 130A-309.295.9(c)."

41 **SECTION 15.(e)** This section becomes effective 1 July 2008. **SECTION**
42 **16.(a)** The Commission for Health Services shall review rules governing the design,
43 construction, operation, maintenance, closure, and post-closure monitoring and
44 maintenance of solid waste management facilities to determine whether changes are

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1 required to protect public health, safety, welfare, and the environment; to improve the
2 performance of solid waste management facilities; to take advantage of technological
3 advances in landfill design, construction, operation, maintenance, and closure; and to
4 provide additional protection to environmentally sensitive areas of the State. The
5 Commission shall adopt rules necessary to minimize impacts from solid waste
6 management facilities on public health, safety, welfare, and the environment. These
7 rules shall:

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

19 **SECTION 16.(b)** This section is effective when it becomes law.

20 **SECTION 17.1.** Article 9 of Chapter 130A of the General Statutes is
21 amended by adding a new Part to read:

22 "Part 2E."North Carolina Computer Equipment Responsibility Program.
23 "§ 130A-309.90. Findings.

24 The General Assembly makes the following findings:

- 25 (1) The computer equipment waste stream is growing rapidly in volume
26 and complexity and can introduce toxic materials into solid waste
27 landfills.
- 28 (2) It is in the best interests of North Carolina's citizens to have
29 convenient, simple, and free access to recycling services for their
30 discarded computer equipment.
- 31 (3) Collection programs operated by local government and nonprofit
32 agencies are an efficient way to divert discarded computer equipment
33 from disposal and to provide recycling services to all North
34 Carolinians across the State.
- 35 (4) The development of local and nonprofit collection programs is
36 hindered by the high costs of recycling and transporting discarded
37 computer equipment.
- 38 (5) No other system currently exists, either provided by electronics
39 manufacturers, retailers, or others, to adequately serve all North
40 Carolinians and to divert large quantities of discarded computer
41 equipment from disposal.
- 42 (6) Manufacturer responsibility is an effective way to ensure that
43 manufacturers of computer equipment take part in a solution to the
44 electronic waste problem.

1 (7) The recycling of discarded computer equipment recovers valuable
2 materials for reuse and will create jobs and expand the tax base in
3 North Carolina.

4 "**§ 130A-309.91. Definitions.**

5 As used in this Part, the following definitions apply:

6 (1) Computer equipment. – Any desktop central processing unit, any
7 laptop computer, the monitor or video display unit for a computer
8 system, the keyboard, mice, and any other peripheral equipment, and
9 printing devices such as printers, scanners, combination
10 print-scanner-fax machines, and other devices designed to produce
11 hard paper copies from a computer. Computer equipment does not
12 include an automobile, a household appliance, a large piece of
13 commercial or industrial equipment, such as commercial medical
14 equipment, that contains a cathode ray tube, a cathode ray tube device,
15 a flat panel display or similar video display device that is contained
16 within, and is not separate from, the larger piece of equipment, or other
17 medical devices as that term is defined under the federal Food, Drug,
18 and Cosmetic Act.

19 (2) Discarded computer equipment. – Computer equipment that has
20 reached the end of its useful life and is ready to be recycled.

21 (3) Discarded computer equipment collectors. – A municipal or county
22 government, nonprofit agency, or retailer that accepts computer
23 equipment from the public.

24 (4) Certified computer equipment recycling facility. – A business that
25 processes covered electronic devices for reuse and recycling that meets
26 a minimum set of operational and material handling standards
27 determined by the Department.

28 (5) Manufacturer. – A person who manufactures computer equipment sold
29 under its own brand or label; sells under its own brand or label
30 computer equipment produced by other suppliers; imports into the
31 United States computer equipment that was manufactured by a person
32 without a presence in the United States; or owns a brand that it licenses
33 to another person for use on computer equipment.

34 (6) Orphan discarded computer equipment. – Any computer equipment for
35 which a manufacturer cannot be identified or for which the
36 manufacturer is no longer in business and has no successor in interest.

37 (7) Retailer. – A person who sells computer equipment in the State to a
38 consumer. Retailer includes a manufacturer of computer equipment
39 that sells directly to a consumer through any means, including
40 transactions conducted through sales outlets, catalogs, or the Internet,
41 or any similar electronic means, but not including wholesale
42 transactions with a distributor or other retailer.

43 "**§ 130A-309.92. Responsibility for recycling discarded computer equipment.**

1 In addition to the specific requirements of this Part, computer equipment
2 collectors, certified computer equipment recycling facilities,
3 manufacturers, and the State share responsibility for the recycling of
4 discarded computer equipment and the education of consumers in North
5 Carolina on recycling opportunities for discarded computer
6 equipment," § 130A-309.93. Requirements for manufacturers.

7 (a) Registration and Fee Required. – Each manufacturer of computer equipment
8 sold in North Carolina shall register with the Department and shall pay an initial
9 registration fee of ten thousand dollars (\$10,000) to the Department and an annual
10 renewal registration fee of five thousand dollars (\$5,000). The proceeds of these fees
11 shall be credited to the Computer Equipment Management Account.

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

15 (c) Recycling Plan; Duty to Pay Cost of Recycling. – Each manufacturer of
16 computer equipment shall do all of the following:

17 (1) Develop and submit to the Department a plan for approval by the
18 Department for the recycling or reuse of computer equipment
19 produced by the manufacturer and generated as discarded computer
20 equipment by households in North Carolina. This plan shall be based
21 on the manufacturer's taking responsibility for its products upon
22 receipt at a certified computer equipment recycling facility and shall
23 include mechanisms by which a manufacturer of computer equipment
24 shall implement and finance the implementation of this plan. This plan
25 shall identify a specific arrangement for working with each certified
26 computer equipment recycling facility, including the prompt payment
27 of quarterly invoices from certified computer equipment recycling
28 facilities. Any plan that excludes any certified computer equipment
29 recycling facility in the State shall not be approved by the Department.

30 (2) Include in its plan under subdivision (1) of this subsection, at a
31 minimum, all of the following:

32 a. Details about meeting all labeling requirements.
33 b. Details for implementing and financing the handling of
34 discarded computer equipment originally produced by the
35 manufacturer and orphan discarded computer equipment
36 generated by households in this State and received by certified
37 computer equipment recyclers in this State. The plan shall show
38 how all costs of handling, transporting, and recycling of
39 discarded computer equipment will be paid.

40 c. A mechanism by which the manufacturer will work with each
41 certified computer equipment recycling facility, including how
42 quarterly invoices will be received from the facility and paid by
43 the manufacturer.

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- d. A description of the performance measures that will be used by the manufacturer to report recovery and recycling rates for discarded computer equipment.
- (3) Upon approval of the plan under subdivision (1) of this subsection by the Department, begin immediate implementation of its plan.
- (4) Following submission and approval of the original plan, revise the plan at any time as the manufacturer considers appropriate in response to changing circumstances or needs, but only if these revisions conform to the provisions of this Part and are submitted to the Department in a timely manner.
- (5) Pay those reasonable costs of operating a certified computer equipment recycling facility that are attributable to the handling of discarded computer equipment generated as waste by households in this State, the costs of transporting the discarded computer equipment from the computer equipment collector to a certified computer equipment recycling facility, and the actual costs of recycling the discarded computer equipment. A manufacturer is responsible for all costs associated with the development and implementation of its plan under this subsection. If the costs of implementing the plan are passed on to consumers, the costs shall be imposed at the time of purchase and shall not be in the form of a fee imposed at the end of the life of the computer equipment.
- (6) Pay each certified computer equipment recycling facility for the manufacturer's pro rata share of orphan discarded computer equipment waste from the previous calendar year, calculated under G.S. 130A-309.97.
- (7) In lieu of the requirements under subdivisions (1) through (5) of this subsection, participate in a collective recovery plan with other manufacturers so long as the collective recovery plan shall meet the same standards and requirements of the plan submitted by an individual manufacturer under subdivisions (1) through (5) of this subsection.
- (8) By 31 January of each year, submit a report to the Department that includes all of the following:
 - a. A description of the collection and recycling services utilized to recover the manufacturer's products.
 - b. Substantiated estimates, on an annual basis for the preceding calendar year, of the quantities of computer equipment marketed to retail consumers in this State and collected for recovery in this State.
 - c. The capture rate for computer equipment based on sales in this State and any systems implemented by the manufacturer to ensure the minimum environmentally sound management of its products.

1 (9) Keep any information submitted pursuant to this subsection
2 confidential as provided by existing State law.

3 (10) At the option of the manufacturer, provide information to the
4 Department, for consideration by the Department under
5 G.S. 130A-309.97, on any certified computer equipment recycling
6 facility whose cost charges are unreasonable.

7 **§ 130A-309.94. Prohibited sales of computer equipment.**

8 (a) A manufacturer not in compliance with the requirements of
9 G.S. 130A-309.93 shall not offer computer equipment for sale in this State and shall
10 provide the necessary support to retailers to ensure the manufacturer's computer
11 equipment is not offered for sale in this State.

12 (b) A retailer shall not offer for sale in this State computer equipment of a
13 manufacturer that is not in compliance with the requirements of G.S. 130A-309.93.

14 **§ 130A-309.95. Certification of computer equipment recycling facilities.**

15 (a) Only a computer equipment recycling facility that is certified by the
16 Department is eligible to be included in a manufacturer producer responsibility plan and
17 is eligible to invoice a manufacturer for the costs of recycling discarded computer
18 equipment.

19 (b) To obtain certification as a computer equipment recycling facility, a business
20 shall apply to the Department. Subject to subsections (c) and (d) of this section, the
21 Department shall certify a business that demonstrates to the satisfaction of the
22 Department that the business meets all of the following minimum environmentally
23 sound management standards:

24 (1) The business complies with all federal and State requirements for the
25 proper handling of discarded electronic equipment, including
26 specifically cathode ray tubes.

27 (2) The business does not directly export intact nonworking cathode ray
28 tubes.

29 (3) The business does not indirectly export intact nonworking cathode ray
30 tubes by either using suppliers or subcontractors that export these
31 cathode ray tubes.

32 (4) Complies with all federal and international laws and agreements on the
33 export of used products or materials.

34 (5) The business does not use prison labor to collect, process, or market
35 discarded computer equipment.

36 (6) The business does not use subcontractors or suppliers that use prison
37 labor to collect, process, or market discarded computer equipment.

38 (7) The business actively uses recycling industry auditing and certification
39 programs to assess ongoing business and environmental performance.

40 (8) The business has, and has implemented, a written health and safety
41 plan to protect workers in handling discarded computer equipment
42 within the business operations.

43 (9) The business has a written plan for hazardous materials identification
44 and management.

- 1 (10) The business has a written plan for reporting and responding to
- 2 exceptional pollutant releases, including emergencies such as
- 3 accidents, spills, fires, and explosions.
- 4 (11) The business has no record of significant violations of federal or State
- 5 occupational health and safety or environmental laws within the
- 6 previous three years by the business or its subcontractors or suppliers.
- 7 (12) The business uses appropriate equipment and facilities that minimize
- 8 adverse exposures to workers and releases to the environment.
- 9 (13) The business has obtained certificates of insurance to cover all aspects
- 10 of the business's operations, including commercial general liability
- 11 insurance or equivalent corporate guarantee for accidents and other
- 12 emergencies with limits of not less than one million dollars
- 13 (\$1,000,000) per occurrence and not less than one million dollars
- 14 (\$1,000,000) in the aggregate. (14) The business has a written plan
- 15 for cost coverage and the handling of discarded electronic equipment
- 16 in the event of disruptions or cessation of the business's operations.
- 17 (15) The business has a demonstrated ability to report detailed information
- 18 on incoming and outgoing materials and the management of those
- 19 materials in its business operations.

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20 (c) Each applicant shall provide information on its business's typical cost charges
 21 for transporting and recycling of discarded computer equipment from computer
 22 equipment collectors or the methods by which it calculates such charges. Each applicant
 23 shall describe its experience and capacity to sort and manage discarded computer
 24 equipment and its system of inventory management and cost accounting. The
 25 Department shall take the information provided by the applicant under this subsection
 26 into account when determining whether to certify the applicant as a computer equipment
 27 recycling facility.

28 (d) When determining whether to certify or renew the certification of a computer
 29 equipment recycling facility, the Department shall review the cost charges of the
 30 certified computer equipment recycling facility to determine whether the charges are
 31 reasonable.

32 (e) Each applicant for certification as a computer equipment recycling facility
 33 shall submit an application fee of five thousand dollars (\$5,000) and shall pay an annual
 34 renewal fee of two thousand five hundred dollars (\$2,500). The funds received under
 35 this section shall be credited to the Computer Equipment Management Account.

36 (f) Any certified computer equipment recycling facility that fails to adhere to the
 37 minimum environmentally sound management standards under subsection (b) of this
 38 section shall be removed from the list of certified facilities and shall no longer be
 39 eligible to be included in a manufacturer's plan or receive payment from any
 40 manufacture for the recycling of discarded computer equipment.

41 **§ 130A-309.96. Requirements for certified computer equipment recycling**
 42 **facilities.**

43 Each certified computer equipment recycling facility shall do all of the following:

- 1 (1) Identify the manufacturer of discarded computer equipment delivered
2 to its facility that was identified as generated by a household in this
3 State.
- 4 (2) Maintain an accounting and an itemized inventory of the discarded
5 computer equipment delivered to its facility, by manufacturer, and no
6 later than 15 January of each year provide this accounting to the
7 Department. The accounting under this subdivision shall include a
8 determination of the amounts of orphan discarded computer
9 equipment.
- 10 (3) Work cooperatively with manufacturers to ensure implementation of a
11 practical and feasible financing system that, at a minimum, provides
12 that each certified computer equipment recycling facility shall invoice
13 any manufacturer for the handling, transportation, and recycling costs
14 for which the manufacturer is responsible under the provisions of
15 G.S. 130A-309.93.
- 16 (4) Ensure that the cost charges for recycling discarded computer
17 equipment at its facility are reasonable.

18 **"§ 130A-309.97. Requirements for the Department.**

19 The Department shall:

- 20 (1) No later than 31 January of each year, calculate, based on the best
21 available information, including but not limited to data provided by
22 manufacturers and certified computer equipment recycling facilities
23 and data from electronic waste collection programs in other
24 jurisdictions within the United States, and provide each manufacturer
25 and certified computer equipment recycling facility with a listing of
26 each manufacturer's pro rata share of the orphan discarded computer
27 equipment from the previous calendar year.
- 28 (2) Develop and maintain a list of certified computer equipment recycling
29 facilities and supply this list to each registered computer equipment
30 manufacturer registered under G.S. 130A-309.93 for inclusion in the
31 manufacturer's plan under G.S. 130A-309.93.

32 **"§ 130A-309.98. Requirements for discarded computer equipment collectors. Each**
33 **computer equipment collector that chooses to participate in the North Carolina**
34 **Computer Equipment Responsibility Program under this Part shall ensure that discarded**
35 **computer equipment generated from households served by the collector is delivered to a**
36 **certified computer equipment recycling facility in this State. A collector may meet this**
37 **requirement by:**

- 38 (1) Collecting and transporting discarded computer equipment from a
39 local or regional solid waste transfer station or recycling facility.
- 40 (2) Contracting with a recycling or solid waste facility to accept computer
41 equipment directly from residents through curbside pickup, at a
42 drop-off center operated by the collector, or by another collection
43 system convenient to consumers of computer equipment.

44 **"§ 130A-309.99. Computer Equipment Management Account.**

Deleted: ¶

1 The Computer Equipment Management Account is created as a nonreverting
2 account within the Department. The fees deposited to the Computer Equipment
3 Management Account as initial registration fees under G.S. 130A-309.93 shall be
4 applied to the costs of implementing the Program under this Part, including necessary
5 staff positions. The fees collected and credited to the Account under G.S. 130A-309.95
6 shall be used to administer the Program under this Part.

7 **"§ 130A-309.100. Enforcement.**

8 (a) If a manufacturer fails to register with the Department or pay for the costs
9 allocated to it, including its pro rata share of costs attributable to orphan discarded
10 computer equipment, the Department shall seek cost recovery from the nonpaying
11 manufacturer. Any nonpaying manufacturer is liable for the costs incurred by the
12 Department in an amount up to three times the amount incurred as a result of such
13 failure to comply.

14 (b) The Attorney General may commence a civil action against any manufacturer
15 to recover the costs described in this section, which are in addition to any fines and
16 penalties imposed.

17 **"§ 130A-309.101. Disposal ban.**

18 Discarded computer equipment shall not be disposed of in a landfill or by
19 incineration.

20 **"§ 130A-309.102. Report required.**

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

28 **SECTION 17.2.** G.S. 130A-309.09A(b)(6) reads as rewritten:

29 "(6) Include an assessment of current programs and a description of
30 intended actions with respect to:

- 31 a. Education with the community and through the schools.
- 32 b. Management of special wastes.
- 33 c. Prevention of illegal disposal and management of litter.
- 34 d. Purchase of recycled materials and products manufactured with
35 recycled materials.
- 36 e. For each county and each municipality with a population in
37 excess of 25,000, collect discarded computer equipment, as
38 defined in G.S. 130A-309.91."

39 **SECTION 17.3.** G.S. 130A-309.10(f) is amended by adding a new
40 subdivision to read:

41 "(14) Discarded computer equipment as provided in G.S. 130A-309.96."

42 **SECTION 17.4.** G.S. 130A-309.10(f1) is amended by adding a new
43 subdivision to read:

44 "(7) Discarded computer equipment as provided in G.S. 130A-309.96."

1 **SECTION 17.5.** G.S. 130A-309.14 is amended by adding a new subsection
2 to read:

3 "(a2) The Department of Administration shall review and revise its bid procedures
4 and specifications so that the bid procedures and specifications comply with all of the
5 following requirements:

6 (1) Effective 1 July 2008, all desktop computers, monitors, laptop or
7 notebook computers, and integrated systems purchased by the State of
8 North Carolina will meet at least the bronze standard of the federal
9 Electronic Product Environmental Assessment Tool (EPEAT).

10 (2) Effective 1 July 2011, all desktop computers, monitors, laptop or
11 notebook computers, and integrated systems purchased by the State of
12 North Carolina will meet at least the silver standard of the federal
13 Electronic Product Environmental Assessment Tool (EPEAT).

14 (3) Effective 1 July 2014, all desktop computers, monitors, laptop or
15 notebook computers, and integrated systems purchased by the State of
16 North Carolina will meet at least the gold standard of the federal
17 Electronic Product Environmental Assessment Tool (EPEAT)."

18 **SECTION 17.6** G.S. 130A-309.93(b) and G.S. 130A-309.94, as enacted by
19 Section 17.1 of this act, become effective 1 January 2008 and apply to sales that occur
20 on or after that date; G.S. 130A-309.95 and G.S. 130A-309.96, as enacted by Section
21 17.1 of this act, become effective 1 January 2008 and apply to discarded computer
22 equipment that is recycled at a certified computer recycling facility on or after 1 January
23 2009; G.S. 130A-309.93(c), as enacted by Section 17.1 of this act, becomes effective 31
24 December 2008, except G.S. 130A-309.93(c)(8) becomes effective 31 January 2010;
25 G.S. 130A-309.96(2), as enacted by Section 17.1 of this act, becomes effective 31
26 January 2010; G.S. 130A-309.102, as enacted by Section 17.1 of this act, becomes
27 effective 1 April 2010; and G.S. 130A-309.101, as enacted by Section 17.1 of this act,
28 and Sections 17.3 and 17.4 of this act become effective 1 January 2011. The remainder
29 of Part 2E of Article 9 of Chapter 130A of the General Statutes, as enacted by Section
30 17.1 of this act, and Sections 17.2 and 17.5 of this act become effective 30 September
31 2007 except as otherwise provided in G.S. 130A-309.14(a2), as enacted by Section 17.5
32 of this act. The Department of Environment and Natural Resources shall submit the
33 first report required by G.S. 130A-309.102, as enacted by Section 17.1 of this act, to the
34 Environmental Review Commission no later than 1 April 2009.

35 **SECTION 18.(a).** G.S. 130A-295.01(g), as enacted by Sec. 1.7 of S.L.
36 2007-107, is recodified as G.S. 130A-295.01(c).

37 **SECTION 18.(b).** G.S. 130A-295.01(c), as enacted by Sec. 1.3 of S.L.
38 2007-107, is recodified as G.S. 130A-295.01(d).

39 **SECTION 18.(c).** Subsections (d), (e), (f), and (g) of G.S. 130A-295.01, as
40 enacted by Sec. 1.4 of S.L. 2007-107, read as rewritten:

41 "(e)

42 (1) Within 10 days of filing an application for a permit for a commercial
43 hazardous waste facility, the applicant shall notify every person who
44 resides or owns property located within one-fourth mile of any

Deleted: (d)

1 property boundary of the facility that the application has been filed.
2 The notice shall be by mail to residents and by certified mail to
3 property owners, or by any other means approved by the Department,
4 shall be in a form approved by the Department, and shall include all of
5 the following:

- 6 a. The location of the facility.
- 7 b. A description of the facility.
- 8 c. The hazardous and nonhazardous wastes that are to be received
9 and processed at the facility.
- 10 d. A description of the emergency response plan for the facility.

11 (2) The permit holder for a commercial hazardous waste facility shall
12 publish a notice that includes the information set out in subdivision
13 (1) of this subsection annually beginning one year after the permit is
14 issued. The notice shall be published in a form and manner approved
15 by the Department in a newspaper of general circulation in the
16 community where the facility is located.

17 (3) The permit holder for a commercial hazardous waste facility shall
18 provide the information set out in subdivision (1) of this subsection by
19 mail to the persons described in subdivision (1) of this subsection at
20 the midpoint of the period for which the permit is issued.

21 (4) Each commercial hazardous waste facility applicant and permit holder
22 shall provide documentation to demonstrate to the Department that the
23 requirements set out in subdivisions (1), (2), and (3) of this subsection
24 have been met."

25 **SECTION 18.(d).** G.S. 130A-295.01(e), as enacted by Sec. 1.5 of S.L.
26 2007-107, is recodified as G.S. 130A-295.01(f).

27 **SECTION 18.(e).** G.S. 130A-295.01(f), as enacted by Sec. 1.6 of S.L.
28 2007-107, is recodified as G.S. 130A-295.01(g).

29 **SECTION 19.** The Division of Waste Management and the Division of
30 Pollution Prevention and Environmental Assistance of the Department of Environment
31 and Natural Resources shall jointly develop a proposal for a recycling program for
32 fluorescent lamps. The program will be developed so as to ensure that substantially all
33 of the mercury contained in florescent lamps will be recovered so as to facilitate a
34 phase-out of incandescent lamps without damage to public health and the environment
35 from the increased use of mercury lamps as replacements for florescent lamps. The
36 Department of Environment and Natural Resources shall report to its findings and
37 recommendations, including legislative proposals and cost estimates, to the
38 Environmental Review Commission on or before 1 March 2008.

39 **SECTION 20.** The Environmental Review Commission shall study issues
40 related to the franchise of solid waste management facilities by units of local
41 government. The Environmental Review Commission shall report its findings and
42 recommendations, including any legislative proposals, to the 2008 Regular Session of
43 the General Assembly.

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- Deleted: (f)
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- Deleted: (d) of this section
- Deleted: (d) of this section
- Deleted: (g)
- Deleted: subsections (d) through (f) of this section

1 **SECTION 21.** If any section or provision of this act is declared
2 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
3 provision does not affect the validity of this act as a whole or any part of this act other
4 than the part declared to be unconstitutional or invalid.

5 **SECTION 22.** Except as otherwise provided in this act, this act becomes
6 effective when it becomes law.