

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 589

Short Title: Hazardous Waste Amends. (Public)

Sponsors: Senator Vaughan.

Referred to: Agriculture/Environment/Natural Resources.

April 14, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND CERTAIN LAWS GOVERNING HAZARDOUS WASTE
3 FACILITIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 130A-295.04 reads as rewritten:

6 "**§ 130A-295.04. Financial responsibility requirements for applicants for a permit and**
7 **permit holders for hazardous waste facilities.**

8 (a) In addition to any other financial responsibility requirements for solid waste
9 management facilities under this Part, the applicant for a permit or a permit holder for a
10 hazardous waste facility shall establish financial assurance that will ensure that sufficient funds
11 are available for facility closure, post-closure maintenance and monitoring, any corrective
12 action that the Department may require, and to satisfy any potential liability for sudden and
13 nonsudden accidental occurrences, even if the applicant or permit holder becomes insolvent or
14 ceases to reside, be incorporated, do business, or maintain assets in the State.

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

22 (c) The applicant for a permit or a permit holder for a hazardous waste facility, and any
23 parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any
24 joint venturer with a direct or indirect interest in the applicant, permit holder, or parent, shall be
25 a guarantor of payment for closure, post-closure maintenance and monitoring, any corrective
26 action that the Department may require, and to satisfy any potential liability for sudden and
27 nonsudden accidental occurrences arising from the operation of the hazardous waste facility.

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

36 (e) The Department may require an applicant for a permit for a hazardous waste facility
37 to provide cost estimates for facility closure, post-closure maintenance and monitoring, and any



1 corrective action that the Department may require to the Department. ~~The Department may~~
2 ~~require an applicant for a permit for a commercial hazardous waste facility to provide cost~~
3 ~~estimates for off-site screening for potential migration of contaminants in the event of a release~~
4 ~~of hazardous waste or hazardous waste constituents into the environment.~~

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

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

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

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

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

26 **SECTION 2.** G.S. 130A-295 reads as rewritten:

27 **"§ 130A-295. Additional requirements for hazardous waste facilities.**

28 (a) An applicant for a permit for a hazardous waste facility shall satisfy the Department
29 that:

- 30 (1) Any hazardous waste facility constructed or operated by the applicant, or
31 any parent or subsidiary corporation if the applicant is a corporation, has
32 been operated in accordance, with sound waste management practices and in
33 substantial compliance with federal and state laws, regulations and rules; and
- 34 (2) The applicant, or any parent or subsidiary corporation if the applicant is a
35 corporation, is financially qualified to operate the proposed hazardous waste
36 facility.

37 (b) An applicant for a permit for a hazardous waste facility shall satisfy the Department
38 that he has met the requirements of subsection (a) of this section before the Department is
39 required to otherwise review the application. In order to continue to hold a permit under this
40 Chapter, a permittee must remain financially qualified and must provide any information
41 requested by the Department to demonstrate that he continues to be financially qualified.

42 (c) No permit for any new commercial hazardous waste treatment, storage, or disposal
43 facility shall be issued or become effective, and no permit for a commercial hazardous waste
44 treatment, storage, or disposal facility shall be modified until the applicant has satisfied the
45 Department that such facility is needed to meet the current or projected hazardous waste
46 management needs of this State or to comply with the terms of any interstate agreement for the
47 management of hazardous waste to which the State is a party. The Commission shall adopt
48 rules to implement this subsection.

49 (d) At least 120 days prior to submitting an application, an applicant for a permit for a
50 new hazardous waste facility shall provide to the county in which the facility is located, to any
51 municipality with planning jurisdiction over the site of the facility, and to all emergency

1 response agencies that have a role under the contingency plan for the facility all of the
2 following information:

- 3 (1) Information on the nature and type of operations to occur at the facility.
- 4 (2) Identification of the properties of the hazardous waste to be managed at the
5 facility.
- 6 (3) A copy of the draft contingency plan for the facility that includes the
7 proposed role for each local government and each emergency response
8 agency that received information under this subsection.
- 9 (4) Information on the hazardous waste locations within the facility.

10 (e) Within 60 days of receiving the information, each local government and emergency
11 response agency that receives information under subsection (d) of this section shall respond to
12 the applicant in writing as to the ~~adequacy review~~ of the applicant's contingency plan and ~~the~~
13 ~~availability and adequacy of its resources and equipment to respond that the local government~~
14 ~~or emergency response agency will respond~~ to an emergency at the facility that results in a
15 release of hazardous waste or hazardous waste constituents into the environment to the best of
16 the local government or emergency response agency's ability with the resources and equipment
17 it has available according to the role set forth for the local government or emergency response
18 agency under the contingency plan.

19 (f) An applicant for a permit for a hazardous waste facility shall include documentation
20 that each local government and emergency response agency received the information required
21 under subsection (d) of this section, the written responses the applicant received under
22 subsection (e) of this section, and verification by each that ~~its resources and equipment are~~
23 ~~available and adequate~~ it is able to respond to an emergency at the facility in accordance with its
24 role as set forth in the contingency plan. If the applicant does not receive a timely verification
25 from a local government or emergency response agency notified under subsection (d) of this
26 section, the Department shall verify the adequacy of resources and equipment for emergency
27 response during the course of review of the permit application, taking into account any
28 contracts entered into by the applicant for such emergency response resources.

29 (g) At each two-year interval after a permit for a hazardous waste facility is issued, the
30 ~~permit holder~~ Department shall verify that the resources and equipment of each local
31 government and emergency response agency are available and adequate to respond to an
32 emergency at the facility in accordance with its role as set forth in the contingency ~~plan.~~ plan
33 ~~and shall submit this verification to the Department. A contingency plan verification under this~~
34 subsection shall be available through utilization of the UT-Dallas E-Plan reporting system."

35 **SECTION 3.** G.S. 130A-295.01 reads as rewritten:

36 **"§ 130A-295.01. Additional requirement for commercial hazardous waste facilities.**

37 (a) As used in this section:

- 38 (1) "Commercial hazardous waste facility" means any hazardous waste facility
39 that accepts hazardous waste from the general public or from another person
40 for a fee, but does not include any facility owned or operated by a generator
41 of hazardous waste solely for his own use, and does not include any facility
42 owned by the State or by any agency or subdivision thereof solely for the
43 management of hazardous waste generated by agencies or subdivisions of
44 the State.
- 45 (2) "New", when used in connection with "facility", refers to a planned or
46 proposed facility, or a facility that has not been placed in operation, but does
47 not include facilities that have commenced operations as of 22 June 1987,
48 including facilities operated under interim status.
- 49 (3) "Modified", when used in connection with "permit", means any change in
50 any permit in force on or after 22 June 1987 that would either expand the
51 scope of permitted operations, or extend the expiration date of the permit, or

1 otherwise constitute a Class 2 or Class 3 modification of the permit as
2 defined in 40 Code of Federal Regulations § 270.41 (1 July 2006).

- 3 (4) "7Q10 conditions", when used in connection with "surface water," refers to
4 the minimum average flow for a period of seven consecutive days that has
5 an average occurrence of once in 10 years as referenced in 15 NCAC
6 2B.0206(a)(3) as adopted 1 February 1976.

7 (b) No permit for any new commercial hazardous waste facility shall be issued or
8 become effective, and no permit for a commercial hazardous waste facility shall be modified,
9 until the applicant has satisfied the Department that such facility meets, in addition to all other
10 applicable requirements, the following requirements:

- 11 (1) The facility shall not discharge directly a hazardous or toxic substance into a
12 surface water that is upstream from a public drinking water supply intake in
13 North Carolina, unless there is a dilution factor of 1000 or greater at the
14 point of discharge into the surface water under 7Q10 conditions.
- 15 (2) The facility shall not discharge indirectly through a publicly owned
16 treatment works (POTW) a hazardous or toxic substance into a surface water
17 that is upstream from a public drinking water supply intake in North
18 Carolina, unless there is a dilution factor of 1000 or greater, irrespective of
19 any dilution occurring in a wastewater treatment plant, at the point of
20 discharge into the surface water under 7Q10 conditions.

21 (c) The Department shall not issue a permit for a commercial hazardous waste facility
22 for a period of more than five years. A permit holder for a commercial hazardous waste facility
23 who intends to apply for renewal of the permit shall submit an application for the renewal of
24 the permit at least one year before the permit expires unless the Department approves a shorter
25 period of time.

26 (d) The owner or operator of a commercial hazardous waste facility shall maintain a
27 record of information at an off-site location that identifies the generators of the waste and the
28 quantity, type, location, and hazards of the waste at the facility and shall make this information
29 available in a form and manner to be determined by the Department, ~~accessible-made available~~
30 to the Department, to the county in which the facility is located, to any municipality with
31 planning jurisdiction over the site of the facility, and to emergency response agencies that have
32 a role under the contingency plan for the ~~facility-facility~~ in the event such information is
33 requested in response to a release of hazardous waste or hazardous waste constituents into the
34 environment.

- 35 (e) (1) Within 10 days of filing an application for a permit for a new commercial
36 hazardous waste facility, the applicant shall notify every person who resides
37 or owns property located within one-fourth mile of any property boundary of
38 the facility that the application has been filed. The notice shall be by mail to
39 residents and by certified mail to property owners, or by any other means
40 approved by the Department, shall be in a form approved by the Department,
41 and shall include all of the following:

- 42 a. The location of the facility.
43 b. A description of the facility.
44 c. The hazardous and nonhazardous wastes that are to be received and
45 processed at the facility.
46 d. A description of the emergency response plan for the facility.

- 47 (2) ~~The permit holder for a commercial hazardous waste facility shall publish a~~
48 ~~notice that includes the information set out in subdivision (1) of this~~
49 ~~subsection annually beginning one year after the permit is issued. The notice~~
50 ~~shall be published in a form and manner approved by the Department in a~~

1 ~~newspaper of general circulation in the community where the facility is~~
2 ~~located.~~

3 ~~(3)~~(2) The permit holder for a commercial hazardous waste facility shall provide
4 the information set out in subdivision (1) of this subsection by published
5 newspaper notice for mail to the persons described in subdivision (1) of this
6 subsection at the midpoint of the period for which the permit is issued. The
7 notice shall be published in a form and manner approved by the Department
8 in a newspaper of general circulation in the community where the facility is
9 located.

10 ~~(4)~~(3) Each commercial hazardous waste facility applicant and permit holder shall
11 provide documentation to demonstrate to the Department that the
12 requirements set out in subdivisions ~~(1), (2), and (3)~~(1) and (2) of this
13 subsection have been met.

14 (f) No later than 31 January of each year, ~~the owner or operator of a commercial~~
15 ~~hazardous waste facility shall report to the Department~~ shall determine any increase or decrease
16 in the number of sensitive land uses and any increase or decrease in estimated population
17 density based on information provided by the local government that has planning jurisdiction
18 over the site on which the facility is located that occurred during the previous calendar year in
19 the area located within one-fourth mile of any property boundary of the facility. ~~Changes shall~~
20 ~~be recorded in the operating record of the facility.~~ As used in this subsection, "sensitive land
21 use" includes residential housing, places of assembly, places of worship, schools, day care
22 providers, and hospitals. Sensitive land use does not include retail businesses.

23 (g) The owner or operator of a commercial hazardous waste facility shall provide a
24 security and surveillance system at the facility 24 hours a day, seven days a week in order to
25 continuously monitor site conditions and to control entry. The security and surveillance system
26 shall be ~~capable~~ capable, to the extent technologically practicable, of promptly detecting
27 unauthorized access to the facility; monitoring conditions; ~~identifying operator errors;~~ and
28 detecting any discharge that could directly or indirectly cause a fire, explosion, or release of
29 hazardous waste or hazardous waste constituents into the environment or threaten human
30 health. The requirements of this subsection may be satisfied either by employing trained facility
31 personnel or by providing an electronic security and surveillance system which may include
32 television, motion detectors, heat-sensing equipment, combustible gas monitors, or any
33 combination of these, as approved by the Department.

34 (h) The operator of a commercial hazardous waste facility shall install an on-site wind
35 monitor approved by the Department. The wind monitor required shall be located so that the
36 real-time wind direction can be determined from a remote location in the event of a release of
37 hazardous waste or hazardous waste constituents into the environment."

38 **SECTION 4.** G.S. 130A-295.02(j) reads as rewritten:

39 "(j) For purposes of this subsection, special purpose commercial hazardous waste
40 facilities include: a facility that manages limited quantities of hazardous waste; a facility that
41 limits its hazardous waste management activities to reclamation or recycling, including energy
42 or materials recovery or a facility that stores hazardous waste primarily for use at such
43 facilities; or a facility that is determined to be low risk under rules adopted by the Commission
44 pursuant to this subsection. The Commission shall adopt rules to determine whether a
45 commercial hazardous waste facility is a special purpose commercial hazardous waste facility
46 and to establish classifications of special purpose commercial hazardous waste facilities. The
47 rules to determine whether a commercial hazardous waste facility is a special purpose
48 commercial hazardous waste facility and to establish classifications of special purpose
49 commercial hazardous waste facilities shall be based on factors including, but not limited to,
50 the size of the facility, the type of treatment or storage being performed, the nature and volume
51 of waste being treated or stored, the uniformity, similarity, or lack of diversity of the waste

1 streams, the predictability of the nature of the waste streams and their treatability, whether the
2 facility utilizes automated monitoring or safety devices that adequately perform functions that
3 would otherwise be performed by a resident inspector, the fact that reclamation or recycling is
4 being performed at the facility, and the compliance history of the facility and its operator.
5 ~~Based on the foregoing factors and any increase or decrease in the number of sensitive land~~
6 ~~uses over time or in estimated population density over time reported pursuant to~~
7 ~~G.S. 130A-295.01(f), rules adopted pursuant to this subsection shall establish times and~~
8 ~~frequencies for the presence of a resident inspector on less than a full time basis at special~~
9 ~~purpose commercial hazardous waste facilities and specify a minimum number of additional~~
10 ~~inspections at special purpose hazardous waste facilities.~~

11 Special purpose commercial hazardous waste facilities that utilize hazardous waste as a fuel
12 source shall be inspected a minimum of 40 hours per week, unless compliance data for these
13 facilities can be electronically monitored and recorded off-site by the Department. The
14 Department, considering the benefits provided by electronic monitoring, shall determine the
15 number of hours of on-site inspection required at these facilities. The Department shall
16 maintain records of all inspections at special purpose commercial hazardous waste facilities.
17 Such records shall contain sufficient detail and shall be arranged in a readily understandable
18 format so as to facilitate determination at any time as to whether the special purpose
19 commercial hazardous waste facility is in compliance with the requirements of this subsection
20 and of rules adopted pursuant to this subsection. Notwithstanding any other provision of this
21 section, special purpose commercial hazardous waste facilities shall be subject to inspection at
22 all times during which the facility is in operation, undergoing any maintenance or repair, or
23 undergoing any test or calibration."

24 **SECTION 5.** G.S. 130A-294(c)(8) reads as rewritten:

25 "(c) The Commission shall adopt and the Department shall enforce rules governing the
26 management of hazardous waste. These rules shall establish a complete and integrated
27 regulatory scheme in the area of hazardous waste management, implement this Part, and shall:

28 ...

- 29 (8) Develop standards regarding location, design, ownership and construction of
30 hazardous waste facilities; ~~provided, however, that no hazardous waste~~
31 ~~disposal facility or polychlorinated biphenyl disposal facility shall be located~~
32 ~~within 25 miles of any other hazardous waste disposal facility or~~
33 ~~polychlorinated biphenyl disposal facility.~~"

34 **SECTION 6.** This act is effective when it becomes law.