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1997 SOLID WASTE MANAGEMENT LEGISLATION

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This bulletin reviews solid waste management legislation enacted by the 1997 session of the North Carolina General Assembly. The legislation is identified by the session law number, with the original bill number in parentheses. Unless stated otherwise, the acts became effective when ratified or signed by the governor and are therefore current law.

Departmental reorganization

Session Law 1997-443 (S 352) reorganizes the departments of Environment, Health, and Natural Resources and Human Resources into new departments of Environment and Natural Resources and Health and Human Services by transferring the health services units from DEHNR to new HHS. The Solid Waste Management Division remains in the Department of Environment and Natural Resources.

Evidence of financial responsibility and compliance with environmental laws

Session Law (S.L.) 1997-27 (S 126) enacts new G.S. 130A-290(b2) and (b3) to direct the Department of Environment and Natural Resources , before it issues any permit under article 9, chapter 130A, of the General Statutes—which includes permits for the incineration or land disposal of municipal solid waste and hazardous waste, to require the applicant for the permit to demonstrate that it is financially qualified to carry out the activities under the permit and that it, and any affiliate or subsidiary, has substantially complied with applicable state and federal environmental laws. The department must be satisfied that these requirements are met before it reviews the permit application. What is necessary to satisfy the financial responsibility requirement will of course vary with the nature and scope of the activity for which the permit is sought. The operative word with regard to compliance with

environmental laws is "substantial." Minor violations of environmental laws would not disqualify an applicant, but it is worth noting that substantial compliance is required with federal laws and the laws of other states. In order to continue to hold a permit, a permittee must remain financially qualified and must provide any information requested by the department concerning its financial qualifications.

The act was effective April 17, 1997, and applies to all permit applications submitted on or after that date. The act provides, however, that an applicant for a renewal or modification of a permit or for the expansion of an existing facility does not have to meet the requirements of the act so long as the applicant is in compliance with G.S. 130A-309.06(b) (has not repeatedly violated rules, statutes, or permit terms).

Information about inactive sites

S.L. 1997-53 (S 151) amends G.S. 130A-310.1 to provide that the secretary of DENR may require any person to furnish information about the nature and quantity of material at an inactive hazardous substance or waste disposal site, any release or threatened release of hazardous substances or waste from a site, or relating to the ability of a person to pay for or perform a cleanup. To enforce this authority, the secretary is given the power to subpoena witnesses, documents, and records.

Exemptions to recording notices of inactive sites

S.L. 1997-528 (H 227) amends G.S. 130A-310.8 to modify the conditions under which notices of inactive hazardous substance or waste disposal sites do not have to be recorded. Substantially revised G.S. 130A-310.8(g) provides that recordation is not required for any site undergoing remediation unless the secretary of DENR determines either (1) that a concentration of a hazardous substance or waste that presents a danger to the public health or the environment will remain after completion of remediation,or (2) that the remedial action program is not being implemented in a satisfactory manner. New subdivision (h) provides that the secretary may waive the recordation requirement with respect to any residential property that is contaminated solely because a hazardous substance or waste migrated to the property from other property by means of groundwater flow *if* disclosure of the contamination is required under the Residential Property Disclosure Act (Chapter 47E, N.C. General Statutes).

Brownfields property

"Brownfields" is the term used to describe property that has been used for commercial or industrial purposes and is, or is suspected of being, contaminated. Most such property is in effect abandoned. In an effort to bring brownfields property back into active use the 1997 General Assembly enacted two pieces of legislation, one to promote the use of such property, and the other to allow the use of such property to be restricted. Both acts are effective October 1, 1997.

Agreement and notice of brownfields property

The first, S.L. 1997-357 (H 1121), establishes a procedure by which DENR may enter into an agreement with a prospective developer of brownfields property concerning the level of cleanup that will be required and that limits the developer's liability. New G.S. 130A-310.31(b)(3) defines "brownfields property" as property that is, or may be, contaminated and is, or may be, subject to remediation under either CERCLA (federal Superfund statutes) or any state remedial program except that under Part 2A, Article 21A, G.S. Chapter 142, the cleanup program for leaking underground storage tanks; also no agreement may be entered into regarding a site that has been identified by U.S. E.P.A. as a Superfund site pursuant to 40 C.F.R., Part 300. The prospective developer, pursuant to new Part 5, Article 9, G.S. Chapter 130A, must submit a proposed plan for remediation and use of the property to DENR. The developer must give notice of its proposal to the community in which the property is located and hold a public hearing on the proposal if one is requested. If DENR finds that the proposed plan of use and remediation is acceptable and that the public health will be protected, it may enter into an agreement with the developer for implementation of the plan. So long as the developer complies with the agreement, it will not be required to remediate the property to current standards; nor will the developer "be held liable for remediation of areas of contaminants identified in the brownfields agreement except as specified in the . . . agreement, so long as the activities conducted on the brownfields property by . . . [the] developer do not increase the

risk of harm to public health or the environment. . . ." [G.S. 130A-310.33(a).

As part of the procedure, new G.S. 130A-310.35 requires the developer to prepare and submit to DENR a Notice of Brownfields Property. The notice must include a plat of the property prepared by a registered land surveyor that meets the requirements of G.S. 47-30. After the secretary of DENR approves and certifies the notice, the developer is required to record a certified copy with the register of deeds of the county where the property is located. Subsequent deeds to the property must contain a reference to the book and page where the notice is recorded.

After the developer has eliminated any environmental hazards on the property, it may request the secretary of DENR to cancel the Notice of Brownfields Property. If the secretary concurs, he will file a notice of cancellation in the office of the register of deeds where the Notice of Brownfields Property is recorded.

To assist in meeting the costs of implementing this program, G.S. 130A-310.38 creates a Brownfields Property Reuse Act Implementation Account. Fees paid by prospective developers and money from the federal government, private sources, and funds appropriated by the General Assembly are to be placed in the account. Propspective developers must pay a fee of $1,000 when submitting a proposed brownfields agreeement to DENR and a fee of $500 when submitting a final report certifying completion of remediation.

Restrictions on the use of brownfields property

The second act, S.L. 1997-394 (S 125), allows the owner of property that is an inactive hazardous substance or waste disposal site or has been subject to the release of oil or hazardous substances to restrict the current and future use of such property. New G.S. 130A-310.3(f) authorizes the owner, operator, or other responsible party to place restrictions on property that is an inactive hazardous substance or waste disposal site. These restrictions must be approved by the secretary of DENR and included as part of the remedial action plan for the site. Once the restrictions have been adopted, they may be enforced by the owner, operator, or other responsible party, by DENR, or by any local government with jurisdiction over the site.

The act similarly allows restrictions to be placed on property contaminated by oil spills or hazardous substances by enacting new G.S. 143-215.84(e). Also new, is G.S. 143-215.85A, which requires the owner of property on which use restrictions have been placed pursuant to G.S. 143-215.84(e) to submit a plat of the restricted property to DENR for approval. This plat serves as part of a Notice of Oil or Hazardous Substance Discharge Site. The plat must be prepared by a registered land surveyor and meet the requirements of G.S. 47-30. After DENR approves and certifies the notice, the owner must file a certified copy of the notice with the register of deeds in the county where the property is located. All deeds to the restricted property are required to carry a reference to the book and page where the notice is recorded.

New G.S. 143-215.85A(f) provides a procedure for cancelling a Notice of Oil or Hazardous Substance Discharge Site. When the secretary of DENR is satisfied that the hazards on the property have been eliminated, and at the request of the owner, the secretary shall file with the register of deeds a cancellation of the notice.

Dry-cleaning solvent contamination

S.L. 1997-392 (H 225) enacts a comprehensive program to deal with property that has been contaminated by dry-cleaning solvents. This program is codified as new Part 6, Article 21A, General Statutes Chapter 143. Among the act's major provisions are these:

1. Establishment of a Dry-Cleaning Solvent Cleanup Fund to assist in cleaning up contaminated sites, especially those that present an imminent hazard. A privilege tax is assessed on the retail sale of dry-cleaning solvents to dry-cleaning facilities at the rate of $5.85 a gallon for chlorine-based solvents and $0.80 a gallon for hydrocarbon-based solvents; and the proceeds of this tax are to be remitted to the cleanup fund. The tax becomes effective October 1, 1997, and is repealed effective January 1, 2010.

2. Establishment of financial responsibility requirements for dry-cleaning facilities. Facilities must obtain liability insurance, make a deposit of cash or securities, or obtain a bond, and the minimum limit is $1 million. Facilities may avoid these requirements by obtaining a determination of uninsurability. This provision is effective April 1, 1998, and is repealed effective January 1, 2012.

3. Establishment of a procedure for landowners and other potentially responsible parties to enter into remediation agreements with the Environmental Management Commission. Pursuant to these agreements, cleanup standards are specified, liability may be limited, and use of the contaminated property

may be restricted. A Notice of Dry-Cleaning Sovent Remediation that contains a plat and description of the property, together with any restrictions on the use of the property, must be filed in the register of deeds' office in the county where the property is located. All subsequent deeds to the property must refer to the book and page where the agreement is recorded. This provision becomes effective January 1, 1999, and is repealed effective January 1, 2012.

Scrap Tire Disposal Tax

Under current law, the Scrap Tire Disposal Tax would have expired June 30, 1997. S.L. 1997-209 (S153) extends the levy of the tax until June 30, 2002. The act amends G.S. 130A-309.63 to provide that up to 50% (from 25%) of the funds in the Scrap Tire Disposal Account may be used for grants to local government and provides that one of the criteria to be used in awarding grants is the efforts made by a local government to ensure that only tires generated in North Carolina are provided free disposal. The obvious purpose of this amendment is to discourage free disposal of out-of-state tires. The act further amends G.S. 130A-309.63 to provide that up to 40% of the funds in the Scrap Tire Disposal Account may be used to make grants to encourage the use of processed materials from scrap tires, such as fuel, crumb rubber, and similar useful products. The act also repeals section 8, chapter 548, 1993 Session Laws, which imposed a limit on the administrative expenses retained by the Department of Revenue in collecting the tax and provided for the distribution of funds to a county that had an agreeement with another unit of government for solid waste disposal.

Notice of Open Dump

S.L. 1997-330 (H 484) enacts new G.S. 130A-301 to provide for the recording of a Notice of Open Dump (a site where solid waste has been disposed of that is not a sanitary landfill) in the office of the register of deeds by the secretary of DENR. Before the notice can be recorded, the department must notify the owner of the property where the dump is located and request that remedial action be taken. At the time the request for remedial action is made, the department may also give the owner notice that it intends to file a notice of open dump, or the notice of intent to file may be given later. But in any event, the notice of intent to file must be given at least 30 days before the notice is filed. The owner of the property may challenge the department's decision to file the notice by filing a contested case under G.S. chapter 150B, art. 3.

The statute sets out a form for the notice, which contains the name of the record owner of the property, a description of the property, and a description of the particular location where the open dump is located. The description is to be based on the best information available to the department and need not be a surveyed plat. The notice is signed by, or on behalf of, the secretary of the department.

The register of deeds is to index the notice in the grantor index in the name of the record owner of the land, and—though the statute does not say—presumably in the grantee index in the name of DENR. After recording, the register of deeds is directed to return the notice to the department in care of the person listed as the contact person in the notice.

When the owner of the site removes the waste from the dump site to the department's satisfaction, the department is to file a cancellation of the Notice of Open Dump in the register's office, which shall be similar in form to the notice and shall be indexed in the same manner as the notice.

The act also amends the definition of "open dump" in G.S. 130A-290(20) to provide that an open dump is not a facility for the disposal of hazardous waste.

Landfill design criteria

S.L. 1997-374 (H 1032) directs the Commission for Health Services, by July 1, 1998, to adopt a rule regarding design criteria for municipal solid waste landfills that complies with 40 Code of Federal Regulations, Part 258.40, and that provides for alternative landfill liners that are at least as protective as the liner authorized under current rules. The design criteria in 40 C.F.R § 258.40 are in part performance criteria, which require that the landfill be designed to keep the concentrations of certain listed contaminants below specified levels in groundwater. The landfill liner prescribed by 40 C.F.R. § 258.40 is a composite liner consisting of a membrane of a prescribed thickness as the upper liner and compacted soil at least two feet thick as the lower liner.

Land acquisition

G.S. 153A-15 provides that in certain counties the board of commissioners must consent to the acquisition of any land in the county by a unit of local

government that is located wholly or partly outside the county. Counties have used this authority to prohibit the acquisition or condemnation of land for use as a solid waste facility to be owned by another unit of government. S.L. 1997-164 (H 831) adds Wilkes and Yancy to the list of counties to which this statute applies, and S.L. 1997-262 adds Alamance, Cabarrus, Camden, Cherokee, Clay, Craven, Currituck, Edgecombe, Greene, Guilford, Halifax, Macon, Nash, Pamlico, Pasquotank, Perquimans, Pitt, Polk, Richmond, and Stanly to the list.

Exemption from training requirements

S.L. 1997-443 (S 352), in section 15.49, amends G.S. 130A-309.25 to exempt from the training course requirements operators of solid waste management facilities with five years of continuous experience immediately preceding January 1, 1998. To qualify for the exemption, an operator must attend a course and complete continuing education requirements approved by DENR.

Local acts

Roofing disposal permits

Some cities and counties have found it useful to regulate roof replacement as a means of assuring that roofing materials are disposed of in a manner that is environmentally sound. In 1993, Alamance County obtained a local act (chapter 381) authorizing it, and the cities located therein, to require a building permit for the removal and replacement of roofing if the cost exceeds $1,500. The application for the permit must state the disposal site of the removed roofing materials. S.L. 1997-63 adds the Town of Sunset Beach to the list of cities and counties authorized to require these permits.

Pending bill

One solid waste management bill passed the house in which it was introduced and remains eligible for consideration in the 1998 short session of the General Assembly. S 124 would amend G.S. 105-187.21 to reduce the white goods tax to a flat $3.

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