

Analysis of S328, Solid Waste Management Act of 2013 (June 7, 2013)

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Issue	Current law	What S328 does	Comment
Length of permit	Until 2012, law allowed five year permits; SL 2012-187, §15.1 gave operators the choice of a 5 or 10 year permit, to take effect after the NCGA adjusts fees to reflect front-loading of the permit review. That fee adjustment is in H135/ S380 in the current session.	Extends initial permits for landfills and transfer stations to 30 years, with five year renewable thereafter. §1 [p2, 5]	<ol style="list-style-type: none"> 1. Smaller operators may not want longer permits, as they require much more expensive reviews up front. 2. Because of capital costs, change tends to promote mega-landfills over smaller, local landfills. 3. Landfills with 30 year permits are grandfathered even if regulations change in the meantime; provision effectively delays improvements in baseline standards for a generation.
Permit fees	§130A-295.8 sets different levels of fees for new permits, modifications, and amendments.	Raises permit fees and establishes annual inflation adjustment; creates new category of 'major permit modification'. §1(c) [p3, 12]	Unclear what would fall in category of 'major permit modification'. S328 does not establish fees for major permit modifications.
Permit renewal	Multiple sections of current law include permit renewals, e.g. compliance review, §130A-295.3(b); substantive review §130A-294(a)(4).	Eliminates permit renewals §1(d)[p4, 41]; §2 [p5, 42]	Apparently, upon expiration of a 30 year permit, a landfill would need to be closed.
Prevention of damage to natural resources	§130A-294(a)(4)(c)(3) currently prohibits permit issuance where "[c]onstruction 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;	Eliminates this subsection. §2 [p6, 21]	Allows 'significant damage' to natural and cultural resources.

	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.”		
Public trust waters and lands	§ 130A-294(a)(4)(c)(4) states that a permit shall not be issued to a landfill that will impede access or use of public trust lands and waters.	Narrows prohibition to situation where landfill limits access to land or water; denial of use is okay. §2 [p6, 33]	Provision removes significant protections for public trust waters and public lands.
Alternatives analysis	§ 130A-294(a)(4)(c)(6) requires denial of a permit if there is a practicable alternative with fewer impacts, taking into account ‘engineering requirements and costs’.	Eliminates this subsection. §2 [p6, 41]	Provision removes an opportunity to consider better alternatives to the landfill, as proposed by the applicant.
Cumulative impacts analysis	§ 130A-294(a)(4)(c)(7) requires denial of a permit if the cumulative impacts of the landfills and other existing facilities would violate criteria outlined above.	Eliminates this subsection. §2 [p6, 45]	Provision removes an opportunity to consider whether, taking into consideration impacts of other nearby facilities, a proposed new landfill would be unacceptable.
Consistency with state solid waste management policy	§ 130A-294(a)(4)(c)(8) requires denial of a permit if issuance would be inconsistent with state solid waste policies and goals.	Rewrites this subsection to merely require that the landfill not ‘violate’ state policy. §2 [p6, 49]	Since state policy is, by itself, unenforceable and therefore not possible to ‘violate’, this change makes this subsection meaningless.

Environmental justice analysis	§ 130A-294(a)(4)(c)(9) blocks issuance of a permit where a facility “would have a disproportionate adverse impact on a minority or low-income community.”	Eliminates environmental justice analysis of cumulative impacts except ‘to the extent required by federal law’ §2 [p7, 3]	Since S328 eliminates cumulative impacts analysis, it is unclear how DENR could identify disproportionate cumulative impacts even if it retained this subsection.
Transfer of permit	§ 130A-294(a1) provides that a permit may only be transferred with the approval of DENR.	Narrows agency discretion; if operator gives 30 days' notice, transfer can only be denied for inadequate financial assurances, §130A-295.2, or a poor compliance history, §130A-295.3. §2 [p7, 11]	This appears to allow the transfer of a permit from an entity with a proven track record to an entity without a history, or even to an entity with a poor record of operation.
Franchise from local government	§ 130A-294(b1)(2) requires an applicant to have a franchise from each jurisdiction where a landfill is located.	S328 limits this requirement to the moment when the applicant first applies for a permit (‘then’). §2 [p7, 31]	This would appear to prevent a jurisdiction from blocking a site by annexing property (voluntarily or otherwise) and then denying a franchise agreement.
Environmental review of proposed landfill	§130A-295.6(a) requires DENR to conduct a study of the environmental impact of any proposed landfill.	Eliminates this requirement. §3 [p9, 25]	This provision reduces public participation in new landfill siting and narrows analysis of impacts.
Buffer to wetlands	§ 130A-295.6 requires that a landfill be at least 100 feet, and more often at least 200 feet, from a wetland.	Eliminates buffer to wetland. §3 [p9, 35]	Pollution in a wetland will reach adjacent waters, so it makes little sense to require a buffer from one but not the other.
Buffer to streams	§ 130A-295.6 requires that a landfill be at least 100 feet, and more often at least 200 feet, from a perennial stream.	Eliminates minimum setback; changes from ‘perennial’ to ‘with continuous flow’. §3 [p9, 35, 37]	Perennial streams can lack continuous flow in dry years; provision reduces protection for water quality in perennial streams and downstream waterbodies.

Isolated wetlands	§130A-295.6(c)(2) establishes the classic mitigation sequence – avoid, minimize, mitigation – for all impacts to wetlands, including wetlands receiving state but not federal protection.	Limits protection to ‘waters of the United States’, a term of art that excludes many isolated wetlands. §3 [p10, 3]	Isolated wetlands provide vital functions, including flood control, groundwater recharge, and habitat. Also, landfills in wetlands are at higher risk of contaminating groundwater.
Wildlands buffers	§130A-295.6(d)(1), (2), (3) require that new landfills be at least 5 miles from a national wildlife refuge, 1 mile from a state gameland, and 2 miles from a state park.	Reduces these buffers to 1,500 feet; adds buffer around ‘national or State park, forest, wilderness area, recreation area, segment of the Natural and Scenic Rivers System, ... preserve or management area, critical fisheries habitat designated by the Marine Fisheries' Commission, or Outstanding Resource Waters designated by the Environmental Management Commission.” §3 [p10, 33]	Creates problems for wildlife, water quality and air quality near wildlife refuges, state parks and gamelands. Threatens tourism due to heavy truck traffic. Invites large landfills into sensitive areas of the state and in areas of the state with the highest populations of low income people and people of color. Invites landfills into areas of state – coastal plain – with high water table and vulnerable groundwater.
Effective date	NA	S328 applies the repeal of the state gamelands buffer – and only that buffer – retroactively to permit applications submitted after January 1, 2013. §3(b) [p12, 19]	This is clearly designed to facilitate a specific application.
Threatened & endangered species	As noted above, §130A-294(a)(4)(c)(3) prohibits permit issuance where landfill would cause ‘significant damage’ to “areas that provide habitat for threatened or endangered species”.	Disallows new landfill in designated critical habitat. §3 [p10, 38]	Most ‘areas that provide habitat’ to protected species are not ‘designated critical habitat’; this change significantly shrinks protection for such habitat.

Leachate collection line maintenance	130A-295.6(h)(3) requires regular cleaning and inspection of leachate collection lines.	Eliminates this requirement. §3 [p11, 10]	Without cleaning and inspections, leachate collections lines are far more likely to become clogged, and there is no guarantee that the operator will recognize the problem before groundwater is contaminated.
Daily cover	Under 15 NCAC 13B .1626 (2)(b), alternative daily cover materials can be approved by DENR on a case-by-case basis, following demonstrations of safety and effectiveness.	S328 states that if DENR approves a alternative cover material at any landfill, it can be used at all landfills. §3 [p11, 22].	Some materials require special training or expertise, so it makes sense to let DENR approve their use on a facility by facility basis.
Studies of alternative disposal and landfill gas	NA	S328 requires that landfills permitted to receive more than 240K tons of waste per year study the potential for alternative disposal and landfill gas and report on both to DENR by July 1 each year. §3 [p11, 26]	
Maximum height of landfill	§130A-295.6(i) currently limits landfills to a maximum height of 250 feet.	S328 raises the maximum height to 300 feet. §3 [p12, 10]	Allowing a large mountain of trash will harm tourism.
Financial assurances	Before 2011, private landfills were required to establish \$3 million in financial assurances. In 2011, the NCGA reduced that to \$2 million, §130A-295.2.	Eliminates any specific minimum financial assurance. §4 [p12, 24]	Strong financial assurance requirements keep poorly-capitalized entities out of the market, and ensure funds are available to properly close a landfill.
Compliance boundary	North Carolina's risk remediation statute, 130A-310.68, enacted in 2011, allows certain properties with groundwater contamination reported to DENR before March 1, 2011 to clean up to a risk-based standard.	S328 states that, in the case of risk-based cleanups of landfills, remediation is not required until groundwater contamination crosses the compliance boundary of the facility. §5 [p13, 15]	This change directly conflicts with and subverts §130A-310.71(b), which states, "[t]he person who proposes a remedial action plan has the burden of demonstrating with reasonable assurance that contamination from

			the site will not migrate to adjacent property above unrestricted use levels..." Waiting until contamination crosses the compliance boundary guarantees contamination, and therefore economic harm, to the neighbors.
Review of groundwater standards	15 NCAC 02L .0202(f) provides for a triennial update of state groundwater standards.	S328 forbids the Environmental Management Commission from updating standards more than once every five years. §6 [p13, 42]	Since the triennial review offers the major path to relax stringent standards (where appropriate), this change does not benefit industry. It also inappropriately delays the adoption of more stringent standards supported by good science, even when those are needed to protect public health.
Leak-proof vs. leak resistant	15A NCAC 13B .0105(c) requires that trucks used to transport solid waste be 'leak-proof', a bright-line test.	S328 replaces this with a vague and unenforceable standard of 'leak-resistance'. §7 [p14, 41].	Leachate, whether from collection trucks or transport trailers, presents a threat to public health.
Definition of leachate	15A NCAC 13B .0101(24) defines 'leachate' as "any liquid, including any suspended components in liquid, that has percolated through or drained from solid waste".	S823 redefines leachate to exclude water on truck tires and any liquids 'generated during the transportation of solid waste' §8 [p15, 16].	Pretending leachate is not leachate does not make it any safer, it just makes it unregulated. This change threatens public health.
Tipping fee surcharge	§153A-292(b) authorizes counties, and 160A-314.1 authorizes cities, to charge a tipping fee that covers the cost of operating a landfill.	S328 allows a local government to place a surcharge on disposal of solid waste from any other jurisdiction, as a source of general revenue for the county. §9 [p16, 12; p17, 11]	In a time of limited tax revenues, this provision encourages cities and counties to turn to garbage imports as a way to fund essential local services.