

Environmental concerns with S328, Solid Waste Management Reform Act

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Issue	Concern
<i>Length of permit (§1)</i>	S328 extends permits for landfills and transfer stations to 30 years, with interim reviews every five years, and 30 year renewals treated as 'major modifications'. S328 does not address whether facilities will be grandfathered under increasingly obsolete rules across the 30 years.
<i>DENR authority to deny permits (§2)</i>	S328 eliminates several grounds on which DENR should be able to deny a permit, §130A-294(a)(4): <ul style="list-style-type: none">• significant damage to natural and cultural resources, (c)(3)• impede use of public trust lands or waters, (c)(4)• practicable alternative available, (c)(6)• inappropriate cumulative impacts, (c)(7)• inconsistent with state waste policy, (c)(8)
<i>Environmental justice (§2)</i>	The combination of eliminating cumulative impacts analysis as a ground for denial, (c)(7), above, and limiting environmental justice analysis to the bare minimum in federal law (c)(9), strips DENR of any authority or mechanism to address unjust cumulative impacts to a community.
<i>Transfer of permits (§3)</i>	The newest version of S328 significantly narrows DENR's discretion to deny a transfer of a landfill permit, GS §130A-294(a1), not just by restricting grounds for denial, but by eliminating compliance review, since transfers will be considered 'modifications', which are not subject to § 130A-294(a1). This could force the agency to allow a transfer to an entity with a poor record or no record at all.
<i>Franchise requirement (§3)</i>	Current law requires an applicant to have a franchise agreement from every jurisdiction involved with the site, § 130A-294(b1)(2). S328 limits that to <i>the time the application is submitted</i> . Since applicants often line up franchise agreements before an application is publicly noticed, this change places communities at a disadvantage in negotiating with applicants.
<i>Environmental review (§3)</i>	S328 replaces current requirements for environmental review with a much weaker version that does not appear to give DENR the ability to deny a permit on the basis of environmental or other impacts. What remains of environmental review applies only to new facilities, not subsequent permits or major modifications.
<i>Wetlands & streams (§3)</i>	S328 allows landfills to be sited adjacent to wetlands, requires stream setbacks only along streams with 'continuous flow', and even there eliminates minimum setbacks. These changes all make surface and groundwater contamination more likely.

<i>Wildlands buffers</i> (§3)	S328 reduces buffers around sensitive protected natural areas to an arbitrary 1,500 feet, and eliminates them entirely around state gamelands. Removal of the buffers for a State Park or National Refuge will guarantee that previously denied mega landfills will be placed near high value public resources. Millions of tons of out-of-state waste will be placed on or near North Carolina’s most environmentally sensitive and protected regions. These areas were previously vetted by state and federal agencies to be among the state’s most important environmental features.
<i>Endangered species</i> (§3)	S328 eliminates the current prohibition of significant damage to ‘areas that provide habitat for threatened or endangered species’.
<i>Line cleanout</i> (§3)	S328 eliminates the current requirement in 130A-295.6(h)(3) for regular cleaning. Instead, operators would inspect every five years and clean line ‘as necessary’, though bill is ambiguous about who decides that. This is bad policy; regular maintenance is needed to prevent contamination, rather than relying on much more expensive remediation later.
<i>Alternative daily cover</i> (§3)	Currently, under 15 NCAC 13B .1626 (2)(b), DENR can approve alternative daily cover materials on a case-by-case basis, following demonstrations of safety and effectiveness. S328 states that if DENR allows a method anywhere, it must allow it everywhere. That one-size-fits-all mandate will either discourage innovation or open the door to abuse.
<i>Financial assurances</i> (§4)	In 2011, the NCGA already reduced the minimum requirement for financial assurances from \$3 million to \$2 million, §130A-295.2. S328 eliminates the minimum, requiring only assurances sufficient to cover analysis and corrective action.
<i>Leak-proof vs. leak resistant</i> (§7)	S328 replaces the current, bright line standard that garbage trucks must not leak, 15A NCAC 13B .0105(c), with a vague and unenforceable standard of ‘leak-resistance’. Garbage leachate is a threat to public health; the current leak proof standard is efficient and relatively effective.
<i>Incentivizing mega-landfills</i> (§9)	In allowing local governments to spend revenue from landfill tipping fees on any purpose – not just landfill operating costs – S328 incentivizes local governments to turn to mega-landfills as a way to fund basic services, even if the cumulative impacts undermine regional growth.