

Analysis of S328, Solid Waste Management Act of 2013 (June 20, 2013)

Issue	Current law	What S328 does (Senate Finance)	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 permits for landfills and transfer stations to 30 years, with limited interim reviews every five years. Spells out content of interim reviews (operations plan, closure plan, post-closure plan, financial assurance cost estimates, environmental monitoring plans, and any other applicable plans), and says that the 30-year permits will 'take account of the duration of any permits previously issued for the facility'. §1 [p2, 3]	PCS does not explicitly address problem of grandfathering of landfills, which slows application of new rules.
Permit fees	§130A-295.8 sets different levels of fees for new permits, modifications, and amendments.	Raises permit fees [p3, 26]; creates new categories of 'major permit modification' and 'ownership modification' [p3, 13]. Provides for permits of less than 30 years, with proportionately reduced costs. §1(c1)[p5, 10]	A previous version of S328 (Senate Environment) included an annual inflation adjustment in the fees. That has been eliminated.
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. Allows for additional 30 year permits after initial permit, defines as 'major modification'. Any change in ownership or corporate structure is also a modification. §1 [p3, 15]	New PCS ties compliance review to permit issuance or amendment, not modification, thus (perhaps inadvertently) ends compliance review for renewals and changes of ownership or structure. §1 [p6, 3]

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; 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.”	Eliminates this subsection. §2 [p7, 32]	Allows ‘significant damage’ to natural and cultural resources.
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; changes allows denial of use. §2 [p7, 44]	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 [p8, 1]	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 [p8, 5]	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 [p8, 14]	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. Since the PCS eliminates the requirement for compliance review for major modification, above, §130A-294(a1) becomes a dead letter. §2 [p8, 22]	Even apart from the new definition of major modification, this section would narrow DENR discretion.
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 [p8, 43]	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.	Changes current provision for DENR study to requirement that applicant 'contract with third party'. Study must meet 'requirements set forth in G.S. 113A-4, State Environmental Policy Act (SEPA). §3a [p10, 36]	Application of SEPA ambiguous, but in any event it is purely procedural and does not offer an independent ground for DENR to deny a damaging permit.
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 setback from wetlands. §3 [p11, 1]	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 from streams; changes from 'perennial' to 'with continuous flow'. §3 [p11, 1]	Perennial streams can lack continuous flow in dry years; provision reduces protection for water quality in perennial streams and downstream waterbodies.
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.	Eliminates gameland buffer entirely. Reduces other 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 [p12, 5]	Threatens wildlife, water quality and air quality near refuges, state and federal 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 change – retroactively to permit applications submitted after January 1, 2013. Also, applies weaker of requirements to any facility transitioning between current permits and 30 year permits. §3(b) [p13, 48]	The January effective date seems 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”.	Senate Environment version of the bill eliminated impacts as a ground for application denial, as noted above, but disallowed siting of a new landfill in designated critical habitat. Current version drops even that protection.	S328 opens up a gap between state and federal law, and eliminates state protections for at risk species.
Leachate collection line maintenance	130A-295.6(h)(3) requires regular cleaning and inspection of leachate collection lines.	Drops requirement of routine maintenance. Requires remote camera inspections once every five years, states that cleaning ‘found necessary for proper functioning...shall occur’. §3 [p12, 25].	New language does not say <i>who</i> will decide that cleaning is necessary. Camera inspections cannot catch all problems. Routine maintenance is a more effective policy to protect groundwater.
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 an 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 more 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 [p12, 46]	

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 but requires amount sufficient to cover analysis and corrective action. §4 [p14, 12].	Strong financial assurance requirements ensure that funds are available to properly close a landfill.
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 that trucks be designed and maintained to be 'leak-resistant'. §7 [p15, 1]	Leachate has astoundingly high pathogen counts and presents a very real 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; water percolating through solid waste would still implicitly be considered leachate. §6(a)[p15, 42]	Unlike the 'leak-proof' change, this provision appears innocuous in its current form.
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, 3; p17, 2]	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.
Return of reimbursements	The 2007 landfill act, S.L. 2007-543, provided for several landfill applicants to receive reimbursement funds to offset their costs invested in projects that would be more difficult to build following the law's enactment.	S328 states that applicants who received these funds must repay 80% of them before receiving a permit to build a landfill on the same sites as their 2007 applications. §8 [p.18, 7].	The fact that the bill envisions the pre-2007 projects receiving permits indicates the bill's commitment to welcoming mega-landfills to North Carolina.
Provisions removed from S328	Previous versions of S328 included additional provisions, now eliminated from the bill , that would have: <ul style="list-style-type: none"> • Allowed landfills to be sited on top of isolated wetlands, threatening groundwater. • Delayed the state's triennial review of groundwater standards. • Exempted certain landfills from remediation until groundwater contamination crossed onto neighboring properties. • Raised the cap on landfill height from 250 feet to 300 feet. 		