

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2017-209  
HOUSE BILL 56

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS.

The General Assembly of North Carolina enacts:

**FINANCIAL ASSURANCE MODIFICATIONS FOR RISK-BASED CLEANUPS**

**SECTION 1.** G.S. 130A-310.72 reads as rewritten:

**"§ 130A-310.72. Financial assurance requirement.**

The person conducting remediation of a contaminated ~~industrial~~ site pursuant to the provisions of this Part shall establish financial assurance that will ensure that sufficient funds are available to implement and maintain the actions or controls specified in the remedial action plan for the site. The person conducting remediation of a site may establish financial assurance through one of the following mechanisms, or any combination of the following mechanisms, in a form specified or approved by the Department: insurance products issued from entities having no corporate or ownership association with the person conducting the remediation; funded trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local government financial tests; corporate guarantees; local government guarantees; capital reserve funds; or any other financial mechanism authorized for the demonstration of financial assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition) and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. Proof of financial assurance shall be provided in the remedial action plan and annually thereafter on the anniversary date of the approval of the plan. The Department may waive the requirement for a person conducting remediation of a contaminated site pursuant to the provisions of this Part to establish or maintain financial assurance if the Department finds that the only actions or controls to be implemented or maintained as part of the remedial action plan for the site include either or both of the following:

- (1) Annual reporting of land-use controls.
- (2) The maintenance of durable or low-maintenance covers for contaminated soil.

**REPEAL OBSOLETE HAZARDOUS WASTE PROVISIONS**

**SECTION 2.(a)** G.S. 130A-294(k) is repealed.

**SECTION 2.(b)** G.S. 130A-309.17 is repealed.

**LAND-USE RESTRICTIONS FOR PROPERTY CONTAMINATED BY A NON-UST PETROLEUM DISCHARGE OR RELEASE**

**SECTION 3.(a)** G.S. 143B-279.9(b) reads as rewritten:

"(b) The definitions set out in G.S. 143-215.94A apply to this subsection. A remedial action plan for the cleanup of environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes-Statutes, other petroleum sources, or from an aboveground storage tank pursuant to Part 7 of Article 21A of Chapter 143 of the General Statutes must include an agreement by the owner, operator, or other party responsible for the discharge or release of



petroleum to record a notice of any applicable land-use restrictions that meet the requirements of this subsection as provided in G.S. 143B-279.11. All of the provisions of this section shall apply except as specifically modified by this subsection and G.S. 143B-279.11. Any restriction on the current or future use of real property pursuant to this subsection shall be enforceable only with respect to: (i) real property on which the source of contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the underground storage tank or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. No restriction on the current or future use of real property shall apply to any portion of any parcel or tract of land on which contamination is not located. This subsection shall not be construed to require any person to record any notice of restriction on the current or future use of real property other than the real property described in this subsection. For purposes of this subsection and G.S. 143B-279.11, the Secretary may restrict current or future use of real property only as set out in any one or more of the following subdivisions:

- (1) Where soil contamination will remain in excess of unrestricted use standards, the property may be used for a primary or secondary residence, school, daycare center, nursing home, playground, park, recreation area, or other similar use only with the approval of the Department.
- (2) Where soil contamination will remain in excess of unrestricted use standards and the property is used for a primary or secondary residence that was constructed before the release of petroleum that resulted in the contamination is discovered or reported, the Secretary may approve alternative restrictions that are sufficient to reduce the risk of exposure to contaminated soils to an acceptable level while allowing the real property to continue to be used for a residence.
- (3) Where groundwater contamination will remain in excess of unrestricted use standards, installation or operation of any well usable as a source of water shall be prohibited.
- (4) Any restriction on the current or future use of the real property that is agreed upon by both the owner of the real property and the Department.

Except with respect to land contaminated from a discharge or release of petroleum from an underground storage tank, the imposition of restrictions on the current or future use of real property on sites contaminated by the discharge or release of petroleum from an aboveground storage tank, or another petroleum source, from which contamination has migrated to off-site properties, as that term is defined under G.S. 130A-310.65(3a), shall only be allowed as provided in G.S. 143-215.104AA or G.S. 130A-310.73A, as applicable."

**SECTION 3.(b)** G.S. 143B-279.11 reads as rewritten:

**"§ 143B-279.11. Recordation of residual petroleum from ~~an~~ underground or aboveground storage tank, tanks or other sources.**

(a) The definitions set out in G.S. 143-215.94A and G.S. 143B-279.9 apply to this section. This section applies only to a cleanup pursuant to a remedial action plan that addresses environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes. Statutes or from an aboveground storage tank or other petroleum source pursuant to Part 7 of Article 21A of Chapter 143 of the General Statutes.

(b) The owner, operator, or other person responsible for a discharge or release of petroleum from an underground storage ~~tank~~ tank, aboveground storage tank, or other petroleum source shall prepare and submit to the Department a proposed Notice that meets the requirements of this section. The proposed Notice shall be submitted to the Department (i) before the property is conveyed, or (ii) when the owner, operator, or other person responsible

for the discharge or release requests that the Department issue a determination that no further action is required under the remedial action plan, whichever first occurs. The Notice shall be entitled "NOTICE OF RESIDUAL PETROLEUM". The Notice shall include a description that would be sufficient as a description in an instrument of conveyance of the (i) real property on which the source of contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the underground storage tank-tank, aboveground storage tank, or other petroleum source, or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. The Notice shall identify the location of any residual petroleum known to exist on the real property at the time the Notice is prepared. The Notice shall also identify the location of any residual petroleum known, at the time the Notice is prepared, to exist on other real property that is a result of the discharge or release. The Notice shall set out any restrictions on the current or future use of the real property that are imposed by the Secretary pursuant to G.S. 143B-279.9(b) to protect public health, the environment, or users of the property.

(c) If the contamination is located on more than one parcel or tract of land, the Department may require that the owner, operator, or other person responsible for the discharge or release prepare a composite map or plat that shows all parcels or tracts. If the contamination is located on one parcel or tract of land, the owner, operator, or other person responsible for the discharge or release may prepare a map or plat that shows the parcel but is not required to do so. A map or plat shall be prepared and certified by a professional land surveyor, shall meet the requirements of G.S. 47-30, and shall be submitted to the Department for approval. When the Department has approved a map or plat, it shall be recorded in the office of the register of deeds and shall be incorporated into the Notice by reference.

(d) The Department shall review the proposed Notice to determine whether the Notice meets the requirements of this section and rules adopted to implement this section and shall provide the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank-tank, aboveground storage tank, or other petroleum source with a notarized copy of the approved Notice. After the Department approves the Notice, the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank-tank, aboveground storage tank, or other petroleum source shall file a notarized copy of the approved Notice in the register of deeds office in the county or counties in which the real property is located (i) before the property is conveyed or (ii) within 30 days after the owner, operator, or other person responsible for the discharge or release receives notice from the Department that no further action is required under the remedial action plan, whichever first occurs. If the owner, operator, or other person responsible for the discharge or release fails to file the Notice as required by this section, any determination by the Department that no further action is required is void. The owner, operator, or other person responsible for the discharge or release, may record the Notice required by this section without the agreement of the owner of the real property. The owner, operator, or other person responsible for the discharge or release shall submit a certified copy of the Notice as filed in the register of deeds office to the Department.

(e) Repealed by Session Laws 2012-18, s. 1.23, effective July 1, 2012.

(f) In the event that the owner, operator, or other person responsible for the discharge or release fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of the real property who is not a responsible party submits and files the Notice required by this section, the owner may recover the reasonable costs thereof from any responsible party.

(g) A Notice filed pursuant to this section shall, at the request of the owner of the real property, be cancelled by the Secretary after the residual petroleum has been eliminated or

remediated to unrestricted use standards. If requested in writing by the owner of the land, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the residual petroleum has been eliminated, or that the residual petroleum has been remediated to unrestricted use standards, and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded.

(h) Except with respect to land contaminated from a discharge or release of petroleum from an underground storage tank, the provisions of this section shall only apply to sites contaminated by the discharge or release of petroleum from an aboveground storage tank, or another petroleum source, from which contamination has migrated to off-site properties, as that term is defined under G.S. 130A-310.65(3a), in compliance with the requirements of G.S. 143-215.104AA or G.S. 130A-310.73A, as applicable."

## **CONSOLIDATE VARIOUS WATER RESOURCES AND WATER QUALITY REPORTS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

**SECTION 4.(a)** G.S. 143-355(m) is repealed.

**SECTION 4.(b)** G.S. 143-355(p) reads as rewritten:

"(p) Report. – The Department of Environmental Quality shall report to the Environmental Review Commission on the implementation of this section, including ~~the development of the State water supply plan and~~ the development of basinwide hydrologic models, no later than November 1 of each year. The Department shall submit the report required by this subsection with the report on basinwide water ~~quality~~ management plans required by G.S. 143-215.8B(d) as a single report."

## **COASTAL AREA MANAGEMENT ACT MODIFICATIONS**

**SECTION 5.(a)** G.S. 113A-124(c) is amended by adding a new subdivision to read:

"(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) Repealed by Session Laws 1987, c. 827, s. 141.
- (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
- (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
- (8) To adopt rules to implement this Article.
- (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department."

**SECTION 5.(b)** G.S. 113A-119 reads as rewritten:

**"§ 113A-119. Permit applications generally.**

(a) Any person required to obtain a permit under this Part shall file with the Secretary and (in the case of a permit sought from a city or county) with the designated local official an application for a permit in accordance with the form and content designated by the Secretary and approved by the Commission. The applicant must submit with the application a check or money order payable to the Department or the city or county, as the case may be, constituting a fee set by the Commission pursuant to G.S. 113A-119.1.

(b) Upon receipt of any application, a significant modification to an application for a major permit, or an application to modify substantially a previously issued major permit, the Secretary shall issue public notice of the proposed development (i) by mailing a copy of the application or modification, or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and to any interested State agency; (ii) with the exception of minor permit applications, by posting or causing to be posted a notice at the location of the proposed development stating that an application, a modification of an application for a major permit, or an application to modify a previously issued major permit for development has been made, where the application or modification may be inspected, and the time period for comments; and (iii) with the exception of minor permit applications, by publishing notice of the application or modification at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least 20 days before final action on a major permit or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after mailing of the mailed notice, whichever is later.

(c) Within the meaning of this Part, the "designated local official" is the official who has been designated by the local governing body to receive and consider permit applications under this Part."

## **ESTABLISH COASTAL STORM DAMAGE MITIGATION FUND**

**SECTION 6.** Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 8D. Coastal Storm Damage Mitigation Fund.

### **"§ 143-215.73M. Coastal Storm Damage Mitigation Fund.**

(a) Fund Established. – The Coastal Storm Damage Mitigation Fund is established as a special revenue fund. The Fund consists of General Fund appropriations, gifts, grants, devises, monies contributed by a non-State entity for a particular beach nourishment or damage mitigation project or group of projects, and any other revenues specifically allocated to the Fund by an act of the General Assembly.

(b) Uses of the Fund. – Revenue credited to the Fund may only be used for costs associated with beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to the ocean beaches and dune systems of the State.

(c) Conditions on Funding. – Any project funded by revenue from the Fund must be cost-shared with non-State dollars on a basis of at least one non-State dollar for every one dollar from the Fund.

(d) Return of Non-State Entity Funds. – Non-State entities that contribute to the Fund for a particular project or group of projects may make a written request to the Secretary that the contribution be returned if the contribution has not been spent or encumbered within two years of receipt of the contribution by the Fund. If the written request is made prior to the funds being spent or encumbered, the Secretary shall return the funds to the entity within 30 days after the later of (i) receiving the request or (ii) the expiration of the two-year period described by this subsection."

## **CLARIFY SETBACK DETERMINATION FOR PERMITTED DISPOSAL SYSTEMS**

**SECTION 7.** G.S. 143-215.1(i) reads as rewritten:

"(i) Any person subject to the requirements of this section who is required to obtain an individual permit from the Commission for a disposal system under the authority of G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as may be established by rule or permit for various categories of disposal systems and beyond which groundwater quality standards may not be exceeded. Multiple contiguous properties under common ownership and permitted for use as a disposal system shall be treated as a single property with regard to determination of a compliance ~~boundary~~boundary and setbacks to property lines."

## **AMEND THE RULE FOR POOL LIGHTING**

**SECTION 8.(a)** Definitions. – "Pool Lighting and Ventilation Rule" means 15A NCAC 18A .2524 (Lighting and Ventilation) for purposes of this section and its implementation.

**SECTION 8.(b)** Pool Lighting and Ventilation Rule. – Until the effective date of the revised permanent rule that the Commission for Public Health is required to adopt pursuant to subsection (d) of this section, the Commission and local inspectors shall implement the Pool Lighting and Ventilation Rule, as provided in subsection (c) of this section.

**SECTION 8.(c)** Implementation. – The Commission shall require pool illumination sufficient to illuminate the main drains of a pool. The Commission shall require pool illumination sufficient to illuminate the deck area of a pool so that it is visible at all times the pool is in use but shall not require specific foot candles of illumination for the deck area.

**SECTION 8.(d)** Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Pool Lighting and Ventilation Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission, pursuant to this section, shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

**SECTION 8.(e)** Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

## **AMEND THE PROTECTION OF EXISTING BUFFERS RULES TO EXEMPT CERTAIN APPLICABILITY REQUIREMENTS FOR PUBLIC SAFETY**

**SECTION 9.(a)** Definitions. – "Protection of Existing Buffers Rules" means all of the following rules for purposes of this section and its implementation:

- (1) Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B .0233).
- (2) Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B .0259).
- (3) Randleman Lake Water Supply Watershed: Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B .0250).
- (4) Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers (15A NCAC 02B .0267).

- (5) Goose Creek Watershed Water Quality Management Plan (15A NCAC 02B .0605, 15A NCAC 02B .0606, 15A NCAC 02B .0607, 15A NCAC 02B .0608).
- (6) Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers (15A NCAC 02B .0295).
- (7) Catawba River Basin: Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B .0243).

**SECTION 9.(b)** Protection of Existing Buffers Rules. – Until the effective date of the revised permanent rules that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission and the Department of Environmental Quality shall implement the Protection of Existing Buffers Rules, as provided in subsection (c) of this section.

**SECTION 9.(c)** Implementation. – The Commission shall exempt from the applicability requirements of the Protection of Existing Buffers Rules any publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety.

**SECTION 9.(d)** Additional Rule-Making Authority. – The Commission shall adopt rules to amend the Protection of Existing Buffers Rules consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission, pursuant to this section, shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

**SECTION 9.(e)** Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

## **AMEND THE RULE FOR PROTECTION AND MAINTENANCE OF EXISTING BUFFERS IN THE CATAWBA RIVER BASIN TO EXEMPT CERTAIN APPLICABILITY REQUIREMENTS FOR PUBLIC WALKING TRAILS**

**SECTION 10.(a)** Definitions. – "Protection and Maintenance of Existing Riparian Buffers Rule" means 15A NCAC 02B .0243 (Catawba River Basin: Protection and Maintenance of Existing Riparian Buffers) for purposes of this section and its implementation.

**SECTION 10.(b)** Protection and Maintenance of Existing Riparian Buffers Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission and the Department of Environmental Quality shall implement the Protection and Maintenance of Existing Riparian Buffers Rule, as provided in subsection (c) of this section.

**SECTION 10.(c)** Implementation. – The Commission shall exempt from the applicability requirements of the Protection and Maintenance of Existing Riparian Buffers Rule any publicly owned property that will be used for walking trails.

**SECTION 10.(d)** Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Protection and Maintenance of Existing Riparian Buffers Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission, pursuant to this section, shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

**SECTION 10.(e)** Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

## **RIPARIAN BUFFER TAX EXCLUSION STUDY**

**SECTION 11.(a)** The Fiscal Research Division of the North Carolina General Assembly is directed to estimate the value of property that is subject to the following riparian buffer rules and the value of property that is being used as a riparian buffer under these rules for each county within the affected river basins:

- (1) Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B .0233).
- (2) Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B .0259).
- (3) Randleman Lake Water Supply Watershed: Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B .0250).
- (4) Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers (15A NCAC 02B .0267).
- (5) Goose Creek Watershed Water Quality Management Plan (15A NCAC 02B .0605, 15A NCAC 02B .0606, 15A NCAC 02B .0607, 15A NCAC 02B .0608).
- (6) Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers (15A NCAC 02B .0295).
- (7) Catawba River Basin: Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B .0243).

**SECTION 11.(b)** No later than May 1, 2018, the Fiscal Research Division shall report its estimates and analysis to the Environmental Review Commission and the Revenue Laws Study Committee.

## **WATER QUALITY TESTING**

**SECTION 12.** The Division of Water Resources of the Department of Environmental Quality shall conduct a water quality sampling program for nutrients along the mainstem of the Catawba River, which includes sampling for nutrients above, in, and below each major tributary of the Catawba River. No later than October 1, 2018, the Division shall report the results of the study to the Environmental Review Commission.

## **MINING PERMITTING REVISIONS**

**SECTION 13.(a)** G.S. 74-50(d) reads as rewritten:

"(d) ~~An operating permit shall be granted for a period not exceeding 10 years. If~~Except as provided in subsection (d1) of this section, permits for mining operations shall be issued for the life-of-site of the operation unless revoked as otherwise provided under this Article. For purposes of this section, "life-of-site" means the period from the initial receipt of a permit from the operation until the mining operation terminates and the reclamation required under the approved reclamation plan is completed prior to the end of the period, the permit shall terminate-completed. Termination of a permit shall not have the effect of relieving the operator of any obligations that the operator has incurred under an approved reclamation plan or otherwise. Where the mining operation itself has terminated, no permit shall be required in order to carry out reclamation measures under the reclamation plan.

(d1) Permits for mining operations conducted on real property that is leased from a public entity shall be issued for the life-of-lease. For purposes of this subsection, the following terms apply: (i) "life-of-lease" means the duration of the lease between the owner or operator of the mining operation and a public entity and (ii) "public entity" means the State, any State agency, State college or university, county, municipal corporation, local board of education,



community college, special district, or other political subdivision of the State. Termination of a permit shall not have the effect of relieving the operator of any obligations that the operator has incurred under an approved reclamation plan or otherwise. Where the mining operation itself has terminated, no permit shall be required in order to carry out reclamation measures under the reclamation plan."

**SECTION 13.(b)** G.S. 74-51 reads as rewritten:

**"§ 74-51. Permits – Application, granting, conditions.**

...  
(c) If the Department determines, based on public comment relevant to the provisions of this Article, that significant public interest exists, the Department shall conduct a public hearing on any application for a new mining permit or for a modification of a mining permit to add land to the permitted area, as defined in G.S. 74-50(b). The hearing shall be held before the Department reaches a final decision on the application, and in making its determination, the Department shall give full consideration to all comments submitted at the public hearing. The public hearing shall be held within 60 days of the end of the 30-day period within which any requests for the public hearing shall be made. A public hearing shall not be required for a modification of a mining permit to extend the duration of the permit to a life-of-site, or life-of-lease, pursuant to G.S. 74-50(d) or (d1), respectively.

(d) The Department may deny the permit upon finding:

- ...  
(7) That the applicant or any parent, subsidiary, or other affiliate of the applicant or parent has not been in substantial compliance with this Article, rules adopted under this Article, or other laws or rules of this State for the protection of the environment or has not corrected all violations that the applicant or any parent, subsidiary, or other affiliate of the applicant or parent may have committed under this Article or rules adopted under this Article and that resulted in:
- a. Revocation of a permit,
  - b. Forfeiture of part or all of a bond or other security,
  - c. Conviction of a misdemeanor under G.S. 74-64,
  - d. Any other court order issued under G.S. 74-64, or
  - e. Final assessment of a civil penalty under G.S. 74-64.
  - f. Failure to pay the application processing fee required under G.S. 74-54.1.

...."

**SECTION 13.(c)** G.S. 74-52 reads as rewritten:

**"§ 74-52. Permits—~~Modification, renewal.~~Permit modifications.**

(a) Any operator engaged in mining under an operating permit may apply at any time for modification of the permit. ~~A permittee may apply for renewal of the permit at any time during the two years prior to the expiration of the permit.~~ The application shall be in writing upon forms furnished by the Department and shall fully state the information called for. The applicant must provide the Department with any additional information necessary to satisfy application requirements. ~~The applicant is not required to resubmit information that remains unchanged since the time of the prior application.~~ In addition, the applicant may be required to furnish any other information as may be deemed necessary by the Department in order adequately to enforce the Article.

~~(b) The procedure to be followed and standards to be applied in renewing a permit shall be the same as those for issuing a permit; provided, however, that in the absence of any changes in legal requirements for issuance of a permit since the date on which the prior permit was issued, the only basis for denying a renewal permit shall be an uncorrected violation of the~~

type listed in G.S. 74-51(7), or failure to submit an adequate reclamation plan in light of conditions then existing.

(c) A modification under this section may affect the land area covered by the permit, the approved reclamation plan coupled with the permit, or other terms and conditions of the permit. A permit may be modified to include land neighboring the affected land, but not other lands. The reclamation plan may be modified in any manner, so long as the Department determines that the modified plan fully meets the standards set forth in G.S. 74-53 and that the modifications would be generally consistent with the bases for issuance of the original permit. Other terms and conditions may be modified only where the Department determines that the permit as modified would meet all requirements of G.S. 74-50 and [G.S.] 74-51. ~~No modification shall extend the expiration date of any permit issued under this Article.~~

(d) No modification ~~or renewal~~ of a permit shall become effective until any required changes have been made in the performance bond or other security posted under the provisions of G.S. 74-54, so as to assure the performance of obligations assumed by the operator under the permit and reclamation plan."

**SECTION 13.(d)** G.S. 74-54 reads as rewritten:

**"§ 74-54. Bonds.**

(a) Each applicant for an operating permit, or for the ~~renewal of a~~ modification of an existing permit shall, following the approval of the application, file and maintain in force a bond in favor of the State of North Carolina, executed by a surety approved by the Commissioner of Insurance, in the amount set forth below. The bond herein provided for must be continuous in nature and shall remain in force until cancelled by the surety. Cancellation by the surety shall be effectuated only upon 60 days written notice thereof to the Department and to the operator.

(b) The applicant shall have the option of filing a separate bond for each operating permit or of filing a blanket bond covering all mining operations within the State for which the applicant holds a permit. The amount of each bond shall be based upon the area of affected land to be reclaimed under the approved reclamation plan or plans to which the bond pertains, less any area where reclamation has been completed and released from coverage by the Department, pursuant to G.S. 74-56, or based on any other criteria established by the ~~Commission.~~ Commission, but shall not exceed one million dollars (\$1,000,000). The Department shall set the amount of the required bond in all cases, based upon a schedule established by the Commission.

...."

**SECTION 13.(e)** G.S. 74-54.1 reads as rewritten:

**"§ 74-54.1. Permit fees.**

(a) The fee schedule for the processing of permit ~~applications and permit renewals~~ applications, transfers, and modifications is as follows:

	0-25 acres	26+ acres
New Permit Applications	\$3,750.00	\$5,000.00
Permit Modifications	\$750.00	\$1,000.00
<del>Permit Renewals</del>	<del>\$750.00</del>	<del>\$1,000.00</del>
<u>Permit Transfers</u>	<u>\$100.00</u>	<u>\$100.00</u>

(a1) In addition to the fees set forth in subsection (a) of this section, permittees shall pay an annual operating fee of four hundred dollars (\$400.00) per permit per year as set forth in G.S. 74-55. The Department may charge a late fee of fifty dollars (\$50.00) per month per permit for every month or partial month that payment of the annual operating fee is delinquent.

...."

**SECTION 13.(f)** G.S. 74-55 reads as rewritten:

**"§ 74-55. Reclamation report.**

~~(a) Within 30 days after completion or termination of mining on an area under permit or within 30 days after each anniversary of the issuance of the operating permit, whichever is earlier, or at such later date as may be provided by rules of the Department, and each year thereafter until reclamation is completed and approved, the~~By July 1 of each year, the operator shall file a report of activities completed during the preceding year on a form prescribed by the Department, which shall include all of the following:

- ~~(1) Identify the mine, the operator and the permit~~number; number.
- ~~(2) State acreage disturbed by mining in the last 12-month~~period; period.
- ~~(3) State and describe amount and type of reclamation carried out in the last 12-month~~period; period.
- ~~(4) Estimate acreage to be newly disturbed by mining in the next 12-month~~period; period.
- ~~(5) Provide such maps as may be specifically requested by the~~Department. Department.
- ~~(6) Include the annual operating fee pursuant to G.S. 74-54.1(a1).~~

(b) When filing the annual report, the permittee shall pay the annual operating fee for the permit to the Department until the permit has been terminated by the Department. The Department may assess and collect a monthly penalty for each annual report or annual operating fee not filed by July 31 of each year until the annual report and annual operating fee are filed with the Department. If the required annual report and operating fee, including any late payment penalties, are not filed by December 31 of each year, the Department shall give written notice to the operator and shall then initiate permit revocation proceedings in accordance with G.S. 74-58."

**SECTION 13.(g)** G.S. 74-58 reads as rewritten:

**"§ 74-58. Suspension or revocation of permit.**

(a) Whenever the Department shall have reason to believe that a violation of (i) this Article, (ii) any rules adopted under this Article, or (iii) the terms and conditions of a permit, including the approved reclamation plan, has taken place, it shall serve written notice of the apparent violation upon the operator, specifying the facts constituting the apparent violation and informing the operator of the operator's right to an informal conference with the Department. The date for an informal conference shall be not less than 15 nor more than 30 days after the date of the notice, unless the Department and the operator mutually agree on another date. If the operator or the operator's representative does not appear at the informal conference, or if the Department following the informal conference finds that there has been a violation, the Department may suspend the permit until the violation is corrected or may revoke the permit where the violation appears to be ~~willful~~willful, or where the permittee has failed to pay the fee or late payment penalties required by G.S. 74-55(b).

(b) The effective date of any suspension or revocation shall be 30 days following the date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the effective date until issuance of a final decision. If the Department finds at the time of its initial decision that any delay in correcting a violation would result in imminent peril to life or danger to property or to the environment, it shall promptly initiate a proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have no effect upon an action for injunctive relief.

(c) Any operator whose permit has been suspended or revoked shall be denied a new permit or ~~a renewal of an existing~~reinstatement of the suspended permit to engage in mining until the operator gives evidence satisfactory to the Department of the operator's ability and intent to fully comply with the provisions of this Article and rules adopted under this Article, and the terms and conditions of the permit, including the approved reclamation plan, and that the operator has satisfactorily corrected all previous violations."

**SECTION 13.(h)** G.S. 74-60 reads as rewritten:

**"§ 74-60. Notice.**

Whenever in this Article written notice is required to be given by the Department, such notice shall be mailed by registered or certified mail to the permanent address of the operator set forth in his most recent application for an operating permit or for a modification ~~or renewal~~ of such permit. No other notice shall be required."

**SECTION 13.(i)** Notwithstanding G.S. 74-55(b), as enacted by subsection (f) of this section, the initial annual operating fee imposed by G.S. 74-54.1(a1), as enacted by subsection (e) of this section, shall be due December 31, 2017.

**SECTION 13.(j)** This section is effective when it becomes law and applies to (i) valid permits for existing mining operations issued before the date this act becomes effective and (ii) any permit application for a mining operation pending or submitted on or after that date. No later than December 1, 2017, the Department shall issue life-of-site permits or life-of-lease permits, as applicable, to replace valid permits for existing mining operations issued before the date this act becomes effective in compliance with the provisions of this act. Until such time as life-of-site permits or life-of-lease permits, as applicable, have been issued to replace valid permits for existing mining operations issued before the date this act becomes effective, any valid permit and its terms and conditions shall remain in effect and govern the operations of the facility notwithstanding any termination date that may be included in such permit.

**AMEND MITIGATION SERVICES LAW**

**SECTION 14.** G.S. 143-214.12 reads as rewritten:

**"§ 143-214.12. Division of Mitigation Services: Ecosystem Restoration Fund.**

(a) Ecosystem Restoration Fund. – The Ecosystem Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Ecosystem Restoration Fund shall provide a repository for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for payments made in lieu of compensatory mitigation as described in subsection (b) of this section. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of ~~wetlands and~~ wetlands, streams, and riparian areas in accordance with the basinwide plan as described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad valorem taxes required under G.S. 146-22.3 when the Department is the State agency making the acquisition.

(a1) The Department may distribute funds from the Ecosystem Restoration Fund directly to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. ~~A recipient of funds under this subsection shall grant a conservation easement in the real property or interest in real property acquired with the funds to the Department in a form that is acceptable to the Department.~~ A recipient of funds under this subsection that acquires a conservation easement or interest in real property appurtenant to a restoration project delivered to the Division of Mitigation Services may transfer the conservation easement or interest in real property to a federal or State agency, a local government, or a private, nonprofit conservation organization approved by the Division of Mitigation Services. The Department may convey real property or an interest in real property that has been acquired under the Division of Mitigation Services to a federal or State agency, a local government, or a private, nonprofit conservation organization approved by the Division of Mitigation Services to acquire, manage, and maintain real property or an interest in real

property for the purposes set out in subsection (a) of this section. ~~A~~ When a grantee of real property or an interest in real property under this subsection shall grant grants a conservation easement in the real property or interest in real property to the Department a federal or State agency, a local government, or a private, nonprofit conservation organization approved by the Division of Mitigation Services, the grant shall be made in a form that is acceptable to the Department.

(b) Authorized Methods of Payment. – A person subject to a permit or authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 may contribute to the Division of Mitigation Services in order to comply with conditions to, or terms of, the permit or authorization if participation in the Division of Mitigation Services will meet the mitigation requirements of the United States Army Corps of Engineers. The Department shall, at the discretion of the applicant, accept payment into the Ecosystem Restoration Fund in lieu of other compensatory mitigation requirements of any authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 if the contributions will meet the mitigation requirements of the United States Army Corps of Engineers. Payment may be made in the form of monetary contributions according to a fee schedule established by the Environmental Management Commission or in the form of donations of real property provided that the property is approved by the Department as a suitable site consistent with the basinwide wetlands restoration plan.

(c) Accounting of Payments. – The Department shall provide an itemized statement that accounts for each payment into the Fund. The statement shall include the expenses and activities financed by the payment."

## **ENERGY POLICY COUNCIL CLARIFICATION**

**SECTION 15.** G.S. 113B-4(a) reads as rewritten:

"(a) The Lieutenant Governor or the Lieutenant Governor's designee shall serve as chair of the Council."

## **SOLID WASTE MODIFICATIONS**

**SECTION 16.** If Senate Bill 16, 2017 Regular Session, becomes law, then Section 16 of that act is amended by adding the following new subsection:

**"SECTION 16.(d) G.S. 130A-294(a3), as enacted by subsection (c) of this section, only applies to valid and operative franchise agreements in effect on October 1, 2015."**

**SECTION 17.(a)** G.S. 130A-291 reads as rewritten:

**"§ 130A-291. Division of Waste Management.**

(a) For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creation of nuisances and the depletion of our natural resources, the Department shall maintain a Division of Waste Management to promote sanitary processing, treatment, disposal, and statewide management of solid waste and the greatest possible recycling and recovery of resources, and the Department shall employ and retain qualified personnel as may be necessary to effect such purposes. It is the purpose and intent of the State to be and remain cognizant not only of its responsibility to authorize and establish a statewide solid waste management program, but also of its responsibility to monitor and supervise, through the Department, the activities and operations of units of local government implementing a permitted solid waste management facility serving a specified geographic area in accordance with a solid waste management plan.

(b) In furtherance of this purpose and intent, it is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that solid waste management facilities permitted hereunder and serving a specified geographic area shall be used by public or private owners or occupants of all lands, buildings, and premises within the geographic area, ~~and a unit of local government may, by ordinance, require that all solid waste~~

~~generated within the geographic area and placed in the waste stream for disposal, shall be delivered to the permitted solid waste management facility or facilities serving the geographic area. Actions taken pursuant to this Article shall be deemed to be acts of the sovereign power of the State of North Carolina, and to the extent reasonably necessary to achieve the purposes of this section, a unit of local government may displace competition with public service for solid waste management and disposal. It is further determined and declared that no person, firm, corporation, association or entity within the geographic area shall engage in any activities which would be competitive with this purpose or with ordinances, rules adopted pursuant to the authority granted herein.~~

(c) Except as provided in subsections (d) and (e) of this section, a unit of local government may, by ordinance, franchise, business license, contract, or otherwise, require that all solid waste generated within the geographic area and placed in the waste stream for disposal be delivered to the permitted solid waste management facility or facilities serving the geographic area only under one of the following conditions:

- (1) If the unit of local government has debt associated with solid waste management facilities and equipment outstanding on September 1, 2017, the unit of local government may adopt and enforce such an ordinance until the date that such debt has matured.
- (2) If the unit of local government incurs debt after September 1, 2017, and the issuance of the debt will be conditioned upon the unit of local government requiring that all waste collected within the county be disposed of within the landfill, for expansion of a landfill or construction of a new landfill after all necessary approvals for issuance of the debt have been obtained from the Local Government Commission in compliance with Chapter 159 of the General Statutes, including the demonstration of need and cost required by G.S. 159-211, the unit of local government may adopt and enforce such an ordinance until the date the debt associated with expansion of the landfill, or construction of the new landfill, has matured.
- (3) If the unit of local government is a party to an exclusive franchise agreement with a private entity governing the management or disposal of waste within the jurisdiction in effect on September 1, 2017, the unit of local government may adopt and enforce such an ordinance until the date that such franchise has expired.

(d) Notwithstanding any limitations set forth in subsection (c) of this section, and except as provided in subsection (e) of this section, a regional solid waste management authority established under Article 22 of Chapter 153A of the General Statutes, and a unit of local government that is a member of an authority, may, by ordinance, require that all solid waste generated within its jurisdiction and placed in the waste stream for disposal be delivered to the permitted solid waste management facility or facilities operated by the regional solid waste management authority.

(e) Notwithstanding authority given to local governments to manage solid waste generated or disposed of within their jurisdiction pursuant to subsection (c) or (d) of this section, or otherwise, units of local government shall not, by ordinance or otherwise, prohibit the disposal of construction and demolition debris in any sanitary landfill permitted for the disposal of construction and demolition debris, which landfill has a valid and operative franchise agreement and is otherwise properly permitted pursuant to G.S. 130A-294."

**SECTION 17.(b)** G.S. 130A-294(a) reads as rewritten:

**"§ 130A-294. Solid waste management program.**

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

...

(5b) ~~Authorize~~ Subject to the limitations of G.S. 130A-291, authorize units of local government to require by ordinance, that all solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, or prohibit collectors of solid waste from recycling materials or limit access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

...."

**SECTION 17.(c)** G.S. 153A-292(a) reads as rewritten:

**"§ 153A-292. County collection and disposal facilities.**

(a) The board of county commissioners of any county may establish and operate solid waste collection and disposal facilities in areas outside the corporate limits of a city. The board may by ordinance regulate the use of a disposal facility provided by the ~~county, county~~ subject to the limitations of G.S. 130A-291, the nature of the solid wastes disposed of in a facility, and the method of disposal. The board may contract with any city, individual, or privately owned corporation to collect and dispose of solid waste in the area. Counties and cities may establish and operate joint collection and disposal facilities. A joint agreement shall be in writing and executed by the governing bodies of the participating units of local government."

**SECTION 17.(d)** Chapter 159 of the General Statutes is amended by adding a new Article to read:

"Article 15.

"Borrowing for expansion of existing landfills and construction of new landfills in certain circumstances.

**"§ 159-211. Borrowing authority for landfills.**

(a) Whenever a unit of local government applies to the Commission for approval to enter debt by any method authorized by this Chapter for the purpose of expansion of an existing landfill within their jurisdiction, or construction of a new landfill within their jurisdiction, and to support the repayment of the new debt by requiring by ordinance, franchise, or otherwise that all waste collected within the county must be delivered to the county facility exclusively, in addition to any other criteria the Commission is required to consider in approving such debt, the unit of local government shall demonstrate all of the following to the satisfaction of the Commission:

- (1) The proposed expansion of the existing landfill, or construction of the new landfill, for which debt is to be incurred is necessary to ensure reliable, convenient, and affordable solid waste disposal service is provided consistently to all citizens under its jurisdiction for the protection of public health, safety, and welfare.
- (2) The proposed expansion of the existing landfill, or construction of the new landfill, will result in lower overall costs per ton of waste disposed for the jurisdiction's citizens and businesses within the jurisdiction than would be available through privately funded and operated disposal facilities. The

analysis shall take into account all direct, indirect, asset retirement, closure, post-closure, and capital costs divided by tons disposed per year to establish a "tip fee" required to support the operation and repayment of the debt. State or federal subsidies shall be disregarded for purposes of this analysis.

(3) The requirements of subdivisions (1) and (2) of this subsection have been confirmed by way of a bid or request for proposals process in which private businesses have been invited to compete for the right to provide the services subject only to compliance with State and federal law. Private company proposals will be on a "tip fee" basis for comparison to the unit of local government landfill tip fee calculated pursuant to subdivision (2) of this subsection.

(b) In determining whether debt for expansion of an existing landfill, or construction of a new landfill, shall be approved, the Commission shall consider the information submitted pursuant to subsection (a) of this section and shall approve an application only if it finds the information presented supports the need for, and cost-effectiveness of, the proposed project. If the Commission tentatively decides to deny the application because it is of the opinion that these criteria cannot be supported from the information presented to it, it shall so notify the unit filing the application. Prior to final approval of the application, the Commission shall hold a public hearing on the application at which time any interested persons shall be heard, including any private business that has offered an alternative. The Commission may appoint a hearing officer to conduct the hearing and to present a summary of the testimony and associated recommendations for the Commission's consideration.

(c) The requirements of this section shall only apply to a unit of local government, which, at the time it submits an application to the Commission for approval to enter debt for expansion or construction of a landfill, has adopted an ordinance pursuant to G.S. 130A-291(c). Provided, however, where such debt is approved and the requirements of this section have not been satisfied, a unit of local government that later seeks to adopt an ordinance pursuant to G.S. 130A-291(c), must meet the requirements of this section prior to adopting and enforcing such an ordinance."

**SECTION 17.(e)** Nothing in this section shall be construed to impact the terms of a contract, franchise agreement, or other agreement between a unit of local government and another entity concerning the management of solid waste, or the financing of such services or related facilities or equipment, in effect on the date this section becomes law.

**SECTION 17.(f)** This section is effective when this act becomes law.

## **CLARIFY ROLES OF GEOLOGISTS AND SOIL SCIENTISTS IN WASTEWATER SYSTEM SITE EVALUATIONS**

**SECTION 18.(a)** G.S. 130A-335(a1) reads as rewritten:

"(a1) Any proposed site for a residence, place of business, or a place of public assembly located in an area that is not served by an approved wastewater system for which a new wastewater system is proposed or repair is necessary for compliance may be evaluated for soil conditions and site features by a ~~licensed soil scientist or licensed geologist.~~ person licensed pursuant to Chapter 89F of the General Statutes as a licensed soil scientist. For purposes of this subsection, "site features" include topography and landscape position; soil characteristics (morphology); soil wetness; soil depth; restrictive horizons; available space; and other applicable factors that involve accepted public health principles. A person licensed pursuant to Chapter 89E of the General Statutes as a licensed geologist may evaluate the proposed site or repair area, as applicable, for geologic and hydrogeologic conditions."

**SECTION 18.(b)** G.S. 130A-336.1(e) reads as rewritten:

"(e) Site Design, Construction, and Activities.



- (1) The professional engineer designing the proposed wastewater system shall use recognized principles and practices of engineering and applicable rules of the Commission in the calculations and design of the wastewater system. The investigations and findings of the professional engineer shall include, at a minimum, the information required in rules adopted by the Commission pursuant to G.S. 130A-335(e). The professional engineer may, at the engineer's discretion, employ pretreatment technologies not yet approved in this State.
- (2) Notwithstanding G.S. 130A-335(a1), the owner of the proposed wastewater system shall employ ~~either a licensed soil scientist or a geologist, licensed pursuant to Chapter 89E of the General Statutes and who has applicable professional experience, to evaluate soil conditions and site features;~~ a person licensed pursuant to Chapter 89F of the General Statutes as a licensed soil scientist to conduct soil and site evaluations and, as applicable, a person licensed pursuant to Chapter 89E of the General Statutes as a licensed geologist to evaluate geologic and hydrogeologic conditions.

...."

## **REPEAL PLASTIC BAG BAN**

**SECTION 19.(a)** Part 2G of Article 9 of Chapter 130A of the General Statutes is repealed.

**SECTION 19.(b)** G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary of Environmental Quality may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars (\$15,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). ~~The penalty shall not exceed one hundred dollars (\$100.00) for a first violation; two hundred dollars (\$200.00) for a second violation within any 12-month period; and five hundred dollars (\$500.00) for each additional violation within any 12-month period for any violation of Part 2G of Article 9 of this Chapter.~~ For violations of Part 7 of Article 9 of this Chapter and G.S. 130A-309.10(m): (i) a warning shall be issued for a first violation; (ii) the penalty shall not exceed two hundred dollars (\$200.00) for a second violation; and (iii) the penalty shall not exceed five hundred dollars (\$500.00) for subsequent violations. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environmental Quality shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

**SECTION 19.(c)** Section 13.10(c) of S.L. 2010-31 is repealed.

**SECTION 19.(d)** This section becomes effective September 1, 2017.

## GENX RESPONSE MEASURES

**SECTION 20.(a)** The General Assembly finds that the discharge of the poly-fluoroalkyl chemical known as "GenX" (CAS registry number 62037-80-3 or 13252-13-6) into the Cape Fear River demonstrates the need for supplemental funding for impacted local public utilities for the monitoring and treatment of GenX and to support the identification and characterization by scientists, engineers, and other professionals of GenX in the Cape Fear River.

Therefore, notwithstanding Section 6.1 of S.L. 2017-57, G.S. 143C-4-4, and G.S. 143C-6-4, of the funds appropriated to the Contingency and Emergency Fund, the sum of four hundred thirty-five thousand dollars (\$435,000) shall be allocated and used as follows:

- (1) One hundred thousand dollars (\$100,000) to the Cape Fear Public Utility Authority, who shall, in coordination with Brunswick County Public Utilities, Pender County Utilities, and other entities that withdraw, treat, and subsequently distribute water originating from the Cape Fear River, study the identification and deployment of water treatment technology to remove GenX from the public water supply, and eighty-five thousand dollars (\$85,000) to the Cape Fear Public Utility Authority for ongoing monitoring of water supplies withdrawn from the Cape Fear River. The Cape Fear Public Utility Authority shall provide an interim report to the Environmental Review Commission no later than December 1, 2017, regarding the progress in implementing this section, and a final report on or before April 1, 2018, to include any findings and recommendations for legislative action.
- (2) Two hundred fifty thousand dollars (\$250,000) to the University of North Carolina at Wilmington to identify and quantify GenX and measure the concentration of the chemicals in the sediments of the Cape Fear River, the extent to which the chemical biodegrades over time or bioaccumulates within local ecosystems, and what risk the contaminant poses to human health. The University of North Carolina at Wilmington shall not charge indirect facilities and administrative costs against the funding provided by this subdivision. The University of North Carolina at Wilmington shall provide an interim report to the Environmental Review Commission no later than December 1, 2017, regarding the progress in implementing this section, and a final report on or before April 1, 2018, to include any findings and recommendations for legislative action.

**SECTION 20.(b)** Funds allocated by this section for the 2017-2018 fiscal year shall not revert but shall remain available for nonrecurring expenses until the end of the 2018-2019 fiscal year. The entities funded by this section may establish time-limited positions for the biennium with the funds allocated by this section.

**SECTION 20.1.** Section 13.7 of S.L. 2017-57, 2017 Regular Session, reads as rewritten:

**"SECTION 13.7.** The North Carolina Policy Collaboratory at the University of North Carolina at Chapel Hill shall develop a ~~proposal~~ proposal (i) to identify and acquire digital data relevant to environmental monitoring and natural resource management, including, but not limited to, the digitization of analog records and (ii) for the creation of an online database to provide National Pollutant Discharge Elimination System (NPDES) and other water quality permits, permit applications, and relevant supporting documents to the public in a searchable and user friendly format, as well as creation of a system for electronic filing of applications for such permits and relevant supporting documents. In developing the proposal, the Collaboratory shall consult with the Department of Environmental Quality and the Department of Information Technology. The Collaboratory shall assess the feasibility of

transferring these data to a central, searchable, and publicly accessible digital database hosted by The University of North Carolina System. The Collaboratory shall provide an interim report to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the Fiscal Research Division no later than December 1, 2017, regarding the progress in implementing this section, and shall provide its proposal no later than March 1, 2018, to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the Fiscal Research Division April 1, 2018, to these entities."

**SECTION 20.2.** If by September 8, 2017, the Department of Environmental Quality has yet to issue a Notice of Violation to any company or person for the discharge of the chemical known as "GenX" (CAS registry number 62037-80-3 or 13252-13-6) to the Cape Fear River, and for the resulting contamination of the Cape Fear River, and public water supplies withdrawing water therefrom, the Department of Environmental Quality shall provide a detailed report, in writing, to the Environmental Review Commission on that date setting forth the reasons why a Notice of Violation has not been issued to a company or person that has discharged GenX to the Cape Fear River.

#### **SEVERABILITY CLAUSE AND EFFECTIVE DATE**

**SECTION 21.(a)** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

**SECTION 21.(b)** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31<sup>st</sup> day of August, 2017.

s/ Rick Gunn  
Presiding Officer of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

VETO Roy Cooper  
Governor

Became law notwithstanding the objections of the Governor at 11:52 a.m. this 4<sup>th</sup> day of October, 2017.

s/ Sarah Lang Holland  
Senate Principal Clerk