

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

SESSION LAW 1999-329  
HOUSE BILL 1160

AN ACT TO ENACT THE CLEAN WATER ACT OF 1999.

The General Assembly of North Carolina enacts:

**PART I. TITLE.**

Section 1.1. This act shall be known as the "Clean Water Act of 1999".

**PART II. EXTEND MORATORIA ON CONSTRUCTION OR EXPANSION OF SWINE FARMS.**

Section 2.1. Subsection (a1) of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, reads as rewritten:

"(a1) There is hereby established a moratorium on the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms. The purposes of this moratorium are to allow counties time to adopt zoning ordinances under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the completion of the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and to allow the 1999 General Assembly to receive and act on the findings and recommendations of those studies. Except as provided in subsection (b) of this section, the Environmental Management Commission shall not issue a permit for an animal waste management system for a new swine farm or the expansion of an existing swine farm for a period beginning on 1 March 1997 and ending on ~~1 September 1999.~~ 1 July 2001. The construction or expansion of a swine farm or animal waste management system for a swine farm is prohibited during the period of the moratorium regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is permitted under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217."

Section 2.2. Section 1.2 of S.L. 1997-458, as amended by Section 3 of S.L. 1998-188, reads as rewritten:

"Section 1.2. (a) As used in this section, 'swine farm' and 'lagoon' have the same meaning as in G.S. 106-802. As used in this section, 'animal waste management system' has the same meaning as in G.S. 143-215.10B. There is hereby established a moratorium for any new or expanding swine farm or lagoon for which a permit is required under Parts 1 or 1A of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty

million dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until ~~1 September 1999~~, 1 July 2001, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802. The exemptions set out in subsection (b) of Section 1.1 of this act do not apply to the moratorium established under this section.

(b) In order to protect travel and tourism, effective ~~1 September 1999~~, 1 July 2001, no animal waste management system shall be permitted except under an individual permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103."

### **PART III. EXTEND AND EXPAND PILOT PROGRAM FOR INSPECTION OF ANIMAL WASTE MANAGEMENT SYSTEMS.**

Section 3.1. Section 15.4(a) of S.L. 1997-443 reads as rewritten:

"(a) The Department of ~~Environment, Health, Environment~~ and Natural Resources shall develop and implement a pilot program to begin no later than November 1, 1997, and to terminate ~~October 31, 1998~~, 1 July 2001, regarding the annual inspections of animal operations that are subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this pilot program. In addition, Brunswick County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes in these ~~two~~ three counties at least once a year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these ~~two~~ three counties shall be located in an office in the county in which that person will be conducting inspections. As part of this pilot program, the Department of ~~Environment, Health, Environment~~ and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the ~~two~~ three counties are used for the quick response ~~of to~~ to complaints and reported problems previously referred only to the Division of Water ~~Quality~~. Quality of the Department of Environment and Natural Resources."

Section 3.2. The two counties that were selected for the pilot program pursuant to Section 15.4(a) of S.L. 1997-443, Columbus County and Jones County,

shall remain in the pilot program. In addition, Brunswick County shall be added to the program.

Section 3.3. The Department of Environment and Natural Resources, in consultation with both the Division of Water Quality and the Division of Soil and Water Conservation, shall submit interim reports no later than 15 October 1999, 15 April 2000, 15 October 2000, 15 April 2001, and a final report no later than 15 July 2001 to the Environmental Review Commission and to the Fiscal Research Division. These reports shall indicate whether the pilot program has increased the effectiveness of the annual inspections program or the response to complaints and reported problems, specifically whether the pilot program had resulted in identifying violations earlier, taking corrective actions earlier, increasing compliance with the animal waste management plans and permit conditions, improving the time to respond to discharges, complaints, and reported problems, improving communications between farmers and Department employees, and any other consequences deemed pertinent by the Department. The final report shall include a recommendation as to whether to continue or expand the pilot program under this act. The Environmental Review Commission may recommend to the 2001 General Assembly whether to continue or expand the pilot program under this act and may make any related legislative proposals.

#### **PART IV. INVENTORY INACTIVE LAGOONS.**

Section 4.1. The definitions set out in G.S. 143-215.10B apply to this Part. The definitions set out in this section apply only to this Part and shall not be construed to apply to any regulatory program. As used in this Part:

- (1) "Inactive lagoon" means a lagoon into which animal waste has not been lawfully discharged for a period of one year or more.
- (2) "Lagoon" means a lagoon, as defined in G.S. 106-802, that is a component of an animal waste management system that serves an animal operation.

Section 4.2. The Department of Environment and Natural Resources shall develop an inventory of all inactive lagoons. The Department shall rank each inactive lagoon on the inventory based on the extent to which the lagoon constitutes a threat to public health, the environment, or the State's natural resources. The Department shall submit this inventory to the Environmental Review Commission on or before 1 March 2000.

#### **PART V. INCREASE CIVIL PENALTIES FOR VIOLATIONS OF WATER QUALITY LAWS.**

Section 5.1. G.S. 143-215.6A reads as rewritten:

##### **"§ 143-215.6A. Enforcement procedures: civil penalties.**

(a) A civil penalty of not more than ~~ten thousand dollars (\$10,000)~~ twenty-five thousand dollars (\$25,000) may be assessed by the Secretary against any person who:

- (1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.

- (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.
- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
- (4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article or G.S. 143-355(k) relating to water use information.
- (5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.
- (6) Violates a rule of the Commission implementing this Part, Part 2A of this Article, or G.S. 143-355(k).
- (7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.
- (8) Violates the offenses set out in G.S. 143-215.6B.
- (9) Is required, but fails, to apply for or to secure a certificate required by G.S. 143-215.22I, or who violates or fails to act in accordance with the terms, conditions, or requirements of the certificate.
- (10) Violates subsections (c1) through (c5) of G.S. 143-215.1 or a rule adopted pursuant to subsections (c1) through (c5) of G.S. 143-215.1.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ~~ten thousand dollars (\$10,000)~~ twenty-five thousand dollars (\$25,000) per day for so long as the violation continues, unless otherwise stipulated.

(b1) The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the two years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional.

(c) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand dollars (\$10,000) per month may be assessed by the Commission against any local government that fails to adopt a local water supply watershed protection program as required by G.S. 143-214.5, or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary 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, unless the violator contests the assessment as provided in subsection (d) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary 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.

(h) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 14.

(h1) The clear proceeds of civil penalties assessed by the Secretary or the Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) As used in this subsection, 'municipality' refers to any unit of local government which operates a wastewater treatment plant. As used in this subsection, 'unit of local government' has the same meaning as in G.S. 130A-290. The provisions of

this subsection shall apply whenever a municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of 10 million gallons per day or more into any of the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is subject to a court order which specifies (i) a schedule of activities with respect to the treatment of wastewater by the municipality; (ii) deadlines for the completion of scheduled activities; and (iii) stipulated penalties for failure to meet such deadlines. A municipality as specified herein that violates any provision of such order for which a penalty is stipulated shall pay the full amount of such penalty as provided in the order unless such penalty is modified, remitted, or reduced by the court.

(j) Local governments certified and approved to administer and enforce pretreatment programs by the Commission pursuant to G.S. 143-215.3(a)(14) may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section.

(k) A person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may request a review of the assessment by filing a request for review with the local government within 30 days of the date the notice of assessment is received. If a local ordinance provides for a local administrative hearing, the hearing shall afford minimum due process including an unbiased hearing official. The local government shall make a final decision on the request for review within 90 days of the date the request for review is filed. The final decision on a request for review shall be subject to review by the superior court pursuant to Article 27 of Chapter 1 of the General Statutes. If the local ordinance does not provide for a local administrative hearing, a person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may contest the assessment by filing a civil action in superior court within 60 days of the date the notice of assessment is received."

Section 5.2. Section 5.1 of this act is effective 1 October 1999 and applies to violations that occur on or after 1 October 1999. Section 5.1 of this act shall not be construed to affect the validity of any civil penalty that is assessed prior to 1 October 1999.

Section 5.3. G.S. 143-215.6A(b1), as enacted by Sections 5.1 and 5.2 of this act, reads as rewritten:

"(b1) The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the ~~two years~~ three years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day for so long as the

violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional."

Section 5.4. Section 5.3 of this act is effective 1 October 2000 and applies to violations that occur on or after 1 October 2000. Section 5.3 of this act shall not be construed to affect the validity of any civil penalty that is assessed prior to 1 October 2000.

Section 5.5. G.S. 143-215.6A(b1), as enacted by Sections 5.1 and 5.2 and amended by Sections 5.3 and 5.4 of this act, reads as rewritten:

"(b1) The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the ~~three years~~ four years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional."

Section 5.6. Section 5.5 of this act is effective 1 October 2001 and applies to violations that occur on or after 1 October 2001. Section 5.5 of this act shall not be construed to affect the validity of any civil penalty that is assessed prior to 1 October 2001.

Section 5.7. G.S. 143-215.6A(b1), as enacted by Sections 5.1 and 5.2 and amended by Sections 5.3, 5.4, 5.5, and 5.6 of this act, reads as rewritten:

"(b1) The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the ~~four years~~ five years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional."

Section 5.8. Section 5.7 of this act is effective 1 October 2002 and applies to violations that occur on or after 1 October 2002. Section 5.7 of this act shall not be construed to affect the validity of any civil penalty that is assessed prior to 1 October 2002.

**PART VI. AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DISTRIBUTE FUNDS FROM THE WETLANDS RESTORATION FUND, TO AUTHORIZE SOIL AND WATER CONSERVATION DISTRICTS TO ACQUIRE EASEMENTS UNDER THE CONSERVATION RESERVE ENHANCEMENT PROGRAM, AND TO AUTHORIZE THE DEPARTMENT TO CONVEY INTERESTS IN REAL PROPERTY ACQUIRED UNDER THE WETLANDS RESTORATION PROGRAM OR THE CONSERVATION RESERVE ENHANCEMENT PROGRAM TO FEDERAL AND STATE AGENCIES, LOCAL**

## GOVERNMENTS, AND PRIVATE NONPROFIT CONSERVATION ORGANIZATIONS.

Section 6.1. G.S. 143-214.12 is amended by adding a new subsection to read:

"(a1) The Department may distribute funds from the Wetlands 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. The Department may convey real property or an interest in real property that has been acquired under the Wetlands Restoration Program 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 grantee of real property or an interest in real property under this subsection shall grant a conservation easement in the real property or interest in real property to the Department in a form that is acceptable to the Department."

Section 6.2. G.S. 143-214.13 reads as rewritten:

### "§ 143-214.13. Wetlands Restoration Program: reporting requirement.

(a) The Department of Environment and Natural Resources shall report each year by November 1 to the Environmental Review Commission regarding its progress in implementing the Wetlands Restoration Program and its use of the funds in the Wetlands Restoration Fund. The report shall document statewide wetlands losses and gains and compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The report shall also provide an accounting of receipts and disbursements of the Wetlands Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost comparison on a per-acre basis between the State's ~~Wetland~~ Wetlands Restoration Program and private mitigation banks. The Department shall also send a copy of its report to the Fiscal Research Division of the General Assembly.

(b) The Department shall maintain an inventory of all property that is held, managed, maintained, enhanced, restored, or used to create wetlands under the Wetlands Restoration Program. The inventory shall also list all conservation easements held by the Department. The inventory shall be included in the annual report required under subsection (a) of this section."

Section 6.3. G.S. 113A-235 reads as rewritten:

### "§ 113A-235. Conservation easements.

(a) Ecological systems and appropriate public use of these systems may be protected through conservation easements, including conservation agreements under Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements ~~Act~~-Act, and conservation easements under the Conservation Reserve Enhancement Program. The Department of Environment and Natural Resources shall work cooperatively with State and local agencies and qualified nonprofit organizations to monitor compliance with conservation easements and conservation agreements and to ensure the continued viability of the protected



ecosystems. Soil and water conservation districts established under Chapter 139 of the General Statutes may acquire easements under the Conservation Reserve Enhancement Program by purchase or gift.

(b) The Department may convey real property or an interest in real property that has been acquired under the Conservation Reserve Enhancement Program 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 grantee of real property or an interest in real property under this subsection shall grant a conservation easement in the real property or interest in real property to the Department in a form that is acceptable to the Department.

(c) The Department shall report on the implementation of this Article to the Environmental Review Commission no later than 1 November of each year. The Department shall maintain an inventory of all conservation easements held by the Department. The inventory shall be included in the report required by this subsection."

## **PART VII. AUTHORIZE TEMPORARY RULES TO PROTECT THE CAPE FEAR, CATAWBA, AND TAR-PAMLICO RIVER BASINS.**

Section 7.1. Notwithstanding G.S. 150B-21.1(a)(2) and Section 8.6 of S.L. 1997-458, the Environmental Management Commission may adopt temporary rules as provided in this section to protect water quality standards and uses as required to implement basinwide water quality management plans for the Cape Fear, Catawba, and Tar-Pamlico River Basins pursuant to G.S. 143-214.1, 143-214.7, 143-215.3, and 143B-282. Prior to the adoption of a temporary rule under this subsection, the Commission shall:

- (1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.
- (2) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed rule may be submitted. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule is published in the North Carolina Register.
- (3) Hold a public hearing on the proposed temporary rule in the river basin to which the proposed temporary rule applies.

Section 7.2. Notwithstanding 26 NCAC 2C.0102(11), Section 7.1 of this act shall continue in effect until 1 July 2001.

Section 7.3. This Part shall not be construed to invalidate any development and implementation of basinwide water quality management plans by the Environmental Management Commission and the Department of Environment and Natural Resources that has occurred prior to the date this Part becomes effective.

**PART VIII. REQUIRE REPORTS TO WASTEWATER SYSTEM CUSTOMERS ON SYSTEM PERFORMANCE AND PUBLICATION OF NOTICE OF DISCHARGES OF UNTREATED WASTEWATER, UNTREATED WASTE, OR ANIMAL WASTE.**

Section 8.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

**"§ 143-215.1C. Report to wastewater system customers on system performance; publication of notice of discharge of untreated wastewater and waste.**

(a) Report to Wastewater System Customers. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part, shall provide to the users or customers of the collection system or treatment works and to the Department an annual report that summarizes the performance of the collection system or treatment works and the extent to which the collection system or treatment works has violated the permit or federal or State laws, regulations, or rules related to the protection of water quality. The report shall be prepared on either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of the calendar or fiscal year.

(b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part shall:

- (1) In the event of a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.
- (2) In the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned 'NOTICE OF DISCHARGE OF UNTREATED SEWAGE'. The owner or operator shall publish the notice within 10 days after the Secretary has

determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days of the discharge. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(c) Publication of Notice of Discharge of Untreated Waste. – The owner or operator of any wastewater collection or treatment works, other than a wastewater collection or treatment works the operation of which is primarily to collect or treat municipal or domestic wastewater, for which a permit is issued under this Part shall:

- (1) In the event of a discharge of 1,000 gallons or more of untreated waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.
- (2) In the event of a discharge of 15,000 gallons or more of untreated waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned 'NOTICE OF DISCHARGE OF UNTREATED WASTE'. The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days of the discharge. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection."

Section 8.2. G.S. 143-215.10C is amended by adding a new subsection to read:

"(h) The owner or operator of an animal waste management system shall:

- (1) In the event of a discharge of 1,000 gallons or more of animal waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.
- (2) In the event of a discharge of 15,000 gallons or more of animal waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned 'NOTICE OF DISCHARGE OF ANIMAL WASTE'. The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days of the discharge. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection."

#### **PART IX. PILOT PROGRAM FOR INSPECTION OF MUNICIPAL AND DOMESTIC WASTEWATER TREATMENT WORKS.**

Section 9.1. The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 January 2000 and to terminate 1 July 2001 to inspect and provide technical assistance to municipal and domestic wastewater treatment works for which a permit is required under Part 1 of Article 21 of Chapter 143 of the General Statutes. The Department shall select a county in which there is located a representative cross section of the types of municipal and domestic wastewater treatment works in operation in the State for this pilot program. The Technical Assistance and Certification Unit of the Non-Discharge Branch of the Water Quality Section of the Division of Water Quality in the Department shall conduct an inspection of each municipal and domestic wastewater treatment works for which a permit is required under Part 1 of Article 21 of Chapter 143 of the General Statutes at least once each six months to determine whether the treatment works is in violation of

any water quality classification, standard, limitation, or management practice or is in violation of any term, condition, or requirement of the permit for the treatment works. The personnel of the Technical Assistance and Certification Unit of the Non-Discharge Branch of the Water Quality Section of the Division of Water Quality who are assigned to conduct these inspections shall be assigned to an office in the county selected for the pilot program.

Section 9.2. The Division of Water Quality of the Department of Environment and Natural Resources shall submit interim reports no later than 15 April 2000, 15 October 2000, 15 April 2001, and a final report no later than 15 July 2001 to the Environmental Review Commission and to the Fiscal Research Division on the implementation of the pilot program established by this Part. These reports shall indicate the extent to which the pilot program has improved compliance with the laws governing water quality and has resulted in actual improvements in water quality by earlier identification of violations; reduction in the time required to respond to discharges, complaints, and reported problems; improved communication between owners and operators of treatment works and Department employees; and any other factors deemed pertinent by the Department. The final report shall include a recommendation as to whether to continue or expand the pilot program established by this Part. The Environmental Review Commission may recommend to the 2001 General Assembly whether to continue or expand the pilot program established by this Part.

#### **PART X. ISSUANCE OF PERMITS FOR NEW OR EXPANDED MUNICIPAL OR DOMESTIC WASTEWATER TREATMENT WORKS THAT DISCHARGE TO THE WATERS OF THE STATE.**

Section 10.1. G.S. 143-215.1(b) is amended by adding a new subdivision to read:

- "(5) The Commission shall not issue a permit for a new municipal or domestic wastewater treatment works that would discharge to the surface waters of the State or for the expansion of an existing municipal or domestic wastewater treatment works that would discharge to the surface waters of the State unless the applicant for the permit demonstrates to the satisfaction of the Commission that:
- a. The applicant has prepared and considered an engineering, environmental, and fiscal analysis of alternatives to the proposed facility.
  - b. The applicant is in compliance with the applicable requirements of the systemwide municipal and domestic wastewater collection systems permit program adopted by the Commission."

#### **PART XI. ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP ENGINEERING STANDARDS AND IMPLEMENT A PERMIT**

## **PROGRAM FOR MUNICIPAL AND DOMESTIC WASTEWATER COLLECTIONS.**

Section 11.1. The Environmental Management Commission shall develop engineering standards governing municipal and domestic wastewater collection systems that will allow interconnection of these systems on a regional basis. The Commission shall report on its progress in developing the engineering standards required by this section as a part of each quarterly report the Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

Section 11.2. The Environmental Management Commission shall develop and implement a permit program for municipal and domestic wastewater collection systems on a systemwide basis. The collection system permit program shall provide for performance standards, minimum design and construction requirements, a capital improvement plan, operation and maintenance requirements, and minimum reporting requirements. In order to ensure an orderly and cost-effective phase-in of the collection system permit program, the Commission shall implement the permit program over a five-year period beginning 1 July 2000. The Commission shall issue permits for approximately twenty percent (20%) of municipal and domestic wastewater collection systems that are in operation on 1 July 2000 during each of the five calendar years beginning 1 July 2000 and shall give priority to those collection systems serving the largest populations, those under a moratorium imposed by the Commission under G.S. 143-215.67, and those for which the Department of Environment and Natural Resources has issued a notice of violation for the discharge of untreated wastewater. The Commission shall report on its progress in developing and implementing the collection system permit program required by this section as a part of each quarterly report the Environmental Management Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

## **PART XII. CLARIFY THAT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES MAY LIMIT TO TWO MILLION DOLLARS RATHER THAN THREE MILLION DOLLARS THE MAXIMUM AMOUNT OF CLEAN WATER GRANTS TO LOCAL GOVERNMENT UNITS WITH HIGH BOND RATINGS AND, FOR CLEAN WATER LOANS FROM BOND FUNDS, TO CHANGE THE TIME BY WHICH A LOCAL GOVERNMENT UNIT MUST SATISFY THE REQUIREMENTS FOR HOLDING A PUBLIC HEARING AND FILING A PETITION FOR A VOTE PRIOR TO DISBURSEMENT OF THE LOAN FUNDS.**

Section 12.1. G.S. 159G-3 is amended by adding a new subdivision to read:

"(2a) 'Bond rating' means the numerical rating of a local government unit developed by the North Carolina Municipal Council, Inc., or any successor thereto. The rating formula is based on 100 being a theoretically 'perfect' local government unit and is an assessment of the creditworthiness of the unit. Local government units with a rating below 75 or with no ratings have limited, if any, access to the private markets for financing water and sewer or other debt."

Section 12.2. G.S. 159G-6(a) reads as rewritten:

- "(a) Revolving loans and grants.
- (1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.
  - (2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be eight million dollars (\$8,000,000).
  - (2a) The maximum principal amount of grants made to any one local government unit during any fiscal year shall be three million dollars (\$3,000,000). The Department of Environment and Natural Resources may limit the maximum principal amount of the grant to two million dollars (\$2,000,000) or two-thirds of the eligible project cost, whichever is less, when the bond rating of the local government unit equals or is greater than 75 during any fiscal year and when one million dollars (\$1,000,000) or one-third of the eligible project cost, whichever is less, is available to the local government unit as a loan from any source.
  - (3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his or her responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants."

Section 12.3. Subsection (c) of Section 10 of S.L. 1998-132 reads as rewritten:

- "(c) Application for Loans; Hearings.
- (1) ~~Eligibility/Initial Hearing: Eligibility.~~ –
    - a. ~~Prior to filing an application for a loan, a~~ A local government unit shall hold a public hearing. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing. The public hearing may be held at any time prior to

the disbursement of loan funds under subsection (e) of this section.

- b. All applications for loans shall be filed with the Department of Environment and Natural Resources. The form of the application shall be prescribed by the Department and shall require any information necessary to determine the eligibility for a loan under the provisions of this section. All applications approved by the Department of Environment and Natural Resources shall be filed with the Local Government Commission. Each applicant shall furnish to the Department of Environment and Natural Resources and the Local Government Commission information in addition or supplemental to the information contained in its application, upon request.
  - c. A local government unit shall not be eligible for a loan unless it demonstrates to the satisfaction of the Department of Environment and Natural Resources and the Local Government Commission that:
    1. The applicant is a local government unit;
    2. The applicant has the financial capacity to pay the principal of and interest on its proposed loan as evidenced by the approval of the Local Government Commission;
    3. The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations, and ordinances, whether federal, State, or local; and
    4. The applicant has agreed by official resolution to adopt and place into effect a schedule of fees and charges or the application of other sources of revenue which will provide adequate funds for proper operation, maintenance, and administration of the project and repayment of all principal and interest on the loan.
- (2) Assessment. — The Department of Environment and Natural Resources may require any applicant to file with its application an assessment of the impact the project for which the funds are sought will have upon meeting the facility needs of the area within which the project is to be located.
- (3) Hearing by the Department of Environment and Natural Resources or the Local Government Commission. — A public hearing may be held by the Department of Environment and Natural Resources or the Local Government Commission at any time on any application. Public hearings may also be held by the Department of Environment and Natural Resources in its discretion upon written request from any citizen or taxpayer who is a resident of the county or counties in which



the project is to be located or a resident of the local government unit that proposes to borrow moneys under this act, if it appears that the public interest will be served by the hearing. The written request shall set forth each objection to the proposed project or other reason for requesting a hearing on the application and shall contain the name and address of the persons submitting it. In deciding whether to grant a request for a hearing on an application, the Department of Environment and Natural Resources may consider the application, the written objections to the proposed project, and the facility needs and shall determine if the public interest will be served by a hearing. The determination by the Department of Environment and Natural Resources shall be conclusive, and all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application.

- (4) Petition for Vote. A petition, demanding that the question of whether to enter into a loan agreement with the State under this act be submitted to voters, may be filed with the clerk of the local government unit applying for the loan within 15 days after the public hearing required by this section, section and prior to the disbursement of loan funds under subsection (e) of this section. The petition's sufficiency shall be determined and a referendum, if any, shall be conducted according to the standards, procedures, and limitations set out in G.S. 159-60 through G.S. 159-62."

### **PART XIII. STUDIES; REPORTS; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES.**

Section 13.1. The Department of Environment and Natural Resources shall submit periodic reports to the Environmental Review Commission on the progress of the State Wetlands Stream Management Advisory Committee no later than 1 November 1999, 1 April 2000, 1 October 2000, and 15 December 2000. As a part of this report, the Department shall evaluate the current federal and State wetlands protection programs and shall develop recommendations to improve and simplify the State's wetlands protection program. The Department shall present interim findings and recommendations, including any legislative proposals, as a part of the 1 April 2000 report and final findings and recommendations, including any legislative proposals, as a part of the 15 December 2000 report.

Section 13.2. The Department of Environment and Natural Resources shall prepare a detailed analysis of discharges of untreated and partially treated municipal and domestic wastewater from publicly and privately owned treatment works and collection systems to determine the causes of these discharges. The analysis shall include both unpermitted discharges and violations of permitted discharges. The Department shall evaluate the extent to which more frequent inspection of these systems would reduce the number and severity of these discharges. In addition, the Department shall develop specific recommendations to: (i) reduce the frequency and severity of discharges of

untreated or partially treated municipal and domestic wastewater from publicly and privately owned treatment works, (ii) reduce the number of point sources and the quantity of waste that is discharged into the surface waters of the State, and (iii) promote the consolidation of municipal and domestic wastewater collection systems and treatment works on a regional basis. The Department shall present interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 March 2000 and shall present final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 15 December 2000.

Section 13.3. The Environmental Management Commission shall study issues related to whether and under what circumstances a privately owned wastewater collection system or treatment works may be required to connect to a publicly owned treatment works in order to protect public health or the environment. The Environmental Management Commission shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 March 2000.

Section 13.4. The Environmental Management Commission shall report on its progress in implementing the Lagoon Conversion Plan pursuant to the letter from Governor James B. Hunt, Jr. to Dr. David Moreau, Chairman, Environmental Management Commission, dated 13 May 1999, as a part of each quarterly report the Environmental Management Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

Section 13.5. The Commission for Health Services shall study issues related to the proper maintenance of septic tank systems. The Commission shall specifically study measures that prevent the failure of septic tank systems and the harm to public health, the environment, and natural resources that results from the failure of septic tank systems. The Commission for Health Services shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 March 2000.

Section 13.6. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 13.7. This act shall not be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

Section 13.8. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 13.9. Part III of this act is effective retroactively to 31 October 1998. Part V of this act is effective 1 October 1999 and applies to violations that occur on or after 1 October 1999. G.S. 143-215.1C(a), as enacted by Part VIII of this act, becomes effective 1 January 1999. The first report required by G.S. 143-215.1C(a) shall

summarize performance and violations during the 1999 calendar year or during the fiscal year that begins 1 July 1999. G.S. 143-215.1C(b) and (c), as enacted by Part VIII of this act, and G.S. 143-215.10C, as amended by Part VIII of this act, become effective 1 October 1999. Part IX of this act becomes effective 1 July 1999. Part X of this act becomes effective 1 October 1999 and applies to any application for a permit that is submitted to the Department of Environment and Natural Resources on or after that date. Part XII of this act is effective when this act becomes law and applies to grants and revolving loans made on or after that date, in accordance with Chapter 159G of the General Statutes and S.L. 1998-132, as amended by Part XII of this act. Except as otherwise provided in this act, all other Parts and sections of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

s/ Dennis A. Wicker  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 10:52 a.m. this 21st day of July, 1999