

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

SESSION LAW 2013-413  
HOUSE BILL 74

AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION, TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

The General Assembly of North Carolina enacts:

**PART I. IMPROVE RULE-MAKING PROCESS**

**SECTION 1.** G.S. 150B-2 is amended by adding a new subdivision to read:

"(7a) "Policy" means any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency which is intended and used purely to assist a person to comply with the law, such as a guidance document."

**SECTION 2.** G.S. 150B-21.4 reads as rewritten:

**"§ 150B-21.4. Fiscal notes on rules.**

(a) State Funds. – Before an agency ~~publishes in the North Carolina Register the proposed text of~~ adopts a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must ~~submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office of State Budget and Management and obtain certification from the Office of State Budget and Management that the funds that would be required by the proposed rule change are available. The agency shall submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office at the same time as the agency submits the notice of text for publication pursuant to G.S. 150B-21.2.~~ submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office at the same time as the agency submits the notice of text for publication pursuant to G.S. 150B-21.2. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation ~~before when the agency publishes the proposed text of the rule change in the North Carolina Register~~ submits the notice of text for publication. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. – Before an agency ~~publishes in the North Carolina Register the proposed text of~~ adopts a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the North Carolina



Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) ~~Substantial Economic Impact. – Before an agency publishes in the North Carolina Register the proposed text of~~ adopts a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency shall prepare a fiscal note for the proposed rule change and have the note approved by the Office of State Budget and Management. The agency may request the Office of State Budget and Management to prepare the fiscal note only after, working with the Office, it has exhausted all resources, internal and external, to otherwise prepare the required fiscal note. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change shall prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management shall review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency shall ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4).

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least ~~five hundred thousand dollars (\$500,000)~~ one million dollars (\$1,000,000) in a 12-month period. In analyzing substantial economic impact, an agency shall do the following:

- (1) Determine and identify the appropriate time frame of the analysis.
- (2) Assess the baseline conditions against which the proposed rule is to be measured.
- (3) Describe the persons who would be subject to the proposed rule and the type of expenditures these persons would be required to make.
- (4) Estimate any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule. The analysis should include direct costs as well as opportunity costs. Cost estimates must be monetized to the greatest extent possible. Where costs are not monetized, they must be listed and described.
- (5) For costs that occur in the future, the agency shall determine the net present value of the costs by using a discount factor of seven percent (7%).

(b2) Content. – A fiscal note required by subsection (b1) of this section must contain the following:

- (1) A description of the persons who would be affected by the proposed rule change.
- (2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.
- (3) A description of the purpose and benefits of the proposed rule change.
- (4) An explanation of how the estimate of expenditures was computed.
- (5) A description of at least two alternatives to the proposed rule that were considered by the agency and the reason the alternatives were rejected. The alternatives may have been identified by the agency or by members of the public.

(c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity of a rule."

**SECTION 3.(a)** G.S. 150B-21.2(c) reads as rewritten:

"(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed ~~rule~~ rule, unless the rule is a readoption without substantive changes to the existing rule proposed in accordance with G.S. 150B-21.3A.
- (2) A short explanation of the reason for the proposed rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process."

**SECTION 3.(b)** Part 2 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

**"§ 150B-21.3A. Periodic review and expiration of existing rules.**

(a) Definitions. – For purposes of this section, the following definitions apply:

- (1) Commission. – Means the Rules Review Commission.
- (2) Committee. – Means the Joint Legislative Administrative Procedure Oversight Committee.
- (3) Necessary with substantive public interest. – Means any rule for which the agency has received public comments within the past two years. A rule is also "necessary with substantive public interest" if the rule affects the property interest of the regulated public and the agency knows or suspects that any person may object to the rule.
- (4) Necessary without substantive public interest. – Means a rule for which the agency has not received a public comment concerning the rule within the past two years. A "necessary without substantive public interest" rule includes a rule that merely identifies information that is readily available to the public, such as an address or a telephone number.
- (5) Public comment. – Means written comments objecting to the rule, in whole or in part, received by an agency from any member of the public, including an association or other organization representing the regulated community or other members of the public.
- (6) Unnecessary rule. – Means a rule that the agency determines to be obsolete, redundant, or otherwise not needed.

(b) Automatic Expiration. – Except as provided in subsection (d1) of this section, any rule for which the agency that adopted the rule has not conducted a review in accordance with this section shall expire on the date set in the schedule established by the Commission pursuant to subsection (d) of this section.

(c) Review Process. – Each agency subject to this Article shall conduct a review of the agency's existing rules at least once every 10 years in accordance with the following process:

- (1) Step 1: The agency shall conduct an analysis of each existing rule and make an initial determination as to whether the rule is (i) necessary with substantive public interest, (ii) necessary without substantive public interest, or (iii) unnecessary. The agency shall then post the results of the initial determination on its Web site and invite the public to comment on the rules and the agency's initial determination. The agency shall also submit the results of the initial determination to the Office of Administrative Hearings for posting on its Web site. The agency shall accept public comment for no

less than 60 days following the posting. The agency shall review the public comments and prepare a brief response addressing the merits of each comment. After completing this process, the agency shall submit a report to the Commission. The report shall include the following items:

- a. The agency's initial determination.
- b. All public comments received in response to the agency's initial determination.
- c. The agency's response to the public comments.

(2) Step 2: The Commission shall review the reports received from the agencies pursuant to subdivision (1) of this subsection. If a public comment relates to a rule that the agency determined to be necessary and without substantive public interest or unnecessary, the Commission shall determine whether the public comment has merit and, if so, designate the rule as necessary with substantive public interest. For purposes of this subsection, a public comment has merit if it addresses the specific substance of the rule and relates to any of the standards for review by the Commission set forth in G.S. 150B-21.9(a). The Commission shall prepare a final determination report and submit the report to the Committee for consultation in accordance with subdivision (3) of this subsection. The report shall include the following items:

- a. The agency's initial determination.
- b. All public comments received in response to the agency's initial determination.
- c. The agency's response to the public comments.
- d. A summary of the Commission's determinations regarding public comments.
- e. A determination that all rules that the agency determined to be necessary and without substantive public interest and for which no public comment was received or for which the Commission determined that the public comment was without merit be allowed to remain in effect without further action.
- f. A determination that all rules that the agency determined to be unnecessary and for which no public comment was received or for which the Commission determined that the public comment was without merit shall expire on the first day of the month following the date the report becomes effective in accordance with this section.
- g. A determination that all rules that the agency determined to be necessary with substantive public interest or that the Commission designated as necessary with public interest as provided in this subdivision shall be readopted as though the rules were new rules in accordance with this Article.

(3) Step 3: The final determination report shall not become effective until the agency has consulted with the Committee. The determinations contained in the report pursuant to sub-subdivisions e., f., and g. of subdivision (2) of this subsection shall become effective on the date the report is reviewed by the Committee. If the Committee does not hold a meeting to hear the consultation required by this subdivision within 60 days of receipt of the final determination report, the consultation requirement is deemed satisfied, and the determinations contained in the report become effective on the 61st day following the date the Committee received the report. If the Committee disagrees with a determination regarding a specific rule contained in the report, the Committee may recommend that the General Assembly direct the agency to conduct a review of the specific rule in accordance with this section in the next year following the consultation.

(d) Timetable. – The Commission shall establish a schedule for the review of existing rules in accordance with this section on a decennial basis by assigning each Title of the Administrative Code a date by which the review required by this section must be completed. In establishing the schedule, the Commission shall consider the scope and complexity of rules subject to this section and the resources required to conduct the review required by this section.

The Commission shall have broad authority to modify the schedule and extend the time for review in appropriate circumstances. Except as provided in subsection (d1) of this section, if the agency fails to conduct the review by the date set by the Commission, the rules contained in that Title which have not been reviewed will expire. The Commission may exempt rules that have been adopted or amended within the previous 10 years from the review required by this section. However, any rule exempted on this basis must be reviewed in accordance with this section no more than 10 years following the last time the rule was amended.

(d1) Rules to Conform to or Implement Federal Law. – Rules adopted to conform to or implement federal law shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.

(e) Other Reviews. – Notwithstanding any provision of this section, an agency may subject a rule that it determines to be unnecessary to review under this section at any time by notifying the Commission that it wishes to be placed on the schedule for the current year. The Commission may also subject a rule to review under this section at any time by notifying the agency that the rule has been placed on the schedule for the current year."

**SECTION 3.(c)** G.S. 150B-19.2 is repealed.

**SECTION 3.(d)** If G.S. 150B-21.3A, as enacted by subsection (b) of this section, becomes law, the Rules Review Commission shall subject rules adopted by the Environmental Management Commission related to surface water quality and wetlands to review in the first year that the Rules Review Commission establishes for the review of existing rules in accordance with G.S. 150B-21.3A.

**SECTION 4.** The Joint Legislative Administrative Procedure Oversight Committee shall undertake a study of the exemptions from rule making contained in G.S. 150B-1(d) and elsewhere in the General Statutes. For each exemption, the Committee shall evaluate the continued need for the exemption and the potential consequences of repeal of the exemption. The Committee shall report to the 2014 Regular Session of the 2013 General Assembly on its findings and recommendations, including any legislative recommendations for the repeal of exemptions.

## **PART II. STATE AND LOCAL GOVERNMENT REGULATIONS**

### **PROHIBIT DELAYED ENFORCEMENT OF LOCAL ORDINANCES AND PROHIBIT CERTAIN CONTRACT REQUIREMENTS BY LOCAL GOVERNMENTS**

**SECTION 5.(a)** G.S. 153A-348 is amended by adding a new subsection to read:

"(d) When a use constituting a violation of a zoning or unified development ordinance is in existence prior to adoption of the zoning or unified development ordinance creating the violation, and that use is grandfathered and subsequently terminated for any reason, a county shall bring an enforcement action within 10 years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety."

**SECTION 5.(b)** G.S. 160A-364.1 is amended by adding a new subsection to read:

"(d) When a use constituting a violation of a zoning or unified development ordinance is in existence prior to adoption of the zoning or unified development ordinance creating the violation, and that use is grandfathered and subsequently terminated for any reason, a city shall bring an enforcement action within 10 years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety."

**SECTION 5.(c)** G.S. 153A-449 reads as rewritten:

#### **"§ 153A-449. Contracts with private entities.**

A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in. A county may not require a private contractor under this section to abide by any restriction that the county could not impose on all employers in the county, such as paying minimum wage or providing paid sick leave to its employees, as a condition of bidding on a contract."

**SECTION 5.(d)** G.S. 160A-20.1 reads as rewritten:

#### **"§ 160A-20.1. Contracts with private entities.**

A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. A city may not require a private contractor under this section to abide by any restriction that the city

could not impose on all employers in the city, such as paying minimum wage or providing paid sick leave to its employees, as a condition of bidding on a contract."

**SECTION 5.(e)** This section is effective when it becomes law and applies to contracts entered on or after that date.

## **EQUAL TREATMENT FOR FRATERNITIES AND SORORITIES BY LOCAL GOVERNMENT**

**SECTION 6.(a)** G.S. 153A-340 is amended by adding a new subsection to read:

"(k) A zoning or unified development ordinance may not differentiate in terms of the regulations applicable to fraternities or sororities between those fraternities or sororities that are approved or recognized by a college or university and those that are not."

**SECTION 6.(b)** G.S. 160A-381 is amended by adding a new subsection to read:

"(g) A zoning or unified development ordinance may not differentiate in terms of the regulations applicable to fraternities or sororities between those fraternities or sororities that are approved or recognized by a college or university and those that are not."

**SECTION 6.(c)** Part 3 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

### **"§ 116-40.11. Disciplinary proceedings; right to counsel for students and organizations.**

(a) Any student enrolled at a constituent institution who is accused of a violation of the disciplinary or conduct rules of the constituent institution shall have the right to be represented, at the student's expense, by a licensed attorney or nonattorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the constituent institution regarding the alleged violation. However, a student shall not have the right to be represented by a licensed attorney or nonattorney advocate in either of the following circumstances:

- (1) If the constituent institution has implemented a "Student Honor Court" which is fully staffed by students to address such violations.
- (2) For any allegation of "academic dishonesty" as defined by the constituent institution.

(b) Any student organization officially recognized by a constituent institution that is accused of a violation of the disciplinary or conduct rules of the constituent institution shall have the right to be represented, at the organization's expense, by a licensed attorney or nonattorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the constituent institution regarding the alleged violation. However, a student organization shall not have the right to be represented by a licensed attorney or nonattorney advocate if the constituent institution has implemented a "Student Honor Court" which is fully staffed by students to address such violations.

(c) Nothing in this section shall be construed to create a right to be represented at a disciplinary proceeding at public expense."

**SECTION 6.(d)** Each constituent institution shall track the number and type of disciplinary proceedings impacted by this section, as well as the number of cases in which a student or student organization is represented by an attorney or nonattorney advocate. The constituent institutions shall report their findings to the Board of Governors of The University of North Carolina, and the Board of Governors shall submit a combined report to the Joint Legislative Education Oversight Committee and the House and Senate Education Appropriations Subcommittees by May 1, 2014.

**SECTION 6.(e)** Subsection (c) of this section is effective when it becomes law and applies to all allegations of violations beginning on or after that date.

## **AMEND PRIVATE CLUB DEFINITION**

**SECTION 7.** G.S. 130A-247 reads as rewritten:

### **"§ 130A-247. Definitions.**

The following definitions shall apply throughout this Part:

- ...
- (2) "Private club" means an organization that (i) maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue

Code as defined in ~~G.S. 105-130.2(1)~~ G.S. 105-130.2(1) or (ii) meets the definition of a private club set forth in G.S. 18B-1000(5).

...."

## **OUTDOOR ADVERTISING AMENDMENTS**

**SECTION 8.(a)** G.S. 136-133.1 reads as rewritten:

**"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

...  
(a1) Notwithstanding any law to the contrary, in order to promote the outdoor advertiser's right to be clearly viewed as set forth in G.S. 136-127, the Department of Transportation, at the request of a selective vegetation removal permittee, may approve plans for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone defined in subsection (a) of this section along acceleration or deceleration ramps so long as the view to the outdoor advertising sign will be improved and the total aggregate area of cutting or removal does not exceed the maximum allowed in subsection (a) of this section.

...  
(f) Tree branches within a highway right-of-way that encroach into the zone created by points A, ~~C, and DB~~, D, and E may be cut or pruned. Except as provided in subsection (g) of this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising and within the limits of the highway right-of-way for the purpose of enhancing the visibility of outdoor advertising unless permitted to do so by the Department in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

...."

**SECTION 8.(b)** Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-131.2. Modernization of outdoor advertising devices.**

No municipality, county, local or regional zoning authority, or other political subdivision shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a valid permit issued by the Department of Transportation so long as the square footage of its advertising surface area is not increased. As used in this section, reconstruction includes the changing of an existing multipole outdoor advertising structure to a new monopole structure."

## **DISPOSITION OF DMH/DD/SAS RECORDS**

**SECTION 9.** The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall amend its Records Retention and Disposition Schedule Manual to provide that if a Medicaid service has been eliminated by the State, the provider must retain records for three years after the last date of the service, unless a longer period is required by federal law. At the termination of that time period, records may be destroyed or transferred to a State agency or contractor identified by the Department of Health and Human Services.

## **STUDY OCCUPATIONAL LICENSING BOARD AGENCY**

**SECTION 10.(a)** The Joint Legislative Program Evaluation Oversight Committee shall include in the 2013-2014 Work Plan for the Program Evaluation Division of the General Assembly a study to evaluate the structure, organization, and operation of the various independent occupational licensing boards. For purposes of this act, the term "occupational licensing board" has the same meaning as defined in G.S. 93B-1. The Program Evaluation Division shall include the following within this study:

- (1) Consideration of the feasibility of establishing a single State agency to oversee the administration of all or some of the occupational licensing boards.
- (2) Whether greater efficiency and cost-effectiveness can be realized by combining the administrative functions of the boards while allowing the boards to continue performing the regulatory functions.
- (3) Whether the total number of boards should be reduced by combining and/or eliminating some boards.

**SECTION 10.(b)** The Program Evaluation Division shall submit its findings and recommendations from Section 10(a) of this act to the Joint Legislative Program Evaluation

Oversight Committee and the Joint Legislative Administrative Procedure Oversight Committee at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

### **PROHIBIT TRANSPORTATION IMPACT MITIGATION ORDINANCES**

**SECTION 10.1.(a)** Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

**"§ 160A-204. Transportation impact mitigation ordinances prohibited.**

No city may enact or enforce an ordinance, rule, or regulation that requires an employer to assume financial, legal, or other responsibility for the mitigation of the impact of his or her employees' commute or transportation to or from the employer's workplace, which may result in the employer being subject to a fine, fee, or other monetary, legal, or negative consequences."

**SECTION 10.1.(b)** Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read as follows:

**"§ 153A-145.1. Transportation impact mitigation ordinances prohibited.**

No county may enact or enforce an ordinance, rule, or regulation that requires an employer to assume financial, legal, or other responsibility for the mitigation of the impact of his or her employees' commute or transportation to or from the employer's workplace, which may result in the employer being subject to a fine, fee, or other monetary, legal, or negative consequences."

### **TEMPORARY LIMITATION ON ENACTMENT OF ENVIRONMENTAL ORDINANCES BY CITIES AND COUNTIES; STUDY**

**SECTION 10.2(a)** Notwithstanding any other provision of law and except as authorized by this section, a city or county may not enact an ordinance that regulates a field that is also regulated by a State or federal statute enforced by an environmental agency or that regulates a field that is also regulated by a rule adopted by an environmental agency. A city or county may enact an ordinance that regulates a field that is also regulated by a State or federal statute enforced by an environmental agency or that regulates a field that is also regulated by a rule adopted by an environmental agency if the ordinance is approved by a unanimous vote of the members present and voting.

**SECTION 10.2(b)** For purposes of this section, "an environmental agency" means any of the following:

- (1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.
- (2) The Environmental Management Commission created pursuant to G.S. 143B-282.
- (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
- (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
- (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
- (6) The Commission for Public Health created pursuant to G.S. 130A-29, when regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A, and 19B of Chapter 130A of the General Statutes.
- (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
- (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.
- (9) The Pesticide Board created pursuant to G.S. 143-436.

**SECTION 10.2.(c)** The Environmental Review Commission shall study the circumstances under which cities and counties should be authorized to enact ordinances (i) that regulate a field that is also regulated by a State or federal statute enforced by an environmental agency or that regulate a field that is also regulated by a rule adopted by an environmental agency and (ii) that are more stringent than the State or federal statute or State rule. The Environmental Review Commission shall report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

**SECTION 10.2.(d)** This section is effective when it becomes law. Subsection (a) of this section applies to ordinances enacted on or after that date. Subsection (a) of this section expires October 1, 2014.

### **PART III. BUSINESS AND LABOR REGULATIONS**

## LET BED AND BREAKFASTS OFFER THREE MEALS/DAY

**SECTION 11.(a)** G.S. 130A-247 is amended by adding a new subdivision to read:

"(5a) "Bed and breakfast home" means a business in a private home of not more than eight guest rooms that offers bed and breakfast accommodations for a period of less than one week and that meets all of the following criteria:

- a. Does not serve food or drink to the general public for pay.
- b. Serves the breakfast meal, the lunch meal, the dinner meal, or a combination of all or some of these three meals, only to overnight guests of the home.
- c. Includes the price of any meals served in the room rate.
- d. Is the permanent residence of the owner or the manager of the business."

**SECTION 11.(b)** G.S. 130A-248(a2) reads as rewritten:

"(a2) For the protection of the public health, the Commission shall adopt rules governing the sanitation of ~~private homes offering bed and breakfast accommodations to eight or fewer persons per night,~~ bed and breakfast homes, as defined in G.S. 130A-247, and rules governing the sanitation of bed and breakfast ~~inns-inns,~~ as defined in G.S. 130A-247. In carrying out this function, the Commission shall adopt requirements that are the least restrictive so as to protect the public health and not unreasonably interfere with the operation of bed and breakfast homes and bed and breakfast inns."

**SECTION 11.(c)** This section becomes effective October 1, 2013.

## PEO ACT AMENDMENTS

**SECTION 11.1.(a)** G.S. 58-89A-5(8) is repealed.

**SECTION 11.1.(b)** G.S. 58-89A-50 reads as rewritten:

"§ 58-89A-50. **Surety bond; letter of credit; other deposits.**

(a) An applicant for licensure shall file with the Commissioner a surety ~~bond for the benefit of the Commissioner~~ as follows:

- (1) ~~If the applicant was initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in the amount of one hundred thousand dollars (\$100,000).~~
- (2) ~~If the applicant was not initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in an amount equal to five percent (5%) of the applicant's prior year's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner may require.~~

bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred thousand dollars (\$100,000) for the benefit of the Commissioner. An applicant whose current assets do not exceed current liabilities pursuant to G.S. 58-89A-60(b) shall file an additional surety bond or other items set forth in subsection (f) of this section equal to or in excess of current liabilities less current assets.

(b) The surety bond required by this section shall be in a form acceptable to the Commissioner, issued by an insurer authorized by the Commissioner to write surety business in this State, and maintained in force while the license remains in effect or any obligations or liabilities of the applicant, licensee or PEO previously licensed by this State remain outstanding.

(c) The surety bond required by this section may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond meets the requirements of this section, and (iii) 90 days' advance written notice is provided to the Commissioner.

(d) ~~A licensee shall not require a client company to contribute in any manner to the payment of the surety bond required by this section.~~

...."

**SECTION 11.1.(c)** G.S. 58-89A-60(b) reads as rewritten:

"(b) Every applicant shall file with the Commissioner ~~evidence of financial responsibility. Evidence of financial responsibility includes~~ an audited GAAP financial statement, prepared as of a date not more than 90 days before the date of application that

demonstrates that the applicant or licensee ~~is not in a hazardous financial condition~~ licensee's current assets exceed current liabilities and attached to which is a separate document signed by the chief executive and the chief financial officer certifying that (i) each has reviewed the financial statement; (ii) based on each signatory's knowledge, the financial statement does not contain any untrue or misleading statement of material fact or omit a fact with respect to the period covered by the financial statement; and (iii) based on each signatory's knowledge, the financial statement fairly presents in all material respects the financial condition of the licensee as of, and for, the period presented in the financial statement.

Notwithstanding the requirements of this subsection, the Commissioner may, in the Commissioner's discretion, accept an audited GAAP financial statement that has been prepared more than 90 days before submission to the Commissioner if the Commissioner deems such acceptance appropriate. The Commissioner may, in the Commissioner's discretion, impose conditions upon such acceptance of financial statements prepared more than 90 days prior to submission.

The audited GAAP financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located and shall be without qualification as to the going concern status of the PEO. A PEO group may submit combined or consolidated audited financial statements to meet the requirements of this section, except that a PEO that has not had sufficient operating history to have audited financial statements based upon at least 12 months of operating history must meet the financial capacity requirements of this subsection and present financial statements reviewed by a certified public accountant."

**SECTION 11.1.(d)** G.S. 58-89A-85 reads as rewritten:

**"§ 58-89A-85. Supervision; rehabilitation; liquidation.**

If at any time the Commissioner determines, after notice and an opportunity for the licensee to be heard, that a licensee (i) has been or will be unable, in such a manner as may endanger the ability of the licensee, to fully perform its obligations pursuant to this Article or (ii) is ~~bankrupt or in a hazardous financial condition, bankrupt,~~ the Commissioner may either (i) commence a supervision proceeding pursuant to Article 30 of this Chapter or (ii) apply to the Superior Court of Wake County or to the federal bankruptcy court that has previously taken jurisdiction over the licensee, if applicable, for an order directing the Commissioner or authorizing the Commissioner to rehabilitate or to liquidate a licensee in accordance with Article 30 of this Chapter."

**SECTION 11.1.(e)** G.S. 58-89A-95 reads as rewritten:

**"§ 58-89A-95. Agreement; notice. Agreement.**

(a) A licensee shall establish the terms of a PEO agreement by a written contract between the licensee and the client company.

(b) The licensee shall give written notice of the agreement, by agreement or otherwise, as it affects assigned employees to each employee assigned to a client company work site. ~~This written notice shall be given to each assigned employee not later than the first payday after the date on which that individual becomes an assigned employee.~~

(c) ~~The licensee shall give each employee written notice when the employee ceases to be an employee of the licensee."~~

**SECTION 11.1.(f)** G.S. 58-89A-100 reads as rewritten:

**"§ 58-89A-100. Contract requirements.**

A contract between a licensee and a client company shall provide:

- (1) ~~That the licensee reserves a right of direction and control over employees assigned to a client company's work sites. However, a~~ Unless otherwise expressly agreed by a professional employer organization and a client company in a PEO agreement, the client company may retain such sufficient retains the exclusive right of direction and control over the assigned employees as is necessary to conduct the client company's business and without which the client company would be unable to conduct its business, to discharge any fiduciary responsibility that it may have, or to comply with any applicable licensure, regulatory, or statutory requirement of the client company. ~~company or an assigned employee.~~ The PEO agreement shall provide that employment responsibilities not allocated to the licensee by the PEO agreement or this section remain with the client company.

- (2) That the licensee assumes responsibility for the payment of wages to the assigned employees as agreed to in the PEO agreement.
- (3) That the licensee assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on assigned employees.
- (4) ~~That the licensee reserves a right to hire, fire, and discipline the assigned employees.~~ That the licensee shall have a right to hire, discipline, and terminate an assigned employee as may be necessary to fulfill the licensee's responsibilities under this Chapter and a PEO agreement. The client company shall have a right to hire, discipline, and terminate an assigned employee.
- (5) That the licensee retains a right of direction and control over the adoption of employment policies and the management of workers' compensation claims, claim filings, and related procedures in accordance with applicable federal laws and the laws of this State.
- (6) That responsibility to obtain workers' compensation coverage for assigned employees, from an entity authorized to do business in this State and otherwise in compliance with all applicable requirements, shall be specifically allocated in the PEO agreement to either the client company or the licensee. If the responsibility is allocated to the licensee under any such agreement, that agreement shall require that the licensee maintain and provide to the client company, at the termination of the agreement if requested by the client company, records regarding the loss experience related to workers' compensation insurance provided to assigned employees pursuant to the agreement."

**SECTION 11.1.(g)** G.S. 58-89A-145 reads as rewritten:

**"§ 58-89A-145. Examinations.**

(a) The Commissioner may conduct an examination of a licensee as often as the Commissioner considers appropriate.

(b) An examination under this Article shall be conducted in accordance with the Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-134.

(c) In lieu of an examination of any foreign or alien person licensed under this Article, the Commissioner may, in the Commissioner's discretion, accept an examination report on the licensee prepared by the appropriate regulator for the licensee's state of domicile.

(d) When making an examination under this Article, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which ~~shall be borne by the licensee that is the subject of the examination,~~ may only be recovered pursuant to G.S. 58-89A-65(d)."

**SECTION 11.1.(h)** G.S. 58-89A-155(a)(4) is repealed.

**SECTION 11.1.(i)** This section becomes effective October 1, 2013.

**CHILD CARE PROVIDERS' CRIMINAL HISTORY CHECKS**

**SECTION 12.** G.S. 110-90.2 is amended by adding a new subsection to read:

"(h) The check of the State and National Repositories for the criminal history of a person required to be conducted by this section and directed to the State Bureau of Investigation shall be completed within 15 business days of the receipt of the properly submitted request from the Department of Health and Human Services. If the check reveals that the child care provider has no criminal history as defined by subdivision (a)(3) of this section, the Department of Health and Human Services shall make a determination of the fitness of the provider pursuant to subsection (d) of this section within 15 calendar days of receipt of the results of the criminal history check. If the check reveals that the child care provider has a criminal history as defined by subdivision (a)(3) of this section, the Department of Health and Human Services shall make a determination of the fitness of the provider pursuant to subsection (d) of this section within 30 business days of receipt of the results of the criminal history check."

**REGULATION OF DIGITAL DISPATCHING SERVICES**

**SECTION 12.1.(a)** G.S. 160A-194 reads as rewritten:

**"§ 160A-194. Regulating and licensing businesses, trades, etc.**

(a) A city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the city may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor. Nothing in this section shall impair the city's power to levy privilege license taxes on occupations, businesses, trades, professions, and other activities pursuant to G.S. 160A-211.

(b) Nothing in this section shall authorize a city to examine or license a person holding a license issued by an occupational licensing board of this State as to the profession or trade that he has been licensed to practice or pursue by the State.

(c) Nothing in this section shall authorize a city to regulate and license digital dispatching services for prearranged transportation services for hire."

**SECTION 12.1.(b)** G.S. 160A-304 is amended by adding a new subsection to read:

"(c) Nothing in this Chapter authorizes a city to adopt an ordinance doing any of the following:

- (1) Requiring licensing or regulation of digital dispatching services for prearranged transportation services for hire connected with vehicles operated for hire in the city if the business providing the digital dispatching services does not own or operate the vehicles for hire in the city.
- (2) Setting a minimum rate or minimum increment of time used to calculate a rate for prearranged transportation services for hire.
- (3) Requiring an operator to use a particular formula or method to calculate rates charged.
- (4) Setting a minimum waiting period between requesting prearranged transportation services and the provision of those transportation services when the prearranged transportation services are digitally dispatched.
- (5) Requiring a final destination to be set at the time of requesting prearranged transportation services through digital dispatching services.
- (6) Requiring or prohibiting taxi franchises or taxi operators from contracting with a person in the business of digital dispatching services for prearranged transportation services for hire."

**SECTION 12.1.(c)** G.S. 153A-134 reads as rewritten:

**"§ 153A-134. Regulating and licensing businesses, trades, etc.**

(a) A county may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the county may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor. This section does not authorize a county to examine or license a person holding a license issued by an occupational licensing board of this State as to the profession or trade that he has been licensed to practice or pursue by the State.

(b) This section does not impair the county's power to levy privilege license taxes on occupations, businesses, trades, professions, and other activities pursuant to G.S. 153A-152.

(c) Nothing in this section shall authorize a county to regulate and license digital dispatching services for prearranged transportation services for hire."

## **WC INSURANCE CANCELLATION/ELECTRONIC COMMUNICATIONS**

**SECTION 13.(a)** G.S. 58-36-105(b) reads as rewritten:

"(b) Any cancellation permitted by subsection (a) of this section is not effective unless written notice of cancellation has been given by registered or certified mail, return receipt requested, to the insured not less than 15 days before the proposed effective date of cancellation. The notice shall may be given by registered or certified mail, return receipt requested, to the insured and any other person designated in the policy to receive notice of cancellation at their addresses shown in the policy or, if not indicated in the policy, at their last known addresses. The notice shall state the precise reason for cancellation. Whenever notice of intention to cancel is required to be given by registered or certified mail, no cancellation by the insurer shall be effective unless and until such method is employed and completed. Notice of cancellation, termination, or nonrenewal may also be given by any method permitted for

service of process pursuant to Rule 4 of the North Carolina Rules of Civil Procedure. Failure to send this notice, as provided in this section, to any other person designated in the policy to receive notice of cancellation invalidates the cancellation only as to that other person's interest."

**SECTION 13.(b)** Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**"§ 58-2-255. Electronic insurance communications and records.**

(a) Definitions. – As used in this section:

- (1) "Communications" means notices, offers, disclosures, documents, forms, information, and correspondence required or permitted to be provided to a party in writing under the insurance laws of this State or that are otherwise provided by an insurer, including, but not limited to, notices pertaining to the cancellation, termination, or nonrenewal of insurance.
- (2) "Delivered by electronic means" includes any of the following:
  - a. Delivery to an electronic mail address or an electronic account at which a party has consented to receive electronic communications.
  - b. Displaying information, or a link to information, as an essential step to completing the transaction to which such information relates.
  - c. Providing notice to a party at the electronic mail address or an electronic account at which the party has consented to receive notice of the posting of a communication on an electronic network or site.
- (3) "Insurer" has the same meaning as in G.S. 58-1-5(3).
- (4) "Party" means a recipient of any communications defined in this section. "Party" includes an applicant, policyholder, insured, claimant, member, provider, or beneficiary.

(b) When any insurance law of this State, except for cancellation, termination, or nonrenewal of workers' compensation policies pursuant to G.S. 58-36-105(b), requires a communication to be provided to a party in writing, signed by a party, provided by means of a specific delivery method, or retained by an insurer, those requirements are satisfied if the insurer complies with Article 40 of Chapter 66 of the General Statutes.

(c) Verification of communications delivered by electronic means shall constitute proof of mailing in civil and administrative proceedings and under the insurance laws of this State.

(d) Nothing in this section affects requirements related to the content or timing of any communication required under the insurance laws of this State.

(e) A recording of an oral communication between an insurer and a party that is reliably stored and reproduced by an insurer shall constitute an electronic communication or record. When a communication is required under the insurance laws of this State to be provided in writing, the communication provided in accordance with this subsection shall satisfy the requirement that the communication be in writing. When a communication is required under the insurance laws of this State to be signed, a recorded oral communication in which a party agrees to the terms stated in the oral communication shall satisfy the requirement."

**SECTION 13.(c)** G.S. 97-19 reads as rewritten:

**"§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.**

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without ~~requiring~~ obtaining from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 ~~hereof, for a specified term,~~ shall be liable, irrespective of whether such subcontractor has regularly in service fewer than three employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at ~~the any time of before~~ the subletting such contract to the subcontractor, he shall not thereafter be held liable to any

employee of such subcontractor for compensation or other benefits under this ~~Article~~ Article and within the term specified by the certificate.

Notwithstanding the provisions of this section, any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of work shall not be held liable to any employee of such subcontractor if either (i) the subcontractor has a workers' compensation insurance policy in compliance with G.S. 97-93 in effect on the date of injury regardless of whether the principal contractor, intermediate contractor, or subcontractor failed to timely obtain a certificate from the subcontractor; or (ii) the policy expired or was cancelled prior to the date of injury provided the principal contractor, intermediate contractor, or subcontractor obtained a certificate at any time before subletting such contract to the subcontractor and was unaware of the expiration or cancellation.

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

**SECTION 13.(d)** This section is effective when it becomes law and applies to insurance policies and certificates of insurance in effect on or after that date.

## **VETERANS PREFERENCE FOR PRIVATE EMPLOYERS**

**SECTION 14.** Article 3 of Chapter 95 of the General Statutes is amended by adding a new section to read:

**"§ 95-28.4. Veterans preference.**

A private, nonpublic employer in the State may provide a preference to a veteran for employment. Spouses of honorably discharged veterans who have a service-connected permanent and total disability also may be preferred for employment. Granting of this preference is not a violation of any State or local equal employment opportunity law."

## **AGRICULTURAL RIGHT TO WORK**

**SECTION 15.** G.S. 95-79 reads as rewritten:

**"§ 95-79. Certain agreements declared illegal.**

(a) Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against the public policy and an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina.

(b) Any provision that directly or indirectly conditions the purchase of agricultural products or the terms of an agreement for the purchase of agricultural products upon an agricultural producer's status as a union or nonunion employer or entry into or refusal to enter into an agreement with a labor union or labor organization is invalid and unenforceable as against public policy in restraint of trade or commerce in the State of North Carolina. For purposes of this subsection, the term "agricultural producer" means any producer engaged in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938, 29 U.S.C. § 203, or section 3121(g) of the Internal Revenue Code of 1986, 26 U.S.C. § 3121."

## **W/C/TAXI DRIVER/INDEPENDENT CONTRACTOR**

**SECTION 17.(a)** Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

**"§ 97-5.1. Presumption that taxicab drivers are independent contractors.**

(a) It shall be a rebuttable presumption under this Chapter that any person who operates, and who has an ownership or leasehold interest in, a passenger motor vehicle that is operated as a taxicab is an independent contractor for the purposes of this Chapter and not an employee as defined in G.S. 97-2. The presumption is not rebutted solely (i) because the operator is required to comply with rules and regulations imposed on taxicabs by the local governmental unit that licenses companies, taxicabs, or operators or (ii) because a taxicab accepts a trip request to be at a specific place at a specific time, but the presumption may be rebutted by application of the common law test for determining employment status.

(b) The following definitions apply in this section:

(1) Lease. – A contract under which the lessor provides a vehicle to a lessee for consideration.

(2) Leasehold. – Includes, but is not limited to, a lease for a shift or a longer period.

(3) Passenger motor vehicle that is operated as a taxicab. – Any vehicle that:

a. Has a passenger seating capacity that does not exceed seven persons; and

b. Is transporting persons, property, or both on a route that begins or ends in this State and either:

1. Carries passengers for hire when the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled, or waiting time; or

2. Is in use under a contract between the operator and a third party to provide specific service to transport designated passengers or to provide errand services to locations selected by the third party."

**SECTION 17.(b)** This section is effective when it becomes law and applies to causes of action arising on or after that date.

## **PART IV. ENVIRONMENTAL AND PUBLIC HEALTH REGULATIONS**

### **SCRAP TIRE DISPOSAL**

**SECTION 18.** G.S. 130A-309.57 reads as rewritten:

**"§ 130A-309.57. Scrap tire disposal program.**

(a) The owner or operator of any scrap tire collection site shall, within six months after October 1, 1989, provide the Department with information concerning the site's location, size, and the approximate number of scrap tires that are accumulated at the site and shall initiate steps to comply with subsection (b) of this section.

(b) On or after July 1, 1990:

(1) A person may not maintain a scrap tire collection site or a scrap tire disposal site unless the site is permitted.

(2) It is unlawful for any person to dispose of scrap tires in the State unless the scrap tires are disposed of at a scrap tire collection site or at a tire disposal site, or disposed of for processing at a scrap tire processing facility.

(c) The Commission shall adopt rules to carry out the provisions of this section. Such rules shall:

(1) Provide for the administration of scrap tire collector and collection center permits and scrap tire disposal site permits, which may not exceed two hundred fifty dollars (\$250.00) annually.

(2) Set standards for scrap tire processing facilities and associated scrap tire sites, scrap tire collection centers, and scrap tire collectors.

(3) Authorize the final disposal of scrap tires at a permitted solid waste disposal facility provided the tires have been cut into sufficiently small parts to assure their proper disposal.

(4) ~~Provide that permitted scrap tire collectors may not contract with a scrap tire processing facility unless the processing facility documents that it has access to a facility permitted to receive scrap tires.~~

(d) A permit is not required for:

- (1) A tire retreading business where fewer than 1,000 scrap tires are kept on the business premises;
- (2) A business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,000 of these tires are kept on the business premises; or
- (3) A retail tire-selling business which is serving as a scrap tire collection center if fewer than 1,000 scrap tires are kept on the business premises.

(e) The Department shall encourage the voluntary establishment of scrap tire collection centers at retail tire-selling businesses, scrap tire processing facilities, and solid waste disposal facilities, to be open to the public for the deposit of used and scrap tires. The Department may establish an incentives program for individuals to encourage them to return their used or scrap tires to a scrap tire collection center.

(f) Permitted scrap tire collectors may not contract with a scrap tire processing facility, unless the processing facility documents that it has access to a facility permitted to receive the scrap tires."

## **CARBON MONOXIDE DETECTORS**

**SECTION 19.(a)** G.S. 143-138 reads as rewritten:

**"§ 143-138. North Carolina State Building Code.**

...  
 (b2) Carbon Monoxide Detectors. – The Code Code (i) may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater, appliance, or fireplace, and in any dwelling unit having an attached garage-garage and (ii) shall contain provisions requiring the installation of electrical carbon monoxide detectors at a lodging establishment. Violations of this subsection and rules adopted pursuant to this subsection shall be punishable in accordance with subsection (h) of this section and G.S. 143-139. In particular, the rules shall provide:

- (1) For dwelling units, carbon-Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.
- (2) For lodging establishments, carbon monoxide detectors shall be installed in every enclosed space having a fossil fuel burning heater, appliance, or fireplace and in any enclosed space, including a sleeping room, that shares a common wall, floor, or ceiling with an enclosed space having a fossil fuel burning heater, appliance, or fireplace. Carbon monoxide detectors shall be (i) listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075, (ii) installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the lodging establishment shall retain or provide as proof of compliance, (iii) receive primary power from the building's wiring, where such wiring is served from a commercial source, and (iv) receive power from a battery when primary power is interrupted. A carbon monoxide detector may be combined with smoke detectors if the combined detector complies with the requirements of this subdivision for carbon monoxide alarms and ANSI/UL217 for smoke detectors. For purposes of this subsection, "lodging establishment" means any hotel, motel,

tourist home, or other establishment permitted under authority of G.S. 130A-248 to provide lodging accommodations for pay to the public.

...."

**SECTION 19.(b)** G.S. 130A-248 reads as rewritten:

**"§ 130A-248. Regulation of food and lodging establishments.**

...  
(b) No establishment shall commence or continue operation without a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the establishment and shall not be transferable. If the establishment is leased, the permit or transitional permit shall be issued to the lessee and shall not be transferable. If the location of an establishment changes, a new permit shall be obtained for the establishment. A permit shall be issued only when the establishment satisfies all of the requirements of the ~~rules~~ rules and the requirements of subsection (g) of this section. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23.

...  
(g) All hotels, motels, tourist homes, and other establishments that provide lodging for pay shall install either a battery-operated or electrical carbon monoxide detector in every enclosed space having a fossil fuel burning heater, appliance, or fireplace and in any enclosed space, including a sleeping room, that shares a common wall, floor, or ceiling with an enclosed space having a fossil fuel burning heater, appliance, or fireplace. Carbon monoxide detectors shall be listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075, and installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the establishment shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector complies with the requirements of this subdivision for carbon monoxide alarms and ANSI/UL217 for smoke detectors."

**SECTION 19.(c)** G.S. 130A-248 reads as rewritten:

**"§ 130A-248. Regulation of food and lodging establishments.**

...  
(b) No establishment shall commence or continue operation without a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the establishment and shall not be transferable. If the establishment is leased, the permit or transitional permit shall be issued to the lessee and shall not be transferable. If the location of an establishment changes, a new permit shall be obtained for the establishment. A permit shall be issued only when the establishment satisfies all of the requirements of the ~~rules~~ rules and the requirements of subsection (g) of this section. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23.

...  
(g) All hotels, motels, tourist homes, and other establishments that provide lodging for pay shall have carbon monoxide detectors installed in every enclosed space having a fossil fuel burning heater, appliance, or fireplace and in any enclosed space, including a sleeping room, that shares a common wall, floor, or ceiling with an enclosed space having a fossil fuel burning heater, appliance, or fireplace. Carbon monoxide detectors shall be (i) listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075, (ii)

installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the establishment shall retain or provide as proof of compliance, (iii) receive primary power from the building's wiring, where such wiring is served from a commercial source, and (iv) receive power from a battery when primary power is interrupted. A carbon monoxide detector may be combined with smoke detectors if the combined detector complies with the requirements of this subdivision for carbon monoxide alarms and ANSI/UL217 for smoke detectors."

**SECTION 19.(d)** The Building Code Council, the Department of Health and Human Services, and the Commission for Public Health, shall jointly study the requirements for installation of carbon monoxide detectors in lodging establishments, enacted by subsections (a), (b), and (c) of this section, in order to determine whether the requirements are adequate to protect the health and safety of the traveling public. At a minimum, the Council, the Department, and the Commission shall study the requirements for placement of detectors and evaluate whether sufficient coverage will be provided to guests and occupants in all areas of an establishment. The Council, the Department, and the Commission shall report their findings and recommendations to the General Assembly no later than April 15, 2014.

**SECTION 19.(e)** This section is effective when it becomes law, except that (i) subsection (b) of this section becomes effective October 1, 2013, and expires October 1, 2014; and (ii) subsection (c) of this section becomes effective October 1, 2014.

### **LAGOON CLOSURE RULE**

**SECTION 20.(a)** The definitions set out in G.S. 143-212, 15A NCAC 02T .0103 (Definitions) and 15A NCAC 02T .1302 (Definitions) apply to this section.

**SECTION 20.(b)** 15A NCAC 02T .1306 (Closure Requirements). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 20(d) of this act, the Commission and the Department shall implement 15A NCAC 02T .1306 (Closure Requirements) as provided in Section 20(c) of this act.

**SECTION 20.(c)** Implementation. – Notwithstanding 15A NCAC 02T .1306 (Closure Requirements), any containment basin, such as a lagoon or a waste storage structure, permitted at a cattle facility under the Section 1300 Rules, shall continue to be subject to the conditions and requirements of the facility's permit until that permit is rescinded by the Division. Upon request of the permittee, the permit may be rescinded by the Division prior to closure of the containment basin if the average size of the confined cattle herd at the cattle facility, calculated on an annual basis during the three years prior to the request for rescission, is less than one hundred confined cattle. Upon permit rescission, all of the following requirements shall apply:

- (1) The cattle facility shall be subject to the requirements of 15A NCAC 02T .1303 (Permitting By Regulation) and 15A NCAC 02T .0113 (Permitting By Regulation) until the containment area is closed in accordance with standards adopted by the NRCS.
- (2) The farm owner shall maintain records of land application and weekly records of containment basin waste levels on forms provided by or approved by the Division.
- (3) Closure shall include prenotification to the Division and, within 15 days of completion of closure, submittal of a closure form supplied by the Division or closure forms approved by the Division that provide the same information required by the forms supplied by the Division.

The Division shall have the authority to deny a request for permit rescission based on the factors set out in subsection (e) of 15A NCAC 02T .0113 (Permitting By Regulation).

**SECTION 20.(d)** Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02T .1306 (Closure Requirements) consistent with Section 20(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 20(c) of this act. 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 20.(e)** Sunset. – Section 20(c) of this act expires on the date that rules adopted pursuant to Section 20(d) of this act become effective.

## **AMEND THE DEFINITION OF "NEW ANIMAL WASTE MANAGEMENT SYSTEM"**

**SECTION 21.(a)** 15A NCAC 02T .1302 (Definitions). – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to Section 21(c) of this act, the Commission and the Department of Environment and Natural Resources shall implement 15A NCAC 02T .1302 (Definitions) as provided in Section 21(b) of this act.

**SECTION 21.(b)** Implementation. – Notwithstanding 15A NCAC 02T .1302 (Definitions), "new animal waste management system" means animal waste management systems which are constructed and operated at a site where no feedlot existed previously, where a system serving a feedlot has been abandoned or unused for a period of four years or more and is then put back into service, or where a permit for a system has been rescinded, and is then reissued when the permittee confines animals in excess of the thresholds established in G.S. 143-215.10B.

**SECTION 21.(c)** Additional Rule-Making Authority. – The Environmental Management Commission shall adopt a rule to amend 15A NCAC 02T .1302 (Definitions) consistent with Section 21(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 21(b) of this act. 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 21.(d)** Sunset. – Section 21(b) of this act expires on the date that rules adopted pursuant to Section 21(c) of this act become effective.

## **RECLAIMED WATER IRRIGATION SETBACK RULE**

**SECTION 22.(a)** The definitions set out in G.S. 143-212 and 15A NCAC 02U .0103 (Definitions) apply to this section.

**SECTION 22.(b)** 15A NCAC 02U .0701 (Setbacks). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 22(d) of this act, the Commission and the Department shall implement 15A NCAC 02U .0701 (Setbacks) as provided in Section 22(c) of this act.

**SECTION 22.(c)** Implementation. – Notwithstanding 15A NCAC 02U .0701 (Setbacks), the rule shall be implemented as provided in this section.

- (1) Setbacks in subsection (c) of the rule for surface waters not classified as SA shall not apply provided that the reclaimed water to be utilized contains no more than 10 mg/l of Total Nitrogen and no more than 2 mg/l of Total Phosphorus. The elimination of setbacks to surface waters does not exempt any discharge of reclaimed water to waters of the State from meeting permit requirements established in 15A NCAC 02U .0101 (Purpose).
- (2) Notwithstanding subsections (a) and (b) of the rule, no setback shall be required between final reclaimed water effluent storage facilities and property lines provided that the proposed final effluent storage facility was constructed prior to June 18, 2011.
- (3) Setbacks between reclaimed water storage ponds and property lines or wells under separate ownership may be waived by the adjoining property owner. A copy of the signed waiver shall be provided to the Department.
- (4) Setbacks between reclaimed water storage ponds and wells under the same ownership as the reclaimed water storage pond may be waived by the property owner.

**SECTION 22.(d)** Additional Rule-Making Authority. – The Environmental Management Commission shall adopt a rule to amend 15A NCAC 02U .0701 (Setbacks) consistent with Section 22(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 22(c) of this act. 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 22.(e)** Sunset. – Section 22(c) of this act expires on the date that rules adopted pursuant to Section 22(d) of this act become effective.

### **SMOKING BAN RULES**

**SECTION 23.** No later than January 1, 2014, the Commission for Public Health shall amend and clarify its rules adopted pursuant to G.S. 130A-497 for the implementation of the prohibition on smoking in restaurants and bars. The rules shall ensure the consistent interpretation and enforcement of Part 1C of Article 23 of Chapter 130A of the General Statutes and shall specifically clarify the definition of enclosed areas for purposes of implementation of the Part. Rules adopted pursuant to this section (i) shall be exempt from the requirements of G.S. 150B-21.4, (ii) are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes, and (iii) 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). No later than November 1, 2013, the Commission shall report to the Joint Legislative Oversight Committee on Health and Human Services on its progress in amending and clarifying the rules.

### **ERC WATER AND SEWER STUDY**

**SECTION 24.(a)** The Environmental Review Commission shall study the statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State. The Commission shall specifically consider the statutory models for the following:

- (1) Sanitary Districts (Part 2 of Article 2 of Chapter 130A of the General Statutes).
- (2) Water and Sewer Authorities (Article 1 of Chapter 162A of the General Statutes).
- (3) Metropolitan Water Districts (Article 4 of Chapter 162A of the General Statutes).
- (4) Metropolitan Sewerage Districts (Article 5 of Chapter 162A of the General Statutes).
- (5) County Water and Sewer Districts (Article 6 of Chapter 162A of the General Statutes).
- (6) Any other similar organizations that provide water or sewer service in the State.

**SECTION 24.(b)** The Commission shall determine whether, how, and to what extent the number of statutory models should be reduced and consolidated. In making these determinations, the Commission shall consider and address any impacts such reduction and consolidation would have on the ongoing operations and financing of existing organizations for the provision of water and sewer services.

**SECTION 24.(c)** The Commission shall report its findings and recommendations, if any, to the 2014 Regular Session of the 2013 General Assembly upon its convening.

## **PART V. AMEND ENVIRONMENTAL LAWS**

### **REPEAL 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY DIESEL VEHICLE REQUIREMENTS**

**SECTION 25.** The Environmental Management Commission shall repeal 15A NCAC 02D .1009 (Model Year 2008 and Subsequent Model Year Heavy-Duty Vehicle Requirements) on or before December 1, 2013. Until the effective date of the repeal of the rule required pursuant to this section, the Environmental Management Commission, the Department of Environment and Natural Resources, or any other political subdivision of the State shall not implement or enforce 15A NCAC 02D .1009 (Model Year 2008 and Subsequent Model Year Heavy-Duty Vehicle Requirements).

### **DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE CONTINUED NEED TO CONDUCT VEHICLE EMISSIONS INSPECTIONS**

**SECTION 26.** The Department of Environment and Natural Resources shall conduct a study to examine whether all of the counties covered under the emissions testing and maintenance program pursuant to G.S. 143-215.107A are needed to meet and maintain the current and proposed federal ozone standards in North Carolina. The Department shall report

its interim findings to the Environmental Review Commission on or before April 1, 2015, and shall submit its final report, including any findings and legislative recommendations, to the Environmental Review Commission on or before April 1, 2016.

**PROVIDE THE ENVIRONMENTAL MANAGEMENT COMMISSION WITH FLEXIBILITY TO DETERMINE WHETHER RULES ARE NECESSARY FOR CONTROLLING THE EFFECTS OF COMPLEX SOURCES ON AIR QUALITY**

**SECTION 27.** G.S. 143-215.109(a) reads as rewritten:

"(a) The Commission ~~shall~~may by rule establish criteria for controlling the effects of complex sources on air quality. The rules shall set forth such basic minimum criteria or standards under which the Commission shall approve or disapprove any such construction or modification. The rules shall further provide for the submission of plans, specifications and such other information as may be necessary for the review and evaluation of proposed or modified complex sources."

**AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT-OF-WAY MAINTENANCE**

**SECTION 28.(a)** 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 28(c) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) shall implement the rule, as provided in Section 28(b) of this act.

**SECTION 28.(b)** Implementation. – Notwithstanding 15A NCAC 02D .1903(b)(2)(F) (Open Burning Without an Air Quality Permit), open burning for land clearing or right-of-way maintenance is permissible without an air quality permit if materials are not carried off site or transported over public roads for open burning unless the materials are carried or transported to:

- (1) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners) for the operation of an air curtain burner at a permanent site; or
- (2) A location, where the material is burned not more than four times per year, that meets all of the following criteria:
  - a. At least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.
  - b. There are no more than two piles, each 20 feet in diameter, being burned at one time.
  - c. The location is not a permitted solid waste management facility.

**SECTION 28.(c)** Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 28(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 28(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. 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 28.(d)** Sunset. – Section 28(b) of this act expires on the date that rules adopted pursuant to Section 28(c) of this act become effective.

**SECTION 28.(e)** G.S. 130A-294(a)(4) is amended by adding a new sub-subdivision to read:

"d. Management of land clearing debris burned in accordance with 15A NCAC 02D .1903 shall not require a permit pursuant to this section."

**CLARIFY THAT AN AIR QUALITY PERMIT SHALL BE ISSUED FOR A TERM OF EIGHT YEARS AND PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING AN AIR QUALITY PERMIT MAY FILE A CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS**

**SECTION 29.** G.S. 143-215.108 reads as rewritten:

**"§ 143-215.108. Control of sources of air pollution; permits required.**

...  
(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term ~~not to exceed~~ of eight years.

(e) A permit ~~applicant or permittee~~applicant, permittee, or third party who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit ~~applicant or permittee~~applicant, permittee, or third party does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review.

...."

**AMEND CAMA MINOR PERMIT NOTICE REQUIREMENTS**

**SECTION 30.** 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) 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 ~~and at least seven days before final action on a permit under G.S. 113A-121 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. ~~Public notice under this subsection is mandatory, except for a proposed modification to an application for a minor permit or proposed modification of a previously issued minor permit that does not substantially alter the original project.~~

(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."

**CLARIFY LOCAL GOVERNMENT AUTHORITY UNDER THE SEDIMENTATION AND POLLUTION CONTROL ACT**

**SECTION 33.** G.S. 113A-64 reads as rewritten:

**"§ 113A-64. Penalties.**

(a) Civil Penalties. –

(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be

assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

- (2) The Secretary or a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under ~~G.S. 1A-1, Rule 4, and G.S. 1A-1.~~ A notice of assessment by the Secretary shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30 days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. A notice of assessment by a local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program. If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this ~~Article.~~ Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.
- (4) ~~Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.~~
- (5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. ~~Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue.~~

(b) Criminal Penalties. – Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000)."

## **PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR WASTEWATER SYSTEMS**

**SECTION 34.(a)** 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 34(c) of this act, the Commission, the Department, and any other political subdivision of the State shall implement 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) as provided in Section 34(b) of this act.

**SECTION 34.(b)** Implementation. – Notwithstanding the Daily Flow for Design rates listed in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units), a wastewater system shall be exempt from the Daily Flow for Design, and any other design flow standards that are established by the Department of Health and Human Services or the Commission for Public Health provided flow rates that are less than those listed in Table No. 1

of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies and the design is prepared, sealed, and signed by a professional engineer licensed pursuant to Chapter 89C of the General Statutes. The Department and Commission may establish lower limits on reduced flow rates as necessary to ensure wastewater system integrity and protect public health, safety, and welfare. Proposed daily design flows for wastewater systems that are calculated to be less than 3,000 total gallons per day shall not require State review pursuant to 15A NCAC 18A .1938(e).

**SECTION 34.(c)** Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) consistent with Section 34(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 34(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. 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 34.(d)** Sunset. – Section 34(b) of this act expires on the date that rules adopted pursuant to Section 34(c) of this act become effective.

**DIRECT THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO PROVIDE FOR NOTICE OF KNOWN CONTAMINATION TO APPLICANTS WHO SEEK TO CONSTRUCT NEW PRIVATE DRINKING WATER WELLS AND TO DIRECT LOCAL HEALTH DEPARTMENTS TO EITHER ISSUE A PERMIT OR DENY AN APPLICATION FOR THE CONSTRUCTION, REPAIR, OR OPERATION OF A WELL WITHIN 30 DAYS OF RECEIPT OF AN APPLICATION**

**SECTION 35.(a)** G.S. 87-97 reads as rewritten:

**"§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article.

(b) Permit Required. – Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

- (1) Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.
- (2) Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department, except that a permit shall not be required for the repair or replacement of a pump or tank.

(c) Permit Not Required for Maintenance or Pump Repair or Replacement. – A repair permit shall not be required for any private drinking water well maintenance work that does not involve breaking or opening the well seal. A repair permit shall not be required for any private drinking water well repair work that involves only the repair or replacement of a pump or tank.

(d) Well Site Evaluation. – The local health department shall conduct a field investigation to evaluate the site on which a private drinking water well is proposed to be located before issuing a permit pursuant to this section. The field investigation shall determine whether there is any abandoned well located on the site, and if so, the construction permit shall be conditioned upon the proper closure of all abandoned wells located on the site in accordance with the requirements of this Article and rules adopted pursuant to this Article. If a private drinking water well is proposed to be located on a site on which a wastewater system subject to the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed to be located, the application for a construction permit shall be accompanied by a plat or site plan, as defined in G.S. 130A-334.

(e) Issuance of Permit. – ~~The local health department shall issue a construction permit or repair permit if it determines that a private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article.~~ Within 30 days of receipt of an application to construct or repair a well, a local health department shall make a determination whether the proposed private drinking water well can be

constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article and shall issue a permit or denial accordingly. If a local health department fails to act within 30 days, the permit shall automatically be issued, and the local health department may challenge issuance of the permit as provided in Chapter 150B of the General Statutes. The local health department may impose any conditions on the issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article. Notwithstanding any other provision of law, no permit for a well that is in compliance with this Article and the rules adopted pursuant to this Article shall be denied on the basis of a local government policy that discourages or prohibits the drilling of new wells.

(e1) Notice for Wells at Contamination Sites. – The Commission shall adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for a private drinking water well is located within 1,000 feet of a known source of release of contamination. Rules adopted pursuant to this subsection shall provide for notice and information of the known source of release of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site.

...."

**SECTION 35.(b)** This section is effective when it becomes law, and G.S. 87-97(e), as amended by subsection (a) of this section, applies to applications to construct or repair a private drinking water well that are received by a local health department on or after that date.

#### **CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020**

**SECTION 36.** Section 11.6(a) of S.L. 2011-394 reads as rewritten:

"**SECTION 11.6.(a)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed after January 1, 1991, and prior to April 1, 2001, shall not be required to provide secondary containment until January 1, 2020."

#### **TECHNICAL AND CONFORMING CHANGES TO PROTECTED SPECIES AND MARINE/WILDLIFE RESOURCES STATUTES**

**SECTION 37.(a)** G.S. 113-129 reads as rewritten:

"§ 113-129. **Definitions relating to resources.**

The following definitions and their cognates apply in the description of the various marine and estuarine and wildlife resources:

...  
(7) Fish; Fishes. – All ~~marine mammals; finfish;~~ all shellfish; and all crustaceans; and all other fishes; crustaceans.

...."

**SECTION 37.(b)** G.S. 113-189 reads as rewritten:

"§ 113-189. **Protection of sea ~~turtles and porpoises.~~ turtles, marine mammals, migratory birds, and finfish.**

(a) It is unlawful to willfully take, harm, disturb or destroy any sea turtles protected under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be subsequently amended, including green, hawksbill, loggerhead, Kemp's ridley and leatherback turtles, or their nests or eggs.

(b) It shall be unlawful willfully to take, ~~harm~~—harm, disturb, or destroy porpoises. marine mammals protected under the federal Marine Mammal Protection Act of 1972 (Public Law 92-522), as it may be subsequently amended.

(c) It shall be unlawful willfully to take, harm, disturb, or destroy migratory birds protected under the federal Migratory Bird Treaty Act of 1918 (16 U.S.C. §§ 703 through 712), as it may be subsequently amended, unless such action is permitted by regulations.

(d) It shall be unlawful willfully to take, harm, disturb, or destroy finfish protected under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be subsequently amended."

**CLARIFYING AND CONFORMING CHANGES TO STATUTES PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES**

**SECTION 38.(a)** G.S. 14-417 reads as rewritten:

**"§ 14-417. Regulation of ownership or use of venomous reptiles.**

(a) It shall be unlawful for any person to own, possess, use, transport, or traffic in any venomous reptile that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof, bite-proof, and have an operable lock. Transport containers shall be designed to be escape-proof and bite-proof.

(b) Each enclosure shall be clearly and visibly labeled "Venomous Reptile Inside" with scientific name, common name, appropriate ~~antivenom~~, antivenin, and owner's identifying information noted on the container. A written bite protocol that includes emergency contact information, local animal control office, the name and location of suitable ~~antivenom~~, antivenin, first aid procedures, and treatment guidelines, as well as an escape recovery plan must be within sight of permanent housing, and a copy must accompany the transport of any venomous reptile.

(c) In the event of an escape of a venomous reptile, the owner or possessor of the venomous reptile shall immediately notify local law enforcement."

**SECTION 38.(b)** G.S. 14-419 reads as rewritten:

**"§ 14-419. Investigation of suspected violations; seizure and examination of reptiles; disposition of reptiles.**

(a) In any case in which any law-enforcement officer or animal control officer has probable cause to believe that any of the provisions of this Article have been or are about to be violated, it shall be the duty of the officer and the officer is authorized, empowered, and directed to immediately investigate the violation or impending violation and to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park or a designated representative of either the Museum or Zoological Park to identify appropriate and safe methods to seize the reptile or reptiles involved, to seize the reptile or reptiles involved, and the officer is authorized and directed to deliver: (i) a reptile believed to be venomous to the North Carolina State Museum of Natural Sciences or to its designated representative for examination for the purpose of ascertaining whether the reptile is regulated under this Article; and, (ii) a reptile believed to be a large constricting snake or crocodylian to the North Carolina Zoological Park for the purpose of ascertaining whether the reptile is regulated under this Article. In any case in which a law enforcement officer or animal control officer determines that there is an immediate risk to public safety, the officer shall not be required to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park as provided by this subsection.

(b) If the Museum or the Zoological Park or their designated representatives find that a seized reptile is a venomous reptile, large constricting snake, or crocodylian regulated under this Article, the Museum or the Zoological Park or their designated representative shall determine final disposition of the reptile in a manner consistent with the safety of the ~~public~~, public, which in the case of a venomous reptile for which antivenin is not readily available, may include euthanasia.

(c) If the Museum or the Zoological Park or their designated representatives find that the reptile is not a venomous reptile, large constricting snake, or crocodylian regulated under this Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the duty of the law enforcement officer to return the reptile or reptiles to the person from whom they were seized within 15 days."

**AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULE-MAKING AUTHORITY FOR MANNER OF TAKE**

**SECTION 39.** G.S. 150B-21.1 reads as rewritten:

**"§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

...

- (7) The need for the Wildlife Resources Commission to establish any of the following:
  - a. No wake zones.
  - b. Hunting or fishing seasons-seasons, including provisions for manner of take or any other conditions required for the implementation of such season.
  - c. Hunting or fishing bag limits.
  - d. Management of public game lands as defined in G.S. 113-129(8a).

...."

**PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING PROPERTY WITH KNOWN CONTAMINATION WITHOUT APPROVAL OF THE GOVERNOR AND COUNCIL OF STATE**

**SECTION 40.(a)** Chapter 133 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Purchase of Contaminated Property by Public Entities.

**"§ 133-40. Purchase of contaminated property by public entities.**

(a) For purposes of this Article, the term "public entity" means the State and the Community College System.

(b) No public entity, as defined in subsection (a) of this section, shall purchase or otherwise acquire an ownership interest in any real property with known contamination, as that term is defined in G.S. 130A-310.65(5), without approval of the Governor and the Council of State. A public entity seeking to purchase or otherwise acquire an ownership interest in such property shall petition the Governor and Council of State for approval of the transaction, with sufficient information to identify the property, the nature and extent of the contamination present, and a plan of paying for the project and for remediation of any contamination without the use of General Fund appropriations. The approval of such a transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such transactions as the Governor deems advisable.

(c) This Article shall not apply to situations in which a public entity acquires ownership or control of real property involuntarily, including having obtained the property through bankruptcy, tax delinquency, abandonment, or other circumstances in which the public entity involuntarily acquires title by virtue of its function as a sovereign."

**SECTION 40.(b)** This section becomes effective September 1, 2013, and applies to a purchase or acquisition of interest in real property occurring on or after that date.

**CLARIFY THAT NO BUILDING PERMIT IS REQUIRED FOR ROUTINE MAINTENANCE ON FUEL DISPENSERS**

**SECTION 41.** G.S. 143-138 is amended by adding a new subsection to read:

"(b13) No building permit shall be required under the Code for routine maintenance on fuel dispensing pumps and other dispensing devices. For purposes of this subsection, "routine maintenance" includes repair or replacement of hoses, O-rings, nozzles, or emergency breakaways."

**CLARIFY THE FEES THAT THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES MAY ADOPT FOR THE NORTH CAROLINA AQUARIUMS**

**SECTION 42.(a)** G.S. 143B-289.44 reads as rewritten:

**"§ 143B-289.44. North Carolina Aquariums; fees; fund.**

(a) Fees. – The Secretary of Environment and Natural Resources may adopt a schedule of ~~uniform entrance~~ fees for the aquariums and piers operated by the North Carolina Aquariums. ~~Aquariums.~~ including:

- (1) Gate admission fees.

- (2) Facility rental fees.
- (3) Educational programs.

....."

**SECTION 42.(b)** This section is effective when it becomes law.

**REPEAL THE MOUNTAIN RESOURCES PLANNING ACT**

**SECTION 43.** Chapter 153B of the General Statutes is repealed.

**PROVIDE AN EXEMPTION FROM LOCAL GOVERNMENT REQUIREMENTS REGARDING THE NUMBER OF ACRES FOR PROPERTY DEVELOPMENT FOR BROWNFIELDS DEVELOPMENTS**

**SECTION 44.(a)** G.S. 153A-349.4 reads as rewritten:

**"§ 153A-349.4. Developed property must contain certain number of acres; permissible durations of agreements.**

(a) A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.

(b) Notwithstanding the acreage requirements of subsection (a) of this section, a local government may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application), if the developable property that would be subject to the development agreement is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."

**SECTION 44.(b)** G.S. 160A-400.23 reads as rewritten:

**"§ 160A-400.23. Developed property must contain certain number of acres; permissible durations of agreements.**

(a) A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.

(b) Notwithstanding the acreage requirements of subsection (a) of this section, a local government may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application), if the developable property that would be subject to the development agreement is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."

**DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY**

**SECTION 45.** The Department of Transportation shall adopt rules to authorize selective pruning within highway rights-of-way for vegetation that obstructs motorists' views of properties on which agritourism activities, as that term is defined in G.S. 99E-30, occur. The Department of Transportation is exempt from the provisions of G.S. 150B that require the preparation of fiscal notes for any rule proposed pursuant to this section.

**CLARIFY REQUIREMENTS FOR COMPLIANCE BOUNDARIES WITH RESPECT TO GROUNDWATER QUALITY STANDARDS**

**SECTION 46.(a)** G.S. 143-215.1 is amended by adding three new subsections to read:

**"§ 143-215.1. Control of sources of water pollution; permits required.**

...  
(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. The location of the compliance boundary shall be established at the property boundary, except as otherwise established by the Commission. 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 under this subsection. Nothing in this subsection shall be interpreted to require a revision to an existing compliance boundary previously approved by rule or permit.

(j) When operation of a disposal system permitted under this section results in an exceedance of the groundwater quality standards adopted in accordance with G.S. 143-214.1, the Commission shall require that the exceedances within the compliance boundary be remedied through cleanup, recovery, containment, or other response only when any of the following conditions occur:

- (1) A violation of any water quality standard in adjoining classified waters of the State occurs or can be reasonably predicted to occur considering hydrogeological conditions, modeling, or any other available evidence.
- (2) An imminent hazard or threat to the environment, public health, or safety exists.
- (3) A violation of any standard in groundwater occurring in the bedrock, including limestone aquifers in Coastal Plain sediments, unless it can be demonstrated that the violation will not adversely affect, or have the potential to adversely affect, a water supply well.

(k) Where operation of a disposal system permitted under this section results in exceedances of the groundwater quality standards at or beyond the compliance boundary established under subsection (i) of this section, exceedances shall be remedied through cleanup, recovery, containment, or other response as directed by the Commission."

**SECTION 46.(b)** With respect to exceedances of groundwater quality standards within a compliance boundary and related remedy requirements, G.S. 143-215.1(j), as set forth in Section 46(a) of this act, shall apply in lieu of the restricted designation directives found in 15A NCAC 2L .0104(d) and (e) until the Department of Environment and Natural Resources has adopted revisions to those rules to comply with this act.

**EXEMPT CERTAIN RADIO TOWERS FROM APPLICABILITY WITH THE MILITARY LANDS PROTECTION ACT OF 2013**

**SECTION 47.** G.S. 143-151.74, as enacted by Section 1 of S.L. 2013-206, reads as rewritten:

**"§ 143-151.74. Exemptions from applicability.**

(a) Wind energy facilities and wind energy facility expansions, as those terms are defined in Chapter 143 of the General Statutes, that are subject to the applicable permit requirements of that Chapter shall be exempt from obtaining the endorsement required by this Article.

(b) ~~Cellular~~ Cellular, radio, and television towers erected to temporarily replace ~~cellular~~ cellular, radio, and television towers that are damaged or destroyed due to a natural disaster shall be exempt from obtaining the endorsement required by this Article provided all of the following conditions are met:

- (1) The height of the ~~cellular~~ cellular, radio, or television tower that is erected to temporarily replace the ~~cellular~~ cellular, radio, or television tower that is damaged or destroyed does not exceed the height of the original ~~cellular~~ cellular, radio, or television tower.
- (2) A disaster has been declared pursuant to Chapter 166A of the General Statutes for the area in which the damaged or destroyed ~~cellular~~ cellular, radio, or television tower is located.

(3) The temporary ~~cellular~~-cellular, radio, or television tower shall only remain in place until the expiration of the declared disaster.

(c) The modification, replacement, removal, or addition of antennas on ~~cellular~~-cellular, radio, or television towers in an area surrounding a major military installation shall be exempt from obtaining the endorsement required by this Article provided the modification, replacement, removal, or addition does not increase the vertical height of the structure."

**CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS CONSTRUCTION**

**SECTION 48.(a)** Section 15.1 of S.L. 2012-187 reads as rewritten:

"**SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct and operate a five-year phase of landfill development and apply to amend the permit to construct and operate subsequent five-year phases of landfill development; or (ii) apply for a permit to construct and operate a 10-year phase of landfill development and apply to amend the permit to construct and operate subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance of permits with a duration of up to 10 years to construct and operate transfer stations."

**SECTION 48.(b)** If Senate Bill 328, 2013 Regular Session, becomes law, then Section 48(a) of this act is repealed.

**ADD A FACTOR FOR CONSIDERATION IN ASSESSING SOLID WASTE PENALTIES**

**SECTION 49.** G.S. 130A-22 reads as rewritten:

"§ 130A-22. **Administrative penalties.**

...  
(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environment and Natural Resources shall consider ~~the degree and extent of the harm caused by the violation and the cost of rectifying the damage.~~ all of the following factors:

- (1) Type of violation.
- (2) Type of waste involved.
- (3) Duration of the violation.
- (4) Cause (whether resulting from a negligent, reckless, or intentional act or omission).
- (5) Potential effect on public health and the environment.
- (6) Effectiveness of responsive measures taken by the violator.
- (7) Damage to private property.
- (8) The degree and extent of harm caused by the violation.
- (9) Cost of rectifying any damage.
- (10) The amount of money the violator saved by noncompliance.

- (11) The violator's previous record in complying or not complying with the provisions of Article 9 of this Chapter, Article 11 of this Chapter, or G.S. 130A-325, and any regulations adopted thereunder, as applicable to the violation in question.

...."

### **LIMIT LOCAL GOVERNMENT REGULATION OF STORAGE, RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS**

**SECTION 50.** G.S. 130A-309.09A is amended by adding a new subsection to read:

"(h) The storage, retention, and use of nonhazardous recyclable materials, including asphalt pavement, rap, or roofing shingles, shall be encouraged by units of local government. A unit of local government shall not impede the storage, retention, or use of nonhazardous recyclable materials in properly zoned storage facilities through the regulation of the height or setback of recyclable material stockpiles, except when such facilities are located on lots within 200 yards of residential districts."

### **AMEND THE DEFINITION OF "BUILT-UPON AREA" FOR PURPOSES OF IMPLEMENTING STORMWATER PROGRAMS**

**SECTION 51.(a)** G.S. 143-214.7 is amended by adding a new subsection to read:

"(b2) For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel."

**SECTION 51.(b)** Subdivision (7) of Section 2 of S.L. 2006-246 is repealed.

**SECTION 51.(c)** Subdivision (3) of subsection (a) of Section 2 of S.L. 2008-211 is repealed.

**SECTION 51.(d)** The Environmental Management Commission shall amend its rules to be consistent with the definition of "built-upon area" set out in subsection (b2) of G.S. 143-214.7, as enacted by Section 51(a) of this act.

**SECTION 51.(e)** The Environmental Review Commission shall study State stormwater programs, including how partially impervious surfaces are treated in the calculation of built-upon area under those programs. The Environmental Review Commission shall report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

**SECTION 51.(f)** This section is effective when it becomes law, and subsection (b2) of G.S. 143-214.7, as enacted by subsection (a) of this section, applies to projects for which permit applications are received on or after that date.

### **EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES**

**SECTION 52.(a)** Except as required by federal law or in an imminent threat to public health or safety, (i) the temporary rules adopted July 22, 1997, January 22, 1998, April 22, 1998, and June 22, 1999, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0233 regarding the protection and maintenance of existing riparian buffers in the Neuse River Basin; (ii) the temporary rule adopted January 1, 2000, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0259 regarding the protection and maintenance of existing riparian buffers in the Tar-Pamlico River Basin; (iii) the permanent rule adopted and effective August 11, 2009, Session Law 2009-216, Session Law 2009-484, and the permanent rule, as amended, effective September 1, 2011, as 15A NCAC 02B .0267 regarding the protection and maintenance of existing riparian buffers in the Jordan Water Supply Watershed; (iv) the permanent rule adopted effective April 1, 1999, and the permanent rule, as amended, effective June 1, 2010, as 15A NCAC 02B .0250 regarding the protection and maintenance of existing riparian buffers in the Randleman Lake Water Supply Watershed; (v) the temporary rule effective June 30, 2001, and the permanent rule effective August 1, 2004, as 15A NCAC 02B .0243 regarding the protection and maintenance of existing riparian buffers in the Catawba River Basin; (vi) the permanent rule adopted and effective February 1, 2009, as 15A NCAC 02B .0605 and the permanent rule adopted and effective February 1, 2009, as 15A NCAC 02B .0607 regarding the protection and maintenance of existing riparian buffers in the Goose Creek Watershed (Yadkin Pee-Dee River Basin); and (vii) any similar rule adopted for

the protection and maintenance of riparian buffers, collectively referred to as "Riparian Buffer Rules" for the purposes of this section, shall not apply to a freshwater pond to which Riparian Buffer Rules would otherwise apply if all of the following conditions are met:

- (1) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.
- (2) Except for the Riparian Buffer Rules and any similar rule adopted for the protection and maintenance of riparian buffers, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before the adoption of the Riparian Buffer Rules for the river basin or watershed in which the property is located.
- (3) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B(3).

**SECTION 52.(b)** If the use of property on which a pond is located changes such that the use no longer meets the criteria in subdivision (1) of subsection (a) of this section, the Riparian Buffer Rules for the river basin or watershed in which the property is located shall apply.

**SECTION 52.(c)** The Commission shall not adopt rules for the protection or maintenance of riparian buffers that apply to ponds provided the ponds are constructed or used for agriculture as that term is defined in G.S. 106-581.1.

**SECTION 52.(d)** Units of local government shall not adopt ordinances, resolutions, plans, or policies for the protection or maintenance of riparian buffers that apply to ponds provided the ponds are constructed or used for agriculture as that term is defined in G.S. 106-581.1.

**SECTION 52.(e)** The Environmental Management Commission shall adopt rules to amend the Neuse River Basin Riparian Buffer Rule, the Tar-Pamlico River Basin Riparian Buffer Rule, the Jordan Water Supply Riparian Buffer Rule, the Randleman Lake Water Supply Watershed Riparian Buffer Rule, the Catawba River Basin Riparian Buffer Rule, the Goose Creek Watershed (Yadkin Pee-Dee River Basin) Riparian Buffer Rule, and any other similar riparian buffer rules in accordance with subsections (a), (b), and (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 subsections (a), (b), and (c) of this section. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. 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 52.(f)** This section is effective when it becomes law and applies to ponds used for agriculture that were either in existence on or constructed after July 22, 1997. Section 52(a) of this act expires on the date that rules adopted pursuant to Section 52(e) of this act become effective.

**PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING A WATER QUALITY PERMIT MAY FILE A CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS**

**SECTION 53.** G.S. 143-215.1 reads as rewritten:

**"§ 143-215.1. Control of sources of water pollution; permits required.**

...

(e) Administrative Review. – A permit ~~applicant or permittee applicant~~, a permittee, or a third party who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit ~~applicant or permittee applicant~~, the permittee, or a third party does not file a petition within the required time, the Commission's decision is final and is not subject to review.

...."

**REPEAL REQUIREMENTS FOR INCREASES IN VEHICULAR SURFACE AREAS**

**SECTION 54.** Article 4A of Chapter 113A of the General Statutes is repealed.

**AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE TO ADJOINING PROPERTY OWNERS**

**SECTION 55.** G.S. 113-229 reads as rewritten:

**"§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.**

...  
(d) An applicant for a permit, other than an emergency permit, shall ~~send a copy of his application to notify the~~ owner of each tract of riparian property that adjoins that of the applicant. ~~The copy shall be served~~ An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified mail. ~~mail.~~ or, if the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, by publication in accordance with the rules of the ~~Commission.~~ Commission shall serve to satisfy the notification requirement. An owner may file written objections to the permit with the Department for 30 days after ~~he~~ the owner is served with a copy of the ~~application.~~ application by certified mail. In the case of a special emergency dredge or fill permit the applicant must certify that ~~he~~ the applicant took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that ~~he~~ the applicant will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.  
...."

**PROVIDE THAT CERTAIN WATER TREATMENT SYSTEMS WITH EXPIRED AUTHORIZATIONS MAY OBTAIN NEW AUTHORIZATIONS THAT ALLOW THE SYSTEMS TO WITHDRAW SURFACE WATER FROM THE SAME WATER BODY AT THE SAME RATE AS WAS APPROVED IN THE EXPIRED AUTHORIZATION**

**SECTION 56.(a)** Public water systems with expired authorizations for water treatment plants that have been deactivated may obtain new water treatment plant authorizations that allow the system to withdraw surface water from the same water body and at the same rate as approved in the expired authorization, and such new authorizations shall not be required to prepare an environmental document pursuant to Article 1 of Chapter 113A of the General Statutes.

**SECTION 56.(b)** This section applies only to those public water systems for which the authorization for the water treatment plant expired within the last 10 calendar years of the effective date of this act.

**COMBINE THE DIVISION OF WATER QUALITY AND THE DIVISION OF WATER RESOURCES TO CREATE A NEW DIVISION OF WATER RESOURCES IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND MAKE CONFORMING CHANGES**

**SECTION 57.(a)** The Department of Environment and Natural Resources shall combine the Division of Water Quality and the Division of Water Resources to create a new Division of Water Resources.

**SECTION 57.(b)** G.S. 74-50(b3) reads as rewritten:

"(b3) When the Department receives an application for a new mining permit or for a modification of a mining permit to add land to the permitted area, the Department shall send a notice of the application to each of the following agencies with a request that each agency review and provide written comment on the application within 30 days of the date on which the request is made:

- (1) Division of Air Quality, Department of Environment and Natural Resources.
- (2) Division of Parks and Recreation, Department of Environment and Natural Resources.
- (3) ~~Division of Water Quality, Department of Environment and Natural Resources.~~

- (4) Division of Water Resources, Department of Environment and Natural Resources.
- (5) North Carolina Geological Survey, Division of Energy, Mineral, and Land Resources, Department of Environment and Natural Resources.
- (6) Wildlife Resources Commission, Department of Environment and Natural Resources.
- (7) Office of Archives and History, Department of Cultural Resources.
- (8) United States Fish and Wildlife Service, United States Department of the Interior.
- (9) Any other federal or State agency that the Department determines to be appropriate, including the Division of Coastal Management, Department of Environment and Natural Resources; the Division of Marine Fisheries, Department of Environment and Natural Resources; the Division of Waste Management, Department of Environment and Natural Resources; and the Department of Transportation."

**SECTION 57.(c)** G.S. 90A-47.3 reads as rewritten:

**"§ 90A-47.3. Qualifications for certification; training; examination.**

(a) The Commission shall develop and administer a certification program for animal waste management system operators in charge that provides for receipt of applications, training and examination of applicants, and investigation of the qualifications of applicants.

(b) The Commission, in cooperation with the Division of Water ~~Quality Resources~~ of the Department of Environment and Natural Resources, and the Cooperative Extension Service, shall develop and administer a training program for animal waste management system operators in charge. An applicant for initial certification shall complete 10 hours of classroom instruction prior to taking the examination. In order to remain certified, an animal waste management system operator in charge shall complete six hours of approved additional training during each three-year period following initial certification. A certified animal waste management system operator in charge who fails to complete approved additional training within 30 days of the end of the three-year period shall take and pass the examination for certification in order to renew the certificate."

**SECTION 57.(d)** G.S. 106-805 reads as rewritten:

**"§ 106-805. Written notice of swine farms.**

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1 or 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, notify all adjoining property owners; all property owners who own property located across a public road, street, or highway from the swine farm; the county or counties in which the farm site is located; and the local health department or departments having jurisdiction over the farm site of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is located. Notice to a county shall be sent to the county manager or, if there is no county manager, to the chair of the board of county commissioners. Notice to a local health department shall be sent to the local health director. The written notice shall include all of the following:

- (1) The name and address of the person intending to construct a swine farm.
- (2) The type of swine farm and the design capacity of the animal waste management system.
- (3) The name and address of the technical specialist preparing the waste management plan.
- (4) The address of the local Soil and Water Conservation District office.
- (5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water ~~Quality Resources~~, Department of Environment and Natural Resources."

**SECTION 57.(e)** G.S. 106-860(d) reads as rewritten:

"(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

- (1) The Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services or the Director's designee, who shall serve as the Chair of the Advisory Committee.
- (2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
- (3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.
- (4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
- (5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
- (6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.
- (7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
- (8) The President of the North Carolina Conservation District Employees Association or the President's designee.
- (9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.
- ~~(10) The Director of the Division of Water Quality of the Department of Environment and Natural Resources or the Director's designee.~~
- (11) The Director of the Division of Forest Resources of the Department of Agriculture and Consumer Services or the Director's designee.
- (12) The Director of the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources or the Director's designee.
- (13) The Director of the Division of Coastal Management of the Department of Environment and Natural Resources or the Director's designee.
- (14) The Director of the Division of Water Resources of the Department of Environment and Natural Resources or the Director's designee.
- (15) The President of the Carolinas Land Improvement Contractors Association or the President's designee."

**SECTION 57.(f)** G.S. 113A-57 reads as rewritten:

**"§ 113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

- (1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
- (2) The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.

- (3) Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.
- (4) No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for the activity is filed with the agency having jurisdiction and approved by the agency. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program, and the land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The agency having jurisdiction shall forward to the Director of the Division of Water ~~Quality-Resources~~ a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.
- (5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

**SECTION 57.(g)** G.S. 136-44.7D reads as rewritten:

**"§ 136-44.7D. Bridge construction guidelines.**

A bridge crossing rivers and streams in watersheds shall be constructed to accommodate the hydraulics of a flood water level equal to the water level projected for a 100-year flood for the region in which the bridge is built. The bridge shall be built without regard for the riparian buffer zones as designated by the Department of Environment and Natural Resources, Division of Water ~~Quality-Resources~~. No Memorandums of Agreement may be made between Departments to bypass this construction mandate. No agency rules shall be enacted contrary to this section."

**SECTION 57.(h)** G.S. 143-214.7(c3) reads as rewritten:

"(c3) In accordance with the Federal Aviation Administration August 28, 2007, Advisory Circular No. 150/5200-33B (Hazardous Wildlife Attractants on or Near Airports), the Department shall not require the use of stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section at public airports that support commercial air carriers or general aviation services. Development projects located within five statute miles from the farthest edge of an airport air operations area, as that term is defined in 14 C.F.R. § 153.3 (July 2011 Edition), shall not be required to use stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section. Existing stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section located at public airports or that are within five statute miles from the farthest edge of an airport operations area may be replaced with alternative measures included in the Division of Water ~~Quality's-Resources'~~ Best Management Practice Manual chapter on airports. In order to be approved by the Department, alternative measures or management designs that are not expressly included in the Division of Water ~~Quality's-Resources'~~ Best Management Practice Manual shall provide for equal or better stormwater control based on the pre- and post-development hydrograph. Any replacement of existing stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water shall be considered a minor modification to the State general stormwater permit."

**SECTION 57.(i)** G.S. 143-214.7A reads as rewritten:

**"§ 143-214.7A. Stormwater control best management practices.**

(a) The Department of Environment and Natural Resources shall establish standard stormwater control best management practices and standard process water treatment processes or equivalent performance standards for composting operations that are required to be permitted by the Division of Water ~~Quality-Resources~~ in the Department and the Division of

Waste Management in the Department. These practices, processes, and standards shall be developed for the purpose of protecting water quality by controlling and containing stormwater that is associated with composting operations, by reducing the pollutant levels of process water from composting operations, and by reducing the opportunities for generation of such waters.

(b) Unless otherwise provided in this subsection, the Division of Water ~~Quality Resources~~ shall clarify that stormwater is water that does not contact anything considered a feedstock, intermediate product, or final product of composting operations. Unless otherwise provided in this subsection, the Division of Water ~~Quality Resources~~ shall clarify that wastewater is leachate and water that contacts feedstocks, intermediate products, or final product, of composting operations. The clarifications shall incorporate available scientifically valid information obtained from sampling and analyses of North Carolina composting facilities and from valid representative data from other states. In addition, the Division of Water ~~Quality Resources~~ shall establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required. A Type 1 solid waste compost facility shall be subject only to applicable State stormwater requirements and federal stormwater requirements established pursuant to 33 U.S.C. § 1342(p)(3)(B). A Type 1 solid waste compost facility shall not be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for discharge of process wastewater based solely on the discharge of stormwater that has come into contact with feedstock, intermediate product, or final product at the facility. For purposes of this section, "Type 1 solid waste compost facilities" are facilities that may receive yard and garden waste, silvicultural waste, untreated and unpainted wood waste, or any combination thereof.

(c) The Department shall establish revised water quality permitting procedures for the composting industry. The revised permitting procedures shall identify the various circumstances that determine which water quality permit is required for various composting activities. The Department shall determine whether selected low-risk subsets of the composting industry may be suitable for expedited or reduced water quality permitting procedures. The determination shall include consideration of the economic impact of regulatory decisions.

(d) In developing the practices, processes, and standards and the revised water quality permitting procedures required by this section, the Department shall review practices, processes, and standards and permitting procedures adopted by other states and similar federal programs.

(e) The Department shall form a Compost Operation Stakeholder Advisory Group composed of representatives from the North Carolina Chapter of the United States Composting Council, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina State Agricultural Extension Service, the North Carolina Chapter of the American Water Works Association-Water Environment Federation, the North Carolina Pumper Group, the North Carolina Chapter of the Solid Waste Association of North America, the North Carolina Septic Tank Association, and any individual or group commenting to the Department on issues related to water quality at composting operations. The Compost Operation Stakeholder Advisory Group shall be convened periodically to provide input and assistance to the Department.

(f) The practices, processes, and standards and the revised permitting procedures shall address the site size of an operation, the nature of the feedstocks composted, the type of compost production method employed, the quantity and water quality of the stormwater or process water associated with composting facilities, the water quality of the receiving waters, as well as operation and maintenance requirements for the resulting standard stormwater control best management practices and standard process water treatment processes."

**SECTION 57.(j)** G.S. 143-214.10 reads as rewritten:

**"§ 143-214.10. Ecosystem Enhancement Program: development and implementation of basinwide restoration plans.**

Develop Basinwide Restoration Plans. – The Department shall develop basinwide plans for wetlands and riparian area restoration with the goal of protecting and enhancing water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities within each of the 17 major river basins in the State. The Department shall develop and implement a basinwide restoration plan for each of the 17 river basins in the State in accordance with the basinwide schedule currently established by the Division of Water ~~Quality Resources~~."

**SECTION 57.(k)** G.S. 143-214.25A, as amended by Section 22 of S.L. 2013-155, reads as rewritten:

**"§ 143-214.25A. Riparian Buffer Protection Program: Surface Water Identification Training and Certification Program.**

(a) The Division of Water ~~Quality-Resources~~ of the Department shall develop a program to train and certify individuals to determine the presence of surface waters that would require the application of rules adopted by the Commission for the protection of riparian buffers. The Division may train and certify employees of the Division as determined by the Director of the Division of Water ~~Quality-Resources~~; employees of units of local government to whom responsibility for the implementation and enforcement of the riparian buffer protection rules is delegated pursuant to G.S. 143-214.23; and Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services as determined by the Assistant Commissioner of the North Carolina Forest Service. The Director of the Division of Water ~~Quality-Resources~~ may review the determinations made by individuals who are certified pursuant to this section, may override a determination made by an individual certified under this section, and, if the Director of the Division of Water ~~Quality-Resources~~ determines that an individual is failing to make correct determinations, revoke the certification of that individual.

(b) The Division of Water ~~Quality-Resources~~ shall develop standard forms for use in making and reporting determinations. Each individual who is certified to make determinations under this section shall prepare a written report of each determination and shall submit the report to the agency that employs the individual. Each agency shall maintain reports of determinations made by its employees, shall forward a copy of each report to the Director of the Division of Water ~~Quality-Resources~~, and shall maintain these reports and all other records related to determinations so that they will be readily accessible to the public.

(c) In implementing the Surface Water Identification Training and Certification Program established by this section, the Division of Water ~~Quality-Resources~~ of the Department of Environment and Natural Resources shall give priority to training and certifying the most highly qualified and experienced personnel in each agency. The Division of Water ~~Quality-Resources~~ shall evaluate the effectiveness of the Surface Water Identification Training and Certification Program and shall submit an annual report of its findings and recommendations, if any, to the Environmental Review Commission on or before October 1 of each year."

**SECTION 57.(l)** G.S. 143-215.9C reads as rewritten:

**"§ 143-215.9C. Use of certain types of culverts allowed.**

(a) The Division of Water ~~Quality-Resources~~ in the Department of Environment and Natural Resources shall allow the use of structures known as three-sided, open-bottom, or bottomless culverts. A culvert authorized under this section shall be designed, constructed, and installed so that it satisfies all of the following requirements:

- (1) Adheres to professional engineering standards and sound engineering practices.
- (2) To the extent practicable, minimizes the erosive velocity of water.
- (3) Has an inside that is greater than or equal to 1.2 times the bankfull width of the spanned waterbody. For purposes of this subdivision, "bankfull width" means the width of the stream where over-bank flow begins during a flood event.

(b) The Division shall allow the use of culverts authorized under this section throughout the State and may not limit their use to locations where they must be tied into bedrock. Culverts authorized under this section may only be used on private property and may not be transferred to, or operated or maintained by, the Department of Transportation."

**SECTION 57.(m)** G.S. 143-215.10A reads as rewritten:

**"§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance will be provided by the

Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services. Inspection and enforcement will be provided by the Division of Water ~~Quality Resources.~~"

**SECTION 57.(n)** G.S. 143-215.10B reads as rewritten:

**"§ 143-215.10B. Definitions.**

As used in this Part:

- (1) "Animal operation" means any agricultural feedlot activity involving 250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, or 30,000 or more confined poultry with a liquid animal waste management system, or any agricultural feedlot activity with a liquid animal waste management system that discharges to the surface waters of the State. A public livestock market regulated under Article 35 of Chapter 106 of the General Statutes is an animal operation for purposes of this Part.
- (2) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter, or other materials from an animal operation.
- (3) "Animal waste management system" means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.
- (4) "Division" means the Division of Water ~~Quality Resources~~ of the Department.
- (5) "Feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part.
- (6) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans."

**SECTION 57.(o)** G.S. 143-215.10M(a) reads as rewritten:

"(a) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before 1 October of each year as required by this section. Each report shall include:

- (1) The number of permits for animal waste management systems, itemized by type of animal subject to such permits, issued since the last report.
- (2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services has conducted since the last report.
- (3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services that have been conducted since the last report.
- (4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.
- (5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.
- (6) The number of compliance inspections of animal waste management systems that the Division of Water ~~Quality Resources~~ has conducted since the last report.
- (7) The number of follow-up inspections associated with compliance inspections conducted by the Division of Water ~~Quality Resources~~ since the last report.
- (8) The average length of time for each category of reviews and inspections under subdivisions (2) through (7) of this subsection.
- (9) The number of violations found during each category of review and inspection under subdivisions (2) through (7) of this subsection, the status of

enforcement actions taken and pending, and the penalties imposed, collected, and in the process of being negotiated for each such violation.

- (10) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission or the Fiscal Research Division."

**SECTION 57.(p)** G.S. 143B-279.7(a) reads as rewritten:

"(a) The Department of Environment and Natural Resources shall coordinate an intradepartmental effort to develop scientific protocols to respond to significant fish kill events utilizing staff from the Division of ~~Water Quality, Resources,~~ Division of Marine Fisheries, Department of Health and Human Services, Wildlife Resources Commission, the scientific community, and other agencies, as necessary. In developing these protocols, the Department of Environment and Natural Resources shall address the unpredictable nature of fish kills caused by both natural and man-made factors. The protocols shall contain written procedures to respond to significant fish kill events including:

- (1) Developing a plan of action to evaluate the impact of fish kills on public health and the environment.
- (2) Responding to fish kills within 24 hours.
- (3) Investigating and collecting data relating to fish kill events.
- (4) Summarizing and distributing fish kill information to participating agencies, scientists and other interested parties."

**SECTION 57.(q)** G.S. 159G-20(5) is repealed.

**SECTION 57.(r)** G.S. 159G-23 reads as rewritten:

**"§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve.**

The criteria in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The ~~Division of Water Quality and the~~ Division of Water Resources must ~~each~~ establish a system of assigning points to applications based on the following criteria:

....  
**SECTION 57.(s)** G.S. 159G-26(a) reads as rewritten:

**"§ 159G-26. Annual reports on Water Infrastructure Fund.**

(a) Requirement. – The Department must publish a report each year on the accounts in the Water Infrastructure Fund that are administered by the ~~Division of Water Quality or the~~ Division of Water Resources. The report must be published by 1 November of each year and cover the preceding fiscal year. The Department must make the report available to the public and must give a copy of the report to the Environmental Review Commission and the Fiscal Research Division of the General Assembly."

**SECTION 57.(t)** G.S. 159G-30 reads as rewritten:

**"§ 159G-30. Department's responsibility.**

The Department, through the ~~Division of Water Quality and the~~ Division of Water Resources, administers loans and grants made from the CWSRF, the DWSRF, the Wastewater Reserve, and the Drinking Water Reserve. ~~The Division of Water Quality administers loans and grants from the CWSRF and the Wastewater Reserve. The Division of Water Resources administers loans and grants from the DWSRF and the Drinking Water Reserve."~~

**SECTION 57.(u)** G.S. 159G-37 reads as rewritten:

**"§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water Reserve.**

An application for a loan or grant from the ~~CWSRF or the Wastewater Reserve must be filed with the Division of Water Quality of the Department. An application for a loan or grant from the DWSRF or the Drinking Water Reserve must be filed with the CWSRF, the Wastewater Reserve, the DWSRF, or the Drinking Water Reserve must be filed with the~~ Division of Water Resources of the Department. An application must be submitted on a form prescribed by the Division and must contain the information required by the Division. An applicant must submit to the Division any additional information requested by the Division to enable the Division to make a determination on the application. An application that does not contain information required on the application or requested by the Division is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this Article."

**SECTION 57.(v)** G.S. 159G-38 reads as rewritten:

**"§ 159G-38. Environmental assessment and public hearing.**

(a) Required Information. – An application submitted under this Article for a loan or grant for a project must state whether the project requires an environmental assessment. If the application indicates that an environmental assessment is not required, it must identify the exclusion in the North Carolina Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. If the application does not identify an exclusion in the North Carolina Environmental Policy Act, it must include an environmental assessment of the project's probable impacts on the environment.

(b) Division Review. – If, after reviewing an application, ~~the Division of Water Quality or the Division of Water Resources, as appropriate, Resources~~ determines that a project requires an environmental assessment, the assessment must be submitted before the Division continues its review of the application. If, after reviewing an environmental assessment, the Division concludes that an environmental impact statement is required, the Division may not continue its review of the application until a final environmental impact statement has been completed and approved as provided in the North Carolina Environmental Policy Act.

(c) Hearing. – ~~The Division of Water Quality or the Division of Water Resources, as appropriate, Resources~~ may hold a public hearing on an application for a loan or grant under this Article if it determines that holding a hearing will serve the public interest. An individual who is a resident of any county in which a proposed project is located may submit a written request for a public hearing. The request must set forth each objection to the proposed project or other reason for requesting a hearing and must include the name and address of the individual making the request. The Division may consider all written objections to the proposed project, any statement submitted with the hearing request, and any significant adverse effects the proposed project may have on the environment. The Division's decision on whether to hold a hearing is conclusive. The Division must keep all written requests for a hearing on an application as part of the records pertaining to the application."

**SECTION 57.(w)** G.S. 159G-39(a) reads as rewritten:

"(a) Point Assignment. – ~~The Division of Water Quality or the Division of Water Resources, as appropriate, Resources~~ must review all applications filed for a loan or grant under this Article for an application period. The Division must rank each application in accordance with the points assigned to the evaluation criteria. The Division must make a written determination of an application's rank and attach the determination to the application. The Division's determination of rank is conclusive."

**SECTION 57.(x)** Section 1.6 of S.L. 1998-221 reads as rewritten:

"Section 1.6. **Delegation of riparian buffer protection requirements to local governments.** – (a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements in the Neuse River Basin to units of local government that have the power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government in the Neuse River Basin that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that any unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Division of Water ~~Quality Resources~~ in the Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule."

**SECTION 57.(y)** Section 2(c) of S.L. 2001-355 reads as rewritten:

**"SECTION 2.(c)** The Director of the Division of Water ~~Quality Resources~~ and the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall jointly appoint members described in subdivisions (1) through (4) of subsection (b) of this section. The Commissioner of Agriculture shall appoint the members described in subdivisions (5) and (6) of subsection (b) of this section. The Commissioner of Agriculture shall appoint the members described in subdivision (6) of subsection (b) of this section from persons nominated by nongovernmental organizations whose members produce or manage significant agricultural commodities in each county or watershed."

**SECTION 57.(z)** Section 2 of S.L. 2006-246 reads as rewritten:

**"SECTION 2.** Definitions. – The following definitions apply to this act and its implementation:

- (1) The definitions set out in 40 Code of Federal Regulations § 122.2 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003 Edition).
- (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).
- (4) The definitions set out in 15A NCAC 2H .1002 (Definitions), except for the definitions of "Built-upon area", "Development", and "Redevelopment", which are defined below.
- (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (6) "BMP" means Best Management Practice.
- (7) "Built-upon area" means that portion of a project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.
- (8) "Development" means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.
- (9) "Division" means the Division of Water ~~Quality Resources~~ in the Department.
- (10) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.
- (11) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.
- (12) "Redevelopment" means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.
- (13) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).

- (14) "Sensitive receiving waters" means any of the following:
- a. Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures).
  - b. Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.
  - c. Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures), have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. § 1313.
- (15) "Shellfish resource waters" means Class SA waters that contain an average concentration of 500 parts per million of natural chloride ion. Average concentration is determined by averaging the chloride concentrations of five water samples taken one-half mile downstream from the project site that are taken on separate days, within one hour of high tide, and not within 48 hours following a rain event. The chloride ion concentrations are to be determined by a State-certified laboratory.
- (16) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).
- (17) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant."

**SECTION 57.(aa)** S.L. 2008-211 reads as rewritten:

**"SECTION 1.(a)** Disapprove Rule. – Pursuant to G.S. 150B-21.3(b1), 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties), as adopted by the Environmental Management Commission on 10 January 2008 and approved by the Rules Review Commission on 20 March 2008, is disapproved.

**"SECTION 1.(b)** Supersede Rule. – 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties), effective 1 September 1995, is superseded by this act. References in the North Carolina Administrative Code to 15A NCAC 02H .1005 shall be deemed to refer to the equivalent provisions of this act.

**"SECTION 2.(a)** Definitions. – The following definitions apply to this act and its implementation:

- (1) The definitions set out in 15A NCAC 02H .1002 (Definitions).
- (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (3) "Built upon area" has the same meaning as in Session Law 2006-246 and means that portion of a project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.
- (4) "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement

materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement.

- (5) "Residential development activities" has the same meaning as in 15A NCAC 02B .0202(54).
- (6) "Vegetative buffer" has the same meaning as in 15A NCAC 02H .1002(22) and means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities.
- (7) "Vegetative conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

**"SECTION 2.(b)** Requirements for Certain Nonresidential and Residential Development in the Coastal Counties. – All nonresidential development activities that occur within the Coastal Counties that will add more than 10,000 square feet of built upon area or that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a Coastal Area Management Act (CAMA) Major Development Permit, pursuant to G.S. 113A-118 and all residential development activities within the Coastal Counties that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a Coastal Area Management Act (CAMA) Major Development Permit, pursuant to G.S. 113A-118 shall manage stormwater runoff as provided in this subsection. A development activity or project requires a Sedimentation and Erosion Control Plan if the activity or project disturbs one acre or more of land, including an activity or project that disturbs less than one acre of land that is part of a larger common plan of development. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the Division of Water Quality of the Department of Environment and Natural Resources to Interested Parties dated 24 July 2006.

- (1) Development Near Outstanding Resource Waters (ORW). – Development activities within the Coastal Counties and located within 575 feet of the mean high waterline of areas designated by the Commission as Outstanding Resource Waters (ORW) shall meet the requirements of 15A NCAC 02H .1007 (Stormwater Requirements: Outstanding Resource Waters) and shall be permitted as follows:
  - a. Low-Density Option. – Development shall be permitted pursuant to 15A NCAC 02H .1003(d)(1) if the development meets all of the following requirements:
    1. The development has a built upon area of twelve percent (12%) or less. A development project with an overall density at or below the low-density threshold, but containing areas with a density greater than the overall project density, shall be considered low-density as long as the project meets or exceeds the requirements for low-density development and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.
    2. Stormwater runoff from the development is transported primarily by vegetated conveyances. As used in this sub-sub-subdivision, "conveyance system" shall not include a stormwater collection system. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.
    3. The development contains a 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams

or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with and maintained in grass or any other vegetative or plant material. The Division of Water ~~Quality Resources~~ may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

- b. High-Density Option. – Development shall be permitted pursuant to 15A NCAC 02H .1003(d)(2) if the development meets all of the following requirements:
1. The development has a built upon area of greater than twelve percent (12%).
  2. The development has no direct outlet channels or pipes to Class SA waters unless permitted in accordance with 15A NCAC 02H .0126. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.
  3. The development utilizes control systems that are any combination of infiltration systems, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative low impact development stormwater management systems designed in accordance with 15A NCAC 02H .1008 to control and treat the runoff from all surfaces generated by one and one-half inches of rainfall, or the difference in the stormwater runoff from all surfaces from the predevelopment and postdevelopment conditions for a one-year, 24-hour storm, whichever is greater. Wet detention ponds may be used as a stormwater control system to meet the requirements of this sub-sub-subdivision, provided that the stormwater control system fully complies with the requirements of this sub-subdivision. If a wet detention pond is used within one-half mile of Class SA waters, installation of a stormwater best management practice in series with the wet detention pond shall be required to treat the discharge from the wet detention pond. Secondary stormwater best management practices that are used in series with another stormwater best management practice do not require any minimum separation from the seasonal high water table. Alternatives as described in 15A NCAC 02H .1008(h) may also be approved if they meet the requirements of this sub-subdivision.
  4. Stormwater runoff from the development that is in excess of the design volume must flow overland through a vegetative filter designed in accordance with 15A NCAC 02H .1008 with a minimum length of 50 feet measured from mean high water of Class SA waters.
  5. The development contains a 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters,

perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with, and maintained in, grass or any other vegetative or plant material. Furthermore, stormwater control best management practices (BMPs), or stormwater control structures, with the exception of wet detention ponds, may be located within this vegetative buffer. The Division of Water ~~Quality Resources~~ may, on a case by case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

- c. Stormwater Discharges Prohibited. – All development activities, including both low- and high-density projects, shall prohibit new points of stormwater discharge to Class SA waters or an increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances of existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. The following shall not be considered a direct point of stormwater discharge:
    - 1. Infiltration of the stormwater runoff from the design storm as described in sub-sub-subdivision 3. of sub-subdivision b. of subdivision (1) of this subsection.
    - 2. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area, that is capable of providing effective infiltration of the runoff from the design storm as described in sub-sub-subdivision 3. of sub-subdivision b. of subdivision (1) of this subsection. Notwithstanding the other requirements of this section, the infiltration mandated in this sub-sub-subdivision does not require a minimum separation from the seasonal high-water table.
    - 3. The discharge from a wet detention pond that is treated by a secondary stormwater best management practice, provided that both the wet detention pond and the secondary stormwater best management practice meet the requirements of this sub-subdivision.
  - d. Limitation on the Density of Development. – Development shall be limited to a built upon area of twenty-five percent (25%) or less.
- (2) Development Near Class SA Waters. – Development activities within one-half mile of and draining to those waters classified by the Commission as Class SA waters or within one-half mile of waters classified by the Commission as Class SA waters and draining to unnamed freshwater tributaries to Class SA waters shall meet the requirements of sub-subdivisions a., b., and c. of subdivision (1) of this subsection. The extent of Class SA waters is limited to those waters that are determined to be at least an intermittent stream based on a site stream determination made in accordance with the procedures that are delineated in the Division of Water Quality's "Identification Methods for the Origin of Intermittent and Perennial Streams" prepared pursuant to Session Law 2001-404.
  - (3) Other Coastal Development. – Development activities within the Coastal Counties except those areas described in subdivisions (1) and (2) of this subsection shall meet all of the following requirements:

- a. Low-Density Option: Development shall be permitted pursuant to 15A NCAC 02H .1003(d)(1) if the development meets all of the following requirements:
1. The development has a built upon area of twenty-four percent (24%) or less. A development project with an overall density at or below the low-density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low-density development and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.
  2. Stormwater runoff from the development is transported primarily by vegetated conveyances. As used in this sub-sub-subdivision, "conveyance system" shall not include a stormwater collection system. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.
  3. The development contains a 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with, and maintained in, grass or any other vegetative or plant material. The Division of Water ~~Quality Resources~~ may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.
- b. High-Density Option: Higher density developments shall be permitted pursuant to 15A NCAC 02H .1003(d)(2) if the development meets all of the following requirements:
1. The development has a built upon area of greater than twenty-four percent (24%).
  2. The development uses control systems that are any combination of infiltration systems, wet detention ponds, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative stormwater management systems designed in accordance with 15A NCAC 02H .1008.
  3. Control systems must be designed to store, control, and treat the stormwater runoff from all surfaces generated by one and one-half inch of rainfall.
  4. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.
  5. A 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded

structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with, and maintained in, grass or any other vegetative or plant material. Furthermore, stormwater control best management practices (BMPs), or stormwater control structures, with the exception of wet detention ponds, may be located within this vegetative buffer. The Division of Water ~~Quality Resources~~ may, on a case by case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

- (4) Requirements for Structural Stormwater Controls. – Structural stormwater controls required under this section shall meet all of the following requirements:
- a. Remove an eighty-five percent (85%) average annual amount of Total Suspended Solids.
  - b. For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
  - c. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
  - d. Meet the General Engineering Design Criteria set forth in 15A NCAC 02H .1008(c).
  - e. For structural stormwater controls that are required under this section and that require separation from the seasonal high-water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal highwater table is not practicable, the Division of Water ~~Quality Resources~~ may grant relief from the separation requirement pursuant to the Alternative Design Criteria set out in 15A NCAC 02H .1008(h). No minimum separation from the seasonal highwater table is required for a secondary stormwater best management practice that is used in a series with another stormwater best management practice.
- (5) Certain Wetlands Excluded From Density Calculation. – For the purposes of this section, areas defined as Coastal Wetlands under 15A NCAC 07H .0205, as measured landward from the normal high waterline, shall not be included in the overall project area to calculate impervious surface density. Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC 07H .0205 and that are located landward of the normal high waterline may be included in the overall project area to calculate impervious surface density.

**"SECTION 2.(c) Requirements for Limited Residential Development in Coastal Counties.**  
– For residential development activities within the 20 Coastal Counties that are located within one-half mile and draining to Class SA waters, that have a built upon area greater than twelve percent (12%), that do not require a stormwater management permit under subsection (b) of this section, and that will add more than 10,000 square feet of built upon area, a one-time, nonrenewable stormwater management permit shall be obtained. The permit shall require recorded deed restrictions or protective covenants to ensure that the plans and specifications approved in the permit are maintained. Under this permit, stormwater runoff shall be managed using any one or combination of the following practices:

- (1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first one and one-half inches of rain. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water

on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.

- (2) Direct rooftop runoff from the first one and one-half inches of rain to an appropriately sized and designed rain garden. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.
- (3) Install any other stormwater best management practice that meets the requirements of 15A NCAC 02H .1008 to control and treat the stormwater runoff from all built upon areas of the site from the first one and one-half inches of rain.

**"SECTION 2.(d)** Exclusions. – The requirements of this section shall not apply to any of the following:

- (1) Activities of the North Carolina Department of Transportation that are regulated in accordance with the provisions of the Department's National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.
- (2) Development activities that are conducted pursuant to and consistent with one of the following authorizations, or any timely renewal thereof, shall be regulated by those provisions and requirements of 15A NCAC 02H .1005 that were effective at the time of the original issuance of the following authorizations:
  - a. State Stormwater Permit issued under the provisions of 15A NCAC 02H .1005.
  - b. Stormwater Certification issued pursuant to 15A NCAC 02H .1000 prior to 1 December 1995.
  - c. A Coastal Area Management Act Major Permit.
  - d. 401 Certification that contains an approved Stormwater Management Plan.
  - e. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.
  - f. A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
  - g. A phased development plan approved pursuant to G.S. 153A-344.1 or G.S. 160A-385.1 that shows:
    1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335 or G.S. 160A-371 through G.S. 160A-376.
    2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this section to that phase of development would require a material change in that phase of the plan.
  - h. A vested right to the development pursuant to common law.
- (3) Redevelopment activities that result in no net increase in built upon area and provide stormwater control equal to the previous development.
- (4) Development activities for which a complete Stormwater Permit Application has been accepted by the Division of ~~Water Quality Resources~~ prior to the effective date of this act, shall be regulated by the provisions and requirements of 15A NCAC 02H .1005 that were effective at the time that this application was accepted as complete by the Division of ~~Water Quality Resources~~. For purposes of this subsection, a Stormwater Permit Application is deemed accepted as complete by the Division of ~~Water Quality Resources~~ when the application is assigned a permit number in the Division's Basinwide Information Management System.
- (5) Development activities for which only a minor modification of a State Stormwater Permit is required shall be regulated by the provisions and requirements of 15A NCAC 02H .1005 that were effective at the time of the

original issuance of the State Stormwater Permit. For purposes of this subsection, a minor modification of a State Stormwater Permit is defined as a modification that does not increase the net area of built upon area within the project site or does not increase the overall size of the stormwater controls that have been previously approved for that development activity.

- (6) Municipalities designated as a National Pollutant Discharge Elimination System (NPDES) Phase 2 municipality located within the 20 Coastal Counties until such time as the NPDES Phase 2 Stormwater Permit expires and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater Permits for municipalities located within the 20 Coastal Counties, the Department shall review the permits to determine whether the permits should be amended to include the provisions of this section.

....."

**SECTION 57.(bb)** S.L. 2009-322 reads as rewritten:

"**SECTION 1.(a)** The Department of Environment and Natural Resources shall establish standard stormwater control best management practices and standard process water treatment processes or equivalent performance standards for composting operations that are required to be permitted by the Division of ~~Water Quality Resources~~ in the Department and the Division of Waste Management in the Department. These practices, processes, and standards shall be developed for the purpose of protecting water quality by controlling and containing stormwater that is associated with composting operations, by reducing the pollutant levels of process water from composting operations, and by reducing the opportunities for generation of such waters.

"**SECTION 1.(b)** The Division of ~~Water Quality Resources~~ shall clarify that stormwater is water that does not contact anything considered a feedstock, intermediate product, or final product of composting operations. The Division of ~~Water Quality Resources~~ shall clarify that wastewater is leachate and water that contacts feedstocks, intermediate products, or final product, of composting operations. The clarifications shall incorporate available scientifically valid information obtained from sampling and analyses of North Carolina composting facilities and from valid representative data from other states. In addition, the Division of ~~Water Quality Resources~~ shall establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required.

"**SECTION 1.(c)** The Department shall establish revised water quality permitting procedures for the composting industry. The revised permitting procedures shall identify the various circumstances that determine which water quality permit is required for various composting activities. The Department shall determine whether selected low-risk subsets of the composting industry may be suitable for expedited or reduced water quality permitting procedures. The determination shall include consideration of the economic impact of regulatory decisions.

"**SECTION 1.(d)** In developing the practices, processes, and standards and the revised water quality permitting procedures required by this section, the Department shall review practices, processes, and standards and permitting procedures adopted by other states and similar federal programs.

"**SECTION 1.(e)** The Department shall form a Compost Operation Stakeholder Advisory Group composed of representatives from the North Carolina Chapter of the United States Composting Council, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina State Agricultural Extension Service, the North Carolina Chapter of the American Water Works Association-Water Environment Federation, the North Carolina Pumper Group, the North Carolina Chapter of the Solid Waste Association of North America, the North Carolina Septic Tank Association, and any individual or group commenting to the Department on issues related to water quality at composting operations. The Compost Operation Stakeholder Advisory Group shall be convened periodically to provide input and assistance to the Department.

"**SECTION 1.(f)** The practices, processes, and standards and the revised permitting procedures shall address the site size of an operation, the nature of the feedstocks composted, the type of compost production method employed, the quantity and water quality of the stormwater or process water associated with composting facilities, the water quality of the receiving waters, as well as operation and maintenance requirements for the resulting standard stormwater control best management practices and standard process water treatment processes.

**"SECTION 2.** Not later than December 31, 2009, the Department shall report to the Environmental Review Commission on the progress of the implementation of the provisions of this act and any recommendations from the Compost Operation Stakeholder Advisory Group and other commenters. The Department shall periodically make other progress reports as the Commission may subsequently direct.

**"SECTION 3.(a)** For the period of time between the effective date of this act and phase-in provided by Section 3(d) of this act, permits for composting facilities shall be handled as follows:

- (1) The Division of Water ~~Quality-Resources~~ shall issue interim water quality permit extensions to all composting facilities applying for a water quality permit renewal until the revised final water quality permitting procedures are phased in, as provided in Section 3(d) of this act. The issuance of interim water quality permit extensions shall be contingent upon no significant changes to the existing quantities, feedstocks, and composting methods permitted by the Division of Waste Management. For any facility found to be causing or contributing to a violation of water quality standards, the Division of Water ~~Quality-Resources~~ may subsequently determine that the facility is ineligible for continued coverage under an interim water quality permit extension.
- (2) For facilities renewing permits issued by the Division of Waste Management prior to the phase-in provided in Section 3(d) of this act, but operating without the appropriate water quality permits, the Division of Water ~~Quality-Resources~~ will work with those facilities on a case-by-case basis to establish appropriate permit coverage.
- (3) New water quality permit applications filed after July 1, 2009, shall be handled on a case-by-case basis.

**"SECTION 3.(b)** Not later than January 1, 2010, the Department shall request comments and recommendations from the Compost Operation Stakeholder Advisory Group as to standard stormwater control best management practices, standard process water treatment processes, and performance standards and the elements of the revised water quality permitting procedures.

**"SECTION 3.(c)** Not later than January 1, 2011, the Department shall establish standard stormwater control best management practices and standard process water treatment processes or performance standards, including standard methods for the reduction in volume for both of these waters.

**"SECTION 3.(d)** Not later than January 1, 2011, the Department shall begin the phase-in of the revised water quality permitting procedures for the composting industry. Complete phase in of the revised water quality permitting procedures shall be accomplished not later than October 1, 2012.

**"SECTION 3.(e)** Water quality permits for the composting industry shall include a reopener clause that may be used to revise permit conditions to reflect the results of the stakeholder process.

**"SECTION 4.** This act is effective when it becomes law."

**SECTION 57.(cc)** Section 4(b) of S.L. 2010-180 reads as rewritten:

**"SECTION 4.(b)** In implementing the Surface Water Identification Training and Certification Program established by G.S. 143-214.25A, as enacted by Section 4(a) of this act, the Division of Water ~~Quality-Resources~~ of the Department of Environment and Natural Resources shall give priority to training and certifying the most highly qualified and experienced personnel in each agency. The Division of Water ~~Quality-Resources~~ shall evaluate the effectiveness of the Surface Water Identification Training and Certification Program and shall submit an annual report of its findings and recommendations, if any, to the Environmental Review Commission on or before October 1 of each year. The Division of Water ~~Quality-Resources~~ shall submit the first report required by this section on or before October 1, 2011."

**SECTION 57.(dd)** Section 4 of S.L. 2005-190, as amended by Section 31 of S.L. 2006-59 and Section 12 of S.L. 2010-180, reads as rewritten:

**"SECTION 4. Other drinking water supply reservoirs.** – The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any impaired drinking water supply reservoir for which the Division of Water ~~Quality-Resources~~ of the Department of Environment and Natural Resources

has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April of each year beginning 1 April 2006."

**SECTION 57.(ee)** Section 13.4(b) of S.L. 2011-145 reads as rewritten:

**"SECTION 13.4.(b)** During the 2011-2012 fiscal year and the 2012-2013 fiscal year, the Groundwater Investigation Unit of the Division of Water ~~Quality Resources~~ of the Department of Environment and Natural Resources shall bid to contract to perform well drilling services for any division within the Department of Environment and Natural Resources that needs to have wells drilled to monitor groundwater, as part of remediating a contaminated site, or as part of any other division or program responsibility, except for a particular instance when this would be impracticable. The provisions of Article 3 of Chapter 143 of the General Statutes apply to any contract entered into under this section."

**SECTION 57.(ff)** Section 21 of Session Law 2011-394 reads as rewritten:

**"SECTION 21.** In order to ensure the ongoing delivery of services by the nonpoint source pollution control programs of the Division of Forest Resources and the Division of Soil and Water Conservation, the Division of Water ~~Quality Resources~~ in the Department of Environment and Natural Resources shall transfer Clean Water Act (CWA) Section 319 Nonpoint Source Management Program Base Grant funds to the Division of Forest Resources and Division of Soil and Water Conservation, where consistent with the federal grant program requirements, in an amount that is no less than the average annual amount of funding received by each of those two Divisions over the two most-recent fiscal bienniums. In the event that the level of Section 319 base grant funds received by the Department of Environment and Natural Resources by the United States Environmental Protection Agency is increased or decreased in any funding cycle, the level of funding received by the Division of Forest Resources and the Division of Soil and Water Conservation shall be adjusted proportionally. Section 319 Nonpoint Source Management Program Competitive Grant funds shall consider water quality benefit and be distributed in a fair and equitable manner based on the grant requirements and the benefit. The Division of Water ~~Quality Resources~~ will establish a Workgroup of Nonpoint Source Agencies, including the Division of Forest Resources and the Division of Soil and Water Conservation, which will consider the competitive grant project proposals. The Workgroup will be given full input to the project funding decisions."

**SECTION 57.(gg)** G.S. 143-215.10F, as amended by S.L. 2013-131, reads as rewritten:

**"§ 143-215.10F. Inspections.**

(a) Except as provided in subsection (b) of this section, the Division shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the 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.

(b) As an alternative to the inspection program set forth in subsection (a) of this section, the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the 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 alternative inspection program shall be located in up to four counties selected using the criteria set forth in Section 15.4(a) of S.L. 1997-443, as amended, as it existed prior to its expiration. The Department of Agriculture and Consumer Services shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the counties are used for quick response to complaints and reported problems previously referred only to the Division of Water ~~Quality Resources~~."

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,  
ENVIRONMENTAL REVIEW COMMISSION, AND OTHERS TO STUDY REVIEW  
OF ENGINEERING WORK**

**SECTION 58.(a)** The Department of Environment and Natural Resources, in conjunction with the Departments of Transportation and Health and Human Services, and local governments operating delegated permitting programs on behalf of the departments, shall study

their internal processes for review of applications and plans submitted for approval. In particular, the departments, and local governments as applicable, shall examine: (i) standard processes for each environmental permit program with respect to evaluation of applications and plans submitted for approval, including the role professional engineers play in each permit program in terms of direct review of applications or plans, or supervisory responsibilities for review of applications and plans by other staff; (ii) mechanisms in place to ensure that staff who are not professional engineers are not engaged in the unauthorized practice of engineering; (iii) the standard scope of review within each permit program, including whether staff are reviewing applications or plans solely on the basis of the application or plan's ability to satisfy the requirements of the statute, rule, standard, or criterion against which the application or plan is being evaluated, or whether staff are requiring revisions that exceed statutory or rulemaking requirements when evaluating such permits or plans; (iv) opportunities to eliminate unnecessary or superfluous revisions that may have resulted in the past from review processes that exceeded requirements under law, and opportunities to otherwise streamline and improve the review process for applications and plans submitted for approval.

**SECTION 58.(b)** The Department of Environment and Natural Resources, in conjunction with the Departments of Transportation and Health and Human Services, and local governments operating delegated permitting programs on behalf of the departments, shall report their findings and recommendations to the Environmental Review Commission no later than January 1, 2014.

**SECTION 58.(c)** The Environmental Review Commission shall study the matter, with the assistance of the departments, applicable local governments, the North Carolina State Board of Examiners for Engineers and Surveyors, and the Professional Engineers of North Carolina, and report its findings and recommendations on the matter, including any legislative proposals, to the 2014 General Assembly upon its convening.

## **PART VI. SOLID WASTE REFORM PROVISIONS**

### **MODIFICATION TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES' AUTHORITY TO ISSUE PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES**

**SECTION 59.(a)** G.S. 130A-294 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:

- ...
- (4) ...
  - c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:
    - ...
    - 9. The cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964. This subdivision shall apply only to the extent required by federal law.

...."

### **MODIFICATIONS TO CERTAIN REQUIREMENTS GOVERNING SANITARY LANDFILLS INCLUDING: ENVIRONMENTAL IMPACT STUDIES, APPLICABLE BUFFERS, CLEANING AND INSPECTION OF LEACHATE COLLECTION LINES, ALTERNATIVE DAILY COVER, AND REQUIRED STUDIES FOR CERTAIN LANDFILL OWNERS AND OPERATORS**

**SECTION 59.1** G.S. 130A-295.6 reads as rewritten:

**"§ 130A-295.6. Additional requirements for sanitary landfills.**

(a) The applicant for a proposed sanitary landfill shall contract with a qualified third party, approved by the Department, Department shall to conduct a study of the environmental

impacts of any proposed sanitary ~~landfill~~ landfill, in conjunction with its application for a new permit as defined in sub-subdivisions a. through d. of subdivision (1) of subsection (b) of G.S. 130A-295.8. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. If an environmental impact statement is required, the Department shall publish notice of the draft environmental impact statement and shall hold a public hearing in the county where the landfill will be located no sooner than 30 days following the public notice. The Department shall consider the study of environmental impacts and any mitigation measures proposed by the applicant in deciding whether to issue or deny a permit. An applicant for a permit for a sanitary landfill shall pay all costs incurred by the Department to comply with the public notice and public hearing requirements of this subsection.~~this subsection including the costs of any special studies that may be required.~~

...  
(d) The Department shall not issue a permit to construct any disposal unit of a sanitary landfill if, at the earlier of (i) the acquisition by the applicant or permit holder of the land or of an option to purchase the land on which the waste disposal unit will be located, (ii) the application by the applicant or permit holder for a franchise agreement, or (iii) at the time of the application for a permit, any portion of the proposed waste disposal unit would be located within:

- (1) Five miles of the outermost boundary of a National Wildlife Refuge.
- (2) One mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306, prior to July 1, 2013, except as provided in subdivision (2a) of this subsection.
- (2a) Five hundred feet of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306, prior to July 1, 2013, when all of the following conditions apply:
  - a. The waste disposal unit will only be permitted to accept construction and demolition debris waste.
  - b. The disposal unit is located within the primary corporate limits of a municipality located in a county with a population of less than 15,000.
  - c. All portions of the gameland within one mile of the disposal unit are separated from the disposal unit by a primary highway designated by the Federal Highway Administration as a U.S. Highway.
- (3) Two miles of the outermost boundary of a component of the State Parks System.

...  
(h) The following requirements apply to any sanitary landfill for which a liner is required:

- (1) A geomembrane base liner system shall be tested for leaks and damage by methods approved by the Department that ensure that the entire liner is evaluated.
- (2) A leachate collection system shall be designed to return the head of the liner to 30 centimeters or less within 72 hours. The design shall be based on the precipitation that would fall on an empty cell of the sanitary landfill as a result of a 25-year-24-hour storm event. The leachate collection system shall maintain a head of less than 30 centimeters at all times during leachate recirculation. The Department may require the operator to monitor the head of the liner to demonstrate that the head is being maintained in accordance with this subdivision and any applicable rules.
- (3) All leachate collection lines shall be designed and constructed to permanently allow cleaning and remote camera inspection. Remote camera inspections of the leachate collection lines shall occur upon completion of the construction and at least once every five years. Cleaning of leachate collection lines found necessary for proper functioning and to address buildup of leachate over the liner shall occur. ~~All leachate collection lines shall be cleaned at least once a year, except that the Department may allow leachate collection lines to be cleaned once every two years if: (i) the facility~~

~~has continuous flow monitoring; and (ii) the permit holder demonstrates to the Department that the leachate collection lines are clear and functional based on at least three consecutive annual cleanings. Remote camera inspections of the leachate collection lines shall occur upon completion of construction, at least once every five years thereafter, and following the clearing of blockages.~~

- (4) Any pipes used to transmit leachate shall provide dual containment outside of the disposal unit. The bottom liner of a sanitary landfill shall be constructed without pipe penetrations.

(h1) With respect to requirements for daily cover at sanitary landfills, once the Department has approved use of an alternative method of daily cover for use at any sanitary landfill, that alternative method of daily cover shall be approved for use at all sanitary landfills located within the State.

(h2) Studies and research and development pertaining to alternative disposal techniques and waste-to-energy matters shall be conducted by certain sanitary landfills as follows:

- (1) The owner or operator of any sanitary landfill permitted to receive more than 240,000 tons of waste per year shall research the development of alternative disposal technologies. In addition, the owner or operator shall allow access to nonproprietary information and provide site resources for individual research and development projects related to alternative disposal techniques for the purpose of studies that may be conducted by local community or State colleges and universities or other third-party developers or consultants. The owner or operator shall report on research and development activities conducted pursuant to this subdivision, and any results of these activities, to the Department annually on or before July 1.

- (2) The owner or operator of any sanitary landfill permitted to receive more than 240,000 tons of waste per year shall perform a feasibility study of landfill gas-to-energy, or other waste-to-energy technology, to determine opportunities for production of renewable energy from landfills in order to promote economic development and job creation in the State. The owner or operator shall initiate the study when sufficient waste is in place at the landfill to produce gas, as determined by the United States Environmental Protection Agency's Landfill Gas Emissions Model (LandGEM), and may consult and coordinate with other entities to facilitate conduct of the study, including local and State government agencies, economic development organizations, consultants, and third-party developers. The study shall specifically examine opportunities for returning a portion of the benefits derived from energy produced from the landfill to the jurisdiction within which the landfill is located in the form of direct supply of energy to the local government and its citizens, or through revenue sharing with the local government from sale of the energy, with revenues owing to the local government credited to a fund specifically designated for economic development within the jurisdiction. The owner or operator shall report on its activities associated with the study, and any results of the study, to the Department annually on or before July 1.

...."

**AMEND THE RULE GOVERNING COLLECTION AND TRANSPORT OF SOLID WASTE TO REQUIRE THAT CONTAINERS BE "LEAK-RESISTANT" RATHER THAN "LEAK-PROOF," AND AMEND A STATUTE THAT REQUIRES VEHICLES TO BE CONSTRUCTED AND LOADED TO PREVENT LEAKAGE**

**SECTION 59.2(a)** Definitions. – "Collection and Transport Rule" means 15A NCAC 13B .0105 (Collection and Transportation of Solid Waste) for purposes of this section and its implementation.

**SECTION 59.2(b)** Collection and Transport Rule. – Until the effective date of the revised permanent rule that the Commission for Public Health is required to adopt pursuant to Section 59.2(d) of this act, the Commission and the Department of Environment and Natural Resources shall implement the Collection and Transport Rule, as provided in Section 59.2(c) of this act.

**SECTION 59.2(c)** Implementation. – Notwithstanding any provision of the Collection and Transport Rule, the Commission shall not require vehicles or containers used for the collection and transportation of solid waste to be leak-proof; however, they may require that these containers be designed and maintained to be leak-resistant in accordance with industry standards.

**SECTION 59.2(d)** Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Collection and Transport Rule. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 59.2(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. The rule 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 59.2(e)** Effective Date. – Section 59.2(c) of this act expires when permanent rules to replace Section 59.2(c) of this act have become effective, as provided by Section 59.2(d) of this act.

**SECTION 59.2(f)** G.S. 20-116(g)(1) reads as rewritten:

"§ 20-116. **Size of vehicles and loads.**

- ...
- (g) (1) No vehicle shall be driven or moved on any highway unless the vehicle is constructed and loaded to prevent any of its load from falling, blowing, dropping, sifting, leaking, or otherwise escaping therefrom, and the vehicle shall not contain any holes, cracks, or openings through which any of its load may escape. However, sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled, dumped, or spread on a roadway in cleaning or maintaining the roadway. For purposes of this subsection, ~~load~~ the terms "load" and "leaking" ~~does do~~ not include water accumulated from precipitation."

**AMEND THE DEFINITION OF "LEACHATE" TO EXCLUDE LIQUID ADHERING TO TIRES OF VEHICLES LEAVING SANITARY LANDFILLS AND TRANSFER STATIONS**

**SECTION 59.3** G.S. 130A-290 is amended by adding a new subdivision to read:

"(16a) "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. The term "leachate" does not include liquid adhering to tires of vehicles leaving a sanitary landfill and transfer stations."

**AUTHORIZE: (1) CITIES AND COUNTIES THAT ACCEPT SOLID WASTE FROM OTHER LOCAL GOVERNMENTS TO LEVY A SURCHARGE ON FEES FOR USE OF THEIR DISPOSAL FACILITIES, AND (2) APPROPRIATIONS FROM A UTILITY OR PUBLIC SERVICE ENTERPRISE FUND USED FOR OPERATION OF A LANDFILL TO THE JURISDICTION'S GENERAL FUND IN CERTAIN CIRCUMSTANCES**

**SECTION 59.4(a)** G.S. 153A-292(b) reads as rewritten:

"(b) The board of county commissioners may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

The board of county commissioners may impose a fee for the use of a disposal facility provided by the county. ~~The~~ Except as provided in this subsection, the fee for use may not exceed the cost of operating the facility and may be imposed only on those who use the facility. The fee may exceed those costs if the county enters into a contract with another local government located within the State to accept the other local government's solid waste and the county by ordinance levies a surcharge on the fee. The fee authorized by this paragraph may only be used to cover the costs of operating the facility. The surcharge authorized by this paragraph may be used for any purpose for which the county may appropriate funds. A fee under this paragraph may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. A county may not impose a fee for the use of a disposal facility on a city located in the county or a contractor or resident of the city unless the fee is based on a schedule that applies uniformly throughout the county.

The board of county commissioners may impose a fee for the availability of a disposal facility provided by the county. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the county that benefits from the availability of the facility. A county may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the county. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the county disposal facility is not considered to benefit from a disposal facility provided by the county and is not subject to a fee imposed by the county for the availability of a disposal facility provided by the county. To the extent that the services provided by the county disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same county, the county may charge an availability fee to cover the costs of the additional services provided by the county disposal facility.

In determining the costs of providing and operating a disposal facility, a county may consider solid waste management costs incidental to a county's handling and disposal of solid waste at its disposal facility, including the costs of the methods of solid waste management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the county."

**SECTION 59.4.(b)** G.S. 159-13(b)(14) reads as rewritten:

"(b) The following directions and limitations shall bind the governing board in adopting the budget ordinance:

- ...
- (14) No appropriation may be made from a utility or public service enterprise fund to any other fund than the appropriate debt service fund unless the total of all other appropriations in the fund equal or exceed the amount that will be required during the fiscal year, as shown by the budget ordinance, to meet operating expenses, capital outlay, and debt service on outstanding utility or enterprise bonds or notes. A county may, upon a finding that a fund balance in a utility or public service enterprise fund used for operation of a landfill exceeds the requirements for funding the operation of that fund, including closure and post-closure expenditures, transfer excess funds accruing due to imposition of a surcharge imposed on another local government located within the State for use of the disposal facility, as authorized by G.S. 153A-292(b), to support the other services supported by the county's general fund."

**SECTION 59.4.(c)** G.S. 160A-314.1 reads as rewritten:

"§ 160A-314.1. **Availability fees for solid waste disposal facilities; collection of any solid waste fees.**

(a) A city may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

A city may impose a fee for the use of a disposal facility provided by the city. Except as provided in this subsection, the fee for use may not exceed the cost of operating the facility. The fee may exceed those costs if the city enters into a contract with another local government located within the State to accept the other local government's solid waste and the city by ordinance levies a surcharge on the fee. The fee authorized by this paragraph may only be used to cover the costs of operating the facility. The surcharge authorized by this paragraph may be used for any purpose for which the city may appropriate funds. A fee under this paragraph may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal.

(a1) In addition to a fee that a city may impose for collecting solid waste or for using a disposal facility, a city may impose a fee for the availability of a disposal facility provided by the city. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the city that benefits from the availability of the facility. A city may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private

contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the city. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the city disposal facility is not considered to benefit from a disposal facility provided by the city and is not subject to a fee imposed by the city for the availability of a disposal facility provided by the city. To the extent that the services provided by the city disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same city, the city may charge an availability fee to cover the costs of the additional services provided by the city disposal facility.

In determining the costs of providing and operating a disposal facility, a city may consider solid waste management costs incidental to a city's handling and disposal of solid waste at its disposal facility. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the city.

(b) A city may adopt an ordinance providing that any fee imposed under subsection (a) or under G.S. 160A-314 for collecting or disposing of solid waste may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee."

**SECTION 59.4(d)** G.S. 160A-314(a2) reads as rewritten:

"§ 160A-314. Authority to fix and enforce rates.

...  
(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons. A city may, upon a finding that a fund balance in a utility or public service enterprise fund used for operation of a landfill exceeds the requirements for funding the operation of that fund, including closure and post-closure expenditures, transfer excess funds accruing due to imposition of a surcharge imposed on another local government located within the State for use of the disposal facility, as authorized by G.S. 160A-314.1, to be used to support the other services supported by the city's general fund.

...."  
**SECTION 59.4.(e)** G.S. 130A-294(b1) is amended by adding a new subdivision to read:

"(2b) A local government may elect to include as part of a franchise agreement a surcharge on waste disposed of in its jurisdiction by other local governments located within the State. Funds collected by a local government pursuant to such a surcharge may be used to support any services supported by the local government's general fund"

**SECTION 59.4.(f)** This section becomes effective August 1, 2013, and Section 59.4(e) is applicable to franchise agreements executed on or after that date.

## **PART VII. INDUSTRIAL COMMISSION**

**SECTION 60.(a)** G.S. 97-78(b) reads as rewritten:

"(b) The Commission may appoint an administrator whose duties shall be prescribed by the Commission, ~~and who shall be subject to the State Personnel System.~~ Commission. The Commission may appoint an executive secretary whose duties shall be prescribed by the Commission, ~~and who shall be subject to the State Personnel System~~ and who, upon entering upon his duties, shall give bond in such sum as may be fixed by the Commission. The Commission may also employ such clerical or other assistance as it may deem necessary, and fix the compensation of its staff, except that the salaries of the administrator and the executive secretary shall be fixed by subsection (b1) of this section. The compensation of Commission staff shall be in keeping with the compensation paid to the persons employed to do similar work in other State departments."

**SECTION 60.(b)** G.S. 97-79(b) reads as rewritten:

"(b) The Commission may appoint deputies who shall have the same power as members of the Commission pursuant to G.S. 97-80 and the same power to take evidence, and enter

orders, opinions, and awards based thereon as is possessed by the members of the Commission. ~~The deputies shall be subject to the State Personnel System. Deputies appointed pursuant to this subsection shall not be considered hearing officers within the meaning of G.S. 126-5(d)(7).~~"

**SECTION 60.(c)** This act becomes effective July 1, 2015.

**PART VIII. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

**SECTION 61.(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 so declared to be unconstitutional or invalid.

**SECTION 61.(b)** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26<sup>th</sup> day of July, 2013.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 10:53 a.m. this 23<sup>rd</sup> day of August, 2013