

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**SESSION LAW 2011-394  
HOUSE BILL 119**

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) EXEMPT CERTAIN NEW RENEWABLE ENERGY FACILITIES FROM BEST AVAILABLE CONTROL TECHNOLOGY (BACT) REQUIREMENTS; (2) REDUCE CERTAIN OPEN BURNING SETBACK REQUIREMENTS AND PROVIDE THAT MINIMAL, UNINTENTIONAL NONCOMPLIANCE WITH AN OPEN BURNING SETBACK IS NOT A VIOLATION; (3) PROVIDE THAT DRAFT EROSION AND SEDIMENTATION CONTROL PLANS FOR THE CONSTRUCTION OF CERTAIN UTILITY LINES MAY BE SUBMITTED WITHOUT A LANDOWNER'S WRITTEN CONSENT; (4) CLARIFY THE PROHIBITION ON DISPOSAL IN LANDFILLS OR BY INCINERATION OF BEVERAGE CONTAINERS THAT ARE REQUIRED TO BE RECYCLED BY CERTAIN ABC PERMITTEES; (5) CLARIFY THE USE OF STATE FUNDS IN THE CONTEXT OF THE REMOVAL OF MERCURY-CONTAINING PRODUCTS FROM PUBLIC BUILDINGS; (6) DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP MODEL STORMWATER CAPTURE AND REUSE PRACTICES; (7) PROHIBIT THE DIVISION OF WATER QUALITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FROM REQUIRING A WATER QUALITY PERMIT FOR A TYPE I SOLID WASTE COMPOST FACILITY; (8) AMEND THE WATER-USE STANDARD FOR PUBLIC MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS TO REQUIRE THE INSTALLATION OF WEATHER-BASED IRRIGATION CONTROLLERS; (9) PROVIDE THAT NO PERMIT IS REQUIRED FOR THE CONSTRUCTION OR ALTERATION OF A SEWER SYSTEM OR TREATMENT WORKS THAT ALREADY HAS A DISCHARGE PERMIT; (10) EXEMPT SMALL DAMS AND AGRICULTURAL POND DAMS FROM THE DAM SAFETY ACT; (11) MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE'S UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES; (12) PROMOTE THE USE OF GRAY WATER; (13) CLARIFY THAT NUTRIENT OFFSET PAYMENTS SHALL REFLECT ACTUAL COSTS AS ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION; (14) DELAY IMPLEMENTATION OF CERTAIN JORDAN LAKE RULE REQUIREMENTS; (15) AUTHORIZE THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO INCORPORATE THE FEDERAL FOOD CODE; (16) ESTABLISH A VARIANCE PROCESS FOR CERTAIN WATER SUPPLY WELL SETBACK REQUIREMENTS; (17) GRANDFATHER CERTAIN DEVELOPMENT UNDER THE NEUSE AND TAR-PAM RIVER BASIN BUFFER REQUIREMENTS; (18) PROVIDE THAT A GINSENG EXPORT CERTIFICATE MAY BE OBTAINED FREE OF CHARGE; (19) PROVIDE FOR AN EARLY SUNSET OF THE METHANE CAPTURE PILOT PROGRAM; (20) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY STORMWATER MANAGEMENT REQUIREMENTS FOR AIRPORTS IN THE STATE; (21) DIRECT CERTAIN TRANSFERS OF FUNDS FOR NONPOINT SOURCE POLLUTION CONTROL PROGRAMS; (22) CONFORM THE STATUTORY DEFINITION OF "SOLID WASTE" TO FEDERAL LAW; AND (23) TO AMEND CERTAIN FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO HAZARDOUS WASTE FACILITIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 62-133.8(g) reads as rewritten:



"(g) Control of Emissions. – As used in this subsection, Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree a reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental, and economic impacts and other costs. A biomass combustion process at any new renewable energy facility that delivers electric power to an electric power supplier shall meet BACT. The Environmental Management Commission shall determine on a case-by-case basis the BACT for a facility that would not otherwise be required to comply with BACT pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The Environmental Management Commission may adopt rules to implement this subsection. In adopting rules, the Environmental Management Commission shall take into account cumulative and secondary impacts associated with the concentration of biomass facilities in close proximity to one another. In adopting rules the Environmental Management Commission shall provide for the manner in which a facility that would not otherwise be required to comply with BACT pursuant to the PSD emissions programs shall meet the BACT requirement. This subsection shall not apply to a facility that qualifies as a new renewable energy facility under sub-subdivision b. of subdivision (5) of subsection (a) of this section."

**SECTION 2.(a)** Definitions. – The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section and its implementation.

**SECTION 2.(b)** 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 2(d) 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 2(c) of this act.

**SECTION 2.(c)** Implementation. – Notwithstanding sub-subdivision (B) subdivision (2) of subsection (b) of 15A NCAC 02D .1903 (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 the location of the burning is 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. The regional office supervisor may grant exceptions to the setback requirements if either of the following conditions is met:

- (1) A signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning.
- (2) An air curtain burner that complies with 15A NCAC 02D .1904 (Air Curtain Burners), as provided in this section, is utilized at the open burning site.

Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it, the location of the burn, and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is occupied.

**SECTION 2.(d)** Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). 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 2(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 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 2.(e)** 15A NCAC 02D .1904 (Air Curtain Burners). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(g) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1904 (Air Curtain Burners) shall implement the rule, as provided in Section 2(f) of this act.

**SECTION 2.(f)** Implementation. – Notwithstanding subdivision (12) of subsection (b) of 15A NCAC 02D .1904 (Air Curtain Burners), the location of the air curtain burning shall be at least 300 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. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

**SECTION 2.(g)** Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1904 (Air Curtain Burners). 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 2(f) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 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 2.(h)** G.S. 113-60.29 reads as rewritten:

**"§ 113-60.29. Penalties.**

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. It is not a violation of this Article or any permit issued under the authority of this Article if a person unintentionally fails to comply with a setback requirement so long as the difference between the required setback and the actual setback is no more than five percent (5%) of the required setback. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G.S. 113-60.28."

**SECTION 3.** G.S. 113A-54.1 reads as rewritten:

**"§ 113A-54.1. Approval of erosion control plans.**

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. If Except as provided in subsection (a1) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of

the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(a1) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

...."

**SECTION 4.** G.S. 130A-309.10 reads as rewritten:

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....

- (f) No person shall knowingly dispose of the following solid wastes in landfills:
- (1) Repealed by Session Laws 1991, c. 375, s. 1.
  - (2) Used oil.
  - (3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
  - (4) White goods.
  - (5) Antifreeze (ethylene glycol).
  - (6) Aluminum cans.
  - (7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
  - (8) Lead-acid batteries, as provided in G.S. 130A-309.70.
  - ~~(9) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
  - (10) Motor vehicle oil filters.
  - (11) Recyclable rigid plastic containers that are required to be labeled as provided in subsection (e) of this section, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor oil or pesticides.
  - (12) Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.
  - (13) Oyster shells.
  - (14) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.
  - (15) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.
- (f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:
- (1) Antifreeze (ethylene glycol) used solely in motor vehicles.
  - (2) Aluminum cans.
  - (3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
  - (4) White goods.
  - (5) Lead-acid batteries, as provided in G.S. 130A-309.70.
  - ~~(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
  - (7) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.
  - (8) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f2) ~~Subsection~~ Subsections (f1) and (f3) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(f3) Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in landfills or by incineration in an incinerator for which a permit is required under this Article.

- (g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
- (h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill shall not be construed as a violation of ~~subsection~~ subsection (f) or (f3) of this section.
- (i) The accidental or occasional disposal of small amounts of prohibited solid waste by incineration shall not be construed as a violation of ~~subsection~~ subsection (f1) or (f3) of this section if the Department has approved a plan for the incinerator as provided in subsection (j) of this section or if the incinerator is exempt from subsection (j) of this section.
- (j) The Department may issue a permit pursuant to this Article for an incinerator that is subject to subsection (f1) of this section only if the applicant for the permit has a plan approved by the Department pursuant to this subsection. The applicant shall file the plan at the time of the application for the permit. The Department shall approve a plan only if it complies with the requirements of this subsection. The plan shall provide for the implementation of a program to prevent the incineration of the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. The program shall include the random visual inspection prior to incineration of at least ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the retention of the records of the random visual inspections and the training of personnel to recognize the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. If a random visual inspection discovers solid waste that may not be incinerated pursuant to ~~subsection~~ subsections (f1) and (f3) of this section, the program shall provide that the operator of the incinerator shall dispose of the solid waste in accordance with applicable federal and State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes only of medical waste.
- (k) A county or city may petition the Department for a waiver from the prohibition on disposal of a material described in subdivisions (9), (10), (11) and (12) of subsection (f) of this section and subsection (f3) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship.
- (l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the landfill.
- (m) **(Effective July 1, 2011)** No person shall knowingly dispose of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris waste that is unlined or in any other landfill that is unlined."

**SECTION 5.** G.S. 130A-310.60 reads as rewritten:

**"§ 130A-310.60. (Effective July 1, 2011) Recycling required by public agencies.**

(a) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, public schools, and political subdivisions using State funds for the construction or operation of public buildings shall establish a program in cooperation with the Department of Environment and Natural Resources and the Department of Administration for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury generated in public buildings owned by each respective entity. The program shall include procedures for convenient collection, safe storage, and proper recycling of spent fluorescent lights and thermostats that contain mercury and contractual or other arrangements with buyers of the recyclable materials.

(b) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, the Department of Public Instruction on behalf of the public schools, and political subdivisions shall submit a report on or before December 1, 2011, that documents the entity's compliance with the requirements of subsection (a) of this section to the Department of Environment and Natural Resources and the Department of Administration. The Departments shall compile the information submitted and jointly shall submit a report to the Environmental Review Commission on or before January 15, 2012, concerning the activities required by subsection (a) of this section. The information provided shall also be included in the report required by G.S. 130A-309.06(c).

(c) For purposes of this section, a political subdivision is using State funds when it receives grant funding from the State for the construction or operation of a public building."

**SECTION 6.** G.S. 143-214.7 reads as rewritten:

**"§ 143-214.7. Stormwater runoff rules and programs.**

(a) Policy, Purpose and Intent. – The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

- (1) Classified shellfish waters.
- (2) Water supply watersheds.
- (3) Outstanding resource waters.
- (4) High quality waters.
- (5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(b1) The Commission shall develop model practices for incorporation of stormwater capture and reuse into stormwater management programs and shall make information on those model practices available to State agencies and local governments.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(c1) Any land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall be enforced by any owner of the land on which the best management practice or project is located, any adjacent property owners, any downstream property owners who would be injured by failure to enforce the land-use restriction, any local government having jurisdiction over any part of the land on which the best management practice or project is located, or the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action, without first having exhausted any available administrative remedies. A land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(d1) A retail merchant shall not use more than 400 square feet of impervious surface area within the portion of the merchant's premises that is designed to be used for vehicular parking for the display and sale of nursery stock, as that term is defined by the Board of Agriculture pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

- (1) Collects and treats stormwater on-site using a treatment system that is designed to remove at least eighty-five percent (85%) of total suspended solids. For purposes of this subdivision, a treatment system includes, but is not limited to, a filtration system or a detention system.
- (2) Collects and stores stormwater for reuse on-site for irrigation or other purposes.
- (3) Collects and discharges stormwater to a local or regional stormwater collection and treatment system.

(d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year."

**SECTION 7.** G.S. 143-214.7A(b) reads as rewritten:

"(b) The Division of Water Quality 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 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 shall establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required. The Division of Water Quality shall not require water quality permitting for any Type I solid waste compost facility, unless required to do so by federal law."

**SECTION 8.(a)** G.S. 143-135.36 is amended by adding a new subdivision to read:

"§ 143-135.36. **Definitions.**

As used in this section, the following definitions apply unless the context requires otherwise:

- (1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.
- (2) "Commission" means to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements.
- (3) "Department" means the Department of Administration.
- (4) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.
- (5) "Major facility construction project" means a project to construct a building larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code adopted under Article 9 of Chapter 143 of the General Statutes. "Major facility construction project" does not include a project to construct a transmitter building or a pumping station.
- (6) "Major facility renovation project" means a project to renovate a building when the cost of the project is greater than fifty percent (50%) of the insurance value of the building prior to the renovation and the renovated portion of the building is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code. "Major facility renovation project" does not include a project to renovate a transmitter building or a pumping station. "Major facility renovation project" does not include a project to renovate a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes.

- (7) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education.
- (8) "Weather-based irrigation controller" means an irrigation control device that utilizes local weather and landscape conditions to tailor irrigation system schedules to irrigation needs specific to site conditions."

**SECTION 8.(b)** G.S. 143-135.37 reads as rewritten:

**"§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.**

(a) Program Established. – The Sustainable Energy-Efficient Buildings Program is established within the Department to be administered by the Department. This program applies to any major facility construction or renovation project of a public agency that is funded in whole or in part from an appropriation in the State capital budget or through a financing contract as defined in G.S. 142-82.

(b) Energy-Efficiency Standard. – For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least thirty percent (30%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least twenty percent (20%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Indoor Potable Water Use Standard. – For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code.

(c1) Outdoor Potable Water Use Standard. – For every major facility construction project of a public agency, the water system shall be designed and constructed so that the calculated sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for the same building as calculated using the performance requirements related to plumbing under the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be used for irrigation systems for major facility construction projects. For every major facility renovation project of a public agency, the Department shall determine on a project-by-project basis what reduced level of outdoor potable water use or harvested stormwater use, if any, is a feasible requirement for the ~~project, project, but the~~ The Department shall not require a greater reduction than is required under this subsection for a major facility construction project. To reduce the potable outdoor water as required under this subsection, weather-based irrigation controllers, landscape materials that are water use efficient-efficient, and irrigation strategies that include reuse and recycling of the water may be used."

**SECTION 9.** G.S. 143-215.1 reads as rewritten:

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

(a) Activities for Which Permits Required. – ~~No-Except as provided in subsection (a5) of this section, no person shall do any of the following things or carry out any of the following activities unless that person has received a permit from the Commission and has complied with all conditions set forth in the permit:~~

- (1) Make any outlets into the waters of the State.
- (2) Construct or operate any sewer system, treatment works, or disposal system within the State.
- (3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State.
- (4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent that would result in any violation of the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters to the extent of violating any applicable standard.



- (5) Change the nature of the waste discharged through any disposal system in any way that would exceed the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters in relation to any applicable standards.
- (6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article.
- (7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in that facility.
- (8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facility.
- (9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto.
- (10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.
- (11) Cause or permit discharges regulated under G.S. 143-214.7 that result in water pollution.
- (12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article.

(a1) In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

(a2) No permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency that administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that any outlet for the disposal of waste is, or would be, sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

(a3) If the Commission denies an application for a permit, the Commission shall state in writing the reason for the denial and shall also state the Commission's estimate of the changes in the applicant's proposed activities or plans that would be required in order that the applicant may obtain a permit.

(a4) The Department shall regulate wastewater systems under rules adopted by the Commission for Public Health pursuant to Article 11 of Chapter 130A of the General Statutes except as otherwise provided in this subsection. No permit shall be required under this section for a wastewater system regulated under Article 11 of Chapter 130A of the General Statutes. The following wastewater systems shall be regulated by the Department under rules adopted by the Commission:

- (1) Wastewater systems designed to discharge effluent to the land surface or surface waters.
- (2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.
- (3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(a5) No permit shall be required to enter into a contract for the construction, installation, or alteration of any treatment works or disposal system or to construct, install, or alter any treatment works or disposal system within the State when the system's or work's principle function is to conduct, treat, equalize, neutralize, stabilize, recycle, or dispose of industrial waste or sewage from an industrial facility and the discharge of the industrial waste or sewage is authorized under a permit issued for the discharge of the industrial waste or sewage into the waters of the State. Notwithstanding the above, the permit issued for the discharge may be modified if required by federal regulation.

...."

**SECTION 10.(a)** G.S. 143-215.25A(a) reads as rewritten:

"(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

- (1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.
- (2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.
- (3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.
- (4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.
- (5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.
- (6) That is less than ~~15-25~~ feet in height or that has an impoundment capacity of less than ~~10-50~~ acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.
- (7) Constructed for the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer under Chapter 89C of the General Statutes designed or approved plans for the dam, supervised its construction, and registered the dam with the Division of Land Resources of the Department. This exemption shall not apply to dams that are determined to be high-hazard by the Department."

**SECTION 10.(b)** The exemption modified in subdivision (6) of G.S. 143-215.25A(a) and the exemption established in subdivision (7) of G.S. 143-215.25A(a), as amended by Section 10(a) of this act, shall apply retroactively to any dam that is subject to any enforcement action that has not been resolved as of June 1, 2011.

**SECTION 10.(c)** If Sections 10(a) and 10(b) of this act become law, and Senate Bill 492, 2011 Regular Session, becomes law, then Section 4 of Senate Bill 492 is repealed.

**SECTION 11.1.** G.S. 143-215.94B(b) reads as rewritten:

"(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars (\$1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

- (8) The costs of a site investigation required by the Department for the purpose of determining whether a release from a tank system has occurred, whether or not the investigation confirms that a release has occurred. This subdivision shall not be construed to allow reimbursement for costs of investigations that are part of routine leak detection procedures required by statute or rule."

**SECTION 11.2.** G.S. 143-215.94B(b1) reads as rewritten:

"(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate

maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

- (1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars (\$75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.
- (2) The multiple discharge amount shall be the lesser of:
  - a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or
  - b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1½).
- (3) If an owner or operator elects to cleanup a separate discharge or release for which the owner or operator is not responsible, the responsible party for the other discharge cannot be identified, and the discharges are commingled, the owner or operator shall only be responsible for those costs applicable to the discharge for which the owner or operator is actually the responsible party."

**SECTION 11.3.(a)** G.S. 143-215.94B is amended by adding a new subsection to

read:

"(i) During each fiscal year, the Department shall use up to one million dollars (\$1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. Any portion of the \$1,000,000 designated each fiscal year, which is not used during that fiscal year to address situations of severe financial hardship, shall revert to the Commercial Fund for the uses otherwise provided by this section. The Commission shall adopt rules to define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and establish a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The Commission shall create a subcommittee of the Commission's Committee on Civil Penalty Remissions as established by G.S. 143B-282.1 to render determinations of eligibility under this subsection."

**SECTION 11.3.(b)** G.S. 143-215.94D is amended by adding a new subsection to

read:

"(h) During each fiscal year, the Department shall use up to one hundred thousand (\$100,000) of the funds in the Noncommercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. Any portion of the \$100,000 designated each fiscal year, which is not used during that fiscal year to address situations of severe financial hardship, shall revert to the Noncommercial Fund for the uses otherwise provided by this section. The Commission shall adopt rules to define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and establish a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The Commission shall create a subcommittee of the Commission's Committee on Civil Penalty Remissions as established by G.S. 143B-282.1 to render determinations of eligibility under this subsection."

**SECTION 11.3.(c)** G.S. 143-215.94C reads as rewritten:

**"§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.**

...  
(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on

or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. ~~The Except as provided in this subsection, the annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. The fee for all commercial underground storage tanks located at the same facility shall be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.~~

...."

**SECTION 11.4.** G.S. 143-215.94T reads as rewritten:

**"§ 143-215.94T. Adoption and implementation of regulatory program.**

...  
(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date. This section shall not be construed to limit the right of an owner or operator to repair any existing component of an underground storage tank system. If an existing underground storage tank is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced piping.

(d) The Department shall allow non-tank metallic components that are unprotected from corrosion, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these components if the component does not have visible corrosion and passes a tightness test."

**SECTION 11.5.** G.S. 143-215.94V(b) reads as rewritten:

"(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk."

**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, shall not be required to provide secondary containment until January 1, 2020.

**SECTION 11.6.(b)** 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)), the Commission shall establish a process for the grant of variances from the setbacks required for UST systems from certain public water supply wells, particularly those that serve only a single facility which are not community water systems, if the Commission finds facts to demonstrate that such variance will not endanger human health and welfare or groundwater.

**SECTION 11.6.(c)** No later than January 1, 2014, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 11.6(a) and Section 11.6(b) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 11.6(a) and Section 11.6(b) of this act.

**SECTION 11.7.(a)** Notwithstanding subsection (a) of 15A NCAC 02N .0903 (Underground Storage Tanks: Tanks), from the effective date of this act the Department of Environment and Natural Resources shall not prohibit the use of tanks that are constructed of steel and cathodically protected as provided in 40 Code of Federal Regulations § 280.20(a)(2) (July 1, 2010 Edition) in order to meet the external corrosion protection standards of that rule.

**SECTION 11.7.(b)** No later than January 1, 2014, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 11.7(a) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 11.7(a) of this act.

**SECTION 11.8.** Sections 11.1 through 11.8 are effective when they become law and apply to discharges or releases reported on or after that date, except that Section 11.2 applies to discharges or releases reported on or after January 1, 2009.

**SECTION 12.(a)** G.S. 143-350 reads as rewritten:

"§ 143-350. **Definitions.**

As used in this Article:

- ...
- (3a) "Gray water" means water that is discharged as waste from bathtubs, showers, wash basins, and clothes washers. "Gray water" does not include water that is discharged from toilets or kitchen sinks.
- (3b) "Gray water system" means a water reuse system that is contained within a single family residence or multiunit residential or commercial building that filters gray water or captured rain water and reuses it for nonpotable purposes such as toilet flushing and irrigation.
- ...."

**SECTION 12.(b)** G.S. 143-355.5 reads as rewritten:

"§ 143-355.5. **Water reuse; policy; rule making.**

(a) **Water Reuse Policy.** – It is the public policy of the State that the reuse of treated wastewater or reclaimed water and the use of gray water or captured rain water is critical to meeting the existing and future water supply needs of the State. The General Assembly finds that reclaimed water systems permitted and operated under G.S. 143-215.1(d2) in an approved wastewater reuse program can provide water for many beneficial purposes in a way that is both environmentally acceptable and protective of public health. This finding includes and applies to conjunctive facilities that require the relocation of a discharge from one receiving stream to another under all of the following conditions:

- (1) The relocation is necessary to create an approved comprehensive wastewater reuse program.
- (2) The reuse program provides significant reuse benefits.
- (3) The relocated discharge will comply with all applicable water quality standards; will not result in degradation of water quality in the receiving waters; will not contribute to water quality impairment in the receiving watershed; and will result in net benefits to water quality, such as the elimination of a wastewater discharge in a nutrient sensitive river basin.

(b) **Water Reuse Rule Making.** – The Commission shall encourage and promote safe and beneficial reuse of treated wastewater as an alternative to surface water discharge. The Commission shall adopt rules to:

- (1) Identify acceptable uses of reclaimed water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.
- (2) Facilitate the permitting of reclaimed water systems.
- (3) Establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water.

(c) Gray Water Rule Making. – The Commission shall encourage and promote the safe and beneficial use of gray water. The Commission shall adopt rules to:

- (1) Identify acceptable uses of gray water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.
- (2) Facilitate the permitting of gray water systems.
- (3) Establish standards, in coordination with the Commission for Public Health, for gray water systems that protect public health and safety and the environment and reduce the use of potable water within individual structures.

(d) The Department shall develop policies and procedures to promote the voluntary adoption and installation of gray water systems."

**SECTION 12.(c)** G.S. 130A-335(b) reads as rewritten:

"(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

- (1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.
- (2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.
- (3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.
- (4) Gray water systems as defined in G.S. 143-350."

**SECTION 12.(d)** Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

**"§ 153A-145. Limitations on regulating cisterns and rain barrels.**

No county ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collect water for irrigation purposes. A county may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance."

**SECTION 12.(e)** Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

**"§ 160A-202. Limitations on regulating cisterns and rain barrels.**

No city ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collect water for irrigation purposes. A city may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance."

**SECTION 13.** Section 5 of S.L. 2007-438, as amended by Section 3(b) of S.L. 2009-484 and Section 19 of S.L. 2010-180, reads as rewritten:

"**SECTION 5.** This act becomes effective 1 September 2007 and applies to all nutrient offset payments, including those set out in 15A NCAC 2B .0240, as adopted by the Environmental Management Commission on 12 January 2006. The fee schedule set out in Section 1 of this act expires ~~1 September 2011~~, when amendments to 15A NCAC 02B .0240 and .0274 become effective."

**SECTION 14.** Section 2(b) of S.L. 2009-216 reads as rewritten:

"**SECTION 2.(b)** Implementation. – Notwithstanding sub-subdivision (c) of subdivision (6) of Wastewater Discharge Rule 15A NCAC 02B .0270, each existing discharger with a permitted flow greater than or equal to 0.1 million gallons per day (MGD) shall limit its total nitrogen discharge to its active individual discharge allocation as defined or modified pursuant to Wastewater Discharge Rule 15A NCAC 02B .0270 no later than calendar year ~~2016~~2016, unless the discharger has received an authorization pursuant to G.S. 143-215.1 for construction, installation, or alteration of the treatment works for purposes of complying with the allocation

under Wastewater Discharge Rule 15A NCAC 02B .0270 by December 31, 2016, at which point the compliance date shall be no later than calendar year 2018."

**SECTION 15.(a)** Notwithstanding G.S. 150B-19, as amended by S.L. 2011-13, the Commission for Public Health may adopt rules to incorporate all or part of the United States Food and Drug Administration Food Code 2009 and to require that employees of establishments regulated under subsections (a) and (a2) of G.S. 130A-248 be certified in food protection in accordance with the United States Food and Drug Administration Food Code 2009.

**SECTION 15.(b)** G.S. 130A-248 is amended by adding a new subsection to read:

"(a5) The Department of Health and Human Services may grant a variance from rules adopted pursuant to this section in accordance with the United States Food and Drug Administration Food Code 2009 if the Department determines that the issuance of the variance will not result in a health hazard or nuisance condition."

**SECTION 16.1.** Variance from Setbacks for Public Water Supply Wells. –

(a) The Department of Environment and Natural Resources may grant a variance from the minimum horizontal separation distances for public water supply wells set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) upon finding that:

- (1) The well supplies water to a noncommunity water system as defined in G.S. 130A-313(10)(b) or supplies water to a business or institution, such as a school, that has become a noncommunity water system through an increase in the number of people served by the well.
- (2) It is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the applicable sub-subpart of 15A NCAC 18C .0203(2).
- (3) There is no reasonable alternative source of drinking water available to the public water supply system.
- (4) The granting of the variance will not result in an unreasonable risk to public health.

(b) A variance from the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) shall require that the noncommunity public water supply well meet the following requirements:

- (1) The well shall comply with the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) to the maximum extent practicable.
- (2) The well shall meet a minimum horizontal separation distance of 25 feet from a building, mobile home, or other permanent structure that is not used primarily to house animals.
- (3) The well shall meet a minimum horizontal separation distance of 100 feet from any animal house or feedlot and from cultivated areas to which chemicals are applied.
- (4) The well shall meet a minimum horizontal separation distance of 50 feet from surface water.
- (5) The well shall comply with all other requirements for public well water supplies set out in 15A NCAC 18C .0203.

**SECTION 16.2.** Rule Making. – The Commission for Public Health shall adopt rules that are substantively identical to the provisions of Section 16.1. The Commission may reorganize or renumber any of the rules to which this section applies at its discretion. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 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 16.3.** Effective Date. – Section 16.1 of this act expires when permanent rules to replace Section 16.1 have become effective as provided by Section 16.2 of this act.

**SECTION 17.(a)** Definitions. – The following definitions apply to this act and its implementation:

- (1) The definitions set out in G.S. 113A-103 and G.S. 143-212.
- (2) The definitions set out in the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule.
- (3) "Coastal wetlands" means marshland as defined in G.S. 113-229.

- (4) "Commission" means the Environmental Management Commission.
- (5) "Existing lot" means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to August 1, 2000.
- (6) "Neuse River Basin Riparian Buffer Rule" means 15A NCAC 02B .0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers), effective August 1, 2000.
- (7) "Tar-Pamlico River Basin Riparian Buffer Rule" means 15A NCAC 02B .0259 (Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers), effective August 1, 2000.

**SECTION 17.(b)** Neuse River Basin Riparian Buffer Rule and Tar-Pamlico River Basin Riparian Buffer Rule. – Until the effective date of the revised permanent rules that the Commission is required to adopt pursuant to Section 17.(d) of this act, the Commission and the Department shall implement the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule, as provided in Section 17.(c) of this act.

**SECTION 17.(c)** Implementation. – The riparian buffer requirements of the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule shall apply to development of an existing lot located adjacent to surface waters in the coastal area as provided in this section. Where application of the riparian buffer requirements would preclude construction of a single-family residence and necessary infrastructure, such as an on-site wastewater system, the single-family residence may encroach on the buffer if all of the following conditions are met:

- (1) The residence is set back the maximum feasible distance from the normal high-water level or normal water level, whichever is applicable, on the existing lot and designed to minimize encroachment into the riparian buffer.
- (2) The residence is set back a minimum of 30 feet landward of the normal high-water level or normal water level, whichever is applicable.
- (3) Stormwater generated by new impervious surface within the riparian buffer is treated and diffuse flow of stormwater is maintained through the buffer.
- (4) If the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer.

**SECTION 17.(d)** Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 17.(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. 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 17.(e)** The Department of Environment and Natural resources shall study the application and implementation of the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule. The Department shall specifically consider: (i) whether the rules might be amended or implemented in a different way to achieve the same level of water quality protection while reducing the impact to riparian property owners in the river basins; and (ii) exempting all single family residence lots platted prior to August 1, 2000. In conducting this study, the Department shall consult with representatives of the development community, the agricultural community, the forestry industry, the environmental community, local governments, property owners, and other interested parties. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

**SECTION 18.(a)** Definitions. – The definitions set out in G.S. 106-202.12 and 02 NCAC 48F .0305 (Collection and Sale of Ginseng Rule) apply to this section and its implementation.

**SECTION 18.(b)** Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. – Until the effective date of the revised permanent rule that the Board is required to adopt pursuant to Section 18(d) of this act, the Board and the Department shall implement Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, as provided in Section 18(c) of this act.



**SECTION 18.(c)** Implementation. – Notwithstanding subdivision (6) of subsection (d) of Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, there shall be no charge for an export certification.

**SECTION 18.(d)** Additional Rule-Making Authority. – The Board shall adopt a rule to replace Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. Notwithstanding G.S. 150B-19(4), the rule adopted by the Board pursuant to this section shall be substantively identical to the provisions of Section 18(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 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 19.** Section 6 of S.L. 2007-523 reads as rewritten:

"**SECTION 6.** Effective Dates. – Section 3 of this act becomes effective 1 July 2007. All other sections of this act become effective 1 September 2007. Section 4 of this act expires 1 September ~~2017,2011.~~"

**SECTION 20.** The Department of Environment and Natural Resources shall study the stormwater management requirements for airports in the State. The Department shall specifically consider whether the requirements might be amended or implemented in a different way to achieve the same level of water quality protection while reducing the cost and other regulatory burdens associated with compliance with the requirements. In conducting this study, the Department shall consult with representatives of the airports in the State. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

**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 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 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 22.** If House Bill 750, 2011 Regular Session, becomes law, then G.S. 130A-55(7), as amended by Section 2 of that act, reads as rewritten:

"§ **130A-55. Corporate powers.**

A sanitary district board shall be a body politic and corporate and may sue and be sued in matters relating to the sanitary district. Notwithstanding any limitation in the petition under G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary district board shall have the following powers:

- ...
- (7) To adopt rules necessary for the proper functioning of the district. However, these rules shall not conflict with rules adopted by the Commission for Public Health, Environmental Management Commission, or the local board of health having jurisdiction over the area. Further, such sanitary district board rules shall be no more restrictive than or conflict with requirements or ordinances of any county having jurisdiction over the area, and, if a conflict should arise, the requirements or ordinances of the county having jurisdiction over the area shall control.

...."

**SECTION 23.(a)** G.S. 130A-295.04 reads as rewritten:

**"§ 130A-295.04. Financial responsibility requirements for applicants for a permit and permit holders for hazardous waste facilities.**

(a) In addition to any other financial responsibility requirements for solid waste management facilities under this Part, the applicant for a permit or a permit holder for a hazardous waste facility shall establish financial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident at a facility, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b) To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a hazardous waste facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.

(c) The applicant for a permit or a permit holder for a hazardous waste facility, and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or indirect interest in the applicant, permit holder, or parent, shall be a guarantor of payment for closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences arising from the operation of the hazardous waste facility.

~~(d) In addition to any other financial assurance requirements for hazardous waste management facilities under this section, an applicant for a permit or a permit holder for a commercial hazardous waste facility shall establish financial assurance that will ensure that sufficient funds are available for corrective action and for off-site screening for potential migration of contaminants in the event of a release of hazardous waste or hazardous waste constituents into the environment in an amount approved by the Department. The applicant for a permit or a permit holder may not use a financial test or captive insurance to establish financial assurance under this subsection.~~

~~(e) The Department may require an applicant for a permit for a hazardous waste facility to provide cost estimates for facility closure, post-closure maintenance and monitoring, and any corrective action that the Department may require to the Department. The Department may require an applicant for a permit for a commercial hazardous waste facility to provide cost estimates for off-site screening for potential migration of contaminants in the event of a release of hazardous waste or hazardous waste constituents into the environment.~~

(f) Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department. Compliance with the financial assurance requirements set forth in Subpart H of Part 264 of 40 Code of Federal Regulations (July 1, 2010 edition) shall be sufficient to meet the requirements of this subsection.

(g) The Department may provide a copy of any filing that an applicant for a permit or a permit holder for a hazardous waste facility submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(h) In order to continue to hold a permit for a hazardous waste facility, a permit holder must maintain financial responsibility as required by this Part and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility.

(i) An applicant for a permit or a permit holder for a hazardous waste facility shall satisfy the Department that the applicant or permit holder has met the financial responsibility requirements of this Part before the Department is required to otherwise review the application.

(j) ~~The Commission may adopt rules regarding financial responsibility in order to implement this section."~~

**SECTION 23.(b)** The Commission shall adopt rules regarding financial responsibility in order to implement Section 23.(a) of this act. Such rules, however, shall not exceed or be more stringent than requirements for financial responsibility for applicants for a permit and permit holders for hazardous waste facilities provided by federal regulation or law.

**SECTION 24.** Except as otherwise provided, this act is effective when it becomes law. Section 8(b) of this act applies to every major facility construction project, as defined in G.S. 143-135.36, and every major facility renovation project, as defined in G.S. 143-135.36, of a public agency, as defined in G.S. 143-135.36, that has not entered the schematic design phase prior to the effective date of this act.

In the General Assembly read three times and ratified this the 18<sup>th</sup> day of June, 2011.

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

s/ Thom Tillis  
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 20<sup>th</sup> day of June, 2011 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 1<sup>st</sup> day of July, 2011.

s/ Karen Jenkins  
Enrolling Clerk