

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 94  
Committee Substitute Favorable 5/9/13  
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted  
6/26/13

Short Title: Amend Environmental Laws 2013.

(Public)

Sponsors:

Referred to:

February 13, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES  
3 LAWS TO (1) REPEAL 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY  
4 DIESEL VEHICLE REQUIREMENTS; (2) DIRECT THE DEPARTMENT OF  
5 ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE CONTINUED  
6 NEED TO CONDUCT VEHICLE EMISSIONS INSPECTIONS; (3) PROVIDE THE  
7 ENVIRONMENTAL MANAGEMENT COMMISSION WITH THE FLEXIBILITY TO  
8 DETERMINE WHETHER RULES ARE NECESSARY FOR CONTROLLING THE  
9 EFFECTS OF COMPLEX SOURCES ON AIR QUALITY; (4) AMEND THE RULES  
10 THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT-OF-WAY  
11 MAINTENANCE; (5) CLARIFY THAT AN AIR QUALITY PERMIT SHALL BE  
12 ISSUED FOR A TERM OF EIGHT YEARS AND PROVIDE THAT A THIRD PARTY  
13 WHO IS DISSATISFIED WITH A DECISION OF THE ENVIRONMENTAL  
14 MANAGEMENT COMMISSION REGARDING AN AIR QUALITY PERMIT MAY  
15 FILE A CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT  
16 WITHIN 30 DAYS; (6) AMEND COASTAL AREA MANAGEMENT ACT MINOR  
17 PERMIT NOTICE REQUIREMENTS; (7) AMEND THE PROVISION OF HYDRAULIC  
18 FRACTURING FLUID CHEMICALS AND CONSTITUENTS DATA TO THE MINING  
19 AND ENERGY COMMISSION AND THE DEPARTMENT OF ENVIRONMENT AND  
20 NATURAL RESOURCES; (8) EXEMPT THE MINING AND ENERGY COMMISSION,  
21 THE ENVIRONMENTAL MANAGEMENT COMMISSION, AND THE COMMISSION  
22 FOR PUBLIC HEALTH FROM PREPARING FISCAL NOTES FOR RULES THAT  
23 PERTAIN TO THE MANAGEMENT OF OIL AND GAS DEVELOPMENT; (9)  
24 CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY  
25 A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN  
26 EROSION AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER  
27 G.S. 113A-60 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL  
28 GOVERNMENT PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL  
29 ACT OF 1973 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE  
30 FUND; (10) PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR  
31 WASTEWATER SYSTEMS; (11) DIRECT THE COMMISSION FOR PUBLIC HEALTH  
32 TO ADOPT RULES TO PROVIDE FOR NOTICE OF KNOWN CONTAMINATION TO  
33 APPLICANTS WHO SEEK TO CONSTRUCT NEW PRIVATE DRINKING WATER  
34 WELLS AND TO DIRECT LOCAL HEALTH DEPARTMENTS TO EITHER ISSUE A



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1 PERMIT OR DENY AN APPLICATION FOR THE CONSTRUCTION, REPAIR, OR  
2 OPERATION OF A WELL WITHIN 30 DAYS OF RECEIPT OF AN APPLICATION;  
3 (12) CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT  
4 REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020;  
5 (13) MAKE TECHNICAL AND CONFORMING CHANGES TO PROTECTED  
6 SPECIES, MARINE, AND WILDLIFE RESOURCES STATUTES; (14) MAKE  
7 CLARIFYING AND CONFORMING CHANGES TO THE STATUTES PERTAINING  
8 TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES; (15) AMEND THE  
9 ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE WILDLIFE RESOURCES  
10 COMMISSION WITH TEMPORARY RULE-MAKING AUTHORITY FOR MANNER  
11 OF TAKE; (16) PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR  
12 ACQUIRING PROPERTY WITH KNOWN CONTAMINATION WITHOUT  
13 APPROVAL OF THE GOVERNOR AND COUNCIL OF STATE; (17) CLARIFY THAT  
14 NO BUILDING PERMIT IS REQUIRED FOR ROUTINE MAINTENANCE OF FUEL  
15 DISPENSERS; (18) CLARIFY THE FEES THAT THE SECRETARY FOR  
16 ENVIRONMENT AND NATURAL RESOURCES MAY ADOPT FOR THE NORTH  
17 CAROLINA AQUARIUMS; (19) REPEAL THE MOUNTAIN RESOURCES  
18 PLANNING ACT; (20) PROVIDE AN EXEMPTION FROM LOCAL GOVERNMENT  
19 REQUIREMENTS REGARDING THE NUMBER OF ACRES REQUIRED FOR  
20 PROPERTY DEVELOPMENT FOR BROWNFIELDS AGREEMENTS; (21) DIRECT  
21 THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR SELECTIVE  
22 PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY; (22) CLARIFY REQUIREMENTS  
23 FOR COMPLIANCE BOUNDARIES WITH RESPECT TO GROUNDWATER  
24 QUALITY STANDARDS; (23) EXEMPT CERTAIN RADIO TOWERS FROM  
25 APPLICABILITY WITH THE MILITARY LANDS PROTECTION ACT; (24) CLARIFY  
26 THAT EXTENDED DURATION PERMITS FOR SANITARY LANDFILLS AND  
27 TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR  
28 OPERATION AS WELL AS CONSTRUCTION; (25) ADD A FACTOR FOR  
29 CONSIDERATION IN ASSESSING SOLID WASTE PENALTIES; (26) LIMIT LOCAL  
30 GOVERNMENT REGULATION OF STORAGE, RETENTION, OR USE OF  
31 NONHAZARDOUS RECYCLED MATERIALS; (27) DIRECT THE  
32 ENVIRONMENTAL REVIEW COMMISSION TO STUDY THE REQUIREMENTS  
33 APPLICABLE TO RECYCLING OF DISCARDED COMPUTER EQUIPMENT; (28)  
34 AMEND THE DEFINITION OF "BUILT-UPON AREA" FOR PURPOSES OF  
35 IMPLEMENTING STORMWATER PROGRAMS; (29) EXEMPT PONDS THAT ARE  
36 CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES FROM RIPARIAN  
37 BUFFER RULES; (30) PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED  
38 WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION  
39 REGARDING A WATER QUALITY PERMIT MAY FILE A CONTESTED CASE  
40 UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS; (31)  
41 REPEAL REQUIREMENTS FOR INCREASES IN VEHICULAR SURFACE AREAS;  
42 (32) AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE  
43 TO ADJOINING PROPERTY OWNERS; (33) PROVIDE THAT CERTAIN WATER  
44 TREATMENT SYSTEMS WITH EXPIRED AUTHORIZATIONS MAY OBTAIN NEW  
45 AUTHORIZATIONS THAT ALLOW THE SYSTEMS TO WITHDRAW SURFACE  
46 WATER FROM THE SAME WATER BODY AT THE SAME RATE AS WAS  
47 APPROVED IN THE EXPIRED AUTHORIZATION; (34) AMEND S.L. 2013-50, AN  
48 ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER  
49 SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN  
50 PUBLIC WATER AND SEWER SYSTEMS TO A METROPOLITAN WATER AND  
51 SEWERAGE DISTRICT; AND (35) COMBINE THE DIVISION OF WATER QUALITY

1 AND THE DIVISION OF WATER RESOURCES TO CREATE A NEW DIVISION OF  
2 WATER RESOURCES IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL  
3 RESOURCES AND MAKE CONFORMING CHANGES.

4 The General Assembly of North Carolina enacts:  
5

6 **PART I. REPEAL 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY DIESEL**  
7 **VEHICLE REQUIREMENTS**

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

16 **PART II. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO**  
17 **STUDY THE CONTINUED NEED TO CONDUCT VEHICLE EMISSIONS**  
18 **INSPECTIONS**

19 **SECTION 2.** The Department of Environment and Natural Resources shall  
20 conduct a study to examine whether all of the counties covered under the emissions testing and  
21 maintenance program pursuant to G.S. 143-215.107A are needed to meet and maintain the  
22 current and proposed federal ozone standards in North Carolina. The Department shall report  
23 its interim findings to the Environmental Review Commission on or before April 1, 2015, and  
24 shall submit its final report, including any findings and legislative recommendations, to the  
25 Environmental Review Commission on or before April 1, 2016.  
26

27 **PART III. PROVIDE THE ENVIRONMENTAL MANAGEMENT COMMISSION**  
28 **WITH FLEXIBILITY TO DETERMINE WHETHER RULES ARE NECESSARY FOR**  
29 **CONTROLLING THE EFFECTS OF COMPLEX SOURCES ON AIR QUALITY**

30 **SECTION 3.** G.S. 143-215.109(a) reads as rewritten:

31 "(a) The Commission ~~shall~~may by rule establish criteria for controlling the effects of  
32 complex sources on air quality. The rules shall set forth such basic minimum criteria or  
33 standards under which the Commission shall approve or disapprove any such construction or  
34 modification. The rules shall further provide for the submission of plans, specifications and  
35 such other information as may be necessary for the review and evaluation of proposed or  
36 modified complex sources."  
37

38 **PART IV. AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND**  
39 **CLEARING OR RIGHT-OF-WAY MAINTENANCE**

40 **SECTION 4.(a)** 15A NCAC 02D .1903 (Open Burning Without an Air Quality  
41 Permit). – Until the effective date of the revised permanent rule that the Commission is  
42 required to adopt pursuant to Section 4(c) of this act, the Commission, the Department, and any  
43 other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning  
44 Without an Air Quality Permit) shall implement the rule, as provided in Section 4(b) of this act.

45 **SECTION 4.(b)** Implementation. – Notwithstanding 15A NCAC 02D  
46 .1093(b)(2)(F) (Open Burning Without an Air Quality Permit), open burning for land clearing  
47 or right-of-way maintenance is permissible without an air quality permit if materials are not  
48 carried off site or transported over public roads for open burning unless the materials are  
49 carried or transported to:

- 50 (1) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain  
51 Burners) for the operation of an air curtain burner at a permanent site; or

- 1 (2) A location, where the material is burned not more than four times per year,  
2 that meets all of the following criteria:  
3 a. At least 500 feet from any dwelling, group of dwellings, or  
4 commercial or institutional establishment, or other occupied structure  
5 not located on the property on which the burning is conducted.  
6 b. There are no more than two piles, each 20 feet in diameter, being  
7 burned at one time.  
8 c. The location is not a permitted solid waste management facility.

9 **SECTION 4.(c)** Additional Rule-Making Authority. – The Commission shall adopt  
10 a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit)  
11 consistent with Section 4(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by  
12 the Commission pursuant to this section shall be substantively identical to the provisions of  
13 Section 4(b) of this act. Rules adopted pursuant to this section are not subject to  
14 G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become  
15 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been  
16 received as provided by G.S. 150B-21.3(b2).

17 **SECTION 4.(d)** Sunset. – Section 4(b) of this act expires on the date that rules  
18 adopted pursuant to Section 4(c) of this act become effective.

19 **SECTION 4.(e)** G.S. 130A-294(a) reads as rewritten:

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

- 23 (1) Develop a comprehensive program for implementation of safe and sanitary  
24 practices for management of solid waste;  
25 (2) Advise, consult, cooperate and contract with other State agencies, units of  
26 local government, the federal government, industries and individuals in the  
27 formulation and carrying out of a solid waste management program;  
28 (3) Develop and adopt rules to establish standards for qualification as a  
29 "recycling, reduction or resource recovering facility" or as "recycling,  
30 reduction or resource recovering equipment" for the purpose of special tax  
31 classifications or treatment, and to certify as qualifying those applicants  
32 which meet the established standards. The standards shall be developed to  
33 qualify only those facilities and equipment exclusively used in the actual  
34 waste recycling, reduction or resource recovering process and shall exclude  
35 any incidental or supportive facilities and equipment;  
36 (4) a. Develop a permit system governing the establishment and operation  
37 of solid waste management facilities. A landfill with a disposal area  
38 of 1/2 acre or less for the on-site disposal of land clearing and inert  
39 debris is exempt from the permit requirement of this section and shall  
40 be governed by G.S. 130A-301.1. Demolition debris from the  
41 decommissioning of manufacturing buildings, including electric  
42 generating stations, that is disposed of on the same site as the  
43 decommissioned buildings, is exempt from the permit requirement of  
44 this section and rules adopted pursuant to this section and shall be  
45 governed by G.S. 130A-301.3. The Department shall not approve an  
46 application for a new permit, the renewal of a permit, or a substantial  
47 amendment to a permit for a sanitary landfill, excluding demolition  
48 landfills as defined in the rules of the Commission, except as  
49 provided in subdivisions (3) and (4) of subsection (b1) of this  
50 section. No permit shall be granted for a solid waste management  
51 facility having discharges that are point sources until the Department

1 has referred the complete plans and specifications to the  
 2 Environmental Management Commission and has received advice in  
 3 writing that the plans and specifications are approved in accordance  
 4 with the provisions of G.S. 143-215.1. If the applicant is a unit of  
 5 local government, and has not submitted a solid waste management  
 6 plan that has been approved by the Department pursuant to  
 7 G.S. 130A-309.09A(b), the Department may deny a permit for a  
 8 sanitary landfill or a facility that disposes of solid waste by  
 9 incineration, unless the Commission has not adopted rules pursuant  
 10 to G.S. 130A-309.29 for local solid waste management plans. In any  
 11 case where the Department denies a permit for a solid waste  
 12 management facility, it shall state in writing the reason for denial and  
 13 shall also state its estimate of the changes in the applicant's proposed  
 14 activities or plans that will be required for the applicant to obtain a  
 15 permit.

16 ...

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

19 ...."

20  
 21 **PART V. CLARIFY THAT AN AIR QUALITY PERMIT SHALL BE ISSUED FOR A**  
 22 **TERM OF EIGHT YEARS AND PROVIDE THAT A THIRD PARTY WHO IS**  
 23 **DISSATISFIED WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT**  
 24 **COMMISSION REGARDING AN AIR QUALITY PERMIT MAY FILE A**  
 25 **CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN**  
 26 **30 DAYS**

27 SECTION 5. G.S. 143-215.108 reads as rewritten:

28 "§ 143-215.108. Control of sources of air pollution; permits required.

29 ...

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

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

39 ...."

40  
 41 **PART VI. AMEND CAMA MINOR PERMIT NOTICE REQUIREMENTS**

42 SECTION 6. G.S. 113A-119 reads as rewritten:

43 "§ 113A-119. Permit applications generally.

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

50 (b) Upon receipt of any application, a significant modification to an application for a  
 51 major permit, or an application to modify substantially a previously issued major permit, the

1 Secretary shall issue public notice of the proposed development (i) by mailing a copy of the  
2 application or modification, or a brief description thereof together with a statement indicating  
3 where a detailed copy of the proposed development may be inspected, to any citizen or group  
4 which has filed a request to be notified of the proposed development, and to any interested  
5 State agency; (ii) by posting or causing to be posted a notice at the location of the proposed  
6 development stating that an application, a modification of an application for a major permit, or  
7 an application to modify a previously issued major permit for development has been made,  
8 where the application or modification may be inspected, and the time period for comments; and  
9 (iii) with the exception of minor permit applications, by publishing notice of the application or  
10 modification at least once in one newspaper of general circulation in the county or counties  
11 wherein the development would be located at least 20 days before final action on a major  
12 permit ~~and at least seven days before final action on a permit under G.S. 113A-121 or before~~  
13 ~~the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any~~  
14 ~~comments on the development should be submitted to the Secretary by a specified date, not less~~  
15 ~~than 15 days from the date of the newspaper publication of the notice or 15 days after mailing~~  
16 ~~of the mailed notice, whichever is later. Public notice under this subsection is mandatory,~~  
17 ~~except for a proposed modification to an application for a minor permit or proposed~~  
18 ~~modification of a previously issued minor permit that does not substantially alter the original~~  
19 ~~project.~~

20 (c) Within the meaning of this Part, the "designated local official" is the official who  
21 has been designated by the local governing body to receive and consider permit applications  
22 under this Part."  
23

## 24 **PART VII. AMEND THE PROVISION OF HYDRAULIC FRACTURING FLUID** 25 **CHEMICALS AND CONSTITUENTS DATA TO THE MINING AND ENERGY** 26 **COMMISSION AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL** 27 **RESOURCES**

28 **SECTION 7. G.S. 113-391 reads as rewritten:**

29 **"§ 113-391. Jurisdiction and authority; rules and orders.**

30 ...

31 (b1) In the exercise of their respective authority over oil and gas exploration and  
32 development activities, the Commission and the Department, as applicable, shall have access to  
33 all data, records, and information related to such activities, including, but not limited to,  
34 seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic  
35 fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole  
36 logs. ~~With the exception of information designated as a trade secret, as defined in~~  
37 ~~G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2,~~  
38 ~~the Department shall make any information it receives available to the public. The State~~  
39 ~~Geologist shall serve as the custodian of all data, information, and records received by the~~  
40 ~~Department pursuant to this subsection and shall ensure that the information is maintained~~  
41 ~~securely as provided in G.S. 132-7. With the exception of information designated as a trade~~  
42 ~~secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret~~  
43 ~~under G.S. 132-1.2, the Department shall make any information it receives available to the~~  
44 ~~public. In addition, the following provisions shall apply to information designated as a trade~~  
45 ~~secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret~~  
46 ~~under G.S. 132-1.2:~~

47 (1) The Commission or the Department may disclose confidential information to  
48 officers, employees, or authorized representatives of federal, State, or local  
49 agencies if such disclosure is determined to be necessary by the Secretary of  
50 Environment and Natural Resources, or the Secretary's designee, to respond  
51 to a situation that endangers the public health or the environment. Any

1 officer or employee of the State who knowingly discloses information  
2 designated as confidential in violation of this subsection shall be guilty of a  
3 Class 1 misdemeanor and shall be removed from office or discharged from  
4 employment, and may be subject to civil liability for improper disclosure as  
5 provided in G.S. 66-154. The following information either received or  
6 prepared by the Commission or Department in the course of carrying out  
7 their duties and responsibilities of this Article is deemed confidential  
8 information and shall not be subject to disclosure under G.S. 132-6:

9 a. Information that is entitled to confidential treatment pursuant to  
10 G.S. 132-1.2.

11 b. Information that is confidential under any provision of federal or  
12 State law.

13 c. Information compiled in anticipation of enforcement or criminal  
14 proceedings, but only to the extent disclosure could reasonably be  
15 expected to interfere with the institution of such proceedings.

16 (2) Notwithstanding any other provisions of this section, persons subject to  
17 regulation under this Chapter may withhold any information that constitutes  
18 a trade secret, as that term is defined in G.S. 66-152(3), related to hydraulic  
19 fracturing fluid chemicals and constituents. Any person who withholds such  
20 information shall submit a claim of entitlement that the trade secret is valid  
21 to the Secretary of Environment and Natural Resources. Upon a  
22 determination by the Secretary of Environment and Natural Resources that  
23 information withheld as a trade secret pursuant to this subsection is  
24 necessary to respond to a situation that endangers the public health or the  
25 environment, the Secretary may issue a written declaration that the trade  
26 secret information shall be submitted to the Commission and the Department  
27 within two hours of the time the written declaration is issued.

28 (3) The Commission, Department, an agency of the State, a local government  
29 emergency response official, or a landowner or other person having a legal  
30 interest in real property on which a hydraulically fractured wellhead is  
31 located or that is adjacent to such property where a hydraulically fractured  
32 wellhead is located may bring an action challenging the designation of  
33 information as a trade secret as defined in G.S. 66-152(3) or information  
34 designated as confidential as defined in G.S. 132-1.2 under this subsection.  
35 The North Carolina Business Court shall be the court of exclusive  
36 jurisdiction in determining whether a trade secret is valid under this  
37 subsection."

38  
39 **PART VIII. EXEMPT THE MINING AND ENERGY COMMISSION, THE**  
40 **ENVIRONMENTAL MANAGEMENT COMMISSION, AND THE COMMISSION FOR**  
41 **PUBLIC HEALTH FROM PREPARING FISCAL NOTES FOR RULES THAT**  
42 **PERTAIN TO THE MANAGEMENT OF OIL AND GAS EXPLORATION AND**  
43 **DEVELOPMENT**

44 **SECTION 8.** The Mining and Energy Commission, the Environmental  
45 Management Commission, and the Commission for Public Health are exempt from the  
46 provisions of G.S. 150B of the General Statutes that require the preparation of fiscal notes for  
47 any rule proposed for the creation of a modern regulatory program for the management of oil  
48 and gas exploration and development activities in the State, including the use of horizontal  
49 drilling and hydraulic fracturing for that purpose.  
50

1 **PART IX. CLARIFY LOCAL GOVERNMENT AUTHORITY UNDER THE**  
2 **SEDIMENTATION AND POLLUTION CONTROL ACT**

3 **SECTION 9.** G.S. 113A-64 reads as rewritten:

4 **"§ 113A-64. Penalties.**

5 (a) Civil Penalties. –

- 6 (1) Any person who violates any of the provisions of this Article or any  
7 ordinance, rule, or order adopted or issued pursuant to this Article by the  
8 Commission or by a local government, or who initiates or continues a  
9 land-disturbing activity for which an erosion and sedimentation control plan  
10 is required except in accordance with the terms, conditions, and provisions  
11 of an approved plan, is subject to a civil penalty. The maximum civil penalty  
12 for a violation is five thousand dollars (\$5,000). A civil penalty may be  
13 assessed from the date of the violation. Each day of a continuing violation  
14 shall constitute a separate violation.
- 15 (2) The Secretary or a local government that administers an erosion and  
16 sedimentation control program approved under G.S. 113A-60 shall  
17 determine the amount of the civil penalty and shall notify the person who is  
18 assessed the civil penalty of the amount of the penalty and the reason for  
19 assessing the penalty. The notice of assessment shall be served by any means  
20 authorized under ~~G.S. 1A-1, Rule 4, and G.S. 1A-1.~~ A notice of assessment  
21 by the Secretary shall direct the violator to either pay the assessment or  
22 contest the assessment within 30 days by filing a petition for a contested  
23 case under Article 3 of Chapter 150B of the General Statutes. If a violator  
24 does not pay a civil penalty assessed by the Secretary within 30 days after it  
25 is due, the Department shall request the Attorney General to institute a civil  
26 action to recover the amount of the assessment. A notice of assessment by a  
27 local government shall direct the violator to either pay the assessment or  
28 contest the assessment within 30 days by filing a petition for hearing with  
29 the local government as directed by procedures within the local ordinances  
30 or regulations adopted to establish and enforce the erosion and sedimentation  
31 control program. If a violator does not pay a civil penalty assessed by a local  
32 government within 30 days after it is due, the local government may institute  
33 a civil action to recover the amount of the assessment. The civil action may  
34 be brought in the superior court of any county where the violation occurred  
35 or the violator's residence or principal place of business is located. A civil  
36 action must be filed within three years of the date the assessment was due.  
37 An assessment that is not contested is due when the violator is served with a  
38 notice of assessment. An assessment that is contested is due at the  
39 conclusion of the administrative and judicial review of the assessment.
- 40 (3) In determining the amount of the penalty, the Secretary or a local  
41 government shall consider the degree and extent of harm caused by the  
42 violation, the cost of rectifying the damage, the amount of money the  
43 violator saved by noncompliance, whether the violation was committed  
44 willfully and the prior record of the violator in complying or failing to  
45 comply with this ~~Article.~~ Article, or any ordinance, rule, or order adopted or  
46 issued pursuant to this Article by the Commission or by a local government.
- 47 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.
- 48 (5) The clear proceeds of civil penalties collected by the Department or other  
49 State agency or a local government under this subsection shall be remitted to  
50 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)."

## **PART X. PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR WASTEWATER SYSTEMS**

**SECTION 10.(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 10(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 10(b) of this act.

**SECTION 10.(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 10.(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 10(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 10(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 10.(d)** Sunset. – Section 10(b) of this act expires on the date that rules adopted pursuant to Section 10(c) of this act become effective.

## **PART XI. 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 11.** G.S. 87-97 is amended by rewriting that section to read:

**"§ 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

1 set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay  
2 or refuse to permit a well that can be constructed or repaired and operated in compliance with  
3 the requirements set out in this Article and rules adopted pursuant to this Article.

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

6 (1) Construct or assist in the construction of a private drinking water well unless  
7 a construction permit has been obtained from the local health department.

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

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

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

25 (e) Issuance of Permit. – ~~The local health department shall issue a construction permit~~  
26 ~~or repair permit if it determines that a private drinking water well can be constructed or~~  
27 ~~repaired and operated in compliance with this Article and rules adopted pursuant to this Article.~~  
28 Within 30 days of receipt of an application to construct or repair a well, a local health  
29 department shall make a determination whether the proposed private drinking water well can be  
30 constructed or repaired and operated in compliance with this Article and rules adopted pursuant  
31 to this Article and shall issue a permit or denial accordingly. If a local health department fails to  
32 act within 30 days, the applicant may treat the failure to act as a denial of the permit and may  
33 challenge the denial as provided in Chapter 150B of the General Statutes. The local health  
34 department may impose any conditions on the issuance of a construction permit or repair  
35 permit that it determines to be necessary to ensure compliance with this Article and rules  
36 adopted pursuant to this Article. Notwithstanding any other provision of law, no permit for a  
37 well that is in compliance with this Article and the rules adopted pursuant to this Article shall  
38 be denied on the basis of a local government policy that discourages or prohibits the drilling of  
39 new wells.

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

47 ...."

48  
49 **PART XII. CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT**  
50 **REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020**

51 **SECTION 12.** Section 11.6(a) of S.L. 2011-394 reads as rewritten:

1 "SECTION 11.6.(a) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation  
2 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for  
3 Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed  
4 after January 1, ~~1991~~,1991, and prior to April 1, 2001, shall not be required to provide  
5 secondary containment until January 1, 2020."  
6

### 7 PART XIII. TECHNICAL AND CONFORMING CHANGES TO PROTECTED 8 SPECIES AND MARINE/WILDLIFE RESOURCES STATUTES

9 SECTION 13.(a) G.S. 113-129 reads as rewritten:

#### 10 "§ 113-129. Definitions relating to resources.

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

13 ...

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

16 ...."

17 SECTION 13.(b) G.S. 113-189 reads as rewritten:

#### 18 "§ 113-189. Protection of sea ~~turtles and porpoises;~~turtles, marine mammals, migratory 19 birds, and finfish.

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

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

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

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

### 33 34 PART XIV. CLARIFYING AND CONFORMING CHANGES TO STATUTES 35 PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES

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

#### 37 "§ 14-417. Regulation of ownership or use of venomous reptiles.

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

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

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

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

1 "§ 14-419. Investigation of suspected violations; seizure and examination of reptiles;  
2 disposition of reptiles.

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

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

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

32  
33 **PART XV. AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE**  
34 **WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULE-MAKING**  
35 **AUTHORITY FOR MANNER OF TAKE**

36 **SECTION 15.** G.S. 150B-21.1 reads as rewritten:

37 **"§ 150B-21.1. Procedure for adopting a temporary rule.**

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

41 ...

42 (7) The need for the Wildlife Resources Commission to establish any of the  
43 following:

44 a. No wake zones.

45 b. Hunting or fishing ~~seasons~~-seasons, including provisions for manner  
46 of take or any other conditions required for the implementation of  
47 such season.

48 c. Hunting or fishing bag limits.

49 d. Management of public game lands as defined in G.S. 113-129(8a).

50 ...."

51

1 **PART XVI. PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING**  
2 **PROPERTY WITH KNOWN CONTAMINATION WITHOUT APPROVAL OF THE**  
3 **GOVERNOR AND COUNCIL OF STATE**

4 **SECTION 16.** Chapter 133 of the General Statutes is amended by adding a new  
5 Article to read:

6 "Article 4.

7 "Purchase of Contaminated Property by Public Entities.

8 **"§ 133-40. Purchase of contaminated property by public entities.**

9 (a) For purposes of this Article, the term "public entity" means any department or  
10 agency of the State, a State university or college, and other similar entities.

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

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

30  
31 **PART XVII. CLARIFY THAT NO BUILDING PERMIT IS REQUIRED FOR**  
32 **ROUTINE MAINTENANCE ON FUEL DISPENSERS**

33 **SECTION 17.** G.S. 143-138 is amended by adding a new subsection to read:

34 "...

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

39  
40 **PART XVIII. CLARIFY THE FEES THAT THE SECRETARY OF ENVIRONMENT**  
41 **AND NATURAL RESOURCES MAY ADOPT FOR THE NORTH CAROLINA**  
42 **AQUARIUMS**

43 **SECTION 18.** G.S. 143B-289.44 reads as rewritten:

44 **"§ 143B-289.44. North Carolina Aquariums; fees; fund.**

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

48 (1) Gate admission fees.

49 (2) Facility rental fees.

50 (3) Educational programs.

51 ...."

**PART XIX. REPEAL THE MOUNTAIN RESOURCES PLANNING ACT**

**SECTION 19.** Chapter 153B of the General Statutes is repealed.

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

**SECTION 20.(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 20.(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."

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

**SECTION 21.** 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.

1  
2 **PART XXII. CLARIFY REQUIREMENTS FOR COMPLIANCE BOUNDARIES WITH**  
3 **RESPECT TO GROUNDWATER QUALITY STANDARDS**

4 **SECTION 22.(a)** G.S. 143-215.1 is amended by adding three new subsections to  
5 read:

6 "**§ 143-215.1. Control of sources of water pollution; permits required.**

7 ...  
8 (i) Any person subject to the requirements of this section who is required to obtain an  
9 individual permit from the Commission for a disposal system under the authority of  
10 G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as  
11 may be established by rule or permit for various categories of disposal systems and beyond  
12 which groundwater quality standards may not be exceeded. The location of the compliance  
13 boundary shall be established at the property boundary, except as otherwise established by the  
14 Commission. Multiple contiguous properties under common ownership and permitted for use  
15 as a disposal system shall be treated as a single property with regard to determination of a  
16 compliance boundary under this subsection. Nothing in this subsection shall be interpreted to  
17 require a revision to an existing compliance boundary previously approved by rule or permit.

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

23 (1) A violation of any water quality standard in adjoining classified waters of  
24 the State occurs or can be reasonably predicted to occur considering  
25 hydrogeological conditions, modeling, or any other available evidence.

26 (2) An imminent hazard or threat to the environment, public health, or safety  
27 exists.

28 (3) A violation of any standard in groundwater occurring in the bedrock other  
29 than limestones found in the Coastal Plain sediments, unless it can be  
30 demonstrated that the violation will not adversely affect, or have the  
31 potential to adversely affect, a water supply well.

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

36 **SECTION 22.(b)** With respect to exceedances of groundwater quality standards  
37 within a compliance boundary and related remedy requirements, G.S. 143-215.1(j) as set forth  
38 in Section 22(a) of this act shall apply in lieu of the restricted designation directives found in  
39 15A NCAC 2L .0104(d) and (e) until the Department of Environment and Natural Resources  
40 has adopted revisions to those rules to comply with this act.

41  
42 **PART XXIII. EXEMPT CERTAIN RADIO TOWERS FROM APPLICABILITY WITH**  
43 **THE MILITARY LANDS PROTECTION ACT OF 2013**

44 **SECTION 23.** If House Bill 433, 2013 Regular Session becomes law, then  
45 G.S. 143-151.74, as amended by Section 1 of House Bill 433, Regular Session, reads as  
46 rewritten:

47 "**§ 143-151.74. Exemptions from applicability.**

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

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

5 (1) The height of the ~~cellular~~ cellular, radio, or television tower that is erected to  
6 temporarily replace the ~~cellular~~ cellular, radio, or television tower that is  
7 damaged or destroyed does not exceed the height of the original ~~cellular~~  
8 cellular, radio, or television tower.

9 (2) A disaster has been declared pursuant to Chapter 166A of the General  
10 Statutes for the area in which the damaged or destroyed ~~cellular~~ cellular,  
11 radio, or television tower is located.

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

14 (c) The modification, replacement, removal, or addition of antennas on ~~cellular~~ cellular,  
15 radio, or television towers in an area surrounding a major military installation shall be exempt  
16 from obtaining the endorsement required by this Article provided the modification,  
17 replacement, removal, or addition does not increase the vertical height of the structure."  
18

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

22 **SECTION 24.(a)** Section 15.1 of S.L. 2012-187 reads as rewritten:

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

47 **SECTION 24.(b)** If Senate Bill 328, 2013 Regular Session becomes law, then  
48 Section 24(a) of this act is repealed.  
49

50 **PART XXV. ADD A FACTOR FOR CONSIDERATION IN ASSESSING SOLID**  
51 **WASTE PENALTIES**



1           **SECTION 25.** G.S. 130A-22 reads as rewritten:

2   "**§ 130A-22. Administrative penalties.**

3       ...

4       (d) In determining the amount of the penalty in subsections (a), (b) and (c), the

5 Secretary and the Secretary of Environment and Natural Resources shall consider ~~the degree~~

6 ~~and extent of the harm caused by the violation and the cost of rectifying the damage.~~all of the

7 following factors:

8           (1) Type of violation.

9           (2) Type of waste involved.

10          (3) Duration of the violation.

11          (4) Cause (whether resulting from a negligent, reckless, or intentional act or

12 omission).

13          (5) Potential effect on public health and the environment.

14          (6) Effectiveness of responsive measures taken by the violator.

15          (7) Damage to private property.

16          (8) The degree and extent of harm caused by the violation.

17          (9) Cost of rectifying any damage.

18          (10) The amount of money the violator saved by noncompliance.

19          (11) The violator's previous record in complying or not complying with the

20 provisions of Article 9 of this Chapter, Article 11 of this Chapter, or

21 G.S. 130A-325, and any regulations adopted thereunder, as applicable to the

22 violation in question.

23       ...."

24

25 **PART XXVI. LIMIT LOCAL GOVERNMENT REGULATION OF STORAGE,**

26 **RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS**

27       **SECTION 26.** G.S. 130A-309.09A is amended by adding a new subsection to

28 read:

29       "**(h)** The storage, retention, and use of nonhazardous recycled materials, including

30 asphalt pavement, rap, or roofing shingles, shall be encouraged by units of local government. A

31 unit of local government shall not impede the storage, retention, or use of nonhazardous

32 recycled products in properly zoned storage facilities through the regulation of the height of

33 recycled material stockpiles, except when such facilities are located on lots within 200 yards of

34 residential districts."

35

36 **PART XXVII. DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO**

37 **STUDY THE REQUIREMENTS APPLICABLE TO RECYCLING OF DISCARDED**

38 **COMPUTER EQUIPMENT**

39       **SECTION 27.** The Environmental Review Commission shall study the State

40 requirements applicable to recycling of discarded computer equipment and televisions, the

41 results of program implementation since enactment of these provisions, and whether any

42 changes may be required or advisable to improve recycling rates and overall effectiveness of

43 the State program. As part of this study, the Environmental Review Commission shall evaluate

44 all information submitted by the Department pursuant to G.S. 130A-309.140. The Commission

45 shall report its findings, together with any recommended legislation, to the 2014 Regular

46 Session of the 2013 General Assembly upon its convening.

47

48 **PART XXVIII. AMEND THE DEFINITION OF "BUILT-UPON AREA" FOR**

49 **PURPOSES OF IMPLEMENTING STORMWATER PROGRAMS**

50       **SECTION 28.(a)** G.S. 143-214.7 is amended by adding a new subsection to read:

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

5       **SECTION 28.(b)** Subdivision (7) of Section 2 of S.L. 2006-246 is repealed.

6       **SECTION 28.(c)** Subdivision (3) of subsection (a) of Section 2 of S.L. 2008-211 is  
7 repealed.

8       **SECTION 28.(d)** The Environmental Management Commission shall amend its  
9 rules to be consistent with the definition of "built-upon area" set out in subsection (b2) of  
10 G.S. 143-214.7, as enacted by Section 28(a) of this act.

11  
12 **PART XXIX. EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR**  
13 **AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES**

14       **SECTION 29.(a)** Except as required by federal law or in an imminent threat to  
15 public health or safety (i) the temporary rules adopted July 22, 1997, January 22, 1998, April  
16 22, 1998, and June 22, 1999, and the permanent rule adopted and effective August 1, 2000, as  
17 15A NCAC 02B .0233 regarding the protection and maintenance of existing riparian buffers in  
18 the Neuse River Basin; (ii) the temporary rule adopted January 1, 2000, and the permanent rule  
19 adopted and effective August 1, 2000, as 15A NCAC 02B .0259 regarding the protection and  
20 maintenance of existing riparian buffers in the Tar-Pamlico River Basin; (iii) the permanent  
21 rule adopted and effective August 11, 2009, Session Law 2009-216, Session Law 2009-484,  
22 and the permanent rule, as amended, effective September 1, 2011, as 15A NCAC 02B .0267  
23 regarding the protection and maintenance of existing riparian buffers in the Jordan Water  
24 Supply Watershed; (iv) the permanent rule adopted effective April 1, 1999, and the permanent  
25 rule, as amended, effective June 1, 2010, as 15A NCAC 02B .0250 regarding the protection and  
26 maintenance of existing riparian buffers in the Randleman Lake Water Supply Watershed; (v)  
27 the temporary rule effective June 30, 2001, and the permanent rule effective August 1, 2004, as  
28 15A NCAC 02B .0243 regarding the protection and maintenance of existing riparian buffers in  
29 the Catawba River Basin; (vi) the permanent rule adopted and effective February 1, 2009, as  
30 15A NCAC 02B .0605 and the permanent rule adopted and effective February 1, 2009, as 15A  
31 NCAC 02B .0607 regarding the protection and maintenance of existing riparian buffers in the  
32 Goose Creek Watershed (Yadkin Pee-Dee River Basin); and (vii) any similar rule adopted for  
33 the protection and maintenance of riparian buffers, collectively referred to as "Riparian Buffer  
34 Rules" for the purposes of this section, shall not apply to a freshwater pond to which Riparian  
35 Buffer Rules would otherwise apply if all of the following conditions are met:

36       (1) The property on which the pond is located is used for agriculture as that term  
37 is defined in G.S. 106-581.1.

38       (2) Except for the Riparian Buffer Rules and any similar rule adopted for the  
39 protection and maintenance of riparian buffers, the use of the property is in  
40 compliance with all other water quality and water quantity statutes and rules  
41 applicable to the property before the adoption of the Riparian Buffer Rules  
42 for the river basin or watershed in which the property is located.

43       (3) The pond is not a component of an animal waste management system as  
44 defined in G.S. 143-215.10B(3).

45       **SECTION 29.(b)** If the use of property on which a pond is located changes such  
46 that the use no longer meets the criteria in subdivision (1) of subsection (a) of this section, the  
47 Riparian Buffer Rules for the river basin or watershed in which the property is located shall  
48 apply.

49       **SECTION 29.(c)** The Commission shall not adopt rules for the protection or  
50 maintenance of riparian buffers that apply to ponds provided the ponds are constructed or used  
51 for agriculture as that term is defined in G.S. 106-581.1.

1           **SECTION 29.(d)** Units of local government shall not adopt ordinances,  
2 resolutions, plans, or policies for the protection or maintenance of riparian buffers that apply to  
3 ponds provided the ponds are constructed or used for agriculture as that term is defined in  
4 G.S. 106-581.1.

5           **SECTION 29.(e)** The Environmental Management Commission shall adopt rules  
6 to amend the Neuse River Basin Riparian Buffer Rule, the Tar-Pamlico River Basin Riparian  
7 Buffer Rule, the Jordan Water Supply Riparian Buffer Rule, the Randleman Lake Water  
8 Supply Watershed Riparian Buffer Rule, the Catawba River Basin Riparian Buffer Rule, the  
9 Goose Creek Watershed (Yadkin Pee-Dee River Basin) Riparian Buffer Rule, and any other  
10 similar riparian buffer rules in accordance with subsections (a), (b), and (c) of this section.  
11 Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section  
12 shall be substantively identical to the provisions of subsections (a), (b), and (c) of this section.  
13 Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through  
14 G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in  
15 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by  
16 G.S. 150B-21.3(b2).

17           **SECTION 29.(f)** Section 29(a) of this act expires on the date that rules adopted  
18 pursuant to Section 29(e) of this act become effective.

19  
20 **PART XXX. PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED WITH A**  
21 **DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION**  
22 **REGARDING A WATER QUALITY PERMIT MAY FILE A CONTESTED CASE**  
23 **UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS**

24           **SECTION 30.** G.S. 143-215.1 reads as rewritten:

25 **"§ 143-215.1. Control of sources of water pollution; permits required.**

26           ...  
27           (e) Administrative Review. – A permit ~~applicant or permittee~~ applicant, a permittee, or  
28 a third party who is dissatisfied with a decision of the Commission may commence a contested  
29 case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the  
30 applicant or permittee of its decision. If the permit applicant or permittee does not file a petition  
31 within the required time, the Commission's decision is final and is not subject to review.

32           ...."

33  
34 **PART XXXI. REPEAL REQUIREMENTS FOR INCREASES IN VEHICULAR**  
35 **SURFACE AREAS**

36           **SECTION 31.** Article 4A of Chapter 113A of the General Statutes is repealed.

37  
38 **PART XXXII. AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE**  
39 **FOR NOTICE TO ADJOINING PROPERTY OWNERS**

40           **SECTION 32.** G.S. 113-229 reads as rewritten:

41 **"§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.**

42           ...  
43           (d) An applicant for a permit, other than an emergency permit, shall ~~send a copy of his~~  
44 ~~application to notify~~ the owner of each tract of riparian property that adjoins that of the  
45 applicant. ~~The copy shall be served~~ An applicant may satisfy the required notification of  
46 adjoining riparian property owners by either (i) obtaining from each adjoining riparian property  
47 owner a signed statement that the adjoining riparian property owner has no objection to the  
48 proposed project or (ii) providing a copy of the applicant's permit application to each adjoining  
49 riparian property owner by certified mail-mail. or, if if the owner's address is unknown and  
50 cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made  
51 to serve the copy by certified mail, ~~by~~ publication in accordance with the rules of the

1 ~~Commission.~~ Commission shall serve to satisfy the notification requirement. An owner may file  
2 written objections to the permit with the Department for 30 days after ~~he~~the owner is served  
3 with a copy of the ~~application.~~ application by certified mail. In the case of a special emergency  
4 dredge or fill permit the applicant must certify that ~~he~~the applicant took all reasonable steps to  
5 notify adjacent riparian owners of the application for a special emergency dredge and fill  
6 permit prior to submission of the application. Upon receipt of this certification, the Secretary  
7 shall issue or deny the permit within the time period specified in subsection (e) of this section,  
8 upon the express understanding from the applicant that ~~he~~the applicant will be entirely liable  
9 and hold the State harmless for all damage to adjacent riparian landowners directly and  
10 proximately caused by the dredging or filling for which approval may be given.

11 ...."

12  
13 **PART XXXIII. PROVIDE THAT CERTAIN WATER TREATMENT SYSTEMS WITH**  
14 **EXPIRED AUTHORIZATIONS MAY OBTAIN NEW AUTHORIZATIONS THAT**  
15 **ALLOW THE SYSTEMS TO WITHDRAW SURFACE WATER FROM THE SAME**  
16 **WATER BODY AT THE SAME RATE AS WAS APPROVED IN THE EXPIRED**  
17 **AUTHORIZATION**

18 **SECTION 33.(a)** Public water systems with expired authorizations for water  
19 treatment plants that have been deactivated may obtain new water treatment plant  
20 authorizations that allow the system to withdraw surface water from the same water body and  
21 at the same rate as approved in the expired authorization and such new authorizations shall not  
22 be required to prepare an environmental document pursuant to Article 1 of Chapter 113A of the  
23 General Statutes.

24 **SECTION 33.(b)** This section applies only to those public water systems for which  
25 the authorization for the water treatment plant expired within the last ten calendar years of the  
26 effective date of this act.

27  
28 **PART XXXIV. AMEND S.L. 2013-50, AN ACT TO PROMOTE THE PROVISION OF**  
29 **REGIONAL WATER AND SEWER SERVICES BY TRANSFERRING OWNERSHIP**  
30 **AND OPERATION OF CERTAIN PUBLIC WATER AND SEWER SYSTEMS TO A**  
31 **METROPOLITAN WATER AND SEWERAGE DISTRICT**

32 **SECTION 34.** Section 1(a)(2) of S.L. 2013-50 is repealed.

33  
34 **PART XXXV. COMBINE THE DIVISION OF WATER QUALITY AND THE**  
35 **DIVISION OF WATER RESOURCES TO CREATE A NEW DIVISION OF WATER**  
36 **RESOURCES IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL**  
37 **RESOURCES AND MAKE CONFORMING CHANGES**

38 **SECTION 35.(a)** The Department of Environment and Natural Resources shall  
39 combine the Division of Water Quality and the Division of Water Resources to create a new  
40 Division of Water Resources.

41 **SECTION 35.(b)** G.S. 74-50(b3) reads as rewritten:

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

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

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

16 **SECTION 35.(c)** G.S. 90A-47.3 reads as rewritten:

17 **"§ 90A-47.3. Qualifications for certification; training; examination.**

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

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

31 **SECTION 35.(d)** G.S. 106-805 reads as rewritten:

32 **"§ 106-805. Written notice of swine farms.**

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

- 44 (1) The name and address of the person intending to construct a swine farm.
- 45 (2) The type of swine farm and the design capacity of the animal waste  
46 management system.
- 47 (3) The name and address of the technical specialist preparing the waste  
48 management plan.
- 49 (4) The address of the local Soil and Water Conservation District office.
- 50 (5) Information informing the adjoining property owners and the property  
51 owners who own property located across a public road, street, or highway

1 from the swine farm that they may submit written comments to the Division  
2 of Water ~~Quality, Resources,~~ Department of Environment and Natural  
3 Resources."

4 **SECTION 35.(e)** G.S. 106-860(d) reads as rewritten:

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

- 9 (1) The Director of the Division of Soil and Water Conservation of the  
10 Department of Agriculture and Consumer Services or the Director's  
11 designee, who shall serve as the Chair of the Advisory Committee.
- 12 (2) The President of the North Carolina Association of Soil and Water  
13 Conservation Districts or the President's designee.
- 14 (3) The Director of the Cooperative Extension Service at North Carolina State  
15 University or the Director's designee.
- 16 (4) The Executive Director of the North Carolina Association of County  
17 Commissioners or the Executive Director's designee.
- 18 (5) The Executive Director of the North Carolina League of Municipalities or  
19 the Executive Director's designee.
- 20 (6) The State Conservationist of the Natural Resources Conservation Service of  
21 the United States Department of Agriculture or the State Conservationist's  
22 designee.
- 23 (7) The Executive Director of the Wildlife Resources Commission or the  
24 Executive Director's designee.
- 25 (8) The President of the North Carolina Conservation District Employees  
26 Association or the President's designee.
- 27 (9) The President of the North Carolina Association of Resource Conservation  
28 and Development Councils or the President's designee.
- 29 ~~(10) The Director of the Division of Water Quality of the Department of~~  
30 ~~Environment and Natural Resources or the Director's designee.~~
- 31 (11) The Director of the Division of Forest Resources of the Department of  
32 Agriculture and Consumer Services or the Director's designee.
- 33 (12) The Director of the Division of Energy, Mineral, and Land Resources of the  
34 Department of Environment and Natural Resources or the Director's  
35 designee.
- 36 (13) The Director of the Division of Coastal Management of the Department of  
37 Environment and Natural Resources or the Director's designee.
- 38 (14) The Director of the Division of Water Resources of the Department of  
39 Environment and Natural Resources or the Director's designee.
- 40 (15) The President of the Carolinas Land Improvement Contractors Association  
41 or the President's designee."

42 **SECTION 35.(f)** G.S. 113A-57 reads as rewritten:

43 **"§ 113A-57. Mandatory standards for land-disturbing activity.**

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

- 46 (1) No land-disturbing activity during periods of construction or improvement to  
47 land shall be permitted in proximity to a lake or natural watercourse unless a  
48 buffer zone is provided along the margin of the watercourse of sufficient  
49 width to confine visible siltation within the twenty-five percent (25%) of the  
50 buffer zone nearest the land-disturbing activity. Waters that have been  
51 classified as trout waters by the Environmental Management Commission

1 shall have an undisturbed buffer zone 25 feet wide or of sufficient width to  
2 confine visible siltation within the twenty-five percent (25%) of the buffer  
3 zone nearest the land-disturbing activity, whichever is greater. Provided,  
4 however, that the Sedimentation Control Commission may approve plans  
5 which include land-disturbing activity along trout waters when the duration  
6 of said disturbance would be temporary and the extent of said disturbance  
7 would be minimal. This subdivision shall not apply to a land-disturbing  
8 activity in connection with the construction of facilities to be located on,  
9 over, or under a lake or natural watercourse.

10 (2) The angle for graded slopes and fills shall be no greater than the angle that  
11 can be retained by vegetative cover or other adequate erosion-control  
12 devices or structures. In any event, slopes left exposed will, within 21  
13 calendar days of completion of any phase of grading, be planted or otherwise  
14 provided with temporary or permanent ground cover, devices, or structures  
15 sufficient to restrain erosion.

16 (3) Whenever land-disturbing activity that will disturb more than one acre is  
17 undertaken on a tract, the person conducting the land-disturbing activity  
18 shall install erosion and sedimentation control devices and practices that are  
19 sufficient to retain the sediment generated by the land-disturbing activity  
20 within the boundaries of the tract during construction upon and development  
21 of the tract, and shall plant or otherwise provide a permanent ground cover  
22 sufficient to restrain erosion after completion of construction or development  
23 within a time period to be specified by rule of the Commission.

24 (4) No person shall initiate any land-disturbing activity that will disturb more  
25 than one acre on a tract unless, 30 or more days prior to initiating the  
26 activity, an erosion and sedimentation control plan for the activity is filed  
27 with the agency having jurisdiction and approved by the agency. An erosion  
28 and sedimentation control plan may be filed less than 30 days prior to  
29 initiation of a land-disturbing activity if the plan is submitted under an  
30 approved express permit program, and the land-disturbing activity may be  
31 initiated and conducted in accordance with the plan once the plan has been  
32 approved. The agency having jurisdiction shall forward to the Director of the  
33 Division of Water ~~Quality-Resources~~ a copy of each erosion and  
34 sedimentation control plan for a land-disturbing activity that involves the  
35 utilization of ditches for the purpose of de-watering or lowering the water  
36 table of the tract.

37 (5) The land-disturbing activity shall be conducted in accordance with the  
38 approved erosion and sedimentation control plan."

39 **SECTION 35.(g)** G.S. 136-44.7D reads as rewritten:

40 **"§ 136-44.7D. Bridge construction guidelines.**

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

48 **SECTION 35.(h)** G.S. 143-214.7(c3) reads as rewritten:

49 "(c3) In accordance with the Federal Aviation Administration August 28, 2007, Advisory  
50 Circular No. 150/5200-33B (Hazardous Wildlife Attractants on or Near Airports), the  
51 Department shall not require the use of stormwater retention ponds, stormwater detention

1 ponds, or any other stormwater control measure that promotes standing water in order to  
2 comply with this section at public airports that support commercial air carriers or general  
3 aviation services. Development projects located within five statute miles from the farthest edge  
4 of an airport air operations area, as that term is defined in 14 C.F.R. § 153.3 (July 2011  
5 Edition), shall not be required to use stormwater retention ponds, stormwater detention ponds,  
6 or any other stormwater control measure that promotes standing water in order to comply with  
7 this section. Existing stormwater retention ponds, stormwater detention ponds, or any other  
8 stormwater control measure that promotes standing water in order to comply with this section  
9 located at public airports or that are within five statute miles from the farthest edge of an airport  
10 operations area may be replaced with alternative measures included in the Division of Water  
11 ~~Quality's Resources'~~ Best Management Practice Manual chapter on airports. In order to be  
12 approved by the Department, alternative measures or management designs that are not  
13 expressly included in the Division of Water ~~Quality's Resources'~~ Best Management Practice  
14 Manual shall provide for equal or better stormwater control based on the pre- and  
15 post-development hydrograph. Any replacement of existing stormwater retention ponds,  
16 stormwater detention ponds, or any other stormwater control measure that promotes standing  
17 water shall be considered a minor modification to the State general stormwater permit."

18 **SECTION 35.(i)** G.S. 143-214.7A reads as rewritten:

19 **"§ 143-214.7A. Stormwater control best management practices.**

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

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

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



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

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

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

21 **SECTION 35.(j)** G.S. 143-214.10 reads as rewritten:

22 **"§ 143-214.10. Ecosystem Enhancement Program: development and implementation of**  
23 **basinwide restoration plans.**

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

30 **SECTION 35.(k)** G.S. 143-214.25A reads as rewritten:

31 **"§ 143-214.25A. Riparian Buffer Protection Program: Surface Water Identification**  
32 **Training and Certification Program.**

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

47 (b) The Division of Water ~~Quality-Resources~~ shall develop standard forms for use in  
48 making and reporting determinations. Each individual who is certified to make determinations  
49 under this section shall prepare a written report of each determination and shall submit the  
50 report to the agency that employs the individual. Each agency shall maintain reports of  
51 determinations made by its employees, shall forward a copy of each report to the Director of

1 the Division of Water ~~Quality,Resources~~, and shall maintain these reports and all other records  
2 related to determinations so that they will be readily accessible to the public.

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

11 **SECTION 35.(l)** G.S. 143-215.9C reads as rewritten:

12 **"§ 143-215.9C. Use of certain types of culverts allowed.**

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

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

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

28 **SECTION 35.(m)** G.S. 143-215.10A reads as rewritten:

29 **"§ 143-215.10A. Legislative findings and intent.**

30 The General Assembly finds that animal operations provide significant economic and other  
31 benefits to this State. The growth of animal operations in recent years has increased the  
32 importance of good animal waste management practices to protect water quality. It is critical  
33 that the State balance growth with prudent environmental safeguards. It is the intention of the  
34 State to promote a cooperative and coordinated approach to animal waste management among  
35 the agencies of the State with a primary emphasis on technical assistance to farmers. To this  
36 end, the General Assembly intends to establish a permitting program for animal waste  
37 management systems that will protect water quality and promote innovative systems and  
38 practices while minimizing the regulatory burden. Technical assistance will be provided by the  
39 Division of Soil and Water Conservation of the Department of Agriculture and Consumer  
40 Services. Inspection and enforcement will be provided by the Division of Water  
41 ~~Quality-Resources~~."

42 **SECTION 35.(n)** G.S. 143-215.10B reads as rewritten:

43 **"§ 143-215.10B. Definitions.**

44 As used in this Part:

- 45 (1) "Animal operation" means any agricultural feedlot activity involving 250 or  
46 more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more  
47 sheep, or 30,000 or more confined poultry with a liquid animal waste  
48 management system, or any agricultural feedlot activity with a liquid animal  
49 waste management system that discharges to the surface waters of the State.  
50 A public livestock market regulated under Article 35 of Chapter 106 of the  
51 General Statutes is an animal operation for purposes of this Part.

- 1 (2) "Animal waste" means livestock or poultry excreta or a mixture of excreta  
2 with feed, bedding, litter, or other materials from an animal operation.
- 3 (3) "Animal waste management system" means a combination of structures and  
4 nonstructural practices serving a feedlot that provide for the collection,  
5 treatment, storage, or land application of animal waste.
- 6 (4) "Division" means the Division of Water ~~Quality~~Resources of the  
7 Department.
- 8 (5) "Feedlot" means a lot or building or combination of lots and buildings  
9 intended for the confined feeding, breeding, raising, or holding of animals  
10 and either specifically designed as a confinement area in which animal waste  
11 may accumulate or where the concentration of animals is such that an  
12 established vegetative cover cannot be maintained. A building or lot is not a  
13 feedlot unless animals are confined for 45 or more days, which may or may  
14 not be consecutive, in a 12-month period. Pastures shall not be considered  
15 feedlots for purposes of this Part.
- 16 (6) "Technical specialist" means an individual designated by the Soil and Water  
17 Conservation Commission, pursuant to rules adopted by that Commission, to  
18 certify animal waste management plans."

19 **SECTION 35.(o)** G.S. 143-215.10M(a) reads as rewritten:

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

- 23 (1) The number of permits for animal waste management systems, itemized by  
24 type of animal subject to such permits, issued since the last report.
- 25 (2) The number of operations reviews of animal waste management systems that  
26 the Division of Soil and Water Conservation of the Department of  
27 Agriculture and Consumer Services has conducted since the last report.
- 28 (3) The number of operations reviews of animal waste management systems  
29 conducted by agencies other than the Division of Soil and Water  
30 Conservation of the Department of Agriculture and Consumer Services that  
31 have been conducted since the last report.
- 32 (4) The number of reinspections associated with operations reviews conducted  
33 by the Division of Soil and Water Conservation of the Department of  
34 Agriculture and Consumer Services since the last report.
- 35 (5) The number of reinspections associated with operations reviews conducted  
36 by agencies other than the Division of Soil and Water Conservation of the  
37 Department of Agriculture and Consumer Services since the last report.
- 38 (6) The number of compliance inspections of animal waste management  
39 systems that the Division of Water ~~Quality~~Resources has conducted since  
40 the last report.
- 41 (7) The number of follow-up inspections associated with compliance inspections  
42 conducted by the Division of Water ~~Quality~~Resources since the last report.
- 43 (8) The average length of time for each category of reviews and inspections  
44 under subdivisions (2) through (7) of this subsection.
- 45 (9) The number of violations found during each category of review and  
46 inspection under subdivisions (2) through (7) of this subsection, the status of  
47 enforcement actions taken and pending, and the penalties imposed, collected,  
48 and in the process of being negotiated for each such violation.
- 49 (10) Any other information that the Department determines to be appropriate or  
50 that is requested by the Environmental Review Commission or the Fiscal  
51 Research Division."

1           **SECTION 35.(p)** G.S. 143B-279.7(a) reads as rewritten:

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

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

16           **SECTION 35.(q)** G.S. 159G-20(5) is repealed.

17           **SECTION 35.(r)** G.S. 159G-23 reads as rewritten:

18       "**§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking**  
19       **Water Reserve.**

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

23       ...."

24           **SECTION 35.(s)** G.S. 159G-26(a) reads as rewritten:

25       "**§ 159G-26. Annual reports on Water Infrastructure Fund.**

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

32           **SECTION 35.(t)** G.S. 159G-30 reads as rewritten:

33       "**§ 159G-30. Department's responsibility.**

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

39           **SECTION 35.(u)** G.S. 159G-37 reads as rewritten:

40       "**§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water**  
41       **Reserve.**

42       An application for a loan or grant from the ~~CWSRF or the Wastewater Reserve must be~~  
43 ~~filed with the Division of Water Quality of the Department. An application for a loan or grant~~  
44 ~~from the DWSRF or the Drinking Water Reserve must be filed with the CWSRF, the~~  
45 Wastewater Reserve, the DWSRF, or the Drinking Water Reserve must be filed with the  
46 Division of Water Resources of the Department. An application must be submitted on a form  
47 prescribed by the Division and must contain the information required by the Division. An  
48 applicant must submit to the Division any additional information requested by the Division to  
49 enable the Division to make a determination on the application. An application that does not  
50 contain information required on the application or requested by the Division is incomplete and

1 is not eligible for consideration. An applicant may submit an application in as many categories  
2 as it is eligible for consideration under this Article."

3 **SECTION 35.(v)** G.S. 159G-38 reads as rewritten:

4 "**§ 159G-38. Environmental assessment and public hearing.**

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

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

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

30 **SECTION 35.(w)** G.S. 159G-39(a) reads as rewritten:

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

37 **SECTION 35.(x)** Section 1.6 of S.L. 1998-221 reads as rewritten:

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

48 (b) Within 90 days after the Commission receives a complete application requesting  
49 delegation of responsibility for the implementation and enforcement of the State's riparian  
50 buffer protection requirement, the Commission shall review the application and notify the unit  
51 of local government that submitted the application whether the application has been approved,

1 approved with modifications, or disapproved. The Commission shall not approve a delegation  
2 unless the Commission finds that local implementation and enforcement of the State's riparian  
3 buffer protection requirements will equal implementation and enforcement by the State.

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

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

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

20 **SECTION 35.(y)** Section 2(c) of S.L. 2001-355 reads as rewritten:

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

29 **SECTION 35.(z)** Section 2 of S.L. 2006-246 reads as rewritten:

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

- 32 (1) The definitions set out in 40 Code of Federal Regulations § 122.2  
33 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003  
34 Edition).
- 35 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- 36 (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).
- 37 (4) The definitions set out in 15A NCAC 2H .1002 (Definitions), except for the  
38 definitions of "Built-upon area", "Development", and "Redevelopment",  
39 which are defined below.
- 40 (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be  
41 equaled or exceeded, on average, once in 12 months and with a duration of  
42 24 hours.
- 43 (6) "BMP" means Best Management Practice.
- 44 (7) "Built-upon area" means that portion of a project that is covered by  
45 impervious or partially impervious surface including, but not limited to,  
46 buildings; pavement and gravel areas such as roads, parking lots, and paths;  
47 and recreation facilities such as tennis courts. "Built-upon area" does not  
48 include a wooden slatted deck, the water area of a swimming pool, or  
49 pervious or partially pervious paving material to the extent that the paving  
50 material absorbs water or allows water to infiltrate through the paving  
51 material.

- 1 (8) "Development" means any land-disturbing activity that increases the amount  
2 of built-upon area or that otherwise decreases the infiltration of precipitation  
3 into the soil.
- 4 (9) "Division" means the Division of Water ~~Quality~~ Resources in the  
5 Department.
- 6 (10) "Planning jurisdiction" means the territorial jurisdiction within which a  
7 municipality exercises the powers authorized by Article 19 of Chapter 160A  
8 of the General Statutes, or a county may exercise the powers authorized by  
9 Article 18 of Chapter 153A of the General Statutes.
- 10 (11) "Public entity" means the United States; the State; a city, village, township,  
11 county, school district, public college or university, or single-purpose  
12 governmental agency; or any other governing body that is created by federal  
13 or State law.
- 14 (12) "Redevelopment" means any land-disturbing activity that does not result in a  
15 net increase in built-upon area and that provides greater or equal stormwater  
16 control than the previous development.
- 17 (13) "Regulated entity" means any public entity that must obtain a Phase II  
18 National Pollutant Discharge Elimination System (NPDES) permit for  
19 stormwater management for its municipal separate storm sewer system  
20 (MS4).
- 21 (14) "Sensitive receiving waters" means any of the following:  
22 a. Waters that are classified as high quality, outstanding resource,  
23 shellfish, trout, or nutrient-sensitive waters in accordance with  
24 subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for  
25 Assignment of Water Quality Standards – General Procedures).
- 26 b. Waters that are occupied by or designated as critical habitat for  
27 aquatic animal species that are listed as threatened or endangered by  
28 the United States Fish and Wildlife Service or the National Marine  
29 Fisheries Service under the provisions of the Endangered Species Act  
30 of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et  
31 seq.), as amended.
- 32 c. Waters for which the designated use, as described by the  
33 classification system set out in subsections (c), (d), and (e) of 15A  
34 NCAC 2B .0101 (Procedures for Assignment of Water Quality  
35 Standards – General Procedures), have been determined to be  
36 impaired in accordance with the requirements of subsection (d) of 33  
37 U.S.C. § 1313.
- 38 (15) "Shellfish resource waters" means Class SA waters that contain an average  
39 concentration of 500 parts per million of natural chloride ion. Average  
40 concentration is determined by averaging the chloride concentrations of five  
41 water samples taken one-half mile downstream from the project site that are  
42 taken on separate days, within one hour of high tide, and not within 48 hours  
43 following a rain event. The chloride ion concentrations are to be determined  
44 by a State-certified laboratory.
- 45 (16) "Significant contributor of pollutants" means a municipal separate storm  
46 sewer system (MS4) or a discharge that contributes to the pollutant loading  
47 of a water body or that destabilizes the physical structure of a water body  
48 such that the contribution to pollutant loading or the destabilization may  
49 reasonably be expected to adversely affect the quality and uses of the water  
50 body. Uses of a water body shall be determined pursuant to 15A NCAC 2B  
51 .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 35.(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



1 activity or project that disturbs less than one acre of land that is part of a larger common plan of  
2 development. Whether an activity or project that disturbs less than one acre of land is part of a  
3 larger common plan of development shall be determined in a manner consistent with the  
4 memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from  
5 the Director of the Division of Water Quality of the Department of Environment and Natural  
6 Resources to Interested Parties dated 24 July 2006.

7 (1) Development Near Outstanding Resource Waters (ORW). – Development  
8 activities within the Coastal Counties and located within 575 feet of the  
9 mean high waterline of areas designated by the Commission as Outstanding  
10 Resource Waters (ORW) shall meet the requirements of 15A NCAC 02H  
11 .1007 (Stormwater Requirements: Outstanding Resource Waters) and shall  
12 be permitted as follows:

13 a. Low-Density Option. – Development shall be permitted pursuant to  
14 15A NCAC 02H .1003(d)(1) if the development meets all of the  
15 following requirements:

- 16 1. The development has a built upon area of twelve percent  
17 (12%) or less. A development project with an overall density  
18 at or below the low-density threshold, but containing areas  
19 with a density greater than the overall project density, shall be  
20 considered low-density as long as the project meets or  
21 exceeds the requirements for low-density development and  
22 locates the higher density development in upland areas and  
23 away from surface waters and drainageways to the maximum  
24 extent practicable.
- 25 2. Stormwater runoff from the development is transported  
26 primarily by vegetated conveyances. As used in this  
27 sub-sub-subdivision, "conveyance system" shall not include a  
28 stormwater collection system. Stormwater runoff from built  
29 upon areas that is directed to flow through any wetlands shall  
30 flow into and through these wetlands at a non-erosive  
31 velocity.
- 32 3. The development contains a 50-foot-wide vegetative buffer  
33 for new development activities and a 30-foot-wide vegetative  
34 buffer for redevelopment activities. The width of a buffer is  
35 measured horizontally from the normal pool elevation of  
36 impounded structures, from the bank of each side of streams  
37 or rivers, and from the mean high waterline of tidal waters,  
38 perpendicular to the shoreline. The vegetative buffer may be  
39 cleared or graded, but must be planted with and maintained in  
40 grass or any other vegetative or plant material. The Division  
41 of Water ~~Quality~~ Resources may, on a case-by-case basis,  
42 grant a minor variance from the vegetative buffer  
43 requirements of this section pursuant to the procedures set out  
44 in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters  
45 required by this section and any other buffers or filters  
46 required by State water quality or coastal management rules  
47 or local government requirements may be met concurrently  
48 and may contain, in whole or in part, coastal, isolated, or 404  
49 jurisdictional wetlands that are located landward of the  
50 normal waterline.

- 1                   b.     High-Density Option. – Development shall be permitted pursuant to  
2                   15A NCAC 02H .1003(d)(2) if the development meets all of the  
3                   following requirements:  
4                   1.     The development has a built upon area of greater than twelve  
5                   percent (12%).  
6                   2.     The development has no direct outlet channels or pipes to  
7                   Class SA waters unless permitted in accordance with 15A  
8                   NCAC 02H .0126. Stormwater runoff from built upon areas  
9                   that is directed to flow through any wetlands shall flow into  
10                  and through these wetlands at a non-erosive velocity.  
11                  3.     The development utilizes control systems that are any  
12                  combination of infiltration systems, bioretention systems,  
13                  constructed stormwater wetlands, sand filters, rain barrels,  
14                  cisterns, rain gardens or alternative low impact development  
15                  stormwater management systems designed in accordance with  
16                  15A NCAC 02H .1008 to control and treat the runoff from all  
17                  surfaces generated by one and one-half inches of rainfall, or  
18                  the difference in the stormwater runoff from all surfaces from  
19                  the predevelopment and postdevelopment conditions for a  
20                  one-year, 24-hour storm, whichever is greater. Wet detention  
21                  ponds may be used as a stormwater control system to meet  
22                  the requirements of this sub-sub-division, provided that  
23                  the stormwater control system fully complies with the  
24                  requirements of this sub-sub-division. If a wet detention pond  
25                  is used within one-half mile of Class SA waters, installation  
26                  of a stormwater best management practice in series with the  
27                  wet detention pond shall be required to treat the discharge  
28                  from the wet detention pond. Secondary stormwater best  
29                  management practices that are used in series with another  
30                  stormwater best management practice do not require any  
31                  minimum separation from the seasonal high water table.  
32                  Alternatives as described in 15A NCAC 02H .1008(h) may  
33                  also be approved if they meet the requirements of this  
34                  sub-sub-division.  
35                  4.     Stormwater runoff from the development that is in excess of  
36                  the design volume must flow overland through a vegetative  
37                  filter designed in accordance with 15A NCAC 02H .1008  
38                  with a minimum length of 50 feet measured from mean high  
39                  water of Class SA waters.  
40                  5.     The development contains a 50-foot-wide vegetative buffer  
41                  for new development activities and a 30-foot-wide vegetative  
42                  buffer for redevelopment activities. The width of a buffer is  
43                  measured horizontally from the normal pool elevation of  
44                  impounded structures, from the bank of each side of streams  
45                  or rivers, and from the mean high waterline of tidal waters,  
46                  perpendicular to the shoreline. The vegetative buffer may be  
47                  cleared or graded, but must be planted with, and maintained  
48                  in, grass or any other vegetative or plant material.  
49                  Furthermore, stormwater control best management practices  
50                  (BMPs), or stormwater control structures, with the exception  
51                  of wet detention ponds, may be located within this vegetative

- 1 buffer. The Division of Water ~~Quality~~ Resources may, on a  
2 case by case basis, grant a minor variance from the vegetative  
3 buffer requirements of this section pursuant to the procedures  
4 set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers  
5 and filters required by this section and any other buffers or  
6 filters required by State water quality or coastal management  
7 rules or local government requirements may be met  
8 concurrently and may contain, in whole or in part, coastal,  
9 isolated, or 404 jurisdictional wetlands that are located  
10 landward of the normal waterline.
- 11 c. Stormwater Discharges Prohibited. – All development activities,  
12 including both low- and high-density projects, shall prohibit new  
13 points of stormwater discharge to Class SA waters or an increase in  
14 the volume of stormwater flow through conveyances or increase in  
15 capacity of conveyances of existing stormwater conveyance systems  
16 that drain to Class SA waters. Any modification or redesign of a  
17 stormwater conveyance system within the contributing drainage  
18 basin must not increase the net amount or rate of stormwater  
19 discharge through existing outfalls to Class SA waters. The following  
20 shall not be considered a direct point of stormwater discharge:
- 21 1. Infiltration of the stormwater runoff from the design storm as  
22 described in sub-sub-subdivision 3. of sub-subdivision b. of  
23 subdivision (1) of this subsection.
  - 24 2. Diffuse flow of stormwater at a non-erosive velocity to a  
25 vegetated buffer or other natural area, that is capable of  
26 providing effective infiltration of the runoff from the design  
27 storm as described in sub-sub-subdivision 3. of  
28 sub-subdivision b. of subdivision (1) of this subsection.  
29 Notwithstanding the other requirements of this section, the  
30 infiltration mandated in this sub-sub-subdivision does not  
31 require a minimum separation from the seasonal high-water  
32 table.
  - 33 3. The discharge from a wet detention pond that is treated by a  
34 secondary stormwater best management practice, provided  
35 that both the wet detention pond and the secondary  
36 stormwater best management practice meet the requirements  
37 of this sub-subdivision.
- 38 d. Limitation on the Density of Development. – Development shall be  
39 limited to a built upon area of twenty-five percent (25%) or less.
- 40 (2) Development Near Class SA Waters. – Development activities within  
41 one-half mile of and draining to those waters classified by the Commission  
42 as Class SA waters or within one-half mile of waters classified by the  
43 Commission as Class SA waters and draining to unnamed freshwater  
44 tributaries to Class SA waters shall meet the requirements of  
45 sub-subdivisions a., b., and c. of subdivision (1) of this subsection. The  
46 extent of Class SA waters is limited to those waters that are determined to be  
47 at least an intermittent stream based on a site stream determination made in  
48 accordance with the procedures that are delineated in the Division of Water  
49 Quality's "Identification Methods for the Origin of Intermittent and Perennial  
50 Streams" prepared pursuant to Session Law 2001-404.

1 (3) Other Coastal Development. – Development activities within the Coastal  
2 Counties except those areas described in subdivisions (1) and (2) of this  
3 subsection shall meet all of the following requirements:

4 a. Low-Density Option: Development shall be permitted pursuant to  
5 15A NCAC 02H .1003(d)(1) if the development meets all of the  
6 following requirements:

7 1. The development has a built upon area of twenty-four percent  
8 (24%) or less. A development project with an overall density  
9 at or below the low-density threshold, but containing areas  
10 with a density greater than the overall project density, shall be  
11 considered low density as long as the project meets or  
12 exceeds the requirements for low-density development and  
13 locates the higher density in upland areas and away from  
14 surface waters and drainageways to the maximum extent  
15 practicable.

16 2. Stormwater runoff from the development is transported  
17 primarily by vegetated conveyances. As used in this  
18 sub-sub-subdivision, "conveyance system" shall not include a  
19 stormwater collection system. Stormwater runoff from built  
20 upon areas that is directed to flow through any wetlands shall  
21 flow into and through these wetlands at a non-erosive  
22 velocity.

23 3. The development contains a 50-foot-wide vegetative buffer  
24 for new development activities and a 30-foot-wide vegetative  
25 buffer for redevelopment activities. The width of a buffer is  
26 measured horizontally from the normal pool elevation of  
27 impounded structures, from the bank of each side of streams  
28 or rivers, and from the mean high waterline of tidal waters,  
29 perpendicular to the shoreline. The vegetative buffer may be  
30 cleared or graded, but must be planted with, and maintained  
31 in, grass or any other vegetative or plant material. The  
32 Division of Water ~~Quality Resources~~ may, on a case-by-case  
33 basis, grant a minor variance from the vegetative buffer  
34 requirements of this section pursuant to the procedures set out  
35 in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters  
36 required by this section and any other buffers or filters  
37 required by State water quality or coastal management rules  
38 or local government requirements may be met concurrently  
39 and may contain, in whole or in part, coastal, isolated, or 404  
40 jurisdictional wetlands that are located landward of the  
41 normal waterline.

42 b. High-Density Option: Higher density developments shall be  
43 permitted pursuant to 15A NCAC 02H .1003(d)(2) if the  
44 development meets all of the following requirements:

45 1. The development has a built upon area of greater than  
46 twenty-four percent (24%).

47 2. The development uses control systems that are any  
48 combination of infiltration systems, wet detention ponds,  
49 bioretention systems, constructed stormwater wetlands, sand  
50 filters, rain barrels, cisterns, rain gardens or alternative

- 1 stormwater management systems designed in accordance with  
2 15A NCAC 02H .1008.
- 3 3. Control systems must be designed to store, control, and treat  
4 the stormwater runoff from all surfaces generated by one and  
5 one-half inch of rainfall.
- 6 4. Stormwater runoff from built upon areas that is directed to  
7 flow through any wetlands shall flow into and through these  
8 wetlands at a non-erosive velocity.
- 9 5. A 50-foot-wide vegetative buffer for new development  
10 activities and a 30-foot-wide vegetative buffer for  
11 redevelopment activities. The width of a buffer is measured  
12 horizontally from the normal pool elevation of impounded  
13 structures, from the bank of each side of streams or rivers,  
14 and from the mean high waterline of tidal waters,  
15 perpendicular to the shoreline. The vegetative buffer may be  
16 cleared or graded, but must be planted with, and maintained  
17 in, grass or any other vegetative or plant material.  
18 Furthermore, stormwater control best management practices  
19 (BMPs), or stormwater control structures, with the exception  
20 of wet detention ponds, may be located within this vegetative  
21 buffer. The Division of Water ~~Quality Resources~~ may, on a  
22 case by case basis, grant a minor variance from the vegetative  
23 buffer requirements of this section pursuant to the procedures  
24 set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers  
25 and filters required by this section and any other buffers or  
26 filters required by State water quality or coastal management  
27 rules or local government requirements may be met  
28 concurrently and may contain, in whole or in part, coastal,  
29 isolated, or 404 jurisdictional wetlands that are located  
30 landward of the normal waterline.
- 31 (4) Requirements for Structural Stormwater Controls. – Structural stormwater  
32 controls required under this section shall meet all of the following  
33 requirements:
- 34 a. Remove an eighty-five percent (85%) average annual amount of  
35 Total Suspended Solids.
- 36 b. For detention ponds, draw down the treatment volume no faster than  
37 48 hours, but no slower than 120 hours.
- 38 c. Discharge the storage volume at a rate equal to or less than the  
39 predevelopment discharge rate for the one-year, 24-hour storm.
- 40 d. Meet the General Engineering Design Criteria set forth in 15A  
41 NCAC 02H .1008(c).
- 42 e. For structural stormwater controls that are required under this section  
43 and that require separation from the seasonal high-water table, a  
44 minimum separation of two feet is required. Where a separation of  
45 two feet from the seasonal highwater table is not practicable, the  
46 Division of Water ~~Quality Resources~~ may grant relief from the  
47 separation requirement pursuant to the Alternative Design Criteria set  
48 out in 15A NCAC 02H .1008(h). No minimum separation from the  
49 seasonal highwater table is required for a secondary stormwater best  
50 management practice that is used in a series with another stormwater  
51 best management practice.

- 1 (5) Certain Wetlands Excluded From Density Calculation. – For the purposes of  
2 this section, areas defined as Coastal Wetlands under 15A NCAC 07H  
3 .0205, as measured landward from the normal high waterline, shall not be  
4 included in the overall project area to calculate impervious surface density.  
5 Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC  
6 07H .0205 and that are located landward of the normal high waterline may  
7 be included in the overall project area to calculate impervious surface  
8 density.

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

- 18 (1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from  
19 the first one and one-half inches of rain. Rain barrels and cisterns shall be  
20 installed in such a manner as to facilitate the reuse of the collected rain water  
21 on site and shall be installed in such a manner that any overflow from these  
22 devices is directed to a vegetated area in a diffuse flow. Construct all  
23 uncovered driveways, uncovered parking areas, uncovered walkways, and  
24 uncovered patios out of permeable pavement or other pervious materials.  
25 (2) Direct rooftop runoff from the first one and one-half inches of rain to an  
26 appropriately sized and designed rain garden. Construct all uncovered  
27 driveways, uncovered parking areas, uncovered walkways, and uncovered  
28 patios out of permeable pavement or other pervious materials.  
29 (3) Install any other stormwater best management practice that meets the  
30 requirements of 15A NCAC 02H .1008 to control and treat the stormwater  
31 runoff from all built upon areas of the site from the first one and one-half  
32 inches of rain.

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

- 35 (1) Activities of the North Carolina Department of Transportation that are  
36 regulated in accordance with the provisions of the Department's National  
37 Pollutant Discharge Elimination System (NPDES) Stormwater Permit.  
38 (2) Development activities that are conducted pursuant to and consistent with  
39 one of the following authorizations, or any timely renewal thereof, shall be  
40 regulated by those provisions and requirements of 15A NCAC 02H .1005  
41 that were effective at the time of the original issuance of the following  
42 authorizations:  
43 a. State Stormwater Permit issued under the provisions of 15A NCAC  
44 02H .1005.  
45 b. Stormwater Certification issued pursuant to 15A NCAC 02H .1000  
46 prior to 1 December 1995.  
47 c. A Coastal Area Management Act Major Permit.  
48 d. 401 Certification that contains an approved Stormwater Management  
49 Plan.  
50 e. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.

- 1 f. A site-specific development plan as defined by  
2 G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
- 3 g. A phased development plan approved pursuant to G.S. 153A-344.1  
4 or G.S. 160A-385.1 that shows:
- 5 1. For the initial or first phase of development, the type and  
6 intensity of use for a specific parcel or parcels, including at a  
7 minimum, the boundaries of the project and a subdivision  
8 plan that has been approved pursuant to G.S. 153A-330  
9 through G.S. 153A-335 or G.S. 160A-371 through  
10 G.S. 160A-376.
- 11 2. For any subsequent phase of development, sufficient detail so  
12 that implementation of the requirements of this section to that  
13 phase of development would require a material change in that  
14 phase of the plan.
- 15 h. A vested right to the development pursuant to common law.
- 16 (3) Redevelopment activities that result in no net increase in built upon area and  
17 provide stormwater control equal to the previous development.
- 18 (4) Development activities for which a complete Stormwater Permit Application  
19 has been accepted by the Division of Water ~~Quality Resources~~ prior to the  
20 effective date of this act, shall be regulated by the provisions and  
21 requirements of 15A NCAC 02H .1005 that were effective at the time that  
22 this application was accepted as complete by the Division of Water  
23 ~~Quality Resources~~. For purposes of this subsection, a Stormwater Permit  
24 Application is deemed accepted as complete by the Division of Water  
25 ~~Quality Resources~~ when the application is assigned a permit number in the  
26 Division's Basinwide Information Management System.
- 27 (5) Development activities for which only a minor modification of a State  
28 Stormwater Permit is required shall be regulated by the provisions and  
29 requirements of 15A NCAC 02H .1005 that were effective at the time of the  
30 original issuance of the State Stormwater Permit. For purposes of this  
31 subsection, a minor modification of a State Stormwater Permit is defined as  
32 a modification that does not increase the net area of built upon area within  
33 the project site or does not increase the overall size of the stormwater  
34 controls that have been previously approved for that development activity.
- 35 (6) Municipalities designated as a National Pollutant Discharge Elimination  
36 System (NPDES) Phase 2 municipality located within the 20 Coastal  
37 Counties until such time as the NPDES Phase 2 Stormwater Permit expires  
38 and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater  
39 Permits for municipalities located within the 20 Coastal Counties, the  
40 Department shall review the permits to determine whether the permits  
41 should be amended to include the provisions of this section.

42 ...."

43 **SECTION 35.(bb)** S.L. 2009-322 reads as rewritten:

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

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

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

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

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

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

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

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

- 45 (1) The Division of Water ~~Quality Resources~~ shall issue interim water quality  
46 permit extensions to all composting facilities applying for a water quality  
47 permit renewal until the revised final water quality permitting procedures are  
48 phased in, as provided in Section 3(d) of this act. The issuance of interim  
49 water quality permit extensions shall be contingent upon no significant  
50 changes to the existing quantities, feedstocks, and composting methods  
51 permitted by the Division of Waste Management. For any facility found to



1 be causing or contributing to a violation of water quality standards, the  
2 Division of Water ~~Quality Resources~~ may subsequently determine that the  
3 facility is ineligible for continued coverage under an interim water quality  
4 permit extension.

5 (2) For facilities renewing permits issued by the Division of Waste Management  
6 prior to the phase-in provided in Section 3(d) of this act, but operating  
7 without the appropriate water quality permits, the Division of Water ~~Quality~~  
8 ~~Resources~~ will work with those facilities on a case-by-case basis to establish  
9 appropriate permit coverage.

10 (3) New water quality permit applications filed after July 1, 2009, shall be  
11 handled on a case-by-case basis.

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

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

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

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

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

28 **SECTION 35.(cc)** Section 4(b) of S.L. 2010-180 reads as rewritten:

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

38 **SECTION 35.(dd)** Section 4 of S.L. 2005-190, as amended by Section 31 of S.L.  
39 2006-59 and Section 12 of S.L. 2010-180, reads as rewritten:

40 **"SECTION 4. Other drinking water supply reservoirs.** – The Environmental  
41 Management Commission shall not make any new or increased nutrient loading allocation to  
42 any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater  
43 discharge directly or indirectly into any impaired drinking water supply reservoir for which the  
44 Division of Water ~~Quality Resources~~ of the Department of Environment and Natural Resources  
45 has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent  
46 rules adopted by the Commission to implement the nutrient management strategy for that  
47 reservoir become effective. The Commission shall report its progress in developing and  
48 implementing nutrient management strategies for reservoirs to which this section applies to the  
49 Environmental Review Commission by 1 April of each year beginning 1 April 2006."

50 **SECTION 35.(ee)** Section 13.4(b) of S.L. 2011-145 reads as rewritten:

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

9 SECTION 35.(ff) Section 21 of Session Law 2011-394 reads as rewritten:

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

28 SECTION 35.(gg) G.S. 143-215.10F, as amended by S.L. 2013-131, reads as  
29 rewritten:

30 "§ 143-215.10F. Inspections.

31 (a) Except as provided in subsection (b) of this section, the Division shall conduct  
32 inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least  
33 once a year to determine whether the system is causing a violation of water quality standards  
34 and whether the system is in compliance with its animal waste management plan or any other  
35 condition of the permit.

36 (b) As an alternative to the inspection program set forth in subsection (a) of this section,  
37 the Division of Soil and Water Conservation of the Department of Agriculture and Consumer  
38 Services shall conduct inspections of all animal operations that are subject to a permit under  
39 G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of  
40 water quality standards and whether the system is in compliance with its animal waste  
41 management plan or any other condition of the permit. The alternative inspection program shall  
42 be located in up to four counties selected using the criteria set forth in Section 15.4(a) of S.L.  
43 1997-443, as amended, as it existed prior to its expiration. The Department of Agriculture and  
44 Consumer Services shall establish procedures whereby resources within the local Soil and  
45 Water Conservation Districts serving the counties are used for quick response to complaints  
46 and reported problems previously referred only to the Division of Water ~~Quality-Resources~~."

47  
48 **PART XXXVI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

49 SECTION 36.(a) If any section or provision of this act is declared unconstitutional  
50 or invalid by the courts, it does not affect the validity of this act as a whole or any part other  
51 than the part so declared to be unconstitutional or invalid.

1           **SECTION 36.(b)** G.S. 87-97(e), as amended by Section 11 of this act, is effective  
2 when this act becomes law and applies to applications to construct or repair a private drinking  
3 water well that are received by a local health department on or after that date. Section 29 of this  
4 act is effective when it becomes law and applies to ponds used for agriculture that were either  
5 in existence on or constructed after July 22, 1997. Section 18 of this act becomes effective July  
6 1, 2013. Section 16 becomes effective July 1, 2013, and applies to a purchase or acquisition of  
7 interest in real property occurring on or after that date. Section 28 of this act is effective when  
8 this act becomes law and subsection (b2) of G.S. 143-214.7, as enacted by subsection (a) of  
9 Section 28 of this act, applies to projects for which permit applications are received on or after  
10 that date. The remainder of this act is effective when it becomes law.