

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 729  
Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/17/14  
Third Edition Engrossed 6/25/14  
House Committee Substitute Favorable 7/2/14  
Fifth Edition Engrossed 7/3/14

Short Title: Coal Ash Management Act of 2014.

(Public)

Sponsors:

Referred to:

May 15, 2014

1 A BILL TO BE ENTITLED  
2 AN ACT TO (1) PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL  
3 DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE  
4 IMPOUNDMENTS; (2) ESTABLISH A MORATORIUM ON CERTAIN RATE CASES;  
5 (3) CREATE THE COAL ASH MANAGEMENT COMMISSION TO REVIEW AND  
6 APPROVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS  
7 CLASSIFICATIONS AND CLOSURE PLANS AND OTHERWISE STUDY AND  
8 MAKE RECOMMENDATIONS ON LAWS GOVERNING MANAGEMENT OF COAL  
9 COMBUSTION RESIDUALS; (4) REQUIRE EXPEDITED REVIEW BY THE  
10 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES OF ANY  
11 PERMIT NECESSARY TO CONDUCT ACTIVITIES REQUIRED BY THIS ACT; (5)  
12 ESTABLISH VARIOUS REPORTING REQUIREMENTS TO THE GENERAL  
13 ASSEMBLY, INCLUDING A QUARTERLY REPORT FROM THE DEPARTMENT OF  
14 ENVIRONMENT AND NATURAL RESOURCES ON ITS OPERATIONS,  
15 ACTIVITIES, PROGRAMS, AND PROGRESS WITH RESPECT TO ITS  
16 OBLIGATIONS UNDER THIS ACT FOR COAL COMBUSTION RESIDUALS  
17 SURFACE IMPOUNDMENTS; (6) PROHIBIT LOCAL GOVERNMENT REGULATION  
18 OF MANAGEMENT OF COAL COMBUSTION RESIDUALS OR COAL  
19 COMBUSTION PRODUCTS; (7) PROHIBIT CONSTRUCTION OF NEW OR  
20 EXPANSION OF EXISTING COAL COMBUSTION RESIDUALS SURFACE  
21 IMPOUNDMENTS EFFECTIVE AUGUST 1, 2014; (8) PROHIBIT THE DISPOSAL OF  
22 COAL COMBUSTION RESIDUALS INTO COAL COMBUSTION RESIDUALS  
23 SURFACE IMPOUNDMENTS AT COAL-FIRED GENERATING UNITS THAT ARE  
24 NO LONGER PRODUCING COAL COMBUSTION RESIDUALS EFFECTIVE  
25 OCTOBER 1, 2014; (9) PROHIBIT DISPOSAL OF STORMWATER TO COAL  
26 COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE DECEMBER  
27 31, 2018; (10) REQUIRE ALL ELECTRIC GENERATING FACILITIES TO CONVERT  
28 TO GENERATION OF DRY FLY ASH ON OR BEFORE DECEMBER 31, 2017, AND  
29 DRY BOTTOM ASH ON OR BEFORE DECEMBER 31, 2020, OR RETIRE; (11)  
30 REQUIRE THE ASSESSMENT OF GROUNDWATER AT COAL COMBUSTION  
31 RESIDUALS SURFACE IMPOUNDMENTS; (12) REQUIRE CORRECTIVE ACTION  
32 FOR THE RESTORATION OF GROUNDWATER QUALITY AT COAL  
33 COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (13) REQUIRE A



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1 SURVEY OF DRINKING WATER SUPPLY WELLS AND REPLACEMENT OF  
2 CONTAMINATED WATER SUPPLIES; (14) REQUIRE THE IDENTIFICATION,  
3 ASSESSMENT, AND CORRECTION OF UNPERMITTED DISCHARGES FROM  
4 COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (15) REQUIRE  
5 THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO, AS  
6 SOON AS PRACTICABLE, BUT NO LATER THAN AUGUST 1, 2015, PRIORITIZE  
7 FOR THE PURPOSE OF CLOSURE AND REMEDIATION COAL COMBUSTION  
8 RESIDUALS SURFACE IMPOUNDMENTS, INCLUDING ACTIVE AND RETIRED  
9 SITES, BASED ON THESE SITES' RISKS TO PUBLIC HEALTH, SAFETY,  
10 WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES; (16) REQUIRE  
11 OWNERS OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS TO  
12 SUBMIT A PROPOSED PLAN FOR CLOSURE OF ALL IMPOUNDMENTS TO THE  
13 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; (17) REQUIRE  
14 CLOSURE AND REMEDIATION OF CERTAIN COAL COMBUSTION RESIDUALS  
15 SURFACE IMPOUNDMENTS AS SOON AS PRACTICABLE, BUT NO LATER THAN  
16 AUGUST 1, 2019; (18) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND  
17 NATURAL RESOURCES TO ESTABLISH A SCHEDULE AND PROCESS FOR  
18 CLOSURE AND REMEDIATION OF ALL COAL COMBUSTION RESIDUALS  
19 SURFACE IMPOUNDMENTS BASED UPON THE DEPARTMENT'S RISK  
20 ASSESSMENT OF THESE SITES, BASELINE REQUIREMENTS SET BY THE  
21 GENERAL ASSEMBLY, EVALUATION OF PROPOSED CLOSURE PLANS  
22 SUBMITTED BY IMPOUNDMENT OWNERS, AND INPUT FROM THE PUBLIC  
23 AND OTHER STAKEHOLDERS; (19) ESTABLISH MINIMUM STATUTORY  
24 REQUIREMENTS FOR STRUCTURAL FILL PROJECTS USING COAL  
25 COMBUSTION PRODUCTS AND REQUIRE THE DEPARTMENT OF  
26 ENVIRONMENT AND NATURAL RESOURCES TO INVENTORY AND INSPECT  
27 CERTAIN STRUCTURAL FILL PROJECTS; (20) PLACE A MORATORIUM ON  
28 CERTAIN PROJECTS USING COAL COMBUSTION PRODUCTS AS STRUCTURAL  
29 FILL UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF  
30 ENVIRONMENT AND NATURAL RESOURCES AND THE ENVIRONMENTAL  
31 MANAGEMENT COMMISSION TO STUDY THE ADEQUACY OF CURRENT LAW  
32 GOVERNING USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL  
33 AND FOR BENEFICIAL USE; (21) PLACE A MORATORIUM ON THE EXPANSION  
34 AND CONSTRUCTION OF COAL COMBUSTION RESIDUALS LANDFILLS UNTIL  
35 AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND  
36 NATURAL RESOURCES TO ASSESS THE RISKS TO PUBLIC HEALTH, SAFETY,  
37 WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES OF COAL  
38 COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS LOCATED BENEATH  
39 THESE LANDFILLS TO DETERMINE THE ADVISABILITY OF CONTINUED  
40 OPERATION OF THESE LANDFILLS; (22) STRENGTHEN THE REPORTING AND  
41 NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF  
42 WASTEWATER TO WATERS OF THE STATE; (23) REQUIRE CERTAIN  
43 EMERGENCY CALLS TO BE RECORDED; (24) REQUIRE DEVELOPMENT OF  
44 EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS  
45 AND AMEND OTHER DAM SAFETY LAW REQUIREMENTS APPLICABLE TO  
46 COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (25) TRANSFER  
47 SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC  
48 HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION; (26) AMEND  
49 COMPLIANCE BOUNDARY PROVISIONS; (27) PROVIDE FOR VARIOUS STUDIES;  
50 (28) REQUIRE THE STATE CONSTRUCTION OFFICE AND THE DEPARTMENT OF  
51 TRANSPORTATION TO DEVELOP TECHNICAL SPECIFICATIONS FOR USE OF

1 COAL COMBUSTION PRODUCTS; AND (29) PROVIDE RESOURCES FOR  
2 IMPLEMENTATION OF THIS ACT.

3 The General Assembly of North Carolina enacts:  
4

5 **PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL**  
6 **DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE**  
7 **IMPOUNDMENTS; MORATORIUM ON RATE CASES**

8 **SECTION 1.(a)** Article 7 of Chapter 62 of the General Statutes is amended by  
9 adding a new section to read:

10 **"§ 62-133.13. Recovery of costs related to unlawful discharges from coal combustion**  
11 **residuals surface impoundments to the surface waters of the State.**

12 The Commission shall not allow an electric public utility to recover from the retail electric  
13 customers of the State costs resulting from an unlawful discharge to the surface waters of the  
14 State from a coal combustion residuals surface impoundment, unless the Commission  
15 determines the discharge was due to an event of force majeure. For the purposes of this section,  
16 "coal combustion residuals surface impoundments" has the same meaning as in  
17 G.S. 130A-309.201. For the purposes of this section, "unlawful discharge" means a discharge  
18 that results in a violation of State or federal surface water quality standards."

19 **SECTION 1.(b)** Section 1(a) of this act is effective when it becomes law and  
20 applies to discharges occurring on or after January 1, 2014.

21 **SECTION 2.(a)** Moratorium on Cost Recovery. – The Utilities Commission shall  
22 not issue an order authorizing an electric public utility the recovery of any costs related to coal  
23 combustion residuals surface impoundments that were not included in the utility's cost of  
24 service approved in its most recent general rate case until the end of the moratorium provided  
25 in this section. Nothing in this section prohibits the utility from seeking, nor prohibits the  
26 Commission from authorizing under its existing authority, a deferral for costs related to coal  
27 ash combustion residual surface impoundments. The moratorium established under this section  
28 shall not apply to the net recovery of any fuel and fuel-related costs under G.S. 62-133.2. For  
29 the purposes of this section, "coal combustion residuals surface impoundments" has the same  
30 meaning as in G.S. 130A-309.201. The moratorium in this section shall end December 31,  
31 2016.

32 **SECTION 2.(b)** Purpose of Moratorium. – The purpose of the moratorium is to  
33 allow the State to study the disposition of coal combustion residuals surface impoundments,  
34 including any final rules adopted by the United States Environmental Protection Agency on the  
35 regulation of coal combustion residuals.  
36

37 **PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL**  
38 **COMBUSTION RESIDUALS**

39 **SECTION 3.(a)** Article 9 of Chapter 130A of the General Statutes is amended by  
40 adding a new Part to read:

41 "Part 2I. Coal Ash Management.

42 "Subpart 1. Short Title, Definitions, and General Provisions.

43 **"§ 130A-309.200. Title.**

44 This Part may be cited as the "Coal Ash Management Act of 2014."

45 **"§ 130A-309.201. Definitions.**

46 Unless a different meaning is required by the context, the definitions of G.S. 130A-290 and  
47 the following definitions apply throughout this Part:

- 48 (1) "Beneficial and beneficial use" means projects promoting public health and  
49 environmental protection, offering equivalent success relative to other  
50 alternatives, and preserving natural resources.

- 1           (2)    "Boiler slag" means the molten bottom ash collected at the base of slag tap  
2           and cyclone type furnaces that is quenched with water. It is made up of hard,  
3           black, angular particles that have a smooth, glassy appearance.
- 4           (3)    "Bottom ash" means the agglomerated, angular ash particles formed in  
5           pulverized coal furnaces that are too large to be carried in the flue gases and  
6           collect on the furnace walls or fall through open grates to an ash hopper at  
7           the bottom of the furnace.
- 8           (4)    "Coal combustion products" means fly ash, bottom ash, boiler slag, or flue  
9           gas desulfurization materials, that are beneficially used, including use for  
10           structural fill.
- 11          (5)    "Coal combustion residuals" has the same meaning as defined in  
12           G.S. 130A-290.
- 13          (6)    "Coal combustion residuals surface impoundment" means a topographic  
14           depression, excavation, or diked area that is (i) primarily formed from  
15           earthen materials; (ii) without a base liner approved for use by Article 9 of  
16           Chapter 130A of the General Statutes or rules adopted thereunder for a  
17           combustion products landfill or coal combustion residuals landfill, industrial  
18           landfill, or municipal solid waste landfill; and (iii) designed to hold  
19           accumulated coal combustion residuals in the form of liquid wastes, wastes  
20           containing free liquids, or sludges, and that is not backfilled or otherwise  
21           covered during periods of deposition. "Coal combustion residuals surface  
22           impoundment" shall only include impoundments owned by a public utility,  
23           as defined in G.S. 62-3. "Coal combustion residuals surface impoundment"  
24           includes all of the following:
- 25           a.     An impoundment that is dry due to the deposited liquid having  
26           evaporated, volatilized, or leached.
- 27           b.     An impoundment that is wet with exposed liquid.
- 28           c.     Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and  
29           sludge pits, when these structures are designed to hold accumulated  
30           coal combustion residuals.
- 31           d.     A coal combustion residuals surface impoundment that has been  
32           covered with soil or other material after the final deposition of coal  
33           combustion residuals at the impoundment.
- 34          (7)    "Commission" means the Environmental Management Commission.
- 35          (8)    "Fly ash" means the very fine, powdery material, composed mostly of silica  
36           with nearly all particles spherical in shape, which is a product of burning  
37           finely ground coal in a boiler to produce electricity and is removed from the  
38           plant exhaust gases by air emission control devices.
- 39          (9)    "Flue gas desulfurization material" means the material produced through a  
40           process used to reduce sulfur dioxide emissions from the exhaust gas system  
41           of a coal-fired boiler. The physical nature of these materials varies from a  
42           wet sludge to a dry powdered material, depending on the process, and their  
43           composition comprises either sulfites, sulfates, or a mixture thereof.
- 44          (10)   "Minerals" means soil, clay, coal, phosphate, metallic ore, and any other  
45           solid material or substance of commercial value found in natural deposits on  
46           or in the earth.
- 47          (11)   "Open pit mine" means an excavation made at the surface of the ground for  
48           the purpose of extracting minerals, inorganic and organic, from their natural  
49           deposits, which excavation is open to the surface.

- 1           (12) "Owner" or "owner of a coal combustion residuals surface impoundment"  
2 means a public utility, as defined in G.S. 62-3, that owns a coal combustion  
3 residuals surface impoundment.
- 4           (13) "Receptor" means any human, plant, animal, or structure which is, or has the  
5 potential to be, affected by the release or migration of contaminants. Any  
6 well constructed for the purpose of monitoring groundwater and contaminant  
7 concentrations shall not be considered a receptor.
- 8           (14) "Structural fill" means an engineered fill with a projected beneficial end use  
9 constructed using coal combustion products that are properly placed and  
10 compacted. For purposes of this Part, the term includes fill used to reclaim  
11 open pit mines and for embankments, greenscapes, foundations, construction  
12 foundations, and for bases or sub-bases under a structure or a footprint of a  
13 paved road, parking lot, sidewalk, walkway, or similar structure.
- 14           (15) "Use or reuse of coal combustion products" means the procedure whereby  
15 coal combustion products are directly used as either of the following:
- 16           a. As an ingredient in an industrial process to make a product, unless  
17 distinct components of the coal combustion products are recovered as  
18 separate end products.
- 19           b. In a function or application as an effective substitute for a  
20 commercial product or natural resource.

21 **"§ 130A-309.202. Coal Ash Management Commission.**

22           (a) Creation. – In recognition of the complexity and magnitude of the issues associated  
23 with the management of coal combustion residuals and the proper closure and remediation of  
24 coal combustion residuals surface impoundments, the Coal Ash Management Commission is  
25 hereby established.

26           (b) Membership. – The Commission shall consist of nine members as follows:

- 27           (1) One appointed by the General Assembly upon recommendation of the  
28 President Pro Tempore of the Senate in accordance with G.S. 120-121 who  
29 shall at the time of appointment be a resident of the State.
- 30           (2) One appointed by the General Assembly upon recommendation of the  
31 President Pro Tempore of the Senate in accordance with G.S. 120-121 who  
32 shall at the time of appointment have special training or scientific expertise  
33 in waste management, including solid waste disposal, hauling, or beneficial  
34 use.
- 35           (3) One appointed by the General Assembly upon recommendation of the  
36 President Pro Tempore of the Senate in accordance with G.S. 120-121 who  
37 shall at the time of appointment be a licensed physician or a person with  
38 experience in public health.
- 39           (4) One appointed by the General Assembly upon recommendation of the  
40 Speaker of the House of Representatives in accordance with G.S. 120-121  
41 who shall at the time of appointment be a member of a nongovernmental  
42 conservation interest.
- 43           (5) One appointed by the General Assembly upon recommendation of the  
44 Speaker of the House of Representatives in accordance with G.S. 120-121  
45 who shall at the time of appointment have special training or scientific  
46 expertise in waste management, including solid waste disposal, hauling, or  
47 beneficial use, or is a representative of or on the faculty of a State college or  
48 university that conducts coal ash research.
- 49           (6) One appointed by the General Assembly upon recommendation of the  
50 Speaker of the House of Representatives in accordance with G.S. 120-121  
51 who shall at the time of appointment have expertise in determining and

1 evaluating the costs associated with electricity generation and establishing  
2 the rates associated with electricity consumption.

3 (7) One appointed by the Governor who shall at the time of appointment have  
4 experience in economic development.

5 (8) One appointed by the Governor who shall at the time of appointment be a  
6 representative of an electric membership corporation organized under Article  
7 2 of Chapter 117 of the General Statutes, who has a background in power  
8 supply resource planning and engineering.

9 (9) One appointed by the Governor who shall at the time of appointment be a  
10 person with experience in science or engineering in the manufacturing  
11 sector.

12 (c) Chair. – The Governor shall appoint the Chair of the Commission from among the  
13 Commission's members, and that person shall serve at the pleasure of the Governor. The Chair  
14 shall serve two-year terms.

15 (d) Vacancies. – Any appointment to fill a vacancy on the Commission created by the  
16 resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired  
17 term. The Governor may reappoint a gubernatorial appointee of the Commission to an  
18 additional term if, at the time of the reappointment, the member qualifies for membership on  
19 the Commission under subdivisions (7) through (9) of subsection (b) of this section.  
20 Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and  
21 vacancies in those appointments shall be filled in accordance with G.S. 120-122.

22 (e) Removal. – The Governor shall have the power to remove any member of the  
23 Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the  
24 provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

25 (f) Powers and Duties. – The Commission shall have all of the following powers and  
26 duties:

27 (1) To review and approve the classification of coal combustion residuals  
28 surface impoundments required by G.S. 130A-309.211.

29 (2) To review and approve Coal Combustion Residuals Surface Impoundment  
30 Closure Plans as provided in G.S. 130A-309.212.

31 (3) To review and make recommendations on the provisions of this Part and  
32 other statutes and rules related to the management of coal combustion  
33 residuals.

34 (4) To undertake any additional studies as requested by the General Assembly.

35 (g) Reimbursement. – The members of the Commission shall receive per diem and  
36 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

37 (h) Quorum. – Five members of the Commission shall constitute a quorum for the  
38 transaction of business.

39 (i) Staff. – The Commission is authorized and empowered to employ staff as the  
40 Commission may determine to be necessary for the proper discharge of the Commission's  
41 duties and responsibilities. The Chair of the Commission shall organize and direct the work of  
42 the Commission staff. The salaries and compensation of all such personnel shall be fixed in the  
43 manner provided by law for fixing and regulating salaries and compensation by other State  
44 agencies. The Chair, within allowed budgetary limits and as allowed by law, shall authorize  
45 and approve travel, subsistence, and related expenses of such personnel incurred while  
46 traveling on official business. All State agencies, including the constituent institutions of The  
47 University of North Carolina, shall provide information and support to the Commission upon  
48 request.

49 (j) Conflicts of Interest; Disclosure. – The Governor shall require adequate disclosure  
50 of potential conflicts of interest by members. The Governor, by executive order, shall  
51 promulgate criteria regarding conflicts of interest and disclosure thereof for determining the

1 eligibility of persons under this subsection, giving due regard to the requirements of federal  
2 legislation and, for this purpose, may promulgate rules, regulations, or guidelines in  
3 conformance with those established by any federal agency interpreting and applying provisions  
4 of federal law.

5 (k) Covered Persons. – All members of the Commission are covered persons for the  
6 purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As  
7 covered persons, members of the Commission shall comply with the applicable requirements of  
8 the State Government Ethics Act, including mandatory training, the public disclosure of  
9 economic interests, and ethical standards for covered persons. Members of the Commission  
10 shall comply with the provisions of the State Government Ethics Act to avoid conflicts of  
11 interest.

12 (l) Meetings. – The Commission shall meet at least once every two months and may  
13 hold special meetings at any time and place within the State at the call of the Chair or upon the  
14 written request of at least five members.

15 (m) Reports. – The Commission shall submit quarterly written reports as to its operation,  
16 activities, programs, and progress to the Environmental Review Commission. The Commission  
17 shall supplement the written reports required by this subsection with additional written and oral  
18 reports as may be requested by the Environmental Review Commission. The Commission shall  
19 submit the written reports required by this subsection whether or not the General Assembly is  
20 in session at the time the report is due.

21 (n) Administrative Location; Independence. – The Commission shall be  
22 administratively located in the Department of Environment and Natural Resources. The  
23 Commission shall exercise all of its powers and duties independently and shall not be subject to  
24 the supervision, direction, or control of the Department.

25 (o) Terms of Members. – Members of the Commission shall serve terms of six years.

26 **"§ 130A-309.203. Expedited permit review.**

27 (a) The Department shall act as expeditiously as practicable, but no later than the  
28 deadlines established under subsection (b) of this section, except in compliance with subsection  
29 (c) of this section, to issue all permits necessary to conduct activities required by this Part.

30 (b) Notwithstanding G.S. 130A-295.8(e), the Department shall determine whether an  
31 application for any permit necessary to conduct activities required by this Part is complete  
32 within 30 days after the Department receives the application for the permit. A determination of  
33 completeness means that the application includes all required components but does not mean  
34 that the required components provide all of the information that is required for the Department  
35 to make a decision on the application. If the Department determines that an application is not  
36 complete, the Department shall notify the applicant of the components needed to complete the  
37 application. An applicant may submit additional information to the Department to cure the  
38 deficiencies in the application. The Department shall make a final determination as to whether  
39 the application is complete within the later of (i) 30 days after the Department receives the  
40 application for the permit less the number of days that the applicant uses to provide the  
41 additional information or (ii) 10 days after the Department receives the additional information  
42 from the applicant. The Department shall issue a draft permit decision on an application for a  
43 permit within 90 days after the Department determines that the application is complete. The  
44 Department shall hold a public hearing and accept written comment on the draft permit  
45 decision for a period of not less than 30 or more than 60 days after the Department issues a  
46 draft permit decision. The Department shall issue a final permit decision on an application for a  
47 permit within 60 days after the comment period on the draft permit decision closes. If the  
48 Department fails to act within any time period set out in this subsection, the applicant may treat  
49 the failure to act as a denial of the permit and may challenge the denial as provided in Chapter  
50 150B of the General Statutes.

1       (c) If the Department finds that compliance with the deadlines established under  
2 subsection (b) of this section would result in insufficient review of a permit application that  
3 would pose a risk to public health, safety, and welfare; the environment; or natural resources,  
4 the applicable deadline shall be waived for the application as necessary to allow for adequate  
5 review. If a deadline is waived pursuant to this subsection, the Secretary shall issue a written  
6 declaration, including findings of fact, documenting the need for the waiver.

7       (d) Notwithstanding any other provision of this section or any other provision of law,  
8 the Department shall either issue or deny a permit required for dewatering of a retired  
9 impoundment within 90 days of receipt of a completed application, in such a form and  
10 including such information as the Department may prescribe, for the dewatering activities. The  
11 Department shall accept written comment on a draft permit decision for a period of not less  
12 than 30 days or more than 60 days prior to issuance or denial of such a permit. If the  
13 Department fails to act within any time period set out in this subsection, the applicant may treat  
14 the failure to act as a denial of the permit and may challenge the denial as provided in Chapter  
15 150B of the General Statutes.

16 **"§ 130A-309.204. Reports.**

17       (a) The Department shall submit quarterly written reports to the Environmental Review  
18 Commission and the Coal Ash Management Commission on its operations, activities,  
19 programs, and progress with respect to its obligations under this Part concerning all coal  
20 combustion residuals surface impoundments. At a minimum, the report shall include  
21 information concerning the status of assessment, corrective action, prioritization, and closure  
22 for each coal combustion residuals surface impoundment and information on costs connected  
23 therewith. The report shall include an executive summary of each annual Groundwater  
24 Protection and Restoration Report submitted to the Department by the operator of any coal  
25 combustion residuals surface impoundments pursuant to G.S. 130A-309.209(d) and a summary  
26 of all groundwater sampling, protection, and restoration activities related to the impoundment  
27 for the preceding year. The report shall also include an executive summary of each annual  
28 Surface Water Protection and Restoration Report submitted to the Department by the operator  
29 of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.210(e) and  
30 a summary of all surface water sampling, protection, and restoration activities related to the  
31 impoundment for the preceding year, including the status of the identification, assessment, and  
32 correction of unpermitted discharges from coal combustion residuals surface impoundments to  
33 the surface waters of the State. The Department shall supplement the written reports required  
34 by this subsection with additional written and oral reports as may be requested by the  
35 Environmental Review Commission. The Department shall submit the written reports required  
36 by this subsection whether or not the General Assembly is in session at the time the report is  
37 due.

38       (b) On or before October 1 of each year, the Department shall report to each member of  
39 the General Assembly who has a coal combustion residuals surface impoundment in the  
40 member's district. This report shall include the location of each impoundment in the member's  
41 district, the amount of coal combustion residuals known or believed to be located in the  
42 impoundment, the last action taken at the impoundment, and the date of that last action.

43       (c) On or before October 1 of each year, a public utility generating coal combustion  
44 residuals and coal combustion products shall submit an annual summary to the Department.  
45 The annual summary shall be for the period July 1 through June 30 and shall include all of the  
46 following:

- 47           (1) The volume of coal combustion residuals and products produced.
- 48           (2) The volume of coal combustion residuals disposed.
- 49           (3) The volume of coal combustion products used in structural fill projects.
- 50           (4) The volume of coal combustion products beneficially used, other than for  
51 structural fill.



1 "§ 130A-309.205. Local ordinances regulating management of coal combustion residuals  
2 and coal combustion products invalid; petition to preempt local ordinance.

3 (a) It is the intent of the General Assembly to maintain a uniform system for the  
4 management of coal combustion residuals and coal combustion products, including matters of  
5 disposal and beneficial use, and to place limitations upon the exercise by all units of local  
6 government in North Carolina of the power to regulate the management of coal combustion  
7 residuals and coal combustion products by means of ordinances, property restrictions, zoning  
8 regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or  
9 other local authorities to adopt local ordinances, including those imposing taxes, fees, or  
10 charges or regulating health, environment, or land use, all provisions of local ordinances,  
11 including those regulating land use, adopted by counties, municipalities, or other local  
12 authorities that regulate or have the effect of regulating the management of coal combustion  
13 residuals and coal combustion products within the jurisdiction of a local government are  
14 invalidated, to the extent necessary to effectuate the purposes of this Part, that do the following:

15 (1) Place any restriction or condition not placed by this Part upon management  
16 of coal combustion residuals or coal combustion products, including  
17 restrictions or conditions applicable to facilities that primarily engage in  
18 processes to prepare coal ash for beneficial use such as carbon burn-out  
19 plants, within any county, city, or other political subdivision.

20 (2) Conflict or are in any manner inconsistent with the provisions of this Part.

21 (b) If a local zoning or land-use ordinance imposes requirements, restrictions, or  
22 conditions that are generally applicable to development, including, but not limited to, setback,  
23 buffer, and stormwater requirements, and coal combustion residuals and coal combustion  
24 products would be regulated under the ordinance of general applicability, the operator of the  
25 proposed activities may petition the Environmental Management Commission to review the  
26 matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the  
27 procedures in subsection (c) of this section and shall determine whether or to what extent to  
28 preempt the local ordinance to allow for the management of coal combustion residuals and coal  
29 combustion products.

30 (c) When a petition described in subsection (b) of this section has been filed with the  
31 Environmental Management Commission, the Commission shall hold a public hearing to  
32 consider the petition. The public hearing shall be held in the affected locality within 60 days  
33 after receipt of the petition by the Commission. The Commission shall give notice of the public  
34 hearing by both of the following means:

35 (1) Publication in a newspaper or newspapers having general circulation in the  
36 county or counties where the activities are to be conducted, once a week for  
37 three consecutive weeks, the first notice appearing at least 30 days prior to  
38 the scheduled date of the hearing.

39 (2) First-class mail to persons who have requested notice. The Commission shall  
40 maintain a mailing list of persons who request notice in advance of the  
41 hearing pursuant to this section. Notice by mail shall be complete upon  
42 deposit of a copy of the notice in a postage-paid wrapper addressed to the  
43 person to be notified at the address that appears on the mailing list  
44 maintained by the Commission in a post office or official depository under  
45 the exclusive care and custody of the United States Postal Service.

46 (d) Any interested person may appear before the Environmental Management  
47 Commission at the hearing to offer testimony. In addition to testimony before the Commission,  
48 any interested person may submit written evidence to the Commission for the Commission's  
49 consideration. At least 20 days shall be allowed for receipt of written comment following the  
50 hearing.

1       (e) A local zoning or land-use ordinance is presumed to be valid and enforceable to the  
2 extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that  
3 are generally applicable to development, including, but not limited to, setback, buffer, and  
4 stormwater requirements, unless the Environmental Management Commission makes a finding  
5 of fact to the contrary. The Commission shall determine whether or to what extent to preempt  
6 local ordinances so as to allow the project involving management of coal combustion residuals  
7 and coal combustion products no later than 60 days after conclusion of the hearing. The  
8 Commission shall preempt a local ordinance only if the Commission makes all of the following  
9 findings:

- 10       (1) That there is a local ordinance that would regulate the management of coal  
11 combustion residuals and coal combustion products.  
12       (2) That all legally required State and federal permits or approvals have been  
13 issued by the appropriate State and federal agencies or that all State and  
14 federal permit requirements have been satisfied and that the permits or  
15 approvals have been denied or withheld only because of the local ordinance.  
16       (3) That local citizens and elected officials have had adequate opportunity to  
17 participate in the permitting process.  
18       (4) That the project involving management of coal combustion residuals and  
19 coal combustion products will not pose an unreasonable health or  
20 environmental risk to the surrounding locality and that the operator has taken  
21 or consented to take reasonable measures to avoid or manage foreseeable  
22 risks and to comply to the maximum feasible extent with applicable local  
23 ordinances.

24       (f) If the Environmental Management Commission does not make all of the findings  
25 under subsection (e) of this section, the Commission shall not preempt the challenged local  
26 ordinance. The Commission's decision shall be in writing and shall identify the evidence  
27 submitted to the Commission plus any additional evidence used in arriving at the decision.

28       (g) The decision of the Environmental Management Commission shall be final, unless a  
29 party to the action files a written appeal under Article 3 of Chapter 150B of the General  
30 Statutes, as modified by this section, within 30 days of the date of the decision. The record on  
31 appeal shall consist of all materials and information submitted to or considered by the  
32 Commission, the Commission's written decision, a complete transcript of the hearing, the  
33 specific findings required by subsection (e) of this section, and any minority positions on the  
34 specific findings required by subsection (e) of this section. The scope of judicial review shall be  
35 as set forth in G.S. 150B-51, except as this subsection provides regarding the record on appeal.

36       (h) If the court reverses or modifies the decision of the Environmental Management  
37 Commission, the judge shall set out in writing, which writing shall become part of the record,  
38 the reasons for the reversal or modification.

39       (i) In computing any period of time prescribed or allowed by the procedure in this  
40 section, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

41 **"§ 130A-309.206. Federal preemption; severability.**

42 The provisions of this Part shall be severable, and if any phrase, clause, sentence, or  
43 provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law  
44 or regulation, the validity of the remainder of this Part shall not be affected thereby.

45 **"§ 130A-309.207. General rule making for Part.**

46 The Environmental Management Commission shall adopt rules as necessary to implement  
47 the provisions of the Part. Such rules shall be exempt from the requirements of G.S. 150B-19.3.

48 "Subpart 2. Management of Coal Ash Residuals; Closure of Coal Ash Impoundments.

49 **"§ 130A-309.208. Generation, disposal, and use of coal combustion residuals.**

50       (a) On or after August 1, 2014, the construction of new and expansion of existing coal  
51 combustion residuals surface impoundments is prohibited.

1        (b) On or after October 1, 2014, the disposal of coal combustion residuals into a coal  
2 combustion residuals surface impoundment at an electric generating facility where the  
3 coal-fired generating units are no longer producing coal combustion residuals is prohibited.

4        (c) On or after December 31, 2018, the discharge of stormwater into a coal combustion  
5 surface impoundment at an electric generating facility where the coal-fired generating units are  
6 no longer producing coal combustion residuals is prohibited.

7        (d) On or after December 31, 2019, the discharge of stormwater into a coal combustion  
8 surface impoundment at an electric generating facility where the coal-fired generating units are  
9 actively producing coal combustion residuals is prohibited.

10       (e) On or before December 31, 2018, all electric generating facilities owned by a public  
11 utility shall convert to the disposal of "dry" fly ash or the facility shall be retired. For purposes  
12 of this subsection, the term "dry" means coal combustion residuals that are not in the form of  
13 liquid wastes, wastes containing free liquids, or sludges.

14       (f) On or before December 31, 2019, all electric generating facilities owned by a public  
15 utility shall convert to the disposal of "dry" bottom ash or the facility shall be retired. For  
16 purposes of this subsection, the term "dry" means coal combustion residuals that are not in the  
17 form of liquid wastes, wastes containing free liquids, or sludges.

18 **§ 130A-309.209. Groundwater assessment and corrective action; drinking water supply**  
19 **well survey and provision of alternate water supply; reporting.**

20       (a) Groundwater Assessment of Coal Combustion Residuals Surface Impoundments. –  
21 The owner of a coal combustion residuals surface impoundment shall conduct groundwater  
22 monitoring and assessment as provided in this subsection. The requirements for groundwater  
23 monitoring and assessment set out in this subsection are in addition to any other groundwater  
24 monitoring and assessment requirements applicable to the owners of coal combustion residuals  
25 surface impoundments.

26           (1) No later than December 31, 2014, the owner of a coal combustion residuals  
27 surface impoundment shall submit a proposed Groundwater Assessment  
28 Plan for the impoundment to the Department for its review and approval.  
29 The Groundwater Assessment Plan shall, at a minimum, provide for all of  
30 the following:

31           a. A description of all receptors and significant exposure pathways.

32           b. An assessment of the horizontal and vertical extent of soil and  
33 groundwater contamination for all contaminants confirmed to be  
34 present in groundwater in exceedance of groundwater quality  
35 standards.

36           c. A description of all significant factors affecting movement and  
37 transport of contaminants.

38           d. A description of the geological and hydrogeological features  
39 influencing the chemical and physical character of the contaminants.

40           e. A schedule for continued groundwater monitoring.

41           f. Any other information related to groundwater assessment required by  
42 the Department.

43           (2) The Department shall approve the Groundwater Assessment Plan if it  
44 determines that the Plan complies with the requirements of this subsection  
45 and will be sufficient to protect public health, safety, and welfare; the  
46 environment; and natural resources.

47           (3) No later than 10 days from approval of the Groundwater Assessment Plan,  
48 the owner shall begin implementation of the Plan.

49           (4) No later than 180 days from approval of the Groundwater Assessment Plan,  
50 the owner shall submit a Groundwater Assessment Report to the

1 Department. The Report shall describe all exceedances of groundwater  
2 quality standards associated with the impoundment.

3 (b) Corrective Action for the Restoration of Groundwater Quality. – The owner of a  
4 coal combustion residuals surface impoundment shall implement corrective action for the  
5 restoration of groundwater quality as provided in this subsection. The requirements for  
6 corrective action for the restoration of groundwater quality set out in this subsection are in  
7 addition to any other corrective action for the restoration of groundwater quality requirements  
8 applicable to the owners of coal combustion residuals surface impoundments.

9 (1) No later than 90 days from submission of the Groundwater Assessment  
10 Report required by subsection (a) of this section, or a time frame otherwise  
11 approved by the Department, the owner of the coal combustion residuals  
12 surface impoundment shall submit a proposed Groundwater Corrective  
13 Action Plan to the Department for its review and approval. The Groundwater  
14 Corrective Action Plan shall provide for the restoration of groundwater in  
15 conformance with the requirements of Subchapter L of Chapter 2 of Title  
16 15A of the North Carolina Administrative Code. The Groundwater  
17 Corrective Action Plan shall include, at a minimum, all of the following:

18 a. A description of all exceedances of the groundwater quality  
19 standards, including any exceedances that the owner asserts are the  
20 result of natural background conditions.

21 b. A description of the methods for restoring groundwater in  
22 conformance with the requirements of Subchapter L of Chapter 2 of  
23 Title 15A of the North Carolina Administrative Code and a detailed  
24 explanation of the reasons for selecting these methods.

25 c. Specific plans, including engineering details, for restoring  
26 groundwater quality.

27 d. A schedule for implementation of the Plan.

28 e. A monitoring plan for evaluating the effectiveness of the proposed  
29 corrective action and detecting movement of any contaminant  
30 plumes.

31 f. Any other information related to groundwater assessment required by  
32 the Department.

33 (2) The Department shall approve the Groundwater Corrective Action Plan if it  
34 determines that the Plan complies with the requirements of this subsection  
35 and will be sufficient to protect public health, safety, and welfare; the  
36 environment; and natural resources.

37 (3) No later than 30 days from the approval of the Groundwater Corrective  
38 Action Plan, the owner shall begin implementation of the Plan in accordance  
39 with the Plan's schedule.

40 (c) Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No  
41 later than October 1, 2014, the owner of a coal combustion residuals surface impoundment  
42 shall conduct a Drinking Water Supply Well Survey that identifies all drinking water supply  
43 wells within one-half mile down-gradient from the established compliance boundary of the  
44 impoundment and submit the Survey to the Department. The Survey shall include well  
45 locations, the nature of water uses, available well construction details, and information  
46 regarding ownership of the wells. No later than December 1, 2014, the Department shall  
47 determine, based on the Survey, which drinking water supply wells the owner is required to  
48 sample and how frequently and for what period sampling is required. The Department shall  
49 require sampling for drinking water supply wells where data regarding groundwater quality and  
50 flow and depth in the area of any surveyed well provide a reasonable basis to predict that the  
51 quality of water from the surveyed well may be adversely impacted by constituents associated

1 with the presence of the impoundment. No later than January 1, 2015, the owner shall initiate  
2 sampling and water quality analysis of the drinking water supply wells. A property owner may  
3 elect to have an independent third party selected from a laboratory certified by the Department's  
4 Wastewater/Groundwater Laboratory Certification program sample wells located on their  
5 property in lieu of sampling conducted by the owner of the coal combustion residuals surface  
6 impoundment. The owner of the coal combustion residuals surface impoundment shall pay for  
7 the reasonable costs of such sampling. Nothing in this subsection shall be construed to preclude  
8 or impair the right of any property owner to refuse such sampling of wells on their property. If  
9 the sampling and water quality analysis indicates that water from a drinking water supply well  
10 exceeds groundwater quality standards for constituents associated with the presence of the  
11 impoundment, the owner shall replace the contaminated drinking water supply well with an  
12 alternate supply of potable drinking water and an alternate supply of water that is safe for other  
13 household uses. The alternate supply of potable drinking water shall be supplied within 24  
14 hours of the Department's determination that there is an exceedance of groundwater quality  
15 standards attributable to constituents associated with the presence of the impoundment. The  
16 alternate supply of water that is safe for other household uses shall be supplied within 30 days  
17 of the Department's determination that there is an exceedance of groundwater quality standards  
18 attributable to constituents associated with the presence of the impoundment. The requirement  
19 to replace a contaminated drinking water supply well with an alternate supply of potable  
20 drinking water and an alternate supply of water that is safe for other household uses set out in  
21 this subsection is in addition to any other requirements to replace a contaminated drinking  
22 water supply well with an alternate supply of potable drinking water or an alternate supply of  
23 water that is safe for other household uses applicable to the owners of coal combustion  
24 residuals surface impoundments.

25 (d) Reporting. – In addition to any other reporting required by the Department, the  
26 owner of a coal combustion residuals surface impoundment shall submit an annual  
27 Groundwater Protection and Restoration Report to the Department no later than January 31 of  
28 each year. The Report shall include a summary of all groundwater monitoring, protection, and  
29 restoration activities related to the impoundment for the preceding year, including the status of  
30 the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater  
31 Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any  
32 contaminated drinking water supply wells. The owner of a coal combustion residuals surface  
33 impoundment shall also submit all information required to be submitted to the Department  
34 pursuant to this section to the Coal Ash Management Commission.

35 **"§ 130A-309.210. Identification and assessment of discharges; correction of unpermitted**  
36 **discharges.**

37 (a) Identification of Discharges from Coal Combustion Residuals Surface  
38 Impoundments. –

39 (1) The owner of a coal combustion residuals surface impoundment shall  
40 identify all discharges from the impoundment as provided in this subsection.  
41 The requirements for identifying all discharges from an impoundment set out  
42 in this subsection are in addition to any other requirements for identifying  
43 discharges applicable to the owners of coal combustion residuals surface  
44 impoundments.

45 (2) No later than December 31, 2014, the owner of a coal combustion residuals  
46 surface impoundment shall submit a topographic map that identifies the  
47 location of all (i) outfalls from engineered channels designed or improved  
48 for the purpose of collecting water from the toe of the impoundment and (ii)  
49 seeps and weeps discharging from the impoundment that are not captured by  
50 engineered channels designed or improved for the purpose of collecting

1 water from the toe of the impoundment to the Department. The topographic  
2 map shall comply with all of the following:

- 3 a. Be at a scale as required by the Department.
- 4 b. Specify the latitude and longitude of each toe drain outfall, seep, and  
5 weep.
- 6 c. Specify whether the discharge from each toe drain outfall, seep, and  
7 weep is continuous or intermittent.
- 8 d. Provide an average flow measurement of the discharge from each toe  
9 drain outfall, seep, and weep including a description of the method  
10 used to measure average flow.
- 11 e. Specify whether the discharge from each toe drain outfall, seep, and  
12 weep identified reaches the surface waters of the State. If the  
13 discharge from a toe drain outfall, seep, or weep reaches the surface  
14 waters of the State, the map shall specify the latitude and longitude  
15 of where the discharge reaches the surface waters of the State.
- 16 f. Any other information related to the topographic map required by the  
17 Department.

18 (b) Assessment of Discharges from Coal Combustion Residuals Surface Impoundments  
19 to the Surface Waters of the State. – The owner of a coal combustion residuals surface  
20 impoundment shall conduct an assessment of discharges from the coal combustion residuals  
21 surface impoundment to the surface waters of the State as provided in this subsection. The  
22 requirements for assessment of discharges from the coal combustion residuals surface  
23 impoundment to the surface waters of the State set out in this subsection are in addition to any  
24 other requirements for the assessment of discharges from coal combustion residuals surface  
25 impoundments to surface waters of the State applicable to the owners of coal combustion  
26 residuals surface impoundments.

27 (1) No later than December 31, 2014, the owner of a coal combustion residuals  
28 surface impoundment shall submit a proposed Discharge Assessment Plan to  
29 the Department. The Discharge Assessment Plan shall include information  
30 sufficient to allow the Department to determine whether any discharge,  
31 including a discharge from a toe drain outfall, seep, or weep, has reached the  
32 surface waters of the State and has caused a violation of surface water  
33 quality standards. The Discharge Assessment Plan shall include, at a  
34 minimum, all of the following:

- 35 a. Upstream and downstream sampling locations within all channels  
36 that could potentially carry a discharge.
- 37 b. A description of the surface water quality analyses that will be  
38 performed.
- 39 c. A sampling schedule, including the frequency and duration of  
40 sampling activities.
- 41 d. Reporting requirements.
- 42 e. Any other information related to the assessment of discharges  
43 required by the Department.

44 (2) The Department shall approve the Discharge Assessment Plan if it  
45 determines that the Plan complies with the requirements of this subsection  
46 and will be sufficient to protect public health, safety, and welfare; the  
47 environment; and natural resources.

48 (3) No later than 30 days from the approval of the Discharge Assessment Plan,  
49 the owner shall begin implementation of the Plan in accordance with the  
50 Plan's schedule.

1        (c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion  
2 Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal  
3 combustion residuals surface impoundment shall implement corrective action to prevent  
4 unpermitted discharges from the coal combustion residuals surface impoundment to the surface  
5 waters of the State as provided in this subsection. The requirements for corrective action to  
6 prevent unpermitted discharges from coal combustion residuals surface impoundments to the  
7 surface waters of the State set out in this subsection are in addition to any other requirements  
8 for corrective action to prevent unpermitted discharges from coal combustion residuals surface  
9 impoundments to the surface waters of the State applicable to the owners of coal combustion  
10 residuals surface impoundments.

11            (1) If the Department determines, based on information provided pursuant to  
12 subsection (a) or (b) of this section, that an unpermitted discharge from a  
13 coal combustion residuals surface impoundment, including an unpermitted  
14 discharge from a toe drain outfall, seep, or weep, has reached the surface  
15 waters of the State, the Department shall notify the owner of the  
16 impoundment of its determination.

17            (2) No later than 30 days from a notification pursuant to subdivision (1) of this  
18 subsection, the owner of the coal combustion residuals surface impoundment  
19 shall submit a proposed Unpermitted Discharge Corrective Action Plan to  
20 the Department for its review and approval. The proposed Unpermitted  
21 Discharge Corrective Action Plan shall include, at a minimum, all of the  
22 following:

23            a. One of the following methods of proposed corrective action:

24                    1. Elimination of the unpermitted discharge.

25                    2. Application for a National Pollutant Discharge Elimination  
26 System (NPDES) permit amendment pursuant to  
27 G.S. 143-215.1 and Subchapter H of Chapter 2 of Title 15A  
28 of the North Carolina Administrative Code to bring the  
29 unpermitted discharge under permit regulations.

30            b. A detailed explanation of the reasons for selecting the method of  
31 corrective action.

32            c. Specific plans, including engineering details, to prevent the  
33 unpermitted discharge.

34            d. A schedule for implementation of the Plan.

35            e. A monitoring plan for evaluating the effectiveness of the proposed  
36 corrective action.

37            f. Any other information related to the correction of unpermitted  
38 discharges required by the Department.

39            (3) The Department shall approve the Unpermitted Discharge Corrective Action  
40 Plan if it determines that the Plan complies with the requirements of this  
41 subsection and will be sufficient to protect public health, safety, and welfare;  
42 the environment; and natural resources.

43            (4) No later than 30 days from the approval of the Unpermitted Discharge  
44 Corrective Action Plan, the owner shall begin implementation of the Plan in  
45 accordance with the Plan's schedule.

46        (d) Identification of New Discharges. – No later than August 1, 2014, the owner of a  
47 coal combustion residuals surface impoundment shall submit a proposed Plan for the  
48 Identification of New Discharges to the Department for its review and approval as provided in  
49 this subsection.

50            (1) The proposed Plan for the Identification of New Discharges shall include, at  
51 a minimum, all of the following:

- 1           a.     A procedure for routine inspection of the coal combustion residuals  
2           surface impoundment to identify indicators of potential new  
3           discharges, including toe drain outfalls, seeps, and weeps.  
4           b.     A procedure for determining whether a new discharge is actually  
5           present.  
6           c.     A procedure for notifying the Department when a new discharge is  
7           confirmed.  
8           d.     Any other information related to the identification of new discharges  
9           required by the Department.  
10          (2)    The Department shall approve the Plan for the Identification of New  
11          Discharges if it determines that the Plan complies with the requirements of  
12          this subsection and will be sufficient to protect public health, safety, and  
13          welfare; the environment; and natural resources.  
14          (3)    No later than 30 days from the approval of the Plan for the Identification of  
15          New Discharges, the owner shall begin implementation of the Plan in  
16          accordance with the Plan.  
17          (e)    Reporting. – In addition to any other reporting required by the Department, the  
18          owner of a coal combustion residuals surface impoundment shall submit an annual Surface  
19          Water Protection and Restoration Report to the Department no later than January 31 of each  
20          year. The Report shall include a summary of all surface water sampling, protection, and  
21          restoration activities related to the impoundment for the preceding year, including the status of  
22          the identification, assessment, and correction of unpermitted discharges from coal combustion  
23          residuals surface impoundments to the surface waters of the State. The owner of a coal  
24          combustion residuals surface impoundment shall also submit all information required to be  
25          submitted to the Department pursuant to this section to the Coal Ash Management  
26          Commission.  
27          **§ 130A-309.211. Prioritization of coal combustion residuals surface impoundments.**  
28          (a)    As soon as practicable, but no later than August 1, 2015, the Department shall  
29          develop proposed classifications for all coal combustion residuals surface impoundments,  
30          including active and retired sites, for the purpose of closure and remediation based on these  
31          sites' risks to public health, safety, and welfare; the environment; and natural resources and  
32          shall determine a schedule for closure and required remediation that is based on the degree of  
33          risk to public health, safety, and welfare; the environment; and natural resources posed by the  
34          impoundments and that gives priority to the closure and required remediation of impoundments  
35          that pose the greatest risk. In assessing the risk, the Department shall evaluate information  
36          received pursuant to G.S. 130A-309.209 and G.S. 130A-309.210 and any other information  
37          deemed relevant and, at a minimum, consider all of the following:  
38               (1)    Any hazards to public health, safety, or welfare resulting from the  
39               impoundment.  
40               (2)    Structural condition and hazard potential of the impoundment.  
41               (3)    The proximity of surface waters to the impoundment and whether any  
42               surface waters are contaminated or threatened by contamination as a result  
43               of the impoundment.  
44               (4)    Information concerning the horizontal and vertical extent of soil and  
45               groundwater contamination for all contaminants confirmed to be present in  
46               groundwater in exceedance of groundwater quality standards and all  
47               significant factors affecting contaminant transport.  
48               (5)    The location and nature of all receptors and significant exposure pathways.  
49               (6)    The geological and hydrogeological features influencing the movement and  
50               chemical and physical character of the contaminants.



1           (7) Amount and characteristics of coal combustion residuals in the  
2           impoundment.

3           (8) Any other factor the Department deems relevant to establishment of risk.

4        (b) The Department shall issue a proposed classification for each coal combustion  
5        residuals surface impoundment based upon the assessment conducted pursuant to subsection (a)  
6        of this section as high-risk, intermediate-risk, or low-risk. Within 30 days after a proposed  
7        classification has been issued, the Department shall issue a written declaration, including  
8        findings of fact, documenting the proposed classification. The Department shall provide for  
9        public participation on the proposed risk classification as follows:

10       (1) The Department shall make copies of the written declaration issued pursuant  
11       to this subsection available for inspection as follows:

12        a. A copy of the declaration shall be provided to the local health  
13        director.

14        b. A copy of the declaration shall be provided to the public library  
15        located in closest proximity to the site in the county or counties in  
16        which the site is located.

17        c. The Department shall post a copy of the declaration on the  
18        Department's Web site.

19        d. The Department may place copies of the declaration in other  
20        locations so as to assure the availability thereof to the public.

21       (2) Before issuing a proposed classification of an impoundment as high-risk,  
22       intermediate-risk, or low-risk, the Department shall give notice of the written  
23       declaration issued pursuant to this subsection as follows:

24        a. A notice and summary of the declaration shall be published weekly  
25        for a period of three consecutive weeks in a newspaper having  
26        general circulation in the county or counties where the site is located.

27        b. Notice of the written declaration shall be given by first-class mail to  
28        persons who have requested such notice. Such notice shall include a  
29        summary of the written declaration and state the locations where a  
30        copy of the written declaration is available for inspection. The  
31        Department shall maintain a mailing list of persons who request  
32        notice pursuant to this section.

33        c. Notice of the written declaration shall be given by electronic mail to  
34        persons who have requested such notice. Such notice shall include a  
35        summary of the written declaration and state the locations where a  
36        copy of the written declaration is available for inspection. The  
37        Department shall maintain a mailing list of persons who request  
38        notice pursuant to this section.

39       (3) No later than 60 days after issuance of the written declaration, the  
40       Department shall conduct a public meeting in the county or counties in  
41       which the site is located to explain the written declaration to the public. The  
42       Department shall give notice of the hearing at least 15 days prior to the date  
43       thereof by all of the following methods:

44        a. Publication as provided in subdivision (1) of this subsection, with  
45        first publication to occur not less than 30 days prior to the scheduled  
46        date of the hearing.

47        b. First-class mail to persons who have requested notice as provided in  
48        subdivision (2) of this subsection.

49        c. Electronic mail to persons who have requested notice as provided in  
50        subdivision (2) of this subsection.

1           (4) At least 30 days from the latest date on which notice is provided pursuant to  
2 subdivision (2) of this subsection shall be allowed for the receipt of written  
3 comment on the written declaration prior to issuance of a final risk  
4 classification. At least 20 days will be allowed for receipt of written  
5 comment following a hearing conducted pursuant to subdivision (3) of this  
6 subsection prior to issuance of a final risk classification.

7           (c) Within 30 days of the receipt of all written comment as required by subdivision (4)  
8 of subsection (b) of this section, the Department shall submit a proposed classification for a  
9 coal combustion residuals surface impoundment to the Coal Ash Management Commission  
10 established pursuant to G.S. 130A-309.202. The Commission shall evaluate all information  
11 submitted in accordance with this Part related to the proposed classification and any other  
12 information the Commission deems relevant. The Commission shall only approve the proposed  
13 classification if it determines that the classification was developed in accordance with this  
14 section and that the classification accurately reflects the level of risk posed by the coal  
15 combustion residuals surface impoundment. The Commission shall issue its determination in  
16 writing, including findings in support of its determination. If the Commission fails to act on a  
17 proposed classification within 60 days of receipt of the proposed classification, the proposed  
18 classification shall be deemed approved. Parties aggrieved by a final decision of the  
19 Commission pursuant to this subsection may appeal the decision as provided under Article 3 of  
20 Chapter 150B of the General Statutes.

21 **"§ 130A-309.212. Closure of coal combustion residuals surface impoundments.**

22           (a) An owner of a coal combustion residuals surface impoundment shall submit a  
23 proposed Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's  
24 approval. If corrective action to restore groundwater has not been completed pursuant to the  
25 requirements of G.S. 130A-309.209(b), the proposed closure plan shall include provisions for  
26 completion of activities to restore groundwater in conformance with the requirements of  
27 Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. In addition,  
28 the following requirements, at a minimum, shall apply to such plans:

29           (1) High-risk impoundments shall be closed as soon as practicable, but no later  
30 than December 31, 2019. A proposed closure plan for such impoundments  
31 must be submitted as soon as practicable, but no later than December 31,  
32 2016. At a minimum, such impoundments shall be dewatered, and the owner  
33 of an impoundment shall either:

34           a. Convert the coal combustion residuals impoundment to an industrial  
35 landfill by removing all coal combustion residuals and contaminated  
36 soil from the impoundment temporarily, safely storing the residuals  
37 on-site, and complying with the requirements for such landfills  
38 established by this Article and rules adopted thereunder. At a  
39 minimum, the landfills shall have a design with a leachate collection  
40 system, a closure cap system, and a composite liner system  
41 consisting of two components: the upper component shall consist of a  
42 minimum 30-ml flexible membrane (FML), and the lower  
43 components shall consist of at least a two-foot layer of compacted  
44 soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$   
45 centimeters per second. FML components consisting of high density  
46 polyethylene (HDPE) shall be at least 60 ml thick. The landfill shall  
47 otherwise comply with the construction requirements established by  
48 Section .1624 of Subchapter B of Chapter 13 of Title 15A of the  
49 North Carolina Administrative Code, and the siting and design  
50 requirements for disposal sites established by Section .0503 of  
51 Subchapter B of Chapter 13 of Title 15A of the North Carolina

1 Administrative Code, except with respect to those requirements that  
2 pertain to buffers. In lieu of the buffer requirement established by  
3 Section .0503(f)(2)(iii) of Subchapter B of Chapter 13 of Title 15A  
4 of the North Carolina Administrative Code, the owner of the  
5 impoundment shall establish and maintain a 300-foot buffer between  
6 surface waters and disposal areas. After the temporarily displaced  
7 coal combustion residuals have been returned for disposal in the  
8 industrial landfill constructed pursuant to the requirements of this  
9 sub-subdivision, the owner of the landfill shall comply with the  
10 closure and post-closure requirements established by Section .1627  
11 of Subchapter B of Chapter 13 of Title 15A of the North Carolina  
12 Administrative Code. A landfill constructed pursuant to this  
13 sub-subdivision shall otherwise be subject to all applicable  
14 requirements of this Chapter and rules adopted thereunder. Prior to  
15 closure, the Department may allow the disposal of coal combustion  
16 residuals, in addition to those originally contained in the  
17 impoundment, to the landfill constructed pursuant to this  
18 sub-subdivision, if the Department determines that the site is suitable  
19 for additional capacity and that disposal of additional coal  
20 combustion residuals will not pose an unacceptable risk to public  
21 health, safety, welfare; the environment; and natural resources.

22 b. Remove all coal combustion residuals from the impoundment, return  
23 the former impoundment to a nonerosive and stable condition and (i)  
24 transfer the coal combustion residuals for disposal in a coal  
25 combustion residuals landfill, industrial landfill, or municipal solid  
26 waste landfill or (ii) use the coal combustion products in a structural  
27 fill or other beneficial use as allowed by law. The use of coal  
28 combustion products (i) as structural fill shall be conducted in  
29 accordance with the requirements of Subpart 3 of this Part and (ii) for  
30 other beneficial uses shall be conducted in accordance with the  
31 requirements of Section .1700 of Subchapter B of Chapter 13 of Title  
32 15A of the North Carolina Administrative Code (Requirements for  
33 Beneficial Use of Coal Combustion By-Products) and Section .1205  
34 of Subchapter T of Chapter 2 of Title 15A of the North Carolina  
35 Administrative Code (Coal Combustion Products Management).

36 (2) Intermediate-risk impoundments shall be closed as soon as practicable, but  
37 no later than December 31, 2024. A proposed closure plan for such  
38 impoundments must be submitted as soon as practicable, but no later than  
39 December 31, 2017. At a minimum, such impoundments shall be dewatered,  
40 and the owner of an impoundment shall close the impoundment in any  
41 manner allowed pursuant to subdivision (1) of this subsection.

42 (3) Low-risk impoundments shall be closed as soon as practicable, but no later  
43 than December 31, 2029. A proposed closure plan for such impoundments  
44 must be submitted as soon as practicable, but no later than December 31,  
45 2018. Such impoundments may be closed in any manner allowed pursuant to  
46 subdivision (1) of this subsection. At a minimum, such impoundments shall  
47 be dewatered and the Department shall require such sites to comply with the  
48 closure and post-closure requirements established by Section .1627 of  
49 Subchapter B of Chapter 13 of Title 15A of the North Carolina  
50 Administrative Code, except that such impoundments shall not be required  
51 to install and maintain a leachate collection system. Specifically, the owner

1 of an impoundment shall install and maintain a cap system that is designed  
2 to minimize infiltration and erosion in conformance with the requirements of  
3 Section .1624 of Subchapter B of Chapter 13 of Title 15A of the North  
4 Carolina Administrative Code, and, at a minimum, shall be designed and  
5 constructed to (i) have a permeability no greater than  $1 \times 10^{-5}$  centimeters  
6 per second; (ii) minimize infiltration by the use of a low-permeability barrier  
7 that contains a minimum 18 inches of earthen material; and (iii) minimize  
8 erosion of the cap system and protect the low-permeability barrier from root  
9 penetration by use of an erosion layer that contains a minimum of six inches  
10 of earthen material that is capable of sustaining native plant growth. In  
11 addition, the owner of an impoundment shall (i) install and maintain a  
12 groundwater monitoring system; (ii) establish financial assurance that will  
13 ensure that sufficient funds are available for closure pursuant to this  
14 subdivision, post-closure maintenance and monitoring, any corrective action  
15 that the Department may require, and satisfy any potential liability for  
16 sudden and nonsudden accidental occurrences arising from the impoundment  
17 and subsequent costs incurred by the Department in response to an incident,  
18 even if the owner becomes insolvent or ceases to reside, be incorporated, do  
19 business, or maintain assets in the State; and (iii) conduct post-closure care  
20 for a period of 30 years, which period may be increased by the Department  
21 upon a determination that a longer period is necessary to protect public  
22 health, safety, welfare; the environment; and natural resources, or decreased  
23 upon a determination that a shorter period is sufficient to protect public  
24 health, safety, welfare; the environment; and natural resources. The  
25 Department may require implementation of any other measure it deems  
26 necessary to protect public health, safety, and welfare; the environment; and  
27 natural resources, including imposition of institutional controls that are  
28 sufficient to protect public health, safety, and welfare; the environment; and  
29 natural resources.

30 (4) Closure Plans for all impoundments shall include all of the following:

- 31 a. Facility and coal combustion residuals surface impoundment  
32 description. – A description of the operation of the site that shall  
33 include, at a minimum, all of the following:  
34 1. Site history and history of site operations, including details on  
35 the manner in which coal combustion residuals have been  
36 stored and disposed of historically.  
37 2. Estimated volume of material contained in the impoundment.  
38 3. Analysis of the structural integrity of dikes or dams  
39 associated with impoundment.  
40 4. All sources of discharge into the impoundment, including  
41 volume and characteristics of each discharge.  
42 5. Whether the impoundment is lined, and, if so, the  
43 composition thereof.  
44 6. A summary of all information available concerning the  
45 impoundment as a result of inspections and monitoring  
46 conducted pursuant to this Part and otherwise available.  
47 b. Site maps, which, at a minimum, illustrate all of the following:  
48 1. All structures associated with the operation of any coal  
49 combustion residuals surface impoundment located on the  
50 site. For purposes of this sub-subdivision, the term "site"



- 1                                   6.     Identification of all substances with concentrations
- 2                                   determined to be in excess of the groundwater quality
- 3                                   standards for the substance established by Subchapter L of
- 4                                   Chapter 2 of Title 15A of the North Carolina Administrative
- 5                                   Code, including all laboratory results for these analyses.
- 6                                   7.     Summary tables of historical records of groundwater
- 7                                   sampling results.
- 8                                   8.     A map that illustrates the potentiometric contours and flow
- 9                                   directions for all identified aquifers underlying
- 10                                  impoundments (shallow, intermediate, and deep) and the
- 11                                  horizontal extent of areas where groundwater quality
- 12                                  standards established by Subchapter L of Chapter 2 of Title
- 13                                  15A of the North Carolina Administrative Code for a
- 14                                  substance are exceeded.
- 15                                  9.     Cross-sections that illustrate the following: the vertical and
- 16                                  horizontal extent of the coal combustion residuals within an
- 17                                  impoundment; stratigraphy of the geologic units underlying
- 18                                  an impoundment; and the vertical extent of areas where
- 19                                  groundwater quality standards established by Subchapter L of
- 20                                  Chapter 2 of Title 15A of the North Carolina Administrative
- 21                                  Code for a substance are exceeded.
- 22                                  d.     The results of groundwater modeling of the site that shall include, at
- 23                                  a minimum, all of the following:
- 24                                  1.     An account of the design of the proposed Closure Plan that is
- 25                                  based on the site hydrogeologic conceptual model developed
- 26                                  and includes (i) predictions on post-closure groundwater
- 27                                  elevations and groundwater flow directions and velocities,
- 28                                  including the effects on and from the potential receptors and
- 29                                  (ii) predictions at the compliance boundary for substances
- 30                                  with concentrations determined to be in excess of the
- 31                                  groundwater quality standards for the substance established
- 32                                  by Subchapter L of Chapter 2 of Title 15A of the North
- 33                                  Carolina Administrative Code.
- 34                                  2.     Predictions that include the effects on the groundwater
- 35                                  chemistry and should describe migration, concentration,
- 36                                  mobilization, and fate for substances with concentrations
- 37                                  determined to be in excess of the groundwater quality
- 38                                  standards for the substance established by Subchapter L of
- 39                                  Chapter 2 of Title 15A of the North Carolina Administrative
- 40                                  Code pre- and post-closure, including the effects on and from
- 41                                  potential receptors.
- 42                                  3.     A description of the groundwater trend analysis methods used
- 43                                  to demonstrate compliance with groundwater quality
- 44                                  standards for the substance established by Subchapter L of
- 45                                  Chapter 2 of Title 15A of the North Carolina Administrative
- 46                                  Code and requirements for corrective action of groundwater
- 47                                  contamination established by Subchapter L of Chapter 2 of
- 48                                  Title 15A of the North Carolina Administrative Code.
- 49                                  e.     A description of any plans for beneficial use of the coal combustion
- 50                                  residuals in compliance with the requirements of Section .1700 of
- 51                                  Subchapter B of Chapter 13 of Title 15A of the North Carolina

- 1 Administrative Code (Requirements for Beneficial Use of Coal  
2 Combustion By-Products) and Section .1205 of Subchapter T of  
3 Chapter 2 of Title 15A of the North Carolina Administrative Code  
4 (Coal Combustion Products Management).
- 5 f. All engineering drawings, schematics, and specifications for the  
6 proposed Closure Plan. If required by Chapter 89C of the General  
7 Statutes, engineering design documents should be prepared, signed,  
8 and sealed by a professional engineer.
- 9 g. A description of the construction quality assurance and quality  
10 control program to be implemented in conjunction with the Closure  
11 Plan, including the responsibilities and authorities for monitoring and  
12 testing activities, sampling strategies, and reporting requirements.
- 13 h. A description of the provisions for disposal of wastewater and  
14 management of stormwater and the plan for obtaining all required  
15 permits.
- 16 i. A description of the provisions for the final disposition of the coal  
17 combustion residuals. If the coal combustion residuals are to be  
18 removed, the owner must (i) identify the location and permit number  
19 for the coal combustion residuals landfills, industrial landfills, or  
20 municipal solid waste landfills in which the coal combustion  
21 residuals will be disposed and (ii) in the case where the coal  
22 combustion residuals are planned for beneficial use, the location and  
23 manner in which the residuals will be temporarily stored. If the coal  
24 combustion residuals are to be left in the impoundment, the owner  
25 must (i) in the case of closure pursuant to sub-subdivision (a)(1)a. of  
26 this section, provide a description of how the ash will be stabilized  
27 prior to completion of closure in accordance with closure and  
28 post-closure requirements established by Section .1627 of Subchapter  
29 B of Chapter 13 of Title 15A of the North Carolina Administrative  
30 Code and (ii) in the case of closure pursuant to sub-subdivision  
31 (a)(1)b. of this section, provide a description of how the ash will be  
32 stabilized pre- and post-closure. If the coal combustion residuals are  
33 to be left in the impoundment, the owner must provide an estimate of  
34 the volume of coal combustion residuals remaining.
- 35 j. A list of all permits that will need to be acquired or modified to  
36 complete closure activities.
- 37 k. A description of the plan for post-closure monitoring and care for an  
38 impoundment for a minimum of 30 years. The length of the  
39 post-closure care period may be (i) proposed to be decreased or the  
40 frequency and parameter list modified if the owner demonstrates that  
41 the reduced period or modifications are sufficient to protect public  
42 health, safety, and welfare; the environment; and natural resources  
43 and (ii) increased by the Department at the end of the post-closure  
44 monitoring and care period if there are statistically significant  
45 increasing groundwater quality trends or if contaminant  
46 concentrations have not decreased to a level protective of public  
47 health, safety, and welfare; the environment; and natural resources. If  
48 the owner determines that the post-closure care monitoring and care  
49 period is no longer needed and the Department agrees, the owner  
50 shall provide a certification, signed and sealed by a professional  
51 engineer, verifying that post-closure monitoring and care has been

1 completed in accordance with the post-closure plan. If required by  
2 Chapter 89C of the General Statutes, the proposed plan for  
3 post-closure monitoring and care should be signed and sealed by a  
4 professional engineer. The plan shall include, at a minimum, all of  
5 the following:

6 1. A demonstration of the long-term control of all leachate,  
7 affected groundwater, and stormwater.

8 2. A description of a groundwater monitoring program that  
9 includes (i) post-closure groundwater monitoring, including  
10 parameters to be sampled and sampling schedules; (ii) any  
11 additional monitoring well installations, including a map with  
12 the proposed locations and well construction details; and (iii)  
13 the actions proposed to mitigate statistically significant  
14 increasing groundwater quality trends.

15 l. An estimate of the milestone dates for all activities related to closure  
16 and post-closure.

17 m. Projected costs of assessment, corrective action, closure, and  
18 post-closure care for each coal combustion residuals surface  
19 impoundment.

20 n. A description of the anticipated future use of the site and the  
21 necessity for the implementation of institutional controls following  
22 closure, including property use restrictions, and requirements for  
23 recordation of notices documenting the presence of contamination, if  
24 applicable, or historical site use.

25 (b) The Department shall review a proposed Coal Combustion Residuals Surface  
26 Impoundment Closure Plan for consistency with the minimum requirements set forth in  
27 subsection (a) of this section and whether the proposed Closure Plan is protective of public  
28 health, safety, and welfare; the environment; and natural resources and otherwise complies with  
29 the requirements of this Part. Prior to issuing a decision on a proposed Closure Plan, the  
30 Department shall provide for public participation on the proposed Closure Plan as follows:

31 (1) The Department shall make copies of the proposed Closure Plan available  
32 for inspection as follows:

33 a. A copy of the proposed Closure Plan shall be provided to the local  
34 health director.

35 b. A copy of the proposed Closure Plan shall be provided to the public  
36 library located in closest proximity to the site in the county or  
37 counties in which the site is located.

38 c. The Department shall post a copy of the proposed Closure Plan on  
39 the Department's Web site.

40 d. The Department may place copies of the proposed Closure Plan in  
41 other locations so as to assure the availability thereof to the public.

42 (2) Before approving a proposed Closure Plan, the Department shall give notice  
43 as follows:

44 a. A notice and summary of the proposed Closure Plan shall be  
45 published weekly for a period of three consecutive weeks in a  
46 newspaper having general circulation in the county or counties where  
47 the site is located.

48 b. Notice that a proposed Closure Plan has been developed shall be  
49 given by first-class mail to persons who have requested such notice.  
50 Such notice shall include a summary of the proposed Closure Plan  
51 and state the locations where a copy of the proposed Closure Plan is



- 1                   available for inspection. The Department shall maintain a mailing list  
2                   of persons who request notice pursuant to this section.
- 3           c.       Notice that a proposed Closure Plan has been developed shall be  
4                   given by electronic mail to persons who have requested such notice.  
5                   Such notice shall include a summary of the proposed Closure Plan  
6                   and state the locations where a copy of the proposed Closure Plan is  
7                   available for inspection. The Department shall maintain a mailing list  
8                   of persons who request notice pursuant to this section.
- 9           (3)       No later than 60 days after receipt of a proposed Closure Plan, the  
10                   Department shall conduct a public meeting in the county or counties in  
11                   which the site is located to explain the proposed Closure Plan and  
12                   alternatives to the public. The Department shall give notice of the hearing at  
13                   least 30 days prior to the date thereof by all of the following methods:
- 14                   a.       Publication as provided in subdivision (1) of this subsection, with  
15                   first publication to occur not less than 30 days prior to the scheduled  
16                   date of the hearing.
- 17                   b.       First-class mail to persons who have requested notice as provided in  
18                   subdivision (2) of this subsection.
- 19                   c.       Electronic mail to persons who have requested notice as provided in  
20                   subdivision (2) of this subsection.
- 21           (4)       At least 30 days from the latest date on which notice is provided pursuant to  
22                   subdivision (2) of this subsection shall be allowed for the receipt of written  
23                   comment on the proposed Closure Plan prior to its approval. At least 20 days  
24                   will be allowed for receipt of written comment following a hearing  
25                   conducted pursuant to subdivision (3) of this subsection prior to the approval  
26                   of the proposed Closure Plan.
- 27           (c)       The Department shall disapprove a proposed Coal Combustion Residuals Surface  
28                   Impoundment Closure Plan unless the Department finds that the Closure Plan is protective of  
29                   public health, safety, and welfare; the environment; and natural resources and otherwise  
30                   complies with the requirements of this Part. The Department shall provide specific findings to  
31                   support its decision to approve or disapprove a proposed Closure Plan. If the Department  
32                   disapproves a proposed Closure Plan, the person who submitted the Closure Plan may seek  
33                   review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails  
34                   to approve or disapprove a proposed Closure Plan within 120 days after a complete Closure  
35                   Plan has been submitted, the person who submitted the proposed Closure Plan may treat the  
36                   Closure Plan as having been disapproved at the end of that time period. The Department may  
37                   require a person who proposes a Closure Plan to supply any additional information necessary  
38                   for the Department to approve or disapprove the Closure Plan.
- 39           (d)       Within 30 days of its approval of a Coal Combustion Residuals Surface  
40                   Impoundment Closure Plan, the Department shall submit the Closure Plan to the Coal Ash  
41                   Management Commission. The Commission shall evaluate all information submitted in  
42                   accordance with this Part related to the Closure Plan and any other information the Commission  
43                   deems relevant. The Commission shall only approve the Closure Plan if it determines that the  
44                   Closure Plan was developed in accordance with this section; that implementation of the Closure  
45                   Plan according to the Closure Plan's schedule is technologically feasible; and that the benefits  
46                   to public health, safety, and welfare; the environment; and natural resources outweigh the  
47                   negative impacts on electricity costs and reliability. The Commission shall issue its  
48                   determination in writing, including findings in support of its determination. If the Commission  
49                   fails to act on a Closure Plan within 60 days of receipt of the Closure Plan, the Closure Plan  
50                   shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to

1 this subsection may appeal the decision as provided under Article 3 of Chapter 150B of the  
2 General Statutes.

3 (e) As soon as practicable, but no later than 60 days after a Coal Combustion Residuals  
4 Surface Impoundment Closure Plan has been approved by the Coal Ash Management  
5 Commission, the owner of the coal combustion residuals impoundment shall begin  
6 implementation of the approved plan. Modifications to an approved Closure Plan may only be  
7 allowed in conformance with the requirements of this Part, upon written request of an owner of  
8 an impoundment, with the written approval of the Department, and after public notice of the  
9 change in accordance with the requirements of subdivision (2) of subsection (b) of this section.  
10 Provided, however, minor technical modifications may be made in accordance with standard  
11 Department procedures for such minor modifications and may be made without written  
12 approval of the Department or public notice of the change.

13 (f) Nothing in this section shall be construed to obviate the need for sampling,  
14 remediation, and monitoring activities at the site as required by G.S. 130A-309.209 and  
15 G.S. 130A-309.310.

16 **"§ 130A-309.213. Variance authority.**

17 In recognition of the complexity and magnitude of the issues surrounding the management  
18 of coal combustion residuals and coal combustion residuals surface impoundments, the General  
19 Assembly authorizes the Secretary to grant a variance to extend any deadline for closure of an  
20 impoundment established under G.S. 130A-309.212 in conformance with the requirements of  
21 this section. To request such a variance the owner of an impoundment shall submit an  
22 application in a form acceptable to the Department which shall include, at a minimum, all of  
23 the following information: identification of the site, applicable requirements, and applicable  
24 deadlines for which a variance is sought, and detailed information that demonstrates that  
25 compliance with the deadline cannot be achieved by application of best available technology  
26 found to be economically reasonable at the time and would produce serious hardship without  
27 equal or greater benefits to the public. As soon as practicable, but no later than 60 days from  
28 receipt of an application, the Secretary shall evaluate the information submitted in conjunction  
29 with the application, and any other information the Secretary deems relevant, to determine  
30 whether the information supports issuance of a variance. After such evaluation, if the Secretary  
31 finds that the information supports issuance of a variance from the deadline, the Secretary shall  
32 issue a proposed variance. Within 10 days after a proposed variance has been issued, the  
33 Secretary shall issue a written declaration, including findings of fact, documenting the proposed  
34 variance. The Department shall provide for public participation on the proposed variance in the  
35 manner provided by G.S. 130A-309.212(b) and shall take the public input received through the  
36 process into account in its decision before issuing a final variance. Parties aggrieved by a final  
37 decision of the Secretary pursuant to this section may appeal the decision as provided under  
38 Article 3 of Chapter 150B of the General Statutes within 30 days of the date of the decision.

39 "Subpart 3. Use of Coal Combustion Products in Structural Fill.

40 **"§ 130A-309.214. Applicability.**

41 The provisions of this Subpart shall apply to the siting, design, construction, operation, and  
42 closure of projects that utilize coal combustion products for structural fill.

43 **"§ 130A-309.215. Permit requirements for projects using coal combustion products for**  
44 **structural fill.**

45 (a) Permit Requirements. –

46 (1) Projects using coal combustion products as structural fill involving the  
47 placement of less than 8,000 tons of coal combustion products per acre or  
48 less than 80,000 tons of coal combustion products in total per project, which  
49 proceed in compliance with the requirements of this section and rules  
50 adopted thereunder, are deemed permitted. Any person proposing such a  
51 project shall submit an application for a permit to the Department upon such

1 form as the Department may prescribe, including, at a minimum, the  
2 information set forth in subdivision (1) of subsection (b) of this section.

3 (2) No person shall commence or operate a project using coal combustion  
4 residuals as structural fill involving the placement of 8,000 or more tons of  
5 coal combustion products per acre or 80,000 or more tons of coal  
6 combustion products in total per project without first receiving an individual  
7 permit from the Department. Any person proposing such a project shall  
8 submit an application for a permit to the Department upon such form as the  
9 Department may prescribe, including, at a minimum, the information set  
10 forth in subdivisions (1) and (2) of subsection (b) of this section.

11 (b) Information to Be Provided to the Department. – At least 60 days before initiation  
12 of a proposed project using coal combustion products as structural fill, the person proposing the  
13 project shall submit all of the following information to the Department on a form as prescribed  
14 by the Department:

15 (1) For projects involving placement of less than 8,000 tons of coal combustion  
16 products per acre or less than 80,000 tons of coal combustion products in  
17 total per project, the person shall provide, at a minimum, the following  
18 information:

19 a. The description of the nature, purpose, and location of the project.

20 b. The estimated start and completion dates for the project.

21 c. An estimate of the volume of coal combustion products to be used in  
22 the project.

23 d. A Toxicity Characteristic Leaching Procedure analysis from a  
24 representative sample of each different coal combustion product's  
25 source to be used in the project for, at a minimum, all of the  
26 following constituents: arsenic, barium, cadmium, lead, chromium,  
27 mercury, selenium, and silver.

28 e. A signed and dated statement by the owner of the land on which the  
29 structural fill is to be placed, acknowledging and consenting to the  
30 use of coal combustion products as structural fill on the property and  
31 agreeing to record the fill in accordance with the requirements of  
32 G.S. 130A-390.219.

33 f. The name, address, and contact information for the generator of the  
34 coal combustion products.

35 g. Physical location of the project at which the coal combustion  
36 products were generated.

37 (2) For projects involving placement of 8,000 or more tons of coal combustion  
38 products per acre or 80,000 or more tons of coal combustion products in  
39 total per project, the person shall provide all information required pursuant  
40 to subdivision (1) of this subsection and shall provide construction plans for  
41 the project, including a stability analysis as the Department may require. If  
42 required by the Department, a stability analysis shall be prepared, signed,  
43 and sealed by a professional engineer in accordance with sound engineering  
44 practices. A construction plan shall, at a minimum, include a groundwater  
45 monitoring system and an encapsulation liner system in compliance with the  
46 requirements of G.S. 130A-309.216.

47 **§ 130A-309.216. Design, construction, and siting requirements for projects using coal**  
48 **combustion products for structural fill.**

49 (a) Design, Construction, and Operation of Structural Fill Sites. –

50 (1) A structural fill site must be designed, constructed, operated, closed, and  
51 maintained in such a manner as to minimize the potential for harmful release

1 of constituents of coal combustion residuals to the environment or create a  
2 nuisance to the public.

3 (2) Coal combustion products shall be collected and transported in a manner that  
4 will prevent nuisances and hazards to public health and safety. Coal  
5 combustion products shall be moisture conditioned, as necessary, and  
6 transported in covered trucks to prevent dusting.

7 (3) Coal combustion products shall be placed uniformly and shall be compacted  
8 to standards, including in situ density, compaction effort, and relative  
9 density, specified by a registered professional engineer for a specific end-use  
10 purpose.

11 (4) Equipment shall be provided that is capable of placing and compacting the  
12 coal combustion products and handling the earthwork required during the  
13 periods that coal combustion products are received at the fill project.

14 (5) The coal combustion product structural fill project shall be effectively  
15 maintained and operated as a nondischarge system to prevent discharge to  
16 surface water resulting from the project.

17 (6) The coal combustion product structural fill project shall be effectively  
18 maintained and operated to ensure no violations of groundwater standards  
19 adopted by the Commission pursuant to Article 21 of Chapter 143 of the  
20 General Statutes due to the project.

21 (7) Surface waters resulting from precipitation shall be diverted away from the  
22 active coal combustion product placement area during filling and  
23 construction activity.

24 (8) Site development shall comply with the North Carolina Sedimentation  
25 Pollution Control Act of 1973, as amended.

26 (9) The structural fill project shall be operated with sufficient dust control  
27 measures to minimize airborne emissions and to prevent dust from creating a  
28 nuisance or safety hazard and shall not violate applicable air quality  
29 regulations.

30 (10) Coal combustion products utilized on an exterior slope of a structural fill  
31 shall not be placed with a slope greater than 3.0 horizontal to 1.0 vertical.

32 (11) Compliance with this subsection shall not insulate any of the owners or  
33 operators of a structural fill project from claims for damages to surface  
34 waters, groundwater, or air resulting from the operation of the structural fill  
35 project. If the project fails to comply with the requirements of this section,  
36 the constructor, generator, owner, or operator shall notify the Department  
37 and shall take any immediate corrective action as may be required by the  
38 Department.

39 (b) Liners, Leachate Collection System, Cap, and Groundwater Monitoring System  
40 Required for Large Structural Fills. – For projects involving placement of 8,000 or more tons of  
41 coal combustion products per acre or 80,000 or more tons of coal combustion products in total  
42 per project shall have an encapsulation liner system. The encapsulation liner system shall be  
43 constructed on and around the structural fill and shall be designed to efficiently contain, collect,  
44 and remove leachate generated by the coal combustion products, as well as separate the coal  
45 combustion products from any exposure to surrounding environs. At a minimum, the  
46 components of the liner system shall consist of the following:

47 (1) A base liner. The base liner shall consist of one of the following designs:

48 a. A composite liner utilizing a compacted clay liner. This composite  
49 liner is one liner that consists of two components: a geomembrane  
50 liner installed above and in direct and uniform contact with a  
51 compacted clay liner with a minimum thickness of 24 inches (0.61

- 1                                    m) and a permeability of no more than  $1.0 \times 10^{-7}$  centimeters per  
2                                    second.
- 3                                    b. A composite liner utilizing a geosynthetic clay liner. This composite  
4                                    liner is one liner that consists of three components: a geomembrane  
5                                    liner installed above and in uniform contact with a geosynthetic clay  
6                                    liner overlying a compacted clay liner with a minimum thickness of  
7                                    18 inches (0.46 m) and a permeability of no more than  $1.0 \times 10^{-5}$   
8                                    centimeters per second.
- 9                                    (2) A leachate collection system, which is constructed directly above the base  
10                                   liner and shall be designed to effectively collect and remove leachate from  
11                                   the project.
- 12                                   (3) A cap system that is designed to minimize infiltration and erosion as  
13                                   follows:
- 14                                   a. The cap system shall be designed and constructed to (i) have a  
15                                   permeability less than or equal to the permeability of any base liner  
16                                   system or the in situ subsoils underlying the structural fill, or the  
17                                   permeability specified for the final cover in the effective permit, or a  
18                                   permeability no greater than  $1 \times 10^{-5}$  centimeters per second,  
19                                   whichever is less; (ii) minimize infiltration through the closed  
20                                   structural fill by the use of a low-permeability barrier that contains a  
21                                   minimum 18 inches of earthen material; and (iii) minimize erosion of  
22                                   the cap system and protect the low-permeability barrier from root  
23                                   penetration by use of an erosion layer that contains a minimum of six  
24                                   inches of earthen material that is capable of sustaining native plant  
25                                   growth.
- 26                                   b. The Department may approve an alternative cap system if the owner  
27                                   or operator can adequately demonstrate (i) the alternative cap system  
28                                   will achieve an equivalent or greater reduction in infiltration as the  
29                                   low-permeability barrier specified in sub-subdivision a. of this  
30                                   subdivision and (ii) the erosion layer will provide equivalent or  
31                                   improved protection as the erosion layer specified in sub-subdivision  
32                                   a. of this subdivision.
- 33                                   (4) A groundwater monitoring system, that shall be approved by the Department  
34                                   and, at a minimum, consists of all of the following:
- 35                                   a. A sufficient number of wells, installed at appropriate locations and  
36                                   depths, to yield groundwater samples from the uppermost aquifer that  
37                                   represent the quality of groundwater passing the relevant point of  
38                                   compliance as approved by the Department. A down-gradient  
39                                   monitoring system shall be installed at the relevant point of  
40                                   compliance so as to ensure detection of groundwater contamination  
41                                   in the uppermost aquifer.
- 42                                   b. A proposed monitoring plan, which shall be certified by a licensed  
43                                   geologist or professional engineer to be effective in providing early  
44                                   detection of any release of hazardous constituents from any point in a  
45                                   structural fill or leachate surface impoundment to the uppermost  
46                                   aquifer, so as to be protective of public health, safety, and welfare;  
47                                   the environment; and natural resources.
- 48                                   c. A groundwater monitoring program, which shall include consistent  
49                                   sampling and analysis procedures that are designed to ensure  
50                                   monitoring results that provide an accurate representation of  
51                                   groundwater quality at the background and down-gradient wells.

1 Monitoring shall be conducted through construction and the  
2 post-closure care period. The sampling procedures and frequency  
3 shall be protective of public health, safety, and welfare; the  
4 environment; and natural resources.

5 d. A detection monitoring program for all Appendix I constituents. For  
6 purposes of this subdivision, the term "Appendix I" means Appendix  
7 I to 40 C.F.R. Part 258, "Appendix I Constituents for Detection  
8 Monitoring," including subsequent amendments and editions.

9 e. An assessment monitoring program and corrective action plan if one  
10 or more of the constituents listed in Appendix I is detected in  
11 exceedance of a groundwater protection standard.

12 (c) Siting for Structural Fill Facilities. – Coal combustion products used as a structural  
13 fill shall not be placed:

14 (1) Within 100 horizontal feet of a wetland, unless, after consideration of the  
15 chemical and physical impact on the wetland, the United States Army Corps  
16 of Engineers issues a permit or waiver for the fill.

17 (2) Within 300 horizontal feet of the top of the bank of a perennial stream or  
18 other surface water body.

19 (3) Within four feet of the seasonal high groundwater table.

20 (4) Within 500 horizontal feet of any source of drinking water, such as a well,  
21 spring, or other groundwater source of drinking water.

22 (5) Within an area subject to a 100-year flood, unless it can be demonstrated to  
23 the Department that the project will be protected from inundation and  
24 washout, and the flow of water is not restricted and the storage volume of  
25 the floodplain will not be significantly reduced.

26 (6) Within 30 feet of a bedrock outcrop.

27 (7) Within 200 feet of any property boundary.

28 **§ 130A-309.217. Financial assurance requirements for large projects using coal**  
29 **combustion products for structural fill.**

30 (a) For projects involving placement of 8,000 or more tons of coal combustion products  
31 per acre or 80,000 or more tons of coal combustion products in total per project, the applicant  
32 for a permit or a permit holder to construct or operate a structural fill shall establish financial  
33 assurance that will ensure that sufficient funds are available for facility closure, post-closure  
34 maintenance and monitoring, any corrective action that the Department may require, and to  
35 satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent  
36 costs incurred by the Department in response to an incident at a structural fill project, even if  
37 the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do  
38 business, or maintain assets in the State.

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

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

1        (d) Assets used to meet the financial assurance requirements of this section shall be in a  
2 form that will allow the Department to readily access funds for the purposes set out in this  
3 section. Assets used to meet financial assurance requirements of this section shall not be  
4 accessible to the permit holder except as approved by the Department.

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

10       (f) In order to continue to hold a permit for a structural fill, a permit holder must  
11 maintain financial responsibility as required by this Part and must provide any information  
12 requested by the Department to establish that the permit holder continues to maintain financial  
13 responsibility.

14       (g) An applicant for a permit or a permit holder shall satisfy the Department that the  
15 applicant or permit holder has met the financial responsibility requirements of this Part before  
16 the Department is required to otherwise review the application.

17 **"§ 130A-309.218. Closure of projects using coal combustion products for structural fill.**

18       (a) Closure of Structural Fill Projects. –

19           (1) No later than 30 working days or 60 calendar days, whichever is less, after  
20 coal combustion product placement has ceased, the final cover shall be  
21 applied over the coal combustion product placement area.

22           (2) The final surface of the structural fill shall be graded and provided with  
23 drainage systems that do all of the following:

24                a. Minimize erosion of cover materials.

25                b. Promote drainage of area precipitation, minimize infiltration, and  
26 prevent ponding of surface water on the structural fill.

27           (3) Other erosion control measures, such as temporary mulching, seeding, or silt  
28 barriers shall be installed to ensure no visible coal combustion product  
29 migration to adjacent properties until the beneficial end use of the project is  
30 realized.

31           (4) The constructor or operator shall submit a certification to the Department  
32 signed and sealed by a registered professional engineer or signed by the  
33 Secretary of the Department of Transportation or the Secretary's designee  
34 certifying that all requirements of this Subpart have been met. The report  
35 shall be submitted within 30 days of application of the final cover.

36       (b) Additional Closure and Post-Closure Requirements for Large Structural Fill  
37 Projects. – For projects involving placement of 8,000 or more tons of coal combustion products  
38 per acre or 80,000 or more tons of coal combustion products in total per project, a constructor  
39 or operator shall conduct post-closure care. Post-closure care shall be conducted for 30 years,  
40 which period may be increased by the Department upon a determination that a longer period is  
41 necessary to protect public health, safety, welfare; the environment; and natural resources, or  
42 decreased upon a determination that a shorter period is sufficient to protect public health,  
43 safety, welfare; the environment; and natural resources. Additional closure and post-closure  
44 requirements include, at a minimum, all of the following:

45           (1) Submit a written closure plan, that includes all of the following:

46                a. A description of the cap liner system and the methods and procedures  
47 used to install the cap that conforms to the requirement in  
48 G.S. 130A-309.216(b).

49                b. An estimate of the largest area of the structural fill project ever  
50 requiring the cap liner system at any time during the overall

- 1                    construction period that is consistent with the drawings prepared for  
2                    the structural fill.
- 3                    c.    An estimate of the maximum inventory of coal combustion products  
4                    ever on-site over the construction duration of the structural fill.
- 5                    d.    A schedule for completing all activities necessary to satisfy the  
6                    closure criteria set forth in this section.
- 7                    (2)   Submit a written post-closure plan, that includes all of the following:
- 8                    a.    A description of the monitoring and maintenance activities required  
9                    for the project and the frequency at which these activities must be  
10                    performed.
- 11                    b.    The name, address, and telephone number of the person or office  
12                    responsible for the project during the post-closure period.
- 13                    c.    A description of the planned uses of the property during the  
14                    post-closure period. Post-closure use of the property must not disturb  
15                    the integrity of the cap system, base liner system, or any other  
16                    components of the containment system or the function of the  
17                    monitoring systems, unless necessary to comply with the  
18                    requirements of this subsection. The Department may approve  
19                    disturbance if the constructor or operator demonstrates that  
20                    disturbance of the cap system, base liner system, or other component  
21                    of the containment system will not increase the potential threat to  
22                    public health, safety, and welfare; the environment; and natural  
23                    resources.
- 24                    d.    The cost estimate for post-closure activities required under this  
25                    section.
- 26                    (3)   Maintain the integrity and effectiveness of any cap system, including  
27                    repairing the system as necessary to correct the defects of settlement,  
28                    subsidence, erosion, or other events and preventing run-on and runoff from  
29                    eroding or otherwise damaging the cap system.
- 30                    (4)   Maintain and operate the leachate collection system. The Department may  
31                    allow the constructor or operator to stop managing leachate upon a  
32                    satisfactory demonstration that leachate from the project no longer poses a  
33                    threat to human health and the environment.
- 34                    (5)   Monitor and maintain the groundwater monitoring system in accordance  
35                    with G.S. 130A-309.216 and monitor the surface water in accordance with  
36                    15A NCAC 13B .0602.
- 37                    (c)   Completion of Post-Closure Care. – Following completion of the post-closure care  
38                    period, the constructor or operator shall submit a certification, signed by a registered  
39                    professional engineer, to the Department, verifying that post-closure care has been completed  
40                    in accordance with the post-closure plan, and include the certification in the operating record.
- 41                    **"§ 130A-309.219. Recordation of projects using coal combustion products for structural**  
42                    **fill.**
- 43                    (a)   The owner of land where coal combustion products have been used in volumes of  
44                    more than 1,000 cubic yards shall file a statement of the volume and locations of the coal  
45                    combustion residuals with the Register of Deeds in the county or counties where the property is  
46                    located. The statement shall identify the parcel of land according to the complete legal  
47                    description on the recorded deed, either by metes and bounds, or by reference to a recorded plat  
48                    map. The statement shall be signed and acknowledged by the landowners in the form  
49                    prescribed by G.S. 47-38 through G.S. 47-43.
- 50                    (b)   Recordation shall be required within 90 days after completion of a structural fill  
51                    project using coal combustion residuals.





1 (3) Coal combustion residuals surface impoundments located at the Asheville  
2 Steam Electric Generating Plant, owned and operated by Duke Energy  
3 Progress, and located in Buncombe County.

4 (4) Coal combustion residuals surface impoundments located at the Sutton  
5 Plant, owned and operated by Duke Energy Progress, and located in New  
6 Hanover County.

7 **SECTION 3.(c)** The impoundments identified in subsection (b) of this section shall  
8 be closed as follows:

9 (1) The impoundments shall be dewatered.

10 (2) All coal combustion residuals shall be removed from the impoundments and  
11 transferred for (i) disposal in a coal combustion residuals landfill, industrial  
12 landfill, or municipal solid waste landfill or (ii) use in a structural fill or  
13 other beneficial use as allowed by law. Any disposal or use of coal  
14 combustion products pursuant to this section shall comply with the  
15 moratoriums enacted under Section 4(a) and Section 5(a) of this act and any  
16 extensions thereof. The use of coal combustion products (i) as structural fill,  
17 as authorized by Section 4(b) of this act, shall be conducted in accordance  
18 with the requirements of Subpart 3 of Part 2I of Article 9 of the General  
19 Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial  
20 uses shall be conducted in accordance with the requirements of Section  
21 .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina  
22 Administrative Code (Requirements for Beneficial Use of Coal Combustion  
23 By-Products) and Section .1205 of Subchapter T of Chapter 2 of Title 15A  
24 of the North Carolina Administrative Code (Coal Combustion Products  
25 Management), as applicable.

26 (3) Restoration of groundwater quality is degraded as a result of the  
27 impoundment, corrective action to restore groundwater quality shall be  
28 implemented by the owner or operator as provided in G.S. 130A-309.204.

29 **SECTION 3.(d)** G.S. 130A-290(a) reads as rewritten:

30 **"§ 130A-290. Definitions.**

31 (a) Unless a different meaning is required by the context, the following definitions shall  
32 apply throughout this Article:

33 ...  
34 (2b) ~~"Combustion products"~~ "Coal combustion residuals" means residuals,  
35 including fly ash, bottom ash, boiler slag, mill rejects, and flue gas  
36 desulfurization residue produced by a coal-fired generating unit ~~unit~~ unit ~~destined~~  
37 for disposal. The term does not include coal combustion products as defined  
38 in G.S. 130A-309.201(4).

39 (2c) ~~"Combustion products landfill"~~ "Coal combustion residuals landfill" means a  
40 facility or unit for the disposal of combustion products, where the landfill is  
41 located at the same facility with the coal-fired generating unit or units  
42 producing the combustion products, and where the landfill is located wholly  
43 or partly on top of a facility that is, or was, being used for the disposal or  
44 storage of such combustion products, including, but not limited to, landfills,  
45 wet and dry ash ponds, and structural fill facilities.

46 ...  
47 (3a) "Commission" means the Environmental Management Commission.

48 ...  
49 (20) "Open dump" means any facility or site where solid waste is disposed of that  
50 is not a sanitary landfill and that is not a coal combustion residuals surface  
51 impoundment or a facility for the disposal of hazardous waste.

1 ...  
2 (35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or  
3 sludge from a waste treatment plant, water supply treatment plant or air  
4 pollution control facility, domestic sewage and sludges generated by the  
5 treatment thereof in sanitary sewage collection, treatment and disposal  
6 systems, and other material that is either discarded or is being accumulated,  
7 stored or treated prior to being discarded, or has served its original intended  
8 use and is generally discarded, including solid, liquid, semisolid or contained  
9 gaseous material resulting from industrial, institutional, commercial and  
10 agricultural operations, and from community activities. Notwithstanding  
11 sub-sub-subdivision b.3. of this subdivision, the term includes coal  
12 combustion residuals. The term does not include:

- 13 a. Fecal waste from fowls and animals other than humans.  
14 b. Solid or dissolved material in:  
15 1. Domestic sewage and sludges generated by treatment thereof  
16 in sanitary sewage collection, treatment and disposal systems  
17 which are designed to discharge effluents to the surface  
18 waters.  
19 2. Irrigation return flows.  
20 3. Wastewater discharges and the sludges incidental to and  
21 generated by treatment which are point sources subject to  
22 permits granted under Section 402 of the Water Pollution  
23 Control Act, as amended (P.L. 92-500), and permits granted  
24 under G.S. 143-215.1 by the ~~Environmental Management~~  
25 ~~Commission.~~ Commission, including coal combustion  
26 products. However, any sludges that meet the criteria for  
27 hazardous waste under RCRA shall also be a solid waste for  
28 the purposes of this Article.

29 "...."

30 **SECTION 3.(e)** The initial members of the Coal Ash Management Commission  
31 established pursuant to G.S. 130A-309.202, as enacted by Section 3(a) of this act, whose  
32 qualifications are described in subdivisions (3), (4), and (9) of G.S. 130A-309.202(b), shall be  
33 appointed for an initial term of two years and subsequent appointments shall be for six-year  
34 terms. The initial members of the Coal Ash Management Commission established pursuant to  
35 G.S. 130A-309.202, as enacted by Section 3(a) of this act, whose qualifications are described in  
36 subdivisions (1), (6), and (8) of G.S. 130A-309.202(b), shall be appointed for an initial term of  
37 four years and subsequent appointments shall be for six-year terms. The initial members of the  
38 Coal Ash Management Commission established pursuant to G.S. 130A-309.202, as enacted by  
39 Section 3(a) of this act, whose qualifications are described in subdivisions (2), (5), and (7) of  
40 G.S. 130A-309.202(b), shall be appointed for an initial term of six years and subsequent  
41 appointments shall be for six-year terms.

42 **SECTION 3.(f)** This section is effective when it becomes law. G.S. 130A-309.202,  
43 as enacted by Section 3(a) of this act, is repealed June 30, 2030. Subpart 3 of Part 2I of Article  
44 9 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of coal  
45 combustion products as structural fill contracted for on or after that date. The first report due  
46 under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due October 1, 2014.  
47 Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this  
48 act, shall be appointed no later than September 1, 2014.

1 **PART III. MORATORIUMS AND STUDY ON (1) USE OF COAL COMBUSTION**  
2 **PRODUCTS AS STRUCTURAL FILL AND (2) CONSTRUCTION OR EXPANSION**  
3 **OF COMBUSTION PRODUCTS LANDFILLS**

4 **SECTION 4.(a)** Notwithstanding 15A NCAC 13B .1701, et seq., and except as  
5 provided in Section 4(b) of this act, the use of coal combustion products, as defined in  
6 G.S. 130A-309.201, as structural fill is prohibited until August 1, 2015, in order to allow the  
7 Department of Environment and Natural Resources, the Environmental Management  
8 Commission, and the General Assembly time to review and evaluate the use of coal  
9 combustion residuals as structural fill.

10 **SECTION 4.(b)** Coal combustion products may be used as structural fill for any of  
11 the following types of projects:

- 12 (1) A project where the structural fill is used with a base liner, leachate  
13 collection system, cap liner, or groundwater monitoring system and where  
14 the constructor or operator establishes financial assurance, as required by  
15 G.S. 130A-309.217.
- 16 (2) As the base or sub-base of a concrete or asphalt paved road constructed  
17 under the authority of a public entity.

18 **SECTION 4.(c)** The use of coal combustion products (i) as structural fill as  
19 authorized by Section 4(b) of this act shall be conducted in accordance with the requirements of  
20 Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act,  
21 and (ii) for other beneficial uses shall be conducted in accordance with the requirements of  
22 Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative  
23 Code (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1205 of  
24 Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal  
25 Combustion Products Management), as applicable.

26 **SECTION 4.(d)** The Department of Environment and Natural Resources and the  
27 Environmental Management Commission shall jointly review Subpart 3 of Part 2I of Article 9  
28 of the General Statutes, as enacted by Section 3(a) of this act, and 15A NCAC 13B .1701, et  
29 seq. In conducting this review, the Department and Commission shall do all of the following:

- 30 (1) Review the uses of coal combustion products as structural fill and the  
31 regulation of this use under Subpart 3 of Part 2I of Article 9 of the General  
32 Statutes, as enacted by Section 3(a) of this act, to determine if the  
33 requirements are sufficient to protect public health, safety, and welfare; the  
34 environment; and natural resources.
- 35 (2) Review the uses of coal combustion products for other beneficial uses and  
36 the regulation of these uses under Section .1700 of Subchapter B of Chapter  
37 13 of Title 15A of the North Carolina Administrative Code (Requirements  
38 for Beneficial Use of Coal Combustion By-Products) and Section .1200 of  
39 Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative  
40 Code (Coal Combustion Products Management), and other applicable rules,  
41 to determine if the rules are sufficient to protect public health, safety, and  
42 welfare; the environment; and natural resources.
- 43 (3) Evaluate additional opportunities for the use of coal combustion products as  
44 structural fill and for other beneficial uses that would reduce the volume of  
45 coal combustion residuals that are being disposed of in coal combustion  
46 residuals landfills, industrial landfills, or municipal solid waste landfills  
47 while still being protective of public health, safety, and welfare; the  
48 environment; and natural resources.
- 49 (4) Monitor any actions of the United States Environmental Protection Agency  
50 regarding the use of coal combustion products as structural fill or for other  
51 beneficial uses.

- 1 (5) Jointly report to the Environmental Review Commission no later than  
2 January 15, 2015, on their findings and recommendations regarding the use  
3 of coal combustion products as structural fill and for other beneficial uses.

4 **SECTION 4.(e)** All electric generating facilities owned by a public utility that  
5 produce coal combustion residuals and coal combustion products shall issue a request for  
6 proposals on or before December 31, 2014, for (i) the conduct of a market analysis for the  
7 concrete industry and other industries that might beneficially use coal combustion residuals and  
8 coal combustion products; (ii) the study of the feasibility and advisability of installation of  
9 technology to convert existing and newly generated coal combustion residuals to  
10 commercial-grade coal combustion products suitable for use in the concrete industry and other  
11 industries that might beneficially use coal combustion residuals; and (iii) an examination of all  
12 innovative technologies that might be applied to diminish, recycle or reuse, or mitigate the  
13 impact of existing and newly generated coal combustion residuals. All electric generating  
14 facilities shall present the materials and information received in response to a request for  
15 proposals issued pursuant to this section and an assessment of the materials and information,  
16 including a forecast of specific actions to be taken in response to the materials and information  
17 received, to the Environmental Management Commission and the Coal Ash Management  
18 Commission on or before August 1, 2016.

19 **SECTION 4.(f)** This section is effective when it becomes law and applies to the  
20 use of coal combustion residuals as structural fill contracted for on or after that date.

21 **SECTION 5.(a)** There is hereby established a moratorium on construction of new  
22 or expansion of existing coal combustion residuals landfills, as defined by G.S. 130A-290(2c)  
23 and amended by Section 3(d) of this act. The purpose of this moratorium is to allow the State to  
24 assess the risks to public health, safety, welfare; the environment; and natural resources of coal  
25 combustion residuals impoundments located beneath coal combustion residuals landfills to  
26 determine the advisability of continued operation of these landfills.

27 **SECTION 5.(b)** The Department of Environment and Natural Resources shall  
28 evaluate each coal combustion residuals landfill currently operating in the State, and, in  
29 particular, assess the risks to public health, safety, welfare; the environment; and natural  
30 resources, of coal combustion residuals surface impoundments located beneath coal  
31 combustion residuals landfills to determine the advisability of continued operation of these  
32 landfills. The Department shall report to the Environmental Review Commission no later than  
33 January 15, 2015, on its findings and recommendations concerning the risk assessment of each  
34 of these sites and the advisability of continued operation of coal combustion residuals landfills.

35 **SECTION 5.(c)** This section is effective when it becomes law and expires August  
36 1, 2015.

37  
38 **PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION**  
39 **REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO**  
40 **WATERS OF THE STATE; REQUIRE CERTAIN EMERGENCY CALLS TO BE**  
41 **RECORDED**

42 **SECTION 6.(a)** G.S. 143-215.1C reads as rewritten:

43 **"§ 143-215.1C. Report to wastewater system customers on system performance; report**  
44 **discharge of untreated wastewater to the Department; publication of notice of**  
45 **discharge of untreated wastewater and waste.**

46 (a) Report to Wastewater System Customers. – The owner or operator of any  
47 wastewater collection or treatment works, the operation of which is primarily to collect or treat  
48 municipal or domestic wastewater and for which a permit is issued under this Part and having  
49 an average annual flow greater than 200,000 gallons per day, shall provide to the users or  
50 customers of the collection system or treatment works and to the Department an annual report  
51 that summarizes the performance of the collection system or treatment works and the extent to

1 which the collection system or treatment works has violated the permit or federal or State laws,  
2 regulations, or rules related to the protection of water quality. The report shall be prepared on  
3 either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of  
4 the calendar or fiscal year.

5 (a1) Report Discharge of Untreated Wastewater to the Department. – The owner or  
6 operator of any wastewater collection or treatment works for which a permit is issued under  
7 this Part shall report a discharge of 1,000 gallons or more of untreated wastewater to the  
8 surface waters of the State to the Department as soon as practicable, but no later than 24 hours  
9 after the owner or operator has determined that the discharge has reached the surface waters of  
10 the State. This reporting requirement shall be in addition to any other reporting requirements  
11 applicable to the owner or operator of the wastewater collection or treatment works.

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

16 (1) In the event of a discharge of 1,000 gallons or more of untreated wastewater  
17 to the surface waters of the State, issue a press release to all print and  
18 electronic news media that provide general coverage in the county where the  
19 discharge occurred setting out the details of the discharge. The owner or  
20 operator shall issue the press release within ~~48~~24 hours after the owner or  
21 operator has determined that the discharge has reached the surface waters of  
22 the State. The owner or operator shall retain a copy of the press release and a  
23 list of the news media to which it was distributed for at least one year after  
24 the discharge and shall provide a copy of the press release and the list of the  
25 news media to which it was distributed to any person upon request.

26 (2) In the event of a discharge of 15,000 gallons or more of untreated  
27 wastewater to the surface waters of the State, publish a notice of the  
28 discharge in a newspaper having general circulation in the county in which  
29 the discharge occurs and in each county downstream from the point of  
30 discharge that is significantly affected by the discharge. The Secretary shall  
31 determine, at the Secretary's sole discretion, which counties are significantly  
32 affected by the discharge and shall approve the form and content of the  
33 notice and the newspapers in which the notice is to be published. The notice  
34 shall be captioned "NOTICE OF DISCHARGE OF UNTREATED  
35 SEWAGE". The owner or operator shall publish the notice within 10 days  
36 after the Secretary has determined the counties that are significantly affected  
37 by the discharge and approved the form and content of the notice and the  
38 newspapers in which the notice is to be published. The owner or operator  
39 shall file a copy of the notice and proof of publication with the Department  
40 within 30 days after the notice is published. Publication of a notice of  
41 discharge under this subdivision is in addition to the requirement to issue a  
42 press release under subdivision (1) of this subsection.

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

47 (1) In the event of a discharge of 1,000 gallons or more of untreated waste to the  
48 surface waters of the State, issue a press release to all print and electronic  
49 news media that provide general coverage in the county where the discharge  
50 occurred setting out the details of the discharge. The owner or operator shall  
51 issue the press release within ~~48~~24 hours after the owner or operator has

1 determined that the discharge has reached the surface waters of the State.  
2 The owner or operator shall retain a copy of the press release and a list of the  
3 news media to which it was distributed for at least one year after the  
4 discharge and shall provide a copy of the press release and the list of the  
5 news media to which it was distributed to any person upon request.

- 6 (2) In the event of a discharge of 15,000 gallons or more of untreated waste to  
7 the surface waters of the State, publish a notice of the discharge in a  
8 newspaper having general circulation in the county in which the discharge  
9 occurs and in each county downstream from the point of discharge that is  
10 significantly affected by the discharge. The Secretary shall determine, at the  
11 Secretary's sole discretion, which counties are significantly affected by the  
12 discharge and shall approve the form and content of the notice and the  
13 newspapers in which the notice is to be published. The notice shall be  
14 captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The  
15 owner or operator shall publish the notice within 10 days after the Secretary  
16 has determined the counties that are significantly affected by the discharge  
17 and approved the form and content of the notice and the newspapers in  
18 which the notice is to be published. The owner or operator shall file a copy  
19 of the notice and proof of publication with the Department within 30 days  
20 after the notice is published. Publication of a notice of discharge under this  
21 subdivision is in addition to the requirement to issue a press release under  
22 subdivision (1) of this subsection."

23 **SECTION 6.(b)** Section 6(a) of this act becomes effective September 1, 2014.

24 **SECTION 6.(c)** G.S. 166A-19.12(16) reads as rewritten:

25 "(16) Establishing and operating a 24-hour Operations Center to serve as a single  
26 point of contact for local governments to report the occurrence of emergency  
27 and disaster events and to coordinate local and State response assets. The  
28 Division shall record all telephone calls to the 24-hour Operations Center  
29 emergency hotline and shall maintain the recording of each telephone call  
30 for at least one year."

31  
32 **PART V. REQUIRE NOTIFICATION OF THE DEPARTMENT OF EMERGENCY**  
33 **DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS;**  
34 **REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS**  
35 **SURFACE IMPOUNDMENTS**

36 **SECTION 7.** G.S. 143-215.27 reads as rewritten:

37 **"§ 143-215.27. Repair, alteration, or removal of dam.**

38 (a) Before commencing the repair, alteration or removal of a dam, application shall be  
39 made for written approval by the Department, except as otherwise provided by this Part. The  
40 application shall state the name and address of the applicant, shall adequately detail the changes  
41 it proposes to effect and shall be accompanied by maps, plans and specifications setting forth  
42 such details and dimensions as the Department requires. The Department may waive any such  
43 requirements. The application shall give such other information concerning the dam and  
44 reservoir required by the Department, such information concerning the safety of any change as  
45 it may require, and shall state the proposed time of commencement and completion of the  
46 work. When an application has been completed it may be referred by the Department for  
47 agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of  
48 original construction.

49 (b) When emergency repairs are necessary to safeguard life and property they may be  
50 started immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and  
51 of the work ~~under way, and they~~ underway as soon as possible, but not later than 24 hours after

1 first knowledge of the necessity for the emergency repairs, and the emergency repairs shall be  
2 made to conform to ~~its~~ the Department's orders."

3 **SECTION 7.1** Part 3 of Article 21 of Chapter 143 of the General Statutes is  
4 amended by adding a new section to read:

5 **"§ 143-215.27A. Closure of coal combustion residuals surface impoundments to render**  
6 **such facilities exempt from the North Carolina Dam Safety Law of 1967.**

7 (a) Decommissioning Request. – The owner of a coal combustion residuals surface  
8 impoundment, as defined by G.S. 130A-309.201, that seeks to decommission the impoundment  
9 shall submit a Decommissioning Request to the Division of Energy, Mineral, and Land  
10 Resources of the Department requesting that the facility be decommissioned. The  
11 Decommissioning Request shall include, at a minimum, all of the following:

- 12 (1) A proposed geotechnical investigation plan scope of work. Upon preliminary  
13 plan approval pursuant to subsection (b) of this section, the owner shall  
14 proceed with necessary field work and submit a geotechnical report with  
15 site-specific field data indicating that the containment dam and material  
16 impounded by the containment dam are stable, and that the impounded  
17 material is not subject to liquid flow behavior under expected static and  
18 dynamic loading conditions. Material testing should be performed along the  
19 full extent of the containment dam and in a pattern throughout the area of  
20 impounded material.
- 21 (2) A topographic map depicting existing conditions of the containment dam  
22 and impoundment area at two-foot contour intervals or less.
- 23 (3) If the facility contains areas capable of impounding by topography, a breach  
24 plan must be included that ensures that there shall be no place within the  
25 facility capable of impounding. The breach plan shall include, at a minimum,  
26 proposed grading contours superimposed on the existing topographic map as  
27 well as necessary engineering calculations, construction details, and  
28 construction specifications.
- 29 (4) A permanent vegetation and stabilization or capping plan by synthetic liner  
30 or other means, if needed. These plans shall include at minimum, proposed  
31 grading contours superimposed on the existing topographic map where  
32 applicable as well as necessary engineering calculations, construction  
33 details, construction specifications, and all details for the establishment of  
34 surface area stabilization.
- 35 (5) A statement indicating that the impoundment facility has not received  
36 sluiced coal combustion residuals for at least three years and that there are  
37 no future plans to place coal combustion residuals in the facility by sluicing  
38 methods. The Division of Energy, Mineral, and Land Resources may waive  
39 the three-year requirement if proper evidence is presented by a North  
40 Carolina registered professional engineer indicating that the impounded  
41 material is not subject to liquid flow behavior.

42 (b) Preliminary Review and Approval. – The Decommissioning Request shall undergo  
43 a preliminary review by the Division for completeness and approval of the proposed  
44 geotechnical investigation plan scope of work. The owner shall be notified by letter with results  
45 of the preliminary review, including approval or revision requests relative to the proposed  
46 scope of work included in the geotechnical investigation plan. Upon receipt of a letter issued by  
47 the Division approving the preliminary geotechnical plan scope of work, the owner may  
48 proceed with field work and development of the geotechnical report.

49 (c) Final Determination and Approval. – Upon receipt of the geotechnical report, the  
50 Division shall complete the submittal review as provided in this subsection.



- 1           (1)    If it is determined that sufficient evidence has been presented to clearly show  
2           that the facility no longer functions as a dam in its current state, a letter  
3           decommissioning the facility shall be issued by the Division, and the facility  
4           shall no longer be under jurisdiction of the Dam Safety Law of 1967.
- 5           (2)    If modifications such as breach construction or implementation of a  
6           permanent vegetation or surface lining plan are needed, such plans shall be  
7           reviewed per standard procedures for consideration of a letter of approval to  
8           modify or breach.
- 9           (3)    If approved, such plans shall follow standard procedure for construction,  
10          including construction supervision by a North Carolina registered  
11          professional engineer, as-built submittal by a North Carolina registered  
12          professional engineer, and follow up final inspection by the Division.
- 13          (4)    Final approval shall be issued by the Division in the form of a letter  
14          decommissioning the facility, and the facility shall no longer be under  
15          jurisdiction of the Dam Safety Law of 1967."

16           **SECTION 8.(a)** G.S. 143-215.31 reads as rewritten:

17   **"§ 143-215.31. Supervision over maintenance and operation of dams.**

18           (a)    The Commission shall have jurisdiction and supervision over the maintenance and  
19           operation of dams to safeguard life and property and to satisfy minimum streamflow  
20           requirements. The Commission may adopt standards for the maintenance and operation of  
21           dams as may be necessary for the purposes of this Part. The Commission may vary the  
22           standards applicable to various dams, giving due consideration to the minimum flow  
23           requirements of the stream, the type and location of the structure, the hazards to which it may  
24           be exposed, and the peril of life and property in the event of failure of a dam to perform its  
25           function.

26           (a1)   The owner of a dam classified by the Department as a high-hazard dam or an  
27           intermediate-hazard dam shall develop an Emergency Action Plan for the dam as provided in  
28           this subsection.

- 29           (1)    The owner of the dam shall submit a proposed Emergency Action Plan for  
30           the dam within 90 days after the dam is classified as a high-hazard dam or an  
31           intermediate-hazard dam to the Department and the Department of Public  
32           Safety for their review and approval. The Department and the Department of  
33           Public Safety shall approve the Emergency Action Plan if they determine  
34           that it complies with the requirements of this subsection and will protect  
35           public health, safety, and welfare; the environment; and natural resources.
- 36           (2)    The Emergency Action Plan shall include, at a minimum, all of the  
37           following:
- 38           a.     A description of potential emergency conditions that could occur at  
39           the dam, including security risks.
- 40           b.     A description of actions to be taken in response to an emergency  
41           condition at the dam.
- 42           c.     Emergency notification procedures to aid in warning and evacuations  
43           during an emergency condition at the dam.
- 44           d.     A downstream inundation map depicting areas affected by a dam  
45           failure and sudden release of the impoundment.
- 46           (3)    The owner of the dam shall update the Emergency Action Plan annually and  
47           shall submit it to the Department and the Department of Public Safety for  
48           their review and approval within one year of the prior approval.
- 49           (4)    The Department shall provide a copy of the Emergency Action Plan to the  
50           regional offices of the Department that might respond to an emergency  
51           condition at the dam.

1           (5)    The Department of Public Safety shall provide a copy of the Emergency  
2           Action Plan to all local emergency management agencies that might respond  
3           to an emergency condition at the dam.

4           (6)    Information included in an Emergency Action Plan that constitutes sensitive  
5           public security information, as provided in G.S. 132-1.7, shall be maintained  
6           as confidential information and shall not be subject to disclosure under the  
7           Public Records Act. For purposes of this section, "sensitive public security  
8           information" shall include Critical Energy Infrastructure Information  
9           protected from disclosure under rules adopted by the Federal Energy  
10           Regulatory Commission in 18 C.F.R. § 333.112.

11        ...."

12           **SECTION 8.(b)** Notwithstanding G.S. 143-215.31, as amended by Section 8(a) of  
13 this act, the owners of all high-hazard dams and intermediate-hazard dams in operation on the  
14 effective date of this act shall submit their proposed Emergency Action Plans to the Department  
15 of Environment and Natural Resources and the Department of Public Safety no later than  
16 March 1, 2015.

17           **SECTION 8.(c)** G.S. 143-215.30 reads as rewritten:

18        "**§ 143-215.30. Notice of completion; certification of final ~~approval~~approval; notice of**  
19        transfer.

20           (a)    Immediately upon completion, enlargement, repair, alteration or removal of a dam,  
21 notice of completion shall be given the Commission. As soon as possible thereafter  
22 supplementary drawings or descriptive matter showing or describing the dam as actually  
23 constructed shall be filed with the Department in such detail as the Commission may require.

24           (b)    When an existing dam is enlarged, the supplementary drawings and descriptive  
25 matter need apply only to the new work.

26           (c)    The completed work shall be inspected by the supervising engineers, and upon  
27 finding that the work has been done as required and that the dam is safe and satisfies minimum  
28 streamflow requirements, they shall file with the Department a certificate that the work has  
29 been completed in accordance with approved design, plans, specifications and other  
30 requirements. Unless the Commission has reason to believe that the dam is unsafe or is not in  
31 compliance with any applicable rule or law, the Commission shall grant final approval of the  
32 work in accordance with the certificate, subject to such terms as it deems necessary for the  
33 protection of life and property.

34           (d)    Pending issuance of the Commission's final approval, the dam shall not be used  
35 except on written consent of the Commission, subject to conditions it may impose.

36           (e)    The owner of a dam shall provide written notice of transfer to the Department  
37 within 30 days after title to the dam has been legally transferred. The notice of transfer shall  
38 include the name and address of the new dam owner."

39           **SECTION 9.** Section 3(b) of S.L. 2009-390 reads as rewritten:

40        "**SECTION 3.(b)** Any impoundments or other facilities that were in use ~~on the effective~~  
41 ~~date of this section~~January 1, 2010, in connection with nonnuclear electric generating facilities  
42 under the jurisdiction of the North Carolina Utilities Commission, and that had been exempted  
43 under the provisions of G.S. 143-215.25A(4), prior to ~~amendment by Section 3(a) of this act,~~  
44 January 1, 2010, shall be deemed to have received all of the necessary approvals from the  
45 Department of Environment and Natural Resources and the ~~Commission for~~  
46 ~~Dam~~Environmental Management Commission. Safety, and shall not be required to submit  
47 application, certificate, or other materials in connection with the continued normal operation  
48 and maintenance of those facilities."

49           **SECTION 10.** G.S. 143-215.32 reads as rewritten:

50        "**§ 143-215.32. Inspection of dams.**

1 (a) The Department may at any time inspect any dam, including a dam that is otherwise  
2 exempt from this Part, upon receipt of a written request of any affected person or agency, or  
3 upon a motion of the Environmental Management Commission. Within the limits of available  
4 funds the Department shall endeavor to provide for inspection of all dams at intervals of  
5 approximately five years.

6 (a1) Coal combustion residuals surface impoundments, as defined by  
7 G.S. 130A-309.201, shall be inspected as provided in this subsection.

8 (1) The Department shall inspect each dam associated with a coal combustion  
9 residuals surface impoundment at least annually.

10 (2) The owner of a coal combustion residuals surface impoundment shall inspect  
11 the impoundment weekly and after storms to detect evidence of any of the  
12 following conditions:

13 a. Deterioration, malfunction, or improper operation of spillway control  
14 systems.

15 b. Sudden drops in the level of the contents of the impoundment.

16 c. Severe erosion or other signs of deterioration in dikes or other  
17 containment devices or structures.

18 d. New or enlarged seeps along the downstream slope or toe of the dike  
19 or other containment devices or structures.

20 e. Any other abnormal conditions at the impoundment that could pose a  
21 risk to public health, safety, or welfare; the environment; or natural  
22 resources.

23 (3) If any of the conditions described in subdivision (2) of this subsection are  
24 observed, the owner shall provide documentation of the conditions to the  
25 Department and a registered professional engineer. The registered  
26 professional engineer shall investigate the conditions and, if necessary,  
27 develop a plan of corrective action to be implemented by the owner of the  
28 impoundment. The owner of the impoundment shall provide documentation  
29 of the completed corrective action to the Department.

30 (4) The owner of a coal combustion residuals surface impoundment shall  
31 provide for the annual inspection of the impoundment by an independent  
32 registered professional engineer to ensure that the structural integrity and the  
33 design, operation, and maintenance of the impoundment is in accordance  
34 with generally accepted engineering standards. Within 30 days of the  
35 inspection, the owner shall provide to the Department the inspection report  
36 and a certification by the engineer that the impoundment is structurally  
37 sound and that the design, operation, and maintenance of the impoundment  
38 is in accordance with generally accepted engineering standards. The owner  
39 and the Department shall each place the inspection report and certification  
40 on a publicly accessible Internet site.

41 (b) If the Department upon inspection finds that any dam is not sufficiently strong, is  
42 not maintained in good repair or operating condition, is dangerous to life or property, or does  
43 not satisfy minimum streamflow requirements, the Department shall present its findings to the  
44 Commission and the Commission may issue an order directing the owner or owners of the dam  
45 to make at his or her expense maintenance, alterations, repairs, reconstruction, change in  
46 construction or location, or removal as may be deemed necessary by the Commission within a  
47 time limited by the order, not less than 90 days from the date of issuance of each order, except  
48 in the case of extreme danger to the safety of life or property, as provided by subsection (c) of  
49 this section.

50 (c) If at any time the condition of any dam becomes so dangerous to the safety of life or  
51 property, in the opinion of the Environmental Management Commission, as not to permit

1 sufficient time for issuance of an order in the manner provided by subsection (b) of this section,  
 2 the Environmental Management Commission may immediately take such measures as may be  
 3 essential to provide emergency protection to life and property, including the lowering of the  
 4 level of a reservoir by releasing water impounded or the destruction in whole or in part of the  
 5 dam or reservoir. The Environmental Management Commission may recover the costs of such  
 6 measures from the owner or owners by appropriate legal action.

7 (d) An order issued under this Part shall be served on the owner of the dam as provided  
 8 in G.S. 1A-1, Rule 4."  
 9

10 **PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM**  
 11 **COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT**  
 12 **COMMISSION**

13 **SECTION 11.(a)** G.S. 130A-29 reads as rewritten:

14 **"§ 130A-29. Commission for Public Health – Creation, powers and duties.**

15 ...

16 (c) The Commission shall adopt rules:

17 (1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.

18 (2) Establishing standards for approving sewage-treatment devices and holding  
 19 tanks for marine toilets as provided in G.S. 75A-6(o).

20 (3) Establishing specifications for sanitary privies for schools where  
 21 water-carried sewage facilities are unavailable as provided in  
 22 G.S. 115C-522.

23 (4) Establishing requirements for the sanitation of local confinement facilities as  
 24 provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.

25 (5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.

26 (5a) Establishing eligibility standards for participation in Department  
 27 reimbursement programs.

28 ~~(6) Requiring proper treatment and disposal of sewage and other waste from~~  
 29 ~~ehemical and portable toilets.~~

30 (7) Establishing statewide health outcome objectives and delivery standards.

31 (8) Establishing permit requirements for the sanitation of premises, utensils,  
 32 equipment, and procedures to be used by a person engaged in tattooing, as  
 33 provided in Part 11 of Article 8 of this Chapter.

34 (9) Implementing immunization requirements for adult care homes as provided  
 35 in G.S. 131D-9 and for nursing homes as provided in G.S. 131E-113.

36 (10) Pertaining to the biological agents registry in accordance with  
 37 G.S. 130A-479.

38 (11) For matters within its jurisdiction that allow for and regulate horizontal  
 39 drilling and hydraulic fracturing for the purpose of oil and gas exploration  
 40 and development.

41 ...."

42 **SECTION 11.(b)** G.S. 130A-291.1 reads as rewritten:

43 **"§ 130A-291.1. Septage management program; permit fees.**

44 ...

45 (d) Septage shall be treated and disposed only at a wastewater system that has been  
 46 approved by the Department under rules adopted by the Commission ~~or by the Environmental~~  
 47 ~~Management Commission~~ or at a site that is permitted by the Department under this section. A  
 48 permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the  
 49 Commission.

50 ...."

51 **SECTION 11.(c)** G.S. 130A-294(a)(4) reads as rewritten:

1 **"§ 130A-294. Solid waste management program.**

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

- 5 ...
- 6 (4) a. Develop a permit system governing the establishment and operation  
7 of solid waste management facilities. A landfill with a disposal area  
8 of 1/2 acre or less for the on-site disposal of land clearing and inert  
9 debris is exempt from the permit requirement of this section and shall  
10 be governed by G.S. 130A-301.1. Demolition debris from the  
11 decommissioning of manufacturing buildings, including electric  
12 generating stations, that is disposed of on the same site as the  
13 decommissioned buildings, is exempt from the permit requirement of  
14 this section and rules adopted pursuant to this section and shall be  
15 governed by G.S. 130A-301.3. The Department shall not approve an  
16 application for a new permit, the renewal of a permit, or a substantial  
17 amendment to a permit for a sanitary landfill, excluding demolition  
18 landfills as defined in the rules of the Commission, except as  
19 provided in subdivisions (3) and (4) of subsection (b1) of this  
20 section. No permit shall be granted for a solid waste management  
21 facility having discharges that are point sources until the Department  
22 has referred the complete plans and specifications to the  
23 ~~Environmental Management~~ Commission and has received advice in  
24 writing that the plans and specifications are approved in accordance  
25 with the provisions of G.S. 143-215.1. In any case where the  
26 Department denies a permit for a solid waste management facility, it  
27 shall state in writing the reason for denial and shall also state its  
28 estimate of the changes in the applicant's proposed activities or plans  
29 that will be required for the applicant to obtain a permit.
- 30 b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1,  
31 2007.
- 32 c. The Department shall deny an application for a permit for a solid  
33 waste management facility if the Department finds that:
- 34 1. Construction or operation of the proposed facility would be  
35 inconsistent with or violate rules adopted by the Commission.
  - 36 2. Construction or operation of the proposed facility would  
37 result in a violation of water quality standards adopted by the  
38 ~~Environmental Management~~ Commission pursuant to  
39 G.S. 143-214.1 for waters, as defined in G.S. 143-213.
  - 40 3. Construction or operation of the facility would result in  
41 significant damage to ecological systems, natural resources,  
42 cultural sites, recreation areas, or historic sites of more than  
43 local significance. These areas include, but are not limited to,  
44 national or State parks or forests; wilderness areas; historic  
45 sites; recreation areas; segments of the natural and scenic  
46 rivers system; wildlife refuges, preserves, and management  
47 areas; areas that provide habitat for threatened or endangered  
48 species; primary nursery areas and critical fisheries habitat  
49 designated by the Marine Fisheries Commission; and  
50 Outstanding Resource Waters designated by the  
51 ~~Environmental Management~~ Commission.

...."

**SECTION 11.(d)** G.S. 130A-300 reads as rewritten:

**"§ 130A-300. Effect on laws applicable to water pollution control.**

This Article shall not be considered as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of water pollution as now administered by the ~~Environmental Management~~ Commission nor shall the provisions of this Article be construed as being applicable to or in any way affecting the authority of the ~~Environmental Management~~ Commission to control the discharges of wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143 of the General Statutes."

**SECTION 11.(e)** G.S. 130A-302 reads as rewritten:

**"§ 130A-302. Sludge deposits at sanitary landfills.**

Sludges generated by the treatment of wastewater discharges which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Act, as amended (P.L. 92-500), or permits generated under G. S. 143-215.1 by the ~~Environmental Management~~ Commission shall not be deposited in or on a sanitary landfill permitted under this Article unless in a compliance with the rules concerning solid waste adopted under this Article."

**SECTION 11.(f)** G.S. 130A-310.3 reads as rewritten:

**"§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.**

...

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the ~~Environmental Management~~ Commission, the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

...

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the ~~Environmental Management~~ Commission.

...."

**SECTION 11.(g)** G.S. 130A-310.4(g) reads as rewritten:

"(g) The Commission on ~~Health Services~~ [~~Commission for Public Health~~] shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan."

**SECTION 11.(h)** G.S. 130A-310.31(b)(5) reads as rewritten:

"(5) "Unrestricted use standards" when used in connection with "cleanup", "remediated", or "remediation" means contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the ~~Environmental Management~~ Commission, the Commission, or the Department instead of the site-specific contaminant levels established pursuant to this Part."

1           **SECTION 11.(i)** G.S. 130A-310.65 reads as rewritten:

2   "**§ 130A-310.65. Definitions.**

3       As used in this Part:

4           (1) "Background standard" means the naturally occurring concentration of a  
5           substance in the absence of the release of a contaminant.

6           ~~(2) "Commission" means the Environmental Management Commission created~~  
7           ~~pursuant to G.S. 143B-282.~~

8           ...  
9           (12) "Unrestricted use standards" means contaminant concentrations for each  
10           environmental medium that are acceptable for all uses; that are protective of  
11           public health, safety, and welfare and the environment; and that comply with  
12           generally applicable standards, guidance, or methods established by statute  
13           or adopted, published, or implemented by the ~~Commission, the Commission~~  
14           ~~for Public Health, Commission~~ or the Department."

15       **SECTION 11.(j)** G.S. 113-391(a)(5)f. reads as rewritten:

16           "f. Management of wastes produced in connection with oil and gas  
17           exploration and development and use of horizontal drilling and  
18           hydraulic fracturing treatments for that purpose. Such rules shall  
19           address storage, transportation, and disposal of wastes that may  
20           contain radioactive materials or wastes that may be toxic or have  
21           other hazardous wastes' characteristics that are not otherwise  
22           regulated as a hazardous waste by the federal Resource Conservation  
23           and Recovery Act (RCRA), such as top-hole water, brines, drilling  
24           fluids, additives, drilling muds, stimulation fluids, well servicing  
25           fluids, oil, production fluids, and drill cuttings from the drilling,  
26           alteration, production, plugging, or other activity associated with oil  
27           and gas wells. Wastes generated in connection with oil and gas  
28           exploration and development and use of horizontal drilling and  
29           hydraulic fracturing treatments for that purpose that constitute  
30           hazardous waste under RCRA shall be subject to rules adopted by the  
31           Environmental Management Commission for Public Health to  
32           implement RCRA requirements in the State."

33       **SECTION 11.(k)** G.S. 113-415 reads as rewritten:

34   "**§ 113-415. Conflicting laws.**

35       No provision of this Article shall be construed to repeal, amend, abridge or otherwise  
36   ~~affect: (i) affect~~ the authority and ~~responsibility~~ responsibility (i) vested in the Environmental  
37   Management Commission by Article 7 of Chapter 87 of the General Statutes, pertaining to the  
38   location, construction, repair, operation and abandonment of ~~wells, or the authority and~~  
39   ~~responsibility wells; (ii)~~ vested in the Environmental Management Commission related to the  
40   control of water and air pollution as provided in Articles 21 and 21A of Chapter 143 of the  
41   General Statutes; ~~or (ii) the authority or responsibility (iii)~~ vested in the Department and the  
42   Environmental Management Commission for Public Health by Article 10 of Chapter 130A of  
43   the General Statutes pertaining to public water-supply ~~requirements, requirements;~~  
44   ~~authority and responsibility (iv)~~ vested in the Environmental Management Commission for  
45   ~~Public Health~~ related to the management of solid and hazardous waste as provided in Article 9  
46   of Chapter 130A of the General Statutes."

47       **SECTION 11.(l)** The Revisor of Statutes shall make any conforming statutory  
48   changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter  
49   130A of the General Statutes from the Commission for Public Health to the Environmental  
50   Management Commission.

1           **SECTION 11.(m)** The Codifier of Rules shall make any conforming rule changes  
2 necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of  
3 the General Statutes from the Commission for Public Health to the Environmental Management  
4 Commission.

5  
6 **PART VII. AMEND COMPLIANCE BOUNDARY PROVISIONS**

7           **SECTION 12.(a)** G.S. 143-215.1 reads as rewritten:

8 "**§ 143-215.1. Control of sources of water pollution; permits required.**

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

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

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

29           (2) ~~An imminent hazard or threat to the environment, public health, or safety~~  
30 ~~exists.~~

31           (3) ~~A violation of any standard in groundwater occurring in the bedrock,~~  
32 ~~including limestone aquifers in Coastal Plain sediments, unless it can be~~  
33 ~~demonstrated that the violation will not adversely affect, or have the~~  
34 ~~potential to adversely affect, a water supply well.~~

35          (k) ~~Where operation of a disposal system permitted under this section results in~~  
36 ~~exceedances of the groundwater quality standards at or beyond the compliance boundary~~  
37 ~~established under subsection (i) of this section, boundary, the Commission shall require the~~  
38 ~~permittee to undertake corrective action, without regard to the date that the system was first~~  
39 ~~permitted, to restore the groundwater quality by assessing the cause, significance, and extent of~~  
40 ~~the violation of standards and submit the results of the investigation, and a plan and proposed~~  
41 ~~schedule for corrective action to the Director or the Director's designee. The permittee shall~~  
42 ~~implement the plan as approved by, and in accordance with, a schedule established by the~~  
43 ~~Director or the Director's designee. In establishing a schedule the Director or the Director's~~  
44 ~~designee shall consider any reasonable schedule proposed by the permittee. exceedances shall~~  
45 ~~be remedied through cleanup, recovery, containment, or other response as directed by the~~  
46 ~~Commission."~~

47           **SECTION 12.(b)** Section 46(b) of S.L. 2013-413 is repealed.

48           **SECTION 12.(c)** The Environmental Management Commission shall review the  
49 compliance boundary and corrective action provisions of Subchapter 2L of Title 15A of the  
50 North Carolina Administrative Code for clarity and internal consistency. The Commission



1 shall report the results of its review, including any recommendations, to the Environmental  
2 Review Commission no later than December 1, 2014.

#### 3 4 **PART VIII. OTHER STUDIES**

5 **SECTION 13.(a)** The Coal Ash Management Commission, established pursuant to  
6 G.S. 130A-309.202, as enacted by Section 3(a) of this act, shall study whether and under what  
7 circumstances no further action or natural attenuation is appropriate for a coal combustion  
8 residuals surface impoundment that is classified as low-priority pursuant to  
9 G.S. 130A-309.211, as enacted by Section 3(a) of this act. In conducting this study, the  
10 Commission shall specifically consider whether there is any contact or interaction between coal  
11 combustion residuals and groundwater and surface water, whether the area has reverted to a  
12 natural state as evidenced by the presence of wildlife and vegetation, and whether no further  
13 action or natural attenuation would be protective of public health, safety, and welfare; the  
14 environment; and natural resources. The Commission shall report the results of its study,  
15 including any recommendations, to the Environmental Review Commission no later than  
16 October 1, 2015.

17 **SECTION 13.(b)** The Department of Environment and Natural Resources shall  
18 review and make recommendations on all deadlines established under Part 2I of Article 9 of  
19 Chapter 130A of the General Statutes, as enacted by Section 3(a) of this act. At a minimum, the  
20 Department shall identify all permits that may be required for closure requirements established  
21 under this act and expected time frames for issuance of these permits. The Department shall  
22 report the results of its study, including any recommendations, to the Environmental Review  
23 Commission no later than December 1, 2014.

24 **SECTION 13.(c)** The Coal Ash Management Commission, established pursuant to  
25 G.S. 130A-309.202, as enacted by Section 3(a) of this act, shall study how to promote,  
26 incentivize, and prioritize the beneficial use of coal combustion products over the disposal of  
27 coal combustion residuals.

28 **SECTION 14.** The Department of Transportation shall evaluate additional  
29 opportunities for the use of coal combustion products in the construction and maintenance of  
30 roads and bridges within the State. The Department shall report the results of its study,  
31 including any recommendations, to the Environmental Review Commission and the Joint  
32 Legislative Transportation Oversight Committee no later than December 1, 2014.

#### 33 34 **PART IX. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT**

35 **SECTION 15.(a)** Article 14 of Chapter 62 of the General Statutes is amended by  
36 adding a new section to read:

##### 37 **"§ 62-302.1. Regulatory fee for combustion residual surface impoundments.**

38 (a) Fee Imposed. – Each public utility with a coal combustion residuals surface  
39 impoundment shall pay a regulatory fee for the purpose of defraying the costs of oversight of  
40 coal combustion residuals. The fee is in addition to the fee imposed under G.S. 62-302. The  
41 fees collected under this section shall only be used to pay the expenses of the Coal Ash  
42 Management Commission and the Department of Environment and Natural Resources in  
43 providing oversight of coal combustion residuals.

44 (b) Rate. – The combustion residuals surface impoundment fee shall be  
45 three-hundredths of one percent (0.03%) of the North Carolina jurisdictional revenues of each  
46 public utility with a coal combustion residuals surface impoundment. For the purposes of this  
47 section, the term "North Carolina jurisdictional revenues" has the same meaning as in  
48 G.S. 62-302.

49 (c) When Due. – The fee shall be paid in quarterly installments. The fee is payable to  
50 the Coal Ash Management Commission on or before the 15th of the second month following  
51 the end of each quarter. Each public utility subject to this fee shall, on or before the date the fee

1 is due for each quarter, prepare and render a report on a form prescribed by the Commission.  
2 The report shall state the public utility's total North Carolina jurisdictional revenues for the  
3 preceding quarter and shall be accompanied by any supporting documentation that the Coal  
4 Ash Management Commission may by rule require. Receipts shall be reported on an accrual  
5 basis.

6 (d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash  
7 Management Commission is created. The fees collected pursuant to this section and all other  
8 funds received by the Coal Ash Management Commission shall be deposited in the Coal  
9 Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing  
10 account, and any interest or other income derived from the Fund shall be credited to the Fund.  
11 Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly.  
12 The Commission shall be subject to the provisions of the State Budget Act, except that no  
13 unexpended surplus of the Coal Combustion Residuals Management Fund shall revert to the  
14 General Fund. All funds credited to the Commission Fund shall be used only to pay the  
15 expenses of the Coal Ash Management Commission and the Department of Environment and  
16 Natural Resources in providing oversight of coal combustion residuals.

17 (e) Recovery of Fee. – The North Carolina Utilities Commission shall not allow an  
18 electric public utility to recover this fee from the retail electric customers of the State."

19 **SECTION 15.(b)** Notwithstanding G.S. 62-302.1, as enacted by this section, for  
20 the first two quarters of fiscal year 2014-2015, each public utility shall pay the fee in  
21 G.S. 62-302.1 on a monthly basis. The fee shall be paid by the 15th of the following month.

22 **SECTION 15.(c)** Subsection (a) of this section becomes effective July 1, 2014, and  
23 expires April 1, 2030, and applies to jurisdictional revenues earned on or after July 1, 2014, and  
24 before April 1, 2030. The remainder of this section becomes effective July 1, 2014.

## 25 **PART X. SPECIFICATIONS FOR USE OF COAL ASH COAL COMBUSTION** 26 **PRODUCTS IN PUBLIC PROCUREMENT**

27 **SECTION 16.** Article 3 of Chapter 143 of the General Statutes is amended by  
28 adding a new section to read:

### 29 **"§ 143-58.6. Specifications for Use of Coal Combustion Products.**

30 (a) State Construction Office to Develop Technical Specifications. – The State  
31 Construction Office shall develop recommended technical specifications for the use of coal  
32 combustion products that may be utilized in any construction by all State departments,  
33 institutions, agencies, community colleges, and local school administrative units, other than the  
34 Department of Transportation. The technical specifications shall address all products used in  
35 construction, including, but not limited to, the use of coal combustion products in concrete and  
36 cement products, and in construction fill.

37 (b) Department of Transportation to Develop Technical Specifications. – The  
38 Department of Transportation shall develop recommended technical specifications for the use  
39 of coal combustion products that may be utilized in any construction by the Department of  
40 Transportation. The technical specifications shall address all products used in construction,  
41 including, but not limited to, the use of coal combustion products in concrete and cement  
42 products, and in construction fill.

43 (c) Specification Factors. – The State Construction Office and the Department of  
44 Transportation shall consider safety, best practice engineering standards, quality, cost, and  
45 availability of an in-State source of coal combustion products in developing the recommended  
46 technical specifications pursuant to this section.

47 (d) Consultation. – The State Construction Office and the Department of Transportation  
48 shall consult with each other in the development of the recommended technical specifications  
49 pursuant to the provisions of this section, in order to insure that the recommended technical  
50 standards are uniform for similar types of construction. The goal of the Department of  
51

1 Administration and the Department of Transportation shall be to increase the usage and  
2 consumption of coal combustion products in their respective construction projects.

3 (e) Report of Recommended Specifications. – The State Construction Office and the  
4 Department of Transportation shall report the recommended technical specifications developed  
5 pursuant to this section to the Environmental Review Commission and the Joint Legislative  
6 Transportation Oversight Committee on or before February 1, 2015."

7  
8 **PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

9 **SECTION 17.** If any provision of this act or its application is held invalid, the  
10 invalidity does not affect other provisions or applications of this act that can be given effect  
11 without the invalid provisions or application, and to this end the provisions of this act are  
12 severable.

13 **SECTION 18.** Except as otherwise provided, this act is effective when it becomes  
14 law.