

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SENATE BILL 71
RATIFIED BILL

AN ACT TO (1) REQUIRE A COAL COMBUSTION RESIDUALS IMPOUNDMENT OWNER TO PROVIDE PERMANENT ALTERNATIVE WATER SUPPLIES FOR RESIDENTS IN AREAS SURROUNDING COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (2) EXTEND THE PERIOD FOR PUBLIC COMMENT AND REVIEW OF PROPOSED RISK CLASSIFICATIONS FOR COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; AND (3) MODIFY APPOINTMENTS TO THE COAL ASH MANAGEMENT COMMISSION, THE MINING COMMISSION, AND THE OIL AND GAS COMMISSION, IN ACCORD WITH THE HOLDING OF *MCCRORY V. BERGER*.

Whereas, the Coal Ash Management Act of 2014 required the owner of a coal combustion residuals surface impoundment to sample and analyze the water quality of drinking water supply wells in areas surrounding coal combustion residuals surface impoundments and, if the sampling and water quality analysis indicated that water from a drinking water supply well exceeded groundwater quality standards for constituents associated with the presence of the impoundment, required the owner to replace the contaminated drinking water supply well with an alternate supply of potable drinking water and an alternate supply of water that is safe for other household uses; and

Whereas, the Department of Environmental Quality recently reported that well water of residents living nearby coal ash residuals impoundments met federal requirements for safe drinking water, but the General Assembly nonetheless recognizes that confusion and worry has persisted with these residents in the aftermath of testing conducted by the Department of Environmental Quality and issuance of "do-not-drink advisories" by the Department of Health and Human Services, even after many of these advisories were subsequently withdrawn; and

Whereas, the General Assembly concludes that the owner of a coal combustion residuals surface impoundment should establish permanent alternative water supplies for residents in areas surrounding coal combustion residuals surface impoundments, to alleviate their concerns about availability of clean, safe, pure, and wholesome water; and

Whereas, in 2014 the General Assembly developed and enacted groundbreaking legislation, the Coal Ash Management Act, to comprehensively address the issue of proper management of coal ash residuals impoundments in the State for the protection of public health, safety, and welfare; the environment; and natural resources; and

Whereas, the Coal Ash Management Act of 2014 set forth closure requirements based on a comprehensive assessment of a site's risk, taking into account a number of factors, including:

- (1) Any hazards to public health, safety, or welfare resulting from the impoundment.
- (2) The structural condition and hazard potential of the impoundment.
- (3) The proximity of surface waters to the impoundment and whether any surface waters are contaminated or threatened by contamination as a result of the impoundment.
- (4) Information concerning the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.
- (5) The location and nature of all receptors and significant exposure pathways.
- (6) The geological and hydrogeological features influencing the movement and chemical and physical character of the contaminants.



- (7) The amount and characteristics of coal combustion residuals in the impoundment.
- (8) Whether the impoundment is located within an area subject to a 100-year flood; and

Whereas, the Coal Ash Management Act of 2014 conclusively designated eight coal combustion residuals surface impoundments as high-priority, including two impoundments each at the following facilities: the Dan River Steam Station, the Riverbend Steam Station, the Asheville Steam Electric Generating Plant, and the Sutton Plant; and,

Whereas, the Executive Branch agency tasked with developing proposed classifications based on risk, the Department of Environmental Quality, issued proposed classifications on May 18, 2016, which designated all other coal combustion residuals surface impoundments located in the State as intermediate priority; and

Whereas, upon issuance of the proposed classifications, the Department of Environmental Quality requested that the General Assembly allow the Department an additional 18 months to enable the Department to reconsider the proposed classifications, indicating that "work that is already either planned or underway could significantly change the risk posed by the ponds"; and

Whereas, upon issuance of the proposed classifications, the Secretary of Environmental Quality stated that the Coal Ash Management Act of 2014 did "not allow for revisions to the classifications based on new information about a pond's risk to public health and the environment"; and

Whereas, the Secretary of Environmental Quality further stated that "making decisions based on incomplete information could lead to the expenditure of billions of dollars when spending millions now would provide equal or better protection"; and

Whereas, the General Assembly concurs that accurate classification of risk for coal combustion residuals surface impoundments is essential to appropriate management of the impoundments; and

Whereas the General Assembly created the Coal Ash Management Commission as an integral part of the Coal Ash Management Act of 2014 to provide oversight to the Department of Environmental Quality in establishment of risk classifications and closure plans for all coal combustion residuals surface impoundments; and

Whereas, in reviewing a classification proposed by the Department of Environmental Quality, the Coal Ash Management Act of 2014 directed the Coal Ash Management Commission to evaluate all information submitted in accordance with the Coal Ash Management Act of 2014 related to the proposed classifications, and any other information the Coal Ash Management Commission deemed relevant; and

Whereas, in reviewing a classification proposed by the Department of Environmental Quality, the Act directed the Coal Ash Management Commission to approve a proposed classification only if the Commission determined that the classification accurately reflected the level of risk posed by the coal combustion residuals surface impoundment; and

Whereas, a mechanism existed under the Coal Ash Management Act of 2014, as enacted, to allow sufficient time for the State to properly assess accurate risk for impoundments given that the Act (i) authorized the Commission to consider all information submitted pursuant to the law, and any other information the Commission deemed relevant, (ii) required that the Commission approve plans that accurately reflected the level of risk posed by an impoundment, and (iii) established no deadline for the Commission to issue final approval of an accurate classification; and

Whereas, closure methods under the Coal Ash Management Act of 2014 cannot be developed, approved, or implemented until accurate risk classifications for the impoundments have been finalized; and

Whereas, the General Assembly believes addressing the issue of proper management of coal combustion residuals surface impoundments is too pressing to grant a blanket extension of finalization of risk classifications of the impoundments for 18 months, while recognizing that accurate classifications of impoundments is imperative for timely and proper closure of coal ash impoundments; and

Whereas, the General Assembly established the Coal Ash Management Commission in 2014, to be comprised of individuals qualified with particular experience and expertise, including requirements for appointments of individuals who are representatives of an electric membership corporation or that have a background in power supply resource planning and

engineering, individuals that have experience in economic development, and individuals that have expertise in determining and evaluating the costs associated with electricity generation and establishing the rates associated with electricity consumption, in order to facilitate thorough examination and sound decision making on complex and wide-reaching issues surrounding coal ash management, facets of which are beyond the jurisdictional responsibilities of the Department of Environmental Quality; and

Whereas, in *McCrory v. Berger*, the North Carolina Supreme Court expressed concerns that the General Assembly retained a majority of appointments to the Coal Ash Management Commission under the Coal Ash Management Act of 2014 and held the appointments provisions violated the separation of powers clause of the Constitution of North Carolina; but stated that "the appointments clause does not prohibit the General Assembly from appointing statutory officers, and the General Assembly can appoint them in many instances"; and

Whereas, the Court expressed other separation of powers concerns that although the Coal Ash Management Commission was administratively located within the Division of Emergency Management of the Department of Public Safety, the Commission was directed to exercise all of its power and duties independently and was not subject to the supervision, direction, or control of the Division or Department; and

Whereas, Section 5 of Article III of the North Carolina Constitution ascribes to the General Assembly the power to assign functions, powers, and duties to the Executive Branch; and

Whereas, in accord with the authority given to it under Section 5 of Article III of the North Carolina Constitution, the General Assembly enacted the Coal Ash Management Commission, and other statutorily created commissions, with varying functions, powers, and duties; and

Whereas, Section 11 of Article III of the North Carolina Constitution provides that all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law, and further provides that regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department; and

Whereas, allocations of the functions, powers, and duties of administrative agencies, by law, is the province and responsibility of the General Assembly through the aforementioned provisions of the Constitution of North Carolina and Article II of the State's Constitution establishing the purpose and power of the legislative branch; and

Whereas, the General Assembly intends to reconstitute the membership of the Coal Ash Management Commission in accord with the Court's holding so that the authority of the Coal Ash Management Commission established in 2014 to finalize accurate risk classifications, based on evaluation of all information the Commission deems necessary to achieve accurate classifications, can be exercised without further delay for the protection of public health, safety, and welfare; the environment; or natural resources for the benefit of all citizens of North Carolina; and

Whereas, the Court also expressed concerns that the General Assembly retained a majority of appointments to the Oil and Gas Commission and the Mining Commission and held the appointments provisions violated the separation of powers clause of the Constitution of North Carolina but stated that "the appointments clause does not prohibit the General Assembly from appointing statutory officers, and the General Assembly can appoint them in many instances"; and

Whereas, the General Assembly intends to reconstitute the membership of the Oil and Gas Commission and the Mining Commission in accordance with the Court's holding; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 130A-309.211 is amended by adding a new subsection to read:

"(c1) Provision of Permanent Water Supply. – As soon as practicable, but no later than October 1, 2017, the owner of a coal combustion residuals surface impoundment shall execute a memorandum of agreement or other binding agreement with the Department of Environmental Quality to establish permanent replacement water supplies for (i) each

household that has a drinking water supply well located within one-half mile radius from the established compliance boundary of a coal combustion residuals impoundment, and is not separated from the impoundment by the mainstem of a river, as that term is defined under G.S. 143-215.22G, or other body of water that would prevent the migration of contaminants through groundwater from the impoundment to a well and (ii) each household that has a drinking water supply well that is located in an area in which contamination resulting from constituents associated with the presence of a coal combustion residuals impoundment is expected to migrate, as demonstrated by groundwater modeling, and hydrogeologic, geologic, and geotechnical investigations of the site, conducted in accordance with the requirements of G.S. 130A-309.214(a)(4) and the results of other modeling or investigations that are submitted pursuant to G.S. 130A-309.213(b)(4). Preference shall be given to permanent replacement water supplies by connection to public water supplies; however, if the State Water Infrastructure Authority determines that connection to a public water supply to a particular household would be cost-prohibitive, the State Water Infrastructure Authority shall authorize provision of a permanent replacement water supply to that household through installation of a filtration system. For households for which filtration systems are installed, the impoundment owner shall be responsible for periodic required maintenance of the filtration system. No later than September 1, 2017, an impoundment owner shall submit information on permanent replacement water supplies proposed to be provided to each household to the State Water Infrastructure Authority, including, at a minimum, the type of permanent water supply proposed; the location of the household and its proximity to the nearest connection point to a public water supply; projected cost of the permanent water supply option proposed for the household; and if proposing to connect to a public water supply, a binding written agreement with that public water supplier. Projects involving permanent replacement water supplies by connection to public water supplies shall be deemed approved for this purpose. Nothing in this section shall be construed to obviate the need for other federal, State, and local permits and approvals. The Department of Environmental Quality shall expedite any State permits and approvals required for such projects. For projects involving installation of a filtration system, the State Water Infrastructure Authority shall evaluate information submitted by the impoundment owner to determine whether connection to a public water supply is cost-prohibitive and render a decision to approve or disapprove the plan, including written findings of fact, no later than December 1, 2017."

SECTION 1.(b) This section is effective when it becomes law. Requirements for establishment of a permanent alternative water supply under subsection (a) of this section shall apply only to households with drinking water supply wells in existence on the date this act becomes effective.

SECTION 1.1.(a) G.S. 130A-309.214 reads as rewritten:

"§ 130A-309.214. Closure of coal combustion residuals surface impoundments.

...

(g) Notwithstanding any other requirement for closure under this section or Part, no later than December 1, 2016, an impoundment owner shall submit plans to the Department of Environmental Quality to make at least 2.5 million tons of coal combustion residuals per year available for beneficial use for addition to concrete. At least fifty percent (50%) of the coal combustion residuals made available for beneficial use shall be removed from the current inventory of coal combustion residuals. Facilities that are receiving or have received coal combustion residuals from other sites will be the sites from which the coal combustion residuals inventory will be used first. No later than June 1, 2018, an impoundment owner shall begin to supply such coal combustion residuals for beneficial use in accordance with this subsection."

SECTION 1.1.(b) This section is effective when it becomes law.

SECTION 2.(a) G.S. 130A-309.202 reads as rewritten:

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

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

(b) Membership.—~~The Commission shall consist of nine members as follows:~~

- ~~(1) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be a resident of the State.~~
 - ~~(2) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment have special training or scientific expertise in waste management, including solid waste disposal, hauling, or beneficial use.~~
 - ~~(3) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be a licensed physician or a person with experience in public health.~~
 - ~~(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be a member of a nongovernmental conservation interest.~~
 - ~~(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment have special training or scientific expertise in waste management, including solid waste disposal, hauling, or beneficial use, or is a representative of or on the faculty of a State college or university that conducts coal ash research.~~
 - ~~(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be a representative of an electric membership corporation organized under Article 2 of Chapter 117 of the General Statutes and have a background in power supply resource planning and engineering.~~
 - ~~(7) One appointed by the Governor who shall at the time of appointment have experience in economic development.~~
 - ~~(8) One appointed by the Governor who shall at the time of appointment have expertise in determining and evaluating the costs associated with electricity generation and establishing the rates associated with electricity consumption.~~
 - ~~(9) One appointed by the Governor who shall at the time of appointment be a person with experience in science or engineering in the manufacturing sector.~~
- (b1) Membership. – The Commission shall consist of seven members as follows:
- (1) One appointed by the Governor subject to confirmation by the General Assembly, who shall at the time of appointment have special training or scientific expertise in waste management, including solid waste disposal, hauling, or beneficial use.
 - (2) One appointed by the Governor subject to confirmation by the General Assembly, who shall at the time of appointment be a licensed physician or a person with experience in public health.
 - (3) One appointed by the Governor subject to confirmation by the General Assembly, who shall at the time of appointment be a representative of an electric membership corporation organized under Article 2 of Chapter 117 of the General Statutes and have a background in power supply resource planning and engineering.
 - (4) One appointed by the Governor subject to confirmation by the General Assembly, who shall at the time of appointment have expertise in determining and evaluating the costs associated with electricity generation and establishing the rates associated with electricity consumption.
 - (5) One appointed by the Governor subject to confirmation by the General Assembly, who shall at the time of appointment be a person with experience in science or engineering in hydrology or geology.
 - (6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, who is a representative of a nongovernmental conservation interest.

(7) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, who shall at the time of appointment be a resident of the State.

(b2) Process for Appointments by the Governor. – The Governor shall transmit to the presiding officers of the Senate and the House of Representatives, within four weeks of the convening of the session of the General Assembly in the year for which the terms in question are to expire, the names of the persons to be appointed by the Governor and submitted to the General Assembly for confirmation by joint resolution. If an appointment is required pursuant to this subsection when the General Assembly is not in session, the member may be appointed and serve on an interim basis pending confirmation by the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the regular session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine die adjournment of the Regular Session.

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

- (1) The initial appointment of the Chair no later than ~~October 1, 2014.~~ July 1, 2016. If the initial appointment is not made by that date, the Chair shall be elected by a vote of the membership; and
- (2) Appointments of a subsequent Chair, including appointments to fill a vacancy of the Chair created by resignation, dismissal, death, or disability of the Chair, no later than 30 days after the last day of the previous Chair's term. If an appointment of a subsequent Chair is not made by that date, the Chair shall be elected by a vote of the membership.

(d) Vacancies. – ~~Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Governor may reappoint a gubernatorial appointee of the Commission to an additional term if, at the time of the reappointment, the member qualifies for membership on the Commission under subdivisions (7) through (9) of subsection (b) of this section. In case of death, incapacity, resignation, or vacancy for any other reason in the office of any member appointed by the Governor, prior to the expiration of the member's term of office, the name of the successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. In case of death, incapacity, resignation, or vacancy for any other reason in the office of any member appointed by the General Assembly, shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. If a vacancy arises or exists when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the member may be appointed by the Governor and serve on an interim basis pending confirmation or appointment by the General Assembly, as applicable. An appointment to fill a vacancy shall be for the unexpired balance of the term.~~

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

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

- (1) To review and approve the classification of coal combustion residuals surface impoundments required by G.S. 130A-309.213.
- (2) To review and approve Coal Combustion Residuals Surface Impoundment Closure Plans as provided in G.S. 130A-309.214.
- (3) To review and make recommendations on the provisions of this Part and other statutes and rules related to the management of coal combustion residuals.
- (4) To undertake any additional studies as requested by the General Assembly.

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

(h) Quorum. – ~~Five~~ Four members of the ~~Commission~~ Commission, at least three of whom must be gubernatorial appointees, shall constitute a quorum for the transaction of business.

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

(j) Repealed by Session Laws 2015-9, s. 1.1, effective April 27, 2015.

(k) Covered Persons; Conflicts of Interest; Disclosure. – All members of the Commission are covered persons for the purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As covered persons, members of the Commission shall comply with the applicable requirements of the State Government Ethics Act, including mandatory training, the public disclosure of economic interests, and ethical standards for covered persons. Members of the Commission shall comply with the provisions of the State Government Ethics Act to avoid conflicts of interest. The Governor may require additional disclosure of potential conflicts of interest by members. The Governor may promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection, giving due regard to the requirements of federal legislation, and, for this purpose, may promulgate rules, regulations, or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

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

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

~~(n) Administrative Location; Independence. Location. – The Commission shall be administratively located in the Division of Emergency Management of the Department of Public Safety. Safety, the head of which is the Secretary of Public Safety, who, as provided in G.S. 143B-602, has powers and duties as delegated to the Secretary by the Governor and conferred on the Secretary by the Constitution and laws of this State. The Commission shall exercise all of its powers and duties independently and shall not be subject to the supervision, direction, or control of the Division or Department.~~

(o) Terms of Members. – ~~Members of the Commission shall serve terms of six-four years, beginning effective July 1-January 1 of the year of appointment. appointment, and terminate on December 31 of the year of expiration. At the expiration of each member's term, the appointing authority shall replace the member with a new member of like qualifications for a term of four years. A member shall continue to serve until the member's successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term. In order to establish regularly overlapping terms, initial appointments shall be made effective June 1, 2016, or as soon as feasible thereafter, and expire as follows:~~

(1) The initial appointments made by the Governor:

- a. Pursuant to subdivision (b1)(1) of this section shall expire December 31, 2020.
- b. Pursuant to subdivision (b1)(2) of this section shall expire December 31, 2020.
- c. Pursuant to subdivision (b1)(3) of this section shall expire December 31, 2020.
- d. Pursuant to subdivision (b1)(4) of this section shall expire December 31, 2019.
- e. Pursuant to subdivision (b1)(5) of this section shall expire December 31, 2019.

- (2) The initial appointment made by the General Assembly upon recommendation of the Speaker of the House of Representatives pursuant to subdivision (b1)(6) of this section shall expire December 31, 2018.
- (3) The initial appointment made by the General Assembly upon recommendation of the President Pro Tempore of the Senate pursuant to subdivision (b1)(7) of this section shall expire December 31, 2018."

SECTION 2.(b) G.S. 130A-309.213 reads as rewritten:

"§ 130A-309.213. Prioritization of coal combustion residuals surface impoundments.

(a) As soon as practicable, but no later than December 31, 2015, the Department shall develop proposed classifications for all coal combustion residuals surface impoundments, including active and retired sites, for the purpose of closure and remediation based on these sites' risks to public health, safety, and welfare; the environment; and natural resources and shall determine a schedule for closure and required remediation that is based on the degree of risk to public health, safety, and welfare; the environment; and natural resources posed by the impoundments and that gives priority to the closure and required remediation of impoundments that pose the greatest risk. In assessing the risk, the Department shall evaluate information received pursuant to G.S. 130A-309.211 and G.S. 130A-309.212 and any other information deemed relevant and, at a minimum, consider all of the following:

- (1) Any hazards to public health, safety, or welfare resulting from the impoundment.
- (2) The structural condition and hazard potential of the impoundment.
- (3) The proximity of surface waters to the impoundment and whether any surface waters are contaminated or threatened by contamination as a result of the impoundment.
- (4) Information concerning the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.
- (5) The location and nature of all receptors and significant exposure pathways.
- (6) The geological and hydrogeological features influencing the movement and chemical and physical character of the contaminants.
- (7) The amount and characteristics of coal combustion residuals in the impoundment.
- (8) Whether the impoundment is located within an area subject to a 100-year flood.
- (9) Any other factor the Department deems relevant to establishment of risk.

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

- (1) The Department shall make copies of the written declaration issued pursuant to this subsection available for inspection as follows:
 - a. A copy of the declaration shall be provided to the local health director.
 - b. A copy of the declaration shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.
 - c. The Department shall post a copy of the declaration on the Department's Web site.
 - d. The Department shall place copies of the declaration in other locations so as to assure the reasonable availability thereof to the public.
- (2) The Department shall give notice of the written declaration issued pursuant to this subsection as follows:
 - a. A notice and summary of the declaration shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.

- b. Notice of the written declaration shall be given by first-class mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.
 - c. Notice of the written declaration shall be given by electronic mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.
- (3) No later than 60 days after issuance of the written declaration, the Department shall conduct a public meeting in the county or counties in which the site is located to explain the written declaration to the public. The Department shall give notice of the hearing at least 15 days prior to the date thereof by all of the following methods:
- a. Publication as provided in subdivision (1) of this subsection, with first publication to occur not less than 30 days prior to the scheduled date of the hearing.
 - b. First-class mail to persons who have requested notice as provided in subdivision (2) of this subsection.
 - c. Electronic mail to persons who have requested notice as provided in subdivision (2) of this subsection.
- (4) At least 30 days from the latest date on which notice is provided pursuant to subdivision (2) of this subsection shall be allowed for the receipt of written comment on the written declaration prior to issuance of a final risk classification. At least 20 days will be allowed for receipt of written comment following a hearing conducted pursuant to subdivision (3) of this subsection prior to issuance of a final risk classification.

(c) ~~Within 30 days of the receipt~~ After receipt of all written comment as required by subdivision (4) of subsection (b) of this section, the Department shall submit a proposed classification for a coal combustion residuals surface impoundment to the Coal Ash Management Commission established pursuant to ~~G.S. 130A-309.202~~. G.S. 130A-309.202 as soon as legally practicable but no later than 10 days after all appointments have been made pursuant to G.S. 130A-309.202(b1). The Commission shall evaluate all information submitted in accordance with this Part related to the proposed ~~classification~~ classification, including memorandums of agreement or other binding agreements to provide permanent replacement water supplies in accordance with the requirements of G.S. 130A-309.211 to reduce potential risks to public health, safety, and welfare, and any other information the Commission deems relevant. The Commission shall only approve the proposed classification if it determines that the classification was developed in accordance with this section and that the classification accurately reflects the level of risk posed by the coal combustion residuals surface impoundment. The Commission shall issue its determination in writing, including findings in support of its ~~determination~~ determination, which shall constitute a final decision of the Commission for purposes of an appeal under Article 3 of Chapter 150B of the General Statutes. If the ~~Commission~~ Commission, appointed as provided by G.S. 130A-309.202(b1), fails to act on a proposed classification within 60-120 days of receipt of the proposed classification, the proposed classification shall be deemed approved. disapproved. If a proposed classification is deemed disapproved on the basis that a final decision, including a written determination with findings of facts, has not been issued by the Commission prior to expiration of the 120-day period, the Commission may extend the deadline for no more than 120 days if necessary for adequate review of a proposed classification. Parties aggrieved by a final decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes. A classification deemed disapproved as a result of the Commission's failure to act within the 120-day review period, and, if applicable, a subsequent 120-day review period resulting from an extension issued by the Commission to allow additional review shall not constitute a final decision of the Commission for purposes of an appeal under Article 3 of Chapter 150B of the General Statutes."

SECTION 2.(c) Notwithstanding the provisions of G.S. 130A-309.202(b2) and G.S. 130A-309.202(o), as enacted and amended by Section 2(a) of this act, no later than 30 days after the date this act becomes law, the Governor shall transmit to the presiding officers of the Senate and the House of Representatives, the names of the persons nominated by the Governor for appointment to the Coal Ash Management Commission pursuant to G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, for confirmation by the General Assembly by joint resolution.

SECTION 2.(d) Notwithstanding G.S. 130A-309.213(c) and G.S. 130A-309.214(d), the Environmental Management Commission shall assume all powers and duties for review and approval of proposed classifications for all coal combustion residuals surface impoundments and closure plans for all coal combustion residuals surface impoundments pursuant to those sections, if (i) upon expiration of the period established for public comment set forth in Section 2(f) of this act, the Coal Ash Management Commission has not been appointed as provided by G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or (ii) if at any point a court of competent jurisdiction issues a temporary or permanent order enjoining the authority, operation, or activities of the Coal Ash Management Commission appointed as provided by G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or issues any other decision or order that prevents the Commission from carrying out its statutory duties.

SECTION 2.(e) No classification for any coal combustion residuals surface impoundment, regardless of when such classification was issued, shall be construed to be deemed approved or final, or implemented as such by the Department of Environmental Quality, until the classification is approved by the (i) Coal Ash Management Commission, as appointed pursuant to G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or (ii) the Environmental Management Commission, if applicable, pursuant to Section 2(d) of this act.

SECTION 2.(f) Notwithstanding G.S. 130A-309.213, the Department of Environmental Quality shall do all of the following:

- (1) Extend the period for receipt of public comment on the written declarations for proposed classifications for all coal combustion residuals surface impoundments until August 1, 2016, consider any comments, information, and data received during this period, including memorandums of agreement or other binding agreements to provide permanent replacement water supplies in accordance with the requirements of G.S. 130A-309.211, as amended by Section 1(a) of this act, to reduce potential risks to public health, safety, and welfare; and incorporate any comments, information, and data necessary for issuance of a classification that accurately reflects the level of risk posed by the coal combustion residuals surface impoundment.
- (2) No later than September 1, 2016, submit a proposed classification for review and approval to the (i) Coal Ash Management Commission, as appointed pursuant to G.S. 130A-309.202(b1), as enacted by subsection (a) of this section, or (ii) the Environmental Management Commission, if applicable, pursuant to subsection (d) of this section.

SECTION 2.(g) Up to five receipt-supported positions are created in the Division of Emergency Management of the Department of Public Safety to carry out the duties in G.S. 130A-309.202. There is appropriated a sum of up to four hundred thousand dollars (\$400,000) to the Coal Ash Management Commission from the Coal Combustion Residuals Management Fund cash balance on June 30, 2016, to fund said positions or for the purpose of executing contractual arrangements for engineering or other consulting services the Commission determines are necessary or advisable to render requisite information and expertise on coal ash management issues or otherwise support the Commission's work. The positions shall be used to provide assistance to the Coal Ash Management Commission established by G.S. 130A-309.202, as enacted by Section 2(a) of this act. The Division of Emergency Management in the Department of Public Safety shall consult with the Chair of the Commission in hiring the staff for the Coal Ash Management Commission. The Division of Emergency Management in the Department of Public Safety shall provide support to the Commission until the staff of the Commission is hired, including the designation of an individual to serve as an interim executive director of the staff. Provided, however, that if the Environmental Management Commission assumes all powers and duties for review and approval of proposed classifications for all coal combustion residuals surface impoundments

and closure plans for all coal combustion residuals surface impoundments pursuant to Section 2(d) of this act, then funds to be appropriated pursuant to this section shall instead be appropriated to the Environmental Management Commission, which funds shall be used solely to support the work of the Commission to review and approve proposed classifications and proposed closure plans.

SECTION 2.(h) This section is effective when it becomes law.

SECTION 3.(a) G.S. 143B-291 reads as rewritten:

"§ 143B-291. North Carolina Mining Commission – members; selection; removal; compensation; quorum; services.

(a) Repealed by 2014-4, s. 5(a), effective July 31, 2015.

(a1) **Members, Selection.** – The North Carolina Mining Commission shall consist of eight members appointed as follows:

- (1) One member who is the chair of the North Carolina State University Minerals Research Laboratory Advisory Committee.
- (2) The State Geologist, ex officio and nonvoting.
- (3) One member appointed by the Governor subject to confirmation by the General Assembly, who is a representative of the mining industry.
- (4) One member appointed by the Governor subject to confirmation by the General Assembly, who is a representative of the mining industry.
- (5) One member appointed by the ~~General Assembly upon recommendation of the Speaker of the House of Representatives~~ Governor subject to confirmation by the General Assembly who is a representative of the mining industry.
- (6) One member appointed by the ~~General Assembly upon recommendation of the President Pro Tempore of the Senate~~ Governor subject to confirmation by the General Assembly who is a representative of the mining industry.
- (7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, who is a ~~member of~~ representative of a nongovernmental conservation interests-interest.
- (8) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, who is a ~~member of~~ representative of a nongovernmental conservation interests-interest.

(a2) **Process for Appointments by the Governor.** – The Governor shall transmit to the presiding officers of the Senate and the House of Representatives, within four weeks of the convening of the session of the General Assembly in the year for which the terms in question are to expire, the names of the persons to be appointed by the Governor and submitted to the General Assembly for confirmation by joint resolution. If an appointment is required pursuant to this subsection when the General Assembly is not in session, the member may be appointed and serve on an interim basis pending confirmation by the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the regular session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine die adjournment of the regular session.

(b) **Terms.** – The term of office of a member of the Commission is ~~six years~~ four years, beginning effective January 1 of the year of appointment and terminating on December 31 of the year of expiration. At the expiration of each member's term, the appointing authority shall replace the member with a new member of like qualifications for a term of ~~six~~ four years. The term of the member appointed under subdivision (5) of subsection (a1) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection (a1) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (4) and (7) of subsection (a1) of this section shall expire on June 30 of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. In order to establish regularly overlapping terms, initial appointments shall be made effective June 1, 2016, or as soon as feasible thereafter, and expire as follows:

- (1) The initial appointments made by the Governor:

- a. Pursuant to subdivision (a1)(3) of this section shall expire December 31, 2020.
- b. Pursuant to subdivision (a1)(4) of this section shall expire December 31, 2020.
- c. Pursuant to subdivision (a1)(5) of this section shall expire December 31, 2019.
- d. Pursuant to subdivision (a1)(6) of this section shall expire December 31, 2019.
- (2) The initial appointment made by the General Assembly upon recommendation of the Speaker of the House of Representatives pursuant to subdivision (a1)(7) of this section shall expire December 31, 2018.
- (3) The initial appointment made by the General Assembly upon recommendation of the President Pro Tempore of the Senate pursuant to subdivision (a1)(8) of this section shall expire December 31, 2018.

(c) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason in the office of any member appointed by the Governor, prior to the expiration of the member's term of office, the name of the successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. In case of death, incapacity, resignation, or vacancy for any other reason in the office of any member appointed by the General Assembly, vacancies in those appointments shall be filled in accordance with G.S. 120-122. If a vacancy arises or exists when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the member may be appointed by the Governor and serve on an interim basis pending confirmation or appointment by the General Assembly, as applicable. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(d) Removal. – The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13.

(e) Compensation. – The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) Quorum. – A majority of the Commission shall constitute a quorum for the transaction of business.

(g) Staff. – All clerical and other services required by the Commission shall be supplied by the Secretary of Environmental Quality."

SECTION 3.(b) Notwithstanding the provisions of G.S. 143B-291(a2) and G.S. 143B-291(b), as enacted and amended by Section 3(a) of this act, no later than 30 days after the date this act becomes law, the Governor shall transmit to the presiding officers of the Senate and the House of Representatives the names of the persons nominated by the Governor for appointment to the Mining Commission pursuant to G.S. 143B-291(a1), as enacted by Section 3(a) of this act, for confirmation by the General Assembly by joint resolution. Upon failure of the Governor to submit names as provided herein by December 1, 2016, the Lieutenant Governor shall make such appointments, and if such appointments made by the Lieutenant Governor occur when the General Assembly is not in session, the member may be appointed and serve on an interim basis pending confirmation by the General Assembly.

SECTION 3.(c) This section is effective when it becomes law.

SECTION 4.(a) G.S. 143B-293.2 reads as rewritten:

"§ 143B-293.2. North Carolina Oil and Gas Commission – members; selection; removal; compensation; quorum; services.

(a) Repealed by Session Laws 2014-4, s. 4(a), effective July 31, 2015.

(a1) Members Selection. – The North Carolina Oil and Gas Commission shall consist of nine members appointed as follows:

- (1) One appointed by the ~~General Assembly upon recommendation of the Speaker of the House of Representatives~~ Governor subject to confirmation by the General Assembly who, at the time of initial appointment, is an elected official of a municipal government located in a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if the person is no longer serving as an elected official of a municipal government but may not be reappointed to a subsequent term.

- (2) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, who shall be a geologist with experience in oil and gas exploration and development.
- (3) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, who is a ~~member~~ representative of a nongovernmental conservation interest.
- (4) One appointed by the ~~General Assembly upon recommendation of the President Pro Tempore of the Senate~~ Governor subject to confirmation by the General Assembly who, at the time of initial appointment, is a member of a county board of commissioners of a county located in a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if the person is no longer serving as county commissioner but may not be reappointed to a subsequent term.
- (5) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, who is a ~~member~~ representative of a nongovernmental conservation interest.
- (6) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, who shall be an engineer with experience in oil and gas exploration and development.
- (7) One appointed by the Governor subject to confirmation by the General Assembly, who shall be a representative of a publicly traded natural gas company.
- (8) One appointed by the Governor subject to confirmation by the General Assembly, who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.
- (9) One appointed by the Governor subject to confirmation by the General Assembly, with experience in matters related to public health.

(a2) Process for Appointments by the Governor. – The Governor shall transmit to the presiding officers of the Senate and the House of Representatives, within four weeks of the convening of the session of the General Assembly in the year for which the terms in question are to expire, the names of the persons to be appointed by the Governor and submitted to the General Assembly for confirmation by joint resolution. If an appointment is required pursuant to this subsection when the General Assembly is not in session, the member may be appointed and serve on an interim basis pending confirmation by the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the regular session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine die adjournment of the regular session.

(b) Terms. – The term of office of members of the Commission is ~~three years~~ four years, beginning effective January 1 of the year of appointment and terminating on December 31 of the year of expiration. A member may be reappointed to no more than two consecutive ~~three year~~ four-year terms. The term of a member who no longer meets the qualifications of their respective appointment, as set forth in subsection (a)(a1) of this section, shall terminate but the member may continue to serve until a new member who meets the qualifications is appointed. ~~The terms of members appointed under subdivisions (1), (4), and (7) of subsection (a1) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions (2), (5), and (8) of subsection (a1) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions (3), (6), and (9) of subsection (a1) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. In order to establish regularly overlapping terms, initial appointments shall be made effective June 1, 2016, or as soon as feasible thereafter, and expire as follows:~~

- (1) The initial appointments made by the Governor:
 - a. Pursuant to subdivision (a1)(1) of this section shall expire December 31, 2020.
 - b. Pursuant to subdivision (a1)(4) of this section shall expire December 31, 2020.

- c. Pursuant to subdivision (a1)(7) of this section shall expire December 31, 2020.
- d. Pursuant to subdivision (a1)(8) of this section shall expire December 31, 2019.
- e. Pursuant to subdivision (a1)(9) of this section shall expire December 31, 2019.
- (2) The initial appointments made by the General Assembly upon recommendation of the Speaker of the House of Representatives:
 - a. Pursuant to subdivision (a1)(2) of this section shall expire December 31, 2018.
 - b. Pursuant to subdivision (a1)(3) of this section shall expire December 31, 2019.
- (3) The initial appointments made by the General Assembly upon recommendation of the President Pro Tempore of the Senate:
 - a. Pursuant to subdivision (a1)(5) of this section shall expire December 31, 2018.
 - b. Pursuant to subdivision (a1)(6) of this section shall expire December 31, 2019.

~~(c) Vacancies; Removal from Office.~~ Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason in the office of any member appointed by the Governor, prior to the expiration of the member's term of office, the name of the successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. In case of death, incapacity, resignation, or vacancy for any other reason in the office of any member appointed by the General Assembly, vacancies in those appointments shall be filled in accordance with G.S. 120-122. If a vacancy arises or exists when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the member may be appointed by the Governor and serve on an interim basis pending confirmation or appointment by the General Assembly, as applicable. An appointment to fill a vacancy shall be for the unexpired balance of the term.

~~(c1) Removal. –~~

~~(1) Any appointment by the Governor to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.~~

~~(2) Members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. In accordance with Section 10 of Article VI of the North Carolina Constitution, a member may continue to serve until a successor is duly appointed.~~

(d) Compensation. – The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) Quorum. – A majority of the Commission shall constitute a quorum for the transaction of business.

(f) Staff. – All staff support required by the Commission shall be supplied by the Division of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.

(g) Committees. – In addition to the Committee on Civil Penalty Remissions required to be established under G.S. 143B-293.6, the chair may establish other committees from members of the Commission to address specific issues as appropriate. No member of a committee may hear or vote on any matter in which the member has an economic interest. A majority of a committee shall constitute a quorum for the transaction of business.

(h) Office May Be Held Concurrently With Others. – Membership on the Oil and Gas Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1."

SECTION 4.(b) Notwithstanding the provisions of G.S. 143B-293.2(a1) and G.S. 143B-293.2(b), as enacted and amended by Section 4(a) of this act, no later than 30 days after the date this act becomes law the Governor shall transmit to the presiding officers of the Senate and the House of Representatives, the names of the persons nominated by the Governor

for appointment to the Oil and Gas Commission pursuant to G.S. 143B-293.2(a1), as enacted by Section 4(a) of this act, for confirmation by the General Assembly by joint resolution. Upon failure of the Governor to submit names as provided herein by December 1, 2016, the Lieutenant Governor shall make such appointments, and if such appointments made by the Lieutenant Governor occur when the General Assembly is not in session, the member may be appointed and serve on an interim basis pending confirmation by the General Assembly.

SECTION 4.(c) For purposes of the rules set forth in 15A NCAC 05H (Oil and Gas Conservation Rules), modifications made to the Oil and Gas Commission under Section 4(a) of this act shall, pursuant to G.S. 150B-21.7, be construed to (1) have repealed authority to adopt such rules given to previously constituted commissions and (2) transferred the authority to adopt such rules to the Oil and Gas Commission as modified by Section 4(a) of this act. Therefore, pursuant to G.S. 150B-21.7, rules set forth in 15A NCAC 05H (Oil and Gas Conservation Rules) shall be effective until the Oil and Gas Commission, as modified Section 4(a) of this act, amends or repeals the rules.

SECTION 4.(d) This section is effective when it becomes law.

SECTION 5. The provisions of this act shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid, the validity of the remainder of this act shall not be affected thereby.

SECTION 6. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of June, 2016.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____m. this _____ day of _____, 2016