

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 119
Committee Substitute Favorable 6/2/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H119-PCS90127-SB-45

Short Title: Amend Environmental Laws 2011.

(Public)

Sponsors:

Referred to:

February 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES
3 LAWS TO (1) EXEMPT CERTAIN NEW RENEWABLE ENERGY FACILITIES FROM
4 BEST AVAILABLE CONTROL TECHNOLOGY (BACT) REQUIREMENTS; (2)
5 REDUCE CERTAIN OPEN BURNING SETBACK REQUIREMENTS AND PROVIDE
6 THAT MINIMAL, UNINTENTIONAL NONCOMPLIANCE WITH AN OPEN
7 BURNING SETBACK IS NOT A VIOLATION; (3) PROVIDE THAT DRAFT EROSION
8 AND SEDIMENTATION CONTROL PLANS FOR THE CONSTRUCTION OF
9 CERTAIN UTILITY LINES MAY BE SUBMITTED WITHOUT A LANDOWNER'S
10 WRITTEN CONSENT; (4) CLARIFY THE PROHIBITION ON DISPOSAL IN
11 LANDFILLS OR BY INCINERATION OF BEVERAGE CONTAINERS THAT ARE
12 REQUIRED TO BE RECYCLED BY CERTAIN ABC PERMITTEES; (5) CLARIFY
13 THE USE OF STATE FUNDS IN THE CONTEXT OF THE REMOVAL OF
14 MERCURY-CONTAINING PRODUCTS FROM PUBLIC BUILDINGS; (6) DIRECT
15 THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP MODEL
16 STORMWATER CAPTURE AND REUSE PRACTICES; (7) PROHIBIT THE DIVISION
17 OF WATER QUALITY OF THE DEPARTMENT OF ENVIRONMENT AND
18 NATURAL RESOURCES FROM REQUIRING A WATER QUALITY PERMIT FOR A
19 TYPE I SOLID WASTE COMPOST FACILITY; (8) AMEND THE WATER-USE
20 STANDARD FOR PUBLIC MAJOR FACILITY CONSTRUCTION AND
21 RENOVATION PROJECTS TO REQUIRE THE INSTALLATION OF
22 WEATHER-BASED IRRIGATION CONTROLLERS; (9) PROVIDE THAT NO PERMIT
23 IS REQUIRED FOR THE CONSTRUCTION OR ALTERATION OF A SEWER
24 SYSTEM OR TREATMENT WORKS THAT ALREADY HAS A DISCHARGE
25 PERMIT; (10) EXEMPT SMALL DAMS AND AGRICULTURAL POND DAMS FROM
26 THE DAM SAFETY ACT; (11) MAKE VARIOUS CHANGES TO THE LAWS
27 GOVERNING THE STATE'S UNDERGROUND STORAGE TANK PROGRAM AND
28 PETROLEUM DISCHARGES; (12) PROMOTE THE USE OF GRAY WATER; (13)
29 CLARIFY THAT NUTRIENT OFFSET PAYMENTS SHALL REFLECT ACTUAL
30 COSTS AS ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION;
31 (14) DELAY IMPLEMENTATION OF CERTAIN JORDAN LAKE RULE
32 REQUIREMENTS; (15) AUTHORIZE THE COMMISSION FOR PUBLIC HEALTH TO



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1 ADOPT RULES TO INCORPORATE THE FEDERAL FOOD CODE; (16) ESTABLISH
2 A VARIANCE PROCESS FOR CERTAIN WATER SUPPLY WELL SETBACK
3 REQUIREMENTS; (17) GRANDFATHER CERTAIN DEVELOPMENT UNDER THE
4 NEUSE AND TAR-PAM RIVER BASIN BUFFER REQUIREMENTS; (18) PROVIDE
5 THAT A GINSENG EXPORT CERTIFICATE MAY BE OBTAINED FREE OF
6 CHARGE; (19) PROVIDE FOR AN EARLY SUNSET OF THE METHANE CAPTURE
7 PILOT PROGRAM; (20) DIRECT THE DEPARTMENT OF ENVIRONMENT AND
8 NATURAL RESOURCES TO STUDY STORMWATER MANAGEMENT
9 REQUIREMENTS FOR AIRPORTS IN THE STATE; AND (21) DIRECT CERTAIN
10 TRANSFERS OF FUNDS FOR NONPOINT SOURCE POLLUTION CONTROL
11 PROGRAMS; AND (22) CONFORM THE STATUTORY DEFINITION OF "SOLID
12 WASTE" TO FEDERAL LAW.

13 The General Assembly of North Carolina enacts:

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

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

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

34 **SECTION 2.(b)** 15A NCAC 02D .1903 (Open Burning Without An Air Quality
35 Permit). – Until the effective date of the revised permanent rule that the Commission is
36 required to adopt pursuant to Section 2(d) of this act, the Commission, the Department, and any
37 other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning
38 Without An Air Quality Permit) shall implement the rule, as provided in Section 2(c) of this
39 act.

40 **SECTION 2.(c)** Implementation. – Notwithstanding sub-subdivision (B)
41 subdivision (2) of subsection (b) of 15A NCAC 02D .1903 (Open Burning Without An Air
42 Quality Permit), open burning for land clearing or right-of-way maintenance is permissible
43 without an air quality permit if the location of the burning is at least 500 feet from any
44 dwelling, group of dwellings, or commercial or institutional establishment, or other occupied
45 structure not located on the property on which the burning is conducted. The regional office
46 supervisor may grant exceptions to the setback requirements if either of the following
47 conditions is met:

- 48 (1) A signed, written statement waiving objections to the open burning
49 associated with the land clearing operation is obtained and submitted to, and
50 the exception granted by, the regional office supervisor before the burning
51 begins from a resident or an owner of each dwelling, commercial or

1 institutional establishment, or other occupied structure within 500 feet of the
2 open burning site. In the case of a lease or rental agreement, the lessee or
3 renter shall be the person from whom permission shall be gained prior to any
4 burning.

- 5 (2) An air curtain burner that complies with 15A NCAC 02D .1904 (Air Curtain
6 Burners), as provided in this section, is utilized at the open burning site.

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

13 **SECTION 2.(d)** Additional Rule-Making Authority. – The Commission shall
14 adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit).
15 Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section
16 shall be substantively identical to the provisions of Section 2(c) of this act. Rules adopted
17 pursuant to this section are not subject to the publication of notice of text or public hearing
18 requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to
19 G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become
20 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been
21 received as provided by G.S. 150B-21.3(b2).

22 **SECTION 2.(e)** 15A NCAC 02D .1904 (Air Curtain Burners). – Until the effective
23 date of the revised permanent rule that the Commission is required to adopt pursuant to Section
24 2(g) of this act, the Commission, the Department, and any other political subdivision of the
25 State that implements 15A NCAC 02D .1904 (Air Curtain Burners) shall implement the rule, as
26 provided in Section 2(f) of this act.

27 **SECTION 2.(f)** Implementation. – Notwithstanding subdivision (12) of subsection
28 (b) of 15A NCAC 02D .1904 (Air Curtain Burners), the location of the air curtain burning shall
29 be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional
30 establishment, or other occupied structure not located on the property on which the burning is
31 conducted. The regional office supervisor may grant exceptions to the setback requirements if
32 a signed, written statement waiving objections to the air curtain burning is obtained from a
33 resident or an owner of each dwelling, commercial or institutional establishment, or other
34 occupied structure within 300 feet of the burning site. In case of a lease or rental agreement,
35 the lessee or renter, and the property owner shall sign the statement waiving objections to the
36 burning. The statement shall be submitted to and approved by the regional office supervisor
37 before initiation of the burn. Factors that the regional supervisor shall consider in deciding to
38 grant the exception include all the persons who need to sign the statement waiving the
39 objection have signed it; the location of the burn; and the type, amount, and nature of the
40 combustible substances.

41 **SECTION 2.(g)** Additional Rule-Making Authority. – The Commission shall adopt
42 a rule to amend 15A NCAC 02D .1904 (Air Curtain Burners). Notwithstanding
43 G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be
44 substantively identical to the provisions of Section 2(f) of this act. Rules adopted pursuant to
45 this section are not subject to the publication of notice of text or public hearing requirements of
46 G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9
47 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as
48 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
49 provided by G.S. 150B-21.3(b2).

50 **SECTION 2.(h)** G.S. 113-60.29 reads as rewritten:

51 "**§ 113-60.29. Penalties.**

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

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

11 **"§ 113A-54.1. Approval of erosion control plans.**

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

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

37"

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

39 "...

40 (f) No person shall knowingly dispose of the following solid wastes in landfills:

- 41 (1) Repealed by Session Laws 1991, c. 375, s. 1.
- 42 (2) Used oil.
- 43 (3) Yard trash, except in landfills approved for the disposal of yard trash under
44 rules adopted by the Commission. Yard trash that is source separated from
45 solid waste may be accepted at a solid waste disposal area where the area
46 provides and maintains separate yard trash composting facilities.
- 47 (4) White goods.
- 48 (5) Antifreeze (ethylene glycol).
- 49 (6) Aluminum cans.

- 1 (7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition on
2 disposal of whole scrap tires in landfills applies to all whole pneumatic
3 rubber coverings, but does not apply to whole solid rubber coverings.
- 4 (8) Lead-acid batteries, as provided in G.S. 130A-309.70.
- 5 ~~(9) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
- 6 (10) Motor vehicle oil filters.
- 7 (11) Recyclable rigid plastic containers that are required to be labeled as provided
8 in subsection (e) of this section, that have a neck smaller than the body of the
9 container, and that accept a screw top, snap cap, or other closure. The
10 prohibition on disposal of recyclable rigid plastic containers in landfills does
11 not apply to rigid plastic containers that are intended for use in the sale or
12 distribution of motor oil or pesticides.
- 13 (12) Wooden pallets, except that wooden pallets may be disposed of in a landfill
14 that is permitted to only accept construction and demolition debris.
- 15 (13) Oyster shells.
- 16 (14) **(Effective July 1, 2011)** Discarded computer equipment, as defined in
17 G.S. 130A-309.131.
- 18 (15) **(Effective July 1, 2011)** Discarded televisions, as defined in
19 G.S. 130A-309.131.
- 20 (f1) No person shall knowingly dispose of the following solid wastes by incineration in
21 an incinerator for which a permit is required under this Article:
- 22 (1) Antifreeze (ethylene glycol) used solely in motor vehicles.
- 23 (2) Aluminum cans.
- 24 (3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
- 25 (4) White goods.
- 26 (5) Lead-acid batteries, as provided in G.S. 130A-309.70.
- 27 ~~(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
- 28 (7) **(Effective July 1, 2011)** Discarded computer equipment, as defined in
29 G.S. 130A-309.131.
- 30 (8) **(Effective July 1, 2011)** Discarded televisions, as defined in
31 G.S. 130A-309.131.
- 32 (f2) ~~Subsection-Subsections (f1) and (f3)~~ of this section shall not apply to solid waste
33 incinerated in an incinerator solely owned and operated by the generator of the solid waste.
34 Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be
35 recycled or reclaimed to make it usable as antifreeze in a motor vehicle.
- 36 (f3) Holders of on-premises malt beverage permits, on-premises unfortified wine
37 permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly
38 dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in
39 landfills or by incineration in an incinerator for which a permit is required under this Article.
- 40 (g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
- 41 (h) The accidental or occasional disposal of small amounts of prohibited solid waste by
42 landfill shall not be construed as a violation of ~~subsection-subsection (f) or (f3)~~ of this section.
- 43 (i) The accidental or occasional disposal of small amounts of prohibited solid waste by
44 incineration shall not be construed as a violation of ~~subsection-subsection (f1) or (f3)~~ of this
45 section if the Department has approved a plan for the incinerator as provided in subsection (j)
46 of this section or if the incinerator is exempt from subsection (j) of this section.
- 47 (j) The Department may issue a permit pursuant to this Article for an incinerator that is
48 subject to subsection (f1) of this section only if the applicant for the permit has a plan approved
49 by the Department pursuant to this subsection. The applicant shall file the plan at the time of
50 the application for the permit. The Department shall approve a plan only if it complies with the
51 requirements of this subsection. The plan shall provide for the implementation of a program to

1 prevent the incineration of the solid waste listed in ~~subsection~~subsections (f1) and (f3) of this
2 section. The program shall include the random visual inspection prior to incineration of at least
3 ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the
4 retention of the records of the random visual inspections and the training of personnel to
5 recognize the solid waste listed in ~~subsection~~subsections (f1) and (f3) of this section. If a
6 random visual inspection discovers solid waste that may not be incinerated pursuant to
7 ~~subsection~~subsections (f1) and (f3) of this section, the program shall provide that the operator
8 of the incinerator shall dispose of the solid waste in accordance with applicable federal and
9 State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes
10 only of medical waste.

11 (k) A county or city may petition the Department for a waiver from the prohibition on
12 disposal of a material described in subdivisions (9), (10), (11) and (12) of subsection (f) of this
13 section and subsection (f3) of this section in a landfill based on a showing that prohibiting the
14 disposal of the material would constitute an economic hardship.

15 (l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least
16 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are
17 not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding
18 subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the
19 landfill.

20 (m) **(Effective July 1, 2011)** No person shall knowingly dispose of fluorescent lights
21 and thermostats that contain mercury in a sanitary landfill for the disposal of construction and
22 demolition debris waste that is unlined or in any other landfill that is unlined."

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

24 **"§ 130A-310.60. (Effective July 1, 2011) Recycling required by public agencies.**

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

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

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

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

46 **"§ 143-214.7. Stormwater runoff rules and programs.**

47 (a) Policy, Purpose and Intent. – The Commission shall undertake a continuing
48 planning process to develop and adopt a statewide plan with regard to establishing and
49 enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the
50 purpose and intent of this section that, in developing stormwater runoff rules and programs, the
51 Commission may utilize stormwater rules established by the Commission to protect classified

1 shellfish waters, water supply watersheds, and outstanding resource waters; and to control
2 stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the
3 intent of this section that the Commission phase in the stormwater rules on a priority basis for
4 all sources of pollution to the water. The plan shall be applied evenhandedly throughout the
5 State to address the State's water quality needs. The Commission shall continually monitor
6 water quality in the State and shall revise stormwater runoff rules as necessary to protect water
7 quality. As necessary, the stormwater rules shall be modified to comply with federal
8 regulations.

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

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

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

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

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

49 (d) The Commission shall review each stormwater management program submitted by
50 a State agency or unit of local government and shall notify the State agency or unit of local
51 government that submitted the program that the program has been approved, approved with

1 modifications, or disapproved. The Commission shall approve a program only if it finds that
2 the standards of the program equal or exceed those of the model program adopted by the
3 Commission pursuant to this section.

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

8 (1) Collects and treats stormwater on-site using a treatment system that is
9 designed to remove at least eighty-five percent (85%) of total suspended
10 solids. For purposes of this subdivision, a treatment system includes, but is
11 not limited to, a filtration system or a detention system.

12 (2) Collects and stores stormwater for reuse on-site for irrigation or other
13 purposes.

14 (3) Collects and discharges stormwater to a local or regional stormwater
15 collection and treatment system.

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

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

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

22 "(b) The Division of Water Quality shall clarify that stormwater is water that does not
23 contact anything considered a feedstock, intermediate product, or final product of composting
24 operations. The Division of Water Quality shall clarify that wastewater is leachate and water
25 that contacts feedstocks, intermediate products, or final product, of composting operations. The
26 clarifications shall incorporate available scientifically valid information obtained from
27 sampling and analyses of North Carolina composting facilities and from valid representative
28 data from other states. In addition, the Division of Water Quality shall establish threshold
29 quantities of feedstocks, intermediate products, and final products above which water quality
30 permitting will be required. The Division of Water Quality shall not require water quality
31 permitting for any Type I solid waste compost facility, unless required to do so by federal law."

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

33 **"§ 143-135.36. Definitions.**

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

36 (1) "ASHRAE" means the American Society of Heating, Refrigerating and
37 Air-Conditioning Engineers, Inc.

38 (2) "Commission" means to document and to verify throughout the construction
39 process whether the performance of a building, a component of a building, a
40 system of a building, or a component of a building system meets specified
41 objectives, criteria, and agency project requirements.

42 (3) "Department" means the Department of Administration.

43 (4) "Institutions of higher education" means the constituent institutions of The
44 University of North Carolina, the regional institutions as defined in
45 G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.

46 (5) "Major facility construction project" means a project to construct a building
47 larger than 20,000 gross square feet of occupied or conditioned space, as
48 defined in the North Carolina State Building Code adopted under Article 9
49 of Chapter 143 of the General Statutes. "Major facility construction project"
50 does not include a project to construct a transmitter building or a pumping
51 station.

1 (6) "Major facility renovation project" means a project to renovate a building
2 when the cost of the project is greater than fifty percent (50%) of the
3 insurance value of the building prior to the renovation and the renovated
4 portion of the building is larger than 20,000 gross square feet of occupied or
5 conditioned space, as defined in the North Carolina State Building Code.
6 "Major facility renovation project" does not include a project to renovate a
7 transmitter building or a pumping station. "Major facility renovation project"
8 does not include a project to renovate a building having historic,
9 architectural, or cultural significance under Part 4 of Article 2 of Chapter
10 143B of the General Statutes.

11 (7) "Public agency" means every State office, officer, board, department, and
12 commission and institutions of higher education.

13 (8) "Weather-based irrigation controller" means an irrigation control device that
14 utilizes local weather and landscape conditions to tailor irrigation system
15 schedules to irrigation needs specific to site conditions."

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

17 **"§ 143-135.37. Energy and water use standards for public major facility construction and**
18 **renovation projects; verification and reporting of energy and water use.**

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

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

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

39 (c1) Outdoor Potable Water Use Standard. – For every major facility construction project
40 of a public agency, the water system shall be designed and constructed so that the calculated
41 sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent
42 (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for
43 the same building as calculated using the performance requirements related to plumbing under
44 the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be
45 used for irrigation systems for major facility construction projects. For every major facility
46 renovation project of a public agency, the Department shall determine on a project-by-project
47 basis what reduced level of outdoor potable water use or harvested stormwater use, if any, is a
48 feasible requirement for the ~~project, project, but the~~ The Department shall not require a greater
49 reduction than is required under this subsection for a major facility construction project. To
50 reduce the potable outdoor water as required under this subsection, weather-based irrigation

1 controllers, landscape materials that are water use ~~efficient~~ efficient, and irrigation strategies
2 that include reuse and recycling of the water may be used."

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

4 **"§ 143-215.1. Control of sources of water pollution; permits required.**

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

- 9 (1) Make any outlets into the waters of the State.
- 10 (2) Construct or operate any sewer system, treatment works, or disposal system
11 within the State.
- 12 (3) Alter, extend, or change the construction or method of operation of any
13 sewer system, treatment works, or disposal system within the State.
- 14 (4) Increase the quantity of waste discharged through any outlet or processed in
15 any treatment works or disposal system to any extent that would result in
16 any violation of the effluent standards or limitations established for any
17 point source or that would adversely affect the condition of the receiving
18 waters to the extent of violating any applicable standard.
- 19 (5) Change the nature of the waste discharged through any disposal system in
20 any way that would exceed the effluent standards or limitations established
21 for any point source or that would adversely affect the condition of the
22 receiving waters in relation to any applicable standards.
- 23 (6) Cause or permit any waste, directly or indirectly, to be discharged to or in
24 any manner intermixed with the waters of the State in violation of the water
25 quality standards applicable to the assigned classifications or in violation of
26 any effluent standards or limitations established for any point source, unless
27 allowed as a condition of any permit, special order or other appropriate
28 instrument issued or entered into by the Commission under the provisions of
29 this Article.
- 30 (7) Cause or permit any wastes for which pretreatment is required by
31 pretreatment standards to be discharged, directly or indirectly, from a
32 pretreatment facility to any disposal system or to alter, extend or change the
33 construction or method of operation or increase the quantity or change the
34 nature of the waste discharged from or processed in that facility.
- 35 (8) Enter into a contract for the construction and installation of any outlet, sewer
36 system, treatment works, pretreatment facility or disposal system or for the
37 alteration or extension of any such facility.
- 38 (9) Dispose of sludge resulting from the operation of a treatment works,
39 including the removal of in-place sewage sludge from one location and its
40 deposit at another location, consistent with the requirement of the Resource
41 Conservation and Recovery Act and regulations promulgated pursuant
42 thereto.
- 43 (10) Cause or permit any pollutant to enter into a defined managed area of the
44 State's waters for the maintenance or production of harvestable freshwater,
45 estuarine, or marine plants or animals.
- 46 (11) Cause or permit discharges regulated under G.S. 143-214.7 that result in
47 water pollution.
- 48 (12) Construct or operate an animal waste management system, as defined in
49 G.S. 143-215.10B, without obtaining a permit under either this Part or Part
50 1A of this Article.

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

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

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

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

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

28 (a5) No permit shall be required to enter into a contract for the construction, installation,
29 alteration, or extension of any sewer system, treatment works, or disposal system or to
30 construct, install, alter, extend, or change the operation of any sewer system, treatment works,
31 or disposal system within the State when the system's or work's principal function is to conduct,
32 treat, equalize, neutralize, stabilize, recycle, or dispose of industrial waste or sewage from an
33 industrial facility and the discharge of the industrial waste or sewage is authorized under a
34 permit issued for the discharge of the industrial waste or sewage into the waters of the State.

35"

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

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

- 38 (1) Constructed by the United States Army Corps of Engineers, the Tennessee
39 Valley Authority, or another agency of the United States government, when
40 the agency designed or approved plans for the dam and supervised its
41 construction.
- 42 (2) Constructed with financial assistance from the United States Soil
43 Conservation Service, when that agency designed or approved plans for the
44 dam and supervised its construction.
- 45 (3) Licensed by the Federal Energy Regulatory Commission, or for which a
46 license application is pending with the Federal Energy Regulatory
47 Commission.
- 48 (4) For use in connection with electric generating facilities regulated by the
49 Nuclear Regulatory Commission.

- 1 (5) Under a single private ownership that provides protection only to land or
2 other property under the same ownership and that does not pose a threat to
3 human life or property below the dam.
4 (6) That is less than ~~15~~25 feet in height or that has an impoundment capacity of
5 less than ~~40~~50 acre-feet, unless the Department determines that failure of
6 the dam could result in loss of human life or significant damage to property
7 below the dam.
8 (7) Constructed for the purpose of providing water for agricultural use, when a
9 person who is licensed as a professional engineer under Chapter 89C of the
10 General Statutes designed or approved plans for the dam and supervised its
11 construction."

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

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

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

- 20 ...
21 (8) The costs of a site investigation required by the Department for the purpose
22 of determining whether a release from a tank system has occurred, whether
23 or not the investigation confirms that a release has occurred. This
24 subdivision shall not be construed to allow reimbursement for costs of
25 investigations that are part of routine leak detection procedures required by
26 statute or rule."

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

28 "(b1) In the event that two or more discharges or releases at any one facility, the first of
29 which was discovered or reported on or after 30 June 1988, result in more than one plume of
30 soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the
31 payment of the costs of the cleanup of environmental damage as required by
32 G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate
33 maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount
34 shall be calculated as follows:

- 35 (1) Each discharge or release shall be considered separately as if it were the only
36 discharge or release, and the cost for which the owner or operator is
37 responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this
38 section, whichever are applicable, shall be determined for each discharge or
39 release. For each discharge or release for which subdivision (4) of subsection
40 (b) of this section is applicable, the cost for which the owner or operator is
41 responsible, for the purpose of this subsection, shall be seventy-five
42 thousand dollars (\$75,000). For purposes of this subsection, two or more
43 discharges or releases that result in a single plume of soil, surface water, or
44 groundwater contamination shall be considered as a single discharge or
45 release.
46 (2) The multiple discharge amount shall be the lesser of:
47 a. The sum of all the costs determined as set out in subdivision (1) of
48 this subsection; or
49 b. The product of the highest of the costs determined as set out in
50 subdivision (1) of this subsection multiplied by one and one-half
51 (1½).

1 (3) If an owner or operator elects to cleanup a separate discharge or release for
2 which the owner or operator is not responsible, the responsible party for the
3 other discharge cannot be identified, and the discharges are commingled, the
4 owner or operator shall only be responsible for those costs applicable to the
5 discharge for which the owner or operator is actually the responsible party."

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

8 "(i) During each fiscal year, the Department shall use up to one million dollars
9 (\$1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to
10 be conducted by the Department of discharges or releases for which a responsible party has
11 been identified but for which the responsible party can demonstrate that undertaking the costs
12 of assessment and cleanup will impose a severe financial hardship. The Commission shall
13 adopt rules to define severe financial hardship; establish criteria for assistance due to severe
14 financial hardship pursuant to this section; and establish a process for evaluation and
15 determinations of eligibility with respect to applications for assistance due to severe financial
16 hardship. The rules shall provide that the determinations of eligibility shall be made by the
17 Petroleum Underground Storage Tank Funds Council established under G.S. 143-215.94O."

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

19 "**§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.**

20 ...

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

47 "

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

49 "**§ 143-215.94T. Adoption and implementation of regulatory program.**

50 ...

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

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

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

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

29 **SECTION 11.6.(a)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation
30 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for
31 Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed
32 after January 1, 1991, shall not be required to provide secondary containment until January 1,
33 2020.

34 **SECTION 11.6.(b)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation
35 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for
36 Existing UST Systems Located in Areas Defined in Rule .0301(d)), the Commission shall
37 establish a process for the grant of variances from the setbacks required for UST systems from
38 certain public water supply wells, particularly those that serve only a single facility which are
39 not community water systems, if the Commission finds facts to demonstrate that such variance
40 will not endanger human health and welfare or groundwater.

41 **SECTION 11.6.(c)** No later than January 1, 2014, the Environmental Management
42 Commission shall adopt rules consistent with the provisions of Section 11.6(a) and Section
43 11.6(b) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission
44 pursuant to this section shall be substantively identical to the provisions of Section 11.6(a) and
45 Section 11.6(b) of this act.

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

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

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

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

9 **"§ 143-350. Definitions.**

10 As used in this Article:

11 ...

12 (3a) "Gray water" means water that is discharged as waste from bathtubs,
13 showers, wash basins, and clothes washers. "Gray water" does not include
14 water that is discharged from toilets or kitchen sinks.

15 (3b) "Gray water system" means a water reuse system that is contained within a
16 single family residence or multiunit residential or commercial building that
17 filters gray water or captured rain water and reuses it for nonpotable
18 purposes such as toilet flushing and irrigation.

19 "

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

21 **"§ 143-355.5. Water reuse; policy; rule making.**

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

30 (1) The relocation is necessary to create an approved comprehensive wastewater
31 reuse program.

32 (2) The reuse program provides significant reuse benefits.

33 (3) The relocated discharge will comply with all applicable water quality
34 standards; will not result in degradation of water quality in the receiving
35 waters; will not contribute to water quality impairment in the receiving
36 watershed; and will result in net benefits to water quality, such as the
37 elimination of a wastewater discharge in a nutrient sensitive river basin.

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

41 (1) Identify acceptable uses of reclaimed water, including toilet flushing, fire
42 protection, decorative water features, and landscape irrigation.

43 (2) Facilitate the permitting of reclaimed water systems.

44 (3) Establish standards for reclaimed water systems that are adequate to prevent
45 the direct distribution of reclaimed water as potable water.

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

48 (1) Identify acceptable uses of gray water, including toilet flushing, fire
49 protection, decorative water features, and landscape irrigation.

50 (2) Facilitate the permitting of gray water systems.

1 (3) Establish standards, in coordination with the Commission for Public Health,
2 for gray water systems that protect public health and safety and the
3 environment and reduce the use of potable water within individual
4 structures.

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

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

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

11 (1) Wastewater collection, treatment, and disposal systems designed to
12 discharge effluent to the land surface or surface waters.

13 (2) Wastewater systems designed for groundwater remediation, groundwater
14 injection, or landfill leachate collection and disposal.

15 (3) Wastewater systems designed for the complete recycle or reuse of industrial
16 process wastewater.

17 (4) Gray water systems as defined in G.S. 143-350."

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

20 "**§ 153A-145. Limitations on regulating cisterns and rain barrels.**

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

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

28 "**§ 160A-202. Limitations on regulating cisterns and rain barrels.**

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

34 **SECTION 13.** Section 5 of S.L. 2007-438, as amended by Section 3(b) of S.L.
35 2009-484 and Section 19 of S.L. 2010-180, reads as rewritten:

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

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

42 "**SECTION 2.(b)** Implementation. – Notwithstanding sub-subdivision (c) of subdivision
43 (6) of Wastewater Discharge Rule 15A NCAC 02B .0270, each existing discharger with a
44 permitted flow greater than or equal to 0.1 million gallons per day (MGD) shall limit its total
45 nitrogen discharge to its active individual discharge allocation as defined or modified pursuant
46 to Wastewater Discharge Rule 15A NCAC 02B .0270 no later than calendar year ~~2016~~,2020."

47 **SECTION 14.(b)** Section 3(d) of S.L. 2009-216 reads as rewritten:

48 "**SECTION 3.(d)** Control of Nutrient Loading From Existing Development. – The
49 Department shall require implementation of reasonable nutrient load reduction measures for
50 existing development in each subwatershed of the Jordan Reservoir, as provided in this act. The
51 Department shall determine whether nutrient load reduction measures for existing development

1 are necessary in each subwatershed of Jordan Reservoir and require implementation of
2 reasonable nutrient reduction measures in accordance with an adaptive management program as
3 follows:

4 ...
5 (2) Stage 2 Adaptive Management Program to Control Nutrient Loading From
6 Existing Development.

7 a. If the March 1, 2014 monitoring report or any subsequent monitoring
8 report for the Upper New Hope Creek Arm of Jordan Reservoir
9 required under Section 3(c) of this act shows that nutrient-related
10 water quality standards are not being achieved, a municipality or
11 county located in whole or in part in the subwatershed of that arm of
12 Jordan Reservoir shall develop and implement a Stage 2 adaptive
13 management program to control nutrient loading from existing
14 development within the subwatershed, as provided in this act. If the
15 March 1, ~~2017~~ 2020 monitoring report or any subsequent monitoring
16 report for the Haw River Arm or the Lower New Hope Creek Arm of
17 Jordan Reservoir required under Section 3(c) of this act shows that
18 nutrient-related water quality standards are not being achieved, a
19 municipality or county located in whole or in part in the
20 subwatershed of that arm of Jordan Reservoir shall develop and
21 implement a Stage 2 adaptive management program to control
22 nutrient loading from existing development within the subwatershed,
23 as provided in this act. The Department shall defer development and
24 implementation of Stage 2 adaptive management programs to control
25 nutrient loading from existing development required in a
26 subwatershed by this subdivision if it determines that additional
27 reductions in nutrient loading from existing development in that
28 subwatershed will not be necessary to achieve nutrient-related water
29 quality standards. In making this determination, the Department shall
30 consider the anticipated effect of measures implemented or scheduled
31 to be implemented to reduce nutrient loading from sources in the
32 subwatershed other than existing development. If any subsequent
33 monitoring report for an arm of Jordan Reservoir required under
34 Section 3(c) of this act shows that nutrient-related water quality
35 standards have not been achieved, the Department shall notify the
36 municipalities and counties located in whole or in part in the
37 subwatershed of that arm of Jordan Reservoir and the municipalities
38 and counties shall develop and implement a Stage 2 adaptive
39 management program as provided in this subdivision.

40"

41 **SECTION 15.(a)** Notwithstanding G.S. 150B-19, as amended by S.L. 2011-13, the
42 Commission for Public Health may adopt rules to incorporate all or part of the United States
43 Food and Drug Administration Food Code 2009 and to require that employees of
44 establishments regulated under subsections (a) and (a2) of G.S. 130A-248 be certified in food
45 protection in accordance with the United States Food and Drug Administration Food Code
46 2009.

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

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

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

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

5 (1) The well supplies water to a noncommunity water system as defined in
6 G.S. 130A-313(10)(b) or supplies water to a business or institution, such as
7 a school, that has become a noncommunity water system through an increase
8 in the number of people served by the well.

9 (2) It is impracticable, taking into consideration feasibility and cost, for the
10 public water system to comply with the minimum horizontal separation
11 distance set out in the applicable sub-subpart of 15A NCAC 18C .0203(2).

12 (3) There is no reasonable alternative source of drinking water available to the
13 public water supply system.

14 (4) The granting of the variance will not result in an unreasonable risk to public
15 health.

16 (b) A variance from the minimum horizontal separation distances set out in 15A NCAC
17 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) shall require that the noncommunity public
18 water supply well meet the following requirements:

19 (1) The well shall comply with the minimum horizontal separation distances set
20 out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) to the
21 maximum extent practicable.

22 (2) The well shall meet a minimum horizontal separation distance of 25 feet
23 from a building, mobile home, or other permanent structure that is not used
24 primarily to house animals.

25 (3) The well shall meet a minimum horizontal separation distance of 100 feet
26 from any animal house or feedlot and from cultivated areas to which
27 chemicals are applied.

28 (4) The well shall meet a minimum horizontal separation distance of 50 feet
29 from surface water.

30 (5) The well shall comply with all other requirements for public well water
31 supplies set out in 15A NCAC 18C .0203.

32 **SECTION 16.2.** Rule Making. – The Commission for Public Health shall adopt
33 rules that are substantively identical to the provisions of Section 16.1. The Commission may
34 reorganize or renumber any of the rules to which this section applies at its discretion. Rules
35 adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14.
36 Rules adopted pursuant to this section shall become effective as provided in
37 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
38 G.S. 150B-21.3(b2).

39 **SECTION 16.3.** Effective Date. – Section 16.1 of this act expires when permanent
40 rules to replace Section 16.1 have become effective as provided by Section 16.2 of this act.

41 **SECTION 17.** Part 1 of Article 21 of Chapter 143 of the General Statutes is
42 amended by adding a new section to read:

43 **"§ 143-214.18. Exemption to riparian buffer requirements for certain private properties**
44 **in the Neuse River and Tar-Pamlico River Basins.**

45 (a) Absent a requirement of federal law or an imminent threat to public health or safety,
46 the temporary rules adopted July 22, 1997, January 22, 1998, April 22, 1998, and June 22,
47 1999, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0233,
48 regarding the protection and maintenance of existing riparian buffers in the Neuse River and
49 Tar-Pamlico River Basins shall not apply to any tract of land that meets all of the following
50 criteria:

51 (1) The property is private property.

1 (2) Prior to August 1, 2000, the property was private property and was platted
2 and recorded in the register of deeds in the county where the property is
3 located.

4 (3) With the exception of 15A NCAC 02B .0233, the use of the property
5 complies with the rules and other laws regulating and applicable to that
6 property prior to August 1, 2000.

7 (b) If a property described in subsection (a) of this section is converted to a use that
8 does not comply with subdivisions (1) and (3) of subsection (a) of this section, then 15A
9 NCAC 02B .0233 shall apply."

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

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

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

20 **SECTION 18.(d)** Additional Rule-Making Authority. – The Board shall adopt a
21 rule to replace Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. Notwithstanding
22 G.S. 150B-19(4), the rule adopted by the Board pursuant to this section shall be substantively
23 identical to the provisions of Section 18(c) of this act. Rules adopted pursuant to this section
24 are not subject to the publication of notice of text or public hearing requirements of
25 G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9
26 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as
27 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
28 provided by G.S. 150B-21.3(b2).

29 **SECTION 19.** Section 6 of S.L. 2007-523 reads as rewritten:

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

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

41 **SECTION 21.** In order to ensure the ongoing delivery of services by the nonpoint
42 source pollution control programs of the Division of Forest Resources and the Division of Soil
43 and Water Conservation, the Division of Water Quality in the Department of Environment and
44 Natural Resources shall transfer Clean Water Act (CWA) Section 319 Nonpoint Source
45 Management Program grant funds to the Division of Forest Resources and Division of Soil and
46 Water Conservation in an amount that is no less than the average annual amount of funding
47 received by each of those two Divisions over the two most recent fiscal bienniums. In the
48 event that the level of Section 319 grants funds received by the Department of Environment
49 and Natural Resources by the United States Environmental Protection Agency is increased or
50 decreased in any funding cycle, the level of funding received by the Division of Forest
51 Resources and the Division of Soil and Water Conservation shall be adjusted proportionally.

1 **SECTION 22.** G.S. 130A-290(a)(35) reads as rewritten:

2 "(35) "Solid waste" has the same meaning as in 40 Code of Federal Regulations §
3 261.2 (July 1, 2010 Edition).

4 ~~means any hazardous or nonhazardous garbage, refuse or sludge from a~~
5 ~~waste treatment plant, water supply treatment plant or air pollution control~~
6 ~~facility, domestic sewage and sludges generated by the treatment thereof in~~
7 ~~sanitary sewage collection, treatment and disposal systems, and other~~
8 ~~material that is either discarded or is being accumulated, stored or treated~~
9 ~~prior to being discarded, or has served its original intended use and is~~
10 ~~generally discarded, including solid, liquid, semisolid or contained gaseous~~
11 ~~material resulting from industrial, institutional, commercial and agricultural~~
12 ~~operations, and from community activities. 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. However, any sludges that meet the criteria for~~
26 ~~hazardous waste under RCRA shall also be a solid waste for~~
27 ~~the purposes of this Article.~~

28 e. ~~Oils and other liquid hydrocarbons controlled under Article 21A of~~
29 ~~Chapter 143 of the General Statutes. However, any oils or other~~
30 ~~liquid hydrocarbons that meet the criteria for hazardous waste under~~
31 ~~RCRA shall also be a solid waste for the purposes of this Article.~~

32 d. ~~Any source, special nuclear or byproduct material as defined by the~~
33 ~~Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).~~

34 e. ~~Mining refuse covered by the North Carolina Mining Act, G.S. 74-46~~
35 ~~through 74-68 and regulated by the North Carolina Mining~~
36 ~~Commission (as defined under G.S. 143B-290). However, any~~
37 ~~specific mining waste that meets the criteria for hazardous waste~~
38 ~~under RCRA shall also be a solid waste for the purposes of this~~
39 ~~Article.~~

40 f. ~~Recovered material."~~

41 **SECTION 23.** Except as otherwise provided, this act is effective when it becomes
42 law. Section 8(b) of this act applies to every major facility construction project, as defined in
43 G.S. 143-135.36, and every major facility renovation project, as defined in G.S. 143-135.36, of
44 a public agency, as defined in G.S. 143-135.36, that has not entered the schematic design phase
45 prior to the effective date of this act.