

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

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**SENATE BILL 729  
PROPOSED COMMITTEE SUBSTITUTE S729-PCS15451-RIx-40**

Short Title: Coal Ash Management Act of 2014.

(Public)

Sponsors:

Referred to:

May 15, 2014

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



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

48 The General Assembly of North Carolina enacts:  
49

1 **PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL**  
2 **DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE**  
3 **IMPOUNDMENTS; MORATORIUM ON RATE CASES**

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

6 **"§ 62-133.13. Recovery of costs related to unlawful discharges from coal combustion**  
7 **residuals surface impoundments to the surface waters of the State.**

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

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

17 **SECTION 2.(a)** Moratorium on Cost Recovery. – The Utilities Commission shall  
18 not issue an order authorizing an electric public utility the recovery of any additional costs  
19 related to coal combustion residuals surface impoundments until the end of the moratorium  
20 provided in this section. For the purposes of this section, "coal combustion residuals surface  
21 impoundments" has the same meaning as in G.S. 130A-309.201. The Utilities Commission  
22 shall not enter a final order granting an increase in base rates of an electric public utility for  
23 costs related to coal combustion residuals surface impoundments under G.S. 62-133 or  
24 G.S. 62-134 prior to January 15, 2015.

25 **SECTION 2.(b)** Purpose of Moratorium. – The purpose of the moratorium is to  
26 allow the State to study the disposition of coal combustion residuals surface impoundments,  
27 including any final rules adopted by the United States Environmental Protection Agency on the  
28 regulation of coal combustion residuals.  
29

30 **PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL**  
31 **COMBUSTION RESIDUALS**

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

34 "Part 2I. Coal Ash Management.

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

36 **"§ 130A-309.200. Title.**

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

38 **"§ 130A-309.201. Definitions.**

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

- 41 (1) "Beneficial and beneficial use" means projects promoting public health and  
42 environmental protection, offering equivalent success relative to other  
43 alternatives, and preserving natural resources.  
44 (2) "Boiler slag" means the molten bottom ash collected at the base of slag tap  
45 and cyclone type furnaces that is quenched with water. It is made up of hard,  
46 black, angular particles that have a smooth, glassy appearance.  
47 (3) "Bottom ash" means the agglomerated, angular ash particles formed in  
48 pulverized coal furnaces that are too large to be carried in the flue gases and  
49 collect on the furnace walls or fall through open grates to an ash hopper at  
50 the bottom of the furnace.

- 1           (4)    "Coal combustion products" means fly ash, bottom ash, boiler slag, or flue  
2                   gas desulfurization materials, which are beneficially used, including use for  
3                   structural fill.
- 4           (5)    "Coal combustion residuals" has the same meaning as defined in  
5                   G.S. 130A-290.
- 6           (6)    "Coal combustion residuals surface impoundment" means a topographic  
7                   depression, excavation, or diked area that is: (i) primarily formed from  
8                   earthen materials; (ii) without a base liner approved for use by Article 9 of  
9                   Chapter 130A of the General Statutes or rules adopted thereunder for a  
10                  combustion products landfill or coal combustion residuals landfill, industrial  
11                  landfill, or municipal solid waste landfill; and (iii) designed to hold  
12                  accumulated coal combustion residuals in the form of liquid wastes, wastes  
13                  containing free liquids, or sludges, and that is not backfilled or otherwise  
14                  covered during periods of deposition. For purposes of this Part, "coal  
15                  combustion residuals surface impoundment" shall only include  
16                  impoundments owned by a public utility, as defined in G.S. 62-3. "Coal  
17                  combustion residuals surface impoundment" includes all of the following:
- 18                  a.       An impoundment that is dry due to the deposited liquid having  
19                        evaporated, volatilized, or leached.
- 20                  b.       An impoundment that is wet with exposed liquid.
- 21                  c.       Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and  
22                        sludge pits, when these structures are designed to hold accumulated  
23                        coal combustion residuals.
- 24                  d.       A coal combustion residuals surface impoundment that has been  
25                        covered with soil after the final deposition of coal combustion  
26                        residuals at the impoundment.
- 27           (7)    "Commission" means the Environmental Management Commission.
- 28           (8)    "Fly ash" means the very fine, powdery material, composed mostly of silica  
29                    with nearly all particles spherical in shape, which is a product of burning  
30                    finely ground coal in a boiler to produce electricity and is removed from the  
31                    plant exhaust gases by air emission control devices.
- 32           (9)    "Flue gas desulfurization material" means the material produced through a  
33                    process used to reduce sulfur dioxide emissions from the exhaust gas system  
34                    of a coal-fired boiler. The physical nature of these materials varies from a  
35                    wet sludge to a dry powdered material, depending on the process, and their  
36                    composition comprises either sulfites, sulfates, or a mixture thereof.
- 37           (10)   "Mine" means an area of land from which minerals, inorganic and organic,  
38                    have been extracted from their natural deposits.
- 39           (11)   "Minerals" means soil, clay, coal, phosphate, metallic ore, and any other  
40                    solid material or substance of commercial value found in natural deposits on  
41                    or in the earth.
- 42           (12)   "Owner" or "owner of a coal combustion residuals surface impoundment"  
43                    means a public utility, as defined in G.S. 62-3, that owns a coal combustion  
44                    residuals surface impoundment.
- 45           (13)   "Receptor" means any human, plant, animal, or structure which is, or has the  
46                    potential to be, affected by the release or migration of contaminants. Any  
47                    well constructed for the purpose of monitoring groundwater and contaminant  
48                    concentrations shall not be considered a receptor.
- 49           (14)   "Structural fill" means an engineered fill with a projected beneficial end use  
50                    constructed using coal combustion products that are properly placed and  
51                    compacted. For purposes of this Part, the term includes fill used to reclaim

1 abandoned mines and for embankments, greenscapes, foundations,  
2 construction foundations, and for bases/sub-bases under a structure or a  
3 footprint of a paved road, parking lot, sidewalk, walkway, or similar  
4 structure.

5 (15) "Use or reuse of coal combustion products" means the procedure whereby  
6 coal combustion products are directly used as either of the following:

7 a. As an ingredient in an industrial process to make a product, unless  
8 distinct components of the coal combustion products are recovered as  
9 separate end products.

10 b. In a function or application as an effective substitute for a  
11 commercial product or natural resource.

12 **"§ 130A-309.202. Coal Ash Management Commission.**

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

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

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

21 (2) One appointed by the General Assembly upon recommendation of the  
22 President Pro Tempore of the Senate in accordance with G.S. 120-121 who  
23 shall at the time of appointment have special training or scientific expertise  
24 in waste management, including solid waste disposal, hauling, or beneficial  
25 use.

26 (3) One appointed by the General Assembly upon recommendation of the  
27 President Pro Tempore of the Senate in accordance with G.S. 120-121 who  
28 shall at the time of appointment be a licensed physician or a person with  
29 experience in public health.

30 (4) One appointed by the General Assembly upon recommendation of the  
31 Speaker of the House of Representatives in accordance with G.S. 120-121  
32 who shall at the time of appointment be a member of a nongovernmental  
33 conservation interest.

34 (5) One appointed by the General Assembly upon recommendation of the  
35 Speaker of the House of Representatives in accordance with G.S. 120-121  
36 who shall at the time of appointment be actively employed by, or recently  
37 retired from, an industrial manufacturing facility.

38 (6) One appointed by the General Assembly upon recommendation of the  
39 Speaker of the House of Representatives in accordance with G.S. 120-121  
40 who shall at the time of appointment have experience in the use of coal  
41 combustion residuals as structural fill for construction or development  
42 projects.

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

45 (8) One appointed by the Governor who shall at the time of appointment be a  
46 representative of an electric membership corporation organized under Article  
47 2 of Chapter 117 of the General Statutes.

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

1       (c) Chair; Vice-Chair. – The Commission shall have a chair and a vice-chair. The  
2 Commission shall elect one of its members to serve as chair and one of its members to serve as  
3 vice-chair. The chair and vice-chair shall serve two-year terms.

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

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

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

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

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

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

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

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

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

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

37       (j) Conflicts of Interest; Disclosure. – The Governor shall require adequate disclosure  
38 of potential conflicts of interest by members. The Governor, by executive order, shall  
39 promulgate criteria regarding conflicts of interest and disclosure thereof for determining the  
40 eligibility of persons under this subsection, giving due regard to the requirements of federal  
41 legislation and, for this purpose, may promulgate rules, regulations, or guidelines in  
42 conformance with those established by any federal agency interpreting and applying provisions  
43 of federal law.

44       (k) Covered Persons. – All members of the Commission are covered persons for the  
45 purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As  
46 covered persons, members of the Commission shall comply with the applicable requirements of  
47 the State Government Ethics Act, including mandatory training, the public disclosure of  
48 economic interests, and ethical standards for covered persons. Members of the Commission  
49 shall comply with the provisions of the State Government Ethics Act to avoid conflicts of  
50 interest.

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

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

10       (n) Administrative Location; Independence. – The Commission shall be  
11 administratively located in the Division of Emergency Management of the Department of  
12 Public Safety. The Commission shall exercise all of its powers and duties independently and  
13 shall not be subject to the supervision, direction, or control of the Division or Department.

14 **"§ 130A-309.203. Expedited permit review.**

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

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

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

45 **"§ 130A-309.204. Reports.**

46       (a) The Department shall submit quarterly written reports to the Environmental Review  
47 Commission and the Coal Ash Management Commission on its operations, activities,  
48 programs, and progress with respect to its obligations under this Part concerning all coal  
49 combustion residuals surface impoundments. At a minimum, the report shall include  
50 information concerning the status of assessment, corrective action, prioritization, and closure  
51 for each coal combustion residual surface impoundment and information on costs connected

1 therewith. The report shall include an executive summary of each annual Groundwater  
2 Protection and Restoration Report submitted to the Department by the operator of any coal  
3 combustion residuals surface impoundments pursuant to G.S. 130A-309.209(d) and a summary  
4 of all groundwater sampling, protection, and restoration activities related to the impoundment  
5 for the preceding year. The report shall also include an executive summary of each annual  
6 Surface Water Protection and Restoration Report submitted to the Department by the operator  
7 of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.210(e) and  
8 a summary of all surface water sampling, protection, and restoration activities related to the  
9 impoundment for the preceding year, including the status of the identification, assessment, and  
10 correction of unpermitted discharges from coal combustion residuals surface impoundments to  
11 the surface waters of the State. The Department shall supplement the written reports required  
12 by this subsection with additional written and oral reports as may be requested by the  
13 Environmental Review Commission. The Department shall submit the written reports required  
14 by this subsection whether or not the General Assembly is in session at the time the report is  
15 due.

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

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

- 25 (1) The volume of coal combustion residuals and products produced.
- 26 (2) The volume of coal combustion residuals disposed.
- 27 (3) The volume of coal combustion products used in structural fill projects.
- 28 (4) The volume of coal combustion products beneficially used, other than for  
29 structural fill.

30 **"§ 130A-309.205. Local ordinances regulating management of coal combustion residuals**  
31 **and coal combustion products invalid; petition to preempt local ordinance.**

32 (a) It is the intent of the General Assembly to maintain a uniform system for the  
33 management of coal combustion residuals and coal combustion products, including matters of  
34 disposal and beneficial use, and to place limitations upon the exercise by all units of local  
35 government in North Carolina of the power to regulate the management of coal combustion  
36 residuals and coal combustion products by means of ordinances, property restrictions, zoning  
37 regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or  
38 other local authorities to adopt local ordinances, including those imposing taxes, fees, or  
39 charges or regulating health, environment, or land use, all provisions of local ordinances,  
40 including those regulating land use, adopted by counties, municipalities, or other local  
41 authorities that regulate or have the effect of regulating the management of coal combustion  
42 residuals and coal combustion products within the jurisdiction of a local government are  
43 invalidated, to the extent necessary to effectuate the purposes of this Part, that do the following:

- 44 (1) Place any restriction or condition not placed by this Part upon management  
45 of coal combustion residuals and coal combustion products within any  
46 county, city, or other political subdivision.
- 47 (2) Conflict or are in any manner inconsistent with the provisions of this Part.

48 (b) If a local zoning or land-use ordinance imposes requirements, restrictions, or  
49 conditions that are generally applicable to development, including, but not limited to, setback,  
50 buffer, and stormwater requirements, and coal combustion residuals and coal combustion  
51 products would be regulated under the ordinance of general applicability, the operator of the



1 proposed activities may petition the Environmental Management Commission to review the  
2 matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the  
3 procedures in subsection (c) of this section and shall determine whether or to what extent to  
4 preempt the local ordinance to allow for the management of coal combustion residuals and coal  
5 combustion products.

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

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

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

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

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

36 (1) That there is a local ordinance that would regulate the management of coal  
37 combustion residuals and coal combustion products.

38 (2) That all legally required State and federal permits or approvals have been  
39 issued by the appropriate State and federal agencies or that all State and  
40 federal permit requirements have been satisfied and that the permits or  
41 approvals have been denied or withheld only because of the local ordinance.

42 (3) That local citizens and elected officials have had adequate opportunity to  
43 participate in the permitting process.

44 (4) That the project involving management of coal combustion residuals and  
45 coal combustion products will not pose an unreasonable health or  
46 environmental risk to the surrounding locality and that the operator has taken  
47 or consented to take reasonable measures to avoid or manage foreseeable  
48 risks and to comply to the maximum feasible extent with applicable local  
49 ordinances.

50 (f) If the Environmental Management Commission does not make all of the findings  
51 under subsection (e) of this section, the Commission shall not preempt the challenged local

1 ordinance. The Commission's decision shall be in writing and shall identify the evidence  
2 submitted to the Commission plus any additional evidence used in arriving at the decision.

3 (g) The decision of the Environmental Management Commission shall be final, unless a  
4 party to the action files a written appeal under Article 4 of Chapter 150B of the General  
5 Statutes, as modified by this section, within 30 days of the date of the decision. The record on  
6 appeal shall consist of all materials and information submitted to or considered by the  
7 Commission, the Commission's written decision, a complete transcript of the hearing, the  
8 specific findings required by subsection (e) of this section, and any minority positions on the  
9 specific findings required by subsection (e) of this section. The scope of judicial review shall be  
10 as set forth in G.S. 150B-51, except as this subsection provides regarding the record on appeal.

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

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

16 **"§ 130A-309.206. Federal preemption; severability.**

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

20 **"§ 130A-309.207. General rulemaking for Part.**

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

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

24 **"§ 130A-309.208. Generation, disposal, and use of coal combustion residuals.**

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

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

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

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

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

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

44 **"§ 130A-309.209. Groundwater assessment and corrective action; drinking water supply**  
45 **well survey and provision of alternate water supply; reporting.**

46 (a) Groundwater Assessment of Coal Combustion Residuals Surface Impoundments. –  
47 The owner of a coal combustion residuals surface impoundment shall conduct groundwater  
48 monitoring and assessment as provided in this subsection. The requirements for groundwater  
49 monitoring and assessment set out in this subsection are in addition to any other groundwater  
50 monitoring and assessment requirements applicable to the owners of coal combustion residuals  
51 surface impoundments.

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

- 6           a.     A description of all receptors and significant exposure pathways.  
7           b.     An assessment of the horizontal and vertical extent of soil and  
8           groundwater contamination for all contaminants confirmed to be  
9           present in groundwater in exceedance of groundwater quality  
10           standards.  
11           c.     A description of all significant factors affecting movement and  
12           transport of contaminants.  
13           d.     A description of the geological and hydrogeological features  
14           influencing the chemical and physical character of the contaminants.  
15           e.     A schedule for continued groundwater monitoring.  
16           f.     Any other information related to groundwater assessment required by  
17           the Department.

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

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

24           (4)   No later than 180 days from approval of the Groundwater Assessment Plan,  
25           the owner shall submit a Groundwater Assessment Report to the  
26           Department. The Report shall describe all exceedances of groundwater  
27           quality standards associated with the impoundment.

28           (b)   Corrective Action for the Restoration of Groundwater Quality. – The owner of a  
29           coal combustion residuals surface impoundment shall implement corrective action for the  
30           restoration of groundwater quality as provided in this subsection. The requirements for  
31           corrective action for the restoration of groundwater quality set out in this subsection are in  
32           addition to any other corrective action for the restoration of groundwater quality requirements  
33           applicable to the owners of coal combustion residuals surface impoundments.

34           (1)   No later than 90 days from submission of the Groundwater Assessment  
35           Report required by subsection (a) of this section, the owner of the coal  
36           combustion residuals surface impoundment shall submit a proposed  
37           Groundwater Corrective Action Plan to the Department for its review and  
38           approval. The Groundwater Corrective Action Plan shall provide for the  
39           restoration of groundwater in conformance with the requirements of  
40           Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative  
41           Code. The Groundwater Corrective Action Plan shall include, at a minimum,  
42           all of the following:

- 43           a.     A description of all exceedances of the groundwater quality  
44           standards, including any exceedances that the owner asserts are the  
45           result of natural background conditions.  
46           b.     A description of the methods for restoring groundwater in  
47           conformance with the requirements of Subchapter L of Chapter 2 of  
48           Title 15A of the North Carolina Administrative Code and a detailed  
49           explanation of the reasons for selecting these methods.  
50           c.     Specific plans, including engineering details, for restoring  
51           groundwater quality.

- 1           d.     A schedule for implementation of the Plan.  
2           e.     A monitoring plan for evaluating the effectiveness of the proposed  
3                 corrective action and detecting movement of any contaminant  
4                 plumes.  
5           f.     Any other information related to groundwater assessment required by  
6                 the Department.

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

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

14          (c)    Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No  
15                 later than October 1, 2014, the owner of a coal combustion residuals surface impoundment  
16                 shall conduct a Drinking Water Supply Well Survey that identifies all drinking water supply  
17                 wells within one-half mile down-gradient from the established compliance boundary of the  
18                 impoundment and submit the Survey to the Department. The Survey shall include well  
19                 locations, the nature of water uses, available well construction details, and information  
20                 regarding ownership of the wells. No later than December 1, 2014, the Department shall  
21                 determine, based on the Survey, which drinking water supply wells the owner is required to  
22                 sample and how frequently and for what period sampling is required. The Department shall  
23                 require sampling for drinking water supply wells where data regarding groundwater quality and  
24                 flow and depth in the area of any surveyed well provide a reasonable basis to predict that the  
25                 quality of water from the surveyed well may be adversely impacted by constituents associated  
26                 with the presence of the impoundment. No later than January 1, 2015, the owner shall initiate  
27                 sampling and water quality analysis of the drinking water supply wells. A property owner may  
28                 elect to have an independent third party selected from a laboratory certified by the Department's  
29                 Wastewater/Groundwater Laboratory Certification program sample wells located on their  
30                 property in lieu of sampling conducted by the owner of the coal combustion residuals surface  
31                 impoundment. The owner of the coal combustion residuals surface impoundment shall pay for  
32                 the reasonable costs of such sampling. Nothing in this subsection shall be construed to preclude  
33                 or impair the right of any property owner to refuse such sampling of wells on their property. If  
34                 the sampling and water quality analysis indicates that water from a drinking water supply well  
35                 exceeds groundwater quality standards for constituents associated with the presence of the  
36                 impoundment, the owner shall replace the contaminated drinking water supply well with an  
37                 alternate supply of potable drinking water. The alternate supply of potable drinking water shall  
38                 be supplied within 30 days of the Department's determination that there is an exceedance of  
39                 groundwater quality standards attributable to constituents associated with the presence of the  
40                 impoundment. The requirement to replace a contaminated drinking water supply well with an  
41                 alternate supply of potable drinking water set out in this subsection is in addition to any other  
42                 requirements to replace a contaminated drinking water supply well with an alternate supply of  
43                 potable drinking water applicable to the owners of coal combustion residuals surface  
44                 impoundments.

45          (d)    Reporting. – In addition to any other reporting required by the Department, the  
46                 owner of a coal combustion residuals surface impoundment shall submit an annual  
47                 Groundwater Protection and Restoration Report to the Department no later than January 31 of  
48                 each year. The Report shall include a summary of all groundwater monitoring, protection, and  
49                 restoration activities related to the impoundment for the preceding year, including the status of  
50                 the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater  
51                 Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any

1 contaminated drinking water supply wells. The owner of a coal combustion residuals surface  
2 impoundment shall also submit all information required to be submitted to the Department  
3 pursuant to this section to the Coal Ash Management Commission.

4 **"§ 130A-309.210. Identification, assessment, and correction of unpermitted discharges.**

5 (a) Identification of Unpermitted Discharges from Coal Combustion Residuals Surface  
6 Impoundments to the Surface Waters of the State. –

7 (1) The owner of a coal combustion residuals surface impoundment shall  
8 identify all unpermitted discharges from the impoundment to the surface  
9 waters of the State as provided in this subsection. The requirements for  
10 identifying all unpermitted discharges from an impoundment set out in this  
11 subsection are in addition to any other requirements for identifying  
12 unpermitted discharges applicable to the owners of coal combustion  
13 residuals surface impoundments.

14 (2) No later than December 31, 2014, the owner of a coal combustion residuals  
15 surface impoundment shall submit a topographic map that identifies the  
16 location of all: (i) outfalls from engineered channels designed or improved  
17 for the purpose of collecting water from the toe of the impoundment to the  
18 Department; and (ii) seeps discharging from the impoundment that are not  
19 captured by engineered channels designed or improved for the purpose of  
20 collecting water from the toe of the impoundment to the Department. The  
21 topographic map shall comply with all of the following:

- 22 a. Be at a scale as required by the Department.  
23 b. Specify the latitude and longitude of each toe drain outfall and each  
24 seep.  
25 c. Specify whether the discharge from each toe drain outfall and each  
26 seep is continuous or intermittent.  
27 d. Provide an average flow measurement of the discharge from each toe  
28 drain outfall and each seep, including a description of the method  
29 used to measure average flow.  
30 e. Specify whether the discharge from each toe drain outfall and seep  
31 identified reaches the surface waters of the State. If the discharge  
32 from a toe drain outfall or seep reaches the surface waters of the  
33 State, the map shall specify the latitude and longitude of where the  
34 discharge reaches the surface waters of the State.  
35 f. Any other information related to the topographic map required by the  
36 Department.

37 (b) Assessment of Unpermitted Discharges from Coal Combustion Residuals Surface  
38 Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals  
39 surface impoundment shall conduct an assessment of unpermitted discharges from the coal  
40 combustion residuals surface impoundment to the surface waters of the State as provided in this  
41 subsection. The requirements for assessment of unpermitted discharges from the coal  
42 combustion residuals surface impoundment to the surface waters of the State set out in this  
43 subsection are in addition to any other requirements for the assessment of unpermitted  
44 discharges from coal combustion residuals surface impoundments to surface waters of the State  
45 applicable to the owners of coal combustion residuals surface impoundments.

46 (1) No later than December 31, 2014, the owner of a coal combustion residuals  
47 surface impoundment shall submit a proposed Unpermitted Discharge  
48 Assessment Plan to the Department. The Unpermitted Discharge Assessment  
49 Plan shall include information sufficient to allow the Department to  
50 determine whether any unpermitted discharge, including a discharge from a  
51 toe drain outfall or seep, has reached the surface waters of the State and has

1 caused a violation of surface water quality standards. The Unpermitted  
2 Discharge Assessment Plan shall include, at a minimum, all of the  
3 following:

- 4 a. Upstream and downstream sampling locations within all channels  
5 that could potentially carry a discharge.  
6 b. A description of the surface water quality analyses that will be  
7 performed.  
8 c. A sampling schedule, including the frequency and duration of  
9 sampling activities.  
10 d. Reporting requirements.  
11 e. Any other information related to the assessment of unpermitted  
12 discharges required by the Department.

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

17 (3) No later than 30 days from the approval of the Unpermitted Discharge  
18 Assessment Plan, the owner shall begin implementation of the Plan in  
19 accordance with the Plan's schedule.

20 (c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion  
21 Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal  
22 combustion residuals surface impoundment shall implement corrective action to prevent  
23 unpermitted discharges from the coal combustion residuals surface impoundment to the surface  
24 waters of the State as provided in this subsection. The requirements for corrective action to  
25 prevent unpermitted discharges from coal combustion residuals surface impoundments to the  
26 surface waters of the State set out in this subsection are in addition to any other requirements  
27 for corrective action to prevent unpermitted discharges from coal combustion residuals surface  
28 impoundments to the surface waters of the State applicable to the owners of coal combustion  
29 residuals surface impoundments.

30 (1) If the Department determines, based on surface water quality sampling  
31 information provided in an Unpermitted Discharge Assessment Plan  
32 submitted pursuant to subsection (b) of this section, that an unpermitted  
33 discharge from a coal combustion residuals surface impoundment, including  
34 a discharge from a toe drain outfall or seep, has violated State or federal  
35 surface water quality standards, the Department shall notify the owner of the  
36 impoundment of its determination.

37 (2) No later than 30 days from the notification of violation, the owner of the  
38 coal combustion residuals surface impoundment shall submit a proposed  
39 Unpermitted Discharge Corrective Action Plan to the Department for its  
40 review and approval. The proposed Unpermitted Discharge Corrective  
41 Action Plan shall include, at a minimum, all of the following:

- 42 a. One of the following methods of proposed corrective action:  
43 1. Elimination of the unpermitted discharge.  
44 2. Capture and rerouting of the unpermitted discharge through a  
45 permitted outfall.  
46 3. Implementation of best management practices to prevent the  
47 unpermitted discharge.  
48 4. Application for a National Pollutant Discharge Elimination  
49 System (NPDES) permit amendment to bring the unpermitted  
50 discharge under permit regulations.

- 1                    b. A detailed explanation of the reasons for selecting the method of  
2                    corrective action.
- 3                    c. Specific plans, including engineering details, to prevent the  
4                    unpermitted discharge.
- 5                    d. A schedule for implementation of the Plan.
- 6                    e. A monitoring plan for evaluating the effectiveness of the proposed  
7                    corrective action.
- 8                    f. Any other information related to the correction of unpermitted  
9                    discharges required by the Department.
- 10                  (3) The Department shall approve the Unpermitted Discharge Corrective Action  
11                  Plan if it determines that the Plan complies with the requirements of this  
12                  subsection and will be sufficient to protect public health, safety, and welfare;  
13                  the environment; and natural resources.
- 14                  (4) No later than 30 days from the approval of the Unpermitted Discharge  
15                  Corrective Action Plan, the owner shall begin implementation of the Plan in  
16                  accordance with the Plan's schedule.
- 17                  (d) Identification of New Unpermitted Discharges. – No later than August 1, 2014, the  
18                  owner of a coal combustion residuals surface impoundment shall submit a proposed Plan for  
19                  the Identification of New Unpermitted Discharges to the Department for its review and  
20                  approval as provided in this subsection.
- 21                    (1) The proposed Plan for the Identification of New Unpermitted Discharges  
22                    shall include, at a minimum, all of the following:
- 23                    a. A procedure for routine inspection of the coal combustion residuals  
24                    surface impoundment to identify indicators of potential new  
25                    unpermitted discharges, including toe drain outfalls and seeps.
- 26                    b. A procedure for determining whether a new unpermitted discharge is  
27                    actually present.
- 28                    c. A procedure for notifying the Department when a new unpermitted  
29                    discharge is confirmed.
- 30                    d. Any other information related to the identification of new  
31                    unpermitted discharges required by the Department.
- 32                    (2) The Department shall approve the Plan for the Identification of New  
33                    Unpermitted Discharges if it determines that the Plan complies with the  
34                    requirements of this subsection and will be sufficient to protect public  
35                    health, safety, and welfare; the environment; and natural resources.
- 36                    (3) No later than 30 days from the approval of the Plan for the Identification of  
37                    New Unpermitted Discharges, the owner shall begin implementation of the  
38                    Plan in accordance with the Plan.
- 39                  (e) Reporting. – In addition to any other reporting required by the Department, the  
40                  owner of a coal combustion residuals surface impoundment shall submit an annual Surface  
41                  Water Protection and Restoration Report to the Department no later than January 31 of each  
42                  year. The Report shall include a summary of all surface water sampling, protection, and  
43                  restoration activities related to the impoundment for the preceding year, including the status of  
44                  the identification, assessment, and correction of unpermitted discharges from coal combustion  
45                  residuals surface impoundments to the surface waters of the State. The owner of a coal  
46                  combustion residuals surface impoundment shall also submit all information required to be  
47                  submitted to the Department pursuant to this section to the Coal Ash Management  
48                  Commission.
- 49                  **"§ 130A-309.211. Prioritization of coal combustion residuals surface impoundments.**
- 50                    (a) As soon as practicable, but no later than August 1, 2015, the Department shall  
51                    develop proposed classifications for all coal combustion residuals surface impoundments,

1 including active and retired sites, for the purpose of closure and remediation based on these  
2 sites' risks to public health, safety, and welfare; the environment; and natural resources and  
3 shall determine a schedule for closure and required remediation that is based on the degree of  
4 risk to public health, safety, and welfare; the environment; and natural resources posed by the  
5 impoundments and that gives priority to the closure and required remediation of impoundments  
6 that pose the greatest risk. In assessing the risk, the Department shall evaluate information  
7 received pursuant to G.S. 130A-309.209 and G.S. 130A-309.210 and any other information  
8 deemed relevant and, at a minimum, consider all of the following:

- 9 (1) Any imminent hazards to public health, safety, or welfare resulting from the  
10 impoundment.
- 11 (2) Structural condition and hazard potential of the impoundment.
- 12 (3) The proximity of surface waters to the impoundment and whether any  
13 surface waters are contaminated or imminently threatened by contamination  
14 as a result of the impoundment.
- 15 (4) Information concerning the horizontal and vertical extent of soil and  
16 groundwater contamination for all contaminants confirmed to be present in  
17 groundwater in exceedance of groundwater quality standards and all  
18 significant factors affecting contaminant transport.
- 19 (5) The location and nature of all receptors and significant exposure pathways.
- 20 (6) The geological and hydrogeological features influencing the movement and  
21 chemical and physical character of the contaminants.
- 22 (7) Amount and characteristics of coal combustion residuals in the  
23 impoundment.
- 24 (8) Any other factor the Department deems relevant to establishment of risk.

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

- 31 (1) The Department shall make copies of the written declaration issued pursuant  
32 to this subsection available for inspection as follows:
  - 33 a. A copy of the declaration shall be provided to the local health  
34 director.
  - 35 b. A copy of the declaration shall be provided to the public library  
36 located in closest proximity to the site in the county or counties in  
37 which the site is located.
  - 38 c. The Department shall post a copy of the declaration on the  
39 Department's Web site.
  - 40 d. The Department may place copies of the declaration in other  
41 locations so as to assure the availability thereof to the public.
- 42 (2) Before issuing a proposed classification of an impoundment as high-risk,  
43 intermediate-risk, or low-risk, the Department shall give notice of the written  
44 declaration issued pursuant to this subsection as follows:
  - 45 a. A notice and summary of the declaration shall be published weekly  
46 for a period of three consecutive weeks in a newspaper having  
47 general circulation in the county or counties where the site is located.
  - 48 b. Notice of the written declaration shall be given by first-class mail to  
49 persons who have requested such notice. Such notice shall include a  
50 summary of the written declaration and state the locations where a  
51 copy of the written declaration is available for inspection. The



- 1            Department shall maintain a mailing list of persons who request  
2            notice pursuant to this section.
- 3            c.        Notice of the written declaration shall be given by electronic mail to  
4            persons who have requested such notice. Such notice shall include a  
5            summary of the written declaration and state the locations where a  
6            copy of the written declaration is available for inspection. The  
7            Department shall maintain a mailing list of persons who request  
8            notice pursuant to this section.
- 9            (3)        No later than 60 days after issuance of the written declaration, the  
10           Department shall conduct a public meeting in the county or counties in  
11           which the site is located to explain the written declaration to the public. The  
12           Department shall give notice of the hearing at least 15 days prior to the date  
13           thereof by all of the following methods:
- 14           a.        Publication as provided in subdivision (1) of this subsection, with  
15           first publication to occur not less than 30 days prior to the scheduled  
16           date of the hearing.
- 17           b.        First-class mail to persons who have requested notice as provided in  
18           subdivision (2) of this subsection.
- 19           c.        Electronic mail to persons who have requested notice as provided in  
20           subdivision (2) of this subsection.
- 21           (4)        At least 30 days from the latest date on which notice is provided pursuant to  
22           subdivision (2) of this subsection shall be allowed for the receipt of written  
23           comment on the written declaration prior to issuance of a final risk  
24           classification. At least 20 days will be allowed for receipt of written  
25           comment following a hearing conducted pursuant to subdivision (3) of this  
26           subsection prior to issuance of a final risk classification.
- 27           (c)        Within 30 days of the receipt of all written comment as required by subdivision (4)  
28           of subsection (b) of this section, the Department shall submit a proposed classification for a  
29           coal combustion residuals surface impoundment to the Coal Ash Management Commission  
30           established pursuant to G.S. 130A-309.202. The Commission shall evaluate all information  
31           submitted in accordance with this Part related to the proposed classification and any other  
32           information the Commission deems relevant. The Commission shall only approve the proposed  
33           classification if it determines that the classification was developed in accordance with this  
34           section and that the classification accurately reflects the level of risk posed by the coal  
35           combustion residuals surface impoundment. The Commission shall issue its determination in  
36           writing, including findings in support of its determination. If the Commission fails to act on a  
37           proposed classification within 60 days of receipt of the proposed classification, the proposed  
38           classification shall be deemed approved. Parties aggrieved by a final decision of the  
39           Commission pursuant to this subsection may appeal the decision as provided under Article 4 of  
40           Chapter 150B of the General Statutes.
- 41           **§ 130A-309.212. Closure of coal combustion residuals surface impoundments.**
- 42           (a)        An owner of a coal combustion residuals surface impoundment shall submit a  
43           proposed Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's  
44           approval. If corrective action to restore groundwater has not been completed pursuant to the  
45           requirements of G.S. 130A-309.209(b), the proposed closure plan shall include provisions for  
46           completion of activities to restore groundwater in conformance with the requirements of  
47           Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. In addition,  
48           the following requirements, at a minimum, shall apply to such plans:
- 49           (1)        High-risk impoundments shall be closed as soon as practicable, but no later  
50           than December 31, 2019. A proposed closure plan for such impoundments  
51           must be submitted as soon as practicable, but no later than December 31,

1 2016. At a minimum, such impoundments shall be dewatered, and the owner  
2 of an impoundment shall either:

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

30 b. Remove all coal combustion residuals from the impoundment, return  
31 the former impoundment to a nonerosive and stable condition, and (i)  
32 transfer the coal combustion residuals for disposal in a coal  
33 combustion residuals landfill, industrial landfill, or municipal solid  
34 waste landfill or (ii) use the coal combustion products in a structural  
35 fill or other beneficial use as allowed by law. The use of coal  
36 combustion products (i) as structural fill shall be conducted in  
37 accordance with the requirements Subpart 3 of this Part and (ii) for  
38 other beneficial uses shall be conducted in accordance with the  
39 requirements of 15A NCAC 13B .1701, et seq., (Requirements for  
40 Beneficial Use of Coal Combustion By-Products).

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

47 (3) Low-risk impoundments shall be closed as soon as practicable, but no later  
48 than December 31, 2029. A proposed closure plan for such impoundments  
49 must be submitted as soon as practicable, but no later than December 31,  
50 2018. Such impoundments shall be dewatered. The Department shall require  
51 such sites to comply with the closure and post-closure requirements

1 established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of  
2 the North Carolina Administrative Code. The Department may require  
3 implementation of any other measure it deems necessary to protect public  
4 health, safety, and welfare; the environment; and natural resources, including  
5 imposition of institutional controls that are sufficient to protect public health,  
6 safety, and welfare; the environment; and natural resources.

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

8 a. Facility and coal combustion residuals surface impoundment  
9 description. – A description of the operation of the site that shall  
10 include, at a minimum, all of the following:

11 1. Site history and history of site operations, including details on  
12 the manner in which coal combustion residuals have been  
13 stored and disposed of historically.

14 2. Estimated volume of material contained in the impoundment.

15 3. Analysis of the structural integrity of dikes or dams  
16 associated with impoundment.

17 4. All sources of discharge into the impoundment, including  
18 volume and characteristics of each discharge.

19 5. Whether the impoundment is lined, and, if so, the  
20 composition thereof.

21 6. A summary of all information available concerning the  
22 impoundment as a result of inspections and monitoring  
23 conducted pursuant to this Part and otherwise available.

24 b. Site maps, which, at a minimum, illustrate all of the following:

25 1. All structures associated with the operation of any coal  
26 combustion residuals surface impoundment located on the  
27 site. For purposes of this sub-subdivision, the term "site" shall  
28 mean the land or waters within the property boundary of the  
29 applicable electric generating station.

30 2. All current and former coal combustion residuals disposal and  
31 storage areas on the site, including details concerning coal  
32 combustion residuals produced historically by the electric  
33 generating station and disposed of through transfer to  
34 structural fills.

35 3. The property boundary for the applicable site, including  
36 established compliance boundaries within the site.

37 4. All potential receptors within 2,640 feet from established  
38 compliance boundaries.

39 5. Topographic contour intervals of the site shall be selected to  
40 enable an accurate representation of site features and terrain  
41 and in most cases should be less than 20-foot intervals.

42 6. Locations of all sanitary landfills permitted pursuant to this  
43 Article on the site, which are actively receiving waste or are  
44 closed, as well as the established compliance boundaries and  
45 components of associated groundwater and surface water  
46 monitoring systems.

47 7. All existing and proposed groundwater monitoring wells  
48 associated with any coal combustion residuals surface  
49 impoundment on the site.



- 1                   1.     An account of the design of the proposed Closure Plan that is  
2                   based on the site hydrogeologic conceptual model developed  
3                   and includes (i) predictions on post-closure groundwater  
4                   elevations and groundwater flow directions and velocities,  
5                   including the effects on and from the potential receptors, and  
6                   (ii) predictions at the compliance boundary for substances  
7                   with concentrations determined to be in excess of the  
8                   groundwater quality standards for the substance established  
9                   Subchapter L of Chapter 2 of Title 15A of the North Carolina  
10                  Administrative Code.
- 11                  2.     Predictions that include the effects on the groundwater  
12                  chemistry and should describe migration, concentration,  
13                  mobilization, and fate for substances with concentrations  
14                  determined to be in excess of the groundwater quality  
15                  standards for the substance established by Subchapter L of  
16                  Chapter 2 of Title 15A of the North Carolina Administrative  
17                  Code pre- and post-closure, including the effects on and from  
18                  potential receptors.
- 19                  3.     A description of the groundwater trend analysis methods used  
20                  to demonstrate compliance with groundwater quality  
21                  standards for the substance established by Subchapter L of  
22                  Chapter 2 of Title 15A of the North Carolina Administrative  
23                  Code and requirements for corrective action of groundwater  
24                  contamination established by Subchapter L of Chapter 2 of  
25                  Title 15A of the North Carolina Administrative Code.
- 26                  e.     A description of any plans for beneficial use of the coal combustion  
27                  residuals in compliance with the requirements of Section .1200 of  
28                  Subchapter T of Chapter 2 of Title 15A of the North Carolina  
29                  Administrative Code and Section .1700 of Subchapter B of Chapter  
30                  13 of Title 15A of the North Carolina Administrative Code.
- 31                  f.     All engineering drawings, schematics, and specifications for the  
32                  proposed Closure Plan. If required by Chapter 89C of the General  
33                  Statutes, engineering design documents should be prepared, signed,  
34                  and sealed by a professional engineer.
- 35                  g.     A description of the construction quality assurance and quality  
36                  control program to be implemented in conjunction with the Closure  
37                  Plan, including the responsibilities and authorities for monitoring and  
38                  testing activities, sampling strategies, and reporting requirements.
- 39                  h.     A description of the provisions for disposal of wastewater and  
40                  management of stormwater and the plan for obtaining all required  
41                  permits.
- 42                  i.     A description of the provisions for the final disposition of the coal  
43                  combustion residuals. If the coal combustion residuals are to be  
44                  removed, the owner must (i) identify the location and permit number  
45                  for the coal combustion residuals landfills, industrial landfills, or  
46                  municipal solid waste landfills in which the coal combustion  
47                  residuals will be disposed and (ii) in the case where the coal  
48                  combustion residuals are planned for beneficial use, the location and  
49                  manner in which the residuals will be temporarily stored. If the coal  
50                  combustion residuals are to be left in the impoundment, the owner  
51                  must (i) in the case of closure pursuant to sub-subdivision (a)(1)a. of

1 this section, provide a description of how the ash will be stabilized  
2 prior to completion of closure in accordance with closure and  
3 post-closure requirements established by Section .1627 of Subchapter  
4 B of Chapter 13 of Title 15A of the North Carolina Administrative  
5 Code and (ii) in the case of closure pursuant to sub-subdivision  
6 (a)(1)b. of this section, provide a description of how the ash will be  
7 stabilized pre- and post-closure. If the coal combustion residuals are  
8 to be left in the impoundment, the owner must provide an estimate of  
9 the volume of coal combustion residuals remaining.

10 j. A list of all permits that will need to be acquired or modified to  
11 complete closure activities.

12 k. A description of the plan for post-closure monitoring and care for an  
13 impoundment for a minimum of 30 years. The length of the  
14 post-closure care period may be (i) proposed to be decreased or the  
15 frequency and parameter list modified if the owner demonstrates that  
16 the reduced period or modifications are sufficient to protect public  
17 health, safety, and welfare; the environment; and natural resources  
18 and (ii) increased by the Department at the end of the post-closure  
19 monitoring and care period if there are statistically significant  
20 increasing groundwater quality trends or if contaminant  
21 concentrations have not decreased to a level protective of public  
22 health, safety, and welfare; the environment; and natural resources. If  
23 the owner determines that the post-closure care monitoring and care  
24 period is no longer needed and the Department agrees, the owner  
25 shall provide a certification, signed and sealed by a professional  
26 engineer, verifying that post-closure monitoring and care has been  
27 completed in accordance with the post-closure plan. If required by  
28 Chapter 89C of the General Statutes, the proposed plan for  
29 post-closure monitoring and care should be signed and sealed by a  
30 professional engineer. The plan shall include, at a minimum, all of  
31 the following:

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

34 2. A description of a groundwater monitoring program that  
35 includes (i) post-closure groundwater monitoring, including  
36 parameters to be sampled and sampling schedules; (ii) any  
37 additional monitoring well installations, including a map with  
38 the proposed locations and well construction details; and (iii)  
39 the actions proposed to mitigate statistically significant  
40 increasing groundwater quality trends.

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

43 m. A description of the anticipated future use of the site and the  
44 necessity for the implementation of institutional controls following  
45 closure, including property use restrictions, and requirements for  
46 recordation of notices documenting the presence of contamination, if  
47 applicable, or historical site use.

48 (b) The Department shall review a proposed Coal Combustion Residuals Surface  
49 Impoundment Closure Plan for consistency with the minimum requirements set forth in  
50 subsection (a) of this section and whether the proposed Closure Plan is protective of public  
51 health, safety, and welfare; the environment; and natural resources and otherwise complies with

1 the requirements of this Part. Prior to issuing a decision on a proposed Closure Plan, the  
2 Department shall provide for public participation on the proposed Closure Plan as follows:

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

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

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

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

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

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

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

20 b. Notice that a proposed Closure Plan has been developed shall be  
21 given by first-class mail to persons who have requested such notice.  
22 Such notice shall include a summary of the proposed Closure Plan  
23 and state the locations where a copy of the proposed Closure Plan is  
24 available for inspection. The Department shall maintain a mailing list  
25 of persons who request notice pursuant to this section.

26 c. Notice that a proposed Closure Plan has been developed shall be  
27 given by electronic mail to persons who have requested such notice.  
28 Such notice shall include a summary of the proposed Closure Plan  
29 and state the locations where a copy of the proposed Closure Plan is  
30 available for inspection. The Department shall maintain a mailing list  
31 of persons who request notice pursuant to this section.

32 (3) No later than 60 days after receipt of a proposed Closure Plan, the  
33 Department shall conduct a public meeting in the county or counties in  
34 which the site is located to explain the proposed Closure Plan and  
35 alternatives to the public. The Department shall give notice of the hearing at  
36 least 30 days prior to the date thereof by all of the following methods:

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

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

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

44 (4) At least 30 days from the latest date on which notice is provided pursuant to  
45 subdivision (2) of this subsection shall be allowed for the receipt of written  
46 comment on the proposed Closure Plan prior to its approval. At least 20 days  
47 will be allowed for receipt of written comment following a hearing  
48 conducted pursuant to subdivision (3) of this subsection prior to the approval  
49 of the proposed Closure Plan.

50 (c) The Department shall disapprove a proposed Coal Combustion Residuals Surface  
51 Impoundment Closure Plan unless the Department finds that the Closure Plan is protective of

1 public health, safety, and welfare; the environment; and natural resources and otherwise  
2 complies with the requirements of this Part. The Department shall provide specific findings to  
3 support its decision to approve or disapprove a proposed Closure Plan. If the Department  
4 disapproves a proposed Closure Plan, the person who submitted the Closure Plan may seek  
5 review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails  
6 to approve or disapprove a proposed Closure Plan within 120 days after a complete Closure  
7 Plan has been submitted, the person who submitted the proposed Closure Plan may treat the  
8 Closure Plan as having been disapproved at the end of that time period. The Department may  
9 require a person who proposes a Closure Plan to supply any additional information necessary  
10 for the Department to approve or disapprove the Closure Plan.

11 (d) Within 30 days of its approval of a Coal Combustion Residuals Surface  
12 Impoundment Closure Plan, the Department shall submit the Closure Plan to the Coal Ash  
13 Management Commission. The Commission shall evaluate all information submitted in  
14 accordance with this Part related to the Closure Plan and any other information the Commission  
15 deems relevant. The Commission shall only approve the Closure Plan if it determines that the  
16 Closure Plan was developed in accordance with this section; that implementation of the Closure  
17 Plan according to the Closure Plan's schedule is technologically feasible; and that the benefits  
18 to public health, safety, and welfare; the environment; and natural resources outweigh the  
19 negative impacts on electricity costs and reliability. The Commission shall issue its  
20 determination in writing, including findings in support of its determination. If the Commission  
21 fails to act on a Closure Plan within 60 days of receipt of the Closure Plan, the Closure Plan  
22 shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to  
23 this subsection may appeal the decision as provided under Article 4 of Chapter 150B of the  
24 General Statutes.

25 (e) As soon as practicable, but no later than 60 days after a Coal Combustion Residuals  
26 Surface Impoundment Closure Plan has been approved by the Coal Ash Management  
27 Commission, the owner of the coal combustion residuals impoundment shall begin  
28 implementation of the approved plan. Modifications to an approved closure plan may only be  
29 allowed in conformance with the requirements of this Part, upon written request of an owner of  
30 an impoundment, with the written approval of the Department, and after public notice of the  
31 change in accordance with the requirements of subdivision (2) of subsection (b) of this section.

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

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

36 **"§ 130A-309.213. Applicability.**

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

39 **"§ 130A-309.214. Permit requirements for projects using coal combustion products for**  
40 **structural fill.**

41 (a) Permit Requirements. –

42 (1) Projects using coal combustion products as structural fill involving the  
43 placement of less than 10,000 tons of coal combustion products per acre or  
44 less than 100,000 tons of coal combustion products in total per project,  
45 which proceed in compliance with the requirements of this section and rules  
46 adopted thereunder, are deemed permitted. Any person proposing such a  
47 project shall submit an application for a permit to the Department upon such  
48 form as the Department may prescribe including, at a minimum, the  
49 information set forth in subdivision (1) of subsection (b) of this section.

50 (2) No person shall commence or operate a project using coal combustion  
51 residuals as structural fill involving the placement of 10,000 or more tons of



1 coal combustion products per acre or 100,000 or more tons of coal  
2 combustion products in total per project without first receiving an individual  
3 permit from the Department. Any person proposing such a project shall  
4 submit an application for a permit to the Department upon such form as the  
5 Department may prescribe including, at a minimum, the information set  
6 forth in subdivisions (1) and (2) of subsection (b) of this section.

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

11 (1) For projects involving placement of less than 10,000 tons of coal combustion  
12 products per acre or less than 100,000 tons of coal combustion products in  
13 total per project, the person shall provide, at a minimum, the following  
14 information:

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

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

17 c. An estimate of the volume of coal combustion products to be used in  
18 the project.

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

24 e. A signed and dated statement by the owner of the land on which the  
25 structural fill is to be placed, acknowledging and consenting to the  
26 use of coal combustion products as structural fill on the property and  
27 agreeing to record the fill in accordance with the requirements of  
28 G.S. 130A-390.218.

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

31 g. Physical location of the project at which the coal combustion  
32 products were generated.

33 (2) For projects involving placement of 10,000 or more tons of coal combustion  
34 products per acre or 100,000 or more tons of coal combustion products in  
35 total per project, the person shall provide all information required pursuant  
36 to subdivision (1) of this subsection and shall provide construction plans for  
37 the project, including a stability analysis as the Department may require. If  
38 required by the Department, a stability analysis shall be prepared, signed,  
39 and sealed by a professional engineer in accordance with sound engineering  
40 practices. A construction plan shall, at a minimum, include a groundwater  
41 monitoring system and an encapsulation liner system in compliance with the  
42 requirements of G.S. 130A-309.215.

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

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

46 (1) A structural fill site must be designed, constructed, operated, closed, and  
47 maintained in such a manner as to minimize the potential for harmful release  
48 of constituents of coal combustion residuals to the environment or create a  
49 nuisance to the public.

50 (2) Coal combustion products shall be collected and transported in a manner that  
51 will prevent nuisances and hazards to public health and safety. Coal

1 combustion products shall be moisture conditioned, as necessary, and  
2 transported in covered trucks to prevent dusting.

3 (3) Coal combustion products shall be placed uniformly and compacted in lifts  
4 not exceeding one foot in thickness and shall be compacted to standards,  
5 including in-situ density, compaction effort, and relative density, specified  
6 by a registered professional engineer for a specific end-use purpose.

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

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

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

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

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

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

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

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

35 (b) Liners, Leachate Collection System, Cap, and Groundwater Monitoring System  
36 Required for Large Structural Fills. – For projects involving placement of 10,000 or more tons  
37 of coal combustion products per acre or 100,000 or more tons of coal combustion products in  
38 total per project shall have an encapsulation liner system. The encapsulation liner system shall  
39 be constructed on and around the structural fill and shall be designed to efficiently contain,  
40 collect, and remove leachate generated by the coal combustion products, as well as separate the  
41 coal combustion products from any exposure to surrounding environs. At a minimum, the  
42 components of the liner system shall consist of the following:

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

44 a. A composite liner utilizing a compacted clay liner. This composite  
45 liner is one liner that consists of two components: a geomembrane  
46 liner installed above and in direct and uniform contact with a  
47 compacted clay liner with a minimum thickness of 24 inches (0.61  
48 m) and a permeability of no more than  $1.0 \times 10^{-7}$  centimeters per  
49 second.

50 b. A composite liner utilizing a geosynthetic clay liner. This composite  
51 liner is one liner that consists of three components: a geomembrane

1 liner installed above and in uniform contact with a geosynthetic clay  
2 liner overlying a compacted clay liner with a minimum thickness of  
3 18 inches (0.46 m) and a permeability of no more than  $1.0 \times 10^{-5}$   
4 centimeters per second.

5 (2) A leachate collection system, which is constructed directly above the base  
6 liner and shall be designed to effectively collect and remove leachate from  
7 the project.

8 (3) A cap liner, which shall consist of two components: a geomembrane liner  
9 installed across the limits of the coal combustion products covered with a  
10 minimum thickness of 24 inches (0.61 m) compacted earth, and a  
11 permeability of no more than  $1.0 \times 10^{-7}$  centimeters per second, and an  
12 additional surface six inches of soil capable of supporting native plant  
13 growth.

14 (4) A groundwater monitoring system, which shall be approved by the  
15 Department and, at a minimum, consist of all of the following:

16 a. A sufficient number of wells, installed at appropriate locations and  
17 depths, to yield groundwater samples from the uppermost aquifer that  
18 represent the quality of groundwater passing the relevant point of  
19 compliance as approved by the Department. A downgradient  
20 monitoring system shall be installed at the relevant point of  
21 compliance so as to ensure detection of groundwater contamination  
22 in the uppermost aquifer.

23 b. A proposed monitoring plan, which shall be certified by a licensed  
24 geologist or professional engineer to be effective in providing early  
25 detection of any release of hazardous constituents from any point in a  
26 structural fill or leachate surface impoundment to the uppermost  
27 aquifer, so as to be protective of public health, safety, and welfare;  
28 the environment; and natural resources.

29 c. A groundwater monitoring program, which shall include consistent  
30 sampling and analysis procedures that are designed to ensure  
31 monitoring results that provide an accurate representation of  
32 groundwater quality at the background and downgradient wells.  
33 Monitoring shall be conducted through construction and the  
34 post-closure care period. The sampling procedures and frequency  
35 shall be protective of public health, safety, and welfare; the  
36 environment; and natural resources.

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

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

44 **§ 130A-309.216. Financial assurance requirements for large projects using coal**  
45 **combustion products for structural fill.**

46 (a) For projects involving placement of 10,000 or more tons of coal combustion  
47 products per acre or 100,000 or more tons of coal combustion products in total per project, the  
48 applicant for a permit or a permit holder to construct or operate a structural fill shall establish  
49 financial assurance that will ensure that sufficient funds are available for facility closure,  
50 post-closure maintenance and monitoring, any corrective action that the Department may  
51 require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences,

1 and subsequent costs incurred by the Department in response to an incident at a structural fill  
2 project, even if the applicant or permit holder becomes insolvent or ceases to reside, be  
3 incorporated, do business, or maintain assets in the State.

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

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

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

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

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

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

32 **"§ 130A-309.217. Closure of projects using coal combustion products for structural fill.**

33 (a) Closure of Structural Fill Projects. –

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

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

39 a. Minimize erosion of cover materials.

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

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

46 (4) The constructor or operator shall submit a certification to the Department  
47 signed and sealed by a registered professional engineer or signed by the  
48 Secretary of the Department of Transportation or his designee certifying that  
49 all requirements of this Subpart have been met. The report shall be submitted  
50 within 30 days of application of the final cover.

1        (b) Additional Closure and Post-Closure Requirements for Large Structural Fill  
2 Projects. – For projects involving placement of 10,000 or more tons of coal combustion  
3 products per acre or 100,000 or more tons of coal combustion products in total per project, a  
4 constructor or operator shall conduct post-closure care. Post-closure care shall be conducted for  
5 20 years, which period may be increased by the Department upon a determination that a longer  
6 period is necessary to protect public health, safety, welfare; the environment; and natural  
7 resources, or decreased upon a determination that a shorter period is sufficient to protect public  
8 health, safety, welfare; the environment; and natural resources. Additional closure and  
9 post-closure requirements include, at a minimum, all of the following:

10        (1) Submit a written closure plan, which includes all of the following:

- 11            a. A description of the cap liner system and the methods and procedures  
12 used to install the cap that conforms to the requirement in  
13 G.S. 130A-309.215(b).
- 14            b. An estimate of the largest area of the structural fill project ever  
15 requiring the cap liner system at any time during the overall  
16 construction period that is consistent with the drawings prepared for  
17 the structural fill.
- 18            c. An estimate of the maximum inventory of coal combustion products  
19 ever on-site over the construction duration of the structural fill.
- 20            d. A schedule for completing all activities necessary to satisfy the  
21 closure criteria set forth in this section.

22        (2) Submit a written post-closure plan, which includes all of the following:

- 23            a. A description of the monitoring and maintenance activities required  
24 for the project and the frequency at which these activities must be  
25 performed.
- 26            b. The name, address, and telephone number of the person or office  
27 responsible for the project during the post-closure period.
- 28            c. A description of the planned uses of the property during the  
29 post-closure period. Post-closure use of the property must not disturb  
30 the integrity of the cap system, base liner system, or any other  
31 components of the containment system, or the function of the  
32 monitoring systems unless necessary to comply with the  
33 requirements of this subsection. The Department may approve  
34 disturbance if the constructor or operator demonstrates that  
35 disturbance of the cap system, base liner system, or other component  
36 of the containment system will not increase the potential threat to  
37 public health, safety, and welfare; the environment; and natural  
38 resources.
- 39            d. The cost estimate for post-closure activities required under this  
40 section.

41        (3) Maintain the integrity and effectiveness of any cap system, including  
42 repairing the system as necessary to correct the defects of settlement,  
43 subsidence, erosion, or other events and preventing run-on and runoff from  
44 eroding or otherwise damaging the cap system.

45        (4) Maintain and operate the leachate collection system as necessary to allow  
46 the coal combustion products to reach terminal moisture condition. Upon a  
47 satisfactory showing to the Department by the constructor or operator that  
48 the encapsulating liner system has eliminated any recharge sources, and  
49 contact water and leachate generation has ceased and no longer poses a  
50 threat to public health, safety, and welfare; the environment; and natural  
51 resources, the leachate collection system may be closed.

1           (5) Monitor and maintain the groundwater monitoring system in accordance  
2           with G.S. 130A-309.215 and monitor the surface water in accordance with  
3           15A NCAC 13B .0602.

4           (c) Completion of Post-Closure Care. – Following completion of the post-closure care  
5           period, the constructor or operator shall submit a certification, signed by a registered  
6           professional engineer, to the Department, verifying that post-closure care has been completed  
7           in accordance with the post-closure plan, and include the certification in the operating record.

8           **"§ 130A-309.218. Recordation of projects using coal combustion products for structural**  
9           **fill.**

10          (a) The owner of land where coal combustion products have been used in volumes of  
11          more than 1,000 cubic yards shall file a statement of the volume and locations of the coal  
12          combustion residuals with the Register of Deeds in the county or counties where the property is  
13          located. The statement shall identify the parcel of land according to the complete legal  
14          description on the recorded deed, either by metes and bounds, or by reference to a recorded plat  
15          map. The statement shall be signed and acknowledged by the landowners in the form  
16          prescribed by G.S. 47-38 through G.S. 47-43.

17          (b) Recordation shall be required within 90 days after completion of a structural fill  
18          project using coal combustion residuals.

19          (c) The Register of Deeds, in accordance with G.S. 161-14, shall record the notarized  
20          statement and index it in the Grantor Index under the name of the owner of the land. The  
21          original notarized statement with the Register's seal and the date, book, and page number of  
22          recording shall be returned to the Department after recording.

23          (d) When property with more than 1,000 cubic yards of coal combustion products is  
24          sold, leased, conveyed, or transferred in any manner, the deed or other instrument of transfer  
25          shall contain in the description section in no smaller type than used in the body of the deed or  
26          instrument a statement that coal combustion products have been used as structural fill material  
27          on the property.

28          **"§ 130A-309.219. Department of Transportation projects.**

29          The Department and the Department of Transportation may agree on specific design,  
30          construction, siting, operation, and closure criteria that may apply to the Department of  
31          Transportation structural fill projects.

32          **"§ 130A-309.220. Inventory and inspection of certain structural fill projects.**

33          No later than July 1, 2015, the Department shall prepare an inventory of all structural fill  
34          projects with a volume of 10,000 cubic yards or more. The Department shall update the  
35          structural fill project inventory at least annually. The Department shall inspect each structural  
36          fill project with a volume of 10,000 cubic yards or more at least annually to determine if the  
37          project or facility has been constructed and operated in compliance with 15A NCAC 13B  
38          .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products) and all  
39          other applicable laws.

40          **"§ 130A-309.221. Amendments required to rules.**

41          Requirements under existing rules governing the use of coal combustion products for  
42          structural fill that do not conflict with the provisions of this Subpart shall continue to apply to  
43          such projects. The Environmental Management Commission shall amend existing rules  
44          governing the use of coal combustion products for structural fill as necessary to implement the  
45          provisions of this Subpart. Such rules shall be exempt from the requirements of  
46          G.S. 150B-19.3."

47          **SECTION 3.(b)** Notwithstanding G.S. 130A-309.211 or G.S. 130A-309.212, as  
48          enacted by Section 3(a) of this act, and except as otherwise preempted by the requirements of  
49          federal law, the following coal combustion residuals surface impoundments shall be deemed  
50          high-priority, and, as soon as practicable, but no later than August 1, 2019, shall be closed in  
51          conformance with Section 3(c) of this act:

- 1 (1) Coal combustion residuals surface impoundments located at the Dan River
- 2 Steam Station, owned and operated by Duke Energy Progress, and located in
- 3 Rockingham County.
- 4 (2) Coal combustion residuals surface impoundments located at the Riverbend
- 5 Steam Station, owned and operated by Duke Energy Carolinas, and located
- 6 in Gaston County.
- 7 (3) Coal combustion residuals surface impoundments located at the Asheville
- 8 Steam Electric Generating Plant, owned and operated by Duke Energy
- 9 Progress, and located in Buncombe County.
- 10 (4) Coal combustion residuals surface impoundments located at the Sutton
- 11 Plant, owned and operated by Duke Energy Progress, and located in New
- 12 Hanover County.

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

- 15 (1) The impoundments shall be dewatered.
- 16 (2) All coal combustion residuals shall be removed from the impoundments and
- 17 transferred for (i) disposal in a coal combustion residuals landfill, industrial
- 18 landfill, or municipal solid waste landfill or (ii) use in a structural fill or
- 19 other beneficial use as allowed by law. Any disposal or use of coal
- 20 combustion products pursuant to this section shall comply with the
- 21 moratoriums enacted under Section 4(a) and Section 5(a) of this act and any
- 22 extensions thereof. The use of coal combustion products (i) as structural fill,
- 23 as authorized by Section 4(b) of this act, shall be conducted in accordance
- 24 with the requirements of Subpart 3 of Part 2I of Article 9 of the General
- 25 Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial
- 26 uses shall be conducted in accordance with the requirements of 15A NCAC
- 27 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion
- 28 By-Products).
- 29 (3) Where groundwater quality is degraded as a result of the impoundment,
- 30 corrective action to restore groundwater quality shall be implemented by the
- 31 owner or operator as provided in G.S. 130A-309.204.

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

33 **"§ 130A-290. Definitions.**

- 34 (a) Unless a different meaning is required by the context, the following definitions shall
- 35 apply throughout this Article:
- 36 ...
- 37 (2b) ~~"Combustion products"~~ "Coal combustion residuals" means residuals,
- 38 including fly ash, bottom ash, boiler slag, mill rejects, and flue gas
- 39 desulfurization residue produced by a coal-fired generating ~~unit~~ unit destined
- 40 for disposal. The term does not include coal combustion products as defined
- 41 in G.S. 130A-309.201(4).
- 42 (2c) ~~"Combustion products landfill"~~ "Coal combustion residuals landfill" means a
- 43 facility or unit for the disposal of combustion products, where the landfill is
- 44 located at the same facility with the coal-fired generating unit or units
- 45 producing the combustion products, and where the landfill is located wholly
- 46 or partly on top of a facility that is, or was, being used for the disposal or
- 47 storage of such combustion products, including, but not limited to, landfills,
- 48 wet and dry ash ponds, and structural fill facilities.
- 49 ...
- 50 (3a) "Commission" means the Environmental Management Commission.
- 51 ...

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

4 ...

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

16 a. Fecal waste from fowls and animals other than humans.

17 b. Solid or dissolved material in:

18 1. Domestic sewage and sludges generated by treatment thereof  
 19 in sanitary sewage collection, treatment and disposal systems  
 20 which are designed to discharge effluents to the surface  
 21 waters.

22 2. Irrigation return flows.

23 3. Wastewater discharges and the sludges incidental to and  
 24 generated by treatment which are point sources subject to  
 25 permits granted under Section 402 of the Water Pollution  
 26 Control Act, as amended (P.L. 92-500), and permits granted  
 27 under G.S. 143-215.1 by the ~~Environmental Management~~  
 28 ~~Commission.~~ Commission, including coal combustion  
 29 products. However, any sludges that meet the criteria for  
 30 hazardous waste under RCRA shall also be a solid waste for  
 31 the purposes of this Article.

32 ...."

33 **SECTION 3.(e)** This section is effective when it becomes law. Subpart 3 of Part 2I  
 34 of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of  
 35 coal combustion products as structural fill contracted for on or after that date. The first report  
 36 due under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due October 1, 2014.  
 37 Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this  
 38 act, shall be appointed no later than September 1, 2014.

39  
 40 **PART III. MORATORIUMS AND STUDY ON (1) USE OF COAL COMBUSTION**  
 41 **PRODUCTS AS STRUCTURAL FILL AND (2) CONSTRUCTION OR EXPANSION**  
 42 **OF COMBUSTION PRODUCTS LANDFILLS**

43 **SECTION 4.(a)** Notwithstanding 15A NCAC 13B .1701, et seq., and except as  
 44 provided in Section 4(b) of this act, the use of coal combustion products, as defined in  
 45 G.S. 130A-290, as structural fill is prohibited until August 1, 2015, in order to allow the  
 46 Department of Environment and Natural Resources, the Environmental Management  
 47 Commission, and the General Assembly time to review and evaluate the use of coal  
 48 combustion residuals as structural fill.

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



1 (1) A project where the structural fill is used with a base liner, leachate  
2 collection system, cap liner, groundwater monitoring system and where the  
3 constructor or operator establishes financial assurance, as required by  
4 G.S. 130A-309.216.

5 (2) As the base or sub-base of a concrete or asphalt paved road constructed  
6 under the authority of a public entity.

7 **SECTION 4.(c)** The use of coal combustion products (i) as structural fill as  
8 authorized by Section 4(b) of this act shall be conducted in accordance with the requirements of  
9 Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act,  
10 and (ii) for other beneficial uses shall be conducted in accordance with the requirements of 15A  
11 NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion  
12 By-Products).

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

17 (1) Review the uses of coal combustion products as structural fill and the  
18 regulation of this use under Subpart 3 of Part 2I of Article 9 of the General  
19 Statutes, as enacted by Section 3(a) of this act, to protect public health,  
20 safety, and welfare; the environment; and natural resources.

21 (2) Review the uses of coal combustion products for other beneficial uses and  
22 the regulation of these uses under 15A NCAC 13B .1701, et seq., and other  
23 applicable rules, to determine if the rules are sufficient to protect public  
24 health, safety, and welfare; the environment; and natural resources.

25 (3) Evaluate additional opportunities for the use of coal combustion products as  
26 structural fill and for other beneficial uses that would reduce the volume of  
27 coal combustion residuals that are being disposed of in coal combustion  
28 residuals landfills, industrial landfills, or municipal solid waste landfills  
29 while still being protective of public health, safety, and welfare; the  
30 environment; and natural resources.

31 (4) Monitor any actions of the United States Environmental Protection Agency  
32 regarding the use of coal combustion products as structural fill or for other  
33 beneficial uses.

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

37 **SECTION 4.(e)** All electric generating facilities owned by a public utility that  
38 produce coal combustion residuals and coal combustion products shall issue a request for  
39 proposals on or before December 31, 2014, for (i) the conduct of a market analysis for the  
40 concrete industry and other industries that might beneficially use coal combustion residuals and  
41 coal combustion products; (ii) the study of the feasibility and advisability of installation of  
42 technology to convert existing and newly generated coal combustion residuals to  
43 commercial-grade coal combustion products suitable for use in the concrete industry and other  
44 industries that might beneficially use coal combustion residuals; and (iii) an examination of all  
45 innovative technologies that might be applied to diminish, recycle or reuse, or mitigate the  
46 impact of existing and newly generated coal combustion residuals. All electric generating  
47 facilities shall present the materials and information received in response to a request for  
48 proposals issued pursuant to this section and an assessment of the materials and information,  
49 including a forecast of specific actions to be taken in response to the materials and information  
50 received, to the Environmental Management Commission and the Coal Ash Management  
51 Commission on or before August 1, 2016.

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

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

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

17           **SECTION 5.(c)** This section is effective when it becomes law and expires August  
18 1, 2015.

19  
20 **PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION**  
21 **REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO**  
22 **WATERS OF THE STATE; REQUIRE CERTAIN EMERGENCY CALLS TO BE**  
23 **RECORDED**

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

25 "**§ 143-215.1C. Report to wastewater system customers on system performance; report**  
26 **discharge of untreated wastewater to the Department; publication of notice of**  
27 **discharge of untreated wastewater and waste.**

28           (a) Report to Wastewater System Customers. – The owner or operator of any  
29 wastewater collection or treatment works, the operation of which is primarily to collect or treat  
30 municipal or domestic wastewater and for which a permit is issued under this Part and having  
31 an average annual flow greater than 200,000 gallons per day, shall provide to the users or  
32 customers of the collection system or treatment works and to the Department an annual report  
33 that summarizes the performance of the collection system or treatment works and the extent to  
34 which the collection system or treatment works has violated the permit or federal or State laws,  
35 regulations, or rules related to the protection of water quality. The report shall be prepared on  
36 either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of  
37 the calendar or fiscal year.

38           (a1) Report Discharge of Untreated Wastewater to the Department. – The owner or  
39 operator of any wastewater collection or treatment works for which a permit is issued under  
40 this Part shall report a discharge of 1,000 gallons or more of untreated wastewater to the  
41 surface waters of the State to the Department within 24 hours after the owner or operator has  
42 determined that the discharge has reached the surface waters of the State. This reporting  
43 requirement shall be in addition to any other reporting requirements applicable to the owner or  
44 operator of the wastewater collection or treatment works.

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

- 49           (1) In the event of a discharge of 1,000 gallons or more of untreated wastewater  
50 to the surface waters of the State, issue a press release to all print and  
51 electronic news media that provide general coverage in the county where the

1 discharge occurred setting out the details of the discharge. The owner or  
2 operator shall issue the press release within ~~48-24~~ hours after the owner or  
3 operator has determined that the discharge has reached the surface waters of  
4 the State. The owner or operator shall retain a copy of the press release and a  
5 list of the news media to which it was distributed for at least one year after  
6 the discharge and shall provide a copy of the press release and the list of the  
7 news media to which it was distributed to any person upon request.

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

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

- 29 (1) In the event of a discharge of 1,000 gallons or more of untreated waste to the  
30 surface waters of the State, issue a press release to all print and electronic  
31 news media that provide general coverage in the county where the discharge  
32 occurred setting out the details of the discharge. The owner or operator shall  
33 issue the press release within ~~48-24~~ hours after the owner or operator has  
34 determined that the discharge has reached the surface waters of the State.  
35 The owner or operator shall retain a copy of the press release and a list of the  
36 news media to which it was distributed for at least one year after the  
37 discharge and shall provide a copy of the press release and the list of the  
38 news media to which it was distributed to any person upon request.
- 39 (2) In the event of a discharge of 15,000 gallons or more of untreated waste to  
40 the surface waters of the State, publish a notice of the discharge in a  
41 newspaper having general circulation in the county in which the discharge  
42 occurs and in each county downstream from the point of discharge that is  
43 significantly affected by the discharge. The Secretary shall determine, at the  
44 Secretary's sole discretion, which counties are significantly affected by the  
45 discharge and shall approve the form and content of the notice and the  
46 newspapers in which the notice is to be published. The notice shall be  
47 captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The  
48 owner or operator shall publish the notice within 10 days after the Secretary  
49 has determined the counties that are significantly affected by the discharge  
50 and approved the form and content of the notice and the newspapers in  
51 which the notice is to be published. The owner or operator shall file a copy

1 of the notice and proof of publication with the Department within 30 days  
2 after the notice is published. Publication of a notice of discharge under this  
3 subdivision is in addition to the requirement to issue a press release under  
4 subdivision (1) of this subsection."

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

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

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

13  
14 **PART V. REQUIRE NOTIFICATION OF THE DEPARTMENT OF EMERGENCY**  
15 **DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS;**  
16 **REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS**  
17 **SURFACE IMPOUNDMENTS**

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

19 **"§ 143-215.27. Repair, alteration, or removal of dam.**

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

31 (b) When emergency repairs are necessary to safeguard life and property they may be  
32 started immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and  
33 of the work ~~under way, and they underway~~ as soon as possible, but not later than 24 hours after  
34 first knowledge of the necessity for the emergency repairs, and the emergency repairs shall be  
35 made to conform to ~~its~~ the Department's orders."

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

37 **"§ 143-215.31. Supervision over maintenance and operation of dams.**

38 (a) The Commission shall have jurisdiction and supervision over the maintenance and  
39 operation of dams to safeguard life and property and to satisfy minimum streamflow  
40 requirements. The Commission may adopt standards for the maintenance and operation of  
41 dams as may be necessary for the purposes of this Part. The Commission may vary the  
42 standards applicable to various dams, giving due consideration to the minimum flow  
43 requirements of the stream, the type and location of the structure, the hazards to which it may  
44 be exposed, and the peril of life and property in the event of failure of a dam to perform its  
45 function.

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

49 (1) The owner of the dam shall submit a proposed Emergency Action Plan for  
50 the dam within 90 days after the dam is classified as a high hazard dam or an  
51 intermediate hazard dam to the Department and the Department of Public

1 Safety for their review and approval. The Department and the Department of  
 2 Public Safety shall approve the Emergency Action Plan if they determine  
 3 that it complies with the requirements of this subsection and will protect  
 4 public health, safety, and welfare; the environment; and natural resources.

5 (2) The Emergency Action Plan shall include, at a minimum, all of the  
 6 following:

7 a. A description of potential emergency conditions that could occur at  
 8 the dam.

9 b. A description of actions to be taken in response to an emergency  
 10 condition at the dam.

11 c. Emergency notification procedures to aid in warning and evacuations  
 12 during an emergency condition at the dam.

13 d. A downstream inundation map depicting areas affected by a dam  
 14 failure and sudden release of the impoundment.

15 (3) The owner of the dam shall update the Emergency Action Plan annually and  
 16 shall submit it to the Department and the Department of Public Safety for  
 17 their review and approval within one year of the prior approval.

18 (4) The Department shall provide a copy of the Emergency Action Plan to the  
 19 regional offices of the Department that might respond to an emergency  
 20 condition at the dam.

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

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

31 ...."

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

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

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

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

47 "**§ 143-215.32. Inspection of dams.**

48 (a) The Department may at any time inspect any dam, including a dam that is otherwise  
 49 exempt from this Part, upon receipt of a written request of any affected person or agency, or  
 50 upon a motion of the Environmental Management Commission. Within the limits of available

1 funds the Department shall endeavor to provide for inspection of all dams at intervals of  
2 approximately five years.

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

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

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

10 a. Deterioration, malfunction, or improper operation of spillway control  
11 systems.

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

13 c. Severe erosion or other signs of deterioration in dikes or other  
14 containment devices or structures.

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

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

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

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

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

47 (c) If at any time the condition of any dam becomes so dangerous to the safety of life or  
48 property, in the opinion of the Environmental Management Commission, as not to permit  
49 sufficient time for issuance of an order in the manner provided by subsection (b) of this section,  
50 the Environmental Management Commission may immediately take such measures as may be  
51 essential to provide emergency protection to life and property, including the lowering of the

1 level of a reservoir by releasing water impounded or the destruction in whole or in part of the  
2 dam or reservoir. The Environmental Management Commission may recover the costs of such  
3 measures from the owner or owners by appropriate legal action.

4 (d) An order issued under this Part shall be served on the owner of the dam as provided  
5 in G.S. 1A-1, Rule 4."  
6

7 **PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM**  
8 **COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT**  
9 **COMMISSION**

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

11 **"§ 130A-29. Commission for Public Health – Creation, powers and duties.**

12 ...

13 (c) The Commission shall adopt rules:

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

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

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

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

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

23 (5a) Establishing eligibility standards for participation in Department  
24 reimbursement programs.

25 ~~(6) Requiring proper treatment and disposal of sewage and other waste from~~  
26 ~~chemical and portable toilets.~~

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

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

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

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

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

38 ...."

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

40 **"§ 130A-291.1. Septage management program; permit fees.**

41 ...

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

47 ...."

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

49 **"§ 130A-294. Solid waste management program.**

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

4 ...

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

51 ...."



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

2   "**§ 130A-300. Effect on laws applicable to water pollution control.**

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

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

11   "**§ 130A-302. Sludge deposits at sanitary landfills.**

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

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

18   "**§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste**  
19   **disposal sites.**

20       ...

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

27       ...

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

35       ...."

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

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

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

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

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

**"§ 130A-310.65. Definitions.**

As used in this Part:

- (1) "Background standard" means the naturally occurring concentration of a substance in the absence of the release of a contaminant.
- (2) ~~"Commission" means the Environmental Management Commission created pursuant to G.S. 143B-282.~~
- ...
- (12) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses; that are protective of public health, safety, and welfare and the environment; and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the ~~Commission, the Commission for Public Health, Commission~~ or the Department."

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

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

**SECTION 11.(k)** G.S. 113-415 reads as rewritten:**"§ 113-415. Conflicting laws.**

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

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

**SECTION 11.(m)** The Codifier of Rules shall make any conforming rule changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of

1 the General Statutes from the Commission for Public Health to the Environmental Management  
2 Commission.

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

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

17 **SECTION 13.** The Department of Transportation shall evaluate additional  
18 opportunities for the use of coal combustion residuals in the construction and maintenance of  
19 roads and bridges within the State. The Department shall report the results of its study,  
20 including any recommendations, to the Environmental Review Commission no later than  
21 December 1, 2014.

#### 22 23 **PART VIII. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT**

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

##### 26 **"§ 62-302.1. Regulatory fee for combustion residual surface impoundments.**

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

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

38 (c) When Due. – The fee shall be paid in quarterly installments. The fee is payable to  
39 the Coal Ash Management Commission on or before the 15th of the second month following  
40 the end of each quarter. Each public utility subject to this fee shall, on or before the date the fee  
41 is due for each quarter, prepare and render a report on a form prescribed by the Commission.  
42 The report shall state the public utility's total North Carolina jurisdictional revenues for the  
43 preceding quarter and shall be accompanied by any supporting documentation that the Coal  
44 Ash Management Commission may by rule require. Receipts shall be reported on an accrual  
45 basis.

46 (d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash  
47 Management Commission is created. The fees collected pursuant to this section and all other  
48 funds received by the Coal Ash Management Commission shall be deposited in the Coal  
49 Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing  
50 account, and any interest or other income derived from the Fund shall be credited to the Fund.  
51 Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly.

1 The Commission shall be subject to the provisions of the State Budget Act, except that no  
2 unexpended surplus of the Coal Combustion Residuals Management Fund shall revert to the  
3 General Fund. All funds credited to the Commission Fund shall be used only to pay the  
4 expenses of the Coal Ash Management Commission and the Department of Environment and  
5 Natural Resources in providing oversight of coal combustion residuals.

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

8 **SECTION 14.(b)** Notwithstanding G.S. 62-302.1, as enacted by this section, for  
9 the first two quarters of fiscal year 2014-2015, each public utility shall pay the fee in  
10 G.S. 62-302.1 on a monthly basis. The fee shall be paid by the fifteenth of the following month.

11 **SECTION 14.(c)** Twenty-five receipt-supported positions are created in the  
12 Department of Environment and Natural Resources to carry out the duties in Part 2I of Article 9  
13 of Chapter 130A of the General Statutes. There is appropriated from the Coal Combustion  
14 Residuals Management Fund the sum of one million seven hundred fifty thousand dollars  
15 (\$1,750,000) to the Department of Environment and Natural Resources to support the positions  
16 for the 2014-2015 fiscal year.

17 **SECTION 14.(d)** Four receipt supported positions are created in the Division of  
18 Emergency Management of the Department of Public Safety to carry out the duties in  
19 G.S. 130A-309.202. The funds remaining in the Coal Combustion Residuals Management Fund  
20 after the appropriation to the Department of Environment and Natural Resources are  
21 appropriated to the Department of Public Safety for the 2014-2015 fiscal year. These positions  
22 shall be used to provide assistance to the Coal Ash Commission. The positions shall be  
23 assigned in the following manner: one of the positions shall be the executive director of the  
24 staff, two positions shall be assigned as analysts, and one position shall be assigned as  
25 administrative. The Division of Emergency Management in the Department of Public Safety  
26 shall consult with the Chair of the Commission in hiring the staff for the Coal Ash  
27 Commission. The Division of Emergency Management in the Department of Public Safety  
28 shall provide support to the Commission until the staff of the Commission is hired, including  
29 the designation of an individual to serve as an interim executive director of the staff.

30 **SECTION 14.(e)** This section becomes effective July 1, 2014.

31  
32 **PART IX. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

33 **SECTION 15.** If any provision of this act or its application is held invalid, the  
34 invalidity does not affect other provisions or applications of this act that can be given effect  
35 without the invalid provisions or application, and to this end the provisions of this act are  
36 severable.

37 **SECTION 16.** Except as otherwise provided, this act is effective when it becomes  
38 law.