



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

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

3 The General Assembly of North Carolina enacts:  
4

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

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

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

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

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

21 **SECTION 2.(a)** Moratorium on Cost Recovery. – The Utilities Commission shall  
22 not issue an order authorizing an electric public utility the recovery of any costs related to coal  
23 combustion residuals surface impoundments that were not included in the utility's cost of  
24 service approved in its most recent general rate case until the end of the moratorium provided  
25 in this section. The moratorium established under this section shall not apply to the net  
26 recovery of any fuel and fuel-related costs under G.S. 62-133.2. For the purposes of this  
27 section, "coal combustion residuals surface impoundments" has the same meaning as in  
28 G.S. 130A-309.201. The moratorium in this section shall end December 31, 2016.

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

34 **PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL**  
35 **COMBUSTION RESIDUALS**

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

38 "Part 2I. Coal Ash Management.

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

40 **"§ 130A-309.200. Title.**

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

42 **"§ 130A-309.201. Definitions.**

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

- 45 (1) "Beneficial and beneficial use" means projects promoting public health and  
46 environmental protection, offering equivalent success relative to other  
47 alternatives, and preserving natural resources.  
48 (2) "Boiler slag" means the molten bottom ash collected at the base of slag tap  
49 and cyclone type furnaces that is quenched with water. It is made up of hard,  
50 black, angular particles that have a smooth, glassy appearance.

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

1 well constructed for the purpose of monitoring groundwater and contaminant  
2 concentrations shall not be considered a receptor.

3 (14) "Structural fill" means an engineered fill with a projected beneficial end use  
4 constructed using coal combustion products that are properly placed and  
5 compacted. For purposes of this Part, the term includes fill used to reclaim  
6 open pit mines and for embankments, greenscapes, foundations, construction  
7 foundations, and for bases or sub-bases under a structure or a footprint of a  
8 paved road, parking lot, sidewalk, walkway, or similar structure.

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

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

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

16 **"§ 130A-309.202. Coal Ash Management Commission.**

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

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

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

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

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

34 (4) 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 a member of a nongovernmental  
37 conservation interest.

38 (5) 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 special training or scientific  
41 expertise in waste management, including solid waste disposal, hauling, or  
42 beneficial use.

43 (6) One appointed by the General Assembly upon recommendation of the  
44 Speaker of the House of Representatives in accordance with G.S. 120-121  
45 who shall at the time of appointment have expertise in determining and  
46 evaluating the costs associated with electricity generation and establishing  
47 the rates associated with electricity consumption.

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

50 (8) One appointed by the Governor who shall at the time of appointment be  
51 actively employed by, or recently retired from, an industrial manufacturing

1 facility, or be a representative of an electric membership corporation  
2 organized under Article 2 of Chapter 117 of the General Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (k) Covered Persons. – All members of the Commission are covered persons for the  
50 purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As  
51 covered persons, members of the Commission shall comply with the applicable requirements of

1 the State Government Ethics Act, including mandatory training, the public disclosure of  
2 economic interests, and ethical standards for covered persons. Members of the Commission  
3 shall comply with the provisions of the State Government Ethics Act to avoid conflicts of  
4 interest.

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

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

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

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

19 **"§ 130A-309.203. Expedited permit review.**

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

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

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

50 **"§ 130A-309.204. Reports.**

1       (a)     The Department shall submit quarterly written reports to the Environmental Review  
2 Commission and the Coal Ash Management Commission on its operations, activities,  
3 programs, and progress with respect to its obligations under this Part concerning all coal  
4 combustion residuals surface impoundments. At a minimum, the report shall include  
5 information concerning the status of assessment, corrective action, prioritization, and closure  
6 for each coal combustion residuals surface impoundment and information on costs connected  
7 therewith. The report shall include an executive summary of each annual Groundwater  
8 Protection and Restoration Report submitted to the Department by the operator of any coal  
9 combustion residuals surface impoundments pursuant to G.S. 130A-309.209(d) and a summary  
10 of all groundwater sampling, protection, and restoration activities related to the impoundment  
11 for the preceding year. The report shall also include an executive summary of each annual  
12 Surface Water Protection and Restoration Report submitted to the Department by the operator  
13 of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.210(e) and  
14 a summary of all surface water sampling, protection, and restoration activities related to the  
15 impoundment for the preceding year, including the status of the identification, assessment, and  
16 correction of unpermitted discharges from coal combustion residuals surface impoundments to  
17 the surface waters of the State. The Department shall supplement the written reports required  
18 by this subsection with additional written and oral reports as may be requested by the  
19 Environmental Review Commission. The Department shall submit the written reports required  
20 by this subsection whether or not the General Assembly is in session at the time the report is  
21 due.

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

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

- 31           (1)     The volume of coal combustion residuals and products produced.
- 32           (2)     The volume of coal combustion residuals disposed.
- 33           (3)     The volume of coal combustion products used in structural fill projects.
- 34           (4)     The volume of coal combustion products beneficially used, other than for  
35 structural fill.

36     **"§ 130A-309.205. Local ordinances regulating management of coal combustion residuals**  
37 **and coal combustion products invalid; petition to preempt local ordinance.**

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

- 50           (1)     Place any restriction or condition not placed by this Part upon management  
51 of coal combustion residuals or coal combustion products, including



1 restrictions or conditions applicable to facilities that primarily engage in  
2 processes to prepare coal ash for beneficial use such as carbon burn-out  
3 plants, within any county, city, or other political subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **"§ 130A-309.206. Federal preemption; severability.**

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

28 **"§ 130A-309.207. General rule making for Part.**

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

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

32 **"§ 130A-309.208. Generation, disposal, and use of coal combustion residuals.**

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

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

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

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

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

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

1 "§ 130A-309.209. Groundwater assessment and corrective action; drinking water supply  
2 well survey and provision of alternate water supply; reporting.

3 (a) Groundwater Assessment of Coal Combustion Residuals Surface Impoundments. –  
4 The owner of a coal combustion residuals surface impoundment shall conduct groundwater  
5 monitoring and assessment as provided in this subsection. The requirements for groundwater  
6 monitoring and assessment set out in this subsection are in addition to any other groundwater  
7 monitoring and assessment requirements applicable to the owners of coal combustion residuals  
8 surface impoundments.

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

- 14 a. A description of all receptors and significant exposure pathways.  
15 b. An assessment of the horizontal and vertical extent of soil and  
16 groundwater contamination for all contaminants confirmed to be  
17 present in groundwater in exceedance of groundwater quality  
18 standards.  
19 c. A description of all significant factors affecting movement and  
20 transport of contaminants.  
21 d. A description of the geological and hydrogeological features  
22 influencing the chemical and physical character of the contaminants.  
23 e. A schedule for continued groundwater monitoring.  
24 f. Any other information related to groundwater assessment required by  
25 the Department.

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

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

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

36 (b) Corrective Action for the Restoration of Groundwater Quality. – The owner of a  
37 coal combustion residuals surface impoundment shall implement corrective action for the  
38 restoration of groundwater quality as provided in this subsection. The requirements for  
39 corrective action for the restoration of groundwater quality set out in this subsection are in  
40 addition to any other corrective action for the restoration of groundwater quality requirements  
41 applicable to the owners of coal combustion residuals surface impoundments.

42 (1) No later than 90 days from submission of the Groundwater Assessment  
43 Report required by subsection (a) of this section, or a time frame otherwise  
44 approved by the Department, the owner of the coal combustion residuals  
45 surface impoundment shall submit a proposed Groundwater Corrective  
46 Action Plan to the Department for its review and approval. The Groundwater  
47 Corrective Action Plan shall provide for the restoration of groundwater in  
48 conformance with the requirements of Subchapter L of Chapter 2 of Title  
49 15A of the North Carolina Administrative Code. The Groundwater  
50 Corrective Action Plan shall include, at a minimum, all of the following:

- 1           a.     A description of all exceedances of the groundwater quality  
2           standards, including any exceedances that the owner asserts are the  
3           result of natural background conditions.
- 4           b.     A description of the methods for restoring groundwater in  
5           conformance with the requirements of Subchapter L of Chapter 2 of  
6           Title 15A of the North Carolina Administrative Code and a detailed  
7           explanation of the reasons for selecting these methods.
- 8           c.     Specific plans, including engineering details, for restoring  
9           groundwater quality.
- 10          d.     A schedule for implementation of the Plan.
- 11          e.     A monitoring plan for evaluating the effectiveness of the proposed  
12          corrective action and detecting movement of any contaminant  
13          plumes.
- 14          f.     Any other information related to groundwater assessment required by  
15          the Department.
- 16          (2)    The Department shall approve the Groundwater Corrective Action Plan if it  
17          determines that the Plan complies with the requirements of this subsection  
18          and will be sufficient to protect public health, safety, and welfare; the  
19          environment; and natural resources.
- 20          (3)    No later than 30 days from the approval of the Groundwater Corrective  
21          Action Plan, the owner shall begin implementation of the Plan in accordance  
22          with the Plan's schedule.
- 23          (c)    Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No  
24          later than October 1, 2014, the owner of a coal combustion residuals surface impoundment  
25          shall conduct a Drinking Water Supply Well Survey that identifies all drinking water supply  
26          wells within one-half mile down-gradient from the established compliance boundary of the  
27          impoundment and submit the Survey to the Department. The Survey shall include well  
28          locations, the nature of water uses, available well construction details, and information  
29          regarding ownership of the wells. No later than December 1, 2014, the Department shall  
30          determine, based on the Survey, which drinking water supply wells the owner is required to  
31          sample and how frequently and for what period sampling is required. The Department shall  
32          require sampling for drinking water supply wells where data regarding groundwater quality and  
33          flow and depth in the area of any surveyed well provide a reasonable basis to predict that the  
34          quality of water from the surveyed well may be adversely impacted by constituents associated  
35          with the presence of the impoundment. No later than January 1, 2015, the owner shall initiate  
36          sampling and water quality analysis of the drinking water supply wells. A property owner may  
37          elect to have an independent third party selected from a laboratory certified by the Department's  
38          Wastewater/Groundwater Laboratory Certification program sample wells located on their  
39          property in lieu of sampling conducted by the owner of the coal combustion residuals surface  
40          impoundment. The owner of the coal combustion residuals surface impoundment shall pay for  
41          the reasonable costs of such sampling. Nothing in this subsection shall be construed to preclude  
42          or impair the right of any property owner to refuse such sampling of wells on their property. If  
43          the sampling and water quality analysis indicates that water from a drinking water supply well  
44          exceeds groundwater quality standards for constituents associated with the presence of the  
45          impoundment, the owner shall replace the contaminated drinking water supply well with an  
46          alternate supply of potable drinking water and an alternate supply of water that is safe for other  
47          household uses. The alternate supply of potable drinking water shall be supplied within 24  
48          hours of the Department's determination that there is an exceedance of groundwater quality  
49          standards attributable to constituents associated with the presence of the impoundment. The  
50          alternate supply of water that is safe for other household uses shall be supplied within 30 days  
51          of the Department's determination that there is an exceedance of groundwater quality standards

1 attributable to constituents associated with the presence of the impoundment. The requirement  
2 to replace a contaminated drinking water supply well with an alternate supply of potable  
3 drinking water and an alternate supply of water that is safe for other household uses set out in  
4 this subsection is in addition to any other requirements to replace a contaminated drinking  
5 water supply well with an alternate supply of potable drinking water or an alternate supply of  
6 water that is safe for other household uses applicable to the owners of coal combustion  
7 residuals surface impoundments.

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

18 **"§ 130A-309.210. Identification and assessment of discharges; correction of unpermitted**  
19 **discharges.**

20 (a) Identification of Discharges from Coal Combustion Residuals Surface  
21 Impoundments. –

22 (1) The owner of a coal combustion residuals surface impoundment shall  
23 identify all discharges from the impoundment as provided in this subsection.  
24 The requirements for identifying all discharges from an impoundment set out  
25 in this subsection are in addition to any other requirements for identifying  
26 discharges applicable to the owners of coal combustion residuals surface  
27 impoundments.

28 (2) No later than December 31, 2014, the owner of a coal combustion residuals  
29 surface impoundment shall submit a topographic map that identifies the  
30 location of all (i) outfalls from engineered channels designed or improved  
31 for the purpose of collecting water from the toe of the impoundment and (ii)  
32 seeps and weeps discharging from the impoundment that are not captured by  
33 engineered channels designed or improved for the purpose of collecting  
34 water from the toe of the impoundment to the Department. The topographic  
35 map shall comply with all of the following:

- 36 a. Be at a scale as required by the Department.  
37 b. Specify the latitude and longitude of each toe drain outfall, seep, and  
38 weep.  
39 c. Specify whether the discharge from each toe drain outfall, seep, and  
40 weep is continuous or intermittent.  
41 d. Provide an average flow measurement of the discharge from each toe  
42 drain outfall, seep, and weep including a description of the method  
43 used to measure average flow.  
44 e. Specify whether the discharge from each toe drain outfall, seep, and  
45 weep identified reaches the surface waters of the State. If the  
46 discharge from a toe drain outfall, seep, or weep reaches the surface  
47 waters of the State, the map shall specify the latitude and longitude  
48 of where the discharge reaches the surface waters of the State.  
49 f. Any other information related to the topographic map required by the  
50 Department.

1        (b) Assessment of Discharges from Coal Combustion Residuals Surface Impoundments  
2 to the Surface Waters of the State. – The owner of a coal combustion residuals surface  
3 impoundment shall conduct an assessment of discharges from the coal combustion residuals  
4 surface impoundment to the surface waters of the State as provided in this subsection. The  
5 requirements for assessment of discharges from the coal combustion residuals surface  
6 impoundment to the surface waters of the State set out in this subsection are in addition to any  
7 other requirements for the assessment of discharges from coal combustion residuals surface  
8 impoundments to surface waters of the State applicable to the owners of coal combustion  
9 residuals surface impoundments.

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

18        a. Upstream and downstream sampling locations within all channels  
19 that could potentially carry a discharge.

20        b. A description of the surface water quality analyses that will be  
21 performed.

22        c. A sampling schedule, including the frequency and duration of  
23 sampling activities.

24        d. Reporting requirements.

25        e. Any other information related to the assessment of discharges  
26 required by the Department.

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

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

34        (c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion  
35 Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal  
36 combustion residuals surface impoundment shall implement corrective action to prevent  
37 unpermitted discharges from the coal combustion residuals surface impoundment to the surface  
38 waters of the State as provided in this subsection. The requirements for corrective action to  
39 prevent unpermitted discharges from coal combustion residuals surface impoundments to the  
40 surface waters of the State set out in this subsection are in addition to any other requirements  
41 for corrective action to prevent unpermitted discharges from coal combustion residuals surface  
42 impoundments to the surface waters of the State applicable to the owners of coal combustion  
43 residuals surface impoundments.

44        (1) If the Department determines, based on information provided pursuant to  
45 subsection (a) or (b) of this section, that an unpermitted discharge from a  
46 coal combustion residuals surface impoundment, including an unpermitted  
47 discharge from a toe drain outfall, seep, or weep, has reached the surface  
48 waters of the State, the Department shall notify the owner of the  
49 impoundment of its determination.

50        (2) No later than 30 days from a notification pursuant to subdivision (1) of this  
51 subsection, the owner of the coal combustion residuals surface impoundment

1 shall submit a proposed Unpermitted Discharge Corrective Action Plan to  
2 the Department for its review and approval. The proposed Unpermitted  
3 Discharge Corrective Action Plan shall include, at a minimum, all of the  
4 following:

- 5 a. One of the following methods of proposed corrective action:  
6 1. Elimination of the unpermitted discharge.  
7 2. Application for a National Pollutant Discharge Elimination  
8 System (NPDES) permit amendment pursuant to  
9 G.S. 143-215.1 and Subchapter H of Chapter 2 of Title 15A  
10 of the North Carolina Administrative Code to bring the  
11 unpermitted discharge under permit regulations.  
12 b. A detailed explanation of the reasons for selecting the method of  
13 corrective action.  
14 c. Specific plans, including engineering details, to prevent the  
15 unpermitted discharge.  
16 d. A schedule for implementation of the Plan.  
17 e. A monitoring plan for evaluating the effectiveness of the proposed  
18 corrective action.  
19 f. Any other information related to the correction of unpermitted  
20 discharges required by the Department.

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

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

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

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

- 34 a. A procedure for routine inspection of the coal combustion residuals  
35 surface impoundment to identify indicators of potential new  
36 discharges, including toe drain outfalls, seeps, and weeps.  
37 b. A procedure for determining whether a new discharge is actually  
38 present.  
39 c. A procedure for notifying the Department when a new discharge is  
40 confirmed.  
41 d. Any other information related to the identification of new discharges  
42 required by the Department.

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

47 (3) No later than 30 days from the approval of the Plan for the Identification of  
48 New Discharges, the owner shall begin implementation of the Plan in  
49 accordance with the Plan.

50 (e) Reporting. – In addition to any other reporting required by the Department, the  
51 owner of a coal combustion residuals surface impoundment shall submit an annual Surface

1 Water Protection and Restoration Report to the Department no later than January 31 of each  
2 year. The Report shall include a summary of all surface water sampling, protection, and  
3 restoration activities related to the impoundment for the preceding year, including the status of  
4 the identification, assessment, and correction of unpermitted discharges from coal combustion  
5 residuals surface impoundments to the surface waters of the State. The owner of a coal  
6 combustion residuals surface impoundment shall also submit all information required to be  
7 submitted to the Department pursuant to this section to the Coal Ash Management  
8 Commission.

9 **"§ 130A-309.211. Prioritization of coal combustion residuals surface impoundments.**

10 (a) As soon as practicable, but no later than August 1, 2015, the Department shall  
11 develop proposed classifications for all coal combustion residuals surface impoundments,  
12 including active and retired sites, for the purpose of closure and remediation based on these  
13 sites' risks to public health, safety, and welfare; the environment; and natural resources and  
14 shall determine a schedule for closure and required remediation that is based on the degree of  
15 risk to public health, safety, and welfare; the environment; and natural resources posed by the  
16 impoundments and that gives priority to the closure and required remediation of impoundments  
17 that pose the greatest risk. In assessing the risk, the Department shall evaluate information  
18 received pursuant to G.S. 130A-309.209 and G.S. 130A-309.210 and any other information  
19 deemed relevant and, at a minimum, consider all of the following:

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

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

- 42 (1) The Department shall make copies of the written declaration issued pursuant  
43 to this subsection available for inspection as follows:
  - 44 a. A copy of the declaration shall be provided to the local health  
45 director.
  - 46 b. A copy of the declaration shall be provided to the public library  
47 located in closest proximity to the site in the county or counties in  
48 which the site is located.
  - 49 c. The Department shall post a copy of the declaration on the  
50 Department's Web site.



- 1                    d.     The Department may place copies of the declaration in other  
2                    locations so as to assure the availability thereof to the public.
- 3                    (2)    Before issuing a proposed classification of an impoundment as high-risk,  
4                    intermediate-risk, or low-risk, the Department shall give notice of the written  
5                    declaration issued pursuant to this subsection as follows:
- 6                    a.     A notice and summary of the declaration shall be published weekly  
7                    for a period of three consecutive weeks in a newspaper having  
8                    general circulation in the county or counties where the site is located.
- 9                    b.     Notice of the written declaration shall be given by first-class mail to  
10                   persons who have requested such notice. Such notice shall include a  
11                   summary of the written declaration and state the locations where a  
12                   copy of the written declaration is available for inspection. The  
13                   Department shall maintain a mailing list of persons who request  
14                   notice pursuant to this section.
- 15                   c.     Notice of the written declaration shall be given by electronic mail to  
16                   persons who have requested such notice. Such notice shall include a  
17                   summary of the written declaration and state the locations where a  
18                   copy of the written declaration is available for inspection. The  
19                   Department shall maintain a mailing list of persons who request  
20                   notice pursuant to this section.
- 21                   (3)    No later than 60 days after issuance of the written declaration, the  
22                   Department shall conduct a public meeting in the county or counties in  
23                   which the site is located to explain the written declaration to the public. The  
24                   Department shall give notice of the hearing at least 15 days prior to the date  
25                   thereof by all of the following methods:
- 26                   a.     Publication as provided in subdivision (1) of this subsection, with  
27                   first publication to occur not less than 30 days prior to the scheduled  
28                   date of the hearing.
- 29                   b.     First-class mail to persons who have requested notice as provided in  
30                   subdivision (2) of this subsection.
- 31                   c.     Electronic mail to persons who have requested notice as provided in  
32                   subdivision (2) of this subsection.
- 33                   (4)    At least 30 days from the latest date on which notice is provided pursuant to  
34                   subdivision (2) of this subsection shall be allowed for the receipt of written  
35                   comment on the written declaration prior to issuance of a final risk  
36                   classification. At least 20 days will be allowed for receipt of written  
37                   comment following a hearing conducted pursuant to subdivision (3) of this  
38                   subsection prior to issuance of a final risk classification.
- 39                   (c)    Within 30 days of the receipt of all written comment as required by subdivision (4)  
40                   of subsection (b) of this section, the Department shall submit a proposed classification for a  
41                   coal combustion residuals surface impoundment to the Coal Ash Management Commission  
42                   established pursuant to G.S. 130A-309.202. The Commission shall evaluate all information  
43                   submitted in accordance with this Part related to the proposed classification and any other  
44                   information the Commission deems relevant. The Commission shall only approve the proposed  
45                   classification if it determines that the classification was developed in accordance with this  
46                   section and that the classification accurately reflects the level of risk posed by the coal  
47                   combustion residuals surface impoundment. The Commission shall issue its determination in  
48                   writing, including findings in support of its determination. If the Commission fails to act on a  
49                   proposed classification within 60 days of receipt of the proposed classification, the proposed  
50                   classification shall be deemed approved. Parties aggrieved by a final decision of the

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

3 **"§ 130A-309.212. Closure of coal combustion residuals surface impoundments.**

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

11 (1) High-risk impoundments shall be closed as soon as practicable, but no later  
12 than December 31, 2019. A proposed closure plan for such impoundments  
13 must be submitted as soon as practicable, but no later than December 31,  
14 2016. At a minimum, such impoundments shall be dewatered, and the owner  
15 of an impoundment shall either:

16 a. Convert the coal combustion residuals impoundment to an industrial  
17 landfill by removing all coal combustion residuals and contaminated  
18 soil from the impoundment temporarily, safely storing the residuals  
19 on-site, and complying with the requirements for such landfills  
20 established by this Article and rules adopted thereunder. At a  
21 minimum, the landfills shall have a design with a leachate collection  
22 system, a closure cap system, and a composite liner system  
23 consisting of two components: the upper component shall consist of a  
24 minimum 30-ml flexible membrane (FML), and the lower  
25 components shall consist of at least a two-foot layer of compacted  
26 soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$   
27 centimeters per second. FML components consisting of high density  
28 polyethylene (HDPE) shall be at least 60 ml thick. The landfill shall  
29 otherwise comply with the construction requirements established by  
30 Section .1624 of Subchapter B of Chapter 13 of Title 15A of the  
31 North Carolina Administrative Code, and the siting and design  
32 requirements for disposal sites established by Section .0503 of  
33 Subchapter B of Chapter 13 of Title 15A of the North Carolina  
34 Administrative Code, except with respect to those requirements that  
35 pertain to buffers. In lieu of the buffer requirement established by  
36 Section .0503(f)(2)(iii) of Subchapter B of Chapter 13 of Title 15A  
37 of the North Carolina Administrative Code, the owner of the  
38 impoundment shall establish and maintain a 300-foot buffer between  
39 surface waters and disposal areas. After the temporarily displaced  
40 coal combustion residuals have been returned for disposal in the  
41 industrial landfill constructed pursuant to the requirements of this  
42 sub-subdivision, the owner of the landfill shall comply with the  
43 closure and post-closure requirements established by Section .1627  
44 of Subchapter B of Chapter 13 of Title 15A of the North Carolina  
45 Administrative Code. A landfill constructed pursuant to this  
46 sub-subdivision shall otherwise be subject to all applicable  
47 requirements of this Chapter and rules adopted thereunder. Prior to  
48 closure, the Department may allow the disposal of coal combustion  
49 residuals, in addition to those originally contained in the  
50 impoundment, to the landfill constructed pursuant to this  
51 sub-subdivision, if the Department determines that the site is suitable

- 1                   for additional capacity and that disposal of additional coal  
2                   combustion residuals will not pose an unacceptable risk to public  
3                   health, safety, welfare; the environment; and natural resources.  
4                   b.               Remove all coal combustion residuals from the impoundment, return  
5                   the former impoundment to a nonerosive and stable condition and (i)  
6                   transfer the coal combustion residuals for disposal in a coal  
7                   combustion residuals landfill, industrial landfill, or municipal solid  
8                   waste landfill or (ii) use the coal combustion products in a structural  
9                   fill or other beneficial use as allowed by law. The use of coal  
10                   combustion products (i) as structural fill shall be conducted in  
11                   accordance with the requirements of Subpart 3 of this Part and (ii) for  
12                   other beneficial uses shall be conducted in accordance with the  
13                   requirements of Section .1700 of Subchapter B of Chapter 13 of Title  
14                   15A of the North Carolina Administrative Code (Requirements for  
15                   Beneficial Use of Coal Combustion By-Products) and Section .1205  
16                   of Subchapter T of Chapter 2 of Title 15A of the North Carolina  
17                   Administrative Code (Coal Combustion Products Management).  
18               (2)           Intermediate-risk impoundments shall be closed as soon as practicable, but  
19               no later than December 31, 2024. A proposed closure plan for such  
20               impoundments must be submitted as soon as practicable, but no later than  
21               December 31, 2017. At a minimum, such impoundments shall be dewatered,  
22               and the owner of an impoundment shall close the impoundment in any  
23               manner allowed pursuant to subdivision (1) of this subsection.  
24               (3)           Low-risk impoundments shall be closed as soon as practicable, but no later  
25               than December 31, 2029. A proposed closure plan for such impoundments  
26               must be submitted as soon as practicable, but no later than December 31,  
27               2018. Such impoundments shall be dewatered. The Department shall require  
28               such sites to comply with the closure and post-closure requirements  
29               established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of  
30               the North Carolina Administrative Code, except that such impoundments  
31               shall not be required to install and maintain a leachate collection system.  
32               Specifically, the owner of an impoundment shall install and maintain a cap  
33               system that is designed to minimize infiltration and erosion in conformance  
34               with the requirements of Section .1624 of Subchapter B of Chapter 13 of  
35               Title 15A of the North Carolina Administrative Code, and, at a minimum,  
36               shall be designed and constructed to (i) have a permeability no greater than 1  
37               x 10<sup>-5</sup> centimeters per second; (ii) minimize infiltration by the use of a  
38               low-permeability barrier that contains a minimum 18 inches of earthen  
39               material; and (iii) minimize erosion of the cap system and protect the  
40               low-permeability barrier from root penetration by use of an erosion layer  
41               that contains a minimum of six inches of earthen material that is capable of  
42               sustaining native plant growth. In addition, the owner of an impoundment  
43               shall (i) install and maintain a groundwater monitoring system; (ii) establish  
44               financial assurance that will ensure that sufficient funds are available for  
45               closure pursuant to this subdivision, post-closure maintenance and  
46               monitoring, any corrective action that the Department may require, and  
47               satisfy any potential liability for sudden and nonsudden accidental  
48               occurrences arising from the impoundment and subsequent costs incurred by  
49               the Department in response to an incident, even if the owner becomes  
50               insolvent or ceases to reside, be incorporated, do business, or maintain assets  
51               in the State; and (iii) conduct post-closure care for a period of 30 years,

1 which period may be increased by the Department upon a determination that  
2 a longer period is necessary to protect public health, safety, welfare; the  
3 environment; and natural resources, or decreased upon a determination that a  
4 shorter period is sufficient to protect public health, safety, welfare; the  
5 environment; and natural resources. The Department may require  
6 implementation of any other measure it deems necessary to protect public  
7 health, safety, and welfare; the environment; and natural resources, including  
8 imposition of institutional controls that are sufficient to protect public health,  
9 safety, and welfare; the environment; and natural resources.

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

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

- 14 1. Site history and history of site operations, including details on  
15 the manner in which coal combustion residuals have been  
16 stored and disposed of historically.
- 17 2. Estimated volume of material contained in the impoundment.
- 18 3. Analysis of the structural integrity of dikes or dams  
19 associated with impoundment.
- 20 4. All sources of discharge into the impoundment, including  
21 volume and characteristics of each discharge.
- 22 5. Whether the impoundment is lined, and, if so, the  
23 composition thereof.
- 24 6. A summary of all information available concerning the  
25 impoundment as a result of inspections and monitoring  
26 conducted pursuant to this Part and otherwise available.

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

- 28 1. All structures associated with the operation of any coal  
29 combustion residuals surface impoundment located on the  
30 site. For purposes of this sub-subdivision, the term "site"  
31 means the land or waters within the property boundary of the  
32 applicable electric generating station.
- 33 2. All current and former coal combustion residuals disposal and  
34 storage areas on the site, including details concerning coal  
35 combustion residuals produced historically by the electric  
36 generating station and disposed of through transfer to  
37 structural fills.
- 38 3. The property boundary for the applicable site, including  
39 established compliance boundaries within the site.
- 40 4. All potential receptors within 2,640 feet from established  
41 compliance boundaries.
- 42 5. Topographic contour intervals of the site shall be selected to  
43 enable an accurate representation of site features and terrain  
44 and in most cases should be less than 20-foot intervals.
- 45 6. Locations of all sanitary landfills permitted pursuant to this  
46 Article on the site, that are actively receiving waste or are  
47 closed, as well as the established compliance boundaries and  
48 components of associated groundwater and surface water  
49 monitoring systems.

- 1                                   7.     All existing and proposed groundwater monitoring wells
- 2                                   associated with any coal combustion residuals surface
- 3                                   impoundment on the site.
- 4                                   8.     All existing and proposed surface water sample collection
- 5                                   locations associated with any coal combustion residuals
- 6                                   surface impoundment on the site.
- 7                                   c.     The results of a hydrogeologic, geologic, and geotechnical
- 8                                   investigation of the site, including, at a minimum, all of the
- 9                                   following:
- 10                                  1.     A description of the hydrogeology and geology of the site.
- 11                                  2.     A description of the stratigraphy of the geologic units
- 12                                  underlying each coal combustion residuals surface
- 13                                  impoundment located on the site.
- 14                                  3.     The saturated hydraulic conductivity for (i) the coal
- 15                                  combustion residuals within any coal combustion residuals
- 16                                  surface impoundment located on the site and (ii) the saturated
- 17                                  hydraulic conductivity of any existing liner installed at an
- 18                                  impoundment, if any.
- 19                                  4.     The geotechnical properties for (i) the coal combustion
- 20                                  residuals within any coal combustion residuals surface
- 21                                  impoundment located on the site, (ii) the geotechnical
- 22                                  properties of any existing liner installed at an impoundment,
- 23                                  if any, and (iii) the uppermost identified stratigraphic unit
- 24                                  underlying the impoundment, including the soil classification
- 25                                  based upon the Unified Soil Classification System, in-place
- 26                                  moisture content, particle size distribution, Atterberg limits,
- 27                                  specific gravity, effective friction angle, maximum dry
- 28                                  density, optimum moisture content, and permeability.
- 29                                  5.     A chemical analysis of the coal combustion residuals surface
- 30                                  impoundment, including water, coal combustion residuals,
- 31                                  and coal combustion residuals-affected soil.
- 32                                  6.     Identification of all substances with concentrations
- 33                                  determined to be in excess of the groundwater quality
- 34                                  standards for the substance established by Subchapter L of
- 35                                  Chapter 2 of Title 15A of the North Carolina Administrative
- 36                                  Code, including all laboratory results for these analyses.
- 37                                  7.     Summary tables of historical records of groundwater
- 38                                  sampling results.
- 39                                  8.     A map that illustrates the potentiometric contours and flow
- 40                                  directions for all identified aquifers underlying
- 41                                  impoundments (shallow, intermediate, and deep) and the
- 42                                  horizontal extent of areas where groundwater quality
- 43                                  standards established by Subchapter L of Chapter 2 of Title
- 44                                  15A of the North Carolina Administrative Code for a
- 45                                  substance are exceeded.
- 46                                  9.     Cross-sections that illustrate the following: the vertical and
- 47                                  horizontal extent of the coal combustion residuals within an
- 48                                  impoundment; stratigraphy of the geologic units underlying
- 49                                  an impoundment; and the vertical extent of areas where
- 50                                  groundwater quality standards established by Subchapter L of

- 1 Chapter 2 of Title 15A of the North Carolina Administrative  
2 Code for a substance are exceeded.
- 3 d. The results of groundwater modeling of the site that shall include, at  
4 a minimum, all of the following:
- 5 1. An account of the design of the proposed Closure Plan that is  
6 based on the site hydrogeologic conceptual model developed  
7 and includes (i) predictions on post-closure groundwater  
8 elevations and groundwater flow directions and velocities,  
9 including the effects on and from the potential receptors and  
10 (ii) predictions at the compliance boundary for substances  
11 with concentrations determined to be in excess of the  
12 groundwater quality standards for the substance established  
13 by Subchapter L of Chapter 2 of Title 15A of the North  
14 Carolina Administrative Code.
- 15 2. Predictions that include the effects on the groundwater  
16 chemistry and should describe migration, concentration,  
17 mobilization, and fate for substances with concentrations  
18 determined to be in excess of the groundwater quality  
19 standards for the substance established by Subchapter L of  
20 Chapter 2 of Title 15A of the North Carolina Administrative  
21 Code pre- and post-closure, including the effects on and from  
22 potential receptors.
- 23 3. A description of the groundwater trend analysis methods used  
24 to demonstrate compliance with groundwater quality  
25 standards for the substance established by Subchapter L of  
26 Chapter 2 of Title 15A of the North Carolina Administrative  
27 Code and requirements for corrective action of groundwater  
28 contamination established by Subchapter L of Chapter 2 of  
29 Title 15A of the North Carolina Administrative Code.
- 30 e. A description of any plans for beneficial use of the coal combustion  
31 residuals in compliance with the requirements of Section .1700 of  
32 Subchapter B of Chapter 13 of Title 15A of the North Carolina  
33 Administrative Code (Requirements for Beneficial Use of Coal  
34 Combustion By-Products) and Section .1205 of Subchapter T of  
35 Chapter 2 of Title 15A of the North Carolina Administrative Code  
36 (Coal Combustion Products Management).
- 37 f. All engineering drawings, schematics, and specifications for the  
38 proposed Closure Plan. If required by Chapter 89C of the General  
39 Statutes, engineering design documents should be prepared, signed,  
40 and sealed by a professional engineer.
- 41 g. A description of the construction quality assurance and quality  
42 control program to be implemented in conjunction with the Closure  
43 Plan, including the responsibilities and authorities for monitoring and  
44 testing activities, sampling strategies, and reporting requirements.
- 45 h. A description of the provisions for disposal of wastewater and  
46 management of stormwater and the plan for obtaining all required  
47 permits.
- 48 i. A description of the provisions for the final disposition of the coal  
49 combustion residuals. If the coal combustion residuals are to be  
50 removed, the owner must (i) identify the location and permit number  
51 for the coal combustion residuals landfills, industrial landfills, or

1 municipal solid waste landfills in which the coal combustion  
2 residuals will be disposed and (ii) in the case where the coal  
3 combustion residuals are planned for beneficial use, the location and  
4 manner in which the residuals will be temporarily stored. If the coal  
5 combustion residuals are to be left in the impoundment, the owner  
6 must (i) in the case of closure pursuant to sub-subdivision (a)(1)a. of  
7 this section, provide a description of how the ash will be stabilized  
8 prior to completion of closure in accordance with closure and  
9 post-closure requirements established by Section .1627 of Subchapter  
10 B of Chapter 13 of Title 15A of the North Carolina Administrative  
11 Code and (ii) in the case of closure pursuant to sub-subdivision  
12 (a)(1)b. of this section, provide a description of how the ash will be  
13 stabilized pre- and post-closure. If the coal combustion residuals are  
14 to be left in the impoundment, the owner must provide an estimate of  
15 the volume of coal combustion residuals remaining.

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

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

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

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

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

49 m. Projected costs of assessment, corrective action, closure, and  
50 post-closure care for each coal combustion residuals surface  
51 impoundment.

1           n.     A description of the anticipated future use of the site and the  
2                 necessity for the implementation of institutional controls following  
3                 closure, including property use restrictions, and requirements for  
4                 recordation of notices documenting the presence of contamination, if  
5                 applicable, or historical site use.

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

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

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

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

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

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

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

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

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

35       c.     Notice that a proposed Closure Plan has been developed shall be  
36                 given by electronic mail to persons who have requested such notice.  
37                 Such notice shall include a summary of the proposed Closure Plan  
38                 and state the locations where a copy of the proposed Closure Plan is  
39                 available for inspection. The Department shall maintain a mailing list  
40                 of persons who request notice pursuant to this section.

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

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

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



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

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

9           (c)     The Department shall disapprove a proposed Coal Combustion Residuals Surface  
10           Impoundment Closure Plan unless the Department finds that the Closure Plan is protective of  
11           public health, safety, and welfare; the environment; and natural resources and otherwise  
12           complies with the requirements of this Part. The Department shall provide specific findings to  
13           support its decision to approve or disapprove a proposed Closure Plan. If the Department  
14           disapproves a proposed Closure Plan, the person who submitted the Closure Plan may seek  
15           review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails  
16           to approve or disapprove a proposed Closure Plan within 120 days after a complete Closure  
17           Plan has been submitted, the person who submitted the proposed Closure Plan may treat the  
18           Closure Plan as having been disapproved at the end of that time period. The Department may  
19           require a person who proposes a Closure Plan to supply any additional information necessary  
20           for the Department to approve or disapprove the Closure Plan.

21           (d)     Within 30 days of its approval of a Coal Combustion Residuals Surface  
22           Impoundment Closure Plan, the Department shall submit the Closure Plan to the Coal Ash  
23           Management Commission. The Commission shall evaluate all information submitted in  
24           accordance with this Part related to the Closure Plan and any other information the Commission  
25           deems relevant. The Commission shall only approve the Closure Plan if it determines that the  
26           Closure Plan was developed in accordance with this section; that implementation of the Closure  
27           Plan according to the Closure Plan's schedule is technologically feasible; and that the benefits  
28           to public health, safety, and welfare; the environment; and natural resources outweigh the  
29           negative impacts on electricity costs and reliability. The Commission shall issue its  
30           determination in writing, including findings in support of its determination. If the Commission  
31           fails to act on a Closure Plan within 60 days of receipt of the Closure Plan, the Closure Plan  
32           shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to  
33           this subsection may appeal the decision as provided under Article 3 of Chapter 150B of the  
34           General Statutes.

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

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

48           **"§ 130A-309.213. Variance authority.**

49           In recognition of the complexity and magnitude of the issues surrounding the management  
50           of coal combustion residuals and coal combustion residuals surface impoundments, the General  
51           Assembly authorizes the Secretary to grant a variance to extend any deadline for closure of an

1 impoundment established under G.S. 130A-309.212 in conformance with the requirements of  
2 this section. To request such a variance the owner of an impoundment shall submit an  
3 application in a form acceptable to the Department which shall include, at a minimum, all of  
4 the following information: identification of the site, applicable requirements, and applicable  
5 deadlines for which a variance is sought, and detailed information that demonstrates that  
6 compliance with the deadline cannot be achieved by application of best available technology  
7 found to be economically reasonable at the time and would produce serious hardship without  
8 equal or greater benefits to the public. As soon as practicable, but no later than 60 days from  
9 receipt of an application, the Secretary shall evaluate the information submitted in conjunction  
10 with the application, and any other information the Secretary deems relevant, to determine  
11 whether the information supports issuance of a variance. After such evaluation, if the Secretary  
12 finds that the information supports issuance of a variance from the deadline, the Secretary shall  
13 issue a proposed variance. Within 10 days after a proposed variance has been issued, the  
14 Secretary shall issue a written declaration, including findings of fact, documenting the proposed  
15 variance. The Department shall provide for public participation on the proposed variance in the  
16 manner provided by G.S. 130A-309.212(b) and shall take the public input received through the  
17 process into account in its decision before issuing a final variance. Parties aggrieved by a final  
18 decision of the Secretary pursuant to this section may appeal the decision as provided under  
19 Article 3 of Chapter 150B of the General Statutes within 30 days of the date of the decision.

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

21 **"§ 130A-309.214. Applicability.**

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

24 **"§ 130A-309.215. Permit requirements for projects using coal combustion products for**  
25 **structural fill.**

26 (a) Permit Requirements. –

27 (1) Projects using coal combustion products as structural fill involving the  
28 placement of less than 8,000 tons of coal combustion products per acre or  
29 less than 80,000 tons of coal combustion products in total per project, which  
30 proceed in compliance with the requirements of this section and rules  
31 adopted thereunder, are deemed permitted. Any person proposing such a  
32 project shall submit an application for a permit to the Department upon such  
33 form as the Department may prescribe, including, at a minimum, the  
34 information set forth in subdivision (1) of subsection (b) of this section.

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

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

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

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

- 1            b.     The estimated start and completion dates for the project.  
2            c.     An estimate of the volume of coal combustion products to be used in  
3            the project.  
4            d.     A Toxicity Characteristic Leaching Procedure analysis from a  
5            representative sample of each different coal combustion product's  
6            source to be used in the project for, at a minimum, all of the  
7            following constituents: arsenic, barium, cadmium, lead, chromium,  
8            mercury, selenium, and silver.  
9            e.     A signed and dated statement by the owner of the land on which the  
10           structural fill is to be placed, acknowledging and consenting to the  
11           use of coal combustion products as structural fill on the property and  
12           agreeing to record the fill in accordance with the requirements of  
13           G.S. 130A-390.219.  
14           f.     The name, address, and contact information for the generator of the  
15           coal combustion products.  
16           g.     Physical location of the project at which the coal combustion  
17           products were generated.  
18        (2)    For projects involving placement of 8,000 or more tons of coal combustion  
19           products per acre or 80,000 or more tons of coal combustion products in  
20           total per project, the person shall provide all information required pursuant  
21           to subdivision (1) of this subsection and shall provide construction plans for  
22           the project, including a stability analysis as the Department may require. If  
23           required by the Department, a stability analysis shall be prepared, signed,  
24           and sealed by a professional engineer in accordance with sound engineering  
25           practices. A construction plan shall, at a minimum, include a groundwater  
26           monitoring system and an encapsulation liner system in compliance with the  
27           requirements of G.S. 130A-309.216.

28    **"§ 130A-309.216. Design, construction, and siting requirements for projects using coal**  
29           **combustion products for structural fill.**

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

- 31           (1)    A structural fill site must be designed, constructed, operated, closed, and  
32           maintained in such a manner as to minimize the potential for harmful release  
33           of constituents of coal combustion residuals to the environment or create a  
34           nuisance to the public.  
35           (2)    Coal combustion products shall be collected and transported in a manner that  
36           will prevent nuisances and hazards to public health and safety. Coal  
37           combustion products shall be moisture conditioned, as necessary, and  
38           transported in covered trucks to prevent dusting.  
39           (3)    Coal combustion products shall be placed uniformly and shall be compacted  
40           to standards, including in situ density, compaction effort, and relative  
41           density, specified by a registered professional engineer for a specific end-use  
42           purpose.  
43           (4)    Equipment shall be provided that is capable of placing and compacting the  
44           coal combustion products and handling the earthwork required during the  
45           periods that coal combustion products are received at the fill project.  
46           (5)    The coal combustion product structural fill project shall be effectively  
47           maintained and operated as a nondischarge system to prevent discharge to  
48           surface water resulting from the project.  
49           (6)    The coal combustion product structural fill project shall be effectively  
50           maintained and operated to ensure no violations of groundwater standards

1 adopted by the Commission pursuant to Article 21 of Chapter 143 of the  
2 General Statutes due to the project.

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

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

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

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

14 (11) Compliance with this subsection shall not insulate any of the owners or  
15 operators of a structural fill project from claims for damages to surface  
16 waters, groundwater, or air resulting from the operation of the structural fill  
17 project. If the project fails to comply with the requirements of this section,  
18 the constructor, generator, owner, or operator shall notify the Department  
19 and shall take any immediate corrective action as may be required by the  
20 Department.

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

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

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

36 b. A composite liner utilizing a geosynthetic clay liner. This composite  
37 liner is one liner that consists of three components: a geomembrane  
38 liner installed above and in uniform contact with a geosynthetic clay  
39 liner overlying a compacted clay liner with a minimum thickness of  
40 18 inches (0.46 m) and a permeability of no more than  $1.0 \times 10^{-5}$   
41 centimeters per second.

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

45 (3) A cap system that is designed to minimize infiltration and erosion as  
46 follows:

47 a. The cap system shall be designed and constructed to (i) have a  
48 permeability less than or equal to the permeability of any base liner  
49 system or the in situ subsoils underlying the structural fill, or the  
50 permeability specified for the final cover in the effective permit, or a  
51 permeability no greater than  $1 \times 10^{-5}$  centimeters per second,

1 whichever is less; (ii) minimize infiltration through the closed  
2 structural fill by the use of a low-permeability barrier that contains a  
3 minimum 18 inches of earthen material; and (iii) minimize erosion of  
4 the cap system and protect the low-permeability barrier from root  
5 penetration by use of an erosion layer that contains a minimum of six  
6 inches of earthen material that is capable of sustaining native plant  
7 growth.

8 b. The Department may approve an alternative cap system if the owner  
9 or operator can adequately demonstrate (i) the alternative cap system  
10 will achieve an equivalent or greater reduction in infiltration as the  
11 low-permeability barrier specified in sub-subdivision a. of this  
12 subdivision and (ii) the erosion layer will provide equivalent or  
13 improved protection as the erosion layer specified in sub-subdivision  
14 a. of this subdivision.

15 (4) A groundwater monitoring system, that shall be approved by the Department  
16 and, at a minimum, consists of all of the following:

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

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

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

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

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

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

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

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

- 1           (3)    Within four feet of the seasonal high groundwater table.  
2           (4)    Within 500 horizontal feet of any source of drinking water, such as a well,  
3               spring, or other groundwater source of drinking water.  
4           (5)    Within an area subject to a 100-year flood, unless it can be demonstrated to  
5               the Department that the project will be protected from inundation and  
6               washout, and the flow of water is not restricted and the storage volume of  
7               the floodplain will not be significantly reduced.  
8           (6)    Within 30 feet of a bedrock outcrop.  
9           (7)    Within 200 feet of any property boundary.

10 **"§ 130A-309.217. Financial assurance requirements for large projects using coal**  
11 **combustion products for structural fill.**

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

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

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

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

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

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

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

49 **"§ 130A-309.218. Closure of projects using coal combustion products for structural fill.**

50       (a)    Closure of Structural Fill Projects. –

- 1           (1)   No later than 30 working days or 60 calendar days, whichever is less, after  
2           coal combustion product placement has ceased, the final cover shall be  
3           applied over the coal combustion product placement area.  
4           (2)   The final surface of the structural fill shall be graded and provided with  
5           drainage systems that do all of the following:  
6           a.   Minimize erosion of cover materials.  
7           b.   Promote drainage of area precipitation, minimize infiltration, and  
8           prevent ponding of surface water on the structural fill.  
9           (3)   Other erosion control measures, such as temporary mulching, seeding, or silt  
10          barriers shall be installed to ensure no visible coal combustion product  
11          migration to adjacent properties until the beneficial end use of the project is  
12          realized.  
13          (4)   The constructor or operator shall submit a certification to the Department  
14          signed and sealed by a registered professional engineer or signed by the  
15          Secretary of the Department of Transportation or the Secretary's designee  
16          certifying that all requirements of this Subpart have been met. The report  
17          shall be submitted within 30 days of application of the final cover.

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

- 27           (1)   Submit a written closure plan, that includes all of the following:  
28           a.   A description of the cap liner system and the methods and procedures  
29           used to install the cap that conforms to the requirement in  
30           G.S. 130A-309.216(b).  
31           b.   An estimate of the largest area of the structural fill project ever  
32           requiring the cap liner system at any time during the overall  
33           construction period that is consistent with the drawings prepared for  
34           the structural fill.  
35           c.   An estimate of the maximum inventory of coal combustion products  
36           ever on-site over the construction duration of the structural fill.  
37           d.   A schedule for completing all activities necessary to satisfy the  
38           closure criteria set forth in this section.  
39           (2)   Submit a written post-closure plan, that includes all of the following:  
40           a.   A description of the monitoring and maintenance activities required  
41           for the project and the frequency at which these activities must be  
42           performed.  
43           b.   The name, address, and telephone number of the person or office  
44           responsible for the project during the post-closure period.  
45           c.   A description of the planned uses of the property during the  
46           post-closure period. Post-closure use of the property must not disturb  
47           the integrity of the cap system, base liner system, or any other  
48           components of the containment system or the function of the  
49           monitoring systems, unless necessary to comply with the  
50           requirements of this subsection. The Department may approve  
51           disturbance if the constructor or operator demonstrates that

1 disturbance of the cap system, base liner system, or other component  
2 of the containment system will not increase the potential threat to  
3 public health, safety, and welfare; the environment; and natural  
4 resources.

5 d. The cost estimate for post-closure activities required under this  
6 section.

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

11 (4) Maintain and operate the leachate collection system. The Department may  
12 allow the constructor or operator to stop managing leachate upon a  
13 satisfactory demonstration that leachate from the project no longer poses a  
14 threat to human health and the environment.

15 (5) Monitor and maintain the groundwater monitoring system in accordance  
16 with G.S. 130A-309.216 and monitor the surface water in accordance with  
17 15A NCAC 13B .0602.

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

22 **"§ 130A-309.219. Recordation of projects using coal combustion products for structural**  
23 **fill.**

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

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

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

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

42 **"§ 130A-309.220. Department of Transportation projects.**

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

46 **"§ 130A-309.221. Inventory and inspection of certain structural fill projects.**

47 No later than July 1, 2015, the Department shall prepare an inventory of all structural fill  
48 projects with a volume of 10,000 cubic yards or more. The Department shall update the  
49 structural fill project inventory at least annually. The Department shall inspect each structural  
50 fill project with a volume of 10,000 cubic yards or more at least annually to determine if the  
51 project or facility has been constructed and operated in compliance with Section .1700 of



1 Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code  
2 (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1200 of  
3 Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal  
4 Combustion Products Management), as applicable.

5 **"§ 130A-309.222. Amendments required to rules.**

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

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

- 17 (1) Coal combustion residuals surface impoundments located at the Dan River  
18 Steam Station, owned and operated by Duke Energy Progress, and located in  
19 Rockingham County.
- 20 (2) Coal combustion residuals surface impoundments located at the Riverbend  
21 Steam Station, owned and operated by Duke Energy Carolinas, and located  
22 in Gaston County.
- 23 (3) Coal combustion residuals surface impoundments located at the Asheville  
24 Steam Electric Generating Plant, owned and operated by Duke Energy  
25 Progress, and located in Buncombe County.
- 26 (4) Coal combustion residuals surface impoundments located at the Sutton  
27 Plant, owned and operated by Duke Energy Progress, and located in New  
28 Hanover County.

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

- 31 (1) The impoundments shall be dewatered.
- 32 (2) All coal combustion residuals shall be removed from the impoundments and  
33 transferred for (i) disposal in a coal combustion residuals landfill, industrial  
34 landfill, or municipal solid waste landfill or (ii) use in a structural fill or  
35 other beneficial use as allowed by law. Any disposal or use of coal  
36 combustion products pursuant to this section shall comply with the  
37 moratoriums enacted under Section 4(a) and Section 5(a) of this act and any  
38 extensions thereof. The use of coal combustion products (i) as structural fill,  
39 as authorized by Section 4(b) of this act, shall be conducted in accordance  
40 with the requirements of Subpart 3 of Part 2I of Article 9 of the General  
41 Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial  
42 uses shall be conducted in accordance with the requirements of Section  
43 .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina  
44 Administrative Code (Requirements for Beneficial Use of Coal Combustion  
45 By-Products) and Section .1205 of Subchapter T of Chapter 2 of Title 15A  
46 of the North Carolina Administrative Code (Coal Combustion Products  
47 Management), as applicable.
- 48 (3) Restoration of groundwater quality is degraded as a result of the  
49 impoundment, corrective action to restore groundwater quality shall be  
50 implemented by the owner or operator as provided in G.S. 130A-309.204.

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

1 **"§ 130A-290. Definitions.**

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

4 ...

5 (2b) ~~"Combustion products"~~"Coal combustion residuals" means residuals,  
6 including fly ash, bottom ash, boiler slag, mill rejects, and flue gas  
7 desulfurization residue produced by a coal-fired generating ~~unit~~unit destined  
8 for disposal. The term does not include coal combustion products as defined  
9 in G.S. 130A-309.201(4).

10 (2c) ~~"Combustion products landfill"~~"Coal combustion residuals landfill" means a  
11 facility or unit for the disposal of combustion products, where the landfill is  
12 located at the same facility with the coal-fired generating unit or units  
13 producing the combustion products, and where the landfill is located wholly  
14 or partly on top of a facility that is, or was, being used for the disposal or  
15 storage of such combustion products, including, but not limited to, landfills,  
16 wet and dry ash ponds, and structural fill facilities.

17 ...

18 (3a) "Commission" means the Environmental Management Commission.

19 ...

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

23 ...

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

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

36 b. Solid or dissolved material in:

37 1. Domestic sewage and sludges generated by treatment thereof  
38 in sanitary sewage collection, treatment and disposal systems  
39 which are designed to discharge effluents to the surface  
40 waters.

41 2. Irrigation return flows.

42 3. Wastewater discharges and the sludges incidental to and  
43 generated by treatment which are point sources subject to  
44 permits granted under Section 402 of the Water Pollution  
45 Control Act, as amended (P.L. 92-500), and permits granted  
46 under G.S. 143-215.1 by the ~~Environmental Management~~  
47 ~~Commission.~~Commission, including coal combustion  
48 products. However, any sludges that meet the criteria for  
49 hazardous waste under RCRA shall also be a solid waste for  
50 the purposes of this Article.

51 ...."

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

13           **SECTION 3.(f)** This section is effective when it becomes law. G.S. 130A-309.202,  
14 as enacted by Section 3(a) of this act, is repealed June 30, 2030. Subpart 3 of Part 2I of Article  
15 9 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of coal  
16 combustion products as structural fill contracted for on or after that date. The first report due  
17 under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due October 1, 2014.  
18 Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this  
19 act, shall be appointed no later than September 1, 2014.  
20

### 21 **PART III. MORATORIUMS AND STUDY ON (1) USE OF COAL COMBUSTION** 22 **PRODUCTS AS STRUCTURAL FILL AND (2) CONSTRUCTION OR EXPANSION** 23 **OF COMBUSTION PRODUCTS LANDFILLS**

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

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

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

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

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

- 50           (1) Review the uses of coal combustion products as structural fill and the  
51 regulation of this use under Subpart 3 of Part 2I of Article 9 of the General

1 Statutes, as enacted by Section 3(a) of this act, to determine if the  
2 requirements are sufficient to protect public health, safety, and welfare; the  
3 environment; and natural resources.

4 (2) Review the uses of coal combustion products for other beneficial uses and  
5 the regulation of these uses under Section .1700 of Subchapter B of Chapter  
6 13 of Title 15A of the North Carolina Administrative Code (Requirements  
7 for Beneficial Use of Coal Combustion By-Products) and Section .1200 of  
8 Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative  
9 Code (Coal Combustion Products Management), and other applicable rules,  
10 to determine if the rules are sufficient to protect public health, safety, and  
11 welfare; the environment; and natural resources.

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

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

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

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

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

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

47 **SECTION 5.(b)** The Department of Environment and Natural Resources shall  
48 evaluate each coal combustion residuals landfill currently operating in the State, and, in  
49 particular, assess the risks to public health, safety, welfare; the environment; and natural  
50 resources, of coal combustion residuals surface impoundments located beneath coal  
51 combustion residuals landfills to determine the advisability of continued operation of these

landfills. The Department shall report to the Environmental Review Commission no later than January 15, 2015, on its findings and recommendations concerning the risk assessment of each of these sites and the advisability of continued operation of coal combustion residuals landfills.

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

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

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

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

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

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

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

- (1) In the event of a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.
- (2) In the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly

1 affected by the discharge and shall approve the form and content of the  
2 notice and the newspapers in which the notice is to be published. The notice  
3 shall be captioned "NOTICE OF DISCHARGE OF UNTREATED  
4 SEWAGE". The owner or operator shall publish the notice within 10 days  
5 after the Secretary has determined the counties that are significantly affected  
6 by the discharge and approved the form and content of the notice and the  
7 newspapers in which the notice is to be published. The owner or operator  
8 shall file a copy of the notice and proof of publication with the Department  
9 within 30 days after the notice is published. Publication of a notice of  
10 discharge under this subdivision is in addition to the requirement to issue a  
11 press release under subdivision (1) of this subsection.

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

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

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

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

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

45 "(16) Establishing and operating a 24-hour Operations Center to serve as a single  
46 point of contact for local governments to report the occurrence of emergency  
47 and disaster events and to coordinate local and State response assets. The  
48 Division shall record all telephone calls to the 24-hour Operations Center  
49 emergency hotline and shall maintain the recording of each telephone call  
50 for at least one year."  
51

1 **PART V. REQUIRE NOTIFICATION OF THE DEPARTMENT OF EMERGENCY**  
2 **DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS;**  
3 **REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS**  
4 **SURFACE IMPOUNDMENTS**

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

6 "**§ 143-215.27. Repair, alteration, or removal of dam.**

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

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

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

25 "**§ 143-215.27A. Closure of coal combustion residuals surface impoundments to render**  
26 **such facilities exempt from the North Carolina Dam Safety Law of 1967.**

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

32 (1) A proposed geotechnical investigation plan scope of work. Upon preliminary  
33 plan approval pursuant to subsection (b) of this section, the owner shall  
34 proceed with necessary field work and submit a geotechnical report with  
35 site-specific field data indicating that the containment dam and material  
36 impounded by the containment dam are stable, and that the impounded  
37 material is not subject to liquid flow behavior under expected static and  
38 dynamic loading conditions. Material testing should be performed along the  
39 full extent of the containment dam and in a pattern throughout the area of  
40 impounded material.

41 (2) A topographic map depicting existing conditions of the containment dam  
42 and impoundment area at two-foot contour intervals or less.

43 (3) If the facility contains areas capable of impounding by topography, a breach  
44 plan must be included that ensures that there shall be no place within the  
45 facility capable of impounding. The breach plan shall include, at a minimum,  
46 proposed grading contours superimposed on the existing topographic map as  
47 well as necessary engineering calculations, construction details, and  
48 construction specifications.

49 (4) A permanent vegetation and stabilization or capping plan by synthetic liner  
50 or other means, if needed. These plans shall include at minimum, proposed  
51 grading contours superimposed on the existing topographic map where

1 applicable as well as necessary engineering calculations, construction  
2 details, construction specifications, and all details for the establishment of  
3 surface area stabilization.

4 (5) A statement indicating that the impoundment facility has not received  
5 sluiced coal combustion residuals for at least three years and that there are  
6 no future plans to place coal combustion residuals in the facility by sluicing  
7 methods. The Division of Energy, Mineral, and Land Resources may waive  
8 the three-year requirement if proper evidence is presented by a North  
9 Carolina registered professional engineer indicating that the impounded  
10 material is not subject to liquid flow behavior.

11 (b) Preliminary Review and Approval. – The Decommissioning Request shall undergo  
12 a preliminary review by the Division for completeness and approval of the proposed  
13 geotechnical investigation plan scope of work. The owner shall be notified by letter with results  
14 of the preliminary review, including approval or revision requests relative to the proposed  
15 scope of work included in the geotechnical investigation plan. Upon receipt of a letter issued by  
16 the Division approving the preliminary geotechnical plan scope of work, the owner may  
17 proceed with field work and development of the geotechnical report.

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

20 (1) If it is determined that sufficient evidence has been presented to clearly show  
21 that the facility no longer functions as a dam in its current state, a letter  
22 decommissioning the facility shall be issued by the Division, and the facility  
23 shall no longer be under jurisdiction of the Dam Safety Law of 1967.

24 (2) If modifications such as breach construction or implementation of a  
25 permanent vegetation or surface lining plan are needed, such plans shall be  
26 reviewed per standard procedures for consideration of a letter of approval to  
27 modify or breach.

28 (3) If approved, such plans shall follow standard procedure for construction,  
29 including construction supervision by a North Carolina registered  
30 professional engineer, as-built submittal by a North Carolina registered  
31 professional engineer, and follow up final inspection by the Division.

32 (4) Final approval shall be issued by the Division in the form of a letter  
33 decommissioning the facility, and the facility shall no longer be under  
34 jurisdiction of the Dam Safety Law of 1967."

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

36 **"§ 143-215.31. Supervision over maintenance and operation of dams.**

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

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

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



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

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

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

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

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

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

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

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

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

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

30 ...."

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

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

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

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

41 **"§ 130A-291.1. Septage management program; permit fees.**

42 ...

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

49 ...."

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

51 **"§ 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. AMEND COMPLIANCE BOUNDARY PROVISIONS**

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

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

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

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

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

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

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

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

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

46 **SECTION 12.(c)** The Environmental Management Commission shall review the  
47 compliance boundary and corrective action provisions of Subchapter 2L of Title 15A of the  
48 North Carolina Administrative Code for clarity and internal consistency. The Commission  
49 shall report the results of its review, including any recommendations, to the Environmental  
50 Review Commission no later than December 1, 2014.

**PART VIII. OTHER STUDIES**

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

**SECTION 13.(b)** The Department of Environment and Natural Resources shall review and make recommendations on all deadlines established under Part 2I of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 3(a) of this act. The Department shall report the results of its study, including any recommendations, to the Environmental Review Commission no later than December 1, 2014.

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

**PART IX. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT**

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

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

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

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

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

(d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash Management Commission is created. The fees collected pursuant to this section and all other funds received by the Coal Ash Management Commission shall be deposited in the Coal Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing



1 account, and any interest or other income derived from the Fund shall be credited to the Fund.  
2 Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly.  
3 The Commission shall be subject to the provisions of the State Budget Act, except that no  
4 unexpended surplus of the Coal Combustion Residuals Management Fund shall revert to the  
5 General Fund. All funds credited to the Commission Fund shall be used only to pay the  
6 expenses of the Coal Ash Management Commission and the Department of Environment and  
7 Natural Resources in providing oversight of coal combustion residuals.

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

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

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

## 16 17 **PART X. SPECIFICATIONS FOR USE OF COAL ASH COAL COMBUSTION** 18 **PRODUCTS IN PUBLIC PROCUREMENT**

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

### 21 **"§ 143-58.6. Specifications for Use of Coal Combustion Products.**

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

29 (b) Department of Transportation to Develop Technical Specifications. – The  
30 Department of Transportation shall develop recommended technical specifications for the use  
31 of coal combustion products that may be utilized in any construction by the Department of  
32 Transportation. The technical specifications shall address all products used in construction,  
33 including, but not limited to, the use of coal combustion products in concrete and cement  
34 products, and in construction fill.

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

39 (d) Consultation. – The State Construction Office and the Department of Transportation  
40 shall consult with each other in the development of the recommended technical specifications  
41 pursuant to the provisions of this section, in order to insure that the recommended technical  
42 standards are uniform for similar types of construction. The goal of the Department of  
43 Administration and the Department of Transportation shall be to increase the usage and  
44 consumption of coal combustion products in their respective construction projects.

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

## 49 50 **PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

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

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