

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

1 HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION; (26) AMEND
2 COMPLIANCE BOUNDARY PROVISIONS; (27) PROVIDE FOR VARIOUS STUDIES;
3 (28) REQUIRE THE STATE CONSTRUCTION OFFICE AND THE DEPARTMENT OF
4 TRANSPORTATION TO DEVELOP TECHNICAL SPECIFICATIONS FOR USE OF
5 COAL COMBUSTION PRODUCTS; AND (29) PROVIDE RESOURCES FOR
6 IMPLEMENTATION OF THIS ACT.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL**
10 **DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE**
11 **IMPOUNDMENTS; MORATORIUM ON RATE CASES**

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

14 **"§ 62-133.13. Recovery of costs related to unlawful discharges from coal combustion**
15 **residuals surface impoundments to the surface waters of the State.**

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

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

25 **SECTION 2.(a)** Moratorium on Cost Recovery. – The Utilities Commission shall
26 not issue an order authorizing an electric public utility the recovery of any costs related to coal
27 combustion residuals surface impoundments that were not included in the utility's cost of
28 service approved in its most recent general rate case until the end of the moratorium provided
29 in this section. Nothing in this section prohibits the utility from seeking, nor prohibits the
30 Commission from authorizing under its existing authority, a deferral for costs related to coal
31 ash combustion residual surface impoundments. The moratorium established under this section
32 shall not apply to the net recovery of any fuel and fuel-related costs under G.S. 62-133.2. For
33 the purposes of this section, "coal combustion residuals surface impoundments" has the same
34 meaning as in G.S. 130A-309.201. The moratorium in this section shall end January 15, 2015.

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

39
40 **PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL**
41 **COMBUSTION RESIDUALS**

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

44 "Part 2I. Coal Ash Management.

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

46 **"§ 130A-309.200. Title.**

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

48 **"§ 130A-309.201. Definitions.**

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

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

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

24 **"§ 130A-309.202. Coal Ash Management Commission.**

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

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

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

1 (6) One appointed by the General Assembly upon recommendation of the
2 Speaker of the House of Representatives in accordance with G.S. 120-121
3 who shall at the time of appointment be a representative of an electric
4 membership corporation organized under Article 2 of Chapter 117 of the
5 General Statutes and have a background in power supply resource planning
6 and engineering.

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

9 (8) One appointed by the Governor who shall at the time of appointment have
10 expertise in determining and evaluating the costs associated with electricity
11 generation and establishing the rates associated with electricity consumption.

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

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

18 (1) The initial appointment of the Chair no later than October 1, 2014. If the
19 initial appointment is not made by that date, the Chair shall be elected by a
20 vote of the membership; and

21 (2) Appointments of a subsequent Chair, including appointments to fill a
22 vacancy of the Chair created by resignation, dismissal, death, or disability of
23 the Chair, no later than 30 days after the last day of the previous Chair's
24 term. If an appointment of a subsequent Chair is not made by that date, the
25 Chair shall be elected by a vote of the membership.

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

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

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

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

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

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

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

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

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

50 (i) Staff. – The Commission is authorized and empowered to employ staff as the
51 Commission may determine to be necessary for the proper discharge of the Commission's

1 duties and responsibilities. The Chair of the Commission shall organize and direct the work of
2 the Commission staff. The salaries and compensation of all such personnel shall be fixed in the
3 manner provided by law for fixing and regulating salaries and compensation by other State
4 agencies. The Chair, within allowed budgetary limits and as allowed by law, shall authorize
5 and approve travel, subsistence, and related expenses of such personnel incurred while
6 traveling on official business. All State agencies, including the constituent institutions of The
7 University of North Carolina, shall provide information and support to the Commission upon
8 request.

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

16 (k) Covered Persons. – All members of the Commission are covered persons for the
17 purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As
18 covered persons, members of the Commission shall comply with the applicable requirements of
19 the State Government Ethics Act, including mandatory training, the public disclosure of
20 economic interests, and ethical standards for covered persons. Members of the Commission
21 shall comply with the provisions of the State Government Ethics Act to avoid conflicts of
22 interest.

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

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

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

36 (o) Terms of Members. – Members of the Commission shall serve terms of six years,
37 beginning effective July 1 of the year of appointment.

38 **"§ 130A-309.203. Expedited permit review.**

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

42 (b) Notwithstanding G.S. 130A-295.8(e), the Department shall determine whether an
43 application for any permit necessary to conduct activities required by this Part is complete
44 within 30 days after the Department receives the application for the permit. A determination of
45 completeness means that the application includes all required components but does not mean
46 that the required components provide all of the information that is required for the Department
47 to make a decision on the application. If the Department determines that an application is not
48 complete, the Department shall notify the applicant of the components needed to complete the
49 application. An applicant may submit additional information to the Department to cure the
50 deficiencies in the application. The Department shall make a final determination as to whether
51 the application is complete within the later of (i) 30 days after the Department receives the

1 application for the permit less the number of days that the applicant uses to provide the
2 additional information or (ii) 10 days after the Department receives the additional information
3 from the applicant. The Department shall issue a draft permit decision on an application for a
4 permit within 90 days after the Department determines that the application is complete. The
5 Department shall hold a public hearing and accept written comment on the draft permit
6 decision for a period of not less than 30 or more than 60 days after the Department issues a
7 draft permit decision. The Department shall issue a final permit decision on an application for a
8 permit within 60 days after the comment period on the draft permit decision closes. If the
9 Department fails to act within any time period set out in this subsection, the applicant may treat
10 the failure to act as a denial of the permit and may challenge the denial as provided in Chapter
11 150B of the General Statutes.

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

18 (d) Notwithstanding any other provision of this section or any other provision of law,
19 the Department shall either issue or deny a permit required for dewatering of a retired
20 impoundment within 90 days of receipt of a completed application, in such a form and
21 including such information as the Department may prescribe, for the dewatering activities. The
22 Department shall accept written comment on a draft permit decision for a period of not less
23 than 30 days or more than 60 days prior to issuance or denial of such a permit. If the
24 Department fails to act within any time period set out in this subsection, the applicant may treat
25 the failure to act as a denial of the permit and may challenge the denial as provided in Chapter
26 150B of the General Statutes.

27 **"§ 130A-309.204. Reports.**

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

49 (b) On or before October 1 of each year, the Department shall report to each member of
50 the General Assembly who has a coal combustion residuals surface impoundment in the
51 member's district. This report shall include the location of each impoundment in the member's

1 district, the amount of coal combustion residuals known or believed to be located in the
2 impoundment, the last action taken at the impoundment, and the date of that last action.

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

7 (1) The volume of coal combustion residuals and products produced.

8 (2) The volume of coal combustion residuals disposed.

9 (3) The volume of coal combustion products used in structural fill projects.

10 (4) The volume of coal combustion products beneficially used, other than for
11 structural fill.

12 **"§ 130A-309.205. Local ordinances regulating management of coal combustion residuals**
13 **and coal combustion products invalid; petition to preempt local ordinance.**

14 (a) It is the intent of the General Assembly to maintain a uniform system for the
15 management of coal combustion residuals and coal combustion products, including matters of
16 disposal and beneficial use, and to place limitations upon the exercise by all units of local
17 government in North Carolina of the power to regulate the management of coal combustion
18 residuals and coal combustion products by means of ordinances, property restrictions, zoning
19 regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or
20 other local authorities to adopt local ordinances, including those imposing taxes, fees, or
21 charges or regulating health, environment, or land use, all provisions of local ordinances,
22 including those regulating land use, adopted by counties, municipalities, or other local
23 authorities that regulate or have the effect of regulating the management of coal combustion
24 residuals and coal combustion products, including regulation of carbon burn-out plants, within
25 the jurisdiction of a local government are invalidated, to the extent necessary to effectuate the
26 purposes of this Part, that do the following:

27 (1) Place any restriction or condition not placed by this Part upon management
28 of coal combustion residuals or coal combustion products within any county,
29 city, or other political subdivision.

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

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

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

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

49 (2) First-class mail to persons who have requested notice. The Commission shall
50 maintain a mailing list of persons who request notice in advance of the
51 hearing pursuant to this section. Notice by mail shall be complete upon

1 deposit of a copy of the notice in a postage-paid wrapper addressed to the
2 person to be notified at the address that appears on the mailing list
3 maintained by the Commission in a post office or official depository under
4 the exclusive care and custody of the United States Postal Service.

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

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

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

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

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

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

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

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

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

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

50 **§ 130A-309.206. Federal preemption; severability.**

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

4 **"§ 130A-309.207. General rule making for Part.**

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

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

8 **"§ 130A-309.208. Generation, disposal, and use of coal combustion residuals.**

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

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

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

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

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

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

28 **"§ 130A-309.209. Groundwater assessment and corrective action; drinking water supply**
29 **well survey and provision of alternate water supply; reporting.**

30 (a) Groundwater Assessment of Coal Combustion Residuals Surface Impoundments. –
31 The owner of a coal combustion residuals surface impoundment shall conduct groundwater
32 monitoring and assessment as provided in this subsection. The requirements for groundwater
33 monitoring and assessment set out in this subsection are in addition to any other groundwater
34 monitoring and assessment requirements applicable to the owners of coal combustion residuals
35 surface impoundments.

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

- 41 a. A description of all receptors and significant exposure pathways.
- 42 b. An assessment of the horizontal and vertical extent of soil and
43 groundwater contamination for all contaminants confirmed to be
44 present in groundwater in exceedance of groundwater quality
45 standards.
- 46 c. A description of all significant factors affecting movement and
47 transport of contaminants.
- 48 d. A description of the geological and hydrogeological features
49 influencing the chemical and physical character of the contaminants.
- 50 e. A schedule for continued groundwater monitoring.

- 1 f. Any other information related to groundwater assessment required by
2 the Department.
- 3 (2) The Department shall approve the Groundwater Assessment Plan if it
4 determines that the Plan complies with the requirements of this subsection
5 and will be sufficient to protect public health, safety, and welfare; the
6 environment; and natural resources.
- 7 (3) No later than 10 days from approval of the Groundwater Assessment Plan,
8 the owner shall begin implementation of the Plan.
- 9 (4) No later than 180 days from approval of the Groundwater Assessment Plan,
10 the owner shall submit a Groundwater Assessment Report to the
11 Department. The Report shall describe all exceedances of groundwater
12 quality standards associated with the impoundment.
- 13 (b) Corrective Action for the Restoration of Groundwater Quality. – The owner of a
14 coal combustion residuals surface impoundment shall implement corrective action for the
15 restoration of groundwater quality as provided in this subsection. The requirements for
16 corrective action for the restoration of groundwater quality set out in this subsection are in
17 addition to any other corrective action for the restoration of groundwater quality requirements
18 applicable to the owners of coal combustion residuals surface impoundments.
- 19 (1) No later than 90 days from submission of the Groundwater Assessment
20 Report required by subsection (a) of this section, or a time frame otherwise
21 approved by the Department not to exceed 180 days from submission of the
22 Groundwater Assessment Report, the owner of the coal combustion residuals
23 surface impoundment shall submit a proposed Groundwater Corrective
24 Action Plan to the Department for its review and approval. The Groundwater
25 Corrective Action Plan shall provide for the restoration of groundwater in
26 conformance with the requirements of Subchapter L of Chapter 2 of Title
27 15A of the North Carolina Administrative Code. The Groundwater
28 Corrective Action Plan shall include, at a minimum, all of the following:
- 29 a. A description of all exceedances of the groundwater quality
30 standards, including any exceedances that the owner asserts are the
31 result of natural background conditions.
- 32 b. A description of the methods for restoring groundwater in
33 conformance with the requirements of Subchapter L of Chapter 2 of
34 Title 15A of the North Carolina Administrative Code and a detailed
35 explanation of the reasons for selecting these methods.
- 36 c. Specific plans, including engineering details, for restoring
37 groundwater quality.
- 38 d. A schedule for implementation of the Plan.
- 39 e. A monitoring plan for evaluating the effectiveness of the proposed
40 corrective action and detecting movement of any contaminant
41 plumes.
- 42 f. Any other information related to groundwater assessment required by
43 the Department.
- 44 (2) The Department shall approve the Groundwater Corrective Action Plan if it
45 determines that the Plan complies with the requirements of this subsection
46 and will be sufficient to protect public health, safety, and welfare; the
47 environment; and natural resources.
- 48 (3) No later than 30 days from the approval of the Groundwater Corrective
49 Action Plan, the owner shall begin implementation of the Plan in accordance
50 with the Plan's schedule.

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

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

47 **"§ 130A-309.210. Identification and assessment of discharges; correction of unpermitted**
48 **discharges.**

49 (a) Identification of Discharges from Coal Combustion Residuals Surface
50 Impoundments. –

1 (1) The owner of a coal combustion residuals surface impoundment shall
2 identify all discharges from the impoundment as provided in this subsection.
3 The requirements for identifying all discharges from an impoundment set out
4 in this subsection are in addition to any other requirements for identifying
5 discharges applicable to the owners of coal combustion residuals surface
6 impoundments.

7 (2) No later than December 31, 2014, the owner of a coal combustion residuals
8 surface impoundment shall submit a topographic map that identifies the
9 location of all (i) outfalls from engineered channels designed or improved
10 for the purpose of collecting water from the toe of the impoundment and (ii)
11 seeps and weeps discharging from the impoundment that are not captured by
12 engineered channels designed or improved for the purpose of collecting
13 water from the toe of the impoundment to the Department. The topographic
14 map shall comply with all of the following:

15 a. Be at a scale as required by the Department.

16 b. Specify the latitude and longitude of each toe drain outfall, seep, and
17 weep.

18 c. Specify whether the discharge from each toe drain outfall, seep, and
19 weep is continuous or intermittent.

20 d. Provide an average flow measurement of the discharge from each toe
21 drain outfall, seep, and weep including a description of the method
22 used to measure average flow.

23 e. Specify whether the discharge from each toe drain outfall, seep, and
24 weep identified reaches the surface waters of the State. If the
25 discharge from a toe drain outfall, seep, or weep reaches the surface
26 waters of the State, the map shall specify the latitude and longitude
27 of where the discharge reaches the surface waters of the State.

28 f. Include any other information related to the topographic map
29 required by the Department.

30 (b) Assessment of Discharges from Coal Combustion Residuals Surface Impoundments
31 to the Surface Waters of the State. – The owner of a coal combustion residuals surface
32 impoundment shall conduct an assessment of discharges from the coal combustion residuals
33 surface impoundment to the surface waters of the State as provided in this subsection. The
34 requirements for assessment of discharges from the coal combustion residuals surface
35 impoundment to the surface waters of the State set out in this subsection are in addition to any
36 other requirements for the assessment of discharges from coal combustion residuals surface
37 impoundments to surface waters of the State applicable to the owners of coal combustion
38 residuals surface impoundments.

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

47 a. Upstream and downstream sampling locations within all channels
48 that could potentially carry a discharge.

49 b. A description of the surface water quality analyses that will be
50 performed.

- 1 c. A sampling schedule, including the frequency and duration of
2 sampling activities.
- 3 d. Reporting requirements.
- 4 e. Any other information related to the assessment of discharges
5 required by the Department.
- 6 (2) The Department shall approve the Discharge Assessment Plan if it
7 determines that the Plan complies with the requirements of this subsection
8 and will be sufficient to protect public health, safety, and welfare; the
9 environment; and natural resources.
- 10 (3) No later than 30 days from the approval of the Discharge Assessment Plan,
11 the owner shall begin implementation of the Plan in accordance with the
12 Plan's schedule.
- 13 (c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion
14 Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal
15 combustion residuals surface impoundment shall implement corrective action to prevent
16 unpermitted discharges from the coal combustion residuals surface impoundment to the surface
17 waters of the State as provided in this subsection. The requirements for corrective action to
18 prevent unpermitted discharges from coal combustion residuals surface impoundments to the
19 surface waters of the State set out in this subsection are in addition to any other requirements
20 for corrective action to prevent unpermitted discharges from coal combustion residuals surface
21 impoundments to the surface waters of the State applicable to the owners of coal combustion
22 residuals surface impoundments.
- 23 (1) If the Department determines, based on information provided pursuant to
24 subsection (a) or (b) of this section, that an unpermitted discharge from a
25 coal combustion residuals surface impoundment, including an unpermitted
26 discharge from a toe drain outfall, seep, or weep, has reached the surface
27 waters of the State, the Department shall notify the owner of the
28 impoundment of its determination.
- 29 (2) No later than 30 days from a notification pursuant to subdivision (1) of this
30 subsection, the owner of the coal combustion residuals surface impoundment
31 shall submit a proposed Unpermitted Discharge Corrective Action Plan to
32 the Department for its review and approval. The proposed Unpermitted
33 Discharge Corrective Action Plan shall include, at a minimum, all of the
34 following:
- 35 a. One of the following methods of proposed corrective action:
- 36 1. Elimination of the unpermitted discharge.
- 37 2. Application for a National Pollutant Discharge Elimination
38 System (NPDES) permit amendment pursuant to
39 G.S. 143-215.1 and Subchapter H of Chapter 2 of Title 15A
40 of the North Carolina Administrative Code to bring the
41 unpermitted discharge under permit regulations.
- 42 b. A detailed explanation of the reasons for selecting the method of
43 corrective action.
- 44 c. Specific plans, including engineering details, to prevent the
45 unpermitted discharge.
- 46 d. A schedule for implementation of the Plan.
- 47 e. A monitoring plan for evaluating the effectiveness of the proposed
48 corrective action.
- 49 f. Any other information related to the correction of unpermitted
50 discharges required by the Department.

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

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

8 (d) Identification of New Discharges. – No later than October 1, 2014, the owner of a
9 coal combustion residuals surface impoundment shall submit a proposed Plan for the
10 Identification of New Discharges to the Department for its review and approval as provided in
11 this subsection.

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

14 a. A procedure for routine inspection of the coal combustion residuals
15 surface impoundment to identify indicators of potential new
16 discharges, including toe drain outfalls, seeps, and weeps.

17 b. A procedure for determining whether a new discharge is actually
18 present.

19 c. A procedure for notifying the Department when a new discharge is
20 confirmed.

21 d. Any other information related to the identification of new discharges
22 required by the Department.

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

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

30 (e) Reporting. – In addition to any other reporting required by the Department, the
31 owner of a coal combustion residuals surface impoundment shall submit an annual Surface
32 Water Protection and Restoration Report to the Department no later than January 31 of each
33 year. The Report shall include a summary of all surface water sampling, protection, and
34 restoration activities related to the impoundment for the preceding year, including the status of
35 the identification, assessment, and correction of unpermitted discharges from coal combustion
36 residuals surface impoundments to the surface waters of the State. The owner of a coal
37 combustion residuals surface impoundment shall also submit all information required to be
38 submitted to the Department pursuant to this section to the Coal Ash Management
39 Commission.

40 **"§ 130A-309.211. Prioritization of coal combustion residuals surface impoundments.**

41 (a) As soon as practicable, but no later than December 31, 2015, the Department shall
42 develop proposed classifications for all coal combustion residuals surface impoundments,
43 including active and retired sites, for the purpose of closure and remediation based on these
44 sites' risks to public health, safety, and welfare; the environment; and natural resources and
45 shall determine a schedule for closure and required remediation that is based on the degree of
46 risk to public health, safety, and welfare; the environment; and natural resources posed by the
47 impoundments and that gives priority to the closure and required remediation of impoundments
48 that pose the greatest risk. In assessing the risk, the Department shall evaluate information
49 received pursuant to G.S. 130A-309.209 and G.S. 130A-309.210 and any other information
50 deemed relevant and, at a minimum, consider all of the following:

- 1 (1) Any hazards to public health, safety, or welfare resulting from the
2 impoundment.
- 3 (2) The structural condition and hazard potential of the impoundment.
- 4 (3) The proximity of surface waters to the impoundment and whether any
5 surface waters are contaminated or threatened by contamination as a result
6 of the impoundment.
- 7 (4) Information concerning the horizontal and vertical extent of soil and
8 groundwater contamination for all contaminants confirmed to be present in
9 groundwater in exceedance of groundwater quality standards and all
10 significant factors affecting contaminant transport.
- 11 (5) The location and nature of all receptors and significant exposure pathways.
- 12 (6) The geological and hydrogeological features influencing the movement and
13 chemical and physical character of the contaminants.
- 14 (7) The amount and characteristics of coal combustion residuals in the
15 impoundment.
- 16 (8) Whether the impoundment is located within an area subject to a 100-year
17 flood.
- 18 (9) Any other factor the Department deems relevant to establishment of risk.
- 19 (b) The Department shall issue a proposed classification for each coal combustion
20 residuals surface impoundment based upon the assessment conducted pursuant to subsection (a)
21 of this section as high-risk, intermediate-risk, or low-risk. Within 30 days after a proposed
22 classification has been issued, the Department shall issue a written declaration, including
23 findings of fact, documenting the proposed classification. The Department shall provide for
24 public participation on the proposed risk classification as follows:
- 25 (1) The Department shall make copies of the written declaration issued pursuant
26 to this subsection available for inspection as follows:
 - 27 a. A copy of the declaration shall be provided to the local health
28 director.
 - 29 b. A copy of the declaration shall be provided to the public library
30 located in closest proximity to the site in the county or counties in
31 which the site is located.
 - 32 c. The Department shall post a copy of the declaration on the
33 Department's Web site.
 - 34 d. The Department shall place copies of the declaration in other
35 locations so as to assure the reasonable availability thereof to the
36 public.
- 37 (2) The Department shall give notice of the written declaration issued pursuant
38 to this subsection as follows:
 - 39 a. A notice and summary of the declaration shall be published weekly
40 for a period of three consecutive weeks in a newspaper having
41 general circulation in the county or counties where the site is located.
 - 42 b. Notice of the written declaration shall be given by first-class mail to
43 persons who have requested such notice. Such notice shall include a
44 summary of the written declaration and state the locations where a
45 copy of the written declaration is available for inspection. The
46 Department shall maintain a mailing list of persons who request
47 notice pursuant to this section.
 - 48 c. Notice of the written declaration shall be given by electronic mail to
49 persons who have requested such notice. Such notice shall include a
50 summary of the written declaration and state the locations where a
51 copy of the written declaration is available for inspection. The

1 Department shall maintain a mailing list of persons who request
2 notice pursuant to this section.

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

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

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

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

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

21 (c) Within 30 days of the receipt of all written comment as required by subdivision (4)
22 of subsection (b) of this section, the Department shall submit a proposed classification for a
23 coal combustion residuals surface impoundment to the Coal Ash Management Commission
24 established pursuant to G.S. 130A-309.202. The Commission shall evaluate all information
25 submitted in accordance with this Part related to the proposed classification and any other
26 information the Commission deems relevant. The Commission shall only approve the proposed
27 classification if it determines that the classification was developed in accordance with this
28 section and that the classification accurately reflects the level of risk posed by the coal
29 combustion residuals surface impoundment. The Commission shall issue its determination in
30 writing, including findings in support of its determination. If the Commission fails to act on a
31 proposed classification within 60 days of receipt of the proposed classification, the proposed
32 classification shall be deemed approved. Parties aggrieved by a final decision of the
33 Commission pursuant to this subsection may appeal the decision as provided under Article 3 of
34 Chapter 150B of the General Statutes.

35 **"§ 130A-309.212. Closure of coal combustion residuals surface impoundments.**

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

43 (1) High-risk impoundments shall be closed as soon as practicable, but no later
44 than December 31, 2019. A proposed closure plan for such impoundments
45 must be submitted as soon as practicable, but no later than December 31,
46 2016. At a minimum, (i) impoundments located in whole above the seasonal
47 high groundwater table shall be dewatered; (ii) impoundments located in
48 whole or in part beneath the seasonal high groundwater table shall be
49 dewatered to the maximum extent practicable; and (iii) the owner of an
50 impoundment shall either:

- 1 a. Convert the coal combustion residuals impoundment to an industrial
2 landfill by removing all coal combustion residuals and contaminated
3 soil from the impoundment temporarily, safely storing the residuals
4 on-site, and complying with the requirements for such landfills
5 established by this Article and rules adopted thereunder. At a
6 minimum, the landfills shall have a design with a leachate collection
7 system, a closure cap system, and a composite liner system
8 consisting of two components: the upper component shall consist of a
9 minimum 30-ml flexible membrane (FML), and the lower
10 components shall consist of at least a two-foot layer of compacted
11 soil with a hydraulic conductivity of no more than 1×10^{-7}
12 centimeters per second. FML components consisting of high density
13 polyethylene (HDPE) shall be at least 60 ml thick. The landfill shall
14 otherwise comply with the construction requirements established by
15 Section .1624 of Subchapter B of Chapter 13 of Title 15A of the
16 North Carolina Administrative Code, and the siting and design
17 requirements for disposal sites established by Section .0503 of
18 Subchapter B of Chapter 13 of Title 15A of the North Carolina
19 Administrative Code, except with respect to those requirements that
20 pertain to buffers. In lieu of the buffer requirement established by
21 Section .0503(f)(2)(iii) of Subchapter B of Chapter 13 of Title 15A
22 of the North Carolina Administrative Code, the owner of the
23 impoundment shall establish and maintain a 300-foot buffer between
24 surface waters and disposal areas. After the temporarily displaced
25 coal combustion residuals have been returned for disposal in the
26 industrial landfill constructed pursuant to the requirements of this
27 sub-subdivision, the owner of the landfill shall comply with the
28 closure and post-closure requirements established by Section .1627
29 of Subchapter B of Chapter 13 of Title 15A of the North Carolina
30 Administrative Code. A landfill constructed pursuant to this
31 sub-subdivision shall otherwise be subject to all applicable
32 requirements of this Chapter and rules adopted thereunder. Prior to
33 closure, the Department may allow the disposal of coal combustion
34 residuals, in addition to those originally contained in the
35 impoundment, to the landfill constructed pursuant to this
36 sub-subdivision, if the Department determines that the site is suitable
37 for additional capacity and that disposal of additional coal
38 combustion residuals will not pose an unacceptable risk to public
39 health, safety, welfare; the environment; and natural resources.
40 b. Remove all coal combustion residuals from the impoundment, return
41 the former impoundment to a nonerosive and stable condition and (i)
42 transfer the coal combustion residuals for disposal in a coal
43 combustion residuals landfill, industrial landfill, or municipal solid
44 waste landfill or (ii) use the coal combustion products in a structural
45 fill or other beneficial use as allowed by law. The use of coal
46 combustion products (i) as structural fill shall be conducted in
47 accordance with the requirements of Subpart 3 of this Part and (ii) for
48 other beneficial uses shall be conducted in accordance with the
49 requirements of Section .1700 of Subchapter B of Chapter 13 of Title
50 15A of the North Carolina Administrative Code (Requirements for
51 Beneficial Use of Coal Combustion By-Products) and Section .1205

1 of Subchapter T of Chapter 2 of Title 15A of the North Carolina
2 Administrative Code (Coal Combustion Products Management).

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

9 (3) Low-risk impoundments shall be closed as soon as practicable, but no later
10 than December 31, 2029. A proposed closure plan for such impoundments
11 must be submitted as soon as practicable, but no later than December 31,
12 2018. At a minimum, (i) impoundments located in whole above the seasonal
13 high groundwater table shall be dewatered; (ii) impoundments located in
14 whole or in part beneath the seasonal high groundwater table shall be
15 dewatered to the maximum extent practicable; and (iii) the owner of an
16 impoundment shall either:

17 a. Close in any manner allowed pursuant to subdivision (1) of this
18 subsection.

19 b. Comply with the closure and post-closure requirements established
20 by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the
21 North Carolina Administrative Code, except that such impoundments
22 shall not be required to install and maintain a leachate collection
23 system. Specifically, the owner of an impoundment shall install and
24 maintain a cap system that is designed to minimize infiltration and
25 erosion in conformance with the requirements of Section .1624 of
26 Subchapter B of Chapter 13 of Title 15A of the North Carolina
27 Administrative Code, and, at a minimum, shall be designed and
28 constructed to (i) have a permeability no greater than 1×10^{-5}
29 centimeters per second; (ii) minimize infiltration by the use of a
30 low-permeability barrier that contains a minimum 18 inches of
31 earthen material; and (iii) minimize erosion of the cap system and
32 protect the low-permeability barrier from root penetration by use of
33 an erosion layer that contains a minimum of six inches of earthen
34 material that is capable of sustaining native plant growth. In addition,
35 the owner of an impoundment shall (i) install and maintain a
36 groundwater monitoring system; (ii) establish financial assurance
37 that will ensure that sufficient funds are available for closure
38 pursuant to this subdivision, post-closure maintenance and
39 monitoring, any corrective action that the Department may require,
40 and satisfy any potential liability for sudden and nonsudden
41 accidental occurrences arising from the impoundment and
42 subsequent costs incurred by the Department in response to an
43 incident, even if the owner becomes insolvent or ceases to reside, be
44 incorporated, do business, or maintain assets in the State; and (iii)
45 conduct post-closure care for a period of 30 years, which period may
46 be increased by the Department upon a determination that a longer
47 period is necessary to protect public health, safety, welfare; the
48 environment; and natural resources, or decreased upon a
49 determination that a shorter period is sufficient to protect public
50 health, safety, welfare; the environment; and natural resources. The
51 Department may require implementation of any other measure it

1 deems necessary to protect public health, safety, and welfare; the
2 environment; and natural resources, including imposition of
3 institutional controls that are sufficient to protect public health,
4 safety, and welfare; the environment; and natural resources. The
5 Department may not approve closure for an impoundment pursuant
6 to sub-subdivision b. of subdivision (3) of this subsection unless the
7 Department finds that the proposed closure plan includes design
8 measures to prevent, upon the plan's full implementation,
9 post-closure exceedances of groundwater quality standards beyond
10 the compliance boundary that are attributable to constituents
11 associated with the presence of the impoundment.

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

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

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

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

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

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

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

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

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

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

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

50 b. First-class mail to persons who have requested notice as provided in
51 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 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 and economically feasible, and
28 the Closure Plan is protective of the public health, safety, and welfare; the environment; and
29 natural resources. In addition, the Commission may consider any impact on electricity costs
30 and reliability, but this factor may not be dispositive of the Commission's determination. The
31 Commission shall issue its determination in writing, including findings in support of its
32 determination. If the Commission fails to act on a Closure Plan within 60 days of receipt of the
33 Closure Plan, the Closure Plan shall be deemed approved. Parties aggrieved by a final decision
34 of the Commission pursuant to this subsection may appeal the decision as provided under
35 Article 3 of Chapter 150B of the General Statutes.

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

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

49 **"§ 130A-309.213. Variance authority.**

50 (a) In recognition of the complexity and magnitude of the issues surrounding the
51 management of coal combustion residuals and coal combustion residuals surface

1 impoundments, the General Assembly authorizes the Commission to grant a variance to extend
2 any deadline for closure of an impoundment established under G.S. 130A-309.212 in
3 conformance with the requirements of this section. To request such a variance the owner of an
4 impoundment shall, no earlier than two years prior to the applicable deadline, submit an
5 application in a form acceptable to the Department which shall include, at a minimum, all of
6 the following information: identification of the site, applicable requirements, and applicable
7 deadlines for which a variance is sought, and the site-specific circumstances that support the
8 need for the variance. The owner of the impoundment shall also provide detailed information
9 that demonstrates (i) the owner has substantially complied with all other requirements and
10 deadlines established by this Part; (ii) the owner has made good faith efforts to comply with the
11 applicable deadline for closure of the impoundment; and (iii) that compliance with the deadline
12 cannot be achieved by application of best available technology found to be economically
13 reasonable at the time and would produce serious hardship without equal or greater benefits to
14 the public. As soon as practicable, but no later than 60 days from receipt of an application, the
15 Secretary shall evaluate the information submitted in conjunction with the application, and any
16 other information the Secretary deems relevant, to determine whether the information supports
17 issuance of a variance. After such evaluation, if the Secretary finds that the information
18 supports issuance of a variance from the deadline, the Secretary shall issue a proposed variance.
19 Within 10 days after a proposed variance has been issued, the Secretary shall issue a written
20 declaration, including findings of fact, documenting the proposed variance. The Department
21 shall provide for public participation on the proposed variance in the manner provided by
22 G.S. 130A-309.212(b) and shall take the public input received through the process into account
23 in its decision concerning the proposed variance. Within 30 days of the receipt of all public
24 input received, the Department shall submit a proposed variance to the Coal Ash Management
25 Commission. The Commission shall evaluate all information submitted in accordance with this
26 section and any other information the Commission deems relevant. The Commission shall only
27 approve a variance if it determines that compliance with the deadline cannot be achieved by
28 application of best available technology found to be economically reasonable at the time and
29 would produce serious hardship without equal or greater benefits to the public. The
30 Commission shall issue its determination in writing, including findings in support of its
31 determination. If the Commission fails to act on a variance request within 60 days of receipt,
32 the variance shall be deemed denied. Parties aggrieved by a final decision of the Commission
33 pursuant to this subsection may appeal the decision as provided under Article 3 of Chapter
34 150B of the General Statutes.

35 (b) A variance granted pursuant to this section shall not extend a deadline for closure of
36 an impoundment more than three years beyond the date applicable to the impoundment as
37 provided under G.S. 130A-309.212.

38 (c) No more than one variance may be granted pursuant to this section per
39 impoundment.

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

41 **"§ 130A-309.214. Applicability.**

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

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

46 (a) Permit Requirements. –

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

1 project shall submit an application for a permit to the Department upon such
2 form as the Department may prescribe, including, at a minimum, the
3 information set forth in subdivision (1) of subsection (b) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (1) A structural fill site must be designed, constructed, operated, closed, and
2 maintained in such a manner as to minimize the potential for harmful release
3 of constituents of coal combustion residuals to the environment or create a
4 nuisance to the public.
- 5 (2) Coal combustion products shall be collected and transported in a manner that
6 will prevent nuisances and hazards to public health and safety. Coal
7 combustion products shall be moisture conditioned, as necessary, and
8 transported in covered trucks to prevent dusting.
- 9 (3) Coal combustion products shall be placed uniformly and shall be compacted
10 to standards, including in situ density, compaction effort, and relative
11 density, specified by a registered professional engineer for a specific end-use
12 purpose.
- 13 (4) Equipment shall be provided that is capable of placing and compacting the
14 coal combustion products and handling the earthwork required during the
15 periods that coal combustion products are received at the fill project.
- 16 (5) The coal combustion product structural fill project shall be effectively
17 maintained and operated as a nondischarge system to prevent discharge to
18 surface water resulting from the project.
- 19 (6) The coal combustion product structural fill project shall be effectively
20 maintained and operated to ensure no violations of groundwater standards
21 adopted by the Commission pursuant to Article 21 of Chapter 143 of the
22 General Statutes due to the project.
- 23 (7) Surface waters resulting from precipitation shall be diverted away from the
24 active coal combustion product placement area during filling and
25 construction activity.
- 26 (8) Site development shall comply with the North Carolina Sedimentation
27 Pollution Control Act of 1973, as amended.
- 28 (9) The structural fill project shall be operated with sufficient dust control
29 measures to minimize airborne emissions and to prevent dust from creating a
30 nuisance or safety hazard and shall not violate applicable air quality
31 regulations.
- 32 (10) Coal combustion products utilized on an exterior slope of a structural fill
33 shall not be placed with a slope greater than 3.0 horizontal to 1.0 vertical.
- 34 (11) Compliance with this subsection shall not insulate any of the owners or
35 operators of a structural fill project from claims for damages to surface
36 waters, groundwater, or air resulting from the operation of the structural fill
37 project. If the project fails to comply with the requirements of this section,
38 the constructor, generator, owner, or operator shall notify the Department
39 and shall take any immediate corrective action as may be required by the
40 Department.

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

- 49 (1) A base liner, which shall consist of one of the following designs:
 - 50 a. A composite liner utilizing a compacted clay liner. This composite
51 liner is one liner that consists of two components: a geomembrane

- 1 liner installed above and in direct and uniform contact with a
2 compacted clay liner with a minimum thickness of 24 inches (0.61
3 m) and a permeability of no more than 1.0×10^{-7} centimeters per
4 second.
- 5 b. A composite liner utilizing a geosynthetic clay liner. This composite
6 liner is one liner that consists of three components: a geomembrane
7 liner installed above and in uniform contact with a geosynthetic clay
8 liner overlying a compacted clay liner with a minimum thickness of
9 18 inches (0.46 m) and a permeability of no more than 1.0×10^{-5}
10 centimeters per second.
- 11 (2) A leachate collection system, which is constructed directly above the base
12 liner and shall be designed to effectively collect and remove leachate from
13 the project.
- 14 (3) A cap system that is designed to minimize infiltration and erosion as
15 follows:
- 16 a. The cap system shall be designed and constructed to (i) have a
17 permeability less than or equal to the permeability of any base liner
18 system or the in situ subsoils underlying the structural fill, or the
19 permeability specified for the final cover in the effective permit, or a
20 permeability no greater than 1×10^{-5} centimeters per second,
21 whichever is less; (ii) minimize infiltration through the closed
22 structural fill by the use of a low-permeability barrier that contains a
23 minimum 18 inches of earthen material; and (iii) minimize erosion of
24 the cap system and protect the low-permeability barrier from root
25 penetration by use of an erosion layer that contains a minimum of six
26 inches of earthen material that is capable of sustaining native plant
27 growth.
- 28 b. The Department may approve an alternative cap system if the owner
29 or operator can adequately demonstrate (i) the alternative cap system
30 will achieve an equivalent or greater reduction in infiltration as the
31 low-permeability barrier specified in sub-subdivision a. of this
32 subdivision and (ii) the erosion layer will provide equivalent or
33 improved protection as the erosion layer specified in sub-subdivision
34 a. of this subdivision.
- 35 (4) A groundwater monitoring system, that shall be approved by the Department
36 and, at a minimum, consists of all of the following:
- 37 a. A sufficient number of wells, installed at appropriate locations and
38 depths, to yield groundwater samples from the uppermost aquifer that
39 represent the quality of groundwater passing the relevant point of
40 compliance as approved by the Department. A down-gradient
41 monitoring system shall be installed at the relevant point of
42 compliance so as to ensure detection of groundwater contamination
43 in the uppermost aquifer.
- 44 b. A proposed monitoring plan, which shall be certified by a licensed
45 geologist or professional engineer to be effective in providing early
46 detection of any release of hazardous constituents from any point in a
47 structural fill or leachate surface impoundment to the uppermost
48 aquifer, so as to be protective of public health, safety, and welfare;
49 the environment; and natural resources.
- 50 c. A groundwater monitoring program, which shall include consistent
51 sampling and analysis procedures that are designed to ensure

1 monitoring results that provide an accurate representation of
2 groundwater quality at the background and down-gradient wells.
3 Monitoring shall be conducted through construction and the
4 post-closure care period. The sampling procedures and frequency
5 shall be protective of public health, safety, and welfare; the
6 environment; and natural resources.

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

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

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

16 (1) Within 50 feet of any property boundary.

17 (2) Within 300 horizontal feet of a private dwelling or well.

18 (3) Within 50 horizontal feet of the top of the bank of a perennial stream or
19 other surface water body.

20 (4) Within four feet of the seasonal high groundwater table.

21 (5) Within a 100-year floodplain except as authorized under
22 G.S. 143-215.54A(b). A site located in a floodplain shall not restrict the flow
23 of the 100-year flood, reduce the temporary water storage capacity of the
24 floodplain or result in washout of solid waste so as to pose a hazard to
25 human life, wildlife or land or water resources.

26 (6) Within 50 horizontal feet of a wetland, unless, after consideration of the
27 chemical and physical impact on the wetland, the United States Army Corps
28 of Engineers issues a permit or waiver for the fill.

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

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

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

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

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

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

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

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

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

18 (a) Closure of Structural Fill Projects. –

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

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

24 a. Minimize erosion of cover materials.

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

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

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

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

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

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

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

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

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

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

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

(1) Impoundments located in whole above the seasonal high groundwater table shall be dewatered. Impoundments located in whole or in part beneath the seasonal high groundwater table shall be dewatered to the maximum extent practicable.

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

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

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

"§ 130A-290. Definitions.

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

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

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

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

...

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

4 ...

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

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

17 b. Solid or dissolved material in:

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

22 2. Irrigation return flows.

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

32"

33 **SECTION 3.(e)** The initial members of the Coal Ash Management Commission
34 established pursuant to G.S. 130A-309.202, as enacted by Section 3(a) of this act, whose
35 qualifications are described in subdivisions (3), (4), and (9) of G.S. 130A-309.202(b), shall be
36 appointed for an initial term of two years beginning effective July 1, 2014, and subsequent
37 appointments shall be for six-year terms. The initial members of the Coal Ash Management
38 Commission established pursuant to G.S. 130A-309.202, as enacted by Section 3(a) of this act,
39 whose qualifications are described in subdivisions (1), (6), and (8) of G.S. 130A-309.202(b),
40 shall be appointed for an initial term of four years beginning effective July 1, 2014, and
41 subsequent appointments shall be for six-year terms. The initial members of the Coal Ash
42 Management Commission established pursuant to G.S. 130A-309.202, as enacted by Section
43 3(a) of this act, whose qualifications are described in subdivisions (2), (5), and (7) of
44 G.S. 130A-309.202(b), shall be appointed for an initial term of six years beginning effective
45 July 1, 2014, and subsequent appointments shall be for six-year terms.

46 **SECTION 3.(f)** This section is effective when it becomes law. G.S. 130A-309.202,
47 as enacted by Section 3(a) of this act, is repealed June 30, 2030. Subpart 3 of Part 2I of Article
48 9 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of coal
49 combustion products as structural fill contracted for on or after that date. The first report due
50 under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due November 1, 2014.

1 Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this
2 act, shall be appointed no later than October 1, 2014.

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

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

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

15 (1) A project where the structural fill is used with a base liner, leachate
16 collection system, cap liner, or groundwater monitoring system and where
17 the constructor or operator establishes financial assurance, as required by
18 G.S. 130A-309.217.

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

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

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

33 (1) Review the uses of coal combustion products as structural fill and the
34 regulation of this use under Subpart 3 of Part 2I of Article 9 of the General
35 Statutes, as enacted by Section 3(a) of this act, to determine if the
36 requirements are sufficient to protect public health, safety, and welfare; the
37 environment; and natural resources.

38 (2) Review the uses of coal combustion products for other beneficial uses and
39 the regulation of these uses under Section .1700 of Subchapter B of Chapter
40 13 of Title 15A of the North Carolina Administrative Code (Requirements
41 for Beneficial Use of Coal Combustion By-Products) and Section .1200 of
42 Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative
43 Code (Coal Combustion Products Management), and other applicable rules,
44 to determine if the rules are sufficient to protect public health, safety, and
45 welfare; the environment; and natural resources.

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

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

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

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

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

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

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

38 **SECTION 5.(c)** This section is effective when it becomes law and expires August
39 1, 2015.

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

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

46 "**§ 143-215.1C. Report to wastewater system customers on system performance; report**
47 **discharge of untreated wastewater to the Department; publication of notice of**
48 **discharge of untreated wastewater and waste.**

49 (a) Report to Wastewater System Customers. – The owner or operator of any
50 wastewater collection or treatment works, the operation of which is primarily to collect or treat
51 municipal or domestic wastewater and for which a permit is issued under this Part and having

1 an average annual flow greater than 200,000 gallons per day, shall provide to the users or
2 customers of the collection system or treatment works and to the Department an annual report
3 that summarizes the performance of the collection system or treatment works and the extent to
4 which the collection system or treatment works has violated the permit or federal or State laws,
5 regulations, or rules related to the protection of water quality. The report shall be prepared on
6 either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of
7 the calendar or fiscal year.

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

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

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

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

- 50 (1) In the event of a discharge of 1,000 gallons or more of untreated waste to the
51 surface waters of the State, issue a press release to all print and electronic

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

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

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

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

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

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

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

40 **"§ 143-215.27. Repair, alteration, or removal of dam.**

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

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

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

8 "**§ 143-215.27A. Closure of coal combustion residuals surface impoundments to render**
9 **such facilities exempt from the North Carolina Dam Safety Law of 1967.**

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

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

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

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

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

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

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

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

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

19 **"§ 143-215.31. Supervision over maintenance and operation of dams.**

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

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

31 (1) The owner of the dam shall submit a proposed Emergency Action Plan for
32 the dam within 90 days after the dam is classified as a high-hazard dam or an
33 intermediate-hazard dam to the Department and the Department of Public
34 Safety for their review and approval. The Department and the Department of
35 Public Safety shall approve the Emergency Action Plan if they determine
36 that it complies with the requirements of this subsection and will protect
37 public health, safety, and welfare; the environment; and natural resources.

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

40 a. A description of potential emergency conditions that could occur at
41 the dam, including security risks.

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

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

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

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

- 1 (4) The Department shall provide a copy of the Emergency Action Plan to the
2 regional offices of the Department that might respond to an emergency
3 condition at the dam.
- 4 (5) The Department of Public Safety shall provide a copy of the Emergency
5 Action Plan to all local emergency management agencies that might respond
6 to an emergency condition at the dam.
- 7 (6) Information included in an Emergency Action Plan that constitutes sensitive
8 public security information, as provided in G.S. 132-1.7, shall be maintained
9 as confidential information and shall not be subject to disclosure under the
10 Public Records Act. For purposes of this section, "sensitive public security
11 information" shall include Critical Energy Infrastructure Information
12 protected from disclosure under rules adopted by the Federal Energy
13 Regulatory Commission in 18 C.F.R. § 333.112.

14 "

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

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

21 "**§ 143-215.30. Notice of completion; certification of final ~~approval~~approval; notice of**
22 **transfer.**

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

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

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

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

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

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

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

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

2 "**§ 143-215.32. Inspection of dams.**

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

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

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

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

15 a. Deterioration, malfunction, or improper operation of spillway control
16 systems.

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

18 c. Severe erosion or other signs of deterioration in dikes or other
19 containment devices or structures.

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

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

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

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

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

1 (c) If at any time the condition of any dam becomes so dangerous to the safety of life or
2 property, in the opinion of the Environmental Management Commission, as not to permit
3 sufficient time for issuance of an order in the manner provided by subsection (b) of this section,
4 the Environmental Management Commission may immediately take such measures as may be
5 essential to provide emergency protection to life and property, including the lowering of the
6 level of a reservoir by releasing water impounded or the destruction in whole or in part of the
7 dam or reservoir. The Environmental Management Commission may recover the costs of such
8 measures from the owner or owners by appropriate legal action.

9 (d) An order issued under this Part shall be served on the owner of the dam as provided
10 in G.S. 1A-1, Rule 4."
11

12 **PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM** 13 **COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT** 14 **COMMISSION**

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

16 **"§ 130A-29. Commission for Public Health – Creation, powers and duties.**

17 ...

18 (c) The Commission shall adopt rules:

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

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

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

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

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

28 (5a) Establishing eligibility standards for participation in Department
29 reimbursement programs.

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

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

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

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

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

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

43"

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

45 **"§ 130A-291.1. Septage management program; permit fees.**

46 ...

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

1 "

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

3 "**§ 130A-294. Solid waste management program.**

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

7 ...

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

1 Outstanding Resource Waters designated by the
2 ~~Environmental Management Commission~~.

3"

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

5 **"§ 130A-300. Effect on laws applicable to water pollution control.**

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

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

14 **"§ 130A-302. Sludge deposits at sanitary landfills.**

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

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

21 **"§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste
22 disposal sites.**

23 ...

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

30 ...

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

38"

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

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

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

46 "(5) "Unrestricted use standards" when used in connection with "cleanup",
47 "remediated", or "remediation" means contaminant concentrations for each
48 environmental medium that are considered acceptable for all uses and that
49 comply with generally applicable standards, guidance, or established
50 methods governing the contaminants that are established by statute or
51 adopted, published, or implemented by the ~~Environmental Management~~

1 ~~Commission, the Commission, Commission~~ or the Department instead of the
2 site-specific contaminant levels established pursuant to this Part."

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

4 **"§ 130A-310.65. Definitions.**

5 As used in this Part:

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

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

10 ...

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

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

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

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

36 **"§ 113-415. Conflicting laws.**

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

49 **SECTION 11.(l)** The Revisor of Statutes shall make any conforming statutory
50 changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter

1 130A of the General Statutes from the Commission for Public Health to the Environmental
2 Management Commission.

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

7
8 **PART VII. AMEND COMPLIANCE BOUNDARY PROVISIONS**

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

10 **"§ 143-215.1. Control of sources of water pollution; permits required.**

11 ...

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

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

- 28 (1) ~~A violation of any water quality standard in adjoining classified waters of~~
29 ~~the State occurs or can be reasonably predicted to occur considering~~
30 ~~hydrogeological conditions, modeling, or any other available evidence.~~
31 (2) ~~An imminent hazard or threat to the environment, public health, or safety~~
32 ~~exists.~~
33 (3) ~~A violation of any standard in groundwater occurring in the bedrock,~~
34 ~~including limestone aquifers in Coastal Plain sediments, unless it can be~~
35 ~~demonstrated that the violation will not adversely affect, or have the~~
36 ~~potential to adversely affect, a water supply well.~~

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

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

50 **SECTION 12.(c)** The Environmental Management Commission shall review the
51 compliance boundary and corrective action provisions of Subchapter 2L of Title 15A of the

1 North Carolina Administrative Code for clarity and internal consistency. The Commission
2 shall report the results of its review, including any recommendations, to the Environmental
3 Review Commission no later than December 1, 2014.
4

5 **PART VIII. OTHER STUDIES**

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

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

24 **SECTION 13.(c)** The Coal Ash Management Commission, established pursuant to
25 G.S. 130A-309.202, as enacted by Section 3(a) of this act, shall study how to promote,
26 incentivize, and prioritize the beneficial use of coal combustion products over the disposal of
27 coal combustion residuals. The Commission shall report the results of its study, including any
28 recommendations, to the Environmental Review Commission no later than December 1, 2014.

29 **SECTION 14.** The Department of Transportation shall evaluate additional
30 opportunities for the use of coal combustion products in the construction and maintenance of
31 roads and bridges within the State. The Department shall report the results of its study,
32 including any recommendations, to the Environmental Review Commission and the Joint
33 Legislative Transportation Oversight Committee no later than December 1, 2014.
34

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

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

38 **"§ 62-302.1. Regulatory fee for combustion residuals surface impoundments.**

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

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

50 (c) When Due. – The fee shall be paid in quarterly installments. The fee is payable to
51 the Coal Ash Management Commission on or before the 15th of the second month following

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

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

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

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

23 **SECTION 15.(c)** Twenty-five receipt-supported positions are created in the
24 Department of Environment and Natural Resources to carry out the duties in Part 2I of Article 9
25 of Chapter 130A of the General Statutes. There is appropriated from the Coal Combustion
26 Residuals Management Fund the sum of one million seven hundred fifty thousand dollars
27 (\$1,750,000) to the Department of Environment and Natural Resources to support the positions
28 for the 2014-2015 fiscal year.

29 **SECTION 15.(d)** Five receipt-supported positions are created in the Division of
30 Emergency Management of the Department of Public Safety to carry out the duties in
31 G.S. 130A-309.202. The funds remaining in the Coal Combustion Residuals Management Fund
32 after the appropriation to the Department of Environment and Natural Resources are
33 appropriated to the Department of Public Safety for the 2014-2015 fiscal year. These positions
34 shall be used to provide assistance to the Coal Ash Management Commission established by
35 G.S. 130A-309.202, as enacted by Section 3(a) of this act. The positions shall be assigned in
36 the following manner: one of the positions shall be the executive director of the staff, two
37 positions shall be assigned as analysts, one position shall be assigned as a technician, and one
38 position shall be assigned as administrative. The Division of Emergency Management in the
39 Department of Public Safety shall consult with the Chair of the Commission in hiring the staff
40 for the Coal Ash Management Commission. The Division of Emergency Management in the
41 Department of Public Safety shall provide support to the Commission until the staff of the
42 Commission is hired, including the designation of an individual to serve as an interim executive
43 director of the staff.

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

47 **PART X. SPECIFICATIONS FOR USE OF COAL COMBUSTION PRODUCTS IN** 48 **PUBLIC PROCUREMENT**

49 **SECTION 16.** Article 3 of Chapter 143 of the General Statutes is amended by
50 adding a new section to read:
51

1 **"§ 143-58.6. Specifications for use of coal combustion products.**

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

9 (b) Department of Transportation to Develop Technical Specifications. – The
10 Department of Transportation shall develop recommended technical specifications for the use
11 of coal combustion products that may be utilized in any construction by the Department of
12 Transportation. The technical specifications shall address all products used in construction,
13 including, but not limited to, the use of coal combustion products in concrete and cement
14 products and in construction fill.

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

19 (d) Consultation. – The State Construction Office and the Department of Transportation
20 shall consult with each other in the development of the recommended technical specifications
21 pursuant to the provisions of this section in order to ensure that the recommended technical
22 standards are uniform for similar types of construction. The goal of the Department of
23 Administration and the Department of Transportation shall be to increase the usage and
24 consumption of coal combustion products in their respective construction projects.

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

29
30 **PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

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

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