GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE DRH30252-SB-17 (03/25)

Short Title:	Amend Coal Ash Management Act of 2014.	(Public)
Sponsors:	Representative Harrison.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO AMEND THE COAL ASH MANAGEMENT ACT OF 2014.

The General Assembly of North Carolina enacts:

PART I. PROHIBIT RECOVERY OF COSTS RELATED TO THE MANAGEMENT OF COAL COMBUSTION RESIDUALS AND UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS

SECTION 1. G.S. 62-133.13 reads as rewritten:

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

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

(a) For the purposes of this section, "coal combustion residuals surface impoundment" has the same meaning as in G.S. 130A-290. For the purposes of this section, "costs related to unlawful discharges to the surface waters of the State" include any corrective actions required of the electric public utility under State or federal law.

(b) The Commission shall not allow an electric public utility to recover from the retail electric customers of the State any of the following costs:

(1) Costs incurred on or after January 1, 2014, that are related to the management of coal combustion residuals disposed of in coal combustion residuals surface impoundments, including costs associated with complying with the provisions of Part 2I of Article 9 of Chapter 130A of the General Statutes.

(2) Costs incurred on or after January 1, 2014, that are related to an unlawful discharge to the surface waters of the State from a coal combustion residuals surface impoundment, unless the Commission determines the discharge was due to an event of force majeure."

PART II. PROHIBIT PERMITTED SEEPS

SECTION 2. G.S. 130A-309.212(c) reads as rewritten:

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

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

(2) No later than 30 days from a notification pursuant to subdivision (1) of this subsection, the owner of the coal combustion residuals surface impoundment shall submit a proposed Unpermitted Discharge Corrective Action Plan to the Department for its review and approval. The proposed Unpermitted Discharge Corrective Action Plan shall include, at a minimum, all of the following:

a. One of the following methods of proposed corrective action:

1. Elimination of the unpermitted discharge.

2. Application for a National Pollutant Discharge Elimination System (NPDES) permit amendment pursuant to G.S. 143-215.1 and Subchapter H of Chapter 2 of Title 15A of the North Carolina Administrative Code to bring the unpermitted discharge under permit regulations. <u>This method of corrective action shall not be available for seeps except as necessary to implement a Closure Plan pursuant to this Article.</u>

b. A detailed explanation of the reasons for selecting the method of corrective action.

c. Specific plans, including engineering details, to prevent the unpermitted discharge.

d. A schedule for implementation of the Plan.

e. A monitoring plan for evaluating the effectiveness of the proposed corrective action.

f. Any other information related to the correction of unpermitted discharges required by the Department.

…."

PART III. AMEND COMPLIANCE BOUNDARY PROVISIONS

SECTION 3. Subsections (i) and (k) of G.S. 143-215.1 are repealed.

PART IV. CLOSURE OF PONDS

SECTION 4.(a) G.S. 130A-309.214 is repealed.

SECTION 4.(b) Part 2I Article 9 of Chapter130A of the General Statutes is amended by adding a new section to read:

"**<u>§ 130A-309.214A. Closure of coal combustion residual surface impoundments.</u>**

(a) Method of Closure. – All coal combustion residuals surface impoundments shall be dewatered, and the owner of the impoundment shall remove all coal combustion residuals from the impoundment, return the former impoundment to a nonerosive and stable condition, and dispose the coal combustion residuals in a municipal solid waste landfill located on the same property as the impoundment. Municipal solid waste landfills that receive coal combustion residuals pursuant to this subsection shall comply with the siting and design requirements for disposal sites established by Section .0503 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, except that in lieu of the liner requirement of that section the landfill shall include a bottom liner system consisting of three components in accordance with this subsection. Of the required three components of the liner system, the upper two components shall consist of two separate flexible membrane liners, with a leak detection system between the two liners. The third component shall consist of a minimum of two feet of soil underneath the bottom of those liners, with the soil having a maximum permeability of 1 x 10^{-7} centimeters per second. The flexible membrane liners shall have a minimum thickness of thirty one-thousandths of an inch (0.030"), except that liners consisting of high-density polyethylene shall be at least sixty one-thousandths of an inch (0.060") thick. The lower flexible membrane liner shall be installed in direct and uniform contact with the compacted soil layer. The Department may approve an alternative to the soil component of the composite liner system if the Department finds, based on modeling, that the alternative liner system will provide an equivalent or greater degree of impermeability. The landfill shall otherwise comply with the construction, closure, and post-closure requirements established by Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code and shall be subject to all applicable requirements of this Chapter and all other applicable rules adopted thereunder.

(b) Schedule of Closure. – Impoundments classified pursuant to G.S. 130A-309.204 shall be closed according to the following schedule:

(1) High-risk impoundments shall be closed as soon as practicable but no later than August 1, 2019.

(2) Intermediate-risk impoundments shall be closed as soon as practicable but no later than August 1, 2024.

(3) Low-risk impoundments shall be closed as soon as practicable but no later than August 1, 2029.

PART V. STRUCTURAL FILL/LINER REQUIRED FOR ALL PROJECTS

SECTION 5. G.S. 130A-309.220(b) reads as rewritten:

"**§ 130A-309.220. Design, construction, and siting requirements for projects using coal combustion products for structural fill.**

…

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

(1) A base liner, which shall consist of one of the following designs:

a. A composite liner utilizing a compacted clay liner. This composite liner is one liner that consists of two components: a geomembrane liner installed above and in direct and uniform contact with a compacted clay liner with a minimum thickness of 24 inches (0.61

m) and a permeability of no more than 1.0 x 10^{-7} centimeters per second.

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

(2) A leachate collection system, which is constructed directly above the base liner and shall be designed to effectively collect and remove leachate from the project. Leachate collected shall be properly discharged to a wastewater treatment plant.

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

a. The cap system shall be designed and constructed to (i) have a permeability less than or equal to the permeability of any base liner system or the in situ subsoils underlying the structural fill, or the permeability specified for the final cover in the effective permit, or a permeability no greater than 1 x 10^{-5} centimeters per second, whichever is less; (ii) minimize infiltration through the closed structural fill by the use of a low-permeability barrier that contains a minimum 18 inches of earthen material; and (iii) minimize erosion of the cap system and protect the low-permeability barrier from root penetration by use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

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

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

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

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

c. A groundwater monitoring program, which shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of

groundwater quality at the background and down-gradient wells. Monitoring shall be conducted through construction and the post-closure care period. The sampling procedures and frequency shall be protective of public health, safety, and welfare; the environment; and natural resources.

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

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

PART VI. EFFECTIVE DATE

SECTION 6. This act is effective when it becomes law.