

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 765

Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted  
6/29/15

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Proposed Conference Committee Substitute H765-PCCS40526-SBf-6

Short Title: Regulatory Reform Act of 2015.

(Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF  
NORTH CAROLINA BY PROVIDING FOR VARIOUS ADMINISTRATIVE  
REFORMS, BY ELIMINATING CERTAIN UNNECESSARY OR OUTDATED  
STATUTES AND REGULATIONS AND MODERNIZING OR SIMPLIFYING  
CUMBERSOME OR OUTDATED REGULATIONS, AND BY MAKING VARIOUS  
OTHER STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

**PART I. ADMINISTRATIVE REFORMS**

**REPEAL OBSOLETE STATUTES**

**SECTION 1.1.** The following statutes are repealed:

- (1) G.S. 14-197. Using profane or indecent language on public highways; counties exempt.
- (2) G.S. 14-401.8. Refusing to relinquish party telephone line in emergency; false statement of emergency.

**BURDEN OF PROOF IN CERTAIN CONTESTED CASES**

**SECTION 1.2.(a)** Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

**"§ 150B-25.1. Burden of proof.**

(a) Except as otherwise provided by law or by this section, the petitioner in a contested case has the burden of proving the facts alleged in the petition by a preponderance of the evidence.

(b) In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing by clear and convincing evidence that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the State agency.



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1       (c) The burden of showing by a preponderance of the evidence that a career State  
2 employee subject to Chapter 126 of the General Statutes was discharged, suspended, or  
3 demoted for just cause rests with the agency employer."

4       **SECTION 1.2.(b)** The Joint Legislative Administrative Procedure Oversight  
5 Committee shall study whether there are other categories of contested cases in which the  
6 burden of proof should be placed with the agency.

7       **SECTION 1.2.(c)** This section is effective when this act becomes law and applies  
8 to contested cases commenced on or after that date.

## 10 **LEGISLATIVE APPOINTMENTS**

11       **SECTION 1.3.(a)** G.S. 120-121 is amended by adding two new subsections to  
12 read:

13       "(e) The following applies in any case where the Speaker of the House of  
14 Representatives or the President Pro Tempore of the Senate is directed by law to make a  
15 recommendation for an appointment by the General Assembly, and the legislator is also  
16 directed to make the recommendation in consultation with or upon the recommendation of a  
17 third party:

18       (1) The recommendation or consultation is discretionary and is not binding upon  
19 the legislator.

20       (2) The third party must submit the recommendation or consultation at least 60  
21 days prior to the expiration of the term or within 10 business days from the  
22 occurrence of a vacancy.

23       (3) Failure by the third party to submit the recommendation or consultation to  
24 the legislator within the time periods required under this subsection shall be  
25 deemed a waiver by the third party of the opportunity.

26       (f) The following applies in any case where the Speaker of the House of  
27 Representatives or the President Pro Tempore of the Senate is directed by law to make a  
28 recommendation for an appointment by the General Assembly, and the legislator is also  
29 directed to make the recommendation from nominees provided by a third party:

30       (1) The third party must submit the nominees at least 60 days prior to the  
31 expiration of the term or within 10 business days from the occurrence of a  
32 vacancy.

33       (2) Failure by the third party to submit the nomination to the legislator within  
34 the time periods required under this subsection shall be deemed a waiver by  
35 the third party of the opportunity."

36       **SECTION 1.3.(b)** Article 16 of Chapter 120 of the General Statutes is amended by  
37 adding a new section to read:

### 38 **"§ 120-124. Appointments made by legislators.**

39       (a) In any case where a legislator is called upon by law to appoint a member to a board  
40 or commission upon the recommendation of or in consultation with a third party, the  
41 recommendation or consultation is discretionary and is not binding upon the legislator. The  
42 third party must submit the recommendation or consultation at least 60 days prior to the  
43 expiration of the term or within 10 business days from the occurrence of a vacancy.

44       (b) In any case where a legislator is called upon by law to appoint a member to a board  
45 or commission from nominees provided by a third party, the third party must submit the  
46 nominees at least 60 days prior to the expiration of the term or within 10 business days from the  
47 occurrence of a vacancy. This subsection does not apply to nominations made under  
48 G.S. 120-99(a) or G.S. 120-100(b).

49       (c) Failure to submit the recommendation, consultation, or nomination within the time  
50 periods required under this section shall be deemed a waiver by the third party of the  
51 opportunity."

1           **SECTION 1.3.(c)** This section is effective when this act becomes law and applies  
2 to recommendations, consultations, and nominations made on or after that date.

#### 3 4 **OCCUPATIONAL LICENSING BOARD INVESTIGATORS AND INSPECTORS**

5           **SECTION 1.5.** Chapter 93B of the General Statutes is amended by adding a new  
6 section to read:

7 **"§ 93B-8.2. Prohibit licensees from serving as investigators.**

8           No occupational licensing board shall contract with or employ a person licensed by the  
9 board to serve as an investigator or inspector if the licensee is actively practicing in the  
10 profession or occupation and is in competition with other members of the profession or  
11 occupation over which the board has jurisdiction. Nothing in this section shall prevent a board  
12 from (i) employing licensees who are not otherwise employed in the same profession or  
13 occupation as investigators or inspectors or for other purposes or (ii) contracting with licensees  
14 of the board to serve as expert witnesses or consultants in cases where special knowledge and  
15 experience is required, provided that the board limits the duties and authority of the expert  
16 witness or consultant to serving as an information resource to the board and board personnel."

#### 17 18 **NO FISCAL NOTE REQUIRED FOR LESS STRINGENT RULES**

19           **SECTION 1.6.(a)** G.S. 150B-21.3A(d) reads as rewritten:

20           "(d) Timetable. – The Commission shall establish a schedule for the review and  
21 readoption of existing rules in accordance with this section on a decennial basis as follows:

22           ...

- 23           (2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g.  
24 of this section, once the final determination report becomes effective, the  
25 Commission shall establish a date by which the agency must readopt the  
26 rules. The Commission shall consult with the agency and shall consider the  
27 agency's rule-making priorities in establishing the readoption date. The  
28 agency may amend a rule as part of the readoption process. If a rule is  
29 readopted without substantive ~~change, change~~ or if the rule is amended to  
30 impose a less stringent burden on regulated persons, the agency is not  
31 required to prepare a fiscal note as provided by G.S. 150B-21.4."

32           **SECTION 1.6.(b)** This section is effective when this act becomes law and applies  
33 to periodic review of existing rules occurring pursuant to G.S. 150B-21.3A on or after that date.

#### 34 35 **APO TO MAKE RECOMMENDATIONS ON OCCUPATIONAL LICENSING BOARD** 36 **CHANGES**

37           **SECTION 1.7.** Pursuant to G.S. 120-70.101(3a), the Joint Legislative  
38 Administrative Procedure Oversight Committee (APO) shall review the recommendations  
39 contained in the Joint Legislative Program Evaluation Oversight Committee's report, entitled  
40 "Occupational Licensing Agencies Should Not be Centralized, but Stronger Oversight is  
41 Needed," to determine the best way to accomplish the recommendations contained in the report  
42 and to improve oversight of occupational licensing boards. In conducting the review, APO shall  
43 consult with occupational licensing boards, licensees, associations representing licensees, the  
44 Department of Commerce, and other interested parties. The APO cochairs may establish  
45 subcommittees to assist with various parts of the review, including determining whether  
46 licensing authority should be continued for the 12 boards identified in the report. The APO  
47 shall propose legislation to the 2016 Regular Session of the 2015 General Assembly.

#### 48 49 **TECHNICAL CORRECTIONS**

50           **SECTION 1.8.(a)** G.S. 20-116 reads as rewritten:

51 **"§ 20-116. Size of vehicles and loads.**

1 ...

2 (g) ...

3 (3) A truck, trailer, or other ~~vehicle~~:

4 a. ~~Licensed~~ vehicle licensed for 7,500 pounds or less gross vehicle  
 5 weight and loaded with rock, gravel, stone, or any other similar  
 6 substance that could fall, blow, leak, or sift, or licensed for any gross  
 7 vehicle weight and loaded with sand; or sand,

8 b. ~~Licensed for 7,500 pounds or less gross vehicle weight and loaded~~  
 9 ~~with rock, gravel, stone, or any other similar substance that could~~  
 10 ~~fall, blow, leak, sift, or drop;~~

11 shall not be driven or moved on any highway unless:

12 a. The height of the load against all four walls does not extend above a  
 13 horizontal line six inches below the top when loaded at the loading  
 14 point;

15 b. The load is securely covered by tarpaulin or some other suitable  
 16 covering; or

17 c. The vehicle is constructed to prevent any of its load from falling,  
 18 dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

19 ...."

20 **SECTION 1.8.(b)** If House Bill 44, 2015 Regular Session becomes law, then  
 21 House Bill 44 is amended by adding a new section to read:

22 "**SECTION 3.1.(a)** G.S. 160A-381(c) reads as rewritten:

23 "(c) The regulations may also provide that the board of adjustment, the planning board,  
 24 or the city council may issue special use permits or conditional use permits in the classes of  
 25 cases or situations and in accordance with the principles, conditions, safeguards, and  
 26 procedures specified therein and may impose reasonable and appropriate conditions and  
 27 safeguards upon these permits. Conditions and safeguards imposed under this subsection shall  
 28 not include requirements for which the city does not have authority under statute to regulate nor  
 29 requirements for which the courts have held to be unenforceable if imposed directly by the city.  
 30 When deciding special use permits or conditional use permits, the city council or planning  
 31 board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use  
 32 permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority  
 33 vote shall be required for the city council or planning board to issue such permits. For the  
 34 purposes of this section, vacant positions on the board and members who are disqualified from  
 35 voting on a quasi-judicial matter shall not be considered "members of the board" for calculation  
 36 of the requisite majority. Every such decision of the city council or planning board shall be  
 37 subject to review of the superior court in the nature of certiorari in accordance with  
 38 G.S. 160A-388.

39 Where appropriate, such conditions may include requirements that street and utility  
 40 rights-of-way be dedicated to the public and that provision be made of recreational space and  
 41 facilities."

42 "**SECTION 3.1.(b)** G.S. 153A-340(c1) reads as rewritten:

43 "(c1) The regulations may also provide that the board of adjustment, the planning board,  
 44 or the board of commissioners may issue special use permits or conditional use permits in the  
 45 classes of cases or situations and in accordance with the principles, conditions, safeguards, and  
 46 procedures specified therein and may impose reasonable and appropriate conditions and  
 47 safeguards upon these permits. Conditions and safeguards imposed under this subsection shall  
 48 not include requirements for which the county does not have authority under statute to regulate  
 49 nor requirements for which the courts have held to be unenforceable if imposed directly by the  
 50 county. Where appropriate, the conditions may include requirements that street and utility  
 51 rights-of-way be dedicated to the public and that recreational space be provided. When

1 deciding special use permits or conditional use permits, the board of county commissioners or  
2 planning board shall follow quasi-judicial procedures. Notice of hearings on special or  
3 conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater  
4 than a majority vote shall be required for the board of county commissioners or planning board  
5 to issue such permits. For the purposes of this section, vacant positions on the board and  
6 members who are disqualified from voting on a quasi-judicial matter shall not be considered  
7 "members of the board" for calculation of the requisite majority. Every such decision of the  
8 board of county commissioners or planning board shall be subject to review of the superior  
9 court in the nature of certiorari consistent with G.S. 160A-388."

10 **SECTION 1.8.(c)** If House Bill 44, 2015 Regular Session becomes law, then  
11 G.S. 153A-457 reads as rewritten:

12 **"§ 153A-457. Notice prior to construction.**

13 (a) A county shall notify the property owners and adjacent property owners prior to  
14 commencement of any construction project by the county.

15 (b) Notice under this section shall be in writing at least 15 days prior to the  
16 commencement of construction, except in any of the following instances:

- 17 (1) If the construction is ~~a repair~~ of an emergency nature, the notice may be  
18 given by any means, including verbally, that the county has for contacting  
19 the property owner within a reasonable time prior to, or after,  
20 commencement of the ~~repair~~construction.
- 21 (2) The property owner requests action of the county that requires construction  
22 activity.
- 23 (3) The property owner consents to less than 15 days' notice.
- 24 (4) Notice of the construction project is given in any open meeting of the county  
25 prior to the commencement of the construction project.

26 (c) For purposes of this section, "construction" shall mean the building, erection, or  
27 establishment of new buildings, facilities, and infrastructure and shall not include routine  
28 maintenance and repair."

29 **SECTION 1.8.(d)** If House Bill 44, 2015 Regular Session becomes law, then  
30 G.S. 160A-499.4 reads as rewritten:

31 **"§ 160A-499.4. Notice prior to construction.**

32 (a) A city shall notify the property owners and adjacent property owners prior to  
33 commencement of any construction project by the city.

34 (b) Notice under this section shall be in writing at least 15 days prior to the  
35 commencement of construction, except in any of the following instances:

- 36 (1) If the construction is ~~a repair~~ of an emergency nature, the notice may be  
37 given by any means, including verbally, that the city has for contacting the  
38 property owner within a reasonable time prior to, or after, commencement of  
39 the ~~repair~~construction.
- 40 (2) The property owner requests action of the city that requires construction  
41 activity.
- 42 (3) The property owner consents to less than 15 days' notice.
- 43 (4) Notice of the construction project is given in any open meeting of the city  
44 prior to the commencement of the construction project.

45 (c) For purposes of this section, "construction" shall mean the building, erection, or  
46 establishment of new buildings, facilities, and infrastructure and shall not include routine  
47 maintenance and repair."

48  
49 **PART II. BUSINESS REGULATION**

**EXEMPT SMALL BUSINESS ENTITIES BUYING OR SELLING ENTITY-OWNED PROPERTY**

**SECTION 2.1.** G.S. 93A-2(c)(1) reads as rewritten:

"(c) The provisions of G.S. 93A-1 and G.S. 93A-2 do not apply to and do not include:

(1) Any partnership, corporation, limited liability company, association, or other business entity that, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein. The exemption from licensure under this subsection shall extend to the following persons when those persons are engaged in acts or services for which the corporation, partnership, limited liability company, or other business entity would be exempt hereunder:

a. The officers and employees whose income is reported on IRS Form W-2 of an exempt corporation, the corporation.

b. The general partners and employees whose income is reported on IRS Form W-2 of an exempt partnership, and the managers partnership.

c. The managers, member-managers, and employees whose income is reported on IRS Form W-2 of an exempt limited liability company when said persons are engaged in acts or services for which the corporation, partnership, or limited liability company would be exempt hereunder-company.

d. The natural person owners of an exempt closely held business entity. For purposes of this subdivision, a closely held business entity is a limited liability company or a corporation, neither having more than two legal owners, at least one of whom is a natural person.

e. The officers, managers, member-managers, and employees whose income is reported on IRS Form W-2 of a closely held business entity when acting as an agent for an exempt business entity if the closely held business entity is owned by a natural person either (i) owning fifty percent (50%) or more ownership interest in the closely held business entity and the exempt business entity or (ii) owning fifty percent (50%) or more of a closely held business entity that owns a fifty percent (50%) or more ownership interest in the exempt business entity. The closely held business entity acting as an agent under this sub-subdivision must file an annual written notice with the Secretary of State, including its legal name and physical address. The exemption authorized by this sub-subdivision is only effective if, immediately following the completion of the transaction for which the exemption is claimed, the closely held business entity has a net worth that equals or exceeds the value of the transaction.

When a person conducts a real estate transaction pursuant to an exemption under this subdivision, the person shall disclose, in writing, to all parties to the transaction (i) that the person is not licensed as a real estate broker or salesperson under Article 1 of this Chapter, (ii) the specific exemption under this subdivision that applies, and (iii) the legal name and physical address of the owner of the subject property and of the closely held business entity acting under sub-subdivision e. of this subdivision, if applicable. This disclosure may be included on the face of a lease or contract executed in compliance with an exemption under this subdivision."

**MANUFACTURED HOME LICENSE/CRIMINAL HISTORY CHECK****SECTION 2.2.** G.S. 143-143.10A reads as rewritten:**"§ 143-143.10A. Criminal history checks of applicants for licensure.**

(a) Definitions. – The following definitions shall apply in this section:

(1) Applicant. – A person applying for initial licensure as a manufactured home ~~manufacturer, dealer, salesperson, salesperson~~ or set-up contractor.

...

(b) All applicants for initial licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. Applicants shall obtain criminal record reports from one or more reporting services designated by the Board to provide criminal record reports. Each applicant is required to pay the designated service for the cost of the criminal record report. In the alternative, the Board may provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

...."

**AMEND DEFINITION OF "EMPLOYEE" UNDER THE WORKERS' COMPENSATION ACT TO EXCLUDE VOLUNTEERS AND OFFICERS OF CERTAIN NONPROFIT CORPORATIONS AND ASSOCIATIONS****SECTION 2.3.** G.S. 97-2(2) reads as rewritten:**"§ 97-2. Definitions.**

When used in this Article, unless the context otherwise requires:

...

(2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina National Guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the

1 emergency. The sheriff shall furnish to the board of county commissioners a  
2 complete list of all deputy sheriffs named or appointed by him immediately  
3 after their appointment and notify the board of commissioners of any  
4 changes made therein promptly after such changes are made. Any reference  
5 to an employee who has been injured shall, when the employee is dead,  
6 include also the employee's legal representative, dependents, and other  
7 persons to whom compensation may be payable: Provided, further, that any  
8 employee, as herein defined, of a municipality, county, or of the State of  
9 North Carolina, while engaged in the discharge of the employee's official  
10 duty outside the jurisdictional or territorial limits of the municipality, county,  
11 or the State of North Carolina and while acting pursuant to authorization or  
12 instruction from any superior officer, shall have the same rights under this  
13 Article as if such duty or activity were performed within the territorial  
14 boundary limits of their employer.

15 ~~Every~~ Except as otherwise provided herein, every executive officer  
16 elected or appointed and empowered in accordance with the charter and  
17 bylaws of a corporation shall be considered as an employee of such  
18 corporation under this Article.

19 Any such executive officer of a corporation may, notwithstanding any  
20 other provision of this Article, be exempt from the coverage of the  
21 corporation's insurance contract by such corporation's specifically excluding  
22 such executive officer in such contract of insurance, and the exclusion to  
23 remove such executive officer from the coverage shall continue for the  
24 period such contract of insurance is in effect, and during such period such  
25 executive officers thus exempted from the coverage of the insurance contract  
26 shall not be employees of such corporation under this Article.

27 All county agricultural extension service employees who do not receive  
28 official federal appointments as employees of the United States Department  
29 of Agriculture and who are field faculty members with professional rank as  
30 designated in the memorandum of understanding between the North  
31 Carolina Agricultural Extension Service, North Carolina State University, A  
32 & T State University, and the boards of county commissioners shall be  
33 deemed to be employees of the State of North Carolina. All other county  
34 agricultural extension service employees paid from State or county funds  
35 shall be deemed to be employees of the county board of commissioners in  
36 the county in which the employee is employed for purposes of workers'  
37 compensation.

38 The term "employee" shall also include members of the Civil Air Patrol  
39 currently certified pursuant to G.S. 143B-1031(a) when performing duties in  
40 the course and scope of a State-approved mission pursuant to Subpart C of  
41 Part 5 of Article 13 of Chapter 143B of the General Statutes.

42 "Employee" shall not include any person performing voluntary service as  
43 a ski patrolman who receives no compensation for such services other than  
44 meals or lodging or the use of ski tow or ski lift facilities or any combination  
45 thereof.

46 "Employee" shall not include any person elected or appointed and  
47 empowered as an executive officer, director, or committee member under the  
48 charter, articles, or bylaws of a nonprofit corporation subject to Chapter  
49 47A, 47C, 47F, 55A, or 59B of the General Statutes, or any organization  
50 exempt from federal income tax under section 501(c)(3) of the Internal  
51 Revenue Code, who performs only voluntary service for the nonprofit

1 corporation, provided that the person receives no remuneration for the  
2 voluntary service other than reasonable reimbursement for expenses incurred  
3 in connection with the voluntary service. When a nonprofit corporation as  
4 described herein employs one or more persons who do receive remuneration  
5 other than reasonable reimbursement for expenses, then any volunteer  
6 officers, directors, or committee members excluded from the definition of  
7 "employee" by operation of this paragraph shall be counted as employees for  
8 the sole purpose of determining the number of persons regularly employed  
9 in the same business or establishment pursuant to G.S. 97-2(1). Other than  
10 for the limited purpose of determining the number of persons regularly  
11 employed in the same business or establishment, such volunteer nonprofit  
12 officers, directors, or committee members shall not be "employees" under  
13 the Act. Nothing herein shall prohibit a nonprofit corporation as described  
14 herein from voluntarily electing to provide for workers' compensation  
15 benefits in the manner provided in G.S. 97-93 for volunteer officers,  
16 directors, or committee members excluded from the definition of  
17 "employee" by operation of this paragraph. This paragraph shall not apply to  
18 any volunteer firefighter, volunteer member of an organized rescue squad, an  
19 authorized pickup firefighter when that individual is engaged in emergency  
20 fire suppression activities for the North Carolina Forest Service, a duly  
21 appointed and sworn member of an auxiliary police department organized  
22 pursuant to G.S. 160A-282, or a senior member of the State Civil Air Patrol  
23 functioning under Subpart C of Part 5 of Article 13 of Chapter 143B of the  
24 General Statutes, even if such person is elected or appointed and empowered  
25 as an executive officer, director, or committee member under the charter,  
26 articles, or bylaws of a nonprofit corporation as described herein.

27 Any sole proprietor or partner of a business or any member of a limited  
28 liability company may elect to be included as an employee under the  
29 workers' compensation coverage of such business if he is actively engaged in  
30 the operation of the business and if the insurer is notified of his election to  
31 be so included. Any such sole proprietor or partner or member of a limited  
32 liability company shall, upon such election, be entitled to employee benefits  
33 and be subject to employee responsibilities prescribed in this Article.

34 ~~Employee~~—"Employee" shall include an authorized pickup firefighter of  
35 the North Carolina Forest Service of the Department of Agriculture and  
36 Consumer Services when that individual is engaged in emergency fire  
37 suppression activities for the North Carolina Forest Service. As used in this  
38 section, "authorized pickup firefighter" means an individual who has  
39 completed required fire suppression training as a wildland firefighter and  
40 who is available as needed by the North Carolina Forest Service for  
41 emergency fire suppression activities, including immediate dispatch to  
42 wildfires and standby for initial attack on fires during periods of high fire  
43 danger.

44 It shall be a rebuttable presumption that the term "employee" shall not  
45 include any person performing services in the sale of newspapers or  
46 magazines to ultimate consumers under an arrangement whereby the  
47 newspapers or magazines are to be sold by that person at a fixed price and  
48 the person's compensation is based on the retention of the excess of the fixed  
49 price over the amount at which the newspapers or magazines are charged to  
50 the person."  
51

**PART III. STATE AND LOCAL GOVERNMENT REGULATION****REDUCE STATE AGENCY MOBILE DEVICE REPORTING FREQUENCY**

**SECTION 3.1.** Subsection 6A.14(a) of S.L. 2011-145 reads as rewritten:

**"SECTION 6A.14.(a)** Every executive branch agency within State government shall develop a policy to limit the issuance and use of mobile electronic devices to the minimum required to carry out the agency's mission. By September 1, 2011, each agency shall provide a copy of its policy to the Chairs of the Appropriations Committee and the Appropriations Subcommittee on General Government of the House of Representatives, the Chairs of the Appropriations/Base Budget Committee and the Appropriations Committee on General Government and Information Technology of the Senate, the Chairs of the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management.

State-issued mobile electronic devices shall be used only for State business. Agencies shall limit the issuance of cell phones, smart phones, and any other mobile electronic devices to employees for whom access to a mobile electronic device is a critical requirement for job performance. The device issued and the plan selected shall be the minimum required to support the employees' work requirements. This shall include considering the use of pagers in lieu of a more sophisticated device. The requirement for each mobile electronic device issued shall be documented in a written justification that shall be maintained by the agency and reviewed annually. All State agency heads, in consultation with the Office of Information Technology Services and the Office of State Budget and Management, shall document and review all authorized cell phone, smart phone, and other mobile electronic communications device procurement, and related phone, data, Internet, and other usage plans for and by their employees. Agencies shall conduct periodic audits of mobile device usage to ensure that State employees and contractors are complying with agency policies and State requirements for their use.

Beginning October 1, 2011, each agency shall report ~~quarterly~~ annually to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management on the following:

- (1) Any changes to agency policies on the use of mobile devices.
- (2) The number and types of new devices issued since the last report.
- (3) The total number of mobile devices issued by the agency.
- (4) The total cost of mobile devices issued by the agency.
- (5) The number of each type of mobile device issued, with the total cost for each type."

**GOOD SAMARITAN EXPANSION**

**SECTION 3.3.(a)** G.S. 14-56 reads as rewritten:

**"§ 14-56. Breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft.**

**(a)** If any person, with intent to commit any felony or larceny therein, breaks or enters any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind, containing any goods, wares, freight, or other thing of value, or, after having committed any felony or larceny therein, breaks out of any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind containing any goods, wares, freight, or other thing of value, that person is guilty of a Class I felony. It is prima facie evidence that a person entered in violation of this

1 section if he is found unlawfully in such a railroad car, motor vehicle, trailer, aircraft, boat, or  
2 other watercraft.

3 (b) It shall not be a violation of this section for any person to break or enter any railroad  
4 car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind to provide assistance to  
5 a person inside the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any kind if  
6 one or more of the following circumstances exist:

7 (1) The person acts in good faith to access the person inside the railroad car,  
8 motor vehicle, trailer, aircraft, boat, or watercraft of any kind in order to  
9 provide first aid or emergency health care treatment or because the person  
10 inside is, or is in imminent danger of becoming unconscious, ill, or injured.

11 (2) It is reasonably apparent that the circumstances require prompt decisions and  
12 actions in medical, other health care, or other assistance for the person inside  
13 the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any  
14 kind.

15 (3) The necessity of immediate health care treatment or removal of the person  
16 from the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft  
17 of any kind is so reasonably apparent that any delay in the rendering of  
18 treatment or removal would seriously worsen the physical condition or  
19 endanger the life of the person."

20 **SECTION 3.3.(b)** This section becomes effective December 1, 2015, and applies  
21 to offenses committed on or after that date.

22 **SECTION 3.4.(a)** Chapter 1 of the General Statutes is amended by adding a new  
23 Article to read:

24 "Article 43F.

25 "Immunity for Damage to Vehicle.

26 **"§ 1-539.27. Immunity from civil liability for damage to railroad car, motor vehicle,**  
27 **trailer, aircraft, boat, or other watercraft necessary for assistance.**

28 Any person who enters or attempts to enter any railroad car, motor vehicle, trailer, aircraft,  
29 boat, or other watercraft of any kind shall not be liable in civil damages for any damage to the  
30 railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind if one or more  
31 of the following circumstances exist:

32 (1) The person acts in good faith to access a person inside the railroad car,  
33 motor vehicle, trailer, aircraft, boat, or watercraft of any kind in order to  
34 provide first aid or emergency health care treatment or because the person  
35 inside is, or is in imminent danger of becoming unconscious, ill, or injured.

36 (2) It is reasonably apparent that the circumstances require prompt decisions and  
37 actions in medical care, other health care, or other assistance.

38 (3) The necessity of immediate health care treatment or removal of the person  
39 from the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft  
40 of any kind is so reasonably apparent that any delay in the rendering of  
41 treatment or removal would seriously worsen the physical condition or  
42 endanger the life of the person.

43 This section shall not apply to any acts of gross negligence, wanton conduct, or intentional  
44 wrongdoing."

45 **SECTION 3.4.(b)** This section becomes effective December 1, 2015, and applies  
46 to causes of action arising on or after that date.

47  
48 **DIRECT DMV TO ISSUE SUITABLY REDUCED SIZE REGISTRATION PLATES**  
49 **FOR MOTORCYCLES AND PROPERTY HAULING TRAILERS ATTACHED TO**  
50 **MOTORCYCLES**

51 **SECTION 3.5.(a)** G.S. 20-63(d) reads as rewritten:

"(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semitrailer shall be attached thereto, one in the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof. Provided further, that when only one registration plate is issued for a motor vehicle and this motor vehicle is transporting a substance that may adhere to the plate so as to cover or discolor the plate or if the motor vehicle has a mechanical loading device that may damage the plate, the registration plate may be attached to the front of the motor vehicle.

Any motor vehicle of the age of 35 years or more from the date of manufacture may bear the license plates of the year of manufacture instead of the current registration plates, if the current registration plates are maintained within the vehicle and produced upon the request of any person.

The Division shall provide registered owners of motorcycles and property hauling motorcycle trailers attached to the rear of motorcycles with suitably reduced size registration plates, approximately four by seven inches in size, that are issued on a multiyear basis in accordance with G.S. 20-88(c), or on an annual basis as otherwise provided in this Chapter."

**SECTION 3.5.(b)** This section becomes effective January 1, 2016.

## **STATUS FOR PROVIDERS OF MH/DD/SA SERVICES WHO ARE NATIONALLY ACCREDITED**

**SECTION 3.7.** G.S. 122C-81 reads as rewritten:

### **"§ 122C-81. National accreditation benchmarks.**

(a) As used in this section, the term:

- (1) "National accreditation" applies to accreditation by an entity approved by the Secretary that accredits mental health, developmental disabilities, and substance abuse services.
- (2) "Provider" applies to only those providers of services, including facilities, requiring national accreditation, which services are designated by the Secretary pursuant to subsection (b) of this section.

(b) The Secretary, through the Medicaid State Plan, Medicaid waiver, or rules adopted by the Secretary, shall designate the mental health, developmental disabilities, and substance abuse services that require national accreditation. In accordance with rules of the Commission, the Secretary may exempt a provider that is accredited under this section and in good standing with the national accrediting agency from undergoing any routine monitoring that is duplicative of the oversight by the national accrediting agency.

...

(e) The Commission may adopt rules establishing a procedure by which a provider that is accredited under this section and in good standing with the national accrediting agency may be exempt from undergoing any routine monitoring that is duplicative of the oversight by the national accrediting agency. Any provider shall continue to be subject to inspection by the Secretary, provided the inspection is not duplicative of inspections required by the national accrediting agency. Rules adopted under this subsection may not waive any requirements that may be imposed under federal law."

## **CLARIFY THAT WHEN A NEW PERMIT OR TRANSITIONAL PERMIT IS ISSUED FOR AN ESTABLISHMENT, ANY PREVIOUS PERMIT FOR THAT SAME ESTABLISHMENT IN THAT LOCATION BECOMES VOID**

**SECTION 3.8.** G.S. 130A-248(c) reads as rewritten:

"(c) If ownership of an establishment is transferred or the establishment is leased, the new owner or lessee shall apply for a new permit. The new owner or lessee may also apply for

1 a transitional permit. A transitional permit may be issued upon the transfer of ownership or  
2 lease of an establishment to allow the correction of construction and equipment problems that  
3 do not represent an immediate threat to the public health. Upon issuance of a new permit or a  
4 transitional permit for ~~an~~the same establishment, any previously issued permit for an  
5 establishment in that location becomes void. This subsection does not prohibit issuing more  
6 than one owner or lessee a permit for the same location if (i) more than one establishment is  
7 operated in the same physical location and (ii) each establishment satisfies all of the rules and  
8 requirements of subsection (g) of this section. For purposes of this subsection, "transitional  
9 permit" shall mean a permit issued upon the transfer of ownership or lease of an existing food  
10 establishment to allow the correction of construction and equipment problems that do not  
11 represent an immediate threat to the public health."

### 12 13 ENVIRONMENTAL REVIEW COMMISSION TO STUDY OPEN AND FAIR 14 COMPETITION WITH RESPECT TO MATERIALS USED IN WASTEWATER, 15 STORMWATER, AND OTHER WATER PROJECTS

16 SECTION 3.9. The Environmental Review Commission may study whether to  
17 require public entities to consider all acceptable piping materials before determining which  
18 piping material should be used in the constructing, developing, financing, maintaining,  
19 rebuilding, improving, repairing, procuring, or operating of a water, wastewater, or stormwater  
20 drainage project. The Environmental Review Commission shall report its findings and  
21 recommendations to the 2016 Regular Session of the 2015 General Assembly.

### 22 23 AMEND UNDERGROUND DAMAGE PREVENTION REVIEW BOARD, 24 ENFORCEMENT, AND CIVIL PENALTIES

25 SECTION 3.12. G.S. 87-129 reads as rewritten:

26 "**§ 87-129. Underground Damage Prevention Review Board; enforcement; civil penalties.**

27 (a) ~~The Notification Center shall establish an~~ There is hereby established the  
28 Underground Damage Prevention Review Board to review reports of alleged violations of this  
29 Article. The members of the Board shall be appointed by the Governor. The Board shall consist  
30 of the following members: 15 members as follows:

- 31 (1) A representative from the North Carolina Department of Transportation;
- 32 (2) A representative from a facility contract locator;
- 33 (3) A representative from the Notification Center;
- 34 (4) A representative from an electric public utility;
- 35 (5) A representative from the telecommunications industry;
- 36 (6) A representative from a natural gas utility;
- 37 (7) A representative from a hazardous liquid transmission pipeline company;
- 38 (8) A representative recommended by the League of Municipalities;
- 39 (9) A highway contractor licensed under G.S. 87-10(b)(2) who does not own or  
40 operate facilities;
- 41 (10) A public utilities contractor licensed under G.S. 87-10(b)(3) who does not  
42 own or operate facilities;
- 43 (11) A surveyor licensed under Chapter 89C of the General Statutes;
- 44 (12) A representative from a rural water system;
- 45 (13) A representative from an investor-owned water system;
- 46 (14) A representative from an electric membership corporation; and
- 47 (15) A representative from a cable company.

48 (a1) Each member of the Board shall be appointed for a term of four years. Members of  
49 the Board may serve no more than two consecutive terms. Vacancies in appointments made by  
50 the Governor occurring prior to the expiration of a term shall be filled by appointment for the  
51 unexpired term.

1       (a2) No member of the Board may serve on a case where there would be a conflict of  
2 interest.

3       (a3) The Governor may remove any member at any time for cause.

4       (a4) Eight members of the Board shall constitute a quorum.

5       (a5) The Governor shall designate one member of the Board as chair.

6       (a6) The Board may adopt rules to implement this Article.

7       (b) ~~The Notification Center shall transmit all reports of alleged violations of this Article~~  
8 ~~to the Board, including any information received by the Notification Center regarding the~~  
9 ~~report. The Board shall meet at least quarterly to review all reports filed pursuant to~~  
10 ~~G.S. 87-120(e). The Board shall act as an arbitrator between the parties to the report. If, after~~  
11 ~~reviewing the report and any accompanying information, the Board determines that a violation~~  
12 ~~of this Article has occurred, the Board shall notify the violating party in writing of its~~  
13 ~~determination and the recommended penalty. The violating party~~

14       (b1) The Board shall review all reports of alleged violations of this Article and  
15 accompanying information. If the Board determines that a person has violated any provision of  
16 this Article, the Board shall determine the appropriate action or penalty to impose for each such  
17 violation. Actions and penalties may include training, education, and a civil penalty not to  
18 exceed two thousand five hundred dollars (\$2,500). The Board shall notify each person who is  
19 determined to have violated this Article in writing of the Board's determination and the Board's  
20 recommended action or penalty. A person determined to be in violation of this Article may  
21 request a hearing before the Board, after which the Board may reverse or uphold its original  
22 finding. If the Board recommends a penalty, the Board shall notify the Utilities Commission of  
23 the recommended penalty, and the Utilities Commission shall issue an order imposing the  
24 penalty.

25       (c) ~~A party-person determined by the Board under subsection (b)-(b1) of this section to~~  
26 ~~have violated this Article may initiate appeal the Board's determination by initiating an~~  
27 ~~arbitration proceeding before the Utilities Commission. Commission within 30 days of the~~  
28 ~~Board's determination. If the violating party elects to initiate an arbitration proceeding, the~~  
29 ~~violating party shall pay a filing fee of two hundred fifty dollars (\$250.00) to the Utilities~~  
30 ~~Commission, and the Utilities Commission shall open a docket regarding the report. The~~  
31 ~~Utilities Commission shall direct the parties enter into an arbitration process. The parties shall~~  
32 ~~be responsible for selecting and contracting with the arbitrator. Upon completion of the~~  
33 ~~arbitration process, the Utilities Commission shall issue an order encompassing the outcome of~~  
34 ~~the binding arbitration process, including a determination of fault, a penalty, and assessing the~~  
35 ~~costs of arbitration to the non-prevailing party. Any party may~~

36       (c1) A person may timely appeal an order issued by the Utilities Commission pursuant to  
37 this section to the superior court division of the General Court of Justice in the county where  
38 the alleged violation of this Article occurred or in Wake County, for trial de novo. de novo  
39 within 30 days of entry of the Utilities Commission's order. The authority granted to the  
40 Utilities Commission within this section is limited to this section and does not grant the  
41 Utilities Commission any authority that they are not otherwise granted under Chapter 62 of the  
42 General Statutes.

43       (d) ~~Any person who violates any provision of this Article shall be subject to a penalty~~  
44 ~~as set forth in this subsection. The provisions of this Article do not affect any civil remedies for~~  
45 ~~personal injury or property damage otherwise available to any person, except as otherwise~~  
46 ~~specifically provided for in this Article. The penalty provisions of this Article are cumulative to~~  
47 ~~and not in conflict with provisions of law with respect to civil remedies for personal injury or~~  
48 ~~property damage. The clear proceeds of any civil penalty assessed under this section shall be~~  
49 ~~used as provided in Section 7(a) of Article IX of the North Carolina Constitution. The penalties~~  
50 ~~for a violation of this Article shall be as follows: In any arbitration proceeding before the~~

1 Utilities Commission, any actions and penalties assessed against any person for violation of this  
2 Article shall include the actions and penalties set out in subsection (b1) of this section.

- 3 (1) ~~If the violation was the result of negligence, the penalty shall be a~~  
4 ~~requirement of training, a requirement of education, or both.~~  
5 (2) ~~If the violation was the result of gross negligence, the penalty shall be a civil~~  
6 ~~penalty of one thousand dollars (\$1,000), a requirement of training, a~~  
7 ~~requirement of education, or a combination of the three.~~  
8 (3) ~~If the violation was the result of willful or wanton negligence or intentional~~  
9 ~~conduct, the penalty shall be a civil penalty of two thousand five hundred~~  
10 ~~dollars (\$2,500), a requirement of training, and a requirement of education."~~

11  
12 **CONFORM NORTH CAROLINA ALL-TERRAIN VEHICLE LAWS TO NATIONAL**  
13 **SAFETY AND DESIGN STANDARDS FOR YOUTH OPERATORS**

14 **SECTION 3.13.(a)** G.S. 20-171.15 reads as rewritten:

15 **"§ 20-171.15. Age restrictions.**

16 (a) It is unlawful for any parent or legal guardian of a person less than eight years of  
17 age to knowingly permit that person to operate an all-terrain vehicle.

18 (b) ~~It is unlawful for any parent or legal guardian of a person less than 12 years of age~~  
19 ~~to knowingly permit that person to operate an all-terrain vehicle with an engine capacity of 70~~  
20 ~~cubic centimeter displacement or greater.~~

21 (c) It is unlawful for any parent or legal guardian of a person less than 16 years of age  
22 to knowingly permit that person to operate an all-terrain vehicle ~~with an engine capacity greater~~  
23 ~~than 90 cubic centimeter displacement.~~ in violation of the Age Restriction Warning Label  
24 affixed by the manufacturer as required by the applicable American National Standards  
25 Institute/Specialty Vehicle Institute of America (ANSI/SVIA) design standard.

26 (d) It is unlawful for any parent or legal guardian of a person less than 16 years of age  
27 to knowingly permit that person to operate an all-terrain vehicle unless the person is under the  
28 continuous visual supervision of a person 18 years of age or older while operating the  
29 all-terrain vehicle.

30 (e) ~~Subsections (b) and Subsection (c) of this section do~~ does not apply to any parent or  
31 legal guardian of a person born on or before August 15, 1997, who permits that person to  
32 operate an all-terrain vehicle and who establishes proof that the parent or legal guardian owned  
33 the all-terrain vehicle prior to August 15, 2005."

34 **SECTION 3.13.(b)** G.S. 20-171.17 reads as rewritten:

35 **"§ 20-171.17. Prohibited acts by sellers.**

36 No person shall knowingly sell or offer to sell an all-terrain vehicle:

- 37 (1) For use by a person under the age of eight years.  
38 (2) ~~With an engine capacity of 70 cubic centimeter displacement or greater for~~  
39 ~~use by a person less than 12 years of age.~~ In violation of the Age Restriction  
40 Warning Label affixed by the manufacturer as required by the applicable  
41 American National Standards Institute/Specialty Vehicle Institute of  
42 America (ANSI/SVIA) design standard for use by a person less than 16  
43 years of age.  
44 (3) ~~With an engine capacity of greater than 90 cubic centimeter displacement for~~  
45 ~~use by a person less than 16 years of age."~~

46  
47 **PART IV. ENVIRONMENTAL AND NATURAL RESOURCES REGULATION**

48  
49 **ENVIRONMENTAL SELF-AUDIT PRIVILEGE AND LIMITED IMMUNITY**

50 **SECTION 4.1.(a)** Chapter 8 of the General Statutes is amended by adding a new  
51 Part to read:

"Part 7D. Environmental Audit Privilege and Limited Immunity.

**"§ 8-58.50. Purpose.**

(a) In order to encourage owners and operators of facilities and persons conducting activities regulated under those portions of the General Statutes set forth in G.S. 8-58.52, or conducting activities regulated under other environmental laws, to conduct voluntary internal environmental audits of their compliance programs and management systems and to assess and improve compliance with statutes, an environmental audit privilege is recognized to protect the confidentiality of communications relating to voluntary internal environmental audits.

(b) Nothing in this Part shall be construed to protect owners and operators of facilities and regulated persons from a criminal investigation or prosecution carried out by any appropriate governmental entity.

(c) Any privilege granted by this Part shall apply only to those communications, oral or written, pertaining to and made in connection with the environmental audit and shall not apply to the facts relating to the violation itself.

**"§ 8-58.51. Definitions.**

The following definitions apply in this Part:

(1) "Department" means the Department of Environment and Natural Resources.

(2) "Enforcement agencies" means the Department, any other agency of the State, and units of local government responsible for enforcement of environmental laws.

(3) "Environmental audit" means a voluntary, internal evaluation or review of one or more facilities or an activity at one or more facilities regulated under federal, State, regional, or local environmental law, or of compliance programs or management systems related to the facility or activity if designed to identify and prevent noncompliance and to improve compliance with these laws. For the purposes of this Part, an environmental audit does not include an environmental site assessment of a facility conducted solely in anticipation of the purchase, sale, or transfer of the business or facility. An environmental audit may be conducted by the owner or operator, the parent corporation of the owner or operator or by their officers or employees, or by independent contractors. An environmental audit must be a discrete activity with a specified beginning date and scheduled ending date reflecting the auditor's bona fide intended completion schedule.

(4) "Environmental audit report" means a document marked or identified as such with a completion date existing either individually or as a compilation prepared in connection with an environmental audit. An environmental audit report may include field notes and records of observations, findings, opinions, suggestions, recommendations, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys, provided the supporting information is collected or developed for the primary purpose and in the course of an environmental audit. An environmental audit report, when completed, may include all of the following components:

a. An audit report prepared by an auditor, which may include the scope and date of the audit and the information gained in the audit, together with exhibits and appendices and may include conclusions, recommendations, exhibits, and appendices.

b. Memoranda and documents analyzing any portion of the audit report or issues relating to the implementation of an audit report.

1                   c.     An implementation plan that addresses correcting past  
2                         noncompliance, improving current compliance, or preventing future  
3                         noncompliance.

4                   (5)     "Environmental laws" means all provisions of federal, State, and local laws,  
5                         rules, and ordinances pertaining to environmental matters.

6     **"§ 8-58.52. Applicability.**

7                   (a)     This Part applies to activities regulated under environmental laws, including all of  
8     the following provisions of the General Statutes, and rules adopted thereunder:

9                   (1)     Article 7 of Chapter 74.

10                  (2)     Chapter 104E.

11                  (3)     Article 25 of Chapter 113.

12                  (4)     Articles 1, 4, and 7 of Chapter 113A.

13                  (5)     Article 9 of Chapter 130A, except as provided in subsection (b) of this  
14                         section.

15                  (6)     Articles 21, 21A, and 21B of Chapter 143.

16                  (7)     Part 1 of Article 7 of Chapter 143B.

17                  (b)     This Part shall not apply to activities regulated under the Coal Ash Management Act  
18     of 2014 under Part 2I of Article 9 of Chapter 130A of the General Statutes and rules  
19     promulgated pursuant to that Part.

20     **"§ 8-58.53. Environmental audit report; privilege.**

21                  (a)     An environmental audit report or any part of an environmental audit report is  
22     privileged and, therefore, immune from discovery and is not admissible as evidence in civil or  
23     administrative proceedings, except as provided in G.S. 8-58.54 and G.S. 8-58.56. Provided,  
24     however, all of the following documents are exempt from the privilege established by this Part:

25                  (1)     Information obtained by observation of an enforcement agency.

26                  (2)     Information obtained from a source independent of the environmental audit.

27                  (3)     Documents, communication, data, reports, or other information required to  
28                         be collected, maintained, otherwise made available, or reported to an  
29                         enforcement agency or any other entity by environmental laws, permits,  
30                         orders, consent agreements, or as otherwise provided by law.

31                  (4)     Documents prepared either prior to the beginning of the environmental audit  
32                         or subsequent to the completion date of the audit report and, in all cases, any  
33                         documents prepared independent of the audit or audit report.

34                  (5)     Documents prepared as a result of multiple or continuous self-auditing  
35                         conducted in an effort to intentionally avoid liability for violations.

36                  (6)     Information that is knowingly misrepresented or misstated or that is  
37                         knowingly deleted or withheld from an environmental audit report, whether  
38                         or not included in a subsequent environmental audit report.

39                  (7)     Information in instances where the material shows evidence of  
40                         noncompliance with environmental laws, permits, orders, consent  
41                         agreements, and the owner or operator failed to either promptly take  
42                         corrective action or eliminate any violation of law identified during the  
43                         environmental audit within a reasonable period of time.

44                  (b)     If an environmental audit report or any part of an environmental audit report is  
45     subject to the privilege provided for in subsection (a) of this section, no person who conducted  
46     or participated in the audit or who significantly reviewed the audit report may be compelled to  
47     testify regarding the audit report or a privileged part of the audit report except as provided for  
48     in G.S. 8-58.53(d), 8-58.54, or 8-58.56.

49                  (c)     Nothing in this Part shall be construed to restrict a party in a proceeding before the  
50     Industrial Commission from obtaining or discovering any evidence necessary or appropriate for  
51     the proof of any issue pending in an action before the Commission, regardless of whether

1 evidence is privileged pursuant to this Part. Further, nothing in this Part shall be construed to  
2 prevent the admissibility of evidence that is otherwise relevant and admissible in a proceeding  
3 before the Industrial Commission, regardless of whether the evidence is privileged pursuant to  
4 this Part. Provided, however, the Commission, upon motion made by a party to the proceeding,  
5 may issue appropriate protective orders preventing disclosure of information outside of the  
6 Commission's proceeding.

7 (d) Nothing in this Part shall be construed to circumvent the employee protection  
8 provisions provided by federal or State law.

9 (e) The privilege created by this Part does not apply to criminal investigations or  
10 proceedings. Where an audit report is obtained, reviewed, or used in a criminal proceeding, the  
11 privilege created by this Part shall continue to apply and is not waived in civil and  
12 administrative proceedings and is not discoverable or admissible in civil or administrative  
13 proceedings even if disclosed during a criminal proceeding.

14 **"§ 8-58.54. Waiver of privilege.**

15 (a) The privilege established under G.S. 8-58.53 does not apply to the extent that it is  
16 expressly waived in writing by the owner or operator of a facility at which an environmental  
17 audit was conducted and who prepared or caused to be prepared the audit report as a result of  
18 the audit.

19 (b) The audit report and information generated by the audit may be disclosed without  
20 waiving the privilege established under G.S. 8-58.53 to all of the following persons:

21 (1) A person employed by the owner or operator or the parent corporation of the  
22 audited facility.

23 (2) A legal representative of the owner or operator or parent corporation.

24 (3) An independent contractor retained by the owner or operator or parent  
25 corporation to conduct an audit on or to address an issue or issues raised by  
26 the audit.

27 (c) Disclosure of an audit report or information generated by the audit under all of the  
28 following circumstances shall not constitute a waiver of the privilege established under  
29 G.S. 8-58.53:

30 (1) Disclosure made under the terms of a confidentiality agreement between the  
31 owner or operator of the facility audited and a potential purchaser of the  
32 business or facility audited.

33 (2) Disclosure made under the terms of a confidentiality agreement between  
34 governmental officials and the owner or operator of the facility audited.

35 (3) Disclosure made under the terms of a confidentiality agreement between a  
36 customer, lending institution, or insurance company with an existing or  
37 proposed relationship with the facility.

38 **"§ 8-58.55. Notification of audit.**

39 In order to assert the privilege established under G.S. 8-58.53, the owner or operator of the  
40 facility conducting the environmental audit shall, upon inspection of the facility by an  
41 enforcement agency, or no later than 10 working days after completion of an agency's  
42 inspection, notify the enforcement agency of the existence of any audit relevant to the subject  
43 of the agency's inspection, as well as the beginning date and completion date of that audit. Any  
44 environmental audit report shall include a signed certification from the owner or operator of the  
45 facility that documents the date the audit began and the completion date of the audit.

46 **"§ 8-58.56. Revocation of privilege in civil and administrative proceedings.**

47 In a civil or administrative proceeding, an enforcement agency may seek by motion a  
48 declaratory ruling on the issue of whether an environmental audit report is privileged. The court  
49 shall revoke the privilege established under G.S. 8-58.53 for an audit report if the factors set  
50 forth in this section apply. In a civil proceeding, the court, after an in camera review, shall  
51 revoke the privilege established under G.S. 8-58.53 if the court determines that disclosure of

1 the environmental audit report was sought after the effective date of this Part and either of the  
2 following apply:

3 (1) The privilege is asserted for purposes of deception or evasion.

4 (2) The material shows evidence of significant noncompliance with applicable  
5 environmental laws; the owner or operator of the facility has not promptly  
6 initiated and pursued with diligence appropriate action to achieve  
7 compliance with these environmental laws or has not made reasonable  
8 efforts to complete any necessary permit application; and, as a result, the  
9 owner or operator of the facility did not or will not achieve compliance with  
10 applicable environmental laws or did not or will not complete the necessary  
11 permit application within a reasonable period of time.

12 **"§ 8-58.57. Privilege in criminal proceedings.**

13 The privilege established under G.S. 8-58.53 is not applicable in any criminal proceeding.

14 **"§ 8-58.58. Burden of proof.**

15 A party asserting the privilege established under G.S. 8-58.53 has the burden of proving  
16 that (i) the materials claimed as privileged constitute an environmental audit report as defined  
17 by this Part, and (ii) compliance has been achieved or will be achieved within a reasonable  
18 period of time. A party seeking disclosure under G.S. 8-58.56 has the burden of proving the  
19 condition for disclosure set forth in that section.

20 **"§ 8-58.59. Stipulations; declaratory rulings.**

21 The parties to a proceeding may at any time stipulate to entry of an order directing that  
22 specific information contained in an environmental audit report is or is not subject to the  
23 privilege. In the absence of an ongoing proceeding, where the parties are not in agreement, an  
24 enforcement agency may seek a declaratory ruling from a court on the issue of whether the  
25 materials are privileged under G.S. 8-58.53 and whether the privilege, if existing, should be  
26 revoked pursuant to G.S. 8-58.56.

27 **"§ 8-58.60. Construction of Part.**

28 Nothing in this Part limits, waives, or abrogates any of the following:

29 (1) The scope or nature of any statutory or common law privilege, including the  
30 work-product privilege or the attorney-client privilege.

31 (2) Any existing ability or authority under State law to challenge privilege.

32 (3) An enforcement agency's ability to obtain or use documents or information  
33 that the agency otherwise has the authority to obtain under State law adopted  
34 pursuant to federally delegated programs.

35 **"§ 8-58.61. Voluntary disclosure; limited immunity from civil and administrative**  
36 **penalties and fines.**

37 (a) An owner or operator of a facility is immune from imposition of civil and  
38 administrative penalties and fines for a violation of environmental laws voluntarily disclosed  
39 subject to the requirements and criteria set forth in this section. Provided, however, that waiver  
40 of penalties and fines shall not be granted until the applicable enforcement agency has certified  
41 that the violation was corrected within a reasonable period of time. If compliance is not  
42 certified by the enforcement agency, the enforcement agency shall retain discretion to assess  
43 penalties and fines for the violation.

44 (b) If a person or entity makes a voluntary disclosure of a violation of environmental  
45 laws discovered through performance of an environmental audit, that person has the burden of  
46 proving (i) that the disclosure is voluntary by establishing the elements set forth in subsection  
47 (c) of this section and (ii) that the person is therefore entitled to immunity from any  
48 administrative or civil penalties associated with the issues disclosed. Nothing in this section  
49 may be construed to provide immunity from criminal penalties.

50 (c) For purposes of this section, disclosure is voluntary if all of the following criteria  
51 are met:

- 1           (1)    The disclosure is made within 14 days following a reasonable investigation  
2                   of the violation's discovery through the environmental audit.  
3           (2)    The disclosure is made to an enforcement agency having regulatory  
4                   authority over the violation disclosed.  
5           (3)    The person or entity making the disclosure initiates an action to resolve the  
6                   violation identified in the disclosure in a diligent manner.  
7           (4)    The person or entity making the disclosure cooperates with the applicable  
8                   enforcement agency in connection with investigation of the issues identified  
9                   in the disclosure.  
10          (5)    The person or entity making the disclosure diligently pursues compliance  
11                   and promptly corrects the noncompliance within a reasonable period of time.

12          (d)    A disclosure is not voluntary for purposes of this section if any of the following  
13          factors apply:

- 14           (1)    Specific permit conditions require monitoring or sampling records and  
15                   reports or assessment plans and management plans to be maintained or  
16                   submitted to the enforcement agency pursuant to an established schedule.  
17           (2)    Environmental laws or specific permit conditions require notification of  
18                   releases to the environment.  
19           (3)    The violation was committed intentionally, willfully, or through criminal  
20                   negligence by the person or entity making the disclosure.  
21           (4)    The violation was not corrected in a diligent manner.  
22           (5)    The violation posed or poses a significant threat to public health, safety, and  
23                   welfare; the environment; and natural resources.  
24           (6)    The violation occurred within one year of a similar prior violation at the  
25                   same facility, and immunity from civil and administrative penalties was  
26                   granted by the applicable enforcement agency for the prior violation.  
27           (7)    The violation has resulted in a substantial economic benefit to the owner or  
28                   operator of the facility.  
29           (8)    The violation is a violation of the specific terms of a judicial or  
30                   administrative order.

31          (e)    If a person meets the burden of proving that the disclosure is voluntary, the burden  
32                   shifts to the enforcement agency to prove that the disclosure was not voluntary, based upon the  
33                   factors set forth in this section. The person claiming immunity from civil or administrative  
34                   penalties or fines under this section retains the ultimate burden of proving the violations were  
35                   voluntarily disclosed.

36          (f)    A voluntary disclosure made pursuant to this section is subject to disclosure  
37                   pursuant to the Public Records Act in accordance with the provisions of Chapter 132 of the  
38                   General Statutes.

39          **"§ 8-58.62. Additional limitations on exercise of privilege or immunity.**

40           An owner or operator of a facility who makes a voluntary disclosure of a violation of  
41                   environmental laws discovered through performance of an environmental audit shall only be  
42                   entitled to exercise of the privilege or immunity established by this Part once in a two-year  
43                   period, not more than twice in a five-year period, and not more than three times in a 10-year  
44                   period.

45          **"§ 8-58.63. Preemption of local laws.**

46           No local law, rule, ordinance, or permit condition may circumvent or limit the privilege  
47                   established by this Part or the exercise of the privileges or the presumption and immunity  
48                   established by this Part."

49          **SECTION 4.1.(b)** No later than 30 days after this bill becomes law, the  
50 Department of Environment and Natural Resources shall submit Part 7D of Chapter 8 of the  
51 General Statutes, Environmental Audit Privilege and Limited Immunity, as enacted by this

1 section, to the United States Environmental Protection Agency and shall request the Agency's  
2 approval to implement the Part in concert with the State's legal authority to continue  
3 administering delegated, approved, or authorized federal environmental programs within the  
4 State.

5 **SECTION 4.1.(c)** No later than December 1, 2015, the Department shall report to  
6 the Environmental Review Commission on its activities conducted pursuant to subsection (b) of  
7 this section and shall report monthly thereafter until approval to implement Part 7D of Chapter  
8 8 of the General Statutes, Environmental Audit Privilege and Limited Immunity, as enacted by  
9 this section, is received from the United States Environmental Protection Agency.

10 **SECTION 4.1.(d)** This section becomes effective upon the date approval to  
11 implement Part 7D of Chapter 8 of the General Statutes, Environmental Audit Privilege and  
12 Limited Immunity, as enacted by this section, is received from the United States Environmental  
13 Protection Agency.

## 14 **STUDY COMPUTER EQUIPMENT, TELEVISION, AND ELECTRONICS** 15 **RECYCLING PROGRAM**

16 **SECTION 4.2.** The Department of Environment and Natural Resources shall, in  
17 consultation with the North Carolina League of Municipalities, the North Carolina Association  
18 of County Commissioners, the Consumer Electronics Association, the Retail Merchants  
19 Association, and representatives of the recycling and waste management industries, study  
20 North Carolina's recycling requirements for discarded computer equipment and televisions. In  
21 conducting this study, the Department shall consider (i) the changing waste stream, including  
22 the transition from televisions containing cathode ray tubes to flat screen televisions; (ii) the  
23 current status of North Carolina's recycling system, including cost and financing issues, and  
24 options that may be available to reduce costs and establish sufficient funding to cover necessary  
25 costs; (iii) opportunities for more efficient and effective recycling systems; and (iv) any other  
26 issue the Department deems relevant. The Department shall report its findings, including  
27 specific recommendations for legislative action, to the Environmental Review Commission on  
28 or before April 1, 2016.

## 29 **PROHIBIT IMPLEMENTATION AND ENFORCEMENT OF FEDERAL STANDARDS** 30 **FOR WOOD HEATERS**

31 **SECTION 4.3.(a)** G.S. 143-215.107 reads as rewritten:

32 "**§ 143-215.107. Air quality standards and classifications.**

33 (a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and  
34 empowered, as rapidly as possible within the limits of funds and facilities available to it, and  
35 subject to the procedural requirements of this Article and Article 21:

36 ...

37 (10) ~~To~~ Except as provided in subsection (h) of this section, to develop and adopt  
38 standards and plans necessary to implement requirements of the federal  
39 Clean Air Act and implementing regulations adopted by the United States  
40 Environmental Protection Agency.

41 ...

42 (h) With respect to any regulation adopted by the United States Environmental  
43 Protection Agency limiting emissions from wood heaters and adopted after May 1, 2014,  
44 neither the Commission nor the Department shall do any of the following:

45 (1) Issue rules limiting emissions from wood heaters to implement the federal  
46 regulations described in this subsection.

47 (2) Enforce against a manufacturer, distributor, or consumer the federal  
48 regulations described in this subsection."

49 **SECTION 4.3.(b)** G.S. 143-213 is amended by adding a new subdivision to read:  
50  
51

1           "(31) "Wood heater" means a fireplace, wood stove, pellet stove, wood-fired  
 2           hydronic heater, wood-burning forced-air furnace, or masonry wood heater  
 3           or other similar appliance designed for heating a residence or business or for  
 4           heating water for use by a residence through the combustion of wood or  
 5           products substantially composed of wood."  
 6

## 7 **AMEND RISK-BASED REMEDIATION PROVISIONS**

8           **SECTION 4.7.(a)** Part 8 of Article 9 of Chapter 130A of the General Statutes reads  
 9 as rewritten:

10           "Part 8. Risk-Based Environmental Remediation of ~~Industrial~~ Sites.

### 11 **"§ 130A-310.65. Definitions.**

12           As used in this Part:

- 13           (1) "Background standard" means the naturally occurring concentration of a  
 14           substance in the absence of the release of a contaminant.
- 15           (2) Repealed by Session Laws 2014-122, s. 11(i), effective September 20, 2014.
- 16           (3) "Contaminant" means any substance regulated under any program listed in  
 17           G.S. 130A-310.67(a).
- 18           (3a) "Contaminated off-site property" or "off-site property" means property under  
 19           separate ownership from the contaminated site that is contaminated as a  
 20           result of a release or migration of contaminants at the contaminated site.  
 21           This term includes publicly owned property, including rights-of-way for  
 22           public streets, roads, or sidewalks.
- 23           (4) ~~"Contaminated industrial site" site," "source site," or "site" means any real~~  
 24           ~~property that meets all of the following criteria:~~
- 25           a. ~~The property is contaminated~~ is contaminated, and is the property  
 26           from which the contamination originated, and may be subject to  
 27           remediation under any of the programs or requirements set out in  
 28           G.S. 130A-310.67(a).
- 29           b. ~~The property is or has been used primarily for manufacturing or other~~  
 30           ~~industrial activities for the production of a commercial product. This~~  
 31           ~~includes a property used primarily for the generation of electricity.~~
- 32           e. ~~No contaminant associated with activities at the property is located~~  
 33           ~~off of the property at the time the remedial action plan is submitted.~~
- 34           d. ~~No contaminant associated with activities at the property will migrate~~  
 35           ~~to any adjacent properties above unrestricted use standards for the~~  
 36           ~~contaminant.~~
- 37           (5) "Contamination" means a contaminant released into an environmental  
 38           medium that has resulted in or has the potential to result in an increase in the  
 39           concentration of the contaminant in the environmental medium in excess of  
 40           unrestricted use standards.
- 41           (6) ~~"Fund" means the Inactive Hazardous Sites Cleanup Risk-Based~~  
 42           Remediation Fund established pursuant to  
 43           G.S. 130A-310.11-G.S. 130A-310.76.
- 44           (7) "Institutional controls" means nonengineered measures used to prevent  
 45           unsafe exposure to contamination, such as land-use restrictions.
- 46           (8) "Registered environmental consultant" means an environmental consulting  
 47           or engineering firm approved to implement and oversee voluntary remedial  
 48           actions pursuant to Part 3 of Article 9 of Chapter 130A of the General  
 49           Statutes and rules adopted to implement the Part.
- 50           (9) "Remedial action plan" means a plan for eliminating or reducing  
 51           contamination or exposure to contamination.

1 (10) "Remediation" means all actions that are necessary or appropriate to clean  
2 up, mitigate, correct, abate, minimize, eliminate, control, or prevent the  
3 spreading, migration, leaking, leaching, volatilization, spilling, transport, or  
4 further release of a contaminant into the environment in order to protect  
5 public health, safety, or welfare or the environment.

6 (11) "Systemic toxicant" means any substance that may enter the body and have a  
7 harmful effect other than causing cancer.

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

14 **"§ 130A-310.66. Purpose.**

15 It is the purpose of this Part to authorize the Department to approve the remediation of  
16 contaminated ~~industrial~~-sites based on site-specific remediation standards in circumstances  
17 where site-specific remediation standards are adequate to protect public health, safety, and  
18 welfare and the environment and are consistent with protection of current and anticipated future  
19 use of groundwater and surface water affected or potentially affected by the contamination.

20 **"§ 130A-310.67. Applicability.**

21 (a) This Part applies to contaminated ~~industrial~~-sites subject to remediation pursuant to  
22 any of the following programs or requirements:

23 (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9  
24 of Chapter 130A of the General Statutes, including voluntary actions under  
25 G.S. 130A-310.9 of that act, and rules promulgated pursuant to those  
26 statutes.

27 (2) The hazardous waste management program administered by the State  
28 pursuant to the federal Resource Conservation and Recovery Act of 1976,  
29 Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended,  
30 and Article 9 of Chapter 130A of the General Statutes.

31 (3) The solid waste management program administered pursuant to Article 9 of  
32 Chapter 130A of the General Statutes.

33 (4) The federal Superfund program administered in part by the State pursuant to  
34 the Comprehensive Environmental Response, Compensation, and Liability  
35 Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as  
36 amended, the Superfund Amendments and Reauthorization Act of 1986,  
37 Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article  
38 9 of Chapter 130A of the General Statutes.

39 (5) The groundwater protection corrective action requirements adopted by the  
40 Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

41 (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2  
42 of Article 21A of Chapter 143 of the General ~~Statutes~~. Statutes, except with  
43 respect to those sites identified in subdivision (1a) of subsection (b) of this  
44 section.

45 (b) This Part shall not apply to contaminated ~~industrial~~-sites subject to remediation  
46 pursuant to any of the following programs or requirements:

47 (1) The Leaking Petroleum Underground Storage Tank Cleanup program under  
48 Part 2A of Article 21A of Chapter 143 of the General Statutes and rules  
49 promulgated pursuant to that statute.

- 1           (1a) Leaking petroleum aboveground storage tanks and other sources of  
2           petroleum releases governed by Part 7 of Article 21A of Chapter 143 of the  
3           General Statutes and rules promulgated pursuant to that Part.  
4           (2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of  
5           Chapter 143 of the General Statutes and rules promulgated pursuant to that  
6           statute.  
7           (3) The pre-1983 landfill assessment and remediation program established under  
8           G.S. 130A-310.6(c) through (g).  
9           (4) The Coal Ash Management Act of 2014 under Part 2I of Article 9 of Chapter  
10           130A of the General Statutes and rules promulgated pursuant to that Part.  
11           (5) Animal waste management systems permitted under Part 1 or Part 1A of  
12           Article 21 of Chapter 143 of the General Statutes.

13           ~~(e) This Part shall apply only to sites where a discharge, spill, or release of~~  
14           ~~contamination has been reported to the Department prior to March 1, 2011.~~

15           **"§ 130A-310.68. Remediation standards.**

16           ...

17           (b) Site-specific remediation standards shall be developed for each medium as provided  
18           in this subsection to achieve remediation that eliminates or reduces to protective levels any  
19           substantial present or probable future risk to human health, including sensitive subgroups, and  
20           the environment based upon the present or currently planned future use of the property  
21           comprising the site. Site-specific remediation standards shall be developed in accordance with  
22           all of the following:

- 23           (1) Remediation methods and technologies that result in emissions of air  
24           pollutants shall comply with applicable air quality standards adopted by the  
25           Commission.  
26           (2) The site-specific remediation standard for surface waters shall be the water  
27           quality standards adopted by the Commission.  
28           (3) The current and probable future use of groundwater shall be identified and  
29           protected. Site-specific sources of contaminants and potential receptors shall  
30           be identified. Potential receptors must be protected, controlled, or eliminated  
31           whether the receptors are located on or off the site where the source of  
32           contamination is located. Natural environmental conditions affecting the fate  
33           and transport of contaminants, such as natural attenuation, shall be  
34           determined by appropriate scientific methods.  
35           (4) Permits for facilities located at sites covered by any of the programs or  
36           requirements set out in G.S. 130A-310.67(a) shall contain conditions to  
37           avoid exceedances of applicable groundwater standards adopted by the  
38           Commission pursuant to Article 21 of Chapter 143 of the General Statutes  
39           due to operation of the facility.  
40           (5) Soil shall be remediated to levels that no longer constitute a continuing  
41           source of groundwater contamination in excess of the site-specific  
42           groundwater remediation standards approved under this Part.  
43           (6) Soil shall be remediated to unrestricted use standards on residential property  
44           with the following exceptions:  
45           a. For mixed-use developments where the ground level uses are  
46           nonresidential and where all potential exposure to contaminated soil  
47           has been eliminated, the Department may allow soil to remain on the  
48           site in excess of unrestricted use standards.  
49           b. If soil remediation is impracticable because of the presence of  
50           preexisting structures or impracticability of removal, all areas of the  
51           real property at which a person may come into contact with soil shall

1 be remediated to unrestricted use standards, and, on all other areas of  
2 the real property, engineering and institutional controls that are  
3 sufficient to protect public health, safety, and welfare and the  
4 environment shall be implemented and maintained.

- 5 (7) The potential for human inhalation of contaminants from the outdoor air and  
6 other site-specific indoor air exposure pathways shall be considered, if  
7 applicable.
- 8 (8) The site-specific remediation standard shall protect against human exposure  
9 to contamination through the consumption of contaminated fish or wildlife  
10 and through the ingestion of contaminants in surface water or groundwater  
11 supplies.
- 12 (9) For known or suspected carcinogens, site-specific remediation standards  
13 shall be established at exposures that represent an excess lifetime cancer risk  
14 of one in 1,000,000. The site-specific remediation standard may depart from  
15 the one-in-1,000,000 risk level based on the criteria set out in 40 Code of  
16 Federal Regulations § 300.430(e)(9)(July 1, 2003 Edition). The cumulative  
17 excess lifetime cancer risk to an exposed individual shall not be greater than  
18 one in 10,000 based on the sum of carcinogenic risk posed by each  
19 contaminant present.
- 20 (10) For systemic toxicants, site-specific remediation standards shall represent  
21 levels to which the human population, including sensitive subgroups, may be  
22 exposed without any adverse health effect during a lifetime or part of a  
23 lifetime. Site-specific remediation standards for systemic toxicants shall  
24 incorporate an adequate margin of safety and shall take into account cases  
25 where two or more systemic toxicants affect the same organ or organ  
26 system.
- 27 (11) The site-specific remediation standards for each medium shall be adequate to  
28 avoid foreseeable adverse effects to other media or the environment that are  
29 inconsistent with the risk-based approach under this Part.

30 ...  
31 **§ 130A-310.71. Review and approval of proposed remedial action plans.**

32 (a) The Department shall review and approve a proposed remedial action plan  
33 consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set  
34 out in this section. In its review of a proposed remedial action plan, the Department shall do all  
35 of the following:

- 36 (1) Determine whether site-specific remediation standards are appropriate for a  
37 particular contaminated site. In making this determination, the Department  
38 shall consider proximity of the contamination to water supply wells or other  
39 receptors; current and probable future reliance on the groundwater as a water  
40 supply; current and anticipated future land use; environmental impacts; and  
41 the feasibility of remediation to unrestricted use standards.
- 42 (2) Determine whether the party conducting the remediation has adequately  
43 demonstrated through modeling or other scientific means acceptable to the  
44 Department that no contamination will migrate to ~~adjacent~~ off-site property  
45 at levels above unrestricted use ~~standards~~ standards, except as may remain  
46 pursuant to a cleanup conducted pursuant to G.S. 130A-310.73A(a)(2).
- 47 (3) Determine whether the proposed remedial action plan meets the  
48 requirements of G.S. 130A-310.69.
- 49 (4) Determine whether the proposed remedial action plan meets the  
50 requirements of any other applicable remediation program except those  
51 pertaining to remediation standards.

- 1 (5) Establish the acceptable level or range of levels of risk to public health,  
2 safety, and welfare and to the environment.
- 3 (6) Establish, for each contaminant, the maximum allowable quantity,  
4 concentration, range, or other measures of contamination that will remain at  
5 the contaminated site at the conclusion of the contaminant-reduction phase  
6 of the remediation.
- 7 (7) Consider the technical performance, effectiveness, and reliability of the  
8 proposed remedial action plan in attaining and maintaining compliance with  
9 applicable remediation standards.
- 10 (8) Consider the ability of the person who proposes to remediate the site to  
11 implement the proposed remedial action plan within a reasonable time and  
12 without jeopardizing public health, safety, or welfare or the environment.
- 13 (9) Determine whether the proposed remedial action plan adequately provides  
14 for the imposition and maintenance of engineering and institutional controls  
15 and for sampling, monitoring, and reporting requirements necessary to  
16 protect public health, safety, and welfare and the environment. In making  
17 this determination, the Department may consider, in lieu of land-use  
18 restrictions authorized under G.S. 130A-310.69, reliance on other State or  
19 local land-use controls. Any land-use controls implemented shall adequately  
20 protect public health, safety, and welfare and the environment and provide  
21 adequate notice to current and future property owners of any residual  
22 contamination and the land-use controls in place.
- 23 (10) Approve the circumstances under which no further remediation is required.

24 (b) The person who proposes a remedial action plan has the burden of demonstrating  
25 with reasonable assurance that contamination from the site will not migrate to ~~adjacent off-site~~  
26 property above unrestricted use ~~levels~~ levels, except as may remain pursuant to a cleanup  
27 conducted pursuant to G.S. 130A-310.73A(a)(2), and that the remedial action plan is protective  
28 of public health, safety, and welfare and the environment by virtue of its compliance with this  
29 Part. The demonstration shall (i) take into account actions proposed in the remedial action plan  
30 that will prevent contamination from migrating off the site; and (ii) use scientifically valid  
31 site-specific data.

32 (c) The Department may require a person who proposes a remedial action plan to  
33 supply any additional information necessary for the Department to approve or disapprove the  
34 plan.

35 (d) In making a determination on a proposed remedial action plan, the Department shall  
36 consider the information provided by the person who proposes the remedial action plan as well  
37 as information provided by local governments and adjoining landowners pursuant to  
38 G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the  
39 Department finds that the plan is protective of public health, safety, and welfare and the  
40 environment and complies with the requirements of this Part. If the Department disapproves a  
41 proposed remedial action plan, the person who submitted the plan may seek review as provided  
42 in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or  
43 disapprove a proposed remedial action plan within 120 days after a complete plan has been  
44 submitted, the person who submitted the plan may treat the plan as having been disapproved at  
45 the end of that time period.

46 (e) If, pursuant to subdivision (9) of subsection (a) of this section, reliance on other  
47 State or local land-use controls is approved by the Department in lieu of land-use restrictions, a  
48 "Notice of Residual Contamination" shall be prepared and filed in the chain of title of each  
49 contaminated site or contaminated off-site property where any contamination has or will in the  
50 future exceed unrestricted use standards. The Notice shall identify the type of contamination on  
51 the site or property and the land-use controls that address the contamination and may be filed

1 by the person who proposes to remediate the site. Provided, however, the Department may only  
2 approve imposition of land-use controls on contaminated off-site property with the written  
3 consent of the owner of the property in conformance with G.S. 130A-310.73A(a)(2).

4 ...

5 **"§ 130A-310.73. Attainment of the remediation standards.**

6 (a) Compliance with the approved remediation standards is attained for a site or portion  
7 of a site when a remedial action plan approved by the Department has been implemented and  
8 applicable soil, groundwater, surface water, and air emission standards have been attained. The  
9 remediation standards may be attained through a combination of remediation activities that can  
10 include treatment, removal, engineering, or institutional controls, except that the person  
11 conducting the remediation may not demonstrate attainment of ~~an unrestricted-use~~ a remediation  
12 standard or a background standard through the use of institutional controls ~~alone~~ that result in  
13 an incompatible use of the property relative to surrounding land uses. When the remedial action  
14 plan has been fully implemented, the person conducting the remediation shall submit a final  
15 report to the Department, with notice to all local governments with taxing and land-use  
16 jurisdiction over the site, that demonstrates that the remedial action plan has been fully  
17 implemented, that any land-use restrictions have been certified on an annual basis, and that the  
18 remediation standards have been attained. The final report shall be accompanied by a request  
19 that the Department issue a determination that no further remediation beyond that specified in  
20 the approved remedial action plan is required.

21 (b) The person conducting the remediation has the burden of demonstrating that the  
22 remedial action plan has been fully implemented and that the remediation standards have been  
23 attained in compliance with the requirements of this Part. The Department may require a person  
24 who implements the remedial action plan to supply any additional information necessary for  
25 the Department to determine whether the remediation standards have been attained.

26 (c) The Department shall review the final report, and, upon determining that the person  
27 conducting the remediation has completed remediation to the approved remediation standard  
28 and met all the requirements of the approved remedial action plan, the Department shall issue a  
29 determination that no further remediation beyond that specified in the approved remedial action  
30 plan is required at the site. Once the Department has issued a no further action determination,  
31 the Department may require additional remedial action by the responsible party only upon  
32 finding any of the following:

- 33 (1) Monitoring, testing, or analysis of the site subsequent to the issuance of the  
34 no further action determination indicates that the remediation standards and  
35 objectives were not achieved or are not being maintained.
- 36 (2) One or more of the conditions, restrictions, or limitations imposed on the site  
37 as part of the remediation have been violated.
- 38 (3) Site monitoring or operation and maintenance activities that are required as  
39 part of the remedial action plan or no further action determination for the site  
40 are not adequately funded or are not adequately implemented.
- 41 (4) A contaminant or hazardous substance release is discovered at the site that  
42 was not the subject of the remedial investigation report or the remedial  
43 action plan.
- 44 (5) A material change in the facts known to the Department at the time the  
45 written no further action determination was issued, or new facts, cause the  
46 Department to find that further assessment or remediation is necessary to  
47 prevent a significant risk to human health and safety or to the environment.
- 48 (6) The no further action determination was based on fraud, misrepresentation,  
49 or intentional nondisclosure of information by the person conducting the  
50 ~~remediation~~ remediation, or that person's agents, contractors, or affiliates.

1 (7) Installation or use of wells would induce the flow of contaminated  
2 groundwater off the ~~site~~contaminated site, as defined in the remedial action  
3 plan.

4 (d) The Department shall issue a final decision on a request for a determination that  
5 remediation has been completed to approved standards and that no further remediation beyond  
6 that specified in the approved remedial action plan is required within 180 days after receipt of a  
7 complete final report. Failure of the Department to issue a final decision on a no further  
8 remediation determination within 180 days after receipt of a complete final report and request  
9 for a determination of no further remediation may be treated as a denial of the request for a no  
10 further remediation determination. The responsible person may seek review of a denial of a  
11 request for a release from further remediation as provided in Article 3 of Chapter 150B of the  
12 General Statutes.

13 **"§ 130A-310.73A. Remediation of sites with off-site migration of contaminants.**

14 (a) Contaminated sites at which contamination has migrated to off-site properties may  
15 be remediated pursuant to this Part consistent with the remediation standards set out in  
16 G.S. 130A-310.68 if either of the following occur:

17 (1) The person who proposes to conduct the remediation pursuant to this Part  
18 remediates the contaminated off-site property to unrestricted use standards.

19 (2) The person who proposes to conduct the remediation pursuant to this Part (i)  
20 provides the owner of the contaminated off-site property with a copy of this  
21 Part and the publication produced by the Department pursuant to subsection  
22 (b) of this section and (ii) obtains written consent from the owner of the  
23 contaminated off-site property for the person to remediate the contaminated  
24 off-site property using site-specific remediation standards pursuant to this  
25 Part; provided that the site-specific remediation standards shall not allow  
26 concentrations of contaminants on the off-site property to increase above the  
27 levels present on the date the written consent is obtained. Written consent  
28 from the owner of the off-site property shall be on a form prescribed by the  
29 Department and include an affirmation that the owner has received and read  
30 the publication and authorizes the person to remediate the owner's property  
31 using site-specific remediation standards pursuant to this Part.

32 (b) In order to inform owners of contaminated off-site property of the issues and  
33 liabilities associated with the contamination on their property, the Department, in consultation  
34 with the Consumer Protection Division of the North Carolina Department of Justice and the  
35 North Carolina Real Estate Commission, shall develop and make available a publication  
36 entitled "Contaminated Property: Issues and Liabilities" to provide information on the nature of  
37 risk-based remediation and how it differs from remediation to unrestricted use standards,  
38 potential health impacts that may arise from residual contamination, as well as identification of  
39 liabilities that arise from contaminated property and associated issues, including potential  
40 impacts to real estate transactions and real estate financing. The Department shall update the  
41 publication as necessary.

42 (c) If, after issuance of a no further action determination, the Department determines  
43 that additional remedial action is required for a contaminated off-site property pursuant to  
44 G.S. 130A-310.73(c), the responsible party shall be liable for the additional remediation  
45 deemed necessary.

46 (d) Nothing in this section shall be construed to preclude or impair any person from  
47 obtaining any and all other remedies allowed by law.

48 **"§ 130A-310.74. Compliance with other laws.**

49 Where a site is covered by an agreement under the Brownfields Property Reuse Act of  
50 1997, as codified as Part 5 of Article 9 of Chapter 130A of the General Statutes, any work  
51 performed by the prospective developer pursuant to that agreement is not required to comply

1 with this Part, but any work not covered by such agreement and performed at the site by  
2 another person not a party to that agreement may be performed pursuant to this Part.

3 **"§ 130A-310.75. Use of registered environmental consultants.**

4 The Department may approve the use of a registered environmental consultant to provide  
5 oversight for the assessment and remediation of a site under this ~~Part~~Part based on the risk  
6 posed by the site and the availability of Department staff for oversight of remediation activities.  
7 If remediation under this Part is not undertaken voluntarily, the Department may not require the  
8 use of a registered environmental consultant to provide oversight for the assessment and  
9 remediation of a site under this Part.

10 **"§ 130A-310.76. Fees; permissible uses of fees.**

11 (a) ~~A person who undertakes remediation of environmental contamination under~~  
12 ~~site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund~~  
13 ~~in an amount equal to four thousand five hundred dollars (\$4,500) for each acre or portion of an~~  
14 ~~acre of contamination, including any area that will become contaminated as a result of the~~  
15 ~~release; however, no person shall be required to pay more than one hundred twenty five~~  
16 ~~thousand dollars (\$125,000) to the Fund for any individual site, regardless of its size. This~~  
17 ~~one-time fee shall be payable at the time the person undertaking remediation submits the~~  
18 ~~remedial action plan to the Department.~~The following fees, payable to the Risk-Based  
19 Remediation Fund established under G.S. 130A-310.76A, are applicable to activities under this  
20 Part:

21 (1) Application fee. – A person who proposes to conduct remediation pursuant  
22 to this Part shall pay an application fee due at the time a proposed remedial  
23 action plan is submitted to the Department for approval. The application fee  
24 shall not exceed five thousand dollars (\$5,000) for each acre or portion of an  
25 acre of contamination, including any area that will become contaminated as  
26 a result of the release; however, no person shall be required to pay more than  
27 one hundred thousand dollars (\$100,000) in fees attributable to this  
28 subdivision to the Fund, with the total amount owed calculated by the  
29 Department after evaluation of the factors set forth in subsection (a1) of this  
30 section and any rules promulgated thereunder.

31 (2) Oversight fee. – A person who has been approved by the Department to  
32 conduct a remedial action plan pursuant to this Part shall pay an oversight  
33 fee to the Department within 30 days of such approval or at such other time  
34 as the Department may authorize. The total ongoing oversight fees shall not  
35 exceed five hundred dollars (\$500.00) for each acre or portion of an acre of  
36 contamination, including any area that will become contaminated as a result  
37 of the release; however, no person shall be required to pay more than  
38 twenty-five thousand dollars (\$25,000) in fees attributable to this subdivision  
39 to the Fund, with the total amount owed calculated by the Department after  
40 evaluation of the factors set forth in subsection (a1) of this section and any  
41 rules promulgated thereunder.

42 (a1) The Department shall take all of the following factors into account prior to imposing  
43 a fee on a person pursuant to subsection (a) of this section and provide the person written  
44 documentation of the Department's findings with respect to each factor at the time the fee is  
45 imposed:

46 (1) The size of the site subject to a proposed remedial action plan.

47 (2) Whether groundwater contamination from the site has migrated, or is likely  
48 to migrate, to off-site properties.

49 (3) The complexity of the work to be conducted at a site under a proposed  
50 remedial action plan.

1           (4) The resources that the Department will need to evaluate and oversee the  
2 work to be conducted at a site under a proposed remedial action plan and the  
3 resources the Department will need to monitor a site after completion of  
4 remediation. If such work, or any portion thereof, is to be performed by a  
5 registered environmental consultant in accordance with the provisions of  
6 G.S. 130A-310.75, the Department shall take this into account accordingly  
7 in imposing a reduced fee.

8           (b) Funds collected pursuant to subsection (a) of this section may be used only for the  
9 following purposes:

10           (1) To pay for administrative and operating expenses necessary to implement  
11 this Part, including the full cost of the Department's activities associated  
12 with any human health or ecological risk assessments, groundwater  
13 modeling, financial assurance matters, or community outreach.

14           (2) To establish, administer, and maintain a system for the tracking of land-use  
15 restrictions recorded at sites that are remediated pursuant to this Part.

16           (c) The Department shall report to the Joint Legislative Commission on Governmental  
17 Operations, the Environmental Review Commission, and the Fiscal Research Division on or  
18 before October 1 of each year on the amounts and sources of funds collected by year received  
19 pursuant to this Part, the amounts and sources of those funds paid into the Risk-Based  
20 Remediation Fund established under G.S. 130A-310.76A, the number of acres of  
21 contamination for which funds have been received pursuant to subsection (a) of this section,  
22 and a detailed annual accounting of how the funds collected pursuant to this Part have been  
23 utilized by the Department to advance the purposes of this Part.

24           (d) The Commission may adopt rules to implement the requirements of subsection (a1)  
25 of this section.

26 **"§ 130A-310.76A. Risk-Based Remediation Fund.**

27 There is established under the control and direction of the Department the Risk-Based  
28 Remediation Fund. This fund shall be a revolving fund consisting of fees collected pursuant to  
29 G.S. 130A-310.76 and other monies paid to it or recovered by or on behalf of the Department.  
30 The Risk-Based Remediation Fund shall be treated as a nonreverting special trust fund pursuant  
31 to G.S. 147-69.2 and G.S. 147-69.3, except that interest and other income received on the Fund  
32 balance shall be treated as set forth in G.S. 147-69.1(d).

33 ...."

34           **SECTION 4.7.(b)** Article 21A of Chapter 143 of the General Statutes is amended  
35 by adding a new Part to read:

36 **"Part 7. Risk-Based Remediation for Petroleum Releases from Aboveground Storage Tanks and**  
37 **Other Sources.**

38 **"§ 143-215.104AA. Standards for petroleum releases from aboveground storage tanks**  
39 **and other sources.**

40           (a) Legislative Findings and Intent. –

41           (1) The General Assembly finds the following:

42           a. Risk-based corrective action gives the State flexibility in requiring  
43 different levels of cleanup based on scientific analysis of different  
44 site characteristics and allowing no action or no further action at sites  
45 that pose little risk to human health or the environment.

46           b. A risk-based approach to the cleanup of environmental damage can  
47 adequately protect human health and the environment while  
48 preventing excessive or unproductive cleanup efforts, thereby  
49 assuring that limited resources are directed toward those sites that  
50 pose the greatest risk to human health and the environment.

1           c.     Risk-based corrective action has successfully been used to clean up  
2                     contamination from petroleum underground storage tanks, as well as  
3                     contamination at sites governed by other environmental programs.

4           (2)    The General Assembly intends the following:

5           a.     To direct the Commission to adopt rules that will provide for  
6                     risk-based assessment and cleanup of discharges and releases of  
7                     petroleum from aboveground storage tanks and other sources. These  
8                     rules are intended to combine groundwater standards that protect  
9                     current and potential future uses of groundwater with risk-based  
10                    analysis to determine the appropriate cleanup levels and actions.

11          b.     That these rules apply to all discharges or releases that are reported  
12                     on or after the date the rules become effective in order to ascertain  
13                     whether cleanup is necessary, and if so, the appropriate level of  
14                     cleanup.

15          c.     That these rules may be applied to any discharge or release that has  
16                     been reported at the time the rules become effective at the discretion  
17                     of the Commission.

18          d.     That these rules, and decisions of the Commission and the  
19                     Department in implementing these rules, facilitate the completion of  
20                     more cleanups in a shorter period of time.

21          (b)    The Commission shall adopt rules to establish a risk-based approach for the cleanup  
22                     of discharges and releases of petroleum from aboveground storage tanks and other sources. At  
23                     a minimum, the rules shall address all of the following:

24           (1)    The circumstances where site-specific information should be considered.

25           (2)    Criteria for determining acceptable cleanup levels.

26           (3)    The acceptable level or range of levels of risk to human health and the  
27                     environment. Rules that use the distance between a source area of a  
28                     confirmed discharge or release to a water supply well or a private drinking  
29                     water well, as those terms are defined under G.S. 87-85, shall include a  
30                     determination whether a nearby well is likely to be affected by the discharge  
31                     or release as a factor in determining levels of risk.

32           (4)    Remediation standards and processes.

33           (5)    Requirements for financial assurance, where the Commission deems it  
34                     necessary.

35           (6)    Appropriate fees to be applied to persons who undertake remediation of  
36                     environmental contamination under site-specific remediation pursuant to this  
37                     Part to pay for administrative and operating expenses necessary to  
38                     implement this Part and rules adopted to implement this Part.

39          (c)    The Commission may require an owner, operator, or landowner to provide  
40                     information necessary to determine the degree of risk to human health and the environment that  
41                     is posed by a discharge or release of petroleum from an aboveground storage tank or other  
42                     source.

43          (d)    If the Commission concludes that a discharge or release poses a degree of risk to  
44                     human health or the environment that is no greater than the acceptable level of risk established  
45                     by the Commission, the Commission shall notify an owner, operator, or landowner who  
46                     provides the information required by subsection (c) of this section that no cleanup, further  
47                     cleanup, or further action will be required unless the Commission later determines that the  
48                     discharge or release poses an unacceptable level of risk or a potentially unacceptable level of  
49                     risk to human health or the environment. If the Commission concludes that a discharge or  
50                     release poses a degree of risk to human health or the environment that requires further cleanup,  
51                     the Commission shall notify the owner, operator, or landowner who provides the information

1 required by subsection (c) of this section of the cleanup method approved by the Commission.  
2 This section shall not be construed to prohibit an owner, operator, or landowner from selecting  
3 a cleanup method other than the cleanup method approved by the Commission so long as the  
4 Commission determines that the alternative cleanup method will address imminent threats to  
5 human health and the environment.

6 (e) Remediation of sites with off-site migration shall be subject to the following  
7 provisions:

8 (1) Contaminated sites at which contamination has migrated to off-site  
9 properties may be remediated pursuant to this Part if either of the following  
10 occur:

11 a. The person who proposes to conduct the remediation pursuant to this  
12 Part remediates the contaminated off-site property to unrestricted use  
13 standards.

14 b. The person who proposes to conduct the remediation pursuant to this  
15 Part (i) provides the owner of the contaminated off-site property with  
16 a copy of this Part and the publication produced by the Department  
17 pursuant to subdivision (2) of this subsection and (ii) obtains written  
18 consent from the owner of the contaminated off-site property for the  
19 person to remediate the contaminated off-site property using  
20 site-specific remediation standards pursuant to this Part. Provided  
21 that the site-specific remediation standards shall not allow  
22 concentrations of contaminants on the off-site property to increase  
23 above the levels present on the date the written consent is obtained.  
24 Written consent from the owner of the off-site property shall be on a  
25 form prescribed by the Department and include an affirmation that  
26 the owner has received and read the publication and authorizes the  
27 person to remediate the owner's property using site-specific  
28 remediation standards pursuant to this Part.

29 (2) In order to inform owners of contaminated off-site property of the issues and  
30 liabilities associated with the contamination on their property, the  
31 Department, in consultation with the Consumer Protection Division of the  
32 North Carolina Department of Justice and the North Carolina Real Estate  
33 Commission, shall develop and make available a publication entitled  
34 "Contaminated Property: Issues and Liabilities" to provide information on  
35 the nature of risk-based remediation and how it differs from remediation to  
36 unrestricted use standards, potential health impacts that may arise from  
37 residual contamination, as well as identification of liabilities that arise from  
38 contaminated property and associated issues, including potential impacts to  
39 real estate transactions and real estate financing. The Department shall  
40 update the publication as necessary.

41 (3) If, after issuance of a no further action determination, the Department  
42 determines that additional remedial action is required for a contaminated  
43 off-site property, the responsible party shall be liable for the additional  
44 remediation deemed necessary.

45 (4) Nothing in this subsection shall be construed to preclude or impair any  
46 person from obtaining any and all other remedies allowed by law.

47 (f) This section shall not be construed to limit the authority of the Commission to  
48 require investigation, initial response, and abatement of a discharge or release pending a  
49 determination by the Commission under subsection (d) of this section as to whether cleanup,  
50 further cleanup, or further action will be required. Notwithstanding any authority provided  
51 under this section to the Commission and the Department allowing use of a risk-based approach

1 for the cleanup of discharges and releases of petroleum from aboveground storage tanks and  
2 other sources, a responsible party shall, at a minimum, do all of the following:

3 (1) Perform initial abatement actions to (i) measure for the presence of a release  
4 where contamination is most likely to be present and to confirm the precise  
5 source of the release; (ii) determine the possible presence of free product and  
6 to begin free product removal immediately; (iii) continue to monitor and  
7 mitigate any additional fire, vapor, or explosion hazards posed by vapors or  
8 by free product; and (iv) submit a report summarizing these initial abatement  
9 actions within 20 days after a discharge or release. For purposes of this  
10 subdivision, the term "free product" means a non-aqueous phase liquid  
11 which may be present within the saturated zone or in surface water.

12 (2) Remove, or in situ remediate, contaminated soil or free product that would  
13 act as a continuing source of contamination to groundwater. Actions  
14 conducted in conformance with this subdivision shall require approval by the  
15 Department.

16 (g) This section shall apply to discharges of petroleum from aboveground storage tanks  
17 and other sources not otherwise governed by the provisions of G.S. 143-215.94V."

18 **SECTION 4.7.(c)** G.S. 130A-310.8 is amended by adding a new subsection to  
19 read:

20 **"§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.**

21 ...

22 (i) If a site subject to the requirements of this section is remediated pursuant to the  
23 requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of  
24 Residual Contamination may be prepared and filed in accordance with G.S. 130A-310.71(a)(9),  
25 in lieu of a Notice prepared and filed pursuant to this section."

26 **SECTION 4.7.(d)** G.S. 143-215.85A is amended by adding a new subsection to  
27 read:

28 **"§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.**

29 ...

30 (g) If a site subject to the requirements of this section is remediated pursuant to the  
31 requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of  
32 Residual Contamination may be prepared and filed in accordance with G.S. 130A-310.71(a)(9),  
33 in lieu of a Notice prepared and filed pursuant to this section."

34 **SECTION 4.7.(e)** G.S. 143B-279.10 is amended by adding a new subsection to  
35 read:

36 **"§ 143B-279.10. Recordation of contaminated sites.**

37 ...

38 (i) If a site subject to the requirements of this section is remediated pursuant to the  
39 requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of  
40 Residual Contamination may be prepared and filed in accordance with G.S. 130A-310.71(a)(9),  
41 in lieu of a Notice prepared and filed pursuant to this section."

42 **SECTION 4.7.(f)** G.S. 130A-310.10(a)(8a) is repealed.

43 **SECTION 4.8.(a)** No later than March 1, 2016, the Department of Environment  
44 and Natural Resources shall do all of the following:

45 (1) Develop internal processes to govern remediation of contaminated sites  
46 conducted under this Part that are consistent across all programs or  
47 requirements identified in subsection (a) of G.S. 130A-310.67.

48 (2) Develop a coordinated program and processes for remediation of  
49 contaminated sites conducted under this Part that are subject to more than  
50 one program or requirement identified in subsection (a) of  
51 G.S. 130A-310.67.

- 1 (3) Develop reforms to expand the role, and otherwise enhance the use of,  
2 registered environmental consultants approved to implement and oversee  
3 voluntary remedial actions pursuant to this Part.  
4 (4) Examine the criteria for development of site-specific remediation standards  
5 pursuant to this Part, specifically distances between water bodies and other  
6 receptors to plumes of contamination that originate from the source, to  
7 ensure that such standards are protective of public health, safety, and  
8 welfare; the environment; and natural resources.

9 **SECTION 4.8.(b)** No later than April 1, 2016, the Department shall report to the  
10 Environmental Review Commission on its activities conducted pursuant to subsection (a) of  
11 this section, together with any pertinent findings or recommendations, including any legislative  
12 proposals that it deems advisable.

13 **SECTION 4.8A.(a)** The Department of Environment and Natural Resources, in  
14 conjunction with the Department of Health and Human Services, shall study the State's  
15 groundwater standards under 15A NCAC 2L, or State Interim Allowable Maximum  
16 Contaminant Levels (IMAC), as applicable, as well as State health screening levels, for  
17 hexavalent chromium and vanadium relative to other southeastern states' standards for these  
18 contaminants and the federal maximum contaminant levels (MCLs) for these contaminants  
19 under the Safe Drinking Water Act, in order to identify appropriate standards to protect public  
20 health, safety, and welfare; the environment; and natural resources. The Department shall also  
21 evaluate background standards for these contaminants where they naturally occur in  
22 groundwater in the State.

23 **SECTION 4.8A.(b)** The Department shall submit an interim report no later than  
24 November 1, 2015, and a final report no later than April 1, 2016, to the Environmental Review  
25 Commission and the Joint Legislative Oversight Committee on Health and Human Services on  
26 its activities conducted pursuant to subsection (a) of this section, together with any pertinent  
27 findings or recommendations, including any legislative proposals that it deems advisable.

28  
29 **MODIFY EFFECTIVE DATE FOR LIFE-OF-SITE PERMITS FOR SANITARY**  
30 **LANDFILLS AND TRANSFER STATIONS AND MAKE OTHER TECHNICAL,**  
31 **CLARIFYING, AND CONFORMING CHANGES**

32 **SECTION 4.9.(a)** Section 14.20(a) of S.L. 2015-241 reads as rewritten:

33 "SECTION 14.20.(a) G.S. 130A-294 reads as rewritten:

34 "§ 130A-294. **Solid waste management program.**

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

38 ...

- 39 (4) a. Develop a permit system governing the establishment and operation  
40 of solid waste management facilities. A landfill with a disposal area  
41 of 1/2 acre or less for the on-site disposal of land clearing and inert  
42 debris is exempt from the permit requirement of this section and shall  
43 be governed by G.S. 130A-301.1. Demolition debris from the  
44 decommissioning of manufacturing buildings, including electric  
45 generating stations, that is disposed of on the same site as the  
46 decommissioned buildings, is exempt from the permit requirement of  
47 this section and rules adopted pursuant to this section and shall be  
48 governed by G.S. 130A-301.3. The Department shall not approve an  
49 application for a new permit, the renewal of a permit, or a substantial  
50 amendment to a permit for a sanitary landfill, excluding demolition  
51 landfills as defined in the rules of the Commission, except as

1 provided in subdivisions (3) and (4) of subsection (b1) of this  
2 section. No permit shall be granted for a solid waste management  
3 facility having discharges that are point sources until the Department  
4 has referred the complete plans and specifications to the Commission  
5 and has received advice in writing that the plans and specifications  
6 are approved in accordance with the provisions of G.S. 143-215.1. In  
7 any case where the Department denies a permit for a solid waste  
8 management facility, it shall state in writing the reason for denial and  
9 shall also state its estimate of the changes in the applicant's proposed  
10 activities or plans that will be required for the applicant to obtain a  
11 permit.

12 ...

13 (a2) Permits for sanitary landfills and transfer stations shall be issued for ~~(i) a design and~~  
14 ~~operation phase of five years or (ii) a design and operation phase of 10 years.~~ A permit issued  
15 ~~for a design and operation phase of 10 years shall be subject to a limited review within five~~  
16 ~~years of the issuance date.~~the life-of-site of the facility unless revoked as otherwise provided  
17 under this Article or upon the expiration of any local government franchise required for the  
18 facility pursuant to subsection (b1) of this section. For purposes of this section, "life-of-site"  
19 means the period from the initial receipt of solid waste at the facility until the Department  
20 approves final closure of the facility. Permits issued pursuant to this subsection shall take into  
21 account the duration of any permits previously issued for the facility and the remaining  
22 capacity at the facility.

23 (a3) As used in this section, the following definitions apply:

24 (1) "New permit" means any of the following:

- 25 a. An application for a permit for a solid waste management facility  
26 that has not been previously permitted by the Department. The term  
27 includes one site suitability review, the initial permit to construct,  
28 and one permit to operate.
- 29 b. An application that proposes to expand the permitted activity of the  
30 waste management facility through an increase of ten percent (10%)  
31 or more in (i) the population of the geographic area to be served by  
32 the sanitary landfill; (ii) the quantity of solid waste to be disposed of  
33 in the sanitary landfill; or (iii) the geographic area to be served by the  
34 sanitary landfill.
- 35 c. An application that includes a proposed expansion to the boundary of  
36 a waste disposal unit within a permitted solid waste management  
37 facility.
- 38 d. An application that includes a proposed change in the categories of  
39 solid waste to be disposed of in the sanitary landfill.
- 40 e. An application for a permit to be issued pursuant to  
41 G.S. 130A-294(a2), which is issued for a duration of less than a  
42 facility's life-of-site based upon permits previously issued to a  
43 facility.

44 (2) "Permit amendment" means any of the following:

- 45 a. An application for the five-year renewal of a permit for a permitted  
46 solid waste management facility or for a permit review of a permitted  
47 solid waste management facility. This sub-subdivision shall not  
48 apply to sanitary landfills or transfer stations.
- 49 b. Any application that proposes a change in ownership or corporate  
50 structure of a permitted solid waste management facility.

51 (3) "Permit modification" means any of the following:

- 1           a.     An application for any change to the plans approved in a permit for a  
2                 solid waste management facility that does not constitute a "permit  
3                 amendment" or a "new permit."  
4           b.     An application for a five-year limited review of a 10-year permit,  
5                 including review of the operations plan, closure plan, post-closure  
6                 plan, financial assurance cost estimates, environmental monitoring  
7                 plans, and any other applicable plans for the facility.

8           (b)     The Commission shall adopt and the Department shall enforce rules to implement a  
9     comprehensive statewide solid waste management program. The rules shall be consistent with  
10    applicable State and federal law; and shall be designed to protect the public health, safety, and  
11    welfare; preserve the environment; and provide for the greatest possible conservation of  
12    cultural and natural resources. Rules for the establishment, location, operation, maintenance,  
13    use, discontinuance, recordation, post-closure care of solid waste management facilities also  
14    shall be based upon recognized public health practices and procedures, including applicable  
15    epidemiological research and studies; hydrogeological research and studies; sanitary  
16    engineering research and studies; and current technological development in equipment and  
17    methods. The rules shall not apply to the management of solid waste that is generated by an  
18    individual or individual family or household unit on the individual's property and is disposed of  
19    on the individual's property.

20           (b1)   (1)   For purposes of this subsection and subdivision (4) of subsection (a) of this  
21                 section, a "substantial amendment" means either:

- 22           a.     An increase of ten percent (10%) or more in:  
23                 1.     The population of the geographic area to be served by the  
24                         sanitary landfill;  
25                 2.     The quantity of solid waste to be disposed of in the sanitary  
26                         landfill; or  
27                 3.     The geographic area to be served by the sanitary landfill.  
28           b.     A change in the categories of solid waste to be disposed of in the  
29                 sanitary landfill or any other change to the application for a permit or  
30                 to the permit for a sanitary landfill that the Commission or the  
31                 Department determines to be substantial.

32           (2)   A person who intends to apply for a new permit, ~~the renewal of a permit, or~~  
33                 ~~a substantial amendment to a permit for a sanitary landfill shall obtain, prior~~  
34                 to applying for a permit, a franchise for the operation of the sanitary landfill  
35                 from each local government having jurisdiction over any part of the land on  
36                 which the sanitary landfill and its appurtenances are located or to be located.  
37                 A local government may adopt a franchise ordinance under G.S. 153A-136  
38                 or G.S. 160A-319. A franchise granted for a sanitary landfill shall be granted  
39                 for the life-of-site of the landfill and shall include all of the following:

- 40           a.     A statement of the population to be served, including a description of  
41                         the geographic area.  
42           b.     A description of the volume and characteristics of the waste stream.  
43           c.     A projection of the useful life of the sanitary landfill.  
44           d.     Repealed by Session Laws 2013-409, s. 8, effective August 23, 2013.  
45           e.     The procedures to be followed for governmental oversight and  
46                         regulation of the fees and rates to be charged by facilities subject to  
47                         the franchise for waste generated in the jurisdiction of the franchising  
48                         entity.  
49           f.     A facility plan for the sanitary landfill that shall include the  
50                         boundaries of the proposed facility, proposed development of the  
51                         facility ~~site in five-year operational phases, site,~~ the boundaries of all

1 waste disposal units, final elevations and capacity of all waste  
2 disposal units, the amount of waste to be received per day in tons, the  
3 total waste disposal capacity of the sanitary landfill in tons, a  
4 description of environmental controls, and a description of any other  
5 waste management activities to be conducted at the facility. In  
6 addition, the facility plan shall show the proposed location of soil  
7 borrow areas, leachate facilities, and all other facilities and  
8 infrastructure, including ingress and egress to the facility.

9 ...  
10 (4) An applicant for a new ~~permit, the renewal of a permit, or a substantial~~  
11 ~~amendment to a permit~~ for a sanitary landfill shall request each local  
12 government having jurisdiction over any part of the land on which the  
13 sanitary landfill and its appurtenances are located or to be located to issue a  
14 determination as to whether the local government has in effect a franchise,  
15 zoning, subdivision, or land-use planning ordinance applicable to the  
16 sanitary landfill and whether the proposed sanitary landfill, or the existing  
17 sanitary landfill as it would be operated under the ~~renewed or substantially~~  
18 ~~amended~~ permit, would be consistent with the applicable ordinances. The  
19 request to the local government shall be accompanied by a copy of the  
20 permit application and shall be delivered to the clerk of the local government  
21 personally or by certified mail. In order to serve as a basis for a  
22 determination that an application for a new ~~permit, the renewal of a permit,~~  
23 ~~or a substantial amendment to a permit~~ for a sanitary landfill is consistent  
24 with a zoning, subdivision, or land-use planning ordinance, an ordinance or  
25 zoning classification applicable to the real property designated in the permit  
26 application shall have been in effect not less than 90 days prior to the date  
27 the request for a determination of consistency is delivered to the clerk of the  
28 local government. The determination shall be verified or supported by  
29 affidavit signed by the chief administrative officer, the chief administrative  
30 officer's designee, clerk, or other official designated by the local government  
31 to make the determination and, if the local government states that the  
32 sanitary landfill as it would be operated under the ~~new, renewed, or~~  
33 ~~substantially amended~~ new permit is inconsistent with a franchise, zoning,  
34 subdivision, or land-use planning ordinance, shall include a copy of the  
35 ordinance and the specific reasons for the determination of inconsistency. A  
36 copy of the determination shall be provided to the applicant when the  
37 determination is submitted to the Department. The Department shall not act  
38 upon an application for a permit under this section until it has received a  
39 determination from each local government requested to make a  
40 determination by the applicant; provided that if a local government fails to  
41 submit a determination to the Department as provided by this subsection  
42 within 15 days after receipt of the request, the Department shall proceed to  
43 consider the permit application without regard to a franchise, local zoning,  
44 subdivision, and land-use planning ordinances. Unless the local government  
45 makes a subsequent determination of consistency with all ordinances cited in  
46 the determination or the sanitary landfill as it would be operated under the  
47 ~~new, renewed, or substantially amended~~ new permit is determined by a court  
48 of competent jurisdiction to be consistent with the cited ordinances, the  
49 Department shall attach as a condition of the permit a requirement that the  
50 applicant, prior to construction or operation of the sanitary landfill under the  
51 permit, comply with all lawfully adopted local ordinances cited in the

determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

- (5) As used in this subdivision, "coal-fired generating unit" and "investor-owned public utility" have the same meaning as in G.S. 143-215.107D(a). Notwithstanding subdivisions (a)(4), (b1)(3), or (b1)(4) of this section, no franchise shall be required for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.

...."

**SECTION 4.9.(b)** Section 14.20(a) of S.L. 2015-241 reads as rewritten:

**"SECTION 14.20.(c)** G.S. 130A-295.8 reads as rewritten:

**"§ 130A-295.8. Fees applicable to permits for solid waste management facilities.**

(a) The Solid Waste Management Account is established as a nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used to support the solid waste management program established pursuant to G.S. 130A-294.

(b) As used in this section:

(1) ~~"Major permit modification" means an application for any change to the approved engineering plans for a sanitary landfill or transfer station permitted for a 10-year design capacity that does not constitute a "permit amendment," "new permit," or "permit modification."~~

(1a) ~~"New permit" means any of the following:~~

- a. ~~An application for a permit for a solid waste management facility that has not been previously permitted by the Department. The term includes one site suitability review, the initial permit to construct, and one permit to operate the constructed portion of a phase included in the permit to construct.~~
- b. ~~An application that proposes to expand the boundary of a permitted waste management facility for the purpose of expanding the permitted activity.~~
- e. ~~An application that includes a proposed expansion to the boundary of a waste disposal unit within a permitted solid waste management facility.~~
- d. ~~An application for a substantial amendment to a solid waste permit, as defined in G.S. 130A-294.~~

(2) ~~"Permit amendment" means any of the following:~~

- a. ~~An application for a permit to construct and one permit to operate for the second and subsequent phases of landfill development described in the approved facility plan for a permitted solid waste management facility.~~
- b. ~~An application for the five-year renewal of a permit for a permitted solid waste management facility or for a permit review of a permitted solid waste management facility.~~

- 1 e. Any application that proposes a change in ownership or corporate  
2 structure of a permitted solid waste management facility.
- 3 (3) "Permit modification" means any of the following:
- 4 a. An application for any change to the plans approved in a permit for a  
5 solid waste management facility that does not constitute a "permit  
6 amendment" or a "new permit".
- 7 b. A second or subsequent permit to operate for a constructed portion of  
8 a phase included in the permit to construct.
- 9 e. An application for a five year limited review of a 10 year permit,  
10 including review of the operations plan, closure plan, post closure  
11 plan, financial assurance cost estimates, environmental monitoring  
12 plans, and any other applicable plans for the facility.
- 13 (e) An applicant for a permit shall pay an application fee upon submission of an  
14 application according to the following schedule:
- 15 (1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of  
16 solid waste, New Permit (Five Year) — \$25,000.
- 17 (1a) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of  
18 solid waste, New Permit (Ten Year) — \$38,500.
- 19 (2) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of  
20 solid waste, Amendment (Five Year) — \$15,000.
- 21 (2a) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of  
22 solid waste, Amendment (Ten Year) — \$28,500.
- 23 (3) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of  
24 solid waste, Modification (Five Year) — \$1,500.
- 25 (3a) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of  
26 solid waste, Major Modification (Ten Year) — \$7,500.
- 27 (4) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid  
28 waste, New Permit (Five Year) — \$50,000.
- 29 (4a) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid  
30 waste, New Permit (Ten Year) — \$77,000.
- 31 (5) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid  
32 waste, Amendment (Five Year) — \$30,000.
- 33 (5a) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid  
34 waste, Amendment (Ten Year) — \$57,000.
- 35 (6) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid  
36 waste, Modification (Five Year) — \$3,000.
- 37 (6a) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid  
38 waste, Major Modification (Ten Year) — \$15,000.
- 39 (7) Construction and Demolition Landfill accepting less than 100,000 tons/year  
40 of solid waste, New Permit (Five Year) — \$15,000.
- 41 (7a) Construction and Demolition Landfill accepting less than 100,000 tons/year  
42 of solid waste, New Permit (Ten Year) — \$22,500.
- 43 (8) Construction and Demolition Landfill accepting less than 100,000 tons/year  
44 of solid waste, Amendment (Five Year) — \$9,000.
- 45 (8a) Construction and Demolition Landfill accepting less than 100,000 tons/year  
46 of solid waste, Amendment (Ten Year) — \$16,500.
- 47 (9) Construction and Demolition Landfill accepting less than 100,000 tons/year  
48 of solid waste, Modification (Five Year) — \$1,500.
- 49 (9a) Construction and Demolition Landfill accepting less than 100,000 tons/year  
50 of solid waste, Major Modification (Ten Year) — \$4,500.

- 1           (10)    Construction and Demolition Landfill accepting 100,000 tons/year or more  
2           of solid waste, New Permit (Five Year) — \$30,000.
- 3           (10a)   Construction and Demolition Landfill accepting 100,000 tons/year or more  
4           of solid waste, New Permit (Ten Year) — \$46,000.
- 5           (11)    Construction and Demolition Landfill accepting 100,000 tons/year or more  
6           of solid waste, Amendment (Five Year) — \$18,500.
- 7           (11a)   Construction and Demolition Landfill accepting 100,000 tons/year or more  
8           of solid waste, Amendment (Ten Year) — \$34,500.
- 9           (12)    Construction and Demolition Landfill accepting 100,000 tons/year or more  
10          of solid waste, Modification (Five Year) — \$2,500.
- 11          (12a)   Construction and Demolition Landfill accepting 100,000 tons/year or more  
12          of solid waste, Major Modification (Ten Year) — \$9,250.
- 13          (13)    Industrial Landfill accepting less than 100,000 tons/year of solid waste, New  
14          Permit (Five Year) — \$15,000.
- 15          (13a)   Industrial Landfill accepting less than 100,000 tons/year of solid waste, New  
16          Permit (Ten Year) — \$22,500.
- 17          (14)    Industrial Landfill accepting less than 100,000 tons/year of solid waste,  
18          Amendment (Five Year) — \$9,000.
- 19          (14a)   Industrial Landfill accepting less than 100,000 tons/year of solid waste,  
20          Amendment (Ten Year) — \$16,500.
- 21          (15)    Industrial Landfill accepting less than 100,000 tons/year of solid waste,  
22          Modification (Five Year) — \$1,500.
- 23          (15a)   Industrial Landfill accepting less than 100,000 tons/year of solid waste,  
24          Major Modification (Ten Year) — \$4,500.
- 25          (16)    Industrial Landfill accepting 100,000 tons/year or more of solid waste, New  
26          Permit (Five Year) — \$30,000.
- 27          (16a)   Industrial Landfill accepting 100,000 tons/year or more of solid waste, New  
28          Permit (Ten Year) — \$46,000.
- 29          (17)    Industrial Landfill accepting 100,000 tons/year or more of solid waste,  
30          Amendment (Five Year) — \$18,500.
- 31          (17a)   Industrial Landfill accepting 100,000 tons/year or more of solid waste,  
32          Amendment (Ten Year) — \$34,500.
- 33          (18)    Industrial Landfill accepting 100,000 tons/year or more of solid waste,  
34          Modification (Five Year) — \$2,500.
- 35          (18a)   Industrial Landfill accepting 100,000 tons/year or more of solid waste,  
36          Major Modification (Ten Year) — \$9,250.
- 37          (19)    Tire Monofill, New Permit — \$1,750.
- 38          (19a)   Tire Monofill, New Permit (Ten Year) — \$2,500.
- 39          (20)    Tire Monofill, Amendment — \$1,250.
- 40          (20A)   Tire Monofill, Amendment (Ten Year) — \$2,000.
- 41          (21)    Tire Monofill, Modification — \$500.
- 42          (21A)   Tire Monofill, Major Modification — \$625.
- 43          (22)    Treatment and Processing, New Permit — \$1,750.
- 44          (23)    Treatment and Processing, Amendment — \$1,250.
- 45          (24)    Treatment and Processing, Modification — \$500.
- 46          (25)    Transfer Station, New Permit (Five Year) — \$5,000.
- 47          (25a)   Transfer Station, New Permit (Ten Year) — \$7,500.
- 48          (26)    Transfer Station, Amendment (Five Year) — \$3,000.
- 49          (26a)   Transfer Station, Amendment (Ten Year) — \$5,500.
- 50          (27)    Transfer Station, Modification (Five Year) — \$500.
- 51          (27a)   Transfer Station, Major Modification (Ten Year) — \$1,500.

- 1           (28) Incinerator, New Permit— \$1,750.  
 2           (29) Incinerator, Amendment— \$1,250.  
 3           (30) Incinerator, Modification— \$500.  
 4           (31) Large Compost Facility, New Permit— \$1,750.  
 5           (32) Large Compost Facility, Amendment— \$1,250.  
 6           (33) Large Compost Facility, Modification— \$500.  
 7           (34) Land Clearing and Inert, New Permit— \$1,000.  
 8           (35) Land Clearing and Inert, Amendment— \$500.  
 9           (36) Land Clearing and Inert, Modification— \$250.
- 10        (d) ~~A permitted solid waste management facility shall pay an annual permit fee on or~~  
 11 ~~before 1 August of each year according to the following schedule:~~
- 12           (1) ~~Municipal Solid Waste Landfill— \$3,500.~~  
 13           (2) ~~Post-Closure Municipal Solid Waste Landfill— \$1,000.~~  
 14           (3) ~~Construction and Demolition Landfill— \$2,750.~~  
 15           (4) ~~Post-Closure Construction and Demolition Landfill— \$500.~~  
 16           (5) ~~Industrial Landfill— \$2,750.~~  
 17           (6) ~~Post-Closure Industrial Landfill— \$500.~~  
 18           (7) ~~Transfer Station— \$750.~~  
 19           (8) ~~Treatment and Processing Facility— \$500.~~  
 20           (9) ~~Tire Monofill— \$500.~~  
 21           (10) ~~Incinerator— \$500.~~  
 22           (11) ~~Large Compost Facility— \$500.~~  
 23           (12) ~~Land Clearing and Inert Debris Landfill— \$500.~~
- 24        (d1) A permitted solid waste management facility shall pay an annual permit fee on or  
 25 before August 1 of each year according to the following schedule:
- 26           (1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of  
 27 solid waste – \$6,125.  
 28           (2) Municipal Solid Waste Landfill accepting 100,000 tons/year or more but less  
 29 than 250,000 tons/year of solid waste – \$7,000.  
 30           (3) Municipal Solid Waste Landfill accepting 250,000 tons/year or more of solid  
 31 waste – \$8,750.  
 32           (4) Post-Closure Municipal Solid Waste Landfill – \$1,000.  
 33           (5) Construction and Demolition Landfill accepting less than 25,000 tons/year  
 34 of solid waste – \$4,813.  
 35           (6) Construction and Demolition Landfill accepting 25,000 tons/year or more of  
 36 solid waste – \$5,500.  
 37           (7) Post-Closure Construction and Demolition Landfill – \$500.  
 38           (8) Industrial Landfill accepting less than 100,000 tons/year of solid waste –  
 39 \$5,500.  
 40           (9) Industrial Landfill accepting 100,000 tons/year or more of solid waste –  
 41 \$6,875.  
 42           (10) Post-Closure Industrial Landfill – \$500.  
 43           (11) Transfer Station accepting less than 25,000 tons/year of solid waste –  
 44 \$1,500.  
 45           (12) Transfer Station accepting 25,000 tons/year or more of solid waste – \$1,875.  
 46           (13) Treatment and Processing Facility – \$500.  
 47           (14) Tire Monofill – \$1,000.  
 48           (15) Incinerator – \$500.  
 49           (16) Large Compost Facility – \$500.  
 50           (17) Land Clearing and Inert Debris Landfill – \$500.

1       (d2) Upon submission of an application for a new permit, an applicant shall pay an  
2 application fee in the amount of ten percent (10%) of the annual permit fee imposed for that  
3 type of solid waste management facility as identified in subdivisions (1) through (17) of  
4 subsection (d1) of this section.

5       ...."

6               **SECTION 4.9.(c)** Section 14.20(d) of S.L. 2015-241 reads as rewritten:

7       **"SECTION 14.20.(d)** G.S. 130A-295.3 reads as rewritten:

8       **"§ 130A-295.3. Environmental compliance review requirements for applicants and**  
9       **permit holders.**

10       ...

11       (b) The Department shall conduct an environmental compliance review of each  
12 applicant for a new ~~permit, permit renewal, permit~~ and permit amendment under this Article.  
13 The environmental compliance review shall evaluate the environmental compliance history of  
14 the applicant for a period of five years prior to the date of the application and may cover a  
15 longer period at the discretion of the Department. The environmental compliance review of an  
16 applicant may include consideration of the environmental compliance history of the parents,  
17 subsidiaries, or other affiliates of an applicant or parent that is a business entity, including any  
18 business entity or joint venturer with a direct or indirect interest in the applicant, and other  
19 facilities owned or operated by any of them. The Department shall determine the scope of the  
20 review of the environmental compliance history of the applicant, parents, subsidiaries, or other  
21 affiliates of the applicant or parent, including any business entity or joint venturer with a direct  
22 or indirect interest in the applicant, and of other facilities owned or operated by any of them.  
23 An applicant for a permit shall provide environmental compliance history information for each  
24 facility, business entity, joint venture, or other undertaking in which any of the persons listed in  
25 this subsection is or has been an owner, operator, officer, director, manager, member, or  
26 partner, or in which any of the persons listed in this subsection has had a direct or indirect  
27 interest as requested by the Department.

28       ...."

29               **SECTION 4.9.(d)** Section 14.20(f) of S.L. 2015-241 reads as rewritten:

30       **"SECTION 14.20.(f)** This section becomes effective October 1, 2015.  
31 G.S. 130A-294(b1)(2), as amended by subsection (a) of this section, applies to franchise  
32 agreements executed on or after October 1, 2015. The remainder of G.S. 130A-294, as  
33 amended by subsection (a) of this section, and G.S. 130A-295.8, as amended by subsection (c)  
34 of this section, apply to (i) existing sanitary landfills and transfer stations, with a valid permit  
35 issued before the date this act becomes effective, on July 1, 2016, at which point a permittee  
36 may choose to apply for a life-of-site permit pursuant to G.S. 130A-294(a2), as amended by  
37 Section 14.20(b) of this act, or may choose to apply for a life-of-site permit for the facility  
38 when ~~that~~ the facility's permit is next subject to renewal after July 1, 2016, (ii) new sanitary  
39 landfills and transfer stations, for applications submitted on or after July 1, 2016, and (iii)  
40 applications for sanitary landfills or transfer stations submitted before July 1, 2015, and  
41 pending on the date this act becomes law shall be evaluated by the Department based on the  
42 applicable laws that were in effect on July 1, 2015, and the Department shall not delay in  
43 processing such permit applications in consideration of changes made by this act, but such  
44 landfills and transfer stations shall be eligible for issuance of life-of-site permits pursuant to  
45 G.S. 130A-294(a2), as amended by Section 14.20(b) of this act, on July 1, 2016, at which point  
46 a permittee may choose to apply for a life-of-site permit pursuant to G.S. 130A-294(a2), as  
47 amended by Section 14.20(b) of this act, or may choose to apply for a life-of-site permit for the  
48 facility when ~~that~~ the facility's permit is next subject to renewal after July 1, 2016."

49  
50       **AMEND THE DEFINITION FOR "PROSPECTIVE DEVELOPER" UNDER THE**  
51 **LAW GOVERNING BROWNFIELDS REDEVELOPMENT**

1           **SECTION 4.10.(a)** G.S. 130A-310.31(b)(10) reads as rewritten:

2   "**§ 130A-310.31. Definitions.**

3       (a) Unless a different meaning is required by the context or unless a different meaning  
4 is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and G.S. 130A-310  
5 apply throughout this Part.

6       (b) Unless a different meaning is required by the context:

7       ...

8       (10) "Prospective developer" means any person with a bona fide, demonstrable  
9 desire to ~~either buy or sell a brownfields property for the purpose of~~  
10 ~~developing or redeveloping that~~ develop or redevelop a brownfields property  
11 and who did not cause or contribute to the contamination at the brownfields  
12 property."

13           **SECTION 4.10.(b)** This section becomes effective December 1, 2015, and applies  
14 to Notices of Intent to Redevelop a Brownfields Property filed on or after that date.

## 15 16 **ELIMINATE OUTDATED FEES RELATED TO SOLID WASTE MATTERS**

17           **SECTION 4.11.(a)** G.S. 105-102.6 is repealed.

18           **SECTION 4.11.(b)** G.S. 130A-309.17(d) and (i) are repealed.

## 19 20 **DELETE OR REPEAL VARIOUS ENVIRONMENTAL AND NATURAL RESOURCES** 21 **REPORTING REQUIREMENTS**

22           **SECTION 4.12.(a)** G.S. 113-175.6 is repealed.

23           **SECTION 4.12.(b)** G.S. 113-182.1(e) reads as rewritten:

24   "**§ 113-182.1. Fishery Management Plans.**

25       ...

26       (e) The Secretary of Environment and Natural Resources shall monitor progress in the  
27 development and adoption of Fishery Management Plans in relation to the Schedule for  
28 development and adoption of the plans established by the Marine Fisheries Commission. ~~The~~  
29 ~~Secretary of Environment and Natural Resources shall report to the Joint Legislative~~  
30 ~~Commission on Governmental Operations on progress in developing and implementing the~~  
31 ~~Fishery Management Plans on or before 1 September of each year.~~ The Secretary of  
32 Environment and Natural Resources shall report to the Joint Legislative Commission on  
33 Governmental Operations within 30 days of the completion or substantial revision of each  
34 proposed Fishery Management Plan. The Joint Legislative Commission on Governmental  
35 Operations shall review each proposed Fishery Management Plan within 30 days of the date the  
36 proposed Plan is submitted by the Secretary. The Joint Legislative Commission on  
37 Governmental Operations may submit comments and recommendations on the proposed Plan  
38 to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary."

39           **SECTION 4.12.(c)** G.S. 143B-279.15 is repealed.

40           **SECTION 4.12.(d)** G.S. 143B-289.44(d) is repealed.

41           **SECTION 4.12.(e)** G.S. 159I-29 is repealed.

42           **SECTION 4.12.(f)** Section 2.3 of S.L. 2007-485 is repealed.

## 43 44 **ON-SITE WASTEWATER AMENDMENTS AND CLARIFICATIONS**

45           **SECTION 4.14.(a)** G.S. 130A-334 reads as rewritten:

46   "**§ 130A-334. Definitions.**

47       The following definitions shall apply throughout this Article:

48       (1) "Accepted wastewater system" has the same meaning as in G.S. 130A-343.

49       (1a) "Approved agency for special inspection" means an individual, corporation,  
50 company, association, or partnership that is objective, competent, and  
51 independent from the contractor who is responsible for the work that is

- 1           inspected. The agency shall disclose possible conflicts of interest in a  
2           manner such that objectivity can be confirmed.
- 3           (1b) "Approved special inspector" means a person who demonstrates competence  
4           to the satisfaction of the professional engineer who designed the wastewater  
5           system for the inspection of the construction or operation subject to special  
6           inspection.
- 7           ~~(1)~~(1c) "Construction" means any work at the site of placement done for the purpose  
8           of preparing a residence, place of business or place of public assembly for  
9           initial occupancy, or subsequent additions or modifications which increase  
10          sewage flow.
- 11          (1d) "Construction observation" means the visual observation of the construction  
12          and installation of the wastewater system for general conformance with the  
13          construction documents prepared by the professional engineer who designed  
14          the wastewater system. Construction observation that is conducted by the  
15          professional engineer who designed the wastewater system does not include  
16          or waive the requirement to conduct special inspections.
- 17          (1e) "Conventional wastewater system" has the same meaning as in  
18          G.S. 130A-343.
- 19          ~~(1a)~~(1f) "Department" means the Department of Health and Human Services.
- 20          (1g) "Engineered option permit" means an on-site wastewater system that is  
21          permitted pursuant to the rules adopted by the Commission in accordance  
22          with this Article, meets the criteria established by G.S. 130A-336.1, and is  
23          designed by a professional engineer who is licensed under Chapter 89C of  
24          the General Statutes who has expertise in the design of on-site wastewater  
25          systems.
- 26          ~~(1b)~~(1h) "Ground absorption system" means a system of tanks, treatment units,  
27          nitrification fields, and appurtenances for wastewater collection, treatment,  
28          and subsurface disposal.
- 29          (2) Repealed by Session Laws 1985, c. 462, s. 18.
- 30          (2a) "Industrial process wastewater" means any water-carried waste resulting  
31          from any process of industry, manufacture, trade, or business.
- 32          (2b) "Licensed geologist" means a person who is licensed as a geologist under the  
33          provisions of Chapter 89E of the General Statutes.
- 34          (2c) "Licensed soil scientist" has the same meaning as in G.S. 89F-3.
- 35          (3) "Location" means the initial placement for occupancy of a residence, place  
36          of business or place of public assembly.
- 37          (3a) "Maintenance" means normal or routine maintenance including replacement  
38          of broken pipes, cleaning, or adjustment to an existing wastewater system.
- 39          (4), (5) Repealed by Session Laws 1985, c. 462, s. 18.
- 40          (6) "Place of business" means a store, warehouse, manufacturing establishment,  
41          place of amusement or recreation, service station, office building or any  
42          other place where people work.
- 43          (7) "Place of public assembly" means a fairground, auditorium, stadium, church,  
44          campground, theater or any other place where people assemble.
- 45          (7a) "Plat" means a property survey prepared by a registered land surveyor,  
46          drawn to a scale of one inch equals no more than 60 feet, that includes: the  
47          specific location of the proposed facility and appurtenances, the site for the  
48          proposed wastewater system, and the location of water supplies and surface  
49          waters. "Plat" also means, for subdivision lots approved by the local  
50          planning authority if a local planning authority exists at the time of  
51          application for a permit under this Article, a copy of the subdivision plat that

1 has been recorded with the county register of deeds and is accompanied by a  
2 site plan that is drawn to scale.

3 (7b) "Pretreatment" means any biological, chemical, or physical process or  
4 system for improving wastewater quality and reducing wastewater  
5 constituents prior to final treatment and disposal in a subsurface wastewater  
6 system and includes, but is not limited to aeration, clarification, digestion,  
7 disinfection, filtration, separation, and settling.

8 (7c) "Professional engineer" has the same meaning as in G.S. 89C-3.

9 (8) "Public or community wastewater system" means a single system of  
10 wastewater collection, treatment and disposal owned and operated by a  
11 sanitary district, a metropolitan sewage district, a water and sewer authority,  
12 a county or municipality or a public utility.

13 (9) "Relocation" means the displacement of a residence or place of business  
14 from one site to another.

15 (9a) "Repair" means the extension, alteration, replacement, or relocation of  
16 existing components of a wastewater system.

17 (10) "Residence" means a private home, dwelling unit in a multiple family  
18 structure, hotel, motel, summer camp, labor work camp, manufactured  
19 home, institution or any other place where people reside.

20 (10a) "Secretary" means the Secretary of ~~Environment and Natural~~  
21 ~~Resources.~~Health and Human Services.

22 (11) Repealed by Session Laws 1992, c. 944, s. 3.

23 (12) "Septic tank system" means a subsurface wastewater system consisting of a  
24 settling tank and a subsurface disposal field.

25 (13) "Sewage" means the liquid and solid human body waste and liquid waste  
26 generated by water-using fixtures and appliances, including those associated  
27 with foodhandling. The term does not include industrial process wastewater  
28 or sewage that is combined with industrial process wastewater.

29 (13a) "Site plan" means a drawing not necessarily drawn to scale that shows the  
30 existing and proposed property lines with dimensions, the location of the  
31 facility and appurtenances, the site for the proposed wastewater system, and  
32 the location of water supplies and surface waters.

33 (13b) "Special inspection" means a required inspection of the materials,  
34 installation, fabrication, erection, or placement of components and systems  
35 that require special expertise to ensure compliance with referenced standards  
36 and the construction documents prepared by the professional engineer.

37 (14) "Wastewater" means any sewage or industrial process wastewater  
38 discharged, transmitted, or collected from a residence, place of business,  
39 place of public assembly, or other places into a wastewater system.

40 (15) "Wastewater system" means a system of wastewater collection, treatment,  
41 and disposal in single or multiple components, including a ground  
42 absorption system, privy, septic tank system, public or community  
43 wastewater system, wastewater reuse or recycle system, mechanical or  
44 biological wastewater treatment system, any other similar system, and any  
45 chemical toilet used only for human waste. A wastewater system located on  
46 multiple adjoining lots or tracts of land under common ownership or control  
47 shall be considered a single system for purposes of permitting under this  
48 Article."

49 **SECTION 4.14.(b)** G.S. 130A-335 reads as rewritten:

50 **"§ 130A-335. Wastewater collection, treatment and disposal; rules.**

1 (a) A person owning or controlling a residence, place of business or a place of public  
2 assembly shall provide an approved wastewater system. Except as may be allowed under  
3 another provision of law, all wastewater from water-using fixtures and appliances connected to  
4 a water supply source shall discharge to the approved wastewater system. A wastewater system  
5 may include components for collection, treatment and disposal of wastewater.

6 (a1) Any proposed site for a residence, place of business, or a place of public assembly  
7 located in an area that is not served by an approved wastewater system for which a new  
8 wastewater system is proposed or repair is necessary for compliance may be evaluated for soil  
9 conditions and site features by a licensed soil scientist or licensed geologist. For purposes of  
10 this subsection, "site features" include topography and landscape position; soil characteristics  
11 (morphology); soil wetness; soil depth; restrictive horizons; available space; and other  
12 applicable factors that involve accepted public health principles.

13 (b) All wastewater systems shall either (i) be regulated by the Department under rules  
14 adopted by the Commission or (ii) conform with the engineered option permit criteria set forth  
15 in G.S. 130A-336.1 and under rules adopted by the Commission except for the following  
16 wastewater systems that shall be regulated by the Department under rules adopted by the  
17 Environmental Management Commission:

- 18 (1) Wastewater collection, treatment, and disposal systems designed to  
19 discharge effluent to the land surface or surface waters.
- 20 (2) Wastewater systems designed for groundwater remediation, groundwater  
21 injection, or landfill leachate collection and disposal.
- 22 (3) Wastewater systems designed for the complete recycle or reuse of industrial  
23 process wastewater.
- 24 (4) Gray water systems as defined in G.S. 143-350.

25 (c) A wastewater system subject to approval under rules of the Commission shall be  
26 reviewed and approved under rules of a local board of health in the following circumstances:

- 27 (1) The local board of health, on its own motion, has requested the Department  
28 to review its proposed rules concerning wastewater systems; and
- 29 (2) The local board of health has adopted by reference the wastewater system  
30 rules adopted by the Commission, with any more stringent modifications or  
31 additions deemed necessary by the local board of health to protect the public  
32 health; and
- 33 (3) The Department has found that the rules of the local board of health  
34 concerning wastewater collection, treatment and disposal systems are at least  
35 as stringent as rules adopted by the Commission and are sufficient and  
36 necessary to safeguard the public health.

37 (c1) The rules adopted by the Commission for wastewater systems approved under the  
38 engineered option permit criteria pursuant to G.S. 130A-336.1 shall be, at a minimum, as  
39 stringent as the rules for wastewater systems established by the Commission.

40 (d) The Department may, upon its own motion, upon the request of a local board of  
41 health or upon the request of a citizen of an affected county, review its findings under  
42 subsection (c) of this section.

43 The Department shall review its findings under subsection (c) of this section upon  
44 modification by the Commission of the rules applicable to wastewater systems. The  
45 Department may deny, suspend, or revoke the approval of local board of health wastewater  
46 system rules upon a finding that the local wastewater rules are not as stringent as rules adopted  
47 by the Commission, are not sufficient and necessary to safeguard the public health, or are not  
48 being enforced. Suspension and revocation of approval shall be in accordance with  
49 G.S. 130A-23.

50 (d1) The Department or owner of a wastewater system may file a written complaint with  
51 the North Carolina Board of Examiners for Engineers and Surveyors in accordance with rules

1 and procedures adopted by the Board pursuant to Chapter 89C of the General Statutes citing  
2 failure of a professional engineer to adhere to the rules adopted by the Commission pursuant to  
3 this Article. The Department or owner of a wastewater system may file a written complaint  
4 with the North Carolina Board of Licensed Soil Scientists in accordance with rules and  
5 procedures adopted by the Board pursuant to Chapter 89F of the General Statutes citing failure  
6 of a licensed soil scientist to adhere to the rules adopted by the Commission pursuant to this  
7 Article. The Department or owner of a wastewater system may file a written complaint with the  
8 North Carolina Board for Licensing of Geologists in accordance with rules and procedures  
9 adopted by the Board pursuant to Chapter 89E of the General Statutes citing failure of a  
10 licensed geologist to adhere to the rules adopted by the Commission pursuant to this Article.  
11 The Department or owner of a wastewater system may file a written complaint with the North  
12 Carolina On-Site Wastewater Contractors and Inspectors Certification Board in accordance  
13 with rules and procedures adopted by the Board pursuant to Article 5 of Chapter 90A of the  
14 General Statutes citing failure of a contractor to adhere to the rules adopted by the Commission  
15 pursuant to this Article.

16 ...."

17 **SECTION 4.14.(c)** Article 11 of Chapter 130A of the General Statutes is amended  
18 by adding a new section to read:

19 **"§ 130A-336.1. Alternative process for wastewater system approvals.**

20 (a) Engineered Option Permit Authorized. – A professional engineer licensed under  
21 Chapter 89C of the General Statutes may, at the direction of the owner of a proposed  
22 wastewater system who wishes to utilize the engineered option permit, prepare signed and  
23 sealed drawings, specifications, plans, and reports for the design, construction, operation, and  
24 maintenance of the wastewater system in accordance with this section and rules adopted  
25 thereunder.

26 (b) Notice of Intent to Construct. – Prior to commencing or assisting in the  
27 construction, siting, or relocation of a wastewater system, the owner of a proposed wastewater  
28 system who wishes to utilize the engineered option permit, or a professional engineer  
29 authorized as the legal representative of the owner, shall submit to the local health department  
30 with jurisdiction over the location of the proposed wastewater system a notice of intent to  
31 construct a wastewater system utilizing the engineered permit option. The Department shall  
32 develop a common form for use as the notice of intent to construct that includes all of the  
33 following:

- 34 (1) The owner's name, address, e-mail address, and telephone number.
- 35 (2) The professional engineer's name, license number, address, e-mail address,  
36 and telephone number.
- 37 (3) For the professional engineer, the licensed soil scientist, the licensed  
38 geologist, and any on-site wastewater contractors, proof of errors and  
39 omissions insurance coverage or other appropriate liability insurance.
- 40 (4) A description of the facility the proposed site is to serve and any factors that  
41 would affect the wastewater load.
- 42 (5) The type of proposed wastewater system and its location.
- 43 (6) The design wastewater flow and characteristics.
- 44 (7) Any proposed landscape, site, drainage, or soil modifications.
- 45 (8) A soil evaluation that is conducted and signed and sealed by a either a  
46 licensed soil scientist or licensed geologist.
- 47 (9) A plat, as defined in G.S. 130A-334(7a).

48 (c) Completeness Review for Notice of Intent to Construct. – The local health  
49 department shall determine whether a notice of intent to construct, as required pursuant  
50 subsection (b) of this section, is complete within 15 business days after the local health  
51 department receives the notice of intent to construct. A determination of completeness means

1 that the notice of intent to construct includes all of the required components. If the local health  
2 department determines that the notice of intent to construct is incomplete, the department shall  
3 notify the owner or the professional engineer of the components needed to complete the notice.  
4 The owner or professional engineer may submit additional information to the department to  
5 cure the deficiencies in the notice. The local health department shall make a final determination  
6 as to whether the notice of intent to construct is complete within 10 business days after the  
7 department receives the additional information from the owner or professional engineer. If the  
8 department fails to act within any time period set out in this subsection, the owner or  
9 professional engineer may treat the failure to act as a determination of completeness.

10 (d) Submission of Notice of Intent to Construct to Department for Certain Systems. –  
11 Prior to commencing in the construction, siting, or relocation of a wastewater system designed  
12 (i) for the collection, treatment, and disposal of industrial process wastewater or (ii) to treat  
13 greater than 3,000 gallons per day, the owner of a proposed wastewater system who wishes to  
14 utilize the engineered option permit, or a professional engineer authorized as the legal  
15 representative of the owner, shall provide to the Department a duplicate copy of the notice of  
16 intent to construct submitted to the local health department required pursuant to subsection (b)  
17 of this section.

18 (e) Site Design, Construction, and Activities. –

19 (1) The professional engineer designing the proposed wastewater system shall  
20 use recognized principles and practices of engineering and applicable rules  
21 of the Commission in the calculations and design of the wastewater system.  
22 The investigations and findings of the professional engineer shall include, at  
23 a minimum, the information required in rules adopted by the Commission  
24 pursuant to G.S. 130A-335(e). The professional engineer may, at the  
25 engineer's discretion, employ pretreatment technologies not yet approved in  
26 this State.

27 (2) Notwithstanding G.S. 130A-335(a1), the owner of the proposed wastewater  
28 system shall employ either a licensed soil scientist or a geologist, licensed  
29 pursuant to Chapter 89E of the General Statutes and who has applicable  
30 professional experience, to evaluate soil conditions and site features.

31 (3) The professional engineer designing the proposed wastewater system:

32 a. Shall be responsible for the engineer's scope of work, including all  
33 aspects of the design and any drawings, specifications, plans, or  
34 reports that are signed and sealed by the professional engineer.

35 b. Shall prepare a signed and sealed statement of special inspections  
36 that includes the following items:

37 1. The materials, systems, components, and work subject to  
38 special inspection or testing.

39 2. The type and extent of each special inspection and each test.

40 3. The frequency of each type of special inspection. For  
41 purposes of this sub-sub-division, frequency of special  
42 inspections shall be required on either a continuous or  
43 periodic basis. Continuous special inspections mean the  
44 full-time observation of work requiring special inspection by  
45 an approved special inspector who is present in the area  
46 where the work is performed. Periodic special inspections  
47 mean the part-time or intermittent observation of work  
48 requiring a special inspection by an approved special  
49 inspector who is present in the area where the work is or has  
50 been performed and at the completion of the work.

- 1                   c.       May assist the owner of the proposed wastewater system with the  
2                               selection of an on-site wastewater system contractor certified  
3                               pursuant to Article 5 of Chapter 90A of the General Statutes.
- 4           (4)       An on-site wastewater system contractor, licensed pursuant to Article 5 of  
5                   Chapter 90A of the General Statutes, who is employed by the owner of the  
6                   wastewater system, shall:
- 7                   a.       Be responsible for all aspects of the construction and installation of  
8                               the wastewater system or components of the wastewater system,  
9                               including adherence to the design, specifications, and any special  
10                              inspections that are prepared, signed, and sealed by the professional  
11                              engineer in accordance with all the applicable provisions of this  
12                              section.
- 13                   b.       Submit a signed and dated statement of responsibility to the owner of  
14                               the wastewater system, prior to the commencement of work, that  
15                               contains acknowledgement and awareness of the requirements in the  
16                               professional engineer's statement of special inspections.
- 17           (5)       Where the professional engineer's designs, plans, and specifications call for  
18                   the installation of a conventional wastewater system, such designs, plans,  
19                   and specifications shall allow for the installation of an accepted system in  
20                   lieu of a conventional system in accordance with the accepted system  
21                   approval.
- 22           (6)       In addition to the requirements of this section, the owner, the professional  
23                   engineer designing the proposed wastewater system, and any on-site  
24                   wastewater system contractors employed to construct or install the  
25                   wastewater system shall comply with applicable federal, State, and local  
26                   laws, regulations, rules, and ordinances.
- 27           (f)       No Public Liability. – The Department, the Department's authorized agents, or local  
28                   health departments shall have no liability for wastewater systems designed, constructed, and  
29                   installed pursuant to a engineered option permit.
- 30           (g)       Inspections, Construction Observations, and Reports. –
- 31                   (1)       Site visits. – The local health department may, at any time, conduct a site  
32                               visit of the wastewater system.
- 33                   (2)       Construction observations. – The professional engineer who designed the  
34                               wastewater system shall make periodic visits to the site, at intervals  
35                               appropriate to the stage of construction, to observe the progress and quality  
36                               of the construction and to determine, generally, if the construction is  
37                               proceeding in accordance with the engineer's plans and specifications.
- 38                   (3)       Special inspections. – The owner of the proposed wastewater system shall  
39                               employ one or more approved special inspectors to conduct special  
40                               inspections during the construction of the wastewater system. The  
41                               professional engineer who designed the wastewater system, or the engineer's  
42                               personnel, may function as an approved agency to conduct special  
43                               inspections required by this subdivision. The professional engineer's  
44                               personnel shall only operate as an approved agency for special inspections if  
45                               the personnel can demonstrate competence and relevant experience or  
46                               training. For purposes of this subdivision, experience or training shall be  
47                               considered relevant when the documented experience or training is related in  
48                               complexity to the same type of special inspection activities for projects of  
49                               similar complexity and material qualities.
- 50                   (4)       Inspection reports. – Approved special inspectors shall maintain and furnish  
51                               all inspection records to the professional engineer who designed the

1 wastewater system. The records shall indicate whether the work inspected  
2 was completed in conformance with the engineer's design and specifications.  
3 Any discrepancies identified between the completed work and the engineer's  
4 design shall be brought to the immediate attention of the on-site wastewater  
5 system contractor for correction. If discrepancies are not corrected, they  
6 shall be brought to the attention of the professional engineer who designed  
7 the wastewater system prior to completion of work. A final inspection report  
8 documenting the required special inspections and the correction of any  
9 identified discrepancies shall be provided to the professional engineer and  
10 the owner of the wastewater system for review at the post-construction  
11 conference required pursuant to subsection (j) of this section.

12 (h) Local Authority. – This section shall not relieve the owner or operator of a  
13 wastewater system from complying with any and all modifications or additions to rules adopted  
14 by a local health department to protect public health pursuant to G.S. 130A-335(c) that are  
15 required at the time the owner or operator submits the notice of intent to construct pursuant to  
16 G.S. 130A-336.1(b). The local health department shall notify the owner or operator of the  
17 wastewater system of any issues of compliance related to such modifications or additions.

18 (i) Operations and Management. –

19 (1) The professional engineer designing the wastewater system shall establish a  
20 written operations and management program based on the size and  
21 complexity of the wastewater system and shall provide the program to the  
22 owner.

23 (2) The owner shall enter into a contract with a water pollution control system  
24 operator certified pursuant to Part 1 of Article 3 of Chapter 90A of the  
25 General Statutes and who is selected from the list of certified operators  
26 maintained by the Division of Water Resources in the Department of  
27 Environment and Natural Resources for operation and maintenance of the  
28 wastewater system in accordance with rules adopted by the Commission.

29 (3) The owner of the wastewater system shall be responsible for the continued  
30 adherence to the operations and management program established by the  
31 professional engineer pursuant to subdivision (1) of this subsection.

32 (j) Post-Construction Conference. – The professional engineer designing the  
33 wastewater system shall hold a post-construction conference with the owner of the wastewater  
34 system; the licensed soil scientist or licensed geologist who performed the soils evaluation for  
35 the wastewater system; the on-site wastewater system contractor, certified pursuant to Article 5  
36 of Chapter 90A of the General Statutes, who installed the wastewater system; the certified  
37 operator of the wastewater system, if any; and representatives from the local health department  
38 and, as applicable, the Department. The post-construction conference shall include start-up of  
39 the wastewater system and any required verification of system design or system components.

40 (k) Required Documentation. –

41 (1) At the completion of the post-construction conference conducted pursuant to  
42 subsection (j) of this section, the professional engineer who designed the  
43 wastewater system shall deliver to the owner signed, sealed, and dated  
44 copies of the engineer's report, which, for purposes of this subsection, shall  
45 include the following:

46 a. The evaluation of soil conditions and site features as prepared by  
47 either the licensed soil scientist or licensed geologist.

48 b. The drawings, specifications, plans, and reports of the wastewater  
49 system, including the statement of special inspections required  
50 pursuant to G.S. 130A-336.1(e)(3); the on-site wastewater system  
51 contractor's signed statement of responsibility required pursuant to

- 1 G.S. 130A-336.1(e)(4); records of all special inspections; and the  
2 final inspection report documenting the correction of any identified  
3 discrepancies required pursuant to subsection (g) of this section.  
4 c. The operator's management program manual that includes a copy of  
5 the contract with the certified water pollution control system operator  
6 required pursuant to subsection (i) of this section.  
7 d. Any reports and findings related to the design and installation of the  
8 wastewater system.  
9 (2) Upon reviewing the professional engineer's report, the owner of the  
10 wastewater system shall sign and notarize the report as having been  
11 received.  
12 (l) Reporting Requirements. –  
13 (1) The owner of the wastewater system shall submit the following to the local  
14 health department:  
15 a. A copy of the professional engineer's report required pursuant to  
16 G.S. 130A-336.1(k)(1).  
17 b. A copy of the operations and management program.  
18 c. The fee required pursuant to subsection (n) of this section.  
19 d. A notarized letter that documents the owner's acceptance of the  
20 system from the professional engineer.  
21 (2) The owner of any wastewater system that is subject to subsection (d) of this  
22 section shall deliver to the Department copies of the engineer's report, as  
23 described G.S. 130A-336.1(k)(1).  
24 (m) Authorization to Operate. – Within 15 business days of receipt of the documents and  
25 fees required pursuant to G.S. 130A-336.1(l)(1), the local health department shall issue the  
26 owner a letter of confirmation that states the documents and information contained therein have  
27 been received and that the wastewater system may operate in accordance with rules adopted by  
28 the Commission.  
29 (n) Fees. – The local health department may assess a fee for the engineered option  
30 permit of up to thirty percent (30%) of the cumulative total of the fees the department has  
31 established to obtain an improvement permit, an authorization to construct, and an operations  
32 permit for wastewater systems under its jurisdiction. The fee shall only be used by the  
33 department in support of its work pursuant to this section to conduct site inspections; support  
34 the department's staff participation at post-construction conference meetings; and archive the  
35 engineered permit with the county register of deeds or other recordation of the wastewater  
36 system as required.  
37 (o) Change in System Ownership. – A wastewater system authorized pursuant to this  
38 section shall not be affected by change in ownership of the site for the wastewater system,  
39 provided both the site for the wastewater system and the facility the system serves are  
40 unchanged and remain under the ownership or control of the person owning the facility.  
41 (p) Remedies. – Notwithstanding any other provision of this section or any other  
42 provision of law, owners; operators; professional engineers who utilize the engineered option  
43 permit, who prepare drawings, specifications, plans, and reports; licensed soil scientists;  
44 licensed geologists; and on-site wastewater system contractors employed for the construction or  
45 installation of the wastewater system shall be subject to the provisions and remedies provided  
46 to the Department and local health departments pursuant to Article 1 of this Chapter.  
47 (q) Rule Making. – The Commission shall adopt rules to implement the provisions of  
48 this section.  
49 (r) Reports. – The Department shall report to the Environmental Review Commission  
50 and the Joint Legislative Oversight Committee on Health and Human Services on or before  
51 January 1, 2017, and annually thereafter, on the implementation and effectiveness of this

1 section. For the report due on or before January 1, 2017, the Department shall specifically study  
2 (i) whether the engineered option permit resulted in a reduction in the length of time  
3 improvement permits or authorizations to construct are pending; (ii) whether the engineered  
4 option permit resulted in increased system failures or other adverse impacts; (iii) if the  
5 engineered option permit resulted in new or increased environmental or public health impacts;  
6 (iv) an amount of errors and omissions insurance or other liability sufficient for covering  
7 professional engineers, licensed soil scientists, licensed geologists, and contractors who employ  
8 the engineered option permit; and (v) the fees charged by local health departments to  
9 administer the engineered option permit pursuant to subsection (n) of this section. The  
10 Department may include recommendations, including any legislative proposals, in its reports to  
11 the Commission and Committee."

12 **SECTION 4.14.(d)** G.S. 130A-338 reads as rewritten:

13 **"§ 130A-338. Authorization for wastewater system construction required before other**  
14 **permits to be issued.**

15 Where construction, location or relocation is proposed to be done upon a residence, place of  
16 business or place of public assembly, no permit required for electrical, plumbing, heating, air  
17 conditioning or other construction, location or relocation activity under any provision of  
18 general or special law shall be issued until an authorization for wastewater system construction  
19 has been issued under ~~G.S. 130A-336~~ G.S. 130A-336, or authorization has been obtained under  
20 ~~G.S. 130A-337(e)~~ G.S. 130A-337(c), or a decision on the completeness of the notice of intent  
21 to construct is made by the local health department pursuant to G.S. 130A-336.1(c)."

22 **SECTION 4.14.(e)** G.S. 130A-339 reads as rewritten:

23 **"§ 130A-339. Limitation on electrical service.**

24 No person shall allow permanent electrical service to a residence, place of business or place  
25 of public assembly upon construction, location or relocation until the official electrical  
26 inspector with jurisdiction as provided in G.S. 143-143.2 certifies to the electrical supplier that  
27 the required improvement permit authorization for wastewater system construction and an  
28 operation permit or authorization under G.S. 130A-337(c) or the letter of confirmation  
29 authorizing wastewater system operation under G.S. 130A-336.1(m) has been obtained.  
30 Temporary electrical service necessary for constructing a residence, place of business or place  
31 of public assembly can be provided upon compliance with G.S. 130A-338."

32 **SECTION 4.14.(f)** The Commission for Public Health, in consultation with the  
33 Department of Health and Human Services, local health departments, and stakeholders  
34 representing the wastewater system industry, shall study the minimum on-site wastewater  
35 system inspection frequency established pursuant to Table V(a) in 15A NCAC 18A .1961 to  
36 evaluate the feasibility and desirability of eliminating duplicative inspections of on-site  
37 wastewater systems. In the conduct of its study, the Commission shall consider (i) the  
38 compliance history of wastewater systems, including whether operators' reports and laboratory  
39 reports are in compliance with Article 11 of Chapter 130A of the General Statutes and the rules  
40 adopted pursuant to that Article; (ii) alternative inspection frequencies, including the use of  
41 remote Web-based monitoring for alarm and compliance notification; (iii) whether the required  
42 verification visit conducted by local health departments shows a statistically significant  
43 justification for duplicative costs to the owner of the wastewater system; (iv) methods for  
44 notifications of changes to and expirations of operations contracts; and (v) methods for local  
45 health departments to provide certified operator management for sites that are not under  
46 contract with a water pollution control system operator certified pursuant to Part 1 of Article 3  
47 of Chapter 90A of the General Statutes. The Commission shall report its findings and  
48 recommendations, including any legislative proposals, to the Environmental Review  
49 Commission and the Joint Legislative Oversight Committee on Health and Human Services on  
50 or before March 1, 2016.

51 **SECTION 4.14.(g)** G.S. 130A-336 reads as rewritten:

1 **"§ 130A-336. Improvement permit and authorization for wastewater system construction**  
2 **required.**

3 (a) Any proposed site for a residence, place of business, or place of public assembly in  
4 an area not served by an approved wastewater system shall be evaluated by either (i) the local  
5 health department in accordance with rules adopted pursuant to this Article.Article or (ii) by a  
6 professional engineer, licensed soil scientist, or licensed geologist acting within the engineer's,  
7 soil scientist's, or geologist's scope of work, as applicable, and pursuant to the conditions of the  
8 engineered option permit in G.S. 130A-336.1. An improvement permit shall be issued in  
9 compliance with the rules adopted pursuant to this Article. An improvement permit issued by a  
10 local health department shall include:

- 11 (1) For permits that are valid without expiration, a ~~plat~~ plat, or, for permits that  
12 are valid for five years, a site plan.
- 13 (2) A description of the facility the proposed site is to serve.
- 14 (3) The proposed wastewater system and its location.
- 15 (4) The design wastewater flow and characteristics.
- 16 (5) The conditions for any site modifications.
- 17 (6) Any other information required by the rules of the Commission.

18 ~~The~~ Neither the improvement permit nor the authorization for wastewater system construction  
19 shall not be affected by change in ownership of the site for the wastewater system provided  
20 both the site for the wastewater system and the facility the system serves are unchanged and  
21 remain under the ownership or control of the person owning the facility. No person shall  
22 commence or assist in the construction, location, or relocation of a residence, place of business,  
23 or place of public assembly in an area not served by an approved wastewater system unless an  
24 improvement permit and an authorization for wastewater system construction are obtained from  
25 the local health department.department unless that person is acting in accordance with the  
26 conditions and criteria of an engineered option permit pursuant to G.S. 130A-336.1. This  
27 requirement shall not apply to a manufactured residence exhibited for sale or stored for later  
28 sale and intended to be located at another site after sale.

29 (b) The local health department shall issue an authorization for wastewater system  
30 construction authorizing work to proceed and the installation or repair of a wastewater system  
31 when it has determined after a field investigation that the system can be installed and operated  
32 in compliance with this Article and rules adopted pursuant to this Article. This authorization for  
33 wastewater system construction shall be valid for a period equal to the period of validity of the  
34 improvement permit and may be issued at the same time the improvement permit is issued. No  
35 person shall commence or assist in the installation, construction, or repair of a wastewater  
36 system unless an improvement permit and an authorization for wastewater system construction  
37 have been obtained from the Department or the local health ~~department.~~ department unless that  
38 person is acting in accordance with the conditions and criteria of an engineered option permit  
39 pursuant to G.S. 130A-336.1. No improvement permit or authorization for wastewater system  
40 construction shall be required for maintenance of a wastewater system. The Department and the  
41 local health department may impose conditions on the issuance of an improvement permit and  
42 an authorization for wastewater system construction.

43 (c) Unless the Commission otherwise provides by rule, plans, and specifications for all  
44 wastewater systems designed for the collection, treatment, and disposal of industrial process  
45 wastewater shall be reviewed and approved by the Department prior to the issuance of an  
46 authorization for wastewater system construction by the local health department.

47 (d) If a local health department repeatedly fails to issue or deny improvement permits  
48 for conventional or accepted septic tank systems within 60 ~~days of~~ days, or within 90 days for  
49 provisional or innovative systems, after receiving completed applications for the permits, then  
50 the Department of ~~Environment and Natural Resources~~ Health and Human Services may  
51 withhold public health funding from that local health department."

1           **SECTION 4.14.(h)** The Commission for Public Health, in consultation with the  
2 Department of Health and Human Services, local health departments, stakeholders who  
3 represent the wastewater system industry, and other interested parties shall study the period of  
4 validity for improvement permits and authorizations for wastewater system construction and  
5 evaluate the costs and benefits of a range of periods of validity. In the conduct of this study, the  
6 Commission shall also evaluate the feasibility and desirability of conducting an abbreviated  
7 review and possible extension of a permit or authorization that is due to expire at a lower cost  
8 to the applicant. The Commission shall report its findings and recommendations, including any  
9 legislative proposals, to the Environmental Review Commission and the Joint Legislative  
10 Oversight Committee on Health and Human Services on or before April 1, 2016.

11           **SECTION 4.14.(i)** Any improvement permit or authorization for wastewater  
12 system construction that is in effect on the effective date of this act which is scheduled to  
13 expire on or before July 1, 2016, shall remain in effect until July 1, 2016.

14           **SECTION 4.14.(j)** G.S. 130A-342 reads as rewritten:

15 **"§ 130A-342. Residential wastewater treatment systems.**

16           (a) Individual residential wastewater treatment systems that are approved and listed in  
17 accordance with the standards adopted by the National Sanitation Foundation, Inc. for Class I  
18 residential wastewater treatment systems, as set out in Standard 40 of the National Sanitation  
19 Foundation, Inc., (as approved 13 January 2001) as amended, shall be permitted under rules  
20 adopted by the Commission. The Commission may establish standards in addition to those set  
21 by the National Sanitation Foundation, Inc.

22           (b) A permitted system with a design flow of less than 1,500 gallons per day shall be  
23 operated and maintained by a certified wastewater treatment facility operator by a person who  
24 is a Subsurface Water Pollution Control System Operator as certified by the Water Pollution  
25 Control System Operators Certification Commission and authorized by the manufacturer of the  
26 individual residential wastewater treatment system. The Commission may, in addition to the  
27 requirement for a certified Subsurface Water Pollution Control System Operator, establish  
28 additional standards for wastewater systems with a design flow of 1,500 gallons or greater per  
29 day.

30           (c) Each county, in which one or more residential wastewater treatment systems  
31 permitted pursuant to this section are in use, shall document the performance of each system  
32 and report the results to the Department annually."

33           **SECTION 4.14.(k)** This section is effective when this act becomes law. The  
34 Commission for Public Health shall adopt temporary rules pursuant to Sections 4.14(a) through  
35 4.14(e), Section 4.14(g), and Section 4.14(j) of this act no later than June 1, 2016, and shall  
36 adopt permanent rules pursuant to Sections 4.14(a) through 4.14(e), Section 4.14(g), and  
37 Section 4.14(j) of this act no later than January 1, 2017. No person shall utilize the engineered  
38 permit option authorized pursuant to G.S. 130A-336.1, as enacted by Section 4.14(c) of this act,  
39 however, until such time as the rules adopted by the Commission pursuant to Section 4.14(c) of  
40 this act become effective.

41  
42 **CLARIFY CERTIFICATION REQUIREMENTS FOR PLUMBING CONTRACTORS**  
43 **WHO INSTALL OR REPAIR GREASE TRAPS**

44           **SECTION 4.14A.** G.S. 90A-72 reads as rewritten:

45 **"§ 90A-72. Certification required; applicability.**

46           (a) Certification Required. – No person shall construct, install, or repair or offer to  
47 construct, install, or repair an on-site wastewater system permitted under Article 11 of Chapter  
48 130A of the General Statutes without being certified as a contractor at the required level of  
49 certification for the specified system. No person shall conduct an inspection or offer to conduct  
50 an inspection of an on-site wastewater system as permitted under Article 11 of Chapter 130A of  
51 the General Statutes without being certified in accordance with the provisions of this Article.

(b) Applicability. – This Article does not apply to the following:

- (1) A person who is employed by a certified contractor or inspector in connection with the construction, installation, repair, or inspection of an on-site wastewater system performed under the direct and personal supervision of the certified contractor or inspector in charge.
- (2) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed gravel trench dispersal media when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family who reside in the same dwelling.
- (3) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed or who provides corrective services and labor for an on-site wastewater system ancillary to the building being constructed.
- (4) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.
- (5) A person permitted under Article 21 of Chapter 143 of the General Statutes who is constructing a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.
- (6) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.
- (7) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes, so long as the plumber is not performing plumbing work that includes the installation or repair of a septic tank or similar depository, such as a treatment or pretreatment tank or system, or lines—lines, tanks, or appurtenances downstream from the point where the house or building sewer lines from the plumbing system meet the septic tank or similar depository. This subdivision shall not be construed to require a plumbing contractor to become certified as a contractor pursuant to this section to install or repair a grease trap, interceptor, or separator upstream from a septic tank or similar depository that complies with the requirements of the local health department.
- (8) A person employed by the Department, a local health department, or a local health district, when conducting a regulatory inspection of an on-site wastewater system for purposes of determining compliance."

**AMEND APPROVAL OF ON-SITE WASTEWATER SYSTEMS**

**SECTION 4.15.(a)** G.S. 130A-343 reads as rewritten:

**"§ 130A-343. Approval of on-site subsurface wastewater systems.**

(a) Definitions. – As used in this section:

- (1) "Accepted wastewater dispersal system" means any subsurface wastewater dispersal system, other than a conventional wastewater system, ~~or any technology, device, or component of a wastewater system~~ that: (i) has been previously approved as an innovative wastewater dispersal system by the Department; (ii) has been in general use in this State as an innovative wastewater dispersal system for more than five years; and (iii) has been approved by the Commission for general use or use in one or more specific

- 1 applications. An accepted wastewater dispersal system may be approved for  
2 use in applications for which a conventional wastewater system is  
3 unsuitable. The Commission may impose any design, operation,  
4 maintenance, monitoring, and management requirements on the use of an  
5 accepted wastewater dispersal system that it determines to be appropriate.
- 6 (2) "~~Controlled demonstration~~Provisional wastewater system" means any  
7 wastewater system or any technology, device, or component of a wastewater  
8 system that, on the basis of (i) research acceptable research, is approved by  
9 to the Department or (ii) approval of the wastewater system by a nationally  
10 recognized certification body for a period that exceeds one year for research,  
11 testing, or trial use under actual field conditions in this State pursuant to a  
12 protocol that has been approved by the Department.
- 13 (3) "Conventional wastewater system", "conventional sewage system", or  
14 "conventional septic tank system" means a subsurface wastewater system  
15 that consists of a traditional septic or settling tank and a gravity-fed  
16 subsurface ~~disposal~~dispersal field that uses washed natural stone or gravel  
17 ~~or crushed stone~~of approved size and grade and piping to distribute effluent  
18 to soil in one or more nitrification trenches and that does not include any  
19 other appurtenance.
- 20 (4) "~~Experimental wastewater system~~" means ~~any wastewater system or any~~  
21 ~~technology, device, or component of a wastewater system that is approved~~  
22 ~~by the Department for research, testing, or limited trial use under actual field~~  
23 ~~conditions in this State pursuant to a protocol that has been approved by the~~  
24 ~~Department.~~
- 25 (5) "Innovative wastewater system" means any wastewater system, other than a  
26 conventional wastewater system or a provisional wastewater system, or any  
27 technology, device, or component of a wastewater system that: (i) has been  
28 demonstrated to perform in a manner equal or superior to a conventional  
29 wastewater system; (ii) is constructed of materials whose physical and  
30 chemical properties provide the strength, durability, and chemical resistance  
31 to allow the system to withstand loads and conditions as required by rules  
32 adopted by the Commission; and (iii) has been approved by the Department  
33 for general use or for one or more specific applications. An innovative  
34 wastewater system may be approved for use in applications for which a  
35 conventional wastewater system is unsuitable. The Department may impose  
36 any design, operation, maintenance, monitoring, and management  
37 requirements on the use of an innovative wastewater system that it  
38 determines to be appropriate. A wastewater system approved by a nationally  
39 recognized certification body and in compliance with the ongoing  
40 verification program of such body may submit a sampling protocol for  
41 innovative system approval that reduces the data sets required for such  
42 approval by fifty percent (50%). Such an application shall include all of the  
43 data associated with the nationally recognized certification body's  
44 verification of the system's performance.
- 45 (6) "Nationally recognized certification body" means a third-party certification  
46 body for wastewater systems or system components that is accredited by an  
47 entity widely recognized in the United States such as the American National  
48 Standards Institute, the Standards Council of Canada, or the International  
49 Accreditation Service, Inc.
- 50 (b) Adoption of Rules Governing Approvals. – The Commission shall adopt rules for  
51 the approval and permitting of ~~experimental, controlled demonstration,~~ innovative,

1 conventional, provisional, and accepted wastewater systems. The rules shall address the criteria  
2 to be considered prior to issuing a permit—an approval for a system, requirements for  
3 preliminary design plans and specifications that must be submitted, methodology to be used,  
4 standards for monitoring and evaluating the system, research evaluation of the system, the plan  
5 of work for monitoring system performance and maintenance, and any additional matters the  
6 Commission deems appropriate.determines are necessary for verification of the performance of  
7 a wastewater system or system component.

8 (c) ~~Approved Systems.—~~Procedure for Modifications or Revocations. – The  
9 Department may modify, suspend, or revoke the approval of a wastewater system if the  
10 Department determines that the approval is based on false, incomplete, or misleading  
11 information or if the Department finds that modification, suspension, or revocation is necessary  
12 to protect public health, safety, or welfare. The Department shall provide a listing of all  
13 approved experimental, controlled demonstration, innovative, provisional, and accepted  
14 wastewater systems to the local health departments annually, and more frequently, when the  
15 Department makes a final agency decision related to the approval of a wastewater system or the  
16 Commission adopts rules related to the notify the local health departments within 30 days of  
17 any modification or revocation of an approval of a wastewater system-system or system  
18 component.

19 (d) Evaluation Protocols. – The Department shall approve one or more nationally  
20 recognized protocols for the evaluation of on-site subsurface wastewater systems. Any protocol  
21 approved by the Department shall specify a minimum number of sites that must be evaluated  
22 and the duration of the evaluation period. At the request of a manufacturer of a wastewater  
23 system, the Department may approve an alternative protocol for use in the evaluation of the  
24 performance of the manufacturer's wastewater system. A protocol for the evaluation of an  
25 on-site subsurface-a wastewater system approved by the Department pursuant to this section is  
26 a scientific standard within the meaning of G.S. 150B-2(8a)h.

27 (e) Experimental Systems.— A manufacturer of a wastewater system that is intended for  
28 on-site subsurface use may apply to the Department to have the system evaluated as an  
29 experimental wastewater system as provided in this subsection. The manufacturer shall submit  
30 a proposal for evaluation of the system to the Department. The proposal for evaluation shall  
31 include the design of the system, a description of any laboratory or field research or testing that  
32 will be used to evaluate the system, a description of the research or testing protocol, and the  
33 credentials of the independent laboratory, consultant, or other entity that will be conducting the  
34 research or testing on the system. The proposal may include an evaluation of research and  
35 testing conducted in other states to the extent that the research and testing involves soil types,  
36 climate, hydrology, and other relevant conditions that are comparable to conditions in this State  
37 and if the research or testing was conducted pursuant to a protocol acceptable to the  
38 Department. The manufacturer shall enter into a contract for an evaluation of the performance  
39 of the experimental wastewater system with an independent laboratory, consultant, or other  
40 entity that has expertise in the evaluation of wastewater systems and that is approved by the  
41 Department. The manufacturer may install up to 50 experimental systems pursuant to a  
42 protocol approved by the Department on sites that are suitable for a conventional wastewater  
43 system and that have a repair area of sufficient size to allow installation of a conventional  
44 wastewater system, an approved innovative wastewater system, or an accepted wastewater  
45 system if the experimental wastewater system fails to perform properly.

46 (f) ~~Controlled Demonstration Provisional~~ Systems. – A manufacturer of a wastewater  
47 system intended for on-site subsurface use may apply to the Department to have the system  
48 evaluated as a controlled demonstration wastewater system as provided in this subsection.  
49 provisionally approved for use in this State. Any wastewater system approved based on its  
50 approval by a nationally recognized certification body must be designed and installed in a  
51 manner consistent with the system evaluated and approved by the nationally recognized

1 certification body. The manufacturer shall submit a proposal for evaluation of the system to the  
2 Department. The proposal shall contain procedures for obtaining specified information  
3 necessary to achieve innovative status upon completion of the provisional status. The proposal  
4 for evaluation shall include the design of the system, a description of any laboratory or field  
5 research or testing that will be used to evaluate the system, a description of the research or  
6 testing protocol, and the credentials of the independent laboratory, consultant, or other entity  
7 that will be conducting the research or testing on the system. ~~If the system was evaluated as an~~  
8 ~~experimental system under subsection (e) of this section, the proposal shall include the results~~  
9 ~~of the evaluation.~~ The proposal may include an evaluation of research and testing conducted in  
10 other states to the extent that the research and testing involves soil types, climate, hydrology,  
11 and other relevant conditions that are comparable to conditions in this State and if the research  
12 or testing was conducted pursuant to a protocol acceptable to the Department. The  
13 manufacturer shall enter into a contract for an evaluation of the performance of the controlled  
14 demonstration wastewater system with an independent laboratory, consultant, or other entity  
15 that has expertise in the evaluation of wastewater systems and that is approved by the  
16 Department. The manufacturer may install up to 200 ~~controlled demonstration~~ provisional  
17 ~~wastewater systems pursuant to a protocol approved by the Department~~ on sites that are  
18 suitable for a conventional wastewater system and that have a repair area of sufficient size to  
19 allow installation of a conventional wastewater system, an approved innovative wastewater  
20 system, or an accepted wastewater system if the ~~controlled demonstration~~ provisional  
21 ~~wastewater system fails to perform properly.~~ If the ~~controlled demonstration~~ provisional  
22 ~~wastewater system is intended for use on sites that are not suitable, or that are provisionally~~  
23 ~~suitable,~~ suitable for a conventional wastewater system, the Department may approve the  
24 installation of the ~~controlled demonstration~~ provisional wastewater system if the Department  
25 determines that the manufacturer can provide an acceptable alternative method for collection,  
26 treatment, and ~~disposal~~ dispersal of the wastewater. The Department shall approve applications  
27 for provisional systems based on approval by a nationally recognized certification body within  
28 90 days of receipt of a complete application. A manufacturer that chooses to remove its product  
29 from the nationally recognized standard during the provisional approval may continue its  
30 application in this State pursuant to requirements and procedures established by the  
31 Department.

32 (g) Innovative Systems. – A manufacturer of a wastewater system for on-site subsurface  
33 use ~~that has been evaluated as an experimental wastewater system as provided in subsection (e)~~  
34 ~~of this section or that has been evaluated as a controlled demonstration wastewater system as~~  
35 ~~provided in subsection (f) of this section may apply to the Department to have the system~~  
36 ~~approved as an innovative wastewater system as provided in this subsection.~~ may apply for and  
37 be considered for innovative system status by the Department in one of the following ways:

38 (1) If the wastewater system has been approved as a provisional wastewater  
39 system pursuant to subsection (f) of this section, the manufacturer may apply  
40 to have the system approved as an innovative wastewater system based on  
41 successful completion of the evaluation protocols established pursuant to  
42 subsection (d) of this section.

43 (2) ~~A manufacturer of a~~ If the wastewater system for on-site subsurface use that  
44 has not been evaluated or approved as an ~~experimental~~ provisional  
45 ~~wastewater system or as a controlled demonstration wastewater system~~  
46 pursuant to subsection (f) of this section, the manufacturer may also apply to  
47 the Department to have the system approved as an innovative wastewater  
48 system on the basis of comparable research and testing conducted in other  
49 states. The manufacturer shall provide the Department with the data and  
50 findings of all evaluations of the performance of the system that have been  
51 conducted in any state by or on behalf of the manufacturer. The

1 manufacturer shall also provide the Department with a summary of the data  
2 and findings of all other evaluations of the performance of the system that  
3 are known to the manufacturer.

4 (3) If the wastewater system has not been evaluated or approved as a provisional  
5 system pursuant to subsection (f) of this section, but has been evaluated  
6 under protocol established by a nationally recognized certification body for  
7 at least two consecutive years, has been found to perform acceptably based  
8 on the criteria of the protocol, and is designed and will be installed in a  
9 manner consistent with the system evaluated and approved by the nationally  
10 recognized certification body, the manufacturer may apply to have the  
11 system approved as an innovative wastewater system.

12 Within 30 days of receipt of the initial application, the Department shall either (i) notify the  
13 manufacturer of any items necessary to complete the application or (ii) notify the manufacturer  
14 that its application is complete. The Department shall publish a notice that the manufacturer has  
15 submitted an application under this subsection in the North Carolina Register and may provide  
16 additional notice to the public via the Internet or by other means. The Department shall receive  
17 public comment on the application for at least 30 days after the date the notice is published in  
18 the North Carolina Register. In making a determination under this subsection, the Department  
19 shall consider the data, findings, and recommendations submitted by the manufacturer and all  
20 public comment. The Department may also consider any other information that the Department  
21 determines to be relevant. The Department shall determine: (i) whether the system performs in  
22 a manner equal or superior to a conventional wastewater ~~system;~~ system, in terms of structural  
23 integrity, treatment, and hydraulic performance; (ii) whether the system is constructed of  
24 materials whose physical and chemical properties provide the strength, durability, and chemical  
25 resistance to allow the system to withstand loads and conditions as required by rules adopted by  
26 the Commission; (iii) the circumstances in which use of the system is appropriate; and (iv) any  
27 conditions and limitations related to the use of the system. The Department shall make the  
28 determinations required by this subsection and approve or deny the application within ~~180~~ 90  
29 days after the Department receives a complete application from a manufacturer. If the  
30 Department fails to act on the application within ~~180 days,~~ 90 days of the notice of receipt of the  
31 complete application, the manufacturer may treat the application as denied and challenge the  
32 denial by filing a contested case as provided in Article 3 of Chapter 150B of the General  
33 Statutes. If the Department approves an innovative wastewater system, the Department shall  
34 notify the manufacturer of the approval and specify the circumstances in which use of the  
35 system is appropriate and any conditions and limitations related to the use of the system.

36 (g1) Approval of Functionally Equivalent Trench Systems as Innovative Systems. – A  
37 manufacturer of a wastewater trench system may petition the Commission to have the  
38 wastewater trench system approved as an innovative wastewater system as provided in this  
39 subsection.

40 (1) The Commission shall approve a wastewater trench system as an innovative  
41 wastewater system if it finds that there is clear, convincing, and cogent  
42 evidence that the wastewater trench system is functionally equivalent to a  
43 wastewater trench system that is approved as an accepted wastewater  
44 system. A wastewater trench system shall be considered functionally  
45 equivalent to an accepted wastewater trench system if the performance  
46 characteristics of the wastewater trench system satisfy all of the following  
47 requirements:

48 a. The physical properties and chemical durability of the materials from  
49 which the wastewater trench system is constructed are equal to or  
50 superior to the physical properties and chemical durability of the

- 1 materials from which the accepted wastewater trench system is  
2 constructed.
- 3 b. The permeable sidewall area and bottom infiltrative area of the  
4 wastewater trench system are equal to or greater than the permeable  
5 sidewall area and bottom infiltrative area of the accepted wastewater  
6 trench system at a field-installed size.
- 7 c. The wastewater trench system utilizes a similar method and manner  
8 of function for the conveyance and application of effluent as the  
9 accepted wastewater trench system.
- 10 d. The structural integrity of the wastewater trench system is equal to or  
11 superior to the structural integrity of the accepted wastewater trench  
12 system.
- 13 e. The wastewater trench system shall provide a field installed system  
14 storage volume equal to or greater than the field installed system  
15 storage volume of the accepted wastewater trench system.
- 16 (2) As part of its petition, the manufacturer shall provide to the Commission all  
17 of the following information:
- 18 a. Specifications of the wastewater trench system.
- 19 b. Data necessary to demonstrate that the wastewater trench system is  
20 functionally equivalent to a wastewater trench system that is  
21 approved as an accepted wastewater system.
- 22 c. A certified statement from an independent, third-party professional  
23 engineer or testing laboratory that, based on verified documentation,  
24 the wastewater trench system is functionally equivalent to an  
25 accepted wastewater system.
- 26 (3) Approval of a wastewater trench system as an innovative wastewater system  
27 shall not be conditioned on the manufacturer of the wastewater trench  
28 system having operational systems installed in the State.
- 29 (4) The Commission shall authorize the use of a wastewater trench system as an  
30 innovative wastewater system in the same applications as the accepted  
31 wastewater trench system.
- 32 (5) The Commission shall not include conditions and limitations in the approval  
33 of a wastewater trench system as an innovative wastewater system that are  
34 not included in the approval of the accepted wastewater trench system.
- 35 (h) Accepted Wastewater Dispersal Systems. – A manufacturer of an innovative  
36 wastewater dispersal system that has been in general use in this State for ~~more than a~~ minimum  
37 of five years may petition the Commission to have the system designated as an accepted  
38 wastewater system as provided in this subsection. The manufacturer shall provide the  
39 Commission with the data and findings of all prior evaluations of the performance of the  
40 ~~system.~~ system in this State and other states referenced in the petition, including disclosure of  
41 any conditions found to result in unacceptable structural integrity, treatment, or hydraulic  
42 performance. In addition, the manufacturer shall provide the Commission with information  
43 sufficient to enable the Commission to fully evaluate the performance of the system in this  
44 State for at least the five-year period immediately preceding the petition. The Commission shall  
45 designate a wastewater system as an accepted wastewater system only if it finds that there is  
46 clear, convincing, and cogent evidence (i) to confirm the findings made by the Department at  
47 the time the Department approved the system as an innovative wastewater system and (ii) that  
48 the system performs in a manner that is equal or superior to a conventional wastewater system  
49 under actual field conditions in this State. The Commission shall specify the circumstances in  
50 which use of the system is appropriate and any conditions and limitations related to the use of  
51 the system.

(i) ~~Miscellaneous Provisions.—Nonproprietary Wastewater Systems.—~~

(1) ~~In evaluating applications for approval under this section, the Department may consult with persons who have special training and experience related to on-site subsurface wastewater systems and may form a technical advisory committee for this purpose. However, the Department is responsible for making timely and appropriate determinations under this section.~~

(2) The Department may initiate a review of a nonproprietary wastewater system and approve the system for on-site subsurface use as an experimental wastewater system, a controlled demonstration wastewater system, as a provisional wastewater system or an innovative wastewater system without having received an application from a manufacturer. The Department may recommend that the Commission designate a nonproprietary wastewater system as an accepted wastewater system without having received a petition from a manufacturer.

(j) ~~Warranty Required in Certain Circumstances.—The Department shall not approve a reduction of the total nitrification trench length for an innovative wastewater system or accepted wastewater system handling untreated septic tank effluent of more than twenty-five percent (25%) as compared to the total nitrification trench length required for a 36-inch wide conventional wastewater system unless the manufacturer of the innovative wastewater system or accepted wastewater system provides a performance warranty for the nitrification trench system to each owner or purchaser of the system for a warranty period of at least five years from the date on which the wastewater system is placed in operation. The warranty shall provide that the manufacturer shall provide all material and labor that may be necessary to provide a fully functional wastewater system. The Commission shall establish minimum terms and conditions for the warranty required by this subsection. This subsection shall not be construed to require that a manufacturer warrant a wastewater system that is not properly sized to meet the design load required for a particular use, that is improperly installed, or that is improperly operated and maintained.~~

(j1) Clarification With Respect to Certain Dispersal Media. – In considering the application by a manufacturer of a wastewater system utilizing expanded polystyrene synthetic aggregate particles as a septic effluent dispersal medium for approval of the system under this section, neither the Commission nor the Department may condition, delay, or deny the approval based on the particle or bulk density of the expanded polystyrene material. With respect to approvals already issued by the Department or Commission that include conditions or requirements related to the particle or bulk density of expanded polystyrene material, the Commission or Department, as applicable, shall promptly reissue all such approvals with the conditions and requirements relating to the density of expanded polystyrene material permanently deleted while leaving all other terms and conditions of the approval intact.

(k) Fees. – The Department shall collect the following fees under this section:

- |     |   |                       |
|-----|---|-----------------------|
| (1) | Review of an alternative protocol under subsection (d) of this section        | \$1,000.00            |
| (2) | <del>Review of an experimental system</del>                                   | <del>\$3,000.00</del> |
| (3) | Review of a <del>controlled demonstration</del> <u>provisional</u> system     | \$3,000.00            |
| (4) | Review of an innovative system  | \$3,000.00            |
| (5) | Review of an accepted system  | \$3,000.00            |
| (6) | Review of a residential wastewater treatment system pursuant to G.S. 130A-342 | \$1,500.00            |
| (7) | Review of a component <u>or device required</u> of a system                   | \$ 100.00             |
| (8) | Modification to approved <u>accepted, provisional, or</u> innovative system   | \$1,000.00            |

1 (l) On-Site Wastewater System Account. – The On-Site Wastewater System Account is  
2 established as a nonreverting account within the Department. Fees collected pursuant to this  
3 section shall be placed in the On-Site Wastewater System Account and shall be applied only to  
4 the costs of implementing this section."

5 **SECTION 4.15.(b)** The Commission for Public Health shall review and amend its  
6 rules to implement Section 4.15(a) of this act.

7 **SECTION 4.15.(c)** Beginning January 1, 2016, and every quarter thereafter until  
8 all rules required pursuant to Sections 4.14 and 4.15 of this act are adopted or amended, the  
9 Commission for Public Health shall submit written reports as to its progress on adopting or  
10 amending rules as required by Sections 4.14 and 4.15 of this act to the Environmental Review  
11 Commission and the Joint Legislative Oversight Committee on Health and Human Services.  
12 The Commission shall supplement the written reports required by this subsection with  
13 additional written and oral reports as may be requested by the Environmental Review  
14 Commission and the Joint Legislative Oversight Committee on Health and Human Services.  
15 The Commission shall submit the written reports required by this subsection whether or not the  
16 General Assembly is in session at the time the report is due.

17 **SECTION 4.15.(d)** The Commission for Public Health, in consultation with the  
18 Department of Health and Human Services, local health departments, and stakeholders  
19 representing the wastewater system industry, shall study the costs and benefits of requiring  
20 treatment standards greater than those listed by nationally recognized standards, including the  
21 recorded advantage of such higher treatment standards for the protection of the public health  
22 and the environment. The Commission shall report its findings and recommendations,  
23 including any legislative proposals, to the Environmental Review Commission and the Joint  
24 Legislative Oversight Committee on Health and Human Services on or before March 1, 2016.

## 25 26 **CONTESTED CASES FOR AIR PERMITS**

27 **SECTION 4.17.(a)** G.S. 143-215.108 reads as rewritten:

28 "**§ 143-215.108. Control of sources of air pollution; permits required.**

29 ...

30 (e) A permit ~~applicant, permittee, or third party~~ applicant or permittee who is  
31 dissatisfied with a decision of the Commission on a permit application may commence a  
32 contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission  
33 notifies the applicant or permittee of its decision. If the permit ~~applicant, permittee, or third~~  
34 ~~party~~ applicant or permittee does not file a petition within the required time, the Commission's  
35 decision on the application is final and is not subject to review. The filing of a petition under  
36 this subsection will stay the Commission's decision until resolution of the contested case.

37 (e1) A person other than a permit applicant or permittee who is a person aggrieved by  
38 the Commission's decision on a permit application may commence a contested case by filing a  
39 petition under G.S. 150B-23 within 30 days after the Commission provides notice of its  
40 decision on a permit application, as provided in G.S. 150B-23(f), or by posting the decision on  
41 a publicly available Web site. The filing of a petition under this subsection does not stay the  
42 Commission's decision except as ordered by the administrative law judge under  
43 G.S. 150B-33(b).

44 ...."

45 **SECTION 4.17.(b)** The Department of Environment and Natural Resources shall  
46 study whether the amendments to G.S. 143-215.108, as enacted by Section 4.17(a) of this act,  
47 should be expanded into other programs administered by the Department. The Department shall  
48 specifically consider whether these changes should be made to the water and solid waste  
49 permitting programs. No later than March 1, 2016, the Department shall report the results of  
50 this study, including any recommendations, to the Environmental Review Commission.

**AMEND ISOLATED WETLANDS LAW**

**SECTION 4.18.(a)** For the purposes of implementing Section .1300 of Subchapter 2H of Chapter 2 of Title 15A of the North Carolina Administrative Code (Discharges to Isolated Wetlands and Isolated Waters), the isolated wetlands provisions of Section .1300 shall apply only to Basin Wetlands and Bogs and no other wetland types as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 that are not jurisdictional wetlands under the federal Clean Water Act. The isolated wetlands provisions of Section .1300 shall not apply to an isolated man-made ditch or pond constructed for stormwater management purposes or any other man-made isolated pond.

**SECTION 4.18.(b)** The Environmental Management Commission may adopt rules to amend Section .1300 of Subchapter 2H of Chapter 2 of Title 15A of the North Carolina Administrative Code consistent with subsection (a) of this section.

**SECTION 4.18.(c)** Section 54 of S.L. 2014-120 reads as rewritten:

**"SECTION 54.(a)** Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to Section 54(c) of this act, the Commission and the Department of Environment and Natural Resources shall implement 15A NCAC 02H .1305 (Review of Applications) as provided in Section 54(b) of this act.

**"SECTION 54.(b)** Notwithstanding 15A NCAC 02H .1305 (Review of Applications), all of the following shall apply to the implementation of 15A NCAC 02H .1305:

- (1) The amount of impacts of isolated wetlands under 15A NCAC 02H .1305(d)(2) shall be less than or equal to one acre of isolated wetlands east of I-95 for the entire project and less than or equal to 1/3 acre of isolated wetlands west of I-95 for the entire project.
- (2) Mitigation requirements for impacts to isolated wetlands shall only apply to the amount of impact that exceeds the threshold set out in subdivision (1) of this section. The mitigation ratio for impacts of greater than one acre exceeding the threshold for the entire project under 15A NCAC 02H .1305(g)(6) shall be 1:1 and may be located on the same parcel.
- (3) ~~For purposes of Section 54(b) of this section, "isolated wetlands" means a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October, 2010, that are not jurisdictional wetlands under the federal Clean Water Act. An "isolated wetland" does not include an isolated man-made ditch or pond constructed for stormwater management purposes or any other man-made isolated pond.~~
- (4) Impacts to isolated wetlands shall not be combined with the project impacts to 404 jurisdictional wetlands or streams for the purpose of determining when impact thresholds that trigger a mitigation requirement are met.

**"SECTION 54.(c)** The Environmental Management Commission shall adopt rules to amend 15A NCAC 02H .1300 through 15A NCAC 02H .1305 consistent with Section 54(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this subsection shall be substantively identical to the provisions of Section 54(b) of this act. Rules adopted pursuant to this subsection are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this subsection shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

**"SECTION 54.(d)** The Department of Environment and Natural Resources shall study (i) how the term "isolated wetland" has been previously defined in State law and whether the term should be clarified in order to provide greater certainty in identifying isolated wetlands; (ii) the

1 surface area thresholds for the regulation of mountain bog isolated wetlands, including whether  
2 mountain bog isolated wetlands should have surface area regulatory thresholds different from  
3 other types of isolated wetlands; and (iii) whether impacts to isolated wetlands should be  
4 combined with the project impacts to jurisdictional wetlands or streams for the purpose of  
5 determining when impact thresholds that trigger a mitigation requirement are met. The  
6 Department shall report its findings and recommendations to the Environmental Review  
7 Commission on or before November 1, 2014.

8 "SECTION 54.(e) This section is effective when it becomes law. Section 54(b) of this act  
9 expires on the date that rules adopted pursuant to Section 54(c) of this act become effective."

10 SECTION 4.18.(d) No later than March 1, 2016, the Environmental Management  
11 Commission shall amend 15A NCAC 02H .1305 (Review of Applications) to establish a  
12 coastal region, piedmont region, and mountain region for purposes of regulating impacts to  
13 isolated wetlands. The amount of impacts of isolated wetlands under 15A NCAC 02H  
14 .1305(d)(2) shall be the following:

- 15 (1) Less than or equal to one acre of isolated wetlands for the entire project in  
16 the coastal region.
- 17 (2) Less than or equal to one-half acre of isolated wetlands for the entire project  
18 for the piedmont region.
- 19 (3) Less than or equal to one-third acre of isolated wetlands for the entire project  
20 for the mountain region.

21 In no event shall the regulatory requirements for impacts to isolated wetlands be more stringent  
22 than required under current law. When the rules required by this section become effective,  
23 subdivision (1) of Section 54(b) of S.L. 2014-120 is repealed.

## 24 25 STUDY COASTAL WATER QUALITY AND COASTAL STORMWATER 26 REQUIREMENTS

27 SECTION 4.19. The Department of Environment and Natural Resources shall  
28 evaluate the water quality of surface waters in the Coastal Counties and the impact of  
29 stormwater on this water quality. The Department shall study and determine the maximum  
30 allowable built-upon area for the low density state stormwater option as directly related to the  
31 length of grassed swale treatment length; therefore providing data for a property to achieve  
32 increased built-upon area above current limits by providing a longer length of grassed swale  
33 through which the stormwater must pass. If it is determined that increases in the percentage of  
34 built-upon area can be allowed in this way without detriment to the water quality, the  
35 Department shall submit recommendations to the General Assembly for the levels of increases  
36 in built-upon area that can be supported with corresponding increases in the length of grassed  
37 swale through which the stormwater shall pass. No later than April 1, 2016, the Department  
38 shall report the results of its study, including recommendations, to the Environmental Review  
39 Commission.

## 40 41 AMEND STORMWATER MANAGEMENT LAW

42 SECTION 4.20.(a) Section 3 of S.L. 2013-82 reads as rewritten:

43 "SECTION 3. The Environmental Management Commission shall adopt rules  
44 implementing Section 2 of this act no later than ~~July 1, 2016~~ November 1, 2016."

45 SECTION 4.20.(b) G.S. 143-214.7, as amended by S.L. 2015-149, reads as  
46 rewritten:

47 "§ 143-214.7. Stormwater runoff rules and programs.

48 ...

49 (b2) For purposes of implementing stormwater programs, "built-upon area" means  
50 impervious surface and partially impervious surface to the extent that the partially impervious  
51 surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon

1 area" does not include a slatted deck; the water area of a swimming pool; a surface of number  
2 57 stone, as designated by the American Society for Testing and Materials, laid at least four  
3 inches thick over a geotextile fabric; or a trail as defined in G.S. 113A-85 that is either unpaved  
4 or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001  
5 centimeters per second (1.41 inches per hour). For State stormwater programs and local  
6 stormwater programs approved pursuant to subsection (d) of this section, all of the following  
7 shall apply:

8 (1) The volume, velocity, and discharge rates of water associated with the  
9 one-year, 24-hour storm and the difference in stormwater runoff from the  
10 predevelopment and postdevelopment conditions for the one-year, 24-hour  
11 storm shall be calculated using any acceptable engineering hydrologic and  
12 hydraulic methods.

13 (2) Development may occur within the area that would otherwise be required to  
14 be placed within a vegetative buffer required by the Commission pursuant to  
15 G.S. 143-214.1 and G.S. 143-214.7 to protect classified shellfish waters,  
16 outstanding resource waters, and high-quality waters provided the  
17 stormwater runoff from the development is collected and treated from the  
18 entire impervious area and discharged so that it passes through the  
19 vegetative buffer and is managed so that it otherwise complies with all  
20 applicable State and federal stormwater management requirements.

21 (3) The requirements that apply to development activities within one-half mile  
22 of and draining to Class SA waters or within one-half mile of Class SA  
23 waters and draining to unnamed freshwater tributaries shall not apply to  
24 development activities and associated stormwater discharges that do not  
25 occur within one-half mile of and draining to Class SA waters or are not  
26 within one-half mile of Class SA waters and draining to unnamed freshwater  
27 tributaries.

28 ...

29 (d) The Commission shall review each stormwater management program submitted by  
30 a State agency or unit of local government and shall notify the State agency or unit of local  
31 government that submitted the program that the program has been approved, approved with  
32 modifications, or disapproved. The Commission shall approve a program only if it finds that  
33 the standards of the program equal ~~or exceed~~ those of the model program adopted by the  
34 Commission pursuant to this section.

35 ...."

36 **SECTION 4.20.(c)** No later than March 1, 2016, a State agency or local  
37 government that implements a stormwater management program approved pursuant to  
38 subsection (d) of G.S. 143-214.7 shall submit its current stormwater management program or a  
39 revised stormwater management program to the Environmental Management Commission. No  
40 later than December 1, 2016, the Environmental Management Commission shall review and act  
41 on each of the submitted stormwater management programs in accordance with subsection (d)  
42 of G.S. 143-214.7, as amended by this section.

43 **SECTION 4.20.(d)** The Environmental Review Commission, with the assistance  
44 of the Department of Environment and Natural Resources, shall review the current status of  
45 State statutes, session laws, rules, and guidance documents related to the management of  
46 stormwater in the State. The Commission shall specifically examine whether State statutes,  
47 session laws, rules, and guidance documents related to the management of stormwater in the  
48 State should be recodified or reorganized in order to clarify State law for the management of  
49 stormwater. The Commission shall submit legislative recommendations, if any, to the 2016  
50 Regular Session of the 2015 General Assembly.

51 **SECTION 4.20A.** Section 46 of S.L. 2014-120 reads as rewritten:

1 "SECTION 46.(a) Notwithstanding the requirements of Article 21 of Chapter 143 of the  
2 General Statutes and rules adopted pursuant to that Article, the addition of a cluster box unit to  
3 a single-family or duplex development permitted by a local government shall not require a  
4 modification to any stormwater permit for that development. This section shall only apply to  
5 single-family or duplex developments in which individual curbside mailboxes are replaced with  
6 cluster box units whereupon the associated built-upon area supporting the cluster box units  
7 shall be considered incidental and shall not be required in the calculation of built-upon area for  
8 the development for stormwater permitting purposes.

9 "SECTION 46.(b) This section is effective when this act becomes law and expires on  
10 December 31, ~~2015~~, 2017, or when regulations on cluster box design and placement by the  
11 United States Postal Service become effective and those regulations are adopted by local  
12 governments, whichever is earlier."  
13

#### 14 **STUDY EXEMPTING LINEAR UTILITY PROJECTS FROM CERTAIN** 15 **ENVIRONMENTAL REGULATIONS**

16 **SECTION 4.21.** The Department of Environment and Natural Resources shall  
17 study whether and to what extent activities related to the construction, maintenance, and  
18 removal of linear utility projects should be exempt from certain environmental regulations. For  
19 purposes of this section, "linear utility project" means an electric power line, water line, sewage  
20 line, stormwater drainage line, telephone line, cable television line, data transmission line,  
21 communications-related line, or natural gas pipeline. For purposes of this section,  
22 "environmental regulation" means a regulation established or implemented by any of the  
23 following:

- 24 (1) The Department of Environment and Natural Resources created pursuant to  
25 G.S. 143B-279.1.
- 26 (2) The Environmental Management Commission created pursuant to  
27 G.S. 143B-282.
- 28 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
- 29 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
- 30 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
- 31 (6) The Commission for Public Health created pursuant to G.S. 130A-29.
- 32 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
- 33 (8) The North Carolina Mining and Energy Commission created pursuant to  
34 G.S. 143B-293.1.
- 35 (9) The North Carolina Oil and Gas Commission created pursuant to  
36 G.S. 143B-293.1.

37 No later than March 1, 2016, the Department shall report the results of this study, including any  
38 recommendations, to the Environmental Review Commission.  
39

#### 40 **REPEAL DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES** 41 **IDLING RULES**

42 **SECTION 4.24.** The Secretary of Environment and Natural Resources shall repeal  
43 15A NCAC 02D .1010 (Heavy-Duty Vehicle Idling Restrictions) on or before March 1, 2016.  
44 Until the effective date of the repeal of the rule required pursuant to this section, the Secretary,  
45 the Department of Environment and Natural Resources, the Environmental Management  
46 Commission, or any other political subdivision of the State shall not implement or enforce 15A  
47 NCAC 02D .1010 (Heavy-Duty Vehicle Idling Restrictions).  
48

#### 49 **AMBIENT AIR MONITORING**

50 **SECTION 4.25.(a)** The Department of Environment and Natural Resources shall  
51 review its ambient air monitoring network and, in the next annual monitoring network plan

1 submitted to the United States Environmental Protection Agency, shall request the removal of  
2 any ambient air monitors that are not required by applicable federal laws and regulations and  
3 that the Department has determined are not necessary to protect public health, safety, and  
4 welfare; the environment; and natural resources.

5 **SECTION 4.25.(b)** No later than September 1, 2016, the Department of  
6 Environment and Natural Resources shall discontinue all ambient air monitors not required by  
7 applicable federal laws and regulations if approval from the United States Environmental  
8 Protection Agency is not required for the discontinuance and the Department has determined  
9 that the monitors are not necessary to protect public health, safety, and welfare; the  
10 environment; and natural resources.

11 **SECTION 4.25.(c)** Nothing in this section is intended to prevent the Department  
12 from installing temporary ambient air monitors as part of an investigation of a suspected  
13 violation of air quality rules, standards, or limitations or in response to an emergency situation  
14 causing an imminent danger to human health and safety.

15 **SECTION 4.25.(d)** The Division of Air Quality, Department of Environment and  
16 Natural Resources, shall report to the Environmental Review Commission no later than  
17 November 1, 2016, on the status of the ambient air monitoring network and the Division's  
18 implementation of the requirements of this section.

## 19 **DIVISION OF AIR QUALITY NOTICE REQUIREMENTS**

20 **SECTION 4.27.** G.S. 143-215.110 reads as rewritten:

### 21 **"§ 143-215.110. Special orders.**

22 (a) Issuance. – The Commission is hereby empowered, after the effective date of  
23 standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from time to  
24 time to modify or revoke) a special order or other appropriate instrument, to any person whom  
25 it finds responsible for causing or contributing to any pollution of the air within the area for  
26 which standards have been established. Such an order or instrument may direct such person to  
27 take or refrain from taking such action, or to achieve such results, within a period of time  
28 specified by such special order, as the Commission deems necessary and feasible in order to  
29 alleviate or eliminate such pollution. The Commission is authorized to enter into consent  
30 special orders, assurances of voluntary compliance or other similar documents by agreement  
31 with the person responsible for pollution of the air, subject to the provisions of subsection (a1)  
32 of this section regarding proposed orders, and such consent order, when entered into by the  
33 Commission after public review, shall have the same force and effect as a special order of the  
34 Commission issued pursuant to hearing.

#### 35 (a1) Public Notice and Review of Consent Orders.

36 (1) The Commission shall give notice of a proposed consent order to the proper  
37 State, interstate, and federal agencies, to interested persons, and to the  
38 public. The Commission may also provide any other data it considers  
39 appropriate to those notified. The Commission shall prescribe the form and  
40 content of the notice. The notice shall be given at least ~~45~~ 30 days prior to  
41 any final action regarding the consent order. Public notice shall be given by  
42 publication of the notice ~~one time in a newspaper having general circulation~~  
43 ~~within the county in which the pollution originates~~ for 30 days on the  
44 regulatory agency Web site.

45 (2) Any person who desires a public meeting on any proposed consent order  
46 may request one in writing to the Commission within 30 days following date  
47 of the notice of the proposed consent order. The Commission shall consider  
48 all such requests for meetings. If the Commission determines that there is  
49 significant public interest in holding a meeting, the Commission shall  
50 schedule a meeting and shall give notice of such meeting at least 30 days in  
51

1 advance to all persons to whom notice of the proposed consent order was  
2 given and to any other person requesting notice. At least 30 days prior to the  
3 date of meeting, the Commission shall also have a copy of the notice of the  
4 meeting published ~~at least one time in a newspaper having general~~  
5 ~~circulation within the county in which the pollution originates.~~ for 30 days on  
6 the regulatory agency Web site. The Commission shall prescribe the form  
7 and content of notices under this subsection.

8 ...."  
9

## 10 PROHIBIT THE REQUIREMENT OF MITIGATION FOR IMPACTS TO 11 INTERMITTENT STREAMS

12 SECTION 4.31.(a) Article 21 of Chapter 143 of the General Statutes is amended  
13 by adding a new section to read:

### 14 "§ 143-214.7C. Prohibit the requirement of mitigation for impacts to intermittent 15 streams.

16 Except as required by federal law, the Department of Environment and Natural Resources  
17 shall not require mitigation for impacts to an intermittent stream. For purposes of this section,  
18 "intermittent stream" means a well-defined channel that has all of the following characteristics:

- 19 (1) It contains water for only part of the year, typically during winter and spring  
20 when the aquatic bed is below the water table.
- 21 (2) The flow of water in the intermittent stream may be heavily supplemented  
22 by stormwater runoff.
- 23 (3) It often lacks the biological and hydrological characteristics commonly  
24 associated with the conveyance of water."

25 SECTION 4.31.(b) The Department of Environment and Natural Resources and  
26 the Environmental Management Commission shall amend their rules so that the rules are  
27 consistent with the provisions of G.S. 143-214.7C, as enacted by subsection (a) of this section.  
28

## 29 PIGEON HUNTING

30 SECTION 4.32(a) G.S. 14-360(c) reads as rewritten:

31 "(c) As used in this section, the words "torture", "torment", and "cruelly" include or refer  
32 to any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death. As  
33 used in this section, the word "intentionally" refers to an act committed knowingly and without  
34 justifiable excuse, while the word "maliciously" means an act committed intentionally and with  
35 malice or bad motive. As used in this section, the term "animal" includes every living  
36 vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings.  
37 However, this section shall not apply to the following activities:

- 38 (1) The lawful taking of animals under the jurisdiction and regulation of the  
39 Wildlife Resources Commission, except that this section shall apply to those  
40 birds other than pigeons exempted by the Wildlife Resources Commission  
41 from its definition of "wild birds" pursuant to G.S. 113-129(15a).
- 42 (2) Lawful activities conducted for purposes of biomedical research or training  
43 or for purposes of production of livestock, poultry, or aquatic species.
- 44 (2a) Lawful activities conducted for the primary purpose of providing food for  
45 human or animal consumption.
- 46 (3) Activities conducted for lawful veterinary purposes.
- 47 (4) The lawful destruction of any animal for the purposes of protecting the  
48 public, other animals, property, or the public health.
- 49 (5) The physical alteration of livestock or poultry for the purpose of conforming  
50 with breed or show standards."

51 SECTION 4.32.(b) G.S. 19A-1.1 reads as rewritten:

**"§ 19A-1.1. Exemptions.**

This Article shall not apply to the following:

- (1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this Article applies to those birds other than pigeons exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).

...."

**WILDLIFE RESOURCES COMMISSION STUDIES**

**SECTION 4.33.(a)** The Wildlife Resources Commission shall review the methods and criteria by which it adds, removes, or changes the status of animals on the State protected animal list as defined in G.S. 113-331 and compare these to federal regulations and the methods and criteria of other states in the region. The Commission shall also review the policies by which the State addresses introduced species and make recommendations for improving these policies, including impacts associated with hybridization that occurs among federally listed, State-listed, and nonlisted animals.

**SECTION 4.33.(b)** The Wildlife Resources Commission shall report its findings and recommendations to the Environmental Review Commission by March 1, 2016.

**SECTION 4.34.(a)** The Wildlife Resources Commission shall establish a coyote management plan to address the impacts of coyotes in this State and the threats that coyotes pose to citizens, industries, and populations of native wildlife species within the State.

**SECTION 4.34.(b)** The Wildlife Resources Commission shall report its findings and recommendations, including any proposed legislation to address overpopulation of coyotes, to the Environmental Review Commission by March 1, 2016.

**SECTION 4.35.(a)** The Wildlife Resources Commission shall establish a pilot coyote management assistance program in Mitchell County. In implementing the program, the Commission shall document and assess private property damage associated with coyotes; evaluate effectiveness of different coyote control methodologies, including lethal removal; and evaluate potential for a scalable statewide coyote assistance program.

**SECTION 4.35.(b)** The Wildlife Resources Commission shall submit an interim report on the progress of the pilot program to the Environmental Review Commission by March 1, 2016. The Wildlife Resources Commission shall submit a final report on the results of the pilot program, including any proposed legislation, to the Environmental Review Commission by January 1, 2017.

**ANIMAL WELFARE HOTLINE AND COURT FEE TO SUPPORT THE INVESTIGATION OF ANIMAL CRUELTY VIOLATIONS**

**SECTION 4.36.(a)** Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

**"§ 114-8.7. Reports of animal cruelty and animal welfare violations.**

(a) The Attorney General shall establish a hotline to receive reports of allegations of animal cruelty or violations of the Animal Welfare Act, Article 3 of Chapter 19A of the General Statutes, against animals under private ownership, by means including telephone, electronic mail, and Internet Web site. The Attorney General shall periodically publicize the hotline telephone number, electronic mail address, Internet Web site address, and any other means by which the Attorney General may receive reports of allegations of animal cruelty or violations of the Animal Welfare Act. Any individual who makes a report under this section shall disclose his or her name and telephone number and any other information the Attorney General may require.

(b) When the Attorney General receives allegations involving activity that the Attorney General determines may involve cruelty to animals under private ownership in violation of

1 Article 47 of Chapter 14 of the General Statutes, the allegations shall be referred to the  
2 appropriate local animal control authority for the unit or units of local government within  
3 which the violations are alleged to have occurred. When the Attorney General receives  
4 allegations involving activity that the Attorney General determines may involve violations of  
5 the Animal Welfare Act, the allegations shall be referred to the Department of Agriculture and  
6 Consumer Services. The Attorney General shall record the total number of reports received on  
7 the hotline and the number of reports received against any individual on the hotline.

8 (c) Notwithstanding other provisions of law, the Department of Justice is authorized to  
9 spend any federal, State, local, or private funds available for this purpose to administer the  
10 provisions of this section.

11 (d) Notwithstanding G.S. 147-33.72C and related provisions of law, in order to expedite  
12 the timely implementation of technology systems to record and manage public allegations and  
13 complaints received pursuant to this section, the Department of Justice is exempted from  
14 external agency project approval standards."

15 **SECTION 4.36.(b)** This section becomes effective March 1, 2016.

## 16 17 **STUDY FLOOD ELEVATIONS AND BUILDING HEIGHT REQUIREMENTS**

18 **SECTION 4.38.** The Department of Insurance, the Department of Public Safety,  
19 and the Building Code Council shall jointly study how flood elevations and building heights for  
20 structures are established and measured in the coastal region of the State. The Departments and  
21 the Council shall specifically consider how flood elevations and coastal building height  
22 requirements affect flood insurance rates and how height calculation methods might be made  
23 more consistent and uniform in order to provide flood insurance rate relief. In conducting this  
24 study, the Departments and the Council shall engage a broad group of stakeholders, including  
25 property owners, local governments, representatives of the surveying industry, and  
26 representatives of the development industry. No later than March 1, 2016, the Departments and  
27 the Council shall jointly submit the results of their study, including any legislative  
28 recommendations, to the 2015 General Assembly.

## 29 30 **ALLOW ALTERNATE DISPOSAL OF BIODEGRADABLE AGRICULTURAL** 31 **PLASTICS**

32 **SECTION 4.39.(a)** G.S. 106-950 reads as rewritten:

33 **"§ 106-950. Exempt fires; no permit fees.**

34 (a) This Article shall not apply to any fires started, or caused to be started, within 100  
35 feet of an occupied dwelling house if such fire shall be confined (i) within an enclosure from  
36 which burning material may not escape or (ii) within a protected area upon which a watch is  
37 being maintained and which is provided with adequate fire protection equipment.

38 (a1) Except in cases where the Commissioner has prohibited all open burning during  
39 periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to  
40 Article 21B of Chapter 143 of the General Statutes, this Article shall not apply to, and no air  
41 quality permit shall be required for, the burning of polyethylene agricultural plastic used in  
42 connection with agricultural operations related to the growing, harvesting, or maintenance of  
43 crops, when all of the following conditions apply:

44 (1) The burning does not violate any State or federal ambient air quality  
45 standards.

46 (2) The burning is conducted between an hour after sunrise and an hour before  
47 sunset.

48 (3) The fire is set back at least 250 feet from any paved public roadway and at  
49 least 500 feet from any dwelling, group of dwellings, commercial or  
50 institutional establishment, or other occupied structure not located on the  
51 property on which the burning is conducted.

- 1           (4)   The burning is conducted in a manner such that it does not constitute a
- 2                   public nuisance.
- 3           (5)   The burning is conducted by any of the following means:
- 4                   a.   By professionally manufactured equipment solely for the purpose of
- 5                           plastic mulch burning or incineration and approved by the
- 6                           Commissioner.
- 7                   b.   By a fire that is enclosed in a noncombustible container.
- 8                   c.   By a fire that is restricted to a pile no greater than eight feet in
- 9                           diameter built upon ground cleared of all combustible material.

10       (b)   No charge shall be made for the granting of any permit required by this Article."

11           **SECTION 4.39.(b)** The Department of Agriculture and Consumer Services may

12 adopt rules to implement the provisions of this section.

13           **SECTION 4.39.(c)** This section becomes effective January 1, 2015.

14

15 **PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

16           **SECTION 5.1.** If any section or provision of this act is declared unconstitutional or

17 invalid by the courts, it does not affect the validity of this act as a whole or any part other than

18 the part declared to be unconstitutional or invalid.

19           **SECTION 5.2.** Except as otherwise provided, this act is effective when it becomes

20 law.