

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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**SENATE BILL 312\***  
**Agriculture/Environment/Natural Resources Committee Substitute Adopted**  
**4/17/01**  
**House Committee Substitute Favorable 6/5/01**  
**House Committee Substitute #2 Favorable 9/25/01**

Short Title: Amend Environmental/Health Laws.

(Public)

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Sponsors:

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Referred to:

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March 5, 2001

A BILL TO BE ENTITLED

1  
2 AN ACT TO: (1) AMEND CERTAIN LAWS RELATING TO THE CERTIFICATION  
3 OF WELL CONTRACTORS AND TO INCREASE THE MAXIMUM CIVIL  
4 PENALTY THAT MAY BE ASSESSED FOR VIOLATIONS OF THE WELL  
5 CONTRACTORS CERTIFICATION ACT OR THE WELL CONSTRUCTION  
6 ACT; (2) CLARIFY THAT THE REQUIREMENTS OF G.S. 106-660 APPLY  
7 ONLY TO INSTALLATIONS THAT HANDLE, STORE, DISTRIBUTE, OR  
8 APPLY ANHYDROUS AMMONIA FOR FERTILIZER USE; (3) REQUIRE  
9 THAT SOLID WASTE THAT IS TO BE INCINERATED IN CERTAIN  
10 INCINERATORS BE VISUALLY INSPECTED IN ORDER TO PREVENT THE  
11 INCINERATION OF WASTE THAT MAY NOT BE LAWFULLY  
12 INCINERATED; AND (4) AMEND THE EXEMPTION OF CERTAIN  
13 ESTABLISHMENTS THAT PREPARE OR SERVE FOOD OR DRINK FROM  
14 REGULATION AS FOOD AND LODGING FACILITIES.

15 The General Assembly of North Carolina enacts:

16 **SECTION 1.1.** G.S. 87-98.4(a) reads as rewritten:

17 "(a) Certification Required. – No well contractor shall perform or offer to perform  
18 any well contractor activity without being certified under this Article. The Commission  
19 may specify the types of general construction activities or geophysical activities that are  
20 not directly related to locating, testing, or withdrawing groundwater; evaluating, testing,  
21 developing, draining, or recharging any groundwater reservoir or aquifer; or controlling,  
22 diverting, or otherwise causing the movement of water from or into any aquifer and are  
23 therefore not well construction activities."

24 **SECTION 1.2.** G.S. 87-98.7 reads as rewritten:

25 "§ **87-98.7.** **Issuance and renewal of certificates; temporary**  
26 **certification-certification; refusal to issue a certificate.**

1 (a) Issuance. – An applicant, upon satisfactorily meeting the appropriate  
2 requirements, shall be certified to perform in the capacity of a well contractor and shall  
3 be issued a suitable certificate by the Commission designating the level of the person's  
4 competency. A certificate shall be valid for one year or until any of the following  
5 occurs:

6 (1) The certificate holder voluntarily surrenders the certificate to the  
7 Commission.

8 (2) The certificate is revoked or suspended by the Commission for cause.

9 (b) Renewal. – A certificate shall be renewed annually by payment of the annual  
10 fee. A person who fails to renew a certificate within ~~three months~~30 days of the  
11 expiration of the certificate must reapply for certification under this Article.

12 (c) Temporary Certification. – A person may receive temporary certification to  
13 construct a well upon submission of an application to the Commission and subsequent  
14 approval in accordance with the criteria established by the Commission and upon  
15 payment of a temporary certification fee. A temporary certification shall be granted to  
16 the same person only once per calendar year and may not be valid for a period in excess  
17 of 45 consecutive days. To perform additional well contractor activity during that same  
18 calendar year, the person shall apply for certification under this Article.

19 (d) Refusal to Issue a Certificate. – The Commission shall not issue a certificate  
20 under any of the following circumstances:

21 (1) The applicant has not paid civil penalties assessed against the applicant  
22 under G.S. 87-94 for a violation of this Article, Article 7 of this  
23 Chapter, or any rule adopted to implement either of those Articles.

24 (2) The applicant has not conducted all restoration activities ordered by  
25 the Department related to a violation by the applicant of Article 7 of  
26 this Chapter.

27 (3) As determined by the Commission, the applicant has a history of not  
28 complying with this Article, Article 7 of this Chapter, or any rule  
29 adopted to implement either of those Articles."

30 **SECTION 1.3.** G.S. 87-98.12 reads as rewritten:

31 "**§ 87-98.12. Continuing education requirements; requirements; exemption.**

32 (a) In order to continue to be certified under this Article, a well contractor shall  
33 satisfactorily complete the number of hours of approved continuing education required  
34 by the Commission. The Commission shall establish the minimum number of hours of  
35 continuing education that shall be required to maintain certification, shall specify the  
36 scope of required continuing education courses, and shall approve continuing education  
37 courses.

38 (b) A well contractor who is 70 years of age or more; who has engaged in well  
39 contractor activity for more than 20 years; who has no record of having violated any  
40 provision of this Article, Article 7 of this Chapter, or order issued pursuant to or rule  
41 adopted under this Article or Article 7 of this Chapter in the previous 10 years; and who  
42 meets all other requirements for certification under this Article is exempt from  
43 continuing education requirements adopted pursuant to this section."

1           **SECTION 1.4.** G.S. 87-94(a) reads as rewritten:

2           "(a) Any person who violates any provision of this Article, Article 7A of this  
3 Chapter, any order issued pursuant thereto, or any rule adopted thereunder, shall be  
4 subject to a civil penalty of not more than ~~one hundred dollars (\$100.00)~~one thousand  
5 dollars (\$1,000) for each violation, as determined by the Secretary of Environment and  
6 Natural Resources. Each day of a continuing violation shall be considered a separate  
7 offense. No person shall be subject to a penalty who did not directly commit the  
8 violation or cause it to be committed."

9           **SECTION 1.5.** The Well Contractors Certification Commission may adopt  
10 temporary and permanent rules to implement the provisions of Sections 1.1 through 1.4  
11 of this act and to alter the minimum requirements of education, experience, and  
12 knowledge for certification of well contractors adopted by the Commission pursuant to  
13 G.S. 87-98.6. Sections 1.1 through 1.4 of this act constitute a recent act of the General  
14 Assembly within the meaning of G.S. 150B-21.1. Notwithstanding G.S.  
15 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Well Contractors Certification  
16 Commission may adopt temporary rules as provided in this section until 1 July 2002.  
17 Prior to the adoption of a temporary rule under this section, the Commission shall  
18 publish a notice of intent to adopt a temporary rule in the North Carolina Register. The  
19 notice shall set out the text of the proposed temporary rule and include the name and  
20 address of the person to whom questions and written comment on the proposed  
21 temporary rule may be submitted. The Commission shall accept written comment on  
22 the proposed temporary rule for at least 30 days after the notice of intent to adopt a  
23 temporary rule is published in the North Carolina Register.

24           **SECTION 2.** G.S. 106-660(g) reads as rewritten:

25           "(g) Before any anhydrous ammonia installation that handles, stores, distributes,  
26 or applies anhydrous ammonia for fertilizer use shall be built in this State, a general  
27 layout of ~~such the~~ installation shall be submitted in duplicate and approved by the  
28 Commissioner. In order that ~~such a the~~ layout may be approved it must conform to the  
29 minimum standards and rules and regulations, relating to safe handling, storage,  
30 ~~distribution and/or distribution,~~ or application adopted by the Board of Agriculture. All  
31 storage tanks, transfer or transport containers, applicator containers, and attached  
32 equipment for fertilizer use shall conform to the minimum standards adopted by the  
33 Board of Agriculture. It shall be the duty of ~~the contractors referred to in G.S. 106-~~  
34 ~~657(4) a contractor,~~ as defined in G.S. 106-657 to obtain, maintain and operate in  
35 accordance with the minimum standards and rules and regulations adopted by the Board  
36 of Agriculture, ~~any and all equipment which he~~ any equipment that the contractor may  
37 use in the application of anhydrous ammonia. It shall be the duty of the Commissioner  
38 to inspect and ascertain whether or not the provisions of this section are complied with."

39           **SECTION 3.1.** G.S. 130A-309.10(h) reads as rewritten:

40           "(h) The accidental or occasional disposal of small amounts of prohibited solid  
41 waste by landfill ~~or incineration~~ shall not be construed as a violation of subsection (f) ~~or~~  
42 ~~(f1)~~ of this section."

1           **SECTION 3.2.** G.S. 130A-309.10 is amended by adding new subsections to  
2 read:

3       "(i) The accidental or occasional disposal of small amounts of prohibited solid  
4 waste by incineration shall not be construed as a violation of subsection (f1) of this  
5 section if the Department has approved a plan for the incinerator as provided in  
6 subsection (j) of this section or if the incinerator is exempt from subsection (j) of this  
7 section.

8       (j) The Department may issue a permit pursuant to this Article for an incinerator  
9 that is subject to subsection (f1) of this section only if the applicant for the permit has a  
10 plan approved by the Department pursuant to this subsection. The applicant shall file the  
11 plan at the time of the application for the permit. The Department shall approve a plan  
12 only if it complies with the requirements of this subsection. The plan shall provide for  
13 the implementation of a program to prevent the incineration of the solid waste listed in  
14 subsection (f1) of this section. The program shall include the random visual inspection  
15 prior to incineration of at least ten percent (10%) of the solid waste to be incinerated.  
16 The program shall also provide for the retention of the records of the random visual  
17 inspections and the training of personnel to recognize the solid waste listed in  
18 subsection (f1) of this section. If a random visual inspection discovers solid waste that  
19 may not be incinerated pursuant to subsection (f1) of this section, the program shall  
20 provide that the operator of the incinerator shall dispose of the solid waste in accordance  
21 with applicable federal and State laws, regulations, and rules. This subsection does not  
22 apply to an incinerator that disposes only of medical waste."

23           **SECTION 3.3.** If an incinerator that is subject to the new G.S.  
24 130A-309.10(j) as enacted by Section 3.2 of this act has received a permit pursuant to  
25 this Article prior to the effective date of Section 3.2 of this act, then a plan that complies  
26 with the requirements of G.S. 130A-309.10(j) shall be submitted to the Department for  
27 approval within 90 days after Section 3.2 of this act becomes effective. The Department  
28 shall review and either approve or disapprove a plan submitted pursuant to this section  
29 within 90 days of the day the plan is submitted. Upon approval by the Department, a  
30 plan submitted pursuant to this section shall be implemented within 60 days of the date  
31 of its approval.

32           **SECTION 3.4.** The Environmental Management Commission shall adopt  
33 temporary rules in accordance with 65 Federal Register No. 235 pp. 76,378 through  
34 76,405 (6 December 2000) by 1 March 2002. These rules shall include a compliance  
35 schedule that requires existing small municipal waste combustion units to achieve final  
36 compliance with the rules no later than 1 March 2003.

37           **SECTION 3.5.** The Lower Cape Fear River Research and Education  
38 Program, located at and administered by the Center for Marine Science at the University  
39 of North Carolina at Wilmington, shall pursue and apply for funding to conduct water  
40 quality and sediment sampling for heavy metals and other contaminants in the Lower  
41 Cape Fear River.

42           **SECTION 4.** G.S. 130A-250(7) reads as rewritten:

43 "**§ 130A-250. Exemptions.**

1 The following shall be exempt from this Part:

2 ...

3 (7) Establishments (i) that are incorporated as nonprofit corporations in  
4 accordance with Chapter 55A of the General Statutes or (ii) that are  
5 exempt from federal income tax under the Internal Revenue Code, as  
6 defined in G.S. 105-228.90, or (iii) that are political committees as  
7 defined in G.S. 163-278.6(14) and that prepare or serve food or drink  
8 for pay no more frequently than once a month for a period not to  
9 exceed two consecutive days, including establishments permitted  
10 pursuant to this Part when preparing or serving food or drink at a  
11 location other than the permitted locations. A nutrition program for the  
12 elderly that is administered by the Division of Aging of the  
13 Department of Health and Human Services and that prepares and  
14 serves food or drink on the premises where the program is located in  
15 connection with a fundraising event is exempt from this Part if food  
16 and drink are prepared and served no more frequently than one day  
17 each month.

18 ...."

19 **SECTION 5.** This act is effective when it becomes law. Section 1.3 of this  
20 act expires 1 September 2008.