

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 94  
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Short Title: Amend Environmental Laws 2013.

(Public)

Sponsors:

Referred to:

February 13, 2013

A BILL TO BE ENTITLED

1 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES  
2 LAWS TO (1) REPEAL 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY  
3 DIESEL VEHICLE REQUIREMENTS; (2) DIRECT THE DEPARTMENT OF  
4 ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE CONTINUED  
5 NEED TO CONDUCT VEHICLE EMISSIONS INSPECTIONS; (3) PROVIDE THE  
6 ENVIRONMENTAL MANAGEMENT COMMISSION WITH THE FLEXIBILITY TO  
7 DETERMINE WHETHER RULES ARE NECESSARY FOR CONTROLLING THE  
8 EFFECTS OF COMPLEX SOURCES ON AIR QUALITY; (4) AMEND THE RULES  
9 THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT-OF-WAY  
10 MAINTENANCE; (5) CLARIFY THAT AN AIR QUALITY PERMIT SHALL BE  
11 ISSUED FOR A TERM OF EIGHT YEARS AND PROVIDE THAT A THIRD PARTY  
12 WHO IS DISSATISFIED WITH A DECISION OF THE ENVIRONMENTAL  
13 MANAGEMENT COMMISSION REGARDING AN AIR QUALITY PERMIT MAY  
14 FILE A CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT  
15 WITHIN 30 DAYS; (6) AMEND COASTAL AREA MANAGEMENT ACT MINOR  
16 PERMIT NOTICE REQUIREMENTS; (7) AMEND DIRECTION TO THE MINING  
17 ENERGY COMMISSION CONCERNING ADOPTION OF RULES GOVERNING  
18 DISCLOSURE OF INFORMATION PERTAINING TO HYDRAULIC FRACTURING  
19 FLUID CHEMICALS AND CONSTITUENTS; (8) EXEMPT THE MINING AND  
20 ENERGY COMMISSION, THE ENVIRONMENTAL MANAGEMENT COMMISSION,  
21 AND THE COMMISSION FOR PUBLIC HEALTH FROM PREPARING FISCAL  
22 NOTES FOR RULES THAT PERTAIN TO THE MANAGEMENT OF OIL AND GAS  
23 DEVELOPMENT; (9) CLARIFY THE PROCESS FOR APPEALS FROM CIVIL  
24 PENALTIES ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED  
25 AND ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM  
26 APPROVED UNDER G.S. 113A-60 AND PROVIDE THAT CIVIL PENALTIES  
27 ASSESSED BY A LOCAL GOVERNMENT PURSUANT TO THE SEDIMENTATION  
28 POLLUTION CONTROL ACT OF 1973 SHALL BE REMITTED TO THE CIVIL  
29 PENALTY AND FORFEITURE FUND; (10) PROVIDE FOR LOW-FLOW DESIGN  
30 ALTERNATIVES FOR WASTEWATER SYSTEMS; (11) DIRECT THE COMMISSION  
31 FOR PUBLIC HEALTH TO ADOPT RULES TO PROVIDE FOR NOTICE OF KNOWN  
32 CONTAMINATION TO APPLICANTS WHO SEEK TO CONSTRUCT NEW PRIVATE  
33



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1 DRINKING WATER WELLS AND TO DIRECT LOCAL HEALTH DEPARTMENTS  
2 TO EITHER ISSUE A PERMIT OR DENY AN APPLICATION FOR THE  
3 CONSTRUCTION, REPAIR, OR OPERATION OF A WELL WITHIN 30 DAYS OF  
4 RECEIPT OF AN APPLICATION; (12) CLARIFY THOSE UNDERGROUND  
5 STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY  
6 CONTAINMENT UNTIL JANUARY 1, 2020; (13) MAKE TECHNICAL AND  
7 CONFORMING CHANGES TO PROTECTED SPECIES, MARINE, AND WILDLIFE  
8 RESOURCES STATUTES; (14) MAKE CLARIFYING AND CONFORMING  
9 CHANGES TO THE STATUTES PERTAINING TO THE MANAGEMENT OF  
10 SNAKES AND OTHER REPTILES; (15) AMEND THE ADMINISTRATIVE  
11 PROCEDURE ACT TO PROVIDE THE WILDLIFE RESOURCES COMMISSION  
12 WITH TEMPORARY RULE-MAKING AUTHORITY FOR MANNER OF TAKE; (16)  
13 PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING PROPERTY  
14 WITH KNOWN CONTAMINATION WITHOUT APPROVAL OF THE GOVERNOR  
15 AND COUNCIL OF STATE; (17) CLARIFY THAT NO BUILDING PERMIT IS  
16 REQUIRED FOR ROUTINE MAINTENANCE OF FUEL DISPENSERS; (18) CLARIFY  
17 THE FEES THAT THE SECRETARY FOR ENVIRONMENT AND NATURAL  
18 RESOURCES MAY ADOPT FOR THE NORTH CAROLINA AQUARIUMS; (19)  
19 REPEAL THE MOUNTAIN RESOURCES PLANNING ACT; (20) PROVIDE AN  
20 EXEMPTION FROM LOCAL GOVERNMENT REQUIREMENTS REGARDING THE  
21 NUMBER OF ACRES REQUIRED FOR PROPERTY DEVELOPMENT FOR  
22 BROWNFIELDS AGREEMENTS; (21) DIRECT THE DEPARTMENT OF  
23 TRANSPORTATION TO ADOPT RULES FOR SELECTIVE PRUNING WITHIN  
24 HIGHWAY RIGHTS-OF-WAY; (22) CLARIFY REQUIREMENTS FOR COMPLIANCE  
25 BOUNDARIES WITH RESPECT TO GROUNDWATER QUALITY STANDARDS; (23)  
26 EXEMPT CERTAIN RADIO TOWERS FROM APPLICABILITY WITH THE  
27 MILITARY LANDS PROTECTION ACT; (24) CLARIFY THAT EXTENDED  
28 DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS  
29 AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS  
30 CONSTRUCTION; (25) ADD A FACTOR FOR CONSIDERATION IN ASSESSING  
31 SOLID WASTE PENALTIES; (26) LIMIT LOCAL GOVERNMENT REGULATION OF  
32 STORAGE, RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS;  
33 (27) AMEND THE DEFINITION OF "BUILT-UPON AREA" FOR PURPOSES OF  
34 IMPLEMENTING STORMWATER PROGRAMS; (28) EXEMPT PONDS THAT ARE  
35 CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES FROM RIPARIAN  
36 BUFFER RULES; (29) PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED  
37 WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION  
38 REGARDING A WATER QUALITY PERMIT MAY FILE A CONTESTED CASE  
39 UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS; (30)  
40 REPEAL REQUIREMENTS FOR INCREASES IN VEHICULAR SURFACE AREAS;  
41 (31) AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE  
42 TO ADJOINING PROPERTY OWNERS; (32) PROVIDE THAT CERTAIN WATER  
43 TREATMENT SYSTEMS WITH EXPIRED AUTHORIZATIONS MAY OBTAIN NEW  
44 AUTHORIZATIONS THAT ALLOW THE SYSTEMS TO WITHDRAW SURFACE  
45 WATER FROM THE SAME WATER BODY AT THE SAME RATE AS WAS  
46 APPROVED IN THE EXPIRED AUTHORIZATION; (33) COMBINE THE DIVISION  
47 OF WATER QUALITY AND THE DIVISION OF WATER RESOURCES TO CREATE  
48 A NEW DIVISION OF WATER RESOURCES IN THE DEPARTMENT OF  
49 ENVIRONMENT AND NATURAL RESOURCES AND MAKE CONFORMING  
50 CHANGES; (34) LIMIT REVIEW OF ENGINEERING WORK; AND (35) DIRECT THE

1 COMMISSION FOR PUBLIC HEALTH TO CLARIFY ITS RULES THAT  
2 IMPLEMENT THE PROHIBITION ON SMOKING IN BARS AND RESTAURANTS.  
3 The General Assembly of North Carolina enacts:  
4

5 **PART I. REPEAL 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY DIESEL**  
6 **VEHICLE REQUIREMENTS**

7 **SECTION 1.** The Environmental Management Commission shall repeal 15A  
8 NCAC 02D .1009 (Model Year 2008 and Subsequent Model Year Heavy-Duty Vehicle  
9 Requirements) on or before December 1, 2013. Until the effective date of the repeal of the rule  
10 required pursuant to this section, the Environmental Management Commission, the Department  
11 of Environment and Natural Resources, or any other political subdivision of the State shall not  
12 implement or enforce 15A NCAC 02D .1009 (Model Year 2008 and Subsequent Model Year  
13 Heavy-Duty Vehicle Requirements).  
14

15 **PART II. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO**  
16 **STUDY THE CONTINUED NEED TO CONDUCT VEHICLE EMISSIONS**  
17 **INSPECTIONS**

18 **SECTION 2.** The Department of Environment and Natural Resources shall  
19 conduct a study to examine whether all of the counties covered under the emissions testing and  
20 maintenance program pursuant to G.S. 143-215.107A are needed to meet and maintain the  
21 current and proposed federal ozone standards in North Carolina. The Department shall report  
22 its interim findings to the Environmental Review Commission on or before April 1, 2015, and  
23 shall submit its final report, including any findings and legislative recommendations, to the  
24 Environmental Review Commission on or before April 1, 2016.  
25

26 **PART III. PROVIDE THE ENVIRONMENTAL MANAGEMENT COMMISSION**  
27 **WITH FLEXIBILITY TO DETERMINE WHETHER RULES ARE NECESSARY FOR**  
28 **CONTROLLING THE EFFECTS OF COMPLEX SOURCES ON AIR QUALITY**

29 **SECTION 3.** G.S. 143-215.109(a) reads as rewritten:

30 "(a) The Commission ~~shall~~ may by rule establish criteria for controlling the effects of  
31 complex sources on air quality. The rules shall set forth such basic minimum criteria or  
32 standards under which the Commission shall approve or disapprove any such construction or  
33 modification. The rules shall further provide for the submission of plans, specifications and  
34 such other information as may be necessary for the review and evaluation of proposed or  
35 modified complex sources."  
36

37 **PART IV. AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND**  
38 **CLEARING OR RIGHT-OF-WAY MAINTENANCE**

39 **SECTION 4.(a)** 15A NCAC 02D .1903 (Open Burning Without an Air Quality  
40 Permit). – Until the effective date of the revised permanent rule that the Commission is  
41 required to adopt pursuant to Section 4(c) of this act, the Commission, the Department, and any  
42 other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning  
43 Without an Air Quality Permit) shall implement the rule, as provided in Section 4(b) of this act.

44 **SECTION 4.(b)** Implementation. – Notwithstanding 15A NCAC 02D  
45 .1093(b)(2)(F) (Open Burning Without an Air Quality Permit), open burning for land clearing  
46 or right-of-way maintenance is permissible without an air quality permit if materials are not  
47 carried off site or transported over public roads for open burning unless the materials are  
48 carried or transported to:

- 49 (1) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain  
50 Burners) for the operation of an air curtain burner at a permanent site; or

- 1 (2) A location, where the material is burned not more than four times per year,
- 2 that meets all of the following criteria:
- 3 a. At least 500 feet from any dwelling, group of dwellings, or
- 4 commercial or institutional establishment, or other occupied structure
- 5 not located on the property on which the burning is conducted.
- 6 b. There are no more than two piles, each 20 feet in diameter, being
- 7 burned at one time.
- 8 c. The location is not a permitted solid waste management facility.

9 **SECTION 4.(c)** Additional Rule-Making Authority. – The Commission shall adopt  
 10 a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit)  
 11 consistent with Section 4(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by  
 12 the Commission pursuant to this section shall be substantively identical to the provisions of  
 13 Section 4(b) of this act. Rules adopted pursuant to this section are not subject to  
 14 G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become  
 15 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been  
 16 received as provided by G.S. 150B-21.3(b2).

17 **SECTION 4.(d)** Sunset. – Section 4(b) of this act expires on the date that rules  
 18 adopted pursuant to Section 4(c) of this act become effective.

19 **SECTION 4.(e)** G.S. 130A-294(a)(4) is amended by adding a new sub-subdivision  
 20 to read:

21 "d. Management of land clearing debris burned in accordance with 15A  
 22 NCAC 02D .1903 shall not require a permit pursuant to this section."  
 23

24 **PART V. CLARIFY THAT AN AIR QUALITY PERMIT SHALL BE ISSUED FOR A**  
 25 **TERM OF EIGHT YEARS AND PROVIDE THAT A THIRD PARTY WHO IS**  
 26 **DISSATISFIED WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT**  
 27 **COMMISSION REGARDING AN AIR QUALITY PERMIT MAY FILE A**  
 28 **CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN**  
 29 **30 DAYS**

30 **SECTION 5.** G.S. 143-215.108 reads as rewritten:

31 "**§ 143-215.108. Control of sources of air pollution; permits required.**

32 ...

33 (d1) No Title V permit issued pursuant to this section shall be issued or renewed for a  
 34 term exceeding five years. All other permits issued pursuant to this section shall be issued for a  
 35 term ~~not to exceed~~of eight years.

36 (e) A permit ~~applicant or permittee~~applicant, a permittee, or a third party who is  
 37 dissatisfied with a decision of the Commission may commence a contested case by filing a  
 38 petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or  
 39 permittee of its decision. If the permit applicant or permittee does not file a petition within the  
 40 required time, the Commission's decision on the application is final and is not subject to  
 41 review.

42 ...."

43  
 44 **PART VI. AMEND CAMA MINOR PERMIT NOTICE REQUIREMENTS**

45 **SECTION 6.** G.S. 113A-119 reads as rewritten:

46 "**§ 113A-119. Permit applications generally.**

47 (a) Any person required to obtain a permit under this Part shall file with the Secretary  
 48 and (in the case of a permit sought from a city or county) with the designated local official an  
 49 application for a permit in accordance with the form and content designated by the Secretary  
 50 and approved by the Commission. The applicant must submit with the application a check or

1 money order payable to the Department or the city or county, as the case may be, constituting a  
2 fee set by the Commission pursuant to G.S. 113A-119.1.

3 (b) Upon receipt of any application, a significant modification to an application for a  
4 major permit, or an application to modify substantially a previously issued major permit, the  
5 Secretary shall issue public notice of the proposed development (i) by mailing a copy of the  
6 application or modification, or a brief description thereof together with a statement indicating  
7 where a detailed copy of the proposed development may be inspected, to any citizen or group  
8 which has filed a request to be notified of the proposed development, and to any interested  
9 State agency; (ii) by posting or causing to be posted a notice at the location of the proposed  
10 development stating that an application, a modification of an application for a major permit, or  
11 an application to modify a previously issued major permit for development has been made,  
12 where the application or modification may be inspected, and the time period for comments; and  
13 (iii) with the exception of minor permit applications, by publishing notice of the application or  
14 modification at least once in one newspaper of general circulation in the county or counties  
15 wherein the development would be located at least 20 days before final action on a major  
16 permit ~~and at least seven days before final action on a permit under G.S. 113A-121 or before~~  
17 ~~the beginning of the hearing on a permit under G.S. 113A-122.~~ The notice shall set out that any  
18 comments on the development should be submitted to the Secretary by a specified date, not less  
19 than 15 days from the date of the newspaper publication of the notice or 15 days after mailing  
20 of the mailed notice, whichever is later. ~~Public notice under this subsection is mandatory,~~  
21 ~~except for a proposed modification to an application for a minor permit or proposed~~  
22 ~~modification of a previously issued minor permit that does not substantially alter the original~~  
23 ~~project.~~

24 (c) Within the meaning of this Part, the "designated local official" is the official who  
25 has been designated by the local governing body to receive and consider permit applications  
26 under this Part."  
27

## 28 **PART VII. AMEND DIRECTION TO THE MINING AND ENERGY COMMISSION** 29 **CONCERNING ADOPTION OF RULES GOVERNING DISCLOSURE OF** 30 **INFORMATION PERTAINING TO HYDRAULIC FRACTURING FLUID** 31 **CHEMICALS AND CONSTITUENTS**

32 SECTION 7.(a) G.S. 113-391(a)(5)h. reads as rewritten:

33 "§ 113-391. **Jurisdiction and authority; rules and orders.**

34 ...

- 35 h. Disclosure of chemicals and constituents used in oil and gas  
36 exploration, drilling, and production, including hydraulic fracturing  
37 fluids, to State regulatory agencies and to local government  
38 emergency response officials, and, with the exception of those items  
39 constituting trade secrets, as defined in G.S. 66-152(3), and that are  
40 designated as confidential or as a trade secret under G.S. 132-1.2,  
41 requirements for disclosure of those chemicals and constituents to the  
42 public. The rules shall provide that the Commission and the  
43 Department may review, but shall not possess or take ownership of,  
44 data and information related to chemicals and constituents used in  
45 hydraulic fracturing fluids that is designated as a trade secret. In  
46 addition, for that information related to chemicals and constituents  
47 used in hydraulic fracturing fluids that is designated as a trade secret,  
48 the Commission shall also develop rules that require public  
49 disclosure through an online chemical registry such as FracFOCUS  
50 of the applicable chemical families or other similar description of  
51 those chemicals and constituents, provided that such disclosure does

1 not violate federal or State law. For purposes of this subsection,  
2 "chemical family" means a group of chemicals that share similar  
3 chemical properties and have a common general name."

4 **SECTION 7.(b)** Notwithstanding subsection (m) of Section 2 of S.L. 2012-143,  
5 the Mining and Energy Commission shall adopt the rule as required by subsection (a) of this  
6 section no later than December 1, 2013. Rules adopted pursuant to subsection (a) of this section  
7 shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written  
8 objections had been received as provided by G.S. 150B-21.3(b2).

9  
10 **PART VIII. EXEMPT THE MINING AND ENERGY COMMISSION, THE**  
11 **ENVIRONMENTAL MANAGEMENT COMMISSION, AND THE COMMISSION FOR**  
12 **PUBLIC HEALTH FROM PREPARING FISCAL NOTES FOR RULES THAT**  
13 **PERTAIN TO THE MANAGEMENT OF OIL AND GAS EXPLORATION AND**  
14 **DEVELOPMENT**

15 **SECTION 8.** The Mining and Energy Commission, the Environmental  
16 Management Commission, and the Commission for Public Health are exempt from the  
17 provisions of G.S. 150B of the General Statutes that require the preparation of fiscal notes for  
18 any rule proposed for the creation of a modern regulatory program for the management of oil  
19 and gas exploration and development activities in the State, including the use of horizontal  
20 drilling and hydraulic fracturing for that purpose.

21  
22 **PART IX. CLARIFY LOCAL GOVERNMENT AUTHORITY UNDER THE**  
23 **SEDIMENTATION AND POLLUTION CONTROL ACT**

24 **SECTION 9.** G.S. 113A-64 reads as rewritten:

25 **"§ 113A-64. Penalties.**

26 (a) Civil Penalties. –

27 (1) Any person who violates any of the provisions of this Article or any  
28 ordinance, rule, or order adopted or issued pursuant to this Article by the  
29 Commission or by a local government, or who initiates or continues a  
30 land-disturbing activity for which an erosion and sedimentation control plan  
31 is required except in accordance with the terms, conditions, and provisions  
32 of an approved plan, is subject to a civil penalty. The maximum civil penalty  
33 for a violation is five thousand dollars (\$5,000). A civil penalty may be  
34 assessed from the date of the violation. Each day of a continuing violation  
35 shall constitute a separate violation.

36 (2) The Secretary or a local government that administers an erosion and  
37 sedimentation control program approved under G.S. 113A-60 shall  
38 determine the amount of the civil penalty and shall notify the person who is  
39 assessed the civil penalty of the amount of the penalty and the reason for  
40 assessing the penalty. The notice of assessment shall be served by any means  
41 authorized under ~~G.S. 1A-1, Rule 4, and~~ G.S. 1A-1. A notice of assessment  
42 by the Secretary shall direct the violator to either pay the assessment or  
43 contest the assessment within 30 days by filing a petition for a contested  
44 case under Article 3 of Chapter 150B of the General Statutes. If a violator  
45 does not pay a civil penalty assessed by the Secretary within 30 days after it  
46 is due, the Department shall request the Attorney General to institute a civil  
47 action to recover the amount of the assessment. A notice of assessment by a  
48 local government shall direct the violator to either pay the assessment or  
49 contest the assessment within 30 days by filing a petition for hearing with  
50 the local government as directed by procedures within the local ordinances  
51 or regulations adopted to establish and enforce the erosion and sedimentation

1 control program. If a violator does not pay a civil penalty assessed by a local  
2 government within 30 days after it is due, the local government may institute  
3 a civil action to recover the amount of the assessment. The civil action may  
4 be brought in the superior court of any county where the violation occurred  
5 or the violator's residence or principal place of business is located. A civil  
6 action must be filed within three years of the date the assessment was due.  
7 An assessment that is not contested is due when the violator is served with a  
8 notice of assessment. An assessment that is contested is due at the  
9 conclusion of the administrative and judicial review of the assessment.

10 (3) In determining the amount of the penalty, the Secretary or a local  
11 government shall consider the degree and extent of harm caused by the  
12 violation, the cost of rectifying the damage, the amount of money the  
13 violator saved by noncompliance, whether the violation was committed  
14 willfully and the prior record of the violator in complying or failing to  
15 comply with this ~~Article.~~ Article, or any ordinance, rule, or order adopted or  
16 issued pursuant to this Article by the Commission or by a local government.

17 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

18 (5) The clear proceeds of civil penalties collected by the Department or other  
19 State agency or a local government under this subsection shall be remitted to  
20 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.  
21 ~~Civil penalties collected by a local government under this subsection shall be~~  
22 ~~credited to the general fund of the local government as nontax revenue.~~

23 (b) Criminal Penalties. – Any person who knowingly or willfully violates any provision  
24 of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the  
25 Commission or a local government, or who knowingly or willfully initiates or continues a  
26 land-disturbing activity for which an erosion and sedimentation control plan is required, except  
27 in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of  
28 a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000)."  
29

## 30 **PART X. PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR** 31 **WASTEWATER SYSTEMS**

32 **SECTION 10.(a)** 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design  
33 Units). – Until the effective date of the revised permanent rule that the Commission is required  
34 to adopt pursuant to Section 10(c) of this act, the Commission, the Department, and any other  
35 political subdivision of the State shall implement 15A NCAC 18A .1949(b) (Sewage Flow  
36 Rates for Design Units) as provided in Section 10(b) of this act.

37 **SECTION 10.(b)** Implementation. – Notwithstanding the Daily Flow for Design  
38 rates listed in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units),  
39 a wastewater system shall be exempt from the Daily Flow for Design, and any other design  
40 flow standards that are established by the Department of Health and Human Services or the  
41 Commission for Public Health provided flow rates that are less than those listed in Table No. 1  
42 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) can be achieved through  
43 engineering design that utilizes low-flow fixtures and low-flow technologies and the design is  
44 prepared, sealed, and signed by a professional engineer licensed pursuant to Chapter 89C of the  
45 General Statutes. The Department and Commission may establish lower limits on reduced flow  
46 rates as necessary to ensure wastewater system integrity and protect public health, safety, and  
47 welfare. Proposed daily design flows for wastewater systems that are calculated to be less than  
48 3,000 total gallons per day shall not require State review pursuant to 15A NCAC 18A .1938(e).

49 **SECTION 10.(c)** Additional Rule-Making Authority. – The Commission shall  
50 adopt a rule to amend 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units)  
51 consistent with Section 10(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by

1 the Commission pursuant to this section shall be substantively identical to the provisions of  
2 Section 10(b) of this act. Rules adopted pursuant to this section are not subject to  
3 G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become  
4 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been  
5 received as provided by G.S. 150B-21.3(b2).

6 **SECTION 10.(d)** Sunset. – Section 10(b) of this act expires on the date that rules  
7 adopted pursuant to Section 10(c) of this act become effective.

8  
9 **PART XI. DIRECT THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES**  
10 **TO PROVIDE FOR NOTICE OF KNOWN CONTAMINATION TO APPLICANTS**  
11 **WHO SEEK TO CONSTRUCT NEW PRIVATE DRINKING WATER WELLS AND**  
12 **TO DIRECT LOCAL HEALTH DEPARTMENTS TO EITHER ISSUE A PERMIT OR**  
13 **DENY AN APPLICATION FOR THE CONSTRUCTION, REPAIR, OR OPERATION**  
14 **OF A WELL WITHIN 30 DAYS OF RECEIPT OF AN APPLICATION**

15 **SECTION 11.** G.S. 87-97 is amended by rewriting that section to read:

16 **"§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

17 (a) **Mandatory Local Well Programs.** – Each county, through the local health  
18 department that serves the county, shall implement a private drinking water well permitting,  
19 inspection, and testing program. Local health departments shall administer the program and  
20 enforce the minimum well construction, permitting, inspection, repair, and testing requirements  
21 set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay  
22 or refuse to permit a well that can be constructed or repaired and operated in compliance with  
23 the requirements set out in this Article and rules adopted pursuant to this Article.

24 (b) **Permit Required.** – Except for those wells required to be permitted by the  
25 Environmental Management Commission pursuant to G.S. 87-88, no person shall:

26 (1) Construct or assist in the construction of a private drinking water well unless  
27 a construction permit has been obtained from the local health department.

28 (2) Repair or assist in the repair of a private drinking water well unless a repair  
29 permit has been obtained from the local health department, except that a  
30 permit shall not be required for the repair or replacement of a pump or tank.

31 (c) **Permit Not Required for Maintenance or Pump Repair or Replacement.** – A repair  
32 permit shall not be required for any private drinking water well maintenance work that does not  
33 involve breaking or opening the well seal. A repair permit shall not be required for any private  
34 drinking water well repair work that involves only the repair or replacement of a pump or tank.

35 (d) **Well Site Evaluation.** – The local health department shall conduct a field  
36 investigation to evaluate the site on which a private drinking water well is proposed to be  
37 located before issuing a permit pursuant to this section. The field investigation shall determine  
38 whether there is any abandoned well located on the site, and if so, the construction permit shall  
39 be conditioned upon the proper closure of all abandoned wells located on the site in accordance  
40 with the requirements of this Article and rules adopted pursuant to this Article. If a private  
41 drinking water well is proposed to be located on a site on which a wastewater system subject to  
42 the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed  
43 to be located, the application for a construction permit shall be accompanied by a plat or site  
44 plan, as defined in G.S. 130A-334.

45 (e) **Issuance of Permit.** – ~~The local health department shall issue a construction permit~~  
46 ~~or repair permit if it determines that a private drinking water well can be constructed or~~  
47 ~~repaired and operated in compliance with this Article and rules adopted pursuant to this Article.~~  
48 Within 30 days of receipt of an application to construct or repair a well, a local health  
49 department shall make a determination whether the proposed private drinking water well can be  
50 constructed or repaired and operated in compliance with this Article and rules adopted pursuant  
51 to this Article and shall issue a permit or denial accordingly. If a local health department fails to



1 act within 30 days, the applicant may treat the failure to act as a denial of the permit and may  
2 challenge the denial as provided in Chapter 150B of the General Statutes. The local health  
3 department may impose any conditions on the issuance of a construction permit or repair  
4 permit that it determines to be necessary to ensure compliance with this Article and rules  
5 adopted pursuant to this Article. Notwithstanding any other provision of law, no permit for a  
6 well that is in compliance with this Article and the rules adopted pursuant to this Article shall  
7 be denied on the basis of a local government policy that discourages or prohibits the drilling of  
8 new wells.

9 (e1) Notice for Wells at Contamination Sites. – The Commission shall adopt rules  
10 governing permits issued for private drinking water wells for circumstances in which the local  
11 health department has determined that the proposed site for a private drinking water well is  
12 located within 1,000 feet of a known source of release of contamination. Rules adopted  
13 pursuant to this subsection shall provide for notice and information of the known source of  
14 release of contamination and any known risk of issuing a permit for the construction and use of  
15 a private drinking water well on such a site.

16 "...."

## 17

### 18 **PART XII. CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE** 19 **NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY** 20 **1, 2020**

21 **SECTION 12.** Section 11.6(a) of S.L. 2011-394 reads as rewritten:

22 "**SECTION 11.6.(a)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation  
23 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for  
24 Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed  
25 after January 1, ~~1994~~,1991, and prior to April 1, 2001, shall not be required to provide  
26 secondary containment until January 1, 2020."

### 27

### 28 **PART XIII. TECHNICAL AND CONFORMING CHANGES TO PROTECTED** 29 **SPECIES AND MARINE/WILDLIFE RESOURCES STATUTES**

30 **SECTION 13.(a)** G.S. 113-129 reads as rewritten:

31 "**§ 113-129. Definitions relating to resources.**

32 The following definitions and their cognates apply in the description of the various marine  
33 and estuarine and wildlife resources:

34 ...

35 (7) Fish; Fishes. – All ~~marine mammals; finfish;~~ all shellfish; and all  
36 crustaceans; and all other fishes, crustaceans.

37 "...."

38 **SECTION 13.(b)** G.S. 113-189 reads as rewritten:

39 "**§ 113-189. Protection of sea ~~turtles and porpoises;~~ turtles, marine mammals, migratory**  
40 **birds, and finfish.**

41 (a) It is unlawful to willfully take, harm, disturb or destroy any sea turtles protected  
42 under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be  
43 subsequently amended, including green, hawksbill, loggerhead, Kemp's ridley and leatherback  
44 turtles, or their nests or eggs.

45 (b) It shall be unlawful willfully to take, ~~harm~~—harm, disturb, or destroy  
46 porpoises, marine mammals protected under the federal Marine Mammal Protection Act of 1972  
47 (Public Law 92-522), as it may be subsequently amended.

48 (c) It shall be unlawful willfully to take, harm, disturb, or destroy migratory birds  
49 protected under the federal Migratory Bird Treaty Act of 1918 (16 U.S.C. §§ 703 through 712),  
50 as it may be subsequently amended, unless such action is permitted by regulations.

1       (d) It shall be unlawful willfully to take, harm, disturb, or destroy finfish protected  
2 under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be  
3 subsequently amended."  
4

5 **PART XIV. CLARIFYING AND CONFORMING CHANGES TO STATUTES**  
6 **PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES**

7       **SECTION 14.(a)** G.S. 14-417 reads as rewritten:

8 **"§ 14-417. Regulation of ownership or use of venomous reptiles.**

9       (a) It shall be unlawful for any person to own, possess, use, transport, or traffic in any  
10 venomous reptile that is not housed in a sturdy and secure enclosure. Permanent enclosures  
11 shall be designed to be escape-proof, bite-proof, and have an operable lock. Transport  
12 containers shall be designed to be escape-proof and bite-proof.

13       (b) Each enclosure shall be clearly and visibly labeled "Venomous Reptile Inside" with  
14 scientific name, common name, appropriate ~~antivenom~~, antivenin, and owner's identifying  
15 information noted on the container. A written bite protocol that includes emergency contact  
16 information, local animal control office, the name and location of suitable ~~antivenom~~, antivenin,  
17 first aid procedures, and treatment guidelines, as well as an escape recovery plan must be  
18 within sight of permanent housing, and a copy must accompany the transport of any venomous  
19 reptile.

20       (c) In the event of an escape of a venomous reptile, the owner or possessor of the  
21 venomous reptile shall immediately notify local law enforcement."

22       **SECTION 14.(b)** G.S. 14-419 reads as rewritten:

23 **"§ 14-419. Investigation of suspected violations; seizure and examination of reptiles;**  
24 **disposition of reptiles.**

25       (a) In any case in which any law-enforcement officer or animal control officer has  
26 probable cause to believe that any of the provisions of this Article have been or are about to be  
27 violated, it shall be the duty of the officer and the officer is authorized, empowered, and  
28 directed to immediately investigate the violation or impending violation and to consult with  
29 representatives of the North Carolina Museum of Natural Sciences or the North Carolina  
30 Zoological Park or a designated representative of either the Museum or Zoological Park to  
31 identify appropriate and safe methods to seize the reptile or reptiles involved, to seize the  
32 reptile or reptiles involved, and the officer is authorized and directed to deliver: (i) a reptile  
33 believed to be venomous to the North Carolina State Museum of Natural Sciences or to its  
34 designated representative for examination for the purpose of ascertaining whether the reptile is  
35 regulated under this Article; and, (ii) a reptile believed to be a large constricting snake or  
36 crocodilian to the North Carolina Zoological Park for the purpose of ascertaining whether the  
37 reptile is regulated under this Article. In any case in which a law enforcement officer or animal  
38 control officer determines that there is an immediate risk to public safety, the officer shall not  
39 be required to consult with representatives of the North Carolina Museum of Natural Sciences  
40 or the North Carolina Zoological Park as provided by this subsection.

41       (b) If the Museum or the Zoological Park or their designated representatives find that a  
42 seized reptile is a venomous reptile, large constricting snake, or crocodilian regulated under this  
43 Article, the Museum or the Zoological Park or their designated representative shall determine  
44 final disposition of the reptile in a manner consistent with the safety of the ~~public~~, public, which  
45 in the case of a venomous reptile for which antivenin is not readily available, may include  
46 euthanasia.

47       (c) If the Museum or the Zoological Park or their designated representatives find that  
48 the reptile is not a venomous reptile, large constricting snake, or crocodilian regulated under  
49 this Article, and either no criminal warrants or indictments are initiated in connection with the  
50 reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being  
51 owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the

1 duty of the law enforcement officer to return the reptile or reptiles to the person from whom  
2 they were seized within 15 days."  
3

4 **PART XV. AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE**  
5 **THE WILDLIFE RESOURCES COMMISSION WITH TEMPORARY**  
6 **RULE-MAKING AUTHORITY FOR MANNER OF TAKE**

7 **SECTION 15.** G.S. 150B-21.1 reads as rewritten:

8 "**§ 150B-21.1. Procedure for adopting a temporary rule.**

9 (a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to  
10 the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest  
11 and that the immediate adoption of the rule is required by one or more of the following:

12 ...

13 (7) The need for the Wildlife Resources Commission to establish any of the  
14 following:

- 15 a. No wake zones.  
16 b. Hunting or fishing seasons-seasons, including provisions for manner  
17 of take or any other conditions required for the implementation of  
18 such season.  
19 c. Hunting or fishing bag limits.  
20 d. Management of public game lands as defined in G.S. 113-129(8a).

21 ...."

22  
23 **PART XVI. PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING**  
24 **PROPERTY WITH KNOWN CONTAMINATION WITHOUT APPROVAL OF THE**  
25 **GOVERNOR AND COUNCIL OF STATE**

26 **SECTION 16.** Chapter 133 of the General Statutes is amended by adding a new  
27 Article to read:

28 "Article 4.

29 "Purchase of Contaminated Property by Public Entities.

30 "**§ 133-40. Purchase of contaminated property by public entities.**

31 (a) For purposes of this Article, the term "public entity" means any department or  
32 agency of the State, a State university or college, and other similar entities.

33 (b) No public entity, as defined in subsection (a) of this section, shall purchase or  
34 otherwise acquire an ownership interest in any real property with known contamination, as that  
35 term is defined in G.S. 130A-310.65(5), without approval of the Governor and the Council of  
36 State. A public entity seeking to purchase or otherwise acquire an ownership interest in such  
37 property shall petition the Governor and Council of State for approval of the transaction, with  
38 sufficient information to identify the property, the nature and extent of the contamination  
39 present, and a plan of paying for the project and for remediation of any contamination without  
40 the use of General Fund appropriations. The approval of such a transaction by the Governor  
41 and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the  
42 meeting of the Governor and Council of State, attested by the private secretary to the Governor  
43 or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and  
44 said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of  
45 review and approval of the subject transaction by the Governor and Council of State. The  
46 Governor, acting with the approval of the Council of State, may delegate the review and  
47 approval of such transactions as the Governor deems advisable.

48 (c) This Article shall not apply to situations in which a public entity acquires ownership  
49 or control of real property involuntarily, including having obtained the property through  
50 bankruptcy, tax delinquency, abandonment, or other circumstances in which the public entity  
51 involuntarily acquires title by virtue of its function as a sovereign."

1  
2 **PART XVII. CLARIFY THAT NO BUILDING PERMIT IS REQUIRED FOR**  
3 **ROUTINE MAINTENANCE ON FUEL DISPENSERS**

4 **SECTION 17.** G.S. 143-138 is amended by adding a new subsection to read:

5 "...

6 (b13) No building permit shall be required under the Code for routine maintenance on fuel  
7 dispensing pumps and other dispensing devices. For purposes of this subsection, "routine  
8 maintenance" includes repair or replacement of hoses, O-rings, nozzles, or emergency  
9 breakaways."

10  
11 **PART XVIII. CLARIFY THE FEES THAT THE SECRETARY OF ENVIRONMENT**  
12 **AND NATURAL RESOURCES MAY ADOPT FOR THE NORTH CAROLINA**  
13 **AQUARIUMS**

14 **SECTION 18.** G.S. 143B-289.44 reads as rewritten:

15 **"§ 143B-289.44. North Carolina Aquariums; fees; fund.**

16 (a) Fees. – The Secretary of Environment and Natural Resources may adopt a schedule  
17 of ~~uniform entrance~~ fees for the aquariums and piers operated by the North Carolina  
18 Aquariums. Aquariums, including:

19 (1) Gate admission fees.

20 (2) Facility rental fees.

21 (3) Educational programs.

22 "...."

23  
24 **PART XIX. REPEAL THE MOUNTAIN RESOURCES PLANNING ACT**

25 **SECTION 19.** Chapter 153B of the General Statutes is repealed.

26  
27 **PART XX. PROVIDE AN EXEMPTION FROM LOCAL GOVERNMENT**  
28 **REQUIREMENTS REGARDING THE NUMBER OF ACRES FOR PROPERTY**  
29 **DEVELOPMENT FOR BROWNFIELDS DEVELOPMENTS**

30 **SECTION 20.(a)** G.S. 153A-349.4 reads as rewritten:

31 **"§ 153A-349.4. Developed property must contain certain number of acres; permissible**  
32 **durations of agreements.**

33 (a) A local government may enter into a development agreement with a developer for  
34 the development of property as provided in this Part, provided the property contains 25 acres or  
35 more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes,  
36 and other portions of the property which may be precluded from development at the time of  
37 application). Development agreements shall be of a term specified in the agreement, provided  
38 they may not be for a term exceeding 20 years.

39 (b) Notwithstanding the acreage requirements of subsection (a) of this section, a local  
40 government may enter into a development agreement with a developer for the development of  
41 property as provided in this Part for developable property of any size (exclusive of wetlands,  
42 mandatory buffers, unbuildable slopes, and other portions of the property which may be  
43 precluded from development at the time of application), if the developable property that would  
44 be subject to the development agreement is subject to an executed brownfields agreement  
45 pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development  
46 agreements shall be of a term specified in the agreement, provided they may not be for a term  
47 exceeding 20 years."

48 **SECTION 20.(b)** G.S. 160A-400.23 reads as rewritten:

49 **"§ 160A-400.23. Developed property must contain certain number of acres; permissible**  
50 **durations of agreements.**

1       (a) A local government may enter into a development agreement with a developer for  
2 the development of property as provided in this Part, provided the property contains 25 acres or  
3 more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes,  
4 and other portions of the property which may be precluded from development at the time of  
5 application). Development agreements shall be of a term specified in the agreement, provided  
6 they may not be for a term exceeding 20 years.

7       (b) Notwithstanding the acreage requirements of subsection (a) of this section, a local  
8 government may enter into a development agreement with a developer for the development of  
9 property as provided in this Part for developable property of any size (exclusive of wetlands,  
10 mandatory buffers, unbuildable slopes, and other portions of the property which may be  
11 precluded from development at the time of application), if the developable property that would  
12 be subject to the development agreement is subject to an executed brownfields agreement  
13 pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development  
14 agreements shall be of a term specified in the agreement, provided they may not be for a term  
15 exceeding 20 years."

16  
17 **PART XXI. DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT**  
18 **RULES FOR SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY**

19       **SECTION 21.** The Department of Transportation shall adopt rules to authorize  
20 selective pruning within highway rights-of-way for vegetation that obstructs motorists' views of  
21 properties on which agritourism activities, as that term is defined in G.S. 99E-30, occur. The  
22 Department of Transportation is exempt from the provisions of G.S. 150B that require the  
23 preparation of fiscal notes for any rule proposed pursuant to this Section.  
24

25 **PART XXII. CLARIFY REQUIREMENTS FOR COMPLIANCE BOUNDARIES**  
26 **WITH RESPECT TO GROUNDWATER QUALITY STANDARDS**

27       **SECTION 22.(a)** G.S. 143-215.1 is amended by adding three new subsections to  
28 read:

29 **"§ 143-215.1. Control of sources of water pollution; permits required.**

30       ...  
31       (i) Any person subject to the requirements of this section who is required to obtain an  
32 individual permit from the Commission for a disposal system under the authority of  
33 G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as  
34 may be established by rule or permit for various categories of disposal systems and beyond  
35 which groundwater quality standards may not be exceeded. The location of the compliance  
36 boundary shall be established at the property boundary, except as otherwise established by the  
37 Commission. Multiple contiguous properties under common ownership and permitted for use  
38 as a disposal system shall be treated as a single property with regard to determination of a  
39 compliance boundary under this subsection. Nothing in this subsection shall be interpreted to  
40 require a revision to an existing compliance boundary previously approved by rule or permit.

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

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

49           (2) An imminent hazard or threat to the environment, public health, or safety  
50 exists.

1           (3) A violation of any standard in groundwater occurring in the bedrock other  
2           than limestones found in the Coastal Plain sediments, unless it can be  
3           demonstrated that the violation will not adversely affect, or have the  
4           potential to adversely affect, a water supply well.

5           (k) Where operation of a disposal system permitted under this section results in  
6           exceedances of the groundwater quality standards at or beyond the compliance boundary  
7           established under subsection (i) of this section, exceedances shall be remedied through cleanup,  
8           recovery, containment, or other response as directed by the Commission."

9           **SECTION 22.(b)** With respect to exceedances of groundwater quality standards  
10          within a compliance boundary and related remedy requirements, G.S. 143-215.1(j) as set forth  
11          in Section 22(a) of this act shall apply in lieu of the restricted designation directives found in  
12          15A NCAC 2L .0104(d) and (e) until the Department of Environment and Natural Resources  
13          has adopted revisions to those rules to comply with this act.

### 14 15 **PART XXIII. EXEMPT CERTAIN RADIO TOWERS FROM APPLICABILITY WITH** 16 **THE MILITARY LANDS PROTECTION ACT OF 2013**

17          **SECTION 23.** G.S. 143-151.74, as enacted by Section 1 of S.L. 2013-206, reads as  
18          rewritten:

19          "**§ 143-151.74. Exemptions from applicability.**

20          (a) Wind energy facilities and wind energy facility expansions, as those terms are  
21          defined in Chapter 143 of the General Statutes, that are subject to the applicable permit  
22          requirements of that Chapter shall be exempt from obtaining the endorsement required by this  
23          Article.

24          (b) ~~Cellular~~-Cellular, radio, and television towers erected to temporarily replace ~~cellular~~  
25          cellular, radio, and television towers that are damaged or destroyed due to a natural disaster  
26          shall be exempt from obtaining the endorsement required by this Article provided all of the  
27          following conditions are met:

28               (1) The height of the ~~cellular~~-cellular, radio, or television tower that is erected to  
29               temporarily replace the ~~cellular~~-cellular, radio, or television tower that is  
30               damaged or destroyed does not exceed the height of the original ~~cellular~~  
31               cellular, radio, or television tower.

32               (2) A disaster has been declared pursuant to Chapter 166A of the General  
33               Statutes for the area in which the damaged or destroyed ~~cellular~~-cellular,  
34               radio, or television tower is located.

35               (3) The temporary ~~cellular~~-cellular, radio, or television tower shall only remain  
36               in place until the expiration of the declared disaster.

37          (c) The modification, replacement, removal, or addition of antennas on ~~cellular~~-cellular,  
38          radio, or television towers in an area surrounding a major military installation shall be exempt  
39          from obtaining the endorsement required by this Article provided the modification,  
40          replacement, removal, or addition does not increase the vertical height of the structure."

### 41 42 **PART XXIV. CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY** 43 **LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE** 44 **PERMITS FOR OPERATION AS WELL AS CONSTRUCTION**

45          **SECTION 24.(a)** Section 15.1 of S.L. 2012-187 reads as rewritten:

46          "**SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health shall adopt  
47          rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct  
48          and operate a five-year phase of landfill development and apply to amend the permit to  
49          construct and operate subsequent five-year phases of landfill development; or (ii) apply for a  
50          permit to construct and operate a 10-year phase of landfill development and apply to amend the  
51          permit to construct and operate subsequent 10-year phases of landfill development, with a

1 limited review of the permit five years after issuance of the initial permit and five years after  
2 issuance of each amendment for subsequent phases of development. No later than July 1, 2013,  
3 the Commission shall also adopt rules to allow applicants for permits for transfer stations the  
4 option to (i) apply for a permit with a five-year duration to construct and operate a transfer  
5 station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer  
6 station, with a limited review of the permit five years after issuance of the initial permit and  
7 five years after issuance of any amendment to the permit. In developing these rules, the  
8 Department of Environment and Natural Resources shall examine the current fee schedule for  
9 permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and  
10 formulate recommendations for adjustments to the current fee schedule sufficient to address  
11 any additional demands associated with review of permits issued for 10-year phases of landfill  
12 development and the issuance permits with a duration of up to 10 years for transfer stations.  
13 The Department shall report its findings and recommendations, including any legislative  
14 proposals, to the Environmental Review Commission on or before December 1, 2012. The rules  
15 required by this section shall not become effective until the fee schedule set forth under  
16 G.S. 130A-295.8 is amended as necessary to address any additional demands associated with  
17 review of permits issued for 10-year phases of landfill development and the issuance of permits  
18 with a duration of up to 10 years to construct and operate transfer stations."

19 **SECTION 24.(b)** If Senate Bill 328, 2013 Regular Session becomes law, then  
20 Section 24(a) of this act is repealed.

21  
22 **PART XXV. ADD A FACTOR FOR CONSIDERATION IN ASSESSING SOLID**  
23 **WASTE PENALTIES**

24 **SECTION 25.** G.S. 130A-22 reads as rewritten:

25 "**§ 130A-22. Administrative penalties.**

26 ...

27 (d) In determining the amount of the penalty in subsections (a), (b) and (c), the  
28 Secretary and the Secretary of Environment and Natural Resources shall consider ~~the degree~~  
29 ~~and extent of the harm caused by the violation and the cost of rectifying the damage.~~all of the  
30 following factors:

31 (1) Type of violation.

32 (2) Type of waste involved.

33 (3) Duration of the violation.

34 (4) Cause (whether resulting from a negligent, reckless, or intentional act or  
35 omission).

36 (5) Potential effect on public health and the environment.

37 (6) Effectiveness of responsive measures taken by the violator.

38 (7) Damage to private property.

39 (8) The degree and extent of harm caused by the violation.

40 (9) Cost of rectifying any damage.

41 (10) The amount of money the violator saved by noncompliance.

42 (11) The violator's previous record in complying or not complying with the  
43 provisions of Article 9 of this Chapter, Article 11 of this Chapter, or  
44 G.S. 130A-325, and any regulations adopted thereunder, as applicable to the  
45 violation in question.

46 ...."

47  
48 **PART XXVI. LIMIT LOCAL GOVERNMENT REGULATION OF STORAGE,**  
49 **RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS**

50 **SECTION 26.** G.S. 130A-309.09A is amended by adding a new subsection to  
51 read:

1        "(h) The storage, retention, and use of nonhazardous recycled materials, including  
2 asphalt pavement, rap, or roofing shingles, shall be encouraged by units of local government. A  
3 unit of local government shall not impede the storage, retention, or use of nonhazardous  
4 recycled products in properly zoned storage facilities through the regulation of the height of  
5 recycled material stockpiles, except when such facilities are located on lots within 200 yards of  
6 residential districts."

7  
8 **PART XXVII. AMEND THE DEFINITION OF "BUILT-UPON AREA" FOR**  
9 **PURPOSES OF IMPLEMENTING STORMWATER PROGRAMS**

10        **SECTION 27.(a)** G.S. 143-214.7 is amended by adding a new subsection to read:

11        "(b2) For purposes of implementing stormwater programs, "built-upon area" means  
12 impervious surface and partially impervious surface to the extent that the partially impervious  
13 surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon  
14 area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel."

15        **SECTION 27.(b)** Subdivision (7) of Section 2 of S.L. 2006-246 is repealed.

16        **SECTION 27.(c)** Subdivision (3) of subsection (a) of Section 2 of S.L. 2008-211 is  
17 repealed.

18        **SECTION 27.(d)** The Environmental Management Commission shall amend its  
19 rules to be consistent with the definition of "built-upon area" set out in subsection (b2) of  
20 G.S. 143-214.7, as enacted by Section 27(a) of this act.

21  
22 **PART XXVIII. EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR**  
23 **AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES**

24        **SECTION 28.(a)** Except as required by federal law or in an imminent threat to  
25 public health or safety (i) the temporary rules adopted July 22, 1997, January 22, 1998, April  
26 22, 1998, and June 22, 1999, and the permanent rule adopted and effective August 1, 2000, as  
27 15A NCAC 02B .0233 regarding the protection and maintenance of existing riparian buffers in  
28 the Neuse River Basin; (ii) the temporary rule adopted January 1, 2000, and the permanent rule  
29 adopted and effective August 1, 2000, as 15A NCAC 02B .0259 regarding the protection and  
30 maintenance of existing riparian buffers in the Tar-Pamlico River Basin; (iii) the permanent  
31 rule adopted and effective August 11, 2009, Session Law 2009-216, Session Law 2009-484,  
32 and the permanent rule, as amended, effective September 1, 2011, as 15A NCAC 02B .0267  
33 regarding the protection and maintenance of existing riparian buffers in the Jordan Water  
34 Supply Watershed; (iv) the permanent rule adopted effective April 1, 1999, and the permanent  
35 rule, as amended, effective June 1, 2010, as 15A NCAC 02B .0250 regarding the protection and  
36 maintenance of existing riparian buffers in the Randleman Lake Water Supply Watershed; (v)  
37 the temporary rule effective June 30, 2001, and the permanent rule effective August 1, 2004, as  
38 15A NCAC 02B .0243 regarding the protection and maintenance of existing riparian buffers in  
39 the Catawba River Basin; (vi) the permanent rule adopted and effective February 1, 2009, as  
40 15A NCAC 02B .0605 and the permanent rule adopted and effective February 1, 2009, as 15A  
41 NCAC 02B .0607 regarding the protection and maintenance of existing riparian buffers in the  
42 Goose Creek Watershed (Yadkin Pee-Dee River Basin); and (vii) any similar rule adopted for  
43 the protection and maintenance of riparian buffers, collectively referred to as "Riparian Buffer  
44 Rules" for the purposes of this section, shall not apply to a freshwater pond to which Riparian  
45 Buffer Rules would otherwise apply if all of the following conditions are met:

- 46        (1) The property on which the pond is located is used for agriculture as that term  
47 is defined in G.S. 106-581.1.  
48        (2) Except for the Riparian Buffer Rules and any similar rule adopted for the  
49 protection and maintenance of riparian buffers, the use of the property is in  
50 compliance with all other water quality and water quantity statutes and rules



1 applicable to the property before the adoption of the Riparian Buffer Rules  
2 for the river basin or watershed in which the property is located.

- 3 (3) The pond is not a component of an animal waste management system as  
4 defined in G.S. 143-215.10B(3).

5 **SECTION 28.(b)** If the use of property on which a pond is located changes such  
6 that the use no longer meets the criteria in subdivision (1) of subsection (a) of this section, the  
7 Riparian Buffer Rules for the river basin or watershed in which the property is located shall  
8 apply.

9 **SECTION 28.(c)** The Commission shall not adopt rules for the protection or  
10 maintenance of riparian buffers that apply to ponds provided the ponds are constructed or used  
11 for agriculture as that term is defined in G.S. 106-581.1.

12 **SECTION 28.(d)** Units of local government shall not adopt ordinances,  
13 resolutions, plans, or policies for the protection or maintenance of riparian buffers that apply to  
14 ponds provided the ponds are constructed or used for agriculture as that term is defined in  
15 G.S. 106-581.1.

16 **SECTION 28.(e)** The Environmental Management Commission shall adopt rules  
17 to amend the Neuse River Basin Riparian Buffer Rule, the Tar-Pamlico River Basin Riparian  
18 Buffer Rule, the Jordan Water Supply Riparian Buffer Rule, the Randleman Lake Water  
19 Supply Watershed Riparian Buffer Rule, the Catawba River Basin Riparian Buffer Rule, the  
20 Goose Creek Watershed (Yadkin Pee-Dee River Basin) Riparian Buffer Rule, and any other  
21 similar riparian buffer rules in accordance with subsections (a), (b), and (c) of this section.  
22 Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section  
23 shall be substantively identical to the provisions of subsections (a), (b), and (c) of this section.  
24 Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 through  
25 G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in  
26 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by  
27 G.S. 150B-21.3(b2).

28 **SECTION 28.(f)** Section 28(a) of this act expires on the date that rules adopted  
29 pursuant to Section 28(e) of this act become effective.  
30

31 **PART XXIX. PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED WITH A**  
32 **DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION**  
33 **REGARDING A WATER QUALITY PERMIT MAY FILE A CONTESTED CASE**  
34 **UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS**

35 **SECTION 29.** G.S. 143-215.1 reads as rewritten:

36 **"§ 143-215.1. Control of sources of water pollution; permits required.**

37 ...

38 (e) Administrative Review. – A permit ~~applicant or permittee~~ applicant, a permittee, or  
39 a third party who is dissatisfied with a decision of the Commission may commence a contested  
40 case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the  
41 applicant or permittee of its decision. If the permit applicant or permittee does not file a petition  
42 within the required time, the Commission's decision is final and is not subject to review.

43 ...."

44  
45 **PART XXX. REPEAL REQUIREMENTS FOR INCREASES IN VEHICULAR**  
46 **SURFACE AREAS**

47 **SECTION 30.** Article 4A of Chapter 113A of the General Statutes is repealed.  
48

49 **PART XXXI. AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE**  
50 **FOR NOTICE TO ADJOINING PROPERTY OWNERS**

51 **SECTION 31.** G.S. 113-229 reads as rewritten:

1 "§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

2 ...  
 3 (d) An applicant for a permit, other than an emergency permit, shall ~~send a copy of his~~  
 4 ~~application to notify~~ the owner of each tract of riparian property that adjoins that of the  
 5 applicant. ~~The copy shall be served~~ An applicant may satisfy the required notification of  
 6 adjoining riparian property owners by either (i) obtaining from each adjoining riparian property  
 7 owner a signed statement that the adjoining riparian property owner has no objection to the  
 8 proposed project or (ii) providing a copy of the applicant's permit application to each adjoining  
 9 riparian property owner by certified mail. ~~or, if~~ if the owner's address is unknown and  
 10 cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made  
 11 to serve the copy by certified mail, ~~by~~ publication in accordance with the rules of the  
 12 ~~Commission~~. Commission shall serve to satisfy the notification requirement. An owner may file  
 13 written objections to the permit with the Department for 30 days after ~~he~~ the owner is served  
 14 with a copy of the ~~application~~. application by certified mail. In the case of a special emergency  
 15 dredge or fill permit the applicant must certify that ~~he~~ the applicant took all reasonable steps to  
 16 notify adjacent riparian owners of the application for a special emergency dredge and fill  
 17 permit prior to submission of the application. Upon receipt of this certification, the Secretary  
 18 shall issue or deny the permit within the time period specified in subsection (e) of this section,  
 19 upon the express understanding from the applicant that ~~he~~ the applicant will be entirely liable  
 20 and hold the State harmless for all damage to adjacent riparian landowners directly and  
 21 proximately caused by the dredging or filling for which approval may be given.

22 ...."  
 23  
 24 **PART XXXII. PROVIDE THAT CERTAIN WATER TREATMENT SYSTEMS WITH**  
 25 **EXPIRED AUTHORIZATIONS MAY OBTAIN NEW AUTHORIZATIONS THAT**  
 26 **ALLOW THE SYSTEMS TO WITHDRAW SURFACE WATER FROM THE SAME**  
 27 **WATER BODY AT THE SAME RATE AS WAS APPROVED IN THE EXPIRED**  
 28 **AUTHORIZATION**

29 **SECTION 32.(a)** Public water systems with expired authorizations for water  
 30 treatment plants that have been deactivated may obtain new water treatment plant  
 31 authorizations that allow the system to withdraw surface water from the same water body and  
 32 at the same rate as approved in the expired authorization and such new authorizations shall not  
 33 be required to prepare an environmental document pursuant to Article 1 of Chapter 113A of the  
 34 General Statutes.

35 **SECTION 32.(b)** This section applies only to those public water systems for which  
 36 the authorization for the water treatment plant expired within the last ten calendar years of the  
 37 effective date of this act.

38  
 39 **PART XXXIII. COMBINE THE DIVISION OF WATER QUALITY AND THE**  
 40 **DIVISION OF WATER RESOURCES TO CREATE A NEW DIVISION OF WATER**  
 41 **RESOURCES IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL**  
 42 **RESOURCES AND MAKE CONFORMING CHANGES**

43 **SECTION 33.(a)** The Department of Environment and Natural Resources shall  
 44 combine the Division of Water Quality and the Division of Water Resources to create a new  
 45 Division of Water Resources.

46 **SECTION 33.(b)** G.S. 74-50(b3) reads as rewritten:

47 "(b3) When the Department receives an application for a new mining permit or for a  
 48 modification of a mining permit to add land to the permitted area, the Department shall send a  
 49 notice of the application to each of the following agencies with a request that each agency  
 50 review and provide written comment on the application within 30 days of the date on which the  
 51 request is made:

- 1 (1) Division of Air Quality, Department of Environment and Natural Resources.
- 2 (2) Division of Parks and Recreation, Department of Environment and Natural
- 3 Resources.
- 4 ~~(3) Division of Water Quality, Department of Environment and Natural~~
- 5 ~~Resources.~~
- 6 (4) Division of Water Resources, Department of Environment and Natural
- 7 Resources.
- 8 (5) North Carolina Geological Survey, Division of Energy, Mineral, and Land
- 9 Resources, Department of Environment and Natural Resources.
- 10 (6) Wildlife Resources Commission, Department of Environment and Natural
- 11 Resources.
- 12 (7) Office of Archives and History, Department of Cultural Resources.
- 13 (8) United States Fish and Wildlife Service, United States Department of the
- 14 Interior.
- 15 (9) Any other federal or State agency that the Department determines to be
- 16 appropriate, including the Division of Coastal Management, Department of
- 17 Environment and Natural Resources; the Division of Marine Fisheries,
- 18 Department of Environment and Natural Resources; the Division of Waste
- 19 Management, Department of Environment and Natural Resources; and the
- 20 Department of Transportation."

21 **SECTION 33.(c)** G.S. 90A-47.3 reads as rewritten:

22 **"§ 90A-47.3. Qualifications for certification; training; examination.**

23 (a) The Commission shall develop and administer a certification program for animal  
24 waste management system operators in charge that provides for receipt of applications, training  
25 and examination of applicants, and investigation of the qualifications of applicants.

26 (b) The Commission, in cooperation with the Division of Water ~~Quality Resources~~ of  
27 the Department of Environment and Natural Resources, and the Cooperative Extension Service,  
28 shall develop and administer a training program for animal waste management system  
29 operators in charge. An applicant for initial certification shall complete 10 hours of classroom  
30 instruction prior to taking the examination. In order to remain certified, an animal waste  
31 management system operator in charge shall complete six hours of approved additional training  
32 during each three-year period following initial certification. A certified animal waste  
33 management system operator in charge who fails to complete approved additional training  
34 within 30 days of the end of the three-year period shall take and pass the examination for  
35 certification in order to renew the certificate."

36 **SECTION 33.(d)** G.S. 106-805 reads as rewritten:

37 **"§ 106-805. Written notice of swine farms.**

38 Any person who intends to construct a swine farm whose animal waste management system  
39 is subject to a permit under Part 1 or 1A of Article 21 of Chapter 143 of the General Statutes  
40 shall, after completing a site evaluation and before the farm site is modified, notify all  
41 adjoining property owners; all property owners who own property located across a public road,  
42 street, or highway from the swine farm; the county or counties in which the farm site is located;  
43 and the local health department or departments having jurisdiction over the farm site of that  
44 person's intent to construct the swine farm. This notice shall be by certified mail sent to the  
45 address on record at the property tax office in the county in which the land is located. Notice to  
46 a county shall be sent to the county manager or, if there is no county manager, to the chair of  
47 the board of county commissioners. Notice to a local health department shall be sent to the  
48 local health director. The written notice shall include all of the following:

- 49 (1) The name and address of the person intending to construct a swine farm.
- 50 (2) The type of swine farm and the design capacity of the animal waste
- 51 management system.

- 1 (3) The name and address of the technical specialist preparing the waste  
2 management plan.  
3 (4) The address of the local Soil and Water Conservation District office.  
4 (5) Information informing the adjoining property owners and the property  
5 owners who own property located across a public road, street, or highway  
6 from the swine farm that they may submit written comments to the Division  
7 of Water ~~Quality, Resources~~, Department of Environment and Natural  
8 Resources."

9 **SECTION 33.(e)** G.S. 106-860(d) reads as rewritten:

10 "(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by  
11 the Community Conservation Assistance Program Advisory Committee. The Advisory  
12 Committee shall meet quarterly to review the progress of the Program. The Advisory  
13 Committee shall consist of the following members:

- 14 (1) The Director of the Division of Soil and Water Conservation of the  
15 Department of Agriculture and Consumer Services or the Director's  
16 designee, who shall serve as the Chair of the Advisory Committee.  
17 (2) The President of the North Carolina Association of Soil and Water  
18 Conservation Districts or the President's designee.  
19 (3) The Director of the Cooperative Extension Service at North Carolina State  
20 University or the Director's designee.  
21 (4) The Executive Director of the North Carolina Association of County  
22 Commissioners or the Executive Director's designee.  
23 (5) The Executive Director of the North Carolina League of Municipalities or  
24 the Executive Director's designee.  
25 (6) The State Conservationist of the Natural Resources Conservation Service of  
26 the United States Department of Agriculture or the State Conservationist's  
27 designee.  
28 (7) The Executive Director of the Wildlife Resources Commission or the  
29 Executive Director's designee.  
30 (8) The President of the North Carolina Conservation District Employees  
31 Association or the President's designee.  
32 (9) The President of the North Carolina Association of Resource Conservation  
33 and Development Councils or the President's designee.  
34 ~~(10) The Director of the Division of Water Quality of the Department of~~  
35 ~~Environment and Natural Resources or the Director's designee.~~  
36 (11) The Director of the Division of Forest Resources of the Department of  
37 Agriculture and Consumer Services or the Director's designee.  
38 (12) The Director of the Division of Energy, Mineral, and Land Resources of the  
39 Department of Environment and Natural Resources or the Director's  
40 designee.  
41 (13) The Director of the Division of Coastal Management of the Department of  
42 Environment and Natural Resources or the Director's designee.  
43 (14) The Director of the Division of Water Resources of the Department of  
44 Environment and Natural Resources or the Director's designee.  
45 (15) The President of the Carolinas Land Improvement Contractors Association  
46 or the President's designee."

47 **SECTION 33.(f)** G.S. 113A-57 reads as rewritten:

48 "**§ 113A-57. Mandatory standards for land-disturbing activity.**

49 No land-disturbing activity subject to this Article shall be undertaken except in accordance  
50 with the following mandatory requirements:

- 1 (1) No land-disturbing activity during periods of construction or improvement to  
2 land shall be permitted in proximity to a lake or natural watercourse unless a  
3 buffer zone is provided along the margin of the watercourse of sufficient  
4 width to confine visible siltation within the twenty-five percent (25%) of the  
5 buffer zone nearest the land-disturbing activity. Waters that have been  
6 classified as trout waters by the Environmental Management Commission  
7 shall have an undisturbed buffer zone 25 feet wide or of sufficient width to  
8 confine visible siltation within the twenty-five percent (25%) of the buffer  
9 zone nearest the land-disturbing activity, whichever is greater. Provided,  
10 however, that the Sedimentation Control Commission may approve plans  
11 which include land-disturbing activity along trout waters when the duration  
12 of said disturbance would be temporary and the extent of said disturbance  
13 would be minimal. This subdivision shall not apply to a land-disturbing  
14 activity in connection with the construction of facilities to be located on,  
15 over, or under a lake or natural watercourse.
- 16 (2) The angle for graded slopes and fills shall be no greater than the angle that  
17 can be retained by vegetative cover or other adequate erosion-control  
18 devices or structures. In any event, slopes left exposed will, within 21  
19 calendar days of completion of any phase of grading, be planted or otherwise  
20 provided with temporary or permanent ground cover, devices, or structures  
21 sufficient to restrain erosion.
- 22 (3) Whenever land-disturbing activity that will disturb more than one acre is  
23 undertaken on a tract, the person conducting the land-disturbing activity  
24 shall install erosion and sedimentation control devices and practices that are  
25 sufficient to retain the sediment generated by the land-disturbing activity  
26 within the boundaries of the tract during construction upon and development  
27 of the tract, and shall plant or otherwise provide a permanent ground cover  
28 sufficient to restrain erosion after completion of construction or development  
29 within a time period to be specified by rule of the Commission.
- 30 (4) No person shall initiate any land-disturbing activity that will disturb more  
31 than one acre on a tract unless, 30 or more days prior to initiating the  
32 activity, an erosion and sedimentation control plan for the activity is filed  
33 with the agency having jurisdiction and approved by the agency. An erosion  
34 and sedimentation control plan may be filed less than 30 days prior to  
35 initiation of a land-disturbing activity if the plan is submitted under an  
36 approved express permit program, and the land-disturbing activity may be  
37 initiated and conducted in accordance with the plan once the plan has been  
38 approved. The agency having jurisdiction shall forward to the Director of the  
39 Division of Water ~~Quality-Resources~~ a copy of each erosion and  
40 sedimentation control plan for a land-disturbing activity that involves the  
41 utilization of ditches for the purpose of de-watering or lowering the water  
42 table of the tract.
- 43 (5) The land-disturbing activity shall be conducted in accordance with the  
44 approved erosion and sedimentation control plan."

45 **SECTION 33.(g)** G.S. 136-44.7D reads as rewritten:

46 **"§ 136-44.7D. Bridge construction guidelines.**

47 A bridge crossing rivers and streams in watersheds shall be constructed to accommodate the  
48 hydraulics of a flood water level equal to the water level projected for a 100-year flood for the  
49 region in which the bridge is built. The bridge shall be built without regard for the riparian  
50 buffer zones as designated by the Department of Environment and Natural Resources, Division  
51 of Water ~~Quality-Resources~~. No Memorandums of Agreement may be made between

1 Departments to bypass this construction mandate. No agency rules shall be enacted contrary to  
2 this section."

3 **SECTION 33.(h)** G.S. 143-214.7(c3) reads as rewritten:

4 "(c3) In accordance with the Federal Aviation Administration August 28, 2007, Advisory  
5 Circular No. 150/5200-33B (Hazardous Wildlife Attractants on or Near Airports), the  
6 Department shall not require the use of stormwater retention ponds, stormwater detention  
7 ponds, or any other stormwater control measure that promotes standing water in order to  
8 comply with this section at public airports that support commercial air carriers or general  
9 aviation services. Development projects located within five statute miles from the farthest edge  
10 of an airport air operations area, as that term is defined in 14 C.F.R. § 153.3 (July 2011  
11 Edition), shall not be required to use stormwater retention ponds, stormwater detention ponds,  
12 or any other stormwater control measure that promotes standing water in order to comply with  
13 this section. Existing stormwater retention ponds, stormwater detention ponds, or any other  
14 stormwater control measure that promotes standing water in order to comply with this section  
15 located at public airports or that are within five statute miles from the farthest edge of an airport  
16 operations area may be replaced with alternative measures included in the Division of Water  
17 ~~Quality's Resources'~~ Best Management Practice Manual chapter on airports. In order to be  
18 approved by the Department, alternative measures or management designs that are not  
19 expressly included in the Division of Water ~~Quality's Resources'~~ Best Management Practice  
20 Manual shall provide for equal or better stormwater control based on the pre- and  
21 post-development hydrograph. Any replacement of existing stormwater retention ponds,  
22 stormwater detention ponds, or any other stormwater control measure that promotes standing  
23 water shall be considered a minor modification to the State general stormwater permit."

24 **SECTION 33.(i)** G.S. 143-214.7A reads as rewritten:

25 **"§ 143-214.7A. Stormwater control best management practices.**

26 (a) The Department of Environment and Natural Resources shall establish standard  
27 stormwater control best management practices and standard process water treatment processes  
28 or equivalent performance standards for composting operations that are required to be  
29 permitted by the Division of Water ~~Quality Resources~~ in the Department and the Division of  
30 Waste Management in the Department. These practices, processes, and standards shall be  
31 developed for the purpose of protecting water quality by controlling and containing stormwater  
32 that is associated with composting operations, by reducing the pollutant levels of process water  
33 from composting operations, and by reducing the opportunities for generation of such waters.

34 (b) Unless otherwise provided in this subsection, the Division of Water ~~Quality~~  
35 ~~Resources~~ shall clarify that stormwater is water that does not contact anything considered a  
36 feedstock, intermediate product, or final product of composting operations. Unless otherwise  
37 provided in this subsection, the Division of Water ~~Quality Resources~~ shall clarify that  
38 wastewater is leachate and water that contacts feedstocks, intermediate products, or final  
39 product, of composting operations. The clarifications shall incorporate available scientifically  
40 valid information obtained from sampling and analyses of North Carolina composting facilities  
41 and from valid representative data from other states. In addition, the Division of Water ~~Quality~~  
42 ~~Resources~~ shall establish threshold quantities of feedstocks, intermediate products, and final  
43 products above which water quality permitting will be required. A Type 1 solid waste compost  
44 facility shall be subject only to applicable State stormwater requirements and federal  
45 stormwater requirements established pursuant to 33 U.S.C. § 1342(p)(3)(B). A Type 1 solid  
46 waste compost facility shall not be required to obtain a National Pollutant Discharge  
47 Elimination System (NPDES) permit for discharge of process wastewater based solely on the  
48 discharge of stormwater that has come into contact with feedstock, intermediate product, or  
49 final product at the facility. For purposes of this section, "Type 1 solid waste compost facilities"  
50 are facilities that may receive yard and garden waste, silvicultural waste, untreated and  
51 unpainted wood waste, or any combination thereof.

1 (c) The Department shall establish revised water quality permitting procedures for the  
2 composting industry. The revised permitting procedures shall identify the various  
3 circumstances that determine which water quality permit is required for various composting  
4 activities. The Department shall determine whether selected low-risk subsets of the composting  
5 industry may be suitable for expedited or reduced water quality permitting procedures. The  
6 determination shall include consideration of the economic impact of regulatory decisions.

7 (d) In developing the practices, processes, and standards and the revised water quality  
8 permitting procedures required by this section, the Department shall review practices,  
9 processes, and standards and permitting procedures adopted by other states and similar federal  
10 programs.

11 (e) The Department shall form a Compost Operation Stakeholder Advisory Group  
12 composed of representatives from the North Carolina Chapter of the United States Composting  
13 Council, the North Carolina Association of County Commissioners, the North Carolina League  
14 of Municipalities, the North Carolina State Agricultural Extension Service, the North Carolina  
15 Chapter of the American Water Works Association-Water Environment Federation, the North  
16 Carolina Pumper Group, the North Carolina Chapter of the Solid Waste Association of North  
17 America, the North Carolina Septic Tank Association, and any individual or group commenting  
18 to the Department on issues related to water quality at composting operations. The Compost  
19 Operation Stakeholder Advisory Group shall be convened periodically to provide input and  
20 assistance to the Department.

21 (f) The practices, processes, and standards and the revised permitting procedures shall  
22 address the site size of an operation, the nature of the feedstocks composted, the type of  
23 compost production method employed, the quantity and water quality of the stormwater or  
24 process water associated with composting facilities, the water quality of the receiving waters,  
25 as well as operation and maintenance requirements for the resulting standard stormwater  
26 control best management practices and standard process water treatment processes."

27 **SECTION 33.(j)** G.S. 143-214.10 reads as rewritten:

28 **"§ 143-214.10. Ecosystem Enhancement Program: development and implementation of**  
29 **basinwide restoration plans.**

30 Develop Basinwide Restoration Plans. – The Department shall develop basinwide plans for  
31 wetlands and riparian area restoration with the goal of protecting and enhancing water quality,  
32 flood prevention, fisheries, wildlife habitat, and recreational opportunities within each of the 17  
33 major river basins in the State. The Department shall develop and implement a basinwide  
34 restoration plan for each of the 17 river basins in the State in accordance with the basinwide  
35 schedule currently established by the Division of Water ~~Quality~~Resources."

36 **SECTION 33.(k)** G.S. 143-214.25A reads as rewritten:

37 **"§ 143-214.25A. Riparian Buffer Protection Program: Surface Water Identification**  
38 **Training and Certification Program.**

39 (a) The Division of Water ~~Quality~~Resources of the Department shall develop a  
40 program to train and certify individuals to determine the presence of surface waters that would  
41 require the application of rules adopted by the Commission for the protection of riparian  
42 buffers. The Division may train and certify employees of the Division as determined by the  
43 Director of the Division of Water ~~Quality~~Resources; employees of units of local government  
44 to whom responsibility for the implementation and enforcement of the riparian buffer  
45 protection rules is delegated pursuant to G.S. 143-214.23; and Registered Foresters under  
46 Chapter 89B of the General Statutes who are employees of the Division of Forest Resources of  
47 the Department of Agriculture and Consumer Services as determined by the Director of the  
48 Division of Forest Resources. The Director of the Division of Water ~~Quality~~Resources may  
49 review the determinations made by individuals who are certified pursuant to this section, may  
50 override a determination made by an individual certified under this section, and, if the Director

1 of the Division of Water ~~Quality-Resources~~ determines that an individual is failing to make  
2 correct determinations, revoke the certification of that individual.

3 (b) The Division of Water ~~Quality-Resources~~ shall develop standard forms for use in  
4 making and reporting determinations. Each individual who is certified to make determinations  
5 under this section shall prepare a written report of each determination and shall submit the  
6 report to the agency that employs the individual. Each agency shall maintain reports of  
7 determinations made by its employees, shall forward a copy of each report to the Director of  
8 the Division of Water ~~Quality-Resources~~, and shall maintain these reports and all other records  
9 related to determinations so that they will be readily accessible to the public.

10 (c) In implementing the Surface Water Identification Training and Certification  
11 Program established by this section, the Division of Water ~~Quality-Resources~~ of the  
12 Department of Environment and Natural Resources shall give priority to training and certifying  
13 the most highly qualified and experienced personnel in each agency. The Division of Water  
14 ~~Quality-Resources~~ shall evaluate the effectiveness of the Surface Water Identification Training  
15 and Certification Program and shall submit an annual report of its findings and  
16 recommendations, if any, to the Environmental Review Commission on or before October 1 of  
17 each year."

18 **SECTION 33.(l)** G.S. 143-215.9C reads as rewritten:

19 **"§ 143-215.9C. Use of certain types of culverts allowed.**

20 (a) The Division of Water ~~Quality-Resources~~ in the Department of Environment and  
21 Natural Resources shall allow the use of structures known as three-sided, open-bottom, or  
22 bottomless culverts. A culvert authorized under this section shall be designed, constructed, and  
23 installed so that it satisfies all of the following requirements:

- 24 (1) Adheres to professional engineering standards and sound engineering  
25 practices.
- 26 (2) To the extent practicable, minimizes the erosive velocity of water.
- 27 (3) Has an inside that is greater than or equal to 1.2 times the bankfull width of  
28 the spanned waterbody. For purposes of this subdivision, "bankfull width"  
29 means the width of the stream where over-bank flow begins during a flood  
30 event.

31 (b) The Division shall allow the use of culverts authorized under this section throughout  
32 the State and may not limit their use to locations where they must be tied into bedrock. Culverts  
33 authorized under this section may only be used on private property and may not be transferred  
34 to, or operated or maintained by, the Department of Transportation."

35 **SECTION 33.(m)** G.S. 143-215.10A reads as rewritten:

36 **"§ 143-215.10A. Legislative findings and intent.**

37 The General Assembly finds that animal operations provide significant economic and other  
38 benefits to this State. The growth of animal operations in recent years has increased the  
39 importance of good animal waste management practices to protect water quality. It is critical  
40 that the State balance growth with prudent environmental safeguards. It is the intention of the  
41 State to promote a cooperative and coordinated approach to animal waste management among  
42 the agencies of the State with a primary emphasis on technical assistance to farmers. To this  
43 end, the General Assembly intends to establish a permitting program for animal waste  
44 management systems that will protect water quality and promote innovative systems and  
45 practices while minimizing the regulatory burden. Technical assistance will be provided by the  
46 Division of Soil and Water Conservation of the Department of Agriculture and Consumer  
47 Services. Inspection and enforcement will be provided by the Division of Water  
48 ~~Quality-Resources~~."

49 **SECTION 33.(n)** G.S. 143-215.10B reads as rewritten:

50 **"§ 143-215.10B. Definitions.**

51 As used in this Part:



- 1 (1) "Animal operation" means any agricultural feedlot activity involving 250 or  
2 more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more  
3 sheep, or 30,000 or more confined poultry with a liquid animal waste  
4 management system, or any agricultural feedlot activity with a liquid animal  
5 waste management system that discharges to the surface waters of the State.  
6 A public livestock market regulated under Article 35 of Chapter 106 of the  
7 General Statutes is an animal operation for purposes of this Part.
- 8 (2) "Animal waste" means livestock or poultry excreta or a mixture of excreta  
9 with feed, bedding, litter, or other materials from an animal operation.
- 10 (3) "Animal waste management system" means a combination of structures and  
11 nonstructural practices serving a feedlot that provide for the collection,  
12 treatment, storage, or land application of animal waste.
- 13 (4) "Division" means the Division of Water ~~Quality~~ Resources of the  
14 Department.
- 15 (5) "Feedlot" means a lot or building or combination of lots and buildings  
16 intended for the confined feeding, breeding, raising, or holding of animals  
17 and either specifically designed as a confinement area in which animal waste  
18 may accumulate or where the concentration of animals is such that an  
19 established vegetative cover cannot be maintained. A building or lot is not a  
20 feedlot unless animals are confined for 45 or more days, which may or may  
21 not be consecutive, in a 12-month period. Pastures shall not be considered  
22 feedlots for purposes of this Part.
- 23 (6) "Technical specialist" means an individual designated by the Soil and Water  
24 Conservation Commission, pursuant to rules adopted by that Commission, to  
25 certify animal waste management plans."

26 **SECTION 33.(o)** G.S. 143-215.10M(a) reads as rewritten:

27 "(a) The Department shall report to the Environmental Review Commission and the  
28 Fiscal Research Division on or before 1 October of each year as required by this section. Each  
29 report shall include:

- 30 (1) The number of permits for animal waste management systems, itemized by  
31 type of animal subject to such permits, issued since the last report.
- 32 (2) The number of operations reviews of animal waste management systems that  
33 the Division of Soil and Water Conservation of the Department of  
34 Agriculture and Consumer Services has conducted since the last report.
- 35 (3) The number of operations reviews of animal waste management systems  
36 conducted by agencies other than the Division of Soil and Water  
37 Conservation of the Department of Agriculture and Consumer Services that  
38 have been conducted since the last report.
- 39 (4) The number of reinspections associated with operations reviews conducted  
40 by the Division of Soil and Water Conservation of the Department of  
41 Agriculture and Consumer Services since the last report.
- 42 (5) The number of reinspections associated with operations reviews conducted  
43 by agencies other than the Division of Soil and Water Conservation of the  
44 Department of Agriculture and Consumer Services since the last report.
- 45 (6) The number of compliance inspections of animal waste management  
46 systems that the Division of Water ~~Quality~~ Resources has conducted since  
47 the last report.
- 48 (7) The number of follow-up inspections associated with compliance inspections  
49 conducted by the Division of Water ~~Quality~~ Resources since the last report.
- 50 (8) The average length of time for each category of reviews and inspections  
51 under subdivisions (2) through (7) of this subsection.

- 1 (9) The number of violations found during each category of review and  
2 inspection under subdivisions (2) through (7) of this subsection, the status of  
3 enforcement actions taken and pending, and the penalties imposed, collected,  
4 and in the process of being negotiated for each such violation.
- 5 (10) Any other information that the Department determines to be appropriate or  
6 that is requested by the Environmental Review Commission or the Fiscal  
7 Research Division."

8 **SECTION 33.(p)** G.S. 143B-279.7(a) reads as rewritten:

9 "(a) The Department of Environment and Natural Resources shall coordinate an  
10 intradepartmental effort to develop scientific protocols to respond to significant fish kill events  
11 utilizing staff from the Division of Water ~~Quality, Resources,~~ Division of Marine Fisheries,  
12 Department of Health and Human Services, Wildlife Resources Commission, the scientific  
13 community, and other agencies, as necessary. In developing these protocols, the Department of  
14 Environment and Natural Resources shall address the unpredictable nature of fish kills caused  
15 by both natural and man-made factors. The protocols shall contain written procedures to  
16 respond to significant fish kill events including:

- 17 (1) Developing a plan of action to evaluate the impact of fish kills on public  
18 health and the environment.
- 19 (2) Responding to fish kills within 24 hours.
- 20 (3) Investigating and collecting data relating to fish kill events.
- 21 (4) Summarizing and distributing fish kill information to participating agencies,  
22 scientists and other interested parties."

23 **SECTION 33.(q)** G.S. 159G-20(5) is repealed.

24 **SECTION 33.(r)** G.S. 159G-23 reads as rewritten:

25 **"§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking**  
26 **Water Reserve.**

27 The criteria in this section apply to a loan or grant from the Wastewater Reserve or the  
28 Drinking Water Reserve. The ~~Division of Water Quality and the~~ Division of Water Resources  
29 must ~~each~~ establish a system of assigning points to applications based on the following criteria:  
30 ...."

31 **SECTION 33.(s)** G.S. 159G-26(a) reads as rewritten:

32 **"§ 159G-26. Annual reports on Water Infrastructure Fund.**

33 (a) Requirement. – The Department must publish a report each year on the accounts in  
34 the Water Infrastructure Fund that are administered by the ~~Division of Water Quality or the~~  
35 Division of Water Resources. The report must be published by 1 November of each year and  
36 cover the preceding fiscal year. The Department must make the report available to the public  
37 and must give a copy of the report to the Environmental Review Commission and the Fiscal  
38 Research Division of the General Assembly."

39 **SECTION 33.(t)** G.S. 159G-30 reads as rewritten:

40 **"§ 159G-30. Department's responsibility.**

41 The Department, through the ~~Division of Water Quality and the~~ Division of Water  
42 Resources, administers loans and grants made from the CWSRF, the DWSRF, the Wastewater  
43 Reserve, and the Drinking Water Reserve. ~~The Division of Water Quality administers loans and~~  
44 ~~grants from the CWSRF and the Wastewater Reserve. The Division of Water Resources~~  
45 ~~administers loans and grants from the DWSRF and the Drinking Water Reserve."~~

46 **SECTION 33.(u)** G.S. 159G-37 reads as rewritten:

47 **"§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water**  
48 **Reserve.**

49 An application for a loan or grant from the ~~CWSRF or the Wastewater Reserve must be~~  
50 ~~filed with the Division of Water Quality of the Department. An application for a loan or grant~~  
51 ~~from the DWSRF or the Drinking Water Reserve must be filed with the~~ CWSRF, the

1 Wastewater Reserve, the DWSRF, or the Drinking Water Reserve must be filed with the  
2 Division of Water Resources of the Department. An application must be submitted on a form  
3 prescribed by the Division and must contain the information required by the Division. An  
4 applicant must submit to the Division any additional information requested by the Division to  
5 enable the Division to make a determination on the application. An application that does not  
6 contain information required on the application or requested by the Division is incomplete and  
7 is not eligible for consideration. An applicant may submit an application in as many categories  
8 as it is eligible for consideration under this Article."

9 **SECTION 33.(v)** G.S. 159G-38 reads as rewritten:

10 "**§ 159G-38. Environmental assessment and public hearing.**

11 (a) Required Information. – An application submitted under this Article for a loan or  
12 grant for a project must state whether the project requires an environmental assessment. If the  
13 application indicates that an environmental assessment is not required, it must identify the  
14 exclusion in the North Carolina Environmental Policy Act, Article 1 of Chapter 113A of the  
15 General Statutes, that applies to the project. If the application does not identify an exclusion in  
16 the North Carolina Environmental Policy Act, it must include an environmental assessment of  
17 the project's probable impacts on the environment.

18 (b) Division Review. – If, after reviewing an application, ~~the Division of Water Quality~~  
19 ~~or the Division of Water Resources, as appropriate, Resources~~ determines that a project requires  
20 an environmental assessment, the assessment must be submitted before the Division continues  
21 its review of the application. If, after reviewing an environmental assessment, the Division  
22 concludes that an environmental impact statement is required, the Division may not continue its  
23 review of the application until a final environmental impact statement has been completed and  
24 approved as provided in the North Carolina Environmental Policy Act.

25 (c) Hearing. – ~~The Division of Water Quality or the Division of Water Resources, as~~  
26 ~~appropriate, Resources~~ may hold a public hearing on an application for a loan or grant under  
27 this Article if it determines that holding a hearing will serve the public interest. An individual  
28 who is a resident of any county in which a proposed project is located may submit a written  
29 request for a public hearing. The request must set forth each objection to the proposed project  
30 or other reason for requesting a hearing and must include the name and address of the  
31 individual making the request. The Division may consider all written objections to the proposed  
32 project, any statement submitted with the hearing request, and any significant adverse effects  
33 the proposed project may have on the environment. The Division's decision on whether to hold  
34 a hearing is conclusive. The Division must keep all written requests for a hearing on an  
35 application as part of the records pertaining to the application."

36 **SECTION 33.(w)** G.S. 159G-39(a) reads as rewritten:

37 "(a) Point Assignment. – ~~The Division of Water Quality or the Division of Water~~  
38 ~~Resources, as appropriate, Resources~~ must review all applications filed for a loan or grant under  
39 this Article for an application period. The Division must rank each application in accordance  
40 with the points assigned to the evaluation criteria. The Division must make a written  
41 determination of an application's rank and attach the determination to the application. The  
42 Division's determination of rank is conclusive."

43 **SECTION 33.(x)** Section 1.6 of S.L. 1998-221 reads as rewritten:

44 "Section 1.6. **Delegation of riparian buffer protection requirements to local**  
45 **governments.** – (a) The Commission may delegate responsibility for the implementation and  
46 enforcement of the State's riparian buffer protection requirements in the Neuse River Basin to  
47 units of local government that have the power to regulate land use. A delegation under this  
48 section shall not affect the jurisdiction of the Commission over State agencies and units of local  
49 government. Any unit of local government in the Neuse River Basin that has the power to  
50 regulate land use may request that responsibility for the implementation and enforcement of the  
51 State's riparian buffer protection requirements be delegated to the unit of local government. To

1 this end, units of local government may adopt ordinances and regulations necessary to establish  
2 and enforce the State's riparian buffer protection requirements.

3 (b) Within 90 days after the Commission receives a complete application requesting  
4 delegation of responsibility for the implementation and enforcement of the State's riparian  
5 buffer protection requirement, the Commission shall review the application and notify the unit  
6 of local government that submitted the application whether the application has been approved,  
7 approved with modifications, or disapproved. The Commission shall not approve a delegation  
8 unless the Commission finds that local implementation and enforcement of the State's riparian  
9 buffer protection requirements will equal implementation and enforcement by the State.

10 (c) If the Commission determines that any unit of local government is failing to  
11 implement or enforce the State's riparian buffer protection requirements, the Commission shall  
12 notify the unit of local government in writing and shall specify the deficiencies in  
13 implementation and enforcement. If the local government has not corrected the deficiencies  
14 within 90 days after the unit of local government receives the notification, the Commission  
15 shall rescind delegation and shall implement and enforce the State's riparian buffer protection  
16 program. If the unit of local government indicates that it is willing and able to resume  
17 implementation and enforcement of the State's riparian buffer protection requirements, the unit  
18 of local government may reapply for delegation under this section.

19 (d) The Division of Water ~~Quality Resources~~ in the Department shall provide technical  
20 assistance to units of local government in the development, implementation, and enforcement  
21 of the State's riparian buffer protection requirements.

22 (e) The Commission may adopt rules to implement this section and may recommend  
23 any legislation it determines to be necessary or desirable to achieve the purposes of this section.  
24 Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall  
25 be set out as a separately numbered rule."

26 **SECTION 33.(y)** Section 2(c) of S.L. 2001-355 reads as rewritten:

27 "**SECTION 2.(c)** The Director of the Division of Water ~~Quality Resources~~ and the Director  
28 of the Division of Soil and Water Conservation of the Department of Environment and Natural  
29 Resources shall jointly appoint members described in subdivisions (1) through (4) of subsection  
30 (b) of this section. The Commissioner of Agriculture shall appoint the members described in  
31 subdivisions (5) and (6) of subsection (b) of this section. The Commissioner of Agriculture  
32 shall appoint the members described in subdivision (6) of subsection (b) of this section from  
33 persons nominated by nongovernmental organizations whose members produce or manage  
34 significant agricultural commodities in each county or watershed."

35 **SECTION 33.(z)** Section 2 of S.L. 2006-246 reads as rewritten:

36 "**SECTION 2.** Definitions. – The following definitions apply to this act and its  
37 implementation:

- 38 (1) The definitions set out in 40 Code of Federal Regulations § 122.2  
39 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003  
40 Edition).
- 41 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- 42 (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).
- 43 (4) The definitions set out in 15A NCAC 2H .1002 (Definitions), except for the  
44 definitions of "Built-upon area", "Development", and "Redevelopment",  
45 which are defined below.
- 46 (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be  
47 equaled or exceeded, on average, once in 12 months and with a duration of  
48 24 hours.
- 49 (6) "BMP" means Best Management Practice.
- 50 (7) "Built-upon area" means that portion of a project that is covered by  
51 impervious or partially impervious surface including, but not limited to,

- 1 buildings; pavement and gravel areas such as roads, parking lots, and paths;  
2 and recreation facilities such as tennis courts. "Built-upon area" does not  
3 include a wooden slatted deck, the water area of a swimming pool, or  
4 pervious or partially pervious paving material to the extent that the paving  
5 material absorbs water or allows water to infiltrate through the paving  
6 material.
- 7 (8) "Development" means any land-disturbing activity that increases the amount  
8 of built-upon area or that otherwise decreases the infiltration of precipitation  
9 into the soil.
- 10 (9) "Division" means the Division of Water ~~Quality~~Resources in the  
11 Department.
- 12 (10) "Planning jurisdiction" means the territorial jurisdiction within which a  
13 municipality exercises the powers authorized by Article 19 of Chapter 160A  
14 of the General Statutes, or a county may exercise the powers authorized by  
15 Article 18 of Chapter 153A of the General Statutes.
- 16 (11) "Public entity" means the United States; the State; a city, village, township,  
17 county, school district, public college or university, or single-purpose  
18 governmental agency; or any other governing body that is created by federal  
19 or State law.
- 20 (12) "Redevelopment" means any land-disturbing activity that does not result in a  
21 net increase in built-upon area and that provides greater or equal stormwater  
22 control than the previous development.
- 23 (13) "Regulated entity" means any public entity that must obtain a Phase II  
24 National Pollutant Discharge Elimination System (NPDES) permit for  
25 stormwater management for its municipal separate storm sewer system  
26 (MS4).
- 27 (14) "Sensitive receiving waters" means any of the following:  
28 a. Waters that are classified as high quality, outstanding resource,  
29 shellfish, trout, or nutrient-sensitive waters in accordance with  
30 subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for  
31 Assignment of Water Quality Standards – General Procedures).  
32 b. Waters that are occupied by or designated as critical habitat for  
33 aquatic animal species that are listed as threatened or endangered by  
34 the United States Fish and Wildlife Service or the National Marine  
35 Fisheries Service under the provisions of the Endangered Species Act  
36 of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et  
37 seq.), as amended.  
38 c. Waters for which the designated use, as described by the  
39 classification system set out in subsections (c), (d), and (e) of 15A  
40 NCAC 2B .0101 (Procedures for Assignment of Water Quality  
41 Standards – General Procedures), have been determined to be  
42 impaired in accordance with the requirements of subsection (d) of 33  
43 U.S.C. § 1313.
- 44 (15) "Shellfish resource waters" means Class SA waters that contain an average  
45 concentration of 500 parts per million of natural chloride ion. Average  
46 concentration is determined by averaging the chloride concentrations of five  
47 water samples taken one-half mile downstream from the project site that are  
48 taken on separate days, within one hour of high tide, and not within 48 hours  
49 following a rain event. The chloride ion concentrations are to be determined  
50 by a State-certified laboratory.

- 1 (16) "Significant contributor of pollutants" means a municipal separate storm  
2 sewer system (MS4) or a discharge that contributes to the pollutant loading  
3 of a water body or that destabilizes the physical structure of a water body  
4 such that the contribution to pollutant loading or the destabilization may  
5 reasonably be expected to adversely affect the quality and uses of the water  
6 body. Uses of a water body shall be determined pursuant to 15A NCAC 2B  
7 .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality  
8 Standards Applicable to Surface Waters and Wetlands of North Carolina)  
9 and 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).  
10 (17) "Total maximum daily load (TMDL) implementation plan" means a written,  
11 quantitative plan and analysis for attaining and maintaining water quality  
12 standards in all seasons for a specific water body and pollutant."

13 **SECTION 33.(aa)** S.L. 2008-211 reads as rewritten:

14 **"SECTION 1.(a)** Disapprove Rule. – Pursuant to G.S. 150B-21.3(b1), 15A NCAC 02H  
15 .1005 (Stormwater Requirements: Coastal Counties), as adopted by the Environmental  
16 Management Commission on 10 January 2008 and approved by the Rules Review Commission  
17 on 20 March 2008, is disapproved.

18 **"SECTION 1.(b)** Supersede Rule. – 15A NCAC 02H .1005 (Stormwater Requirements:  
19 Coastal Counties), effective 1 September 1995, is superseded by this act. References in the  
20 North Carolina Administrative Code to 15A NCAC 02H .1005 shall be deemed to refer to the  
21 equivalent provisions of this act.

22 **"SECTION 2.(a)** Definitions. – The following definitions apply to this act and its  
23 implementation:

- 24 (1) The definitions set out in 15A NCAC 02H .1002 (Definitions).  
25 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.  
26 (3) "Built upon area" has the same meaning as in Session Law 2006-246 and  
27 means that portion of a project that is covered by impervious or partially  
28 impervious surface including, but not limited to, buildings; pavement and  
29 gravel areas such as roads, parking lots, and paths; and recreation facilities  
30 such as tennis courts. "Built upon area" does not include a wooden slatted  
31 deck, the water area of a swimming pool, or pervious or partially pervious  
32 paving material to the extent that the paving material absorbs water or allows  
33 water to infiltrate through the paving material.  
34 (4) "Permeable pavement" means paving material that absorbs water or allows  
35 water to infiltrate through the paving material. Permeable pavement  
36 materials include porous concrete, permeable interlocking concrete pavers,  
37 concrete grid pavers, porous asphalt, and any other material with similar  
38 characteristics. Compacted gravel shall not be considered permeable  
39 pavement.  
40 (5) "Residential development activities" has the same meaning as in 15A NCAC  
41 02B .0202(54).  
42 (6) "Vegetative buffer" has the same meaning as in 15A NCAC 02H .1002(22)  
43 and means an area of natural or established vegetation directly adjacent to  
44 surface waters through which stormwater runoff flows in a diffuse manner to  
45 protect surface waters from degradation due to development activities.  
46 (7) "Vegetative conveyance" means a permanent, designed waterway lined with  
47 vegetation that is used to convey stormwater runoff at a non-erosive velocity  
48 within or away from a developed area.

49 **"SECTION 2.(b)** Requirements for Certain Nonresidential and Residential Development in  
50 the Coastal Counties. – All nonresidential development activities that occur within the Coastal  
51 Counties that will add more than 10,000 square feet of built upon area or that require a

1 Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a Coastal Area  
2 Management Act (CAMA) Major Development Permit, pursuant to G.S. 113A-118 and all  
3 residential development activities within the Coastal Counties that require a Sedimentation and  
4 Erosion Control Plan, pursuant to G.S. 113A-57 or a Coastal Area Management Act (CAMA)  
5 Major Development Permit, pursuant to G.S. 113A-118 shall manage stormwater runoff as  
6 provided in this subsection. A development activity or project requires a Sedimentation and  
7 Erosion Control Plan if the activity or project disturbs one acre or more of land, including an  
8 activity or project that disturbs less than one acre of land that is part of a larger common plan of  
9 development. Whether an activity or project that disturbs less than one acre of land is part of a  
10 larger common plan of development shall be determined in a manner consistent with the  
11 memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from  
12 the Director of the Division of Water Quality of the Department of Environment and Natural  
13 Resources to Interested Parties dated 24 July 2006.

14 (1) Development Near Outstanding Resource Waters (ORW). – Development  
15 activities within the Coastal Counties and located within 575 feet of the  
16 mean high waterline of areas designated by the Commission as Outstanding  
17 Resource Waters (ORW) shall meet the requirements of 15A NCAC 02H  
18 .1007 (Stormwater Requirements: Outstanding Resource Waters) and shall  
19 be permitted as follows:

20 a. Low-Density Option. – Development shall be permitted pursuant to  
21 15A NCAC 02H .1003(d)(1) if the development meets all of the  
22 following requirements:

- 23 1. The development has a built upon area of twelve percent  
24 (12%) or less. A development project with an overall density  
25 at or below the low-density threshold, but containing areas  
26 with a density greater than the overall project density, shall be  
27 considered low-density as long as the project meets or  
28 exceeds the requirements for low-density development and  
29 locates the higher density development in upland areas and  
30 away from surface waters and drainageways to the maximum  
31 extent practicable.
- 32 2. Stormwater runoff from the development is transported  
33 primarily by vegetated conveyances. As used in this  
34 sub-sub-subdivision, "conveyance system" shall not include a  
35 stormwater collection system. Stormwater runoff from built  
36 upon areas that is directed to flow through any wetlands shall  
37 flow into and through these wetlands at a non-erosive  
38 velocity.
- 39 3. The development contains a 50-foot-wide vegetative buffer  
40 for new development activities and a 30-foot-wide vegetative  
41 buffer for redevelopment activities. The width of a buffer is  
42 measured horizontally from the normal pool elevation of  
43 impounded structures, from the bank of each side of streams  
44 or rivers, and from the mean high waterline of tidal waters,  
45 perpendicular to the shoreline. The vegetative buffer may be  
46 cleared or graded, but must be planted with and maintained in  
47 grass or any other vegetative or plant material. The Division  
48 of Water ~~Quality-Resources~~ may, on a case-by-case basis,  
49 grant a minor variance from the vegetative buffer  
50 requirements of this section pursuant to the procedures set out  
51 in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters

1 required by this section and any other buffers or filters  
2 required by State water quality or coastal management rules  
3 or local government requirements may be met concurrently  
4 and may contain, in whole or in part, coastal, isolated, or 404  
5 jurisdictional wetlands that are located landward of the  
6 normal waterline.

7 b. High-Density Option. – Development shall be permitted pursuant to  
8 15A NCAC 02H .1003(d)(2) if the development meets all of the  
9 following requirements:

- 10 1. The development has a built upon area of greater than twelve  
11 percent (12%).
- 12 2. The development has no direct outlet channels or pipes to  
13 Class SA waters unless permitted in accordance with 15A  
14 NCAC 02H .0126. Stormwater runoff from built upon areas  
15 that is directed to flow through any wetlands shall flow into  
16 and through these wetlands at a non-erosive velocity.
- 17 3. The development utilizes control systems that are any  
18 combination of infiltration systems, bioretention systems,  
19 constructed stormwater wetlands, sand filters, rain barrels,  
20 cisterns, rain gardens or alternative low impact development  
21 stormwater management systems designed in accordance with  
22 15A NCAC 02H .1008 to control and treat the runoff from all  
23 surfaces generated by one and one-half inches of rainfall, or  
24 the difference in the stormwater runoff from all surfaces from  
25 the predevelopment and postdevelopment conditions for a  
26 one-year, 24-hour storm, whichever is greater. Wet detention  
27 ponds may be used as a stormwater control system to meet  
28 the requirements of this sub-sub-subdivision, provided that  
29 the stormwater control system fully complies with the  
30 requirements of this sub-subdivision. If a wet detention pond  
31 is used within one-half mile of Class SA waters, installation  
32 of a stormwater best management practice in series with the  
33 wet detention pond shall be required to treat the discharge  
34 from the wet detention pond. Secondary stormwater best  
35 management practices that are used in series with another  
36 stormwater best management practice do not require any  
37 minimum separation from the seasonal high water table.  
38 Alternatives as described in 15A NCAC 02H .1008(h) may  
39 also be approved if they meet the requirements of this  
40 sub-subdivision.
- 41 4. Stormwater runoff from the development that is in excess of  
42 the design volume must flow overland through a vegetative  
43 filter designed in accordance with 15A NCAC 02H .1008  
44 with a minimum length of 50 feet measured from mean high  
45 water of Class SA waters.
- 46 5. The development contains a 50-foot-wide vegetative buffer  
47 for new development activities and a 30-foot-wide vegetative  
48 buffer for redevelopment activities. The width of a buffer is  
49 measured horizontally from the normal pool elevation of  
50 impounded structures, from the bank of each side of streams  
51 or rivers, and from the mean high waterline of tidal waters,



- 1 perpendicular to the shoreline. The vegetative buffer may be  
2 cleared or graded, but must be planted with, and maintained  
3 in, grass or any other vegetative or plant material.  
4 Furthermore, stormwater control best management practices  
5 (BMPs), or stormwater control structures, with the exception  
6 of wet detention ponds, may be located within this vegetative  
7 buffer. The Division of Water ~~Quality~~ Resources may, on a  
8 case by case basis, grant a minor variance from the vegetative  
9 buffer requirements of this section pursuant to the procedures  
10 set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers  
11 and filters required by this section and any other buffers or  
12 filters required by State water quality or coastal management  
13 rules or local government requirements may be met  
14 concurrently and may contain, in whole or in part, coastal,  
15 isolated, or 404 jurisdictional wetlands that are located  
16 landward of the normal waterline.
- 17 c. Stormwater Discharges Prohibited. – All development activities,  
18 including both low- and high-density projects, shall prohibit new  
19 points of stormwater discharge to Class SA waters or an increase in  
20 the volume of stormwater flow through conveyances or increase in  
21 capacity of conveyances of existing stormwater conveyance systems  
22 that drain to Class SA waters. Any modification or redesign of a  
23 stormwater conveyance system within the contributing drainage  
24 basin must not increase the net amount or rate of stormwater  
25 discharge through existing outfalls to Class SA waters. The following  
26 shall not be considered a direct point of stormwater discharge:
- 27 1. Infiltration of the stormwater runoff from the design storm as  
28 described in sub-sub-subdivision 3. of sub-subdivision b. of  
29 subdivision (1) of this subsection.
  - 30 2. Diffuse flow of stormwater at a non-erosive velocity to a  
31 vegetated buffer or other natural area, that is capable of  
32 providing effective infiltration of the runoff from the design  
33 storm as described in sub-sub-subdivision 3. of  
34 sub-subdivision b. of subdivision (1) of this subsection.  
35 Notwithstanding the other requirements of this section, the  
36 infiltration mandated in this sub-sub-subdivision does not  
37 require a minimum separation from the seasonal high-water  
38 table.
  - 39 3. The discharge from a wet detention pond that is treated by a  
40 secondary stormwater best management practice, provided  
41 that both the wet detention pond and the secondary  
42 stormwater best management practice meet the requirements  
43 of this sub-subdivision.
- 44 d. Limitation on the Density of Development. – Development shall be  
45 limited to a built upon area of twenty-five percent (25%) or less.
- 46 (2) Development Near Class SA Waters. – Development activities within  
47 one-half mile of and draining to those waters classified by the Commission  
48 as Class SA waters or within one-half mile of waters classified by the  
49 Commission as Class SA waters and draining to unnamed freshwater  
50 tributaries to Class SA waters shall meet the requirements of  
51 sub-subdivisions a., b., and c. of subdivision (1) of this subsection. The

1 extent of Class SA waters is limited to those waters that are determined to be  
2 at least an intermittent stream based on a site stream determination made in  
3 accordance with the procedures that are delineated in the Division of Water  
4 Quality's "Identification Methods for the Origin of Intermittent and Perennial  
5 Streams" prepared pursuant to Session Law 2001-404.

6 (3) Other Coastal Development. – Development activities within the Coastal  
7 Counties except those areas described in subdivisions (1) and (2) of this  
8 subsection shall meet all of the following requirements:

9 a. Low-Density Option: Development shall be permitted pursuant to  
10 15A NCAC 02H .1003(d)(1) if the development meets all of the  
11 following requirements:

- 12 1. The development has a built upon area of twenty-four percent  
13 (24%) or less. A development project with an overall density  
14 at or below the low-density threshold, but containing areas  
15 with a density greater than the overall project density, shall be  
16 considered low density as long as the project meets or  
17 exceeds the requirements for low-density development and  
18 locates the higher density in upland areas and away from  
19 surface waters and drainageways to the maximum extent  
20 practicable.
- 21 2. Stormwater runoff from the development is transported  
22 primarily by vegetated conveyances. As used in this  
23 sub-sub-subdivision, "conveyance system" shall not include a  
24 stormwater collection system. Stormwater runoff from built  
25 upon areas that is directed to flow through any wetlands shall  
26 flow into and through these wetlands at a non-erosive  
27 velocity.
- 28 3. The development contains a 50-foot-wide vegetative buffer  
29 for new development activities and a 30-foot-wide vegetative  
30 buffer for redevelopment activities. The width of a buffer is  
31 measured horizontally from the normal pool elevation of  
32 impounded structures, from the bank of each side of streams  
33 or rivers, and from the mean high waterline of tidal waters,  
34 perpendicular to the shoreline. The vegetative buffer may be  
35 cleared or graded, but must be planted with, and maintained  
36 in, grass or any other vegetative or plant material. The  
37 Division of Water ~~Quality~~ Quality-Resources may, on a case-by-case  
38 basis, grant a minor variance from the vegetative buffer  
39 requirements of this section pursuant to the procedures set out  
40 in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters  
41 required by this section and any other buffers or filters  
42 required by State water quality or coastal management rules  
43 or local government requirements may be met concurrently  
44 and may contain, in whole or in part, coastal, isolated, or 404  
45 jurisdictional wetlands that are located landward of the  
46 normal waterline.

47 b. High-Density Option: Higher density developments shall be  
48 permitted pursuant to 15A NCAC 02H .1003(d)(2) if the  
49 development meets all of the following requirements:

- 50 1. The development has a built upon area of greater than  
51 twenty-four percent (24%).

- 1 2. The development uses control systems that are any  
2 combination of infiltration systems, wet detention ponds,  
3 bioretention systems, constructed stormwater wetlands, sand  
4 filters, rain barrels, cisterns, rain gardens or alternative  
5 stormwater management systems designed in accordance with  
6 15A NCAC 02H .1008.
- 7 3. Control systems must be designed to store, control, and treat  
8 the stormwater runoff from all surfaces generated by one and  
9 one-half inch of rainfall.
- 10 4. Stormwater runoff from built upon areas that is directed to  
11 flow through any wetlands shall flow into and through these  
12 wetlands at a non-erosive velocity.
- 13 5. A 50-foot-wide vegetative buffer for new development  
14 activities and a 30-foot-wide vegetative buffer for  
15 redevelopment activities. The width of a buffer is measured  
16 horizontally from the normal pool elevation of impounded  
17 structures, from the bank of each side of streams or rivers,  
18 and from the mean high waterline of tidal waters,  
19 perpendicular to the shoreline. The vegetative buffer may be  
20 cleared or graded, but must be planted with, and maintained  
21 in, grass or any other vegetative or plant material.  
22 Furthermore, stormwater control best management practices  
23 (BMPs), or stormwater control structures, with the exception  
24 of wet detention ponds, may be located within this vegetative  
25 buffer. The Division of Water ~~Quality-Resources~~ may, on a  
26 case by case basis, grant a minor variance from the vegetative  
27 buffer requirements of this section pursuant to the procedures  
28 set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers  
29 and filters required by this section and any other buffers or  
30 filters required by State water quality or coastal management  
31 rules or local government requirements may be met  
32 concurrently and may contain, in whole or in part, coastal,  
33 isolated, or 404 jurisdictional wetlands that are located  
34 landward of the normal waterline.
- 35 (4) Requirements for Structural Stormwater Controls. – Structural stormwater  
36 controls required under this section shall meet all of the following  
37 requirements:
  - 38 a. Remove an eighty-five percent (85%) average annual amount of  
39 Total Suspended Solids.
  - 40 b. For detention ponds, draw down the treatment volume no faster than  
41 48 hours, but no slower than 120 hours.
  - 42 c. Discharge the storage volume at a rate equal to or less than the  
43 predevelopment discharge rate for the one-year, 24-hour storm.
  - 44 d. Meet the General Engineering Design Criteria set forth in 15A  
45 NCAC 02H .1008(c).
  - 46 e. For structural stormwater controls that are required under this section  
47 and that require separation from the seasonal high-water table, a  
48 minimum separation of two feet is required. Where a separation of  
49 two feet from the seasonal highwater table is not practicable, the  
50 Division of Water ~~Quality-Resources~~ may grant relief from the  
51 separation requirement pursuant to the Alternative Design Criteria set

1 out in 15A NCAC 02H .1008(h). No minimum separation from the  
2 seasonal highwater table is required for a secondary stormwater best  
3 management practice that is used in a series with another stormwater  
4 best management practice.

- 5 (5) Certain Wetlands Excluded From Density Calculation. – For the purposes of  
6 this section, areas defined as Coastal Wetlands under 15A NCAC 07H  
7 .0205, as measured landward from the normal high waterline, shall not be  
8 included in the overall project area to calculate impervious surface density.  
9 Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC  
10 07H .0205 and that are located landward of the normal high waterline may  
11 be included in the overall project area to calculate impervious surface  
12 density.

13 **"SECTION 2.(c) Requirements for Limited Residential Development in Coastal Counties.**  
14 – For residential development activities within the 20 Coastal Counties that are located within  
15 one-half mile and draining to Class SA waters, that have a built upon area greater than twelve  
16 percent (12%), that do not require a stormwater management permit under subsection (b) of  
17 this section, and that will add more than 10,000 square feet of built upon area, a one-time,  
18 nonrenewable stormwater management permit shall be obtained. The permit shall require  
19 recorded deed restrictions or protective covenants to ensure that the plans and specifications  
20 approved in the permit are maintained. Under this permit, stormwater runoff shall be managed  
21 using any one or combination of the following practices:

- 22 (1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from  
23 the first one and one-half inches of rain. Rain barrels and cisterns shall be  
24 installed in such a manner as to facilitate the reuse of the collected rain water  
25 on site and shall be installed in such a manner that any overflow from these  
26 devices is directed to a vegetated area in a diffuse flow. Construct all  
27 uncovered driveways, uncovered parking areas, uncovered walkways, and  
28 uncovered patios out of permeable pavement or other pervious materials.  
29 (2) Direct rooftop runoff from the first one and one-half inches of rain to an  
30 appropriately sized and designed rain garden. Construct all uncovered  
31 driveways, uncovered parking areas, uncovered walkways, and uncovered  
32 patios out of permeable pavement or other pervious materials.  
33 (3) Install any other stormwater best management practice that meets the  
34 requirements of 15A NCAC 02H .1008 to control and treat the stormwater  
35 runoff from all built upon areas of the site from the first one and one-half  
36 inches of rain.

37 **"SECTION 2.(d) Exclusions.** – The requirements of this section shall not apply to any of  
38 the following:

- 39 (1) Activities of the North Carolina Department of Transportation that are  
40 regulated in accordance with the provisions of the Department's National  
41 Pollutant Discharge Elimination System (NPDES) Stormwater Permit.  
42 (2) Development activities that are conducted pursuant to and consistent with  
43 one of the following authorizations, or any timely renewal thereof, shall be  
44 regulated by those provisions and requirements of 15A NCAC 02H .1005  
45 that were effective at the time of the original issuance of the following  
46 authorizations:  
47 a. State Stormwater Permit issued under the provisions of 15A NCAC  
48 02H .1005.  
49 b. Stormwater Certification issued pursuant to 15A NCAC 02H .1000  
50 prior to 1 December 1995.  
51 c. A Coastal Area Management Act Major Permit.

- 1 d. 401 Certification that contains an approved Stormwater Management  
2 Plan.
- 3 e. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.
- 4 f. A site-specific development plan as defined by  
5 G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
- 6 g. A phased development plan approved pursuant to G.S. 153A-344.1  
7 or G.S. 160A-385.1 that shows:
- 8 1. For the initial or first phase of development, the type and  
9 intensity of use for a specific parcel or parcels, including at a  
10 minimum, the boundaries of the project and a subdivision  
11 plan that has been approved pursuant to G.S. 153A-330  
12 through G.S. 153A-335 or G.S. 160A-371 through  
13 G.S. 160A-376.
- 14 2. For any subsequent phase of development, sufficient detail so  
15 that implementation of the requirements of this section to that  
16 phase of development would require a material change in that  
17 phase of the plan.
- 18 h. A vested right to the development pursuant to common law.
- 19 (3) Redevelopment activities that result in no net increase in built upon area and  
20 provide stormwater control equal to the previous development.
- 21 (4) Development activities for which a complete Stormwater Permit Application  
22 has been accepted by the Division of Water ~~Quality Resources~~ prior to the  
23 effective date of this act, shall be regulated by the provisions and  
24 requirements of 15A NCAC 02H .1005 that were effective at the time that  
25 this application was accepted as complete by the Division of Water  
26 ~~Quality Resources~~. For purposes of this subsection, a Stormwater Permit  
27 Application is deemed accepted as complete by the Division of Water  
28 ~~Quality Resources~~ when the application is assigned a permit number in the  
29 Division's Basinwide Information Management System.
- 30 (5) Development activities for which only a minor modification of a State  
31 Stormwater Permit is required shall be regulated by the provisions and  
32 requirements of 15A NCAC 02H .1005 that were effective at the time of the  
33 original issuance of the State Stormwater Permit. For purposes of this  
34 subsection, a minor modification of a State Stormwater Permit is defined as  
35 a modification that does not increase the net area of built upon area within  
36 the project site or does not increase the overall size of the stormwater  
37 controls that have been previously approved for that development activity.
- 38 (6) Municipalities designated as a National Pollutant Discharge Elimination  
39 System (NPDES) Phase 2 municipality located within the 20 Coastal  
40 Counties until such time as the NPDES Phase 2 Stormwater Permit expires  
41 and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater  
42 Permits for municipalities located within the 20 Coastal Counties, the  
43 Department shall review the permits to determine whether the permits  
44 should be amended to include the provisions of this section.

45 ...."

46 **SECTION 33.(bb)** S.L. 2009-322 reads as rewritten:

47 **"SECTION 1.(a)** The Department of Environment and Natural Resources shall establish  
48 standard stormwater control best management practices and standard process water treatment  
49 processes or equivalent performance standards for composting operations that are required to  
50 be permitted by the Division of Water ~~Quality Resources~~ in the Department and the Division of  
51 Waste Management in the Department. These practices, processes, and standards shall be

1 developed for the purpose of protecting water quality by controlling and containing stormwater  
2 that is associated with composting operations, by reducing the pollutant levels of process water  
3 from composting operations, and by reducing the opportunities for generation of such waters.

4 **"SECTION 1.(b)** The Division of Water ~~Quality Resources~~ shall clarify that stormwater is  
5 water that does not contact anything considered a feedstock, intermediate product, or final  
6 product of composting operations. The Division of Water ~~Quality Resources~~ shall clarify that  
7 wastewater is leachate and water that contacts feedstocks, intermediate products, or final  
8 product, of composting operations. The clarifications shall incorporate available scientifically  
9 valid information obtained from sampling and analyses of North Carolina composting facilities  
10 and from valid representative data from other states. In addition, the Division of Water ~~Quality~~  
11 ~~Resources~~ shall establish threshold quantities of feedstocks, intermediate products, and final  
12 products above which water quality permitting will be required.

13 **"SECTION 1.(c)** The Department shall establish revised water quality permitting  
14 procedures for the composting industry. The revised permitting procedures shall identify the  
15 various circumstances that determine which water quality permit is required for various  
16 composting activities. The Department shall determine whether selected low-risk subsets of the  
17 composting industry may be suitable for expedited or reduced water quality permitting  
18 procedures. The determination shall include consideration of the economic impact of regulatory  
19 decisions.

20 **"SECTION 1.(d)** In developing the practices, processes, and standards and the revised  
21 water quality permitting procedures required by this section, the Department shall review  
22 practices, processes, and standards and permitting procedures adopted by other states and  
23 similar federal programs.

24 **"SECTION 1.(e)** The Department shall form a Compost Operation Stakeholder Advisory  
25 Group composed of representatives from the North Carolina Chapter of the United States  
26 Composting Council, the North Carolina Association of County Commissioners, the North  
27 Carolina League of Municipalities, the North Carolina State Agricultural Extension Service, the  
28 North Carolina Chapter of the American Water Works Association-Water Environment  
29 Federation, the North Carolina Pumper Group, the North Carolina Chapter of the Solid Waste  
30 Association of North America, the North Carolina Septic Tank Association, and any individual  
31 or group commenting to the Department on issues related to water quality at composting  
32 operations. The Compost Operation Stakeholder Advisory Group shall be convened  
33 periodically to provide input and assistance to the Department.

34 **"SECTION 1.(f)** The practices, processes, and standards and the revised permitting  
35 procedures shall address the site size of an operation, the nature of the feedstocks composted,  
36 the type of compost production method employed, the quantity and water quality of the  
37 stormwater or process water associated with composting facilities, the water quality of the  
38 receiving waters, as well as operation and maintenance requirements for the resulting standard  
39 stormwater control best management practices and standard process water treatment processes.

40 **"SECTION 2.** Not later than December 31, 2009, the Department shall report to the  
41 Environmental Review Commission on the progress of the implementation of the provisions of  
42 this act and any recommendations from the Compost Operation Stakeholder Advisory Group  
43 and other commenters. The Department shall periodically make other progress reports as the  
44 Commission may subsequently direct.

45 **"SECTION 3.(a)** For the period of time between the effective date of this act and phase-in  
46 provided by Section 3(d) of this act, permits for composting facilities shall be handled as  
47 follows:

- 48 (1) The Division of Water ~~Quality Resources~~ shall issue interim water quality  
49 permit extensions to all composting facilities applying for a water quality  
50 permit renewal until the revised final water quality permitting procedures are  
51 phased in, as provided in Section 3(d) of this act. The issuance of interim

1 water quality permit extensions shall be contingent upon no significant  
2 changes to the existing quantities, feedstocks, and composting methods  
3 permitted by the Division of Waste Management. For any facility found to  
4 be causing or contributing to a violation of water quality standards, the  
5 Division of Water ~~Quality-Resources~~ may subsequently determine that the  
6 facility is ineligible for continued coverage under an interim water quality  
7 permit extension.

8 (2) For facilities renewing permits issued by the Division of Waste Management  
9 prior to the phase-in provided in Section 3(d) of this act, but operating  
10 without the appropriate water quality permits, the Division of Water ~~Quality~~  
11 ~~Resources~~ will work with those facilities on a case-by-case basis to establish  
12 appropriate permit coverage.

13 (3) New water quality permit applications filed after July 1, 2009, shall be  
14 handled on a case-by-case basis.

15 "**SECTION 3.(b)** Not later than January 1, 2010, the Department shall request comments  
16 and recommendations from the Compost Operation Stakeholder Advisory Group as to standard  
17 stormwater control best management practices, standard process water treatment processes, and  
18 performance standards and the elements of the revised water quality permitting procedures.

19 "**SECTION 3.(c)** Not later than January 1, 2011, the Department shall establish standard  
20 stormwater control best management practices and standard process water treatment processes  
21 or performance standards, including standard methods for the reduction in volume for both of  
22 these waters.

23 "**SECTION 3.(d)** Not later than January 1, 2011, the Department shall begin the phase-in  
24 of the revised water quality permitting procedures for the composting industry. Complete phase  
25 in of the revised water quality permitting procedures shall be accomplished not later than  
26 October 1, 2012.

27 "**SECTION 3.(e)** Water quality permits for the composting industry shall include a  
28 reopener clause that may be used to revise permit conditions to reflect the results of the  
29 stakeholder process.

30 "**SECTION 4.** This act is effective when it becomes law."

31 **SECTION 33.(cc)** Section 4(b) of S.L. 2010-180 reads as rewritten:

32 "**SECTION 4.(b)** In implementing the Surface Water Identification Training and  
33 Certification Program established by G.S. 143-214.25A, as enacted by Section 4(a) of this act,  
34 the Division of Water ~~Quality-Resources~~ of the Department of Environment and Natural  
35 Resources shall give priority to training and certifying the most highly qualified and  
36 experienced personnel in each agency. The Division of Water ~~Quality-Resources~~ shall evaluate  
37 the effectiveness of the Surface Water Identification Training and Certification Program and  
38 shall submit an annual report of its findings and recommendations, if any, to the Environmental  
39 Review Commission on or before October 1 of each year. The Division of Water ~~Quality~~  
40 ~~Resources~~ shall submit the first report required by this section on or before October 1, 2011."

41 **SECTION 33.(dd)** Section 4 of S.L. 2005-190, as amended by Section 31 of S.L.  
42 2006-59 and Section 12 of S.L. 2010-180, reads as rewritten:

43 "**SECTION 4. Other drinking water supply reservoirs.** – The Environmental  
44 Management Commission shall not make any new or increased nutrient loading allocation to  
45 any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater  
46 discharge directly or indirectly into any impaired drinking water supply reservoir for which the  
47 Division of Water ~~Quality-Resources~~ of the Department of Environment and Natural Resources  
48 has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent  
49 rules adopted by the Commission to implement the nutrient management strategy for that  
50 reservoir become effective. The Commission shall report its progress in developing and

1 implementing nutrient management strategies for reservoirs to which this section applies to the  
2 Environmental Review Commission by 1 April of each year beginning 1 April 2006."

3 **SECTION 33.(ee)** Section 13.4(b) of S.L. 2011-145 reads as rewritten:

4 **"SECTION 13.4.(b)** During the 2011-2012 fiscal year and the 2012-2013 fiscal year, the  
5 Groundwater Investigation Unit of the Division of Water ~~Quality-Resources~~ of the Department  
6 of Environment and Natural Resources shall bid to contract to perform well drilling services for  
7 any division within the Department of Environment and Natural Resources that needs to have  
8 wells drilled to monitor groundwater, as part of remediating a contaminated site, or as part of  
9 any other division or program responsibility, except for a particular instance when this would  
10 be impracticable. The provisions of Article 3 of Chapter 143 of the General Statutes apply to  
11 any contract entered into under this section."

12 **SECTION 33.(ff)** Section 21 of Session Law 2011-394 reads as rewritten:

13 **"SECTION 21.** In order to ensure the ongoing delivery of services by the nonpoint source  
14 pollution control programs of the Division of Forest Resources and the Division of Soil and  
15 Water Conservation, the Division of Water ~~Quality-Resources~~ in the Department of  
16 Environment and Natural Resources shall transfer Clean Water Act (CWA) Section 319  
17 Nonpoint Source Management Program Base Grant funds to the Division of Forest Resources  
18 and Division of Soil and Water Conservation, where consistent with the federal grant program  
19 requirements, in an amount that is no less than the average annual amount of funding received  
20 by each of those two Divisions over the two most-recent fiscal bienniums. In the event that the  
21 level of Section 319 base grant funds received by the Department of Environment and Natural  
22 Resources by the United States Environmental Protection Agency is increased or decreased in  
23 any funding cycle, the level of funding received by the Division of Forest Resources and the  
24 Division of Soil and Water Conservation shall be adjusted proportionally. Section 319  
25 Nonpoint Source Management Program Competitive Grant funds shall consider water quality  
26 benefit and be distributed in a fair and equitable manner based on the grant requirements and  
27 the benefit. The Division of Water ~~Quality-Resources~~ will establish a Workgroup of Nonpoint  
28 Source Agencies, including the Division of Forest Resources and the Division of Soil and  
29 Water Conservation, which will consider the competitive grant project proposals. The  
30 Workgroup will be given full input to the project funding decisions."

31 **SECTION 33.(gg)** G.S. 143-215.10F, as amended by S.L. 2013-131, reads as  
32 rewritten:

33 **"§ 143-215.10F. Inspections.**

34 (a) Except as provided in subsection (b) of this section, the Division shall conduct  
35 inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least  
36 once a year to determine whether the system is causing a violation of water quality standards  
37 and whether the system is in compliance with its animal waste management plan or any other  
38 condition of the permit.

39 (b) As an alternative to the inspection program set forth in subsection (a) of this section,  
40 the Division of Soil and Water Conservation of the Department of Agriculture and Consumer  
41 Services shall conduct inspections of all animal operations that are subject to a permit under  
42 G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of  
43 water quality standards and whether the system is in compliance with its animal waste  
44 management plan or any other condition of the permit. The alternative inspection program shall  
45 be located in up to four counties selected using the criteria set forth in Section 15.4(a) of S.L.  
46 1997-443, as amended, as it existed prior to its expiration. The Department of Agriculture and  
47 Consumer Services shall establish procedures whereby resources within the local Soil and  
48 Water Conservation Districts serving the counties are used for quick response to complaints  
49 and reported problems previously referred only to the Division of Water ~~Quality-Resources~~."

50  
51 **PART XXXIV. LIMIT REVIEW OF ENGINEERING WORK**



1           **SECTION 34.** G.S. 89C-19 reads as rewritten:

2   "**§ 89C-19. Public works; requirements where public safety involved.**

3       This State and its political subdivisions such as counties, cities, towns, or other political  
4   entities or legally constituted boards, commissions, public utility companies, or authorities, or  
5   officials, or employees of these entities shall not engage in the practice of engineering or land  
6   surveying involving either public or private property where the safety of the public is directly  
7   involved without the project being under the supervision of a professional engineer for the  
8   preparations of plans and specifications for engineering projects, or a professional land  
9   surveyor for land surveying projects, as provided for the practice of the respective professions  
10   by this Chapter. These entities shall not, in the course of conducting technical review of an  
11   application for a permit or a plan submitted for approval by the entity, require revisions to that  
12   part of the application or plan that constitutes the practice of engineering and that has been  
13   supervised and sealed by a professional engineer unless the employee or official of the  
14   reviewing entity requiring the revision is also a professional engineer or is an engineering  
15   intern under the responsible charge of a professional engineer. Any revisions to the application  
16   or plan that are required by the reviewing entity and that constitute the practice of engineering  
17   shall be provided by written notice to the permit applicant or the person submitting a plan for  
18   approval. The written notice shall be on agency letterhead and shall be signed by the  
19   professional engineer reviewing or supervising the review of the submission and shall include  
20   the engineer's state license number.

21       An official or employee of the State or any political subdivision specified in this section,  
22   holding the positions set out in this section as of June 19, 1975, shall be exempt from the  
23   provisions of this section so long as such official or employee is engaged in substantially the  
24   same type of work as is involved in the present position.

25       Nothing in this section shall be construed to prohibit inspection, maintenance and service  
26   work done by employees of the State of North Carolina, any political subdivision of the State,  
27   or any municipality including construction, installation, servicing, and maintenance by regular  
28   full-time employees of, secondary roads and drawings incidental to work on secondary roads,  
29   streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam,  
30   electric and sewage treatment and disposal plants, the services of superintendents, inspectors or  
31   foremen regularly employed by the State of North Carolina or any political subdivision of the  
32   State, or municipal corporation.

33       The provisions in this section shall not be construed to alter or modify the requirements of  
34   Article 1 of Chapter 133 of the General Statutes."

35  
36   **PART XXXV. DIRECT THE COMMISSION FOR PUBLIC HEALTH TO CLARIFY**  
37   **ITS RULES THAT IMPLEMENT THE PROHIBITION ON SMOKING IN BARS AND**  
38   **RESTAURANTS**

39       **SECTION 35.** No later than January 1, 2014, the Commission for Public Health  
40   shall amend and clarify its rules adopted pursuant to G.S. 130A-497 for the implementation of  
41   the prohibition on smoking in restaurants and bars. The rules shall ensure the consistent  
42   interpretation and enforcement of Part 1C of Article 23 of Chapter 130A of the General  
43   Statutes and shall specifically clarify the definition of enclosed areas for purposes of  
44   implementation of the Part. Rules adopted pursuant to this section (i) shall be exempt from the  
45   requirements of G.S. 150B-21.4; (ii) are not subject to G.S. 150B-21.8 through  
46   G.S. 150B-21.14; and (iii) shall become effective as provided in G.S. 150B-21.3(b1) as though  
47   10 or more written objections had been received as provided by G.S. 150B-21.3(b2). No later  
48   than November 1, 2013, the Commission shall report to the Joint Legislative Oversight  
49   Committee on Health and Human Services on its progress in amending and clarifying the rules.

50  
51   **PART XXXVI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

1           **SECTION 36.(a)** If any section or provision of this act is declared unconstitutional  
2 or invalid by the courts, it does not affect the validity of this act as a whole or any part other  
3 than the part so declared to be unconstitutional or invalid.

4           **SECTION 36.(b)** G.S. 87-97(e), as amended by Section 11 of this act, is effective  
5 when this act becomes law and applies to applications to construct or repair a private drinking  
6 water well that are received by a local health department on or after that date. Section 28 of this  
7 act is effective when it becomes law and applies to ponds used for agriculture that were either  
8 in existence on or constructed after July 22, 1997. Section 18 of this act becomes effective July  
9 1, 2013. Section 16 becomes effective September 1, 2013, and applies to a purchase or  
10 acquisition of interest in real property occurring on or after that date. Section 27 of this act is  
11 effective when this act becomes law and subsection (b2) of G.S. 143-214.7, as enacted by  
12 subsection (a) of Section 27 of this act, applies to projects for which permit applications are  
13 received on or after that date. The remainder of this act is effective when it becomes law.