

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 593
Committee Substitute Favorable 4/21/15

Short Title: Amend Environmental Laws-3.

(Public)

Sponsors:

Referred to:

April 6, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES
3 LAWS.

4 The General Assembly of North Carolina enacts:

5
6 **CLARIFY REIMBURSEMENT OF THIRD-PARTY CLAIMS FROM THE**
7 **COMMERCIAL AND NONCOMMERCIAL LEAKING PETROLEUM**
8 **UNDERGROUND STORAGE TANK CLEANUP FUNDS**

9 **SECTION 1.(a)** G.S. 143-215.94V(e) reads as rewritten:

10 "(e) If the Commission concludes under subsection (d) of this section that no cleanup, no
11 further cleanup, or no further action will be required, the Department shall not pay or reimburse
12 any costs otherwise payable or reimbursable under this Article from either the Commercial or
13 Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment
14 required by this section, unless:

15 (1) Cleanup is ordered or damages are awarded in a finally adjudicated
16 judgment in an action against the owner or landowner. To be eligible for
17 reimbursement of damages arising from a third-party claim for bodily injury
18 or property damage awarded in a finally adjudicated judgment, however, an
19 owner or operator shall (i) notify the Department of any such claim; (ii)
20 provide the Department with all pleadings and other related documents if a
21 lawsuit has been filed; and (iii) provide the Department copies of any
22 medical reports, statements, investigative reports, or certifications from
23 licensed professionals necessary to determine that a claim for bodily injury
24 or property damage is reasonable and necessary. Reimbursement of claims
25 for damages arising from a third-party claim for bodily injury or property
26 damage awarded in a finally adjudicated judgment shall be subject to the
27 limitations set forth in G.S. 143-215.94B(b)(5) and
28 G.S. 143-215.94D(b1)(2), as applicable, and any other provision governing
29 third-party claims set forth in this Article.

30"

31 **SECTION 1.(b)** G.S. 143-215.94A is amended by adding three new subdivisions
32 to read:

33 **"§ 143-215.94A. Definitions.**

34 Unless a different meaning is required by the context, the following definitions shall apply
35 throughout this Part and Part 2B of this Article:

36 ...



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1 (12) "Third party" means a person other than the owner or operator of an
2 underground storage tank from which a release has occurred, or employees
3 or agents of an owner or operator. A property owner shall not be considered
4 a third party if the property was transferred by the owner or operator of an
5 underground storage tank in anticipation of damage due to a release.

6 (13) "Third-party bodily injury" or "bodily injury" when used in connection with
7 "third-party" means specific physical bodily injury proximately resulting
8 from exposure, explosion, or fire caused by the presence of a petroleum
9 release and that is incurred by a person other than the owner or operator of
10 an underground storage tank from which a release has occurred, or
11 employees or agents of an owner or operator.

12 (14) "Third-party property damage" or "property damage" when used in
13 connection with "third-party" means actual physical damage or damage due
14 to specific loss of normal use that proximately resulted from exposure,
15 explosion, or fire caused by the presence of a petroleum release and that is
16 incurred to property owned by a person other than the owner or operator of
17 an underground storage tank from which a release has occurred, or
18 employees or agents of an owner or operator."

19 **SECTION 1.(c)** G.S. 143-215.94B reads as rewritten:

20 **"§ 143-215.94B. Commercial Leaking Petroleum Underground Storage Tank Cleanup**
21 **Fund.**

22 (a) There is established under the control and direction of the Department the
23 Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Commercial
24 Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such
25 purpose by the General Assembly or available to it from grants, other monies paid to it or
26 recovered on behalf of the Commercial Fund, and fees paid pursuant to this Part.

27 (b) The Commercial Fund shall be used for the payment of the following costs up to an
28 aggregate maximum of one million dollars (\$1,000,000) per occurrence resulting from a
29 discharge or release of a petroleum product from a commercial underground storage tank:

30 ...

31 (5) Compensation to third parties for bodily injury and property damage in
32 excess of one hundred thousand dollars (\$100,000) per occurrence. Claims
33 for third-party property damage shall be based on the rental costs of
34 comparable property during the period of loss of use up to a maximum
35 amount equal to the fair market value. In the case of property that is actually
36 destroyed as a result of a petroleum release, reimbursement shall be at an
37 amount necessary to replace or repair the destroyed property.

38 "

39 **SECTION 1.(d)** G.S. 143-215.94D reads as rewritten:

40 **"§ 143-215.94D. Noncommercial Leaking Petroleum Underground Storage Tank**
41 **Cleanup Fund.**

42 (a) There is established under the control and direction of the Department the
43 Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This
44 Noncommercial Fund shall be a nonreverting revolving fund consisting of any monies
45 appropriated for such purpose by the General Assembly or available to it from grants, or other
46 monies paid to it or recovered on behalf of the Noncommercial Fund.

47 ...

48 (b1) The Noncommercial Fund shall be used for the payment of the costs of:

49 (1) For releases discovered or reported to the Department prior to August 1,
50 2013, the cleanup of environmental damage as required by
51 G.S. 143-215.94E(a).

- 1 (1a) For releases discovered or reported to the Department on or after August 1,
- 2 2013, the cleanup of environmental damage as required by
- 3 G.S.143-215.94E(a) in excess of two thousand dollars (\$2,000) or the sum of
- 4 the following amounts, whichever is less:
- 5 a. A deductible of one thousand dollars (\$1,000) per occurrence.
- 6 b. A co-payment equal to ten percent (10%) of the costs of the cleanup
- 7 of environmental damage, per occurrence.
- 8 (2) Compensation to third parties for bodily injury and property damage in
- 9 excess of one hundred thousand dollars (\$100,000) per occurrence. Claims
- 10 for third-party property damage shall be based on the rental costs of
- 11 comparable property during the period of loss of use up to a maximum
- 12 amount equal to the fair market value. In the case of property that is actually
- 13 destroyed as a result of a petroleum release, reimbursement shall be at an
- 14 amount necessary to replace or repair the destroyed property.

15"

16 **SECTION 1.(e)** This section is effective when it becomes law and applies to

17 claims for reimbursement pending or submitted on or after that date.

18

19 **EXEMPT CERTAIN WETLANDS MITIGATION ACTIVITIES FROM**

20 **REQUIREMENTS UNDER THE SEDIMENTATION POLLUTION CONTROL ACT**

21 **SECTION 2.** G.S. 113A-52.01 reads as rewritten:

22 **"§ 113A-52.01. Applicability of this Article.**

23 This Article shall not apply to the following land-disturbing activities:

- 24 (1) Activities, including the breeding and grazing of livestock, undertaken on
- 25 agricultural land for the production of plants and animals useful to man,
- 26 including, but not limited to:
- 27 a. Forages and sod crops, grains and feed crops, tobacco, cotton, and
- 28 peanuts.
- 29 b. Dairy animals and dairy products.
- 30 c. Poultry and poultry products.
- 31 d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies,
- 32 mules, and goats.
- 33 e. Bees and apiary products.
- 34 f. Fur producing animals.
- 35 (2) Activities undertaken on forestland for the production and harvesting of
- 36 timber and timber products and conducted in accordance with best
- 37 management practices set out in Forest Practice Guidelines Related to Water
- 38 Quality, as adopted by the Department.
- 39 (3) Activities for which a permit is required under the Mining Act of 1971,
- 40 Article 7 of Chapter 74 of the General Statutes.
- 41 (4) For the duration of an emergency, activities essential to protect human life,
- 42 including activities specified in an executive order issued under
- 43 G.S. 166A-19.30(a)(5).
- 44 (5) Activities undertaken pursuant to Natural Resources Conservation Service
- 45 standards to restore the wetlands functions of converted wetlands as defined
- 46 in 7 Code of Federal Regulations § 12.2 (January 1, 2014 Edition)."

47

48 **MODIFY IMPLEMENTATION OF THE ODOR CONTROL OF FEED INGREDIENT**

49 **MANUFACTURING PLANTS RULE**

1 **SECTION 3.(a)** Definitions. – "Odor Control of Feed Ingredient Manufacturing
2 Plants Rule" means 15A NCAC 02D .0539 (Odor Control of Feed Ingredient Manufacturing
3 Plants) for purposes of this section and its implementation.

4 **SECTION 3.(b)** Odor Control of Feed Ingredient Manufacturing Plants Rule. –
5 Until the effective date of the revised permanent rule that the Environmental Management
6 Commission is required to adopt pursuant to subsection (d) of this section, the Commission and
7 the Department of Environment and Natural Resources shall implement the Odor Control of
8 Feed Ingredient Manufacturing Plants Rule, as provided in subsection (c) of this section.

9 **SECTION 3.(c)** Implementation. – Notwithstanding the Odor Control of Feed
10 Ingredient Manufacturing Plants Rule, the Commission shall implement the rule as follows:

- 11 (1) Raw material shall be considered in "storage" after it has been unloaded at a
12 facility or after it has been located at the facility for at least 36 hours.
- 13 (2) A vehicle or container holding raw material, which has not been unloaded
14 inside or parked inside an odor controlled area within the facility, shall be
15 unloaded for processing of the raw material prior to the expiration of the
16 following time limits:
 - 17 a. For feathers with only trace amounts of blood, such as those obtained
18 from slaughtering houses that separate blood from offal and feathers,
19 no later than 48 hours after being weighed upon arrival at the facility.
 - 20 b. For used cooking oil in sealed tankers, no later than 96 hours after
21 being weighed upon arrival at the facility.

22 **SECTION 3.(d)** Additional Rule-Making Authority. – The Commission shall
23 adopt a rule to replace the Odor Control of Feed Ingredient Manufacturing Plants Rule.
24 Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section
25 shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted
26 pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General
27 Statutes. Rules adopted pursuant to this section shall become effective as provided in
28 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
29 G.S. 150B-21.3(b2).

30 **SECTION 3.(e)** Effective Date. – Subsection (c) of this section expires when
31 permanent rules to replace subsection (c) of this section have become effective, as provided by
32 subsection (d) of this section.

33 34 **PROHIBIT THE REQUIREMENT OF MITIGATION FOR IMPACTS TO** 35 **INTERMITTENT STREAMS**

36 **SECTION 4.(a)** Article 21 of Chapter 143 of the General Statutes is amended by
37 adding a new section to read:

38 **"§ 143-214.7C. Prohibit the requirement of mitigation for impacts to intermittent**
39 **streams.**

40 Except as required by federal law and notwithstanding any other provision of State law, the
41 Department of Environment and Natural Resources shall not require mitigation for impacts to
42 an intermittent stream. For purposes of this section, "intermittent stream" means a well-defined
43 channel that has all of the following characteristics:

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

1 **SECTION 4.(b)** The Department of Environment and Natural Resources and the
2 Environmental Management Commission shall amend their rules so that the rules are consistent
3 with the provisions of G.S. 143-214.7C, as enacted by subsection (a) of this section.
4

5 **DIRECT THE NORTH CAROLINA FOREST SERVICE TO STUDY DANGERS AND**
6 **RISKS FOR THE STATE'S FORESTS RESULTING FROM IMPORTATION OF**
7 **FIREWOOD FROM OTHER STATES**

8 **SECTION 5.** In order to ensure the protection, preservation, and sustainability of
9 the State's forest resources, the North Carolina Forest Service of the Department of Agriculture
10 and Consumer Services shall study: (i) dangers and risks associated with importation of
11 firewood from other states including the threat of infestation from nonnative invasive species,
12 pests, and disease, such as the emerald ash borer, Asian longhorned beetle, and thousand
13 cankers disease; (ii) impacts from such pests and disease on the State's forests, including the
14 costs to address impacts, as well as impacts on tourism and the wood product industry; (iii)
15 regulations in effect in other states addressing dangers associated with importation of firewood;
16 (iv) restrictions that may be advisable to protect the State's forests from invasive species, pests,
17 and disease; and (v) any other issue the Service deems relevant. In conducting this study, the
18 Service shall, at a minimum, consult with stakeholders including members of the Western
19 North Carolina Public Lands Council, entomologists, and private foresters and landowners. The
20 Service shall report its findings, including specific recommendations for legislative action, to
21 the Environmental Review Commission on or before December 1, 2015.
22

23 **CREATE STREAMLINED PROCESS FOR ON-SITE WASTEWATER SYSTEM**
24 **APPROVAL**

25 **SECTION 6.(a)** The Department of Health and Human Services, Division of
26 Public Health, On-Site Water Protection Branch, shall engage with stakeholders representing
27 the private wastewater system industry to cooperatively develop streamlined and uniform
28 approval processes for new technologies that are introduced for use in on-site wastewater
29 treatment and dispersal systems in this State. The On-Site Water Protection Branch and the
30 industry stakeholders together shall identify and suggest amendments to G.S. 130A-343
31 (Approval of on-site subsurface wastewater systems) that are necessary to achieve and
32 implement such a streamlined uniform approval process.

33 **SECTION 6.(b)** The Department of Health and Human Services shall report its
34 findings and recommended amendments to G.S. 130A-343 to the Environmental Review
35 Commission and the Joint Legislative Oversight Committee on Health and Human Services on
36 or before February 1, 2016.

37 **SECTION 6.(c)** This section shall in no way supersede or nullify the on-site
38 wastewater approval clarifications with respect to certain dispersal media under
39 G.S. 130-343(j1).
40

41 **EFFECTIVE DATE**

42 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
43 law.