

§ 130A-309.213. Prioritization of coal combustion residuals surface impoundments.

(a) As soon as practicable, but no later than December 31, 2015, the Department shall develop proposed classifications for all coal combustion residuals surface impoundments, including active and retired sites, for the purpose of closure and remediation based on these sites' risks to public health, safety, and welfare; the environment; and natural resources and shall determine a schedule for closure and required remediation that is based on the degree of risk to public health, safety, and welfare; the environment; and natural resources posed by the impoundments and that gives priority to the closure and required remediation of impoundments that pose the greatest risk. In assessing the risk, the Department shall evaluate information received pursuant to G.S. 130A-309.211 and G.S. 130A-309.212 and any other information deemed relevant.

(b) The Department shall issue a proposed classification for each coal combustion residuals surface impoundment based upon the assessment conducted pursuant to subsection (a) of this section as high-risk, intermediate-risk, or low-risk. Within 30 days after a proposed classification has been issued, the Department shall issue a written declaration, including findings of fact, documenting the proposed classification. The Department shall provide for public participation on the proposed risk classification as follows:

- (1) The Department shall make copies of the written declaration issued pursuant to this subsection available for inspection as follows:
 - a. A copy of the declaration shall be provided to the local health director.
 - b. A copy of the declaration shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.
 - c. The Department shall post a copy of the declaration on the Department's Web site.
 - d. The Department shall place copies of the declaration in other locations so as to assure the reasonable availability thereof to the public.
- (2) The Department shall give notice of the written declaration issued pursuant to this subsection as follows:
 - a. A notice and summary of the declaration shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.
 - b. Notice of the written declaration shall be given by first-class mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.
 - c. Notice of the written declaration shall be given by electronic mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.
- (3) No later than 60 days after issuance of the written declaration, the Department shall conduct a public meeting in the county or counties in which the site is located to explain the written declaration to the public. The

Department shall give notice of the hearing at least 15 days prior to the date thereof by all of the following methods:

- a. Publication as provided in subdivision (1) of this subsection, with first publication to occur not less than 30 days prior to the scheduled date of the hearing.
- b. First-class mail to persons who have requested notice as provided in subdivision (2) of this subsection.
- c. Electronic mail to persons who have requested notice as provided in subdivision (2) of this subsection.

- (4) At least 30 days from the latest date on which notice is provided pursuant to subdivision (2) of this subsection shall be allowed for the receipt of written comment on the written declaration prior to issuance of a final risk classification. At least 20 days will be allowed for receipt of written comment following a hearing conducted pursuant to subdivision (3) of this subsection prior to issuance of a preliminary risk classification.

(c) Repealed by Session Laws 2016-95, s. 1, effective July 14, 2016.

(d) No later than 30 days after expiration of the deadline set forth in G.S. 130A-309.211(c1), or any applicable extension granted by the Secretary pursuant G.S. 130A-309.211(c1), the Department shall issue a final classification for each impoundment as follows:

- (1) The Department shall classify an impoundment as low-risk if the impoundment owner satisfies both of the following criteria:

- a. Has established permanent water supplies as required for the impoundment pursuant to G.S. 130A-309.211(c1).
- b. Has rectified any deficiencies identified by, and otherwise complied with the requirements of, any dam safety order issued by the Environmental Management Commission for the impoundment pursuant to G.S. 143-215.32. No later than July 1, 2018, the Department shall conduct the annual inspection of each dam associated with a coal combustion residuals surface impoundment required for that year, to detect any deficiencies and to ascertain, at a minimum, whether the dam is sufficiently strong, maintained in good repair and operating condition, does not pose a danger to life or property, and satisfies minimum streamflow requirements. The Department shall issue written findings of fact for each inspection and present such findings to the Environmental Management Commission. If the Department detects any deficiencies, the Commission shall issue an order directing the owner of the dam to take action as may be deemed necessary by the Commission within a time limited by the order, but not later than 90 days after issuance of the order.

- (2) All other impoundments shall be classified as intermediate-risk.

(e) Parties aggrieved by a final decision of the Department issued pursuant to subsection (d) of this section may appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes. (2014-122, s. 3(a); 2016-95, s. 1.)