

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 119
Committee Substitute Favorable 6/2/11
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
6/15/11

Short Title: Amend Environmental Laws 2011.

(Public)

Sponsors:

Referred to:

February 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES
3 LAWS TO (1) EXEMPT CERTAIN NEW RENEWABLE ENERGY FACILITIES FROM
4 BEST AVAILABLE CONTROL TECHNOLOGY (BACT) REQUIREMENTS; (2)
5 REDUCE CERTAIN OPEN BURNING SETBACK REQUIREMENTS AND PROVIDE
6 THAT MINIMAL, UNINTENTIONAL NONCOMPLIANCE WITH AN OPEN
7 BURNING SETBACK IS NOT A VIOLATION; (3) PROVIDE THAT DRAFT EROSION
8 AND SEDIMENTATION CONTROL PLANS FOR THE CONSTRUCTION OF
9 CERTAIN UTILITY LINES MAY BE SUBMITTED WITHOUT A LANDOWNER'S
10 WRITTEN CONSENT; (4) CLARIFY THE PROHIBITION ON DISPOSAL IN
11 LANDFILLS OR BY INCINERATION OF BEVERAGE CONTAINERS THAT ARE
12 REQUIRED TO BE RECYCLED BY CERTAIN ABC PERMITTEES; (5) CLARIFY
13 THE USE OF STATE FUNDS IN THE CONTEXT OF THE REMOVAL OF
14 MERCURY-CONTAINING PRODUCTS FROM PUBLIC BUILDINGS; (6) DIRECT
15 THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP MODEL
16 STORMWATER CAPTURE AND REUSE PRACTICES; (7) PROHIBIT THE DIVISION
17 OF WATER QUALITY OF THE DEPARTMENT OF ENVIRONMENT AND
18 NATURAL RESOURCES FROM REQUIRING A WATER QUALITY PERMIT FOR A
19 TYPE I SOLID WASTE COMPOST FACILITY; (8) AMEND THE WATER-USE
20 STANDARD FOR PUBLIC MAJOR FACILITY CONSTRUCTION AND
21 RENOVATION PROJECTS TO REQUIRE THE INSTALLATION OF
22 WEATHER-BASED IRRIGATION CONTROLLERS; (9) PROVIDE THAT NO PERMIT
23 IS REQUIRED FOR THE CONSTRUCTION OR ALTERATION OF A SEWER
24 SYSTEM OR TREATMENT WORKS THAT ALREADY HAS A DISCHARGE
25 PERMIT; (10) EXEMPT SMALL DAMS AND AGRICULTURAL POND DAMS FROM
26 THE DAM SAFETY ACT; (11) MAKE VARIOUS CHANGES TO THE LAWS
27 GOVERNING THE STATE'S UNDERGROUND STORAGE TANK PROGRAM AND
28 PETROLEUM DISCHARGES; (12) PROMOTE THE USE OF GRAY WATER; (13)
29 CLARIFY THAT NUTRIENT OFFSET PAYMENTS SHALL REFLECT ACTUAL
30 COSTS AS ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION;
31 (14) DELAY IMPLEMENTATION OF CERTAIN JORDAN LAKE RULE
32 REQUIREMENTS; (15) AUTHORIZE THE COMMISSION FOR PUBLIC HEALTH TO
33 ADOPT RULES TO INCORPORATE THE FEDERAL FOOD CODE; (16) ESTABLISH
34 A VARIANCE PROCESS FOR CERTAIN WATER SUPPLY WELL SETBACK



1 REQUIREMENTS; (17) GRANDFATHER CERTAIN DEVELOPMENT UNDER THE
2 NEUSE AND TAR-PAM RIVER BASIN BUFFER REQUIREMENTS; (18) PROVIDE
3 THAT A GINSENG EXPORT CERTIFICATE MAY BE OBTAINED FREE OF
4 CHARGE; (19) PROVIDE FOR AN EARLY SUNSET OF THE METHANE CAPTURE
5 PILOT PROGRAM; (20) DIRECT THE DEPARTMENT OF ENVIRONMENT AND
6 NATURAL RESOURCES TO STUDY STORMWATER MANAGEMENT
7 REQUIREMENTS FOR AIRPORTS IN THE STATE; AND (21) DIRECT CERTAIN
8 TRANSFERS OF FUNDS FOR NONPOINT SOURCE POLLUTION CONTROL
9 PROGRAMS; AND (22) CONFORM THE STATUTORY DEFINITION OF "SOLID
10 WASTE" TO FEDERAL LAW.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** G.S. 62-133.8(g) reads as rewritten:

13 "(g) Control of Emissions. – As used in this subsection, Best Available Control
14 Technology (BACT) means an emissions limitation based on the maximum degree a reduction
15 in the emission of air pollutants that is achievable for a facility, taking into account energy,
16 environmental, and economic impacts and other costs. A biomass combustion process at any
17 new renewable energy facility that delivers electric power to an electric power supplier shall
18 meet BACT. The Environmental Management Commission shall determine on a case-by-case
19 basis the BACT for a facility that would not otherwise be required to comply with BACT
20 pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The
21 Environmental Management Commission may adopt rules to implement this subsection. In
22 adopting rules, the Environmental Management Commission shall take into account cumulative
23 and secondary impacts associated with the concentration of biomass facilities in close
24 proximity to one another. In adopting rules the Environmental Management Commission shall
25 provide for the manner in which a facility that would not otherwise be required to comply with
26 BACT pursuant to the PSD emissions programs shall meet the BACT requirement. This
27 subsection shall not apply to a facility that qualifies as a new renewable energy facility under
28 sub-subdivision b. of subdivision (5) of subsection (a) of this section."

29 **SECTION 2.(a)** Definitions. – The definitions set out in G.S. 143-212,
30 G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section and its
31 implementation.

32 **SECTION 2.(b)** 15A NCAC 02D .1903 (Open Burning Without An Air Quality
33 Permit). – Until the effective date of the revised permanent rule that the Commission is
34 required to adopt pursuant to Section 2(d) of this act, the Commission, the Department, and any
35 other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning
36 Without An Air Quality Permit) shall implement the rule, as provided in Section 2(c) of this
37 act.

38 **SECTION 2.(c)** Implementation. – Notwithstanding sub-subdivision (B)
39 subdivision (2) of subsection (b) of 15A NCAC 02D .1903 (Open Burning Without An Air
40 Quality Permit), open burning for land clearing or right-of-way maintenance is permissible
41 without an air quality permit if the location of the burning is at least 500 feet from any
42 dwelling, group of dwellings, or commercial or institutional establishment, or other occupied
43 structure not located on the property on which the burning is conducted. The regional office
44 supervisor may grant exceptions to the setback requirements if either of the following
45 conditions is met:

- 46 (1) A signed, written statement waiving objections to the open burning
47 associated with the land clearing operation is obtained and submitted to, and
48 the exception granted by, the regional office supervisor before the burning
49 begins from a resident or an owner of each dwelling, commercial or
50 institutional establishment, or other occupied structure within 500 feet of the
51 open burning site. In the case of a lease or rental agreement, the lessee or

1 renter shall be the person from whom permission shall be gained prior to any
2 burning.

3 (2) An air curtain burner that complies with 15A NCAC 02D .1904 (Air Curtain
4 Burners), as provided in this section, is utilized at the open burning site.

5 Factors that the regional supervisor shall consider in deciding to grant the exception include
6 all the persons who need to sign the statement waiving the objection have signed it, the location
7 of the burn, and the type, amount, and nature of the combustible substances. The regional
8 supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest
9 home, or other similar institution is less than 500 feet from the proposed burn site when such
10 institution is occupied.

11 **SECTION 2.(d)** Additional Rule-Making Authority. – The Commission shall
12 adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit).
13 Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section
14 shall be substantively identical to the provisions of Section 2(c) of this act. Rules adopted
15 pursuant to this section are not subject to the publication of notice of text or public hearing
16 requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to
17 G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become
18 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been
19 received as provided by G.S. 150B-21.3(b2).

20 **SECTION 2.(e)** 15A NCAC 02D .1904 (Air Curtain Burners). – Until the effective
21 date of the revised permanent rule that the Commission is required to adopt pursuant to Section
22 2(g) of this act, the Commission, the Department, and any other political subdivision of the
23 State that implements 15A NCAC 02D .1904 (Air Curtain Burners) shall implement the rule, as
24 provided in Section 2(f) of this act.

25 **SECTION 2.(f)** Implementation. – Notwithstanding subdivision (12) of subsection
26 (b) of 15A NCAC 02D .1904 (Air Curtain Burners), the location of the air curtain burning shall
27 be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional
28 establishment, or other occupied structure not located on the property on which the burning is
29 conducted. The regional office supervisor may grant exceptions to the setback requirements if
30 a signed, written statement waiving objections to the air curtain burning is obtained from a
31 resident or an owner of each dwelling, commercial or institutional establishment, or other
32 occupied structure within 300 feet of the burning site. In case of a lease or rental agreement,
33 the lessee or renter, and the property owner shall sign the statement waiving objections to the
34 burning. The statement shall be submitted to and approved by the regional office supervisor
35 before initiation of the burn. Factors that the regional supervisor shall consider in deciding to
36 grant the exception include all the persons who need to sign the statement waiving the
37 objection have signed it; the location of the burn; and the type, amount, and nature of the
38 combustible substances.

39 **SECTION 2.(g)** Additional Rule-Making Authority. – The Commission shall adopt
40 a rule to amend 15A NCAC 02D .1904 (Air Curtain Burners). Notwithstanding
41 G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be
42 substantively identical to the provisions of Section 2(f) of this act. Rules adopted pursuant to
43 this section are not subject to the publication of notice of text or public hearing requirements of
44 G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9
45 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as
46 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
47 provided by G.S. 150B-21.3(b2).

48 **SECTION 2.(h)** G.S. 113-60.29 reads as rewritten:

49 "**§ 113-60.29. Penalties.**

50 Any person violating the provisions of this Article or of any permit issued under the
51 authority of this Article shall be guilty of a Class 3 misdemeanor. It is not a violation of this

1 Article or any permit issued under the authority of this Article if a person unintentionally fails
2 to comply with a setback requirement so long as the difference between the required setback
3 and the actual setback is no more than five percent (5%) of the required setback. The penalties
4 imposed by this section shall be separate and apart and not in lieu of any civil or criminal
5 penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties
6 imposed are also in addition to any liability the violator incurs as a result of actions taken by
7 the Department under G.S. 113-60.28."

8 **SECTION 3.** G.S. 113A-54.1 reads as rewritten:

9 **"§ 113A-54.1. Approval of erosion control plans.**

10 (a) A draft erosion and sedimentation control plan must contain the applicant's address
11 and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for
12 the purpose of receiving notice from the Commission or the Secretary of compliance or
13 noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. ~~If~~
14 Except as provided in subsection (a1) of this section, if the applicant is not the owner of the
15 land to be disturbed, the draft erosion and sedimentation control plan must include the owner's
16 written consent for the applicant to submit a draft erosion and sedimentation control plan and to
17 conduct the anticipated land-disturbing activity. The Commission shall approve, approve with
18 modifications, or disapprove a draft erosion and sedimentation control plan for those
19 land-disturbing activities for which prior plan approval is required within 30 days of receipt.
20 The Commission shall condition approval of a draft erosion and sedimentation control plan
21 upon the applicant's compliance with federal and State water quality laws, regulations, and
22 rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion
23 and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan.
24 If the Commission disapproves a draft erosion and sedimentation control plan or a revised
25 erosion and sedimentation control plan, it must state in writing the specific reasons that the plan
26 was disapproved. Failure to approve, approve with modifications, or disapprove a revised
27 erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of
28 the plan. The Commission may establish an expiration date for erosion and sedimentation
29 control plans approved under this Article.

30 (a1) If the applicant is not the owner of the land to be disturbed and the anticipated
31 land-disturbing activity involves the construction of utility lines for the provision of water,
32 sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation
33 control plan may be submitted without the written consent of the owner of the land, so long as
34 the owner of the land has been provided prior notice of the project.

35 "...."

36 **SECTION 4.** G.S. 130A-309.10 reads as rewritten:

37 "..."

38 (f) No person shall knowingly dispose of the following solid wastes in landfills:

- 39 (1) Repealed by Session Laws 1991, c. 375, s. 1.
- 40 (2) Used oil.
- 41 (3) Yard trash, except in landfills approved for the disposal of yard trash under
42 rules adopted by the Commission. Yard trash that is source separated from
43 solid waste may be accepted at a solid waste disposal area where the area
44 provides and maintains separate yard trash composting facilities.
- 45 (4) White goods.
- 46 (5) Antifreeze (ethylene glycol).
- 47 (6) Aluminum cans.
- 48 (7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition on
49 disposal of whole scrap tires in landfills applies to all whole pneumatic
50 rubber coverings, but does not apply to whole solid rubber coverings.
- 51 (8) Lead-acid batteries, as provided in G.S. 130A-309.70.

- 1 (9) ~~Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
2 (10) Motor vehicle oil filters.
3 (11) Recyclable rigid plastic containers that are required to be labeled as provided
4 in subsection (e) of this section, that have a neck smaller than the body of the
5 container, and that accept a screw top, snap cap, or other closure. The
6 prohibition on disposal of recyclable rigid plastic containers in landfills does
7 not apply to rigid plastic containers that are intended for use in the sale or
8 distribution of motor oil or pesticides.
9 (12) Wooden pallets, except that wooden pallets may be disposed of in a landfill
10 that is permitted to only accept construction and demolition debris.
11 (13) Oyster shells.
12 (14) **(Effective July 1, 2011)** Discarded computer equipment, as defined in
13 G.S. 130A-309.131.
14 (15) **(Effective July 1, 2011)** Discarded televisions, as defined in
15 G.S. 130A-309.131.
16 (f1) No person shall knowingly dispose of the following solid wastes by incineration in
17 an incinerator for which a permit is required under this Article:
18 (1) Antifreeze (ethylene glycol) used solely in motor vehicles.
19 (2) Aluminum cans.
20 (3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
21 (4) White goods.
22 (5) Lead-acid batteries, as provided in G.S. 130A-309.70.
23 (6) ~~Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
24 (7) **(Effective July 1, 2011)** Discarded computer equipment, as defined in
25 G.S. 130A-309.131.
26 (8) **(Effective July 1, 2011)** Discarded televisions, as defined in
27 G.S. 130A-309.131.
28 (f2) ~~Subsection-Subsections (f1) and (f3)~~ of this section shall not apply to solid waste
29 incinerated in an incinerator solely owned and operated by the generator of the solid waste.
30 Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be
31 recycled or reclaimed to make it usable as antifreeze in a motor vehicle.
32 (f3) Holders of on-premises malt beverage permits, on-premises unfortified wine
33 permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly
34 dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in
35 landfills or by incineration in an incinerator for which a permit is required under this Article.
36 (g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
37 (h) The accidental or occasional disposal of small amounts of prohibited solid waste by
38 landfill shall not be construed as a violation of ~~subsection-subsection (f) or (f3)~~ of this section.
39 (i) The accidental or occasional disposal of small amounts of prohibited solid waste by
40 incineration shall not be construed as a violation of ~~subsection-subsection (f1) or (f3)~~ of this
41 section if the Department has approved a plan for the incinerator as provided in subsection (j)
42 of this section or if the incinerator is exempt from subsection (j) of this section.
43 (j) The Department may issue a permit pursuant to this Article for an incinerator that is
44 subject to subsection (f1) of this section only if the applicant for the permit has a plan approved
45 by the Department pursuant to this subsection. The applicant shall file the plan at the time of
46 the application for the permit. The Department shall approve a plan only if it complies with the
47 requirements of this subsection. The plan shall provide for the implementation of a program to
48 prevent the incineration of the solid waste listed in ~~subsection-subsections (f1) and (f3)~~ of this
49 section. The program shall include the random visual inspection prior to incineration of at least
50 ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the
51 retention of the records of the random visual inspections and the training of personnel to

1 recognize the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. If a
2 random visual inspection discovers solid waste that may not be incinerated pursuant to
3 ~~subsection~~ subsections (f1) and (f3) of this section, the program shall provide that the operator
4 of the incinerator shall dispose of the solid waste in accordance with applicable federal and
5 State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes
6 only of medical waste.

7 (k) A county or city may petition the Department for a waiver from the prohibition on
8 disposal of a material described in subdivisions (9), (10), (11) and (12) of subsection (f) of this
9 section and subsection (f3) of this section in a landfill based on a showing that prohibiting the
10 disposal of the material would constitute an economic hardship.

11 (l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least
12 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are
13 not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding
14 subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the
15 landfill.

16 (m) **(Effective July 1, 2011)** No person shall knowingly dispose of fluorescent lights
17 and thermostats that contain mercury in a sanitary landfill for the disposal of construction and
18 demolition debris waste that is unlined or in any other landfill that is unlined."

19 **SECTION 5.** G.S. 130A-310.60 reads as rewritten:

20 **"§ 130A-310.60. (Effective July 1, 2011) Recycling required by public agencies.**

21 (a) Each State agency, including the General Assembly, the General Court of Justice,
22 universities, community colleges, public schools, and political subdivisions using State funds
23 for the construction or operation of public buildings shall establish a program in cooperation
24 with the Department of Environment and Natural Resources and the Department of
25 Administration for the collection and recycling of all spent fluorescent lights and thermostats
26 that contain mercury generated in public buildings owned by each respective entity. The
27 program shall include procedures for convenient collection, safe storage, and proper recycling
28 of spent fluorescent lights and thermostats that contain mercury and contractual or other
29 arrangements with buyers of the recyclable materials.

30 (b) Each State agency, including the General Assembly, the General Court of Justice,
31 universities, community colleges, the Department of Public Instruction on behalf of the public
32 schools, and political subdivisions shall submit a report on or before December 1, 2011, that
33 documents the entity's compliance with the requirements of subsection (a) of this section to the
34 Department of Environment and Natural Resources and the Department of Administration. The
35 Departments shall compile the information submitted and jointly shall submit a report to the
36 Environmental Review Commission on or before January 15, 2012, concerning the activities
37 required by subsection (a) of this section. The information provided shall also be included in
38 the report required by G.S. 130A-309.06(c).

39 (c) For purposes of this section, a political subdivision is using State funds when it
40 receives grant funding from the State for the construction or operation of a public building."

41 **SECTION 6.** G.S. 143-214.7 reads as rewritten:

42 **"§ 143-214.7. Stormwater runoff rules and programs.**

43 (a) Policy, Purpose and Intent. – The Commission shall undertake a continuing
44 planning process to develop and adopt a statewide plan with regard to establishing and
45 enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the
46 purpose and intent of this section that, in developing stormwater runoff rules and programs, the
47 Commission may utilize stormwater rules established by the Commission to protect classified
48 shellfish waters, water supply watersheds, and outstanding resource waters; and to control
49 stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the
50 intent of this section that the Commission phase in the stormwater rules on a priority basis for
51 all sources of pollution to the water. The plan shall be applied evenhandedly throughout the

1 State to address the State's water quality needs. The Commission shall continually monitor
2 water quality in the State and shall revise stormwater runoff rules as necessary to protect water
3 quality. As necessary, the stormwater rules shall be modified to comply with federal
4 regulations.

5 (b) The Commission shall implement stormwater runoff rules and programs for point
6 and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards
7 and best management practices for the protection of the State's water resources in the following
8 order of priority:

9 (1) Classified shellfish waters.

10 (2) Water supply watersheds.

11 (3) Outstanding resource waters.

12 (4) High quality waters.

13 (5) All other waters of the State to the extent that the Commission finds control
14 of stormwater is needed to meet the purposes of this Article.

15 (b1) The Commission shall develop model practices for incorporation of stormwater
16 capture and reuse into stormwater management programs and shall make information on those
17 model practices available to State agencies and local governments.

18 (c) The Commission shall develop model stormwater management programs that may
19 be implemented by State agencies and units of local government. Model stormwater
20 management programs shall be developed to protect existing water uses and assure compliance
21 with water quality standards and classifications. A State agency or unit of local government
22 may submit to the Commission for its approval a stormwater control program for
23 implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of
24 local government are authorized to adopt ordinances and regulations necessary to establish and
25 enforce stormwater control programs. Units of local government are authorized to create or
26 designate agencies or subdivisions to administer and enforce the programs. Two or more units
27 of local government are authorized to establish a joint program and to enter into any
28 agreements that are necessary for the proper administration and enforcement of the program.

29 (c1) Any land-use restriction providing for the maintenance of stormwater best
30 management practices or site consistency with approved stormwater project plans filed
31 pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission
32 shall be enforced by any owner of the land on which the best management practice or project is
33 located, any adjacent property owners, any downstream property owners who would be injured
34 by failure to enforce the land-use restriction, any local government having jurisdiction over any
35 part of the land on which the best management practice or project is located, or the Department
36 through the remedies provided by any provision of law that is implemented or enforced by the
37 Department or by means of a civil action, without first having exhausted any available
38 administrative remedies. A land-use restriction providing for the maintenance of stormwater
39 best management practices or site consistency with approved stormwater project plans filed
40 pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission
41 shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of
42 benefit to particular land, or due to lack of any property interest in particular land. Any person
43 who owns or leases a property subject to a land-use restriction under this section shall abide by
44 the land-use restriction.

45 (d) The Commission shall review each stormwater management program submitted by
46 a State agency or unit of local government and shall notify the State agency or unit of local
47 government that submitted the program that the program has been approved, approved with
48 modifications, or disapproved. The Commission shall approve a program only if it finds that
49 the standards of the program equal or exceed those of the model program adopted by the
50 Commission pursuant to this section.

1 (d1) A retail merchant shall not use more than 400 square feet of impervious surface area
2 within the portion of the merchant's premises that is designed to be used for vehicular parking
3 for the display and sale of nursery stock, as that term is defined by the Board of Agriculture
4 pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

5 (1) Collects and treats stormwater on-site using a treatment system that is
6 designed to remove at least eighty-five percent (85%) of total suspended
7 solids. For purposes of this subdivision, a treatment system includes, but is
8 not limited to, a filtration system or a detention system.

9 (2) Collects and stores stormwater for reuse on-site for irrigation or other
10 purposes.

11 (3) Collects and discharges stormwater to a local or regional stormwater
12 collection and treatment system.

13 (d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

14 (e) The Commission shall annually report to the Environmental Review Commission on
15 the implementation of this section, including the status of any stormwater control programs
16 administered by State agencies and units of local government, on or before 1 October of each
17 year."

18 **SECTION 7.** G.S. 143-214.7A(b) reads as rewritten:

19 "(b) The Division of Water Quality shall clarify that stormwater is water that does not
20 contact anything considered a feedstock, intermediate product, or final product of composting
21 operations. The Division of Water Quality shall clarify that wastewater is leachate and water
22 that contacts feedstocks, intermediate products, or final product, of composting operations. The
23 clarifications shall incorporate available scientifically valid information obtained from
24 sampling and analyses of North Carolina composting facilities and from valid representative
25 data from other states. In addition, the Division of Water Quality shall establish threshold
26 quantities of feedstocks, intermediate products, and final products above which water quality
27 permitting will be required. The Division of Water Quality shall not require water quality
28 permitting for any Type I solid waste compost facility, unless required to do so by federal law."

29 **SECTION 8.(a)** G.S. 143-135.36 is amended by adding a new subdivision to read:

30 **"§ 143-135.36. Definitions.**

31 As used in this section, the following definitions apply unless the context requires
32 otherwise:

33 (1) "ASHRAE" means the American Society of Heating, Refrigerating and
34 Air-Conditioning Engineers, Inc.

35 (2) "Commission" means to document and to verify throughout the construction
36 process whether the performance of a building, a component of a building, a
37 system of a building, or a component of a building system meets specified
38 objectives, criteria, and agency project requirements.

39 (3) "Department" means the Department of Administration.

40 (4) "Institutions of higher education" means the constituent institutions of The
41 University of North Carolina, the regional institutions as defined in
42 G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.

43 (5) "Major facility construction project" means a project to construct a building
44 larger than 20,000 gross square feet of occupied or conditioned space, as
45 defined in the North Carolina State Building Code adopted under Article 9
46 of Chapter 143 of the General Statutes. "Major facility construction project"
47 does not include a project to construct a transmitter building or a pumping
48 station.

49 (6) "Major facility renovation project" means a project to renovate a building
50 when the cost of the project is greater than fifty percent (50%) of the
51 insurance value of the building prior to the renovation and the renovated

1 portion of the building is larger than 20,000 gross square feet of occupied or
2 conditioned space, as defined in the North Carolina State Building Code.
3 "Major facility renovation project" does not include a project to renovate a
4 transmitter building or a pumping station. "Major facility renovation project"
5 does not include a project to renovate a building having historic,
6 architectural, or cultural significance under Part 4 of Article 2 of Chapter
7 143B of the General Statutes.

8 (7) "Public agency" means every State office, officer, board, department, and
9 commission and institutions of higher education.

10 (8) "Weather-based irrigation controller" means an irrigation control device that
11 utilizes local weather and landscape conditions to tailor irrigation system
12 schedules to irrigation needs specific to site conditions."

13 **SECTION 8.(b)** G.S. 143-135.37 reads as rewritten:

14 **"§ 143-135.37. Energy and water use standards for public major facility construction and**
15 **renovation projects; verification and reporting of energy and water use.**

16 (a) Program Established. – The Sustainable Energy-Efficient Buildings Program is
17 established within the Department to be administered by the Department. This program applies
18 to any major facility construction or renovation project of a public agency that is funded in
19 whole or in part from an appropriation in the State capital budget or through a financing
20 contract as defined in G.S. 142-82.

21 (b) Energy-Efficiency Standard. – For every major facility construction project of a
22 public agency, the building shall be designed and constructed so that the calculated energy
23 consumption is at least thirty percent (30%) less than the energy consumption for the same
24 building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every
25 major facility renovation project of a public agency, the renovated building shall be designed
26 and constructed so that the calculated energy consumption is at least twenty percent (20%) less
27 than the energy consumption for the same renovated building as calculated using the
28 energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any
29 exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is
30 included in the ASHRAE 90.1-2004 standard.

31 (c) Indoor Potable Water Use Standard. – For every major facility construction or
32 renovation project of a public agency, the water system shall be designed and constructed so
33 that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor
34 potable water use for the same building as calculated using the fixture performance
35 requirements related to plumbing under the 2006 North Carolina State Building Code.

36 (c1) Outdoor Potable Water Use Standard. – For every major facility construction project
37 of a public agency, the water system shall be designed and constructed so that the calculated
38 sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent
39 (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for
40 the same building as calculated using the performance requirements related to plumbing under
41 the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be
42 used for irrigation systems for major facility construction projects. For every major facility
43 renovation project of a public agency, the Department shall determine on a project-by-project
44 basis what reduced level of outdoor potable use or harvested stormwater use, if any, is a
45 feasible requirement for the ~~project, project, but the~~ The Department shall not require a greater
46 reduction than is required under this subsection for a major facility construction project. To
47 reduce the potable outdoor water as required under this subsection, weather-based irrigation
48 controllers, landscape materials that are water use efficient-efficient, and irrigation strategies
49 that include reuse and recycling of the water may be used."

50 **SECTION 9.** G.S. 143-215.1 reads as rewritten:

51 **"§ 143-215.1. Control of sources of water pollution; permits required.**

1 (a) Activities for Which Permits Required. – ~~No~~ Except as provided in subsection (a5)
2 of this section, no person shall do any of the following things or carry out any of the following
3 activities unless that person has received a permit from the Commission and has complied with
4 all conditions set forth in the permit:

- 5 (1) Make any outlets into the waters of the State.
- 6 (2) Construct or operate any sewer system, treatment works, or disposal system
7 within the State.
- 8 (3) Alter, extend, or change the construction or method of operation of any
9 sewer system, treatment works, or disposal system within the State.
- 10 (4) Increase the quantity of waste discharged through any outlet or processed in
11 any treatment works or disposal system to any extent that would result in
12 any violation of the effluent standards or limitations established for any
13 point source or that would adversely affect the condition of the receiving
14 waters to the extent of violating any applicable standard.
- 15 (5) Change the nature of the waste discharged through any disposal system in
16 any way that would exceed the effluent standards or limitations established
17 for any point source or that would adversely affect the condition of the
18 receiving waters in relation to any applicable standards.
- 19 (6) Cause or permit any waste, directly or indirectly, to be discharged to or in
20 any manner intermixed with the waters of the State in violation of the water
21 quality standards applicable to the assigned classifications or in violation of
22 any effluent standards or limitations established for any point source, unless
23 allowed as a condition of any permit, special order or other appropriate
24 instrument issued or entered into by the Commission under the provisions of
25 this Article.
- 26 (7) Cause or permit any wastes for which pretreatment is required by
27 pretreatment standards to be discharged, directly or indirectly, from a
28 pretreatment facility to any disposal system or to alter, extend or change the
29 construction or method of operation or increase the quantity or change the
30 nature of the waste discharged from or processed in that facility.
- 31 (8) Enter into a contract for the construction and installation of any outlet, sewer
32 system, treatment works, pretreatment facility or disposal system or for the
33 alteration or extension of any such facility.
- 34 (9) Dispose of sludge resulting from the operation of a treatment works,
35 including the removal of in-place sewage sludge from one location and its
36 deposit at another location, consistent with the requirement of the Resource
37 Conservation and Recovery Act and regulations promulgated pursuant
38 thereto.
- 39 (10) Cause or permit any pollutant to enter into a defined managed area of the
40 State's waters for the maintenance or production of harvestable freshwater,
41 estuarine, or marine plants or animals.
- 42 (11) Cause or permit discharges regulated under G.S. 143-214.7 that result in
43 water pollution.
- 44 (12) Construct or operate an animal waste management system, as defined in
45 G.S. 143-215.10B, without obtaining a permit under either this Part or Part
46 1A of this Article.

47 (a1) In the event that both effluent standards or limitations and classifications and water
48 quality standards are applicable to any point source or sources and to the waters to which they
49 discharge, the more stringent among the standards established by the Commission shall be
50 applicable and controlling.

1 (a2) No permit shall be granted for the disposal of waste in waters classified as sources
2 of public water supply where the head of the agency that administers the public water supply
3 program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the
4 plans and specifications for the proposed disposal facility, determines and advises the
5 Commission that any outlet for the disposal of waste is, or would be, sufficiently close to the
6 intake works or proposed intake works of a public water supply as to have an adverse effect on
7 the public health.

8 (a3) If the Commission denies an application for a permit, the Commission shall state in
9 writing the reason for the denial and shall also state the Commission's estimate of the changes
10 in the applicant's proposed activities or plans that would be required in order that the applicant
11 may obtain a permit.

12 (a4) The Department shall regulate wastewater systems under rules adopted by the
13 Commission for Public Health pursuant to Article 11 of Chapter 130A of the General Statutes
14 except as otherwise provided in this subsection. No permit shall be required under this section
15 for a wastewater system regulated under Article 11 of Chapter 130A of the General Statutes.
16 The following wastewater systems shall be regulated by the Department under rules adopted by
17 the Commission:

- 18 (1) Wastewater systems designed to discharge effluent to the land surface or
19 surface waters.
- 20 (2) Wastewater systems designed for groundwater remediation, groundwater
21 injection, or landfill leachate collection and disposal.
- 22 (3) Wastewater systems designed for the complete recycle or reuse of industrial
23 process wastewater.

24 (a5) No permit shall be required to enter into a contract for the construction, installation,
25 alteration, or extension of any sewer system, treatment works, or disposal system or to
26 construct, install, alter, extend, or change the operation of any sewer system, treatment works,
27 or disposal system within the State when the system's or work's principal function is to conduct,
28 treat, equalize, neutralize, stabilize, recycle, or dispose of industrial waste or sewage from an
29 industrial facility and the discharge of the industrial waste or sewage is authorized under a
30 permit issued for the discharge of the industrial waste or sewage into the waters of the State.

31"

32 **SECTION 10.(a)** G.S. 143-215.25A(a) reads as rewritten:

33 "(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

- 34 (1) Constructed by the United States Army Corps of Engineers, the Tennessee
35 Valley Authority, or another agency of the United States government, when
36 the agency designed or approved plans for the dam and supervised its
37 construction.
- 38 (2) Constructed with financial assistance from the United States Soil
39 Conservation Service, when that agency designed or approved plans for the
40 dam and supervised its construction.
- 41 (3) Licensed by the Federal Energy Regulatory Commission, or for which a
42 license application is pending with the Federal Energy Regulatory
43 Commission.
- 44 (4) For use in connection with electric generating facilities regulated by the
45 Nuclear Regulatory Commission.
- 46 (5) Under a single private ownership that provides protection only to land or
47 other property under the same ownership and that does not pose a threat to
48 human life or property below the dam.
- 49 (6) That is less than ~~45~~25 feet in height or that has an impoundment capacity of
50 less than ~~40~~50 acre-feet, unless the Department determines that failure of

1 the dam could result in loss of human life or significant damage to property
2 below the dam.

3 (7) Constructed for the purpose of providing water for agricultural use, when a
4 person who is licensed as a professional engineer under Chapter 89C of the
5 General Statutes designed or approved plans for the dam and supervised its
6 construction."

7 **SECTION 10.(b)** The exemption modified in subdivision (6) of
8 G.S. 143-215.25A(a) and the exemption established in subdivision (7) of G.S. 143-215.25A(a),
9 as amended by Section 10(a) of this act, shall apply retroactively to any dam that is subject to
10 any enforcement action that has not been resolved as of June 1, 2011.

11 **SECTION 11.1.** G.S. 143-215.94B(b) reads as rewritten:

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

15 ...
16 (8) The costs of a site investigation required by the Department for the purpose
17 of determining whether a release from a tank system has occurred, whether
18 or not the investigation confirms that a release has occurred. This
19 subdivision shall not be construed to allow reimbursement for costs of
20 investigations that are part of routine leak detection procedures required by
21 statute or rule."

22 **SECTION 11.2.** G.S. 143-215.94B(b1) reads as rewritten:

23 "(b1) In the event that two or more discharges or releases at any one facility, the first of
24 which was discovered or reported on or after 30 June 1988, result in more than one plume of
25 soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the
26 payment of the costs of the cleanup of environmental damage as required by
27 G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate
28 maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount
29 shall be calculated as follows:

30 (1) Each discharge or release shall be considered separately as if it were the only
31 discharge or release, and the cost for which the owner or operator is
32 responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this
33 section, whichever are applicable, shall be determined for each discharge or
34 release. For each discharge or release for which subdivision (4) of subsection
35 (b) of this section is applicable, the cost for which the owner or operator is
36 responsible, for the purpose of this subsection, shall be seventy-five
37 thousand dollars (\$75,000). For purposes of this subsection, two or more
38 discharges or releases that result in a single plume of soil, surface water, or
39 groundwater contamination shall be considered as a single discharge or
40 release.

41 (2) The multiple discharge amount shall be the lesser of:

- 42 a. The sum of all the costs determined as set out in subdivision (1) of
43 this subsection; or
44 b. The product of the highest of the costs determined as set out in
45 subdivision (1) of this subsection multiplied by one and one-half
46 (1½).

47 (3) If an owner or operator elects to cleanup a separate discharge or release for
48 which the owner or operator is not responsible, the responsible party for the
49 other discharge cannot be identified, and the discharges are commingled, the
50 owner or operator shall only be responsible for those costs applicable to the
51 discharge for which the owner or operator is actually the responsible party."

1 **SECTION 11.3.(a)** G.S. 143-215.94B is amended by adding a new subsection to
2 read:

3 "**(i)** During each fiscal year, the Department shall use up to one million dollars
4 (\$1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to
5 be conducted by the Department of discharges or releases for which a responsible party has
6 been identified but for which the responsible party can demonstrate that undertaking the costs
7 of assessment and cleanup will impose a severe financial hardship. The Commission shall
8 adopt rules to define severe financial hardship; establish criteria for assistance due to severe
9 financial hardship pursuant to this section; and establish a process for evaluation and
10 determinations of eligibility with respect to applications for assistance due to severe financial
11 hardship. The rules shall provide that the determinations of eligibility shall be made by the
12 Petroleum Underground Storage Tank Funds Council established under G.S. 143-215.94O."

13 **SECTION 11.3.(b)** G.S. 143-215.94C reads as rewritten:

14 "**§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.**

15 ...

16 (b) The annual operating fee shall be determined on a calendar year basis. For
17 petroleum commercial underground storage tanks in use on 1 January and remaining in use on
18 or after 1 December of that year, the annual operating fee due for that year shall be as specified
19 in subsection (a) of this section. For a petroleum commercial underground storage tank that is
20 first placed in service in any year, the annual operating fee due for that year shall be determined
21 by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by
22 the number of months remaining in the calendar year. For a petroleum commercial
23 underground storage tank that is permanently removed from service in any year, the annual
24 operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the
25 amount specified in subsection (a) of this section by the number of months in the calendar year
26 preceding the permanent removal from use. In calculating the pro rata annual operating fee for
27 a tank that is first placed in use or permanently removed during a calendar year under the
28 preceding two sentences, a partial month shall count as a month, except that where a tank is
29 permanently removed and replaced by another tank, the total of the annual operating fee for the
30 tank that is removed and the replacement tank shall not exceed the annual operating fee for the
31 replacement tank. ~~The~~ Except as provided in this subsection, the annual operating fee shall be
32 due and payable on the first day of the month in accordance with a staggered schedule
33 established by the Department. The Department shall implement a staggered schedule to the
34 end that the total amount of fees to be collected by the Department is approximately the same
35 each quarter. A person who owns or operates more than one petroleum commercial
36 underground storage tank may request that the fee for all tanks be due at the same time. ~~The fee~~
37 ~~for all commercial underground storage tanks located at the same facility shall be due at the~~
38 ~~same time.~~ ~~A person who owns or operates 12 or more commercial petroleum storage tanks~~
39 may request that the total of all fees be paid in four equal payments to be due on the first day of
40 each calendar ~~quarter.~~ quarter, provided that the fee for all commercial underground storage
41 tanks located at the same facility shall be due at the same time.

42 "

43 **SECTION 11.4.** G.S. 143-215.94T reads as rewritten:

44 "**§ 143-215.94T. Adoption and implementation of regulatory program.**

45 ...

46 (c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall
47 require secondary containment for all components of underground storage tank systems,
48 including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary
49 containment requirements shall include standards for double wall tanks, piping, and fittings and
50 for sump containment for pump heads and dispensers. The rules shall provide for monitoring of
51 double wall interstices and sump containments. The rules shall apply to any underground

1 storage tank system that is installed on or after the date on which the rules become effective
2 and to the replacement of any component of an underground storage tank system on or after
3 that date. This section shall not be construed to limit the right of an owner or operator to repair
4 any existing component of an underground storage tank system. If an existing underground
5 storage tank is replaced, the secondary containment and interstitial monitoring requirements
6 shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the
7 secondary containment and interstitial monitoring requirements shall apply only to the replaced
8 piping.

9 (d) The Department shall allow non-tank metallic components that are unprotected from
10 corrosion, including flex connectors and other metal fittings and connectors at the ends of
11 piping runs, to have corrosion protection added as an alternative to replacement of these
12 components if the component does not have visible corrosion and passes a tightness test."

13 **SECTION 11.5.** G.S. 143-215.94V(b) reads as rewritten:

14 "(b) The Commission shall adopt rules to establish a risk-based approach for the
15 assessment, prioritization, and cleanup of discharges and releases from petroleum underground
16 storage tanks. The rules shall address, at a minimum, the circumstances where site-specific
17 information should be considered, criteria for determining acceptable cleanup levels, and the
18 acceptable level or range of levels of risk to human health and the environment. Rules that use
19 the distance between a source area of a confirmed discharge or release to a water supply well or
20 a private drinking water well, as those terms are defined under G.S. 87-85, shall include a
21 determination whether a nearby well is likely to be affected by the discharge or release as a
22 factor in determining levels of risk."

23 **SECTION 11.6.(a)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation
24 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for
25 Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed
26 after January 1, 1991, shall not be required to provide secondary containment until January 1,
27 2020.

28 **SECTION 11.6.(b)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation
29 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for
30 Existing UST Systems Located in Areas Defined in Rule .0301(d)), the Commission shall
31 establish a process for the grant of variances from the setbacks required for UST systems from
32 certain public water supply wells, particularly those that serve only a single facility which are
33 not community water systems, if the Commission finds facts to demonstrate that such variance
34 will not endanger human health and welfare or groundwater.

35 **SECTION 11.6.(c)** No later than January 1, 2014, the Environmental Management
36 Commission shall adopt rules consistent with the provisions of Section 11.6(a) and Section
37 11.6(b) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission
38 pursuant to this section shall be substantively identical to the provisions of Section 11.6(a) and
39 Section 11.6(b) of this act.

40 **SECTION 11.7.(a)** Notwithstanding subsection (a) of 15A NCAC 02N .0903
41 (Underground Storage Tanks: Tanks), from the effective date of this act the Department of
42 Environment and Natural Resources shall not prohibit the use of tanks that are constructed of
43 steel and cathodically protected as provided in 40 Code of Federal Regulations § 280.20(a)(2)
44 (July 1, 2010 Edition) in order to meet the external corrosion protection standards of that rule.

45 **SECTION 11.7.(b)** No later than January 1, 2014, the Environmental Management
46 Commission shall adopt rules consistent with the provisions of Section 11.7(a) of this act.
47 Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this
48 section shall be substantively identical to the provisions of Section 11.7(a) of this act.

49 **SECTION 11.8.** Sections 11.1 through 11.8 are effective when they become law
50 and apply to discharges or releases reported on or after that date, except that Section 11.2
51 applies to discharges or releases reported on or after January 1, 2009.

1 **SECTION 12.(a)** G.S. 143-350 reads as rewritten:

2 "**§ 143-350. Definitions.**

3 As used in this Article:

4 ...

5 **(3a)** "Gray water" means water that is discharged as waste from bathtubs,
6 showers, wash basins, and clothes washers. "Gray water" does not include
7 water that is discharged from toilets or kitchen sinks.

8 **(3b)** "Gray water system" means a water reuse system that is contained within a
9 single family residence or multiunit residential or commercial building that
10 filters gray water or captured rain water and reuses it for nonpotable
11 purposes such as toilet flushing and irrigation.

12 "

13 **SECTION 12.(b)** G.S. 143-355.5 reads as rewritten:

14 "**§ 143-355.5. Water reuse; policy; rule making.**

15 (a) Water Reuse Policy. – It is the public policy of the State that the reuse of treated
16 wastewater or reclaimed water and the use of gray water or captured rain water is critical to
17 meeting the existing and future water supply needs of the State. The General Assembly finds
18 that reclaimed water systems permitted and operated under G.S. 143-215.1(d2) in an approved
19 wastewater reuse program can provide water for many beneficial purposes in a way that is both
20 environmentally acceptable and protective of public health. This finding includes and applies to
21 conjunctive facilities that require the relocation of a discharge from one receiving stream to
22 another under all of the following conditions:

23 (1) The relocation is necessary to create an approved comprehensive wastewater
24 reuse program.

25 (2) The reuse program provides significant reuse benefits.

26 (3) The relocated discharge will comply with all applicable water quality
27 standards; will not result in degradation of water quality in the receiving
28 waters; will not contribute to water quality impairment in the receiving
29 watershed; and will result in net benefits to water quality, such as the
30 elimination of a wastewater discharge in a nutrient sensitive river basin.

31 (b) Water Reuse Rule Making. – The Commission shall encourage and promote safe
32 and beneficial reuse of treated wastewater as an alternative to surface water discharge. The
33 Commission shall adopt rules to:

34 (1) Identify acceptable uses of reclaimed water, including toilet flushing, fire
35 protection, decorative water features, and landscape irrigation.

36 (2) Facilitate the permitting of reclaimed water systems.

37 (3) Establish standards for reclaimed water systems that are adequate to prevent
38 the direct distribution of reclaimed water as potable water.

39 (c) Gray Water Rule Making. – The Commission shall encourage and promote the safe
40 and beneficial use of gray water. The Commission shall adopt rules to:

41 (1) Identify acceptable uses of gray water, including toilet flushing, fire
42 protection, decorative water features, and landscape irrigation.

43 (2) Facilitate the permitting of gray water systems.

44 (3) Establish standards, in coordination with the Commission for Public Health,
45 for gray water systems that protect public health and safety and the
46 environment and reduce the use of potable water within individual
47 structures.

48 (d) The Department shall develop policies and procedures to promote the voluntary
49 adoption and installation of gray water systems."

50 **SECTION 12.(c)** G.S. 130A-335(b) reads as rewritten:

1 "(b) All wastewater systems shall be regulated by the Department under rules adopted by
2 the Commission except for the following wastewater systems that shall be regulated by the
3 Department under rules adopted by the Environmental Management Commission:

- 4 (1) Wastewater collection, treatment, and disposal systems designed to
5 discharge effluent to the land surface or surface waters.
- 6 (2) Wastewater systems designed for groundwater remediation, groundwater
7 injection, or landfill leachate collection and disposal.
- 8 (3) Wastewater systems designed for the complete recycle or reuse of industrial
9 process wastewater.
- 10 (4) Gray water systems as defined in G.S. 143-350."

11 **SECTION 12.(d)** Article 6 of Chapter 153A of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 153A-145. Limitations on regulating cisterns and rain barrels.**

14 No county ordinance may prohibit or have the effect of prohibiting the installation and
15 maintenance of cisterns and rain barrel collection systems used to collect water for irrigation
16 purposes. A county may regulate the installation and maintenance of those cisterns and rain
17 barrel collection systems for the purpose of protecting the public health and safety and for the
18 purpose of preventing them from becoming a public nuisance."

19 **SECTION 12.(e)** Article 8 of Chapter 160A of the General Statutes is amended by
20 adding a new section to read:

21 **"§ 160A-202. Limitations on regulating cisterns and rain barrels.**

22 No city ordinance may prohibit or have the effect of prohibiting the installation and
23 maintenance of cisterns and rain barrel collection systems used to collect water for irrigation
24 purposes. A city may regulate the installation and maintenance of those cisterns and rain barrel
25 collection systems for the purpose of protecting the public health and safety and for the purpose
26 of preventing them from becoming a public nuisance."

27 **SECTION 13.** Section 5 of S.L. 2007-438, as amended by Section 3(b) of S.L.
28 2009-484 and Section 19 of S.L. 2010-180, reads as rewritten:

29 **"SECTION 5.** This act becomes effective 1 September 2007 and applies to all nutrient
30 offset payments, including those set out in 15A NCAC 2B .0240, as adopted by the
31 Environmental Management Commission on 12 January 2006. The fee schedule set out in
32 Section 1 of this act expires ~~1 September 2011~~, when amendments to 15A NCAC 02B .0240
33 and .0274 become effective."

34 **SECTION 14.(a)** Section 2(b) of S.L. 2009-216 reads as rewritten:

35 **"SECTION 2.(b)** Implementation. – Notwithstanding sub-subdivision (c) of subdivision
36 (6) of Wastewater Discharge Rule 15A NCAC 02B .0270, each existing discharger with a
37 permitted flow greater than or equal to 0.1 million gallons per day (MGD) shall limit its total
38 nitrogen discharge to its active individual discharge allocation as defined or modified pursuant
39 to Wastewater Discharge Rule 15A NCAC 02B .0270 no later than calendar year ~~2016~~,2020."

40 **SECTION 14.(b)** Section 3(d) of S.L. 2009-216 reads as rewritten:

41 **"SECTION 3.(d)** Control of Nutrient Loading From Existing Development. – The
42 Department shall require implementation of reasonable nutrient load reduction measures for
43 existing development in each subwatershed of the Jordan Reservoir, as provided in this act. The
44 Department shall determine whether nutrient load reduction measures for existing development
45 are necessary in each subwatershed of Jordan Reservoir and require implementation of
46 reasonable nutrient reduction measures in accordance with an adaptive management program as
47 follows:

- 48 ...
- 49 (2) Stage 2 Adaptive Management Program to Control Nutrient Loading From
50 Existing Development.

1 a. If the March 1, 2014 monitoring report or any subsequent monitoring
 2 report for the Upper New Hope Creek Arm of Jordan Reservoir
 3 required under Section 3(c) of this act shows that nutrient-related
 4 water quality standards are not being achieved, a municipality or
 5 county located in whole or in part in the subwatershed of that arm of
 6 Jordan Reservoir shall develop and implement a Stage 2 adaptive
 7 management program to control nutrient loading from existing
 8 development within the subwatershed, as provided in this act. If the
 9 March 1, ~~2017~~2020 monitoring report or any subsequent monitoring
 10 report for the Haw River Arm or the Lower New Hope Creek Arm of
 11 Jordan Reservoir required under Section 3(c) of this act shows that
 12 nutrient-related water quality standards are not being achieved, a
 13 municipality or county located in whole or in part in the
 14 subwatershed of that arm of Jordan Reservoir shall develop and
 15 implement a Stage 2 adaptive management program to control
 16 nutrient loading from existing development within the subwatershed,
 17 as provided in this act. The Department shall defer development and
 18 implementation of Stage 2 adaptive management programs to control
 19 nutrient loading from existing development required in a
 20 subwatershed by this subdivision if it determines that additional
 21 reductions in nutrient loading from existing development in that
 22 subwatershed will not be necessary to achieve nutrient-related water
 23 quality standards. In making this determination, the Department shall
 24 consider the anticipated effect of measures implemented or scheduled
 25 to be implemented to reduce nutrient loading from sources in the
 26 subwatershed other than existing development. If any subsequent
 27 monitoring report for an arm of Jordan Reservoir required under
 28 Section 3(c) of this act shows that nutrient-related water quality
 29 standards have not been achieved, the Department shall notify the
 30 municipalities and counties located in whole or in part in the
 31 subwatershed of that arm of Jordan Reservoir and the municipalities
 32 and counties shall develop and implement a Stage 2 adaptive
 33 management program as provided in this subdivision.

34"

35 **SECTION 15.(a)** Notwithstanding G.S. 150B-19, as amended by S.L. 2011-13, the
 36 Commission for Public Health may adopt rules to incorporate all or part of the United States
 37 Food and Drug Administration Food Code 2009 and to require that employees of
 38 establishments regulated under subsections (a) and (a2) of G.S. 130A-248 be certified in food
 39 protection in accordance with the United States Food and Drug Administration Food Code
 40 2009.

41 **SECTION 15.(b)** G.S. 130A-248 is amended by adding a new subsection to read:
 42 "(a5) The Department of Health and Human Services may grant a variance from rules
 43 adopted pursuant to this section in accordance with the United States Food and Drug
 44 Administration Food Code 2009 if the Department determines that the issuance of the variance
 45 will not result in a health hazard or nuisance condition."

46 **SECTION 16.1.** Variance from Setbacks for Public Water Supply Wells. –
 47 (a) The Department of Environment and Natural Resources may grant a variance from
 48 the minimum horizontal separation distances for public water supply wells set out in 15A
 49 NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) upon finding that:
 50 (1) The well supplies water to a noncommunity water system as defined in
 51 G.S. 130A-313(10)(b) or supplies water to a business or institution, such as

1 a school, that has become a noncommunity water system through an increase
2 in the number of people served by the well.

3 (2) It is impracticable, taking into consideration feasibility and cost, for the
4 public water system to comply with the minimum horizontal separation
5 distance set out in the applicable sub-subpart of 15A NCAC 18C .0203(2).

6 (3) There is no reasonable alternative source of drinking water available to the
7 public water supply system.

8 (4) The granting of the variance will not result in an unreasonable risk to public
9 health.

10 (b) A variance from the minimum horizontal separation distances set out in 15A NCAC
11 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) shall require that the noncommunity public
12 water supply well meet the following requirements:

13 (1) The well shall comply with the minimum horizontal separation distances set
14 out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) to the
15 maximum extent practicable.

16 (2) The well shall meet a minimum horizontal separation distance of 25 feet
17 from a building, mobile home, or other permanent structure that is not used
18 primarily to house animals.

19 (3) The well shall meet a minimum horizontal separation distance of 100 feet
20 from any animal house or feedlot and from cultivated areas to which
21 chemicals are applied.

22 (4) The well shall meet a minimum horizontal separation distance of 50 feet
23 from surface water.

24 (5) The well shall comply with all other requirements for public well water
25 supplies set out in 15A NCAC 18C .0203.

26 **SECTION 16.2.** Rule Making. – The Commission for Public Health shall adopt
27 rules that are substantively identical to the provisions of Section 16.1. The Commission may
28 reorganize or renumber any of the rules to which this section applies at its discretion. Rules
29 adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14.
30 Rules adopted pursuant to this section shall become effective as provided in
31 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
32 G.S. 150B-21.3(b2).

33 **SECTION 16.3.** Effective Date. – Section 16.1 of this act expires when permanent
34 rules to replace Section 16.1 have become effective as provided by Section 16.2 of this act.

35 **SECTION 17.** Part 1 of Article 21 of Chapter 143 of the General Statutes is
36 amended by adding a new section to read:

37 **§ 143-214.18. Exemption to riparian buffer requirements for certain private properties**
38 **in the Neuse River and Tar-Pamlico River Basins.**

39 (a) Absent a requirement of federal law or an imminent threat to public health or safety,
40 the temporary rules adopted July 22, 1997, January 22, 1998, April 22, 1998, and June 22,
41 1999, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0233,
42 regarding the protection and maintenance of existing riparian buffers in the Neuse River and
43 Tar-Pamlico River Basins shall not apply to any tract of land that meets all of the following
44 criteria:

45 (1) The property is private property.

46 (2) Prior to August 1, 2000, the property was private property and was platted
47 and recorded in the register of deeds in the county where the property is
48 located.

49 (3) With the exception of 15A NCAC 02B .0233, the use of the property
50 complies with the rules and other laws regulating and applicable to that
51 property prior to August 1, 2000.

1 (b) If a property described in subsection (a) of this section is converted to a use that
2 does not comply with subdivisions (1) and (3) of subsection (a) of this section, then 15A
3 NCAC 02B .0233 shall apply."

4 **SECTION 18.(a)** Definitions. – The definitions set out in G.S. 106-202.12 and 02
5 NCAC 48F .0305 (Collection and Sale of Ginseng Rule) apply to this section and its
6 implementation.

7 **SECTION 18.(b)** Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. –
8 Until the effective date of the revised permanent rule that the Board is required to adopt
9 pursuant to Section 18(d) of this act, the Board and the Department shall implement Collection
10 and Sale of Ginseng Rule 02 NCAC 48F .0305, as provided in Section 18(c) of this act.

11 **SECTION 18.(c)** Implementation. – Notwithstanding subdivision (6) of subsection
12 (d) of Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, there shall be no charge for an
13 export certification.

14 **SECTION 18.(d)** Additional Rule-Making Authority. – The Board shall adopt a
15 rule to replace Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. Notwithstanding
16 G.S. 150B-19(4), the rule adopted by the Board pursuant to this section shall be substantively
17 identical to the provisions of Section 18(c) of this act. Rules adopted pursuant to this section
18 are not subject to the publication of notice of text or public hearing requirements of
19 G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9
20 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as
21 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
22 provided by G.S. 150B-21.3(b2).

23 **SECTION 19.** Section 6 of S.L. 2007-523 reads as rewritten:

24 "**SECTION 6.** Effective Dates. – Section 3 of this act becomes effective 1 July 2007. All
25 other sections of this act become effective 1 September 2007. Section 4 of this act expires 1
26 September ~~2017~~2011."

27 **SECTION 20.** The Department of Environment and Natural Resources shall study
28 the stormwater management requirements for airports in the State. The Department shall
29 specifically consider whether the requirements might be amended or implemented in a different
30 way to achieve the same level of water quality protection while reducing the cost and other
31 regulatory burdens associated with compliance with the requirements. In conducting this study,
32 the Department shall consult with representatives of the airports in the State. The Department
33 shall report its findings and recommendations to the Environmental Review Commission no
34 later than February 1, 2012.

35 **SECTION 21.** In order to ensure the ongoing delivery of services by the nonpoint
36 source pollution control programs of the Division of Forest Resources and the Division of Soil
37 and Water Conservation, the Division of Water Quality in the Department of Environment and
38 Natural Resources shall transfer Clean Water Act (CWA) Section 319 Nonpoint Source
39 Management Program grant funds to the Division of Forest Resources and Division of Soil and
40 Water Conservation in an amount that is no less than the average annual amount of funding
41 received by each of those two Divisions over the two most recent fiscal bienniums. In the
42 event that the level of Section 319 grants funds received by the Department of Environment
43 and Natural Resources by the United States Environmental Protection Agency is increased or
44 decreased in any funding cycle, the level of funding received by the Division of Forest
45 Resources and the Division of Soil and Water Conservation shall be adjusted proportionally.

46 **SECTION 22.** G.S. 130A-290(a)(35) reads as rewritten:

47 "(35) "Solid waste" has the same meaning as in 40 Code of Federal Regulations §
48 261.2 (July 1, 2010 Edition).

49 ~~means any hazardous or nonhazardous garbage, refuse or sludge from a~~
50 ~~waste treatment plant, water supply treatment plant or air pollution control~~
51 ~~facility, domestic sewage and sludges generated by the treatment thereof in~~

1 sanitary sewage collection, treatment and disposal systems, and other
2 material that is either discarded or is being accumulated, stored or treated
3 prior to being discarded, or has served its original intended use and is
4 generally discarded, including solid, liquid, semisolid or contained gaseous
5 material resulting from industrial, institutional, commercial and agricultural
6 operations, and from community activities. The term does not include:

- 7 a. Fecal waste from fowls and animals other than humans.
8 b. Solid or dissolved material in:
9 1. Domestic sewage and sludges generated by treatment thereof
10 in sanitary sewage collection, treatment and disposal systems
11 which are designed to discharge effluents to the surface
12 waters.
13 2. Irrigation return flows.
14 3. Wastewater discharges and the sludges incidental to and
15 generated by treatment which are point sources subject to
16 permits granted under Section 402 of the Water Pollution
17 Control Act, as amended (P.L. 92-500), and permits granted
18 under G.S. 143-215.1 by the Environmental Management
19 Commission. However, any sludges that meet the criteria for
20 hazardous waste under RCRA shall also be a solid waste for
21 the purposes of this Article.
22 e. Oils and other liquid hydrocarbons controlled under Article 21A of
23 Chapter 143 of the General Statutes. However, any oils or other
24 liquid hydrocarbons that meet the criteria for hazardous waste under
25 RCRA shall also be a solid waste for the purposes of this Article.
26 d. Any source, special nuclear or byproduct material as defined by the
27 Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).
28 e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46
29 through 74-68 and regulated by the North Carolina Mining
30 Commission (as defined under G.S. 143B-290). However, any
31 specific mining waste that meets the criteria for hazardous waste
32 under RCRA shall also be a solid waste for the purposes of this
33 Article.
34 f. Recovered material."

35 **SECTION 23.** Except as otherwise provided, this act is effective when it becomes
36 law. Section 8(b) of this act applies to every major facility construction project, as defined in
37 G.S. 143-135.36, and every major facility renovation project, as defined in G.S. 143-135.36, of
38 a public agency, as defined in G.S. 143-135.36, that has not entered the schematic design phase
39 prior to the effective date of this act.