

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2015-1
HOUSE BILL 157**

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS.

The General Assembly of North Carolina enacts:

PART I. INTERSTATE MINING COMPACT CLARIFICATION

SECTION 1. G.S. 74-37 reads as rewritten:

"§ 74-37. Compact enacted into law.

The Interstate Mining Compact is hereby enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE MINING COMPACT

...

Article V. The Commission

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission," hereinafter called "the Commission." The Commission shall be composed of one commissioner from each party state who shall be Governor thereof. Pursuant to the laws of his party state, each Governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the Commission. In any instance where a Governor is unable to attend a meeting of the Commission or perform any other function in connection with the business of the Commission, he shall designate an alternate, from among the members of the advisory body required by this ~~paragraph~~paragraph or an official of the state environmental protection agency with responsibility for protecting and restoring lands affected by mining, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the Governor to the Commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the Commission. No action of the Commission making a recommendation pursuant to Article IV-3, IV-7, and IV-8 or requesting, accepting or disposing of funds, services, or other property pursuant to this paragraph, Articles V (g), V (h), or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the Commission is cast in favor thereof. All other action shall be by a majority of those present and voting: Provided that action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The Commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the Commission. The executive director, the treasurer, and such other personnel as the Commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the Commission.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the Commission, shall appoint, remove



or discharge such personnel as may be necessary for the performance of the Commission's functions, and shall fix the duties and compensation of such personnel.

(f) The Commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the Commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The Commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(h) The Commission may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the annual report of the Commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(i) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The Commission annually shall make to the Governor, legislature and advisory body required by Article V (a) of each party state a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been made by the Commission. The Commission may make such additional reports as it may deem desirable.

...."

PART II. RECYCLED AND RECOVERED MATERIALS

SECTION 2.(a) G.S. 130A-290(a) reads as rewritten:

"§ 130A-290. Definitions.

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

...
(35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. Notwithstanding sub-sub-subdivision b.3. of this subdivision, the term includes coal combustion residuals. The term does not include:

- a. Fecal waste from fowls and animals other than humans.
- b. Solid or dissolved material in:
 1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.
 2. Irrigation return flows.
 3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted

under G.S. 143-215.1 by the Commission, including coal combustion products. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

- c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.
- d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).
- e. **(Effective until August 1, 2015)** Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining and Energy Commission (as defined under G.S. 143B-293.1). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.
- e. **(Effective August 1, 2015)** Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-293.1). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.
- f. Recovered material.
- g. Steel slag that is a product of the electric arc furnace steelmaking process; provided, that such steel slag is sold and distributed in the stream of commerce for consumption, use, or further processing into another desired commodity and is managed as an item of commercial value in a controlled manner and not as a discarded material or in a manner constituting disposal.

....

SECTION 2.(b) G.S. 130A-309.05 reads as rewritten:

"§ 130A-309.05. Regulated wastes; certain exclusions.

(a) Notwithstanding other provisions of this Article, the following waste shall be regulated pursuant to this Part:

- (1) Medical waste; and
- (2) Ash generated by a solid waste management facility from the burning of solid waste.

(b) Ash generated by a solid waste management facility from the burning of solid waste shall be disposed of in a properly designed solid waste disposal area that complies with standards developed by the Department for the disposal of the ash. The Department shall work with solid waste management facilities that burn solid waste to identify and develop methods for recycling and reusing incinerator ash or treated ash.

(c) Recovered material is not subject to regulation as solid waste under this Article. In order for a material that would otherwise be regulated as solid waste to qualify as a recovered material, the Department may require any person who owns or has control over the material to demonstrate that the material meets the requirements of this subsection. In order to protect public health and the environment, the Commission may adopt rules to implement this subsection. Materials that are accumulated speculatively, as that term is defined under 40 Code of Federal Regulations § 261 (July 1, 2014 Edition), shall not qualify as a recovered material, and shall be subject to regulation as solid waste. In order to qualify as a recovered material, the material shall be managed as a valuable commodity in a manner consistent with the desired use or end use, and all of the following conditions shall be met:

- (1) A majority—Seventy-five percent (75%), by weight or volume, of the recovered material stored at a facility at the beginning of a calendar year commencing January 1, shall be sold, used, or reused within one year; removed from the facility through sale, use, or reuse by December 31 of the same year.
- (2) The recovered material or the products or by-products of operations that process recovered material shall not be discharged, deposited, injected,

dumped, spilled, leaked, or placed into or upon any land or water so that the products or by-products or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters including groundwaters, or otherwise enter the environment or pose a threat to public health and ~~safety; and safety.~~ Facilities that process recovered material shall be operated in a manner to ensure compliance with this subdivision.

- (3) The recovered material shall not be a hazardous waste or have been recovered from a hazardous waste.
- (4) The recovered material shall not contain significant concentrations of foreign constituents that render it unserviceable or inadequate for sale, or its intended use or reuse."

SECTION 2.(c) G.S. 130A-294 is amended by adding two new subsections to read:

"§ 130A-294. Solid waste management program.

...
(t) Construction and demolition debris diverted from the waste stream or collected as source separated material is subject to a solid waste permit for transfer, treatment, and processing in a permitted solid waste management facility. The Department may adopt rules to implement this subsection.

(u) Garbage diverted from the waste stream or collected as source separated material is subject to a solid waste permit for transfer, treatment, and processing in a permitted solid waste management facility. The Department may adopt rules to implement this subsection."

SECTION 2.(d) G.S. 130A-309.131 reads as rewritten:

"§ 130A-309.131. Definitions.

As used in this Part, the following definitions apply:

- (1) Business entity. – Defined in G.S. 55-1-40(2a).
- (2) Computer equipment. – Any ~~desktop computer, notebook computer, monitor or video display unit for a computer system, and the keyboard, mice, other peripheral equipment, equipment except keyboards and mice, and a printing device such as a printer, a scanner, a combination print-scanner-fax machine, or other device designed to produce hard paper copies from a computer.~~ Computer equipment does not include an automated typewriter, professional workstation, server, ICI device, ICI system, mobile telephone, portable handheld calculator, portable digital assistant (PDA), MP3 player, or other similar device; an automobile; a television; a household appliance; a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the federal Food, Drug, and Cosmetic Act.

- ...
(6) ~~Desktop computer.~~ Computer. – An electronic, magnetic, optical, electrochemical, or other high-speed data processing device that has all of the following features:
- a. Performs logical, arithmetic, and storage functions for general purpose needs that are met through interaction with a number of software programs contained in the computer.
 - b. Is not designed to exclusively perform a specific type of limited or specialized application.
 - c. Achieves human interface through a ~~stand-alone~~ keyboard, ~~stand-alone monitor or other display unit, and a stand-alone mouse or other pointing device.~~
 - d. Is designed for a single user.
 - e. ~~Has a main unit that is intended to be persistently located in a single location, often on a desk or on the floor.~~

...
(9a) Electronic device. – Machinery that is powered by a battery or an electrical cord.
...

- (11) ~~Notebook computer. An electronic, magnetic, optical, electrochemical, or other high-speed data processing device that has all of the following features:~~
- ~~a. Performs logical, arithmetic, or storage functions for general purpose needs that are met through interaction with a number of software programs contained in the computer.~~
 - ~~b. Is not designed to exclusively perform a specific type of limited or specialized application.~~
 - ~~c. Achieves human interface through a keyboard, video display greater than four inches in size, and mouse or other pointing device, all of which are contained within the construction of the unit that comprises the computer.~~
 - ~~d. Is able to be carried as one unit by an individual.~~
 - ~~e. Is able to use external power, internal power, or batteries for a power source.~~

~~Notebook computer includes those that have a supplemental stand-alone interface device attached to the notebook computer. Notebook computer does not include a portable handheld calculator, a PDA, or similar specialized device. A notebook computer may also be referred to as a laptop computer.~~

...."
SECTION 2.(e) Part 2H of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-309.142. Registration of facilities recovering or recycling electronics required.

Facilities that recover or recycle covered devices or other electronic devices diverted from the waste stream for transfer, treatment, or processing shall register annually with the Department on or before August 1 of each year upon such form as the Department may prescribe."

PART III. COAL ASH MANAGEMENT TECHNICAL CORRECTIONS AND AMENDMENTS

SECTION 3.1.(a) G.S. 130A-309.201 reads as rewritten:

"§ 130A-309.201. Definitions.

Unless a different meaning is required by the context, the definitions of G.S. 130A-290 and the following definitions apply throughout this Part:

- ...
 (7) "Commission" means the ~~Environmental~~ Coal Ash Management Commission.

...."
SECTION 3.1.(b) G.S. 130A-309.205 is amended by adding a new subsection to read:

"§ 130A-309.205. Local ordinances regulating management of coal combustion residuals and coal combustion products invalid; petition to preempt local ordinance.

- ...
 (a1) As used in this section, "Commission" means the Environmental Management Commission.

...."
SECTION 3.1.(c) G.S. 130A-309.220 reads as rewritten:

"§ 130A-309.220. Design, construction, and siting requirements for projects using coal combustion products for structural fill.

- (a) Design, Construction, and Operation of Structural Fill Sites. –

- ...
 (6) The coal combustion product structural fill project shall be effectively maintained and operated to ensure no violations of groundwater standards adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to the project.

...."
SECTION 3.2. Section 3(c) of S.L. 2014-122 reads as rewritten:

"**SECTION 3.(c)** The impoundments identified in subsection (b) of this section shall be closed as follows:

- ...
- (3) If restoration of groundwater quality is degraded as a result of the impoundment, corrective action to restore groundwater quality shall be implemented by the owner or operator as provided in ~~G.S. 130A-309.204.~~ G.S. 130A-309.211."

SECTION 3.3. Section 3(f) of S.L. 2014-122 reads as rewritten:

"**SECTION 3.(f)** This section is effective when it becomes law. G.S. 130A-309.202, as enacted by Section 3(a) of this act, is repealed June 30, 2030. Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of coal combustion products as structural fill contracted for on or after that date. ~~The first report due under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due November 1, 2014.~~ Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this act, shall be appointed no later than October 1, 2014."

SECTION 3.4.(a) Section 4(b) of S.L. 2014-122 reads as rewritten:

"**SECTION 4.(b)** Coal combustion products may be used as structural fill for any of the following types of projects:

- (1) A project where the structural fill is used with a base liner, leachate collection system, cap liner, ~~or groundwater monitoring system~~ system, and where the constructor or operator establishes financial assurance, as required by G.S. 130A-309.217.
- (2) As the base or sub-base of a concrete or asphalt paved road constructed under the authority of a public entity."

SECTION 3.4.(b) Section 4(f) of S.L. 2014-122 reads as rewritten:

"**SECTION 4.(f)** This section is effective when it becomes law and applies to the use of coal combustion ~~residuals products~~ residuals products as structural fill contracted for on or after that date."

SECTION 3.4.(c) This section is effective retroactively to September 20, 2014, and applies to the use of coal combustion products as structural fill contracted for on or after that date.

SECTION 3.5. G.S. 143-215.1(k) reads as rewritten:

"(k) Where operation of a disposal system permitted under this section results in exceedances of the groundwater quality standards at or beyond the compliance boundary, the Commission shall require the permittee to undertake corrective action, without regard to the date that the system was first permitted, to restore the groundwater quality by assessing the cause, significance, and extent of the violation of standards and submit the results of the investigation and a plan and proposed schedule for corrective action to the ~~Director or the Director's designee~~ Secretary. The permittee shall implement the plan as approved by, and in accordance with, a schedule established by the ~~Director or the Director's designee~~ Secretary. In establishing a schedule the ~~Director or the Director's designee~~ Secretary shall consider any reasonable schedule proposed by the permittee."

SECTION 3.6. G.S. 62-302.1 reads as rewritten:

"**§ 62-302.1. Regulatory fee for combustion residuals surface impoundments.**

...

(c) When Due. – The fee shall be paid in quarterly installments. The fee is payable to the Coal Ash Management Commission on or before the 15th of the second month following the end of each quarter. Each public utility subject to this fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Coal Ash Management Commission. The report shall state the public utility's total North Carolina jurisdictional revenues for the preceding quarter and shall be accompanied by any supporting documentation that the Coal Ash Management Commission may by rule require. Receipts shall be reported on an accrual basis.

(d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash Management Commission is created. The fees collected pursuant to this section and all other funds received by the Coal Ash Management Commission shall be deposited in the Coal Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing account, and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly. The Coal Ash Management Commission shall be subject to the provisions of the State Budget

Act, except that no unexpended surplus of the Coal Combustion Residuals Management Fund shall revert to the General Fund. All funds credited to the Fund shall be used only to pay the expenses of the Coal Ash Management Commission and the Department of Environment and Natural Resources in providing oversight of coal combustion residuals.

(e) Recovery of Fee. – The North Carolina Utilities Commission shall not allow an electric public utility to recover this fee from the retail electric customers of the State."

SECTION 3.7. G.S. 113-415 reads as rewritten:

"§ 113-415. Conflicting laws.

No provision of this Article shall be construed to repeal, amend, abridge or otherwise affect the authority and responsibility (i) vested in the Environmental Management Commission by Article 7 of Chapter 87 of the General Statutes, pertaining to the location, construction, repair, operation and abandonment of wells; (ii) vested in the Environmental Management Commission related to the control of water and air pollution as provided in Articles 21 and 21A of Chapter 143 of the General Statutes; (iii) vested in the Department and the ~~Environmental Management Commission~~ for Public Health by Article 10 of Chapter 130A of the General Statutes pertaining to public water-supply requirements; or (iv) vested in the Environmental Management Commission related to the management of solid and hazardous waste as provided in Article 9 of Chapter 130A of the General Statutes."

PART IV. CHANGE NAME OF ECOSYSTEM ENHANCEMENT PROGRAM TO DIVISION OF MITIGATION SERVICES

SECTION 4.1. G.S. 143-214.8 reads as rewritten:

"§ 143-214.8. ~~Ecosystem Enhancement Program~~ Division of Mitigation Services: established.

The ~~Ecosystem Enhancement Program~~ Division of Mitigation Services is established within the Department of Environment and Natural Resources. The ~~Ecosystem Enhancement Program~~ Division of Mitigation Services shall be developed by the Department as a nonregulatory statewide ~~ecosystem enhancement~~ mitigation services program for the acquisition, maintenance, restoration, enhancement, and creation of wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities. The ~~Ecosystem Enhancement Program~~ Division of Mitigation Services shall consist of the following components:

- (1) Restoration and perpetual maintenance of wetlands.
- (2) Development of restoration plans.
- (3) Landowner contact and land acquisition.
- (4) Evaluation of site plans and engineering studies.
- (5) Oversight of construction and monitoring of restoration sites.
- (6) Land ownership and management.
- (7) Mapping, site identification, and assessment of wetlands functions.
- (8) Oversight of private wetland mitigation banks to facilitate the components of the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services."

SECTION 4.2. G.S. 143-214.9 reads as rewritten:

"§ 143-214.9. ~~Ecosystem Enhancement Program~~ Division of Mitigation Services: purposes.

The purposes of the ~~program~~ Division of Mitigation Services are as follows:

- (1) To restore wetlands functions and values across the State to replace critical functions lost through historic wetlands conversion and through current and future permitted impacts. It is not the policy of the State to destroy upland habitats unless it would further the purposes of the ~~Wetlands Restoration Program~~ Division of Mitigation Services.
- (2) To provide a consistent and simplified approach to address mitigation requirements associated with permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344.
- (3) To streamline the wetlands permitting process, minimize delays in permit decisions, and decrease the burden of permit applicants of planning and performing compensatory mitigation for wetlands losses.
- (4) To increase the ecological effectiveness of compensatory mitigation.
- (5) To achieve a net increase in wetland acres, functions, and values in each major river basin.

(6) To foster a comprehensive approach to environmental protection."

SECTION 4.3. G.S. 143-214.10 reads as rewritten:

"§ 143-214.10. ~~Ecosystem Enhancement Program~~ Division of Mitigation Services: development and implementation of basinwide restoration plans.

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

SECTION 4.4. G.S. 143-214.11 reads as rewritten:

"§ 143-214.11. ~~Ecosystem Enhancement Program~~ Division of Mitigation Services: compensatory mitigation.

(a) Definitions. – The following definitions apply to this section:

(1) Compensatory mitigation. – The restoration, creation, enhancement, or preservation of jurisdictional waters required as a condition of a permit issued by the Department or by the United States Army Corps of Engineers.

(1a) Compensatory mitigation bank. – A private compensatory mitigation bank or an existing local compensatory mitigation bank.

(1b) Existing local compensatory mitigation bank. – A mitigation bank operated by a unit of local government that is a party to a mitigation banking instrument executed on or before July 1, 2011, notwithstanding subsequent amendments to such instrument executed after July 1, 2011.

(2) Government entity. – The State and its agencies and subdivisions, or the federal government. "Government entity" does not include a unit of local government unless the unit of local government was a party to a mitigation banking instrument executed on or before July 1, 2011, notwithstanding subsequent amendments to such instrument executed after July 1, 2011.

(3) Hydrologic area. – An eight-digit Cataloging Unit designated by the United States Geological Survey.

(4) Jurisdictional waters. – Wetlands, streams, or other waters of the State or of the United States.

(4a) Mitigation banking instrument. – The legal document for the establishment, operation, and use of a mitigation bank.

(4b) Private compensatory mitigation bank. – A site created by a private compensatory mitigation provider and approved for mitigation credit by State and federal regulatory authorities through execution of a mitigation banking instrument. No site owned by a government entity or unit of local government shall be considered a "private compensatory mitigation bank."

(5) Unit of local government. – A "local government," "public authority," or "special district" as defined in G.S. 159-7.

(b) Department to Coordinate Compensatory Mitigation. – All compensatory mitigation required by permits or authorizations issued by the Department or by the United States Army Corps of Engineers shall be coordinated by the Department consistent with the basinwide restoration plans and rules developed by the Environmental Management Commission. All compensatory mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans. All compensatory mitigation shall be consistent with rules adopted by the Commission for wetland and stream mitigation and for protection and maintenance of riparian buffers.

(c) Compensatory Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. – The emphasis of compensatory mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services.

(d) Compensatory Mitigation Options Available to Government Entities. – A government entity may satisfy compensatory mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the Department or of the United States Army Corps of Engineers, as applicable:

- (1) Payment of a fee established by the Commission into the Ecosystem Restoration Fund established in G.S. 143-214.12.
 - (2) Donation of land to the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services or to other public or private nonprofit conservation organizations as approved by the Department.
 - (3) Participation in a compensatory mitigation bank that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation.
 - (4) Preparing and implementing a compensatory mitigation plan.
- (d1) **Compensatory Mitigation Options Available to Applicants Other than Government Entities.** – An applicant other than a government entity may satisfy compensatory mitigation requirements by the following actions, if those actions meet or exceed the requirements of the United States Army Corps of Engineers:
- (1) Participation in a compensatory mitigation bank that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation. This option is only available in a hydrologic area where there is at least one compensatory mitigation bank that has been approved by the United States Army Corps of Engineers.
 - (2) Payment of a fee established by the Commission into the Ecosystem Restoration Fund established in G.S. 143-214.12. – This option is only available to an applicant who demonstrates that the option under subdivision (1) of this subsection is not available.
 - (3) Donation of land to the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services or to other public or private nonprofit conservation organizations as approved by the Department.
 - (4) Preparing and implementing a compensatory mitigation plan.
- (e) **Payment Schedule.** – A standardized schedule of compensatory mitigation payment amounts shall be established by the Commission. Compensatory mitigation payments shall be made by applicants to the Ecosystem Restoration Fund established in G.S. 143-214.12. The monetary payment shall be based on the ecological functions and values of wetlands and streams permitted to be lost and on the cost of restoring or creating wetlands and streams capable of performing the same or similar functions, including directly related costs of wetland and stream restoration planning, long-term monitoring, and maintenance of restored areas. Compensatory mitigation payments for wetlands shall be calculated on a per acre basis. Compensatory mitigation payments for streams shall be calculated on a per linear foot basis.
- (f) **Mitigation Banks.** – State agencies and mitigation banks shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.
- (g) **Payment for Taxes.** – A State agency acquiring land to restore, enhance, preserve, or create wetlands must also pay a sum in lieu of ad valorem taxes lost by the county in accordance with G.S. 146-22.3.
- (h) **Sale of Mitigation Credits by Existing Local Compensatory Mitigation Bank.** – An existing local compensatory mitigation bank shall comply with the requirements of Article 12 of Chapter 160A of the General Statutes applicable to the disposal of property whenever it transfers any mitigation credits to another person.
- (i) The ~~Ecosystem Enhancement Program~~ Division of Mitigation Services shall exercise its authority to provide for compensatory mitigation under the authority granted by this section to use mitigation procurement programs in the following order of preference:
- (1) Full delivery/bank credit purchase program. – The ~~Ecosystem Enhancement Program~~ Division of Mitigation Services shall first seek to meet compensatory mitigation procurement requirements through the ~~Program's~~ Division's full delivery program or by the purchase of credits from a private compensatory mitigation bank.
 - (2) Existing local compensatory mitigation bank credit purchase program. – Any compensatory mitigation procurement requirements that are not fulfillable

under subdivision (1) of this subsection shall be procured from an existing local compensatory mitigation bank, provided that the credit purchase is made to mitigate the impacts of a project located within the mitigation bank service area and hydrologic area of the existing local compensatory mitigation bank.

- (3) Design/build program. – Any compensatory mitigation procurement requirements that are not fulfillable under subdivision (1) or (2) of this subsection shall be procured under a program in which ~~Ecosystem Enhancement Program~~ the Division of Mitigation Services contracts with one private entity to lead or implement the design, construction, and postconstruction monitoring of compensatory mitigation at sites obtained by the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services. Such a program shall be considered the procurement of compensatory mitigation credits.
- (4) Design-bid-build program. – Any compensatory mitigation procurement requirements that are not fulfillable under either subdivision (1) or (2) of this subsection may be procured under the ~~Ecosystem Enhancement Program's~~ Division of Mitigation Services' design-bid-build program. The ~~Ecosystem Enhancement Program~~ Division of Mitigation Services may utilize this program only when procurement under subdivision (1) or (2) of this subsection is not feasible. Any mitigation site design work currently being performed through contracts awarded under the design-bid-build program shall be allowed to continue as scheduled. Contracts for construction of projects with a design already approved by the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services shall be awarded by the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services by issuing a Request for Proposal (RFP). Only contractors who have prequalified under procedures established by the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services shall be eligible to bid on ~~Ecosystem Enhancement Program~~ Division of Mitigation Services construction projects. Construction contracts issued under this subdivision shall be exempt from the requirements of Article 8B of Chapter 143 of the General Statutes.

(j) The regulatory requirements for the establishment, operation, and monitoring of a compensatory mitigation bank or full delivery project shall vest at the time of the execution of the mitigation banking instrument or the award of a full delivery contract."

SECTION 4.5. G.S. 143-214.12 reads as rewritten:

"§ 143-214.12. ~~Ecosystem Enhancement Program~~ Division of Mitigation Services:
Ecosystem Restoration Fund.

(a) Ecosystem Restoration Fund. – The Ecosystem Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Ecosystem Restoration Fund shall provide a repository for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for payments made in lieu of compensatory mitigation as described in subsection (b) of this section. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands and riparian areas in accordance with the basinwide plan as described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad valorem taxes required under G.S. 146-22.3 when the Department is the State agency making the acquisition.

(a1) The Department may distribute funds from the Ecosystem Restoration Fund directly to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A recipient of funds under this subsection shall grant a conservation easement in the real property or interest in real property acquired with the funds to the Department in a form that is acceptable to the Department. The Department may convey real property or an interest in real property that has been acquired under the ~~Ecosystem Enhancement Program~~ Division of Mitigation Services to a federal or

State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A grantee of real property or an interest in real property under this subsection shall grant a conservation easement in the real property or interest in real property to the Department in a form that is acceptable to the Department.

(b) Authorized Methods of Payment. – A person subject to a permit or authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 may contribute to the ~~Ecosystem Enhancement Program~~Division of Mitigation Services in order to comply with conditions to, or terms of, the permit or authorization if participation in the ~~Ecosystem Enhancement Program~~Division of Mitigation Services will meet the mitigation requirements of the United States Army Corps of Engineers. The Department shall, at the discretion of the applicant, accept payment into the Ecosystem Restoration Fund in lieu of other compensatory mitigation requirements of any authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 if the contributions will meet the mitigation requirements of the United States Army Corps of Engineers. Payment may be made in the form of monetary contributions according to a fee schedule established by the Environmental Management Commission or in the form of donations of real property provided that the property is approved by the Department as a suitable site consistent with the basinwide wetlands restoration plan.

(c) Accounting of Payments. – The Department shall provide an itemized statement that accounts for each payment into the Fund. The statement shall include the expenses and activities financed by the payment."

SECTION 4.6. G.S. 143-214.13 reads as rewritten:

"§ 143-214.13. ~~Ecosystem Enhancement Program~~Division of Mitigation Services: **reporting requirement.**

(a) The Department of Environment and Natural Resources shall report each year by November 1 to the Environmental Review Commission and to the Joint Legislative Commission on Governmental Operations regarding its progress in implementing the ~~Ecosystem Enhancement Program~~Division of Mitigation Services and its use of the funds in the Ecosystem Restoration Fund. The report shall document statewide wetlands losses and gains and compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The report shall also provide an accounting of receipts and disbursements of the Ecosystem Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost comparison on a per-acre basis between the State's ~~Ecosystem Enhancement Program~~Division of Mitigation Services and private mitigation banks. The Department shall also send a copy of its report to the Fiscal Research Division of the General Assembly.

(b) The Department shall maintain an inventory of all property that is held, managed, maintained, enhanced, restored, or used to create wetlands under the ~~Ecosystem Enhancement Program~~Division of Mitigation Services. The inventory shall also list all conservation easements held by the Department. The inventory shall be included in the annual report required under subsection (a) of this section."

SECTION 4.7. G.S. 143-214.14 reads as rewritten:

"§ 143-214.14. **Cooperative State-local coalition water quality protection plans.**

(a) Definitions. – The following definitions apply in this section:

- (1) "Basin" means a river basin as defined in G.S. 143-215.22G or any subbasin or segment thereof.
- (2) "Coalition plan" means a water quality protection plan developed by a coalition of local governments for water quality protection of a basin.
- (3) "Local government" means a city, county, special district, authority, or other political subdivision of the State.
- (4) "Water quality protection" means management of water use, quantity, and quality.

(b) Legislative Findings. – This section establishes a framework to encourage State-local pollutant reduction strategies for basins under the supervision and coordination of the Commission. The General Assembly finds that:

- (1) Water quality conditions and sources of water contamination may vary from one basin to another.
- (2) Water quality conditions and sources of water contamination may vary within a basin.

- (3) Some local governments have demonstrated greater capacity than others to protect and improve water quality conditions.
- (4) In some areas of the State artificial alteration of watercourses by surface water impoundments or other means may have a significant effect on water quality.
- (5) Imposition of standard basinwide water quality protection requirements and strategies may not equitably address the varying conditions and needs of all areas.
- (6) There is a need to develop distinct approaches to address water quality protection in basins in the State, drawing upon the resources of local governments and the State, under the supervision and coordination of the Commission.

(c) Legislative Goals and Policies. – It is the goal of the General Assembly that, to the extent practicable, the State shall adopt water quality protection plans that are developed and implemented in cooperation and coordination with local governments and that the State shall adopt water quality protection requirements that are proportional to the relative contributions of pollution from all sources in terms of both the loading and proximity of those sources. Furthermore, it is the goal of the General Assembly to encourage and support State-local partnerships for improved water quality protection through the provision of technical and financial assistance available through the Clean Water Management Trust Fund, the ~~Ecosystem Enhancement Program, Division of Mitigation Services~~, the Ecosystem Restoration Fund, water quality planning and project grant programs, the State's revolving loan and grant programs for water and wastewater facilities, other funding sources, and future appropriations. The Commission shall implement these goals in accordance with the standards, procedures, and requirements set out in this section.

(d) The Commission may, as an alternative method of attaining water quality standards in a basin, approve a coalition plan proposed by a coalition of local governments whose territorial area collectively includes the affected basin in the manner provided by this section. The Commission may approve a coalition plan proposed by a coalition of local governments whose territorial area or water quality protection plan does not include all of an affected basin if the Commission determines that the omission will not adversely affect water quality.

(e) A coalition of local governments choosing to propose a coalition plan to the Commission shall do so through a nonprofit corporation the coalition of local governments incorporates with the Secretary of State.

(f) The Commission may approve a coalition plan only if the Commission first determines that:

- (1) The basin under consideration is an appropriate unit for water quality planning.
- (2) The coalition plan meets the requirements of subsection (g) of this section.
- (3) The coalition of local governments has formed a nonprofit corporation pursuant to subsection (e) of this section.
- (4) The coalition plan has been approved by the governing board of each local government that is a member of the coalition of local governments proposing the coalition plan.
- (5) The coalition plan will provide a viable alternative method of attaining equivalent compliance with federal and State water quality standards, classifications, and management practices in the affected basin.

(g) A coalition plan shall include all of the following:

- (1) An assessment of water quality and related water quantity management in the affected basin.
- (2) A description of the goals and objectives for protection and improvement of water quality and related water quantity management in the affected basin.
- (3) A workplan that describes proposed water quality protection strategies, including point and nonpoint source programs, for achieving the specified goals and objectives; an implementation strategy including specified tasks, timetables for action, implementation responsibilities of State and local agencies; and sources of funding, where applicable.

- (4) A description of the performance indicators and benchmarks that will be used to measure progress in achieving the specified goals and objectives, and an associated monitoring framework.
- (5) A timetable for reporting to the Commission on progress in implementing the coalition plan.

(h) A coalition plan shall cover a specified period. The coalition plan may provide for the phasing in of specific strategies, tasks, or mechanisms by specified dates within the period covered by the plan. The Commission may approve one or more successive coalition plan periods. The coalition plan may include strategies that vary among the subareas or jurisdictions of the geographic area covered by the coalition plan.

(i) If a local government chooses to withdraw from a coalition of local governments or fails to implement a coalition plan, the remaining members of a coalition of local governments may prepare and submit a revised coalition plan for approval by the Commission. If the Commission determines that an approved coalition plan no longer provides a viable alternative method of attaining equivalent compliance with federal and State water quality standards, classifications, and management practices, the Commission may suspend or revoke its approval of the coalition plan.

(j) The Commission may approve one or more amendments to a coalition plan proposed by a coalition of local governments through its nonprofit corporation with the approval of the governing board of each local government that is a member of the coalition of local governments that proposed the coalition plan.

(k) With the approval of the Commission, any coalition of local governments with an approved coalition plan may establish and implement a pollutant trading program for specific pollutants between and among point source dischargers and nonpoint pollution sources.

(l) The Commission shall submit an annual progress report on the implementation of this section to the Environmental Review Commission on or before 1 October of each year."

PART V. ENERGY POLICY COUNCIL AMENDMENTS

SECTION 5. G.S. 113B-3 reads as rewritten:

"§ 113B-3. **Composition of Council; appointments; terms of members; removal; qualifications.**

(a) The Energy Policy Council shall consist of 13 members to be appointed as follows:

(1), (2) Repealed by Session Laws 2013-365, s. 8(c), effective July 29, 2013.

(2a) The Secretary of Environment and Natural ~~Resources~~.Resources, or the Secretary's designee.

(2b) The Secretary of ~~Commerce~~.Commerce, or the Secretary's designee.

(2c) The Lieutenant ~~Governor~~.Governor, or the Lieutenant Governor's designee.

(3) Ten public members who are citizens of the State of North Carolina and who are appointed in accordance with subsection (c) of this section.

(4) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

...
(d) A Council member shall be automatically removed from the Council if he or she fails to attend three successive Council meetings without just cause as determined by the remainder of the Council.

(e) The Governor shall have the power to remove any member of the Council from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973."

PART VI. CLARIFY RULEMAKING DIRECTIVE

SECTION 6.(a) G.S. 113-391(a3) reads as rewritten:

"(a3) The Environmental Management Commission shall adopt rules, after consideration of recommendations from the Mining and Energy Commission, for all of the following purposes:

(1) Stormwater control for sites on which oil and gas exploration and development activities are conducted.

(2) Regulation of toxic air emissions from drilling ~~operations~~.operations, if it determines that the State's current air toxics program and any federal regulations governing toxic air emissions from drilling operations to be adopted by the State by reference are inadequate to protect public health,

safety, welfare, and the environment. In formulating appropriate standards, the Department shall assess emissions from oil and gas exploration and development activities that use horizontal drilling and hydraulic fracturing technologies, including emissions from associated truck traffic, in order to (i) determine the adequacy of the State's current air toxics program to protect landowners who lease their property to drilling operations and (ii) determine the impact on ozone levels in the area in order to determine measures needed to maintain compliance with federal ozone standards."

SECTION 6.(b) This section is effective retroactively to July 2, 2012.

PART VII. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 7.1. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 7.2. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of March, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 8:56 p.m. this 16th day of March, 2015