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SENATE DRS25150-RIa-28A* (05/01)

Short Title: Coal Ash Management Act of 2014. (Public)

Sponsors: Senator Woodard (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO (1) PROHIBIT RECOVERY OF COSTS RELATED TO THE MANAGEMENT
3 OF COAL COMBUSTION RESIDUALS AND UNLAWFUL DISCHARGES FROM
4 COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (2) PROHIBIT
5 CONSTRUCTION OF NEW OR EXPANSION OF EXISTING COAL COMBUSTION
6 RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE JULY 1, 2014; (3) PROHIBIT
7 THE DISPOSAL OF COAL COMBUSTION RESIDUALS GENERATED AFTER
8 AUGUST 1, 2014, INTO COAL COMBUSTION RESIDUALS SURFACE
9 IMPOUNDMENTS AND REQUIRE THAT COAL COMBUSTION RESIDUALS
10 GENERATED AFTER THAT DATE BE DISPOSED OF IN SANITARY LANDFILLS
11 OR PUT TO BENEFICIAL USE AS ALLOWED BY LAW; (4) REQUIRE A SURVEY
12 OF DRINKING WATER SUPPLY WELLS AND REPLACEMENT OF
13 CONTAMINATED WATER SUPPLIES; (5) REQUIRE THE DEPARTMENT OF
14 ENVIRONMENT AND NATURAL RESOURCES TO, AS SOON AS PRACTICABLE
15 BUT NO LATER THAN DECEMBER 1, 2014, PRIORITIZE FOR THE PURPOSE OF
16 CLOSURE AND REMEDIATION COAL COMBUSTION RESIDUALS SURFACE
17 IMPOUNDMENTS, INCLUDING ACTIVE AND RETIRED SITES, BASED ON THESE
18 SITES' RISKS TO PUBLIC HEALTH, SAFETY, AND WELFARE; THE
19 ENVIRONMENT; AND NATURAL RESOURCES; (6) ESTABLISH A SCHEDULE
20 FOR CLOSURE AND REMEDIATION OF ALL IMPOUNDMENTS BASED UPON
21 THE DEPARTMENT'S RISK ASSESSMENT OF THESE SITES AND ESTABLISH
22 BASELINE CLOSURE REQUIREMENTS; (7) REQUIRE CLOSURE AND
23 REMEDIATION OF CERTAIN COAL COMBUSTION RESIDUALS SURFACE
24 IMPOUNDMENTS AS SOON AS PRACTICABLE BUT NO LATER THAN JANUARY
25 1, 2017; (8) PROVIDE FOR THE POSSIBILITY OF FEDERAL PREEMPTION; (9)
26 REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
27 TO REPORT QUARTERLY ON ITS OPERATIONS, ACTIVITIES, PROGRAMS, AND
28 PROGRESS WITH RESPECT TO ITS OBLIGATIONS UNDER THIS ACT FOR COAL
29 COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (10) PLACE A
30 TEMPORARY MORATORIUM ON THE USE OF COAL COMBUSTION RESIDUALS
31 AS STRUCTURAL FILL AND DIRECT THE DEPARTMENT OF ENVIRONMENT
32 AND NATURAL RESOURCES AND THE COMMISSION FOR PUBIC HEALTH TO
33 STUDY THE ADEQUACY OF CURRENT LAWS GOVERNING USE OF COAL
34 COMBUSTION RESIDUALS FOR STRUCTURAL FILL AND OTHER BENEFICIAL
35 USES; (11) PLACE A TEMPORARY MORATORIUM ON THE DISPOSAL OF COAL
36 COMBUSTION RESIDUALS INTO COMBUSTION PRODUCTS LANDFILLS AND



1 THE CONSTRUCTION OF SUCH LANDFILLS UNTIL AUGUST 1, 2015, AND
2 DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
3 TO ASSESS THE RISKS TO PUBLIC HEALTH, SAFETY, AND WELFARE; THE
4 ENVIRONMENT; AND NATURAL RESOURCES, OF COAL COMBUSTION
5 RESIDUALS SURFACE IMPOUNDMENTS LOCATED BENEATH THESE
6 LANDFILLS TO DETERMINE THE ADVISABILITY OF CONTINUED OPERATION
7 OF THESE LANDFILLS; (12) STRENGTHEN THE REPORTING AND
8 NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF
9 WASTEWATER TO WATERS OF THE STATE; (13) REQUIRE DEVELOPMENT OF
10 EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS
11 AND AMEND OTHER DAM SAFETY LAW REQUIREMENTS APPLICABLE TO
12 COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (14) REPEAL
13 COMPLIANCE BOUNDARY AMENDMENTS; AND (15) PROVIDE RESOURCES
14 FOR IMPLEMENTATION OF THIS ACT.

15 The General Assembly of North Carolina enacts:

16
17 **PART I. PROHIBIT RECOVERY OF COSTS RELATED TO THE MANAGEMENT**
18 **OF COAL COMBUSTION RESIDUALS AND UNLAWFUL DISCHARGES FROM**
19 **COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS**

20 **SECTION 1.** Article 7 of Chapter 62 of the General Statutes is amended by adding
21 a new section to read:

22 **"§ 62-133.13. Recovery of costs related to the management of coal combustion residuals**
23 **and unlawful discharges from coal combustion residuals surface**
24 **impoundments to the surface waters of the State.**

25 (a) For the purposes of this section, "coal combustion residuals surface impoundment"
26 has the same meaning as in G.S. 130A-290. For the purposes of this section, "costs related to
27 unlawful discharges to the surface waters of the State" include any corrective actions required
28 of the electric public utility under State or federal law.

29 (b) The Commission shall not allow an electric public utility to recover from the retail
30 electric customers of the State any of the following costs:

31 (1) Costs incurred on or after January 1, 2014, that are related to the
32 management of coal combustion residuals disposed of in coal combustion
33 residuals surface impoundments, including costs associated with complying
34 with the provisions of Part 2I of Article 9 of Chapter 130A of the General
35 Statutes.

36 (2) Costs incurred on or after January 1, 2014, that are related to an unlawful
37 discharge to the surface waters of the State from a coal combustion residuals
38 surface impoundment, unless the Commission determines the discharge was
39 due to an event of force majeure."

40
41 **PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL**
42 **COMBUSTION RESIDUALS**

43 **SECTION 2.(a)** Article 9 of Chapter 130A of the General Statutes is amended by
44 adding a new Part to read:

45 "Part 2I. Coal Ash Management.

46 **"§ 130A-309.200. Title.**

47 This Part may be cited as the "Coal Ash Management Act of 2014."

48 **"§ 130A-309.201. Definitions.**

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

- 1 (1) "Beneficial and beneficial use" means projects promoting public health and
2 environmental protection, offering equivalent success relative to other
3 alternatives, and preserving natural resources.
- 4 (2) "Coal combustion residuals surface impoundment" means a topographic
5 depression, excavation, or diked area that is primarily formed from earthen
6 materials, that is either lined or unlined, and that is designed to hold
7 accumulated coal combustion residuals in the form of liquid wastes, wastes
8 containing free liquids, or sludges, and that is not backfilled or otherwise
9 covered during periods of deposition. "Coal combustion residuals surface
10 impoundment" includes all of the following:
- 11 a. An impoundment that is dry due to the deposited liquid having
12 evaporated, volatilized, or leached.
- 13 b. An impoundment that is wet with exposed liquid.
- 14 c. Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and
15 sludge pits, when these structures are designed to hold accumulated
16 coal combustion residuals.
- 17 d. A coal combustion residuals surface impoundment that has been
18 covered with soil after the final deposition of coal combustion
19 residuals at the impoundment.
- 20 (3) "Structural fill" means an engineered fill with a projected beneficial end use
21 constructed using coal combustion residuals that are properly placed and
22 compacted.
- 23 (4) "Receptor" means any human, plant, animal, or structure which is, or has the
24 potential to be, affected by the release or migration of contaminants. Any
25 well constructed for the purpose of monitoring groundwater and contaminant
26 concentrations shall not be considered a receptor.

27 **"§ 130A-309.202. Disposal to coal combustion residual surface impoundments.**

28 (a) On or after July 1, 2014, the construction of new and expansion of existing coal
29 combustion residuals surface impoundments is prohibited.

30 (b) On or after August 1, 2014, the disposal of coal combustion residuals into a coal
31 combustion residuals surface impoundment is prohibited.

32 (c) Coal combustion residuals generated on or after August 1, 2014, shall be either (i)
33 disposed of into a sanitary landfill properly permitted pursuant to this Article and rules adopted
34 thereunder or (ii) put to beneficial use in compliance with the requirements of 15A NCAC 13B
35 .1700 and other rules as applicable.

36 **"§ 130A-309.203. Drinking water supply well survey and provision of alternate water**
37 supply.

38 No later than October 1, 2014, the owner of a coal combustion residuals surface
39 impoundment shall conduct a Drinking Water Supply Well Survey that identifies all drinking
40 water supply wells within one-half mile from the established compliance boundary of the
41 impoundment and submit the Survey to the Department. No later than December 1, 2014, the
42 Department shall determine, based on the Survey, which drinking water supply wells the owner
43 is required to sample and how frequently and for what period sampling is required. No later
44 than January 1, 2015, the owner shall initiate sampling and water quality analysis of the
45 drinking water supply wells. If the sampling and water quality analysis indicates that water
46 from a drinking water supply well exceeds groundwater quality standards, the owner shall
47 replace the contaminated drinking water supply well with an alternate supply of potable
48 drinking water. The alternate supply of potable drinking water shall be supplied within 30 days
49 of the determination that there is an exceedance of groundwater quality standards. The
50 requirement to replace a contaminated drinking water supply well with an alternate supply of
51 potable drinking water set out in this section is in addition to any other requirements to replace

1 a contaminated drinking water supply well with an alternate supply of potable drinking water
2 applicable to the owners of coal combustion residuals surface impoundments.

3 **"§ 130A-309.204. Prioritization of coal combustion residuals surface impoundments.**

4 (a) As soon as practicable but no later than December 1, 2014, the Department, in
5 coordination with other appropriate agencies, including the United States Environmental
6 Protection Agency, shall prioritize for the purpose of closure and remediation all coal
7 combustion residual surface impoundments, including active and retired sites, based on these
8 sites' risks to public health, safety, and welfare; the environment; and natural resources, and
9 shall determine a schedule for closure and required remediation that is based on the degree of
10 risk to safety, and welfare; the environment; and natural resources posed by impoundment and
11 that gives priority to the closure and required remediation of impoundments that pose the
12 greatest risk. In assessing the risk, the Department shall evaluate information received pursuant
13 to G.S. 130A-309.203 and may request submission of any other information from the owner or
14 operator of an impoundment the Department deems relevant, and, at a minimum, consider all of
15 the following:

- 16 (1) Any imminent hazards to public health and safety resulting from the
17 impoundment.
- 18 (2) Condition and hazard potential classifications for the impoundment issued
19 by the United States Environmental Protection Agency.
- 20 (3) The proximity of surface waters to the impoundment, and whether any
21 surface waters are contaminated or imminently threatened by contamination
22 as a result of the impoundment.
- 23 (4) Information concerning the horizontal and vertical extent of soil and
24 groundwater contamination for all contaminants confirmed to be present in
25 groundwater in exceedance of groundwater quality standards and all
26 significant factors affecting contaminant transport.
- 27 (5) The location and nature of all receptors and significant exposure pathways.
- 28 (6) The geological and hydrogeological features influencing the movement,
29 chemical, and physical character of the contaminants.
- 30 (7) Amount and characteristics of coal combustion residuals in the
31 impoundment.
- 32 (8) Any other factor the Department deems relevant to establishment of risk.

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

- 39 (1) The Secretary shall make copies of the written declaration issued pursuant to
40 this subsection available for inspection as follows:
 - 41 a. A copy of the declaration shall be provided to the local health
42 director.
 - 43 b. A copy of the declaration shall be provided to the public library
44 located in closest proximity to the site in the county or counties in
45 which the site is located.
 - 46 c. The Secretary shall post a copy of the declaration on the
47 Department's Web site.
 - 48 d. The Secretary may place copies of the declaration in other locations
49 so as to assure the availability thereof to the public.

- 1 (2) Before issuing a final classification of an impoundment as high-risk,
2 intermediate-risk, or low-risk, the Secretary shall give notice of the written
3 declaration issued pursuant to this subsection as follows:
- 4 a. A notice and summary of the declaration shall be published weekly
5 for a period of three consecutive weeks in a newspaper having
6 general circulation in the county or counties where the site is located.
- 7 b. Notice of the written declaration shall be given by first-class mail to
8 persons who have requested such notice. Such notice shall include a
9 summary of the written declaration and state the locations where a
10 copy of the written declaration is available for inspection. The
11 Department shall maintain a mailing list of persons who request
12 notice pursuant to this section.
- 13 c. Notice of the written declaration shall be given by electronic mail to
14 persons who have requested such notice. Such notice shall include a
15 summary of the written declaration and state the locations where a
16 copy of the written declaration is available for inspection. The
17 Department shall maintain a mailing list of persons who request
18 notice pursuant to this section.
- 19 (3) No later than 30 days after issuance of the written declaration, the Secretary
20 shall conduct a public meeting in the county or counties in which the site is
21 located to explain the written declaration to the public. The Department shall
22 give notice of the hearing at least 15 days prior to the date thereof by all of
23 the following methods:
- 24 a. Publication as provided in subdivision (1) of this subsection with first
25 publication to occur not less than 30 days prior to the scheduled date
26 of the hearing; and
- 27 b. First-class mail to persons who have requested notice as provided in
28 subdivision (2) of this subsection.
- 29 (4) At least 30 days from the latest date on which notice is provided pursuant to
30 subdivision (2) of this subsection shall be allowed for the receipt of written
31 comment on the written declaration prior to issuance of a final risk
32 classification. At least 20 days shall be allowed for receipt of written
33 comment following a hearing conducted pursuant to subdivision (3) of this
34 subsection prior to issuance of a final risk classification.

35 **"§ 130A-309.205. Closure of coal combustion residual surface impoundments.**

36 (a) Method of Closure. – All coal combustion residuals surface impoundments shall be
37 dewatered and the owner of the impoundment shall remove all coal combustion residuals from
38 the impoundment, return the former impoundment to a nonerosive and stable condition, and
39 dispose the coal combustion residuals in a municipal solid waste landfill located on the same
40 property as the impoundment. Municipal solid waste landfills that receive coal combustion
41 residuals pursuant to this subsection shall, in lieu of the liner requirement established by 15A
42 NCAC 13B .0503, include a bottom liner system consisting of three components in accordance
43 with this subsection. Of the required three components of the liner system, the upper two
44 components shall consist of two separate flexible membrane liners, with a leak detection
45 system between the two liners. The third component shall consist of a minimum of two feet of
46 soil underneath the bottom of those liners, with the soil having a maximum permeability of 1×10^{-7}
47 centimeters per second. The flexible membrane liners shall have a minimum thickness of
48 thirty one-thousandths of an inch (0.030"), except that liners consisting of high-density
49 polyethylene shall be at least sixty one-thousandths of an inch (0.060") thick. The lower
50 flexible membrane liner shall be installed in direct and uniform contact with the compacted soil
51 layer. The Department may approve an alternative to the soil component of the composite liner

1 system if the Department finds, based on modeling, that the alternative liner system will
2 provide an equivalent or greater degree of impermeability.

3 (b) Schedule of Closure. – Impoundments classified pursuant to G.S. 130A-309.204
4 shall be closed according to the following schedule:

5 (1) High-risk impoundments shall be closed as soon as practicable but no later
6 than August 1, 2019.

7 (2) Intermediate-risk impoundments shall be closed as soon as practicable but
8 no later than August 1, 2024.

9 (3) Low-risk impoundments shall be closed as soon as practicable but no later
10 than August 1, 2029.

11 **"§ 130A-309.206. Reports.**

12 (a) The Secretary shall provide an inspection and evaluation report to the
13 Environmental Review Commission that includes (i) a detailed description of each coal
14 combustion residuals surface impoundment, including the location, dimensions, and volume of
15 each impoundment and the amount and type of coal combustion residuals and other waste
16 contained in each impoundment; (ii) findings from inspections and evaluations to ascertain
17 compliance with all applicable State and federal laws; (iii) findings from inspections and
18 evaluations of all infrastructure related to each impoundment to ensure that the infrastructure is
19 in good repair and is properly functioning. The Secretary shall provide a preliminary inspection
20 and evaluation report to the Environmental Review Commission no later than October 1, 2014,
21 and a final inspection and evaluation report to the Environmental Review Commission no later
22 than January 1, 2015.

23 (b) The Secretary shall submit quarterly written reports to the Environmental Review
24 Commission on its operations, activities, programs, and progress with respect to its obligations
25 under this Part concerning all coal combustion residuals surface impoundments. At a minimum,
26 the report shall include information concerning the status of assessment, corrective action,
27 prioritization, and closure for each coal combustion residual surface impoundment and
28 information on costs connected therewith. The report shall also include a summary of all
29 surface water sampling, protection, and restoration activities related to the impoundment for the
30 preceding year, including the status of the identification, assessment, and correction of
31 unpermitted discharges from coal combustion residuals surface impoundments to the surface
32 waters of the State. The Department shall supplement the written reports required by this
33 subsection with additional written and oral reports as may be requested by the Environmental
34 Review Commission. The Department shall submit the written reports required by this
35 subsection whether or not the General Assembly is in session at the time the report is due.

36 (c) On or before October 1 of each year, the Department shall report to each member of
37 the General Assembly who has a coal combustion residuals surface impoundment in the
38 member's district. This report shall include the location of each impoundment in the member's
39 district, the amount of coal combustion residuals known or believed to be located in the
40 impoundment, the last action taken at the impoundment, and the date of that last action.

41 **"§ 130A-309.207. Federal preemption; severability.**

42 The provisions of this Part shall be severable, and if any phrase, clause, sentence, or
43 provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law
44 or regulation, the validity of the remainder of this Part shall not be affected thereby."

45 **SECTION 2.(b)** Notwithstanding G.S. 130A-309.203 and G.S. 130A-309.204, as
46 enacted by Section 1 of this act, the following coal combustion residual surface impoundments
47 shall be deemed high-risk and, as soon as practicable but no later than January 1, 2017, shall be
48 closed in conformance with subsection (c) of this section:

49 (1) Coal combustion residuals surface impoundments located at the Dan River
50 Steam Station, owned and operated by Duke Energy Carolinas, and located
51 in Rockingham County.

- 1 (2) Coal combustion residuals surface impoundments located at the Riverbend
2 Steam Station, owned and operated by Duke Energy Carolinas, and located
3 in Gaston County.
- 4 (3) Coal combustion residuals surface impoundments located at the Asheville
5 Steam Electric Generating Plant, owned and operated by Duke Energy
6 Progress, and located in Buncombe County.
- 7 (4) Coal combustion residuals surface impoundments located at the Sutton
8 Plant, owned and operated by Duke Energy Carolinas, and located in New
9 Hanover County.

10 **SECTION 2.(c)** Except as otherwise preempted by the requirements of federal law,
11 the impoundments identified in subsection (a) of this section shall be dewatered and the owner
12 of the impoundment shall remove all coal combustion residuals from the impoundment, return
13 the former impoundment to a nonerosive and stable condition, and dispose the coal combustion
14 residuals in a municipal solid waste landfill located on the same property as the impoundment.
15 Municipal solid waste landfills that receive coal combustion residuals pursuant to this
16 subsection shall, in lieu of the liner requirement established by 15A NCAC 13B .0503, include
17 a bottom liner system consisting of three components in accordance with this subsection. Of the
18 required three components of the liner system, the upper two components shall consist of two
19 separate flexible membrane liners, with a leak detection system between the two liners. The
20 third component shall consist of a minimum of two feet of soil underneath the bottom of those
21 liners, with the soil having a maximum permeability of 1×10^{-7} centimeters per second. The
22 flexible membrane liners shall have a minimum thickness of thirty one-thousandths of an inch
23 (0.030"), except that liners consisting of high-density polyethylene shall be at least sixty
24 one-thousandths of an inch (0.060") thick. The lower flexible membrane liner shall be installed
25 in direct and uniform contact with the compacted soil layer. The Department may approve an
26 alternative to the soil component of the composite liner system if the Department finds, based
27 on modeling, that the alternative liner system will provide an equivalent or greater degree of
28 impermeability.

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

30 **"§ 130A-290. Definitions.**

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

- 33 ...
- 34 (2b) ~~"Combustion products"~~ "Coal combustion residuals" means residuals,
35 including fly ash, bottom ash, boiler slag, mill rejects, and flue gas
36 desulfurization residue produced by a coal-fired generating unit.
- 37 (2c) ~~"Combustion products landfill"~~ "Coal combustion residuals landfill" means a
38 facility or unit for the disposal of combustion products, where the landfill is
39 located at the same facility with the coal-fired generating unit or units
40 producing the combustion products, and where the landfill is located wholly
41 or partly on top of a facility that is, or was, being used for the disposal or
42 storage of such combustion products, including, but not limited to, landfills,
43 wet and dry ash ponds, and structural fill facilities.
- 44 ...
- 45 (20) "Open dump" means any facility or site where solid waste is disposed of that
46 is not a sanitary landfill and that is not a coal combustion residuals surface
47 impoundment or a facility for the disposal of hazardous waste.
- 48 ...
- 49 (31) "Sanitary landfill" means a facility for disposal of solid waste on land in a
50 sanitary manner in accordance with the rules concerning sanitary landfills
51 adopted under this Article.

- 1 ...
- 2 (35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or
- 3 sludge from a waste treatment plant, water supply treatment plant or air
- 4 pollution control facility, domestic sewage and sludges generated by the
- 5 treatment thereof in sanitary sewage collection, treatment and disposal
- 6 systems, and other material that is either discarded or is being accumulated,
- 7 stored or treated prior to being discarded, or has served its original intended
- 8 use and is generally discarded, including solid, liquid, semisolid or contained
- 9 gaseous material resulting from industrial, institutional, commercial and
- 10 agricultural operations, and from community activities. Notwithstanding
- 11 sub-sub-subdivision a.3. of this subdivision, the term includes coal
- 12 combustion residuals. The term does not include:
- 13 a. Fecal waste from fowls and animals other than humans.
- 14 b. Solid or dissolved material in:
- 15 1. Domestic sewage and sludges generated by treatment thereof
- 16 in sanitary sewage collection, treatment and disposal systems
- 17 which are designed to discharge effluents to the surface
- 18 waters.
- 19 2. Irrigation return flows.
- 20 3. Wastewater discharges and the sludges incidental to and
- 21 generated by treatment which are point sources subject to
- 22 permits granted under Section 402 of the Water Pollution
- 23 Control Act, as amended (P.L. 92-500), and permits granted
- 24 under G.S. 143-215.1 by the Environmental Management
- 25 Commission. However, any sludges that meet the criteria for
- 26 hazardous waste under RCRA shall also be a solid waste for
- 27 the purposes of this Article.

28"

29 **SECTION 2.(e)** This section is effective when it becomes law. The first reports

30 due under subsections (b) and (c) of G.S. 130A-309.208, as enacted by Section 2(a) of this act,

31 are due October 1, 2014.

32

33 **PART III. MORATORIUM ON USE OF COAL COMBUSTION RESIDUALS AS**

34 **STRUCTURAL FILL AND STUDY USE OF COAL COMBUSTION RESIDUALS AS**

35 **STRUCTURAL FILL AND FOR OTHER BENEFICIAL USES; MORATORIUM ON**

36 **AND STUDY OF DISPOSAL OF COAL COMBUSTION RESIDUALS TO**

37 **COMBUSTION PRODUCTS LANDFILLS**

38 **SECTION 3.(a)** Notwithstanding 15A NCAC 13B .1701 et seq., the use of coal

39 combustion residuals, as defined in G.S. 130A-290, as structural fill is prohibited in order to

40 allow the Department of Environment and Natural Resources, the Commission for Public

41 Health, and the General Assembly time to review and evaluate the use of coal combustion

42 residuals as structural fill.

43 **SECTION 3.(b)** The Department of Environment and Natural Resources and the

44 Commission for Public Health shall jointly review 15A NCAC 13B .1701 et seq. In conducting

45 this review, the Department and the Commission shall do all of the following:

- 46 (1) Review the uses of coal combustion residuals as structural fill and the
- 47 regulation of this use under the rules to determine if the rules are sufficient
- 48 to protect public health, safety, and welfare; the environment; and natural
- 49 resources.
- 50 (2) Review the uses of coal combustion residuals for other beneficial uses and
- 51 the regulation of these uses under the rules to determine if the rules are

1 sufficient to protect public health, safety, and welfare; the environment; and
2 natural resources.

3 (3) Monitor any actions of the United States Environmental Protection Agency
4 regarding the use of coal combustion residuals as structural fill or for other
5 beneficial uses.

6 (4) Jointly report to the Environmental Review Commission no later than
7 January 15, 2015, on their findings and recommendations regarding the use
8 of coal combustion residuals as structural fill and for other beneficial uses.

9 **SECTION 3.(c)** This section is effective when it becomes law and applies to the
10 use of coal combustion residuals as structural fill for projects for which construction has not
11 begun or for which the use of coal combustion residuals as structural fill has not been permitted
12 on or before that date.

13 **SECTION 4.(a)** Notwithstanding G.S. 130A-295.4, there is hereby established a
14 moratorium on (i) disposal of combustion products or coal combustion residuals, as defined by
15 G.S. 130A-290 and amended by Section 1(d) of this act, in a combustion products landfill or
16 coal combustion residuals landfill, as defined by G.S. 130A-290 and amended by Section 2(d)
17 of this act and (ii) construction of new or expansion of existing combustion products landfills.
18 The purpose of this moratorium is to allow the State to assess the risks to public health, safety,
19 and welfare; the environment; and natural resources of coal combustion residuals
20 impoundments located beneath combustion products landfills to determine the advisability of
21 continued operation of these landfills.

22 **SECTION 4.(b)** The Department of Environment and Natural Resources shall
23 evaluate each combustion products landfill currently operating in the State, and, in particular,
24 assess the risks to public health, safety, and welfare; the environment; and natural resources of
25 coal combustion residuals impoundments located beneath combustion products landfills to
26 determine the advisability of continued operation of these landfills. The Department shall
27 report to the Environmental Review Commission no later than January 15, 2015, on its findings
28 and recommendations concerning the risk assessment of each of these sites and the advisability
29 of continued operation of combustion products landfills.

30 **SECTION 4.(c)** This section is effective when it becomes law and expires August
31 1, 2015.

32 **SECTION 5.(a)** Section 9(b) of S.L. 2007-550 reads as rewritten:

33 **"SECTION 9.(b)** This section becomes effective 1 August 2007 and applies to any
34 application for a permit for a solid waste management facility that is pending on that date. To
35 the extent that G.S. 130A-295.6, as enacted by this section, imposes requirements that are more
36 stringent than those in effect prior to 1 August 2007, the more stringent requirements do not
37 apply to:

38 (1) An amendment, modification, or other change to a permit for a landfill
39 issued on or before 1 June 2006.

40 (2) A permit for a horizontal or vertical expansion of the landfill permitted on or
41 before 1 June 2006.

42 (3) A permit to construct a new landfill within the facility boundary identified in
43 the facility plan of a landfill permitted on or before 1 June 2006.

44 (4) A permit to operate a new landfill if a permit to construct the new landfill
45 was issued on or before 1 June 2006.

46 ~~(5) A permit for a sanitary landfill used only to dispose of waste generated by a~~
47 ~~coal fired generating unit that is owned or operated by an investor owned~~
48 ~~utility subject to the requirements of G.S. 143-215.107D.~~

49 (6) A permit for a sanitary landfill determined to be necessary by the Secretary
50 of Environment and Natural Resources in order to respond to an imminent
51 hazard to public health or a natural disaster."

1 SECTION 5.(b) This section is effective when it becomes law.

2
3 **PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION**
4 **REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO**
5 **WATERS OF THE STATE**

6 SECTION 6. G.S. 143-215.1C reads as rewritten:

7 "**§ 143-215.1C. Report to wastewater system customers on system performance; report**
8 **discharge of untreated wastewater or wastewater containing coal combustion**
9 **residuals to the Department; publication of notice of discharge of untreated**
10 **wastewater and waste.**

11 (a) Report to Wastewater System Customers. – The owner or operator of any
12 wastewater collection or treatment works, the operation of which is primarily to collect or treat
13 municipal or domestic wastewater and for which a permit is issued under this Part and having
14 an average annual flow greater than 200,000 gallons per day, shall provide to the users or
15 customers of the collection system or treatment works and to the Department an annual report
16 that summarizes the performance of the collection system or treatment works and the extent to
17 which the collection system or treatment works has violated the permit or federal or State laws,
18 regulations, or rules related to the protection of water quality. The report shall be prepared on
19 either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of
20 the calendar or fiscal year.

21 (a1) Report Discharge of Untreated Wastewater or Wastewater Containing Coal
22 Combustion Residuals to the Department. – The owner or operator of any wastewater
23 collection or treatment works for which a permit is issued under this Part shall report a
24 discharge of 1,000 gallons or more of untreated wastewater or wastewater containing coal
25 combustion residuals or a discharge of any amount of untreated wastewater or wastewater
26 containing coal combustion residuals to the surface waters of the State to the Department as
27 soon as possible, but not later than 24 hours after first knowledge of the spill. This reporting
28 requirement shall be in addition to any other reporting requirements applicable to the owner or
29 operator of the wastewater collection or treatment works.

30 (b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or
31 operator of any wastewater collection or treatment works, the operation of which is primarily to
32 collect or treat municipal or domestic wastewater ~~and for which a permit is issued under this~~
33 ~~Part~~ shall:

- 34 (1) In the event of a discharge of 1,000 gallons or more of untreated wastewater
35 to the surface waters of the State, issue a press release to all print and
36 electronic news media that provide general coverage in the county where the
37 discharge occurred setting out the details of the discharge. The owner or
38 operator shall issue the press release within ~~48-24~~ hours after the owner or
39 operator has ~~determined that the discharge has reached the surface waters of~~
40 ~~the State.~~ first knowledge of the discharge. The owner or operator shall retain
41 a copy of the press release and a list of the news media to which it was
42 distributed for at least one year after the discharge and shall provide a copy
43 of the press release and the list of the news media to which it was distributed
44 to any person upon request.
- 45 (2) In the event of a discharge of 15,000 gallons or more of untreated
46 wastewater to the surface waters of the State, publish a notice of the
47 discharge in a newspaper having general circulation in the county in which
48 the discharge ~~occurs and~~ occurred, in the county immediately downstream
49 from the point of discharge, and in each county downstream from the point
50 of discharge that is significantly affected by the discharge. The Secretary
51 shall determine, at the Secretary's sole discretion, which counties are

1 significantly affected by the discharge and shall approve the form and
2 content of the notice and the newspapers in which the notice is to be
3 published. The notice shall be captioned "NOTICE OF DISCHARGE OF
4 UNTREATED SEWAGE". The owner or operator shall publish the notice
5 within 10 days after the Secretary has determined the counties that are
6 significantly affected by the discharge and approved the form and content of
7 the notice and the newspapers in which the notice is to be published. The
8 owner or operator shall file a copy of the notice and proof of publication
9 with the Department within 30 days after the notice is published. Publication
10 of a notice of discharge under this subdivision is in addition to the
11 requirement to issue a press release under subdivision (1) of this subsection.

12 (c) Publication of Notice of Discharge of Untreated Waste. – The owner or operator of
13 any wastewater collection or treatment works, other than a wastewater collection or treatment
14 works the operation of which is primarily to collect or treat municipal or domestic wastewater,
15 ~~for which a permit is issued under this Part~~ shall:

16 (1) In the event of a discharge of 1,000 gallons or more of untreated waste to the
17 surface waters of the State, issue a press release to all print and electronic
18 news media that provide general coverage in the county where the discharge
19 occurred setting out the details of the discharge. The owner or operator shall
20 issue the press release within ~~48–24~~ hours after the owner or operator has
21 ~~determined that the discharge has reached the surface waters of the State~~ first
22 knowledge of the discharge. The owner or operator shall retain a copy of the
23 press release and a list of the news media to which it was distributed for at
24 least one year after the discharge and shall provide a copy of the press
25 release and the list of the news media to which it was distributed to any
26 person upon request.

27 (2) In the event of a discharge of 15,000 gallons or more of untreated waste to
28 the surface waters of the State, publish a notice of the discharge in a
29 newspaper having general circulation in the county in which the discharge
30 ~~occurs~~ occurred, in the county immediately downstream from the point of
31 discharge, and in each county downstream from the point of discharge that is
32 significantly affected by the discharge. The Secretary shall determine, at the
33 Secretary's sole discretion, which counties are significantly affected by the
34 discharge and shall approve the form and content of the notice and the
35 newspapers in which the notice is to be published. The notice shall be
36 captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The
37 owner or operator shall publish the notice within 10 days after the Secretary
38 has determined the counties that are significantly affected by the discharge
39 and approved the form and content of the notice and the newspapers in
40 which the notice is to be published. The owner or operator shall file a copy
41 of the notice and proof of publication with the Department within 30 days
42 after the notice is published. Publication of a notice of discharge under this
43 subdivision is in addition to the requirement to issue a press release under
44 subdivision (1) of this subsection."
45

46 **PART V. REQUIRE NOTIFICATION OF THE DEPARTMENT OF EMERGENCY**
47 **DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS;**
48 **REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS**
49 **SURFACE IMPOUNDMENTS**

50 **SECTION 7.** G.S. 143-215.27 reads as rewritten:

51 **"§ 143-215.27. Repair, alteration, or removal of dam.**

1 (a) Before commencing the repair, alteration or removal of a dam, application shall be
2 made for written approval by the Department, except as otherwise provided by this Part. The
3 application shall state the name and address of the applicant, shall adequately detail the changes
4 it proposes to effect and shall be accompanied by maps, plans and specifications setting forth
5 such details and dimensions as the Department requires. The Department may waive any such
6 requirements. The application shall give such other information concerning the dam and
7 reservoir required by the Department, such information concerning the safety of any change as
8 it may require, and shall state the proposed time of commencement and completion of the
9 work. When an application has been completed it may be referred by the Department for
10 agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of
11 original construction.

12 (b) When emergency repairs are necessary to safeguard life and property they may be
13 started immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and
14 of the work under ~~way, and the way~~ as soon as possible, but not later than 24 hours after first
15 knowledge of the necessity for the emergency repairs, and the emergency repairs shall be made
16 to conform to its the Department's orders."

17 **SECTION 8.(a)** G.S. 143-215.31 reads as rewritten:

18 **"§ 143-215.31. Supervision over maintenance and operation of dams.**

19 (a) The Commission shall have jurisdiction and supervision over the maintenance and
20 operation of dams to safeguard life and property and to satisfy minimum streamflow
21 requirements. The Commission may adopt standards for the maintenance and operation of
22 dams as may be necessary for the purposes of this Part. The Commission may vary the
23 standards applicable to various dams, giving due consideration to the minimum flow
24 requirements of the stream, the type and location of the structure, the hazards to which it may
25 be exposed, and the peril of life and property in the event of failure of a dam to perform its
26 function.

27 (a1) The owner of a dam classified by the Department as a high-hazard dam or an
28 intermediate-hazard dam shall develop an Emergency Action Plan for the dam as provided in
29 this subsection.

30 (1) The owner of the dam shall submit a proposed Emergency Action Plan for
31 the dam within 90 days after the dam is classified as a high-hazard dam or an
32 intermediate-hazard dam to the Department and the Department of Public
33 Safety for their review and approval. The Department and the Department of
34 Public Safety shall approve the Emergency Action Plan if they determine
35 that it complies with the requirements of this subsection and will protect
36 public health, safety, and welfare; the environment; and natural resources.

37 (2) The Emergency Action Plan shall include, at a minimum, all of the
38 following:

39 a. A description of potential emergency conditions that could occur at
40 the dam.

41 b. A description of actions to be taken in response to an emergency
42 condition at the dam.

43 c. Emergency notification procedures to aid in warnings and
44 evacuations during an emergency condition at the dam.

45 d. A downstream inundation map depicting areas affected by a dam
46 failure and sudden release of the impoundment.

47 (3) The owner of the dam shall update the Emergency Action Plan annually and
48 shall submit it to the Department and the Department of Public Safety for
49 their review and approval within one year of the prior approval.

- 1 (4) The Department shall provide a copy of the Emergency Action Plan to the
2 regional offices of the Department that might respond to an emergency
3 condition at the dam.
- 4 (5) The Department of Public Safety shall provide a copy of the Emergency
5 Action Plan to all local emergency management agencies that might respond
6 to an emergency condition at the dam.
- 7 (6) Information included in an Emergency Action Plan that constitutes sensitive
8 public security information, as provided in G.S. 132-1.7, shall be maintained
9 as confidential information and shall not be subject to disclosure under the
10 Public Records Act.

11 "

12 **SECTION 8.(b)** Notwithstanding G.S. 143-215.31, as amended by Section 6(a) of
13 this act, the owners of all high-hazard dams and intermediate-hazard dams in operation on the
14 effective date of this act shall submit their proposed Emergency Action Plans to the Department
15 of Environment and Natural Resources and the Department of Public Safety no later than
16 October 1, 2015.

17 **SECTION 9.** Section 3.(b) of S.L. 2009-390 is repealed.

18 **SECTION 10.** G.S. 143-215.32 reads as rewritten:

19 "**§ 143-215.32. Inspection of dams.**

20 (a) The Department may at any time inspect any dam, including a dam that is otherwise
21 exempt from this Part, upon receipt of a written request of any affected person or agency, or
22 upon a motion of the Environmental Management Commission. Within the limits of available
23 funds the Department shall endeavor to provide for inspection of all dams at intervals of
24 approximately five years.

25 (a1) Coal combustion residuals surface impoundments, as defined by
26 G.S. 130A-309.202, shall be inspected as provided in this subsection.

27 (1) The Department shall inspect each dam associated with a coal combustion
28 residuals surface impoundment at least annually.

29 (2) The owner of a coal combustion residuals surface impoundment shall inspect
30 the impoundment weekly and after storms to detect evidence of any of the
31 following conditions:

32 a. Deterioration, malfunction, or improper operation of spillway control
33 systems.

34 b. Sudden drops in the level of the contents of the impoundment.

35 c. Severe erosion or other signs of deterioration in dikes or other
36 containment devices or structures.

37 d. New or enlarged seeps along the downstream slope or toe of the dike
38 or other containment devices or structures.

39 e. Any other abnormal conditions at the impoundment that could pose a
40 risk to public health, safety, or and welfare; the environment; or
41 natural resources.

42 (3) If any of the conditions described in subdivision (2) of this subsection are
43 observed, the owner shall provide documentation of the conditions to the
44 Department and a registered professional engineer. The registered
45 professional engineer shall investigate the conditions and, if necessary,
46 develop a plan of corrective action to be implemented by the owner of the
47 impoundment. The owner of the impoundment shall provide documentation
48 of the completed corrective action to the Department.

49 (4) The owner of a coal combustion residuals surface impoundment shall
50 provide for the annual inspection of the impoundment by an independent
51 registered professional engineer to ensure that the structural integrity and the

1 design, operation, and maintenance of the impoundment is in accordance
2 with generally accepted engineering standards. Within 30 days of the
3 inspection, the owner shall provide to the Department the inspection report
4 and a certification by the engineer that the impoundment is structurally
5 sound and that the design, operation, and maintenance of the impoundment
6 is in accordance with generally accepted engineering standards. The owner
7 and the Department shall each place the inspection report and certification
8 on a publicly accessible Internet Web site.

9 (b) If the Department upon inspection finds that any dam is not sufficiently strong, is
10 not maintained in good repair or operating condition, is dangerous to life or property, or does
11 not satisfy minimum streamflow requirements, the Department shall present its findings to the
12 Commission and the Commission may issue an order directing the owner or owners of the dam
13 to make at his or her expense maintenance, alterations, repairs, reconstruction, change in
14 construction or location, or removal as may be deemed necessary by the Commission within a
15 time limited by the order, not less than 90 days from the date of issuance of each order, except
16 in the case of extreme danger to the safety of life or property, as provided by subsection (c) of
17 this section.

18 (c) If at any time the condition of any dam becomes so dangerous to the safety of life or
19 property, in the opinion of the Environmental Management Commission, as not to permit
20 sufficient time for issuance of an order in the manner provided by subsection (b) of this section,
21 the Environmental Management Commission may immediately take such measures as may be
22 essential to provide emergency protection to life and property, including the lowering of the
23 level of a reservoir by releasing water impounded or the destruction in whole or in part of the
24 dam or reservoir. The Environmental Management Commission may recover the costs of such
25 measures from the owner or owners by appropriate legal action.

26 (d) An order issued under this Part shall be served on the owner of the dam as provided
27 in G.S. 1A-1, Rule 4."

28 **PART VI. REPEAL COMPLIANCE BOUNDARY AMENDMENTS**

29 **SECTION 11.** Section 46 of S.L. 2013-413 is repealed.

30 **PART VII. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT**

31 **SECTION 12.** There is appropriated from the General Fund to the Department of
32 Environment and Natural Resources the sum of one million seven hundred fifty thousand
33 dollars (\$1,750,000) in nonrecurring funds for the 2013-2014 fiscal year to establish 19
34 positions to implement this act.
35
36
37

38 **PART VIII. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

39 **SECTION 13.** If any provision of this act or its application is held invalid, the
40 invalidity does not affect other provisions or applications of this act that can be given effect
41 without the invalid provisions or application, and to this end the provisions of this act are
42 severable.

43 **SECTION 14.** Except as otherwise provided, this act is effective when it becomes
44 law.