

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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2

HOUSE BILL 630  
Senate Rules and Operations of the Senate Committee Substitute Adopted 6/28/16

Short Title: Drinking Water Protect'n/Coal Ash Cleanup Act. (Public)

Sponsors:

Referred to:

April 14, 2015

1  
2 A BILL TO BE ENTITLED  
3 AN ACT TO (1) REQUIRE A COAL COMBUSTION RESIDUALS IMPOUNDMENT OWNER  
4 TO PROVIDE PERMANENT ALTERNATIVE WATER SUPPLIES FOR RESIDENTS IN  
5 AREAS SURROUNDING COAL COMBUSTION RESIDUALS SURFACE  
6 IMPOUNDMENTS; (2) REPEAL STATUTORY PROVISIONS RELATED TO THE COAL  
7 ASH MANAGEMENT COMMISSION; (3) MODIFY THE CLOSURE REQUIREMENTS  
8 FOR COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS UNDER THE  
9 COAL ASH MANAGEMENT ACT OF 2014; AND (4) MODIFY APPOINTMENTS TO  
10 THE MINING COMMISSION AND THE OIL AND GAS COMMISSION.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** Part 2I of Article 9 of Chapter 130A of the General Statutes reads as  
13 rewritten:

14 "Part 2I. Coal Ash Management.

15 "Subpart 1. Short Title, Definitions, and General Provisions.

16 "§ 130A-309.200. Title.

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

18 "§ 130A-309.201. Definitions.

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

- 21 (1) "Beneficial and beneficial use" means projects promoting public health and  
22 environmental protection, offering equivalent success relative to other  
23 alternatives, and preserving natural resources.
- 24 (2) "Boiler slag" means the molten bottom ash collected at the base of slag tap and  
25 cyclone type furnaces that is quenched with water. It is made up of hard, black,  
26 angular particles that have a smooth, glassy appearance.
- 27 (3) "Bottom ash" means the agglomerated, angular ash particles formed in  
28 pulverized coal furnaces that are too large to be carried in the flue gases and  
29 collect on the furnace walls or fall through open grates to an ash hopper at the  
30 bottom of the furnace.
- 31 (4) "Coal combustion products" it means fly ash, bottom ash, boiler slag, or flue  
32 gas desulfurization materials that are beneficially used, including use for  
33 structural fill.
- 34 (5) "Coal combustion residuals" has the same meaning as defined in  
35 G.S. 130A-290.



- 1 (6) "Coal combustion residuals surface impoundment" means a topographic  
2 depression, excavation, or diked area that is (i) primarily formed from earthen  
3 materials; (ii) without a base liner approved for use by Article 9 of Chapter  
4 130A of the General Statutes or rules adopted thereunder for a combustion  
5 products landfill or coal combustion residuals landfill, industrial landfill, or  
6 municipal solid waste landfill; and (iii) designed to hold accumulated coal  
7 combustion residuals in the form of liquid wastes, wastes containing free  
8 liquids, or sludges, and that is not backfilled or otherwise covered during  
9 periods of deposition. "Coal combustion residuals surface impoundment" shall  
10 only include impoundments owned by a public utility, as defined in G.S. 62-3.  
11 "Coal combustion residuals surface impoundment" includes all of the  
12 following:
- 13 a. An impoundment that is dry due to the deposited liquid having  
14 evaporated, volatilized, or leached.
  - 15 b. An impoundment that is wet with exposed liquid.
  - 16 c. Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and sludge  
17 pits, when these structures are designed to hold accumulated coal  
18 combustion residuals.
  - 19 d. A coal combustion residuals surface impoundment that has been  
20 covered with soil or other material after the final deposition of coal  
21 combustion residuals at the impoundment.
- 22 ~~(7) "Commission" means the Coal Ash Management Commission.~~
- 23 (8) "Flue gas desulfurization material" means the material produced through a  
24 process used to reduce sulfur dioxide emissions from the exhaust gas system of  
25 a coal-fired boiler. The physical nature of these materials varies from a wet  
26 sludge to a dry powdered material, depending on the process, and their  
27 composition comprises either sulfites, sulfates, or a mixture thereof.
- 28 (9) "Fly ash" means the very fine, powdery material, composed mostly of silica  
29 with nearly all particles spherical in shape, which is a product of burning finely  
30 ground coal in a boiler to produce electricity and is removed from the plant  
31 exhaust gases by air emission control devices.
- 32 (10) "Minerals" means soil, clay, coal, phosphate, metallic ore, and any other solid  
33 material or substance of commercial value found in natural deposits on or in the  
34 earth.
- 35 (11) "Open pit mine" means an excavation made at the surface of the ground for the  
36 purpose of extracting minerals, inorganic and organic, from their natural  
37 deposits, which excavation is open to the surface.
- 38 (12) "Owner" or "owner of a coal combustion residuals surface impoundment"  
39 means a public utility, as defined in G.S. 62-3, that owns a coal combustion  
40 residuals surface impoundment.
- 41 (13) "Receptor" means any human, plant, animal, or structure which is, or has the  
42 potential to be, affected by the release or migration of contaminants. Any well  
43 constructed for the purpose of monitoring groundwater and contaminant  
44 concentrations shall not be considered a receptor.
- 45 (14) "Structural fill" means an engineered fill with a projected beneficial end use  
46 constructed using coal combustion products that are properly placed and  
47 compacted. For purposes of this Part, the term includes fill used to reclaim open  
48 pit mines and for embankments, greenscapes, foundations, construction  
49 foundations, and for bases or sub-bases under a structure or a footprint of a  
50 paved road, parking lot, sidewalk, walkway, or similar structure.

- 1 (15) "Use or reuse of coal combustion products" means the procedure whereby coal  
2 combustion products are directly used as either of the following:  
3 a. As an ingredient in an industrial process to make a product, unless  
4 distinct components of the coal combustion products are recovered as  
5 separate end products.  
6 b. In a function or application as an effective substitute for a commercial  
7 product or natural resource.

8 ~~"§ 130A-309.202. (Repealed effective June 30, 2030) Coal Ash Management Commission.~~

9 ~~(a) Creation.—In recognition of the complexity and magnitude of the issues associated~~  
10 ~~with the management of coal combustion residuals and the proper closure and remediation of coal~~  
11 ~~combustion residuals surface impoundments, the Coal Ash Management Commission is hereby~~  
12 ~~established.~~

13 ~~(b) Membership.—The Commission shall consist of nine members as follows:~~

- 14 ~~(1) One appointed by the General Assembly upon recommendation of the President~~  
15 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~  
16 ~~time of appointment be a resident of the State.~~  
17 ~~(2) One appointed by the General Assembly upon recommendation of the President~~  
18 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~  
19 ~~time of appointment have special training or scientific expertise in waste~~  
20 ~~management, including solid waste disposal, hauling, or beneficial use.~~  
21 ~~(3) One appointed by the General Assembly upon recommendation of the President~~  
22 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~  
23 ~~time of appointment be a licensed physician or a person with experience in~~  
24 ~~public health.~~  
25 ~~(4) One appointed by the General Assembly upon recommendation of the Speaker~~  
26 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~  
27 ~~the time of appointment be a member of a nongovernmental conservation~~  
28 ~~interest.~~  
29 ~~(5) One appointed by the General Assembly upon recommendation of the Speaker~~  
30 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~  
31 ~~the time of appointment have special training or scientific expertise in waste~~  
32 ~~management, including solid waste disposal, hauling, or beneficial use, or is a~~  
33 ~~representative of or on the faculty of a State college or university that conducts~~  
34 ~~coal-ash research.~~  
35 ~~(6) One appointed by the General Assembly upon recommendation of the Speaker~~  
36 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~  
37 ~~the time of appointment be a representative of an electric membership~~  
38 ~~corporation organized under Article 2 of Chapter 117 of the General Statutes~~  
39 ~~and have a background in power supply resource planning and engineering.~~  
40 ~~(7) One appointed by the Governor who shall at the time of appointment have~~  
41 ~~experience in economic development.~~  
42 ~~(8) One appointed by the Governor who shall at the time of appointment have~~  
43 ~~expertise in determining and evaluating the costs associated with electricity~~  
44 ~~generation and establishing the rates associated with electricity consumption.~~  
45 ~~(9) One appointed by the Governor who shall at the time of appointment be a~~  
46 ~~person with experience in science or engineering in the manufacturing sector.~~

47 ~~(c) Chair.—The Governor shall appoint the Chair of the Commission from among the~~  
48 ~~Commission's members, and that person shall serve at the pleasure of the Governor. The Chair~~  
49 ~~shall serve two-year terms. The Governor shall make:~~

- 1           (1)    ~~The initial appointment of the Chair no later than October 1, 2014. If the initial~~  
2           ~~appointment is not made by that date, the Chair shall be elected by a vote of the~~  
3           ~~membership; and~~
- 4           (2)    ~~Appointments of a subsequent Chair, including appointments to fill a vacancy~~  
5           ~~of the Chair created by resignation, dismissal, death, or disability of the Chair,~~  
6           ~~no later than 30 days after the last day of the previous Chair's term. If an~~  
7           ~~appointment of a subsequent Chair is not made by that date, the Chair shall be~~  
8           ~~elected by a vote of the membership.~~
- 9           (d)    ~~Vacancies.—Any appointment to fill a vacancy on the Commission created by the~~  
10          ~~resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired~~  
11          ~~term. The Governor may reappoint a gubernatorial appointee of the Commission to an additional~~  
12          ~~term if, at the time of the reappointment, the member qualifies for membership on the Commission~~  
13          ~~under subdivisions (7) through (9) of subsection (b) of this section. Appointments by the General~~  
14          ~~Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments~~  
15          ~~shall be filled in accordance with G.S. 120-122.~~
- 16          (e)    ~~Removal.—The Governor shall have the power to remove any member of the~~  
17          ~~Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the~~  
18          ~~provisions of G.S. 143B-13 of the Executive Organization Act of 1973.~~
- 19          (f)    ~~Powers and Duties.—The Commission shall have all of the following powers and~~  
20          ~~duties:~~
- 21                (1)    ~~To review and approve the classification of coal combustion residuals surface~~  
22                ~~impoundments required by G.S. 130A-309.213.~~
- 23                (2)    ~~To review and approve Coal Combustion Residuals Surface Impoundment~~  
24                ~~Closure Plans as provided in G.S. 130A-309.214.~~
- 25                (3)    ~~To review and make recommendations on the provisions of this Part and other~~  
26                ~~statutes and rules related to the management of coal combustion residuals.~~
- 27                (4)    ~~To undertake any additional studies as requested by the General Assembly.~~
- 28          (g)    ~~Reimbursement.—The members of the Commission shall receive per diem and~~  
29          ~~necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.~~
- 30          (h)    ~~Quorum.—Five members of the Commission shall constitute a quorum for the~~  
31          ~~transaction of business.~~
- 32          (i)    ~~Staff.—The Commission is authorized and empowered to employ staff as the~~  
33          ~~Commission may determine to be necessary for the proper discharge of the Commission's duties~~  
34          ~~and responsibilities. The Chair of the Commission shall organize and direct the work of the~~  
35          ~~Commission staff. The salaries and compensation of all such personnel shall be fixed in the~~  
36          ~~manner provided by law for fixing and regulating salaries and compensation by other State~~  
37          ~~agencies. The Chair, within allowed budgetary limits and as allowed by law, shall authorize and~~  
38          ~~approve travel, subsistence, and related expenses of such personnel incurred while traveling on~~  
39          ~~official business. All State agencies, including the constituent institutions of The University of~~  
40          ~~North Carolina, shall provide information and support to the Commission upon request.~~
- 41          (j)    ~~Repealed by Session Laws 2015-9, s. 1.1, effective April 27, 2015.~~
- 42          (k)    ~~Covered Persons; Conflicts of Interest; Disclosure.—All members of the Commission~~  
43          ~~are covered persons for the purposes of Chapter 138A of the General Statutes, the State~~  
44          ~~Government Ethics Act. As covered persons, members of the Commission shall comply with the~~  
45          ~~applicable requirements of the State Government Ethics Act, including mandatory training, the~~  
46          ~~public disclosure of economic interests, and ethical standards for covered persons. Members of the~~  
47          ~~Commission shall comply with the provisions of the State Government Ethics Act to avoid~~  
48          ~~conflicts of interest. The Governor may require additional disclosure of potential conflicts of~~  
49          ~~interest by members. The Governor may promulgate criteria regarding conflicts of interest and~~  
50          ~~disclosure thereof for determining the eligibility of persons under this subsection, giving due~~  
51          ~~regard to the requirements of federal legislation, and, for this purpose, may promulgate rules,~~

1 ~~regulations, or guidelines in conformance with those established by any federal agency~~  
2 ~~interpreting and applying provisions of federal law.~~

3 ~~(l) Meetings.—The Commission shall meet at least once every two months and may hold~~  
4 ~~special meetings at any time and place within the State at the call of the Chair or upon the written~~  
5 ~~request of at least five members.~~

6 ~~(m) Reports.—The Commission shall submit quarterly written reports as to its operation,~~  
7 ~~activities, programs, and progress to the Environmental Review Commission. The Commission~~  
8 ~~shall supplement the written reports required by this subsection with additional written and oral~~  
9 ~~reports as may be requested by the Environmental Review Commission. The Commission shall~~  
10 ~~submit the written reports required by this subsection whether or not the General Assembly is in~~  
11 ~~session at the time the report is due.~~

12 ~~(n) Administrative Location; Independence.—The Commission shall be administratively~~  
13 ~~located in the Division of Emergency Management of the Department of Public Safety. The~~  
14 ~~Commission shall exercise all of its powers and duties independently and shall not be subject to~~  
15 ~~the supervision, direction, or control of the Division or Department.~~

16 ~~(o) Terms of Members.—Members of the Commission shall serve terms of six years,~~  
17 ~~beginning effective July 1 of the year of appointment.~~

18 **"§ 130A-309.203. Expedited permit review.**

19 (a) The Department shall act as expeditiously as practicable, but no later than the deadlines  
20 established under subsection (b) of this section, except in compliance with subsection (c) of this  
21 section, to issue all permits necessary to conduct activities required by this Part.

22 (b) Notwithstanding G.S. 130A-295.8(e), the Department shall determine whether an  
23 application for any permit necessary to conduct activities required by this Part is complete within  
24 30 days after the Department receives the application for the permit. A determination of  
25 completeness means that the application includes all required components but does not mean that  
26 the required components provide all of the information that is required for the Department to make  
27 a decision on the application. If the Department determines that an application is not complete, the  
28 Department shall notify the applicant of the components needed to complete the application. An  
29 applicant may submit additional information to the Department to cure the deficiencies in the  
30 application. The Department shall make a final determination as to whether the application is  
31 complete within the later of (i) 30 days after the Department receives the application for the permit  
32 less the number of days that the applicant uses to provide the additional information or (ii) 10 days  
33 after the Department receives the additional information from the applicant. The Department shall  
34 issue a draft permit decision on an application for a permit within 90 days after the Department  
35 determines that the application is complete. The Department shall hold a public hearing and accept  
36 written comment on the draft permit decision for a period of not less than 30 or more than 60 days  
37 after the Department issues a draft permit decision. The Department shall issue a final permit  
38 decision on an application for a permit within 60 days after the comment period on the draft  
39 permit decision closes. If the Department fails to act within any time period set out in this  
40 subsection, the applicant may treat the failure to act as a denial of the permit and may challenge  
41 the denial as provided in Chapter 150B of the General Statutes.

42 (c) If the Department finds that compliance with the deadlines established under  
43 subsection (b) of this section would result in insufficient review of a permit application that would  
44 pose a risk to public health, safety, and welfare; the environment; or natural resources, the  
45 applicable deadline shall be waived for the application as necessary to allow for adequate review.  
46 If a deadline is waived pursuant to this subsection, the Secretary shall issue a written declaration,  
47 including findings of fact, documenting the need for the waiver.

48 (d) Notwithstanding any other provision of this section or any other provision of law, the  
49 Department shall either issue or deny a permit required for dewatering of a retired impoundment  
50 within 90 days of receipt of a completed application, in such a form and including such  
51 information as the Department may prescribe, for the dewatering activities. The Department shall

1 accept written comment on a draft permit decision for a period of not less than 30 days or more  
2 than 60 days prior to issuance or denial of such a permit. If the Department fails to act within any  
3 time period set out in this subsection, the applicant may treat the failure to act as a denial of the  
4 permit and may challenge the denial as provided in Chapter 150B of the General Statutes.

5 **"§ 130A-309.204. Reports.**

6 (a) The Department shall submit quarterly written reports to the Environmental Review  
7 Commission ~~and the Coal Ash Management Commission~~ on its operations, activities, programs,  
8 and progress with respect to its obligations under this Part concerning all coal combustion  
9 residuals surface impoundments. At a minimum, the report shall include information concerning  
10 the status of assessment, corrective action, prioritization, and closure for each coal combustion  
11 residuals surface impoundment and information on costs connected therewith. The report shall  
12 include an executive summary of each annual Groundwater Protection and Restoration Report  
13 submitted to the Department by the operator of any coal combustion residuals surface  
14 impoundments pursuant to G.S. 130A-309.211(d) and a summary of all groundwater sampling,  
15 protection, and restoration activities related to the impoundment for the preceding year. The report  
16 shall also include an executive summary of each annual Surface Water Protection and Restoration  
17 Report submitted to the Department by the operator of any coal combustion residuals surface  
18 impoundments pursuant to G.S. 130A-309.212(e) and a summary of all surface water sampling,  
19 protection, and restoration activities related to the impoundment for the preceding year, including  
20 the status of the identification, assessment, and correction of unpermitted discharges from coal  
21 combustion residuals surface impoundments to the surface waters of the State. The Department  
22 shall supplement the written reports required by this subsection with additional written and oral  
23 reports as may be requested by the Environmental Review Commission. The Department shall  
24 submit the written reports required by this subsection whether or not the General Assembly is in  
25 session at the time the report is due.

26 (b) On or before October 1 of each year, the Department shall report to each member of  
27 the General Assembly who has a coal combustion residuals surface impoundment in the member's  
28 district. This report shall include the location of each impoundment in the member's district, the  
29 amount of coal combustion residuals known or believed to be located in the impoundment, the last  
30 action taken at the impoundment, and the date of that last action.

31 (c) On or before October 1 of each year, a public utility generating coal combustion  
32 residuals and coal combustion products shall submit an annual summary to the Department. The  
33 annual summary shall be for the period of July 1 through June 30 and shall include all of the  
34 following:

- 35 (1) The volume of coal combustion residuals and products produced.
- 36 (2) The volume of coal combustion residuals disposed.
- 37 (3) The volume of coal combustion products used in structural fill projects.
- 38 (4) The volume of coal combustion products beneficially used, other than for  
39 structural fill.

40 **"§ 130A-309.205. Local ordinances regulating management of coal combustion residuals  
41 and coal combustion products invalid; petition to preempt local ordinance.**

42 (a) It is the intent of the General Assembly to maintain a uniform system for the  
43 management of coal combustion residuals and coal combustion products, including matters of  
44 disposal and beneficial use, and to place limitations upon the exercise by all units of local  
45 government in North Carolina of the power to regulate the management of coal combustion  
46 residuals and coal combustion products by means of ordinances, property restrictions, zoning  
47 regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or  
48 other local authorities to adopt local ordinances, including those imposing taxes, fees, or charges  
49 or regulating health, environment, or land use, all provisions of local ordinances, including those  
50 regulating land use, adopted by counties, municipalities, or other local authorities that regulate or  
51 have the effect of regulating the management of coal combustion residuals and coal combustion

1 products, including regulation of carbon burn-out plants, within the jurisdiction of a local  
2 government are invalidated and unenforceable, to the extent necessary to effectuate the purposes  
3 of this Part, that do the following:

4 (1) Place any restriction or condition not placed by this Part upon management of  
5 coal combustion residuals or coal combustion products within any county, city,  
6 or other political subdivision.

7 (2) Conflict or are in any manner inconsistent with the provisions of this Part.

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

10 (b) If a local zoning or land-use ordinance imposes requirements, restrictions, or  
11 conditions that are generally applicable to development, including, but not limited to, setback,  
12 buffer, and stormwater requirements, and coal combustion residuals and coal combustion products  
13 would be regulated under the ordinance of general applicability, the operator of the proposed  
14 activities may petition the Environmental Management Commission to review the matter. After  
15 receipt of a petition, the Commission shall hold a hearing in accordance with the procedures in  
16 subsection (c) of this section and shall determine whether or to what extent to preempt the local  
17 ordinance to allow for the management of coal combustion residuals and coal combustion  
18 products.

19 (c) When a petition described in subsection (b) of this section has been filed with the  
20 Environmental Management Commission, the Commission shall hold a public hearing to consider  
21 the petition. The public hearing shall be held in the affected locality within 60 days after receipt of  
22 the petition by the Commission. The Commission shall give notice of the public hearing by both  
23 of the following means:

24 (1) Publication in a newspaper or newspapers having general circulation in the  
25 county or counties where the activities are to be conducted, once a week for  
26 three consecutive weeks, the first notice appearing at least 30 days prior to the  
27 scheduled date of the hearing.

28 (2) First-class mail to persons who have requested notice. The Commission shall  
29 maintain a mailing list of persons who request notice in advance of the hearing  
30 pursuant to this section. Notice by mail shall be complete upon deposit of a  
31 copy of the notice in a postage-paid wrapper addressed to the person to be  
32 notified at the address that appears on the mailing list maintained by the  
33 Commission in a post office or official depository under the exclusive care and  
34 custody of the United States Postal Service.

35 (d) Any interested person may appear before the Environmental Management Commission  
36 at the hearing to offer testimony. In addition to testimony before the Commission, any interested  
37 person may submit written evidence to the Commission for the Commission's consideration. At  
38 least 20 days shall be allowed for receipt of written comment following the hearing.

39 (e) A local zoning or land-use ordinance is presumed to be valid and enforceable to the  
40 extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that are  
41 generally applicable to development, including, but not limited to, setback, buffer, and stormwater  
42 requirements, unless the Environmental Management Commission makes a finding of fact to the  
43 contrary. The Commission shall determine whether or to what extent to preempt local ordinances  
44 so as to allow the project involving management of coal combustion residuals and coal  
45 combustion products no later than 60 days after conclusion of the hearing. The Commission shall  
46 preempt a local ordinance only if the Commission makes all of the following findings:

47 (1) That there is a local ordinance that would regulate the management of coal  
48 combustion residuals and coal combustion products.

49 (2) That all legally required State and federal permits or approvals have been issued  
50 by the appropriate State and federal agencies or that all State and federal permit

1 requirements have been satisfied and that the permits or approvals have been  
2 denied or withheld only because of the local ordinance.

3 (3) That local citizens and elected officials have had adequate opportunity to  
4 participate in the permitting process.

5 (4) That the project involving management of coal combustion residuals and coal  
6 combustion products will not pose an unreasonable health or environmental risk  
7 to the surrounding locality and that the operator has taken or consented to take  
8 reasonable measures to avoid or manage foreseeable risks and to comply to the  
9 maximum feasible extent with applicable local ordinances.

10 (f) If the Environmental Management Commission does not make all of the findings under  
11 subsection (e) of this section, the Commission shall not preempt the challenged local ordinance.  
12 The Commission's decision shall be in writing and shall identify the evidence submitted to the  
13 Commission plus any additional evidence used in arriving at the decision.

14 (g) The decision of the Environmental Management Commission shall be final, unless a  
15 party to the action files a written appeal under Article 3 of Chapter 150B of the General Statutes,  
16 as modified by this section, within 30 days of the date of the decision. The record on appeal shall  
17 consist of all materials and information submitted to or considered by the Commission, the  
18 Commission's written decision, a complete transcript of the hearing, the specific findings required  
19 by subsection (e) of this section, and any minority positions on the specific findings required by  
20 subsection (e) of this section. The scope of judicial review shall be as set forth in G.S. 150B-51,  
21 except as this subsection provides regarding the record on appeal.

22 (h) If the court reverses or modifies the decision of the Environmental Management  
23 Commission, the judge shall set out in writing, which writing shall become part of the record, the  
24 reasons for the reversal or modification.

25 (i) In computing any period of time prescribed or allowed by the procedure in this section,  
26 the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

27 **"§ 130A-309.206. Federal preemption; severability.**

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

31 **"§ 130A-309.207. General rule making for Part.**

32 The Environmental Management Commission shall adopt rules as necessary to implement the  
33 provisions of the Part. Such rules shall be exempt from the requirements of G.S. 150B-19.3.

34 **"§ 130A-309.208: Reserved for future codification purposes.**

35 **"§ 130A-309.209: Reserved for future codification purposes.**

36 "Subpart 2. Management of Coal Ash Residuals; Closure of Coal Ash Impoundments.

37 **"§ 130A-309.210. Generation, disposal, and use of coal combustion residuals.**

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

40 (b) On or after October 1, 2014, the disposal of coal combustion residuals into a coal  
41 combustion residuals surface impoundment at an electric generating facility where the coal-fired  
42 generating units are no longer producing coal combustion residuals is prohibited.

43 (c) On or after December 31, 2018, the discharge of stormwater into a coal combustion  
44 surface impoundment at an electric generating facility where the coal-fired generating units are no  
45 longer producing coal combustion residuals is prohibited.

46 (d) On or after December 31, 2019, the discharge of stormwater into a coal combustion  
47 surface impoundment at an electric generating facility where the coal-fired generating units are  
48 actively producing coal combustion residuals is prohibited.

49 (e) On or before December 31, 2018, all electric generating facilities owned by a public  
50 utility shall convert to the disposal of "dry" fly ash or the facility shall be retired. For purposes of



1 this subsection, the term "dry" means coal combustion residuals that are not in the form of liquid  
2 wastes, wastes containing free liquids, or sludges.

3 (f) On or before December 31, 2019, all electric generating facilities owned by a public  
4 utility shall convert to the disposal of "dry" bottom ash or the facility shall be retired. For purposes  
5 of this subsection, the term "dry" means coal combustion residuals that are not in the form of  
6 liquid wastes, wastes containing free liquids, or sludges.

7 **"§ 130A-309.211. Groundwater assessment and corrective action; drinking water supply**  
8 **well survey and provision of alternate water supply; reporting.**

9 (a) Groundwater Assessment of Coal Combustion Residuals Surface Impoundments. –  
10 The owner of a coal combustion residuals surface impoundment shall conduct groundwater  
11 monitoring and assessment as provided in this subsection. The requirements for groundwater  
12 monitoring and assessment set out in this subsection are in addition to any other groundwater  
13 monitoring and assessment requirements applicable to the owners of coal combustion residuals  
14 surface impoundments:

15 (1) No later than December 31, 2014, the owner of a coal combustion residuals  
16 surface impoundment shall submit a proposed Groundwater Assessment Plan  
17 for the impoundment to the Department for its review and approval. The  
18 Groundwater Assessment Plan shall, at a minimum, provide for all of the  
19 following:

- 20 a. A description of all receptors and significant exposure pathways.
- 21 b. An assessment of the horizontal and vertical extent of soil and  
22 groundwater contamination for all contaminants confirmed to be present  
23 in groundwater in exceedance of groundwater quality standards.
- 24 c. A description of all significant factors affecting movement and transport  
25 of contaminants.
- 26 d. A description of the geological and hydrogeological features influencing  
27 the chemical and physical character of the contaminants.
- 28 e. A schedule for continued groundwater monitoring.
- 29 f. Any other information related to groundwater assessment required by  
30 the Department.

31 (2) The Department shall approve the Groundwater Assessment Plan if it  
32 determines that the Plan complies with the requirements of this subsection and  
33 will be sufficient to protect public health, safety, and welfare; the environment;  
34 and natural resources.

35 (3) No later than 10 days from approval of the Groundwater Assessment Plan, the  
36 owner shall begin implementation of the Plan.

37 (4) No later than 180 days from approval of the Groundwater Assessment Plan, the  
38 owner shall submit a Groundwater Assessment Report to the Department. The  
39 Report shall describe all exceedances of groundwater quality standards  
40 associated with the impoundment.

41 (b) Corrective Action for the Restoration of Groundwater Quality. – The owner of a coal  
42 combustion residuals surface impoundment shall implement corrective action for the restoration of  
43 groundwater quality as provided in this subsection. The requirements for corrective action for the  
44 restoration of groundwater quality set out in this subsection are in addition to any other corrective  
45 action for the restoration of groundwater quality requirements applicable to the owners of coal  
46 combustion residuals surface impoundments:

47 (1) No later than 90 days from submission of the Groundwater Assessment Report  
48 required by subsection (a) of this section, or a time frame otherwise approved  
49 by the Department not to exceed 180 days from submission of the Groundwater  
50 Assessment Report, the owner of the coal combustion residuals surface  
51 impoundment shall submit a proposed Groundwater Corrective Action Plan to

1 the Department for its review and approval. The Groundwater Corrective  
2 Action Plan shall provide for the restoration of groundwater in conformance  
3 with the requirements of Subchapter L of Chapter 2 of Title 15A of the North  
4 Carolina Administrative Code. The Groundwater Corrective Action Plan shall  
5 include, at a minimum, all of the following:

- 6 a. A description of all exceedances of the groundwater quality standards,  
7 including any exceedances that the owner asserts are the result of  
8 natural background conditions.
- 9 b. A description of the methods for restoring groundwater in conformance  
10 with the requirements of Subchapter L of Chapter 2 of Title 15A of the  
11 North Carolina Administrative Code and a detailed explanation of the  
12 reasons for selecting these methods.
- 13 c. Specific plans, including engineering details, for restoring groundwater  
14 quality.
- 15 d. A schedule for implementation of the Plan.
- 16 e. A monitoring plan for evaluating the effectiveness of the proposed  
17 corrective action and detecting movement of any contaminant plumes.
- 18 f. Any other information related to groundwater assessment required by  
19 the Department.

20 (2) The Department shall approve the Groundwater Corrective Action Plan if it  
21 determines that the Plan complies with the requirements of this subsection and  
22 will be sufficient to protect public health, safety, and welfare; the environment;  
23 and natural resources.

24 (3) No later than 30 days from the approval of the Groundwater Corrective Action  
25 Plan, the owner shall begin implementation of the Plan in accordance with the  
26 Plan's schedule.

27 (c) Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No  
28 later than October 1, 2014, the owner of a coal combustion residuals surface impoundment shall  
29 conduct a Drinking Water Supply Well Survey that identifies all drinking water supply wells  
30 within one-half mile down-gradient from the established compliance boundary of the  
31 impoundment and submit the Survey to the Department. The Survey shall include well locations,  
32 the nature of water uses, available well construction details, and information regarding ownership  
33 of the wells. No later than December 1, 2014, the Department shall determine, based on the  
34 Survey, which drinking water supply wells the owner is required to sample and how frequently  
35 and for what period sampling is required. The Department shall require sampling for drinking  
36 water supply wells where data regarding groundwater quality and flow and depth in the area of  
37 any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed  
38 well may be adversely impacted by constituents associated with the presence of the impoundment.  
39 No later than January 1, 2015, the owner shall initiate sampling and water quality analysis of the  
40 drinking water supply wells. A property owner may elect to have an independent third party  
41 selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory  
42 Certification program sample wells located on their property in lieu of sampling conducted by the  
43 owner of the coal combustion residuals surface impoundment. The owner of the coal combustion  
44 residuals surface impoundment shall pay for the reasonable costs of such sampling. Nothing in this  
45 subsection shall be construed to preclude or impair the right of any property owner to refuse such  
46 sampling of wells on their property. If the sampling and water quality analysis indicates that water  
47 from a drinking water supply well exceeds groundwater quality standards for constituents  
48 associated with the presence of the impoundment, the owner shall replace the contaminated  
49 drinking water supply well with an alternate supply of potable drinking water and an alternate  
50 supply of water that is safe for other household uses. The alternate supply of potable drinking  
51 water shall be supplied within 24 hours of the Department's determination that there is an

1 exceedance of groundwater quality standards attributable to constituents associated with the  
2 presence of the impoundment. The alternate supply of water that is safe for other household uses  
3 shall be supplied within 30 days of the Department's determination that there is an exceedance of  
4 groundwater quality standards attributable to constituents associated with the presence of the  
5 impoundment. The requirement to replace a contaminated drinking water supply well with an  
6 alternate supply of potable drinking water and an alternate supply of water that is safe for other  
7 household uses set out in this subsection is in addition to any other requirements to replace a  
8 contaminated drinking water supply well with an alternate supply of potable drinking water or an  
9 alternate supply of water that is safe for other household uses applicable to the owners of coal  
10 combustion residuals surface impoundments.

11 (c1) Provision of Permanent Water Supply. – As soon as practicable, but no later than  
12 October 15, 2018, the owner of a coal combustion residuals surface impoundment shall establish  
13 permanent replacement water supplies for (i) each household that has a drinking water supply well  
14 located within a one-half mile radius from the established compliance boundary of a coal  
15 combustion residuals impoundment, and is not separated from the impoundment by the mainstem  
16 of a river, as that term is defined under G.S. 143-215.22G, or other body of water that would  
17 prevent the migration of contaminants through groundwater from the impoundment to a well and  
18 (ii) each household that has a drinking water supply well that is located in an area in which  
19 contamination resulting from constituents associated with the presence of a coal combustion  
20 residuals impoundment is expected to migrate, as demonstrated by groundwater modeling and  
21 hydrogeologic, geologic, and geotechnical investigations of the site, conducted in accordance with  
22 the requirements of G.S. 130A-309.214(a)(4), and the results of other modeling or investigations  
23 that may have been submitted pursuant to G.S. 130A-309.213(b)(4). Preference shall be given to  
24 permanent replacement water supplies by connection to public water supplies; provided that (i) a  
25 household may elect to receive a filtration system in lieu of a connection to public water supplies  
26 and (ii) if the Department determines that connection to a public water supply to a particular  
27 household would be cost-prohibitive, the Department shall authorize provision of a permanent  
28 replacement water supply to that household through installation of a filtration system. For  
29 households for which filtration systems are installed, the impoundment owner shall be responsible  
30 for periodic required maintenance of the filtration system. No later than December 15, 2016, an  
31 impoundment owner shall submit information on permanent replacement water supplies proposed  
32 to be provided to each household to the Department, including, at a minimum, the type of  
33 permanent water supply proposed; the location of the household and its proximity to the nearest  
34 connection point to a public water supply; projected cost of the permanent water supply option  
35 proposed for the household; and any proposal to connect to a public water supply. The Department  
36 shall evaluate information submitted by the impoundment owner and render a final decision to  
37 approve or disapprove the plan, including written findings of fact, no later than January 15, 2017.  
38 If disapproved, an impoundment owner shall resubmit a plan for the Department's approval within  
39 30 days. No later than April 15, 2017, an impoundment owner shall notify all residents identified  
40 in the approved plan of their eligibility for establishment of a permanent water supply. Until such  
41 time as an impoundment owner has established a permanent water supply for each household  
42 required by this subsection, the impoundment owner shall supply the household with an alternate  
43 supply of potable drinking water and an alternate supply of water that is safe for other household  
44 uses. Nothing in this section shall be construed to (i) require an eligible household to connect to a  
45 public water supply or receive a filtration system or (ii) obviate the need for other federal, State,  
46 and local permits and approvals. All State entities and local governments shall expedite any  
47 permits and approvals required for such projects. The Department may grant an impoundment  
48 owner an extension of time, not to exceed one year, to establish permanent water supplies as  
49 required by this section, if the Department determines that it is infeasible for the impoundment  
50 owner to establish a permanent water supply for a household by October 15, 2018, based on

1 limitations arising from local government resources, including limitations on water supply  
2 capacity and staffing limitations for permitting and construction activities.

3 (d) Reporting. – In addition to any other reporting required by the Department, the owner  
4 of a coal combustion residuals surface impoundment shall submit an annual Groundwater  
5 Protection and Restoration Report to the Department no later than January 31 of each year. The  
6 Report shall include a summary of all groundwater monitoring, protection, and restoration  
7 activities related to the impoundment for the preceding year, including the status of the  
8 Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater Corrective  
9 Action Plan, the Drinking Water Supply Well Survey, and the replacement of any contaminated  
10 drinking water supply wells. ~~The owner of a coal combustion residuals surface impoundment shall~~  
11 ~~also submit all information required to be submitted to the Department pursuant to this section to~~  
12 ~~the Coal Ash Management Commission.~~

13 **"§ 130A-309.212. Identification and assessment of discharges; correction of unpermitted**  
14 **discharges.**

15 (a) Identification of Discharges from Coal Combustion Residuals Surface Impoundments.

16 –

- 17 (1) The owner of a coal combustion residuals surface impoundment shall identify  
18 all discharges from the impoundment as provided in this subsection. The  
19 requirements for identifying all discharges from an impoundment set out in this  
20 subsection are in addition to any other requirements for identifying discharges  
21 applicable to the owners of coal combustion residuals surface impoundments.
- 22 (2) No later than December 31, 2014, the owner of a coal combustion residuals  
23 surface impoundment shall submit a topographic map that identifies the  
24 location of all (i) outfalls from engineered channels designed or improved for  
25 the purpose of collecting water from the toe of the impoundment and (ii) seeps  
26 and weeps discharging from the impoundment that are not captured by  
27 engineered channels designed or improved for the purpose of collecting water  
28 from the toe of the impoundment to the Department. The topographic map shall  
29 comply with all of the following:
- 30 a. Be at a scale as required by the Department.
  - 31 b. Specify the latitude and longitude of each toe drain outfall, seep, and  
32 weep.
  - 33 c. Specify whether the discharge from each toe drain outfall, seep, and  
34 weep is continuous or intermittent.
  - 35 d. Provide an average flow measurement of the discharge from each toe  
36 drain outfall, seep, and weep including a description of the method used  
37 to measure average flow.
  - 38 e. Specify whether the discharge from each toe drain outfall, seep, and  
39 weep identified reaches the surface waters of the State. If the discharge  
40 from a toe drain outfall, seep, or weep reaches the surface waters of the  
41 State, the map shall specify the latitude and longitude of where the  
42 discharge reaches the surface waters of the State.
  - 43 f. Include any other information related to the topographic map required  
44 by the Department.

45 (b) Assessment of Discharges from Coal Combustion Residuals Surface Impoundments to  
46 the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment  
47 shall conduct an assessment of discharges from the coal combustion residuals surface  
48 impoundment to the surface waters of the State as provided in this subsection. The requirements  
49 for assessment of discharges from the coal combustion residuals surface impoundment to the  
50 surface waters of the State set out in this subsection are in addition to any other requirements for

1 the assessment of discharges from coal combustion residuals surface impoundments to surface  
2 waters of the State applicable to the owners of coal combustion residuals surface impoundments:

- 3 (1) No later than December 31, 2014, the owner of a coal combustion residuals  
4 surface impoundment shall submit a proposed Discharge Assessment Plan to  
5 the Department. The Discharge Assessment Plan shall include information  
6 sufficient to allow the Department to determine whether any discharge,  
7 including a discharge from a toe drain outfall, seep, or weep, has reached the  
8 surface waters of the State and has caused a violation of surface water quality  
9 standards. The Discharge Assessment Plan shall include, at a minimum, all of  
10 the following:
- 11 a. Upstream and downstream sampling locations within all channels that  
12 could potentially carry a discharge.
  - 13 b. A description of the surface water quality analyses that will be  
14 performed.
  - 15 c. A sampling schedule, including the frequency and duration of sampling  
16 activities.
  - 17 d. Reporting requirements.
  - 18 e. Any other information related to the assessment of discharges required  
19 by the Department.
- 20 (2) The Department shall approve the Discharge Assessment Plan if it determines  
21 that the Plan complies with the requirements of this subsection and will be  
22 sufficient to protect public health, safety, and welfare; the environment; and  
23 natural resources.
- 24 (3) No later than 30 days from the approval of the Discharge Assessment Plan, the  
25 owner shall begin implementation of the Plan in accordance with the Plan's  
26 schedule.

27 (c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion  
28 Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal  
29 combustion residuals surface impoundment shall implement corrective action to prevent  
30 unpermitted discharges from the coal combustion residuals surface impoundment to the surface  
31 waters of the State as provided in this subsection. The requirements for corrective action to  
32 prevent unpermitted discharges from coal combustion residuals surface impoundments to the  
33 surface waters of the State set out in this subsection are in addition to any other requirements for  
34 corrective action to prevent unpermitted discharges from coal combustion residuals surface  
35 impoundments to the surface waters of the State applicable to the owners of coal combustion  
36 residuals surface impoundments:

- 37 (1) If the Department determines, based on information provided pursuant to  
38 subsection (a) or (b) of this section, that an unpermitted discharge from a coal  
39 combustion residuals surface impoundment, including an unpermitted discharge  
40 from a toe drain outfall, seep, or weep, has reached the surface waters of the  
41 State, the Department shall notify the owner of the impoundment of its  
42 determination.
- 43 (2) No later than 30 days from a notification pursuant to subdivision (1) of this  
44 subsection, the owner of the coal combustion residuals surface impoundment  
45 shall submit a proposed Unpermitted Discharge Corrective Action Plan to the  
46 Department for its review and approval. The proposed Unpermitted Discharge  
47 Corrective Action Plan shall include, at a minimum, all of the following:
- 48 a. One of the following methods of proposed corrective action:
    - 49 1. Elimination of the unpermitted discharge.
    - 50 2. Application for a National Pollutant Discharge Elimination  
51 System (NPDES) permit amendment pursuant to G.S. 143-215.1

- 1 and Subchapter H of Chapter 2 of Title 15A of the North  
2 Carolina Administrative Code to bring the unpermitted discharge  
3 under permit regulations.
- 4 b. A detailed explanation of the reasons for selecting the method of  
5 corrective action.
- 6 c. Specific plans, including engineering details, to prevent the unpermitted  
7 discharge.
- 8 d. A schedule for implementation of the Plan.
- 9 e. A monitoring plan for evaluating the effectiveness of the proposed  
10 corrective action.
- 11 f. Any other information related to the correction of unpermitted  
12 discharges required by the Department.
- 13 (3) The Department shall approve the Unpermitted Discharge Corrective Action  
14 Plan if it determines that the Plan complies with the requirements of this  
15 subsection and will be sufficient to protect public health, safety, and welfare;  
16 the environment; and natural resources.
- 17 (4) No later than 30 days from the approval of the Unpermitted Discharge  
18 Corrective Action Plan, the owner shall begin implementation of the Plan in  
19 accordance with the Plan's schedule.
- 20 (d) Identification of New Discharges. – No later than October 1, 2014, the owner of a coal  
21 combustion residuals surface impoundment shall submit a proposed Plan for the Identification of  
22 New Discharges to the Department for its review and approval as provided in this subsection:
- 23 (1) The proposed Plan for the Identification of New Discharges shall include, at a  
24 minimum, all of the following:
- 25 a. A procedure for routine inspection of the coal combustion residuals  
26 surface impoundment to identify indicators of potential new discharges,  
27 including toe drain outfalls, seeps, and weeps.
- 28 b. A procedure for determining whether a new discharge is actually  
29 present.
- 30 c. A procedure for notifying the Department when a new discharge is  
31 confirmed.
- 32 d. Any other information related to the identification of new discharges  
33 required by the Department.
- 34 (2) The Department shall approve the Plan for the Identification of New Discharges  
35 if it determines that the Plan complies with the requirements of this subsection  
36 and will be sufficient to protect public health, safety, and welfare; the  
37 environment; and natural resources.
- 38 (3) No later than 30 days from the approval of the Plan for the Identification of  
39 New Discharges, the owner shall begin implementation of the Plan in  
40 accordance with the Plan.
- 41 (e) Reporting. – In addition to any other reporting required by the Department, the owner  
42 of a coal combustion residuals surface impoundment shall submit an annual Surface Water  
43 Protection and Restoration Report to the Department no later than January 31 of each year. The  
44 Report shall include a summary of all surface water sampling, protection, and restoration activities  
45 related to the impoundment for the preceding year, including the status of the identification,  
46 assessment, and correction of unpermitted discharges from coal combustion residuals surface  
47 impoundments to the surface waters of the State. ~~The owner of a coal combustion residuals surface  
48 impoundment shall also submit all information required to be submitted to the Department  
49 pursuant to this section to the Coal Ash Management Commission.~~
- 50 **"§ 130A-309.213. Prioritization of coal combustion residuals surface impoundments.**

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

- 11 ~~(1) Any hazards to public health, safety, or welfare resulting from the~~  
12 ~~impoundment.~~
- 13 ~~(2) The structural condition and hazard potential of the impoundment.~~
- 14 ~~(3) The proximity of surface waters to the impoundment and whether any surface~~  
15 ~~waters are contaminated or threatened by contamination as a result of the~~  
16 ~~impoundment.~~
- 17 ~~(4) Information concerning the horizontal and vertical extent of soil and~~  
18 ~~groundwater contamination for all contaminants confirmed to be present in~~  
19 ~~groundwater in exceedance of groundwater quality standards and all significant~~  
20 ~~factors affecting contaminant transport.~~
- 21 ~~(5) The location and nature of all receptors and significant exposure pathways.~~
- 22 ~~(6) The geological and hydrogeological features influencing the movement and~~  
23 ~~chemical and physical character of the contaminants.~~
- 24 ~~(7) The amount and characteristics of coal combustion residuals in the~~  
25 ~~impoundment.~~
- 26 ~~(8) Whether the impoundment is located within an area subject to a 100-year flood.~~
- 27 ~~(9) Any other factor the Department deems relevant to establishment of risk.~~

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

- 34 (1) The Department shall make copies of the written declaration issued pursuant to  
35 this subsection available for inspection as follows:
  - 36 a. A copy of the declaration shall be provided to the local health director.
  - 37 b. A copy of the declaration shall be provided to the public library located  
38 in closest proximity to the site in the county or counties in which the site  
39 is located.
  - 40 c. The Department shall post a copy of the declaration on the Department's  
41 Web site.
  - 42 d. The Department shall place copies of the declaration in other locations  
43 so as to assure the reasonable availability thereof to the public.
- 44 (2) The Department shall give notice of the written declaration issued pursuant to  
45 this subsection as follows:
  - 46 a. A notice and summary of the declaration shall be published weekly for a  
47 period of three consecutive weeks in a newspaper having general  
48 circulation in the county or counties where the site is located.
  - 49 b. Notice of the written declaration shall be given by first-class mail to  
50 persons who have requested such notice. Such notice shall include a  
51 summary of the written declaration and state the locations where a copy

1 of the written declaration is available for inspection. The Department  
2 shall maintain a mailing list of persons who request notice pursuant to  
3 this section.

- 4 c. Notice of the written declaration shall be given by electronic mail to  
5 persons who have requested such notice. Such notice shall include a  
6 summary of the written declaration and state the locations where a copy  
7 of the written declaration is available for inspection. The Department  
8 shall maintain a mailing list of persons who request notice pursuant to  
9 this section.

- 10 (3) No later than 60 days after issuance of the written declaration, the Department  
11 shall conduct a public meeting in the county or counties in which the site is  
12 located to explain the written declaration to the public. The Department shall  
13 give notice of the hearing at least 15 days prior to the date thereof by all of the  
14 following methods:

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

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

28 ~~(c) Within 30 days of the receipt of all written comment as required by subdivision (4) of~~  
29 ~~subsection (b) of this section, the Department shall submit a proposed classification for a coal~~  
30 ~~combustion residuals surface impoundment to the Coal Ash Management Commission established~~  
31 ~~pursuant to G.S. 130A-309.202. The Commission shall evaluate all information submitted in~~  
32 ~~accordance with this Part related to the proposed classification and any other information the~~  
33 ~~Commission deems relevant. The Commission shall only approve the proposed classification if it~~  
34 ~~determines that the classification was developed in accordance with this section and that the~~  
35 ~~classification accurately reflects the level of risk posed by the coal combustion residuals surface~~  
36 ~~impoundment. The Commission shall issue its determination in writing, including findings in~~  
37 ~~support of its determination. If the Commission fails to act on a proposed classification within 60~~  
38 ~~days of receipt of the proposed classification, the proposed classification shall be deemed~~  
39 ~~approved. Parties aggrieved by a final decision of the Commission pursuant to this subsection may~~  
40 ~~appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes.~~

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

- 45 (1) The Department shall classify an impoundment as low-risk if the impoundment  
46 owner satisfies both of the following criteria:  
47 a. Has established permanent water supplies as required for the  
48 impoundment pursuant to G.S. 130A-309.211(c1).  
49 b. Has rectified any deficiencies identified by, and otherwise complied  
50 with the requirements of, any dam safety order issued by the  
51 Environmental Management Commission for the impoundment



1 pursuant to G.S. 143-215.32. No later than July 1, 2018, the Department  
2 shall conduct the annual inspection of each dam associated with a coal  
3 combustion residuals surface impoundment required for that year, to  
4 detect any deficiencies and to ascertain, at a minimum, whether the dam  
5 is sufficiently strong, maintained in good repair and operating condition,  
6 does not pose a danger to life or property, and satisfies minimum  
7 streamflow requirements. The Department shall issue written findings of  
8 fact for each inspection and present such findings to the Environmental  
9 Management Commission. If the Department detects any deficiencies,  
10 the Commission shall issue an order directing the owner of the dam to  
11 take action as may be deemed necessary by the Commission within a  
12 time limited by the order, but not later than 90 days after issuance of the  
13 order.

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

15 (e) Parties aggrieved by a final decision of the Department issued pursuant to subsection  
16 (d) of this section may appeal the decision as provided under Article 3 of Chapter 150B of the  
17 General Statutes.

18 **"§ 130A-309.214. Closure of coal combustion residuals surface impoundments.**

19 (a) An owner of a coal combustion residuals surface impoundment shall submit a proposed  
20 Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's approval. If  
21 corrective action to restore groundwater has not been completed pursuant to the requirements of  
22 G.S. 130A-309.211(b), the proposed closure plan shall include provisions for completion of  
23 activities to restore groundwater in conformance with the requirements of Subchapter L of Chapter  
24 2 of Title 15A of the North Carolina Administrative Code. In addition, the following requirements,  
25 at a minimum, shall apply to such plans:

26 (1) High-risk impoundments shall be closed as soon as practicable, but no later  
27 than December 31, 2019. A proposed closure plan for such impoundments must  
28 be submitted as soon as practicable, but no later than December 31, 2016. At a  
29 minimum, (i) impoundments located in whole above the seasonal high  
30 groundwater table shall be dewatered; (ii) impoundments located in whole or in  
31 part beneath the seasonal high groundwater table shall be dewatered to the  
32 maximum extent practicable; and (iii) the owner of an impoundment shall  
33 either:

34 a. Convert the coal combustion residuals impoundment to an industrial  
35 landfill by removing all coal combustion residuals and contaminated  
36 soil from the impoundment temporarily, safely storing the residuals  
37 on-site, and complying with the requirements for such landfills  
38 established by this Article and rules adopted thereunder. At a minimum,  
39 the landfills shall have a design with a leachate collection system, a  
40 closure cap system, and a composite liner system consisting of two  
41 components: the upper component shall consist of a minimum 30-ml  
42 flexible membrane (FML), and the lower components shall consist of at  
43 least a two-foot layer of compacted soil with a hydraulic conductivity of  
44 no more than  $1 \times 10^{-7}$  centimeters per second. FML components  
45 consisting of high density polyethylene (HDPE) shall be at least 60 ml  
46 thick. The landfill shall otherwise comply with the construction  
47 requirements established by Section .1624 of Subchapter B of Chapter  
48 13 of Title 15A of the North Carolina Administrative Code, and the  
49 siting and design requirements for disposal sites established by Section  
50 .0503 of Subchapter B of Chapter 13 of Title 15A of the North Carolina  
51 Administrative Code, except with respect to those requirements that

1           pertain to buffers. In lieu of the buffer requirement established by  
2           Section .0503(f)(2)(iii) of Subchapter B of Chapter 13 of Title 15A of  
3           the North Carolina Administrative Code, the owner of the impoundment  
4           shall establish and maintain a 300-foot buffer between surface waters  
5           and disposal areas. After the temporarily displaced coal combustion  
6           residuals have been returned for disposal in the industrial landfill  
7           constructed pursuant to the requirements of this sub-subdivision, the  
8           owner of the landfill shall comply with the closure and post-closure  
9           requirements established by Section .1627 of Subchapter B of Chapter  
10          13 of Title 15A of the North Carolina Administrative Code. A landfill  
11          constructed pursuant to this sub-subdivision shall otherwise be subject  
12          to all applicable requirements of this Chapter and rules adopted  
13          thereunder. Prior to closure, the Department may allow the disposal of  
14          coal combustion residuals, in addition to those originally contained in  
15          the impoundment, to the landfill constructed pursuant to this  
16          sub-subdivision, if the Department determines that the site is suitable for  
17          additional capacity and that disposal of additional coal combustion  
18          residuals will not pose an unacceptable risk to public health, safety,  
19          welfare; the environment; and natural resources.

20          b.       Remove all coal combustion residuals from the impoundment, return the  
21          former impoundment to a nonerosive and stable condition and (i)  
22          transfer the coal combustion residuals for disposal in a coal combustion  
23          residuals landfill, industrial landfill, or municipal solid waste landfill or  
24          (ii) use the coal combustion products in a structural fill or other  
25          beneficial use as allowed by law. The use of coal combustion products  
26          (i) as structural fill shall be conducted in accordance with the  
27          requirements of Subpart 3 of this Part and (ii) for other beneficial uses  
28          shall be conducted in accordance with the requirements of Section .1700  
29          of Subchapter B of Chapter 13 of Title 15A of the North Carolina  
30          Administrative Code (Requirements for Beneficial Use of Coal  
31          Combustion By-Products) and Section .1205 of Subchapter T of  
32          Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal  
33          Combustion Products Management).

34          (2)       Intermediate-risk impoundments shall be closed as soon as practicable, but no  
35          later than December 31, 2024. A proposed closure plan for such impoundments  
36          must be submitted as soon as practicable, but no later than December 31,  
37          ~~2017-2019~~. At a minimum, such impoundments shall be dewatered, and the  
38          owner of an impoundment shall close the impoundment in any manner allowed  
39          pursuant to subdivision (1) of this ~~subsection-subsection~~, or, if applicable, as  
40          provided in G.S. 130A-309.216.

41          (3)       Low-risk impoundments shall be closed as soon as practicable, but no later than  
42          December 31, 2029. A proposed closure plan for such impoundments must be  
43          submitted as soon as practicable, but no later than December 31, ~~2018-2019~~. At  
44          a minimum, (i) impoundments located in whole above the seasonal high  
45          groundwater table shall be dewatered; (ii) impoundments located in whole or in  
46          part beneath the seasonal high groundwater table shall be dewatered to the  
47          maximum extent practicable; and (iii) at the election of the Department, the  
48          owner of an impoundment shall either:

49          a.       Close in any manner allowed pursuant to subdivision (1) of this  
50          ~~subsection-subsection~~;

1           b.     Comply with the closure and post-closure requirements established by  
2                 Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North  
3                 Carolina Administrative Code, except that such impoundments shall not  
4                 be required to install and maintain a leachate collection system.  
5                 Specifically, the owner of an impoundment shall install and maintain a  
6                 cap system that is designed to minimize infiltration and erosion in  
7                 conformance with the requirements of Section .1624 of Subchapter B of  
8                 Chapter 13 of Title 15A of the North Carolina Administrative Code,  
9                 and, at a minimum, shall be designed and constructed to (i) have a  
10                permeability no greater than  $1 \times 10^{-5}$  centimeters per second; (ii)  
11                minimize infiltration by the use of a low-permeability barrier that  
12                contains a minimum 18 inches of earthen material; and (iii) minimize  
13                erosion of the cap system and protect the low-permeability barrier from  
14                root penetration by use of an erosion layer that contains a minimum of  
15                six inches of earthen material that is capable of sustaining native plant  
16                growth. In addition, the owner of an impoundment shall (i) install and  
17                maintain a groundwater monitoring system; (ii) establish financial  
18                assurance that will ensure that sufficient funds are available for closure  
19                pursuant to this subdivision, post-closure maintenance and monitoring,  
20                any corrective action that the Department may require, and satisfy any  
21                potential liability for sudden and nonsudden accidental occurrences  
22                arising from the impoundment and subsequent costs incurred by the  
23                Department in response to an incident, even if the owner becomes  
24                insolvent or ceases to reside, be incorporated, do business, or maintain  
25                assets in the State; and (iii) conduct post-closure care for a period of 30  
26                years, which period may be increased by the Department upon a  
27                determination that a longer period is necessary to protect public health,  
28                safety, welfare; the environment; and natural resources, or decreased  
29                upon a determination that a shorter period is sufficient to protect public  
30                health, safety, welfare; the environment; and natural resources. The  
31                Department may require implementation of any other measure it deems  
32                necessary to protect public health, safety, and welfare; the environment;  
33                and natural resources, including imposition of institutional controls that  
34                are sufficient to protect public health, safety, and welfare; the  
35                environment; and natural resources. The Department may not approve  
36                closure for an impoundment pursuant to sub-subdivision b. of  
37                subdivision (3) of this subsection unless the Department finds that the  
38                proposed closure plan includes design measures to prevent, upon the  
39                plan's full implementation, post-closure exceedances of groundwater  
40                quality standards beyond the compliance boundary that are attributable  
41                to constituents associated with the presence of the  
42                ~~impoundment~~ impoundment; or

43           c.     Comply with the closure requirements established by the United States  
44                 Environmental Protection Agency as provided in 40 CFR Parts 257 and  
45                 261, "Hazardous and Solid Waste Management System; Disposal of  
46                 Coal Combustion Residuals From Electric Utilities."

47           (4)    Closure Plans for all impoundments shall include all of the following:

48           a.     Facility and coal combustion residuals surface impoundment  
49                 description. – A description of the operation of the site that shall  
50                 include, at a minimum, all of the following:

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1. Site history and history of site operations, including details on the manner in which coal combustion residuals have been stored and disposed of historically.
  2. Estimated volume of material contained in the impoundment.
  3. Analysis of the structural integrity of dikes or dams associated with impoundment.
  4. All sources of discharge into the impoundment, including volume and characteristics of each discharge.
  5. Whether the impoundment is lined, and, if so, the composition thereof.
  6. A summary of all information available concerning the impoundment as a result of inspections and monitoring conducted pursuant to this Part and otherwise available.
- b. Site maps, which, at a minimum, illustrate all of the following:
1. All structures associated with the operation of any coal combustion residuals surface impoundment located on the site. For purposes of this sub-subdivision, the term "site" means the land or waters within the property boundary of the applicable electric generating station.
  2. All current and former coal combustion residuals disposal and storage areas on the site, including details concerning coal combustion residuals produced historically by the electric generating station and disposed of through transfer to structural fills.
  3. The property boundary for the applicable site, including established compliance boundaries within the site.
  4. All potential receptors within 2,640 feet from established compliance boundaries.
  5. Topographic contour intervals of the site shall be selected to enable an accurate representation of site features and terrain and in most cases should be less than 20-foot intervals.
  6. Locations of all sanitary landfills permitted pursuant to this Article on the site that are actively receiving waste or are closed, as well as the established compliance boundaries and components of associated groundwater and surface water monitoring systems.
  7. All existing and proposed groundwater monitoring wells associated with any coal combustion residuals surface impoundment on the site.
  8. All existing and proposed surface water sample collection locations associated with any coal combustion residuals surface impoundment on the site.
- c. The results of a hydrogeologic, geologic, and geotechnical investigation of the site, including, at a minimum, all of the following:
1. A description of the hydrogeology and geology of the site.
  2. A description of the stratigraphy of the geologic units underlying each coal combustion residuals surface impoundment located on the site.
  3. The saturated hydraulic conductivity for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site and (ii) the saturated hydraulic

- 1 conductivity of any existing liner installed at an impoundment, if  
2 any.
- 3 4. The geotechnical properties for (i) the coal combustion residuals  
4 within any coal combustion residuals surface impoundment  
5 located on the site, (ii) the geotechnical properties of any  
6 existing liner installed at an impoundment, if any, and (iii) the  
7 uppermost identified stratigraphic unit underlying the  
8 impoundment, including the soil classification based upon the  
9 Unified Soil Classification System, in-place moisture content,  
10 particle size distribution, Atterberg limits, specific gravity,  
11 effective friction angle, maximum dry density, optimum  
12 moisture content, and permeability.
- 13 5. A chemical analysis of the coal combustion residuals surface  
14 impoundment, including water, coal combustion residuals, and  
15 coal combustion residuals-affected soil.
- 16 6. Identification of all substances with concentrations determined  
17 to be in excess of the groundwater quality standards for the  
18 substance established by Subchapter L of Chapter 2 of Title 15A  
19 of the North Carolina Administrative Code, including all  
20 laboratory results for these analyses.
- 21 7. Summary tables of historical records of groundwater sampling  
22 results.
- 23 8. A map that illustrates the potentiometric contours and flow  
24 directions for all identified aquifers underlying impoundments  
25 (shallow, intermediate, and deep) and the horizontal extent of  
26 areas where groundwater quality standards established by  
27 Subchapter L of Chapter 2 of Title 15A of the North Carolina  
28 Administrative Code for a substance are exceeded.
- 29 9. Cross-sections that illustrate the following: the vertical and  
30 horizontal extent of the coal combustion residuals within an  
31 impoundment; stratigraphy of the geologic units underlying an  
32 impoundment; and the vertical extent of areas where  
33 groundwater quality standards established by Subchapter L of  
34 Chapter 2 of Title 15A of the North Carolina Administrative  
35 Code for a substance are exceeded.
- 36 d. The results of groundwater modeling of the site that shall include, at a  
37 minimum, all of the following:
- 38 1. An account of the design of the proposed Closure Plan that is  
39 based on the site hydrogeologic conceptual model developed and  
40 includes (i) predictions on post-closure groundwater elevations  
41 and groundwater flow directions and velocities, including the  
42 effects on and from the potential receptors and (ii) predictions at  
43 the compliance boundary for substances with concentrations  
44 determined to be in excess of the groundwater quality standards  
45 for the substance established by Subchapter L of Chapter 2 of  
46 Title 15A of the North Carolina Administrative Code.
- 47 2. Predictions that include the effects on the groundwater chemistry  
48 and should describe migration, concentration, mobilization, and  
49 fate for substances with concentrations determined to be in  
50 excess of the groundwater quality standards for the substance  
51 established by Subchapter L of Chapter 2 of Title 15A of the

- 1 North Carolina Administrative Code pre- and post-closure,  
2 including the effects on and from potential receptors.
- 3 3. A description of the groundwater trend analysis methods used to  
4 demonstrate compliance with groundwater quality standards for  
5 the substance established by Subchapter L of Chapter 2 of Title  
6 15A of the North Carolina Administrative Code and  
7 requirements for corrective action of groundwater contamination  
8 established by Subchapter L of Chapter 2 of Title 15A of the  
9 North Carolina Administrative Code.
- 10 e. A description of any plans for beneficial use of the coal combustion  
11 residuals in compliance with the requirements of Section .1700 of  
12 Subchapter B of Chapter 13 of Title 15A of the North Carolina  
13 Administrative Code (Requirements for Beneficial Use of Coal  
14 Combustion By-Products) and Section .1205 of Subchapter T of  
15 Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal  
16 Combustion Products Management).
- 17 f. All engineering drawings, schematics, and specifications for the  
18 proposed Closure Plan. If required by Chapter 89C of the General  
19 Statutes, engineering design documents should be prepared, signed, and  
20 sealed by a professional engineer.
- 21 g. A description of the construction quality assurance and quality control  
22 program to be implemented in conjunction with the Closure Plan,  
23 including the responsibilities and authorities for monitoring and testing  
24 activities, sampling strategies, and reporting requirements.
- 25 h. A description of the provisions for disposal of wastewater and  
26 management of stormwater and the plan for obtaining all required  
27 permits.
- 28 i. A description of the provisions for the final disposition of the coal  
29 combustion residuals. If the coal combustion residuals are to be  
30 removed, the owner must identify (i) the location and permit number for  
31 the coal combustion residuals landfills, industrial landfills, or municipal  
32 solid waste landfills in which the coal combustion residuals will be  
33 disposed and (ii) in the case where the coal combustion residuals are  
34 planned for beneficial use, the location and manner in which the  
35 residuals will be temporarily stored. If the coal combustion residuals are  
36 to be left in the impoundment, the owner must (i) in the case of closure  
37 pursuant to sub-subdivision (a)(1)a. of this section, provide a description  
38 of how the ash will be stabilized prior to completion of closure in  
39 accordance with closure and post-closure requirements established by  
40 Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North  
41 Carolina Administrative Code and (ii) in the case of closure pursuant to  
42 sub-subdivision (a)(1)b. of this section, provide a description of how the  
43 ash will be stabilized pre- and post-closure. If the coal combustion  
44 residuals are to be left in the impoundment, the owner must provide an  
45 estimate of the volume of coal combustion residuals remaining.
- 46 j. A list of all permits that will need to be acquired or modified to  
47 complete closure activities.
- 48 k. A description of the plan for post-closure monitoring and care for an  
49 impoundment for a minimum of 30 years. The length of the post-closure  
50 care period may be (i) proposed to be decreased or the frequency and  
51 parameter list modified if the owner demonstrates that the reduced

1 period or modifications are sufficient to protect public health, safety,  
2 and welfare; the environment; and natural resources and (ii) increased  
3 by the Department at the end of the post-closure monitoring and care  
4 period if there are statistically significant increasing groundwater  
5 quality trends or if contaminant concentrations have not decreased to a  
6 level protective of public health, safety, and welfare; the environment;  
7 and natural resources. If the owner determines that the post-closure care  
8 monitoring and care period is no longer needed and the Department  
9 agrees, the owner shall provide a certification, signed and sealed by a  
10 professional engineer, verifying that post-closure monitoring and care  
11 has been completed in accordance with the post-closure plan. If required  
12 by Chapter 89C of the General Statutes, the proposed plan for  
13 post-closure monitoring and care should be signed and sealed by a  
14 professional engineer. The plan shall include, at a minimum, all of the  
15 following:

- 16 1. A demonstration of the long-term control of all leachate,  
17 affected groundwater, and stormwater.
- 18 2. A description of a groundwater monitoring program that  
19 includes (i) post-closure groundwater monitoring, including  
20 parameters to be sampled and sampling schedules; (ii) any  
21 additional monitoring well installations, including a map with  
22 the proposed locations and well construction details; and (iii) the  
23 actions proposed to mitigate statistically significant increasing  
24 groundwater quality trends.
- 25 l. An estimate of the milestone dates for all activities related to closure  
26 and post-closure.
- 27 m. Projected costs of assessment, corrective action, closure, and  
28 post-closure care for each coal combustion residuals surface  
29 impoundment.
- 30 n. A description of the anticipated future use of the site and the necessity  
31 for the implementation of institutional controls following closure,  
32 including property use restrictions, and requirements for recordation of  
33 notices documenting the presence of contamination, if applicable, or  
34 historical site use.

35 (b) The Department shall review a proposed Coal Combustion Residuals Surface  
36 Impoundment Closure Plan for consistency with the minimum requirements set forth in subsection  
37 (a) of this section and whether the proposed Closure Plan is protective of public health, safety, and  
38 welfare; the environment; and natural resources and otherwise complies with the requirements of  
39 this Part. Prior to issuing a decision on a proposed Closure Plan, the Department shall provide for  
40 public participation on the proposed Closure Plan as follows:

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

- 1 (2) Before approving a proposed Closure Plan, the Department shall give notice as  
2 follows:
- 3 a. A notice and summary of the proposed Closure Plan shall be published  
4 weekly for a period of three consecutive weeks in a newspaper having  
5 general circulation in the county or counties where the site is located.
- 6 b. Notice that a proposed Closure Plan has been developed shall be given  
7 by first-class mail to persons who have requested such notice. Such  
8 notice shall include a summary of the proposed Closure Plan and state  
9 the locations where a copy of the proposed Closure Plan is available for  
10 inspection. The Department shall maintain a mailing list of persons who  
11 request notice pursuant to this section.
- 12 c. Notice that a proposed Closure Plan has been developed shall be given  
13 by electronic mail to persons who have requested such notice. Such  
14 notice shall include a summary of the proposed Closure Plan and state  
15 the locations where a copy of the proposed Closure Plan is available for  
16 inspection. The Department shall maintain a mailing list of persons who  
17 request notice pursuant to this section.
- 18 (3) No later than 60 days after receipt of a proposed Closure Plan, the Department  
19 shall conduct a public meeting in the county or counties in which the site is  
20 located to explain the proposed Closure Plan and alternatives to the public. The  
21 Department shall give notice of the hearing at least 30 days prior to the date  
22 thereof by all of the following methods:
- 23 a. Publication as provided in subdivision (1) of this subsection, with first  
24 publication to occur not less than 30 days prior to the scheduled date of  
25 the hearing.
- 26 b. First-class mail to persons who have requested notice as provided in  
27 subdivision (2) of this subsection.
- 28 c. Electronic mail to persons who have requested notice as provided in  
29 subdivision (2) of this subsection.
- 30 (4) At least 30 days from the latest date on which notice is provided pursuant to  
31 subdivision (2) of this subsection shall be allowed for the receipt of written  
32 comment on the proposed Closure Plan prior to its approval. At least 20 days  
33 will be allowed for receipt of written comment following a hearing conducted  
34 pursuant to subdivision (3) of this subsection prior to the approval of the  
35 proposed Closure Plan.
- 36 (c) The Department shall disapprove a proposed Coal Combustion Residuals Surface  
37 Impoundment Closure Plan unless the Department finds that the Closure Plan is protective of  
38 public health, safety, and welfare; the environment; and natural resources and otherwise complies  
39 with the requirements of this Part. The Department shall provide specific findings to support its  
40 decision to approve or disapprove a proposed Closure Plan. If the Department disapproves a  
41 proposed Closure Plan, the person who submitted the Closure Plan may seek review as provided  
42 in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or  
43 disapprove a proposed Closure Plan within 120 days after a complete Closure Plan has been  
44 submitted, the person who submitted the proposed Closure Plan may treat the Closure Plan as  
45 having been disapproved at the end of that time period. The Department may require a person who  
46 proposes a Closure Plan to supply any additional information necessary for the Department to  
47 approve or disapprove the Closure Plan.
- 48 ~~(d) Within 30 days of its approval of a Coal Combustion Residuals Surface Impoundment~~  
49 ~~Closure Plan, the Department shall submit the Closure Plan to the Coal Ash Management~~  
50 ~~Commission. The Commission shall evaluate all information submitted in accordance with this~~  
51 ~~Part related to the Closure Plan and any other information the Commission deems relevant. The~~



1 Commission shall approve the Closure Plan if it determines that the Closure Plan was developed  
2 in accordance with this section, that implementation of the Closure Plan according to the Closure  
3 Plan's schedule is technologically and economically feasible, and the Closure Plan is protective of  
4 the public health, safety, and welfare; the environment; and natural resources. In addition, the  
5 Commission may consider any impact on electricity costs and reliability, but this factor may not  
6 be dispositive of the Commission's determination. The Commission shall issue its determination in  
7 writing, including findings in support of its determination. If the Commission fails to act on a  
8 Closure Plan within 60 days of receipt of the Closure Plan, the Closure Plan shall be deemed  
9 approved. Parties aggrieved by a final decision of the Commission pursuant to this subsection may  
10 appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes.

11 (e) As soon as practicable, but no later than 60 days after a Coal Combustion Residuals  
12 Surface Impoundment Closure Plan has been approved by the ~~Coal Ash Management~~  
13 ~~Commission, Department~~, the owner of the coal combustion residuals impoundment shall begin  
14 implementation of the approved plan. Modifications to an approved Closure Plan may only be  
15 allowed in conformance with the requirements of this Part, upon written request of an owner of an  
16 impoundment, with the written approval of the Department, and after public notice of the change  
17 in accordance with the requirements of subdivision (2) of subsection (b) of this section. Provided,  
18 however, minor technical modifications may be made in accordance with standard Department  
19 procedures for such minor modifications and may be made without written approval of the  
20 Department or public notice of the change.

21 (f) Nothing in this section shall be construed to obviate the need for sampling,  
22 remediation, and monitoring activities at the site as required by G.S. 130A-309.211 and  
23 G.S. 130A-309.310 [G.S. 130A-309.212].

24 **"§ 130A-309.215. Variance authority.**

25 (a) In recognition of the complexity and magnitude of the issues surrounding the  
26 management of coal combustion residuals and coal combustion residuals surface impoundments,  
27 the General Assembly authorizes the ~~Commission Secretary~~ to grant a variance to extend any  
28 ~~deadline for closure of an impoundment established under G.S. 130A-309.214 in conformance~~  
29 ~~with the requirements of this section. To request such a variance the owner of an impoundment~~  
30 under this act, on the Secretary's own motion, or that of an impoundment owner, on the basis that  
31 compliance with the deadline cannot be achieved by application of best available technology  
32 found to be economically reasonable at the time and would produce serious hardship without  
33 equal or greater benefits to the public.

34 (a1) For variances requested by an impoundment owner, the owner shall, no earlier than  
35 two years~~one year~~ prior to the applicable deadline, submit an application in a form acceptable to  
36 the Department which shall include, at a minimum, all of the following information: identification  
37 of the site, applicable requirements, and applicable deadlines for which a variance is sought, and  
38 the site-specific circumstances that support the need for the variance. The owner of the  
39 impoundment shall also provide detailed information that demonstrates (i) the owner has  
40 substantially complied with all other requirements and deadlines established by this Part; (ii) the  
41 owner has made good faith efforts to comply with the applicable deadline for closure of the  
42 impoundment; and (iii) that compliance with the deadline cannot be achieved by application of  
43 best available technology found to be economically reasonable at the time and would produce  
44 serious hardship without equal or greater benefits to the public. As soon as practicable, but no later  
45 than 60 days from receipt of an application, the Secretary shall evaluate the information submitted  
46 in conjunction with the application, and any other information the Secretary deems relevant, to  
47 determine whether the information supports issuance of a variance. ~~After such evaluation, if the~~  
48 ~~Secretary finds that the information supports issuance of a variance from the deadline, the~~  
49 ~~Secretary shall issue a proposed variance. Within 10 days after a proposed variance has been~~  
50 ~~issued, the Secretary shall issue a written declaration, including findings of fact, documenting the~~  
51 ~~proposed variance.~~

1       (a2) The Department shall provide for public participation on ~~the~~ proposed variance in the  
2 manner provided by G.S. 130A-309.214(b) and shall take the public input received through the  
3 process into account in its decision concerning ~~the proposed issuance of a variance. Within 30 days~~  
4 ~~of the receipt of all public input received, the Department shall submit a proposed variance to the~~  
5 ~~Coal Ash Management Commission. The Commission shall evaluate all information submitted in~~  
6 ~~accordance with this section and any other information the Commission deems relevant. The~~  
7 ~~Commission-Department shall only approve a variance if it determines that compliance with the~~  
8 ~~deadline cannot be achieved by application of best available technology found to be economically~~  
9 ~~reasonable at the time and would produce serious hardship without equal or greater benefits to the~~  
10 ~~public. The Commission-Department shall issue its determination in writing, including findings in~~  
11 ~~support of its determination. If the Commission-Department fails to act on a variance request~~  
12 ~~within 60 days of receipt, the variance shall be deemed denied.~~

13       (a3) Parties aggrieved by a final decision of the Commission pursuant to this subsection  
14 may appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes.

15       (b) ~~A variance granted pursuant to this section shall not extend a deadline for closure of an~~  
16 ~~impoundment more than three years beyond the date applicable to the impoundment as provided~~  
17 ~~under G.S. 130A-309.214.~~

18       (c) ~~No more than one variance may be granted pursuant to this section per impoundment.~~

19 **"§ 130A-309.216. Ash beneficiation projects.**

20       (a) On or before January 1, 2017, an impoundment owner shall (i) identify, at a minimum,  
21 impoundments at two sites located within the State with ash stored in the impoundments on that  
22 date that is suitable for processing for cementitious purposes and (ii) enter into a binding  
23 agreement for the installation and operation of an ash beneficiation project at each site capable of  
24 annually processing 300,000 tons of ash to specifications appropriate for cementitious products,  
25 with all ash processed to be removed from the impoundment(s) located at the sites. As soon as  
26 legally practicable thereafter, the impoundment owner shall apply for all permits necessary for the  
27 ash beneficiation projects from the Department. The Department shall expedite any State permits  
28 and approvals required for such projects. No later than 24 months after issuance of all necessary  
29 permits, operation of the ash beneficiation projects shall be commenced.

30       (b) On or before July 1, 2017, an impoundment owner shall (i) identify an impoundment at  
31 an additional site located within the State with ash stored in the impoundment on that date that is  
32 suitable for processing for cementitious purposes and (ii) enter into a binding agreement for the  
33 installation and operation of an ash beneficiation project capable of annually processing 300,000  
34 tons of ash to specifications appropriate for cementitious products, with all ash processed to be  
35 removed from the impoundment(s) located at the site. As soon as legally practicable thereafter, the  
36 impoundment owner shall apply for all permits necessary for the ash beneficiation project from the  
37 Department. The Department shall expedite any State permits and approvals required for such  
38 projects. No later than 24 months after issuance of all necessary permits, operation of the ash  
39 beneficiation projects shall be commenced.

40       (c) Notwithstanding any deadline for closure provided by G.S. 130A-309.214, any  
41 impoundment classified as intermediate- or low-risk that is located at a site at which an ash  
42 beneficiation project is installed, operating, and processing at least 300,000 tons of ash annually  
43 from the impoundment, shall be closed no later than December 31, 2029.

44 **"§ 130A-309.217: Reserved for future codification purposes."**

45       **SECTION 2.** G.S. 62-302.1 reads as rewritten:

46 **"§ 62-302.1. Regulatory fee for combustion residuals surface impoundments.**

47       (a) Fee Imposed. – Each public utility with a coal combustion residuals surface  
48 impoundment shall pay a regulatory fee for the purpose of defraying the costs of oversight of coal  
49 combustion residuals. The fee is in addition to the fee imposed under G.S. 62-302. The fees  
50 collected under this section shall only be used to pay the expenses of the ~~Coal Ash Management~~

1 ~~Commission and the~~ Department of Environmental Quality in providing oversight of coal  
2 combustion residuals.

3 (b) Rate. – The combustion residuals surface impoundment fee shall be ~~three hundredths~~  
4 ~~of one percent (0.03%)~~ twenty-two thousandths of one percent (0.022%) of the North Carolina  
5 jurisdictional revenues of each public utility with a coal combustion residuals surface  
6 impoundment. For the purposes of this section, the term "North Carolina jurisdictional revenues"  
7 has the same meaning as in G.S. 62-302.

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

17 (d) Use of Proceeds. – A special fund in the ~~Office of State Treasurer and the Coal Ash~~  
18 ~~Management Commission~~ Department of Environmental Quality is created. The fees collected  
19 pursuant to this section ~~and all other funds received by the Coal Ash Management Commission~~  
20 shall be deposited in the Coal Combustion Residuals Management Fund. The Fund shall be placed  
21 in an interest-bearing account, and any interest or other income derived from the Fund shall be  
22 credited to the Fund. Subject to appropriation by the General Assembly, ~~twenty-six and one-half~~  
23 ~~percent (26.5%) of the moneys in the Fund shall be used by the Coal Ash Management~~  
24 ~~Commission and the remainder one hundred percent (100%)~~ shall be used by the Department of  
25 Environmental Quality. ~~The Coal Ash Management Commission shall be subject to the provisions~~  
26 ~~of the State Budget Act, except that no unexpended surplus of the Coal Combustion Residuals~~  
27 ~~Management Fund shall revert to the General Fund.~~ All funds credited to the Fund shall be used  
28 only to pay the expenses of the ~~Coal Ash Management Commission and the~~ Department of  
29 Environmental Quality in providing oversight of coal combustion residuals.

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

32 **SECTION 3.(a)** Notwithstanding G.S. 130A-309.213 or G.S. 130A-309.214, as  
33 amended by Section 1 of this act, and except as otherwise preempted by the requirements of  
34 federal law, the following coal combustion residuals surface impoundments shall be deemed  
35 intermediate-risk and, as soon as practicable, but no later than August 1, 2028, shall be closed in  
36 conformance with Section 3(b) of this act:

- 37 (1) Coal combustion residuals surface impoundments located at the H.F. Lee Steam  
38 Station, owned and operated by Duke Energy Progress, and located in Wayne  
39 County.
- 40 (2) Coal combustion residuals surface impoundments located at the Cape Fear  
41 Steam Station, owned and operated by Duke Energy Progress, and located in  
42 Chatham County.
- 43 (3) Coal combustion residuals surface impoundments located at the Weatherspoon  
44 Steam Station, owned and operated by Duke Energy Progress, and located in  
45 New Hanover County.

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

- 48 (1) Impoundments located in whole above the seasonal high groundwater table  
49 shall be dewatered. Impoundments located in whole or in part beneath the  
50 seasonal high groundwater table shall be dewatered to the maximum extent  
51 practicable.

1 (2) All coal combustion residuals shall be removed from the impoundments and  
2 transferred for (i) disposal in a coal combustion residuals landfill, industrial  
3 landfill, or municipal solid waste landfill or (ii) use in a structural fill or other  
4 beneficial use as allowed by law. The use of coal combustion products (i) as  
5 structural fill shall be conducted in accordance with the requirements of Subpart  
6 3 of Part 2I of Article 9 of the General Statutes and (ii) for other beneficial uses  
7 shall be conducted in accordance with the requirements of Section .1700 of  
8 Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative  
9 Code (Requirements for Beneficial Use of Coal Combustion By-Products) and  
10 Section .1200 of Subchapter T of Chapter 2 of Title 15A of the North Carolina  
11 Administrative Code (Coal Combustion Products Management), as applicable.

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

15 **SECTION 4.** There is appropriated a sum of up to four hundred fifty thousand dollars  
16 (\$450,000) to the State Water Infrastructure Authority from the Coal Combustion Residuals  
17 Management Fund cash balance on June 30, 2016, to fund grants to local governments operating  
18 public water supplies in areas surrounding coal combustion residuals impoundments to provide  
19 moneys for additional staff for permitting and construction activities as may be needed to facilitate  
20 establishment of permanent water supplies to households eligible for connection to public water  
21 supplies pursuant to G.S. 130A-309.211(c1).

22 **SECTION 5.(a)** Section 3(e) of S.L. 2014-122 is repealed.

23 **SECTION 5.(b)** Section 4(e) of S.L. 2014-122 reads as rewritten:

24 **"SECTION 4.(e)** All electric generating facilities owned by a public utility that produce coal  
25 combustion residuals and coal combustion products shall issue a request for proposals on or before  
26 December 31, 2014, for (i) the conduct of a market analysis for the concrete industry and other  
27 industries that might beneficially use coal combustion residuals and coal combustion products; (ii)  
28 the study of the feasibility and advisability of installation of technology to convert existing and  
29 newly generated coal combustion residuals to commercial-grade coal combustion products  
30 suitable for use in the concrete industry and other industries that might beneficially use coal  
31 combustion residuals; and (iii) an examination of all innovative technologies that might be applied  
32 to diminish, recycle or reuse, or mitigate the impact of existing and newly generated coal  
33 combustion residuals. All electric generating facilities shall present the materials and information  
34 received in response to a request for proposals issued pursuant to this section and an assessment of  
35 the materials and information, including a forecast of specific actions to be taken in response to  
36 the materials and information received, to the Environmental Management Commission ~~and the~~  
37 ~~Coal Ash Management Commission~~ on or before August 1, 2016."

38 **SECTION 6.(a)** G.S. 143B-291 reads as rewritten:

39 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;  
40 compensation; quorum; services.**

41 (a) Repealed by 2014-4, s. 5(a), effective July 31, 2015.

42 (a1) Members, Selection. – The North Carolina Mining Commission shall consist of eight  
43 members appointed as follows:

44 (1) One member who is the chair of the North Carolina State University Minerals  
45 Research Laboratory Advisory ~~Committee~~Committee, ex officio and  
46 nonvoting.

47 (2) The State Geologist, ex officio and nonvoting.

48 (3) One member appointed by the Governor subject to confirmation in  
49 conformance with Section 5(8) of Article III of the North Carolina Constitution,  
50 who is a representative of the mining industry.

- 1 (4) One member appointed by the Governor subject to confirmation in  
2 conformance with Section 5(8) of Article III of the North Carolina Constitution,  
3 who is a representative of the mining industry.
- 4 (5) One member appointed by the ~~General Assembly upon recommendation of the~~  
5 ~~Speaker of the House of Representatives~~ Governor subject to confirmation in  
6 conformance with Section 5(8) of Article III of the North Carolina Constitution,  
7 who is a representative of the mining industry.
- 8 (6) One member appointed by the ~~General Assembly upon recommendation of the~~  
9 ~~President Pro Tempore of the Senate~~ Governor subject to confirmation in  
10 conformance with Section 5(8) of Article III of the North Carolina Constitution,  
11 who is a representative of the mining industry.
- 12 (7) One member appointed by the General Assembly upon recommendation of the  
13 Speaker of the House of Representatives in conformance with G.S. 120-121,  
14 who is a ~~member of~~ representative of a nongovernmental conservation  
15 interests.interest.
- 16 (8) One member appointed by the General Assembly upon recommendation of the  
17 President Pro Tempore of the Senate in conformance with G.S. 120-121, who is  
18 a ~~member of~~ representative of a nongovernmental conservation interests.interest.

19 (a2) Process for Appointments by the Governor. – The Governor shall transmit to the  
20 presiding officers of the Senate and the House of Representatives, within four weeks of the  
21 convening of the session of the General Assembly in the year for which the terms in question are  
22 to expire, the names of the persons to be appointed by the Governor and submitted to the General  
23 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this  
24 subsection when the General Assembly is not in session, the member may be appointed and serve  
25 on an interim basis pending confirmation by the General Assembly. For the purpose of this  
26 subsection, the General Assembly is not in session only (i) prior to convening of the regular  
27 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine  
28 die adjournment of the regular session.

29 (b) Terms. – The term of office of a member of the Commission is ~~six years~~ four years,  
30 beginning effective January 1 of the year of appointment and terminating on December 31 of the  
31 year of expiration. At the expiration of each member's term, the appointing authority shall replace  
32 the member with a new member of like qualifications for a term of ~~six~~ four years. The term of the  
33 member appointed under subdivision (5) of subsection (a1) of this section shall expire on June 30  
34 of years that precede by one year those years that are evenly divisible by six. The term of members  
35 appointed under subdivisions (3) and (6) of subsection (a1) of this section shall expire on June 30  
36 of years that follow by one year those years that are evenly divisible by six. The term of members  
37 appointed under subdivisions (4) and (7) of subsection (a1) of this section shall expire on June 30  
38 of years that follow by three years those years that are evenly divisible by six. Upon the expiration  
39 of a six-year term, a member may continue to serve until a successor is appointed and duly  
40 qualified as provided by G.S. 128-7. In order to establish regularly overlapping terms, initial  
41 appointments shall be made effective June 1, 2016, or as soon as feasible thereafter, and expire as  
42 follows:

- 43 (1) The initial appointments made by the Governor:
- 44 a. Pursuant to subdivision (a1)(3) of this section shall expire December 31,  
45 2020.
- 46 b. Pursuant to subdivision (a1)(4) of this section shall expire December 31,  
47 2020.
- 48 c. Pursuant to subdivision (a1)(5) of this section shall expire December 31,  
49 2019.
- 50 d. Pursuant to subdivision (a1)(6) of this section shall expire December 31,  
51 2019.

1           (2)    The initial appointment made by the General Assembly upon recommendation  
2           of the Speaker of the House of Representatives pursuant to subdivision (a1)(7)  
3           of this section shall expire December 31, 2018.

4           (3)    The initial appointment made by the General Assembly upon recommendation  
5           of the President Pro Tempore of the Senate pursuant to subdivision (a1)(8) of  
6           this section shall expire December 31, 2018.

7           (c)    Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason  
8           in the office of any member appointed by the Governor, prior to the expiration of the member's  
9           term of office, the name of the successor shall be submitted by the Governor within four weeks  
10           after the vacancy arises to the General Assembly for confirmation by the General Assembly. In  
11           case of death, incapacity, resignation, or vacancy for any other reason in the office of any member  
12           appointed by the General Assembly, vacancies in those appointments shall be filled in accordance  
13           with G.S. 120-122. If a vacancy arises or exists when the General Assembly is not in session, and  
14           the appointment is deemed urgent by the Governor, the member may be appointed by the  
15           Governor and serve on an interim basis pending confirmation or appointment by the General  
16           Assembly, as applicable. An appointment to fill a vacancy shall be for the unexpired balance of  
17           the term.

18           (d)    Removal. – The Governor may remove any member of the Commission from office for  
19           misfeasance, malfeasance, or nonfeasance in accordance with the provisions of ~~G.S. 143B-13.~~  
20           G.S. 143B-13, or for good cause.

21           (e)    Compensation. – The members of the Commission shall receive per diem and  
22           necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

23           (f)    Quorum. – A majority of the Commission shall constitute a quorum for the transaction  
24           of business.

25           (g)    Staff. – All clerical and other services required by the Commission shall be supplied by  
26           the Secretary of Environmental ~~Quality~~. Quality. The Commission staff shall be housed in the  
27           Department of Environmental Quality and supervised by the Secretary of Environmental Quality."

28           **SECTION 6.(b)** Notwithstanding the provisions of G.S. 143B-291(a2) and  
29           G.S. 143B-291(b), as enacted and amended by Section 6(a) of this act, initial appointments made  
30           by the Governor to the Commission shall not require confirmation by the General Assembly.

31           **SECTION 7.(a)** G.S. 143B-293.2 reads as rewritten:

32           "**§ 143B-293.2. North Carolina Oil and Gas Commission – members; selection; removal;**  
33           **compensation; quorum; services.**

34           (a)    Repealed by Session Laws 2014-4, s. 4(a), effective July 31, 2015.

35           (a1)   Members Selection. – The North Carolina Oil and Gas Commission shall consist of  
36           nine members appointed as follows:

37           (1)    One appointed by the ~~General Assembly upon recommendation of the Speaker~~  
38           ~~of the House of Representatives~~ Governor subject to confirmation in  
39           conformance with Section 5(8) of Article III of the North Carolina Constitution,  
40           who, at the time of initial appointment, is an elected official of a municipal  
41           government located in a region of North Carolina that has oil and gas potential.  
42           A person serving in this seat may complete a term on the Commission even if  
43           the person is no longer serving as an elected official of a municipal government  
44           but may not be reappointed to a subsequent term.

45           (2)    One appointed by the General Assembly upon recommendation of the Speaker  
46           of the House of Representatives in conformance with G.S. 120-121, who shall  
47           be a geologist with experience in oil and gas exploration and development.

48           (3)    One appointed by the General Assembly upon recommendation of the Speaker  
49           of the House of Representatives in conformance with G.S. 120-121, who is a  
50           ~~member~~ representative of a nongovernmental conservation interest.

- 1 (4) One appointed by the ~~General Assembly upon recommendation of the President~~  
2 ~~Pro Tempore of the Senate~~ Governor subject to confirmation in conformance  
3 with Section 5(8) of Article III of the North Carolina Constitution, who, at the  
4 time of initial appointment, is a member of a county board of commissioners of  
5 a county located in a region of North Carolina that has oil and gas potential. A  
6 person serving in this seat may complete a term on the Commission even if the  
7 person is no longer serving as county commissioner but may not be reappointed  
8 to a subsequent term.
- 9 (5) One appointed by the General Assembly upon recommendation of the President  
10 Pro Tempore of the Senate in conformance with G.S. 120-121, who is a  
11 ~~member~~ representative of a nongovernmental conservation interest.
- 12 (6) One appointed by the General Assembly upon recommendation of the President  
13 Pro Tempore of the Senate in conformance with G.S. 120-121, who shall be an  
14 engineer with experience in oil and gas exploration and development.
- 15 (7) One appointed by the Governor subject to confirmation in conformance with  
16 Section 5(8) of Article III of the North Carolina Constitution, who shall be a  
17 representative of a publicly traded natural gas company.
- 18 (8) One appointed by the Governor subject to confirmation in conformance with  
19 Section 5(8) of Article III of the North Carolina Constitution, who shall be a  
20 licensed attorney with experience in legal matters associated with oil and gas  
21 exploration and development.
- 22 (9) One appointed by the Governor subject to confirmation in conformance with  
23 Section 5(8) of Article III of the North Carolina Constitution, with experience  
24 in matters related to public health.

25 (a2) Process for Appointments by the Governor. – The Governor shall transmit to the  
26 presiding officers of the Senate and the House of Representatives, within four weeks of the  
27 convening of the session of the General Assembly in the year for which the terms in question are  
28 to expire, the names of the persons to be appointed by the Governor and submitted to the General  
29 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this  
30 subsection when the General Assembly is not in session, the member may be appointed and serve  
31 on an interim basis pending confirmation by the General Assembly. For the purpose of this  
32 subsection, the General Assembly is not in session only (i) prior to convening of the regular  
33 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine  
34 die adjournment of the regular session.

35 (b) Terms. – The term of office of members of the Commission is ~~three years~~four years,  
36 beginning effective January 1 of the year of appointment and terminating on December 31 of the  
37 year of expiration. A member may be reappointed to no more than two consecutive  
38 ~~three-year~~four-year terms. The term of a member who no longer meets the qualifications of their  
39 respective appointment, as set forth in subsection ~~(a)~~(a1) of this section, shall terminate but the  
40 member may continue to serve until a new member who meets the qualifications is appointed. ~~The~~  
41 ~~terms of members appointed under subdivisions (1), (4), and (7) of subsection (a1) of this section~~  
42 ~~shall expire on June 30 of years evenly divisible by three. The terms of members appointed under~~  
43 ~~subdivisions (2), (5), and (8) of subsection (a1) of this section shall expire on June 30 of years that~~  
44 ~~precede by one year those years that are evenly divisible by three. The terms of members~~  
45 ~~appointed under subdivisions (3), (6), and (9) of subsection (a1) of this section shall expire on~~  
46 ~~June 30 of years that follow by one year those years that are evenly divisible by three. In order to~~  
47 ~~establish regularly overlapping terms, initial appointments shall be made effective June 1, 2016, or~~  
48 ~~as soon as feasible thereafter, and expire as follows:~~

- 49 (1) The initial appointments made by the Governor:  
50 a. Pursuant to subdivision (a1)(1) of this section shall expire December 31,  
51 2020.

- 1            b. Pursuant to subdivision (a1)(4) of this section shall expire December 31,  
 2            2020.
- 3            c. Pursuant to subdivision (a1)(7) of this section shall expire December 31,  
 4            2020.
- 5            d. Pursuant to subdivision (a1)(8) of this section shall expire December 31,  
 6            2019.
- 7            e. Pursuant to subdivision (a1)(9) of this section shall expire December 31,  
 8            2019.
- 9            (2) The initial appointments made by the General Assembly upon recommendation  
 10           of the Speaker of the House of Representatives:
- 11           a. Pursuant to subdivision (a1)(2) of this section shall expire December 31,  
 12           2018.
- 13           b. Pursuant to subdivision (a1)(3) of this section shall expire December 31,  
 14           2019.
- 15           (3) The initial appointments made by the General Assembly upon recommendation  
 16           of the President Pro Tempore of the Senate:
- 17           a. Pursuant to subdivision (a1)(5) of this section shall expire December 31,  
 18           2018.
- 19           b. Pursuant to subdivision (a1)(6) of this section shall expire December 31,  
 20           2019.
- 21           (c) ~~Vacancies; Removal from Office.~~ ~~Vacancies.~~ – In case of death, incapacity,  
 22           resignation, or vacancy for any other reason in the office of any member appointed by the  
 23           Governor, prior to the expiration of the member's term of office, the name of the successor shall be  
 24           submitted by the Governor within four weeks after the vacancy arises to the General Assembly for  
 25           confirmation by the General Assembly. In case of death, incapacity, resignation, or vacancy for  
 26           any other reason in the office of any member appointed by the General Assembly, vacancies in  
 27           those appointments shall be filled in conformance with G.S. 120-122. If a vacancy arises or exists  
 28           when the General Assembly is not in session and the appointment is deemed urgent by the  
 29           Governor, the member may be appointed by the Governor and serve on an interim basis pending  
 30           confirmation or appointment by the General Assembly, as applicable. An appointment to fill a  
 31           vacancy shall be for the unexpired balance of the term.
- 32           (c1) ~~Removal.~~ –
- 33           (1) ~~Any appointment by the Governor to fill a vacancy on the Commission created~~  
 34           ~~by the resignation, dismissal, death, or disability of a member shall be for the~~  
 35           ~~balance of the unexpired term.~~ The Governor shall have the power to remove  
 36           any member of the Commission from office for misfeasance, malfeasance, or  
 37           nonfeasance in accordance with the provisions of G.S. 143B-13 of the  
 38           Executive Organization Act of ~~1973.~~1973, or for good cause.
- 39           (2) ~~Members appointed by the President Pro Tempore of the Senate and the~~  
 40           ~~Speaker of the House of Representatives shall be made in accordance with~~  
 41           ~~G.S. 120-121, and vacancies in those appointments shall be filled in accordance~~  
 42           ~~with G.S. 120-122. In accordance with Section 10 of Article VI of the North~~  
 43           ~~Carolina Constitution, a member may continue to serve until a successor is duly~~  
 44           ~~appointed.~~
- 45           (d) Compensation. – The members of the Commission shall receive per diem and  
 46           necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.
- 47           (e) Quorum. – A majority of the Commission shall constitute a quorum for the transaction  
 48           of business.
- 49           (f) Staff. – All staff support required by the Commission shall be supplied by the Division  
 50           of Energy, Mineral, and Land Resources and the North Carolina Geological ~~Survey.~~ Survey, and  
 51           supervised by the Secretary of Environmental Quality.



1 (g) Committees. – In addition to the Committee on Civil Penalty Remissions required to be  
2 established under G.S. 143B-293.6, the chair may establish other committees from members of the  
3 Commission to address specific issues as appropriate. No member of a committee may hear or  
4 vote on any matter in which the member has an economic interest. A majority of a committee shall  
5 constitute a quorum for the transaction of business.

6 (h) Office May Be Held Concurrently With Others. – Membership on the Oil and Gas  
7 Commission is hereby declared to be an office that may be held concurrently with other elective or  
8 appointive offices in addition to the maximum number of offices permitted to be held by one  
9 person under G.S. 128-1.1."

10 **SECTION 7.(b)** Notwithstanding the provisions of G.S. 143B-293.2(a1) and  
11 G.S. 143B-293.2(b), as enacted and amended by Section 7(a) of this act, initial appointments made  
12 by the Governor to the Commission shall not require confirmation by the General Assembly.

13 **SECTION 7.(c)** For purposes of the rules set forth in 15A NCAC 05H (Oil and Gas  
14 Conservation Rules), modifications made to the Oil and Gas Commission under Section 7(a) of  
15 this act shall, pursuant to G.S. 150B-21.7, be construed to (1) have repealed authority to adopt  
16 such rules given to previously constituted commissions and (2) transferred the authority to adopt  
17 such rules to the Oil and Gas Commission as modified by Section 7(b) of this act. Therefore,  
18 pursuant to G.S. 150B-21.7, rules set forth in 15A NCAC 05H (Oil and Gas Conservation Rules)  
19 shall be effective until the Oil and Gas Commission, as modified Section 7(a) of this act, amends  
20 or repeals the rules.

21 **SECTION 8.** The provisions of this act shall be severable, and if any phrase, clause,  
22 sentence, or provision is declared to be unconstitutional or otherwise invalid, the validity of the  
23 remainder of this act shall not be affected thereby.

24 **SECTION 9.** Except as otherwise provided, this act is effective when it becomes law.  
25 Requirements for establishment of a permanent alternative water supply under  
26 G.S. 130A-309.211(c1), as enacted by Section 1 of this act, shall apply only to households with  
27 drinking water supply wells in existence on the date this act becomes effective.