

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 729

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/17/14
Third Edition Engrossed 6/25/14

PROPOSED HOUSE COMMITTEE SUBSTITUTE S729-CSRIx-42 [v.13]

7/1/2014 6:17:42 PM

Short Title: Coal Ash Management Act of 2014.

(Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

1 AN ACT TO (1) PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL
2 DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE
3 IMPOUNDMENTS; (2) ESTABLISH A MORATORIUM ON CERTAIN RATE CASES;
4 (3) CREATE THE COAL ASH MANAGEMENT COMMISSION TO REVIEW AND
5 APPROVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS
6 CLASSIFICATIONS AND CLOSURE PLANS AND OTHERWISE STUDY AND
7 MAKE RECOMMENDATIONS ON LAWS GOVERNING MANAGEMENT OF COAL
8 COMBUSTION RESIDUALS; (4) REQUIRE EXPEDITED REVIEW BY THE
9 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES OF ANY
10 PERMIT NECESSARY TO CONDUCT ACTIVITIES REQUIRED BY THIS ACT; (5)
11 ESTABLISH VARIOUS REPORTING REQUIREMENTS TO THE GENERAL
12 ASSEMBLY, INCLUDING A QUARTERLY REPORT FROM THE DEPARTMENT OF
13 ENVIRONMENT AND NATURAL RESOURCES ON ITS OPERATIONS,
14 ACTIVITIES, PROGRAMS, AND PROGRESS WITH RESPECT TO ITS
15 OBLIGATIONS UNDER THIS ACT FOR COAL COMBUSTION RESIDUALS
16 SURFACE IMPOUNDMENTS; (6) PROHIBIT LOCAL GOVERNMENT REGULATION
17 OF MANAGEMENT OF COAL COMBUSTION RESIDUALS OR COAL
18 COMBUSTION PRODUCTS; (7) PROHIBIT CONSTRUCTION OF NEW OR
19 EXPANSION OF EXISTING COAL COMBUSTION RESIDUALS SURFACE
20 IMPOUNDMENTS EFFECTIVE AUGUST 1, 2014; (8) PROHIBIT THE DISPOSAL OF
21 COAL COMBUSTION RESIDUALS INTO COAL COMBUSTION RESIDUALS
22 SURFACE IMPOUNDMENTS AT COAL-FIRED GENERATING UNITS THAT ARE
23 NO LONGER PRODUCING COAL COMBUSTION RESIDUALS EFFECTIVE
24 OCTOBER 1, 2014; (9) PROHIBIT DISPOSAL OF STORMWATER TO COAL
25 COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE DECEMBER
26 31, 2018; (10) REQUIRE ALL ELECTRIC GENERATING FACILITIES TO CONVERT
27 TO GENERATION OF DRY FLY ASH ON OR BEFORE DECEMBER 31, 2017, AND
28 DRY BOTTOM ASH ON OR BEFORE DECEMBER 31, 2020, OR RETIRE; (11)
29 REQUIRE THE ASSESSMENT OF GROUNDWATER AT COAL COMBUSTION
30 RESIDUALS SURFACE IMPOUNDMENTS; (12) REQUIRE CORRECTIVE ACTION
31 FOR THE RESTORATION OF GROUNDWATER QUALITY AT COAL
32 COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (13) REQUIRE A
33 SURVEY OF DRINKING WATER SUPPLY WELLS AND REPLACEMENT OF
34



* S 7 2 9 - C S R I X - 4 2 - V - 1 3 *

1 CONTAMINATED WATER SUPPLIES; (14) REQUIRE THE IDENTIFICATION,
2 ASSESSMENT, AND CORRECTION OF UNPERMITTED DISCHARGES FROM
3 COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (15) REQUIRE
4 THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO, AS
5 SOON AS PRACTICABLE BUT NO LATER THAN AUGUST 1, 2015, PRIORITIZE
6 FOR THE PURPOSE OF CLOSURE AND REMEDIATION COAL COMBUSTION
7 RESIDUALS SURFACE IMPOUNDMENTS, INCLUDING ACTIVE AND RETIRED
8 SITES, BASED ON THESE SITES' RISKS TO PUBLIC HEALTH, SAFETY,
9 WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES; (16) REQUIRE
10 OWNERS OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS TO
11 SUBMIT A PROPOSED PLAN FOR CLOSURE OF ALL IMPOUNDMENTS TO THE
12 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; (17) REQUIRE
13 CLOSURE AND REMEDIATION OF CERTAIN COAL COMBUSTION RESIDUALS
14 SURFACE IMPOUNDMENTS AS SOON AS PRACTICABLE, BUT NO LATER THAN
15 AUGUST 1, 2019; (18) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND
16 NATURAL RESOURCES TO ESTABLISH A SCHEDULE AND PROCESS FOR
17 CLOSURE AND REMEDIATION OF ALL COAL COMBUSTION RESIDUALS
18 SURFACE IMPOUNDMENTS BASED UPON THE DEPARTMENT'S RISK
19 ASSESSMENT OF THESE SITES, BASELINE REQUIREMENTS SET BY THE
20 GENERAL ASSEMBLY, EVALUATION OF PROPOSED CLOSURE PLANS
21 SUBMITTED BY IMPOUNDMENT OWNERS, AND INPUT FROM THE PUBLIC
22 AND OTHER STAKEHOLDERS; (19) ESTABLISH MINIMUM STATUTORY
23 REQUIREMENTS FOR STRUCTURAL FILL PROJECTS USING COAL
24 COMBUSTION PRODUCTS AND REQUIRE THE DEPARTMENT OF
25 ENVIRONMENT AND NATURAL RESOURCES TO INVENTORY AND INSPECT
26 CERTAIN STRUCTURAL FILL PROJECTS; (20) PLACE A MORATORIUM ON
27 CERTAIN PROJECTS USING COAL COMBUSTION PRODUCTS AS STRUCTURAL
28 FILL UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF
29 ENVIRONMENT AND NATURAL RESOURCES AND THE ENVIRONMENTAL
30 MANAGEMENT COMMISSION TO STUDY THE ADEQUACY OF CURRENT LAW
31 GOVERNING USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL
32 AND FOR BENEFICIAL USE; (21) PLACE A MORATORIUM ON THE EXPANSION
33 AND CONSTRUCTION OF COAL COMBUSTION RESIDUALS LANDFILLS UNTIL
34 AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND
35 NATURAL RESOURCES TO ASSESS THE RISKS TO PUBLIC HEALTH, SAFETY,
36 WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES OF COAL
37 COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS LOCATED BENEATH
38 THESE LANDFILLS TO DETERMINE THE ADVISABILITY OF CONTINUED
39 OPERATION OF THESE LANDFILLS; (22) STRENGTHEN THE REPORTING AND
40 NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF
41 WASTEWATER TO WATERS OF THE STATE; (23) REQUIRE CERTAIN
42 EMERGENCY CALLS TO BE RECORDED; (24) REQUIRE DEVELOPMENT OF
43 EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS
44 AND AMEND OTHER DAM SAFETY LAW REQUIREMENTS APPLICABLE TO
45 COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (25) TRANSFER
46 SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC
47 HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION; (26) AMEND
48 COMPLIANCE BOUNDARY PROVISIONS; (27) PROVIDE FOR VARIOUS STUDIES;
49 (28) REQUIRE THE STATE CONSTRUCTION OFFICE AND THE DEPARTMENT OF
50 TRANSPORTATION TO DEVELOP TECHNICAL SPECIFICATIONS FOR USE OF

1 COAL COMBUSTION PRODUCTS; AND (29) PROVIDE RESOURCES FOR
2 IMPLEMENTATION OF THIS ACT.

3 The General Assembly of North Carolina enacts:
4

5 **PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL**
6 **DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE**
7 **IMPOUNDMENTS; MORATORIUM ON RATE CASES**

8 **SECTION 1.(a)** Article 7 of Chapter 62 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 62-133.13. Recovery of costs related to unlawful discharges from coal combustion**
11 **residuals surface impoundments to the surface waters of the State.**

12 The Commission shall not allow an electric public utility to recover from the retail electric
13 customers of the State costs resulting from an unlawful discharge to the surface waters of the
14 State from a coal combustion residuals surface impoundment, unless the Commission
15 determines the discharge was due to an event of force majeure. For the purposes of this section,
16 "coal combustion residuals surface impoundments" has the same meaning as in
17 G.S. 130A-309.201. For the purposes of this section, "unlawful discharge" shall mean a
18 discharge that results in a violation of State or federal surface water quality standards."

19 **SECTION 1.(b)** Section 1(a) of this act is effective when it becomes law and
20 applies to discharges occurring on or after January 1, 2014.

21 **SECTION 2.(a)** Moratorium on Cost Recovery. – The Utilities Commission shall
22 not issue an order authorizing an electric public utility the recovery of any costs related to coal
23 combustion residuals surface impoundments that were not included in the utility's cost of
24 service approved in its most recent general rate case until the end of the moratorium provided
25 in this section. The moratorium established under this section shall not apply to the net
26 recovery of any fuel and fuel-related costs under G.S. 62-133.2. For the purposes of this
27 section, "coal combustion residuals surface impoundments" has the same meaning as in
28 G.S. 130A-309.201. The moratorium in this section shall end March 1, 2017.

29 **SECTION 2.(b)** Purpose of Moratorium. – The purpose of the moratorium is to
30 allow the State to study the disposition of coal combustion residuals surface impoundments,
31 including any final rules adopted by the United States Environmental Protection Agency on the
32 regulation of coal combustion residuals.
33

34 **PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL**
35 **COMBUSTION RESIDUALS**

36 **SECTION 3.(a)** Article 9 of Chapter 130A of the General Statutes is amended by
37 adding a new Part to read:

38 "Part 2I. Coal Ash Management.

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

40 **"§ 130A-309.200. Title.**

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

42 **"§ 130A-309.201. Definitions.**

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

- 45 (1) "Beneficial and beneficial use" means projects promoting public health and
46 environmental protection, offering equivalent success relative to other
47 alternatives, and preserving natural resources.
48 (2) "Boiler slag" means the molten bottom ash collected at the base of slag tap
49 and cyclone type furnaces that is quenched with water. It is made up of hard,
50 black, angular particles that have a smooth, glassy appearance.

- 1 (3) "Bottom ash" means the agglomerated, angular ash particles formed in
2 pulverized coal furnaces that are too large to be carried in the flue gases and
3 collect on the furnace walls or fall through open grates to an ash hopper at
4 the bottom of the furnace.
- 5 (4) "Coal combustion products" means fly ash, bottom ash, boiler slag, or flue
6 gas desulfurization materials, which are beneficially used, including use for
7 structural fill.
- 8 (5) "Coal combustion residuals" has the same meaning as defined in
9 G.S. 130A-290.
- 10 (6) "Coal combustion residuals surface impoundment" means a topographic
11 depression, excavation, or diked area that is: (i) primarily formed from
12 earthen materials; (ii) without a base liner approved for use by Article 9 of
13 Chapter 130A of the General Statutes or rules adopted thereunder for a
14 combustion products landfill or coal combustion residuals landfill, industrial
15 landfill, or municipal solid waste landfill; and (iii) designed to hold
16 accumulated coal combustion residuals in the form of liquid wastes, wastes
17 containing free liquids, or sludges, and that is not backfilled or otherwise
18 covered during periods of deposition. "Coal combustion residuals surface
19 impoundment" shall only include impoundments owned by a public utility,
20 as defined in G.S. 62-3. "Coal combustion residuals surface impoundment"
21 includes all of the following:
- 22 a. An impoundment that is dry due to the deposited liquid having
23 evaporated, volatilized, or leached.
- 24 b. An impoundment that is wet with exposed liquid.
- 25 c. Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and
26 sludge pits, when these structures are designed to hold accumulated
27 coal combustion residuals.
- 28 d. A coal combustion residuals surface impoundment that has been
29 covered with soil or other material after the final deposition of coal
30 combustion residuals at the impoundment.
- 31 (7) "Commission" means the Environmental Management Commission.
- 32 (8) "Fly ash" means the very fine, powdery material, composed mostly of silica
33 with nearly all particles spherical in shape, which is a product of burning
34 finely ground coal in a boiler to produce electricity and is removed from the
35 plant exhaust gases by air emission control devices.
- 36 (9) "Flue gas desulfurization material" means the material produced through a
37 process used to reduce sulfur dioxide emissions from the exhaust gas system
38 of a coal-fired boiler. The physical nature of these materials varies from a
39 wet sludge to a dry powdered material, depending on the process, and their
40 composition comprises either sulfites, sulfates, or a mixture thereof.
- 41 (10) "Minerals" means soil, clay, coal, phosphate, metallic ore, and any other
42 solid material or substance of commercial value found in natural deposits on
43 or in the earth.
- 44 (11) "Open pit mine" means an excavation made at the surface of the ground for
45 the purpose of extracting minerals, inorganic and organic, from their natural
46 deposits, which excavation is open to the surface.
- 47 (12) "Owner" or "owner of a coal combustion residuals surface impoundment"
48 means a public utility, as defined in G.S. 62-3, that owns a coal combustion
49 residuals surface impoundment.
- 50 (13) "Receptor" means any human, plant, animal, or structure which is, or has the
51 potential to be, affected by the release or migration of contaminants. Any

1 well constructed for the purpose of monitoring groundwater and contaminant
2 concentrations shall not be considered a receptor.

3 (14) "Structural fill" means an engineered fill with a projected beneficial end use
4 constructed using coal combustion products that are properly placed and
5 compacted. For purposes of this Part, the term includes fill used to reclaim
6 open pit mines and for embankments, greenscapes, foundations, construction
7 foundations, and for bases/sub-bases under a structure or a footprint of a
8 paved road, parking lot, sidewalk, walkway, or similar structure.

9 (15) "Use or reuse of coal combustion products" means the procedure whereby
10 coal combustion products are directly used as either of the following:

11 a. As an ingredient in an industrial process to make a product, unless
12 distinct components of the coal combustion products are recovered as
13 separate end products.

14 b. In a function or application as an effective substitute for a
15 commercial product or natural resource.

16 **"§ 130A-309.202. Coal Ash Management Commission.**

17 (a) Creation. – In recognition of the complexity and magnitude of the issues associated
18 with the management of coal combustion residuals and the proper closure and remediation of
19 coal combustion residuals surface impoundments, the Coal Ash Management Commission is
20 hereby established.

21 (b) Membership. – The Commission shall consist of nine members as follows:

22 (1) One appointed by the General Assembly upon recommendation of the
23 President Pro Tempore of the Senate in accordance with G.S. 120-121 who
24 shall at the time of appointment be a resident of the State.

25 (2) One appointed by the General Assembly upon recommendation of the
26 President Pro Tempore of the Senate in accordance with G.S. 120-121 who
27 shall at the time of appointment have special training or scientific expertise
28 in waste management, including solid waste disposal, hauling, or beneficial
29 use.

30 (3) One appointed by the General Assembly upon recommendation of the
31 President Pro Tempore of the Senate in accordance with G.S. 120-121 who
32 shall at the time of appointment be a licensed physician or a person with
33 experience in public health.

34 (4) One appointed by the General Assembly upon recommendation of the
35 Speaker of the House of Representatives in accordance with G.S. 120-121
36 who shall at the time of appointment be a member of a nongovernmental
37 conservation interest.

38 (5) One appointed by the General Assembly upon recommendation of the
39 Speaker of the House of Representatives in accordance with G.S. 120-121
40 who shall at the time of appointment have special training or scientific
41 expertise in waste management, including solid waste disposal, hauling, or
42 beneficial use.

43 (6) One appointed by the General Assembly upon recommendation of the
44 Speaker of the House of Representatives in accordance with G.S. 120-121
45 who shall at the time of appointment have expertise in determining and
46 evaluating the costs associated with electricity generation and establishing
47 the rates associated with electricity consumption.

48 (7) One appointed by the Governor who shall at the time of appointment have
49 experience in economic development.

50 (8) One appointed by the Governor who shall at the time of appointment be
51 actively employed by, or recently retired from, an industrial manufacturing

1 facility, or be a representative of an electric membership corporation
2 organized under Article 2 of Chapter 117 of the General Statutes.

3 (9) One appointed by the Governor who shall at the time of appointment be a be
4 a person with experience in science or engineering.

5 (c) Chair. – The Governor shall appoint the Chair of the Commission from among the
6 Commission's members, and that person shall serve at the pleasure of the Governor. The chair
7 shall serve two-year terms.

8 (d) Vacancies. – Any appointment to fill a vacancy on the Commission created by the
9 resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired
10 term. The Governor may reappoint a gubernatorial appointee of the Commission to an
11 additional term if, at the time of the reappointment, the member qualifies for membership on
12 the Commission under subdivisions (7) through (9) of subsection (b) of this section.
13 Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and
14 vacancies in those appointments shall be filled in accordance with G.S. 120-122.

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

18 (f) Powers and Duties. – The Commission shall have all of the following powers and
19 duties:

20 (1) To review and approve the classification of coal combustion residuals
21 surface impoundments required by G.S. 130A-309.211.

22 (2) To review and approve Coal Combustion Residuals Surface Impoundment
23 Closure Plans as provided in G.S. 130A-309.212.

24 (3) To review and make recommendations on the provisions of this Part and
25 other statutes and rules related to the management of coal combustion
26 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
34 duties and responsibilities. The Chair of the Commission shall organize and direct the work of
35 the 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) Conflicts of Interest; Disclosure. – The Governor shall require adequate disclosure
42 of potential conflicts of interest by members. The Governor, by executive order, shall
43 promulgate criteria regarding conflicts of interest and disclosure thereof for determining the
44 eligibility of persons under this subsection, giving due regard to the requirements of federal
45 legislation and, for this purpose, may promulgate rules, regulations, or guidelines in
46 conformance with those established by any federal agency interpreting and applying provisions
47 of federal law.

48 (k) Covered Persons. – All members of the Commission are covered persons for the
49 purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As
50 covered persons, members of the Commission shall comply with the applicable requirements of
51 the State Government Ethics Act, including mandatory training, the public disclosure of

1 economic interests, and ethical standards for covered persons. Members of the Commission
2 shall comply with the provisions of the State Government Ethics Act to avoid conflicts of
3 interest.

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

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

13 (n) Administrative Location; Independence. – The Commission shall be
14 administratively located in the Department of Environment and Natural Resources. The
15 Commission shall exercise all of its powers and duties independently and shall not be subject to
16 the supervision, direction, or control of the Department.

17 (o) Terms of Members. – Members of the Commission shall serve terms of six years.

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

19 (a) The Department shall act as expeditiously as practicable, but no later than the
20 deadlines established under subsection (b) of this section, except in compliance with subsection
21 (c) of this 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
24 within 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
26 that the required components provide all of the information that is required for the Department
27 to make a decision on the application. If the Department determines that an application is not
28 complete, the Department shall notify the applicant of the components needed to complete the
29 application. An applicant may submit additional information to the Department to cure the
30 deficiencies in the application. The Department shall make a final determination as to whether
31 the application is complete within the later of (i) 30 days after the Department receives the
32 application for the permit less the number of days that the applicant uses to provide the
33 additional information or (ii) 10 days after the Department receives the additional information
34 from the applicant. The Department shall issue a draft permit decision on an application for a
35 permit within 90 days after the Department determines that the application is complete. The
36 Department shall hold a public hearing and accept written comment on the draft permit
37 decision for a period of not less than 30 or more than 60 days after the Department issues a
38 draft permit decision. The Department shall issue a final permit decision on an application for a
39 permit within 60 days after the comment period on the draft permit decision closes. If the
40 Department fails to act within any time period set out in this subsection, the applicant may treat
41 the failure to act as a denial of the permit and may challenge the denial as provided in Chapter
42 150B of the General Statutes.

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

49 **"§ 130A-309.204. Reports.**

50 (a) The Department shall submit quarterly written reports to the Environmental Review
51 Commission and the Coal Ash Management Commission on its operations, activities,

1 programs, and progress with respect to its obligations under this Part concerning all coal
2 combustion residuals surface impoundments. At a minimum, the report shall include
3 information concerning the status of assessment, corrective action, prioritization, and closure
4 for each coal combustion residual surface impoundment and information on costs connected
5 therewith. The report shall include an executive summary of each annual Groundwater
6 Protection and Restoration Report submitted to the Department by the operator of any coal
7 combustion residuals surface impoundments pursuant to G.S. 130A-309.209(d) and a summary
8 of all groundwater sampling, protection, and restoration activities related to the impoundment
9 for the preceding year. The report shall also include an executive summary of each annual
10 Surface Water Protection and Restoration Report submitted to the Department by the operator
11 of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.210(e) and
12 a summary of all surface water sampling, protection, and restoration activities related to the
13 impoundment for the preceding year, including the status of the identification, assessment, and
14 correction of unpermitted discharges from coal combustion residuals surface impoundments to
15 the surface waters of the State. The Department shall supplement the written reports required
16 by this subsection with additional written and oral reports as may be requested by the
17 Environmental Review Commission. The Department shall submit the written reports required
18 by this subsection whether or not the General Assembly is in session at the time the report is
19 due.

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

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

- 29 (1) The volume of coal combustion residuals and products produced.
- 30 (2) The volume of coal combustion residuals disposed.
- 31 (3) The volume of coal combustion products used in structural fill projects.
- 32 (4) The volume of coal combustion products beneficially used, other than for
33 structural fill.

34 **"§ 130A-309.205. Local ordinances regulating management of coal combustion residuals**
35 **and coal combustion products invalid; petition to preempt local ordinance.**

36 (a) It is the intent of the General Assembly to maintain a uniform system for the
37 management of coal combustion residuals and coal combustion products, including matters of
38 disposal and beneficial use, and to place limitations upon the exercise by all units of local
39 government in North Carolina of the power to regulate the management of coal combustion
40 residuals and coal combustion products by means of ordinances, property restrictions, zoning
41 regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or
42 other local authorities to adopt local ordinances, including those imposing taxes, fees, or
43 charges or regulating health, environment, or land use, all provisions of local ordinances,
44 including those regulating land use, adopted by counties, municipalities, or other local
45 authorities that regulate or have the effect of regulating the management of coal combustion
46 residuals and coal combustion products within the jurisdiction of a local government are
47 invalidated, to the extent necessary to effectuate the purposes of this Part, that do the following:

- 48 (1) Place any restriction or condition not placed by this Part upon management
49 of coal combustion residuals or coal combustion products, including
50 restrictions or conditions applicable to facilities that primarily engage in

1 processes to prepare coal ash for beneficial use such as carbon burn-out
2 plants, within any county, city, or other political subdivision.

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

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

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

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

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

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

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

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

45 (2) That all legally required State and federal permits or approvals have been
46 issued by the appropriate State and federal agencies or that all State and
47 federal permit requirements have been satisfied and that the permits or
48 approvals have been denied or withheld only because of the local ordinance.

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

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

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

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

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

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

24 **"§ 130A-309.206. Federal preemption; severability.**

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

28 **"§ 130A-309.207. General rulemaking for Part.**

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

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

32 **"§ 130A-309.208. Generation, disposal, and use of coal combustion residuals.**

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

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

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

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

44 (e) On or before December 31, 2018, all electric generating facilities owned by a public
45 utility shall convert to the disposal of "dry" fly ash or the facility shall be retired. For purposes
46 of this subsection, the term "dry" shall mean coal combustion residuals which are not in the
47 form of liquid wastes, wastes containing free liquids, or sludges.

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

"§ 130A-309.209. Groundwater assessment and corrective action; drinking water supply well survey and provision of alternate water supply; reporting.

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

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

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

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

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

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

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

(1) No later than 90 days from submission of the Groundwater Assessment Report required by subsection (a) of this section, or a time-frame otherwise approved by the Department, the owner of the coal combustion residuals surface impoundment shall submit a proposed Groundwater Corrective Action Plan to the Department for its review and approval. The Groundwater Corrective Action Plan shall provide for the restoration of groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. The Groundwater Corrective Action Plan shall include, at a minimum, all of the following:

- 1 a. A description of all exceedances of the groundwater quality
2 standards, including any exceedances that the owner asserts are the
3 result of natural background conditions.
- 4 b. A description of the methods for restoring groundwater in
5 conformance with the requirements of Subchapter L of Chapter 2 of
6 Title 15A of the North Carolina Administrative Code and a detailed
7 explanation of the reasons for selecting these methods.
- 8 c. Specific plans, including engineering details, for restoring
9 groundwater quality.
- 10 d. A schedule for implementation of the Plan.
- 11 e. A monitoring plan for evaluating the effectiveness of the proposed
12 corrective action and detecting movement of any contaminant
13 plumes.
- 14 f. Any other information related to groundwater assessment required by
15 the Department.
- 16 (2) The Department shall approve the Groundwater Corrective Action Plan if it
17 determines that the Plan complies with the requirements of this subsection
18 and will be sufficient to protect public health, safety, and welfare; the
19 environment; and natural resources.
- 20 (3) No later than 30 days from the approval of the Groundwater Corrective
21 Action Plan, the owner shall begin implementation of the Plan in accordance
22 with the Plan's schedule.
- 23 (c) Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No
24 later than October 1, 2014, the owner of a coal combustion residuals surface impoundment
25 shall conduct a Drinking Water Supply Well Survey that identifies all drinking water supply
26 wells within one-half mile down-gradient from the established compliance boundary of the
27 impoundment and submit the Survey to the Department. The Survey shall include well
28 locations, the nature of water uses, available well construction details, and information
29 regarding ownership of the wells. No later than December 1, 2014, the Department shall
30 determine, based on the Survey, which drinking water supply wells the owner is required to
31 sample and how frequently and for what period sampling is required. The Department shall
32 require sampling for drinking water supply wells where data regarding groundwater quality and
33 flow and depth in the area of any surveyed well provide a reasonable basis to predict that the
34 quality of water from the surveyed well may be adversely impacted by constituents associated
35 with the presence of the impoundment. No later than January 1, 2015, the owner shall initiate
36 sampling and water quality analysis of the drinking water supply wells. A property owner may
37 elect to have an independent third party selected from a laboratory certified by the Department's
38 Wastewater/Groundwater Laboratory Certification program sample wells located on their
39 property in lieu of sampling conducted by the owner of the coal combustion residuals surface
40 impoundment. The owner of the coal combustion residuals surface impoundment shall pay for
41 the reasonable costs of such sampling. Nothing in this subsection shall be construed to preclude
42 or impair the right of any property owner to refuse such sampling of wells on their property. If
43 the sampling and water quality analysis indicates that water from a drinking water supply well
44 exceeds groundwater quality standards for constituents associated with the presence of the or
45 impair the right of any property owner to refuse such sampling of wells on their property. If the
46 sampling and water quality analysis indicates that water from a drinking water supply well
47 exceeds groundwater quality standards for constituents associated with the presence of the
48 impoundment, the owner shall replace the contaminated drinking water supply well with an
49 alternate supply of potable drinking water and an alternate supply of water that is safe for other
50 household uses. The alternate supply of potable drinking water shall be supplied within 24
51 hours of the Department's determination that there is an exceedance of groundwater quality

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

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

21 **"§ 130A-309.210. Identification and assessment of discharges; correction of unpermitted**
22 **discharges.**

23 (a) Identification of Discharges from Coal Combustion Residuals Surface
24 Impoundments. –

25 (1) The owner of a coal combustion residuals surface impoundment shall
26 identify all discharges from the impoundment as provided in this subsection.
27 The requirements for identifying all discharges from an impoundment set out
28 in this subsection are in addition to any other requirements for identifying
29 discharges applicable to the owners of coal combustion residuals surface
30 impoundments.

31 (2) No later than December 31, 2014, the owner of a coal combustion residuals
32 surface impoundment shall submit a topographic map that identifies the
33 location of all: (i) outfalls from engineered channels designed or improved
34 for the purpose of collecting water from the toe of the impoundment and (ii)
35 seeps and weeps discharging from the impoundment that are not captured by
36 engineered channels designed or improved for the purpose of collecting
37 water from the toe of the impoundment to the Department. The topographic
38 map shall comply with all of the following:

- 39 a. Be at a scale as required by the Department.
- 40 b. Specify the latitude and longitude of each toe drain outfall, seep, and
41 weep.
- 42 c. Specify whether the discharge from each toe drain outfall, seep, and
43 weep is continuous or intermittent.
- 44 d. Provide an average flow measurement of the discharge from each toe
45 drain outfall, seep, and weep including a description of the method
46 used to measure average flow.
- 47 e. Specify whether the discharge from each toe drain outfall, seep, and
48 weep identified reaches the surface waters of the State. If the
49 discharge from a toe drain outfall, seep, or weep reaches the surface
50 waters of the State, the map shall specify the latitude and longitude
51 of where the discharge reaches the surface waters of the State.

1 f. Any other information related to the topographic map required by the
2 Department.

3 (b) Assessment of Discharges from Coal Combustion Residuals Surface Impoundments
4 to the Surface Waters of the State. – The owner of a coal combustion residuals surface
5 impoundment shall conduct an assessment of discharges from the coal combustion residuals
6 surface impoundment to the surface waters of the State as provided in this subsection. The
7 requirements for assessment of discharges from the coal combustion residuals surface
8 impoundment to the surface waters of the State set out in this subsection are in addition to any
9 other requirements for the assessment of discharges from coal combustion residuals surface
10 impoundments to surface waters of the State applicable to the owners of coal combustion
11 residuals surface impoundments.

12 (1) No later than December 31, 2014, the owner of a coal combustion residuals
13 surface impoundment shall submit a proposed Discharge Assessment Plan to
14 the Department. The Discharge Assessment Plan shall include information
15 sufficient to allow the Department to determine whether any discharge,
16 including a discharge from a toe drain outfall, seep, or weep, has reached the
17 surface waters of the State and has caused a violation of surface water
18 quality standards. The Discharge Assessment Plan shall include, at a
19 minimum, all of the following:

20 a. Upstream and downstream sampling locations within all channels
21 that could potentially carry a discharge.

22 b. A description of the surface water quality analyses that will be
23 performed.

24 c. A sampling schedule, including the frequency and duration of
25 sampling activities.

26 d. Reporting requirements.

27 e. Any other information related to the assessment of discharges
28 required by the Department.

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

33 (3) No later than 30 days from the approval of the Discharge Assessment Plan,
34 the owner shall begin implementation of the Plan in accordance with the
35 Plan's schedule.

36 (c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion
37 Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal
38 combustion residuals surface impoundment shall implement corrective action to prevent
39 unpermitted discharges from the coal combustion residuals surface impoundment to the surface
40 waters of the State as provided in this subsection. The requirements for corrective action to
41 prevent unpermitted discharges from coal combustion residuals surface impoundments to the
42 surface waters of the State set out in this subsection are in addition to any other requirements
43 for corrective action to prevent unpermitted discharges from coal combustion residuals surface
44 impoundments to the surface waters of the State applicable to the owners of coal combustion
45 residuals surface impoundments.

46 (1) If the Department determines, based on information provided pursuant to
47 subsection (a) or (b) of this section, that an unpermitted discharge from a
48 coal combustion residuals surface impoundment, including an unpermitted
49 discharge from a toe drain outfall, seep, or weep, has reached the surface
50 waters of the State, the Department shall notify the owner of the
51 impoundment of its determination.

- 1 (2) No later than 30 days from a notification pursuant to subdivision (1) of this
2 subsection, the owner of the coal combustion residuals surface impoundment
3 shall submit a proposed Unpermitted Discharge Corrective Action Plan to
4 the Department for its review and approval. The proposed Unpermitted
5 Discharge Corrective Action Plan shall include, at a minimum, all of the
6 following:
7 a. One of the following methods of proposed corrective action:
8 1. Elimination of the unpermitted discharge.
9 2. Application for a National Pollutant Discharge Elimination
10 System (NPDES) permit amendment pursuant to
11 G.S. 143-215.1 and Subchapter H of Chapter 2 of Title 15A
12 of the North Carolina Administrative Code to bring the
13 unpermitted discharge under permit regulations.
14 b. A detailed explanation of the reasons for selecting the method of
15 corrective action.
16 c. Specific plans, including engineering details, to prevent the
17 unpermitted discharge.
18 d. A schedule for implementation of the Plan.
19 e. A monitoring plan for evaluating the effectiveness of the proposed
20 corrective action.
21 f. Any other information related to the correction of unpermitted
22 discharges required by the Department.
23 (3) The Department shall approve the Unpermitted Discharge Corrective Action
24 Plan if it determines that the Plan complies with the requirements of this
25 subsection and will be sufficient to protect public health, safety, and welfare;
26 the environment; and natural resources.
27 (4) No later than 30 days from the approval of the Unpermitted Discharge
28 Corrective Action Plan, the owner shall begin implementation of the Plan in
29 accordance with the Plan's schedule.
30 (d) Identification of New Discharges. – No later than August 1, 2014, the owner of a
31 coal combustion residuals surface impoundment shall submit a proposed Plan for the
32 Identification of New Discharges to the Department for its review and approval as provided in
33 this subsection.
34 (1) The proposed Plan for the Identification of New Discharges shall include, at
35 a minimum, all of the following:
36 a. A procedure for routine inspection of the coal combustion residuals
37 surface impoundment to identify indicators of potential new
38 discharges, including toe drain outfalls, seeps, and weeps.
39 b. A procedure for determining whether a new discharge is actually
40 present.
41 c. A procedure for notifying the Department when a new discharge is
42 confirmed.
43 d. Any other information related to the identification of new discharges
44 required by the Department.
45 (2) The Department shall approve the Plan for the Identification of New
46 Discharges if it determines that the Plan complies with the requirements of
47 this subsection and will be sufficient to protect public health, safety, and
48 welfare; the environment; and natural resources.
49 (3) No later than 30 days from the approval of the Plan for the Identification of
50 New Discharges, the owner shall begin implementation of the Plan in
51 accordance with the Plan.

1 (e) Reporting. – In addition to any other reporting required by the Department, the
2 owner of a coal combustion residuals surface impoundment shall submit an annual Surface
3 Water Protection and Restoration Report to the Department no later than January 31 of each
4 year. The Report shall include a summary of all surface water sampling, protection, and
5 restoration activities related to the impoundment for the preceding year, including the status of
6 the identification, assessment, and correction of unpermitted discharges from coal combustion
7 residuals surface impoundments to the surface waters of the State. The owner of a coal
8 combustion residuals surface impoundment shall also submit all information required to be
9 submitted to the Department pursuant to this section to the Coal Ash Management
10 Commission.

11 **"§ 130A-309.211. Prioritization of coal combustion residuals surface impoundments.**

12 (a) As soon as practicable, but no later than August 1, 2015, the Department shall
13 develop proposed classifications for all coal combustion residuals surface impoundments,
14 including active and retired sites, for the purpose of closure and remediation based on these
15 sites' risks to public health, safety, and welfare; the environment; and natural resources and
16 shall determine a schedule for closure and required remediation that is based on the degree of
17 risk to public health, safety, and welfare; the environment; and natural resources posed by the
18 impoundments and that gives priority to the closure and required remediation of impoundments
19 that pose the greatest risk. In assessing the risk, the Department shall evaluate information
20 received pursuant to G.S. 130A-309.209 and G.S. 130A-309.210 and any other information
21 deemed relevant and, at a minimum, consider all of the following:

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

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

- 44 (1) The Department shall make copies of the written declaration issued pursuant
45 to this subsection available for inspection as follows:
 - 46 a. A copy of the declaration shall be provided to the local health
47 director.
 - 48 b. A copy of the declaration shall be provided to the public library
49 located in closest proximity to the site in the county or counties in
50 which the site is located.

- 1 c. The Department shall post a copy of the declaration on the
2 Department's Web site.
- 3 d. The Department may place copies of the declaration in other
4 locations so as to assure the availability thereof to the public.
- 5 (2) Before issuing a proposed classification of an impoundment as high-risk,
6 intermediate-risk, or low-risk, the Department shall give notice of the written
7 declaration issued pursuant to this subsection as follows:
- 8 a. A notice and summary of the declaration shall be published weekly
9 for a period of three consecutive weeks in a newspaper having
10 general circulation in the county or counties where the site is located.
- 11 b. Notice of the written declaration shall be given by first-class mail to
12 persons who have requested such notice. Such notice shall include a
13 summary of the written declaration and state the locations where a
14 copy of the written declaration is available for inspection. The
15 Department shall maintain a mailing list of persons who request
16 notice pursuant to this section.
- 17 c. Notice of the written declaration shall be given by electronic mail to
18 persons who have requested such notice. Such notice shall include a
19 summary of the written declaration and state the locations where a
20 copy of the written declaration is available for inspection. The
21 Department shall maintain a mailing list of persons who request
22 notice pursuant to this section.
- 23 (3) No later than 60 days after issuance of the written declaration, the
24 Department shall conduct a public meeting in the county or counties in
25 which the site is located to explain the written declaration to the public. The
26 Department shall give notice of the hearing at least 15 days prior to the date
27 thereof by all of the following methods:
- 28 a. Publication as provided in subdivision (1) of this subsection, with
29 first publication to occur not less than 30 days prior to the scheduled
30 date of the hearing.
- 31 b. First-class mail to persons who have requested notice as provided in
32 subdivision (2) of this subsection.
- 33 c. Electronic mail to persons who have requested notice as provided in
34 subdivision (2) of this subsection.
- 35 (4) At least 30 days from the latest date on which notice is provided pursuant to
36 subdivision (2) of this subsection shall be allowed for the receipt of written
37 comment on the written declaration prior to issuance of a final risk
38 classification. At least 20 days will be allowed for receipt of written
39 comment following a hearing conducted pursuant to subdivision (3) of this
40 subsection prior to issuance of a final risk classification.
- 41 (c) Within 30 days of the receipt of all written comment as required by subdivision (4)
42 of subsection (b) of this section, the Department shall submit a proposed classification for a
43 coal combustion residuals surface impoundment to the Coal Ash Management Commission
44 established pursuant to G.S. 130A-309.202. The Commission shall evaluate all information
45 submitted in accordance with this Part related to the proposed classification and any other
46 information the Commission deems relevant. The Commission shall only approve the proposed
47 classification if it determines that the classification was developed in accordance with this
48 section and that the classification accurately reflects the level of risk posed by the coal
49 combustion residuals surface impoundment. The Commission shall issue its determination in
50 writing, including findings in support of its determination. If the Commission fails to act on a
51 proposed classification within 60 days of receipt of the proposed classification, the proposed

1 classification shall be deemed approved. Parties aggrieved by a final decision of the
2 Commission pursuant to this subsection may appeal the decision as provided under Article 3 of
3 Chapter 150B of the General Statutes.

4 **"§ 130A-309.212. Closure of coal combustion residuals surface impoundments.**

5 (a) An owner of a coal combustion residuals surface impoundment shall submit a
6 proposed Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's
7 approval. If corrective action to restore groundwater has not been completed pursuant to the
8 requirements of G.S. 130A-309.209(b), the proposed closure plan shall include provisions for
9 completion of activities to restore groundwater in conformance with the requirements of
10 Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. In addition,
11 the following requirements, at a minimum, shall apply to such plans:

12 (1) High-risk impoundments shall be closed as soon as practicable, but no later
13 than December 31, 2019. A proposed closure plan for such impoundments
14 must be submitted as soon as practicable, but no later than December 31,
15 2016. At a minimum, such impoundments shall be dewatered, and the owner
16 of an impoundment shall either:

17 a. Convert the coal combustion residuals impoundment to an industrial
18 landfill by removing all coal combustion residuals and contaminated
19 soil from the impoundment temporarily, safely storing the residuals
20 on-site, and complying with the requirements for such landfills
21 established by this Article and rules adopted thereunder. At a
22 minimum, the landfills shall have a design with a leachate collection
23 system, a closure cap system, and a composite liner system
24 consisting of two components: the upper component shall consist of a
25 minimum 30-ml flexible membrane (FML), and the lower
26 components shall consist of at least a two-foot layer of compacted
27 soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.
28 FML components consisting of high density polyethylene (HDPE)
29 shall be at least 60-ml thick. The landfill shall otherwise comply with
30 the construction requirements established by Section .1624 of
31 Subchapter B of Chapter 13 of Title 15A of the North Carolina
32 Administrative Code, and the siting and design requirements for
33 disposal sites established by Section .0503 of Subchapter B of
34 Chapter 13 of Title 15A of the North Carolina Administrative Code,
35 except with respect to those requirements that pertain to buffers. In
36 lieu of the buffer requirement established by Section .0503(f)(2)(iii)
37 of Subchapter B of Chapter 13 of Title 15A of the North Carolina
38 Administrative Code, the owner of the impoundment shall establish
39 and maintain a 300-foot buffer between surface waters and disposal
40 areas. After the temporarily displaced coal combustion residuals have
41 been returned for disposal in the industrial landfill constructed
42 pursuant to the requirements of this sub-subdivision, the owner of the
43 landfill shall comply with the closure and post-closure requirements
44 established by Section .1627 of Subchapter B of Chapter 13 of Title
45 15A of the North Carolina Administrative Code. A landfill
46 constructed pursuant to this sub-subdivision shall otherwise be
47 subject to all applicable requirements of this Chapter and rules
48 adopted thereunder. Prior to closure, the Department may allow the
49 disposal of coal combustion residuals, in addition to those originally
50 contained in the impoundment, to the landfill constructed pursuant to
51 this sub-subdivision, if the Department determines that the site is

- 1 suitable for additional capacity and that disposal of additional coal
2 combustion residuals will not pose an unacceptable risk to public
3 health, safety, welfare; the environment; and natural resources.
- 4 b. Remove all coal combustion residuals from the impoundment, return
5 the former impoundment to a nonerosive and stable condition, and (i)
6 transfer the coal combustion residuals for disposal in a coal
7 combustion residuals landfill, industrial landfill, or municipal solid
8 waste landfill or (ii) use the coal combustion products in a structural
9 fill or other beneficial use as allowed by law. The use of coal
10 combustion products (i) as structural fill shall be conducted in
11 accordance with the requirements of Subpart 3 of this Part and (ii) for
12 other beneficial uses shall be conducted in accordance with the
13 requirements of Section .1700 of Subchapter B of Chapter 13 of Title
14 15A of the North Carolina Administrative Code (Requirements for
15 Beneficial Use of Coal Combustion By-Products) and Section .1205
16 of Subchapter T of Chapter 2 of Title 15A of the North Carolina
17 Administrative Code (Coal Combustion Products Management).
- 18 (2) Intermediate-risk impoundments shall be closed as soon as practicable, but
19 no later than December 31, 2024. A proposed closure plan for such
20 impoundments must be submitted as soon as practicable, but no later than
21 December 31, 2017. At a minimum, such impoundments shall be dewatered,
22 and the owner of an impoundment shall close the impoundment in any
23 manner allowed pursuant to subdivision (1) of this subsection.
- 24 (3) Low-risk impoundments shall be closed as soon as practicable, but no later
25 than December 31, 2029. A proposed closure plan for such impoundments
26 must be submitted as soon as practicable, but no later than December 31,
27 2018. Such impoundments shall be dewatered. The Department shall require
28 such sites to comply with the closure and post-closure requirements
29 established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of
30 the North Carolina Administrative Code, except that such impoundments
31 shall not be required to install and maintain a leachate collection system.
32 Specifically, the owner of an impoundment shall install and maintain a cap
33 system that is designed to minimize infiltration and erosion in conformance
34 with the requirements of Section .1624 of Subchapter B of Chapter 13 of
35 Title 15A of the North Carolina Administrative Code, and, at a minimum,
36 shall be designed and constructed to: (i) have a permeability no greater than
37 1 x 10⁻⁵ cm/sec; (ii) minimize infiltration by the use of a low-permeability
38 barrier that contains a minimum 18 inches of earthen material; and (iii)
39 minimize erosion of the cap system and protect the low-permeability barrier
40 from root penetration by use of an erosion layer that contains a minimum of
41 six inches of earthen material that is capable of sustaining native plant
42 growth. In addition, the owner of an impoundment shall: (i) install and
43 maintain a groundwater monitoring system; (ii) establish financial assurance
44 that will ensure that sufficient funds are available for closure pursuant to this
45 subdivision, post-closure maintenance and monitoring, any corrective action
46 that the Department may require, and to satisfy any potential liability for
47 sudden and nonsudden accidental occurrences arising from the
48 impoundment, and subsequent costs incurred by the Department in response
49 to an incident, even if the owner becomes insolvent or ceases to reside, be
50 incorporated, do business, or maintain assets in the State; and (iii) conduct
51 post-closure care for a period of 30 years, which period may be increased by

1 the Department upon a determination that a longer period is necessary to
2 protect public health, safety, welfare; the environment; and natural
3 resources, or decreased upon a determination that a shorter period is
4 sufficient to protect public health, safety, welfare; the environment; and
5 natural resources. The Department may require implementation of any other
6 measure it deems necessary to protect public health, safety, and welfare; the
7 environment; and natural resources, including imposition of institutional
8 controls that are sufficient to protect public health, safety, and welfare; the
9 environment; and natural resources.

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

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

- 14 1. Site history and history of site operations, including details on
15 the manner in which coal combustion residuals have been
16 stored and disposed of historically.
- 17 2. Estimated volume of material contained in the impoundment.
- 18 3. Analysis of the structural integrity of dikes or dams
19 associated with impoundment.
- 20 4. All sources of discharge into the impoundment, including
21 volume and characteristics of each discharge.
- 22 5. Whether the impoundment is lined, and, if so, the
23 composition thereof.
- 24 6. A summary of all information available concerning the
25 impoundment as a result of inspections and monitoring
26 conducted pursuant to this Part and otherwise available.

27 b. Site maps, which, at a minimum, illustrate all of the following:

- 28 1. All structures associated with the operation of any coal
29 combustion residuals surface impoundment located on the
30 site. For purposes of this sub-subdivision, the term "site" shall
31 mean the land or waters within the property boundary of the
32 applicable electric generating station.
- 33 2. All current and former coal combustion residuals disposal and
34 storage areas on the site, including details concerning coal
35 combustion residuals produced historically by the electric
36 generating station and disposed of through transfer to
37 structural fills.
- 38 3. The property boundary for the applicable site, including
39 established compliance boundaries within the site.
- 40 4. All potential receptors within 2,640 feet from established
41 compliance boundaries.
- 42 5. Topographic contour intervals of the site shall be selected to
43 enable an accurate representation of site features and terrain
44 and in most cases should be less than 20-foot intervals.
- 45 6. Locations of all sanitary landfills permitted pursuant to this
46 Article on the site, which are actively receiving waste or are
47 closed, as well as the established compliance boundaries and
48 components of associated groundwater and surface water
49 monitoring systems.

- 1 7. All existing and proposed groundwater monitoring wells
- 2 associated with any coal combustion residuals surface
- 3 impoundment on the site.
- 4 8. All existing and proposed surface water sample collection
- 5 locations associated with any coal combustion residuals
- 6 surface impoundment on the site.
- 7 c. The results of a hydrogeologic, geologic, and geotechnical
- 8 investigation of the site, including, at a minimum, all of the
- 9 following:
- 10 1. A description of the hydrogeology and geology of the site.
- 11 2. A description of the stratigraphy of the geologic units
- 12 underlying each coal combustion residuals surface
- 13 impoundment located on the site.
- 14 3. The saturated hydraulic conductivity for (i) the coal
- 15 combustion residuals within any coal combustion residuals
- 16 surface impoundment located on the site and (ii) the saturated
- 17 hydraulic conductivity of any existing liner installed at an
- 18 impoundment, if any.
- 19 4. The geotechnical properties for (i) the coal combustion
- 20 residuals within any coal combustion residuals surface
- 21 impoundment located on the site, (ii) the geotechnical
- 22 properties of any existing liner installed at an impoundment,
- 23 if any, and (iii) the uppermost identified stratigraphic unit
- 24 underlying the impoundment, including the soil classification
- 25 based upon the Unified Soil Classification System, in-place
- 26 moisture content, particle size distribution, Atterberg limits,
- 27 specific gravity, effective friction angle, maximum dry
- 28 density, optimum moisture content, and permeability.
- 29 5. A chemical analysis of the coal combustion residuals surface
- 30 impoundment, including water, coal combustion residuals,
- 31 and coal combustion residuals-affected soil.
- 32 6. Identification of all substances with concentrations
- 33 determined to be in excess of the groundwater quality
- 34 standards for the substance established by Subchapter L of
- 35 Chapter 2 of Title 15A of the North Carolina Administrative
- 36 Code, including all laboratory results for these analyses.
- 37 7. Summary tables of historical records of groundwater
- 38 sampling results.
- 39 8. A map that illustrates the potentiometric contours and flow
- 40 directions for all identified aquifers underlying
- 41 impoundments (shallow, intermediate, and deep) and the
- 42 horizontal extent of areas where groundwater quality
- 43 standards established by Subchapter L of Chapter 2 of Title
- 44 15A of the North Carolina Administrative Code for a
- 45 substance are exceeded.
- 46 9. Cross-sections that illustrate the following: the vertical and
- 47 horizontal extent of the coal combustion residuals within an
- 48 impoundment; stratigraphy of the geologic units underlying a
- 49 impoundment; and the vertical extent of areas where
- 50 groundwater quality standards established by Subchapter L of

- 1 Chapter 2 of Title 15A of the North Carolina Administrative
2 Code for a substance are exceeded.
- 3 d. The results of groundwater modeling of the site that shall include, at
4 a minimum, all of the following:
- 5 1. An account of the design of the proposed Closure Plan that is
6 based on the site hydrogeologic conceptual model developed
7 and includes (i) predictions on post-closure groundwater
8 elevations and groundwater flow directions and velocities,
9 including the effects on and from the potential receptors, and
10 (ii) predictions at the compliance boundary for substances
11 with concentrations determined to be in excess of the
12 groundwater quality standards for the substance established
13 Subchapter L of Chapter 2 of Title 15A of the North Carolina
14 Administrative Code.
- 15 2. Predictions that include the effects on the groundwater
16 chemistry and should describe migration, concentration,
17 mobilization, and fate for substances with concentrations
18 determined to be in excess of the groundwater quality
19 standards for the substance established by Subchapter L of
20 Chapter 2 of Title 15A of the North Carolina Administrative
21 Code pre- and post-closure, including the effects on and from
22 potential receptors.
- 23 3. A description of the groundwater trend analysis methods used
24 to demonstrate compliance with groundwater quality
25 standards for the substance established by Subchapter L of
26 Chapter 2 of Title 15A of the North Carolina Administrative
27 Code and requirements for corrective action of groundwater
28 contamination established by Subchapter L of Chapter 2 of
29 Title 15A of the North Carolina Administrative Code.
- 30 e. A description of any plans for beneficial use of the coal combustion
31 residuals in compliance with the requirements of Section .1700 of
32 Subchapter B of Chapter 13 of Title 15A of the North Carolina
33 Administrative Code (Requirements for Beneficial Use of Coal
34 Combustion By-Products) and Section .1205 of Subchapter T of
35 Chapter 2 of Title 15A of the North Carolina Administrative Code
36 (Coal Combustion Products Management).
- 37 f. All engineering drawings, schematics, and specifications for the
38 proposed Closure Plan. If required by Chapter 89C of the General
39 Statutes, engineering design documents should be prepared, signed,
40 and sealed by a professional engineer.
- 41 g. A description of the construction quality assurance and quality
42 control program to be implemented in conjunction with the Closure
43 Plan, including the responsibilities and authorities for monitoring and
44 testing activities, sampling strategies, and reporting requirements.
- 45 h. A description of the provisions for disposal of wastewater and
46 management of stormwater and the plan for obtaining all required
47 permits.
- 48 i. A description of the provisions for the final disposition of the coal
49 combustion residuals. If the coal combustion residuals are to be
50 removed, the owner must (i) identify the location and permit number
51 for the coal combustion residuals landfills, industrial landfills, or

1 municipal solid waste landfills in which the coal combustion
2 residuals will be disposed and (ii) in the case where the coal
3 combustion residuals are planned for beneficial use, the location and
4 manner in which the residuals will be temporarily stored. If the coal
5 combustion residuals are to be left in the impoundment, the owner
6 must (i) in the case of closure pursuant to sub-subdivision (a)(1)a. of
7 this section, provide a description of how the ash will be stabilized
8 prior to completion of closure in accordance with closure and
9 post-closure requirements established by Section .1627 of Subchapter
10 B of Chapter 13 of Title 15A of the North Carolina Administrative
11 Code and (ii) in the case of closure pursuant to sub-subdivision
12 (a)(1)b. of this section, provide a description of how the ash will be
13 stabilized pre- and post-closure. If the coal combustion residuals are
14 to be left in the impoundment, the owner must provide an estimate of
15 the volume of coal combustion residuals remaining.

16 j. A list of all permits that will need to be acquired or modified to
17 complete closure activities.

18 k. A description of the plan for post-closure monitoring and care for an
19 impoundment for a minimum of 30 years. The length of the
20 post-closure care period may be (i) proposed to be decreased or the
21 frequency and parameter list modified if the owner demonstrates that
22 the reduced period or modifications are sufficient to protect public
23 health, safety, and welfare; the environment; and natural resources
24 and (ii) increased by the Department at the end of the post-closure
25 monitoring and care period if there are statistically significant
26 increasing groundwater quality trends or if contaminant
27 concentrations have not decreased to a level protective of public
28 health, safety, and welfare; the environment; and natural resources. If
29 the owner determines that the post-closure care monitoring and care
30 period is no longer needed and the Department agrees, the owner
31 shall provide a certification, signed and sealed by a professional
32 engineer, verifying that post-closure monitoring and care has been
33 completed in accordance with the post-closure plan. If required by
34 Chapter 89C of the General Statutes, the proposed plan for
35 post-closure monitoring and care should be signed and sealed by a
36 professional engineer. The plan shall include, at a minimum, all of
37 the following:

38 1. A demonstration of the long-term control of all leachate,
39 affected groundwater, and stormwater.

40 2. A description of a groundwater monitoring program that
41 includes (i) post-closure groundwater monitoring, including
42 parameters to be sampled and sampling schedules; (ii) any
43 additional monitoring well installations, including a map with
44 the proposed locations and well construction details; and (iii)
45 the actions proposed to mitigate statistically significant
46 increasing groundwater quality trends.

47 l. An estimate of the milestone dates for all activities related to closure
48 and post-closure.

49 m. Projected costs of assessment, corrective action, closure, and
50 post-closure care for each coal combustion residual surface
51 impoundment.

1 n. A description of the anticipated future use of the site and the
2 necessity for the implementation of institutional controls following
3 closure, including property use restrictions, and requirements for
4 recordation of notices documenting the presence of contamination, if
5 applicable, or historical site use.

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

12 (1) The Department shall make copies of the proposed Closure Plan available
13 for inspection as follows:

14 a. A copy of the proposed Closure Plan shall be provided to the local
15 health director.

16 b. A copy of the proposed Closure Plan shall be provided to the public
17 library located in closest proximity to the site in the county or
18 counties in which the site is located.

19 c. The Department shall post a copy of the proposed Closure Plan on
20 the Department's Web site.

21 d. The Department may place copies of the proposed Closure Plan in
22 other locations so as to assure the availability thereof to the public.

23 (2) Before approving a proposed Closure Plan, the Department shall give notice
24 as follows:

25 a. A notice and summary of the proposed Closure Plan shall be
26 published weekly for a period of three consecutive weeks in a
27 newspaper having general circulation in the county or counties where
28 the site is located.

29 b. Notice that a proposed Closure Plan has been developed shall be
30 given by first-class mail to persons who have requested such notice.
31 Such notice shall include a summary of the proposed Closure Plan
32 and state the locations where a copy of the proposed Closure Plan is
33 available for inspection. The Department shall maintain a mailing list
34 of persons who request notice pursuant to this section.

35 c. Notice that a proposed Closure Plan has been developed shall be
36 given by electronic mail to persons who have requested such notice.
37 Such notice shall include a summary of the proposed Closure Plan
38 and state the locations where a copy of the proposed Closure Plan is
39 available for inspection. The Department shall maintain a mailing list
40 of persons who request notice pursuant to this section.

41 (3) No later than 60 days after receipt of a proposed Closure Plan, the
42 Department shall conduct a public meeting in the county or counties in
43 which the site is located to explain the proposed Closure Plan and
44 alternatives to the public. The Department shall give notice of the hearing at
45 least 30 days prior to the date thereof by all of the following methods:

46 a. Publication as provided in subdivision (1) of this subsection, with
47 first publication to occur not less than 30 days prior to the scheduled
48 date of the hearing.

49 b. First-class mail to persons who have requested notice as provided in
50 subdivision (2) of this subsection.

1 c. Electronic mail to persons who have requested notice as provided in
2 subdivision (2) of this subsection.

3 (4) At least 30 days from the latest date on which notice is provided pursuant to
4 subdivision (2) of this subsection shall be allowed for the receipt of written
5 comment on the proposed Closure Plan prior to its approval. At least 20 days
6 will be allowed for receipt of written comment following a hearing
7 conducted pursuant to subdivision (3) of this subsection prior to the approval
8 of the proposed Closure Plan.

9 (c) The Department shall disapprove a proposed Coal Combustion Residuals Surface
10 Impoundment Closure Plan unless the Department finds that the Closure Plan is protective of
11 public health, safety, and welfare; the environment; and natural resources and otherwise
12 complies with the requirements of this Part. The Department shall provide specific findings to
13 support its decision to approve or disapprove a proposed Closure Plan. If the Department
14 disapproves a proposed Closure Plan, the person who submitted the Closure Plan may seek
15 review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails
16 to approve or disapprove a proposed Closure Plan within 120 days after a complete Closure
17 Plan has been submitted, the person who submitted the proposed Closure Plan may treat the
18 Closure Plan as having been disapproved at the end of that time period. The Department may
19 require a person who proposes a Closure Plan to supply any additional information necessary
20 for the Department to approve or disapprove the Closure Plan.

21 (d) Within 30 days of its approval of a Coal Combustion Residuals Surface
22 Impoundment Closure Plan, the Department shall submit the Closure Plan to the Coal Ash
23 Management Commission. The Commission shall evaluate all information submitted in
24 accordance with this Part related to the Closure Plan and any other information the Commission
25 deems relevant. The Commission shall only approve the Closure Plan if it determines that the
26 Closure Plan was developed in accordance with this section; that implementation of the Closure
27 Plan according to the Closure Plan's schedule is technologically feasible; and that the benefits
28 to public health, safety, and welfare; the environment; and natural resources outweigh the
29 negative impacts on electricity costs and reliability. The Commission shall issue its
30 determination in writing, including findings in support of its determination. If the Commission
31 fails to act on a Closure Plan within 60 days of receipt of the Closure Plan, the Closure Plan
32 shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to
33 this subsection may appeal the decision as provided under Article 3 of Chapter 150B of the
34 General Statutes.

35 (e) As soon as practicable, but no later than 60 days after a Coal Combustion Residuals
36 Surface Impoundment Closure Plan has been approved by the Coal Ash Management
37 Commission, the owner of the coal combustion residuals impoundment shall begin
38 implementation of the approved plan. Modifications to an approved closure plan may only be
39 allowed in conformance with the requirements of this Part, upon written request of an owner of
40 an impoundment, with the written approval of the Department, and after public notice of the
41 change in accordance with the requirements of subdivision (2) of subsection (b) of this section.
42 Provided, however, minor technical modifications may be made in accordance with standard
43 Department procedures for such minor modifications, and may be made without written
44 approval of the Department, or public notice of the change.

45 (f) Nothing in this section shall be construed to obviate the need for sampling,
46 remediation, and monitoring activities at the site as required by G.S. 130A-309.209 and
47 G.S. 130A-309.310.

48 **§ 130A-309.213. Variance authority.**

49 In recognition of the complexity and magnitude of the issues surrounding the management
50 of coal combustion residuals and coal combustion residuals surface impoundments, the General
51 Assembly authorizes the Secretary to grant a variance to extend any deadline for closure of an

1 impoundment established under G.S. 130A-309.212 in conformance with the requirements of
2 this section. To request such a variance the owner of an impoundment shall submit an
3 application in a form acceptable to the Department which shall include, at a minimum, all of
4 the following information: identification of the site, applicable requirement(s), and applicable
5 deadline(s) for which a variance is sought, and detailed information that demonstrates that
6 compliance with the deadline cannot be achieved by application of best available technology
7 found to be economically reasonable at the time, and would produce serious hardship without
8 equal or greater benefits to the public. As soon as practicable, but no later than 60 days from
9 receipt of an application, the Secretary shall evaluate the information submitted in conjunction
10 with the application, and any other information the Secretary deems relevant, to determine
11 whether the information supports issuance of a variance. After such evaluation, if the Secretary
12 finds that the information supports issuance of a variance from the deadline, the Secretary shall
13 issue a proposed variance. Within 10 days after a proposed variance has been issued, the
14 Secretary shall issue a written declaration, including findings of fact, documenting the proposed
15 variance. The Department shall provide for public participation on the proposed variance in the
16 manner provided by G.S. 130A-309.212(b), and shall take the public input received through the
17 process into account in its decision, before issuing a final variance. Parties aggrieved by a final
18 decision of the Secretary pursuant to this section may appeal the decision as provided under
19 Article 3 of Chapter 150B of the General Statutes within 30 days of the date of the decision.
20

21 "Subpart 3. Use of Coal Combustion Products in Structural Fill.

22 **"§ 130A-309.214. Applicability.**

23 The provisions of this Subpart shall apply to the siting, design, construction, operation, and
24 closure of projects that utilize coal combustion products for structural fill.

25 **"§ 130A-309.215. Permit requirements for projects using coal combustion products for**
26 **structural fill.**

27 (a) Permit Requirements. –

28 (1) Projects using coal combustion products as structural fill involving the
29 placement of less than 8,000 tons of coal combustion products per acre or
30 less than 80,000 tons of coal combustion products in total per project, which
31 proceed in compliance with the requirements of this section and rules
32 adopted thereunder, are deemed permitted. Any person proposing such a
33 project shall submit an application for a permit to the Department upon such
34 form as the Department may prescribe including, at a minimum, the
35 information set forth in subdivision (1) of subsection (b) of this section.

36 (2) No person shall commence or operate a project using coal combustion
37 residuals as structural fill involving the placement of 8,000 or more tons of
38 coal combustion products per acre or 80,000 or more tons of coal
39 combustion products in total per project without first receiving an individual
40 permit from the Department. Any person proposing such a project shall
41 submit an application for a permit to the Department upon such form as the
42 Department may prescribe including, at a minimum, the information set
43 forth in subdivisions (1) and (2) of subsection (b) of this section.

44 (b) Information to Be Provided to the Department. – At least 60 days before initiation
45 of a proposed project using coal combustion products as structural fill, the person proposing the
46 project shall submit all of the following information to the Department on a form as prescribed
47 by the Department:

48 (1) For projects involving placement of less than 8,000 tons of coal combustion
49 products per acre or less than 80,000 tons of coal combustion products in
50 total per project, the person shall provide, at a minimum, the following
51 information:

- a. The description of the nature, purpose, and location of the project.
 - b. The estimated start and completion dates for the project.
 - c. An estimate of the volume of coal combustion products to be used in the project.
 - d. A Toxicity Characteristic Leaching Procedure analysis from a representative sample of each different coal combustion product's source to be used in the project for, at a minimum, all of the following constituents: arsenic, barium, cadmium, lead, chromium, mercury, selenium, and silver.
 - e. A signed and dated statement by the owner of the land on which the structural fill is to be placed, acknowledging and consenting to the use of coal combustion products as structural fill on the property and agreeing to record the fill in accordance with the requirements of G.S. 130A-390.219.
 - f. The name, address, and contact information for the generator of the coal combustion products.
 - g. Physical location of the project at which the coal combustion products were generated.
- (2) For projects involving placement of 8,000 or more tons of coal combustion products per acre or 80,000 or more tons of coal combustion products in total per project, the person shall provide all information required pursuant to subdivision (1) of this subsection and shall provide construction plans for the project, including a stability analysis as the Department may require. If required by the Department, a stability analysis shall be prepared, signed, and sealed by a professional engineer in accordance with sound engineering practices. A construction plan shall, at a minimum, include a groundwater monitoring system and an encapsulation liner system in compliance with the requirements of G.S. 130A-309.216.

"§ 130A-309.216. Design, construction, and siting requirements for projects using coal combustion products for structural fill.

- (a) Design, Construction, and Operation of Structural Fill Sites. –
- (1) A structural fill site must be designed, constructed, operated, closed, and maintained in such a manner as to minimize the potential for harmful release of constituents of coal combustion residuals to the environment or create a nuisance to the public.
 - (2) Coal combustion products shall be collected and transported in a manner that will prevent nuisances and hazards to public health and safety. Coal combustion products shall be moisture conditioned, as necessary, and transported in covered trucks to prevent dusting.
 - (3) Coal combustion products shall be placed uniformly and shall be compacted to standards, including in situ density, compaction effort, and relative density, specified by a registered professional engineer for a specific end-use purpose.
 - (4) Equipment shall be provided which is capable of placing and compacting the coal combustion products and handling the earthwork required during the periods that coal combustion products are received at the fill project.
 - (5) The coal combustion product structural fill project shall be effectively maintained and operated as a nondischarge system to prevent discharge to surface water resulting from the project.
 - (6) The coal combustion product structural fill project shall be effectively maintained and operated to ensure no violations of groundwater standards

1 adopted by the Commission pursuant to Article 21 of Chapter 143 of the
2 General Statutes due to the project.

3 (7) Surface waters resulting from precipitation shall be diverted away from the
4 active coal combustion product placement area during filling and
5 construction activity.

6 (8) Site development shall comply with the North Carolina Sedimentation
7 Pollution Control Act of 1973, as amended.

8 (9) The structural fill project shall be operated with sufficient dust control
9 measures to minimize airborne emissions and to prevent dust from creating a
10 nuisance or safety hazard and shall not violate applicable air quality
11 regulations.

12 (10) Coal combustion products utilized on an exterior slope of a structural fill
13 shall not be placed with a slope greater than 3.0 horizontal to 1.0 vertical.

14 (11) Compliance with this subsection shall not insulate any of the owners or
15 operators of a structural fill project from claims for damages to surface
16 waters, groundwater, or air resulting from the operation of the structural fill
17 project. If the project fails to comply with the requirements of this section,
18 the constructor, generator, owner, or operator shall notify the Department
19 and shall take any immediate corrective action as may be required by the
20 Department.

21 (b) Liners, Leachate Collection System, Cap, and Groundwater Monitoring System
22 Required for Large Structural Fills. – For projects involving placement of 8,000 or more tons of
23 coal combustion products per acre or 80,000 or more tons of coal combustion products in total
24 per project shall have an encapsulation liner system. The encapsulation liner system shall be
25 constructed on and around the structural fill and shall be designed to efficiently contain, collect,
26 and remove leachate generated by the coal combustion products, as well as separate the coal
27 combustion products from any exposure to surrounding environs. At a minimum, the
28 components of the liner system shall consist of the following:

29 (1) A base liner. The base liner shall consist of one of the following designs:

30 a. A composite liner utilizing a compacted clay liner. This composite
31 liner is one liner that consists of two components: a geomembrane
32 liner installed above and in direct and uniform contact with a
33 compacted clay liner with a minimum thickness of 24 inches (0.61
34 m) and a permeability of no more than 1.0×10^{-7} centimeters per
35 second.

36 b. A composite liner utilizing a geosynthetic clay liner. This composite
37 liner is one liner that consists of three components: a geomembrane
38 liner installed above and in uniform contact with a geosynthetic clay
39 liner overlying a compacted clay liner with a minimum thickness of
40 18 inches (0.46 m) and a permeability of no more than 1.0×10^{-5}
41 centimeters per second.

42 (2) A leachate collection system, which is constructed directly above the base
43 liner and shall be designed to effectively collect and remove leachate from
44 the project.

45 (3) A cap system that is designed to minimize infiltration and erosion as
46 follows:

47 a. The cap system shall be designed and constructed to (i) have a
48 permeability less than or equal to the permeability of any base liner
49 system or the in situ subsoils underlying the structural fill, or the
50 permeability specified for the final cover in the effective permit, or a
51 permeability no greater than 1×10^{-5} cm/sec, whichever is less; (ii)

- 1 minimize infiltration through the closed structural fill by the use of a
2 low-permeability barrier that contains a minimum 18 inches of
3 earthen material; and (iii) minimize erosion of the cap system and
4 protect the low-permeability barrier from root penetration by use of
5 an erosion layer that contains a minimum of six inches of earthen
6 material that is capable of sustaining native plant growth.
- 7 b. The Department may approve an alternative cap system if the owner
8 or operator can adequately demonstrate (i) the alternative cap system
9 will achieve an equivalent or greater reduction in infiltration as the
10 low-permeability barrier specified in sub-subdivision a. of this
11 subdivision and (ii) the erosion layer will provide equivalent or
12 improved protection as the erosion layer specified in sub-subdivision
13 a. of this subdivision.
- 14 (4) A groundwater monitoring system, which shall be approved by the
15 Department and, at a minimum, consist of all of the following:
- 16 a. A sufficient number of wells, installed at appropriate locations and
17 depths, to yield groundwater samples from the uppermost aquifer that
18 represent the quality of groundwater passing the relevant point of
19 compliance as approved by the Department. A downgradient
20 monitoring system shall be installed at the relevant point of
21 compliance so as to ensure detection of groundwater contamination
22 in the uppermost aquifer.
- 23 b. A proposed monitoring plan, which shall be certified by a licensed
24 geologist or professional engineer to be effective in providing early
25 detection of any release of hazardous constituents from any point in a
26 structural fill or leachate surface impoundment to the uppermost
27 aquifer, so as to be protective of public health, safety, and welfare;
28 the environment; and natural resources.
- 29 c. A groundwater monitoring program, which shall include consistent
30 sampling and analysis procedures that are designed to ensure
31 monitoring results that provide an accurate representation of
32 groundwater quality at the background and downgradient wells.
33 Monitoring shall be conducted through construction and the
34 post-closure care period. The sampling procedures and frequency
35 shall be protective of public health, safety, and welfare; the
36 environment; and natural resources.
- 37 d. A detection monitoring program for all Appendix I constituents. For
38 purposes of this subdivision, the term "Appendix I" means Appendix
39 I to 40 C.F.R. Part 258, "Appendix I Constituents for Detection
40 Monitoring," including subsequent amendments and editions.
- 41 e. An assessment monitoring program and corrective action plan if one
42 or more of the constituents listed in Appendix I is detected in
43 exceedance of a groundwater protection standard.
- 44 (c) Siting for Structural Fill Facilities. – Coal combustion products used as a structural
45 fill shall not be placed:
- 46 (1) Within 100 horizontal feet of a wetland, unless, after consideration of the
47 chemical and physical impact on the wetland, the United States Army Corps
48 of Engineers issues a permit or waiver for the fill.
- 49 (2) Within 300 horizontal feet of the top of the bank of a perennial stream or
50 other surface water body.
- 51 (3) Within four feet of the seasonal high groundwater table.

- 1 (4) Within 500 horizontal feet of any source of drinking water, such as a well,
2 spring, or other groundwater source of drinking water.
- 3 (5) Within an area subject to a 100-year flood, unless it can be demonstrated to
4 the Department that the project will be protected from inundation, and
5 washout, and the flow of water is not restricted and the storage volume of
6 the floodplain will not be significantly reduced.
- 7 (6) Within 30 feet of a bedrock outcrop.
- 8 (7) Within 200 feet of any property boundary.

9 **"§ 130A-309.217. Financial assurance requirements for large projects using coal**
10 **combustion products for structural fill.**

11 (a) For projects involving placement of 8,000 or more tons of coal combustion products
12 per acre or 80,000 or more tons of coal combustion products in total per project, the applicant
13 for a permit or a permit holder to construct or operate a structural fill shall establish financial
14 assurance that will ensure that sufficient funds are available for facility closure, post-closure
15 maintenance and monitoring, any corrective action that the Department may require, and to
16 satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent
17 costs incurred by the Department in response to an incident at a structural fill project, even if
18 the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do
19 business, or maintain assets in the State.

20 (b) To establish sufficient availability of funds under this section, the applicant for a
21 permit or a permit holder may use insurance, financial tests, third-party guarantees by persons
22 who can pass the financial test, guarantees by corporate parents who can pass the financial test,
23 irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any
24 combination of the foregoing shown to provide protection equivalent to the financial protection
25 that would be provided by insurance if insurance were the only mechanism used.

26 (c) The applicant for a permit or a permit holder, and any parent, subsidiary, or other
27 affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or
28 indirect interest in the applicant, permit holder, or parent shall be a guarantor of payment for
29 closure, post-closure maintenance and monitoring, any corrective action that the Department
30 may require, and to satisfy any potential liability for sudden and nonsudden accidental
31 occurrences arising from the operation of the hazardous waste facility.

32 (d) Assets used to meet the financial assurance requirements of this section shall be in a
33 form that will allow the Department to readily access funds for the purposes set out in this
34 section. Assets used to meet financial assurance requirements of this section shall not be
35 accessible to the permit holder except as approved by the Department.

36 (e) The Department may provide a copy of any filing that an applicant for a permit or a
37 permit holder submits to the Department to meet the financial responsibility requirements under
38 this section to the State Treasurer. The State Treasurer shall review the filing and provide the
39 Department with a written opinion as to the adequacy of the filing to meet the purposes of this
40 section, including any recommended changes.

41 (f) In order to continue to hold a permit for a structural fill, a permit holder must
42 maintain financial responsibility as required by this Part and must provide any information
43 requested by the Department to establish that the permit holder continues to maintain financial
44 responsibility.

45 (g) An applicant for a permit or a permit holder shall satisfy the Department that the
46 applicant or permit holder has met the financial responsibility requirements of this Part before
47 the Department is required to otherwise review the application.

48 **"§ 130A-309.218. Closure of projects using coal combustion products for structural fill.**

49 (a) Closure of Structural Fill Projects. –

- 1 (1) No later than 30 working days or 60 calendar days, whichever is less, after
2 coal combustion product placement has ceased, the final cover shall be
3 applied over the coal combustion product placement area.
4 (2) The final surface of the structural fill shall be graded and provided with
5 drainage systems that do all of the following:
6 a. Minimize erosion of cover materials.
7 b. Promote drainage of area precipitation, minimize infiltration, and
8 prevent ponding of surface water on the structural fill.
9 (3) Other erosion control measures, such as temporary mulching, seeding, or silt
10 barriers shall be installed to ensure no visible coal combustion product
11 migration to adjacent properties until the beneficial end use of the project is
12 realized.
13 (4) The constructor or operator shall submit a certification to the Department
14 signed and sealed by a registered professional engineer or signed by the
15 Secretary of the Department of Transportation or his designee certifying that
16 all requirements of this Subpart have been met. The report shall be submitted
17 within 30 days of application of the final cover.

18 (b) Additional Closure and Post-Closure Requirements for Large Structural Fill
19 Projects. – For projects involving placement of 8,000 or more tons of coal combustion products
20 per acre or 80,000 or more tons of coal combustion products in total per project, a constructor
21 or operator shall conduct post-closure care. Post-closure care shall be conducted for 30 years,
22 which period may be increased by the Department upon a determination that a longer period is
23 necessary to protect public health, safety, welfare; the environment; and natural resources, or
24 decreased upon a determination that a shorter period is sufficient to protect public health,
25 safety, welfare; the environment; and natural resources. Additional closure and post-closure
26 requirements include, at a minimum, all of the following:

- 27 (1) Submit a written closure plan, which includes all of the following:
28 a. A description of the cap liner system and the methods and procedures
29 used to install the cap that conforms to the requirement in
30 G.S. 130A-309.216(b).
31 b. An estimate of the largest area of the structural fill project ever
32 requiring the cap liner system at any time during the overall
33 construction period that is consistent with the drawings prepared for
34 the structural fill.
35 c. An estimate of the maximum inventory of coal combustion products
36 ever on-site over the construction duration of the structural fill.
37 d. A schedule for completing all activities necessary to satisfy the
38 closure criteria set forth in this section.
39 (2) Submit a written post-closure plan, which includes all of the following:
40 a. A description of the monitoring and maintenance activities required
41 for the project and the frequency at which these activities must be
42 performed.
43 b. The name, address, and telephone number of the person or office
44 responsible for the project during the post-closure period.
45 c. A description of the planned uses of the property during the
46 post-closure period. Post-closure use of the property must not disturb
47 the integrity of the cap system, base liner system, or any other
48 components of the containment system, or the function of the
49 monitoring systems unless necessary to comply with the
50 requirements of this subsection. The Department may approve
51 disturbance if the constructor or operator demonstrates that

1 disturbance of the cap system, base liner system, or other component
2 of the containment system will not increase the potential threat to
3 public health, safety, and welfare; the environment; and natural
4 resources.

5 d. The cost estimate for post-closure activities required under this
6 section.

7 (3) Maintain the integrity and effectiveness of any cap system, including
8 repairing the system as necessary to correct the defects of settlement,
9 subsidence, erosion, or other events and preventing run-on and runoff from
10 eroding or otherwise damaging the cap system.

11 (4) Maintain and operate the leachate collection system. The Department may
12 allow the constructor or operator to stop managing leachate upon a
13 satisfactory demonstration that leachate from the project no longer poses a
14 threat to human health and the environment.

15 (5) Monitor and maintain the groundwater monitoring system in accordance
16 with G.S. 130A-309.216 and monitor the surface water in accordance with
17 15A NCAC 13B .0602.

18 (c) Completion of Post-Closure Care. – Following completion of the post-closure care
19 period, the constructor or operator shall submit a certification, signed by a registered
20 professional engineer, to the Department, verifying that post-closure care has been completed
21 in accordance with the post-closure plan, and include the certification in the operating record.

22 **"§ 130A-309.219. Recordation of projects using coal combustion products for structural**
23 **fill.**

24 (a) The owner of land where coal combustion products have been used in volumes of
25 more than 1,000 cubic yards shall file a statement of the volume and locations of the coal
26 combustion residuals with the Register of Deeds in the county or counties where the property is
27 located. The statement shall identify the parcel of land according to the complete legal
28 description on the recorded deed, either by metes and bounds, or by reference to a recorded plat
29 map. The statement shall be signed and acknowledged by the landowners in the form
30 prescribed by G.S. 47-38 through G.S. 47-43.

31 (b) Recordation shall be required within 90 days after completion of a structural fill
32 project using coal combustion residuals.

33 (c) The Register of Deeds, in accordance with G.S. 161-14, shall record the notarized
34 statement and index it in the Grantor Index under the name of the owner of the land. The
35 original notarized statement with the Register's seal and the date, book, and page number of
36 recording shall be returned to the Department after recording.

37 (d) When property with more than 1,000 cubic yards of coal combustion products is
38 sold, leased, conveyed, or transferred in any manner, the deed or other instrument of transfer
39 shall contain in the description section in no smaller type than used in the body of the deed or
40 instrument a statement that coal combustion products have been used as structural fill material
41 on the property.

42 **"§ 130A-309.220. Department of Transportation projects.**

43 The Department and the Department of Transportation may agree on specific design,
44 construction, siting, operation, and closure criteria that may apply to the Department of
45 Transportation structural fill projects.

46 **"§ 130A-309.221. Inventory and inspection of certain structural fill projects.**

47 No later than July 1, 2015, the Department shall prepare an inventory of all structural fill
48 projects with a volume of 10,000 cubic yards or more. The Department shall update the
49 structural fill project inventory at least annually. The Department shall inspect each structural
50 fill project with a volume of 10,000 cubic yards or more at least annually to determine if the
51 project or facility has been constructed and operated in compliance with Section .1700 of

1 Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code
2 (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1200 of
3 Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal
4 Combustion Products Management), as applicable.

5 **"§ 130A-309.222. Amendments required to rules.**

6 Requirements under existing rules governing the use of coal combustion products for
7 structural fill that do not conflict with the provisions of this Subpart shall continue to apply to
8 such projects. The Environmental Management Commission shall amend existing rules
9 governing the use of coal combustion products for structural fill as necessary to implement the
10 provisions of this Subpart. Such rules shall be exempt from the requirements of
11 G.S. 150B-19.3."

12 **SECTION 3.(b)** Notwithstanding G.S. 130A-309.211 or G.S. 130A-309.212, as
13 enacted by Section 3(a) of this act, and except as otherwise preempted by the requirements of
14 federal law, the following coal combustion residuals surface impoundments shall be deemed
15 high-priority, and, as soon as practicable, but no later than August 1, 2019, shall be closed in
16 conformance with Section 3(c) of this act:

- 17 (1) Coal combustion residuals surface impoundments located at the Dan River
18 Steam Station, owned and operated by Duke Energy Progress, and located in
19 Rockingham County.
- 20 (2) Coal combustion residuals surface impoundments located at the Riverbend
21 Steam Station, owned and operated by Duke Energy Carolinas, and located
22 in Gaston County.
- 23 (3) Coal combustion residuals surface impoundments located at the Asheville
24 Steam Electric Generating Plant, owned and operated by Duke Energy
25 Progress, and located in Buncombe County.
- 26 (4) Coal combustion residuals surface impoundments located at the Sutton
27 Plant, owned and operated by Duke Energy Progress, and located in New
28 Hanover County.

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

- 31 (1) The impoundments shall be dewatered.
- 32 (2) All coal combustion residuals shall be removed from the impoundments and
33 transferred for (i) disposal in a coal combustion residuals landfill, industrial
34 landfill, or municipal solid waste landfill or (ii) use in a structural fill or
35 other beneficial use as allowed by law. Any disposal or use of coal
36 combustion products pursuant to this section shall comply with the
37 moratoriums enacted under Section 4(a) and Section 5(a) of this act and any
38 extensions thereof. The use of coal combustion products (i) as structural fill,
39 as authorized by Section 4(b) of this act, shall be conducted in accordance
40 with the requirements of Subpart 3 of Part 2I of Article 9 of the General
41 Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial
42 uses shall be conducted in accordance with the requirements of Section
43 .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina
44 Administrative Code (Requirements for Beneficial Use of Coal Combustion
45 By-Products) and Section .1205 of Subchapter T of Chapter 2 of Title 15A
46 of the North Carolina Administrative Code (Coal Combustion Products
47 Management), as applicable.
- 48 (3) Restoration of groundwater quality is degraded as a result of the
49 impoundment, corrective action to restore groundwater quality shall be
50 implemented by the owner or operator as provided in G.S. 130A-309.204.

51 **SECTION 3.(d)** G.S. 130A-290(a) reads as rewritten:

"§ 130A-290. Definitions.

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

...
 (2b) ~~"Combustion products"~~ "Coal combustion residuals" means residuals, including fly ash, bottom ash, boiler slag, mill rejects, and flue gas desulfurization residue produced by a coal-fired generating ~~unit~~ unit destined for disposal. The term does not include coal combustion products as defined in G.S. 130A-309.201(4).

(2c) ~~"Combustion products landfill"~~ "Coal combustion residuals landfill" means a facility or unit for the disposal of combustion products, where the landfill is located at the same facility with the coal-fired generating unit or units producing the combustion products, and where the landfill is located wholly or partly on top of a facility that is, or was, being used for the disposal or storage of such combustion products, including, but not limited to, landfills, wet and dry ash ponds, and structural fill facilities.

...
 (3a) "Commission" means the Environmental Management Commission.

...
 (20) "Open dump" means any facility or site where solid waste is disposed of that is not a sanitary landfill and that is not a coal combustion residuals surface impoundment or a facility for the disposal of hazardous waste.

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

- a. Fecal waste from fowls and animals other than humans.
- b. Solid or dissolved material in:
 - 1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.
 - 2. Irrigation return flows.
 - 3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the ~~Environmental Management Commission~~ Commission, including coal combustion products. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

...."

1 **SECTION 3.(e)** The initial members of the Coal Ash Management Commission
2 established pursuant to G.S. 130A-309.202, as enacted by Section 3(a) of this act, whose
3 qualifications are described in subdivisions (3), (4), and (9) of G.S. 130A-309.202(b), shall be
4 appointed for an initial term of two years and subsequent appointments shall be for six-year
5 terms. The initial members of the Coal Ash Management Commission established pursuant to
6 G.S. 130A-309.202, as enacted by Section 3(a) of this act, whose qualifications are described in
7 subdivisions (1), (6), and (8) of G.S. 130A-309.202(b), shall be appointed for an initial term of
8 four years and subsequent appointments shall be for six-year terms. The initial members of the
9 Coal Ash Management Commission established pursuant to G.S. 130A-309.202, as enacted by
10 Section 3(a) of this act, whose qualifications are described in subdivisions (2), (5), and (7) of
11 G.S. 130A-309.202(b), shall be appointed for an initial term of six years and subsequent
12 appointments shall be for six-year terms.

13 **SECTION 3.(f)** This section is effective when it becomes law. G.S. 130A-309.202,
14 as enacted by Section 3(a) of this act, is repealed June 30, 2030. Subpart 3 of Part 2I of Article
15 9 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of coal
16 combustion products as structural fill contracted for on or after that date. The first report due
17 under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due October 1, 2014.
18 Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this
19 act, shall be appointed no later than September 1, 2014.
20

21 **PART III. MORATORIUMS AND STUDY ON (1) USE OF COAL COMBUSTION** 22 **PRODUCTS AS STRUCTURAL FILL AND (2) CONSTRUCTION OR EXPANSION** 23 **OF COMBUSTION PRODUCTS LANDFILLS**

24 **SECTION 4.(a)** Notwithstanding 15A NCAC 13B .1701, et seq., and except as
25 provided in Section 4(b) of this act, the use of coal combustion products, as defined in
26 G.S. 130A-309.201, as structural fill is prohibited until August 1, 2015, in order to allow the
27 Department of Environment and Natural Resources, the Environmental Management
28 Commission, and the General Assembly time to review and evaluate the use of coal
29 combustion residuals as structural fill.

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

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

38 **SECTION 4.(c)** The use of coal combustion products (i) as structural fill as
39 authorized by Section 4(b) of this act shall be conducted in accordance with the requirements of
40 Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act,
41 and (ii) for other beneficial uses shall be conducted in accordance with the requirements of
42 Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative
43 Code (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1205 of
44 Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal
45 Combustion Products Management), as applicable.

46 **SECTION 4.(d)** The Department of Environment and Natural Resources and the
47 Environmental Management Commission shall jointly review Subpart 3 of Part 2I of Article 9
48 of the General Statutes, as enacted by Section 3(a) of this act, and 15A NCAC 13B .1701, et
49 seq. In conducting this review, the Department and Commission shall do all of the following:

- 50 (1) Review the uses of coal combustion products as structural fill and the
51 regulation of this use under Subpart 3 of Part 2I of Article 9 of the General

1 Statutes, as enacted by Section 3(a) of this act, to determine if the
2 requirements are sufficient to protect public health, safety, and welfare; the
3 environment; and natural resources.

4 (2) Review the uses of coal combustion products for other beneficial uses and
5 the regulation of these uses under Section .1700 of Subchapter B of Chapter
6 13 of Title 15A of the North Carolina Administrative Code (Requirements
7 for Beneficial Use of Coal Combustion By-Products) and Section .1200 of
8 Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative
9 Code (Coal Combustion Products Management), and other applicable rules,
10 to determine if the rules are sufficient to protect public health, safety, and
11 welfare; the environment; and natural resources.

12 (3) Evaluate additional opportunities for the use of coal combustion products as
13 structural fill and for other beneficial uses that would reduce the volume of
14 coal combustion residuals that are being disposed of in coal combustion
15 residuals landfills, industrial landfills, or municipal solid waste landfills
16 while still being protective of public health, safety, and welfare; the
17 environment; and natural resources.

18 (4) Monitor any actions of the United States Environmental Protection Agency
19 regarding the use of coal combustion products as structural fill or for other
20 beneficial uses.

21 (5) Jointly report to the Environmental Review Commission no later than
22 January 15, 2015, on their findings and recommendations regarding the use
23 of coal combustion products as structural fill and for other beneficial uses.

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

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

41 **SECTION 5.(a)** There is hereby established a moratorium on construction of new
42 or expansion of existing coal combustion residuals landfills, as defined by G.S. 130A-290(2c)
43 and amended by Section 3(d) of this act. The purpose of this moratorium is to allow the State to
44 assess the risks to public health, safety, welfare; the environment; and natural resources of coal
45 combustion residuals impoundments located beneath coal combustion residuals landfills to
46 determine the advisability of continued operation of these landfills.

47 **SECTION 5.(b)** The Department of Environment and Natural Resources shall
48 evaluate each coal combustion residuals landfill currently operating in the State, and, in
49 particular, assess the risks to public health, safety, welfare; the environment; and natural
50 resources, of coal combustion residuals surface impoundments located beneath coal
51 combustion residuals landfills to determine the advisability of continued operation of these

landfills. The Department shall report to the Environmental Review Commission no later than January 15, 2015, on its findings and recommendations concerning the risk assessment of each of these sites and the advisability of continued operation of coal combustion residuals landfills.

SECTION 5.(c) This section is effective when it becomes law and expires August 1, 2015.

PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED

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

"§ 143-215.1C. Report to wastewater system customers on system performance; report discharge of untreated wastewater to the Department; publication of notice of discharge of untreated wastewater and waste.

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

(a1) Report Discharge of Untreated Wastewater to the Department. – The owner or operator of any wastewater collection or treatment works for which a permit is issued under this Part shall report a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State to the Department as soon as practicable but no later than 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. This reporting requirement shall be in addition to any other reporting requirements applicable to the owner or operator of the wastewater collection or treatment works.

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

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

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

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

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

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

43 **SECTION 6.(b)** Section 6(a) of this act becomes effective September 1, 2014.

44 **SECTION 6.(c)** G.S. 166A-19.12(16) reads as rewritten:

45 "(16) Establishing and operating a 24-hour Operations Center to serve as a single
46 point of contact for local governments to report the occurrence of emergency
47 and disaster events and to coordinate local and State response assets. The
48 Division shall record all telephone calls to the 24-hour Operations Center
49 emergency hotline and shall maintain the recording of each telephone call
50 for at least one year."
51

1 **PART V. REQUIRE NOTIFICATION OF THE DEPARTMENT OF EMERGENCY**
2 **DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS;**
3 **REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS**
4 **SURFACE IMPOUNDMENTS**

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

6 "**§ 143-215.27. Repair, alteration, or removal of dam.**

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

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

23 SECTION 7.1 Part 3 of Article 21 of Chapter 143 of the General Statutes is
24 amended by adding a new section to read:

25 "**§ 143-215.27A. Closure of coal combustion residuals surface impoundments to render**
26 **such facilities exempt from the North Carolina Dam Safety Law of 1967.**

27 (a) Decommissioning Request. – The owner of a coal combustion residuals surface
28 impoundment, as defined by G.S. 130A-309.201, that seeks to decommission the impoundment
29 shall submit a Decommissioning Request to the Division of Energy, Mineral, and Land
30 Resources of the Department requesting that the facility be decommissioned. The
31 Decommissioning Request shall include, at a minimum, all of the following:

32 (1) A proposed geotechnical investigation plan scope of work. Upon preliminary
33 plan approval pursuant to subsection (b) of this section, the owner shall
34 proceed with necessary field work and submit a geotechnical report with site
35 specific field data indicating that the containment dam and material
36 impounded by the containment dam are stable, and that the impounded
37 material is not subject to liquid flow behavior under expected static and
38 dynamic loading conditions. Material testing should be performed along the
39 full extent of the containment dam and in a pattern throughout the area of
40 impounded material.

41 (2) A topographic map depicting existing conditions of the containment dam
42 and impoundment area at two foot contour intervals or less.

43 (3) If the facility contains areas capable of impounding by topography, a breach
44 plan must be included that ensures that there shall be no place within the
45 facility capable of impounding. The breach plan shall include, at a minimum,
46 proposed grading contours superimposed on the existing topographic map as
47 well as necessary engineering calculations, construction details, and
48 construction specifications.

49 (4) A permanent vegetation and stabilization or capping plan by synthetic liner
50 or other means, if needed. These plans shall include at minimum, proposed
51 grading contours superimposed on the existing topographic map where

1 applicable as well as necessary engineering calculations, construction
2 details, construction specifications, and all details for the establishment of
3 surface area stabilization.

4 (5) A statement indicating that the impoundment facility has not received
5 sluiced coal combustion residuals for at least three years and that there are
6 no future plans to place coal combustion residuals in the facility by sluicing
7 methods. The Division of Energy, Mineral, and Land Resources may waive
8 the three year requirement if proper evidence is presented by a North
9 Carolina registered professional engineer indicating that the impounded
10 material is not subject to liquid flow behavior.

11 (b) Preliminary Review and Approval. – The Decommissioning Request shall undergo
12 a preliminary review by the Division for completeness and approval of the proposed
13 geotechnical investigation plan scope of work. The owner shall be notified by letter with results
14 of the preliminary review including approval or revision requests relative to the proposed scope
15 of work included in the geotechnical investigation plan. Upon receipt of a letter issued by the
16 Division approving the preliminary geotechnical plan scope of work, the owner may proceed
17 with field work and development of the geotechnical report.

18 (c) Final Determination and Approval. – Upon receipt of the geotechnical report, the
19 Division shall complete the submittal review as provided in this subsection.

20 (1) If it is determined that sufficient evidence has been presented to clearly show
21 that the facility no longer functions as a dam in its current state, a letter
22 decommissioning the facility shall be issued by the Division and the facility
23 shall no longer be under jurisdiction of the Dam Safety Law of 1967.

24 (2) If modifications such as breach construction or implementation of a
25 permanent vegetation or surface lining plan are needed, such plans shall be
26 reviewed per standard procedures for consideration of a letter of approval to
27 modify or breach.

28 (3) If approved, such plans shall follow standard procedure for construction
29 including construction supervision by a North Carolina registered
30 professional engineer, as-built submittal by a North Carolina registered
31 professional engineer, and follow up final inspection by the Division.

32 (4) Final approval shall be issued by the Division in the form of a letter
33 decommissioning the facility and the facility shall no longer be under
34 jurisdiction of the Dam Safety Law of 1967."

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

36 **"§ 143-215.31. Supervision over maintenance and operation of dams.**

37 (a) The Commission shall have jurisdiction and supervision over the maintenance and
38 operation of dams to safeguard life and property and to satisfy minimum streamflow
39 requirements. The Commission may adopt standards for the maintenance and operation of
40 dams as may be necessary for the purposes of this Part. The Commission may vary the
41 standards applicable to various dams, giving due consideration to the minimum flow
42 requirements of the stream, the type and location of the structure, the hazards to which it may
43 be exposed, and the peril of life and property in the event of failure of a dam to perform its
44 function.

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

48 (1) The owner of the dam shall submit a proposed Emergency Action Plan for
49 the dam within 90 days after the dam is classified as a high hazard dam or an
50 intermediate hazard dam to the Department and the Department of Public
51 Safety for their review and approval. The Department and the Department of

Public Safety shall approve the Emergency Action Plan if they determine that it complies with the requirements of this subsection and will protect public health, safety, and welfare; the environment; and natural resources.

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

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

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

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

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

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

(4) The Department shall provide a copy of the Emergency Action Plan to the regional offices of the Department that might respond to an emergency condition at the dam.

(5) The Department of Public Safety shall provide a copy of the Emergency Action Plan to all local emergency management agencies that might respond to an emergency condition at the dam.

(6) Information included in an Emergency Action Plan that constitutes sensitive public security information, as provided in G.S. 132-1.7, shall be maintained as confidential information and shall not be subject to disclosure under the Public Records Act. For purposes of this section, "sensitive public security information" shall include Critical Energy Infrastructure Information protected from disclosure under rules adopted by the Federal Energy Regulatory Commission in 18 C.F.R. § 333.112.

...."

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

SECTION 9. Section 3(b) of S.L. 2009-390 reads as rewritten:

"SECTION 3.(b) Any impoundments or other facilities that were in use ~~on the effective date of this section~~ January 1, 2010, in connection with nonnuclear electric generating facilities under the jurisdiction of the North Carolina Utilities Commission, and that had been exempted under the provisions of G.S. 143-215.25A(4), prior to ~~amendment by Section 3(a) of this act,~~ January 1, 2010, shall be deemed to have received all of the necessary approvals from the Department of Environment and Natural Resources and the ~~Commission for Dam~~ Environmental Management Commission. ~~Safety, and shall not be required to submit application, certificate, or other materials in connection with the continued normal operation and maintenance of those facilities."~~

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

"§ 143-215.32. Inspection of dams.

(a) The Department may at any time inspect any dam, including a dam that is otherwise exempt from this Part, upon receipt of a written request of any affected person or agency, or upon a motion of the Environmental Management Commission. Within the limits of available

1 funds the Department shall endeavor to provide for inspection of all dams at intervals of
2 approximately five years.

3 (a1) Coal combustion residuals surface impoundments, as defined by
4 G.S. 130A-309.201, shall be inspected as provided in this subsection.

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

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

10 a. Deterioration, malfunction, or improper operation of spillway control
11 systems.

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

13 c. Severe erosion or other signs of deterioration in dikes or other
14 containment devices or structures.

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

17 e. Any other abnormal conditions at the impoundment that could pose a
18 risk to public health, safety, or welfare; the environment; or natural
19 resources.

20 (3) If any of the conditions described in subdivision (2) of this subsection are
21 observed, the owner shall provide documentation of the conditions to the
22 Department and a registered professional engineer. The registered
23 professional engineer shall investigate the conditions and, if necessary,
24 develop a plan of corrective action to be implemented by the owner of the
25 impoundment. The owner of the impoundment shall provide documentation
26 of the completed corrective action to the Department.

27 (4) The owner of a coal combustion residuals surface impoundment shall
28 provide for the annual inspection of the impoundment by an independent
29 registered professional engineer to ensure that the structural integrity and the
30 design, operation, and maintenance of the impoundment is in accordance
31 with generally accepted engineering standards. Within 30 days of the
32 inspection, the owner shall provide to the Department the inspection report
33 and a certification by the engineer that the impoundment is structurally
34 sound and that the design, operation, and maintenance of the impoundment
35 is in accordance with generally accepted engineering standards. The owner
36 and the Department shall each place the inspection report and certification
37 on a publicly accessible Internet site.

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

47 (c) If at any time the condition of any dam becomes so dangerous to the safety of life or
48 property, in the opinion of the Environmental Management Commission, as not to permit
49 sufficient time for issuance of an order in the manner provided by subsection (b) of this section,
50 the Environmental Management Commission may immediately take such measures as may be
51 essential to provide emergency protection to life and property, including the lowering of the

1 level of a reservoir by releasing water impounded or the destruction in whole or in part of the
2 dam or reservoir. The Environmental Management Commission may recover the costs of such
3 measures from the owner or owners by appropriate legal action.

4 (d) An order issued under this Part shall be served on the owner of the dam as provided
5 in G.S. 1A-1, Rule 4."
6

7 **PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM**
8 **COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT**
9 **COMMISSION**

10 **SECTION 11.(a)** G.S. 130A-29 reads as rewritten:

11 **"§ 130A-29. Commission for Public Health – Creation, powers and duties.**

12 ...

13 (c) The Commission shall adopt rules:

14 (1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.

15 (2) Establishing standards for approving sewage-treatment devices and holding
16 tanks for marine toilets as provided in G.S. 75A-6(o).

17 (3) Establishing specifications for sanitary privies for schools where
18 water-carried sewage facilities are unavailable as provided in
19 G.S. 115C-522.

20 (4) Establishing requirements for the sanitation of local confinement facilities as
21 provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.

22 (5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.

23 (5a) Establishing eligibility standards for participation in Department
24 reimbursement programs.

25 ~~(6) Requiring proper treatment and disposal of sewage and other waste from~~
26 ~~chemical and portable toilets.~~

27 (7) Establishing statewide health outcome objectives and delivery standards.

28 (8) Establishing permit requirements for the sanitation of premises, utensils,
29 equipment, and procedures to be used by a person engaged in tattooing, as
30 provided in Part 11 of Article 8 of this Chapter.

31 (9) Implementing immunization requirements for adult care homes as provided
32 in G.S. 131D-9 and for nursing homes as provided in G.S. 131E-113.

33 (10) Pertaining to the biological agents registry in accordance with
34 G.S. 130A-479.

35 (11) For matters within its jurisdiction that allow for and regulate horizontal
36 drilling and hydraulic fracturing for the purpose of oil and gas exploration
37 and development.

38"

39 **SECTION 11.(b)** G.S. 130A-291.1 reads as rewritten:

40 **"§ 130A-291.1. Septage management program; permit fees.**

41 ...

42 (d) Septage shall be treated and disposed only at a wastewater system that has been
43 approved by the Department under rules adopted by the Commission ~~or by the Environmental~~
44 ~~Management Commission~~ or at a site that is permitted by the Department under this section. A
45 permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the
46 Commission.

47"

48 **SECTION 11.(c)** G.S. 130A-294(a)(4) reads as rewritten:

49 **"§ 130A-294. Solid waste management program.**

1 (a) The Department is authorized and directed to engage in research, conduct
2 investigations and surveys, make inspections and establish a statewide solid waste management
3 program. In establishing a program, the Department shall have authority to:

4 ...

5 (4) a. Develop a permit system governing the establishment and operation
6 of solid waste management facilities. A landfill with a disposal area
7 of 1/2 acre or less for the on-site disposal of land clearing and inert
8 debris is exempt from the permit requirement of this section and shall
9 be governed by G.S. 130A-301.1. Demolition debris from the
10 decommissioning of manufacturing buildings, including electric
11 generating stations, that is disposed of on the same site as the
12 decommissioned buildings, is exempt from the permit requirement of
13 this section and rules adopted pursuant to this section and shall be
14 governed by G.S. 130A-301.3. The Department shall not approve an
15 application for a new permit, the renewal of a permit, or a substantial
16 amendment to a permit for a sanitary landfill, excluding demolition
17 landfills as defined in the rules of the Commission, except as
18 provided in subdivisions (3) and (4) of subsection (b1) of this
19 section. No permit shall be granted for a solid waste management
20 facility having discharges that are point sources until the Department
21 has referred the complete plans and specifications to the
22 ~~Environmental Management~~ Commission and has received advice in
23 writing that the plans and specifications are approved in accordance
24 with the provisions of G.S. 143-215.1. In any case where the
25 Department denies a permit for a solid waste management facility, it
26 shall state in writing the reason for denial and shall also state its
27 estimate of the changes in the applicant's proposed activities or plans
28 that will be required for the applicant to obtain a permit.

29 b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1,
30 2007.

31 c. The Department shall deny an application for a permit for a solid
32 waste management facility if the Department finds that:

- 33 1. Construction or operation of the proposed facility would be
34 inconsistent with or violate rules adopted by the Commission.
- 35 2. Construction or operation of the proposed facility would
36 result in a violation of water quality standards adopted by the
37 ~~Environmental Management~~ Commission pursuant to
38 G.S. 143-214.1 for waters, as defined in G.S. 143-213.
- 39 3. Construction or operation of the facility would result in
40 significant damage to ecological systems, natural resources,
41 cultural sites, recreation areas, or historic sites of more than
42 local significance. These areas include, but are not limited to,
43 national or State parks or forests; wilderness areas; historic
44 sites; recreation areas; segments of the natural and scenic
45 rivers system; wildlife refuges, preserves, and management
46 areas; areas that provide habitat for threatened or endangered
47 species; primary nursery areas and critical fisheries habitat
48 designated by the Marine Fisheries Commission; and
49 Outstanding Resource Waters designated by the
50 ~~Environmental Management~~ Commission.

51"

1 **SECTION 11.(d)** G.S. 130A-300 reads as rewritten:

2 "**§ 130A-300. Effect on laws applicable to water pollution control.**

3 This Article shall not be considered as amending, repealing or in any manner abridging or
4 interfering with those sections of the General Statutes of North Carolina relative to the control
5 of water pollution as now administered by the ~~Environmental Management~~ Commission nor
6 shall the provisions of this Article be construed as being applicable to or in any way affecting
7 the authority of the ~~Environmental Management~~ Commission to control the discharges of
8 wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143 of the
9 General Statutes."

10 **SECTION 11.(e)** G.S. 130A-302 reads as rewritten:

11 "**§ 130A-302. Sludge deposits at sanitary landfills.**

12 Sludges generated by the treatment of wastewater discharges which are point sources
13 subject to permits granted under Section 402 of the Federal Water Pollution Act, as amended
14 (P.L. 92-500), or permits generated under G. S. 143-215.1 by the ~~Environmental Management~~
15 Commission shall not be deposited in or on a sanitary landfill permitted under this Article
16 unless in a compliance with the rules concerning solid waste adopted under this Article."

17 **SECTION 11.(f)** G.S. 130A-310.3 reads as rewritten:

18 "**§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste**
19 **disposal sites.**

20 ...

21 (b) Where possible, the Secretary shall work cooperatively with any owner, operator,
22 responsible party, or any appropriate agency of the State or federal government to develop and
23 implement the inactive hazardous substance or waste disposal site remedial action program.
24 The Secretary shall not take action under this section to the extent that the ~~Environmental~~
25 ~~Management~~ Commission, the Commissioner of Agriculture, or the Pesticide Board has
26 assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

27 ...

28 (d) In any inactive hazardous substance or waste disposal site remedial action program
29 implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup
30 standard as would be applied under CERCLA/SARA, and may seek federal approval of any
31 such program to insure concurrent compliance with federal standards. State standards may
32 exceed and be more comprehensive than such federal standards. The Secretary shall assure
33 concurrent compliance with applicable standards set by the ~~Environmental Management~~
34 Commission.

35 "

36 **SECTION 11.(g)** G.S. 130A-310.4(g) reads as rewritten:

37 "(g) The Commission ~~on Health Services~~ [~~Commission for Public Health~~] shall adopt
38 rules prescribing the form and content of the notices required by this section. The proposed
39 remedial action plan shall include a summary of all alternatives considered in the development
40 of the plan. A record shall be maintained of all comment received by the Department regarding
41 the remedial action plan."

42 **SECTION 11.(h)** G.S. 130A-310.31(b)(5) reads as rewritten:

43 "(5) "Unrestricted use standards" when used in connection with "cleanup",
44 "remediated", or "remediation" means contaminant concentrations for each
45 environmental medium that are considered acceptable for all uses and that
46 comply with generally applicable standards, guidance, or established
47 methods governing the contaminants that are established by statute or
48 adopted, published, or implemented by the ~~Environmental Management~~
49 ~~Commission~~, the Commission, or the Department instead of the site-specific
50 contaminant levels established pursuant to this Part."

51 **SECTION 11.(i)** G.S. 130A-310.65 reads as rewritten:

"§ 130A-310.65. Definitions.

As used in this Part:

- (1) "Background standard" means the naturally occurring concentration of a substance in the absence of the release of a contaminant.
- (2) ~~"Commission" means the Environmental Management Commission created pursuant to G.S. 143B-282.~~
- ...
- (12) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses; that are protective of public health, safety, and welfare and the environment; and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the ~~Commission, the Commission for Public Health, Commission~~ or the Department."

SECTION 11.(j) G.S. 113-391(a)(5)f. reads as rewritten:

"f. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose. Such rules shall address storage, transportation, and disposal of wastes that may contain radioactive materials or wastes that may be toxic or have other hazardous wastes' characteristics that are not otherwise regulated as a hazardous waste by the federal Resource Conservation and Recovery Act (RCRA), such as top-hole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, and drill cuttings from the drilling, alteration, production, plugging, or other activity associated with oil and gas wells. Wastes generated in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose that constitute hazardous waste under RCRA shall be subject to rules adopted by the Environmental Management Commission for Public Health to implement RCRA requirements in the State."

SECTION 11.(k) G.S. 113-415 reads as rewritten:**"§ 113-415. Conflicting laws.**

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

SECTION 11.(l) The Revisor of Statutes shall make any conforming statutory changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

SECTION 11.(m) The Codifier of Rules shall make any conforming rule changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of

1 the General Statutes from the Commission for Public Health to the Environmental Management
2 Commission.

3
4 **PART VII. AMEND COMPLIANCE BOUNDARY PROVISIONS**

5 **SECTION 12.(a)** G.S. 143-215.1 reads as rewritten:

6 "**§ 143-215.1. Control of sources of water pollution; permits required.**

7 ...
8 (i) Any person subject to the requirements of this section who is required to obtain an
9 individual permit from the Commission for a disposal system under the authority of
10 G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as
11 may be established by rule or permit for various categories of disposal systems and beyond
12 which groundwater quality standards may not be exceeded. ~~The location of the compliance~~
13 ~~boundary shall be established at the property boundary, except as otherwise established by the~~
14 ~~Commission. Multiple contiguous properties under common ownership and permitted for use~~
15 ~~as a disposal system shall be treated as a single property with regard to determination of a~~
16 ~~compliance boundary under this subsection. boundary. Nothing in this subsection shall be~~
17 ~~interpreted to require a revision to an existing compliance boundary previously approved by~~
18 ~~rule or permit.~~

19 (j) ~~When operation of a disposal system permitted under this section results in an~~
20 ~~exceedance of the groundwater quality standards adopted in accordance with G.S. 143-214.1,~~
21 ~~the Commission shall require that the exceedances within the compliance boundary be~~
22 ~~remedied through cleanup, recovery, containment, or other response only when any of the~~
23 ~~following conditions occur:~~

24 (1) ~~A violation of any water quality standard in adjoining classified waters of~~
25 ~~the State occurs or can be reasonably predicted to occur considering~~
26 ~~hydrogeological conditions, modeling, or any other available evidence.~~

27 (2) ~~An imminent hazard or threat to the environment, public health, or safety~~
28 ~~exists.~~

29 (3) ~~A violation of any standard in groundwater occurring in the bedrock,~~
30 ~~including limestone aquifers in Coastal Plain sediments, unless it can be~~
31 ~~demonstrated that the violation will not adversely affect, or have the~~
32 ~~potential to adversely affect, a water supply well.~~

33 (k) ~~Where operation of a disposal system permitted under this section results in~~
34 ~~exceedances of the groundwater quality standards at or beyond the compliance boundary~~
35 ~~established under subsection (i) of this section, boundary, the Commission shall require the~~
36 ~~permittee to undertake corrective action, without regard to the date that the system was first~~
37 ~~permitted, to restore the groundwater quality by assessing the cause, significance, and extent of~~
38 ~~the violation of standards and submit the results of the investigation, and a plan and proposed~~
39 ~~schedule for corrective action to the Director or the Director's designee. The permittee shall~~
40 ~~implement the plan as approved by, and in accordance with, a schedule established by the~~
41 ~~Director or the Director's designee. In establishing a schedule the Director or the Director's~~
42 ~~designee shall consider any reasonable schedule proposed by the permittee. exceedances shall~~
43 ~~be remedied through cleanup, recovery, containment, or other response as directed by the~~
44 ~~Commission."~~

45 **SECTION 12.(b)** Section 46(b) of S.L. 2013-413 is repealed.

46 **SECTION 12.(c)** The Environmental Management Commission shall review the
47 compliance boundary and corrective action provisions of Subchapter 2L of Title 15A of the
48 North Carolina Administrative Code for clarity and internal consistency. The Commission
49 shall report the results of its review, including any recommendations, to the Environmental
50 Review Commission no later than December 1, 2014.

PART VIII. OTHER STUDIES

SECTION 13.(a) The Coal Ash Management Commission, established pursuant to G.S. 130A-309.202, as enacted by Section 3(a) of this act, shall study whether and under what circumstances no further action or natural attenuation is appropriate for a coal combustion residuals surface impoundment that is classified as low-priority pursuant to G.S. 130A-309.211, as enacted by Section 3(a) of this act. In conducting this study, the Commission shall specifically consider whether there is any contact or interaction between coal combustion residuals and groundwater and surface water, whether the area has reverted to a natural state as evidenced by the presence of wildlife and vegetation, and whether no further action or natural attenuation would be protective of public health, safety, and welfare; the environment; and natural resources. The Commission shall report the results of its study, including any recommendations, to the Environmental Review Commission no later than October 1, 2015.

SECTION 13.(b) The Department of Environment and Natural Resources shall review and make recommendations on all deadlines established under Part 2I of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 3(a) of this act. The Department shall report the results of its study, including any recommendations, to the Environmental Review Commission no later than December 1, 2014.

SECTION 14. The Department of Transportation shall evaluate additional opportunities for the use of coal combustion products in the construction and maintenance of roads and bridges within the State. The Department shall report the results of its study, including any recommendations, to the Environmental Review Commission no later than December 1, 2014.

PART IX. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT

SECTION 15.(a) Article 14 of Chapter 62 of the General Statutes is amended by adding a new section to read:

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

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

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

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

(d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash Management Commission is created. The fees collected pursuant to this section and all other funds received by the Coal Ash Management Commission shall be deposited in the Coal Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing

1 account, and any interest or other income derived from the Fund shall be credited to the Fund.
2 Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly.
3 The Commission shall be subject to the provisions of the State Budget Act, except that no
4 unexpended surplus of the Coal Combustion Residuals Management Fund shall revert to the
5 General Fund. All funds credited to the Commission Fund shall be used only to pay the
6 expenses of the Coal Ash Management Commission and the Department of Environment and
7 Natural Resources in providing oversight of coal combustion residuals.

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

10 **SECTION 15.(b)** Notwithstanding G.S. 62-302.1, as enacted by this section, for
11 the first two quarters of fiscal year 2014-2015, each public utility shall pay the fee in
12 G.S. 62-302.1 on a monthly basis. The fee shall be paid by the fifteenth of the following month.

13 **SECTION 15.(c)** Subsection (a) of this section becomes effective July 1, 2014, and
14 expires April 1, 2030, and applies to jurisdictional revenues earned on or after July 1, 2014, and
15 before April 1, 2030. The remainder of this section becomes effective July 1, 2014.

16 17 **PART X. SPECIFICATIONS FOR USE OF COAL ASH COAL COMBUSTION** 18 **PRODUCTS IN PUBLIC PROCUREMENT**

19 **SECTION 16.** Article 3 of Chapter 143 of the General Statutes is amended by
20 adding a new section to read:

21 **"§ 143-58.6. Specifications for Use of Coal Combustion Products.**

22 (a) State Construction Office to Develop Technical Specifications. – The State
23 Construction Office shall develop recommended technical specifications for the use of coal
24 combustion products that may be utilized in any construction by all State departments,
25 institutions, agencies, community colleges, and local school administrative units, other than the
26 Department of Transportation. The technical specifications shall address all products used in
27 construction, including, but not limited to, the use of coal combustion products in concrete and
28 cement products, and in construction fill.

29 (b) Department of Transportation to Develop Technical Specifications. – The
30 Department of Transportation shall develop recommended technical specifications for the use
31 of coal combustion products that may be utilized in any construction by the Department of
32 Transportation. The technical specifications shall address all products used in construction,
33 including, but not limited to, the use of coal combustion products in concrete and cement
34 products, and in construction fill.

35 (c) Specification Factors. – The State Construction Office and the Department of
36 Transportation shall consider safety, best practice engineering standards, quality, cost, and
37 availability of an in-State source of coal combustion products in developing the recommended
38 technical specifications pursuant to this section.

39 (d) Consultation. – The State Construction Office and the Department of Transportation
40 shall consult with each other in the development of the recommended technical specifications
41 pursuant to the provisions of this section, in order to insure that the recommended technical
42 standards are uniform for similar types of construction.

43 (e) Report of Recommended Specifications. – The State Construction Office and the
44 Department of Transportation shall report the recommended technical specifications developed
45 pursuant to this section to the Environmental Review Commission and the Joint Legislative
46 Transportation Oversight Committee on or before February 1, 2015."

47 48 **PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

49 **SECTION 17.** If any provision of this act or its application is held invalid, the
50 invalidity does not affect other provisions or applications of this act that can be given effect

1 without the invalid provisions or application, and to this end the provisions of this act are
2 severable.
3 **SECTION 18.** Except as otherwise provided, this act is effective when it becomes
4 law.
5