

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

H

HOUSE BILL 56

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Short Title: Amend Environmental Laws - HN.

(Public)

Sponsors:

Referred to:

February 8, 2017

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS.

The General Assembly of North Carolina enacts:

FINANCIAL ASSURANCE MODIFICATIONS FOR RISK-BASED CLEANUPS

SECTION 1. G.S. 130A-310.72 reads as rewritten:

"§ 130A-310.72. Financial assurance requirement.

The person conducting remediation of a contaminated industrial-site pursuant to the provisions of this Part shall establish financial assurance that will ensure that sufficient funds are available to implement and maintain the actions or controls specified in the remedial action plan for the site. The person conducting remediation of a site may establish financial assurance through one of the following mechanisms, or any combination of the following mechanisms, in a form specified or approved by the Department: insurance products issued from entities having no corporate or ownership association with the person conducting the remediation; funded trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local government financial tests; corporate guarantees; local government guarantees; capital reserve funds; or any other financial mechanism authorized for the demonstration of financial assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition) and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. Proof of financial assurance shall be provided in the remedial action plan and annually thereafter on the anniversary date of the approval of the plan. The Department may waive the requirement for a person conducting remediation of a contaminated site pursuant to the provisions of this Part to establish or maintain financial assurance if the Department finds that the only actions or controls to be implemented or maintained as part of the remedial action plan for the site include either or both of the following:

- (1) Annual reporting of land-use controls.
- (2) The maintenance of durable or low-maintenance covers for contaminated soil."

REPEAL OBSOLETE HAZARDOUS WASTE PROVISIONS



Handwritten notes:
New exemptions to
Dunkles
take away local
govt control
relate to
landfills
terminal -
groins

1 SECTION 2.(a) G.S. 130A-294(k) is repealed.

2 SECTION 2.(b) G.S. 130A-309.17 is repealed.

3
4 **LAND-USE RESTRICTIONS FOR PROPERTY CONTAMINATED BY A NON-UST**
5 **PETROLEUM DISCHARGE OR RELEASE**

6 SECTION 3.(a) G.S. 143B-279.9(b) reads as rewritten:

7 "(b) The definitions set out in G.S. 143-215.94A apply to this subsection. A remedial
8 action plan for the cleanup of environmental damage resulting from a discharge or release of
9 petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143
10 of the General Statutes-Statutes, other petroleum sources, or from an aboveground storage tank
11 pursuant to Part 7 of Article 21A of Chapter 143 of the General Statutes must include an
12 agreement by the owner, operator, or other party responsible for the discharge or release of
13 petroleum to record a notice of any applicable land-use restrictions that meet the requirements
14 of this subsection as provided in G.S. 143B-279.11. All of the provisions of this section shall
15 apply except as specifically modified by this subsection and G.S. 143B-279.11. Any restriction
16 on the current or future use of real property pursuant to this subsection shall be enforceable
17 only with respect to: (i) real property on which the source of contamination is located and (ii)
18 any real property on which contamination is located at the time the remedial action plan is
19 approved and that was owned or controlled by any owner or operator of the underground
20 storage tank or other responsible party at the time the discharge or release of petroleum is
21 discovered or reported or at any time thereafter. No restriction on the current or future use of
22 real property shall apply to any portion of any parcel or tract of land on which contamination is
23 not located. This subsection shall not be construed to require any person to record any notice of
24 restriction on the current or future use of real property other than the real property described in
25 this subsection. For purposes of this subsection and G.S. 143B-279.11, the Secretary may
26 restrict current or future use of real property only as set out in any one or more of the following
27 subdivisions:

- 28 (1) Where soil contamination will remain in excess of unrestricted use
29 standards, the property may be used for a primary or secondary residence,
30 school, daycare center, nursing home, playground, park, recreation area, or
31 other similar use only with the approval of the Department.
- 32 (2) Where soil contamination will remain in excess of unrestricted use standards
33 and the property is used for a primary or secondary residence that was
34 constructed before the release of petroleum that resulted in the
35 contamination is discovered or reported, the Secretary may approve
36 alternative restrictions that are sufficient to reduce the risk of exposure to
37 contaminated soils to an acceptable level while allowing the real property to
38 continue to be used for a residence.
- 39 (3) Where groundwater contamination will remain in excess of unrestricted use
40 standards, installation or operation of any well usable as a source of water
41 shall be prohibited.
- 42 (4) Any restriction on the current or future use of the real property that is agreed
43 upon by both the owner of the real property and the Department.

44 Except with respect to land contaminated from a discharge or release of petroleum from an
45 underground storage tank, the imposition of restrictions on the current or future use of real
46 property on sites contaminated by the discharge or release of petroleum from an aboveground
47 storage tank, or another petroleum source, from which contamination has migrated to off-site
48 properties, as that term is defined under G.S. 130A-310.65(3a), shall only be allowed as
49 provided in G.S. 143-215.104AA or G.S. 130A-310.73A, as applicable."

50 SECTION 3.(b) G.S. 143B-279.11 reads as rewritten:

1 "§ 143B-279.11. Recordation of residual petroleum from an—underground or
2 aboveground storage tank-tanks or other sources.

3 (a) The definitions set out in G.S. 143-215.94A and G.S. 143B-279.9 apply to this
4 section. This section applies only to a cleanup pursuant to a remedial action plan that addresses
5 environmental damage resulting from a discharge or release of petroleum from an underground
6 storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes.
7 Statutes or from an aboveground storage tank or other petroleum source pursuant to Part 7 of Article
8 21A of Chapter 143 of the General Statutes.

9 (b) The owner, operator, or other person responsible for a discharge or release of
10 petroleum from an underground storage ~~tank-tank~~, aboveground storage tank, or other
11 petroleum source shall prepare and submit to the Department a proposed Notice that meets the
12 requirements of this section. The proposed Notice shall be submitted to the Department (i)
13 before the property is conveyed, or (ii) when the owner, operator, or other person responsible
14 for the discharge or release requests that the Department issue a determination that no further
15 action is required under the remedial action plan, whichever first occurs. The Notice shall be
16 entitled "NOTICE OF RESIDUAL PETROLEUM". The Notice shall include a description that
17 would be sufficient as a description in an instrument of conveyance of the (i) real property on
18 which the source of contamination is located and (ii) any real property on which contamination
19 is located at the time the remedial action plan is approved and that was owned or controlled by
20 any owner or operator of the underground storage ~~tank-tank~~, aboveground storage tank, or other
21 petroleum source, or other responsible party at the time the discharge or release of petroleum is
22 discovered or reported or at any time thereafter. The Notice shall identify the location of any
23 residual petroleum known to exist on the real property at the time the Notice is prepared. The
24 Notice shall also identify the location of any residual petroleum known, at the time the Notice
25 is prepared, to exist on other real property that is a result of the discharge or release. The Notice
26 shall set out any restrictions on the current or future use of the real property that are imposed by
27 the Secretary pursuant to G.S. 143B-279.9(b) to protect public health, the environment, or users
28 of the property.

29 (c) If the contamination is located on more than one parcel or tract of land, the
30 Department may require that the owner, operator, or other person responsible for the discharge
31 or release prepare a composite map or plat that shows all parcels or tracts. If the contamination
32 is located on one parcel or tract of land, the owner, operator, or other person responsible for the
33 discharge or release may prepare a map or plat that shows the parcel but is not required to do
34 so. A map or plat shall be prepared and certified by a professional land surveyor, shall meet the
35 requirements of G.S. 47-30, and shall be submitted to the Department for approval. When the
36 Department has approved a map or plat, it shall be recorded in the office of the register of
37 deeds and shall be incorporated into the Notice by reference.

38 (d) The Department shall review the proposed Notice to determine whether the Notice
39 meets the requirements of this section and rules adopted to implement this section and shall
40 provide the owner, operator, or other person responsible for the discharge or release of
41 petroleum from an underground storage ~~tank-tank~~, aboveground storage tank, or other
42 petroleum source, with a notarized copy of the approved Notice. After the Department
43 approves the Notice, the owner, operator, or other person responsible for the discharge or
44 release of petroleum from an underground storage ~~tank-tank~~, aboveground storage tank, or
45 other petroleum source shall file a notarized copy of the approved Notice in the register of
46 deeds office in the county or counties in which the real property is located (i) before the
47 property is conveyed or (ii) within 30 days after the owner, operator, or other person
48 responsible for the discharge or release receives notice from the Department that no further
49 action is required under the remedial action plan, whichever first occurs. If the owner, operator,
50 or other person responsible for the discharge or release fails to file the Notice as required by
51 this section, any determination by the Department that no further action is required is void. The

owner, operator, or other person responsible for the discharge or release, may record the Notice required by this section without the agreement of the owner of the real property. The owner, operator, or other person responsible for the discharge or release shall submit a certified copy of the Notice as filed in the register of deeds office to the Department.

(e) Repealed by Session Laws 2012-18, s. 1.23, effective July 1, 2012.

(f) In the event that the owner, operator, or other person responsible for the discharge or release fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of the real property who is not a responsible party submits and files the Notice required by this section, the owner may recover the reasonable costs thereof from any responsible party.

(g) A Notice filed pursuant to this section shall, at the request of the owner of the real property, be cancelled by the Secretary after the residual petroleum has been eliminated or remediated to unrestricted use standards. If requested in writing by the owner of the land, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the residual petroleum has been eliminated, or that the residual petroleum has been remediated to unrestricted use standards, and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded.

(h) Except with respect to land contaminated from a discharge or release of petroleum from an underground storage tank, the provisions of this section shall only apply to sites contaminated by the discharge or release of petroleum from an aboveground storage tank, or another petroleum source, from which contamination has migrated to off-site properties, as that term is defined under G.S. 130A-310.65(3a), in compliance with the requirements of G.S. 143-215.104AA or G.S. 130A-310.73A, as applicable.

CONSOLIDATE VARIOUS WATER RESOURCES AND WATER QUALITY REPORTS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 4.(a) G.S. 143-355(m) is repealed.

SECTION 4.(b) G.S. 143-355(p) reads as rewritten:

"(p) Report. – The Department of Environmental Quality shall report to the Environmental Review Commission on the implementation of this section, including ~~the development of the State water supply plan and the~~ development of basinwide hydrologic models, no later than November 1 of each year. The Department shall submit the report required by this subsection with the report on basinwide water ~~quality~~-management plans required by G.S. 143-215.8B(d) as a single report."

COASTAL AREA MANAGEMENT ACT MODIFICATIONS

SECTION 5.(a) G.S. 113A-124(c) is amended by adding a new subdivision to read:

"(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the

1. Department. Any person to whom a delegation of power is made to conduct
 2. a hearing shall report his recommendations with the evidence and the record
 3. of the hearing to the Commission for decision or action.

4. (5) Repealed by Session Laws 1987, c. 827, s. 141.

5. (6) To delegate the power to determine whether a contested case hearing is
 6. appropriate in accordance with G.S. 113A-121.1(b).

7. (7) To delegate the power to grant or deny requests for declaratory rulings under
 8. G.S. 150B-4 in accordance with standards adopted by the Commission.

9. (8) To adopt rules to implement this Article.

10. (9) To delegate the power to approve land-use plans in accordance with
 11. G.S. 113A-110(f) to any qualified employee of the Department."

12. **SECTION 5.(b)** G.S. 113A-119 reads as rewritten:

13. "**§ 113A-119. Permit applications generally.**

14. (a) Any person required to obtain a permit under this Part shall file with the Secretary
 15. and (in the case of a permit sought from a city or county) with the designated local official an
 16. application for a permit in accordance with the form and content designated by the Secretary
 17. and approved by the Commission. The applicant must submit with the application a check or
 18. money order payable to the Department or the city or county, as the case may be, constituting a
 19. fee set by the Commission pursuant to G.S. 113A-119.1.

20. (b) Upon receipt of any application, a significant modification to an application for a
 21. major permit, or an application to modify substantially a previously issued major permit, the
 22. Secretary shall issue public notice of the proposed development (i) by mailing a copy of the
 23. application or modification, or a brief description thereof together with a statement indicating
 24. where a detailed copy of the proposed development may be inspected, to any citizen or group
 25. which has filed a request to be notified of the proposed development, and to any interested
 26. State agency; (ii) with the exception of minor permit applications, by posting or causing to be
 27. posted a notice at the location of the proposed development stating that an application, a
 28. modification of an application for a major permit, or an application to modify a previously
 29. issued major permit for development has been made, where the application or modification
 30. may be inspected, and the time period for comments; and (iii) with the exception of minor
 31. permit applications, by publishing notice of the application or modification at least once in one
 32. newspaper of general circulation in the county or counties wherein the development would be
 33. located at least 20 days before final action on a major permit or before the beginning of the
 34. hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the
 35. development should be submitted to the Secretary by a specified date, not less than 15 days
 36. from the date of the newspaper publication of the notice or 15 days after mailing of the mailed
 37. notice, whichever is later.

38. (c) Within the meaning of this Part, the "designated local official" is the official who
 39. has been designated by the local governing body to receive and consider permit applications
 40. under this Part."

41.
 42. **ESTABLISH COASTAL STORM DAMAGE MITIGATION FUND**

43. **SECTION 6.** Article 21 of Chapter 143 of the General Statutes is amended by
 44. adding a new Part to read:

45. "Part 8D. Coastal Storm Damage Mitigation Fund.

46. **"§ 143-215.73M. Coastal Storm Damage Mitigation Fund.**

47. (a) Fund Established. – The Coastal Storm Damage Mitigation Fund is established as a
 48. special revenue fund. The Fund consists of General Fund appropriations, gifts, grants, devises,
 49. monies contributed by a non-State entity for a particular beach nourishment or damage
 50. mitigation project or group of projects, and any other revenues specifically allocated to the
 51. Fund by an act of the General Assembly.

1 **(b) Uses of the Fund.** – Revenue credited to the Fund may only be used for costs
2 associated with beach nourishment, artificial dunes, and other projects to mitigate or remediate
3 coastal storm damage to the ocean beaches and dune systems of the State.

4 **(c) Conditions on Funding.** – Any project funded by revenue from the Fund must be
5 cost-shared with non-State dollars on a basis of at least one non-State dollar for every one
6 dollar from the Fund.

7 **(d) Return of Non-State Entity Funds.** – Non-State entities that contribute to the Fund
8 for a particular project or group of projects may make a written request to the Secretary that the
9 contribution be returned if the contribution has not been spent or encumbered within two years
10 of receipt of the contribution by the Fund. If the written request is made prior to the funds being
11 spent or encumbered, the Secretary shall return the funds to the entity within 30 days after the
12 later of (i) receiving the request or (ii) the expiration of the two-year period described by this
13 subsection."

14 15 16 **CLARIFY SETBACK DETERMINATION FOR PERMITTED DISPOSAL SYSTEMS**

17 **SECTION 7.** G.S. 143-215.1(i) reads as rewritten:

18 "(i) Any person subject to the requirements of this section who is required to obtain an
19 individual permit from the Commission for a disposal system under the authority of
20 G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as
21 may be established by rule or permit for various categories of disposal systems and beyond
22 which groundwater quality standards may not be exceeded. Multiple contiguous properties
23 under common ownership and permitted for use as a disposal system shall be treated as a single
24 property with regard to determination of a compliance ~~boundary~~ boundary and setbacks to
25 property lines."
26
27

28 **AMEND THE RULE FOR POOL LIGHTING**

29 **SECTION 8.(a) Definitions.** – "Pool Lighting and Ventilation Rule" means 15A
30 NCAC 18A .2524 (Lighting and Ventilation) for purposes of this section and its
31 implementation.

32 **SECTION 8.(b) Pool Lighting and Ventilation Rule.** – Until the effective date of
33 the revised permanent rule that the Commission for Public Health is required to adopt pursuant
34 to subsection (d) of this section, the Commission and local inspectors shall implement the Pool
35 Lighting and Ventilation Rule, as provided in subsection (c) of this section.

36 **SECTION 8.(c) Implementation.** – The Commission shall require pool
37 illumination sufficient to illuminate the main drains of a pool. The Commission shall require
38 pool illumination sufficient to illuminate the deck area of a pool so that it is visible at all times
39 the pool is in use but shall not require specific foot candles of illumination for the deck area.

40 **SECTION 8.(d) Additional Rule-Making Authority.** – The Commission shall
41 adopt a rule to amend the Pool Lighting and Ventilation Rule consistent with subsection (c) of
42 this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission, pursuant
43 to this section, shall be substantively identical to the provisions of subsection (c) of this section.
44 Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B
45 of the General Statutes. Rules adopted pursuant to this section shall become effective as
46 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
47 provided by G.S. 150B-21.3(b2).

48 **SECTION 8.(e) Sunset.** – This section expires when permanent rules adopted as
49 required by subsection (d) of this section become effective.
50

1. **AMEND THE PROTECTION OF EXISTING BUFFERS RULES TO EXEMPT**
2. **CERTAIN APPLICABILITY REQUIREMENTS FOR PUBLIC SAFETY**

3. **SECTION 9.(a)** Definitions. – "Protection of Existing Buffers Rules" means all of
4. the following rules for purposes of this section and its implementation:

5. (1) Neuse River Basin: Nutrient Sensitive Waters Management Strategy:
6. Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B
7. .0233).
8. (2) Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy:
9. Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B.
10. 0259).
11. (3) Randleman Lake Water Supply Watershed: Protection and Maintenance of
12. Existing Riparian Buffers (15A NCAC 02B .0250).
13. (4) Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian
14. Buffers (15A NCAC 02B .0267).
15. (5) Goose Creek Watershed Water Quality Management Plan (15A NCAC 02B
16. .0605, 15A NCAC 02B .0606, 15A NCAC 02B .0607, 15A NCAC 02B
17. .0608).
18. (6) Mitigation Program Requirements for Protection and Maintenance of
19. Riparian Buffers (15A NCAC 02B .0295).
20. (7) Catawba River Basin: Protection and Maintenance of Existing Riparian
21. Buffers (15A NCAC 02B .0243).

22. **SECTION 9.(b)** Protection of Existing Buffers Rules. – Until the effective date of
23. the revised permanent rules that the Environmental Management Commission is required to
24. adopt pursuant to subsection (d) of this section, the Commission and the Department of
25. Environmental Quality shall implement the Protection of Existing Buffers Rules, as provided in
26. subsection (c) of this section.

27. **SECTION 9.(c)** Implementation. – The Commission shall exempt from the
28. applicability requirements of the Protection of Existing Buffers Rules any publicly owned
29. spaces where it has been determined by the head of the local law enforcement agency with
30. jurisdiction over that area that the buffers pose a risk to public safety.

31. **SECTION 9.(d)** Additional Rule-Making Authority. – The Commission shall
32. adopt rules to amend the Protection of Existing Buffers Rules consistent with subsection (c) of
33. this section. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission, pursuant
34. to this section, shall be substantively identical to the provisions of subsection (c) of this section.
35. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B
36. of the General Statutes. Rules adopted pursuant to this section shall become effective as
37. provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
38. provided by G.S. 150B-21.3(b2).

39. **SECTION 9.(e)** Sunset. – This section expires when permanent rules adopted as
40. required by subsection (d) of this section become effective.

41.
42. **AMEND THE RULE FOR PROTECTION AND MAINTENANCE OF EXISTING**
43. **BUFFERS IN THE CATAWBA RIVER BASIN TO EXEMPT CERTAIN**
44. **APPLICABILITY REQUIREMENTS FOR PUBLIC WALKING TRAILS**

45. **SECTION 10.(a)** Definitions. – "Protection and Maintenance of Existing Riparian
46. Buffers Rule" means 15A NCAC 02B .0243 (Catawba River Basin: Protection and
47. Maintenance of Existing Riparian Buffers) for purposes of this section and its implementation.

48. **SECTION 10.(b)** Protection and Maintenance of Existing Riparian Buffers Rule. –
49. Until the effective date of the revised permanent rule that the Environmental Management
50. Commission is required to adopt pursuant to subsection (d) of this section, the Commission and

1 the Department of Environmental Quality shall implement the Protection and Maintenance of
2 Existing Riparian Buffers Rule, as provided in subsection (c) of this section.

3 **SECTION 10.(c)** Implementation. – The Commission shall exempt from the
4 applicability requirements of the Protection and Maintenance of Existing Riparian Buffers Rule
5 any publicly owned property that will be used for walking trails.

6 **SECTION 10.(d)** Additional Rule-Making Authority. – The Commission shall
7 adopt a rule to amend the Protection and Maintenance of Existing Riparian Buffers Rule
8 consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule
9 adopted by the Commission, pursuant to this section, shall be substantively identical to the
10 provisions of subsection (c) of this section. Rules adopted pursuant to this section are not
11 subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant
12 to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more
13 written objections had been received as provided by G.S. 150B-21.3(b2).

14 **SECTION 10.(e)** Sunset. – This section expires when permanent rules adopted as
15 required by subsection (d) of this section become effective.

16 **RIPARIAN BUFFER TAX EXCLUSION STUDY**

17 **SECTION 11.(a)** The Fiscal Research Division of the North Carolina General
18 Assembly is directed to estimate the value of property that is subject to the following riparian
19 buffer rules and the value of property that is being used as a riparian buffer under these rules
20 for each county within the affected river basins:
21

- 22 (1) Neuse River Basin: Nutrient Sensitive Waters Management Strategy:
23 Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B
24 .0233).
- 25 (2) Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy:
26 Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B.
27 0259).
- 28 (3) Randleman Lake Water Supply Watershed: Protection and Maintenance of
29 Existing Riparian Buffers (15A NCAC 02B .0250).
- 30 (4) Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian
31 Buffers (15A NCAC 02B .0267).
- 32 (5) Goose Creek Watershed Water Quality Management Plan (15A NCAC 02B
33 .0605, 15A NCAC 02B .0606, 15A NCAC 02B .0607, 15A NCAC 02B
34 .0608).
- 35 (6) Mitigation Program Requirements for Protection and Maintenance of
36 Riparian Buffers (15A NCAC 02B .0295).
- 37 (7) Catawba River Basin: Protection and Maintenance of Existing Riparian
38 Buffers (15A NCAC 02B .0243).

39 **SECTION 11.(b)** No later than May 1, 2018, the Fiscal Research Division shall
40 report its estimates and analysis to the Environmental Review Commission and the Revenue
41 Laws Study Committee.

42 **WATER QUALITY TESTING**

43 **SECTION 12.** The Division of Water Resources of the Department of
44 Environmental Quality shall conduct a water quality sampling program for nutrients along the
45 mainstem of the Catawba River, which includes sampling for nutrients above, in, and below
46 each major tributary of the Catawba River. No later than October 1, 2018, the Division shall
47 report the results of the study to the Environmental Review Commission.
48

49 **MINING PERMITTING REVISIONS**

50 **SECTION 13.(a)** G.S. 74-50(d) reads as rewritten:
51

1 "(d) ~~An operating permit shall be granted for a period not exceeding 10 years. If~~Except
 2 ~~as provided in subsection (d1) of this section, permits for mining operations shall be issued for~~
 3 ~~the life-of-site of the operation unless revoked as otherwise provided under this Article. For~~
 4 ~~purposes of this section, "life-of-site" means the period from the initial receipt of a permit from~~
 5 ~~the operation until the mining operation terminates and the reclamation required under the~~
 6 ~~approved reclamation plan is completed prior to the end of the period, completed, the permit~~
 7 ~~shall terminate.~~completed. Termination of a permit shall not have the effect of relieving the
 8 operator of any obligations that the operator has incurred under an approved reclamation plan
 9 or otherwise. Where the mining operation itself has terminated, no permit shall be required in
 10 order to carry out reclamation measures under the reclamation plan.

11 (d1) Permits for mining operations conducted on real property that is leased from a
 12 public entity shall be issued for the life-of-lease. For purposes of this subsection, the following
 13 terms apply: (i) "life-of-lease" means the duration of the lease between the owner or operator of
 14 the mining operation and a public entity and (ii) "public entity" means the State, any State
 15 agency, State college or university, county, municipal corporation, local board of education,
 16 community college, special district, or other political subdivision of the State. Termination of a
 17 permit shall not have the effect of relieving the operator of any obligations that the operator has
 18 incurred under an approved reclamation plan or otherwise. Where the mining operation itself
 19 has terminated, no permit shall be required in order to carry out reclamation measures under the
 20 reclamation plan."

21 **SECTION 13.(b)** G.S. 74-51 reads as rewritten:

22 "**§ 74-51. Permits – Application, granting, conditions.**

23 ...

24 (c) If the Department determines, based on public comment relevant to the provisions
 25 of this Article, that significant public interest exists, the Department shall conduct a public
 26 hearing on any application for a new mining permit or for a modification of a mining permit to
 27 add land to the permitted area, as defined in G.S. 74-50(b). The hearing shall be held before the
 28 Department reaches a final decision on the application, and in making its determination, the
 29 Department shall give full consideration to all comments submitted at the public hearing. The
 30 public hearing shall be held within 60 days of the end of the 30-day period within which any
 31 requests for the public hearing shall be made. A public hearing shall not be required for a
 32 modification of a mining permit to extend the duration of the permit to a life-of-site, or
 33 life-of-lease, pursuant to 74-50(d) or (d1), respectively.

34 (d) The Department may deny the permit upon finding:

35 ...

36 (7) That the applicant or any parent, subsidiary, or other affiliate of the applicant
 37 or parent has not been in substantial compliance with this Article, rules
 38 adopted under this Article, or other laws or rules of this State for the
 39 protection of the environment or has not corrected all violations that the
 40 applicant or any parent, subsidiary, or other affiliate of the applicant or
 41 parent may have committed under this Article or rules adopted under this
 42 Article and that resulted in:

- 43 a. Revocation of a permit,
- 44 b. Forfeiture of part or all of a bond or other security,
- 45 c. Conviction of a misdemeanor under G.S. 74-64,
- 46 d. Any other court order issued under G.S. 74-64, or
- 47 e. Final assessment of a civil penalty under G.S. 74-64.
- 48 f. Failure to pay the application processing fee required under
 49 G.S. 74-54.1.

50 "

51 **SECTION 13.(c)** G.S. 74-52 reads as rewritten;

1 **"§ 74-52. Permits—Modification, renewal. Permit modifications.**

2 (a) Any operator engaged in mining under an operating permit may apply at any time
3 for modification of the permit. ~~A permittee may apply for renewal of the permit at any time~~
4 ~~during the two years prior to the expiration of the permit.~~ The application shall be in writing
5 upon forms furnished by the Department and shall fully state the information called for. The
6 applicant must provide the Department with any additional information necessary to satisfy
7 application requirements. ~~The applicant is not required to resubmit information that remains~~
8 ~~unchanged since the time of the prior application.~~ In addition, the applicant may be required to
9 furnish any other information as may be deemed necessary by the Department in order
10 adequately to enforce the Article.

11 (b) ~~The procedure to be followed and standards to be applied in renewing a permit shall~~
12 ~~be the same as those for issuing a permit; provided, however, that in the absence of any~~
13 ~~changes in legal requirements for issuance of a permit since the date on which the prior permit~~
14 ~~was issued, the only basis for denying a renewal permit shall be an uncorrected violation of the~~
15 ~~type listed in G.S. 74-51(7), or failure to submit an adequate reclamation plan in light of~~
16 ~~conditions then existing.~~

17 (c) A modification under this section may affect the land area covered by the permit,
18 the approved reclamation plan coupled with the permit, or other terms and conditions of the
19 permit. A permit may be modified to include land neighboring the affected land, but not other
20 lands. The reclamation plan may be modified in any manner, so long as the Department
21 determines that the modified plan fully meets the standards set forth in G.S. 74-53 and that the
22 modifications would be generally consistent with the bases for issuance of the original permit.
23 Other terms and conditions may be modified only where the Department determines that the
24 permit as modified would meet all requirements of G.S. 74-50 and [G.S.] 74-51. ~~No~~
25 ~~modification shall extend the expiration date of any permit issued under this Article.~~

26 (d) No modification ~~or renewal~~ of a permit shall become effective until any required
27 changes have been made in the performance bond or other security posted under the provisions
28 of G.S. 74-54, so as to assure the performance of obligations assumed by the operator under the
29 permit and reclamation plan."

30 **SECTION 13.(d)** G.S. 74-54 reads as rewritten:

31 **"§ 74-54. Bonds.**

32 (a) Each applicant for an operating permit, or for the ~~renewal of a modification of an~~
33 existing permit shall, following the approval of the application, file and maintain in force a
34 bond in favor of the State of North Carolina, executed by a surety approved by the
35 Commissioner of Insurance, in the amount set forth below. The bond herein provided for must
36 be continuous in nature and shall remain in force until cancelled by the surety. Cancellation by
37 the surety shall be effectuated only upon 60 days written notice thereof to the Department and
38 to the operator.

39 (b) The applicant shall have the option of filing a separate bond for each operating
40 permit or of filing a blanket bond covering all mining operations within the State for which the
41 applicant holds a permit. The amount of each bond shall be based upon the area of affected land
42 to be reclaimed under the approved reclamation plan or plans to which the bond pertains, less
43 any area where reclamation has been completed and released from coverage by the Department,
44 pursuant to G.S. 74-56, or based on any other criteria established by the ~~Commission.~~
45 Commission, but shall not exceed one million dollars (\$1,000,000). The Department shall set
46 the amount of the required bond in all cases, based upon a schedule established by the
47 Commission.

48"

49 **SECTION 13.(e)** G.S. 74-54.1 reads as rewritten:

50 **"§ 74-54.1. Permit fees.**

1 (a) The fee schedule for the processing of permit applications and permit renewals
2 applications, transfers, and modifications is as follows:

	0-25 acres	26+ acres
4 New Permit Applications	\$3,750.00	\$5,000.00
5 Permit Modifications	\$750.00	\$1,000.00
6 Permit Renewals	\$750.00	\$1,000.00
7 Permit Transfers	\$100.00	\$100.00

8 (a) In addition to the fees set forth in subsection (a) of this section, permittees shall pay
9 an annual operating fee of four hundred dollars (\$400.00) per permit per year as set forth in
10 G.S. 74-55. The Department may charge a late fee of fifty dollars (\$50.00) per month per
11 permit for every month or partial month that payment of the annual operating fee is delinquent.
12"

13 **SECTION 13.(f)** G.S. 74-55 reads as rewritten:

14 "**§ 74-55. Reclamation report.**

15 (a) ~~Within 30 days after completion or termination of mining on an area under permit or~~
16 ~~within 30 days after each anniversary of the issuance of the operating permit, whichever is~~
17 ~~earlier, or at such later date as may be provided by rules of the Department, and each year~~
18 ~~thereafter until reclamation is completed and approved, the~~ By July 1 of each year, the operator
19 shall file a report of activities completed during the preceding year on a form prescribed by the
20 Department, which shall include all of the following:

- 21 (1) Identify the mine, the operator and the permit ~~number;~~ number.
- 22 (2) State acreage disturbed by mining in the last 12-month ~~period;~~ period.
- 23 (3) State and describe amount and type of reclamation carried out in the last
24 12-month ~~period;~~ period.
- 25 (4) Estimate acreage to be newly disturbed by mining in the next 12-month
26 ~~period;~~ period.
- 27 (5) Provide such maps as may be specifically requested by the
28 ~~Department;~~ Department.
- 29 (6) Include the annual operating fee pursuant to G.S. 74-54.1(a1).

30 (b) When filing the annual report, the permittee shall pay the annual operating fee for
31 the permit to the Department until the permit has been terminated by the Department. The
32 Department may assess and collect a monthly penalty for each annual report or annual
33 operating fee not filed by July 31 of each year until the annual report and annual operating fee
34 are filed with the Department. If the required annual report and operating fee, including any
35 late payment penalties, are not filed by December 31 of each year, the Department shall give
36 written notice to the operator and shall then initiate permit revocation proceedings in
37 accordance with G.S. 74-58."

38 **SECTION 13.(g)** G.S. 74-58 reads as rewritten:

39 "**§ 74-58. Suspension or revocation of permit.**

40 (a) Whenever the Department shall have reason to believe that a violation of (i) this
41 Article, (ii) any rules adopted under this Article, or (iii) the terms and conditions of a permit,
42 including the approved reclamation plan, has taken place, it shall serve written notice of the
43 apparent violation upon the operator, specifying the facts constituting the apparent violation
44 and informing the operator of the operator's right to an informal conference with the
45 Department. The date for an informal conference shall be not less than 15 nor more than 30
46 days after the date of the notice, unless the Department and the operator mutually agree on
47 another date. If the operator or the operator's representative does not appear at the informal
48 conference, or if the Department following the informal conference finds that there has been a
49 violation, the Department may suspend the permit until the violation is corrected or may revoke
50 the permit where the violation appears to be ~~willful;~~ willful, or where the permittee has failed to
51 pay the fee or late payment penalties required by G.S. 74-55(b).

1 (b) The effective date of any suspension or revocation shall be 30 days following the
2 date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the
3 effective date until issuance of a final decision. If the Department finds at the time of its initial
4 decision that any delay in correcting a violation would result in imminent peril to life or danger
5 to property or to the environment, it shall promptly initiate a proceeding for injunctive relief
6 under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any
7 appeal from a suspension or revocation of a permit shall have no effect upon an action for
8 injunctive relief.

9 (c) Any operator whose permit has been suspended or revoked shall be denied a new
10 permit or ~~a renewal of an existing~~ reinstatement of the suspended permit to engage in mining
11 until the operator gives evidence satisfactory to the Department of the operator's ability and
12 intent to fully comply with the provisions of this Article and rules adopted under this Article,
13 and the terms and conditions of the permit, including the approved reclamation plan, and that
14 the operator has satisfactorily corrected all previous violations."

15 **SECTION 13.(h)** G.S. 74-60 reads as rewritten:

16 "**§ 74-60. Notice.**

17 Whenever in this Article written notice is required to be given by the Department, such
18 notice shall be mailed by registered or certified mail to the permanent address of the operator
19 set forth in his most recent application for an operating permit or for a modification ~~or renewal~~
20 of such permit. No other notice shall be required."

21 **SECTION 13.(i)** Notwithstanding G.S. 74.55(b), as enacted by subsection (f) of
22 this section, the initial annual operating fee imposed by G.S. 74-54.1, as enacted by subsection
23 (e) of this section, shall be due December 31, 2017.

24 **SECTION 13.(j)** This section becomes effective when it becomes law and applies
25 to (i) valid permits for existing mining operations issued before the date this act becomes
26 effective and (ii) any permit application for a mining operation, pending or submitted on or
27 after that date. No later than December 1, 2017, the Department shall issue life-of-site permits
28 or life-of-lease permits, as applicable, to replace valid permits for existing mining operations
29 issued before the date this act becomes effective in compliance with the provisions of this act.
30 Until such time as life-of-site permits or life-of-lease permits, as applicable, have been issued to
31 replace valid permits for existing mining operations issued before the date this act becomes
32 effective; any valid permit and its terms and conditions shall remain in effect and govern the
33 operations of the facility notwithstanding any termination date that may be included in such
34 permit.

35
36 **AMEND MITIGATION SERVICES LAW**

37 **SECTION 14.** G.S. 143-214.12 reads as rewritten:

38 "**§ 143-214.12. Division of Mitigation Services: Ecosystem Restoration Fund.**

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

1 (a) The Department may distribute funds from the Ecosystem Restoration Fund directly
2 to a federal or State agency, a local government, or a private, nonprofit conservation
3 organization to acquire, manage, and maintain real property or an interest in real property for
4 the purposes set out in subsection (a) of this section. ~~A recipient of funds under this subsection~~
5 ~~shall grant a conservation easement in the real property or interest in real property acquired~~
6 ~~with the funds to the Department in a form that is acceptable to the Department.~~ A recipient of
7 funds under this subsection that acquires a conservation easement or interest in real property
8 appurtenant to a restoration project delivered to the Division of Mitigation Services may
9 transfer the conservation easement or interest in real property to a federal or State agency, a
10 local government, or a private, nonprofit conservation organization approved by the Division of
11 Mitigation Services. The Department may convey real property or an interest in real property
12 that has been acquired under the Division of Mitigation Services to a federal or State agency, a
13 local government, or a private, nonprofit conservation organization approved by the Division of
14 Mitigation Services to acquire, manage, and maintain real property or an interest in real
15 property for the purposes set out in subsection (a) of this section. ~~A~~ When a grantee of real
16 property or an interest in real property under this subsection shall grant grants a conservation
17 easement in the real property or interest in real property to ~~the Department~~ a federal or State
18 agency, a local government, or a private, nonprofit conservation organization approved by the
19 Division of Mitigation Services, the grant shall be made in a form that is acceptable to the
20 Department.

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

34 (c) Accounting of Payments. – The Department shall provide an itemized statement that
35 accounts for each payment into the Fund. The statement shall include the expenses and
36 activities financed by the payment."
37

38 ENERGY POLICY COUNCIL CLARIFICATION

39 SECTION 15. G.S. 113B-4(a) reads as rewritten:

40 "(a) The Lieutenant Governor or the Lieutenant Governor's designee shall serve as chair
41 of the Council."
42

43 SOLID WASTE MODIFICATIONS

44 SECTION 16. If Senate Bill 16, 2017 Regular Session, becomes law, then Section
45 16 of that act is amended to include the following subsection:

46 "SECTION 16.(d) 130A-294(a3), as enacted by subsection (c) of this section, only
47 applies to valid and operative franchise agreements in effect on October 1, 2015."

48 SECTION 17.(a) G.S. 130A-291 reads as rewritten:

49 "**§ 130A-291. Division of Waste Management.**

50 (a) For the purpose of promoting and preserving an environment that is conducive to
51 public health and welfare, and preventing the creation of nuisances and the depletion of our

1 natural resources, the Department shall maintain a Division of Waste Management to promote
2 sanitary processing, treatment, disposal, and statewide management of solid waste and the
3 greatest possible recycling and recovery of resources, and the Department shall employ and
4 retain qualified personnel as may be necessary to effect such purposes. It is the purpose and
5 intent of the State to be and remain cognizant not only of its responsibility to authorize and
6 establish a statewide solid waste management program, but also of its responsibility to monitor
7 and supervise, through the Department, the activities and operations of units of local
8 government implementing a permitted solid waste management facility serving a specified
9 geographic area in accordance with a solid waste management plan.

10 (b) In furtherance of this purpose and intent, it is hereby determined and declared that it
11 is necessary for the health and welfare of the inhabitants of the State that solid waste
12 management facilities permitted hereunder and serving a specified geographic area shall be
13 used by public or private owners or occupants of all lands, buildings, and premises within the
14 geographic area, and a unit of local government may, by ordinance, require that all solid waste
15 generated within the geographic area and placed in the waste stream for disposal, shall be
16 delivered to the permitted solid waste management facility or facilities serving the geographic
17 area. Actions taken pursuant to this Article shall be deemed to be acts of the sovereign power of
18 the State of North Carolina, and to the extent reasonably necessary to achieve the purposes of
19 this section, a unit of local government may displace competition with public service for solid
20 waste management and disposal. It is further determined and declared that no person, firm,
21 corporation, association or entity within the geographic area shall engage in any activities
22 which would be competitive with this purpose or with ordinances, rules adopted pursuant to the
23 authority granted herein.

24 (c) Notwithstanding any authority given to local governments to manage solid waste
25 generated or disposed of within their jurisdiction, units of local government shall not, by
26 ordinance or otherwise, prohibit the disposal of:

- 27 (1) Waste outside the borders of their county or municipality for waste
28 generated within their county or municipality; or
29 (2) Construction and demolition debris in any sanitary landfill permitted for the
30 disposal of construction and demolition debris, which landfill has a valid and
31 operative franchise agreement and is otherwise properly permitted pursuant
32 to G.S. 130A-294. "

33 SECTION 17.(b) G.S. 130A-294(a) reads as rewritten:

34 "**§ 130A-294. Solid waste management program.**

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

38 ...

- 39 (5b) ~~Authorize units of local government to require by ordinance, that all solid~~
40 ~~waste generated within the designated geographic area that is placed in the~~
41 ~~waste stream for disposal be collected, transported, stored and disposed of at~~
42 ~~a permitted solid waste management facility or facilities serving such area.~~
43 ~~The provisions of such ordinance shall not be construed to prohibit the~~
44 ~~source separation of materials from solid waste prior to collection of such~~
45 ~~solid waste for disposal, or prohibit collectors of solid waste from recycling~~
46 ~~materials or limit access to such materials as an incident to collection of such~~
47 ~~solid waste; provided such prohibitions do not authorize the construction and~~
48 ~~operation of a resource recovery facility unless specifically permitted~~
49 ~~pursuant to an approved solid waste management plan. If a private solid~~
50 ~~waste landfill shall be substantially affected by such ordinance then the unit~~
51 ~~of local government adopting the ordinance shall be required to give the~~

operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

..."

SECTION 17.(c) G.S. 153A-292(a) reads as rewritten:

"§ 153A-292. County collection and disposal facilities.

(a) The board of county commissioners of any county may establish and operate solid waste collection and disposal facilities in areas outside the corporate limits of a city. The board may by ordinance regulate the use of a disposal facility provided by the county, the nature of the solid wastes disposed of in a facility, and the method of disposal. The board may contract with any city, individual, or privately owned corporation to collect and dispose of solid waste in the area. Counties and cities may establish and operate joint collection and disposal facilities. A joint agreement shall be in writing and executed by the governing bodies of the participating units of local government."

SECTION 17.(d) G.S. 153A-427(a) reads as rewritten:

"§ 153A-427. Powers of an authority.

(a) The charter may confer on the regional solid waste management authority any or all of the following powers:

...

(23) To acquire property located within the territorial jurisdiction of any member unit of local government by eminent domain pursuant to authority granted to ~~counties;~~ counties; and

(24) ~~To require that any and all (i) solid waste generated within the authority's service area and (ii) recyclable materials generated within the authority's service area and transferred to the authority be separated and delivered to specific locations and facilities provided that if a private landfill shall be substantially affected by such requirement then the regional solid waste management authority shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the requirement; and~~

(25) To do all things necessary, convenient, or desirable to carry out the purposes and to exercise the powers granted to an authority under its charter."

SECTION 17.(e) This section is effective when it becomes law. Subdivision (1) of G.S. 130A-291(c), as enacted by subsection (a) of this section; G.S. 130A-294(a), as amended by subsection (b) of this section; G.S. 130A-292(a), as amended by subsection (c) of this section; and G.S. 153A-427(a), as amended by subsection (d) of this section, apply as follows:

(1) For a unit of local government: (i) without debt associated with solid waste management landfill facilities and equipment outstanding on the date this section becomes law and (ii) that is not a party to an exclusive landfill franchise agreement with a private entity governing the management of waste within the jurisdiction in effect on the date this section becomes law, this section shall apply when it becomes law.

(2) For a local government with public bonds secured by fees charged for the use of solid waste landfill facilities outstanding on the date this section becomes law, this section shall apply on the existing bond maturity date.

(3) For a local government that is party to an exclusive landfill franchise agreement with a private entity governing the disposal of waste within the jurisdiction in effect on the date this section becomes law, this section shall apply on the franchise expiration date in effect on the date it becomes law.

(4) For regional solid waste management authorities established under Article 22 of Chapter 153A of the General Statutes, this section shall not apply.

1 **SECTION 17.(f)** Nothing in this section shall be construed to impact the terms of a
2 contract, franchise agreement, or other agreement between a unit of local government and
3 another entity concerning the management of solid waste, or the financing of such services or
4 related facilities or equipment, in effect on the date this section becomes law.
5

6 **CLARIFY ROLES OF GEOLOGISTS AND SOIL SCIENTISTS IN WASTEWATER** 7 **SYSTEM SITE EVALUATIONS**

8 **SECTION 18.(a)** G.S. 130A-335(a1) reads as rewritten:

9 "(a1) Any proposed site for a residence, place of business, or a place of public assembly
10 located in an area that is not served by an approved wastewater system for which a new
11 wastewater system is proposed or repair is necessary for compliance may be evaluated for soil
12 conditions and site features by a ~~licensed soil scientist or licensed geologist~~ person licensed
13 pursuant to Chapter 89F of the General Statutes as a licensed soil scientist. For purposes of this
14 subsection, "site features" include topography and landscape position; soil characteristics
15 (morphology); soil wetness; soil depth; restrictive horizons; available space; and other
16 applicable factors that involve accepted public health principles. A person licensed pursuant to
17 Chapter 89E of the General Statutes as a licensed geologist may evaluate the proposed site or
18 repair area, as applicable, for geologic and hydrogeologic conditions."

19 **SECTION 18.(b)** G.S. 130A-336.1(e) reads as rewritten:

20 "(e) Site Design, Construction, and Activities.

21 (1) The professional engineer designing the proposed wastewater system shall
22 use recognized principles and practices of engineering and applicable rules
23 of the Commission in the calculations and design of the wastewater system.
24 The investigations and findings of the professional engineer shall include, at
25 a minimum, the information required in rules adopted by the Commission
26 pursuant to G.S. 130A-335(e). The professional engineer may, at the
27 engineer's discretion, employ pretreatment technologies not yet approved in
28 this State.

29 (2) Notwithstanding G.S. 130A-335(a1), the owner of the proposed wastewater
30 system shall employ ~~either a licensed soil scientist or a geologist, licensed~~
31 ~~pursuant to Chapter 89E of the General Statutes and who has applicable~~
32 ~~professional experience, to evaluate soil conditions and site features~~ a person
33 licensed pursuant to Chapter 89F of the General Statutes as a licensed soil
34 scientist to conduct soil and site evaluations and, as applicable, a person
35 licensed pursuant to Chapter 89E of the General Statutes as a licensed
36 geologist to evaluate geologic and hydrogeologic conditions."

37 38 **COASTAL STORMWATER PROGRAM VARIANCE**

39 **SECTION 20.(a)** Notwithstanding S.L. 2008-211 and rules adopted to implement
40 the act, any subdivision meeting all of the following requirements shall be deemed to be in
41 compliance with the impervious surface limitations of the act and its implementing rules:

- 42 (1) The subdivision's original declaration of covenants was recorded at least 20
43 years prior to the effective date of this act.
- 44 (2) The original developer of the subdivision transferred the stormwater permit
45 to the homeowners association for the subdivision and, at the time of the
46 transfer, the homeowners association had no notice from the original
47 developer or any regulatory agency that the subdivision was not in
48 compliance with the impervious surface limitations.

49 **SECTION 20.(b)** This section applies only to impervious surface built prior to
50 January 1, 2017. Any impervious surface built on or after January 1, 2017, shall be subject to
51 S.L. 2008-211 and its implementing rules.

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SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 21.(a) If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 21.(b) Except as otherwise provided, this act is effective when it becomes law.