

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH70270-Rif-5 (04/01)

Short Title: Closure of Industrial Lagoons. (Public)

Sponsors: Representative Nesbitt.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT
COMMISSION TO ADOPT TEMPORARY AND PERMANENT RULES
GOVERNING CLOSURE OF INDUSTRIAL LAGOONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-213 is amended by adding a new subdivision to read:

"(31) The term 'industrial lagoon' means a confined body of water that is designed to hold industrial waste and that is installed as part of a treatment works."

SECTION 2. G.S. 143-215.3(a) reads as rewritten:

"(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

...

(18) To adopt rules governing the maintenance, operation, closure, and postclosure care of an industrial lagoon as provided in G.S. 143-215.3E."

SECTION 3. G.S. 143-215 is amended by adding a new section to read:

§ 143-215.3E. Requirements for industrial lagoons.

(a) An owner of an industrial lagoon shall establish and maintain evidence of financial responsibility satisfactory to the Department to ensure sufficient availability of funds for facility closure and postclosure monitoring and corrective measures. The Department shall establish financial responsibility requirements based on characteristics of the industrial lagoon, and closure and postclosure requirements for the lagoon. Financial responsibility may be established through the use of a letter of credit, insurance, surety, trust agreement, financial test, or financial test and corporate guarantee.

1 **(b)** An owner of an industrial lagoon shall close the lagoon no later than one year
2 after cessation of the activities for which the lagoon was permitted, or at such time as
3 otherwise may be required by law.

4 **(c)** After closure, the owner of an industrial lagoon shall perform any
5 remediation of the lagoon's site that may be necessary to comply with the requirements
6 of this Article and the rules adopted by the Commission.

7 **(d)** In the event that the owner of an industrial lagoon fails to perform the closure
8 or postclosure remediation activities required by subsections (b) and (c) of this section,
9 the Department shall use staff, equipment, or materials under its control or shall contract
10 with any agent or contractor it deems appropriate to perform closure or postclosure
11 remediation activities. When the Department is required to perform closure or
12 postclosure remediation activities for an industrial lagoon, the Department shall keep a
13 record of all expenses incurred for the services of State personnel and for the use of the
14 equipment and material of the State in performing those activities. The Department shall
15 apply the amount of financial responsibility established by the owner in accordance with
16 subsection (a) of this section to the expenses incurred by the Department to close or
17 remediate the site. The Department may seek reimbursement for those expenses
18 incurred that exceed the amount of financial responsibility established by the owner
19 through any legal means available. In order to secure collection of expenses incurred by
20 the State that exceed the amount of financial responsibility established by the owner, the
21 State is entitled to a lien upon any industrial lagoon site where it has performed closure
22 and remediation activities, which lien may be foreclosed in the same manner as
23 provided by law for foreclosure of county tax liens. Any person owning land on which
24 an industrial lagoon is or has been located or who owned the land while the industrial
25 lagoon was in operation, or any person who disposed of waste in the industrial lagoon
26 shall have joint and several liability to the State for any costs incurred by the State to
27 close or remediate the site that exceed the amount of financial responsibility established
28 by the owner."

29 **SECTION 4.** G.S. 143-215.3D(e) is amended by adding a new subdivision
30 to read:

31 **"(8)** Industrial lagoons. – An annual fee of one thousand dollars (\$1,000)
32 shall be imposed on any treatment works for which a water quality
33 permit is required under G.S. 143-215.1 that includes an industrial
34 lagoon. The payment of this fee shall be in addition to any initial
35 application fee, annual fee, or fee for a major permit modification
36 imposed by this section."

37 **SECTION 5.** Sections 1, 2, 3, and 5 of this act are effective when it becomes
38 law. The Commission shall adopt temporary rules pursuant to G.S. 143-215.3(a), as
39 enacted by Section 2 of this act, by 1 September 2004. The Commission shall adopt
40 permanent rules pursuant to G.S. 143-215.3(a), as enacted by Section 2 of this act, so
41 that the permanent rules are subject to legislative review pursuant to G.S. 150B-21.8 by
42 the 2006 Regular Session of the 2005 General Assembly. Section 4 of this act becomes
43 effective 1 January 2004.