

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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SENATE BILL 112*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/14/13

Short Title: Amend Environmental Laws 2013.

(Public)

Sponsors:

Referred to:

February 21, 2013

A BILL TO BE ENTITLED

1 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES
2 LAWS TO (1) CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY
3 LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE
4 PERMITS FOR OPERATION AS WELL AS CONSTRUCTION; (2) CLARIFY THE
5 PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY A LOCAL
6 GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN EROSION
7 AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER G.S. 113A-60
8 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT
9 PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973
10 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND; (3)
11 AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE TO
12 ADJOINING PROPERTY OWNERS; (4) MAKE TECHNICAL AND CONFORMING
13 CHANGES TO PROTECTED SPECIES, MARINE, AND WILDLIFE RESOURCES
14 STATUTES; (5) MAKE CLARIFYING AND CONFORMING CHANGES TO THE
15 STATUTES PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER
16 REPTILES; (6) AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE
17 THE WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULE-MAKING
18 AUTHORITY FOR MANNER OF TAKE; (7) AMEND THE DEFINITION OF
19 "BUILT-UPON AREA"; (8) CLARIFY THOSE UNDERGROUND STORAGE TANKS
20 THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL
21 JANUARY 1, 2020; (9) AMEND THE RULES THAT PERTAIN TO OPEN BURNING
22 FOR LAND CLEARING OR RIGHT OF WAY MAINTENANCE; (10) EXEMPT
23 PONDS THAT ARE CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES
24 FROM RIPARIAN BUFFER RULES; (11) PROVIDE FOR LOW-FLOW DESIGN
25 ALTERNATIVES FOR WASTEWATER SYSTEMS; (12) AMEND THE CONTINUING
26 EDUCATION REQUIREMENTS FOR CERTIFIED WELL CONTRACTORS; (13)
27 DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR
28 SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY; (14) PROHIBIT
29 PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING PROPERTY WITH
30 KNOWN CONTAMINATION WITHOUT APPROVAL OF THE GOVERNOR AND
31 COUNCIL OF STATE; AND (15) LIMIT LOCAL GOVERNMENT REGULATION OF
32 STORAGE, RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS.

33 The General Assembly of North Carolina enacts:
34
35



1 **PART I. CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY**
2 **LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE**
3 **PERMITS FOR OPERATION AS WELL AS CONSTRUCTION**

4 **SECTION 1.** Section 15.1 of S.L. 2012-187 reads as rewritten:

5 "SECTION 15.1. No later than July 1, 2013, the Commission for Public Health shall adopt
6 rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct
7 and operate a five-year phase of landfill development and apply to amend the permit to
8 construct and operate subsequent five-year phases of landfill development; or (ii) apply for a
9 permit to construct and operate a 10-year phase of landfill development and apply to amend the
10 permit to construct and operate subsequent 10-year phases of landfill development, with a
11 limited review of the permit five years after issuance of the initial permit and five years after
12 issuance of each amendment for subsequent phases of development. No later than July 1, 2013,
13 the Commission shall also adopt rules to allow applicants for permits for transfer stations the
14 option to (i) apply for a permit with a five-year duration to construct and operate a transfer
15 station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer
16 station, with a limited review of the permit five years after issuance of the initial permit and
17 five years after issuance of any amendment to the permit. In developing these rules, the
18 Department of Environment and Natural Resources shall examine the current fee schedule for
19 permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and
20 formulate recommendations for adjustments to the current fee schedule sufficient to address
21 any additional demands associated with review of permits issued for 10-year phases of landfill
22 development and the issuance permits with a duration of up to 10 years for transfer stations.
23 The Department shall report its findings and recommendations, including any legislative
24 proposals, to the Environmental Review Commission on or before December 1, 2012. The rules
25 required by this section shall not become effective until the fee schedule set forth under
26 G.S. 130A-295.8 is amended as necessary to address any additional demands associated with
27 review of permits issued for 10-year phases of landfill development and the issuance of permits
28 with a duration of up to 10 years to construct and operate transfer stations."
29

30 **PART II. CLARIFY LOCAL GOVERNMENT AUTHORITY UNDER THE**
31 **SEDIMENTATION AND POLLUTION CONTROL ACT**

32 **SECTION 2.** G.S. 113A-64 reads as rewritten:

33 **"§ 113A-64. Penalties.**

34 (a) Civil Penalties. –

- 35 (1) Any person who violates any of the provisions of this Article or any
36 ordinance, rule, or order adopted or issued pursuant to this Article by the
37 Commission or by a local government, or who initiates or continues a
38 land-disturbing activity for which an erosion and sedimentation control plan
39 is required except in accordance with the terms, conditions, and provisions
40 of an approved plan, is subject to a civil penalty. The maximum civil penalty
41 for a violation is five thousand dollars (\$5,000). A civil penalty may be
42 assessed from the date of the violation. Each day of a continuing violation
43 shall constitute a separate violation.
- 44 (2) The Secretary or a local government that administers an erosion and
45 sedimentation control program approved under G.S. 113A-60 shall
46 determine the amount of the civil penalty and shall notify the person who is
47 assessed the civil penalty of the amount of the penalty and the reason for
48 assessing the penalty. The notice of assessment shall be served by any means
49 authorized under ~~G.S. 1A-1, Rule 4, and G.S. 1A-1.~~ A notice of assessment
50 by the Secretary shall direct the violator to either pay the assessment or
51 contest the assessment within 30 days by filing a petition for a contested

1 case under Article 3 of Chapter 150B of the General Statutes. If a violator
 2 does not pay a civil penalty assessed by the Secretary within 30 days after it
 3 is due, the Department shall request the Attorney General to institute a civil
 4 action to recover the amount of the assessment. A notice of assessment by a
 5 local government shall direct the violator to either pay the assessment or
 6 contest the assessment within 30 days by filing a petition for hearing with
 7 the local government as directed by procedures within the local ordinances
 8 or regulations adopted to establish and enforce the erosion and sedimentation
 9 control program. If a violator does not pay a civil penalty assessed by a local
 10 government within 30 days after it is due, the local government may institute
 11 a civil action to recover the amount of the assessment. The civil action may
 12 be brought in the superior court of any county where the violation occurred
 13 or the violator's residence or principal place of business is located. A civil
 14 action must be filed within three years of the date the assessment was due.
 15 An assessment that is not contested is due when the violator is served with a
 16 notice of assessment. An assessment that is contested is due at the
 17 conclusion of the administrative and judicial review of the assessment.

18 (3) In determining the amount of the penalty, the Secretary or a local
 19 government shall consider the degree and extent of harm caused by the
 20 violation, the cost of rectifying the damage, the amount of money the
 21 violator saved by noncompliance, whether the violation was committed
 22 willfully and the prior record of the violator in complying or failing to
 23 comply with this ~~Article~~ Article, or any ordinance, rule, or order adopted or
 24 issued pursuant to this Article by the Commission or by a local government.

25 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

26 (5) The clear proceeds of civil penalties collected by the Department or other
 27 State agency or a local government under this subsection shall be remitted to
 28 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
 29 ~~Civil penalties collected by a local government under this subsection shall be~~
 30 ~~credited to the general fund of the local government as nontax revenue.~~

31 (b) Criminal Penalties. – Any person who knowingly or willfully violates any provision
 32 of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the
 33 Commission or a local government, or who knowingly or willfully initiates or continues a
 34 land-disturbing activity for which an erosion and sedimentation control plan is required, except
 35 in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of
 36 a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000)."
 37

38 PART III. AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR 39 NOTICE TO ADJOINING PROPERTY OWNERS

40 SECTION 3. G.S. 113-229 reads as rewritten:

41 "§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

42 ...
 43 (d) An applicant for a permit, other than an emergency permit, shall ~~send a copy of his~~
 44 ~~application to notify~~ the owner of each tract of riparian property that adjoins that of the
 45 applicant. ~~The copy shall be served~~ An applicant may satisfy the required notification of
 46 adjoining riparian property owners by either (i) obtaining from each adjoining riparian property
 47 owner a signed statement that the adjoining riparian property owner has no objection to the
 48 proposed project or (ii) providing a copy of the applicant's permit application to each adjoining
 49 riparian property owner by certified mail-mail. or, if ~~if~~ the owner's address is unknown and
 50 cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made
 51 to serve the copy by certified mail, ~~by~~ publication in accordance with the rules of the

1 ~~Commission.~~ Commission shall serve to satisfy the notification requirement. An owner may file
 2 written objections to the permit with the Department for 30 days after ~~hethe~~ the owner is served
 3 with a copy of the ~~application.~~ application by certified mail. In the case of a special emergency
 4 dredge or fill permit the applicant must certify that ~~hethe~~ the applicant took all reasonable steps to
 5 notify adjacent riparian owners of the application for a special emergency dredge and fill
 6 permit prior to submission of the application. Upon receipt of this certification, the Secretary
 7 shall issue or deny the permit within the time period specified in subsection (e) of this section,
 8 upon the express understanding from the applicant that ~~he~~ the applicant will be entirely liable
 9 and hold the State harmless for all damage to adjacent riparian landowners directly and
 10 proximately caused by the dredging or filling for which approval may be given.

11"

13 PART IV. TECHNICAL AND CONFORMING CHANGES TO PROTECTED 14 SPECIES AND MARINE/WILDLIFE RESOURCES STATUTES

15 SECTION 4.(a) G.S. 113-129 reads as rewritten:

16 "§ 113-129. **Definitions relating to resources.**

17 The following definitions and their cognates apply in the description of the various marine
 18 and estuarine and wildlife resources:

19 ...

20 (7) Fish; Fishes. – All ~~marine mammals; finfish;~~ all shellfish; and all
 21 ~~erustaceans; and all other fishes.~~ crustaceans.

22"

23 SECTION 4.(b) G.S. 113-189 reads as rewritten:

24 "§ 113-189. **Protection of sea ~~turtles and porpoises.~~ turtles, marine mammals, migratory**
 25 **birds, and finfish.**

26 (a) It is unlawful to willfully take, harm, disturb or destroy any sea turtles protected
 27 under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be
 28 subsequently amended, including green, hawksbill, loggerhead, Kemp's ridley and leatherback
 29 turtles, or their nests or eggs.

30 (b) It shall be unlawful willfully to take, harm—harm, disturb, or destroy
 31 ~~porpoises.~~ marine mammals protected under the federal Marine Mammal Protection Act of 1972
 32 (Public Law 92-522), as it may be subsequently amended.

33 (c) It shall be unlawful willfully to take, harm, disturb, or destroy migratory birds
 34 protected under the federal Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 through 712), as
 35 it may be subsequently amended, unless such action is permitted by regulations.

36 (d) It shall be unlawful willfully to take, harm, disturb, or destroy finfish protected
 37 under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be
 38 subsequently amended."

40 PART V. CLARIFYING AND CONFORMING CHANGES TO STATUTES 41 PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES

42 SECTION 5.(a) G.S. 14-417 reads as rewritten:

43 "§ 14-417. **Regulation of ownership or use of venomous reptiles.**

44 (a) It shall be unlawful for any person to own, possess, use, transport, or traffic in any
 45 venomous reptile that is not housed in a sturdy and secure enclosure. Permanent enclosures
 46 shall be designed to be escape-proof, bite-proof, and have an operable lock. Transport
 47 containers shall be designed to be escape-proof and bite-proof.

48 (b) Each enclosure shall be clearly and visibly labeled "Venomous Reptile Inside" with
 49 scientific name, common name, appropriate ~~antivenom,~~ antivenin, and owner's identifying
 50 information noted on the container. A written bite protocol that includes emergency contact
 51 information, local animal control office, the name and location of suitable ~~antivenom,~~ antivenin,

1 first aid procedures, and treatment guidelines, as well as an escape recovery plan must be
2 within sight of permanent housing, and a copy must accompany the transport of any venomous
3 reptile.

4 (c) In the event of an escape of a venomous reptile, the owner or possessor of the
5 venomous reptile shall immediately notify local law enforcement."

6 **SECTION 5.(b)** G.S. 14-419 reads as rewritten:

7 "**§ 14-419. Investigation of suspected violations; seizure and examination of reptiles;
8 disposition of reptiles.**

9 (a) In any case in which any law-enforcement officer or animal control officer has
10 probable cause to believe that any of the provisions of this Article have been or are about to be
11 violated, it shall be the duty of the officer and the officer is authorized, empowered, and
12 directed to immediately investigate the violation or impending violation and to consult with
13 representatives of the North Carolina Museum of Natural Sciences or the North Carolina
14 Zoological Park or a designated representative of either the Museum or Zoological Park to
15 identify appropriate and safe methods to seize the reptile or reptiles involved, to seize the
16 reptile or reptiles involved, and the officer is authorized and directed to deliver: (i) a reptile
17 believed to be venomous to the North Carolina State Museum of Natural Sciences or to its
18 designated representative for examination for the purpose of ascertaining whether the reptile is
19 regulated under this Article; and, (ii) a reptile believed to be a large constricting snake or
20 crocodylian to the North Carolina Zoological Park for the purpose of ascertaining whether the
21 reptile is regulated under this Article.

22 (b) If the Museum or the Zoological Park or their designated representatives find that a
23 seized reptile is a venomous reptile, large constricting snake, or crocodylian regulated under this
24 Article, the Museum or the Zoological Park or their designated representative shall determine
25 final disposition of the reptile in a manner consistent with the safety of the ~~public~~-public, which
26 in the case of a venomous reptile for which antivenin is not readily available, may include
27 euthanasia.

28 (c) If the Museum or the Zoological Park or their designated representatives find that
29 the reptile is not a venomous reptile, large constricting snake, or crocodylian regulated under
30 this Article, and either no criminal warrants or indictments are initiated in connection with the
31 reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being
32 owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the
33 duty of the law enforcement officer to return the reptile or reptiles to the person from whom
34 they were seized within 15 days."
35

36 **PART VI. AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE**
37 **WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULEMAKING**
38 **AUTHORITY FOR MANNER OF TAKE**

39 **SECTION 6.** G.S. 150B-21.1 reads as rewritten:

40 "**§ 150B-21.1. Procedure for adopting a temporary rule.**

41 (a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to
42 the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest
43 and that the immediate adoption of the rule is required by one or more of the following:

44 ...

45 (7) The need for the Wildlife Resources Commission to establish any of the
46 following:

47 a. No wake zones.

48 b. Hunting or fishing seasons-seasons, including provisions for manner
49 of take or any other conditions required for the implementation of
50 such season.

51 c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

...."

PART VII. AMEND DEFINITION OF BUILT-UPON AREA

SECTION 7.(a) Section 12 of S.L. 2004-163 reads as rewritten:

"SECTION 12. Definitions. – The following definitions apply to this act and its implementation:

...

(5) "Built-upon area" means that portion of a ~~development~~ project that is covered by impervious ~~or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts.~~surface. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, gravel, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

...."

SECTION 7.(b) Section 2 of S.L. 2006-246 reads as rewritten:

"SECTION 2. Definitions. – The following definitions apply to this act and its implementation:

...

(7) "Built-upon area" means that portion of a project that is covered by impervious ~~or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts.~~surface. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, gravel, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

...."

PART VIII. CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020

SECTION 8. Section 11.6(a) of S.L. 2011-394 reads as rewritten:

"SECTION 11.6.(a) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed after January 1, ~~1994,1991,~~ and prior to April 1, 2001, shall not be required to provide secondary containment until January 1, 2020."

PART IX. AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT-OF-WAY MAINTENANCE

SECTION 9.(a) 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 9(c) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) shall implement the rule, as provided in Section 9(b) of this act.

SECTION 9.(b) Implementation. – Notwithstanding 15A NCAC 02D .1093(b)(2)(F) (Open Burning Without an Air Quality Permit), open burning for land clearing or right-of-way maintenance is permissible without an air quality permit if materials are not

1 carried off site or transported over public roads for open burning unless the materials are
2 carried or transported to:

- 3 (1) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain
4 Burners) for the operation of an air curtain burner at a permanent site; or
- 5 (2) A location, where the material is burned not more than 4 times per year, that
6 meets all of the following criteria:
 - 7 a. At least 500 feet from any dwelling, group of dwellings, or
8 commercial or institutional establishment, or other occupied structure
9 not located on the property on which the burning is conducted.
 - 10 b. There are no more than 2 piles, each 20 feet in diameter, being
11 burned at one time.
 - 12 c. The location is not a permitted solid waste management facility.

13 **SECTION 9.(c)** Additional Rule-Making Authority. – The Commission shall adopt
14 a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit)
15 consistent with Section 9(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by
16 the Commission pursuant to this section shall be substantively identical to the provisions of
17 Section 9(b) of this act. Rules adopted pursuant to this section are not subject to
18 G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become
19 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been
20 received as provided by G.S. 150B-21.3(b2).

21 **SECTION 9.(d)** Sunset. – Section 9(b) of this act expires on the date that rules
22 adopted pursuant to Section 9(c) of this act become effective.

23 **SECTION 9.(e)** G.S. 130A-294(a) reads as rewritten:

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

- 27 (1) Develop a comprehensive program for implementation of safe and sanitary
28 practices for management of solid waste;
- 29 (2) Advise, consult, cooperate and contract with other State agencies, units of
30 local government, the federal government, industries and individuals in the
31 formulation and carrying out of a solid waste management program;
- 32 (3) Develop and adopt rules to establish standards for qualification as a
33 "recycling, reduction or resource recovering facility" or as "recycling,
34 reduction or resource recovering equipment" for the purpose of special tax
35 classifications or treatment, and to certify as qualifying those applicants
36 which meet the established standards. The standards shall be developed to
37 qualify only those facilities and equipment exclusively used in the actual
38 waste recycling, reduction or resource recovering process and shall exclude
39 any incidental or supportive facilities and equipment;
- 40 (4) a. Develop a permit system governing the establishment and operation
41 of solid waste management facilities. A landfill with a disposal area
42 of 1/2 acre or less for the on-site disposal of land clearing and inert
43 debris is exempt from the permit requirement of this section and shall
44 be governed by G.S. 130A-301.1. The Department shall not approve
45 an application for a new permit, the renewal of a permit, or a
46 substantial amendment to a permit for a sanitary landfill, excluding
47 demolition landfills as defined in the rules of the Commission, except
48 as provided in subdivisions (3) and (4) of subsection (b1) of this
49 section. No permit shall be granted for a solid waste management
50 facility having discharges that are point sources until the Department
51 has referred the complete plans and specifications to the

1 Environmental Management Commission and has received advice in
 2 writing that the plans and specifications are approved in accordance
 3 with the provisions of G.S. 143-215.1. If the applicant is a unit of
 4 local government, and has not submitted a solid waste management
 5 plan that has been approved by the Department pursuant to
 6 G.S. 130A-309.09A(b), the Department may deny a permit for a
 7 sanitary landfill or a facility that disposes of solid waste by
 8 incineration, unless the Commission has not adopted rules pursuant
 9 to G.S. 130A-309.29 for local solid waste management plans. In any
 10 case where the Department denies a permit for a solid waste
 11 management facility, it shall state in writing the reason for denial and
 12 shall also state its estimate of the changes in the applicant's proposed
 13 activities or plans that will be required for the applicant to obtain a
 14 permit.

15 ...
 16 d. Management of land clearing debris burned in accordance with 15A
 17 NCAC 02D .1903 shall not require a permit pursuant to this section.

18"

19
 20 **PART X. EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR**
 21 **AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES**

22 **SECTION 10.(a)** Except as required by federal law or in an imminent threat to
 23 public health or safety (i) the temporary rules adopted July 22, 1997, January 22, 1998, April
 24 22, 1998, and June 22, 1999, and the permanent rule adopted and effective August 1, 2000, as
 25 15A NCAC 02B .0233 regarding the protection and maintenance of existing riparian buffers in
 26 the Neuse River Basin; (ii) the temporary rule adopted January 1, 2000, and the permanent rule
 27 adopted and effective August 1, 2000, as 15A NCAC 02B .0259 regarding the protection and
 28 maintenance of existing riparian buffers in the Tar-Pamlico River Basin; (iii) the permanent
 29 rule adopted and effective August 11, 2009, Session Law 2009-216, Session Law 2009-484,
 30 and the permanent rule, as amended, effective September 1, 2011, as 15A NCAC 02B .0267
 31 regarding the protection and maintenance of existing riparian buffers in the Jordan Water
 32 Supply Watershed; (iv) the permanent rule adopted effective April 1, 1999, and the permanent
 33 rule, as amended, effective June 1, 2010, as 15A NCAC 02B .0250 regarding the protection and
 34 maintenance of existing riparian buffers in the Randleman Lake Water Supply Watershed; (v)
 35 the temporary rule effective June 30, 2001, and the permanent rule effective August 1, 2004, as
 36 15A NCAC 02B .0243 regarding the protection and maintenance of existing riparian buffers in
 37 the Catawba River Basin; (vi) the permanent rule adopted and effective February 1, 2009, as
 38 15A NCAC 02B .0605 and the permanent rule adopted and effective February 1, 2009, as 15A
 39 NCAC 02B .0607 regarding the protection and maintenance of existing riparian buffers in the
 40 Goose Creek Watershed (Yadkin Pee-Dee River Basin); (vii) and any similar rule adopted for
 41 the protection and maintenance of riparian buffers, collectively referred to as "Riparian Buffer
 42 Rules" for the purposes of this section; shall not apply to a pond to which Riparian Buffer
 43 Rules would otherwise apply if all of the following conditions are met:

- 44 (1) The property on which the pond is located is used for agriculture as that term
 45 is defined in G.S. 106-581.1.
- 46 (2) Except for the Riparian Buffer Rules and any similar rule adopted for the
 47 protection and maintenance of riparian buffers, the use of the property is in
 48 compliance with all other water quality and water quantity statutes and rules
 49 applicable to the property before the adoption of the Riparian Buffer Rules
 50 for the river basin or watershed in which the property is located.

1 **SECTION 10.(b)** If the use of property on which a pond is located changes such
2 that the use no longer meets the criteria in subdivision (1) of subsection (a) of this section, the
3 Riparian Buffer Rules for the river basin or watershed in which the property is located shall
4 apply.

5 **SECTION 10.(c)** The Commission shall not adopt rules for the protection or
6 maintenance of riparian buffers that apply to ponds provided the ponds are constructed or used
7 for agriculture as that term is defined in G.S. 106-581.1.

8 **SECTION 10.(d)** Units of local government shall not adopt ordinances,
9 resolutions, plans, or policies for the protection or maintenance of riparian buffers that apply to
10 ponds provided the ponds are constructed or used for agriculture as that term is defined in
11 G.S. 106-581.1.

12 **SECTION 10.(e)** The Environmental Management Commission shall adopt rules
13 to amend the Neuse River Basin Riparian Buffer Rule, the Tar-Pamlico River Basin Riparian
14 Buffer Rule, the Jordan Water Supply Riparian Buffer Rule, the Randleman Lake Water
15 Supply Watershed Riparian Buffer Rule, the Catawba River Basin Riparian Buffer Rule, the
16 Goose Creek Watershed (Yadkin Pee-Dee River Basin) Riparian Buffer Rule, and any other
17 similar riparian buffer rules in accordance with subsections (a), (b), and (c) of this section.
18 Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section
19 shall be substantively identical to the provisions of subsections (a), (b), and (c) of this section.
20 Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through
21 G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in
22 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
23 G.S. 150B-21.3(b2).

24 **SECTION 10.(f)** Section 10(a) of this act expires on the date that rules adopted
25 pursuant to Section 10(e) of this act become effective.

26 27 **PART XI. PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR** 28 **WASTEWATER SYSTEMS**

29 **SECTION 11.(a)** 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design
30 Units). – Until the effective date of the revised permanent rule that the Commission is required
31 to adopt pursuant to Section 11(c) of this act, the Commission, the Department, and any other
32 political subdivision of the State shall implement 15A NCAC 18A .1949 (Sewage Flow Rates
33 for Design Units) as provided in Section 11(b) of this act.

34 **SECTION 11.(b)** Implementation. – Notwithstanding the Daily Flow for Design
35 rates listed in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units),
36 a wastewater system shall be exempt from the Daily Flow for Design, and any other design
37 flow standards that are established by the Department of Health and Human Services or the
38 Commission for Public Health provided flow rates that are less than those listed in Table No. 1
39 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) can be achieved through
40 engineering design that utilizes low-flow fixtures and low-flow technologies and the design is
41 prepared, sealed, and signed by a professional engineer licensed pursuant to Chapter 89C of the
42 General Statutes. The Department and Commission may establish lower limits on reduced flow
43 rates as necessary to ensure wastewater system integrity and protect public health, safety, and
44 welfare. Proposed daily design flows for wastewater systems that are calculated to be less than
45 3,000 total gallons per day shall not require State review pursuant to 15A NCAC 18A .1938(e).

46 **SECTION 11.(c)** Additional Rule-Making Authority. – The Commission shall
47 adopt a rule to amend 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units)
48 consistent with Section 11(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by
49 the Commission pursuant to this section shall be substantively identical to the provisions of
50 Section 11(b) of this act. Rules adopted pursuant to this section are not subject to
51 G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become

1 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been
2 received as provided by G.S. 150B-21.3(b2).

3 **SECTION 11.(d)** Sunset. – Section 11(b) of this act expires on the date that rules
4 adopted pursuant to Section 11(c) of this act become effective.

5
6 **PART XII. AMEND THE CONTINUING EDUCATION REQUIREMENTS FOR**
7 **CERTIFIED WELL CONTRACTORS**

8 **SECTION 12.** G.S. 87-98.12 reads as rewritten:

9 **"§ 87-98.12. Continuing education requirements.**

10 In order to continue to be certified under this Article, a well contractor shall satisfactorily
11 complete ~~the number of six~~ hours of approved continuing education within a three-year period
12 as required by the Commission. The Commission shall establish the ~~minimum number of hours~~
13 of continuing education that shall be required to maintain certification, requirements for
14 completing continuing education within the three-year period, shall specify the scope of
15 required continuing education courses, and shall approve continuing education courses."

16
17 **PART XIII. DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT**
18 **RULES FOR SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY**

19 **SECTION 13.** The Department of Transportation shall adopt rules to authorize
20 selective pruning within highway rights-of-way for vegetation that obstructs motorists' views of
21 properties on which agritourism activities, as that term is defined in G.S. 99E-30, occur.

22
23 **PART XIV. PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING**
24 **PROPERTY WITH KNOWN CONTAMINATION WITHOUT APPROVAL OF THE**
25 **GOVERNOR AND COUNCIL OF STATE**

26 **SECTION 14.** Chapter 133 of the General Statutes is amended by adding a new
27 Article to read:

28 "Article 4.

29 "Purchase of Contaminated Property by Public Entities.

30 **"§ 133-40. Purchase of contaminated property by public entities.**

31 (a) For purposes of this Article, the term "public entity" means any entity, department,
32 or agency of the State, a political subdivision, a municipal corporation, a State university or
33 college, a special district, a public authority, and other similar entities.

34 (b) No public entity, as defined in subsection (a) of this section, shall purchase or
35 otherwise acquire an ownership interest in any real property with known contamination, as that
36 term is defined in G.S. 130A-310.65(5), without approval of the Governor and the Council of
37 State. A public entity seeking to purchase or otherwise acquire an ownership interest in such
38 property shall petition the Governor and Council of State for approval of the transaction, with
39 sufficient information to identify the property, the nature and extent of the contamination
40 present, and a plan of paying for the project without the use of General Fund appropriations.
41 The approval of such a transaction by the Governor and Council of State may be evidenced by
42 a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State,
43 attested by the private secretary to the Governor or the Governor, reciting such approval,
44 affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a
45 part thereof, and the same shall be conclusive evidence of review and approval of the subject
46 transaction by the Governor and Council of State. The Governor, acting with the approval of
47 the Council of State, may delegate the review and approval of such transactions as the
48 Governor deems advisable.

49 (c) This Article shall not apply to situations in which a public entity acquires ownership
50 or control of real property involuntarily, including having obtained the property through

1 bankruptcy, tax delinquency, abandonment, or other circumstances in which the public entity
2 involuntarily acquires title by virtue of its function as a sovereign."
3

4 **PART XV. LIMIT LOCAL GOVERNMENT REGULATION OF STORAGE,**
5 **RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS**

6 **SECTION 15.** G.S. 130A-309.09A is amended by adding a new subsection to
7 read:

8 "(h) The storage, retention, and use of nonhazardous recycled materials, including
9 asphalt pavement, rap, or roofing shingles, shall be encouraged by units of local government. A
10 unit of local government shall not impede the storage, retention, or use of nonhazardous
11 recycled products in properly zoned storage facilities through the regulation of the height of
12 recycled material stockpiles."
13

14 **PART XVI. EFFECTIVE DATE**

15 **SECTION 16.** Section 10 of this act is effective when it becomes law and applies
16 to ponds used for agriculture that were either in existence on or constructed after July 22, 1997.
17 Section 12 of this act becomes effective July 1, 2013. Section 14 of this act becomes effective
18 July 1, 2013, and applies to a purchase or acquisition of interest in real property occurring on or
19 after that date. The remainder of this act is effective when it becomes law.