

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 630
PROPOSED SENATE COMMITTEE SUBSTITUTE H630-PCS10571-RI-32

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

(Public)

Sponsors:

Referred to:

April 14, 2015

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A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"Part 2I. Coal Ash Management.

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

"§ 130A-309.200. Title.

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

"§ 130A-309.201. Definitions.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **"§ 130A-309.204. Reports.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 20 b. Remove all coal combustion residuals from the impoundment, return the
21 former impoundment to a nonerosive and stable condition and (i)
22 transfer the coal combustion residuals for disposal in a coal combustion
23 residuals landfill, industrial landfill, or municipal solid waste landfill or
24 (ii) use the coal combustion products in a structural fill or other
25 beneficial use as allowed by law. The use of coal combustion products
26 (i) as structural fill shall be conducted in accordance with the
27 requirements of Subpart 3 of this Part and (ii) for other beneficial uses
28 shall be conducted in accordance with the requirements of Section .1700
29 of Subchapter B of Chapter 13 of Title 15A of the North Carolina
30 Administrative Code (Requirements for Beneficial Use of Coal
31 Combustion By-Products) and Section .1205 of Subchapter T of
32 Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal
33 Combustion Products Management).
- 34 (2) Intermediate-risk impoundments shall be closed as soon as practicable, but no
35 later than December 31, 2024. A proposed closure plan for such impoundments
36 must be submitted as soon as practicable, but no later than December 31,
37 ~~2017~~2019. At a minimum, such impoundments shall be dewatered, and the
38 owner of an impoundment shall close the impoundment in any manner allowed
39 pursuant to subdivision (1) of this ~~subsection~~subsection, or, if applicable, as
40 provided in G.S. 130A-309.216.
- 41 (3) Low-risk impoundments shall be closed as soon as practicable, but no later than
42 December 31, 2029. A proposed closure plan for such impoundments must be
43 submitted as soon as practicable, but no later than December 31, ~~2018~~2019. At
44 a minimum, (i) impoundments located in whole above the seasonal high
45 groundwater table shall be dewatered; (ii) impoundments located in whole or in
46 part beneath the seasonal high groundwater table shall be dewatered to the
47 maximum extent practicable; and (iii) at the election of the Department, the
48 owner of an impoundment shall either:
- 49 a. Close in any manner allowed pursuant to subdivision (1) of this
50 ~~subsection~~subsection;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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