

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015**

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**HOUSE BILL 630  
PROPOSED SENATE COMMITTEE SUBSTITUTE H630-CSRI-32 [v.2]  
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Short Title: Drinking Water Protect'n/Coal Ash Cleanup Act.

(Public)

Sponsors:

Referred to:

April 14, 2015

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

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

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

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

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

- ~~(1) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be a resident of the State.~~
- ~~(2) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment have special training or scientific expertise in waste management, including solid waste disposal, hauling, or beneficial use.~~
- ~~(3) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be a licensed physician or a person with experience in public health.~~
- ~~(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be a member of a nongovernmental conservation interest.~~
- ~~(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment have special training or scientific expertise in waste management, including solid waste disposal, hauling, or beneficial use, or is a representative of or on the faculty of a State college or university that conducts coal ash research.~~
- ~~(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be a representative of an electric membership corporation organized under Article 2 of Chapter 117 of the General Statutes and have a background in power supply resource planning and engineering.~~
- ~~(7) One appointed by the Governor who shall at the time of appointment have experience in economic development.~~
- ~~(8) One appointed by the Governor who shall at the time of appointment have expertise in determining and evaluating the costs associated with electricity generation and establishing the rates associated with electricity consumption.~~
- ~~(9) One appointed by the Governor who shall at the time of appointment be a person with experience in science or engineering in the manufacturing sector.~~

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

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

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

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

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

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

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

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

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

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

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

(d) Notwithstanding any other provision of this section or any other provision of law, the Department shall either issue or deny a permit required for dewatering of a retired impoundment within 90 days of receipt of a completed application, in such a form and including such

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

**§ 130A-309.204. Reports.**

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

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

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

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

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

(a) It is the intent of the General Assembly to maintain a uniform system for the management of coal combustion residuals and coal combustion products, including matters of disposal and beneficial use, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of coal combustion residuals and coal combustion products by means of ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including those imposing taxes, fees, or charges

1 or regulating health, environment, or land use, all provisions of local ordinances, including those  
2 regulating land use, adopted by counties, municipalities, or other local authorities that regulate or  
3 have the effect of regulating the management of coal combustion residuals and coal combustion  
4 products, including regulation of carbon burn-out plants, within the jurisdiction of a local  
5 government are invalidated and unenforceable, to the extent necessary to effectuate the purposes  
6 of this Part, that do the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **§ 130A-309.206. Federal preemption; severability.**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

(b) Corrective Action for the Restoration of Groundwater Quality. – The owner of a coal combustion residuals surface impoundment shall implement corrective action for the restoration of

groundwater quality as provided in this subsection. The requirements for corrective action for the restoration of groundwater quality set out in this subsection are in addition to any other corrective action for the restoration of groundwater quality requirements applicable to the owners of coal combustion residuals surface impoundments:

- (1) No later than 90 days from submission of the Groundwater Assessment Report required by subsection (a) of this section, or a time frame otherwise approved by the Department not to exceed 180 days from submission of the Groundwater Assessment Report, the owner of the coal combustion residuals surface impoundment shall submit a proposed Groundwater Corrective Action Plan to the Department for its review and approval. The Groundwater Corrective Action Plan shall provide for the restoration of groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. The Groundwater Corrective Action Plan shall include, at a minimum, all of the following:
  - a. A description of all exceedances of the groundwater quality standards, including any exceedances that the owner asserts are the result of natural background conditions.
  - b. A description of the methods for restoring groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code and a detailed explanation of the reasons for selecting these methods.
  - c. Specific plans, including engineering details, for restoring groundwater quality.
  - d. A schedule for implementation of the Plan.
  - e. A monitoring plan for evaluating the effectiveness of the proposed corrective action and detecting movement of any contaminant plumes.
  - f. Any other information related to groundwater assessment required by the Department.
- (2) The Department shall approve the Groundwater Corrective Action Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.
- (3) No later than 30 days from the approval of the Groundwater Corrective Action Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No later than October 1, 2014, the owner of a coal combustion residuals surface impoundment shall conduct a Drinking Water Supply Well Survey that identifies all drinking water supply wells within one-half mile down-gradient from the established compliance boundary of the impoundment and submit the Survey to the Department. The Survey shall include well locations, the nature of water uses, available well construction details, and information regarding ownership of the wells. No later than December 1, 2014, the Department shall determine, based on the Survey, which drinking water supply wells the owner is required to sample and how frequently and for what period sampling is required. The Department shall require sampling for drinking water supply wells where data regarding groundwater quality and flow and depth in the area of any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed well may be adversely impacted by constituents associated with the presence of the impoundment. No later than January 1, 2015, the owner shall initiate sampling and water quality analysis of the drinking water supply wells. A property owner may elect to have an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program sample wells located on their property in lieu of sampling conducted by the

owner of the coal combustion residuals surface impoundment. The owner of the coal combustion residuals surface impoundment shall pay for the reasonable costs of such sampling. Nothing in this subsection shall be construed to preclude or impair the right of any property owner to refuse such sampling of wells on their property. If the sampling and water quality analysis indicates that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with the presence of the impoundment, the owner shall replace the contaminated drinking water supply well with an alternate supply of potable drinking water and an alternate supply of water that is safe for other household uses. The alternate supply of potable drinking water shall be supplied within 24 hours of the Department's determination that there is an exceedance of groundwater quality standards attributable to constituents associated with the presence of the impoundment. The alternate supply of water that is safe for other household uses shall be supplied within 30 days of the Department's determination that there is an exceedance of groundwater quality standards attributable to constituents associated with the presence of the impoundment. The requirement to replace a contaminated drinking water supply well with an alternate supply of potable drinking water and an alternate supply of water that is safe for other household uses set out in this subsection is in addition to any other requirements to replace a contaminated drinking water supply well with an alternate supply of potable drinking water or an alternate supply of water that is safe for other household uses applicable to the owners of coal combustion residuals surface impoundments.

(c1) Provision of Permanent Water Supply. – As soon as practicable, but no later than October 15, 2018, the owner of a coal combustion residuals surface impoundment shall establish permanent replacement water supplies for (i) each household that has a drinking water supply well located within a one-half mile radius from the established compliance boundary of a coal combustion residuals impoundment, and is not separated from the impoundment by the mainstem of a river, as that term is defined under G.S. 143-215.22G, or other body of water that would prevent the migration of contaminants through groundwater from the impoundment to a well and (ii) each household that has a drinking water supply well that is located in an area in which contamination resulting from constituents associated with the presence of a coal combustion residuals impoundment is expected to migrate, as demonstrated by groundwater modeling, and hydrogeologic, geologic, and geotechnical investigations of the site, conducted in accordance with the requirements of G.S. 130A-309.214(a)(4) and the results of other modeling or investigations that are may have been submitted pursuant to G.S. 130A-309.213(b)(4). Preference shall be given to permanent replacement water supplies by connection to public water supplies; provided that: (i) a household may elect to receive a filtration system in lieu of a connection to public water supplies; and (ii) if the Department determines that connection to a public water supply to a particular household would be cost-prohibitive, the Department shall authorize provision of a permanent replacement water supply to that household through installation of a filtration system. For households for which filtration systems are installed, the impoundment owner shall be responsible for periodic required maintenance of the filtration system. No later than December 15, 2016, an impoundment owner shall submit information on permanent replacement water supplies proposed to be provided to each household to the Department, including, at a minimum, the type of permanent water supply proposed; the location of the household and its proximity to the nearest connection point to a public water supply; projected cost of the permanent water supply option proposed for the household; and any proposal to connect to a public water supply. The Department shall evaluate information submitted by the impoundment owner and render a final decision to approve or disapprove the plan, including written findings of fact, no later than January 15, 2017. If disapproved, an impoundment owner shall resubmit a plan for the Department's approval within 30 days. No later than April 15, 2017, an impoundment owner shall notify all residents identified in the approved plan of their eligibility for establishment of a permanent water supply. Until such time as an impoundment owner has established a permanent water supply for each household required by this subsection, the impoundment owner shall supply the household with an alternate

supply of potable drinking water and an alternate supply of water that is safe for other household uses. Nothing in this section shall be construed to: (i) require an eligible household to connect to a public water supply or receive a filtration system; or (ii) obviate the need for other federal, State, and local permits and approvals. All State entities and local governments shall expedite any permits and approvals required for such projects. The Department may grant an impoundment owner an extension of time, not to exceed one year, to establish permanent water supplies as required by this section, if the Department determines that it is infeasible for the impoundment owner to establish a permanent water supply for a household by October 15, 2019, based on limitations arising from local government resources, including limitations on water supply capacity and staffing limitations for permitting and construction activities.

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

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

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

–

- (1) The owner of a coal combustion residuals surface impoundment shall identify all discharges from the impoundment as provided in this subsection. The requirements for identifying all discharges from an impoundment set out in this subsection are in addition to any other requirements for identifying discharges applicable to the owners of coal combustion residuals surface impoundments.
- (2) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a topographic map that identifies the location of all (i) outfalls from engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment and (ii) seeps and weeps discharging from the impoundment that are not captured by engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment to the Department. The topographic map shall comply with all of the following:
  - a. Be at a scale as required by the Department.
  - b. Specify the latitude and longitude of each toe drain outfall, seep, and weep.
  - c. Specify whether the discharge from each toe drain outfall, seep, and weep is continuous or intermittent.
  - d. Provide an average flow measurement of the discharge from each toe drain outfall, seep, and weep including a description of the method used to measure average flow.
  - e. Specify whether the discharge from each toe drain outfall, seep, and weep identified reaches the surface waters of the State. If the discharge from a toe drain outfall, seep, or weep reaches the surface waters of the State, the map shall specify the latitude and longitude of where the discharge reaches the surface waters of the State.

- 1 f. Include any other information related to the topographic map required  
2 by the Department.
- 3 (b) Assessment of Discharges from Coal Combustion Residuals Surface Impoundments to  
4 the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment  
5 shall conduct an assessment of discharges from the coal combustion residuals surface  
6 impoundment to the surface waters of the State as provided in this subsection. The requirements  
7 for assessment of discharges from the coal combustion residuals surface impoundment to the  
8 surface waters of the State set out in this subsection are in addition to any other requirements for  
9 the assessment of discharges from coal combustion residuals surface impoundments to surface  
10 waters of the State applicable to the owners of coal combustion residuals surface impoundments:
- 11 (1) No later than December 31, 2014, the owner of a coal combustion residuals  
12 surface impoundment shall submit a proposed Discharge Assessment Plan to  
13 the Department. The Discharge Assessment Plan shall include information  
14 sufficient to allow the Department to determine whether any discharge,  
15 including a discharge from a toe drain outfall, seep, or weep, has reached the  
16 surface waters of the State and has caused a violation of surface water quality  
17 standards. The Discharge Assessment Plan shall include, at a minimum, all of  
18 the following:
- 19 a. Upstream and downstream sampling locations within all channels that  
20 could potentially carry a discharge.
- 21 b. A description of the surface water quality analyses that will be  
22 performed.
- 23 c. A sampling schedule, including the frequency and duration of sampling  
24 activities.
- 25 d. Reporting requirements.
- 26 e. Any other information related to the assessment of discharges required  
27 by the Department.
- 28 (2) The Department shall approve the Discharge Assessment Plan if it determines  
29 that the Plan complies with the requirements of this subsection and will be  
30 sufficient to protect public health, safety, and welfare; the environment; and  
31 natural resources.
- 32 (3) No later than 30 days from the approval of the Discharge Assessment Plan, the  
33 owner shall begin implementation of the Plan in accordance with the Plan's  
34 schedule.
- 35 (c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion  
36 Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal  
37 combustion residuals surface impoundment shall implement corrective action to prevent  
38 unpermitted discharges from the coal combustion residuals surface impoundment to the surface  
39 waters of the State as provided in this subsection. The requirements for corrective action to  
40 prevent unpermitted discharges from coal combustion residuals surface impoundments to the  
41 surface waters of the State set out in this subsection are in addition to any other requirements for  
42 corrective action to prevent unpermitted discharges from coal combustion residuals surface  
43 impoundments to the surface waters of the State applicable to the owners of coal combustion  
44 residuals surface impoundments:
- 45 (1) If the Department determines, based on information provided pursuant to  
46 subsection (a) or (b) of this section, that an unpermitted discharge from a coal  
47 combustion residuals surface impoundment, including an unpermitted discharge  
48 from a toe drain outfall, seep, or weep, has reached the surface waters of the  
49 State, the Department shall notify the owner of the impoundment of its  
50 determination.

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

Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. ~~The owner of a coal combustion residuals surface impoundment shall also submit all information required to be submitted to the Department pursuant to this section to the Coal Ash Management Commission.~~

**§ 130A-309.213. Prioritization of coal combustion residuals surface impoundments.**

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

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

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

- (1) The Department shall make copies of the written declaration issued pursuant to this subsection available for inspection as follows:
  - a. A copy of the declaration shall be provided to the local health director.
  - b. A copy of the declaration shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.
  - c. The Department shall post a copy of the declaration on the Department's Web site.
  - d. The Department shall place copies of the declaration in other locations so as to assure the reasonable availability thereof to the public.
- (2) The Department shall give notice of the written declaration issued pursuant to this subsection as follows:

- 1 a. A notice and summary of the declaration shall be published weekly for a  
2 period of three consecutive weeks in a newspaper having general  
3 circulation in the county or counties where the site is located.
- 4 b. Notice of the written declaration shall be given by first-class 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 c. Notice of the written declaration shall be given by electronic mail to  
11 persons who have requested such notice. Such notice shall include a  
12 summary of the written declaration and state the locations where a copy  
13 of the written declaration is available for inspection. The Department  
14 shall maintain a mailing list of persons who request notice pursuant to  
15 this section.
- 16 (3) No later than 60 days after issuance of the written declaration, the Department  
17 shall conduct a public meeting in the county or counties in which the site is  
18 located to explain the written declaration to the public. The Department shall  
19 give notice of the hearing at least 15 days prior to the date thereof by all of the  
20 following methods:
- 21 a. Publication as provided in subdivision (1) of this subsection, with first  
22 publication to occur not less than 30 days prior to the scheduled date of  
23 the hearing.
- 24 b. First-class mail to persons who have requested notice as provided in  
25 subdivision (2) of this subsection.
- 26 c. Electronic mail to persons who have requested notice as provided in  
27 subdivision (2) of this subsection.
- 28 (4) At least 30 days from the latest date on which notice is provided pursuant to  
29 subdivision (2) of this subsection shall be allowed for the receipt of written  
30 comment on the written declaration prior to issuance of a final risk  
31 classification. At least 20 days will be allowed for receipt of written comment  
32 following a hearing conducted pursuant to subdivision (3) of this subsection  
33 prior to issuance of a ~~final~~ preliminary risk classification.
- 34 (e) ~~Within 30 days of the receipt of all written comment as required by subdivision (4) of~~  
35 ~~subsection (b) of this section, the Department shall submit a proposed classification for a coal~~  
36 ~~combustion residuals surface impoundment to the Coal Ash Management Commission established~~  
37 ~~pursuant to G.S. 130A-309.202. The Commission shall evaluate all information submitted in~~  
38 ~~accordance with this Part related to the proposed classification and any other information the~~  
39 ~~Commission deems relevant. The Commission shall only approve the proposed classification if it~~  
40 ~~determines that the classification was developed in accordance with this section and that the~~  
41 ~~classification accurately reflects the level of risk posed by the coal combustion residuals surface~~  
42 ~~impoundment. The Commission shall issue its determination in writing, including findings in~~  
43 ~~support of its determination. If the Commission fails to act on a proposed classification within 60~~  
44 ~~days of receipt of the proposed classification, the proposed classification shall be deemed~~  
45 ~~approved. Parties aggrieved by a final decision of the Commission pursuant to this subsection may~~  
46 ~~appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes.~~
- 47 (d) No later than 30 days after expiration of the deadline set forth in  
48 G.S. 130A-309.211(c1), or any applicable extension granted by the Secretary pursuant  
49 G.S. 130A-309.211(c1), the Department shall issue a final classification for each impoundment as  
50 follows:



(1) The Department shall classify an impoundment as low-risk if the impoundment owner satisfies both of the following criteria:

a. Has established permanent water supplies as required for the impoundment pursuant to G.S. 130A-309.211(c1).

b. Has rectified any deficiencies identified by, and otherwise complied with the requirements of, any dam safety order issued by the Environmental Management Commission for the impoundment pursuant to G.S. 143-215.32. No later than July 1, 2017, the Department shall conduct the annual inspection of each dam associated with a coal combustion residuals surface impoundment required for that year, to detect any deficiencies and to ascertain, at a minimum, whether the dam is sufficiently strong, maintained in good repair and operating condition, does not pose a danger to life or property, and satisfies minimum streamflow requirements. The Department shall issue written findings of fact for each inspection and present such findings to the Environmental Management Commission. If the Department detects any deficiencies, the Commission shall issue an order directing the owner of the dam to take action as may be deemed necessary by the Commission within a time limited by the order, but not later than 90 days after issuance of the order.

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

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

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

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

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

a. Convert the coal combustion residuals impoundment to an industrial landfill by removing all coal combustion residuals and contaminated soil from the impoundment temporarily, safely storing the residuals on-site, and complying with the requirements for such landfills established by this Article and rules adopted thereunder. At a minimum, the landfills shall have a design with a leachate collection system, a closure cap system, and a composite liner system consisting of two components: the upper component shall consist of a minimum 30-ml flexible membrane (FML), and the lower components shall consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters per second. FML components

consisting of high density polyethylene (HDPE) shall be at least 60 ml thick. The landfill shall otherwise comply with the construction requirements established by Section .1624 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, and the siting and design requirements for disposal sites established by Section .0503 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, except with respect to those requirements that pertain to buffers. In lieu of the buffer requirement established by Section .0503(f)(2)(iii) of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, the owner of the impoundment shall establish and maintain a 300-foot buffer between surface waters and disposal areas. After the temporarily displaced coal combustion residuals have been returned for disposal in the industrial landfill constructed pursuant to the requirements of this sub-subdivision, the owner of the landfill shall comply with the closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. A landfill constructed pursuant to this sub-subdivision shall otherwise be subject to all applicable requirements of this Chapter and rules adopted thereunder. Prior to closure, the Department may allow the disposal of coal combustion residuals, in addition to those originally contained in the impoundment, to the landfill constructed pursuant to this sub-subdivision, if the Department determines that the site is suitable for additional capacity and that disposal of additional coal combustion residuals will not pose an unacceptable risk to public health, safety, welfare; the environment; and natural resources.

- b. Remove all coal combustion residuals from the impoundment, return the former impoundment to a nonerosive and stable condition and (i) transfer the coal combustion residuals for disposal in a coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill or (ii) use the coal combustion products in a structural fill or other beneficial use as allowed by law. The use of coal combustion products (i) as structural fill shall be conducted in accordance with the requirements of Subpart 3 of this Part and (ii) for other beneficial uses shall be conducted in accordance with the requirements of Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1205 of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal Combustion Products Management).
- (2) Intermediate-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2024. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, ~~2017-2019~~. At a minimum, such impoundments shall be dewatered, and the owner of an impoundment shall close the impoundment in any manner allowed pursuant to subdivision (1) of this ~~subsection-subsection~~, or, if applicable, as provided in G.S. 130A-309.216.
- (3) Low-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2029. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, ~~2018-2019~~. At a minimum, (i) impoundments located in whole above the seasonal high

groundwater table shall be dewatered; (ii) impoundments located in whole or in part beneath the seasonal high groundwater table shall be dewatered to the maximum extent practicable; and (iii) at the election of the Department, the owner of an impoundment shall either:

a. Close in any manner allowed pursuant to subdivision (1) of this ~~subsection~~ subsection;

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

c. Comply with the closure requirements established by the United States Environmental Protection Agency as provided in 40 CFR Parts 257 and

261, "Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities."

- (4) Closure Plans for all impoundments shall include all of the following:
- a. Facility and coal combustion residuals surface impoundment description. – A description of the operation of the site that shall include, at a minimum, all of the following:
    1. Site history and history of site operations, including details on the manner in which coal combustion residuals have been stored and disposed of historically.
    2. Estimated volume of material contained in the impoundment.
    3. Analysis of the structural integrity of dikes or dams associated with impoundment.
    4. All sources of discharge into the impoundment, including volume and characteristics of each discharge.
    5. Whether the impoundment is lined, and, if so, the composition thereof.
    6. A summary of all information available concerning the impoundment as a result of inspections and monitoring conducted pursuant to this Part and otherwise available.
  - b. Site maps, which, at a minimum, illustrate all of the following:
    1. All structures associated with the operation of any coal combustion residuals surface impoundment located on the site. For purposes of this sub-subdivision, the term "site" means the land or waters within the property boundary of the applicable electric generating station.
    2. All current and former coal combustion residuals disposal and storage areas on the site, including details concerning coal combustion residuals produced historically by the electric generating station and disposed of through transfer to structural fills.
    3. The property boundary for the applicable site, including established compliance boundaries within the site.
    4. All potential receptors within 2,640 feet from established compliance boundaries.
    5. Topographic contour intervals of the site shall be selected to enable an accurate representation of site features and terrain and in most cases should be less than 20-foot intervals.
    6. Locations of all sanitary landfills permitted pursuant to this Article on the site that are actively receiving waste or are closed, as well as the established compliance boundaries and components of associated groundwater and surface water monitoring systems.
    7. All existing and proposed groundwater monitoring wells associated with any coal combustion residuals surface impoundment on the site.
    8. All existing and proposed surface water sample collection locations associated with any coal combustion residuals surface impoundment on the site.
  - c. The results of a hydrogeologic, geologic, and geotechnical investigation of the site, including, at a minimum, all of the following:
    1. A description of the hydrogeology and geology of the site.

2. A description of the stratigraphy of the geologic units underlying each coal combustion residuals surface impoundment located on the site.
  3. The saturated hydraulic conductivity for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site and (ii) the saturated hydraulic conductivity of any existing liner installed at an impoundment, if any.
  4. The geotechnical properties for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site, (ii) the geotechnical properties of any existing liner installed at an impoundment, if any, and (iii) the uppermost identified stratigraphic unit underlying the impoundment, including the soil classification based upon the Unified Soil Classification System, in-place moisture content, particle size distribution, Atterberg limits, specific gravity, effective friction angle, maximum dry density, optimum moisture content, and permeability.
  5. A chemical analysis of the coal combustion residuals surface impoundment, including water, coal combustion residuals, and coal combustion residuals-affected soil.
  6. Identification of all substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code, including all laboratory results for these analyses.
  7. Summary tables of historical records of groundwater sampling results.
  8. A map that illustrates the potentiometric contours and flow directions for all identified aquifers underlying impoundments (shallow, intermediate, and deep) and the horizontal extent of areas where groundwater quality standards established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code for a substance are exceeded.
  9. Cross-sections that illustrate the following: the vertical and horizontal extent of the coal combustion residuals within an impoundment; stratigraphy of the geologic units underlying an impoundment; and the vertical extent of areas where groundwater quality standards established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code for a substance are exceeded.
- d. The results of groundwater modeling of the site that shall include, at a minimum, all of the following:
1. An account of the design of the proposed Closure Plan that is based on the site hydrogeologic conceptual model developed and includes (i) predictions on post-closure groundwater elevations and groundwater flow directions and velocities, including the effects on and from the potential receptors and (ii) predictions at the compliance boundary for substances with concentrations determined to be in excess of the groundwater quality standards

- for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code.
2. Predictions that include the effects on the groundwater chemistry and should describe migration, concentration, mobilization, and fate for substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code pre- and post-closure, including the effects on and from potential receptors.
3. A description of the groundwater trend analysis methods used to demonstrate compliance with groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code and requirements for corrective action of groundwater contamination established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code.
- e. A description of any plans for beneficial use of the coal combustion residuals in compliance with the requirements of Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1205 of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal Combustion Products Management).
- f. All engineering drawings, schematics, and specifications for the proposed Closure Plan. If required by Chapter 89C of the General Statutes, engineering design documents should be prepared, signed, and sealed by a professional engineer.
- g. A description of the construction quality assurance and quality control program to be implemented in conjunction with the Closure Plan, including the responsibilities and authorities for monitoring and testing activities, sampling strategies, and reporting requirements.
- h. A description of the provisions for disposal of wastewater and management of stormwater and the plan for obtaining all required permits.
- i. A description of the provisions for the final disposition of the coal combustion residuals. If the coal combustion residuals are to be removed, the owner must identify (i) the location and permit number for the coal combustion residuals landfills, industrial landfills, or municipal solid waste landfills in which the coal combustion residuals will be disposed and (ii) in the case where the coal combustion residuals are planned for beneficial use, the location and manner in which the residuals will be temporarily stored. If the coal combustion residuals are to be left in the impoundment, the owner must (i) in the case of closure pursuant to sub-subdivision (a)(1)a. of this section, provide a description of how the ash will be stabilized prior to completion of closure in accordance with closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code and (ii) in the case of closure pursuant to sub-subdivision (a)(1)b. of this section, provide a description of how the ash will be stabilized pre- and post-closure. If the coal combustion

residuals are to be left in the impoundment, the owner must provide an estimate of the volume of coal combustion residuals remaining.

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

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

1. A demonstration of the long-term control of all leachate, affected groundwater, and stormwater.
2. A description of a groundwater monitoring program that includes (i) post-closure groundwater monitoring, including parameters to be sampled and sampling schedules; (ii) any additional monitoring well installations, including a map with the proposed locations and well construction details; and (iii) the actions proposed to mitigate statistically significant increasing groundwater quality trends.

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

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

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

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

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

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



disapprove a proposed Closure Plan within 120 days after a complete Closure Plan has been submitted, the person who submitted the proposed Closure Plan may treat the Closure Plan as having been disapproved at the end of that time period. The Department may require a person who proposes a Closure Plan to supply any additional information necessary for the Department to approve or disapprove the Closure Plan.

~~(d) Within 30 days of its approval of a Coal Combustion Residuals Surface Impoundment Closure Plan, the Department shall submit the Closure Plan to the Coal Ash Management Commission. The Commission shall evaluate all information submitted in accordance with this Part related to the Closure Plan and any other information the Commission deems relevant. The Commission shall approve the Closure Plan if it determines that the Closure Plan was developed in accordance with this section, that implementation of the Closure Plan according to the Closure Plan's schedule is technologically and economically feasible, and the Closure Plan is protective of the public health, safety, and welfare; the environment; and natural resources. In addition, the Commission may consider any impact on electricity costs and reliability, but this factor may not be dispositive of the Commission's determination. The Commission shall issue its determination in writing, including findings in support of its determination. If the Commission fails to act on a Closure Plan within 60 days of receipt of the Closure Plan, the Closure Plan shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes.~~

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

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

#### **§ 130A-309.215. Variance authority.**

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

(a1) For variances requested by an impoundment owner, the owner shall, no earlier than ~~two years~~ one year prior to the applicable deadline, submit an application in a form acceptable to the Department which shall include, at a minimum, all of the following information: identification of the site, applicable requirements, and applicable deadlines for which a variance is sought, and the site-specific circumstances that support the need for the variance. The owner of the impoundment shall also provide detailed information that demonstrates (i) the owner has substantially complied with all other requirements and deadlines established by this Part; (ii) the owner has made good faith efforts to comply with the applicable deadline for closure of the

1 impoundment; and (iii) that compliance with the deadline cannot be achieved by application of  
2 best available technology found to be economically reasonable at the time and would produce  
3 serious hardship without equal or greater benefits to the public. As soon as practicable, but no later  
4 than 60 days from receipt of an application, the Secretary shall evaluate the information submitted  
5 in conjunction with the application, and any other information the Secretary deems relevant, to  
6 determine whether the information supports issuance of a variance. ~~After such evaluation, if the~~  
7 ~~Secretary finds that the information supports issuance of a variance from the deadline, the~~  
8 ~~Secretary shall issue a proposed variance. Within 10 days after a proposed variance has been~~  
9 ~~issued, the Secretary shall issue a written declaration, including findings of fact, documenting the~~  
10 ~~proposed variance.~~

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

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

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

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

### 30 **"§ 130A-309.216. Ash beneficiation projects.**

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

41 (b) On or before July 1, 2017, an impoundment owner shall: (i) identify an impoundment  
42 at an additional site located within the State with ash stored in the impoundment on that date that  
43 is suitable for processing for cementitious purposes; and (ii) enter into a binding agreement for the  
44 installation and operation of an ash beneficiation project capable of annually processing three  
45 hundred thousand (300,000) tons of ash to specifications appropriate for cementitious products,  
46 with all ash processed to be removed from the impoundment(s) located at the site. As soon as  
47 legally practicable thereafter, the impoundment owner shall apply for all permits necessary for the  
48 ash beneficiation project from the Department. The Department shall expedite any State permits  
49 and approvals required for such projects. No later than 24 months after issuance of all necessary  
50 permits, operation of the ash beneficiation projects shall be commenced.

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

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

..."

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

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

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

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

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

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

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

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

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

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

- (1) Impoundments located in whole above the seasonal high groundwater table shall be dewatered. Impoundments located in whole or in part beneath the seasonal high groundwater table shall be dewatered to the maximum extent practicable.
- (2) All coal combustion residuals shall be removed from the impoundments and transferred for (i) disposal in a coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill or (ii) use in a structural fill or other beneficial use as allowed by law. The use of coal combustion products (i) as structural fill shall be conducted in accordance with the requirements of Subpart 3 of Part 2I of Article 9 of the General Statutes, and (ii) for other beneficial uses shall be conducted in accordance with the requirements of Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1200 of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal Combustion Products Management), as applicable.
- (3) If restoration of groundwater quality is degraded as a result of the impoundment, corrective action to restore groundwater quality shall be implemented by the owner or operator as provided in G.S. 130A-309.211.

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

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

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

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

Environmental Management Commission ~~and the Coal Ash Management Commission~~ on or before August 1, 2016."

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

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

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

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

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

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

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

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

(5) One member appointed by the ~~General Assembly upon recommendation of the Speaker of the House of Representatives~~ Governor subject to confirmation in conformance with Article III, Section 5(8) of the Constitution of North Carolina, who is a representative of the mining industry.

(6) One member appointed by the ~~General Assembly upon recommendation of the President Pro Tempore of the Senate~~ Governor subject to confirmation in conformance with Article III, Section 5(8) of the Constitution of North Carolina, who is a representative of the mining industry.

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

(8) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in conformance with G.S. 120-121, who is a ~~member of representative of a nongovernmental conservation interests~~interest.

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

(b) Terms. – The term of office of a member of the Commission is ~~six years~~four years, beginning effective January 1 of the year of appointment and terminating on December 31 of the year of expiration. At the expiration of each member's term, the appointing authority shall replace the member with a new member of like qualifications for a term of ~~six~~four years. ~~The term of the member appointed under subdivision (5) of subsection (a1) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection (a1) of this section shall expire on June 30~~

~~of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (4) and (7) of subsection (a1) of this section shall expire on June 30 of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. In order to establish regularly overlapping terms, initial appointments shall be made effective June 1, 2016, or as soon as feasible thereafter, and expire as follows:~~

(1) The initial appointments made by the Governor:

a. Pursuant to subdivision (a1)(3) of this section shall expire December 31, 2020.

b. Pursuant to subdivision (a1)(4) of this section shall expire December 31, 2020.

c. Pursuant to subdivision (a1)(5) of this section shall expire December 31, 2019.

d. Pursuant to subdivision (a1)(6) of this section shall expire December 31, 2019.

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

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

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

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

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

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

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

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

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

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

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

- 1 (a1) Members Selection. – The North Carolina Oil and Gas Commission shall consist of  
2 nine members appointed as follows:
- 3 (1) One appointed by the ~~General Assembly upon recommendation of the Speaker~~  
4 ~~of the House of Representatives~~ Governor subject to confirmation in  
5 conformance with Article III, Section 5(8) of the Constitution of North  
6 Carolina, who, at the time of initial appointment, is an elected official of a  
7 municipal government located in a region of North Carolina that has oil and gas  
8 potential. A person serving in this seat may complete a term on the Commission  
9 even if the person is no longer serving as an elected official of a municipal  
10 government but may not be reappointed to a subsequent term.
- 11 (2) One appointed by the General Assembly upon recommendation of the Speaker  
12 of the House of Representatives in conformance with G.S. 120-121, who shall  
13 be a geologist with experience in oil and gas exploration and development.
- 14 (3) One appointed by the General Assembly upon recommendation of the Speaker  
15 of the House of Representatives in conformance with G.S. 120-121, who is a  
16 ~~member representative~~ of a nongovernmental conservation interest.
- 17 (4) One appointed by the ~~General Assembly upon recommendation of the President~~  
18 ~~Pro Tempore of the Senate~~ Governor subject to confirmation in conformance  
19 with Article III, Section 5(8) of the Constitution of North Carolina, who, at the  
20 time of initial appointment, is a member of a county board of commissioners of  
21 a county located in a region of North Carolina that has oil and gas potential. A  
22 person serving in this seat may complete a term on the Commission even if the  
23 person is no longer serving as county commissioner but may not be reappointed  
24 to a subsequent term.
- 25 (5) One appointed by the General Assembly upon recommendation of the President  
26 Pro Tempore of the Senate in conformance with G.S. 120-121, who is a  
27 ~~member representative~~ of a nongovernmental conservation interest.
- 28 (6) One appointed by the General Assembly upon recommendation of the President  
29 Pro Tempore of the Senate in conformance with G.S. 120-121, who shall be an  
30 engineer with experience in oil and gas exploration and development.
- 31 (7) One appointed by the Governor subject to confirmation in conformance with  
32 Article III, Section 5(8) of the Constitution of North Carolina, who shall be a  
33 representative of a publicly traded natural gas company.
- 34 (8) One appointed by the Governor subject to confirmation in conformance with  
35 Article III, Section 5(8) of the Constitution of North Carolina, who shall be a  
36 licensed attorney with experience in legal matters associated with oil and gas  
37 exploration and development.
- 38 (9) One appointed by the Governor subject to confirmation in conformance with  
39 Article III, Section 5(8) of the Constitution of North Carolina, with experience  
40 in matters related to public health.
- 41 (a2) Process for Appointments by the Governor. – The Governor shall transmit to the  
42 presiding officers of the Senate and the House of Representatives, within four weeks of the  
43 convening of the session of the General Assembly in the year for which the terms in question are  
44 to expire, the names of the persons to be appointed by the Governor and submitted to the General  
45 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this  
46 subsection when the General Assembly is not in session, the member may be appointed and serve  
47 on an interim basis pending confirmation by the General Assembly. For the purpose of this  
48 subsection, the General Assembly is not in session only (i) prior to convening of the regular  
49 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine  
50 die adjournment of the regular session.

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

(1) The initial appointments made by the Governor:

- a. Pursuant to subdivision (a1)(1) of this section shall expire December 31, 2020.
- b. Pursuant to subdivision (a1)(4) of this section shall expire December 31, 2020.
- c. Pursuant to subdivision (a1)(7) of this section shall expire December 31, 2020.
- d. Pursuant to subdivision (a1)(8) of this section shall expire December 31, 2019.
- e. Pursuant to subdivision (a1)(9) of this section shall expire December 31, 2019.

(2) The initial appointments made by the General Assembly upon recommendation of the Speaker of the House of Representatives:

- a. Pursuant to subdivision (a1)(2) of this section shall expire December 31, 2018.
- b. Pursuant to subdivision (a1)(3) of this section shall expire December 31, 2019.

(3) The initial appointments made by the General Assembly upon recommendation of the President Pro Tempore of the Senate:

- a. Pursuant to subdivision (a1)(5) of this section shall expire December 31, 2018.
- b. Pursuant to subdivision (a1)(6) of this section shall expire December 31, 2019.

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

(c1) Removal. –

~~(1) Any appointment by the Governor to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired~~



~~term.~~ The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of ~~1973~~ 1973, or for good cause.

~~(2) Members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. In accordance with Section 10 of Article VI of the North Carolina Constitution, a member may continue to serve until a successor is duly appointed.~~

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

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

(f) Staff. – All staff support required by the Commission shall be supplied by the Division of Energy, Mineral, and Land Resources and the North Carolina Geological ~~Survey~~ Survey, and supervised by the Secretary of Environmental Quality.

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

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

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

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

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

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