

Incorporating into Rule Session Law Changes to the Jordan Lake Nutrient Strategy

For the January 10, 2013

Environmental Management Commission



Contents

SUMMARY 3

RULEMAKING HISTORY 4

DESCRIPTION OF RULE CHANGES 5

 15A NCAC 02B .0262 – Purpose and Scope (Amendment)..... 5

 15A NCAC 02B .0265 - New Development Stormwater Management (Amendment) 5

 15A NCAC 02B .0266 – Existing Development Stormwater Management (Replacement) 6

 15A NCAC 02B .0267 Protection of Existing Riparian Buffers (Amendment) 8

 15A NCAC 02B .0270 – Wastewater Discharge Requirements (Amendment) 8

 15A NCAC 02B .0271 - State and Federal Entities Stormwater (Amendment)..... 8

FISCAL NOTE..... 10

PROPOSED RULEMAKING PROCESS 10

RECOMMENDATION 11

LIST OF APPENDICES 13

 Appendix A. Rule Text for the Proposed Session Law Revisions to the Jordan Nutrient Strategy

 Appendix B. Revised Addendum to Fiscal Note for Fiscal Analysis B. Everett Jordan Reservoir
 Water Supply Nutrient Strategy

 Appendix C. Sessions Laws Affecting the Jordan Nutrient Strategy

SUMMARY

This report details changes proposed to certain Jordan Lake Rules to incorporate session law requirements, and requests Environmental Management Commission approval of the fiscal analysis along with approval to take these rules to public comment. Six session laws (SLs), [2009-216](#), [2009-484](#), [2011-394](#), [2012-187](#), [2012-200](#), and [2012-201](#), either disapproved or modified portions of the Jordan Lake Nutrient Strategy of the Upper Cape Fear River Basin that was adopted by the Commission in May 2008. In doing so, these laws direct the Commission to adopt rules “substantively identical” to the legislative requirements enacted by the General Assembly. Table 1 details the rules affected by the SLs. The full text of the rules and SLs are provided in Appendices A and C, respectively.

Table 1. Jordan Nutrient Strategy Rules Affected by Recent Session Laws.

Rule	Session Law	Action
165A NCAC 02B .0262 – Purpose and Scope	SL 2012-187	Modified
15A NCAC 02B .0265 - New Development Stormwater	2009-484, SL 2012-200 and SL 201	Modified
15A NCAC 02B .0266 - Local Government Existing Development Stormwater	2009-216	Disapproved/Replaced
15A NCAC 02B .0267 - Buffer Protection	2009-484	Modified
15A NCAC 02B .0270 - Wastewater	2009-216, 2011-394	Modified
15A NCAC 02B .0271 - State and Federal Stormwater	2009-484	Modified

Note: Jordan strategy rules not affected by SL include Definitions (.0263), Agriculture (.0264), Buffer Mitigation (.0268), Buffer Fees (.0269), Fertilizer Management (.0272), and Nutrient Trading (.0273).

The Division received approval from the Office of State Budget and Management in September 2012 for its fiscal analysis of the proposed rule changes (See Appendix B). Given that the rules are substantively identical to SL and impose no new costs relative to the SL mandates, the approved fiscal note qualitatively compares the cost of the proposed rules with those that passed the EMC in August 2008.

Once the Commission has approved the rules to go to public comment, the Division plans to conduct a rulemaking process that solicits written comment but foregoes public hearings. The main reason for this is that all of the above referenced SLs state that the proposed rules must adhere identically to the substance of the SL. Given that the scope of public comment will necessarily be limited to input on whether we have faithfully captured the substance of the SLs, we believe it is reasonable to utilize a process that provides only for written comment.

Finally, once the Commission has given the rules final approval, the SLs call for them to return to the General Assembly for legislative review, which the Division projects to occur in the 2014 short session.

RULEMAKING HISTORY

In May 2008, following a lengthy stakeholder and rule development process that began in 2003, the Division presented and the Commission approved the Jordan Lake Nutrient Strategy—a set of rules designed to reduce nutrient loading levels to Jordan Lake so that it meets nutrient related water quality standards. Following Commission approval, the rules were presented to the NC Rules Review Commission (RRC), as required by law. A sufficient number of rule objection letters were received at the RRC requiring that the rules be reviewed in the 2009 General Assembly.

Two laws passed in the 2009 General Assembly, SLs 2009-216 and 2009-484, provided the bulk of changes to the Jordan strategy. These laws disapproved and replaced the existing development rule (.0267) and modified four others. These rules along with the remaining seven in the strategy became effective in August 2009, commencing the implementation of the Jordan strategy. Subsequent legislation (i.e., SLs 2011-394, 2012-187, 2012-200, and 2012-201) made additional adjustments to the Strategy. In doing so, these laws direct the Commission to adopt rules that are “substantively identical” to the SLs passed by the General Assembly. These laws have combined to disapprove and replace one rule and modify five others.

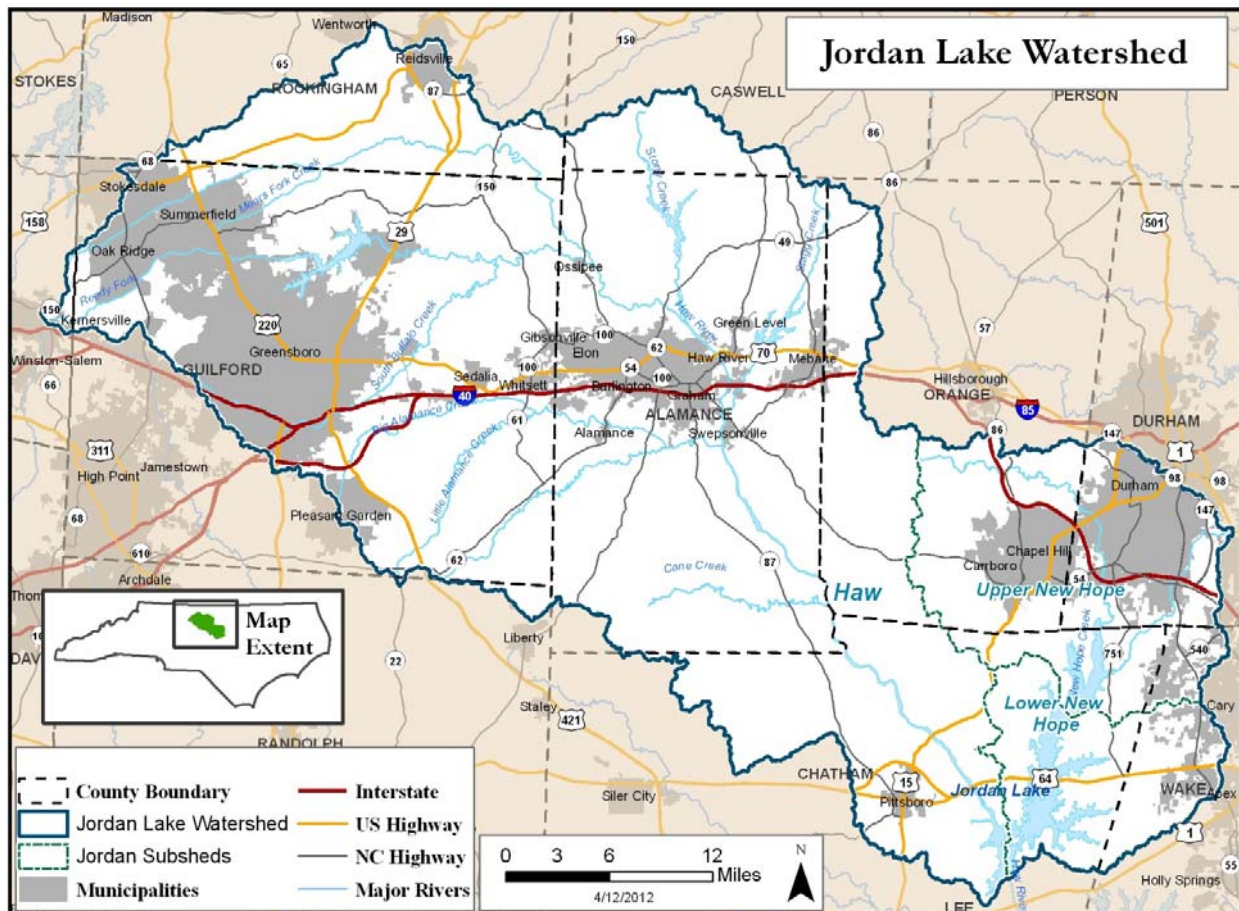


Figure 1. Jordan Lake Watershed and Subwatersheds.

DESCRIPTION OF RULE CHANGES

The Division is proposing one rule adoption and five amendments to the Jordan Lake Strategy rules as required by SL. This section describes the proposed changes to these six rules along with the corresponding SL references from which the proposed rule language was taken. The full text of proposed rule amendments is provided as Appendix A with the full text of all the Session Laws included in Appendix C.

Some SL elements have been rearranged prior to insertion into rule to improve rule organization and clarity. Also, procedural elements that have already transpired have been removed while ongoing or prospective elements have been retained. Finally, language was taken from SL-2009-216 to backfill holes left in State and Federal Rule .0271 when adaptive implementation measures in the SL altered the timeline for development and implementation of existing development stormwater programs without providing an implementation procedure. This proposed rule uses adaptive implementation timelines for state and federal entities that mirrors those used for local governments.

[15A NCAC 02B .0262 – Purpose and Scope \(Amendment\)](#)

SL 2012 - 187 removes the application of certain conditions in the WS-V Standards rule 02B .0218 from applying in Jordan except in cases at industrial intakes where the water is to be used for human consumption and at the upstream boundaries of WS-II, WS-III, or WS-IV waters (see Table 2).

Table 2. Incorporation of Session Law Requirements into Purpose and Scope Rule 02B .0262

SL 2012-187 Section	15A NCAC 02B .0262 Purpose and Scope Rule Item	Proposed Amendment Description
12.1	(6)	WS-V waters no longer have to meet standards in Sub-items (3)(e) through 3(h) of the Water Quality Standards for Class WS-V Waters Rule 02B .0218 except at industrial intakes for drinking water or where they violate standards at boundaries of WS-II, III, or IV waters.

[15A NCAC 02B .0265 - New Development Stormwater Management \(Amendment\)](#)

This rule’s changes are outlined in Table 3. SL 2009-484 raises the offsite offset thresholds for New Development from 4 and 8 lb/ac/yr to 6 and 10 lb/ac/yr for residential development and commercial/industrial/multi-family development respectively, while adding a minimum onsite treatment requirement of at least one BMP to achieve 85% TSS reduction for development that exceeds loading targets in an untreated condition.

SL 2012-200 and SL 2012-201 allow for a 2-year delay in implementation of New Development requirements by local governments. Adoption and implementation of New Development programs is now allowed to be completed by August 10th, 2014. New Development programs were approved by the Commission in May and September 2012.

Table 3. Incorporation of Session Law Requirements into Local Government New Development Stormwater Rule 02B .0265

SL 2009-484 Section	SL 2012-200 Section	SL 2012-201 Section	15A NCAC 02B .0265 New Dev't Stormwater Rule Item	Proposed Amendment Description
5(c)(1)			3(a)(viii)	Adds 85% TSS requirement to certain New Dev't types.
5(c)(2)			3(a)(vii)	Increases to 6 (residential) and 10 (Comm., Ind., Hi-Res) lbs/ac/yr the on-site N treatment thresholds.
	9.(e)	11(c)	4 (a)	Delayed implementation of new dev't requirements from Aug 2012 to Aug 2014.

[15A NCAC 02B .0266 – Existing Development Stormwater Management \(Replacement\)](#)

SL 2009-216 disapproved the original Existing Development Rule and replaced it with a revised set of requirements (see Table 4). The Law retains the basic requirement from the disapproved rule that nutrient reductions are to be obtained from local government’s existing development. The SL required all local governments in the watershed to develop a Stage 1 adaptive management program by August 2010. The Stage 1 program contains measures similar to the Phase II stormwater program aside from the post-construction new development requirements, and also requires the identification of opportunities for nutrient reduction projects from existing development. The Division is required to develop a Model Stage 2 adaptive management program no later than July 1, 2013. Development of that program is currently underway with the involvement of a Nutrient Scientific Advisory Board as required in Section 4.(a) of the same SL.

The SL calls for an ongoing monitoring program for Jordan Lake, and DWQ is tasked with providing monitoring reports to the Commission every three years beginning in March 2014. If nutrient related water quality standards are not met in the Upper New Hope (UNH) arm of the lake by the March 2014 report, or in the Lower New Hope and Haw arms by the March 2017 report, or in any subsequent reports, the Division will notify local governments within the impaired arm of their need to develop a local Stage 2 adaptive management program. Within six month of notification, local governments will submit their Stage 2 programs to the Division. Within another six months, the Division will review the programs. The Stage 2 programs will address how each local government will achieve an 8% nitrogen and 5% phosphorus reduction in loads to the Lake. Additionally, if the UNH arm does not achieve water quality standards by March 2023, the local governments in that subwatershed will be required to revise

their programs to achieve a 35% reduction in nitrogen. Annual reports are required from the Division to the Commission on the status of implementation of adaptive management programs.

Table 4. Incorporation of Session Law Requirements into Local Government Stormwater Management for Existing Development Rule 02B .0266.

SL 2009-216 Sections	15A NCAC 02B .0266 Existing Dev't Stormwater Rule Item	Proposed Adoption Description
3(c)	(4)	Specifies lake monitoring program elements administered by the Division.
3(d)	(1)	Purpose Statement
3(d)(1)	(3)	Stage 1 Stormwater program requirements.
3(d)(1)(b) – (c)	n/a	Stage 1 Implementation process. Session Law elements that have since occurred are not included in the Rule.
3(d)(2)(a)	(5)(a)-(c)	Adaptive implementation triggers for Stage 2 stormwater requirements.
3(d)(2)(b)	(7)	Stage 2 load reduction goals to be set by Department.
3(d)(2)(c)	(6)	The Division's notification requirement to Local Governments for Stage 2 Implementation.
3(d)(2)(d)	(8)	Provision allowing local governments to bypass development of a Stage 2 program by demonstrating to the Division that they have achieved their Stage 2 reductions.
3(d)(2)(e)-(g)	(10)(a)-(c)	Stage 2 Implementation process and program approval requirements.
3(d)(2)(h)	(12)	Annual reporting requirements.
3(d)(2)(i)	(13)	If lake water quality standards have been achieved, local governments may then modify their Stage 2 programs to prevent increases in loading from existing dev't.
3(e)	(9)	Stage 2 existing dev't model local program requirements.
3(f)	(11)	Requirements for additional N reduction measures for communities in the Upper New Hope if water quality standards in the upper lake are not achieved by 2023.

15A NCAC 02B .0267 Protection of Existing Riparian Buffers (Amendment)

SL 2009-484 adds the Geographic Information Coordinating Council into the approval process for alternative maps identifying streams subject to rules, along with a 30-day public comment period prior to their use. Also, the law prohibits impacts outside the buffer if they impact diffuse flow through the buffer. The requirements of this rule are already fully implemented. Table 5 provides this proposed rule's changes.

Table 5. Incorporation of Session Law Requirements into Riparian Buffer Protection Rule 02B .0267

SL 2009-484 Sections	15A NCAC 02B .0267 Buffer Protection Rule Item	Proposed Amendment Description
6(g)(1)-(2)	(4)(c)(iii)	Specifies maps and the process for their use in identifying water features subject to riparian buffer protection.
6(g)(3)	8(d) and (9)	Prohibits activities outside the buffer that impact diffuse flow into the buffer.

15A NCAC 02B .0270 – Wastewater Discharge Requirements (Amendment)

SL 2009-216 changes the nitrogen compliance date in the Rule from the beginning of the fifth full calendar year (2014) to 2016. Subsequent SL 2011-394 allows a discharger an extension to 2018 to meet their wasteload nitrogen allocation if the discharger has received construction authorization to improve treatment at their facility by January 2016. Table 6 summarizes these changes.

Table 6. Incorporation of Session Law Requirements into Wastewater Discharge Requirements Rule 02B .0270

SL 2009-216 Section	SL 2011-394 Section	15A NCAC 02B .0267 Wastewater Rule Item	Proposed Amendment Description
2(b)		(6)(c)	Moves the discharger nitrogen compliance date from 2014 to 2016.
	14	(6)(c)	Allows a discharger an extension to 2018 if the discharger has received construction authorization to their facility by 2016.

15A NCAC 02B .0271 - State and Federal Entities Stormwater (Amendment)

SL amendments to the Rule are listed in Table 7. SL 2009-484 establishes that development and implementation of a stormwater program for existing development hinges on continued impairment of

the Lake demonstrated by the Division’s monitoring program. These monitoring-based triggers for program development are those established for Stage 2 in the Local Government Rule 02B .0266.

Implementation language was taken from SL 2009-216 to backfill a hole left when SL 2009-484 established adaptive implementation measures that hinge on Lake monitoring without providing an implementation procedure. The borrowed language provides a timeline that mirrors that for local governments for implementing existing development stormwater requirements found in Sub-Section (2)(a) of Section 6(c) of Session Law 2009-484. NC DOT reviewed and approved these changes.

If existing development measures are triggered, state and federal entities in all subwatersheds will have the same load reduction goals for existing development as local governments (i.e., 8% n and 5% P), except for NCDOT in the Lower New Hope subwatershed, which will have its original goal of no increase in N and P from baseline loads. Also, if the UNH does not achieve water quality standards by March 2023, entities in that subwatershed will be required to revise their program to achieve a 35% reduction in nitrogen.

Table 7. Incorporation of Session Law Requirements into Stormwater Management for State and Federal Entities Rule 02B .0271.

SL 2009-484 Sections	SL 2009-216 Sections	15A NCAC 02B .0271 State/Federal Rule Item	Proposed Amendment Description
6(c)(1)		(6)(b)	Adjusts existing dev’t load reduction goals for NCDOT roadway and nonroadways.
6(c)(2)(a)		(3)(a) – (c)	Adaptive implementation triggers for existing dev’t stormwater requirements.
6(c)(2)(b)		(3)(d)	Requires 35% N reduction goal for entities’ programs in the Upper New Hope if water quality standards in the upper lake are not achieved by 2023.
6(c)(3)		(6)(d)-(e)	DOT existing dev’t program requirements. Triggered by monitoring.
	3(d)(2)(c)	(4)	The Division’s notification requirement to entities for existing dev’t programs.
	3(d)(2)(e)	(7)(b)-(c)	Non-DOT State/Federal Stormwater program implementation process and approval requirements.
	3(d)(2)(e)	(8)(b)(i)-(ii)	DOT State/Federal Stormwater program implementation process and approval requirements.

FISCAL NOTE

A [fiscal analysis](#) for these SL changes has been completed by the Division and was approved by the Office of State Budget and Management in September 2012. The approved fiscal note qualitatively compares the proposed rules with those passed by the Commission in 2008. As such, it is an amendment to the 2007 Fiscal Analysis completed by the Division and approved by the NC Office of State Budget and Management¹.

The following reasons were used to support the Division's qualitative approach to the Fiscal Analysis:

- The Division completed a fiscal analysis that was approved by OSBM for the original rule package passed by the EMC in 2008 (See [original Fiscal Note](#))
- The SL requirements became effective in 2009 and are currently being implemented.
- The EMC cannot change the SL requirements.
- The substantively identical changes to the rule do not alter costs and benefits from those mandated by the General Assembly.

PROPOSED RULEMAKING PROCESS

The Division plans to conduct a rulemaking process that solicits written comment but foregoes public hearings. The main reason for this is that all of the above referenced SLs state that the proposed rules must adhere identically to the substance of the SL. Given that the scope of public comment will necessarily be limited to input on whether we have faithfully captured the substance of the SLs, we believe it is reasonable to utilize a process that provides only for written comment.

Following completion of the comment period, the rules will be presented to the Commission for final adoption. Following adoption, they will proceed to the Rules Review Commission (RRC). Since, however, rules adopted pursuant to the SLs are not subject to G.S. 150B-21.9 through G.S. 150B-21.14, the RRC will not be allowed to approve or object to the rules. Instead, the SLs require that the rules be subject to review in the General Assembly as though 10 or more written objections have been received by the RRC as provided by G.S. 150B-21.3(b2).

¹ NC Division of Water Quality: Planning Section. 6/11/2007. Fiscal Analysis: B. Everett Jordan Reservoir Water Supply Nutrient Strategy. Online at http://portal.ncdenr.org/c/document_library/get_file?uuid=2e05ae32-55b7-4f9f-b095-244bf6f6720b&groupId=38364 (Accessed 9/13/2012)

To incorporate the SL changes, the Division proposes the following rulemaking process:

1. January 2012 - Seek approval of the fiscal analysis from the Commission and to proceed to public comment with rules;
2. February– March 2013 – Written public comment period;
3. May 2013 - Seek Commission approval of rule amendments and adoptions;
4. June 2013 - Rules pass through Rules Review Commission and are assumed to have 10 objections;
5. Spring 2014 – Adopted rules subject to General Assembly review; and
6. July 2014 –Effective Date of the Rules contingent upon General Assembly action.

RECOMMENDATION

The Division requests to proceed to full EMC for approval to proceed to public comment with the attached Session Law revisions to the Jordan Nutrient Strategy and for approval of the fiscal analysis.

LIST OF APPENDICES

- Appendix A** Rule Text for the Proposed Session Law Revisions to the Jordan Nutrient Strategy
- Appendix B** Revised Addendum to Fiscal Note for Fiscal Analysis B. Everett Jordan Reservoir Water Supply Nutrient Strategy
- Appendix C** Sessions Laws Affecting the Jordan Nutrient Strategy

Appendix A. Rule Text for the Proposed Session Law Revisions to the Jordan Nutrient Strategy

15A NCAC 02B .0262 Purpose and Scope

15A NCAC 02B .0265 Local Government New Development Stormwater

15A NCAC 02B .0266 Local Government Existing Development Stormwater

15A NCAC 02B .0267 Buffer Protection

15A NCAC 02B .0270 Wastewater

15A NCAC 02B .0271 State and Federal Stormwater

1 [15A NCAC 02B .0262 is proposed for amendment as follows:](#)

2
3 **15A NCAC 02B .0262 JORDAN WATER SUPPLY NUTRIENT STRATEGY: PURPOSE AND SCOPE**

4 PURPOSE. The purpose of this Rule, 15A NCAC 02B .0263 through .0273 and .0311(p) shall be to restore and
5 maintain nutrient-related water quality standards in B. Everett Jordan Reservoir; protect its classified uses as set out in
6 15A NCAC 02B .0216, including use as a source of water supply for drinking water, culinary and food processing
7 purposes; and maintain or enhance protections currently implemented by local governments in existing water supply
8 watersheds. These Rules, as further enumerated in Item (3) of this Rule, together shall constitute the Jordan water supply
9 nutrient strategy, or Jordan nutrient strategy. Additional provisions of this Rule include establishing the geographic and
10 regulatory scope of the Jordan nutrient strategy, defining its relationship to existing water quality regulations, setting
11 specific nutrient mass load goals for Jordan Reservoir, providing for the use of adaptive management to restore Jordan
12 Reservoir, and citing general enforcement authorities. The following provisions further establish the framework of the
13 Jordan water supply nutrient strategy:

14 (1) SCOPE. B. Everett Jordan Reservoir is hereafter referred to as Jordan Reservoir. All lands and
15 waters draining to Jordan Reservoir are hereafter referred to as the Jordan watershed. Jordan
16 Reservoir and all waters draining to it have been supplementally classified as Nutrient Sensitive
17 Waters (NSW) pursuant to 15A NCAC 02B .0101(e)(3) and 15A NCAC 02B .0223. Water supply
18 waters designated WS-II, WS-III, and WS-IV within the Jordan watershed shall retain their
19 classifications. The remaining waters in the Jordan watershed shall be classified WS-V. The
20 requirements of all of these water supply classifications shall be retained and applied except as
21 specifically noted in Item (6) of this Rule and elsewhere within the Jordan nutrient strategy. Pursuant
22 to G.S. 143-214.5(b), the entire Jordan watershed shall be designated a critical water supply watershed
23 and through the Jordan nutrient strategy given additional, more stringent requirements than the state
24 minimum water supply watershed management requirements. These requirements supplement the
25 water quality standards applicable to Class C waters, as described in Rule .0211 of this Section, which
26 apply throughout the Jordan watershed.

27 (2) STRATEGY GOAL. Pursuant to G.S. 143-215.1(c5), 143-215.8B, and 143B-282(c) and (d) of the
28 Clean Water Responsibility Act of 1997, the Environmental Management Commission establishes the
29 goal of reducing the average annual loads of nitrogen and phosphorus delivered to Jordan Reservoir
30 from all point and nonpoint sources of these nutrients located within its watershed, as specified in Item
31 (5) of this Rule, and provides for adaptive management of the strategy and goal, as specified in Item
32 (8) of this Rule.

33 (3) RULES ENUMERATED. The second rule in the following list provides definitions for terms that are
34 used in more than one rule of the Jordan nutrient strategy. An individual rule may contain additional
35 definitions that are specific to that rule. The rules of the Jordan nutrient strategy shall be titled as
36 follows:

37 (a) Rule .0262 Purpose and Scope;

- 1 (b) Rule .0263 Definitions;
- 2 (c) Rule .0264 Agriculture;
- 3 (d) Rule .0265 Stormwater Management for New Development;
- 4 (e) Rule .0266 Stormwater Management for Existing Development;
- 5 (f) Rule .0267 Protection of Existing Riparian Buffers;
- 6 (g) Rule .0268 Mitigation for Riparian Buffers;
- 7 (h) Rule .0269 Riparian Buffer Mitigation Fees to the NC Ecosystem Enhancement Program;
- 8 (i) Rule .0270 Wastewater Discharge Requirements;
- 9 (j) Rule .0271 Stormwater Requirements for State and Federal Entities;
- 10 (k) Rule .0272 Fertilizer Management;
- 11 (l) Rule .0273 Options for Offsetting Nutrient Loads; and
- 12 (m) Rule .0311 Cape Fear River Basin.
- 13 (4) RESERVOIR ARMS AND SUBWATERSHEDS. For the purpose of the Jordan nutrient strategy,
- 14 Jordan Reservoir is divided into three arms and the Jordan watershed is divided into three tributary
- 15 subwatersheds as follows:
- 16 (a) The Upper New Hope arm of the reservoir, identified by index numbers 16-41-1-(14), 16-41-
- 17 2-(9.5), and 16-41-(0.5) in the Schedule of Classifications for the Cape Fear River Basin,
- 18 15A NCAC 02B .0311, encompasses the upper end of the reservoir upstream of SR 1008,
- 19 and its subwatershed encompasses all lands and waters draining into it.
- 20 (b) The Lower New Hope arm of the reservoir, identified by index number 16-41-(3.5) in the
- 21 Schedule of Classifications for the Cape Fear River Basin, 15A NCAC 02B .0311, lies
- 22 downstream of SR 1008 and upstream of the Jordan Lake Dam, excluding the Haw River arm
- 23 of the reservoir, and its subwatershed encompasses all lands and waters draining into the
- 24 Lower New Hope arm of the reservoir excluding those that drain to the Upper New Hope arm
- 25 of the reservoir and the Haw River arm of the reservoir.
- 26 (c) The Haw River arm of the reservoir, identified by index number 16-(37.5) in the Schedule of
- 27 Classifications for the Cape Fear River Basin, 15A NCAC 02B .0311, lies immediately
- 28 upstream of Jordan Lake Dam, and its subwatershed includes all lands and waters draining
- 29 into the Haw River arm of the reservoir excluding those draining into the Upper and Lower
- 30 New Hope arms.
- 31 (5) NUTRIENT REDUCTION GOALS. Each arm of the lake has reduction goals, total allowable loads,
- 32 point source wasteload allocations, and nonpoint source load allocations for both nitrogen and
- 33 phosphorus based on a field-calibrated nutrient response model developed pursuant to provisions of
- 34 the Clean Water Responsibility Act of 1997, G.S. 143-215.1(c5). The reduction goals and allocations
- 35 are to be met collectively by the sources regulated under the Jordan nutrient strategy. The reduction
- 36 goals are expressed in terms of a percentage reduction in delivered loads from the baseline years,

1 1997-2001, while allocations are expressed in pounds per year of allowable delivered load. Each arm
2 and subwatershed shall conform to its respective allocations for nitrogen and phosphorus as follows:

- 3 (a) The at-lake nitrogen load reduction goals for the arms of Jordan Reservoir are as follows:
- 4 (i) The Upper New Hope arm has a 1997-2001 baseline nitrogen load of 986,186
5 pounds per year and a TMDL reduction goal of 35 percent. The resulting TMDL
6 includes a total allowable load of 641,021 pounds of nitrogen per year: a point
7 source mass wasteload allocation of 336,079 pounds of nitrogen per year, and a
8 nonpoint source mass load allocation of 304,942 pounds of nitrogen per year.
- 9 (ii) The Lower New Hope arm has a 1997-2001 baseline nitrogen load of 221,929
10 pounds per year and a nitrogen TMDL capped at the baseline nitrogen load. The
11 resulting TMDL includes a total allowable load of 221,929 pounds of nitrogen per
12 year: a point source mass wasteload allocation of 6,836 pounds of nitrogen per year,
13 and a nonpoint source mass load allocation of 215,093 pounds of nitrogen per year.
- 14 (iii) The Haw River arm has a 1997-2001 baseline nitrogen load of 2,790,217 pounds
15 per year and a TMDL percentage reduction of 8 percent. The resulting TMDL
16 includes a total allowable load of 2,567,000 pounds of nitrogen per year: a point
17 source mass wasteload allocation of 895,127 pounds of nitrogen per year, and a
18 nonpoint source mass load allocation of 1,671,873 pounds of nitrogen per year.
- 19 (b) The at-lake phosphorus load reduction goals for the arms of Jordan Reservoir are as follows:
- 20 (i) The Upper New Hope arm has a 1997-2001 baseline phosphorus load of 87,245
21 pounds per year and a TMDL percentage reduction of five percent. The resulting
22 TMDL includes a total allowable load of 82,883 pounds of phosphorus per year: a
23 point source mass wasteload allocation of 23,108 pounds of phosphorus per year,
24 and a nonpoint source mass load allocation of 59,775 pounds of phosphorus per
25 year.
- 26 (ii) The Lower New Hope arm has a 1997-2001 baseline phosphorus load of 26,574
27 pounds per year and a phosphorus TMDL capped at the baseline phosphorus load.
28 The resulting TMDL includes a total allowable load of 26,574 pounds of
29 phosphorus per year: a point source mass wasteload allocation of 498 pounds of
30 phosphorus per year, and a nonpoint source mass load allocation of 26,078 pounds
31 of phosphorus per year.
- 32 (iii) The Haw River arm has a 1997-2001 baseline phosphorus load of 378,569 pounds
33 per year and a TMDL percentage reduction of five percent. The resulting TMDL
34 includes a total allowable load of 359,641 pounds of phosphorus per year: a point
35 source mass wasteload allocation of 106,001 pounds of phosphorus per year, and a
36 nonpoint source mass load allocation of 253,640 pounds of phosphorus per year.

(c) The allocations established in this Item may change as a result of allocation transfer between point and nonpoint sources to the extent provided for in rules of the Jordan nutrient strategy and pursuant to requirements on the sale and purchase of load reduction credit set out in 15A NCAC 02B .0273.

(6) **RELATION TO WATER SUPPLY REQUIREMENTS.** ~~For all waters designated as WS-II, WS-III, or WS-IV within the Jordan watershed, the requirements of water supply 15A NCAC 02B .0214 through .0216 shall remain in effect with the exception of Sub-Item (3)(b) of those rules addressing nonpoint sources. The nonpoint source requirements of Sub-Item (3)(b) of those rules are superseded by the requirements of this Rule and 15A NCAC 02B .0263 through .0269, and .0271 through .0273, except as specifically stated in any of these Rules. For the remaining waters of Jordan watershed, the requirements of water supply Rule .0218 and Rules .0263 through .0273 and .0311 shall be applied. For WS-II, WS-III, and WS-IV waters, the retained requirements of 15A NCAC 02B .0214 through .0216 are the following:~~

~~(a) Item (1) of 15A NCAC 02B .0214 through .0216 addressing best usages;~~

~~(b) Item (2) of 15A NCAC 02B .0214 through .0216 addressing predominant watershed development conditions, discharges expressly allowed watershed-wide, general prohibitions on and allowances for domestic and industrial discharges, Maximum Contaminant Levels following treatment, and the local option to seek more protective classifications for portions of existing water supply watersheds;~~

~~(c) Sub-Item (3)(a) of 15A NCAC 02B .0214 through .0216 addressing waste discharge limitations; and~~

~~(d) Sub-Items (3)(e) through (3)(h) of 15A NCAC 02B .0214 through .0216 addressing aesthetic and human health standards.~~

The following water supply requirements shall apply:

(a) For all waters designated as WS-II, WS-III, or WS-IV within the Jordan watershed, the requirements of water supply 15A NCAC 02B .0214 through .0216 shall remain in effect with the exception of Sub-Item (3)(b) of those rules addressing nonpoint sources. The nonpoint source requirements of Sub-Item (3)(b) of those rules are superseded by the requirements of this Rule and 15A NCAC 02B .0263 through .0269, and .0271 through .0273, except as specifically stated in any of these Rules. For WS-II, WS-III, and WS-IV waters, the retained requirements of 15A NCAC 02B .0214 through .0216 are the following:

(i) Item (1) of 15A NCAC 02B .0214 through .0216 addressing best usages;

(ii) Item (2) of 15A NCAC 02B .0214 through .0216 addressing predominant watershed development conditions, discharges expressly allowed watershed-wide, general prohibitions on and allowances for domestic and industrial discharges, Maximum Contaminant Levels following treatment, and the local option to seek more protective classifications for portions of existing water supply watersheds;

1 (iii) Sub-Item (3)(a) of 15A NCAC 02B .0214 through .0216 addressing waste discharge
 2 limitations; and

3 (iv) Sub-Items (3)(c) through (3)(h) of 15A NCAC 02B .0214 through .0216 addressing
 4 aesthetic and human health standards.

5 (b) For waters designated WS-V in the Jordan Watershed, the requirements of Rules .0263
 6 through .0273 and .0311 shall apply. The requirements of 15A NCAC 2B .0218 shall also
 7 apply except for Sub-Items (3)(e) through (3)(h) of that Rule, which shall only apply where:

8 (i) The designation of WS-V is associated with a water supply intake used by an
 9 industry to supply drinking water for their employees; or

10 (ii) Standards set out in 15A NCAC 02B .0218(3)(e) through (3)(h) are violated at the
 11 upstream boundary of waters within those watersheds that are classified as WS-II,
 12 WS-III, or WS-IV. This Sub-Item shall not be construed to alter the nutrient
 13 reduction requirements set out in 15A NCAC 2B .0262(5) or 15A NCAC 2B
 14 .0275(3).

15 (7) APPLICABILITY. Types of parties responsible for implementing rules within the Jordan nutrient
 16 strategy and, as applicable, their geographic scope of responsibility, are identified in each rule. The
 17 specific local governments responsible for implementing Rules .0265, .0266, .0267, .0268, and .0273
 18 shall be as follows:

19 (a) Rules .0265, .0266, .0267, .0268, and .0273 shall be implemented by all incorporated
 20 municipalities, as identified by the Office of the Secretary of State, with planning jurisdiction
 21 within or partially within the Jordan watershed. Those municipalities currently are:

- 22 (i) Alamance;
- 23 (ii) Apex;
- 24 (iii) Burlington;
- 25 (iv) Carrboro;
- 26 (v) Cary;
- 27 (vi) Chapel Hill;
- 28 (vii) Durham;
- 29 (viii) Elon;
- 30 (ix) Gibsonville;
- 31 (x) Graham;
- 32 (xi) Green Level;
- 33 (xii) Greensboro;
- 34 (xiii) Haw River;
- 35 (xiv) Kernersville;
- 36 (xv) Mebane;
- 37 (xvi) Morrisville;

- 1 (xvii) Oak Ridge;
- 2 (xviii) Ossipee;
- 3 (xix) Pittsboro;
- 4 (xx) Pleasant Garden;
- 5 (xxi) Reidsville;
- 6 (xxii) Sedalia;
- 7 (xxiii) Stokesdale;
- 8 (xxiv) Summerfield; and
- 9 (xxv) Whitsett.
- 10 (b) Rules .0265, .0266, .0267, .0268, and .0273 shall be implemented by the following counties
- 11 for the portions of the counties where the municipalities listed in Sub-Item (7)(a) do not have
- 12 an implementation requirement:
- 13 (i) Alamance;
- 14 (ii) Caswell;
- 15 (iii) Chatham;
- 16 (iv) Durham;
- 17 (v) Guilford;
- 18 (vi) Orange;
- 19 (vii) Rockingham; and
- 20 (viii) Wake.
- 21 (c) A unit of government may arrange through interlocal agreement or other instrument of mutual
- 22 agreement for another unit of government to implement portions or the entirety of a program
- 23 required or allowed under any of the rules listed in Item (3) of this Rule to the extent that
- 24 such an arrangement is otherwise allowed by statute. The governments involved shall submit
- 25 documentation of any such agreement to the Division. No such agreement shall relieve a unit
- 26 of government from its responsibilities under these Rules.
- 27 (8) ADAPTIVE MANAGEMENT. The Division shall evaluate the effectiveness of the Jordan nutrient
- 28 strategy after at least ten years following the effective date and periodically thereafter as part of the
- 29 review of the *Cape Fear River Basinwide Water Quality Plan*. The Division shall base its evaluation
- 30 on, at a minimum, trend analyses as described in the monitoring section of the *B. Everett Jordan*
- 31 *Reservoir, North Carolina Nutrient Management Strategy and Total Maximum Daily Load*, and lake
- 32 use support assessments. The Division may also develop additional watershed modeling or other
- 33 source characterization work. Any nutrient response modeling and monitoring on which any
- 34 recommendation for adjustment to strategy goals may be based shall meet the criteria set forth in G.S.
- 35 143-215.1(c5), also known as the Clean Water Responsibility Act, and meet or exceed criteria used by
- 36 the Division for the monitoring and modeling used to establish the goals in Item (5) of this Rule. Any
- 37 modification to these rules as a result of such evaluations would require additional rulemaking.

1 (9) LIMITATION. The Jordan nutrient strategy may not fully address significant nutrient sources in the
2 Jordan watershed in that the rules do not directly address atmospheric sources of nitrogen to the
3 watershed from sources located both within and outside of the watershed. As better information
4 becomes available from ongoing research on atmospheric nitrogen loading to the watershed from these
5 sources, and on measures to control this loading, the Commission may undertake separate rule making
6 to require such measures it deems necessary from these sources to support the goals of the Jordan
7 nutrient strategy.

8 (10) ENFORCEMENT. Failure to meet requirements of Rules .0262, .0264, .0265, .0266, .0267, .0268,
9 .0269, .0270, .0271, .0272 and .0273 of this Section may result in imposition of enforcement measures
10 as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S.
11 143-215.6C (injunctive relief).

12
13 *History Note:* Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1); 143-215.6A; 143-
14 215.6A; 143-215.6B; 143 215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L.
15 2006-259; [S.L. 2012-187](#).
16 Eff. August 11, 2009;
17 Amended Eff. September 1, ~~2011~~, [2011](#); [July 1, 2014 \(Pending Legislative Review\)](#).

18

1 [15a NCAC 02b .0265 is proposed for amendment as follows:](#)

2
3 **15A NCAC 02B .0265 JORDAN WATER SUPPLY NUTRIENT STRATEGY: STORMWATER**
4 **MANAGEMENT FOR NEW DEVELOPMENT**

5 [\(See S.L. 2009-216 and S.L. 2009-484\)](#)

6 The following is the stormwater strategy for new development activities within the Jordan watershed, as prefaced in
7 15A NCAC 02B .0262:

- 8 (1) PURPOSE. The purposes of this Rule are as follows:
- 9 (a) To achieve and maintain the nitrogen and phosphorus loading goals established for
10 Jordan Reservoir in 15A NCAC 02B .0262 from lands in the Jordan watershed on which
11 new development occurs;
- 12 (b) To provide control for stormwater runoff from new development in Jordan watershed to
13 ensure that the integrity and nutrient processing functions of receiving waters and
14 associated riparian buffers are not compromised by erosive flows; and
- 15 (c) To protect the water supply uses of Jordan Reservoir and of designated water supplies
16 throughout the Jordan watershed from the potential impacts of new development.
- 17 (2) APPLICABILITY. This Rule shall apply to those areas of new development, as defined in 15A
18 NCAC 02B .0263, that lie within the Jordan watershed and the planning jurisdiction of a
19 municipality or county that is identified in 15A NCAC 02B .0262.
- 20 (3) REQUIREMENTS. All local governments subject to this Rule shall ~~develop~~ implement
21 stormwater management programs ~~for submission to and approval as approved~~ by the
22 ~~Commission, to be implemented~~ Commission in areas described in Item (2) of this Rule, based on
23 the standards in this Item:
- 24 (a) An approved stormwater management plan shall be required for all proposed new
25 development disturbing one acre or more for single family and duplex residential
26 property and recreational facilities, and one-half acre or more for commercial, industrial,
27 institutional, multifamily residential, or local government property. These stormwater
28 plans shall not be approved by the subject local governments unless the following criteria
29 are met:
- 30 (i) Nitrogen and phosphorus loads contributed by the proposed new development
31 activity in a given subwatershed shall not exceed the unit-area mass loading
32 rates applicable to that subwatershed as follows for nitrogen and phosphorus,
33 respectively, expressed in units of pounds per acre per year: 2.2 and 0.82 in the
34 Upper New Hope; 4.4 and 0.78 in the Lower New Hope; and 3.8 and 1.43 in the
35 Haw. The developer shall determine the need for engineered stormwater
36 controls to meet these loading rate targets by using ~~the loading calculation~~
37 ~~method called for in Sub Item (4)(a)~~ Jordan and Falls Stormwater Nutrient Load

1 Accounting Tool approved by the Commission in March 2011 or other
2 equivalent method acceptable to the Division;

3 (ii) Proposed new development undertaken by a local government solely as a public
4 road project shall be deemed compliant with the purposes of this Rule if it meets
5 the riparian buffer protection requirements of 15A NCAC 02B .0267 and .0268;

6 (iii) New development that would exceed the nitrogen or phosphorus loading rate
7 targets set out in this Item without the use of engineered stormwater controls
8 shall have engineered stormwater controls that meet the design requirements set
9 out in Sub-Item (3)(a)(v) of this Item and that achieve eighty-five percent (85%)
10 removal of total suspended solids;

11 ~~(iii)~~(iv) Proposed new development subject to NPDES, water supply, and other state-
12 mandated stormwater regulations shall comply with those regulations in addition
13 to the other requirements of this Sub-Item. Proposed new development in any
14 water supply watershed in the Jordan watershed designated WS-II, WS-III, or
15 WS-IV shall comply with the density-based restrictions, obligations, and
16 requirements for engineered stormwater controls, clustering options, and 10/70
17 provisions described in Sub-Items (3)(b)(i) and (3)(b)(ii) of the applicable Rule
18 among 15A NCAC 02B .0214 through .0216;

19 ~~(iv)~~(v) Stormwater systems shall be designed to control and treat the runoff generated
20 from all surfaces by one inch of rainfall. The treatment volume shall be drawn
21 down pursuant to standards specific to each practice as provided in the July
22 2007 version of the *Stormwater Best Management Practices Manual* published
23 by the Division, or other at least technically equivalent standards acceptable to
24 the Division. To ensure that the integrity and nutrient processing functions of
25 receiving waters and associated riparian buffers are not compromised by erosive
26 flows, stormwater flows from the new development shall not contribute to
27 degradation of waters of the State. At a minimum, the new development shall
28 not result in a net increase in peak flow leaving the site from pre-development
29 conditions for the one-year, 24-hour storm event;

30 ~~(v)~~(vi) Proposed new development that would replace or expand structures or
31 improvements that existed as of December 2001, the end of the baseline period,
32 and that would not result in a net increase in built-upon area shall not be
33 required to meet the nutrient loading targets or high-density requirements except
34 to the extent that it shall provide stormwater control at least equal to the
35 previous development. Proposed new development that would replace or
36 expand existing structures or improvements and would result in a net increase in
37 built-upon area shall have the option either to achieve at least the percentage

loading reduction goals stated in 15A NCAC 02B .0262 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the loading rate targets described in Sub-Item (3)(a)(i). These requirements shall supersede those identified in 15A NCAC 02B .0104(q);

~~(vi)~~(vii) Proposed new development shall comply with the riparian buffer protection requirements of 15A NCAC 02B .0267 and .0268; and

~~(vii)~~(viii) Developers shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite management measures as follows: Before using offsite offset options, a development shall attain a ~~maximum~~-nitrogen loading rate on-site of ~~four~~that does not exceed six pounds per acre per year for single-family, detached and duplex residential development and ~~eight-ten~~ pounds per acre per year for other development, including multi-family residential, commercial and industrial and shall meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iii) and (iv) of this Rule. Offsite offsetting measures shall achieve ~~at least equivalent~~ reductions in nitrogen and phosphorus loading that are at least equivalent to the remaining reduction needed ~~onsite~~ to comply with the loading rate targets set out in Sub-Item (3)(a)(i) of this Rule. A developer may make offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the local government in which the development activity occurs. A developer may propose other offset measures to the local government, including providing his or her own offsite offset or utilizing a private seller. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0273 (2) through ~~(4)~~(4) and 15A NCAC 02B .0240.

- (b) A plan to ensure maintenance of best management practices (BMPs) implemented as a result of the provisions in Sub-Item (3)(a) of this Rule for the life of the development;
- (c) A plan to ensure enforcement and compliance with the provisions in Sub-Item (3)(a) of this Rule for the life of the new development; and
- (d) The following requirements in water supply 15A NCAC 02B .0104 shall apply to new development throughout the Jordan watershed:
 - (i) Requirements in Paragraph (f) for local governments to assume ultimate responsibility for operation and maintenance of high-density stormwater controls, to enforce compliance, to collect fees, and other measures;
 - (ii) Variance procedures in Paragraph (r);
 - (iii) Assumption of local programs by the Commission in Paragraph (x); and
 - (iv) Delegation of Commission authorities to the Director in Paragraph (aa).

1 (4) RULE IMPLEMENTATION. This Rule shall be implemented as follows:

2 ~~(a) Within 18 months after the effective date of this Rule, the Division shall submit a model~~
3 ~~local stormwater program, including a model local ordinance, in conjunction with similar~~
4 ~~requirements in 15A NCAC 02B .0266, that embodies the criteria described in Item (3) of~~
5 ~~this Rule to the Commission for approval. The model program shall include a tool that~~
6 ~~will allow developers to account for nutrient loading from development lands and loading~~
7 ~~changes due to BMP implementation to meet the requirements of Item (3) of this Rule.~~
8 ~~The accounting tool shall utilize nutrient efficiencies and associated design criteria~~
9 ~~established for individual BMPs in the July 2007 version of the *Stormwater Best*~~
10 ~~*Management Practices Manual* published by the Division, or other at least technically~~
11 ~~equivalent standards acceptable to the Division. The Division shall work in cooperation~~
12 ~~with subject local governments and other watershed interests in developing this model~~
13 ~~program;~~

14 ~~(b) Within six months after the Commission's approval of the model local stormwater~~
15 ~~program and model ordinance, subject local governments shall submit stormwater~~
16 ~~management programs, in conjunction with similar requirements in 15A NCAC 02B~~
17 ~~.0266, to the Division for preliminary approval. These local programs shall meet or~~
18 ~~exceed the requirements in Item (3) of this Rule;~~

19 ~~(c) Within 15 months after the Commission's approval of the model local stormwater~~
20 ~~program, the Division shall provide recommendations to the Commission on local~~
21 ~~stormwater programs. The Commission shall either approve the programs or require~~
22 ~~changes based on the standards set out in Item (3) of this Rule. Should the Commission~~
23 ~~require changes, the applicable local government shall have two months to submit~~
24 ~~revisions, and the Division shall provide follow up recommendations to the Commission~~
25 ~~within two months after receiving revisions;~~

26 ~~(d)(a) Within three months after the Commission's approval of a local program, or upon the~~
27 ~~Division's first renewal of a local government's NPDES stormwater permit, whichever~~
28 ~~occurs later, By August 10, 2014, the affected local government governments shall~~
29 ~~complete adoption of and implement its their local stormwater management program as~~
30 ~~approved by the Commission in May or September 2012 or subsequent revision to the~~
31 ~~program approved by the Commission or its delegated authority. Programs met the~~
32 ~~requirements of Item (3) of this Rule and were guided by the model local ordinance~~
33 ~~approved by the Commission in March 2011; and~~

34 ~~(e)(b)~~ Upon implementation, subject local governments shall submit annual reports to the
35 Division summarizing their activities in implementing each of the requirements in Item
36 (3) of this Rule, including changes to nutrient loading due to implementation of Sub-Item
37 (3)(a) of this Rule.

1 (5) RELATIONSHIP TO OTHER REQUIREMENTS. Local governments shall have the following
2 options with regard to satisfying the requirements of other rules in conjunction with this Rule:

- 3 (a) A local government may in its program submittal under Sub-Item (4)(b) of this Rule
4 request that the Division accept the local government's implementation of another
5 stormwater program or programs, such as NPDES municipal stormwater requirements, as
6 satisfying one or more of the requirements set forth in Item (3) of this Rule. The Division
7 will provide determination on acceptability of any such alternatives prior to requesting
8 Commission approval of local programs as required in Sub-Item (4)(c) of this Rule. The
9 local government shall include in its program submittal technical information
10 demonstrating the adequacy of the alternative requirements.

11
12 *History Note:* Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-
13 215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L.
14 2006-259; [S.L. 2009-216](#); [S.L. 2009-484](#); [S.L. 2012-2000](#); [2012-201](#);
15 *Eff. August 11, 2009*;
16 [See ~~S.L. 2009-216 and S.L. 2009-484~~. Amended Eff. July 1, 2014 \(Pending Legislative Review\)](#)

1 15A NCAC 02B .0266 is proposed for adoption as follows:

2
3 **15A NCAC 02B .0266 JORDAN WATER SUPPLY NUTRIENT STRATEGY: STORMWATER**
4 **MANAGEMENT FOR EXISTING DEVELOPMENT**

5 This Rule is the stormwater strategy to control nutrient loading from existing development. The Division shall
6 determine whether nutrient load reduction measures for existing development are necessary in each subwatershed of
7 Jordan Reservoir. The Division shall require implementation of reasonable nutrient load reduction measures for
8 existing development in each subwatershed of the Jordan Reservoir, as provided in this Rule and in accordance with
9 a staged, adaptive management program.

10 (1) PURPOSE. The purposes of this Rule are as follows:

11 (a) To improve the management of stormwater runoff from existing development in the
12 Jordan Watershed to contribute toward nitrogen and phosphorus loading goals identified
13 in 15A NCAC 02B .0262; and

14 (b) To contribute to the restoration of water quality in the Jordan Reservoir as specified in
15 Rule 15A NCAC 02B .0262.

16 (2) APPLICABILITY. This Rule shall apply to municipalities and counties located in whole or in
17 part in the Jordan Watershed as identified in Rule 15A NCAC 02B .0262 (7).

18 (3) STAGE 1 PROGRAM REQUIREMENTS. Municipalities and counties located in whole or in
19 part in the Jordan watershed shall continue to implement a Stage 1 adaptive management program
20 to control nutrient loading from existing development in the Jordan watershed as approved by the
21 Commission in May 2010 or subsequent revision their program approved by the Commission or
22 its delegated authority. The Stage 1 adaptive management program met the requirements set out in
23 40 CFR § 122.34 as applied by the Division in the NPDES General Permit for municipal separate
24 storm sewer systems in effect on July 1, 2009. Local governments shall report annually to the
25 Division on implementation progress on the following Stage 1 program elements:

26 (a) Public education to inform the public of the impacts of nutrient loading and measures that
27 can be implemented to reduce nutrient loading from stormwater runoff from existing
28 development.

29 (b) Mapping that includes major components of the municipal separate storm sewer system,
30 including the location of major outfalls, as defined in 40 CFR §122.26(b)(5) (July 1,
31 2008) and the names and location of all waters of the United States that receive
32 discharges from those outfalls, land use types, and location of sanitary sewers.

33 (c) Identification and remove illegal discharges.

34 (d) Identification of opportunities for retrofits and other projects to reduce nutrient loading
35 from existing developed lands.

36 (e) Maintenance of best management practices implemented by the local government.

- 1 (4) NUTRIENT MONITORING. The Division shall maintain an ongoing program to monitor water
2 quality in each arm of Jordan Reservoir. The Division shall also accept water quality sampling
3 data from a monitoring program implemented by a local government or nonprofit organization if
4 the data meets quality assurance standards established by the Division. On March 1, 2014, the
5 Division shall report the results of monitoring in each arm of Jordan Reservoir to the
6 Environmental Review Commission. The Division shall submit an updated monitoring report
7 under this Item every three years thereafter until such time as the lake is no longer impaired by
8 nutrient pollution.
- 9 (5) STAGE 2 ADAPTIVE MANAGEMENT. The Division shall review monitoring described in Item
10 (4) of this Rule to decide whether to implement a Stage 2 adaptive management program to
11 control nutrient loading from existing development to achieve nutrient-related water quality
12 standards in Jordan Lake. The Division shall use the following conditions to identify local
13 governments that need to develop and implement a Stage 2 program:
- 14 (a) If the March 1, 2014 monitoring report or any subsequent monitoring report for the
15 Upper New Hope Creek Arm of Jordan Reservoir required under Item (4) of this Rule
16 shows that nutrient-related water quality standards are not being achieved, a municipality
17 or county located in whole or in part in the subwatershed of that arm of Jordan Reservoir
18 shall develop and implement a Stage 2 program within the subwatershed, as provided in
19 this Rule.
- 20 (b) If the March 1, 2017 monitoring report or any subsequent monitoring report for the Haw
21 River Arm or the Lower New Hope Creek Arm of Jordan Reservoir required under Item
22 (4) of this Rule shows that nutrient-related water quality standards are not being
23 achieved, a municipality or county located in whole or in part in the subwatershed of that
24 arm of Jordan Reservoir shall develop and implement a Stage 2 program within the
25 subwatershed, as provided in this Rule.
- 26 (c) The Division shall defer development and implementation of Stage 2 programs required
27 in a subwatershed by this Item if it determines that additional reductions in nutrient
28 loading from existing development in that subwatershed will not be necessary to achieve
29 nutrient-related water quality standards. In making this determination, the Division shall
30 consider the anticipated effect of measures implemented or scheduled to be implemented
31 to reduce nutrient loading from sources in the subwatershed other than existing
32 development. If any subsequent monitoring report for an arm of Jordan Reservoir
33 required under Item (4) of this Rule shows that nutrient-related water quality standards
34 have not been achieved, the Division shall notify the municipalities and counties located
35 in whole or in part in the subwatershed of that arm of Jordan Reservoir and the
36 municipalities and counties shall develop and implement a Stage 2 adaptive management
37 program as provided in this Rule.

- 1 (6) NOTIFICATION OF STAGE 2 REQUIREMENTS. Based on findings under Item (5) of this
2 Rule, the Division shall notify the local governments in each subwatershed that either:
3 (a) Implementation of a Stage 2 program will be necessary to achieve water quality standards
4 in an arm of the reservoir and direct the municipalities and counties in the subwatershed
5 to develop a load reduction program in compliance with this Rule; or
6 (b) Implementation of a Stage 2 program is not necessary at that time but will be reevaluated
7 in three years based on the most recent water quality monitoring information.
- 8 (7) STAGE 2 LOAD GOALS. The Division shall establish a load reduction goal for existing
9 development for each municipality and county required to implement a Stage 2 program. The load
10 reduction goal shall be designed to achieve, relative to the baseline period 1997 through 2001, an
11 eight percent (8%) reduction in nitrogen loading and a five percent (5%) reduction in phosphorus
12 loading reaching Jordan Reservoir from existing developed lands within the police power
13 jurisdiction of the local government. The baseline load shall be estimated using the results of a
14 watershed model recommended in a July 2012 report to the Secretary from the Nutrient Scientific
15 Advisory Board established pursuant to Section 4(a) of S.L. 2009-216, or by using an equivalent
16 or more accurate method acceptable to the Division and recommended by that Board. The
17 baseline load for a municipality or county shall not include nutrient loading from lands under State
18 or federal control or lands in agriculture or forestry. The load reduction goal shall be adjusted to
19 account for nutrient loading increases from lands developed subsequent to the baseline period but
20 prior to implementation of new development stormwater programs.
- 21 (8) A local government receiving notice of the requirement to develop and implement a Stage 2
22 program under Item (6) of this Rule shall not be required to submit a program if the local
23 government demonstrates that it has already achieved the reductions in nutrient loadings required
24 under Item (7) of this Rule.
- 25 (9) STAGE 2 PROGRAM DEVELOPMENT. Local governments shall utilize the model program to
26 control nutrient loading from existing development, that was approved by the Commission as of
27 December 2013, to develop their Stage 2 program to control nutrient loading from existing
28 development as described under Item (10) of this Rule. In developing this model program, the
29 Division considered comments from municipalities and counties listed in 15A NCAC 02B
30 .0262(7) and recommendations from the Nutrient Scientific Advisory Board. The model program
31 identifies specific load reduction practices and programs and reduction credits associated with
32 each practice or program and shall provide that a local government may obtain additional or
33 alternative load-reduction credits based on site-specific monitoring data.
- 34 (10) STAGE 2 IMPLEMENTATION. The following process shall be applied for local governments
35 subject to the requirement to develop and implement a Stage 2 adaptive management program.
36 (a) Within six months after receiving notice to develop and implement a Stage 2 program as
37 described in Item (6) of this Rule, each local government that has not received Division

1 approval for having achieved the required reductions as specified in Item (8) of this Rule
2 shall submit to the Commission a program that is designed to achieve the reductions in
3 nutrient loadings established by the Division pursuant to Item (7) of this Rule. A local
4 government program may include nutrient management strategies that are not included in
5 the model program developed pursuant to Item (9) of this Rule in addition to or in place
6 of any component of the model program. In addition, a local government may satisfy the
7 requirements of this Item through reductions in nutrient loadings from other sources in
8 the same subwatershed to the extent those reductions go beyond measures otherwise
9 required by statute or rule. A local government may also work with other local
10 governments within the same subwatershed to collectively meet the required reductions
11 in nutrient loadings from existing development within their combined jurisdictions. Any
12 credit for reductions achieved or obtained outside of the police power jurisdiction of a
13 local government shall be adjusted based on transport factors established by the Division
14 document Nitrogen and Phosphorus Delivery from Small Watersheds to Jordan Lake,
15 dated June 30, 2002 or an equivalent or more accurate method acceptable to the Division
16 and recommended by the Nutrient Scientific Advisory Board established pursuant to
17 Section 4(a) of S.L. 2009-216.

18 (b) Within six months following submission of a local government's Stage 2 adaptive
19 management program to control nutrient loading from existing development, the Division
20 shall recommend that the Commission approve or disapprove the program. The
21 Commission shall approve the program if it meets the requirements of this Item, unless
22 the Commission finds that the local government can, through the implementation of
23 reasonable and cost-effective measures not included in the proposed program, meet the
24 reductions in nutrient loading established by the Division pursuant to Item (7) of this
25 Rule by a date earlier than that proposed by the local government. If the Commission
26 finds that there are additional or alternative reasonable and cost-effective measures, the
27 Commission may require the local government to modify its proposed program to include
28 such measures to achieve the required reductions by the earlier date. If the Commission
29 requires such modifications, the local government shall submit a modified program
30 within two months. The Division shall recommend that the Commission approve or
31 disapprove the modified program within three months after receiving the local
32 government's modified program. In determining whether additional or alternative load
33 reduction measures are reasonable and cost effective, the Commission shall consider
34 factors including, but not limited to, the increase in the per capita cost of a local
35 government's stormwater management program that would be required to implement
36 such measures and the cost per pound of nitrogen and phosphorus removed by such

1 measures. The Commission shall not require additional or alternative measures that
2 would require a local government to:

3 (i) Install or require installation of a new stormwater collection system in an area of
4 existing development unless the area is being redeveloped.

5 (ii) Acquire developed private property.

6 (iii) Reduce or require the reduction of impervious surfaces within an area of
7 existing development unless the area is being redeveloped.

8 (c) Within three months after the Commission's approval of a Stage 2 adaptive management
9 program to control nutrient loading from existing development, the local government
10 shall complete adoption and begin implementation of its program.

11 (11) ADDITIONAL MEASURES TO REDUCE NITROGEN LOADING IN THE UPPER NEW
12 HOPE CREEK SUBWATERSHED. If the March 1, 2023, monitoring report or any subsequent
13 monitoring report for the Upper New Hope Creek Arm of Jordan Reservoir shows that nutrient-
14 related water quality standards are not being achieved, a municipality or county located in whole
15 or in part in the Upper New Hope Creek Subwatershed shall modify its Stage 2 adaptive
16 management program to control nutrient loading from existing development to achieve additional
17 reductions in nitrogen loading from existing development. The modified Stage 2 program shall be
18 designed to achieve a total reduction in nitrogen loading from existing development of thirty-five
19 percent (35%) relative to the baseline period 1997 through 2001. The Division shall notify local
20 governments of the requirement to submit a modified Stage 2 adaptive management program.
21 Submission, review and approval, and implementation of a modified Stage 2 adaptive
22 management program shall follow the process, timeline, and standards set out Item (10) of this
23 Rule.

24 (12) Each local government implementing a Stage 2 program shall submit an annual report to the
25 Division summarizing its activities in implementing its program.

26 (13) If at any time the Division finds, based on water quality monitoring, that an arm of the Jordan
27 Reservoir has achieved compliance with water quality standards, the Division shall notify the local
28 governments in the subwatershed. Subject to the approval of the Commission, a local government
29 may modify its Stage 2 adaptive management program to control nutrient loading from existing
30 development to maintain only those measures necessary to prevent increases in nutrient loading
31 from existing development.

32 (14) The Division shall report annually to the Commission regarding the implementation of adaptive
33 management programs to control nutrient loading from existing development in the Jordan
34 watershed.

35

1 *History Note:* Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-
2 215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L.
3 2006-259; S.L. 2009-216;
4 Eff. July 1, 2014 (Pending Legislative Review)

1 [15A NCAC 02B .0267](#) is proposed for amendment as follows:

2
3 **15A NCAC 02B .0267 JORDAN WATER SUPPLY NUTRIENT STRATEGEGY: PROTECTION OF**
4 **EXISTING RIPARIAN BUFFERS**

5 (~~See S.L. 2009-216 and S.L. 2009-484~~)

6 Protection of the nutrient removal and other water quality benefits provided by riparian buffers throughout the
7 watershed is an important element of the overall Jordan water supply nutrient strategy. The following is the strategy
8 for riparian buffer protection and maintenance in the Jordan watershed, as prefaced in 15A NCAC 02B .0262:

9 (1) PURPOSE. The purposes of this Rule shall be to protect and preserve existing riparian buffers
10 throughout the Jordan watershed as generally described in 15A NCAC 02B .0262, in order to
11 maintain their nutrient removal and stream protection functions. Additionally this Rule will help
12 protect the water supply uses of Jordan Reservoir and of designated water supplies throughout the
13 Jordan watershed. Local governments shall establish programs to meet or exceed the minimum
14 requirements of this Rule. The requirements of this Rule shall supersede all locally implemented
15 buffer requirements stated in 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III,
16 and WS-IV waters in the Jordan watershed. Local governments subject to this Rule may choose to
17 implement more stringent requirements, including requiring additional buffer width.

18 (2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:

19 (a) 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces and
20 related structures to access a surface water, including boardwalks, steps, rails, and
21 signage.

22 (b) 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that
23 satisfy or otherwise fall within the scope of one or more of the definitions or uses of the
24 words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under
25 G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport
26 facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in
27 G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used
28 in Article V, Section 13, of the North Carolina Constitution, which shall include, without
29 limitation, any and all of the following: airports, airport maintenance facilities, clear
30 zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related
31 offices, parking facilities, related navigational and signal systems, runways, stormwater
32 outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport
33 buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing
34 areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or
35 other instrumentalities or devices used or useful as an aid, or constituting an advantage or
36 convenience to the safe taking off, navigation, and landing of aircraft, or the safe and
37 efficient operation or maintenance of an airport or restricted landing area; easements

1 through, or interests in, air space over land or water, interests in airport hazards outside
 2 the boundaries of airports or restricted landing areas, and other protection privileges, the
 3 acquisition or control of which is necessary to ensure safe approaches to the landing areas
 4 of airports and restricted landing areas, and the safe and efficient operation thereof and
 5 any combination of any or all of such facilities. Notwithstanding the foregoing, the
 6 following shall not be included in the definition of 'airport facilities':

- 7 (i) Satellite parking facilities;
- 8 (ii) Retail and commercial development outside of the terminal area, such as rental
 9 car facilities; and
- 10 (iii) Other secondary development, such as hotels, industrial facilities, free-standing
 11 offices and other similar buildings, so long as these facilities are not directly
 12 associated with the operation of the airport, and are not operated by a unit of
 13 government or special governmental entity such as an airport authority, in which
 14 case they are included in the definition of 'airport facilities'.

15 (c) 'Forest management plan' means as defined in Chapter 160A-458.5(4).

16 (d) 'Forest plantation' means an area of planted trees that may be conifers (pines) or
 17 hardwoods. On a plantation, the intended crop trees are planted rather than naturally
 18 regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried
 19 into the site.

20 (e) 'Greenway / Hiking Trails' means pedestrian trails constructed of pervious or impervious
 21 surfaces and related structures including but not limited to boardwalks, steps, rails, and
 22 signage, and that generally run parallel to the shoreline.

23 (f) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine
 24 species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for hardwoods
 25 and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.

26 (g) 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization
 27 techniques which include "soft" methods or natural materials (such as root wads, or rock
 28 vanes) may be considered as part of a restoration design. However, stabilization
 29 techniques that consist primarily of "hard" engineering, such as concrete lined channels,
 30 riprap, or gabions, while providing bank stabilization, shall not be considered stream
 31 restoration.

32 (h) 'Stream restoration' is defined as the process of converting an unstable, altered or
 33 degraded stream corridor, including adjacent riparian zone and flood-prone areas to its
 34 natural or referenced, stable conditions considering recent and future watershed
 35 conditions. This process also includes restoring the geomorphic dimension, pattern, and
 36 profile as well as biological and chemical integrity, including transport of water and
 37 sediment produced by the stream's watershed in order to achieve dynamic equilibrium.

1 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium
2 with its valley and contributing watershed. A reference reach can be used to develop
3 natural channel design criteria for stream restoration projects.

4 (i) 'Stump diameter' means the diameter of a tree measured at six inches above the ground
5 surface level.

6 (j) 'Temporary road' means a road constructed temporarily for equipment access to build or
7 replace hydraulic conveyance structures such as bridges, culverts, pipes or water
8 dependent structures, or to maintain public traffic during construction.

9 (3) **APPLICABILITY.** This Rule applies to all landowners and other persons conducting activities in
10 the Jordan watershed, including state and federal entities, and to all local governments in the
11 Jordan watershed, as described in 15A NCAC 02B .0262. Local governments shall develop
12 riparian buffer protection programs for approval by the Commission, incorporating the minimum
13 standards set out throughout this Rule and shall apply the requirements of this Rule throughout
14 their jurisdictions within the Jordan watershed except where The Division shall exercise
15 jurisdiction. For the following types of buffer activities in the Jordan watershed, wherever local
16 governments are referenced in this Rule, the Division shall implement applicable requirements to
17 the exclusion of local governments:

18 (a) Activities conducted under the authority of the State.

19 (b) Activities conducted under the authority of the United States.

20 (c) Activities conducted under the authority of multiple jurisdictions.

21 (d) Activities conducted under the authority of local units of government.

22 (e) Forest harvesting activities described in Item (14) of this Rule.

23 (f) Agricultural activities.

24 (g) Activities conducted in a location where there is no local government program
25 implementing NPDES stormwater requirements, Water Supply Watershed requirements,
26 or a voluntary local stormwater or buffer initiative at the time of the activity.

27 (4) **BUFFERS PROTECTED.** The following minimum criteria shall be used for identifying regulated
28 buffers:

29 (a) This Rule shall apply to activities conducted within, or outside of with impacts upon, 50-
30 foot wide riparian buffers directly adjacent to surface waters in the Jordan watershed
31 (intermittent streams, perennial streams, lakes, reservoirs and ponds), excluding wetlands.

32 (b) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be
33 considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H
34 .0506.

35 (c) A surface water shall be subject to this Rule if the feature is approximately shown on any
36 of the following references, and shall not be subject if it does not appear on any of these
37 references:

- 1 (i) The most recent version of the soil survey map prepared by the Natural
2 Resources Conservation Service of the United States Department of Agriculture.
- 3 (ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle
4 topographic maps prepared by the United States Geologic Survey (USGS).
- 5 (iii) ~~The maps~~ Maps approved by the ~~Commission~~ Geographic Information
6 Coordinating Council and by the Commission, as more accurate than those
7 identified in Sub-Item (4)(e)(i) and (4)(e)(ii) of this Rule. Prior to approving
8 such maps, the Commission shall provide a 30-day public notice and
9 opportunity for comment. Maps approved under this sub-item shall not apply to
10 projects that are existing and ongoing within the meaning of this Rule as set out
11 in Item (6).
- 12 (d) Where the specific origination point of a stream regulated under this Item is in question,
13 upon request of the Division or another party, the local government shall make an on-site
14 determination. A local government representative who has successfully completed the
15 Division's *Surface Water Identification Training Certification* course, its successor, or
16 other equivalent training curriculum approved by the Division, shall establish that point
17 using the latest version of the Division publication, *Identification Methods for the Origins*
18 *of Intermittent and Perennial Streams*, available at
19 http://h2o.enr.state.nc.us/newwetlands/documents/NC_Stream_ID_Manual.pdf
20 <http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations> or
21 from the Division of Water Quality, 401/Wetlands Unit, 1650 Mail Service Center,
22 Raleigh, NC, 27699-1650. A local government may accept the results of a site
23 assessment made by another party who meets these criteria. Any disputes over on-site
24 determinations made according to this Sub-Item shall be referred to the Director in
25 writing. The Director's determination is subject to review as provided in Articles 3 and 4
26 of G.S. 150B.
- 27 (e) Riparian buffers protected by this Rule shall be measured pursuant to Item (7) of this
28 Rule.
- 29 (f) Parties subject to this rule shall abide by all State rules and laws regarding waters of the
30 state including but not limited to 15A NCAC 02H .0500, 15A NCAC 02H .1300, and
31 Sections 401 and 404 of the Federal Water Pollution Control Act.
- 32 (g) A riparian buffer may be exempt from this Rule as described in Item (5) or (6) of this
33 Rule.
- 34 (h) No new clearing, grading, or development shall take place nor shall any new building
35 permits be issued in violation of this Rule.
- 36 (5) EXEMPTION BASED ON ON-SITE DETERMINATION. When a landowner or other affected
37 party including the Division believes that the maps have inaccurately depicted surface waters, he

1 or she shall consult the appropriate local government. Upon request, a local government
 2 representative who has successfully completed the Division's *Surface Water Identification*
 3 *Training Certification* course, its successor, or other equivalent training curriculum approved by
 4 the Division, shall make an on-site determination. Local governments may also accept the results
 5 of site assessments made by other parties who have successfully completed such training. Any
 6 disputes over on-site determinations shall be referred to the Director in writing. A determination
 7 of the Director as to the accuracy or application of the maps is subject to review as provided in
 8 Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to this
 9 Rule if a site evaluation reveals any of the following cases:

- 10 (a) Man-made ponds and lakes that are not part of a natural drainage way that is classified in
 11 accordance with 15A NCAC 02B .0100, including ponds and lakes created for animal
 12 watering, irrigation, or other agricultural uses. A pond or lake is part of a natural
 13 drainage way when it is fed by an intermittent or perennial stream or when it has a direct
 14 discharge point to an intermittent or perennial stream.
- 15 (b) Ephemeral streams.
- 16 (c) The absence on the ground of a corresponding intermittent or perennial stream, lake,
 17 reservoir, or pond.
- 18 (d) Ditches or other man-made water conveyances, other than modified natural streams.

19 (6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not
 20 apply to uses that are existing and ongoing; however, this Rule shall apply at the time an existing,
 21 ongoing use is changed to another use. Change of use shall involve the initiation of any activity
 22 that does not meet either of the following criteria for existing, ongoing activity:

- 23 (a) It was present within the riparian buffer as of the effective date of a local program
 24 enforcing this Rule and has continued to exist since that time. For any Division-
 25 administered activities listed in Item (3) of this Rule, a use shall be considered existing
 26 and ongoing if it was present within the riparian buffer as of the [Rule's](#) effective date of
 27 ~~this Rule-August 11, 2009~~ and has continued to exist since that time. Existing uses shall
 28 include agriculture, buildings, industrial facilities, commercial areas, transportation
 29 facilities, maintained lawns, utility lines and on-site sanitary sewage systems, any of
 30 which involve either specific, periodic management of vegetation or displacement of
 31 vegetation by structures or regular activity. Only the portion of the riparian buffer
 32 occupied by the footprint of the existing use is exempt from this Rule. Change of
 33 ownership through purchase or inheritance is not a change of use. Activities necessary to
 34 maintain uses are allowed provided that the site remains similarly vegetated, no
 35 impervious surface is added within 50 feet of the surface water where it did not
 36 previously exist as of the effective date of a local program enforcing this Rule, or for
 37 Division-administered activities listed in Item (3) of this Rule as of the [Rule's](#) effective

1 date of ~~this Rule~~ [August 11, 2009](#), and existing diffuse flow is maintained. Grading and
2 revegetating Zone Two is allowed provided that the health of the vegetation in Zone One
3 is not compromised, the ground is stabilized and existing diffuse flow is maintained.

4 (b) Projects or proposed development that are determined by the local government to meet at
5 least one of the following criteria:

6 (i) Project requires a 401 Certification/404 Permit and these were issued prior to the
7 effective date of the local program enforcing this Rule, and prior to the [August](#)
8 [11, 2009](#) effective date of this Rule for Division-administered activities listed in
9 Item (3) of this Rule;

10 (ii) Projects that require a state permit, such as landfills, NPDES wastewater
11 discharges, land application of residuals and road construction activities, have
12 begun construction or are under contract to begin construction and had received
13 all required state permits and certifications prior to the effective date of the local
14 program implementing this Rule, and prior to the [August 11, 2009](#) effective date
15 of this Rule for Division-administered activities listed in Item (3) of this Rule;

16 (iii) Projects that are being reviewed through the Clean Water Act Section
17 404/National Environmental Policy Act Merger 01 Process (published by the US
18 Army Corps of Engineers and Federal Highway Administration, 2003) or its
19 immediate successor and that have reached agreement with DENR on avoidance
20 and minimization by the effective date of the local program enforcing this Rule,
21 and prior to the [August 11, 2009](#) effective date of this Rule for state and federal
22 entities; or

23 (iv) Projects that are not required to be reviewed by the Clean Water Act Section
24 404/National Environmental Policy Act Merger 01 Process (published by the US
25 Army Corps of Engineers and Federal Highway Administration, 2003) or its
26 immediate successor if a Finding of No Significant Impact has been issued for
27 the project and the project has the written approval of the local government prior
28 to the effective date of the local program enforcing this Rule, or the written
29 approval of the Division prior to the [August 11, 2009](#) effective date of this Rule
30 for state and federal entities.

31 (7) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as
32 follows:

33 (a) Zone One shall consist of a vegetated area that is undisturbed except for uses provided
34 for in Item (9) of this Rule. The location of Zone One shall be as follows:

35 (i) For intermittent and perennial streams, Zone One shall begin at the top of the
36 bank and extend landward a distance of 30 feet on all sides of the surface water,

- 1 measured horizontally on a line perpendicular to a vertical line marking the top
 2 of the bank.
- 3 (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone One
 4 shall begin at the normal water level and extend landward a distance of 30 feet,
 5 measured horizontally on a line perpendicular to a vertical line marking the
 6 normal water level.
- 7 (b) Zone Two shall consist of a stable, vegetated area that is undisturbed except for uses
 8 provided for in Item (9) of this Rule. Grading and revegetating in Zone Two is allowed
 9 provided that the health of the vegetation in Zone One is not compromised. Zone Two
 10 shall begin at the outer edge of Zone One and extend landward 20 feet as measured
 11 horizontally on a line perpendicular to the surface water. The combined width of Zones
 12 One and Two shall be 50 feet on all sides of the surface water.
- 13 (8) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian
 14 buffer by dispersing concentrated flow prior to its entry into the buffer and reestablishing
 15 vegetation as follows:
- 16 (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to
 17 diffuse flow at non-erosive velocities before the runoff enters Zone Two of the riparian
 18 buffer;
- 19 (b) Periodic corrective action to restore diffuse flow shall be taken as necessary and shall be
 20 designed to impede the formation of erosion gullies; ~~and~~
- 21 (c) As set out in Items (7) and (9) of this Rule, no new stormwater conveyances are allowed
 22 through the buffers except for those specified in Item (9) of this Rule addressing
 23 stormwater management ponds, drainage ditches, roadside ditches, and stormwater
 24 ~~conveyances. conveyances; and~~
- 25 (d) Activities conducted outside of buffers identified in Item (4) that alter the hydrology in
 26 violation of the diffuse flow requirements set out in this Item shall be prohibited.
- 27 (9) TABLE OF USES. The following chart sets out potential new uses within the buffer, or outside
 28 the buffer with impacts on the buffer, and categorizes them as exempt, allowable, or allowable
 29 with mitigation. All uses not categorized as exempt, allowable, or allowable with mitigation are
 30 considered prohibited and may not proceed within the riparian buffer, or outside the buffer if the
 31 use would impact diffuse flow through the buffer, unless a variance is granted pursuant to Item
 32 (12) of this Rule. The requirements for each category are given in Item (10) of this Rule.
- 33

Use	Exempt*	Allowable*	Allowable with Mitigation*
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer 	X	X	
<p>Airport facilities:</p> <ul style="list-style-type: none"> • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer • Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)¹ 		X	X
Archaeological activities	X		
Bridges		X	
Canoe Access provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the buffer.	X		

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
Dam maintenance activities: <ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3 	X	X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the new channel	X		
Driveway crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> • Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer • Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer • In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X X	X
Driveway impacts other than crossing of a stream or other surface waters subject to this Rule			X
Fences: <ul style="list-style-type: none"> • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Rule • Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Rule 	X	X	
Forest harvesting - see Item (14) of this Rule			
Fertilizer application: one-time application to establish vegetation	X		

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
Grading and revegetation in Zone Two provided that diffuse flow and the health of existing vegetation in Zone One is not compromised and disturbed areas are stabilized until they are revegetated.	X		
Greenway/hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.		X	
Historic preservation	X		
Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	
<p>Mining activities:</p> <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (7) and (8) of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (7) and (8) of this Rule are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
Playground equipment: <ul style="list-style-type: none"> • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X	
Ponds created by impounding streams and not used as stormwater BMPs: <ul style="list-style-type: none"> • New ponds provided that a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is NOT established adjacent to the pond 		X	X
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Rule.			X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
<p>Railroad crossings of streams and other surface waters subject to this Rule:</p> <ul style="list-style-type: none"> • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X
<p>Recreational and accessory structures in Zone Two:</p> <ul style="list-style-type: none"> • Sheds and gazebos in Zone Two, provided they are not prohibited under local water supply ordinance: <ul style="list-style-type: none"> ○ Total footprint less than or equal to 150 square feet per lot. ○ Total footprint greater than 150 square feet per lot. • Wooden slatted decks and associated steps, provided the use meets the requirements of Items (7) and (8) of this Rule: <ul style="list-style-type: none"> ○ Deck at least eight feet in height and no vegetation removed from Zone One. ○ Deck less than eight feet in height or vegetation removed from Zone One. 		X X X X	X X X
<p>Removal of previous fill or debris provided that diffuse flow is maintained and vegetation is restored</p>	X		
<p>Road impacts other than crossings of streams and other surface waters subject to this Rule</p>			X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
Road crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> • Road crossings that impact equal to or less than 40 linear feet of riparian buffer • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact 		X	X
Stormwater BMPs: <ul style="list-style-type: none"> • Wet detention, bioretention, and constructed wetlands in Zone Two if diffuse flow of discharge is provided into Zone One • Wet detention, bioretention, and constructed wetlands in Zone One 		X	X
Scientific studies and stream gauging	X		
Streambank or shoreline stabilization		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
<p>Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation: At the end of five years the restored buffer shall comply with the restoration criteria in Item (8) of 15A NCAC 02B .0268:</p> <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation or bridge construction or replacement. 	X	X X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
Utility, electric, aerial, perpendicular crossings of streams and other surface waters subject to this Rule ^{2,3,5} : <ul style="list-style-type: none"> • Disturb equal to or less than 150 linear feet of riparian buffer • Disturb greater than 150 linear feet of riparian buffer 	X	X	
Utility, electric, aerial, other than perpendicular crossings ⁵ : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One^{2,3} 		X	X
Utility, electric, underground, perpendicular crossings ^{3,4,5} : <ul style="list-style-type: none"> • Disturb less than or equal to 40 linear feet of riparian buffer • Disturb greater than 40 linear feet of riparian buffer 	X	X	
Utility, electric, underground, other than perpendicular crossings ⁴ : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One¹ 	X X		

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
Utility, non-electric, perpendicular crossings of streams and other surface waters subject to this Rule ^{3,5} : <ul style="list-style-type: none"> • Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 150 linear feet of riparian buffer 	X	 X X	 X X
Utility, non-electric, other than perpendicular crossings ^{4,5} : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One¹ 		X	X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
<p>Vegetation management:</p> <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Mowing or harvesting of plant products in Zone Two • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees that are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering stability of the streambank. • Removal of individual trees which are dead, diseased or damaged. • Removal of poison ivy • Removal of invasive exotic vegetation as defined in: <p><i>Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</i></p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>		
<p>Vehicular access roads leading to water-dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten feet.</p>		<p>X</p>	
<p>Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers.</p>		<p>X</p>	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt*	Allowable*	Allowable with Mitigation*
Water supply reservoirs: <ul style="list-style-type: none"> • New reservoirs where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is not established adjacent to the reservoir 		X	X
Water wells <ul style="list-style-type: none"> • Single family residential water wells • All other water wells 	X	X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires Division approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not require Division approval for the use of a 401 Water Quality Certification 	X	X	
Wildlife passage structures		X	

1
2
3
4
5
6
7
8
9
10
11
12
13

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

- ¹ Provided that:
- No heavy equipment is used in Zone One.
 - Vegetation in undisturbed portions of the buffer is not compromised.
 - Felled trees are removed by chain.
 - No permanent felling of trees occurs in protected buffers or streams.
 - Stumps are removed only by grinding.
 - At the completion of the project the disturbed area is stabilized with native vegetation.
 - Zones one and two meet the requirements of Sub-Items (7) and (8) of this Rule.

1 2 Provided that, in Zone One, all of the following BMPs for overhead utility lines are used.
2 If all of these BMPs are not used, then the overhead utility lines shall require a no
3 practical alternative evaluation by the local government, as defined in Item (11) of this
4 Rule.

- 5 • A minimum zone of 10 feet wide immediately adjacent to the water body shall be
6 managed such that only vegetation that poses a hazard or has the potential to grow tall
7 enough to interfere with the line is removed.
- 8 • Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- 9 • Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps
10 shall remain where trees are cut.
- 11 • Riprap shall not be used unless it is necessary to stabilize a tower.
- 12 • No fertilizer shall be used other than a one-time application to re-establish vegetation.
- 13 • Construction activities shall minimize the removal of woody vegetation, the extent of the
14 disturbed area, and the time in which areas remain in a disturbed state.
- 15 • Active measures shall be taken after construction and during routine maintenance to
16 ensure diffuse flow of stormwater through the buffer.
- 17 • In wetlands, mats shall be utilized to minimize soil disturbance.

18 3 Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water
19 body unless the local government completes a no practical alternative evaluation as
20 defined in Item (11) of this Rule.

21 4 Provided that, in Zone One, all of the following BMPs for underground utility lines are
22 used. If all of these BMPs are not used, then the underground utility line shall require a
23 no practical alternative evaluation by the local government, as defined in Item (11) of this
24 Rule.

- 25 • Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- 26 • Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps
27 shall remain, except in the trench where trees are cut.
- 28 • Underground cables shall be installed by vibratory plow or trenching.
- 29 • The trench shall be backfilled with the excavated soil material immediately following
30 cable installation.
- 31 • No fertilizer shall be used other than a one-time application to re-establish vegetation.
- 32 • Construction activities shall minimize the removal of woody vegetation, the extent of the
33 disturbed area, and the time in which areas remain in a disturbed state.
- 34 • Measures shall be taken upon completion of construction and during routine maintenance
35 to ensure diffuse flow of stormwater through the buffer.
- 36 • In wetlands, mats shall be utilized to minimize soil disturbance.

1 ⁵ Perpendicular crossings are those that intersect the surface water at an angle between 75
2 degrees and 105 degrees.

3 (10) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated in Item (9) of this Rule as
4 exempt, allowable, and allowable with mitigation within a riparian buffer shall have the following
5 requirements:

6 (a) EXEMPT. Uses designated as exempt are permissible without local government
7 authorization provided that they adhere to the limitations of the activity as defined in Item
8 (9). In addition, exempt uses shall be designed, constructed and maintained to minimize
9 soil disturbance and to provide the maximum water quality protection practicable,
10 including construction, monitoring, and maintenance activities.

11 (b) ALLOWABLE. Uses designated as allowable may proceed provided that there are no
12 practical alternatives to the requested use pursuant to Item (11) of this Rule. This
13 includes construction, monitoring, and maintenance activities. These uses require written
14 authorization from the local government.

15 (c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation
16 may proceed provided that there are no practical alternatives to the requested use
17 pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been
18 approved pursuant to Item (13) of this Rule. These uses require written authorization
19 from the local government.

20 (11) DETERMINATION OF "NO PRACTICAL ALTERNATIVES."

21 (a) Persons who wish to undertake uses designated as allowable or allowable with mitigation
22 shall submit a request for a "no practical alternatives" determination to the local
23 government. The applicant shall certify that the project meets all the following criteria for
24 finding "no practical alternatives":

25 (i) The basic project purpose cannot be practically accomplished in a manner that
26 would better minimize disturbance, preserve aquatic life and habitat, and protect
27 water quality;

28 (ii) The use cannot practically be reduced in size or density, reconfigured or
29 redesigned to better minimize disturbance, preserve aquatic life and habitat, and
30 protect water quality; and

31 (iii) Best management practices shall be used if necessary to minimize disturbance,
32 preserve aquatic life and habitat, and protect water quality;

33 (b) The applicant shall also submit at least the following information in support of their
34 assertion of "no practical alternatives":

35 (i) The name, address and phone number of the applicant;

36 (ii) The nature of the activity to be conducted by the applicant;

37 (iii) The location of the activity, including the jurisdiction;

- 1 (iv) A map of sufficient detail to accurately delineate the boundaries of the land to be
2 utilized in carrying out the activity, the location and dimensions of any
3 disturbance in riparian buffers associated with the activity, and the extent of
4 riparian buffers on the land;
- 5 (v) An explanation of why this plan for the activity cannot be practically
6 accomplished, reduced or reconfigured to better minimize disturbance to the
7 riparian buffer, preserve aquatic life and habitat and protect water quality; and
- 8 (vi) Plans for any best management practices proposed to be used to control the
9 impacts associated with the activity.
- 10 (c) Within 60 days of a submission that addresses Sub-Item (11)(b) of this Rule, the local
11 government shall review the entire project and make a finding of fact as to whether the
12 criteria in Sub-Item (11)(a) have been met. A finding of "no practical alternatives" shall
13 result in issuance of an Authorization Certificate. Failure to act within 60 days shall be
14 construed as a finding of "no practical alternatives" and an Authorization Certificate shall
15 be issued to the applicant unless one of the following occurs:
- 16 (i) The applicant agrees, in writing, to a longer period;
- 17 (ii) The local government determines that the applicant has failed to furnish
18 requested information necessary to the local government's decision;
- 19 (iii) The final decision is to be made pursuant to a public hearing; or
- 20 (iv) The applicant refuses access to its records or premises for the purpose of
21 gathering information necessary to the local government's decision.
- 22 (d) The local government may attach conditions to the Authorization Certificate that support
23 the purpose, spirit and intent of the riparian buffer protection program.
- 24 (e) Any appeals of determinations regarding Authorization Certificates shall be referred to
25 the Director. The Director's decision is subject to review as provided in G.S. 150B
26 Articles 3 and 4.
- 27 (12) VARIANCES. Persons who wish to undertake prohibited uses may pursue a variance. The local
28 government may grant minor variances. For major variances, local governments shall prepare
29 preliminary findings and submit them to the Commission for approval. The variance request
30 procedure shall be as follows:
- 31 (a) For any variance request, the local government shall make a finding of fact as to whether
32 there are practical difficulties or unnecessary hardships that prevent compliance with the
33 riparian buffer protection requirements. A finding of practical difficulties or unnecessary
34 hardships shall require that the following conditions are met:
- 35 (i) If the applicant complies with the provisions of this Rule, he/she can secure no
36 reasonable return from, nor make reasonable use of, his/her property. Merely
37 proving that the variance would permit a greater profit from the property shall

1 not be considered adequate justification for a variance. Moreover, the local
 2 government shall consider whether the variance is the minimum possible
 3 deviation from the terms of this Rule that shall make reasonable use of the
 4 property possible;

5 (ii) The hardship results from application of this Rule to the property rather than
 6 from other factors such as deed restrictions or other hardship;

7 (iii) The hardship is due to the physical nature of the applicant's property, such as its
 8 size, shape, or topography, such that compliance with provisions of this rule
 9 would not allow reasonable use of the property;

10 (iv) The applicant did not cause the hardship by knowingly or unknowingly violating
 11 this Rule;

12 (v) The applicant did not purchase the property after [August 11, 2009](#), the effective
 13 date of this Rule, and then request a variance; and

14 (vi) The hardship is rare or unique to the applicant's property.

15 (b) For any variance request, the local government shall make a finding of fact as to whether
 16 the variance is in harmony with the general purpose and intent of the State's riparian
 17 buffer protection requirements and preserves its spirit; and

18 (c) For any variance request, the local government shall make a finding of fact as to whether,
 19 in granting the variance, the public safety and welfare have been assured, water quality
 20 has been protected, and substantial justice has been done.

21 (d) **MINOR VARIANCES.** A minor variance request pertains to activities that will impact
 22 only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and
 23 approved based on the criteria in Sub-Items (12)(a) through (12)(c) of this Rule by the
 24 local government pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The local
 25 government may attach conditions to the variance approval that support the purpose,
 26 spirit and intent of the riparian buffer protection program. Request for appeals to
 27 decisions made by the local governments shall be made in writing to the Director. The
 28 Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

29 (e) **MAJOR VARIANCES.** A major variance request pertains to activities that will impact
 30 any portion of Zone One or any portion of both Zones One and Two of the riparian
 31 buffer. If the local government has determined that a major variance request meets the
 32 requirements in Sub-Items (12)(a) through (12)(c) of this Rule, then it shall prepare a
 33 preliminary finding and submit it to the Commission for approval. Within 90 days after
 34 receipt by the local government, the Commission shall review preliminary findings on
 35 major variance requests and take one of the following actions: approve, approve with
 36 conditions and stipulations, or deny the request. Appeals from a Commission decision on
 37 a major variance request are made on judicial review to Superior Court.

- 1 (13) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall
2 meet the following requirements in order to proceed with their proposed use:
- 3 (a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item
4 (11) of this Rule; and
- 5 (b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0268.
- 6 (14) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall
7 apply for forest harvesting operations and practices:
- 8 (a) All the following measures shall apply in the entire riparian buffer as applicable:
- 9 (i) Logging decks and sawmill sites shall not be placed in the riparian buffer;
- 10 (ii) Access roads and skid trails shall be prohibited except for temporary and
11 permanent stream crossings established in accordance with 15A NCAC 01I
12 .0203. Temporary stream crossings shall be permanently stabilized after any
13 site disturbing activity is completed;
- 14 (iii) Timber felling shall be directed away from the stream or waterbody;
- 15 (iv) Skidding shall be directed away from the stream or water body and shall be done
16 in a manner that minimizes soil disturbance and prevents the creation of
17 channels or ruts;
- 18 (v) Individual trees may be treated to maintain or improve their health, form or
19 vigor;
- 20 (vi) Harvesting of dead or infected trees as necessary to prevent or control the spread
21 of tree pest and disease infestation shall be allowed. These practices must be
22 approved by the Division of Forest Resources for a specific site pursuant to the
23 rule. The Division of Forest Resources must notify the Division of all
24 approvals;
- 25 (vii) Removal of individual trees that are in danger of causing damage to structures or
26 human life shall be allowed;
- 27 (viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground
28 cover plants to enhance the riparian buffer shall be allowed provided that soil
29 disturbance is minimized;
- 30 (ix) High-intensity prescribed burns shall not be allowed; and
- 31 (x) Application of fertilizer shall not be allowed except as necessary for permanent
32 stabilization. Broadcast application of fertilizer to the adjacent forest stand shall
33 be conducted so that the chemicals are not applied directly to or allowed to drift
34 into the riparian buffer.
- 35 (b) In Zone One, forest vegetation shall be protected and maintained. Selective harvest as
36 provided for below is allowed on forest lands that have a deferment for use value under
37 forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a

1 forest management plan. A plan drafted under either option shall meet the standards set
 2 out in this Item. Copies of either the approval of the deferment for use value under
 3 forestry or the forest management plan shall be produced upon request. For such forest
 4 lands, selective harvest is allowed in accordance with the following:

- 5 (i) Tracked or wheeled vehicles are permitted for the purpose of selective timber
 6 harvesting where there is no other practical alternative for removal of individual
 7 trees provided activities comply with forest practice guidelines for water quality
 8 as defined in 15A NCAC 01I .0101 through .0209, and provided no equipment
 9 shall operate within the first 10 feet immediately adjacent to the stream except at
 10 stream crossings designed, constructed and maintained in accordance with Rule
 11 15A NCAC 01I .0203;
- 12 (ii) Soil disturbing site preparation activities are not allowed; and
- 13 (iii) Trees shall be removed with the minimum disturbance to the soil and residual
 14 vegetation.

15 (c) In addition to the requirements of (b) in this Item, the following provisions for selective
 16 harvesting shall be met:

- 17 (i) The first 10 feet of Zone One directly adjacent to the stream or waterbody shall
 18 be undisturbed except for the removal of individual high value trees as defined
 19 provided that no trees with exposed primary roots visible in the streambank be
 20 cut unless listed as an exempt activity under Vegetation Management in the
 21 Table of Uses, Sub-Item (9) of this Rule;
- 22 (ii) In the outer 20 feet of Zone One, a maximum of 50 percent of the trees greater
 23 than five inches DBH may be cut and removed. The reentry time for harvest
 24 shall be no more frequent than every 15 years, except on forest plantations
 25 where the reentry time shall be no more frequent than every five years. In either
 26 case, the trees remaining after harvest shall be as evenly spaced as possible; and
- 27 (iii) In Zone Two, harvesting and regeneration of the forest stand shall be allowed in
 28 accordance with 15A NCAC 01I .0100 through .0200 as enforced by the
 29 Division of Forest Resources.

30 (15) RULE IMPLEMENTATION. This Rule shall be implemented as follows:

31 (a) For Division-administered activities listed in Item (3) of this Rule, the Division shall
 32 continue to implement the requirements of this ~~Rule~~ Rule, which it has done since ~~as of~~
 33 ~~its effective date;~~ date of August 11, 2009;

34 ~~(b) Within two months after the effective date of this Rule, the Division shall submit a model~~
 35 ~~local riparian buffer protection ordinance that embodies the standards set out in this Rule~~
 36 ~~and 15A NCAC 02B .0268 to the Commission for approval;~~

- 1 ~~(e) Within six months after the Commission's approval of a model local buffer ordinance,~~
2 ~~local governments shall submit local programs to the Division for review based on the~~
3 ~~standards set out in this Rule and 15A NCAC 02B .0268. A local program shall also~~
4 ~~detail implementation including but not limited to such factors as a method for making~~
5 ~~variance determinations, a plan for record keeping, and a plan for enforcement. Local~~
6 ~~governments shall use the latest version of the Division's publication, Identification~~
7 ~~Methods for the Origins of Intermittent and Perennial Streams, available at~~
8 ~~http://h2o.enr.state.nc.us/newetlands/documents/NC_Stream_ID_Manual.pdf or at the~~
9 ~~401/Wetlands Unit of the North Carolina Division of Water Quality at: Mail Service~~
10 ~~Center 1650, Raleigh, NC, 27699 1650, to establish the existence of streams;~~
- 11 ~~(d) Within one year after the Commission's approval of a model local buffer ordinance, the~~
12 ~~Division shall provide recommendations to the Commission on local buffer programs.~~
13 ~~The Commission shall either approve the programs or require changes based on the~~
14 ~~standards set out in this Rule and 15A NCAC 02B .0268. Should the Commission~~
15 ~~require changes, the applicable local government shall have two months to submit~~
16 ~~revisions, and the Division shall provide follow up recommendations to the Commission~~
17 ~~within two months after receiving revisions;~~
- 18 ~~(e)(b) Within two months after the Commission's approval of local buffer programs, local Local~~
19 ~~governments shall continue to implement buffer programs approved by the Commission~~
20 ~~in September 2010 and January 2011, or subsequent revisions to those programs~~
21 ~~approved by the Commission or its delegated authority, to ensure that existing land use~~
22 ~~activities and proposed development complies with local programs. These programs are~~
23 ~~required to meet the standards set out in this Rule, 15A NCAC 02B .0268, and are guided~~
24 ~~by the model buffer program approved by the Commission in September 2009. A local~~
25 ~~government shall issue an approval for new development only if the development~~
26 ~~application proposes to avoid impacts to riparian buffers defined in Item (4) of this Rule,~~
27 ~~or where the application proposes to impact such buffers, it demonstrates that the~~
28 ~~applicant has done the following, as applicable:~~
- 29 (i) Determined that the activity is exempt from requirements of this Rule;
- 30 (ii) Received an Authorization Certificate from the Division pursuant to Item (11) of
- 31 this Rule for uses designated as Allowable or Allowable with Mitigation;
- 32 (iii) For uses designated as Allowable with Mitigation, received approval of a
- 33 mitigation plan pursuant to 15A NCAC 02B .0268; and
- 34 (iv) Received a variance pursuant to Item (12) of this Rule;
- 35 ~~(f)(c) Upon implementation, local Local governments shall continue to submit annual reports~~
36 ~~to the Division summarizing their activities in implementing the requirements of this~~
37 ~~Rule;~~

1 ~~(g)(d)~~ If a local government fails to adopt or adequately implement its program as called for in
 2 this Rule, the Division may take appropriate enforcement action as authorized by statute,
 3 and may choose to assume responsibility for implementing that program until such time
 4 as it determines that the local government is prepared to comply with its responsibilities;
 5 and

6 ~~(h)(e)~~ LOCAL OVERSIGHT. The Division shall periodically inspect local programs to ensure
 7 that they are being implemented and enforced in keeping with the requirements of this
 8 Rule. Local governments shall maintain on-site records for a minimum of five years, and
 9 shall furnish a copy of these records to the Division within 30 days of receipt of a written
 10 request for them. Local programs' records shall include the following:

- 11 (i) A copy of all variance requests;
- 12 (ii) Findings of fact on all variance requests;
- 13 (iii) Results of all variance proceedings;
- 14 (iv) A record of complaints and action taken as a result of complaints;
- 15 (v) Records for stream origin calls and stream ratings; and
- 16 (vi) Copies of all requests for authorization, records approving authorization and
 17 Authorization Certificates.

- 18 (16) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does
 19 not preclude the requirement to comply with all other federal, state and local laws, regulations, and
 20 permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting,
 21 surface mining, land disturbance activities, or any other landscape feature or water quality-related
 22 activity.

23
 24 *History Note:* Authority 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-
 25 215.6C; 143 215.8B; 143B-282(c); 143B-282(d) S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-
 26 259; [S.L. 2009-216](#); [S.L. 2009-484](#);

27 *Eff. August 11, 2009;*

28 [See S.L. 2009 216 and S.L. 2009 484](#);

29 *Amended Eff. September 1, ~~2011-2011~~; July 1, 2014 (Pending Legislative Review).*

30

1 [15a NCAC 02b .0270 is proposed for amendment as follows:](#)

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

15A NCAC 02B .0270 JORDAN WATER SUPPLY NUTRIENT STRATEGY: WASTEWATER DISCHARGE REQUIREMENTS

(See S.L. 2009-216 and S.L. 2009-484)

The following is the NPDES wastewater discharge management strategy for the B. Everett Jordan Reservoir watershed, or Jordan watershed:

- (1) **PURPOSE.** The purpose of this Rule is to establish minimum nutrient control requirements for point source wastewater discharges in the Jordan watershed in order to restore and maintain water quality in the reservoir and its tributaries and protect their designated uses, including water supply.
- (2) **APPLICABILITY.** This Rule applies to all wastewater treatment facilities discharging in the Jordan watershed that receive nutrient-bearing wastewater and are subject to requirements for individual NPDES permits.
- (3) **DEFINITIONS.** For the purposes of this Rule, the following definitions apply:
 - (a) In regard to point source dischargers, treatment facilities, and wastewater flows and discharges,
 - (i) "Existing" means that which was subject to a NPDES permit as of December 31, 2001;
 - (ii) "Expanding" means that which has increased or will increase beyond its permitted flow as defined in this Rule; and
 - (iii) "New" means that which was not subject to a NPDES permit as of December 31, 2001.
 - (b) "Active" allocation means that portion of an allocation that has been applied toward and is expressed as a nutrient limit in an individual NPDES permit. Allocation that is held but not applied in this way is "reserve" allocation.
 - (c) "Limit" means the mass quantity of nitrogen or phosphorus that a discharger or group of dischargers is authorized through a NPDES permit to release into surface waters of the Jordan watershed. Limits are enforceable and may be expressed as "delivered limit" or as the equivalent "discharge limit."
 - (d) "MGD" means million gallons per day.
 - (e) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 2001, with the following exceptions:

Facility Owner	Facility Name	NPDES Permit	Permitted Flow (MGD)
B. E. Jordan & Son, LLC	B. E. Jordan & Son WWTP	NC0042528	0.036
Durham County	Triangle WWTP	NC0026051	12.0

1	Ferrington Utilities, Inc.	Ferrington Village WWTP	NC0043559	0.5
2	Greensboro, City of	T.Z. Osborne WWTP	NC0047384	40.0
3	Mervyn R. King	Countryside Manor WWTP	NC0073571	0.03
4	OWASA	Mason Farm WWTP	NC0025241	14.5
5	Pittsboro, Town of	Pittsboro WWTP	NC0020354	2.25
6	Quarterstone Farm Assoc.	Quarterstone Farm WWTP	NC0066966	0.2
7	Aqua North Carolina, Inc.	Chatham WRF	NC0056413	0.35

(f) "Reserve" allocation means allocation that is held by a permittee or other person but which has not been applied toward and is not expressed as a nutrient limit in an individual NPDES permit. Allocation that has been applied and expressed in this way is "active" allocation.

(4) This Item provides for the initial division of nutrient wasteload allocations among point source dischargers under this strategy.

(a) The delivered wasteload allocations of nitrogen and phosphorus assigned to point source dischargers collectively in each of the Jordan subwatersheds, as set out in 15A NCAC 02B .0262(4), shall be divided as follows:

Subwatershed and Discharger Subcategories	Delivered Allocations (lb/yr)	
	Total Nitrogen	Total Phosphorus
Upper New Hope Arm		
Permitted flows ≥ 0.1 MGD	332,466	22,498
Permitted flows < 0.1 MGD	3,613	608
Lower New Hope Arm		
Permitted flows ≥ 0.1 MGD	6,836	498
Permitted flows < 0.1 MGD	0	0
Haw River Arm		
Permitted flows ≥ 0.1 MGD	881,757	104,004
Permitted flows < 0.1 MGD	13,370	1,996

(b) The nutrient allocations in Sub-Item (a) of this Item shall be apportioned among the existing dischargers in each subcategory in proportion to the dischargers' permitted flows and the resulting delivered nutrient allocations assigned to each individual discharger.

(5) This Item describes allowable changes in nutrient allocations.

(a) The aggregate and individual nutrient allocations available to point source dischargers in the Jordan watershed are subject to change:

(i) Whenever the Commission, through rulemaking, revises the wasteload allocations in 15A NCAC 02B .0262 in order to ensure the protection of water quality in the

- 1 reservoir and its tributaries or to conform with applicable state or federal
2 requirements;
- 3 (ii) Whenever one or more point source dischargers acquires any portion of the
4 nonpoint load allocations under the provisions in this Rule, and 15A NCAC 02B
5 .0273, Options for Offsetting Nutrient Loads;
- 6 (iii) As the result of allocation transfers between point sources or between point and
7 nonpoint sources, except that nutrient allocation can be transferred and applied only
8 within its assigned subwatershed; or
- 9 (iv) Any allocation is valid only in the subwatershed for which it is first established.
- 10 (b) In the event that the Commission changes any nutrient wasteload allocation specified in 15A
11 NCAC 02B .0262 or Item (4) of this Rule, the Commission shall also re-evaluate the
12 apportionment among the dischargers and shall revise the individual allocations as necessary.
- 13 (6) This Item identifies nutrient control requirements specific to existing discharges.
- 14 (a) ~~Beginning with the first full calendar year following the effective date of this Rule, any Any~~
15 existing discharger with a permitted flow of 0.1 MGD or greater shall continue to limit its
16 total phosphorus discharge to its active individual discharge allocation initially applied as of
17 calendar year 2010 as defined or modified pursuant to this Rule.
- 18 (b) ~~No later than six months after the effective date of this Rule, each Each~~ existing discharger
19 with a permitted flow greater than or equal to 0.1 ~~MGD, MGD, having shall evaluate~~
20 evaluated its treatment facilities and ~~operations operations, and identify identified~~ further
21 opportunities to improve and optimize nitrogen reduction in the existing ~~facilities beyond~~
22 ~~those previously implemented pursuant to G.S. 143-215.1B(d); facilities, and submit~~
23 submitted a report to the Division ~~in 2010 documenting its findings,~~ proposing optimization
24 measures, ~~and describing expected results. No later than six months following shall, upon~~
25 Division acceptance of the report, implement the measures or as provided in the acceptance,
26 and shall continue to implement such measures until treatment system improvements
27 undertaken to comply with this Rule's nitrogen limits are completed and operational. ~~the~~
28 ~~discharger shall implement the proposed measures.~~ Beginning one year following Division
29 ~~acceptance of the report and continuing through the fifth calendar year in 2015 and~~
30 continuing until one year after the improvements are operational, ~~after the effective date of~~
31 this Rule, each such discharger shall submit a progress report to the Division by March 1 of
32 each year documenting the status of the proposed measures and the nitrogen reductions
33 achieved at the facility in the previous calendar year.
- 34 (c) ~~Beginning with the fifth full calendar year after the effective date of this Rule, No later than~~
35 the calendar year 2016, each existing discharger with a permitted flow greater than or equal
36 to 0.1 MGD shall limit its total nitrogen discharge to its active individual discharge allocation
37 as defined or modified pursuant to this ~~Rule.~~ Rule, except that if by December 31, 2016, the

discharger has received an authorization pursuant to G.S. 143-215.1 for construction, installation, or alteration of its treatment works for purposes of complying with its total nitrogen limit, at which point the limit shall become effective no later than calendar year 2018.

~~(d) — Not later than 45 days after the effective date of this Rule, the Director shall notify existing permittees of the individual nitrogen and phosphorus allocations assigned according to Item (4) of this Rule and shall further notify each permittee, pursuant to 15A NCAC 02H.0114, of the Division's intent to modify the permittee's NPDES permit to incorporate nitrogen and phosphorus limits pursuant to the requirements set out in this rule and in accordance with applicable rules and regulations.~~

(7) This Item identifies nutrient control requirements specific to new discharges.

(a) Any person proposing a new wastewater discharge to surface waters shall meet the following requirements prior to applying for an NPDES permit:

(i) Evaluate all practical alternatives to said discharge, pursuant to 15A NCAC 02H .0105(c)(2);

(ii) If the results of the evaluation support a new discharge, acquire sufficient nitrogen and phosphorus allocations for the discharge. The proponent may obtain allocation for the proposed discharge from existing dischargers pursuant to the applicable requirements of Item (9) of this Rule or employ measures to offset the increased nutrient loads resulting from the proposed discharge. The proponent may fund offset measures by making payment to the NC Ecosystem Enhancement ~~Program, Program or private sellers of reduction credit, contingent upon acceptance of payments by that Program~~ or may implement other offset measures contingent upon approval by the ~~Division, either of which shall meet Division as meeting~~ the requirements of rule 15A NCAC 02B ~~.0273-.0273 and 15A NCAC 02B .0240~~. The offsets shall be of an amount equivalent to the allocations required for a period of 30 years. Payment for each 30-year portion of the nonpoint source load allocation shall be made prior to the ensuing permit issuance;

(iii) Determine whether the proposed discharge of nutrients will cause local water quality impacts; and

(iv) Provide documentation with its NPDES permit application demonstrating that the requirements of Sub-Items (i) through (iii) of this Sub-Item have been met.

(b) The nutrient discharge allocations and offsets for a new facility shall not exceed the mass loads equivalent to a concentration of 3.0 mg/L nitrogen or 0.18 mg/L phosphorus at the permitted flow in the discharger's NPDES permit.

(c) Upon the effective date of its NPDES permit, a new discharger shall be subject to nitrogen and phosphorus limits not to exceed its active individual discharge allocations.

- 1 (8) This Item identifies nutrient control requirements specific to expanding discharges.
- 2 (a) Any person proposing to expand an existing wastewater discharge to surface waters beyond
- 3 its permitted flow as defined in this Rule shall meet the following requirements prior to
- 4 applying for an NPDES permit:
- 5 (i) Evaluate all practical alternatives to said discharge, pursuant to 15A NCAC 02H
- 6 .0105(c)(2);
- 7 (ii) If the results of the evaluation support an expanded discharge, acquire sufficient
- 8 nitrogen and phosphorus allocations for the discharge. The proponent may obtain
- 9 allocation for the proposed discharge from existing dischargers pursuant to the
- 10 applicable requirements of Item (9) of this Rule or employ measures to offset the
- 11 increased nutrient loads resulting from the proposed discharge. The proponent may
- 12 fund offset measures by making payment to the NC Ecosystem Enhancement
- 13 Program contingent upon acceptance of payments by that Program or implement
- 14 other offset measures contingent upon approval by the Division, either of which
- 15 shall meet the requirements of rule 15A NCAC 02B .0273. The offsets shall be of
- 16 an amount equivalent to the allocations required for a period of 30 years. Payment
- 17 for each 30-year portion of the nonpoint source load allocation shall be made prior
- 18 to the ensuing permit issuance;
- 19 (iii) Determine whether the proposed discharge of nutrients will cause local water
- 20 quality impact; and
- 21 (iv) Provide documentation with its NPDES permit application demonstrating that the
- 22 requirements of Sub-Items (i) through (iii) of this Sub-Item have been met.
- 23 (b) The nutrient discharge limits for an expanding facility shall not exceed the greater of its
- 24 nutrient allocations or the mass value equivalent to a concentration of 3.0 mg/L nitrogen or
- 25 0.18 mg/L phosphorus at the permitted flow in the discharger's NPDES permit; except that
- 26 this provision shall not result in an allocation or limit that is less than originally assigned to
- 27 the discharger under this Rule.
- 28 (c) Upon expansion or upon notification by the Director that it is necessary to protect water
- 29 quality, any discharger with a permitted flow of less than 0.1 MGD, as defined under this
- 30 Rule, shall become subject to total nitrogen and total phosphorus permit limits not to exceed
- 31 its active individual discharge allocations.
- 32 (9) This Item describes additional requirements regarding nutrient discharge limits for wastewater
- 33 facilities:
- 34 (a) Annual mass nutrient limits shall be established as calendar-year limits.
- 35 (b) Any point source discharger holding nutrient allocations under this Rule may by mutual
- 36 agreement transfer all or part of its allocations to any new, existing, or expanding dischargers

- 1 in the same Jordan subwatershed or to other person(s), subject to the provisions of the Jordan
2 nutrient strategy.
- 3 (c) For NPDES compliance purposes, the enforceable nutrient limits for an individual facility or
4 for a compliance association described in Item (10) shall be the effective limits in the
5 governing permit, regardless of the allocation held by the discharger or association.
- 6 (d) The Director may establish more stringent nitrogen or phosphorus discharge limits for any
7 discharger upon finding that such limits are necessary to prevent the discharge from causing
8 adverse water quality impacts on surface waters other than an arm of Jordan Reservoir as
9 defined in Rule .0262(4) of this strategy. The Director shall establish such limits through
10 modification of the discharger's NPDES permit in accordance with applicable rules and
11 regulations. When the Director does so, the discharger retains its nutrient allocations, and the
12 non-active portion of the discharger's allocation becomes reserve allocation. The allocation
13 remains in reserve until the director determines that less stringent limits are allowable or until
14 the allocation is applied to another discharge not subject to such water quality-based limits.
- 15 (e) In order for any transfer of allocation to become effective as a discharge limit in an individual
16 NPDES permit, the discharger must request and obtain modification of the permit. Such
17 request shall:
- 18 (i) Describe the purpose and nature of the modification;
- 19 (ii) Describe the nature of the transfer agreement, the amount of allocation transferred,
20 and the dischargers or persons involved;
- 21 (iii) Provide copies of the transaction agreements with original signatures consistent
22 with NPDES signatory requirements; and
- 23 (iv) Demonstrate to the Director's satisfaction that the increased nutrient discharge will
24 not violate water quality standards in localized areas.
- 25 (f) Changes in a discharger's nutrient limits shall become effective upon modification of its
26 individual permit but no sooner than January 1 of the year following modification. If the
27 modified permit is issued after January 1, the Director may make the limit effective on that
28 January 1 provided that the discharger made acceptable application in a timely manner.
- 29 (g) Regional Facilities. In the event that an existing discharger or group of dischargers accepts
30 wastewater from another NPDES-permitted treatment facility in the same Jordan
31 subwatershed and that acceptance results in the elimination of the discharge from the other
32 treatment facility, the eliminated facility's delivered nutrient allocations shall be transferred
33 and added to the accepting discharger's delivered allocations.
- 34 (10) This Item describes the option for dischargers to join a group compliance association to collectively
35 meet nutrient control requirements.
- 36 (a) Any or all facilities within the same Jordan subwatershed may form a group compliance
37 association to meet delivered nutrient allocations collectively. More than one group

1 compliance association may be established in any subwatershed. No facility may belong to
2 more than one association at a time.

3 (b) Any such association must apply for and shall be subject to an NPDES permit that establishes
4 the effective nutrient limits for the association and for its members.

5 (c) No later than 180 days prior to the proposed date of a new association's operation or
6 expiration of an existing association's NPDES permit, the association and its members shall
7 submit an application for a NPDES permit for the discharge of nutrients to surface waters of
8 the Jordan watershed. The association's NPDES permit shall be issued to the association and
9 its members. It shall specify the delivered nutrient limits for the association and for each of
10 its co-permittee members. Association members shall be deemed in compliance with the
11 permit limits for nitrogen and phosphorus contained in their individually issued NPDES
12 permits so long as they remain members in an association.

13 (d) An association's delivered nitrogen and phosphorus limits shall be the sum of its members'
14 individual active delivered allocations for each nutrient plus any other active allocation
15 obtained by the association or its members.

16 (e) The individual delivered allocations for each member in the association permit shall initially
17 be equivalent to the discharge limits in effect in the member's NPDES permit. Thereafter,
18 changes in individual allocations or limits must be incorporated into the members' individual
19 permits before they are included in the association permit.

20 (f) An association and its members may reapportion the individual delivered allocations of its
21 members on an annual basis. Changes in individual allocations or limits must be incorporated
22 into the members' individual permits before they are included in the association permit.

23 (g) Changes in nutrient limits shall become effective no sooner than January 1 of the year
24 following permit modification. If the modified permit is issued after January 1, the Director
25 may make the limit effective on that January 1 provided that the discharger made acceptable
26 application in a timely manner.

27 (h) Beginning with the first full calendar year that the nitrogen or phosphorus limits are effective,
28 an association that does not meet its permit limit for nitrogen or phosphorus for a calendar
29 year shall, no later than May 1 of the year following the exceedance, make an offset payment
30 to the NC Ecosystem Enhancement Program [or to private sellers of nutrient offset credit,](#)
31 ~~[contingent upon acceptance of payments by that Program](#)~~ or by implementing other load
32 offsetting measures contingent upon approval by the Division, ~~[either of which shall meet as](#)~~
33 ~~[meeting](#)~~ the requirements of rule 15A NCAC 02B ~~.0273-.0273~~ and 15A NCAC 02B .0240.

34 (i) Association members shall be deemed in compliance with their individual delivered limits in
35 the association NPDES permit for any calendar year in which the association is in
36 compliance with its delivered limit. If the association fails to meet its delivered limit, the
37 association and the members that have failed to meet their individual delivered nutrient limits

1 in the association NPDES permit will be out of compliance with the association NPDES
2 permit.

3
4 *History Note:* *Authority G.S. 143-214.1; 143-214.5; 143-215; 143-215.1; 143-215.3(a)(1); 143-215B; 143B-282(c);*
5 *143B-282(d); S.L. 1995, c. 572; S.L. 2005-190; S.L. 2006-259; [S.L. 2009-216](#); [S.L. 2011-394](#); [S.L.](#)*
6 *[2012-187](#);*
7 *Eff. August 11, 2009;*
8 *[See ~~S.L. 2009-216 and S.L. 2009-484~~ Amended Eff. July 1, 2014 \(Pending Legislative Review\).](#)*

9

1 [15a NCAC 02b .0271 is proposed for amendment as follows:](#)

2
3 **15A NCAC 02B .0271 JORDAN WATER SUPPLY NUTRIENT STRATEGY: STORMWATER**
4 **REQUIREMENTS FOR STATE AND FEDERAL ENTITIES**

5 [\(See S.L. 2009-216 and S.L. 2009-484\)](#)

6 The following is the stormwater strategy for the activities of state and federal entities within the Jordan watershed,
7 as prefaced in Rule 02B .0262.

8 (1) PURPOSE. The purposes of this Rule are as follows.

9 (a) To [accomplish the following on lands under state and federal control: ~~achieve and~~](#)
10 [maintain, on new non-road development lands, the nonpoint source nitrogen and](#)
11 [phosphorus percentage reduction goals established for Jordan Reservoir in 15A NCAC](#)
12 [02B .0262 relative to the baseline period defined in that Rule, to provide the highest](#)
13 [practicable level of treatment on new road development, and to achieve and maintain the](#)
14 [percentage goals on existing developed lands by reducing loading from state-maintained](#)
15 [roadways and facilities, and from lands controlled by other state and federal entities in](#)
16 [the Jordan watershed;](#)

17 [\(i\) Achieve and maintain, on new non-road development lands, the nonpoint source](#)
18 [nitrogen and phosphorus percentage reduction goals established for Jordan](#)
19 [Reservoir in 15A NCAC 02B .0262 relative to the baseline period defined in](#)
20 [that Rule;](#)

21 [\(ii\) Provide the highest practicable level of treatment on new road development; and](#)

22 [\(iii\) On existing state-maintained roadways and facilities, and existing developed](#)
23 [lands controlled by other state and federal entities in the Jordan watershed,](#)
24 [achieve and maintain the nonpoint source nitrogen and phosphorus percentage](#)
25 [reduction goals established for Jordan Reservoir in 15A NCAC 02B .0262](#)
26 [relative to the baseline period defined in that Rule.](#)

27 (b) To ensure that the integrity and nutrient processing functions of receiving waters and
28 associated riparian buffers are not compromised by erosive flows from state-maintained
29 roadways and facilities and from lands controlled by other state and federal entities in the
30 Jordan watershed; and

31 (c) To protect the water supply uses of Jordan Reservoir and of designated water supplies
32 throughout the Jordan watershed.

33 (2) APPLICABILITY. This Rule shall apply to all existing and new development, both as defined in
34 15A NCAC 02B .0263, that lies within or partially within the Jordan watershed under the control
35 of the NC Department of Transportation (NCDOT), including roadways and facilities, and to all
36 lands controlled by other state and federal entities in the Jordan watershed.

37 [\(3\) EXISTING DEVELOPMENT ADAPTIVE IMPLEMENTATION. The Division of Water Quality](#)
38 [shall review monitoring required in Item \(4\) of 15A NCAC 02B .0266 to decide whether to](#)

1 implement a program to control nutrient loading from existing development to achieve nutrient-
2 related water quality standards in Jordan Lake. The Division shall use the following conditions to
3 identify state and federal entities that need to develop and implement a program to control nutrient
4 loadings:

5 (a) If the March 2014 monitoring report or any subsequent monitoring report for the Upper
6 New Hope Creek Arm of Jordan Reservoir required under Item (4) of 15A NCAC 02B
7 .0266 shows that nutrient-related water quality standards are not being achieved, state and
8 federal entities in the subwatershed of that arm of Jordan Reservoir shall develop and
9 implement a program to control nutrient loading from existing development within the
10 subwatershed, as provided in this Rule;

11 (b) If the March 2017 monitoring report or any subsequent monitoring report for the Haw
12 River Arm or the Lower New Hope Creek Arm of Jordan Reservoir required under Item
13 (4) of 15A NCAC 02B .0266 shows that nutrient-related water quality standards are not
14 being achieved, state and federal entities in the subwatershed of that arm of Jordan
15 Reservoir shall develop and implement a program to control nutrient loading from
16 existing development within the subwatershed, as provided in this Rule;

17 (c) The Division shall defer development and implementation of a program to control
18 nutrient loading from existing development required in a subwatershed by this Sub-Item
19 if it determines that additional reductions in nutrient loading from existing development
20 in that subwatershed will not be necessary to achieve nutrient-related water quality
21 standards. In making this determination, the Division shall consider the anticipated effect
22 of measures implemented or scheduled to be implemented to reduce nutrient loading
23 from sources in the subwatershed other than existing development. If any subsequent
24 monitoring report for an arm of Jordan Reservoir required under Item (4) of 15A NCAC
25 02B .0266 shows that nutrient-related water quality standards have not been achieved, the
26 Division shall notify each state and federal entity in the subwatershed of that arm of
27 Jordan Reservoir, and each entity shall develop and implement a program to control
28 nutrient loading from existing development as provided in this Rule; and

29 (d) ADDITIONAL MEASURES TO REDUCE NITROGEN LOADING IN THE UPPER
30 NEW HOPE CREEK SUBWATERSHED. If the March 1, 2023, monitoring report or
31 any subsequent monitoring report for the Upper New Hope Creek Arm of Jordan
32 Reservoir shows that nutrient-related water quality standards are not being achieved, state
33 and federal entities located in whole or in part in the Upper New Hope Creek
34 Subwatershed shall modify their programs to control nutrient loading from existing
35 roadway and nonroadway development to achieve additional reductions in nitrogen
36 loadings. The modified program shall be designed to achieve a total reduction in nitrogen
37 loading from existing development of thirty-five percent (35%) relative to the baseline

1 period 1997 through 2001 in that arm of Jordan Reservoir. Subject state and federal
 2 entities shall develop and implement a program to control nutrient loading from existing
 3 development within the subwatershed, as provided in this Rule.

4 (4) EXISTING DEVELOPMENT NOTIFICATION REQUIREMENTS. Based on findings under
 5 Item (3) of this Rule, the Division shall notify the state and federal entities in each subwatershed
 6 that either:

7 (a) Implementation of a program to control nutrient loading from existing development, or
 8 additional measures under an existing program, will be necessary to achieve water quality
 9 standards in an arm of the reservoir and direct the state and federal entities in the
 10 subwatershed to develop or modify a load reduction program in compliance with this
 11 Rule; or

12 (b) Implementation of a program to control nutrient loading from existing development is not
 13 necessary at that time but will be reevaluated in three years based on the most recent
 14 water quality monitoring information.

15 (3)(5) NON-NCDOT REQUIREMENTS. With the exception of the NCDOT, all state and federal
 16 entities that control lands within the Jordan watershed shall meet the following requirements:

17 (a) For any new development proposed within their jurisdictions that would disturb one-half
 18 acre or more, non-NCDOT state and federal entities shall continue to develop stormwater
 19 management plans for submission to and approval by the Division. These stormwater
 20 plans shall not be approved by the Division unless the following criteria are met:

21 (i) The nitrogen and phosphorus loads contributed by the proposed new
 22 development activity in a given subwatershed shall not exceed the unit-area
 23 mass loading rates applicable to that subwatershed as follows for nitrogen and
 24 phosphorus, respectively, expressed in units of pounds per acre per year: 2.2 and
 25 0.82 in the Upper New Hope; 4.4 and 0.78 in the Lower New Hope; and 3.8 and
 26 1.43 in the Haw. The developer shall determine the need for engineered
 27 stormwater controls to meet these loading rate targets by using the loading
 28 calculation method called for in this Section-Item (10) of this Rule or other
 29 equivalent method acceptable to the Division;

30 (ii) Proposed new development subject to NPDES, water supply, and other state-
 31 mandated stormwater regulations shall comply with those regulations in addition
 32 to the other requirements of this Sub-Item. Proposed new development in any
 33 water supply watershed in the Jordan watershed designated WS-II, WS-III, or
 34 WS-IV shall comply with the density-based restrictions, obligations, and
 35 requirements for engineered stormwater controls, clustering options, and 10/70
 36 provisions described in Sub-Items (3)(b)(i) and (3)(b)(ii) of the applicable Rule
 37 among 15A NCAC 02B .0214 through .0216;

- 1 (iii) Stormwater systems shall be designed to control and treat the runoff generated
2 from all surfaces by one inch of rainfall. The treatment volume shall be drawn
3 down pursuant to guidance specific to each practice as provided in the most
4 recent version of the *Stormwater Best Management Practices Manual* published
5 by the Division, or other technically at least equivalent guidance acceptable to
6 the Division. To ensure that the integrity and nutrient processing functions of
7 receiving waters and associated riparian buffers are not compromised by erosive
8 flows, stormwater flows from the development shall not contribute to
9 degradation of waters of the State. At a minimum, the development shall not
10 result in a net increase in peak flow leaving the site from pre-development
11 conditions for the one-year, 24-hour storm event;
- 12 (iv) Proposed new development that would replace or expand structures or
13 improvements that existed as of December 2001, the end of the baseline period,
14 and which would not result in a net increase in built-upon area shall not be
15 required to meet the nutrient loading targets or high-density requirements except
16 to the extent that it shall provide stormwater control at least equal to the
17 previous development. Proposed new development that would replace or
18 expand existing structures or improvements and would result in a net increase in
19 built-upon area shall have the option either to achieve at least the percentage
20 load reduction goals stated in 15A NCAC 02B .0262 as applied to nitrogen and
21 phosphorus loading from the previous development for the entire project site, or
22 to meet the loading rate targets described in Sub-Item ~~(3)(5)~~(a)(i) of this Rule;
- 23 (v) Proposed new development shall comply with the riparian buffer protection
24 requirements of 15A NCAC 02B .0267 and .0268;
- 25 (vi) The entity shall have the option of offsetting part of the nitrogen and phosphorus
26 loads by implementing or funding offsite management measures as follows:
27 Before using offsite offset options, a development shall meet any requirements
28 for engineered stormwater controls described in Sub-Item ~~(3)(5)~~(a)(iii) of this
29 Rule, and shall attain a maximum nitrogen loading rate on-site of four pounds
30 per acre per year for single-family, detached and duplex residential development
31 and eight pounds per acre per year for other development, including multi-
32 family residential, commercial and industrial and shall meet any requirements
33 for engineered stormwater controls described in Sub-Item ~~(3)(5)~~(a)(iii) of this
34 Rule. An entity may make offset payments to the NC Ecosystem Enhancement
35 Program or to private sellers of reduction credit contingent upon acceptance of
36 payments by that Program. as meeting the applicable requirements of 15A
37 NCAC 02B .0240. An entity may propose other offset measures to the Division,

1 including providing its own offsite offset or utilizing a private seller. All offset
2 measures identified in this Sub-Item shall meet the requirements of 15A NCAC
3 02B .0273(2)-(4); and

4 (vii) The non-NCDOT state or federal entity shall include measures to ensure
5 maintenance of best management practices (BMPs) implemented as a result of
6 the provisions in Sub-Item ~~(3)(5)~~(a) of this Rule for the life of the development.

7 (b) For existing development, non-NCDOT state and federal entities receiving notice from
8 the Division of the requirement to develop and implement or modify a program to control
9 nutrient loading from existing development, as specified under Item (4) of this Rule, shall
10 develop and implement load reduction programs for achieving and maintaining nutrient
11 load reductions from existing development- do so based on the standards set out in this
12 Sub-Item. Such entities shall submit these programs for approval by the Division in
13 accordance with the process identified in Item (7) of this Rule. A load reduction program
14 shall include the following elements and meet the associated criteria:

15 (i) The long-term objective of this program shall be for the entity to achieve the
16 percentage nutrient load reduction goals in Item (5) of 15A NCAC 02B .0262
17 relative to annual mass loads, in pounds per year, representative of the baseline
18 period defined in that Rule and reaching Jordan Reservoir from existing
19 developed lands within each subwatershed under its control. Loads shall be
20 calculated by applying the Tar Pamlico Nutrient Export Calculation Worksheet,
21 Piedmont Version, dated October 2004, method called for in Item (10) of this
22 Rule or an equivalent or more accurate method acceptable to the Division, to
23 acreages of different types of existing developed lands as defined in this Sub-
24 Item and in Item (2) of this Rule. To provide entities spatial latitude to obtain
25 reductions in different locations, loads thus calculated shall be converted to
26 delivered loads to Jordan Reservoir using transport factors established in the
27 Division document, *Nitrogen and Phosphorus Delivery from Small Watersheds*
28 *to Jordan Lake*, dated June 30, 2002. Subject entities shall include estimates of,
29 and plans for offsetting, nutrient load increases from lands developed
30 subsequent to the baseline period but prior to implementation of new
31 development programs. For these post-baseline developed lands, the new
32 loading rate shall be compared to the applicable loading rate target in Sub-Item
33 ~~(3)(5)~~(a)(i) of this Rule for the subwatershed and acres involved, and the
34 difference shall constitute the load reduction need. Should percentage reduction
35 goals be adjusted pursuant to Item (8) of 15A NCAC 02B .0262, then the annual
36 load goals established in this Sub-Item shall be adjusted accordingly. Entities
37 may seek to fund implementation of load-reducing activities through grant

1 sources such as the North Carolina Clean Water Act Section 319 Grant Program,
2 or other funding programs for nonpoint sources;

3 (ii) The load reduction program shall include a plan and supporting technical
4 analysis for achieving half of each load reduction goal within 10 years ~~after the~~
5 ~~effective date~~ of the applicable notification date established under Item (4) of
6 this Rule, and a plan and timeframes for achieving the remaining half subject to
7 modification based on technical analysis at 10 years after ~~effective date~~ the
8 notification date established under Item (4) of this Rule. A load reduction
9 program may propose an alternative compliance timeframe provided it includes
10 a technical analysis that demonstrates the need for that timeframe. A program
11 technical analysis shall examine the feasibility of achieving stated goals and
12 shall consider factors such as magnitude of reduction need relative to area within
13 a subwatershed, the potential for utilizing the range of load-reducing activities
14 listed in Sub-Item ~~(3)(5)~~(b)(iv) of this Rule, and relative costs and efficiencies of
15 each activity to the extent information is available. The load reduction program
16 shall propose implementation rates and timeframes for each activity, and shall
17 provide for proportionate annual progress toward meeting the reduction goals as
18 practicable, that is capable of being put into practice, done, or accomplished;

19 (iii) The load reduction program shall identify specific load-reducing practices
20 implemented to date subsequent to the baseline period and for which it is
21 seeking credit. It shall estimate load reductions for these practices using
22 methods provided for in Item ~~(8)~~(10) of this Rule, and their anticipated duration;

23 (iv) The load reduction program shall identify the types of activities the entity
24 intends to implement and types of existing development affected, relative
25 proportions or a prioritization of practices, and the relative magnitude of
26 reductions it expects to achieve from each. An entity may credit any nitrogen or
27 phosphorus load reductions in excess of those required by other rules in this
28 Chapter. The program shall identify the duration of anticipated load reductions,
29 and may seek activities that provide sustained, long-term reductions. The load
30 reduction program shall meet the requirements of 15A NCAC 02B .0273.
31 Potential load-reducing activities may include stormwater activities such as
32 street sweeping, improvement of existing ponds and stormwater structures,
33 removal of existing built-upon area, retrofitting of existing development with
34 engineered best management practices (BMPs), treatment of runoff in
35 redevelopment projects, over-treatment of runoff in new development projects,
36 source control activities such as pet waste reduction and fertilization reduction,
37 alternative stormwater practices such as rain barrels, cisterns, downspout

1 disconnections, and stormwater capture and reuse, restoration of ecological
 2 communities such as streams and riparian buffers, and wastewater activities
 3 such as creation of surplus allocation through advanced treatment at wastewater
 4 facilities, expansion of surplus allocation through regionalization, collection
 5 system improvements, and removal of illegal discharges;

6 (v) The load reduction program shall identify anticipated funding mechanisms or
 7 sources and discuss steps taken or planned to secure such funding;

8 (vi) An entity shall have the option of working with municipalities or counties within
 9 its subwatershed to jointly meet the load targets from all existing development
 10 within their combined jurisdictions. An entity may utilize private or third party
 11 sellers. All reductions shall meet the requirements of 15A NCAC 02B .0273;

12 (vii) The entity shall include measures to provide for operation and maintenance of
 13 retrofitted stormwater controls to ensure that they meet the load targets required
 14 in Sub-Item ~~(3)~~(5)(b) of this Rule for the life of the development; and

15 (viii) An entity may choose to conduct monitoring of stream flows and runoff from
 16 catchments to quantify disproportionately high loading rates relative to those
 17 used in the accounting methods stipulated under Item ~~(8)~~(10) of this Rule, and to
 18 subsequently target load-reducing activities to demonstrated high-loading source
 19 areas within such catchments for proportionately greater load reduction credit.
 20 An entity may propose such actions in its initial load reduction program
 21 submittal or at any time subsequent, and shall obtain Division approval of the
 22 monitoring design. It shall also obtain Division approval of any resulting load
 23 reduction benefits based on the standards set out in this Rule. ~~As detailed in Item~~
 24 ~~(5), an An~~ entity that chooses such monitoring ~~initially may delay submittal of~~
 25 ~~its load reduction program by one year for the purpose of incorporating~~
 26 ~~monitoring findings into its program design provided it submits to the Division~~
 27 ~~within six months of the effective date of this Rule a satisfactory monitoring~~
 28 ~~proposal involving at least one year of up front monitoring, executes shall~~
 29 ~~execute~~ the monitoring, and ~~provides provide~~ the results to the Division as part
 30 of its load reduction program submittal.

31 ~~(4)~~(6) NCDOT REQUIREMENTS. The NCDOT shall ~~meet the following requirements on lands within~~
 32 ~~the Jordan Watershed: develop a single Stormwater Management Program that will be applicable~~
 33 ~~to the entire Jordan watershed and submit this program for approval by the Division according to~~
 34 ~~the following standards:~~

35 ~~(a) Identify NCDOT stormwater outfalls from Interstate, US, and NC primary routes;~~

36 ~~(b) Identify and eliminate illegal discharges into the NCDOT's stormwater conveyance~~
 37 ~~system;~~

1 ~~(e)~~(a) ~~Establish a~~ Implementation of its program for post-construction stormwater runoff
2 control for new development approved by the Commission in November 2012, including
3 new and widening NCDOT roads and facilities. The program ~~shall establish~~ established
4 a process by which the Division ~~shall review~~ reviews and ~~approve~~ approves stormwater
5 designs for new NCDOT development projects. The program ~~shall delineate~~ delineates
6 the scope of vested projects that would be considered as existing development, and ~~shall~~
7 ~~define~~ defines lower thresholds of significance for activities considered new
8 development. In addition, the following criteria ~~shall~~ apply:

- 9 (i) For new and widening roads, compliance with the riparian buffer protection
10 requirements of Rules 15A NCAC 02B .0267 and .0268 which are expected to
11 achieve a 30 percent nitrogen reduction efficiency in runoff treatment through
12 either diffuse flow into buffers or other ~~practices~~ practices, shall be deemed as
13 compliance compliant with the purposes of this Rule;
- 14 (ii) New non-road development shall achieve and maintain the nitrogen and
15 phosphorus percentage load reduction goals established for each subwatershed
16 in 15A NCAC 02B .0262 relative to either area-weighted average loading rates
17 of all developable lands as of the baseline period defined in 15A NCAC 02B
18 .0262, or to project-specific pre-development loading rates. Values for area-
19 weighted average loading rate targets for nitrogen and phosphorus, respectively,
20 in each subwatershed shall be the following, expressed in units of pounds per
21 acre per year: 2.2 and 0.82 in the Upper New Hope; 4.4 and 0.78 in the Lower
22 New Hope; and 3.8 and 1.43 in the Haw. The NCDOT shall determine the need
23 for engineered stormwater controls to meet these loading rate targets by using
24 the loading calculation method called for in Item ~~(8)~~ (10) of this Rule or other
25 equivalent method acceptable to the Division. Where stormwater treatment
26 systems are needed to meet these targets, they shall be designed to control and
27 treat the runoff generated from all surfaces by one inch of rainfall. Such
28 systems shall be assumed to achieve the nutrient removal efficiencies identified
29 in the most recent version of the *Stormwater Best Management Practices*
30 *Manual* published by the Division provided that they meet associated drawdown
31 and other design specifications included in the same document. The NCDOT
32 may propose to the Division nutrient removal rates for practices currently
33 included in the BMP Toolbox required under its NPDES stormwater permit, or
34 may propose revisions to those practices or additional practices with associated
35 nutrient removal rates. The NCDOT may use any such practices approved by
36 the Division to meet loading rate targets identified in this Sub-Item. New non-
37 road development shall also control runoff flows to meet the purpose of this

1 Rule regarding protection of the nutrient functions and integrity of receiving
2 ~~waters.~~ waters;

3 (iii) For new non-road development, the NCDOT shall have the option of partially
4 offsetting its nitrogen and phosphorus loads by implementing or funding offsite
5 management measures. These offsite offsetting measures shall achieve at least
6 equivalent reductions in nitrogen and phosphorus load to the remaining
7 reduction needed onsite to comply with Sub-Item ~~(4)(e)(6)(a)~~(ii) of this Rule.
8 Before using offsite offset options, a development shall attain a maximum
9 nitrogen loading rate of 8 pounds per acre per year. The NCDOT may make
10 offset payments to the NC Ecosystem Enhancement Program contingent upon
11 acceptance of payments by that Program. The NCDOT may propose other
12 offset measures to the Division. All offset measures identified in this Sub-Item
13 shall meet the requirements of ~~15A NCAC 02B .0273~~15A NCAC 02B .0273;
14 and

15 (iv) New development shall continue compliance, required as of August 11, 2009,
16 with the riparian buffer protection requirements of 15A NCAC 02B .0267 and
17 .0268 through a Division approval process.

18 ~~(d) Establish a program to identify and implement load reducing opportunities on existing~~
19 ~~development within the watershed. The long term objective of this effort shall be for the~~
20 ~~NCDOT to achieve the nutrient load goals in 15A NCAC 02B .0262 as applied to~~
21 ~~existing development under its control, including roads and facilities.~~

22 ~~(i) For existing non roadway development, the program shall include estimates of,~~
23 ~~and plans for offsetting, nutrient load increases from lands developed~~
24 ~~subsequent to the baseline period but prior to implementation of its new~~
25 ~~development program. It shall include a technical analysis that includes a~~
26 ~~proposed implementation rate and schedule. This schedule shall provide for~~
27 ~~proportionate annual progress toward reduction goals as practicable throughout~~
28 ~~the proposed compliance period. The program shall identify the types of~~
29 ~~activities NCDOT intends to implement and types of existing non roadway~~
30 ~~development affected, relative proportions or a prioritization of practices, and~~
31 ~~the relative magnitude of reductions it expects to achieve from each.~~

32 ~~(ii) For existing roadway development, NCDOT may meet minimum~~
33 ~~implementation rate and schedule requirements by implementing retrofits or~~
34 ~~other load reducing measures in the watershed to achieve load reductions at the~~
35 ~~rate of 500 pounds of nitrogen reduction per 5 year period and at least 50~~
36 ~~pounds per year. To the maximum extent practicable, retrofits shall be designed~~
37 ~~to treat the runoff generated from all surfaces by 1 inch of rainfall, and shall~~

1 conform to the standards and criteria established in the most recent version of
2 the Division approved NCDOT BMP Toolbox required under NCDOT's
3 NPDES stormwater permit. To establish removal rates for nutrients in the
4 Toolbox, design criteria for individual practices therein shall be modified as
5 needed consistent with such criteria in the most recent version of the *Stormwater*
6 *Best Management Practices Manual* published by the Division, or other
7 technically at least equivalent guidance acceptable to the Division, and the
8 Division shall approve such modifications as part of the accounting process
9 defined in Item (8) of this Rule. Other aspects of nutrient mass load calculations
10 shall be based on the accounting process defined in Item (8) of this Rule.

11 (b) NCDOT EXISTING DEVELOPMENT LOAD REDUCTION GOALS. For NCDOT
12 existing roadway and non-roadway development, a load reduction goal shall be designed
13 to achieve, relative to the baseline period 1997 through 2001, an eight percent (8%)
14 reduction in nitrogen loading and a five percent (5%) reduction in phosphorus loading
15 reaching Jordan Reservoir in the Upper New Hope and Haw subwatersheds. The load
16 reduction goal for the Lower New Hope arm shall be designed to maintain no increases in
17 nitrogen and phosphorus loads from existing roadway and nonroadway development
18 relative to the baseline period 1997 through 2001. Load reduction goals for each
19 subwatershed shall be calculated as follows:

20 (i) For existing NCDOT roadways and industrial facilities, baseline loads shall be
21 established using stormwater runoff nutrient load characterization data collected
22 through the National Pollutant Discharge Elimination System (NPDES)
23 Research Program under NCS0000250 Permit Part II Section G;

24 (ii) For other NCDOT nonroadway development, baseline loads shall be established
25 by applying the Tar-Pamlico Nutrient Export Calculation Worksheet, Piedmont
26 Version, dated October 2004, to acreages of nonroadway development under the
27 control of NCDOT during the baseline period. The baseline load for other
28 nonroadway development may also be calculated using an equivalent or more
29 accurate method acceptable to the Division and recommended by the Scientific
30 Advisory Board established under Session Law 2009-216; and

31 (iii) The existing development load reduction goal shall be adjusted to account for
32 nutrient loading increases from existing roadway and nonroadway development
33 subsequent to the baseline period but prior to implementation of new
34 development stormwater programs pursuant to Sub-Item (6)(a) of this Rule.

35 (c) If notified by the Division of the requirement to develop and implement, or modify a
36 program to control nutrient loading from existing development as specified under Item
37 (4) of this Rule, the NCDOT shall do so based on the standards set out in this sub-item.

1 The NCDOT shall submit such programs to the Division for approval according to the
2 processes identified in Item (8) of this Rule. Such program shall achieve the nutrient load
3 reduction goals in Sub-Item (6)(b) of this rule and address both roadway and nonroadway
4 development. Such program shall include the following elements:

5 (i) Identification of the NCDOT stormwater outfalls from Interstate, US, and NC
6 primary routes;

7 (ii) Identification and elimination of illegal discharges into the NCDOT's
8 stormwater conveyance system; and

9 (iii) Initiation of a "Nutrient Management Education Program" for NCDOT staff and
10 contractors engaged in the application of fertilizers on highway rights of way.
11 The purpose of this program shall be to contribute to the load reduction goals
12 established in 15A NCAC 02B .0262 through proper application of nutrients,
13 both inorganic fertilizer and organic nutrients, to highway rights of way in the
14 Jordan watershed in keeping with the most current state-recognized technical
15 guidance on proper nutrient management.

16 (d) If notified by the Division of the requirement to develop and implement, or modify a
17 program to control nutrient loading from existing development as specified under Item
18 (4) of this Rule, the NCDOT shall achieve the nutrient load reduction goals under Sub-
19 Item (6)(b) of this Rule by development of a load reduction program that addresses both
20 roadway and nonroadway development in each subwatershed of the Jordan Reservoir.
21 Such program may include, but not be limited to, the following load-reducing measures:

22 (i) street sweeping;

23 (ii) source control activities such as pet waste reduction and fertilizer management
24 at NCDOT facilities;

25 (iii) improvement of existing stormwater structures;

26 (iv) alternative stormwater practices such as use of rain barrels and cisterns;

27 (v) stormwater capture and reuse; and

28 (vi) purchase of nutrient reduction credits.

29 (e) The NCDOT may meet minimum implementation rate and schedule requirements of its
30 program by implementing a combination of three stormwater retrofits per year for
31 existing roadway development in the Jordan Lake watershed and other load-reducing
32 measures identified in its program developed pursuant to this Rule and approved by the
33 Commission.

34 ~~(e) Initiate a "Nutrient Management Education Program" for NCDOT staff and contractors~~
35 ~~engaged in the application of fertilizers on highway rights of way. The purpose of this~~
36 ~~program shall be to contribute to the load reduction goals established in 15A NCAC 02B~~
37 ~~.0262 through proper application of nutrients, both inorganic fertilizer and organic~~

~~nutrients, to highway rights of way in the Jordan watershed in keeping with the most current state recognized technical guidance on proper nutrient management; and~~

~~(f) Address compliance with the riparian buffer protection requirements of 15A NCAC 02B .0267 and .0268 through a Division approval process.~~

~~(5)(7)~~ NON-NC DOT RULE IMPLEMENTATION. For all state and federal entities that control lands within the Jordan watershed with the exception of the NCDOT, this Rule shall be implemented as follows:

~~(a) Within six months after the effective date of this Rule, any entity that intends to use water quality monitoring to guide the initial design of its load reduction program shall provide a monitoring design to the Division. The Division shall notify any such entity of the adequacy of its design within three months of submittal. When an entity's monitoring design is deemed adequate, it may delay submittal of its load reduction program by up to one year from the timeframe given in Sub Item (5)(c) of this Rule, whereupon the same time interval would be added to the approval and implementation timeframes given in Sub Items (5)(d) through (5)(f) of this Rule;~~

~~(b)(a)~~ Upon Commission approval of the accounting methods required by Item (8) of this Rule, ~~subject entities shall comply with~~ As of July 2012, the date of Commission approval for the nutrient accounting methods, entities shall comply with the requirements of Sub-Item ~~(3)(5)(a)~~ (5)(a) of this Rule for any new development proposed within their jurisdictions;

~~(c)(b)~~ Within 24 months after the Commission's approval of the accounting methods, Within six months after receiving notice to develop and implement, or modify a program to control nutrient loading from existing development as specified in Sub Item (4)(a) of this Rule, subject entities shall submit load reduction programs to the Division for preliminary approval according to the standards set out in Sub-Item ~~(3)(5)(b)~~ (5)(b) of this Rule;

~~(d)(c)~~ Within 34 months after the Commission's approval of the accounting methods, Within six months following submission of the subject entity's program to control nutrient loading from existing development, the Division shall request the Commission's approval of entities' load reduction programs. The Commission shall either approve the programs or require changes. Should the Commission require changes, the Division shall seek Commission approval at the earliest feasible date subsequent to the original request;

~~(e)(d)~~ Within 36 months after the Commission's approval of the accounting methods, or within two months following Commission approval of a load reduction program, whichever is later, entities shall begin to implement load reduction programs; ~~and~~

~~(f)(e)~~ Upon implementation of the requirements of Item ~~(3)(5)~~ (5) of this Rule, subject entities shall provide annual reports to the Division documenting their progress in implementing those ~~requirements.~~ requirements; and

1 (f) If the 2023 monitoring report or subsequent monitoring reports for the Upper New Hope
2 Arm of Jordan Reservoir shows that nutrient-related water quality standards are not being
3 achieved, the Division shall notify the subject entities of the need for additional measures
4 to reduce nitrogen loading in the subwatershed. The subject entities shall then submit a
5 modified program to achieve the nutrient reductions specified in Sub-Item (3)(d) of this
6 Rule. Submission, review and approval, and implementation of a modified program shall
7 follow the process, timeline, and standards set out in Sub-Items (7)(b) through (7)(d) of
8 this Rule.

9 ~~(6)~~(8) NCDOT RULE IMPLEMENTATION. For the NCDOT, this Rule shall be implemented as
10 follows:

11 ~~(a) Within 30 months of the effective date of this Rule, the NCDOT shall submit the~~
12 ~~Stormwater Management Program for the Jordan watershed to the Division for approval.~~
13 ~~This Program shall meet or exceed the requirements in Item (4) of this Rule;~~

14 ~~(b) Within 40 months of the effective date of this Rule, the Division shall request the~~
15 ~~Commission's approval of the NCDOT Stormwater Management Program;~~

16 ~~(c) Within 42 months of the effective date of this Rule, the NCDOT shall implement the~~
17 ~~approved Stormwater Management Program; and~~

18 (a) NCDOT shall continue to implement the Stormwater Management Program for New
19 Development approved by the Commission in November 2012, and implemented as of
20 January 2013 or subsequent revisions to their program approved by the Commission or
21 its delegated authority. This program shall continue to meet or exceed the requirements
22 in Sub-Items (6)(a) of this Rule;

23 (b) Existing development requirements shall be implemented as follows:

24 (i) Within six months after receiving notice to develop and implement, or modify a
25 program to control nutrient loading from existing development as specified in
26 Item (4)(a) of this Rule, the NCDOT shall submit the Existing Development
27 Program for the Jordan watershed to the Division for approval. This Program
28 shall meet or exceed the requirements in Sub-Items (6)(c) through (6)(e) of this
29 Rule;

30 (ii) Within six months following submission of the NCDOT's program to control
31 nutrient loading from existing development, the Division shall request the
32 Commission's approval of the NCDOT Existing Development Program. If the
33 Commission disapproves the program, the NCDOT shall submit a modified
34 program within two months. The Division shall recommend that the
35 Commission approve or disapprove the modified program within three months
36 after receiving the NCDOT's modified program;

1 (iii) Within two months after the Commission's approval of a program to control
 2 nutrient loading from existing development, the NCDOT shall implement their
 3 approved program; and

4 (iv) If the 2023 monitoring report or subsequent monitoring reports for the Upper
 5 New Hope Arm of Jordan Reservoir shows that nutrient-related water quality
 6 standards are not being achieved, the Division shall notify the NCDOT of the
 7 need for additional measures to reduce nitrogen loading in the subwatershed.
 8 The NCDOT shall then submit a modified program to achieve the nutrient
 9 reductions specified in Sub-Item (3)(d) of this Rule. Submission, review and
 10 approval, and implementation of a modified program shall follow the process
 11 and timeline set out in Sub-Items (8)(b)(i) through (8)(b)(iii) of this Rule.

12 ~~(4)(c)~~ Upon implementation, the NCDOT shall submit annual reports to the Division
 13 summarizing its activities in implementing each of the requirements in ~~Item (4) Sub-~~
 14 ~~Items (6)(c) through (6)(e)~~ of this Rule. This annual reporting may be incorporated into
 15 annual reporting required under NCDOT's NPDES stormwater permit.

16 ~~(7)(9)~~ RELATIONSHIP TO OTHER REQUIREMENTS. A party may in its program submittal under
 17 Item ~~(5)(7)~~ or ~~(6)(8)~~ of this Rule request that the Division accept its implementation of another
 18 stormwater program or programs, such as NPDES stormwater requirements, as satisfying one or
 19 more of the requirements set forth in Item ~~(3)(5)~~ or ~~(4)(6)~~ of this Rule. The Division shall provide
 20 determination on acceptability of any such alternatives prior to requesting Commission approval
 21 of programs as required in Items ~~(5)(7)~~ and ~~(6)(8)~~ of this Rule. The party shall include in its
 22 program submittal technical information demonstrating the adequacy of the alternative
 23 requirements.

24 ~~(8)(10)~~ ACCOUNTING METHODS. ~~Within 18 months after the effective date of this Rule, the Division~~
 25 ~~shall submit a nutrient accounting framework to the Commission for approval. This framework~~
 26 ~~shall include tools for quantifying load reduction assignments on existing development for parties~~
 27 ~~subject to this Rule, load reduction credits from various activities on existing developed lands, and~~
 28 ~~a tool that will allow subject parties to account for loading from new and existing development~~
 29 ~~and loading changes due to BMP implementation. The Division shall work in cooperation with~~
 30 ~~subject parties and other watershed interests in developing this framework. Non-NCDOT entities~~
 31 ~~shall continue to utilize the Jordan/Falls Lake Stormwater Load Accounting Tool approved by the~~
 32 ~~Commission in July 2012 for all applicable load reduction estimation activities or equivalent,~~
 33 ~~more source-specific or more accurate methods acceptable to the Division. Except as for the~~
 34 ~~establishment of baseline loads as specified under Item (6)(b) of this Rule, NCDOT shall utilize~~
 35 ~~the NCDOT-Jordan/Falls Lake Stormwater Load Accounting Tool approved by the Commission~~
 36 ~~in July 2012 for all applicable load estimation activities or equivalent, more source-specific, or~~
 37 ~~more accurate methods acceptable to the Division. The Division shall periodically revisit these~~

1 accounting methods to determine the need for revisions to both the methods and to existing
2 development load reduction assignments made using the methods set out in this Rule. It shall do
3 so no less frequently than every 10 years. Its review shall include values subject to change over
4 time independent of changes resulting from implementation of this Rule, such as untreated export
5 rates that may change with changes in atmospheric deposition. It shall also review values subject
6 to refinement, such as BMP nutrient removal efficiencies.

7
8 *History Note:* Authority G.S. 143-214.1; 143-214.5; 143-214.5(i); 143-214.7; 143-214.12; 143-214.21; 143-
9 215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L.
10 2005-190; S.L. 2006-259; [S.L. 2009-216](#), [S.L. 2009-484](#);
11 *Eff. August 11, 2009*;
12 [See S.L. 2009-216 and S.L. 2009-484](#);
13 *Amended Eff. September 1, 2011, [July 1, 2014 \(Pending Legislative Review\)](#).*

Appendix B. Revised Addendum to Fiscal Note for Fiscal Analysis B. Everett Jordan Reservoir Water Supply Nutrient Strategy

Revised Addendum to Fiscal Note for**Fiscal Analysis B. Everett Jordan Reservoir Water Supply Nutrient Strategy****Date: 8/10/2012**

Agency Contact: Michael Herrmann
 DENR Division of Water Quality
 1617 Mail Service Center
 Raleigh, NC 27699-1617
 (p) 919.807.6442
 (e) Michael.Herrmann@ncdenr.gov

The proposed amendments to the Jordan Nutrient Strategy rules (see Appendix) represent no substantive change to the current requirements in statute being implemented since 2009 and, therefore, have no change in the current estimate of economic impact. Six Session Laws (SLs), 2009-216, 2009-484, 2011-394, 2012-200, 2012-201, and 2012-187 resulted in the changes to the Environmental Management Commission (EMC) rules passed in May 2008. These changes are summarized in Table 1.

Table 1. Jordan Nutrient Strategy Rules Changed by Recent Session Laws

Rule	Session Law	Action
15A NCAC 02B .0262	2012-187	Modified
15A NCAC 02B .0265 - New Development Stormwater	2009-484, 2012- 200 and 201	Modified
15A NCAC 02B .0266 - Local Government Existing Development Stormwater	2009-216	Disapproved/Replaced
15A NCAC 02B .0267 - Buffer Protection	2009-484	Modified
15A NCAC 02B .0270 - Wastewater	2009-216, 2011-394	Modified
15A NCAC 02B .0271 - State and Federal Stormwater	2009-484	Modified

The Division of Water Quality completed a fiscal analysis for the original rules, which was approved by the NC Office of State Budget and Management (OSBM) in July 2007¹ (NC DWQ, 2007). In 2009, the General Assembly approved changes to the rules with SLs 2009-216 and 2009-484. The requirements of these laws have been implemented since they became effective on August 11th, 2009. Since then, the General Assembly approved SL 2011-394, SL 2012-200, SL 2012-201, and SL 2012-187. These changes provided an extension in the implementation timeline for certain wastewater facilities, delayed implementation of local new development requirements, and removed certain requirements for dischargers in WS-V classified waters in the Jordan Watershed.

¹ NC Division of Water Quality: Planning Section. 6/11/2007. Fiscal Analysis: B. Everett Jordan Reservoir Water Supply Nutrient Strategy. Online at http://portal.ncdenr.org/c/document_library/get_file?uuid=2e05ae32-55b7-4f9f-b095-244bf6f6720b&groupId=38364 (Accessed 9/25/2012)

These session laws require the EMC adopt a rule to replace the disapproved rule and the modified ones in a “substantively identical” manner to the laws. Consequently, the proposed amendments are being pursued by the Division to conform existing rules to the requirements of the new session laws. Any changes in program costs and benefits can be attributed to changes in law, not the conforming rules. These proposed rules, therefore, impose no new costs or benefits on affected parties. None the less, the Division presents this analysis to characterize the probable fiscal impacts attributable to recent legislative changes.

For context, Table 2 presents the changes to the Jordan Lake Nutrient Strategy resulting from session laws as well as a qualitative assessment of how their cost and benefits compare with the rules in the 2007 fiscal analysis. Jordan Rules not affected by new laws are not included in Table 2.

Table 2. Session Law (SL) Changes and Their Effect on the Impact Analysis

Rule	Session Law Changes	Session Law Effect and Estimated Impacts
15A NCAC 02B .0262 – Purpose and Scope	1. This change in Jordan’s WS-V classification mainly affects dischargers. Those affected, no longer have to meet standards identified in 02B .0218(3)(e) through (3)(h) except at industrial intakes with drinking water or where they violate standards at boundaries of WS-II, III, or IV areas.	1. Dischargers in WS-V streams will have to meet fewer of the WS-V standards, potentially lowering costs on dischargers who may violate those standards. Some WS-V streams downstream of discharges, however, may incur increased pollutants due to a loss of some protections. In the original strategy fiscal note, best available information indicated these standards would have no associated costs on dischargers, thus their removal will not affect the strategy’s estimated costs. Affected dischargers still need to meet their nutrient load allocations, and those cost estimates remain unaffected.

(Table 2 continues on the following pages.)

Rule	Session Law Changes	Session Law Effect and Estimated Impacts
<p>15A NCAC 02B .0265 - New Development Stormwater</p>	<p>1. SL raised the offsite offset thresholds for new developments from 4 and 8 lbs/acre/year of nitrogen (N) to 6 and 10 lbs/acre/year of N for residential developments and commercial/ industrial/multi-family developments, respectively.</p>	<p>1. Allowing developers to meet more of their load reduction requirement offsite will potentially lower their implementation costs as offsite treatment options often cost less than onsite. The minimum of one BMP onsite treatment requirement (see #2 below) still requires onsite treatment by developers. Overall nutrient loading targets remain the same.</p>
	<p>2. Added a minimum onsite treatment of one best management practice (BMP) that achieves 85% total suspended solids (TSS) for developments not meeting loading targets.</p>	<p>2. SL is expected to not substantially affect rule implementation cost. This onsite TSS requirement already covers much of the Jordan watershed through Phase II stormwater and water supply watershed rules.</p>
	<p>3. Delayed implementation of new development program requirements from Aug 2012 to Aug 2014. Note: The original rule and fiscal analysis projected an implementation date of 2011 for new development programs. This original date was delayed one year by rule review in the 2009 legislative session.</p>	<p>3. Where local governments delay implementation of their new development programs, developers will be the primary beneficiary of lower rule implementation costs during the two year interim. Local governments who delay, however, will increase their nutrient loads to Jordan Lake, contributing to impaired conditions in the lake, and shall be required to reduce those loads to baseline levels under the existing development requirements of SL 2009-216. To avoid incurring the likely more expensive cost to treat these loads later, eight of the 34 local governments have moved forward with implementation of their new development Program.</p>

(Table 2 continues on the following pages.)

Rule	Session Law Changes	Session Law Effect and Estimated Impact																							
<p>15A NCAC 02B .0266 - Local Government Existing Development Stormwater</p> <p>(Note: The original rule was disapproved. Changes presented in this Table are the session law based rule compared with the original disapproved rule.)</p>	<p>Stage 1 SL enacted a staged approach for existing development. SL Stage 1 requirements focus on planning and mirror those of the original rules.</p>	None																							
	<p>Stage 2 / Modified Stage 2 1. SL Stage 2 requirements hinge on whether an arm of the lake is meeting its water quality standards. DWQ will provide monitoring reports to the Commission every three years beginning in March 2014 to assess the need for Stage 2 measures.</p>	<p>1. The main effect on cost is delayed commencement of rule implementation by 1.5 to 4.5 years, shifting the time when benefits would be incurred but with little anticipated effect on overall costs.</p>																							
	<p>2. SL modified local plan approval standards from practicable to reasonable and cost-effective.</p>	<p>2. Any attempt to predict the cost impact of this change in approval standards would be purely speculative.</p>																							
	<p>3. SL enacted the following changes to the long-term total nitrogen (TN) and total phosphorous (TP) reduction goals:</p> <table border="1" data-bbox="354 827 865 1031"> <thead> <tr> <th rowspan="2"></th> <th colspan="2">Original Rule % reduction goals</th> <th colspan="2">SL % reduction goals</th> </tr> <tr> <th>TN</th> <th>TP</th> <th>TN</th> <th>TP</th> </tr> </thead> <tbody> <tr> <td>UNH*</td> <td>35</td> <td>5</td> <td>35^x</td> <td>5</td> </tr> <tr> <td>LNH*</td> <td>0</td> <td>0</td> <td>8</td> <td>5</td> </tr> <tr> <td>Haw*</td> <td>8</td> <td>5</td> <td>8</td> <td>5</td> </tr> </tbody> </table> <p>^x Triggered if lake does not achieve water quality standards by 2023. Otherwise the TN goal is 8%.</p>		Original Rule % reduction goals		SL % reduction goals		TN	TP	TN	TP	UNH*	35	5	35 ^x	5	LNH*	0	0	8	5	Haw*	8	5	8	5
	Original Rule % reduction goals		SL % reduction goals																						
	TN	TP	TN	TP																					
UNH*	35	5	35 ^x	5																					
LNH*	0	0	8	5																					
Haw*	8	5	8	5																					
<p>4. Modified Stage 2 - SL requires modification to UNH local government Stage 2 stormwater plans to meet 35% N reduction goal if UNH arm does not meet water quality standards by March 2023.</p>	<p>4. The UNH* is the most eutrophic part of the lake and local governments there will likely have to plan to meet these reductions. This would not create a discernible cost saving from the original fiscal note estimate given that UNH local government plans could easily and, based on planning activities to date, likely propose reduction rates of no higher than 8% for TN and 5% for TP by 2023. Thus, additional costs from meeting the 35% N reduction would mimic the cost estimated in the original fiscal note and the time horizon called for in the EMC rule. The only difference would be a shift in when costs would be incurred.</p>																								
<p>15A NCAC 02B .0267 - Buffer Protection</p>	<p>1. SL requires a 30-day public comment period prior to EMC approval of alternative maps used for identifying streams subject to buffer requirements.</p>	<p>1. SL changes are not expected to substantially affect rule implementation cost.</p>																							
	<p>2. SL states that the buffer rule applies to activities conducted within the buffer or, if there are hydrologic impacts, activities outside buffers.</p>	<p>2. SL changes are not expected to change rule implementation practice or cost.</p>																							

(Table 2 continues on the following page.)

Rule	Session Law Changes	Session Law Effect and Estimated Impact					
15A NCAC 02B .0270 – Wastewater	SLs extended the compliance date for achieving the required nutrient load by two years to calendar year 2016. Or, if the discharger has received construction authorization to improve their facility’s treatment system, calendar year 2018.	The cost for upgrades is not expected to change substantially however these costs may shift up to 4 years later as a result of SLs.					
15A NCAC 02B .0271 - State and Federal Stormwater	New Development Stormwater - Non-Department of Transportation (DOT), DOT No changes from Session Law	None					
	Existing Development Stormwater 1. Non-DOT - The percent in nutrient reduction goals from the baseline load (TN/TP) have not changed, but they now hinge on whether an arm of the lake is meeting its water quality standards. DWQ will provide monitoring reports to the Commission every three years beginning in March 2014 to assess the need for existing implementation measures.	1. Required implementation of a nutrient reduction program likely will be delayed by 1.5 to 4.5 years, shifting the time when benefits would be incurred but with little anticipated effect on overall costs. For those subwatersheds where standards are not violated, implementation costs will be lowered as reductions will not be needed from existing development. Also, DENR might incur some additional costs related to staff time needs to complete the three year reports.					
	2. DOT - The long-term % reduction goals from the baseline load (TN/TP) have not changed, however, the following compliance option has changed: <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">Original Rule</td> <td style="width: 50%;">SL Roadway</td> </tr> <tr> <td>Roadway Compliance Option</td> <td>Compliance Option (Added):</td> </tr> <tr> <td><u>(Removed):</u> Reduce N loading at the rate of 500 lbs/5 years</td> <td><u>Option (Added):</u> Complete 3 BMPs/year</td> </tr> </table>	Original Rule	SL Roadway	Roadway Compliance Option	Compliance Option (Added):	<u>(Removed):</u> Reduce N loading at the rate of 500 lbs/5 years	<u>Option (Added):</u> Complete 3 BMPs/year
Original Rule	SL Roadway						
Roadway Compliance Option	Compliance Option (Added):						
<u>(Removed):</u> Reduce N loading at the rate of 500 lbs/5 years	<u>Option (Added):</u> Complete 3 BMPs/year						
3. Modified Existing Development Plans – DOT SL adds a modification to UNH* for DOT existing stormwater plan to meet 35% N reduction goal if UNH* arm does not meet water quality standards by March 2023. Note: UNH Non-DOT State/Federal entities have a 35% reduction if required by monitoring under by #1 above.	3. The nominal BMP implementation rates for roadways in the SL apply making the overall cost effect dependent on the BMPs DOT decides to implement. DOT, however, has latitude to potentially reduce cost relative to the lbs/year original rule requirement by implementing three low-cost BMPs per year. This low-cost approach would likely not have the same water quality benefit as the original rule compliance option of 500 lbs N reduction/year. If required, DOT non-roadways will need to meet the rule’s original reduction goal of 35%.						

* Jordan Subwatershed abbreviations: Upper New Hope River (UNH), Lower New Hope River (LNH) and Haw River (Haw).

Appendix C - Sessions Laws Affecting the Jordan Nutrient Strategy

SL 2009-216 – Disapproves & Replaces Existing Development Local Government Stormwater.
Amends Wastewater

SL 2009-484 – Amends New Development Local Government Stormwater and State and Federal
Stormwater

SL 2011-394 – Amends Wastewater Rule

SL 2012-187 – Amends Purpose and Scope Rule

SL 2012-200 – Amends New Development Local Government Stormwater Rule

SL 2012-201 – Amends New Development Local Government Stormwater Rule

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-216
HOUSE BILL 239**

AN ACT TO PROVIDE FOR IMPROVEMENTS IN THE MANAGEMENT OF THE JORDAN WATERSHED IN ORDER TO RESTORE WATER QUALITY IN THE JORDAN RESERVOIR.

The General Assembly of North Carolina enacts:

SECTION 1. Definitions. – The following definitions apply to this act and its implementation:

- (1) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (2) The definitions set out in 15A NCAC 02B .0262 (Jordan Water Supply Nutrient Strategy: Purpose and Scope) and 15A NCAC 02B .0263 (Jordan Water Supply Nutrient Strategy: Definitions).
- (3) "Existing Development Rule 15A NCAC 02B .0266" means 15A NCAC 02B .0266 (Jordan Water Supply Nutrient Strategy: Stormwater Management for Existing Development), adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008.
- (4) "Wastewater Discharge Rule 15A NCAC 02B .0270" means 15A NCAC 02B .0270 (Jordan Water Supply Nutrient Strategy: Wastewater Discharge Requirements) adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on October 16, 2008.

SECTION 2.(a) Wastewater Discharge Rule 15A NCAC 02B .0270. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(c) of this act, the Commission and the Department shall implement the Wastewater Discharge Rule 15A NCAC 02B .0270, as provided in Section 2(b) of this act.

SECTION 2.(b) Implementation. – Notwithstanding sub-subdivision (c) of subdivision (6) of Wastewater Discharge Rule 15A NCAC 02B .0270, each existing discharger with a permitted flow greater than or equal to 0.1 million gallons per day (MGD) shall limit its total nitrogen discharge to its active individual discharge allocation as defined or modified pursuant to Wastewater Discharge Rule 15A NCAC 02B .0270 no later than calendar year 2016.

SECTION 2.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Wastewater Discharge Rule 15A NCAC 02B .0270. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 3.(a) Existing Development Rule 15A NCAC 02B .0266 Disapproved. – Pursuant to G.S. 150B-21.3(b1), Existing Development Rule 15A NCAC 02B .0266, as adopted by the Environmental Management Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008, is disapproved.

SECTION 3.(b) References in the North Carolina Administrative Code to the rule cited in Section 3(a) of this act shall be deemed to refer to the equivalent provisions of this act.

SECTION 3.(c) Nutrient Monitoring. – The Department shall maintain an ongoing program to monitor water quality in each arm of Jordan Reservoir. The Department shall also accept water quality sampling data from a monitoring program implemented by a local government or nonprofit organization if the data meets quality assurance standards established by the Department. On March 1, 2014, the Department shall report the results of monitoring in



each arm of Jordan Reservoir to the Environmental Review Commission. The Department shall submit an updated monitoring report under this section every three years thereafter until such time as the lake is no longer impaired by nutrient pollution.

SECTION 3.(d) Control of Nutrient Loading From Existing Development. – The Department shall require implementation of reasonable nutrient load reduction measures for existing development in each subwatershed of the Jordan Reservoir, as provided in this act. The Department shall determine whether nutrient load reduction measures for existing development are necessary in each subwatershed of Jordan Reservoir and require implementation of reasonable nutrient reduction measures in accordance with an adaptive management program as follows:

- (1) Stage 1 Adaptive Management Program to Control Nutrient Loading From Existing Development. –
 - a. Municipalities and counties located in whole or in part in the Jordan watershed shall implement a Stage 1 adaptive management program to control nutrient loading from existing development in the Jordan watershed. The Stage 1 adaptive management program shall meet the requirements set out in 40 C.F.R. § 122.34 as applied by the Department in the NPDES General Permit for municipal separate storm sewer systems in effect on July 1, 2009. The Stage 1 adaptive management program shall include all of the following measures:
 1. A public education program to inform the public of the impacts of nutrient loading and measures that can be implemented to reduce nutrient loading from stormwater runoff from existing development.
 2. A mapping program that includes major components of the municipal separate storm sewer system, including the location of major outfalls, as defined in 40 Code of Federal Regulations §122.26(b)(5) (July 1, 2008) and the names and location of all waters of the United States that receive discharges from those outfalls, land use types, and location of sanitary sewers.
 3. A program to identify and remove illegal discharges.
 4. A program to identify opportunities for retrofits and other projects to reduce nutrient loading from existing developed lands.
 5. A program to ensure maintenance of best management practices implemented by the local government.
 - b. The Department shall accept local government implementation of another stormwater program or programs meeting the standards set out in this section as satisfying one or more of the requirements set forth in sub-subdivision a. of this subdivision. The local government shall provide technical information sufficient to demonstrate the adequacy of the alternative program or program elements.
 - c. A Stage 1 adaptive management program to control nutrient loading from existing development shall be implemented as follows:
 1. No later than December 31, 2009, each local government shall submit its Stage 1 adaptive management program to the Commission for review and approval.
 2. Within six months following submission of a Stage 1 adaptive management program, the Department shall recommend that the Commission approve or disapprove the program. The Commission shall either approve the program or require changes based on the standards set out in sub-subdivision a. of this subdivision. If the Commission requires changes, the local government shall submit revisions responding to the required changes within two months and the Department shall provide follow-up recommendations to the Commission within two months after receiving revisions.

3. Within three months following Commission approval of a Stage 1 adaptive management program, the local government shall begin implementation of the program. Each local government shall report annually to the Department on implementation of its program.
- (2) Stage 2 Adaptive Management Program to Control Nutrient Loading From Existing Development. –
- a. If the March 1, 2014 monitoring report or any subsequent monitoring report for the Upper New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards are not being achieved, a municipality or county located in whole or in part in the subwatershed of that arm of Jordan Reservoir shall develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development within the subwatershed, as provided in this act. If the March 1, 2017 monitoring report or any subsequent monitoring report for the Haw River Arm or the Lower New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards are not being achieved, a municipality or county located in whole or in part in the subwatershed of that arm of Jordan Reservoir shall develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development within the subwatershed, as provided in this act. The Department shall defer development and implementation of Stage 2 adaptive management programs to control nutrient loading from existing development required in a subwatershed by this subdivision if it determines that additional reductions in nutrient loading from existing development in that subwatershed will not be necessary to achieve nutrient-related water quality standards. In making this determination, the Department shall consider the anticipated effect of measures implemented or scheduled to be implemented to reduce nutrient loading from sources in the subwatershed other than existing development. If any subsequent monitoring report for an arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards have not been achieved, the Department shall notify the municipalities and counties located in whole or in part in the subwatershed of that arm of Jordan Reservoir and the municipalities and counties shall develop and implement a Stage 2 adaptive management program as provided in this subdivision.
 - b. The Department shall establish a load reduction goal for existing development for each municipality and county required to implement a Stage 2 adaptive management program to control nutrient loading from existing development. The load reduction goal shall be designed to achieve, relative to the baseline period 1997 through 2001, an eight percent (8%) reduction in nitrogen loading and a five percent (5%) reduction in phosphorus loading reaching Jordan Reservoir from existing developed lands within the police power jurisdiction of the local government. The baseline load shall be calculated by applying the Tar-Pamlico Nutrient Export Calculation Worksheet, Piedmont Version, dated October 2004, to acreages of different types of existing development within the police power jurisdiction of the local government during the baseline period. The baseline load may also be calculated using an equivalent or more accurate method acceptable to the Department and recommended by the Scientific Advisory Board established pursuant to Section 4(a) of this act. The baseline load for a municipality or county shall not include nutrient loading from lands under State or federal control or lands in agriculture or forestry. The load reduction goal shall be

- adjusted to account for nutrient loading increases from lands developed subsequent to the baseline period but prior to implementation of new development stormwater programs.
- c. Based on findings under sub-subdivision a. of this subdivision, the Department shall notify the local governments in each subwatershed that either:
 - 1. Implementation of a Stage 2 adaptive management program to control nutrient loading from existing development will be necessary to achieve water quality standards in an arm of the reservoir and direct the municipalities and counties in the subwatershed to develop a load reduction program in compliance with this section.
 - 2. Implementation of a Stage 2 adaptive management program to control nutrient loading from existing development is not necessary at that time but will be reevaluated in three years based on the most recent water quality monitoring information.
 - d. A local government receiving notice of the requirement to develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development under this section shall not be required to submit a program if the local government demonstrates that it has already achieved the reductions in nutrient loadings required by sub-subdivision b. of this subdivision.
 - e. Within six months after receiving notice to develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development, each local government shall submit to the Commission a program that is designed to achieve the reductions in nutrient loadings established by the Department pursuant to sub-subdivision b. of this subdivision. A local government program may include nutrient management strategies that are not included in the model program developed pursuant to Section 3(e) of this act in addition to or in place of any component of the model program. In addition, a local government may satisfy the requirements of this subdivision through reductions in nutrient loadings from other sources in the same subwatershed to the extent those reductions go beyond measures otherwise required by statute or rule. A local government may also work with other local governments within the same subwatershed to collectively meet the required reductions in nutrient loadings from existing development within their combined jurisdictions. Any credit for reductions achieved or obtained outside of the police power jurisdiction of a local government shall be adjusted based on transport factors established by the Department document Nitrogen and Phosphorus Delivery from Small Watersheds to Jordan Lake, dated June 30, 2002.
 - f. Within six months following submission of a local government's Stage 2 adaptive management program to control nutrient loading from existing development, the Department shall recommend that the Commission approve or disapprove the program. The Commission shall approve the program if it meets the requirements of this subdivision, unless the Commission finds that the local government can, through the implementation of reasonable and cost-effective measures not included in the proposed program, meet the reductions in nutrient loading established by the Department pursuant to sub-subdivision b. of this subdivision by a date earlier than that proposed by the local government. If the Commission finds that there are additional or alternative reasonable and cost-effective measures, the Commission may require the local government to modify its proposed program to include such measures to achieve the required reductions by the earlier date. If the Commission requires such

modifications, the local government shall submit a modified program within two months. The Department shall recommend that the Commission approve or disapprove the modified program within three months after receiving the local government's modified program. In determining whether additional or alternative load reduction measures are reasonable and cost effective, the Commission shall consider factors including, but not limited to, the increase in the per capita cost of a local government's stormwater management program that would be required to implement such measures and the cost per pound of nitrogen and phosphorus removed by such measures. The Commission shall not require additional or alternative measures that would require a local government to:

1. Install or require installation of a new stormwater collection system in an area of existing development unless the area is being redeveloped.
 2. Acquire developed private property.
 3. Reduce or require the reduction of impervious surfaces within an area of existing development unless the area is being redeveloped.
- g. Within three months after the Commission's approval of a Stage 2 adaptive management program to control nutrient loading from existing development, the local government shall complete adoption and begin implementation of its program.
- h. Each local government implementing a Stage 2 adaptive management program to control nutrient loading from existing development shall submit an annual report to the Department summarizing its activities in implementing its program.
- i. If at any time the Department finds, based on water quality monitoring, that an arm of the Jordan Reservoir has achieved compliance with water quality standards, the Department shall notify the local governments in the subwatershed. Subject to the approval of the Commission, a local government may modify its Stage 2 adaptive management program to control nutrient loading from existing development to maintain only those measures necessary to prevent increases in nutrient loading from existing development.

SECTION 3.(e) Model Stage 2 Adaptive Management Program to Control Nutrient Loading From Existing Development. – No later than July 1, 2013, the Department shall submit a model Stage 2 adaptive management program to control nutrient loading from existing development to the Commission for approval. The model program shall identify specific load reduction practices and programs and reduction credits associated with each practice or program and shall provide that a local government may obtain additional or alternative load-reduction credits based on site-specific monitoring data. In developing the model program, the Department shall consider the findings and recommendations of the Scientific Advisory Board established pursuant to Section 4(a) of this act and comments submitted by municipalities and counties identified in 15A NCAC 02B .0262(7) (Jordan Water Supply Nutrient Strategy: Purpose and Scope). The Commission shall review the model program and either approve the program or return it to the Department with requested changes. The Department shall revise the model program to address changes requested by the Commission. The Commission shall approve a final model program no later than December 31, 2013.

SECTION 3.(f) Additional Measures to Reduce Nitrogen Loading From Existing Development in the Upper New Hope Creek Arm of the Jordan Reservoir. – If the March 1, 2023, monitoring report or any subsequent monitoring report for the Upper New Hope Creek Arm of Jordan Reservoir shows that nutrient-related water quality standards are not being achieved, a municipality or county located in whole or in part in the Upper New Hope Creek Subwatershed shall modify its Stage 2 adaptive management program to control nutrient loading from existing development to achieve additional reductions in nitrogen loading from existing development. The modified Stage 2 adaptive management program shall be designed

to achieve a total reduction in nitrogen loading from existing development of thirty-five percent (35%) relative to the baseline period 1997 through 2001. The Department shall notify local governments of the requirement to submit a modified Stage 2 adaptive management program. Submission, review and approval, and implementation of a modified Stage 2 adaptive management program shall follow the process, timeline, and standards set out in sub-subdivisions e. through g. of subdivision (2) of Section 3(d) of this act.

SECTION 3.(g) Enforcement. – The Department shall enforce the provisions of this act as provided in G.S. 143-215.6A, 143-215.6B, and 143-215.6C.

SECTION 3.(h) Collective Compliance. – Local governments that are subject to regulation under this act may establish collective programs to comply with the requirements of this act.

SECTION 3.(i) Report. – The Department shall report annually to the Commission regarding the implementation of adaptive management programs to control nutrient loading from existing development in the Jordan watershed.

SECTION 3.(j) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 3.(k) No Change to Existing Regulatory Authority. – Nothing in this act shall be construed to limit, expand, or modify the authority of the Commission to undertake alternative regulatory actions otherwise authorized by State or federal law, including, but not limited to, the reclassification of waters of the State pursuant to G.S. 143-214.1, the revision of water quality standards pursuant to G.S. 143-214.3, and the granting of variances pursuant to G.S. 143-215.3.

SECTION 4.(a) Scientific Advisory Board for Nutrient-Impaired Waters Established. – No later than July 1, 2010, the Secretary shall establish a Nutrient Sensitive Waters Scientific Advisory Board. The Scientific Advisory Board shall consist of no fewer than five and no more than 10 members with the following expertise or experience:

- (1) Representatives of one or more local governments in the Jordan Reservoir watershed. Local government representatives shall have experience in stormwater management, flood control, or management of a water or wastewater utility.
- (2) One member with at least 10 years of professional or academic experience relevant to the management of nutrients in impaired water bodies and possessing a graduate degree in a related scientific discipline, such as aquatic science, biology, chemistry, geology, hydrology, environmental science, engineering, economics, or limnology.
- (3) One professional engineer with expertise in stormwater management, hydrology, or flood control.
- (4) One representative of the Department of Transportation with expertise in stormwater management.
- (5) One representative of a conservation organization with expertise in stormwater management, urban landscape design, nutrient reduction, or water quality.

SECTION 4.(b) Duties. – No later than July 1, 2012, the Scientific Advisory Board shall do all of the following:

- (1) Identify management strategies that can be used by local governments to reduce nutrient loading from existing development.
- (2) Evaluate the feasibility, costs, and benefits of implementing the identified management strategies.
- (3) Develop an accounting system for assignment of nutrient reduction credits for the identified management strategies.
- (4) Identify the need for any improvements or refinements to modeling and other analytical tools used to evaluate water quality in nutrient-impaired waters and nutrient management strategies.

SECTION 4.(c) Report; Miscellaneous Provisions. – The Scientific Advisory Board shall also advise the Secretary on any other issue related to management and restoration of nutrient-impaired water bodies. The Scientific Advisory Board shall submit an annual report to the Secretary no later than July 1 of each year concerning its activities, findings, and recommendations. Members of the Scientific Advisory Board shall be reimbursed for reasonable travel expenses to attend meetings convened by the Department for the purposes set out in this section.

SECTION 5. No Preemption. – A local government may adopt and implement a stormwater management program that contains provisions that are more restrictive than the standards set forth in Sections 2 and 3 of this act or in any rules concerning stormwater management in the Jordan watershed adopted by the Commission. This section shall not be construed to authorize a local government to impose stormwater management requirements on lands in agriculture or forestry.

SECTION 6. Construction of Act. –

- (1) Except as specifically provided in Sections 2(c) and 3(j) of this act, nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Commission or any unit of local government.
- (2) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department.

SECTION 7. Note to Revisor of Statutes. – Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of Section 2 of this act as a note to G.S. 143-215.1 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate. The Revisor of Statutes shall set out the text of Section 3 of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate.

SECTION 8. Effective Date. – This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 5:30 p.m. this 30th day of June, 2009

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-484
SENATE BILL 838

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) REQUIRE ELECTRONIC REPORTING OF ENVIRONMENTAL LEAD TEST RESULTS AND BLOOD LEAD TEST RESULTS; (2) CLARIFY THE FEE STRUCTURE FOR FOOD AND LODGING PERMITS; (3) REVISE THE SUNSET PROVISION FOR NUTRIENT OFFSET PAYMENTS; (4) AMEND THE SOLID WASTE DISPOSAL TAX TO STREAMLINE THE PROCESS WHEN A LOCAL GOVERNMENT IS SERVED BY A SOLID WASTE MANAGEMENT AUTHORITY; (5) REPEAL THE REQUIREMENT THAT SEASONAL STATE PARK EMPLOYEES WEAR A UNIFORM VEST; (6) CLARIFY IMPLEMENTATION OF NUTRIENT OFFSETS UNDER THE JORDAN LAKE RULES; (7) CLARIFY IMPLEMENTATION OF THE JORDAN LAKE RULES RELATED TO FEDERAL AND STATE ENTITIES; (8) MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT AND NATURAL RESOURCES; (9) AMEND OR REPEAL VARIOUS ENVIRONMENTAL REPORTING REQUIREMENTS; AND (10) DELAY THE EFFECTIVE DATES FOR LAWS GOVERNING THE MANAGEMENT OF DISCARDED COMPUTER EQUIPMENT AND DISCARDED TELEVISIONS TO JULY 1, 2010.

The General Assembly of North Carolina enacts:

PART I. AMEND ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

SECTION 1. G.S. 130A-131.8 reads as rewritten:

"§ 130A-131.8. Laboratory Reports ~~reports of blood levels in children.~~

(a) All laboratories doing business in this State shall report to the Department all environmental lead test results and blood lead test results for children less than six years of age and for individuals whose ages are unknown at the time of testing. Reports shall be made by electronic submission within five working days after test ~~completion on forms provided by the Department or on self-generated forms containing:~~ completion.

(b) Reports of blood lead test results shall contain all of the following:

- (1) ~~the~~ The child's full name, date of birth, sex, race, ethnicity, address, and Medicaid number, if any; any.
- (2) ~~the~~ The name, address, and telephone number of the requesting health care provider; provider.
- (3) ~~the~~ The name, address, and telephone number of the testing laboratory; laboratory.
- (4) ~~the~~ The laboratory results, whether the specimen type—type is venous or capillary; the laboratory sample number, and the dates the sample was collected and analyzed. ~~The reports may be made by electronic submissions.~~

(c) Reports of environmental lead test results shall contain all of the following:

- (1) The address where the samples were collected.
- (2) Sample type, such as dust, paint, soil, or water.
- (3) Surface type, such as floor, window sill, or window trough.
- (4) Collection location.
- (5) The name, address, and telephone number of the testing laboratory.
- (6) The laboratory results, unit of measurement, the laboratory sample number, and the dates the sample was collected and analyzed."

SECTION 2.(a) If Senate Bill 202, 2009 Regular Session, does not become law then G.S. 130A-248(d) reads as rewritten:



"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging and Adult Services of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school ~~cafeterias, an annual fee of fifty dollars (\$50.00).~~ cafeterias, a fee of fifty dollars (\$50.00) for each permit issued. This fee shall be reassessed annually for permits that do not expire. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33 1/3%) of the fees collected under this subsection may be used to support State health programs and activities."

SECTION 2.(b) If Senate Bill 202, 2009 Regular Session, does become law then G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging and Adult Services of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, ~~an annual a fee of seventy-five dollars (\$75.00).~~ (\$75.00) for each permit issued. This fee shall be reassessed annually for permits that do not expire. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33 1/3%) of the fees collected under this subsection may be used to support State health programs and activities."

SECTION 3.(a) Section 2 of S.L. 2007-438 reads as rewritten:

"**SECTION 2.** No later than ~~1 September 2009,~~ 1 September 2010, the Department of Environment and Natural Resources shall develop and implement a plan to transition the North Carolina Ecosystem Enhancement Program nutrient offset program from a fee-based program to a program based on the actual costs of providing nutrient credits. The new program shall use the least cost alternative for providing nutrient offset credits consistent with rules adopted by the Environmental Management Commission for implementation of nutrient management strategies in the Neuse River Basin and the Tar-Pamlico River Basin."

SECTION 3.(b) Section 5 of S.L. 2007-438 reads as rewritten:

"**SECTION 5.** This act becomes effective 1 September 2007 and applies to all nutrient offset payments, including those set out in 15A NCAC 2B .0240, as adopted by the Environmental Management Commission on 12 January 2006. The fee schedule set out in Section 1 of this act expires ~~1 September 2009.~~ 1 September 2010."

SECTION 4. G.S. 105-187.63 reads as rewritten:

"§ 105-187.63. Use of tax proceeds.

From the taxes received pursuant to this Article, the Secretary may retain the costs of collection, not to exceed two hundred twenty-five thousand dollars (\$225,000) a year, as reimbursement to the Department. The Secretary must credit or distribute taxes received pursuant to this Article, less the cost of collection, on a quarterly basis as follows:

- (1) Fifty percent (50%) to the Inactive Hazardous Sites Cleanup Fund established by G.S. 130A-310.11.
- (2) Thirty-seven and one-half percent (37.5%) to cities and counties in the State on a per capita basis, using the most recent annual estimate of population certified by the State Budget Officer. One-half of this amount must be distributed to cities, and one-half of this amount must be distributed to counties. For purposes of this distribution, the population of a county does not include the population of a city located in the county.

A city or county is excluded from the distribution under this subdivision if it does not provide solid waste management programs and services and is not responsible by contract for payment for these programs and ~~services.~~ services, unless it is served by a regional solid waste management authority established under Article 22 of Chapter 153A of the General Statutes. The Department of Environment and Natural Resources must provide the Secretary with a list of the cities and counties that are excluded under this subdivision. The list must be provided by May 15 of each year and applies to distributions made in the fiscal year that begins on July 1 of that year.

Funds distributed under this subdivision must be used by a city or county solely for solid waste management programs and services. ~~A city or county that receives funds under this subdivision and is served by a regional solid waste management authority must forward the amount it receives to that authority.~~

- (3) Twelve and one-half percent (12.5%) to the Solid Waste Management Trust Fund established by G.S. 130A-309.12."

SECTION 5. G.S. 113-35.1 is repealed.

SECTION 5.1. Section 5 of S.L. 2009-406 reads as rewritten:

"SECTION 5. This act shall not be construed or implemented to:

- (1) Extend any permit or approval issued by the United States or any of its agencies or instrumentalities.
- (2) Extend any permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law.
- (3) Shorten the duration that any development approval would have had in the absence of this act.
- (4) Prohibit the granting of such additional extensions as are provided by law.
- (5) Affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued at any time from the effective date of this act to December 31, 2010.
- (6) Affect the ability of a government entity to revoke or modify a development approval or to accept voluntary relinquishment of a development approval by the holder of the development approval pursuant to law.
- (7) Modify any requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program."

PART II. AMEND CERTAIN JORDAN WATER SUPPLY NUTRIENT STRATEGY RULES.

SECTION 6.(a) S.L. 2009-216 is amended by adding a new subsection to read:

"SECTION 2.(d) Section 2(b) of this act expires on the date that rules adopted pursuant to Section 2(c) of this act become effective."

SECTION 6.(b) S.L. 2009-216 is amended by adding a new subsection to read:

"SECTION 3.(k) Sections 3(c) through 3(i) of this act expire on the date that rules adopted pursuant to Section 3(j) of this act become effective."

SECTION 6.(c) Section 3(k) of S.L. 2009-216 reads as rewritten:

~~SECTION 3.(k)~~ SECTION 3.(l) No Change to Existing Regulatory Authority. – Nothing in this act shall be construed to limit, expand, or modify the authority of the Commission to undertake alternative regulatory actions otherwise authorized by State or federal law, including, but not limited to, the reclassification of waters of the State pursuant to G.S. 143-214.1, the revision of water quality standards pursuant to G.S. 143-214.3, and the granting of variances pursuant to G.S. 143-215.3."

SECTION 7.(a) S.L. 2009-216 is amended by adding a new section to read:

"SECTION 5.(a) Definition. – As used in this section, "New Development Rule 15A NCAC 02B .0265" means 15A NCAC 02B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008.

"SECTION 5.(b) New Development Rule 15A NCAC 02B .0265. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 5(d) of this act, the Commission and the Department shall implement New Development Rule 15A NCAC 02B .0265, as provided in Section 5(c) of this act.

"SECTION 5.(c) Implementation. – Notwithstanding sub-subdivision (vii) of sub-subdivision (a) of subdivision (3) of New Development Rule 15A NCAC 02B .0265, New Development Rule 15A NCAC 02B .0265 shall be implemented as follows:

- (1) New development that would exceed the nitrogen or phosphorus loading rate targets set out in sub-subdivision (i) of sub-subdivision (a) of subdivision (3) of New Development Rule 15A NCAC 02B .0265 without the use of engineered stormwater controls and that is not subject to more stringent stormwater requirements under S.L. 2006-246 or rules adopted pursuant to G.S. 143-214.5 shall have engineered stormwater controls that meet the

- design requirements set out in sub-subdivision (iv) of sub-subdivision (a) of subdivision (3) of New Development Rule 15A NCAC 02B .0265 and achieve eighty-five percent (85%) removal of total suspended solids.
- (2) A developer may offset part of the nitrogen and phosphorus load from a new development by implementing or funding off-site management measures in accordance with this subdivision. New development shall comply with requirements for engineered stormwater controls as set out in this act and in New Development Stormwater Rule 15A NCAC 02B .0265. On-site stormwater controls shall achieve a maximum nitrogen loading rate that does not exceed six pounds per acre per year for single-family detached and duplex residential development and 10 pounds per acre per year for other development, including multifamily residential, commercial, and industrial. Off-site management measures may be used to offset the difference between the nitrogen and phosphorus loading rates achieved through compliance with the stormwater control requirements of this act and the loading rate targets set out in sub-subdivision (i) of sub-subdivision (a) of subdivision (3) of New Development Rule 15A NCAC 02B .0265. Off-site offsetting measures shall achieve at least the reduction in nitrogen and phosphorus loading equivalent to the remaining reduction needed to comply with the loading rate targets set out in sub-subdivision (i) of sub-subdivision (a) of subdivision (3) of New Development Rule 15A NCAC 02B .0265. A developer may make offset payments to the North Carolina Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the local government in which the development activity occurs. A developer may propose other offset measures to the local government, including providing his or her own off-site offset or utilizing a private seller. All offset measures identified above shall meet the requirements of subdivisions (2) through (4) of 15A NCAC 02B .0273.

"SECTION 5.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace New Development Rule 15A NCAC 02B .0265. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 5(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

"SECTION 5.(e) Sunset. – Section 5(c) of this act expires on the date that rules adopted pursuant to Section 5(d) of this act become effective."

SECTION 7.(b) S.L. 2009-216 is amended by adding a new section to read:

"SECTION 6.(a) Definitions. – The following definitions apply to this section and its implementation:

- (1) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (2) The definitions set out in 15A NCAC 02B .0262 (Jordan Water Supply Nutrient Strategy: Purpose and Scope) and 15A NCAC 02B .0263 (Jordan Water Supply Nutrient Strategy: Definitions).
- (3) "State and Federal Rule 15A NCAC 02B .0271" means 15A NCAC 02B .0271 (Jordan Water Supply Nutrient Strategy: Stormwater Requirements for State and Federal Entities), adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on October 16, 2008.
- (4) "Riparian Buffer Rule 15A NCAC 02B .0267" means 15A NCAC 02B .0267 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers), adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008.

"SECTION 6.(b) State and Federal Rule 15A NCAC 02B .0271. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 6(d) of this act, the Commission and the Department shall implement the State and Federal Rule 15A NCAC 02B .0271, as provided in Section 6(c) of this act.

"SECTION 6.(c) Implementation. – Notwithstanding State and Federal Rule 15A NCAC 02B .0271, the Commission shall implement the State and Federal Rule 15A NCAC 02B .0271 as follows:

- (1) The load reduction goal for existing North Carolina Department of Transportation roadway and nonroadway development shall be established as provided in this subdivision. The load reduction goal shall be designed to achieve, relative to the baseline period 1997 through 2001, an eight percent (8%) reduction in nitrogen loading and a five percent (5%) reduction in phosphorus loading reaching Jordan Reservoir from existing roadway and nonroadway development in the Upper New Hope and Haw subwatersheds. The load reduction goal for the Lower New Hope arm shall be designed to maintain no increases in nitrogen and phosphorus loads from existing roadway and nonroadway development relative to the baseline period 1997 through 2001. Load reduction goals for each subwatershed shall be calculated from baseline loads for existing North Carolina Department of Transportation development present during the baseline period. Baseline loads shall be established for roadways and industrial facilities using stormwater runoff nutrient load characterization data collected through the National Pollutant Discharge Elimination System (NPDES) Research Program under NCS0000250 Permit Part II Section G. Baseline loads for other nonroadway development shall be calculated by applying the Tar-Pamlico Nutrient Export Calculation Worksheet, Piedmont Version, dated October 2004, to acreages of nonroadway development under the control of North Carolina Department of Transportation during the baseline period. The baseline load for other nonroadway development may also be calculated using an equivalent or more accurate method acceptable to the Department and recommended by the Scientific Advisory Board established pursuant to Section 4(a) of S.L. 2009-216. The load reduction goal shall be adjusted to account for nutrient loading increases from existing roadway and nonroadway development subsequent to the baseline period but prior to implementation of new development stormwater programs pursuant to 15A NCAC 02B .0271(4)(c).
- (2) Sub-subdivision (b) of subdivision (3) and sub-subdivision (d) of subdivision (4) of State and Federal Rule 15A NCAC 02B .0271 shall be implemented as follows:
 - a. If the March 1, 2014, monitoring report or any subsequent monitoring report for the Upper New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of S.L. 2009-216 shows that nutrient-related water quality standards are not being achieved, State and federal entities shall develop and implement a program to control nutrient loading from existing development within the subwatershed, as provided in this section and State and Federal Rule 15A NCAC 02B .0271. If the March 1, 2017, monitoring report or any subsequent monitoring report for the Haw River Arm or the Lower New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of S.L. 2009-216 shows that nutrient-related water quality standards are not being achieved, State and federal entities shall develop and implement a program to control nutrient loading from existing development within the subwatershed, as provided in this section and State and Federal Rule 15A NCAC 02B .0271. The Department shall defer development and implementation of a program to control nutrient loading from existing development required in a subwatershed by this sub-subdivision if it determines that additional reductions in nutrient loading from existing development in that subwatershed will not be necessary to achieve nutrient-related water quality standards. In making this determination, the Department shall consider the anticipated effect of measures implemented or scheduled to be implemented to reduce nutrient loading from sources in the subwatershed other than existing development. If any subsequent monitoring report for an arm of Jordan Reservoir required under Section 3(c) of S.L. 2009-216 shows that nutrient-related water quality standards have not been achieved,

the Department shall notify each State and federal entity, and each entity shall develop and implement a program to control nutrient loading from existing development as provided in this section and State and Federal Rule 15A NCAC 02B .0271.

- b. If the Commission requires additional reductions in nutrient loading from local governments pursuant to Section 3(f) of S.L. 2009-216, the Commission shall require State and federal entities to modify their nutrient reduction programs for the Upper New Hope Creek subwatershed to achieve a total reduction in nitrogen loading from existing roadway and nonroadway development in nitrogen loading from existing development of thirty-five percent (35%) relative to the baseline period 1997-2001.
- (3) Notwithstanding sub-subdivision (d) of subdivision (4) of State and Federal Rule 15A NCAC 02B .0271, the North Carolina Department of Transportation may achieve the nutrient load reduction goal in subdivision (1) of this section for existing roadway and nonroadway development under its control by development of a load reduction program that addresses both roadway and nonroadway development in the watershed for each arm of Jordan Reservoir. A combined program to address roadway and nonroadway development may include stormwater retrofits and other load-reducing measures in the watershed including, but not limited to, illicit discharge removal; street sweeping; source control activities such as pet waste reduction and fertilizer management at NCDOT facilities; improvement of existing stormwater structures; alternative stormwater practices such as use of rain barrels and cisterns; stormwater capture and reuse; and purchase of nutrient reduction credits. NCDOT may meet minimum implementation rate and schedule requirements by implementing a combination of three stormwater retrofits per year for existing roadway development in the Jordan Lake watershed and other load-reducing measures identified in the program to control nutrient loading from existing development developed pursuant to State and Federal Entities Rule 15A NCAC 02B .0271 and this act and approved by the Commission.

"SECTION 6.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace State and Federal Rule 15A NCAC 02B .0271. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 6(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

"SECTION 6.(e) Sunset. – Section 6(c) of this act expires on the date that rules adopted pursuant to Section 6(d) of this act become effective.

"SECTION 6.(f) Riparian Buffer Rule 15A NCAC 02B .0267. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 6(h) of this act, the Commission and the Department shall implement the Riparian Buffer Rule 15A NCAC 02B .0267, as provided in Section 6(g) of this act.

"SECTION 6.(g) Implementation. – Notwithstanding Riparian Buffer Rule 15A NCAC 02B .0267, the Commission shall implement Riparian Buffer Rule 15A NCAC 02B .0267 as provided in this section.

- (1) For purposes of implementing Riparian Buffer Rule 15A NCAC 02B .0267, the Commission may only use one of the following types of maps for purposes of identifying a water body subject to the riparian buffer protection requirements of Riparian Buffer Rule 15A NCAC 02B .0267:
 - a. The most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United State Department of Agriculture.
 - b. The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geological Survey.

- c. A map approved by the Geographic Information Coordinating Council and by the Commission. Prior to approving a map under this sub-subdivision, the Commission shall provide a 30-day public notice and opportunity for comment.
- (2) Alternative maps approved by the Commission under subdivision (1) of this section shall not be used for buffer delineation on projects that are existing and ongoing within the meaning of subdivision (6) of Riparian Buffer Rule 15A NCAC 02B .0267.
- (3) Sub-subdivision a. of subdivision (4) of Riparian Buffer Rule 15A NCAC 02B .0267 shall be interpreted to prohibit only those activities conducted outside the buffer that have the effect of altering the hydrology in violation of the diffuse flow requirements set out in subdivision (8) of Riparian Buffer Rule 15A NCAC 02B .0267.

"SECTION 6.(h) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Riparian Buffer Rule 15A NCAC 02B .0267. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 6(g) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

"SECTION 6.(i) Sunset. – Section 6(g) of this act expires on the date that rules adopted pursuant to Section 6(h) of this act become effective."

SECTION 8. Sections 5 through 8 of S.L. 2009-216 read as rewritten:

~~"SECTION 5."~~**SECTION 7.** No Preemption. – A local government may adopt and implement a stormwater management program that contains provisions that are more restrictive than the standards set forth in Sections ~~2 and 3~~, 3, and 5 of this act or in any rules concerning stormwater management in the Jordan watershed adopted by the Commission. This section shall not be construed to authorize a local government to impose stormwater management requirements on lands in agriculture or forestry.

~~"SECTION 6."~~**SECTION 8.** Construction of Act. –

- (1) Except as specifically provided in ~~Sections 2(c) and 3(j)~~ Sections 2(c), 3(j), 5(d), and 6(h) of this act, nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Commission or any unit of local government.
- (2) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department.

~~"SECTION 7."~~**SECTION 9.** Note to Revisor of Statutes. – Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of Section 2 of this act as a note to G.S. 143-215.1 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate. The Revisor of Statutes shall set out the text of Sections 3, 4, 5, and 6 of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate.

~~"SECTION 8."~~**SECTION 10.** Effective Date. – This act is effective when it becomes law."

PART III. ENVIRONMENTAL TECHNICAL CORRECTIONS.

SECTION 9. G.S. 120-70.61(c) reads as rewritten:

"§ 120-70.61. Membership; cochairs; vacancies; quorum.

(c) Except as otherwise provided in this section, a legislative member of the Commission shall ~~continue to~~ serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the General Assembly who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A legislative member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from office on the Commission. Any vacancy that occurs on the Commission shall be filled in the same manner as the original appointment."

SECTION 10. G.S. 146-64(9) reads as rewritten:

"(9) "Vacant and unappropriated lands" means all State lands title to which is vested in the State as sovereign, and land acquired by the State by virtue of being sold for taxes, except ~~swamplands as hereinafter defined.~~ swamplands."

SECTION 11. G.S. 130A-310.11 reads as rewritten:

"§ 130A-310.11. Inactive Hazardous Sites Cleanup Fund created.

(a) There is established under the control and direction of the Department the Inactive Hazardous Sites Cleanup Fund. This fund shall be a revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, taxes, and other monies paid to it or recovered by or on behalf of the Department. The Inactive Hazardous Sites Cleanup Fund shall be treated as a nonreverting special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(b) Funds credited to the Inactive Hazardous Sites Cleanup Fund pursuant to G.S. 130A-295.9 shall be used only as provided in ~~G.S. 130A-309.295.9(c).~~ G.S. 130A-295.9(1) and G.S. 130A-310.5(c)."

PART IV. REPORTS CONSOLIDATION.

SECTION 12. G.S. 106-744(i) reads as rewritten:

"(i) The Advisory Committee shall report no later than ~~May 1~~ October 1 of each year to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources regarding the activities of the Advisory Committee, the agriculture easements purchased, and agricultural projects funded during the previous year."

SECTION 13. G.S. 113-44.15(c) reads as rewritten:

"(c) Reports. – The North Carolina Parks and Recreation Authority shall report no later than October 1 of each year to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission on allocations from the Trust Fund from the prior fiscal year. ~~The Authority also shall provide a progress report no later than March 15 of each year to the same recipients on the activities of and the expenditures from the Trust Fund for the current fiscal year.~~"

SECTION 14. G.S. 113-77.9(e) reads as rewritten:

"(e) Reports. – The Secretary shall maintain and annually ~~twice each year~~ revise a list of ~~acquisitions grants~~ made pursuant to this Article. The list shall include the acreage of each tract, the county in which the tract is located, the amount ~~paid~~ awarded from the Fund to acquire the tract, and the State department or division responsible for managing the tract. The Secretary shall furnish a copy of the list to each Trustee, the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission ~~within 30 days after each revision.~~ no later than October 1 of each year."

SECTION 15. G.S. 143-58.2(f) is repealed.

PART V. DELAY EFFECTIVE DATES FOR LAWS GOVERNING THE MANAGEMENT OF DISCARDED COMPUTER EQUIPMENT AND DISCARDED TELEVISIONS.

SECTION 16.(a) Section 16.6 of S.L. 2007-550, as amended by Section 7 of S.L. 2008-208, as amended by Section 11.4 of S.L. 2008-198, reads as rewritten:

"SECTION 16.6.(a) Part 2E of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 16.1(a) of this act, becomes effective as follows:

- (1) G.S. 130A-309.90 becomes effective ~~1 January~~ July 1, 2010.
- (2) G.S. 130A-309.91 becomes effective ~~1 January~~ July 1, 2010.
- (3) G.S. 130A-309.92 becomes effective ~~1 January~~ July 1, 2010.
- (4) G.S. 130A-309.93(a) becomes effective ~~1 January~~ July 1, 2010.
- (5) G.S. 130A-309.93(b) becomes effective ~~1 January~~ July 1, 2010.
- (6) G.S. 130A-309.93(c) becomes effective ~~1 January~~ July 1, 2010.
- (7) G.S. 130A-309.93(d) becomes effective ~~1 January~~ July 1, 2010.
- (8) G.S. 130A-309.93(e) becomes effective ~~1 January~~ July 1, 2010.
- (9) G.S. 130A-309.93(f) becomes effective ~~1 January~~ July 1, 2010.
- (10) G.S. 130A-309.93(g) becomes effective ~~1 February~~ February 1, 2011.

- (10a) G.S. 130A-309.93A(a) through (f) become effective ~~1 January~~ July 1, 2010.
- (10b) G.S. 130A-309.93A(g) becomes effective ~~1 October~~ October 1, 2011.
- (10c) G.S. 130A-309.93B becomes effective ~~1 January~~ July 1, 2010.
- (11) G.S. 130A-309.94 becomes effective ~~1 January~~ July 1, 2010.
- (12) G.S. 130A-309.95(1) becomes effective ~~1 January~~ July 1, 2010.
- (13) G.S. 130A-309.95(2) becomes effective ~~1 January~~ July 1, 2010.
- (14) G.S. 130A-309.95(3) becomes effective ~~1 January~~ July 1, 2010.
- (14a) G.S. 130A-309.95(4) becomes effective July 1, 2010.
- (15) G.S. 130A-309.96 becomes effective ~~1 January~~ July 1, 2010.
- (16) G.S. 130A-309.97 becomes effective ~~1 January~~ July 1, 2010.
- (17) G.S. 130A-309.98 becomes effective ~~15 January~~ January 15, 2011.

"SECTION 16.6.(b) Section 16.2 of this act becomes effective ~~1 January~~ July 1, 2010. Sections 16.3 and 16.4 of this act become effective ~~1 January~~ January 1, 2011. Section 16.5 of this act becomes effective ~~1 July~~ July 1, 2010. Subsection (b) of Section 16.1 of this act, Section 16.6 of this act, and any other provision of Section 16 of this act for which an effective date is not specified become effective ~~1 January~~ July 1, 2010."

SECTION 16.(b) Section 8 of S.L. 2008-208 reads as rewritten:

"SECTION 8. Sections ~~3, 4, and 5~~ 3 and 4 of this act become effective ~~1 January~~ January 1, 2011. ~~The remainder of this act becomes effective July 1, 2010. The remainder of this act is effective when it becomes law."~~

PART VI. EFFECTIVE DATE.

SECTION 17. Sections 12, 13, 14, and 15 of this act become effective January 1, 2010. The remaining sections of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 1:35 p.m. this 26th day of August, 2009

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011****SESSION LAW 2011-394
HOUSE BILL 119**

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) EXEMPT CERTAIN NEW RENEWABLE ENERGY FACILITIES FROM BEST AVAILABLE CONTROL TECHNOLOGY (BACT) REQUIREMENTS; (2) REDUCE CERTAIN OPEN BURNING SETBACK REQUIREMENTS AND PROVIDE THAT MINIMAL, UNINTENTIONAL NONCOMPLIANCE WITH AN OPEN BURNING SETBACK IS NOT A VIOLATION; (3) PROVIDE THAT DRAFT EROSION AND SEDIMENTATION CONTROL PLANS FOR THE CONSTRUCTION OF CERTAIN UTILITY LINES MAY BE SUBMITTED WITHOUT A LANDOWNER'S WRITTEN CONSENT; (4) CLARIFY THE PROHIBITION ON DISPOSAL IN LANDFILLS OR BY INCINERATION OF BEVERAGE CONTAINERS THAT ARE REQUIRED TO BE RECYCLED BY CERTAIN ABC PERMITTEES; (5) CLARIFY THE USE OF STATE FUNDS IN THE CONTEXT OF THE REMOVAL OF MERCURY-CONTAINING PRODUCTS FROM PUBLIC BUILDINGS; (6) DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP MODEL STORMWATER CAPTURE AND REUSE PRACTICES; (7) PROHIBIT THE DIVISION OF WATER QUALITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FROM REQUIRING A WATER QUALITY PERMIT FOR A TYPE I SOLID WASTE COMPOST FACILITY; (8) AMEND THE WATER-USE STANDARD FOR PUBLIC MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS TO REQUIRE THE INSTALLATION OF WEATHER-BASED IRRIGATION CONTROLLERS; (9) PROVIDE THAT NO PERMIT IS REQUIRED FOR THE CONSTRUCTION OR ALTERATION OF A SEWER SYSTEM OR TREATMENT WORKS THAT ALREADY HAS A DISCHARGE PERMIT; (10) EXEMPT SMALL DAMS AND AGRICULTURAL POND DAMS FROM THE DAM SAFETY ACT; (11) MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE'S UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES; (12) PROMOTE THE USE OF GRAY WATER; (13) CLARIFY THAT NUTRIENT OFFSET PAYMENTS SHALL REFLECT ACTUAL COSTS AS ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION; (14) DELAY IMPLEMENTATION OF CERTAIN JORDAN LAKE RULE REQUIREMENTS; (15) AUTHORIZE THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO INCORPORATE THE FEDERAL FOOD CODE; (16) ESTABLISH A VARIANCE PROCESS FOR CERTAIN WATER SUPPLY WELL SETBACK REQUIREMENTS; (17) GRANDFATHER CERTAIN DEVELOPMENT UNDER THE NEUSE AND TAR-PAM RIVER BASIN BUFFER REQUIREMENTS; (18) PROVIDE THAT A GINSENG EXPORT CERTIFICATE MAY BE OBTAINED FREE OF CHARGE; (19) PROVIDE FOR AN EARLY SUNSET OF THE METHANE CAPTURE PILOT PROGRAM; (20) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY STORMWATER MANAGEMENT REQUIREMENTS FOR AIRPORTS IN THE STATE; (21) DIRECT CERTAIN TRANSFERS OF FUNDS FOR NONPOINT SOURCE POLLUTION CONTROL PROGRAMS; (22) CONFORM THE STATUTORY DEFINITION OF "SOLID WASTE" TO FEDERAL LAW; AND (23) TO AMEND CERTAIN FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO HAZARDOUS WASTE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.8(g) reads as rewritten:



"(g) Control of Emissions. – As used in this subsection, Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree a reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental, and economic impacts and other costs. A biomass combustion process at any new renewable energy facility that delivers electric power to an electric power supplier shall meet BACT. The Environmental Management Commission shall determine on a case-by-case basis the BACT for a facility that would not otherwise be required to comply with BACT pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The Environmental Management Commission may adopt rules to implement this subsection. In adopting rules, the Environmental Management Commission shall take into account cumulative and secondary impacts associated with the concentration of biomass facilities in close proximity to one another. In adopting rules the Environmental Management Commission shall provide for the manner in which a facility that would not otherwise be required to comply with BACT pursuant to the PSD emissions programs shall meet the BACT requirement. This subsection shall not apply to a facility that qualifies as a new renewable energy facility under sub-subdivision b. of subdivision (5) of subsection (a) of this section."

SECTION 2.(a) Definitions. – The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section and its implementation.

SECTION 2.(b) 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(d) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit) shall implement the rule, as provided in Section 2(c) of this act.

SECTION 2.(c) Implementation. – Notwithstanding sub-subdivision (B) subdivision (2) of subsection (b) of 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit), open burning for land clearing or right-of-way maintenance is permissible without an air quality permit if the location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if either of the following conditions is met:

- (1) A signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning.
- (2) An air curtain burner that complies with 15A NCAC 02D .1904 (Air Curtain Burners), as provided in this section, is utilized at the open burning site.

Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it, the location of the burn, and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is occupied.

SECTION 2.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 2.(e) 15A NCAC 02D .1904 (Air Curtain Burners). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(g) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1904 (Air Curtain Burners) shall implement the rule, as provided in Section 2(f) of this act.

SECTION 2.(f) Implementation. – Notwithstanding subdivision (12) of subsection (b) of 15A NCAC 02D .1904 (Air Curtain Burners), the location of the air curtain burning shall be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

SECTION 2.(g) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1904 (Air Curtain Burners). Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(f) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 2.(h) G.S. 113-60.29 reads as rewritten:

"§ 113-60.29. Penalties.

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. It is not a violation of this Article or any permit issued under the authority of this Article if a person unintentionally fails to comply with a setback requirement so long as the difference between the required setback and the actual setback is no more than five percent (5%) of the required setback. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G.S. 113-60.28."

SECTION 3. G.S. 113A-54.1 reads as rewritten:

"§ 113A-54.1. Approval of erosion control plans.

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. If Except as provided in subsection (a1) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of

the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(a1) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

...."

SECTION 4. G.S. 130A-309.10 reads as rewritten:

"

....

- (f) No person shall knowingly dispose of the following solid wastes in landfills:
- (1) Repealed by Session Laws 1991, c. 375, s. 1.
 - (2) Used oil.
 - (3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
 - (4) White goods.
 - (5) Antifreeze (ethylene glycol).
 - (6) Aluminum cans.
 - (7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
 - (8) Lead-acid batteries, as provided in G.S. 130A-309.70.
 - ~~(9) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
 - (10) Motor vehicle oil filters.
 - (11) Recyclable rigid plastic containers that are required to be labeled as provided in subsection (e) of this section, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor oil or pesticides.
 - (12) Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.
 - (13) Oyster shells.
 - (14) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.
 - (15) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.
- (f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:
- (1) Antifreeze (ethylene glycol) used solely in motor vehicles.
 - (2) Aluminum cans.
 - (3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
 - (4) White goods.
 - (5) Lead-acid batteries, as provided in G.S. 130A-309.70.
 - ~~(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
 - (7) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.
 - (8) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f2) ~~Subsection~~ Subsections (f1) and (f3) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(f3) Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in landfills or by incineration in an incinerator for which a permit is required under this Article.

- (g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
- (h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill shall not be construed as a violation of ~~subsection~~ subsection (f) or (f3) of this section.
- (i) The accidental or occasional disposal of small amounts of prohibited solid waste by incineration shall not be construed as a violation of ~~subsection~~ subsection (f1) or (f3) of this section if the Department has approved a plan for the incinerator as provided in subsection (j) of this section or if the incinerator is exempt from subsection (j) of this section.
- (j) The Department may issue a permit pursuant to this Article for an incinerator that is subject to subsection (f1) of this section only if the applicant for the permit has a plan approved by the Department pursuant to this subsection. The applicant shall file the plan at the time of the application for the permit. The Department shall approve a plan only if it complies with the requirements of this subsection. The plan shall provide for the implementation of a program to prevent the incineration of the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. The program shall include the random visual inspection prior to incineration of at least ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the retention of the records of the random visual inspections and the training of personnel to recognize the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. If a random visual inspection discovers solid waste that may not be incinerated pursuant to ~~subsection~~ subsections (f1) and (f3) of this section, the program shall provide that the operator of the incinerator shall dispose of the solid waste in accordance with applicable federal and State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes only of medical waste.
- (k) A county or city may petition the Department for a waiver from the prohibition on disposal of a material described in subdivisions (9), (10), (11) and (12) of subsection (f) of this section and subsection (f3) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship.
- (l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the landfill.
- (m) **(Effective July 1, 2011)** No person shall knowingly dispose of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris waste that is unlined or in any other landfill that is unlined."

SECTION 5. G.S. 130A-310.60 reads as rewritten:

"§ 130A-310.60. (Effective July 1, 2011) Recycling required by public agencies.

(a) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, public schools, and political subdivisions using State funds for the construction or operation of public buildings shall establish a program in cooperation with the Department of Environment and Natural Resources and the Department of Administration for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury generated in public buildings owned by each respective entity. The program shall include procedures for convenient collection, safe storage, and proper recycling of spent fluorescent lights and thermostats that contain mercury and contractual or other arrangements with buyers of the recyclable materials.

(b) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, the Department of Public Instruction on behalf of the public schools, and political subdivisions shall submit a report on or before December 1, 2011, that documents the entity's compliance with the requirements of subsection (a) of this section to the Department of Environment and Natural Resources and the Department of Administration. The Departments shall compile the information submitted and jointly shall submit a report to the Environmental Review Commission on or before January 15, 2012, concerning the activities required by subsection (a) of this section. The information provided shall also be included in the report required by G.S. 130A-309.06(c).

(c) For purposes of this section, a political subdivision is using State funds when it receives grant funding from the State for the construction or operation of a public building."

SECTION 6. G.S. 143-214.7 reads as rewritten:

"§ 143-214.7. Stormwater runoff rules and programs.

(a) Policy, Purpose and Intent. – The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

- (1) Classified shellfish waters.
- (2) Water supply watersheds.
- (3) Outstanding resource waters.
- (4) High quality waters.
- (5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(b1) The Commission shall develop model practices for incorporation of stormwater capture and reuse into stormwater management programs and shall make information on those model practices available to State agencies and local governments.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(c1) Any land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall be enforced by any owner of the land on which the best management practice or project is located, any adjacent property owners, any downstream property owners who would be injured by failure to enforce the land-use restriction, any local government having jurisdiction over any part of the land on which the best management practice or project is located, or the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action, without first having exhausted any available administrative remedies. A land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(d1) A retail merchant shall not use more than 400 square feet of impervious surface area within the portion of the merchant's premises that is designed to be used for vehicular parking for the display and sale of nursery stock, as that term is defined by the Board of Agriculture pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

- (1) Collects and treats stormwater on-site using a treatment system that is designed to remove at least eighty-five percent (85%) of total suspended solids. For purposes of this subdivision, a treatment system includes, but is not limited to, a filtration system or a detention system.
- (2) Collects and stores stormwater for reuse on-site for irrigation or other purposes.
- (3) Collects and discharges stormwater to a local or regional stormwater collection and treatment system.

(d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year."

SECTION 7. G.S. 143-214.7A(b) reads as rewritten:

"(b) The Division of Water Quality shall clarify that stormwater is water that does not contact anything considered a feedstock, intermediate product, or final product of composting operations. The Division of Water Quality shall clarify that wastewater is leachate and water that contacts feedstocks, intermediate products, or final product, of composting operations. The clarifications shall incorporate available scientifically valid information obtained from sampling and analyses of North Carolina composting facilities and from valid representative data from other states. In addition, the Division of Water Quality shall establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required. The Division of Water Quality shall not require water quality permitting for any Type I solid waste compost facility, unless required to do so by federal law."

SECTION 8.(a) G.S. 143-135.36 is amended by adding a new subdivision to read:

"§ 143-135.36. Definitions.

As used in this section, the following definitions apply unless the context requires otherwise:

- (1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.
- (2) "Commission" means to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements.
- (3) "Department" means the Department of Administration.
- (4) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.
- (5) "Major facility construction project" means a project to construct a building larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code adopted under Article 9 of Chapter 143 of the General Statutes. "Major facility construction project" does not include a project to construct a transmitter building or a pumping station.
- (6) "Major facility renovation project" means a project to renovate a building when the cost of the project is greater than fifty percent (50%) of the insurance value of the building prior to the renovation and the renovated portion of the building is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code. "Major facility renovation project" does not include a project to renovate a transmitter building or a pumping station. "Major facility renovation project" does not include a project to renovate a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes.

- (7) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education.
- (8) "Weather-based irrigation controller" means an irrigation control device that utilizes local weather and landscape conditions to tailor irrigation system schedules to irrigation needs specific to site conditions."

SECTION 8.(b) G.S. 143-135.37 reads as rewritten:

"§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.

(a) Program Established. – The Sustainable Energy-Efficient Buildings Program is established within the Department to be administered by the Department. This program applies to any major facility construction or renovation project of a public agency that is funded in whole or in part from an appropriation in the State capital budget or through a financing contract as defined in G.S. 142-82.

(b) Energy-Efficiency Standard. – For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least thirty percent (30%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least twenty percent (20%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Indoor Potable Water Use Standard. – For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code.

(c1) Outdoor Potable Water Use Standard. – For every major facility construction project of a public agency, the water system shall be designed and constructed so that the calculated sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for the same building as calculated using the performance requirements related to plumbing under the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be used for irrigation systems for major facility construction projects. For every major facility renovation project of a public agency, the Department shall determine on a project-by-project basis what reduced level of outdoor potable water use or harvested stormwater use, if any, is a feasible requirement for the ~~project, project, but the~~ The Department shall not require a greater reduction than is required under this subsection for a major facility construction project. To reduce the potable outdoor water as required under this subsection, weather-based irrigation controllers, landscape materials that are water use efficient-efficient, and irrigation strategies that include reuse and recycling of the water may be used."

SECTION 9. G.S. 143-215.1 reads as rewritten:

"§ 143-215.1. Control of sources of water pollution; permits required.

(a) Activities for Which Permits Required. – ~~No-Except as provided in subsection (a5) of this section, no person shall do any of the following things or carry out any of the following activities unless that person has received a permit from the Commission and has complied with all conditions set forth in the permit:~~

- (1) Make any outlets into the waters of the State.
- (2) Construct or operate any sewer system, treatment works, or disposal system within the State.
- (3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State.
- (4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent that would result in any violation of the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters to the extent of violating any applicable standard.

- (5) Change the nature of the waste discharged through any disposal system in any way that would exceed the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters in relation to any applicable standards.
- (6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article.
- (7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in that facility.
- (8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facility.
- (9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto.
- (10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.
- (11) Cause or permit discharges regulated under G.S. 143-214.7 that result in water pollution.
- (12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article.

(a1) In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

(a2) No permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency that administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that any outlet for the disposal of waste is, or would be, sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

(a3) If the Commission denies an application for a permit, the Commission shall state in writing the reason for the denial and shall also state the Commission's estimate of the changes in the applicant's proposed activities or plans that would be required in order that the applicant may obtain a permit.

(a4) The Department shall regulate wastewater systems under rules adopted by the Commission for Public Health pursuant to Article 11 of Chapter 130A of the General Statutes except as otherwise provided in this subsection. No permit shall be required under this section for a wastewater system regulated under Article 11 of Chapter 130A of the General Statutes. The following wastewater systems shall be regulated by the Department under rules adopted by the Commission:

- (1) Wastewater systems designed to discharge effluent to the land surface or surface waters.
- (2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.
- (3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(a5) No permit shall be required to enter into a contract for the construction, installation, or alteration of any treatment works or disposal system or to construct, install, or alter any treatment works or disposal system within the State when the system's or work's principle function is to conduct, treat, equalize, neutralize, stabilize, recycle, or dispose of industrial waste or sewage from an industrial facility and the discharge of the industrial waste or sewage is authorized under a permit issued for the discharge of the industrial waste or sewage into the waters of the State. Notwithstanding the above, the permit issued for the discharge may be modified if required by federal regulation.

...."

SECTION 10.(a) G.S. 143-215.25A(a) reads as rewritten:

"(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

- (1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.
- (2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.
- (3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.
- (4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.
- (5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.
- (6) That is less than ~~15-25~~ feet in height or that has an impoundment capacity of less than ~~10-50~~ acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.
- (7) Constructed for the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer under Chapter 89C of the General Statutes designed or approved plans for the dam, supervised its construction, and registered the dam with the Division of Land Resources of the Department. This exemption shall not apply to dams that are determined to be high-hazard by the Department."

SECTION 10.(b) The exemption modified in subdivision (6) of G.S. 143-215.25A(a) and the exemption established in subdivision (7) of G.S. 143-215.25A(a), as amended by Section 10(a) of this act, shall apply retroactively to any dam that is subject to any enforcement action that has not been resolved as of June 1, 2011.

SECTION 10.(c) If Sections 10(a) and 10(b) of this act become law, and Senate Bill 492, 2011 Regular Session, becomes law, then Section 4 of Senate Bill 492 is repealed.

SECTION 11.1. G.S. 143-215.94B(b) reads as rewritten:

"(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars (\$1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

- (8) The costs of a site investigation required by the Department for the purpose of determining whether a release from a tank system has occurred, whether or not the investigation confirms that a release has occurred. This subdivision shall not be construed to allow reimbursement for costs of investigations that are part of routine leak detection procedures required by statute or rule."

SECTION 11.2. G.S. 143-215.94B(b1) reads as rewritten:

"(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate

maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

- (1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars (\$75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.
- (2) The multiple discharge amount shall be the lesser of:
 - a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or
 - b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1½).
- (3) If an owner or operator elects to cleanup a separate discharge or release for which the owner or operator is not responsible, the responsible party for the other discharge cannot be identified, and the discharges are commingled, the owner or operator shall only be responsible for those costs applicable to the discharge for which the owner or operator is actually the responsible party."

SECTION 11.3.(a) G.S. 143-215.94B is amended by adding a new subsection to

read:

"(i) During each fiscal year, the Department shall use up to one million dollars (\$1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. Any portion of the \$1,000,000 designated each fiscal year, which is not used during that fiscal year to address situations of severe financial hardship, shall revert to the Commercial Fund for the uses otherwise provided by this section. The Commission shall adopt rules to define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and establish a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The Commission shall create a subcommittee of the Commission's Committee on Civil Penalty Remissions as established by G.S. 143B-282.1 to render determinations of eligibility under this subsection."

SECTION 11.3.(b) G.S. 143-215.94D is amended by adding a new subsection to

read:

"(h) During each fiscal year, the Department shall use up to one hundred thousand (\$100,000) of the funds in the Noncommercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. Any portion of the \$100,000 designated each fiscal year, which is not used during that fiscal year to address situations of severe financial hardship, shall revert to the Noncommercial Fund for the uses otherwise provided by this section. The Commission shall adopt rules to define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and establish a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The Commission shall create a subcommittee of the Commission's Committee on Civil Penalty Remissions as established by G.S. 143B-282.1 to render determinations of eligibility under this subsection."

SECTION 11.3.(c) G.S. 143-215.94C reads as rewritten:

"§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.

...
 (b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on

or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. ~~The Except as provided in this subsection, the annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. The fee for all commercial underground storage tanks located at the same facility shall be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.~~

...."

SECTION 11.4. G.S. 143-215.94T reads as rewritten:

"§ 143-215.94T. Adoption and implementation of regulatory program.

...
 (c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date. This section shall not be construed to limit the right of an owner or operator to repair any existing component of an underground storage tank system. If an existing underground storage tank is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced piping.

(d) The Department shall allow non-tank metallic components that are unprotected from corrosion, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these components if the component does not have visible corrosion and passes a tightness test."

SECTION 11.5. G.S. 143-215.94V(b) reads as rewritten:

"(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk."

SECTION 11.6.(a) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed

after January 1, 1991, shall not be required to provide secondary containment until January 1, 2020.

SECTION 11.6.(b) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), the Commission shall establish a process for the grant of variances from the setbacks required for UST systems from certain public water supply wells, particularly those that serve only a single facility which are not community water systems, if the Commission finds facts to demonstrate that such variance will not endanger human health and welfare or groundwater.

SECTION 11.6.(c) No later than January 1, 2014, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 11.6(a) and Section 11.6(b) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 11.6(a) and Section 11.6(b) of this act.

SECTION 11.7.(a) Notwithstanding subsection (a) of 15A NCAC 02N .0903 (Underground Storage Tanks: Tanks), from the effective date of this act the Department of Environment and Natural Resources shall not prohibit the use of tanks that are constructed of steel and cathodically protected as provided in 40 Code of Federal Regulations § 280.20(a)(2) (July 1, 2010 Edition) in order to meet the external corrosion protection standards of that rule.

SECTION 11.7.(b) No later than January 1, 2014, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 11.7(a) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 11.7(a) of this act.

SECTION 11.8. Sections 11.1 through 11.8 are effective when they become law and apply to discharges or releases reported on or after that date, except that Section 11.2 applies to discharges or releases reported on or after January 1, 2009.

SECTION 12.(a) G.S. 143-350 reads as rewritten:

"§ 143-350. **Definitions.**

As used in this Article:

- ...
- (3a) "Gray water" means water that is discharged as waste from bathtubs, showers, wash basins, and clothes washers. "Gray water" does not include water that is discharged from toilets or kitchen sinks.
- (3b) "Gray water system" means a water reuse system that is contained within a single family residence or multiunit residential or commercial building that filters gray water or captured rain water and reuses it for nonpotable purposes such as toilet flushing and irrigation.
-"

SECTION 12.(b) G.S. 143-355.5 reads as rewritten:

"§ 143-355.5. **Water reuse; policy; rule making.**

(a) **Water Reuse Policy.** – It is the public policy of the State that the reuse of treated wastewater or reclaimed water and the use of gray water or captured rain water is critical to meeting the existing and future water supply needs of the State. The General Assembly finds that reclaimed water systems permitted and operated under G.S. 143-215.1(d2) in an approved wastewater reuse program can provide water for many beneficial purposes in a way that is both environmentally acceptable and protective of public health. This finding includes and applies to conjunctive facilities that require the relocation of a discharge from one receiving stream to another under all of the following conditions:

- (1) The relocation is necessary to create an approved comprehensive wastewater reuse program.
- (2) The reuse program provides significant reuse benefits.
- (3) The relocated discharge will comply with all applicable water quality standards; will not result in degradation of water quality in the receiving waters; will not contribute to water quality impairment in the receiving watershed; and will result in net benefits to water quality, such as the elimination of a wastewater discharge in a nutrient sensitive river basin.

(b) **Water Reuse Rule Making.** – The Commission shall encourage and promote safe and beneficial reuse of treated wastewater as an alternative to surface water discharge. The Commission shall adopt rules to:

- (1) Identify acceptable uses of reclaimed water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.
- (2) Facilitate the permitting of reclaimed water systems.
- (3) Establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water.

(c) Gray Water Rule Making. – The Commission shall encourage and promote the safe and beneficial use of gray water. The Commission shall adopt rules to:

- (1) Identify acceptable uses of gray water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.
- (2) Facilitate the permitting of gray water systems.
- (3) Establish standards, in coordination with the Commission for Public Health, for gray water systems that protect public health and safety and the environment and reduce the use of potable water within individual structures.

(d) The Department shall develop policies and procedures to promote the voluntary adoption and installation of gray water systems."

SECTION 12.(c) G.S. 130A-335(b) reads as rewritten:

"(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

- (1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.
- (2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.
- (3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.
- (4) Gray water systems as defined in G.S. 143-350."

SECTION 12.(d) Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-145. Limitations on regulating cisterns and rain barrels.

No county ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collect water for irrigation purposes. A county may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance."

SECTION 12.(e) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-202. Limitations on regulating cisterns and rain barrels.

No city ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collect water for irrigation purposes. A city may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance."

SECTION 13. Section 5 of S.L. 2007-438, as amended by Section 3(b) of S.L. 2009-484 and Section 19 of S.L. 2010-180, reads as rewritten:

"**SECTION 5.** This act becomes effective 1 September 2007 and applies to all nutrient offset payments, including those set out in 15A NCAC 2B .0240, as adopted by the Environmental Management Commission on 12 January 2006. The fee schedule set out in Section 1 of this act expires ~~1 September 2011~~, when amendments to 15A NCAC 02B .0240 and .0274 become effective."

SECTION 14. Section 2(b) of S.L. 2009-216 reads as rewritten:

"**SECTION 2.(b)** Implementation. – Notwithstanding sub-subdivision (c) of subdivision (6) of Wastewater Discharge Rule 15A NCAC 02B .0270, each existing discharger with a permitted flow greater than or equal to 0.1 million gallons per day (MGD) shall limit its total nitrogen discharge to its active individual discharge allocation as defined or modified pursuant to Wastewater Discharge Rule 15A NCAC 02B .0270 no later than calendar year ~~2016~~2016, unless the discharger has received an authorization pursuant to G.S. 143-215.1 for construction, installation, or alteration of the treatment works for purposes of complying with the allocation

under Wastewater Discharge Rule 15A NCAC 02B .0270 by December 31, 2016, at which point the compliance date shall be no later than calendar year 2018."

SECTION 15.(a) Notwithstanding G.S. 150B-19, as amended by S.L. 2011-13, the Commission for Public Health may adopt rules to incorporate all or part of the United States Food and Drug Administration Food Code 2009 and to require that employees of establishments regulated under subsections (a) and (a2) of G.S. 130A-248 be certified in food protection in accordance with the United States Food and Drug Administration Food Code 2009.

SECTION 15.(b) G.S. 130A-248 is amended by adding a new subsection to read:

"(a5) The Department of Health and Human Services may grant a variance from rules adopted pursuant to this section in accordance with the United States Food and Drug Administration Food Code 2009 if the Department determines that the issuance of the variance will not result in a health hazard or nuisance condition."

SECTION 16.1. Variance from Setbacks for Public Water Supply Wells. –

(a) The Department of Environment and Natural Resources may grant a variance from the minimum horizontal separation distances for public water supply wells set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) upon finding that:

- (1) The well supplies water to a noncommunity water system as defined in G.S. 130A-313(10)(b) or supplies water to a business or institution, such as a school, that has become a noncommunity water system through an increase in the number of people served by the well.
- (2) It is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the applicable sub-subpart of 15A NCAC 18C .0203(2).
- (3) There is no reasonable alternative source of drinking water available to the public water supply system.
- (4) The granting of the variance will not result in an unreasonable risk to public health.

(b) A variance from the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) shall require that the noncommunity public water supply well meet the following requirements:

- (1) The well shall comply with the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) to the maximum extent practicable.
- (2) The well shall meet a minimum horizontal separation distance of 25 feet from a building, mobile home, or other permanent structure that is not used primarily to house animals.
- (3) The well shall meet a minimum horizontal separation distance of 100 feet from any animal house or feedlot and from cultivated areas to which chemicals are applied.
- (4) The well shall meet a minimum horizontal separation distance of 50 feet from surface water.
- (5) The well shall comply with all other requirements for public well water supplies set out in 15A NCAC 18C .0203.

SECTION 16.2. Rule Making. – The Commission for Public Health shall adopt rules that are substantively identical to the provisions of Section 16.1. The Commission may reorganize or renumber any of the rules to which this section applies at its discretion. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 16.3. Effective Date. – Section 16.1 of this act expires when permanent rules to replace Section 16.1 have become effective as provided by Section 16.2 of this act.

SECTION 17.(a) Definitions. – The following definitions apply to this act and its implementation:

- (1) The definitions set out in G.S. 113A-103 and G.S. 143-212.
- (2) The definitions set out in the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule.
- (3) "Coastal wetlands" means marshland as defined in G.S. 113-229.

- (4) "Commission" means the Environmental Management Commission.
- (5) "Existing lot" means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to August 1, 2000.
- (6) "Neuse River Basin Riparian Buffer Rule" means 15A NCAC 02B .0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers), effective August 1, 2000.
- (7) "Tar-Pamlico River Basin Riparian Buffer Rule" means 15A NCAC 02B .0259 (Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers), effective August 1, 2000.

SECTION 17.(b) Neuse River Basin Riparian Buffer Rule and Tar-Pamlico River Basin Riparian Buffer Rule. – Until the effective date of the revised permanent rules that the Commission is required to adopt pursuant to Section 17.(d) of this act, the Commission and the Department shall implement the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule, as provided in Section 17.(c) of this act.

SECTION 17.(c) Implementation. – The riparian buffer requirements of the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule shall apply to development of an existing lot located adjacent to surface waters in the coastal area as provided in this section. Where application of the riparian buffer requirements would preclude construction of a single-family residence and necessary infrastructure, such as an on-site wastewater system, the single-family residence may encroach on the buffer if all of the following conditions are met:

- (1) The residence is set back the maximum feasible distance from the normal high-water level or normal water level, whichever is applicable, on the existing lot and designed to minimize encroachment into the riparian buffer.
- (2) The residence is set back a minimum of 30 feet landward of the normal high-water level or normal water level, whichever is applicable.
- (3) Stormwater generated by new impervious surface within the riparian buffer is treated and diffuse flow of stormwater is maintained through the buffer.
- (4) If the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer.

SECTION 17.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 17.(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 17.(e) The Department of Environment and Natural resources shall study the application and implementation of the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule. The Department shall specifically consider: (i) whether the rules might be amended or implemented in a different way to achieve the same level of water quality protection while reducing the impact to riparian property owners in the river basins; and (ii) exempting all single family residence lots platted prior to August 1, 2000. In conducting this study, the Department shall consult with representatives of the development community, the agricultural community, the forestry industry, the environmental community, local governments, property owners, and other interested parties. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

SECTION 18.(a) Definitions. – The definitions set out in G.S. 106-202.12 and 02 NCAC 48F .0305 (Collection and Sale of Ginseng Rule) apply to this section and its implementation.

SECTION 18.(b) Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. – Until the effective date of the revised permanent rule that the Board is required to adopt pursuant to Section 18(d) of this act, the Board and the Department shall implement Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, as provided in Section 18(c) of this act.

SECTION 18.(c) Implementation. – Notwithstanding subdivision (6) of subsection (d) of Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, there shall be no charge for an export certification.

SECTION 18.(d) Additional Rule-Making Authority. – The Board shall adopt a rule to replace Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. Notwithstanding G.S. 150B-19(4), the rule adopted by the Board pursuant to this section shall be substantively identical to the provisions of Section 18(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 19. Section 6 of S.L. 2007-523 reads as rewritten:

"**SECTION 6.** Effective Dates. – Section 3 of this act becomes effective 1 July 2007. All other sections of this act become effective 1 September 2007. Section 4 of this act expires 1 September ~~2017,2011.~~"

SECTION 20. The Department of Environment and Natural Resources shall study the stormwater management requirements for airports in the State. The Department shall specifically consider whether the requirements might be amended or implemented in a different way to achieve the same level of water quality protection while reducing the cost and other regulatory burdens associated with compliance with the requirements. In conducting this study, the Department shall consult with representatives of the airports in the State. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

SECTION 21. In order to ensure the ongoing delivery of services by the nonpoint source pollution control programs of the Division of Forest Resources and the Division of Soil and Water Conservation, the Division of Water Quality in the Department of Environment and Natural Resources shall transfer Clean Water Act (CWA) Section 319 Nonpoint Source Management Program Base Grant funds to the Division of Forest Resources and Division of Soil and Water Conservation, where consistent with the federal grant program requirements, in an amount that is no less than the average annual amount of funding received by each of those two Divisions over the two most-recent fiscal bienniums. In the event that the level of Section 319 base grant funds received by the Department of Environment and Natural Resources by the United States Environmental Protection Agency is increased or decreased in any funding cycle, the level of funding received by the Division of Forest Resources and the Division of Soil and Water Conservation shall be adjusted proportionally. Section 319 Nonpoint Source Management Program Competitive Grant funds shall consider water quality benefit and be distributed in a fair and equitable manner based on the grant requirements and the benefit. The Division of Water Quality will establish a Workgroup of Nonpoint Source Agencies, including the Division of Forest Resources and the Division of Soil and Water Conservation, which will consider the competitive grant project proposals. The Workgroup will be given full input to the project funding decisions.

SECTION 22. If House Bill 750, 2011 Regular Session, becomes law, then G.S. 130A-55(7), as amended by Section 2 of that act, reads as rewritten:

"§ **130A-55. Corporate powers.**

A sanitary district board shall be a body politic and corporate and may sue and be sued in matters relating to the sanitary district. Notwithstanding any limitation in the petition under G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary district board shall have the following powers:

- ...
- (7) To adopt rules necessary for the proper functioning of the district. However, these rules shall not conflict with rules adopted by the Commission for Public Health, Environmental Management Commission, or the local board of health having jurisdiction over the area. Further, such sanitary district board rules shall be no more restrictive than or conflict with requirements or ordinances of any county having jurisdiction over the area, and, if a conflict should arise, the requirements or ordinances of the county having jurisdiction over the area shall control.

...."

SECTION 23.(a) G.S. 130A-295.04 reads as rewritten:

"§ 130A-295.04. Financial responsibility requirements for applicants for a permit and permit holders for hazardous waste facilities.

(a) In addition to any other financial responsibility requirements for solid waste management facilities under this Part, the applicant for a permit or a permit holder for a hazardous waste facility shall establish financial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident at a facility, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b) To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a hazardous waste facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.

(c) The applicant for a permit or a permit holder for a hazardous waste facility, and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or indirect interest in the applicant, permit holder, or parent, shall be a guarantor of payment for closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences arising from the operation of the hazardous waste facility.

~~(d) In addition to any other financial assurance requirements for hazardous waste management facilities under this section, an applicant for a permit or a permit holder for a commercial hazardous waste facility shall establish financial assurance that will ensure that sufficient funds are available for corrective action and for off-site screening for potential migration of contaminants in the event of a release of hazardous waste or hazardous waste constituents into the environment in an amount approved by the Department. The applicant for a permit or a permit holder may not use a financial test or captive insurance to establish financial assurance under this subsection.~~

~~(e) The Department may require an applicant for a permit for a hazardous waste facility to provide cost estimates for facility closure, post-closure maintenance and monitoring, and any corrective action that the Department may require to the Department. The Department may require an applicant for a permit for a commercial hazardous waste facility to provide cost estimates for off-site screening for potential migration of contaminants in the event of a release of hazardous waste or hazardous waste constituents into the environment.~~

(f) Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department. Compliance with the financial assurance requirements set forth in Subpart H of Part 264 of 40 Code of Federal Regulations (July 1, 2010 edition) shall be sufficient to meet the requirements of this subsection.

(g) The Department may provide a copy of any filing that an applicant for a permit or a permit holder for a hazardous waste facility submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(h) In order to continue to hold a permit for a hazardous waste facility, a permit holder must maintain financial responsibility as required by this Part and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility.

(i) An applicant for a permit or a permit holder for a hazardous waste facility shall satisfy the Department that the applicant or permit holder has met the financial responsibility requirements of this Part before the Department is required to otherwise review the application.

(j) ~~The Commission may adopt rules regarding financial responsibility in order to implement this section."~~

SECTION 23.(b) The Commission shall adopt rules regarding financial responsibility in order to implement Section 23.(a) of this act. Such rules, however, shall not exceed or be more stringent than requirements for financial responsibility for applicants for a permit and permit holders for hazardous waste facilities provided by federal regulation or law.

SECTION 24. Except as otherwise provided, this act is effective when it becomes law. Section 8(b) of this act applies to every major facility construction project, as defined in G.S. 143-135.36, and every major facility renovation project, as defined in G.S. 143-135.36, of a public agency, as defined in G.S. 143-135.36, that has not entered the schematic design phase prior to the effective date of this act.

In the General Assembly read three times and ratified this the 18th day of June, 2011.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 20th day of June, 2011 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 1st day of July, 2011.

s/ Karen Jenkins
Enrolling Clerk

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2012-187
SENATE BILL 810**

AN ACT TO (1) REESTABLISH THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE; (1A) MODIFY APPOINTMENTS TO THE MINING AND ENERGY COMMISSION; (2A) MAKE VARIOUS TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURES ACT; (2B) MAKE CONFORMING CHANGES TO THE STATE PERSONNEL ACT; (3) EXTEND THE EFFECTIVE DATE FOR CHANGES TO FINAL DECISION-MAKING AUTHORITY IN CERTAIN CONTESTED CASES; (4) LIMIT THE PERIOD DURING WHICH RECORDS OF UNCLAIMED PROPERTY MUST BE MAINTAINED; (5A) DIRECT AGENCIES TO SUBMIT A REPORT ON NOTICE GIVEN BEFORE AUDITING OR EXAMINING A BUSINESS TO THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE; (5B) LIMIT STATE AGENCY IDENTITY THEFT REPORTING REQUIREMENTS; (5C) REQUIRE THE DEPARTMENT OF LABOR TO PROVIDE NOTICE PRIOR TO INSPECTIONS; (6) CLARIFY THAT THE DISCHARGE OF WASTE INTO WATERS OF THE STATE DOES NOT INCLUDE THE RELEASE OF AIR CONTAMINANTS INTO THE OUTDOOR ATMOSPHERE; (7) AUTHORIZE RATHER THAN REQUIRE THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES FOR THE TESTING OF WATER FROM NEW DRINKING WATER WELLS FOR CERTAIN VOLATILE ORGANIC COMPOUNDS; (7A) CLARIFY APPLICATION OF CERTAIN NUTRIENT RULES TO SMALL WASTEWATER DISCHARGES; (8) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO TRACK AND REPORT ON PERMIT PROCESSING TIMES; (9) DELAY THE EFFECTIVE DATE FOR COMPLIANCE WITH WADING POOL FENCING REQUIREMENTS FROM JULY 1, 2012, TO JANUARY 1, 2013; (10) DIRECT THE COMMISSION FOR PUBLIC HEALTH TO AMEND THE RULES GOVERNING THE DURATION OF PERMITS FOR SANITARY LANDFILLS AND THE PERIOD IN WHICH THOSE PERMITS ARE REVIEWED; (11) AMEND THE CRITERIA FOR DESIGNATION AS A PORT ENHANCEMENT ZONE; (12) EXEMPT CERTIFIED ROADSIDE FARM MARKETS FROM CERTAIN BUILDING CODE REQUIREMENTS; AND (13) ALLOW THE PERMITTING OF MOBILE FOOD UNITS THAT MEET THE SANITATION REQUIREMENTS OF A COMMISSARY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.3 of S.L. 2011-291 is repealed.

SECTION 1.1. If Senate Bill 820 becomes law, then, effective August 1, 2012, G.S. 143B-293.2(a), as enacted by Section 1(b) of Senate Bill 820, reads as rewritten:

"(a) Members Selection. – The North Carolina Mining and Energy Commission shall consist of 15 members appointed as follows:

- (1) The Chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, or the Chair's designee, ex officio.
- (2) The State Geologist, or the State Geologist's designee, ex officio.
- (3) The Assistant Secretary of Energy for the Department of Commerce, ex officio.
- (4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of a nongovernmental conservation interest.



- (5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is an elected official of a municipal government located in the Triassic Basin of North Carolina.
- (6) ~~One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.~~ One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of the mining industry.
- (7) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a geologist with experience in oil and gas exploration and development.
- (8) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a nongovernmental conservation interest.
- (9) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a county board of commissioners of a county located in the Triassic Basin of North Carolina.
- (10) ~~One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of the Commission for Public Health and knowledgeable in the principles of waste management.~~ One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of the mining industry.
- (11) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be an engineer with experience in oil and gas exploration and development.
- (12) One appointed by the Governor who shall be a representative of a publicly traded natural gas company.
- (13) One appointed by the Governor who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.
- (14) ~~One appointed by the Governor who is a representative of the mining industry.~~ One appointed by the Governor who is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.
- (15) ~~One appointed by the Governor who is a representative of the mining industry.~~ One appointed by the Governor who is a member of the Commission for Public Health and knowledgeable in the principles of waste management."

SECTION 2. G.S. 150B-18 reads as rewritten:

"§ 150B-18. Scope and effect.

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other ~~nonbinding~~ interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other ~~nonbinding~~ interpretive statement has not been adopted as a rule in accordance with this Article."

SECTION 3. G.S. 150B-19.1 reads as rewritten:

"§ 150B-19.1. Requirements for agencies in the rule-making process.

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.

- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its ~~Web site when the agency submits the notice of text for publication in accordance with G.S. 150B-21.2~~ Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.
- (3) The federal certification required by subsection (g) of this section.
- (4) Instructions on how and where to submit oral or written comments on the proposed rule.
- (5) Any fiscal note that has been prepared for the proposed rule.

~~The agency shall maintain the information in a searchable database and shall periodically update this online information to reflect changes in the proposed rule or the fiscal note prior to adoption. If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.~~

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule ~~with the rule-making body, and the rule-making body must~~ approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

- (1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
- (2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
- (3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Before an agency that is within the Governor's cabinet submits the proposed text of a permanent rule change for publication in the North Carolina Register, the agency must submit the text of the proposed rule change and an analysis of the proposed rule change to the Office

of State Budget and Management and obtain a certification from the Office that the agency adhered to the principles set forth in this section. Before an agency that is within the departments of the Council of State, other than the Governor, submits the proposed text of a permanent rule change for publication in the North Carolina Register, the agency must submit the text of the proposed rule change and an analysis of the proposed rule change to the Commission and obtain a certification from the Commission, or the Commission's designee, as described in G.S. 150B-21.1(b), that the agency adhered to the principles set forth in this section. The Office of State Budget and Management or the Commission, respectively, must respond to an agency's request for certification within 20 business days of receipt of the request."

SECTION 4. G.S. 150B-21.4(a) reads as rewritten:

"(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office of State Budget and Management and obtain certification from the Office that the funds that would be required by the proposed rule change are available. ~~The Office must also determine and certify that the agency adhered to the principles set forth in G.S. 150B-19.1.~~ The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change."

SECTION 5. G.S. 150B-23.2(b) reads as rewritten:

"(b) Time of Collection. – All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected by the Office of Administrative Hearings at the time of commencement of the contested case ~~(except in suits in forma pauperis)~~ except as may be allowed by rule to permit or complete late payment or in suits in forma pauperis."

SECTION 6. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a ~~party or a representative of the party~~ party, an attorney representing a party, or other representative of the party as may specifically be authorized by law, and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article."

SECTION 7.1. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a

contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a ~~decision, by the agency in making a final decision,~~decision or by the court on judicial review."

SECTION 7.2. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

- ...
- (11) Order the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved in contested cases decided under this Article where the administrative law judge finds that the State agency named as respondent has substantially prejudiced the petitioner's rights and has acted arbitrarily or capriciously or under Chapter 126 where the administrative law judge finds discrimination, harassment, or orders reinstatement or back pay.

....
SECTION 7.3. Section 55.2 of S.L. 2011-398 reads as rewritten:

"SECTION 55.2. If necessary to effectuate the purposes of this act, Thethe Office of Administrative Hearings shall seek United States Environmental Protection Agency approval to become an agency responsible for administering programs under the federal Clean Water Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. On or before December 31, 2011, the Office of Administrative Hearings and the Department of Environment and Natural Resources shall jointly develop and submit any Memoranda of Agreement, delineations of programmatic responsibility, procedure for coordination, and other information that United States Environmental Protection Agency may require in order to effectuate ~~the~~any necessary approval process."

SECTION 8.1. Section 63 of S.L. 2011-398 reads as rewritten:

"SECTION 63. Sections 2 through 14 of this act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective January 1, 2012, and apply to contested cases commenced on or after that date. With regard to contested cases affected by Section 55.2 of this act, the provisions of Sections 15 through 27 of this act become effective when the United States Environmental Protection Agency approvals referenced in Section 55.2 have been issued or ~~June 15, 2012,~~October 1, 2012, whichever occurs first. With regard to contested cases affected by Section 55.1 of this act, the provisions of Sections 15 through 27 and Sections 32 and 33 of this act become effective when the waiver referenced in Section 55.1 has been granted or February 1, 2013, whichever occurs first. Unless otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes law."

SECTION 8.2. G.S. 126-34 reads as rewritten:

"§ 126-34. Grievance appeal for career State employees.

Unless otherwise provided in this Chapter, any career State employee having a grievance arising out of or due to the employee's employment and who does not allege unlawful harassment or discrimination because of the employee's age, sex, race, color, national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or political affiliation shall first discuss the problem or grievance with the employee's supervisor and follow the grievance procedure established by the employee's department or agency. Any State employee having a grievance arising out of or due to the employee's employment who alleges unlawful harassment because of the employee's age, sex, race, color, national origin, religion, creed, or handicapping condition as defined by G.S. 168A-3 shall submit a written complaint to the employee's department or agency. The department or agency shall have 60 days within which to take appropriate remedial action. If the employee is not satisfied with the department or agency's response to the complaint, the employee shall have the right to appeal directly to the ~~State Personnel Commission~~Office of Administrative Hearings."

SECTION 8.3. G.S. 126-34.1(e) reads as rewritten:

"(e) Any issue for which appeal to the ~~State Personnel Commission~~Office of Administrative Hearings through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126."

SECTION 8.4. G.S. 126-35(a) reads as rewritten:

"(a) No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the ~~State Personnel Commission~~Office of Administrative Hearings. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision. The State Personnel Commission may adopt, subject to the approval of the Governor, rules that define just cause."

SECTION 8.5. G.S. 126-36 reads as rewritten:**"§ 126-36. Appeal of unlawful State employment practice.**

(a) Any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied the employee or that demotion, layoff, transfer, or termination of employment was forced upon the employee in retaliation for opposition to alleged discrimination or because of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the ~~State Personnel Commission~~Office of Administrative Hearings.

(b) Subject to the requirements of G.S. 126-34, any State employee or former State employee who has reason to believe that the employee has been subjected to any of the following shall have the right to appeal directly to the ~~State Personnel Commission~~Office of Administrative Hearings:

- (1) Harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo.
- (2) Retaliation for opposition to harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo."

SECTION 8.6. G.S. 126-36.1 reads as rewritten:**"§ 126-36.1. Appeal to ~~Personnel Commission~~Office of Administrative Hearings by applicant for employment.**

Any applicant for State employment who has reason to believe that employment was denied in violation of G.S. 126-16 shall have the right to appeal directly to the ~~State Personnel Commission~~Office of Administrative Hearings."

SECTION 8.7. G.S. 126-36.2 reads as rewritten:**"§ 126-36.2. Appeal to ~~Personnel Commission~~Office of Administrative Hearings by career State employee denied notice of vacancy or priority consideration.**

Any career State employee who has reason to believe that he was denied promotion due to the failure of the agency, department, or institution that had a job vacancy to:

- (1) Post notice of the job vacancy pursuant to G.S. 126-7.1(a) or;
- (2) Give him priority consideration pursuant to G.S. 126-7.1(c)

may appeal directly to the ~~State Personnel Commission~~Office of Administrative Hearings."

SECTION 9. G.S. 116B-73(a) reads as rewritten:

"(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for ~~40 years~~five years after the holder files the report, unless a shorter period is provided by rule of the Treasurer."

SECTION 10.1.(a) Each State agency, as defined in G.S. 150B-2(1a), shall submit a report of the audit, examination, and inspection functions performed by the agency and the

amount of notice, if any, that the agency is required, by law or rule, to provide to a business, nonprofit, or individual prior to conducting the audit, examination, or inspection. The agency shall submit the report to the Joint Legislative Administrative Procedure Oversight Committee, as reestablished by Section 1 of this act, no later than October 31, 2012.

SECTION 10.1.(b) Article 1 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-9.1. Notice of employer's rights during farm inspections.

The Department of Labor shall, in consultation with farm organizations and the Department of Agriculture and Consumer Services, prepare a notice to be delivered to the employer, at the beginning of an inspection of any premises engaged in agricultural employment in this State. The notice shall advise the employer of any rights or recourse to which the employer and employees are entitled under State or federal law in connection with any inspection of the employer's premises or operation conducted by the Department of Labor. The Department shall deliver the notice to the employer at the beginning of an inspection of premises used for agricultural employment. For purposes of this section, the term "agricultural employment" shall have the same meaning as defined in G.S. 95-223(1)."

SECTION 10.1.(c) Section 10.1(b) of this act becomes effective August 1, 2012, and applies to all inspections of premises engaged in agricultural employment conducted by the Department of Labor on or after that date.

SECTION 10.2 G.S. 120-270 reads as rewritten:

"§ 120-270. Report by State agencies to the General Assembly on ways to reduce incidence of identity theft.

~~Agencies of the State shall evaluate and report annually by January 1 to the General Assembly about~~ the agency's efforts to reduce the dissemination of personal identifying information, as defined in G.S. 14-113.20(b). The evaluation shall include the review of public forms, the use of random personal identification numbers, restriction of access to personal identifying information, and reduction of use of personal identifying information when it is not necessary. Special attention shall be given to the use, collection, and dissemination of social security numbers. If the collection of a social security number is found to be unwarranted, the State agency shall immediately discontinue the collection of social security numbers for that purpose. Any agency that determines that an act of the General Assembly or other provision of law impedes the agency's ability to reduce the incidence of identity theft shall report such findings to the General Assembly by January 1 of the year following such a determination."

SECTION 10.3. G.S. 143B-431(e) reads as rewritten:

"(e) The Department of Commerce may establish a clearinghouse for State business license information and shall perform the following duties:

...
(5) Collaborate with the business license coordinator designated in State agencies in providing information on the licenses and regulatory requirements of the agency, and in coordinating conferences with applicants to clarify license and regulatory requirements.

...
f. Report, on a ~~quarterly~~ annual basis, to the Department on the number of licenses issued during the previous ~~quarter~~ fiscal year on a form prescribed by the Department."

SECTION 11. G.S. 143-213 reads as rewritten:

"§ 143-213. Definitions.

Unless the context otherwise requires, the following terms as used in this Article and Articles 21A and 21B of this Chapter are defined as follows:

...
(9) Whenever reference is made in this Article to "discharge" or the "discharge of waste," it shall be interpreted to include discharge, spillage, leakage, pumping, placement, emptying, or dumping into waters of the State, or into any unified sewer system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State. A reference to "discharge" or the "discharge of waste" shall not be interpreted to include "emission" as defined in subdivision (12) of this section.

...

(12) The term "emission" means a release into the outdoor atmosphere of air contaminants.

...."

SECTION 12.(a) Section 1 of S.L. 2008-198, S.L. 2009-124, and Section 10.10A of S.L. 2010-31 are repealed.

SECTION 12.(b) G.S. 87-97 reads as rewritten:

"§ 87-97. Permitting, inspection, and testing of private drinking water wells.

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well or ensure that the water obtained from the well has been sampled and tested by a certified laboratory in accordance with rules adopted by the Commission for Public Health. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Public Health to Adopt Drinking Water Testing Rules. – The Commission for Public Health shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Public Health may by rule require testing for additional ~~parameters~~ parameters, including volatile organic compounds, if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rule making to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS-based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites.

...."

SECTION 12.1. Rules adopted by the Environmental Management Commission pursuant to S.L. 2009-216 and S.L. 2009-486 to implement nutrient management strategies for the B. Everett Jordan Reservoir and the Falls of the Neuse Reservoir watersheds shall not be interpreted to apply surface water quality standards set out in 15A NCAC 2B .0218(3)(e) through (3)(h) to waters designated in the nutrient management rules as WS-V except where: (i) the designation of WS-V is associated with a water supply intake used by an industry to supply drinking water for their employees; or (ii) standards set out in 15A NCAC 02B .0218(3)(e) through (3)(h) are violated at the upstream boundary of waters within those watersheds that are classified as WS-II, WS-III, or WS-IV. This section shall not be construed to alter the nutrient reduction requirements set out in 15A NCAC 2B .0262(5) or 15A NCAC 2B .0275(3).

SECTION 13.(a) Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-279.17. Tracking and report on permit processing times.

The Department of Environment and Natural Resources shall track the time required to process all permit applications in the One-Stop for Certain Environmental Permits Programs established by G.S. 143B-279.12 and the Express Permit and Certification Reviews established by G.S. 143B-279.13 that are received by the Department. The processing time tracked shall include (i) the total processing time from when an initial permit application is received to issuance or denial of the permit and (ii) the processing time from when a complete permit application is received to issuance or denial of the permit. No later than March 1 of each year, the Department shall report to the Fiscal Research Division of the General Assembly and the Environmental Review Commission on the permit processing times required to be tracked pursuant to this section."

SECTION 13.(b) The Department of Environment and Natural Resources shall inventory all permits, licenses, and approvals issued by the Department. The Department shall provide a list of all permits, licenses, and approvals to the Environmental Review Commission

no later than January 15, 2013, and shall recommend which of the permits, licenses, and approvals that are not subject to a reporting requirement on permit processing times should be subject to that requirement.

SECTION 14.(a) Section 3(b) of S.L. 2011-39 reads as rewritten:

"**SECTION 3.(b)** Wading Pool Fence Compliance. – From the effective date of this act through ~~July 1, 2012,~~ January 1, 2013, the Department of Environment and Natural Resources shall not require owners and operators of public swimming pools to comply with 15A NCAC 18A .2531(a)(7)."

SECTION 14.(b) This section becomes effective July 1, 2012.

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

SECTION 15.2.(a) G.S. 143B-437.013(a) reads as rewritten:

"(a) Port Enhancement Zone Defined. – A port enhancement zone is an area that meets all of the following conditions:

- (1) It is comprised of part or all of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.
- (2) All of the area is located within 25 miles of a State port and is capable of being used to enhance port operations.
- (3) Every census tract and census block group that comprises the area has at least eleven percent (11%) of households with incomes of fifteen thousand dollars (\$15,000) or less."

SECTION 15.2.(b) This section is effective for taxable years beginning on or after January 1, 2013.

SECTION 16.1. G.S. 143-138(b4) reads as rewritten:

"(b4) Building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. For the purposes of this subsection:

- ...
 - (3) A "farm building" shall include any structure used for the display and sale of produce, no more than 1,000 square feet in size, open to the public for no more than 180 days per year, and certified by the Department of Agriculture and Consumer Services as a Certified Roadside Farm Market."

SECTION 16.2. G.S. 130A-248(c1) reads as rewritten:

"(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A permitted restaurant or commissary shall serve as a base of operations for a pushcart or mobile food unit-pushcart. A mobile food unit shall meet all of the sanitation

requirements of a permitted commissary or shall have a permitted restaurant or commissary that serves as its base of operation."

SECTION 17. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:48 p.m. this 16th day of July, 2012

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011****SESSION LAW 2012-200
SENATE BILL 229**

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO REPORT ON THE INTEGRATION OF STORMWATER CAPTURE AND REUSE INTO STORMWATER REGULATORY PROGRAMS; (2) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE ADVISABILITY AND FEASIBILITY OF REALLOCATING WATER SUPPLY IN JOHN H. KERR RESERVOIR FROM HYDROPOWER STORAGE TO WATER SUPPLY STORAGE; (3) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY AND EVALUATE DEGRADABLE PLASTIC PRODUCTS AND THEIR POTENTIAL TO CONTAMINATE RECYCLED PLASTIC FEEDSTOCKS; (4) DIRECT THE DIVISION OF PUBLIC HEALTH IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO REPORT ON THE ADMINISTRATION AND IMPLEMENTATION OF THE LEAD-BASED PAINT HAZARD MANAGEMENT PROGRAM FOR RENOVATION, REPAIR, AND PAINTING; (5) PROVIDE THAT TYPE 1 SOLID WASTE COMPOST FACILITIES ARE NOT REQUIRED TO OBTAIN A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR DISCHARGE OF PROCESS WASTEWATER BASED SOLELY ON THE DISCHARGE OF STORMWATER THAT HAS COME INTO CONTACT WITH FEEDSTOCK, INTERMEDIATE PRODUCT, OR FINAL PRODUCT AT THE FACILITY; (6) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACCEPT ALTERNATIVE MEASURES FOR STORMWATER CONTROL OTHER THAN PONDS THAT MEET CERTAIN CRITERIA AT AIRPORTS; (7) PROVIDE CONDITIONS TO ALLOW FOR TWO NONCONTIGUOUS PROPERTIES TO BE TREATED AS A SINGLE CONTIGUOUS PROPERTY FOR PURPOSES OF COMPLIANCE WITH LOCAL WATER SUPPLY WATERSHED PROGRAMS; (8) PROHIBIT TREATMENT OF LAND WITHIN RIPARIAN BUFFERS AS LAND OF THE STATE OR ITS SUBDIVISIONS; (8A) AMEND THE NEUSE AND TAR-PAMLICO RIVER BASIN BUFFER RULES TO ALLOW DEVELOPMENT ON EXISTING LOTS UNDER CERTAIN CONDITIONS; (9) PROVIDE FLEXIBILITY FOR THE DEVELOPMENT OF BASINWIDE WATER QUALITY MANAGEMENT PLANS FOR RIVER BASINS THAT HAVE WATERS DESIGNATED AS NUTRIENT SENSITIVE AND DELAY THE IMPLEMENTATION DEADLINE FOR LOCAL STORMWATER MANAGEMENT PROGRAMS UNDER THE JORDAN LAKE NEW DEVELOPMENT RULE; (10) AMEND THE DEFINITION OF COMMUNITY WATER SYSTEM; (11) ESTABLISH A VARIANCE PROCESS FOR CERTAIN SETBACK REQUIREMENTS FOR EXISTING PRIVATE DRINKING WATER WELLS; (12) REPEAL THE AUTHORITY OF THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ADD COUNTIES TO THE MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM; (13) ALLOW THE COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND TO BE USED FOR THE REMOVAL OF ABANDONED UNDERGROUND STORAGE TANKS THAT HAVE NOT LEAKED BUT POSE AN IMMINENT HAZARD; (14) REQUIRE SCRAP TIRE COLLECTORS TO VERIFY ACCESS TO A PERMITTED SCRAP TIRE DISPOSAL SITE BEFORE CONTRACTING WITH ANY SCRAP TIRE PROCESSOR; (15) REQUIRE SEPTAGE MANAGEMENT FIRMS TO PROVIDE IDENTIFICATION OF AND NOTICE TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES BEFORE PLACING A PUMPER TRUCK NOT PREVIOUSLY INCLUDED IN A PERMIT INTO



SERVICE; (16) AMEND THE MARINE FISHERIES COMMISSION ADVISORY COMMITTEES; (17) PROVIDE THAT A SUPERMAJORITY OF THE MARINE FISHERIES COMMISSION IS REQUIRED TO OVERRIDE A RECOMMENDATION OF THE DIVISION OF MARINE FISHERIES REGARDING OVERFISHING OR REBUILDING OF FISH STOCKS; (18) PROVIDE CERTAIN PROTECTIONS TO GALAX AND VENUS FLYTRAP UNDER THE PLANT PROTECTION AND CONSERVATION ACT; (19) INCREASE THE CIVIL PENALTY FOR VIOLATIONS OF CERTAIN RULES OF THE WILDLIFE RESOURCES COMMISSION; (20) PROVIDE THAT FUNDS RECEIVED IN SETTLEMENT OF THE LAWSUIT FILED BY THE STATE AGAINST THE TENNESSEE VALLEY AUTHORITY BE USED EXCLUSIVELY IN CERTAIN COUNTIES; (21) AMEND OR REPEAL VARIOUS ENVIRONMENTAL AND NATURAL RESOURCES REPORTING REQUIREMENTS; AND (22) MAKE TECHNICAL AND CONFORMING CHANGES TO ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

The General Assembly of North Carolina enacts:

PART I. REPORT ON STORMWATER CAPTURE AND REUSE

SECTION 1. G.S. 143-214.7(e) reads as rewritten:

"(e) ~~The Commission shall annually~~ On or before October 1 of each year, the Commission shall report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local ~~government, government.~~ The status report on shall include information on any integration of stormwater capture and reuse into stormwater control programs administered by State agencies and units of local government. ~~or before 1 October of each year.~~"

PART II. STUDY REALLOCATION OF WATER SUPPLY IN KERR LAKE

SECTION 2.(a) The Department of Environment and Natural Resources shall study the advisability and feasibility of reallocating water supply in John H. Kerr Reservoir from hydropower storage to water supply storage. The study shall identify the projected future water supply needs that could be met by reallocation of the water supply and identify any potential impacts of a water supply reallocation. In conducting this study, the Department may:

- (1) In consultation with the Virginia Department of Environmental Quality, develop a Roanoke River Basin Water Supply plan that identifies future water supply needs in both the North Carolina and Virginia portions of the river basin. The water supply plan may provide the basis for determining water supply needs that could be met by reallocation of the water supply in John H. Kerr Reservoir.
- (2) Include a recommendation for an agreement between the State of North Carolina, the Commonwealth of Virginia, and the United States Army Corps of Engineers that will provide guidance for allocations and reallocations of water supply in John H. Kerr Reservoir to enhance the public health, safety, and welfare by fostering efficient and sustainable use of the water that meets economic, environmental, and other goals.
- (3) Identify and review any other issues the Department considers relevant to the topic.

SECTION 2.(b) In conducting this study, the Department shall consult with the Virginia Department of Environmental Quality, the United States Army Corps of Engineers, and any local government or other entity that receives an allocation from the John H. Kerr Reservoir for water supply or for other purposes as of the effective date of this section. The Department shall report its findings and recommendations to the Environmental Review Commission on or before June 1, 2014.

PART III. STUDY DEGRADABLE PLASTIC PRODUCTS

SECTION 3.(a) The Department of Environment and Natural Resources shall study and evaluate degradable plastic products and their potential to contaminate recycled plastic feedstocks. As part of its study, the Department shall develop and recommend standards

for degradable plastic products, including labeling requirements and educational and outreach programs, to prevent contamination of recycled plastic feedstocks.

SECTION 3.(b) The Department of Environment and Natural Resources shall report its findings and recommendations developed pursuant to this section to the Environmental Review Commission on or before January 15, 2013.

PART IV. DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO REPORT ON THE ADMINISTRATION AND IMPLEMENTATION OF THE LEAD-BASED PAINT HAZARD MANAGEMENT PROGRAM FOR RENOVATION, REPAIR, AND PAINTING

SECTION 4.(a) On or before October 1, 2012, the Division of Public Health in the Department of Health and Human Services shall hire staff to administer and implement the Lead-Based Paint Hazard Management Program for Renovation, Repair, and Painting (Program).

SECTION 4.(b) The Division of Public Health in the Department of Health and Human Services shall conduct an analysis on the administration and implementation of the Program. By January 31, 2013, the Division shall report its findings to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The report on the Program shall include all of the following:

- (1) Historical expenditures, collection, and revenues, each by category.
- (2) The amount of the running balance carried forward each year.
- (3) Staff classifications, job descriptions, and dates of hire.
- (4) Workload activities and performance standards.
- (5) Number of site visits and inspections conducted annually.
- (6) Number and description of projects authorized under the Program.
- (7) Number of complaints received, methods by which complaints are responded to, and the turnaround time required to respond to complaints.
- (8) Number and description of revocations, suspensions, or denials of certification.
- (9) Description of the educational materials and training activities provided.
- (10) Description of outreach activities and the amount of staff time spent on outreach activities.
- (11) Description of compliance assistance provided.

PART V. PROVIDE THAT TYPE 1 SOLID WASTE COMPOST FACILITIES ARE NOT REQUIRED TO OBTAIN A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR DISCHARGE OF PROCESS WASTEWATER BASED SOLELY ON THE DISCHARGE OF STORMWATER THAT HAS COME INTO CONTACT WITH FEEDSTOCK, INTERMEDIATE PRODUCT, OR FINAL PRODUCT AT THE FACILITY

SECTION 5. G.S. 143-214.7A(b) reads as rewritten:

"(b) Unless otherwise provided in this subsection, The the Division of Water Quality shall clarify that stormwater is water that does not contact anything considered a feedstock, intermediate product, or final product of composting operations. Unless otherwise provided in this subsection, The the Division of Water Quality shall clarify that wastewater is leachate and water that contacts feedstocks, intermediate products, or final product, of composting operations. The clarifications shall incorporate available scientifically valid information obtained from sampling and analyses of North Carolina composting facilities and from valid representative data from other states. In addition, the Division of Water Quality shall establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required. A Type 1 solid waste compost facility shall be subject only to applicable State stormwater requirements and federal stormwater requirements established pursuant to 33 U.S.C. § 1342(p)(3)(B). A Type 1 solid waste compost facility shall not be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for discharge of process wastewater based solely on the discharge of stormwater that has come into contact with feedstock, intermediate product, or final product at the facility. For purposes of this section, "Type 1 solid waste compost facilities" are facilities that may receive yard and garden waste, silvicultural waste, untreated and unpainted wood waste, or any combination

~~thereof. The Division of Water Quality shall not require water quality permitting for any Type I solid waste compost facility, unless required to do so by federal law."~~

PART VI. DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACCEPT ALTERNATIVE MEASURES OF STORMWATER CONTROL AT PUBLIC AIRPORTS

SECTION 6. G.S. 143-214.7 is amended by adding two new subsections to read:

"(c3) In accordance with the Federal Aviation Administration August 28, 2007, Advisory Circular No. 150/5200-33B (Hazardous Wildlife Attractants on or Near Airports), the Department shall not require the use of stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section at public airports that support commercial air carriers or general aviation services. Development projects located within five statute miles from the farthest edge of an airport air operations area, as that term is defined in 14 C.F.R. § 153.3 (July 2011 Edition), shall not be required to use stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section. Existing stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section located at public airports or that are within five statute miles from the farthest edge of an airport operations area may be replaced with alternative measures included in the Division of Water Quality's Best Management Practice Manual chapter on airports. In order to be approved by the Department, alternative measures or management designs that are not expressly included in the Division of Water Quality's Best Management Practice Manual shall provide for equal or better stormwater control based on the pre- and post-development hydrograph. Any replacement of existing stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water shall be considered a minor modification to the State general stormwater permit.

(c4) The Department shall deem runways, taxiways, and any other areas that provide for overland stormwater flow that promote infiltration and treatment of stormwater into grassed buffers, shoulders, and grass swales permitted pursuant to the State post-construction stormwater requirements."

PART VII. PROVIDE CONDITIONS TO ALLOW FOR TWO NONCONTIGUOUS PROPERTIES TO BE TREATED AS A SINGLE CONTIGUOUS PROPERTY FOR PURPOSES OF COMPLIANCE WITH LOCAL WATER SUPPLY WATERSHED PROGRAMS

SECTION 7. G.S. 143-214.5 is amended by adding a new subsection to read:

"(d2) A local government implementing a water supply watershed program shall allow an applicant to average development density on up to two noncontiguous properties for purposes of achieving compliance with the water supply watershed development standards if all of the following circumstances exist:

- (1) The properties are within the same water supply watershed. If one of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification.
- (2) Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B .0200.
- (3) Vegetated buffers on both properties meet the minimum statewide water supply watershed protection requirements.
- (4) Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
- (5) Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.
- (6) The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to a local government as a park or

greenway, or placed under a permanent conservation or farmland preservation easement unless it can be demonstrated that the local government can ensure long-term compliance through deed restrictions and an electronic permitting mechanism. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable.

(7) Development permitted under density averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

(8) A special use permit or other such permit or certificate shall be obtained from the local Watershed Review Board or Board of Adjustment to ensure that both properties considered together meet the standards of the watershed ordinance and that potential owners have record of how the watershed regulations were applied to the properties."

PART VIII. PROHIBIT TREATMENT OF LAND WITHIN RIPARIAN BUFFERS AS LAND OF THE STATE OR ITS SUBDIVISIONS

SECTION 8.(a) G.S. 143-214.23 is amended by adding a new subsection to read:

"§ 143-214.23. Riparian Buffer Protection Program: Delegation of riparian buffer protection requirements to local governments.

...
 (e1) Units of local government shall not treat the land within a riparian buffer as if the land is the property of the State or any of its subdivisions unless the land or an interest therein has been acquired by the State or its subdivisions by a conveyance or by eminent domain.
"

PART VIIIA. AMEND THE NEUSE AND TAR-PAMLICO RIVER BASIN BUFFER RULES TO ALLOW DEVELOPMENT ON EXISTING LOTS UNDER CERTAIN CONDITIONS

SECTION 8.(b) Section 17(c) of S.L. 2011-394 reads as rewritten:

"SECTION 17.(c) Implementation. – The riparian buffer requirements of the Neuse River Basin Riparian Buffer Rule and the Tar-Pamlico River Basin Riparian Buffer Rule shall apply to development of an existing lot located adjacent to surface waters in the ~~eastal area~~ Neuse and Tar-Pamlico River basins as provided in this section. Where application of the riparian buffer requirements would preclude construction of a single-family residence and necessary infrastructure, such as an on-site wastewater system, the single-family residence may encroach on the buffer if all of the following conditions are met:

- (1) The residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level-level, or normal water level, whichever is applicable, on the existing lot and designed to minimize encroachment into the riparian buffer.
- (2) The residence is set back a minimum of 30 feet landward of the top of the bank, rooted herbaceous vegetation, normal high-water level-level, or normal water level, whichever is applicable.
- (3) Stormwater generated by new impervious surface within the riparian buffer is treated and diffuse flow of stormwater is maintained through the buffer.
- (4) If the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer.

The method for measuring the setbacks required under subdivisions (1) and (2) of this section shall be consistent with the method for measuring the applicable buffer as provided in 15A NCAC 02B .0233(4) and 15A NCAC 02B .0259(4)."

PART IX. PROVIDE FLEXIBILITY FOR THE DEVELOPMENT OF BASINWIDE WATER QUALITY MANAGEMENT PLANS THAT HAVE WATERS DESIGNATED AS NUTRIENT SENSITIVE AND DELAY THE IMPLEMENTATION DEADLINE FOR LOCAL STORMWATER MANAGEMENT PROGRAMS UNDER THE JORDAN LAKE NEW DEVELOPMENT RULE

SECTION 9.(a) G.S. 143-215.1(c6) reads as rewritten:

"(c6) For surface waters that the Commission classifies as nutrient sensitive waters (NSW) on or after 1 July 1997, the Commission shall establish a date by which facilities that were placed into operation prior to the date on which the surface waters are classified NSW or for which an authorization to construct was issued prior to the date on which the surface waters are classified NSW must comply with subsections (c1) and (c2) of this section. The Commission shall establish the compliance ~~date~~ schedule at the time of the classification. ~~The Commission shall not establish a compliance date that is more than five years after the date of the classification. The Commission may extend the compliance date as provided in G.S. 143-215.1B. A request to extend a compliance date shall be submitted within 120 days of the date on which the Commission reclassifies a surface water body as NSW."~~

SECTION 9.(b) G.S. 143-215.8B reads as rewritten:

"§ 143-215.8B. Basinwide water quality management plans.

(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

- (1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.
 - (2) All transfers into and from a river basin that are required to be registered under G.S. 143-215.22H.
- (b) Each basinwide water quality management plan shall:
- (1) Provide that all point sources and nonpoint sources of pollutants jointly share the responsibility of reducing the pollutants in the State's waters in a fair, reasonable, and proportionate manner, using computer modeling and the best science and technology reasonably available and considering future anticipated population growth and economic development.
 - (2) If any of the waters located within the river basin are designated as nutrient sensitive waters, then the basinwide water quality management plan shall establish a goal to reduce the average annual mass load of nutrients that are delivered to surface waters within the river basin from point and nonpoint sources. The Commission shall establish a nutrient reduction goal for the nutrient or nutrients of concern that will result in improvements to water quality such that the designated uses of the water, as provided in the classification of the water under G.S. 143-214.1(d), are not impaired. The plan shall require ~~that incremental progress toward achieving the goal be demonstrated each year. The Commission shall develop a five-year plan to achieve the goal.~~ In developing the plan, the Commission shall determine and allow appropriate credit toward achieving the goal for reductions of water pollution by point and nonpoint sources through voluntary measures.

(c) The Commission shall review and revise its 17 basinwide water quality management plans at least every ~~five~~ 10 years to reflect changes in water quality, improvements in modeling methods, improvements in wastewater treatment technology, and advances in scientific knowledge and, as need to support designated uses of water, modifications to management strategies.

(d) The Commission and the Department shall each report on or before 1 October of each year on an annual basis to the Environmental Review Commission on the progress in developing and implementing basinwide water quality management plans and on increasing public involvement and public education in connection with basinwide water quality management planning. The report to the Environmental Review Commission by the Department shall include a written statement as to all concentrations of heavy metals and other pollutants in the surface waters of the State that are identified in the course of preparing or revising the basinwide water quality management plans.

(e) A basinwide water quality management plan is not a rule and Article 2A of Chapter 150B of the General Statutes does not apply to the development of basinwide water quality management plans. Any water quality standard or classification and any requirement or

limitation of general applicability that implements a basinwide water quality management plan is a rule and must be adopted as provided in Article 2A of Chapter 150B of the General Statutes."

SECTION 9.(c) Definition. – As used in this act, "New Development Rule 15A NCAC 02B .0265" means 15A NCAC 02B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008.

SECTION 9.(d) New Development Rule 15A NCAC 02B .0265. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to subsection (f) of this section, the Commission and the Department shall implement New Development Rule 15A NCAC 02B .0265, as provided in subsection (e) of this section.

SECTION 9.(e) Implementation. – Notwithstanding sub-subdivision (d) of subdivision (4) of New Development Rule 15A NCAC 02B .0265, by August 10, 2014, within three months after the Commission's approval of a local program, or upon the Division's first renewal of a local government's NPDES stormwater permit, whichever occurs later, the affected local government shall complete adoption of and implement its local stormwater management program.

SECTION 9.(f) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace New Development Rule 15A NCAC 02B .0265. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (e) of this section. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 9.(g) Sunset. – Subsection (e) of this section expires on the date that rules adopted pursuant to subsection (f) of this section become effective.

PART X. AMEND THE DEFINITION OF COMMUNITY WATER SYSTEM

SECTION 10. G.S. 130A-313(10) reads as rewritten:

"(10) "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system serves 15 or more service connections or which regularly serves 25 or more individuals. The term includes:

- a. Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and
- b. Any collection or pretreatment storage facility not under the control of the operator of the system that is used primarily in connection with the system.

A public water system is either a "community water system" or a "noncommunity water system" as follows:

- a. "Community water system" means a public water system ~~that serves 15 or more service connections or that that serves at least 15 service connections used by year-round residents or~~ regularly serves at least 25 year-round residents.
- b. "Noncommunity water system" means a public water system that is not a community water system.

A connection to a system that delivers water by a constructed conveyance other than a pipe is not a connection within the meaning of this subdivision under any one of the following circumstances:

- a. The water is used exclusively for purposes other than residential uses. As used in this subdivision, "residential uses" mean drinking, bathing, cooking, or other similar uses.
- b. The Department determines that alternative water to achieve the equivalent level of public health protection pursuant to applicable drinking water rules is provided for residential uses.
- c. The Department determines that the water provided for residential uses is centrally treated or treated at the point of entry by the

provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable drinking water rules."

PART XI. ESTABLISH A VARIANCE PROCESS FOR SETBACK DISTANCES FROM EXISTING PRIVATE DRINKING WATER WELLS

SECTION 11.(a) Variance from Setbacks for Existing Private Drinking Water Wells. –

- (1) The Department of Health and Human Services may grant a variance from the minimum horizontal separation distances from existing private drinking water wells set out in 15A NCAC 02C .0107(a)(2) or 15A NCAC 02C .0107(a)(3) upon finding that:
 - a. The well was constructed and completed on or before July 1, 2008.
 - b. The Department determines that continued use of the well will not endanger human health and welfare or groundwater.
 - c. It is impracticable, taking into consideration feasibility and cost, for the well to comply with the minimum horizontal separation distance set out in the applicable sub-subpart of 15 NCAC 02C .0107(a)(2) and 15A NCAC 02C .0107(a)(3).
 - d. There is no reasonable alternative source of drinking water available.
- (2) A variance from the minimum horizontal separation distances set out in 15A NCAC 02C .0107(a)(2) or 15A NCAC 02C .0107(a)(3) shall require that the existing private drinking water well meet the following requirements:
 - a. The well shall comply with the minimum horizontal separation distances set out in 15A NCAC 02C .0107(a)(2) or 15A NCAC 02C .0107(a)(3) to the maximum extent practicable.
 - b. The well is inspected by the Department or the applicable local health department and is determined to be in good repair.
 - c. The well shall comply with all other requirements for private drinking water wells set out in 15A NCAC 02C .0300.

SECTION 11.(b) Rule Making. – The Commission for Public Health shall adopt rules that are substantively identical to the provisions of subsection (a) of this section. The Commission may reorganize or renumber any of the rules to which this section applies at its discretion. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received, as provided by G.S. 150B-21.3(b2).

SECTION 11.(c) Effective Date. – Subsection (a) of this section expires when permanent rules to replace subsection (a) of this section have become effective, as provided by subsection (b) of this section.

PART XII. REPEAL ENVIRONMENTAL MANAGEMENT COMMISSION AUTHORITY TO ADD COUNTIES TO THE MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM

SECTION 12.(a) G.S. 143-215.107A(d) is repealed.

SECTION 12.(b) G.S. 20-183.2(c) reads as rewritten:

- "(c) Definitions. – The following definitions apply in this Part:
- (1) Electronic inspection authorization. – An inspection authorization that is generated electronically through the electronic accounting system that creates a unique nonduplicating authorization number assigned to the vehicle's inspection receipt upon successful passage of an inspection. The term "electronic inspection authorization" shall include the term "inspection sticker" during the transition period to use of electronic inspection authorizations.
 - (2) Emissions county. – A county listed in G.S. 143-215.107A(c) ~~or designated by the Environmental Management Commission pursuant to G.S. 143-215.107A(d)~~ and certified to the Commissioner of Motor Vehicles as a county in which the implementation of a motor vehicle emissions inspection program will improve ambient air quality.

- (3) Federal installation. – An installation that is owned by, leased to, or otherwise regularly used as the place of business of a federal agency."

PART XIII. ALLOW THE COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND TO BE USED FOR THE REMOVAL OF ABANDONED UNDERGROUND STORAGE TANKS THAT HAVE NOT LEAKED BUT POSE AN IMMINENT HAZARD

SECTION 13.(a) G.S. 143-215.94B is amended by adding a new subsection to read:

"(b5) The Commercial Fund may be used by the Department for the payment of costs necessary to render harmless any commercial underground storage tank from which a discharge or release has not occurred but which poses an imminent hazard to the environment if the owner or operator cannot be identified or located, or if the owner or operator fails to take action to render harmless the underground storage tank within 90 days of having been notified of the imminent hazard posed by the underground storage tank. The Secretary shall seek to recover the costs of the action from any owner or operator as provided in G.S. 143-215.94G."

SECTION 13.(b) G.S. 143-215.94D(b2) reads as rewritten:

"(b2) The Noncommercial Fund may be used by the Department for the payment of costs necessary to render harmless any ~~commercial or~~ noncommercial underground storage tank from which a discharge or release has not occurred but which poses an imminent hazard to the environment if the owner or operator cannot be identified or located, or if the owner or operator fails to take action to render harmless the underground storage tank within 90 days after having been notified of the imminent hazard posed by the underground storage tank. The Secretary ~~may~~ shall seek to recover the costs of the action from the owner or operator as provided in G.S. 143-215.94G."

SECTION 13.(c) G.S. 143-215.94G(d) is amended by adding a new subdivision to read:

"(d) The Secretary shall seek reimbursement through any legal means available, for:

...
(6) The amounts provided for in G.S. 143-215.94B(b5) and G.S. 143-215.94D(b2)."

PART XIV. REQUIRE SCRAP TIRE COLLECTORS TO VERIFY ACCESS TO A PERMITTED SCRAP TIRE DISPOSAL SITE BEFORE CONTRACTING WITH ANY SCRAP TIRE PROCESSOR

SECTION 14.(a) G.S. 130A-309.57 reads as rewritten:

"§ 130A-309.57. Scrap tire disposal program.

(a) The owner or operator of any scrap tire collection site shall, within six months after October 1, 1989, provide the Department with information concerning the site's location, size, and the approximate number of scrap tires that are accumulated at the site and shall initiate steps to comply with subsection (b) of this section.

(b) On or after July 1, 1990:

- (1) A person may not maintain a scrap tire collection site or a scrap tire disposal site unless the site is permitted.
- (2) It is unlawful for any person to dispose of scrap tires in the State unless the scrap tires are disposed of at a scrap tire collection site or at a tire disposal site, or disposed of for processing at a scrap tire processing facility.

(c) ~~By January 1, 1990, the~~ The Commission shall adopt rules to carry out the provisions of this section. Such rules shall:

- (1) Provide for the administration of scrap tire collector and collection center permits and scrap tire disposal site permits, which may not exceed two hundred fifty dollars (\$250.00) ~~annually;~~ annually.
- (2) Set standards for scrap tire processing facilities and associated scrap tire sites, scrap tire collection centers, and scrap tire ~~collectors;~~ collectors.
- (3) Authorize the final disposal of scrap tires at a permitted solid waste disposal facility provided the tires have been cut into sufficiently small parts to assure their proper disposal.

- (4) Provide that permitted scrap tire collectors may not contract with a scrap tire processing facility unless the processing facility documents that it has access to a facility permitted to receive scrap tires.
- (d) A permit is not required for:
 - (1) A tire retreading business where fewer than 1,000 scrap tires are kept on the business premises;
 - (2) A business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,000 of these tires are kept on the business premises; or
 - (3) A retail tire-selling business which is serving as a scrap tire collection center if fewer than 1,000 scrap tires are kept on the business premises.
- (e) The Department shall encourage the voluntary establishment of scrap tire collection centers at retail tire-selling businesses, scrap tire processing facilities, and solid waste disposal facilities, to be open to the public for the deposit of used and scrap tires. The Department may establish an incentives program for individuals to encourage them to return their used or scrap tires to a scrap tire collection center."

SECTION 14.(b) The Department of Environment and Natural Resources shall initiate rule making to comply with the provisions of this section by October 1, 2012.

PART XV. REQUIRE SEPTAGE MANAGEMENT FIRMS TO PROVIDE IDENTIFICATION OF AND NOTICE TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES BEFORE PLACING A PUMPER TRUCK NOT PREVIOUSLY INCLUDED IN A PERMIT INTO SERVICE

SECTION 15. G.S. 130A-291.1 is amended by adding a new subsection to read:
"§ 130A-291.1. Septage management program; permit fees.

...
 (h1) The annual permit application shall identify the pumper trucks to be used by the septage management firm. A permitted septage management firm shall notify the Department within 10 days of placing a pumper truck in service that was not previously included in a permit issued to the firm and shall make the pumper truck available for inspection by the Department. A septage management firm is not prohibited from use of a pumper truck that meets the requirements of the rules adopted by the Commission prior to inspection by the Department.
"

PART XVI. AMEND THE MARINE FISHERIES COMMISSION ADVISORY COMMITTEES

SECTION 16.(a) G.S. 143B-289.57 reads as rewritten:
"§ 143B-289.57. Marine Fisheries Commission Advisory Committees established; members; selection; duties.

- (b) The Chair of the Commission shall appoint the following standing advisory committees:
 - (1) The Finfish Committee, which shall consider matters concerning finfish.
 - (2) ~~The Crustacean Committee, which shall consider matters concerning shrimp and crabs.~~
 - (3) ~~The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.~~
 - (3a) The Shellfish/Crustacean Advisory Committee, which shall consider matters concerning oysters, clams, scallops, other molluscan shellfish, shrimp, and crabs.
 - (4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

...
 (e) The Chair of the Commission shall appoint a ~~regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.54(b) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions.~~ Northern Regional Advisory Committee, encompassing areas from the Virginia line south

through Hyde and Pamlico Counties and any counties to the west, and a Southern Regional Advisory Committee, encompassing areas from Carteret County south to the South Carolina line and any counties to the west. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented."

SECTION 16.(b) G.S. 113-200(e1) reads as rewritten:

"§ 113-200. Fishery Resource Grant Program.

...
(e1) Grants Committee. – The Grants Committee shall consist of eleven members as follows:

- (1) Three employees of the Sea Grant College Program, appointed by the Director of the Sea Grant College Program.
- (2) Two employees of the Division of Marine Fisheries, appointed by the Fisheries Director.
- (3) Two members of the Marine Fisheries Commission, appointed by the Chair of the Marine Fisheries Commission.
- (4) ~~One member~~Two members of the ~~Northeast-Northern~~ Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the ~~Northeast-Northern~~ Regional Advisory Committee.
- (5) ~~One member of the Central Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the Central Regional Advisory Committee.~~
- (6) ~~One member~~Two members of the ~~Southeast-Southern~~ Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the ~~Southeast-Southern~~ Regional Advisory Committee.
- (7) ~~One member of the Inland Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the Inland Regional Advisory Committee.~~

...
SECTION 16.(c) The terms of the members currently serving on the Crustacean, Shellfish, and the four regional advisory committees (Northeast, Southeast, Central, and Inland) shall expire on June 30, 2012. Effective July 1, 2012, the Chair of the Marine Fisheries Advisory Commission shall appoint no more than 11 members to the Northern Regional Advisory Committee and the Southern Regional Advisory Committee, established pursuant to subsection (e) of G.S. 143B-289.57, as amended by this section.

PART XVII. PROVIDE THAT A SUPERMAJORITY OF THE MARINE FISHERIES COMMISSION IS REQUIRED TO OVERRIDE A RECOMMENDATION OF THE DIVISION OF MARINE FISHERIES REGARDING OVERFISHING OR REBUILDING OF FISH STOCKS

SECTION 17. G.S. 143B-289.52 is amended by adding a new subsection to read:

"§ 143B-289.52. Marine Fisheries Commission – powers and duties.

...
(e1) A supermajority of the Commission shall be six members. A supermajority shall be necessary to override recommendations from the Division of Marine Fisheries regarding measures needed to end overfishing or to rebuild overfished stocks."

PART XVIII. PROVIDE CERTAIN PROTECTIONS TO GALAX AND VENUS FLYTRAP UNDER THE PLANT PROTECTION AND CONSERVATION ACT

SECTION 18. G.S. 106-202.19(a) reads as rewritten:

"(a) Unless the conduct is covered under some other provision of law providing greater punishment, it is ~~unlawful~~unlawful to engage in any of the following conduct:

- (1) To uproot, dig, take or otherwise disturb or remove for any purpose from the lands of another, any plant on a protected plant list without a written permit from the owner which is dated and valid for no more than 180 days and which indicates the species or higher taxon of plants for which permission is granted; except that the incidental disturbance of protected plants during agricultural, forestry or development operations is not illegal so long as the plants are not collected for sale or commercial ~~use~~use.

- (2) To sell, barter, trade, exchange, export, offer for sale, barter, trade, exchange or export or give away for any purpose including advertising or other promotional purpose any plant on a protected plant list, except as authorized according to the rules and regulations of the ~~Board;~~Board.
- (3) To violate any rule of the Board promulgated under this ~~Article;~~Article.
- (4) ~~To dig ginseng on another person's land, except for the purpose of replanting, between the first day of April and the first day of September;~~
- (5) To buy ginseng outside of a buying season as provided by the Board without obtaining the required documents from the person selling the ~~ginseng;~~ginseng.
- (6) To buy ginseng for the purpose of resale or trade without holding a currently valid permit as a ginseng ~~dealer;~~dealer.
- (6a) To uproot, dig, take, or otherwise disturb or remove for any purpose from another person's land ginseng, galax, or Venus flytrap without a written permit from the owner that is dated and valid for no more than 180 days. A person in lawful possession of the land who has a recorded lease which allows for the disturbance or removal of any vegetation on the land is not subject to this subdivision.
- (6b) To buy galax outside of a buying season as provided by the Board without obtaining the required documents from the person selling the galax.
- (6c) To buy Venus flytrap outside of a buying season as provided by the Board without obtaining the required documents from the person selling the Venus flytrap.
- (6d) To buy more than five pounds of galax for the purpose of resale or trade without a copy of the landowner's written permission and confirmation of the collection date.
- (6e) To buy more than 50 Venus flytrap plants for the purpose of resale or trade unless fully compliant with applicable regulations.
- (7) To fail to keep records as required under this Article, to refuse to make records available for inspection by the Board or its agent, or to use forms other than those provided for the current year or harvest season by the Department of Agriculture and Consumer ~~Services;~~Services.
- (8) To provide false information on any record or form required under this ~~Article;~~Article.
- (9) To make false statements or provide false information in connection with any investigation conducted under this ~~Article;~~Article.
- (10) To possess any protected plant, or part thereof, which was obtained in violation of this Article or any rule adopted ~~hereunder;~~or under this Article.
- (11) To violate a stop sale order issued by the Board or its agent."

PART XIX. INCREASE THE CIVIL PENALTY FOR VIOLATIONS OF CERTAIN RULES OF THE WILDLIFE RESOURCES COMMISSION

SECTION 19. G.S. 113-135.1(a) reads as rewritten:

"(a) To prevent unsuspecting members of the public from being subject to harsh criminal penalties for offenses created by rules of the Wildlife Resources Commission, the penalty for an offense that is solely a violation of rules of the Wildlife Resources Commission is limited to a fine of ~~ten dollars (\$10.00)~~ twenty-five dollars (\$25.00) except as follows:

- (1) Offenses set out in subsection (b) of this section are punishable as set forth in G.S. 113-135 or other sections of the General Statutes.
- (2) A person who parks a vehicle in violation of a rule regulating the parking of vehicles at boating access or boating launch areas is responsible for an infraction and shall pay a fine of fifty dollars (\$50.00)."

PART XX. USE OF TVA SETTLEMENT FUNDS

SECTION 20. Funds received by the State pursuant to the provisions of the Consent Decree entered into by the State in *State of Alabama et al. v. Tennessee Valley Authority*, Civil Action 3:11-cv-00170 in the United States District Court for the Eastern District of Tennessee and allocated to the Department of Agriculture and Consumer Services by the Committee Report to House Bill 950 shall be used exclusively to award grants for

"Environmental Mitigation Projects" of the types specified in paragraph 128 of the Consent Decree in the following counties: Avery, Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, Watauga, Yancey.

PART XXI. AMEND OR REPEAL VARIOUS ENVIRONMENTAL AND NATURAL RESOURCES REPORTING REQUIREMENTS

SECTION 21.(a) G.S. 130A-294 reads as rewritten:

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

...
 (i) ~~The Department shall develop a comprehensive hazardous waste management plan for the State and shall revise the plan on or before 1 July of even-numbered years. The Department shall report to the Fiscal Research Division of the General Assembly, the Senate Appropriations Subcommittee on Natural and Economic Resources, the House Appropriations Subcommittee on Natural and Economic Resources, and the Environmental Review Commission on or before 1 October~~ January 1 of each year on the implementation and cost of the comprehensive hazardous waste management plan-program. The report shall include an evaluation of how well the State and private parties are managing and cleaning up hazardous waste. The report shall also include recommendations to the Governor, State agencies, and the General Assembly on ways to: improve waste management; reduce the amount of waste generated; maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste which must be disposed of. The report shall include beginning and ending balances in the Hazardous Waste Management Account for the reporting period, total fees collected pursuant to G.S. 130A-294.1, anticipated revenue from all sources, total expenditures by activities and categories for the hazardous waste management program, any recommended adjustments in annual and tonnage fees which may be necessary to assure the continued availability of funds sufficient to pay the State's share of the cost of the hazardous waste management program, and any other information requested by the General Assembly. In recommending adjustments in annual and tonnage fees, the Department may propose fees for hazardous waste generators, and for hazardous waste treatment facilities that treat waste generated on site, which are designed to encourage reductions in the volume or quantity and toxicity of hazardous waste. The report shall also include a description of activities undertaken to implement the resident inspectors program established under G.S. 130A-295.02. In addition, the report shall include an annual update on the mercury switch removal program that shall include, at a minimum, all of the following:

- (1) A detailed description of the mercury recovery performance ratio achieved by the mercury switch removal program.
- (2) A detailed description of the mercury switch collection system developed and implemented by vehicle manufacturers in accordance with the NVMSRP.
- (3) In the event that a mercury recovery performance ratio of at least 0.90 of the national mercury recovery performance ratio as reported by the NVMSRP is not achieved, a description of additional or alternative actions that may be implemented to improve the mercury switch removal program.
- (4) The number of mercury switches collected and a description of how the mercury switches were managed.
- (5) A statement that details the costs required to implement the mercury switch removal program, including a summary of receipts and disbursements from the Mercury Switch Removal Account."

SECTION 21.(b) G.S. 130A-294 reads as rewritten:

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

...
 (i) The Department shall report to the Fiscal Research Division of the General Assembly, the Senate Appropriations Subcommittee on Natural and Economic Resources, the House Appropriations Subcommittee on Natural and Economic Resources, and the Environmental Review Commission on or before January 1 of each year on the implementation and cost of the hazardous waste management program. The report shall include an evaluation of how well the State and private parties are managing and cleaning up hazardous waste. The report shall also include recommendations to the Governor, State agencies, and the General

Assembly on ways to: improve waste management; reduce the amount of waste generated; maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste which must be disposed of. The report shall include beginning and ending balances in the Hazardous Waste Management Account for the reporting period, total fees collected pursuant to G.S. 130A-294.1, anticipated revenue from all sources, total expenditures by activities and categories for the hazardous waste management program, any recommended adjustments in annual and tonnage fees which may be necessary to assure the continued availability of funds sufficient to pay the State's share of the cost of the hazardous waste management program, and any other information requested by the General Assembly. In recommending adjustments in annual and tonnage fees, the Department may propose fees for hazardous waste generators, and for hazardous waste treatment facilities that treat waste generated on site, which are designed to encourage reductions in the volume or quantity and toxicity of hazardous waste. The report shall also include a description of activities undertaken to implement the resident inspectors program established under G.S. 130A-295.02. In addition, the report shall include an annual update on the mercury switch removal program that shall include, at a minimum, all of the following:

- (1) ~~A detailed description and documentation of the capture rate achieved. of the mercury recovery performance ratio achieved by the mercury switch removal program.~~
- (2) ~~A detailed description of the mercury switch collection system developed and implemented by vehicle manufacturers in accordance with the NVMSRP.~~
- (3) ~~In the event that a mercury recovery performance ratio of at least 0.90 of the national mercury recovery performance ratio as reported by the NVMSRP capture rate of at least ninety percent (90%) is not achieved, a description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation. switch removal program.~~
- (4) ~~The number of mercury switches ~~collected~~ collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life vehicles processed for recycling, and a description of how the mercury switches were managed.~~
- (5) ~~A statement that details the costs required to implement the mercury minimization plan. switch removal program including a summary of receipts and disbursements from the Mercury Switch Removal Account.~~

....."

SECTION 21.(c) G.S. 130A-294.1(p) is repealed.

SECTION 21.(d) G.S. 130A-295.02(m) is repealed.

SECTION 21.(e) G.S. 130A-310.2(b) is repealed.

SECTION 21.(f) G.S. 130A-310.57 is repealed.

SECTION 22. G.S. 130A-310.10 reads as rewritten:

"§ 130A-310.10. Annual reports.

(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division on or before ~~1 October~~ October 1 of each year. The report shall include at least the following:

- (1) The Inactive Hazardous Waste Sites Priority List.
- (2) A list of remedial action plans requiring State funding through the Inactive Hazardous Sites Cleanup Fund.
- (3) A comprehensive budget to implement these remedial action plans and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of said plans.
- (4) A prioritized list of sites that are eligible for remedial action under CERCLA/SARA together with recommended remedial action plans and a comprehensive budget to implement such plans. The budget for implementing a remedial action plan under CERCLA/SARA shall include a statement as to any appropriation that may be necessary to pay the State's share of such plan.
- (5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental approval.

- (6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the possible costs of said plans.
- (7) A list of sites that pose an imminent hazard.
- (8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Inactive Hazardous Sites Cleanup Fund.
- (8a) The amounts and sources of funds collected by year received under G.S. 130A-310.76, the amounts and sources of those funds paid into the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11, the number of acres of contamination for which funds have been received pursuant to G.S. 130A-310.76, and a detailed annual accounting of how the funds collected pursuant to G.S. 130A-310.76 have been utilized by the Department to advance the purposes of Part 8 of Article 9 of Chapter 130A of the General Statutes.
- (9) Any other information requested by the General Assembly or the Environmental Review Commission.

(a1) On or before October 1 of each year, the Department shall report to each member of the General Assembly who has an inactive hazardous substance or waste disposal site in the member's district. This report shall include the location of each inactive hazardous substance or waste disposal site in the member's district, the type and amount of hazardous substances or waste known or believed to be located on each of these sites, the last action taken at each of these sites, and the date of that last action.

(b) Repealed by Session Laws 2001-452, s. 2.3, effective October 28, 2001."

SECTION 23. G.S. 143-215.94M reads as rewritten:

"§ 143-215.94M. Reports.

(a) The Secretary shall present an annual report to the Environmental Review Commission—Commission, the Fiscal Research Division, the Senate Appropriations Subcommittee on Natural and Economic Resources, and the House Appropriations Subcommittee on Natural and Economic Resources which shall include at least the following:

- (1) A list of all discharges or releases of petroleum from underground storage ~~tanks;tanks.~~
- (2) A list of all cleanups requiring State funding through the Noncommercial Fund and a comprehensive budget to complete such ~~cleanups;cleanups.~~
- (3) A list of all cleanups undertaken by tank owners or operators and the status of these ~~cleanups;cleanups.~~
- (4) A statement of receipts and disbursements for both the Commercial Fund and the Noncommercial ~~Fund;Fund.~~
- (5) A statement of all claims against both the Commercial Fund and the Noncommercial Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other ~~obligations;obligations.~~
- (6) The adequacy of both the Commercial Fund and the Noncommercial Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Commercial Fund and the Noncommercial ~~Fund; andFund.~~
- (7) ~~A statement of the condition of the Loan Fund and a summary of all activity under the Loan Fund.~~

(b) ~~The report required by this section shall be made by the Secretary on or before 1 September~~November 1 of each year."

SECTION 24. G.S. 113A-35.1(b) is repealed.

SECTION 25. G.S. 136-28.8(g) reads as rewritten:

"(g) On or before October 1 of each year, the Department shall report to the Division of Environmental Assistance and Outreach of the Department of Environment and Natural Resources as to the amounts and types of recycled materials that were specified or used in contracts that were entered into during the previous fiscal year. On or before ~~December 1~~January 15 of each year, the Division of Environmental Assistance and Outreach shall prepare a summary of this report and submit the summary to the Joint Legislative Commission on

Governmental Operations and the Joint Legislative Transportation Oversight Committee. The summary of this report shall also be included in the report required by G.S. 130A-309.06(c)."

SECTION 26. G.S. 159I-29(a) reads as rewritten:

"(a) ~~The~~ If the General Assembly appropriates funds for loans authorized by this Chapter in any fiscal year, the Office of State Budget and Management and the Division shall prepare and file on or before July 31 of ~~each~~ the following fiscal year with the Joint Legislative Commission on Governmental Operations a consolidated report for the preceding fiscal year concerning the allocation of loans authorized by this Chapter. No report shall be filed for fiscal years in which no funds are appropriated or otherwise available for loans authorized by this Chapter."

SECTION 27. G.S. 143B-279.5 reads as rewritten:

"§ 143B-279.5. **Biennial State of the Environment Report.**

(a) The Secretary of Environment and Natural Resources shall report on the state of the environment to the General ~~Assembly~~ Assembly, the Fiscal Research Division of the General Assembly, and the Environmental Review Commission no later than 15 February of each odd-numbered year. The report shall include:

- (1) An identification and analysis of current environmental protection issues and problems within or affecting the State and its people;
- (2) Trends in the quality and use of North Carolina's air and water resources;
- (3) An inventory of areas of the State where air or water pollution is in evidence or may occur during the upcoming biennium;
- (4) Current efforts and resources allocated by the Department to correct identified pollution problems and an estimate, if necessary, of additional resources needed to study, identify, and implement solutions to solve potential problems;
- (5) Departmental goals and strategies to protect the natural resources of the State;
- (6) Any information requested by the General Assembly or the Environmental Review Commission;
- (7) Suggested legislation, if necessary; and
- (8) Any other information on the state of the environment the Secretary considers appropriate.

(b) Other State agencies involved in protecting the State's natural resources and environment shall cooperate with the Department of Environment and Natural Resources in preparing this report."

PART XXII. TECHNICAL AND CONFORMING CHANGES

SECTION 28.(a) G.S. 77-92(a) reads as rewritten:

"(a) The Roanoke River Basin Bi-State Commission shall consist of 18 members with each state appointing nine members. The North Carolina delegation to the Commission shall consist of the six members of the General Assembly of North Carolina appointed to the North Carolina Roanoke River Basin Advisory Committee and three nonlegislative members ~~of the North Carolina Roanoke River Basin Advisory Committee, established pursuant to G.S. 77-103,~~ who represent different geographical areas of the North Carolina portion of the Basin and who reside within the Basin's watershed, to be appointed by the Governor of North Carolina. The Virginia delegation to the Commission shall be appointed as determined by the Commonwealth of Virginia."

SECTION 28.(b) G.S. 77-93(b)(2) reads as rewritten:

"(2) To establish standing and ad hoc advisory committees pursuant to G.S. 77-94 ~~in addition to the North Carolina Roanoke River Basin Advisory Committee established pursuant to Part 2 of this Article~~ and the Virginia Roanoke River Basin Advisory Committee established pursuant to Chapter 5.4 of Title 62.1 of the Code of Virginia, which shall be constituted in a manner to ensure a balance between recognized interests. The Commission shall determine the purpose of each advisory committee."

PART XXIII. EFFECTIVE DATE

SECTION 29. Section 21(b) of this act becomes effective December 31, 2017. Sections 16(a) and 16(b) of this act become effective July 1, 2012. Sections 18 and 19 of this act become effective October 1, 2012, and apply to violations and offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of July, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:42 a.m. this 1st day of August, 2012

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-201
HOUSE BILL 953

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO ENVIRONMENT AND NATURAL RESOURCES, DELAY THE IMPLEMENTATION DEADLINE FOR LOCAL STORMWATER MANAGEMENT PROGRAMS UNDER THE JORDAN LAKE NEW DEVELOPMENT RULE, AND TO MAKE CHANGES TO THE CLEAN ENERGY AND ECONOMIC SECURITY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-182.1(e) reads as rewritten:

"(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment and Natural Resources shall report to the ~~Joint Legislative Commission on Seafood and Aquaculture~~ Joint Legislative Commission on Governmental Operations within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Governmental Operations shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Governmental Operations may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary."

SECTION 2.(a) G.S. 113A-115.1 is amended by adding a new subsection to read:

"§ 113A-115.1. Limitations on erosion control structures.

...
(i) No later than September 1 of each year, the Coastal Resources Commission shall report to the Environmental Review Commission on the implementation of this section. The report shall provide a detailed description of each proposed and permitted terminal groin and its accompanying beach fill project, including the information required to be submitted pursuant to subsection (e) of this section. For each permitted terminal groin and its accompanying beach fill project, the report shall also provide all of the following:

- (1) The findings of the Commission required pursuant to subsection (f) of this section.
- (2) The status of construction and maintenance of the terminal groin and its accompanying beach fill project, including the status of the implementation of the plan for construction and maintenance and the inlet management plan.
- (3) A description and assessment of the benefits of the terminal groin and its accompanying beach fill project, if any.
- (4) A description and assessment of the adverse impacts of the terminal groin and its accompanying beach fill project, if any, including a description and assessment of any mitigation measures implemented to address adverse impacts."

SECTION 2.(b) Section 5 of S.L. 2011-387 is repealed.

SECTION 3. G.S. 130A-309.10(k) reads as rewritten:

"(k) A county or city may petition the Department for a waiver from the prohibition on disposal of a material described in subdivisions (9), (10), ~~(11) and (12)~~(11), (12), and (13) of



subsection (f) of this section and subsection (f3) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship."

SECTION 4. The title of Part 2 of Article 3B of Chapter 143 of the General Statutes reads as rewritten:

"Part 2. ~~Guaranteed Energy Savings Contracts for~~ Energy Saving Measures for Governmental Units."

SECTION 5.(a) G.S. 143-214.11 is amended by adding two new subsections to read:

"§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.

...
(i) The Ecosystem Enhancement Program shall exercise its authority to provide for compensatory mitigation under the authority granted by this section to use mitigation procurement programs in the following order of preference:

- (1) Full delivery/bank credit purchase program. – The Ecosystem Enhancement Program shall first seek to meet compensatory mitigation procurement requirements through the Program's full delivery program or by the purchase of credits from a private compensatory mitigation bank.
- (2) Existing local compensatory mitigation bank credit purchase program. – Any compensatory mitigation procurement requirements that are not fulfillable under subdivision (1) of this subsection shall be procured from an existing local compensatory mitigation bank, provided that the credit purchase is made to mitigate the impacts of a project located within the mitigation bank service area and hydrologic area of the existing local compensatory mitigation bank.
- (3) Design/build program. – Any compensatory mitigation procurement requirements that are not fulfillable under subdivision (1) or (2) of this subsection shall be procured under a program in which Ecosystem Enhancement Program contracts with one private entity to lead or implement the design, construction, and postconstruction monitoring of compensatory mitigation at sites obtained by the Ecosystem Enhancement Program. Such a program shall be considered the procurement of compensatory mitigation credits.
- (4) Design-bid-build program. – Any compensatory mitigation procurement requirements that are not fulfillable under either subdivision (1) or (2) of this subsection may be procured under the Ecosystem Enhancement Program's design-bid-build program. The Ecosystem Enhancement Program may utilize this program only when procurement under subdivision (1) or (2) of this subsection is not feasible. Any mitigation site design work currently being performed through contracts awarded under the design-bid-build program shall be allowed to continue as scheduled. Contracts for construction of projects with a design already approved by the Ecosystem Enhancement Program shall be awarded by the Ecosystem Enhancement Program by issuing a Request for Proposal (RFP). Only contractors who have prequalified under procedures established by the Ecosystem Enhancement Program shall be eligible to bid on Ecosystem Enhancement Program construction projects. Construction contracts issued under this subdivision shall be exempt from the requirements of Article 8B of Chapter 143 of the General Statutes.

(j) The regulatory requirements for the establishment, operation, and monitoring of a compensatory mitigation bank or full delivery project shall vest at the time of the execution of the mitigation banking instrument or the award of a full delivery contract."

SECTION 5.(b) Sections 1.2 and 1.3 of S.L. 2011-343 are repealed.

SECTION 6. G.S. 143B-279.8(f) reads as rewritten:

"(f) The Secretary of Environment and Natural Resources shall report to the Environmental Review Commission and the ~~Joint Legislative Commission on Seafood and Aquaculture~~ ~~[Joint Legislative Commission on Governmental Operations]~~ Joint Legislative Commission on Governmental Operations within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission and the Joint Legislative Commission on Governmental Operations shall concurrently review

each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted by the Secretary. The Environmental Review Commission and the Joint Legislative Commission on Governmental Operations may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

SECTION 7. G.S. 143B-344.37(b)(1) reads as rewritten:

"§ 143B-344.37. (Expires June 30, 2016) North Carolina Sustainable Communities Grant Fund.

...
 (b) Purposes. – Funds in the North Carolina Sustainable Communities Grant Fund shall be used, as available, to provide funding to regional bodies, cities, or counties to improve regional planning efforts that integrate housing and transportation decisions, to increase the capacity to improve land use and zoning and to provide up to fifty percent (50%) of any required local matching funds for recipients of Federal Sustainable Communities Planning Grants and any other federal grants related to sustainable development and requiring local matching funds. In order to receive funds under this section, regions must meet all of the following requirements:

(1) The regional body, city, or county is a part of a regional sustainable development partnership that includes any of the metro regions as defined in ~~G.S. 143B-344.38(b)~~G.S. 143B-344.38(c). Partnerships may also include any Metropolitan Planning Organizations, Regional Planning Organizations, regional transit agencies, and representation from involved State agencies.

...."

SECTION 8. G.S. 143B-344.38 reads as rewritten:

"§ 143B-344.38. (Expires June 30, 2016) North Carolina Sustainable Communities Task Force – reports.

(a) Beginning in 2011, the Task Force shall report to the Governor, the chairs of the ~~House Commerce, Small Business, and Entrepreneurship Committee~~House Committee on Commerce and Job Development, and the Senate Commerce Committee, and the Joint Legislative Commission on Governmental Operations no later than October 1 each year. The report shall include the following elements:

...
 (b) Prior to awarding any funding under G.S. 143B-344.37 and no later than February 1, 2011, the Task Force shall report to the ~~House Commerce, Small Business, and Entrepreneurship Committee~~House Committee on Commerce and Job Development and the Senate Commerce Committee regarding the sustainable practices scoring system developed in accordance with G.S. 143B-344.35(7).

...."

SECTION 9. G.S. 143B-432(a) reads as rewritten:

"(a) The Division of Economic Development of the Department of Natural and Economic Resources, the Science and Technology Committee of the Department of Natural and Economic Resources, and the Science and Technology Research Center of the Department of Natural and Economic Resources ~~Resources, and the Western North Carolina Public Lands Council of the Department of Natural and Economic Resources~~ are each hereby transferred to the Department of Commerce by a Type I transfer, as defined in G.S. 143A-6."

SECTION 10. G.S. 18B-1105(b) reads as rewritten:

"§ 18B-1105. Authorization of distillery permit.

...
 (b) Distilleries for Fuel Alcohol. – Any person in possession of a Federal Operating Permit pursuant to Title 27, Code of Federal Regulations, Part ~~19 (April 1, 2010 Edition), 201.64 through 201.65 or Part 201.131 through 201.138~~ shall obtain a fuel alcohol permit before manufacturing any alcohol. The permit shall entitle the permittee to perform only those acts allowed by the Federal Operating Permit, and all conditions of the Federal Operating Permit shall apply to the State permit."

SECTION 11.(a) Definition. – As used in this act, "New Development Rule 15A NCAC 02B .0265" means 15A NCAC 02B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008.

SECTION 11.(b) New Development Rule 15A NCAC 02B .0265. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 11(d) of this act, the Commission and the Department shall implement New Development Rule 15A NCAC 02B .0265, as provided in Section 11(c) of this act.

SECTION 11.(c) Implementation. – Notwithstanding sub-subdivision (d) of subdivision (4) of New Development Rule 15A NCAC 02B .0265, by August 10, 2014, within three months after the Commission's approval of a local program, or upon the Division's first renewal of a local government's NPDES stormwater permit, whichever occurs later, the affected local government shall complete adoption of and implement its local stormwater management program.

SECTION 11.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace New Development Rule 15A NCAC 02B .0265. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 11(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

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

SECTION 12.(a) If Senate Bill 820, 2011 Regular Session, becomes law, then Section 2(j) of that act reads as rewritten:

"SECTION 2.(j) The Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources, the Department of Transportation, the North Carolina League of Municipalities, and the North Carolina Association of County Commissioners, shall identify appropriate levels of funding and potential sources for that funding, including permit fees, bonds, taxes, and impact fees, necessary to (i) support local governments impacted by the industry and associated activities; (ii) address expected infrastructure impacts, including, but not limited to, repair of roads damaged by truck traffic and heavy equipment; (iii) cover any costs to the State for administering an oil and gas regulatory program, including remediation and reclamation of drilling sites when necessary due to abandonment or insolvency of an oil or gas operator or other responsible party; and (iv) any other issues that may need to be addressed in the Commission's determination. Any recommendation concerning local impact fees shall be formulated to require that all such fees be used exclusively to address infrastructure impacts from the drilling operation for which a fee is imposed. The Commission shall report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the Environmental Review Commission on or before ~~January~~ October 1, 2013."

SECTION 12.(b) If Senate Bill 820, 2011 Regular Session, becomes law, then Section 2(k) of that act reads as rewritten:

"SECTION 2.(k) The Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources, the North Carolina League of Municipalities, and the North Carolina Association of County Commissioners, shall examine the issue of local government regulation of oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose. The Commission shall formulate recommendations that maintain a uniform system for the management of such activities, which allow for reasonable local regulations, including required setbacks, infrastructure placement, and light and noise restrictions, that do not prohibit or have the effect of prohibiting oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose, or otherwise conflict with State law. The Commission shall report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the Environmental Review Commission on or before ~~January~~ October 1, 2013."

SECTION 12.(c) If Senate Bill 820, 2011 Regular Session, becomes law, then Section 2(l) of that act reads as rewritten:

"SECTION 2.(l) The Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources and the Consumer Protection Division of the North Carolina Department of Justice, shall study the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter. The Department shall

report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the Environmental Review Commission on or before ~~January~~ October 1, 2013."

SECTION 12.(d) If Senate Bill 820, 2011 Regular Session, becomes law, then G.S. 113-423(j), as enacted by Section 4(d) of that act, reads as rewritten:

"(j) ~~Three-Day~~Seven-Day Right of Rescission. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall be subject to a ~~three-day~~seven-day right of rescission in which the lessor or lessee may cancel the lease. A bold and conspicuous notice of this right of rescission shall be included in all such leases. In order to cancel the lease, the lessor or lessee shall notify the other party in writing within ~~three~~seven business days of execution of the lease, and the lessor shall return any sums paid by the lessee to the lessor under the terms of the lease."

SECTION 13. Sections 12(a) through 12(c) of this act become effective August 1, 2012. Section 12(d) of this act is effective when it becomes law and applies to leases or contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of July, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:44 a.m. this 1st day of August, 2012