

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2013**

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**SENATE BILL 729**

Short Title: Governor's Coal Ash Action Plan. (Public)

Sponsors: Senators Apodaca, Berger (Primary Sponsors); Allran, Daniel, Pate, Tarte, and Tucker.

Referred to: Agriculture/Environment/Natural Resources.

May 15, 2014

A BILL TO BE ENTITLED

1 AN ACT TO (1) CHANGE NOTIFICATION REQUIREMENTS APPLICABLE TO  
2 DISCHARGES OF WASTEWATER; (2) ESTABLISH COAL COMBUSTION  
3 PRODUCTS IMPOUNDMENT WATER MONITORING PROGRAM; (3) IDENTIFY  
4 AND ADDRESS UNPERMITTED WASTEWATER DISCHARGES AT COAL  
5 COMBUSTION PRODUCTS IMPOUNDMENT SITES; (4) AMEND S.L. 2009-390; (5)  
6 REQUIRE EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE  
7 HAZARD DAMS; (6) CHANGE NOTIFICATION REQUIREMENTS APPLICABLE TO  
8 DAM REPAIRS; (7) INCREASE COAL COMBUSTION PRODUCTS IMPOUNDMENT  
9 INSPECTION REQUIREMENTS; (8) MODIFY THE DEFINITION OF SOLID WASTE  
10 TO INCLUDE REMOVED COMBUSTION PRODUCTS; (9) PLACE A TEMPORARY  
11 MORATORIUM ON THE USE OF COAL COMBUSTION PRODUCTS AS  
12 STRUCTURAL FILL; AND (10) ESTABLISH REQUIREMENTS FOR COAL  
13 COMBUSTION PRODUCTS IMPOUNDMENT CLOSURE.  
14

15       Whereas, the issue of coal ash storage has not been adequately addressed in North  
16 Carolina for more than six decades; and

17       Whereas, on February 2, 2014, an estimated 39,000 tons of coal ash was released  
18 into the Dan River following the failure of a stormwater pipe under a utility coal ash  
19 impoundment pond in Eden, North Carolina; and

20       Whereas, the Department of Environment and Natural Resources ("Department")  
21 finds that coal combustion products have settled into the sediment of the river bottom and  
22 will require an extensive clean-up plan to complete remediation; and

23       Whereas, the Department is in the process of reassessing previous efforts at  
24 achieving compliance at coal ash facilities and developing short term and long term policies  
25 in light of the Dan River spill, violations discovered in light of increased inspections of coal  
26 combustion products disposal facilities and anticipated new federal regulations on coal  
27 combustion products; and

28       Whereas, it is the intent of the Department to ensure that spills of wastewater are  
29 reported to the Department in a defined and adequate time frame; and

30       Whereas, it is the intent of the Department to protect surface water and groundwater  
31 resources for their best usage; and

32       Whereas, it is the intent of the Department to ensure that all unpermitted  
33 wastewater discharges are eliminated or addressed in an environmentally responsible manner;  
34 and



1           Whereas, it is the intent of the Department to equally subject all dams under  
2 jurisdiction of G.S. 143-215.23 to the requirements of statute and administrative code; and

3           Whereas, it is the intent of the Department for the owners of all dams under  
4 jurisdiction of G.S. 143-215.23 deemed intermediate and high hazard by the Department to  
5 prepare at their own cost documents that describe full and adequate response to emergency  
6 situations at their dams and to submit those documents to the Department; and

7           Whereas, it is the intent of the Department to ensure that emergency situations  
8 at dams are reported to the Department in a defined and adequate time frame; and

9           Whereas, the it is the intent of the Department to increase oversight of dam  
10 structure integrity to protect the health and safety of the public; and

11           Whereas, state law exempts coal combustion products removed from  
12 impoundments from being defined as a solid waste; and

13           Whereas, the Department finds that consistent environmental standards should  
14 apply to coal combustion products removed from impoundments for management or  
15 disposal and coal combustion products managed or disposed of as a solid waste; and

16           Whereas, the Department finds the federal Environmental Protection Agency is  
17 under consent decree to complete new regulations by December 2014 for coal combustion  
18 products that are proposed to bring consistency to requirements for large fills such as structural  
19 fills and landfills; and

20           Whereas, the Department finds that conversion and closure of coal ash storage  
21 ponds is necessary for protection of the health and safety of the public; Now, therefore,  
22 The General Assembly of North Carolina enacts:

## 23 24 **PART I. NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF** 25 **WASTEWATER**

26           **SECTION 1.** G.S. 143-215.1C reads as rewritten:

27           "**§ 143-215.1C. Report to wastewater system customers on system performance; report**  
28           **discharge of untreated wastewater and wastewater containing coal combustion**  
29           **products to the Department; publication of notice of discharge of untreated**  
30           **wastewater and waste.**

31           (a) Report to Wastewater System Customers. – The owner or operator of any  
32 wastewater collection or treatment works, the operation of which is primarily to collect or treat  
33 municipal or domestic wastewater and for which a permit is issued under this Part and having  
34 an average annual flow greater than 200,000 gallons per day, shall provide to the users or  
35 customers of the collection system or treatment works and to the Department an annual report  
36 that summarizes the performance of the collection system or treatment works and the extent to  
37 which the collection system or treatment works has violated the permit or federal or State laws,  
38 regulations, or rules related to the protection of water quality. The report shall be prepared on  
39 either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of  
40 the calendar or fiscal year.

41           (a1) Report of Discharge of Untreated Wastewater or Wastewater Containing Coal  
42 Combustion Products to the Department. – The owner or operator of any wastewater collection  
43 or treatment works shall report a discharge of 1,000 gallons or more of untreated wastewater or  
44 wastewater containing coal combustion products, or a spill of any amount of untreated  
45 wastewater or wastewater containing coal combustion products that reaches waters of the State  
46 to the Department as soon as possible but not later than 24 hours after first knowledge of the  
47 spill. This reporting requirement shall be in addition to any other reporting requirement  
48 applicable to the owner or operator of the wastewater collection or treatment works.

49           (b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or  
50 operator of any wastewater collection or treatment works, the operation of which is primarily to

1 collect or treat municipal or domestic wastewater ~~and for which a permit is issued under this~~  
2 ~~Part~~ shall:

- 3 (1) In the event of a discharge of 1,000 gallons or more of untreated wastewater  
4 or wastewater containing coal combustion products to the surface waters of  
5 the State, issue a press release to all print and electronic news media that  
6 provide general coverage in the county where the discharge occurred setting  
7 out the details of the discharge. The owner or operator shall issue the press  
8 release within ~~48-24~~ hours after the owner or operator has ~~determined that~~  
9 ~~the discharge has reached the surface waters of the State.~~ first knowledge of  
10 the spill. The owner or operator shall retain a copy of the press release and a  
11 list of the news media to which it was distributed for at least one year after  
12 the discharge and shall provide a copy of the press release and the list of the  
13 news media to which it was distributed to any person upon request.
- 14 (2) In the event of a discharge of 15,000 gallons or more of untreated  
15 wastewater to the surface waters of the State, publish a notice of the  
16 discharge in a newspaper having general circulation in the county in which  
17 the discharge occurs and the county immediately downstream and in each  
18 county downstream from the point of discharge that is significantly affected  
19 by the discharge. The Secretary shall determine, at the Secretary's sole  
20 discretion, which counties are significantly affected by the discharge and  
21 shall approve the form and content of the notice and the newspapers in  
22 which the notice is to be published. The notice shall be captioned "NOTICE  
23 OF DISCHARGE OF UNTREATED SEWAGE". The owner or operator  
24 shall publish the notice within 10 days after the Secretary has determined the  
25 counties that are significantly affected by the discharge and approved the  
26 form and content of the notice and the newspapers in which the notice is to  
27 be published. The owner or operator shall file a copy of the notice and proof  
28 of publication with the Department within 30 days after the notice is  
29 published. Publication of a notice of discharge under this subdivision is in  
30 addition to the requirement to issue a press release under subdivision (1) of  
31 this subsection.

32 (c) Publication of Notice of Discharge of Untreated Waste as defined in  
33 G.S. 143-213(18). – The owner or operator of any wastewater collection or treatment works,  
34 other than a wastewater collection or treatment works the operation of which is primarily to  
35 collect or treat municipal or domestic wastewater, ~~for which a permit is issued under this Part~~  
36 wastewater shall:

- 37 (1) In the event of a discharge of 1,000 gallons or more of untreated waste to the  
38 surface waters of the State, issue a press release to all print and electronic  
39 news media that provide general coverage in the county where the discharge  
40 occurred setting out the details of the discharge. The owner or operator shall  
41 issue the press release within ~~48-24~~ hours after the owner or operator has  
42 ~~determined that the discharge has reached the surface waters of the State.~~ first  
43 knowledge of the spill. The owner or operator shall retain a copy of the press  
44 release and a list of the news media to which it was distributed for at least  
45 one year after the discharge and shall provide a copy of the press release and  
46 the list of the news media to which it was distributed to any person upon  
47 request.
- 48 (2) In the event of a discharge of 15,000 gallons or more of untreated waste to  
49 the surface waters of the State, publish a notice of the discharge in a  
50 newspaper having general circulation in the county in which the discharge  
51 occurs and the county immediately downstream and in each county

1 downstream from the point of discharge that is significantly affected by the  
2 discharge. The Secretary shall determine, at the Secretary's sole discretion,  
3 which counties are significantly affected by the discharge and shall approve  
4 the form and content of the notice and the newspapers in which the notice is  
5 to be published. The notice shall be captioned "NOTICE OF DISCHARGE  
6 OF UNTREATED WASTE". The owner or operator shall publish the notice  
7 within 10 days after the Secretary has determined the counties that are  
8 significantly affected by the discharge and approved the form and content of  
9 the notice and the newspapers in which the notice is to be published. The  
10 owner or operator shall file a copy of the notice and proof of publication  
11 with the Department within 30 days after the notice is published. Publication  
12 of a notice of discharge under this subdivision is in addition to the  
13 requirement to issue a press release under subdivision (1) of this subsection."  
14

## 15 PART II. COAL COMBUSTION PRODUCTS IMPOUNDMENT WATER 16 MONITORING PROGRAM

17 SECTION 2. Article 21 of Chapter 143 of the General Statutes is amended by  
18 adding a new section to read:

### 19 "§ 143-215.1D. Coal combustion products impoundment water monitoring program.

20 (a) Groundwater Assessment – Owners of coal ash impoundments located at all  
21 investor-owned public utilities shall conduct groundwater monitoring according to the  
22 following schedule and procedures:

23 (1) No later than 45 days from enactment of this Act, the owner shall submit to  
24 the Division of Water Resources a Plan of proposed assessment activities to  
25 evaluate groundwater impacts from all coal combustions products  
26 impoundments located at all investor owned public utilities. At a minimum  
27 the plan shall:

- 28 a. Identify all receptors and significant exposure pathways.
- 29 b. Assess horizontal and vertical extent of soil and groundwater  
30 contamination for all contaminants confirmed to be present in  
31 groundwater in exceedance of groundwater quality standards and all  
32 significant factors affecting contaminant transport.
- 33 c. Identify the geological and hydrogeological features influencing the  
34 movement, chemical, and physical character of the contaminants.
- 35 d. Propose a schedule for continued groundwater monitoring.

36 Upon review and approval by the Division of Water Resources, the  
37 investor-owned public utility shall initiate assessment activities.

38 (2) No later than 180 days from the Division of Water Resources' written  
39 approval of the Plan required under subdivision (1) of subsection (a) of this  
40 section, or a time frame otherwise approved by the Division of Water  
41 Resources, the owner shall submit a Report detailing the findings of the  
42 Plan. The Report shall set forth the extent of any and all exceedances of the  
43 groundwater quality standards.

44 (3) No later than 270 days from the Division of Water Resources' written  
45 approval of the Plan required under subdivision (1) of subsection (a) of this  
46 section, or a time frame otherwise approved by the Division of Water  
47 Resources, the owner shall submit to the Division of Water Resources a  
48 proposed Corrective Action Plan. The Corrective Action Plan shall, at a  
49 minimum, contain:

- 1           a.     A listing of all exceedances of the groundwater quality standards  
2           including any exceedances that the owner asserts are the result of  
3           natural background conditions.
- 4           b.     Except as provided in subdivision f. of this subdivision, a  
5           description of the proposed corrective action employing the best  
6           available technology for the restoration of groundwater quality to the  
7           level of the groundwater quality standards and reasons for its  
8           selection.
- 9           c.     Specific plans, including engineering details where applicable, for  
10          restoring groundwater quality.
- 11          d.     A schedule for the implementation of the proposed corrective action  
12          plan.
- 13          e.     A monitoring plan for evaluating the effectiveness of the proposed  
14          corrective action and the movement of the contaminant plume.
- 15          f.     The owner may request alternative remediation as provided for under  
16          the requirements of 15A NCAC 2L .0106 (k), (l), or (m).
- 17          (4)    No later than 30 days from the Division of Water Resources' approval of a  
18          Final Corrective Action Plan, the owner shall implement the Final  
19          Corrective Action Plan in accordance with a schedule established by  
20          Division of Water Resources. The approval of a Final Corrective Action  
21          Plan is not a final agency action pursuant to G.S. 150B.

22          (b)    Drinking Water Assessment. – Within 60 days of enactment of this Act, owners of  
23          coal ash impoundments located at all investor-owned public utilities shall conduct and submit  
24          to the Division of Water Resources a water supply receptor survey. The Survey shall identify  
25          all receptors within a radius of 2,640 feet (0.5 mile) from the established compliance boundary  
26          of each impoundment. The owner shall sample each receptor identified by the Division of  
27          Water Resources. For any well exceeding the groundwater standards, the owner shall replace  
28          the water supply with a supply of potable drinking water.

29          (c)    Annual Reporting Requirement. – In addition to any other reports required by the  
30          Division of Water Resources, the owners of coal combustion products impoundments located at  
31          all investor owned public utilities shall submit an annual report to the Division of Water  
32          Resources no later than January 31 of each year. The Annual report shall include a summary of  
33          all monitoring data collected over the year, status of Plans and Final Corrective Action Plans,  
34          and a summary of water supply receptor survey results."

35

36    **PART III. IDENTIFY AND ADDRESS UNPERMITTED WASTEWATER**  
37    **DISCHARGES AT COAL COMBUSTION PRODUCTS IMPOUNDMENT SITES**

38          **SECTION 3.** Article 21 of Chapter 143 of the General Statutes is amended by  
39 adding a new section to read:

40    "**§ 143-215.1E. Identify and address unpermitted wastewater discharges at coal**  
41    **combustion products impoundment sites.**

42          (a)    Owners of coal combustion products impoundments located at all investor-owned  
43          public utilities shall implement the plan described in subsections (b) through (h) of this section  
44          to identify and address any unpermitted discharges to surface waters at those coal combustion  
45          products impoundment sites.

46          (b)    No later than 90 days from enactment of this act, the owner shall submit a  
47          topographic map at a scale approved by Division of Water Resources that indicates the  
48          locations of all outfalls from engineered channels designed and/or improved for the purpose of  
49          collecting water from the toe of the coal combustion products impoundments. For each outfall,  
50          the map will:

- 51               (1)    Specify its latitude and longitude.

1           (2)   Specify whether the discharge is continuous or intermittent.

2           (3)   Provide an average flow measurement, including a description of the method  
3           used to measure flow.

4           With the topographic map, the owner will submit to the Division of Water Resources a  
5           schedule according to which the owner shall conduct water quality sampling of the toe drain  
6           outfalls in order to further characterize the discharging water. No later than 30 days from  
7           receipt of the map and sampling schedule, Division of Water Resources will provide the owner  
8           with review comments, either approving the plan or noting any deficiencies to be corrected and  
9           a date by which a corrected map and/or sampling schedule is to be submitted for further review  
10           and comment. Within 30 days of approval of the schedule by the Division of Water Resources,  
11           the owner shall begin to sample the toe drain outfalls in accordance with the schedule and  
12           submit the samples for water quality analysis. Water quality analyses shall include the same  
13           parameters required for a coal-fired power plant per EPA Application Form 2C – Wastewater  
14           Discharge Information, Consolidated Permits Program (EPA Form 3510-2C, August 1990). If  
15           the owner demonstrates to the satisfaction of Division of Water Resources that sampling of a  
16           toe drain outfall is unlikely to generate usable data or is otherwise infeasible, the owner will not  
17           be required to sample that toe drain outfall.

18           (c)   No later than 180 days from the enactment of this act, the owner shall submit a  
19           topographic map at a scale approved by the Division of Water Resources that indicates the  
20           locations of any seeps or drains reflecting discharges from the ash ponds but are not captured  
21           by an engineered channel identified pursuant to subsection (b) of this section. For any seep so  
22           identified that is believed to not reflect flows from any of the ash ponds, the owner shall  
23           provide to the Division of Water Resources the basis for such belief, including hydrological  
24           data or water quality testing information. For the seeps from the impoundments, the map will:

25           (1)   Specify its latitude and longitude.

26           (2)   Specify whether the discharge is continuous or intermittent.

27           (3)   Provide an average flow measurement, including a description of the method  
28           used to measure flow.

29           (4)   Specify whether the discharge from the seep reaches surface waters.

30           (5)   If the discharge from the seep reaches surface water, identify the location  
31           where the seep reaches surface water on the map to include latitude and  
32           longitude.

33           (d)   No later than 180 days from the enactment of this act, the owner shall submit a plan  
34           to determine whether toe drain or seep discharges from the impoundments have reached surface  
35           waters of the state and are causing violations of surface water quality standards. The plan shall  
36           include the following:

37           (1)   Sampling locations upstream and downstream within all channels that  
38           potentially carry such discharges.

39           (2)   Water quality analyses shall include the same parameters required for a  
40           coal-fired power plant per EPA Application Form 2C – Wastewater  
41           Discharge Information, Consolidated Permits Program (EPA Form 3510-2C,  
42           August 1990).

43           (3)   Frequency and duration of the sampling activities.

44           (4)   Reporting requirements.

45           No later than 30 days from receipt of the plan, the Division of Water Resources will provide  
46           the owner with review comments, either approving the plan, or noting any deficiencies to be  
47           corrected and a date by which a corrected plan is to be submitted for further review and  
48           comment or approval. Within 180 days from the Division of Water Resources' approval of the  
49           plan, the owner will implement and complete the plan and submit a report summarizing that  
50           work and its results.

1       (e) If the Division of Water Resources determines, based on information submitted  
2 pursuant to subsections (b) through (d) of this section, that discharges, whether from toe drains  
3 or seeps, are causing a violation of G.S. 143-215.1 or any other law, it shall so notify the  
4 owner. Within 120 days of such notification, the owner shall do one of the following:

5           (1) Stop the discharge.

6           (2) Capture and route the discharge so that it is discharged through an NPDES  
7 permitted outfall.

8           (3) Address the seep using Best Management Practices approved by the Division  
9 of Water Resources pursuant to subsection (f) of this section.

10          (4) Propose alternative Best Management Practices subject to the approval of the  
11 Division of Water Resources.

12          (5) Apply for an NPDES discharge permit or permit amendment to regulate the  
13 discharge.

14       (f) No later than 180 days from the date of enactment of this act, The owner shall  
15 submit to the Division of Water Resources for approval a set of best management practices  
16 designed to prevent unpermitted discharges of pollutants from the ash ponds to surface waters.  
17 Thereafter, the owner may submit additional best management practices for the Division of  
18 Water Resources approval.

19       (g) No later than 30 days from enactment of this act, the owner shall submit to the  
20 Division of Water Resources a plan for identifying new seeps on the dike areas of the ash  
21 ponds that arise after the submission of the maps described in subsections (b) and (c) of this  
22 section. The plan shall include, at a minimum, the following elements:

23           (1) A procedure for routine inspection of the coal combustion products  
24 impoundment areas to identify indicators of potential new seeps.

25           (2) A decision flow chart (including criteria and procedures) for determining  
26 whether a new seep is actually present.

27           (3) A procedure for notifying the Division of Water Resources after a new seep  
28 is confirmed.

29       No later than 30 days from receipt of the plan, the Division of Water Resources will provide  
30 the owner with review comments noting any deficiencies.

31       (h) No later than 12 months from the enactment of this act, the owner shall submit any  
32 information, forms, and fees necessary to request that the Division of Water Resources  
33 incorporate the process described in subsections (b) through (g) of this section into the owner's  
34 NPDES permit."

#### 36 **PART IV. AMEND S.L. 2009-390 (SB 1004)**

37       **SECTION 4.** Section 3.(b) of S.L. 2009-390 is repealed.

#### 39 **PART V. EMERGENCY ACTION PLANS**

40       **SECTION 5.** G.S. 143-215.31 is amended by adding two subsections to read:

41 **"§ 143-215.31. Supervision over maintenance and operation of dams.**

42       ...

43       (f) Develop Emergency Action Plan. – Owners of high and intermediate hazard dams  
44 shall develop at their cost an Emergency Action Plan for their dam in document format in  
45 triplicate copy to be submitted to the Department by January 1, 2015. The emergency action  
46 plan at minimum shall:

47           (1) Identify potential emergency conditions that can occur at the dam.

48           (2) List preplanned actions to be taken during an emergency condition at the  
49 dam.

50           (3) Document emergency notification procedures to aid in warning and  
51 evacuations during an emergency condition at the dam.

1           (4) Provide a downstream inundation map depicting areas affected by a dam  
2           failure and sudden release of the impoundment.

3           If a dam owner fails to provide the Department with an Emergency Action Plan in triplicate  
4           copy by January 1, 2015, it shall be subject to Enforcement Procedures under G.S. 143-215.36.  
5           Dam owners shall update their emergency action plans annually and submit the updated plans  
6           in triplicate copy to the Department each year subsequent to January 1, 2015. The Department  
7           shall provide the appropriate local Emergency Management Agency and the Regional Office of  
8           the Department with the triplicate copy.

9           (g) Confidentiality of Sensitive Public Security Information – To the extent that any  
10           documents included in the Emergency Action Plan developed under this section contain  
11           sensitive public security information, those portions of documents shall not be subject to  
12           disclosure under the North Carolina Public Records Act."

## 13

### 14 **PART VI. NOTIFICATION OF EMERGENCY REPAIR OF A DAM**

15           **SECTION 6.** G.S. 143-215.27 reads as rewritten:

16           "**§143-215.27. Repair, alteration, or removal of dam.**

17           (a) Before commencing the repair, alteration or removal of a dam, application shall be  
18           made for written approval by the Department, except as otherwise provided by this Part. The  
19           application shall state the name and address of the applicant, shall adequately detail the changes  
20           it proposes to effect and shall be accompanied by maps, plans and specifications setting forth  
21           such details and dimensions as the Department requires. The Department may waive any such  
22           requirements. The application shall give such other information concerning the dam and  
23           reservoir required by the Department, such information concerning the safety of any change as  
24           it may require, and shall state the proposed time of commencement and completion of the  
25           work. When an application has been completed it may be referred by the Department for  
26           agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of  
27           original construction.

28           (b) When repairs are necessary to safeguard life and property they may be started  
29           immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and of the  
30           work under way, ~~way~~ as soon as possible but not later than 24 hours after first knowledge of the  
31           necessity for emergency repairs, and ~~they~~ such repairs shall be made to conform to its orders."

### 32

### 33 **PART VII. INSPECTION OF IMPOUNDMENTS**

34           **SECTION 7.** G.S. 143-215.32 is amended by adding two sections to read:

35           "(e) Investor-owned public utilities shall inspect each coal combustion products  
36           impoundment weekly and after storms to detect evidence of any of the following:

37           (1) Deterioration, malfunctions, or improper operation of spillway control  
38           systems.

39           (2) Sudden drops in the level of the impoundment's contents.

40           (3) Severe erosion or other signs of deterioration in dikes or other containment  
41           devices.

42           (4) New or enlarged seeps along the downstream slope or toe of the dike  
43           or other containment devices.

44           (5) Any other abnormal conditions at the impoundment that may pose a health  
45           or safety risk.

46           If any abnormalities in subdivisions (1) through (5) of this subsection are observed,  
47           documentation shall be provided to a registered professional engineer for further investigation  
48           and appropriate action.

49           (f) Each coal combustion products impoundment located at investor-owned public  
50           utilities shall be inspected annually by an independent registered professional engineer to  
51           assure structural integrity and that the design, operation, and maintenance of the surface



1 impoundment are in accordance with generally accepted engineering standards. The owner or  
2 operator must notify the Department by way of a certification by the independent registered  
3 professional engineer that the dam is structurally sound and the design, operation, and  
4 maintenance of the surface impoundment is in accordance with generally accepted engineering  
5 standards. The inspection report shall be submitted to the Department within 30 days of the  
6 completion of the inspection and shall be placed on a publicly accessible internet site."  
7

## 8 **PART VIII. DEFINITION OF SOLID WASTE**

9 **SECTION 8.(a)** G.S. 130A-290(a)(35) reads as rewritten:

10 "(35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or  
11 sludge from a waste treatment plant, water supply treatment plant or air  
12 pollution control facility, domestic sewage and sludges generated by the  
13 treatment thereof in sanitary sewage collection, treatment and disposal  
14 systems, and other material that is either discarded or is being accumulated,  
15 stored or treated prior to being discarded, or has served its original intended  
16 use and is generally discarded, including solid, liquid, semisolid or contained  
17 gaseous material resulting from industrial, institutional, commercial and  
18 agricultural operations, and from community activities. The term does not  
19 include:

- 20 a. Fecal waste from fowls and animals other than humans.  
21 b. Solid or dissolved material in:  
22 1. Domestic sewage and sludges generated by treatment thereof  
23 in sanitary sewage collection, treatment and disposal systems  
24 which are designed to discharge effluents to the surface  
25 waters.  
26 2. Irrigation return flows.  
27 3. Wastewater discharges and the sludges incidental to and  
28 generated by treatment which are point sources subject to  
29 permits granted under Section 402 of the Water Pollution  
30 Control Act, as amended (P.L. 92-500), and permits granted  
31 under G.S. 143-215.1 by the Environmental Management  
32 Commission. However, any combustion products removed  
33 from impoundments subject to permits under Section 402 of  
34 the Water Pollution Control Act, as amended (P.L. 92-500),  
35 and permits granted under G.S. 143-215.1 by the  
36 Environmental Management Commission shall be a solid  
37 waste. Any sludges that meet the criteria for hazardous waste  
38 under RCRA shall also be a solid waste for the purposes of  
39 this Article.  
40 c. Oils and other liquid hydrocarbons controlled under Article 21A of  
41 Chapter 143 of the General Statutes. However, any oils or other  
42 liquid hydrocarbons that meet the criteria for hazardous waste under  
43 RCRA shall also be a solid waste for the purposes of this Article.  
44 d. Any source, special nuclear or byproduct material as defined by the  
45 Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).  
46 e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46  
47 through 74-68 and regulated by the North Carolina Mining and  
48 Energy Commission (as defined under G.S. 143B-293.1). However,  
49 any specific mining waste that meets the criteria for hazardous waste  
50 under RCRA shall also be a solid waste for the purposes of this  
51 Article.

f. Recovered material."

**SECTION 8.(b)** G.S. 143-213(18) reads as rewritten:

"(18) "Waste" shall mean and include the ~~following~~following with the exception of solid waste as defined by G.S. 130A-290(a)(35):

- a. "Sewage," which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.
- b. "Industrial waste" shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.
- c. "Other waste" means sawdust, shavings, lime, refuse, offal, oil, tar chemicals, dissolved and suspended solids, sediment, and all other substances, except industrial waste, sewage, and toxic chemicals which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.
- d. "Toxic waste" means that waste, or combinations of wastes, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformities, in such organisms or their offspring."

## **PART IX. TEMPORARY MORATORIUM ON STRUCTURAL FILL**

**SECTION 9.(a)** Moratorium Established. – Notwithstanding rules adopted by the Commission for Public Health there is hereby established a moratorium on the use of coal combustion products as a structural fill unless the fill is used under an airport runway or base or sub-base of a concrete or asphalt paved road, constructed under the authority of a public entity. The moratorium established by this section shall be in effect until rules are amended by the Commission for Public Health for the management of coal combustion products.

**SECTION 9.(b)** For purposes of this section, the moratorium does not apply to structural fill sites of less than 5,000 cubic yards.

**SECTION 9.(c)** This section is effective when this act becomes law and applies only to those coal combustion products structural fills that have not begun construction or have not received a permit to begin construction on or before that date.

## **PART X. COAL COMBUSTION PRODUCTS IMPOUNDMENT CLOSURE**

**SECTION 10.(a)** Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 12. Coal Combustion Products Impoundment Closure

**"§ 143-215.74Q. Closure of Coal Combustion Products Impoundments to Protect Groundwater and Surface Water**

(a) The Department shall establish the priority for closure of all active and inactive investor-owned coal combustion products impoundments. Once priorities for closure are established, the owner of the active and inactive ash ponds shall propose a schedule for beginning closure activities for each prioritized facility, and shall submit a proposed schedule

1 in accordance with the time frame established by the Department. Six months (180 days) before  
2 the scheduled closure activities begin, the owner must submit five (5) paper copies and one (1)  
3 electronic copy of a closure plan to the Division of Water Resources for approval. The closure  
4 plan shall include the following sections:

5 (1) Facility and Ash Pond Description. – A description of the operation of the  
6 facility that shall include, but not be limited to:

- 7 a. Site and history of site operations; ash handling and storage  
8 operations.  
9 b. Types of flows discharging into the impoundment.  
10 c. Estimated volume of material contained in the impoundment.  
11 d. Analysis of the structural integrity of dikes or dams associated with  
12 impoundment.  
13 e. Composition of liner (lined or unlined pond).  
14 f. Summarized results of any previous environmental investigations  
15 performed at the site.

16 (2) Site Map. – Site maps that illustrate the following:

- 17 a. All structures associated with operations of the ash ponds within the  
18 power plant property boundary.  
19 b. All identified current and former ash disposal and storage areas  
20 including structural fills.  
21 c. All property boundaries and established compliance boundaries.  
22 d. All potential receptors (i.e. water supply wells, surface water bodies  
23 (streams, springs, lakes, ponds and other surface drainage features,  
24 and wetlands) within 2,640 feet from the compliance boundary.  
25 e. Topographic contour intervals of the site shall be selected to enable  
26 an accurate representation of site features and terrain and in most  
27 cases should be less than 20 feet intervals.  
28 f. Locations of all on-site active and inactive Division of Waste  
29 Management permitted solid waste facilities along with their  
30 associated compliance boundaries and monitoring wells.  
31 g. All existing and proposed groundwater monitoring wells associated  
32 with monitoring of the active and inactive ash ponds.  
33 h. All existing and proposed sample collection locations associated with  
34 the operation or closure of the impoundment(s).

35 (3) Hydrogeologic, Geologic, and Geotechnical Investigations. – The results of  
36 a hydrogeologic, geologic, and geotechnical investigation of the facility, that  
37 shall include, but not be limited to:

- 38 a. A description of the hydrogeology and geology of the site.  
39 b. A description of the stratigraphy of the geologic units underlying the  
40 ash ponds.  
41 c. The saturated hydraulic conductivity for the ash and liner if present.  
42 d. The geotechnical properties for the ash, liner if present, and the  
43 uppermost identified stratigraphic unit underlying the impoundment  
44 including the soil classification by Unified Soil Classification  
45 System, in-place moisture content, particle size distribution,  
46 Atterberg limits, specific gravity, effective friction angle, maximum  
47 dry density, optimum moisture content, and permeability.  
48 e. A chemical analysis of the impoundment water, ash, and ash-affected  
49 soil. Identify constituents with concentrations found to be in excess  
50 of 15A NCAC 02L. 0202 Groundwater Quality Standards including  
51 all laboratory results for these analyses.

- 1            f.        Summary tables of historical records of groundwater sampling  
2            results.
- 3            g.        A map that illustrates the potentiometric contours and flow directions  
4            for all identified aquifers underlying impoundments (shallow,  
5            intermediate, and deep) and the horizontal extent of areas where 15A  
6            NCAC 02L. 0202 Groundwater Quality Standards are exceeded.
- 7            h.        Cross-sections that illustrate the following: vertical and horizontal  
8            extent of the ash within the impoundment; Stratigraphy of the  
9            geologic units underlying the ash pond and the vertical extent of  
10           areas where 15A NCAC 02L. 0202 Groundwater Quality Standards  
11           are exceeded.
- 12           (4)      Hydrogeologic Modeling. – The results of groundwater modeling of the site  
13           that shall include, but not be limited to:
- 14           a.        An account of the design of the proposed pond closure method that:  
15           is based on the site hydrogeologic conceptual model developed,  
16           includes predictions on post-closure groundwater elevations,  
17           groundwater flow directions and velocities including the effects  
18           on/from the potential receptors, and includes predictions at the  
19           compliance boundary for constituents identified in subdivision e.  
20           of subdivision (3) of this subsection as exceeding 15A NCAC 2L  
21           .0202 Groundwater Quality Standards.
- 22           b.        Predictions that include the effects on the groundwater chemistry,  
23           and should describe migration, concentration, mobilization and fate  
24           of the constituents that exceed 15A NCAC 2L standards before and  
25           after closure activities including the effects on/from potential  
26           receptors.
- 27           c.        A description of the groundwater trend analysis methods used to  
28           demonstrate compliance with 15A NCAC 02L .0202 Groundwater  
29           Quality Standards and 15A NCAC 02L .0106.
- 30           (5)      Closure Method. – The owner shall provide a proposed closure method. The  
31           proposed closure method must demonstrate that where groundwater quality  
32           is degraded, restoration to the level of the groundwater standards will be  
33           obtained as is economically and technically feasible. The selected proposed  
34           closure method shall be from one of the following alternatives, and shall  
35           include, but not be limited to:
- 36           a.        A description of the closure method identified for each ash pond.  
37           Closure methods include:
- 38           i.        Closure-in-Place. – This alternative entails placing an  
39           engineered cover system such as a composite geomembrane,  
40           impermeable clay, and/or a soil cover over the ash pond. No  
41           ash or ash-affected soil would leave the ash pond area.
- 42           ii.       Clean Closure. – This alternative assumes that all coal ash  
43           can be excavated and the ash pond area will be returned to a  
44           non-erosive and stable condition.
- 45           iii.      Hybrid Closure. – This alternative entails consolidating ash  
46           and ash-affected soil into as small area as feasible within the  
47           ash pond footprint. An engineered cover system (e.g.  
48           composite geomembrane, impermeable clay, and/or a soil  
49           cover) would be installed over the consolidated ash and  
50           ash-affected soil. The remaining ash pond area will be  
51           returned to a non-erosive and stable condition.

- 1                                    iv. Other. – Must be equally or more effective at protecting water  
2                                    quality than the other closure options.
- 3                                    b. A description concerning any plans for beneficial reuse of the coal  
4                                    ash under 15A NCAC 02T .1200 (if applicable).
- 5                                    c. All engineering drawings, schematics, and specifications for the  
6                                    proposed closure method. If required by G.S. 89C, engineering  
7                                    design documents should be prepared, signed, and sealed by a  
8                                    professional engineer. Describe the construction quality assurance  
9                                    and quality control program including the responsibilities and  
10                                    authorities; monitoring and testing activities; sampling strategies; and  
11                                    reporting requirements.
- 12                                    d. A description of the provisions for disposal of wastewater through an  
13                                    NPDES permit or any other relevant permit.
- 14                                    e. A description of the provisions for the final disposition of the ash. If  
15                                    the ash is to be removed, the owner must identify the site location  
16                                    and the permit number for ash sent to a permitted disposal site. If the  
17                                    ash is left in place, the owner must provide a description of how the  
18                                    ash will be stabilized during closure and post closure and an estimate  
19                                    of the volume of ash left in place.
- 20                                    f. A list of all permits that will need to be acquired or modified to  
21                                    complete closure activities.
- 22                                    (6) Post-Closure Plan. – The owner shall provide post-closure plans for a  
23                                    minimum of 30 years. If required by G.S. 89C, these plans should be signed  
24                                    and sealed by a professional engineer. These plans shall include, but not be  
25                                    limited to:
- 26                                    a. A description of the post-closure care and maintenance activities.
- 27                                    b. A demonstration of the long-term control of all leachate, affected  
28                                    groundwater, and stormwater.
- 29                                    c. A description of a groundwater monitoring program that includes:
- 30                                    i. Post closure groundwater monitoring, including parameters to  
31                                    be sampled and sampling schedules.
- 32                                    ii. Any additional monitoring well installations, including a map  
33                                    with the proposed location/s and well construction details.
- 34                                    iii. A description of the actions proposed to mitigate statistically  
35                                    significant increasing groundwater quality trends.
- 36                                    d. The length of the post-closure care period. This period may be  
37                                    proposed to be decreased or the frequency and parameter list  
38                                    modified if the owner demonstrates that the reduced period or  
39                                    modifications are sufficient to protect human health and the  
40                                    environment and this demonstration is approved by the Department.  
41                                    The length of the post-closure care period may be increased by the  
42                                    Department at the end of the post-closure period if there are  
43                                    statistically significant increasing groundwater quality trends or  
44                                    contaminant concentrations have not decreased to a level protective  
45                                    of human health and the environment. If the owner determines that  
46                                    the post-closure care period is no longer needed and the Department  
47                                    agrees, the owner shall provide a certification, signed by a registered  
48                                    professional engineer, verifying that post-closure care has been  
49                                    completed in accordance with the post-closure plan.
- 50                                    (7) Schedules. – The owner shall provide an estimate of the milestone dates for  
51                                    all activities related to closure and post-closure.

- 1           (8) Future Site Use. – The owner shall describe the anticipated future use of the  
2           site and the necessity for deed restrictions following closure.  
3           (9) Final Submittal Determination and Approval. – Within 90 days of receipt of  
4           a completed closure plan, the Department will send a letter either approving  
5           the closure plan or requesting additional information. Upon approval, the  
6           owner must begin closure activities within 30 days."

7           **SECTION 10.(b)** Part 3 of Article 21 of Chapter 143 of the General Statutes is  
8 amended by adding a new section to read:

9 **"§ 143-215.37A. Closure of coal combustion products impoundments to render such**  
10 **facilities exempt from the North Carolina Dam Safety Law of 1967.**

11           (a) Decommissioning Request Submittal. – Any party seeking to decommission a coal  
12 combustion products impoundment facility shall submit a document from the ownership entity  
13 requesting that the facility be decommissioned to the Division of Energy, Mineral, and Land  
14 Resources. The document shall include as a minimum the following:

- 15           (1) A proposed geotechnical investigation plan scope of work. Upon preliminary  
16 plan approval as described below, the owner shall proceed with necessary  
17 field work and submit a geotechnical report with site specific field data  
18 indicating that the containment dam and material impounded by the  
19 containment dam are stable, and that the impounded material is not subject  
20 to liquid flow behavior under expected static and dynamic loading  
21 conditions. Material testing should be performed along the full extent of the  
22 containment dam and in a pattern throughout the area of impounded  
23 material.  
24           (2) A topographic map depicting existing conditions of the containment dam  
25 and impoundment area at two foot contour intervals or less.  
26           (3) If the facility contains areas capable of impounding by topography, a breach  
27 plan must be included which ensures that there shall be no place within the  
28 facility capable of impounding. The breach plan shall include at minimum  
29 proposed grading contours superimposed on the existing topographic map as  
30 well as necessary engineering calculations, construction details and  
31 construction specifications.  
32           (4) A permanent vegetation and stabilization or capping plan by synthetic liner  
33 or other means if needed. These plans shall include at minimum, proposed  
34 grading contours superimposed on the existing topographic map where  
35 applicable as well as necessary engineering calculations, construction  
36 details, construction specifications and all details for the establishment of  
37 surface area stabilization.  
38           (5) A statement indicating that the impoundment facility has not received  
39 sluiced coal ash material for at least three years and there are no future plans  
40 to place coal ash in the facility by sluicing methods.

41           (b) Preliminary Submittal Determination and Approval. – The submitted document  
42 shall undergo a preliminary review by the Division of Energy, Mineral, and Land Resources for  
43 completeness and approval of the proposed geotechnical investigation plan scope of work.

- 44           (1) The owner shall be notified by letter with results of the preliminary review  
45 including approval or revision request relative to the proposed scope of work  
46 included in the geotechnical investigation plan.  
47           (2) Upon receipt of a letter issued by the Division approving the preliminary  
48 geotechnical plan scope of work, the owner may proceed with field work  
49 and development of the geotechnical report.

1       (c)    Final Submittal Determination and Approval. – Upon receipt of the geotechnical  
2 report, the Division of Energy, Mineral, and Land Resources shall complete the submittal  
3 review.

4       (1)    If it is determined that sufficient evidence has been presented to clearly show  
5 that the facility no longer functions as a dam in its current state, a letter  
6 decommissioning the facility shall be issued by the Division of Energy,  
7 Mineral, and Land Resources and the facility shall no longer be under  
8 jurisdiction of the Dam Safety Law of 1967, G.S. 143-215.23.

9       (2)    If modifications such as breach construction and/or implementation of a  
10 permanent vegetation or surface lining plan are needed, such plans shall be  
11 reviewed per standard procedures for consideration of letter of approval to  
12 modify and/or breach.

13       (3)    If approved, such plans shall follow standard procedure for construction  
14 including: construction supervision by a North Carolina registered  
15 professional engineer, as-built submittal by a North Carolina registered  
16 professional engineer, and follow up final inspection by Division of Energy,  
17 Mineral, and Land Resources staff.

18       (4)    Final approval shall be issued by the Division of Energy, Mineral, and Land  
19 Resources in the form of a letter decommissioning the facility and the  
20 facility shall no longer be under jurisdiction of the Dam Safety Law of 1967,  
21 G.S. 143-215.23."

## 22

### 23 **PART XI. CLOSURE PLANS SCHEDULE**

24       **SECTION 11.** Notwithstanding G.S. 143-215.74Q and G.S. 143-215.37A as  
25 enacted by Sections 10.(a) and 10.(b) of this act:

26       (a)    The closure plan for Riverbend shall be submitted to the Department no later  
27 than 60 days after the Act is ratified and shall include detailed provisions that ensure all ash in  
28 the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative  
29 disposition approved by Department.

30       (b)    The closure plan for Asheville shall be submitted to the Department no later  
31 than 60 days after the Act is ratified and include detailed provisions that ensure all ash in the  
32 impoundments will be moved to a lined structural fill, a lined landfill, or an alternative  
33 disposition approved by the Department.

34       (c)    The closure plan for Dan River shall be submitted to the Department no later  
35 than 90 days after the Act is ratified and include detailed provisions that ensure all ash in the  
36 impoundments will be moved to a lined structural fill, a lined landfill, or an alternative  
37 disposition approved by the Department.

38       (d)    The closure plan for Sutton shall be submitted to the Department no later  
39 than 90 days after the Act is ratified, and include detailed provisions that ensure all ash in the  
40 impoundments will be moved to a lined structural fill, a lined landfill, or an alternative  
41 disposition approved by Department.

### 42

### 43 **PART XII. APPROPRIATION**

44       **SECTION 12.** There is appropriated from the General Fund to the Department of  
45 Environment and Natural Resources the sum of one million four hundred thousand dollars  
46 (\$1,400,000) for the 2013-2014 Fiscal Year to establish nineteen permanent positions and  
47 associated operating costs to implement this act."

### 48

### 49 **PART XIII. EFFECTIVE DATE**

50       **SECTION 13.** This act is effective when it becomes law.