

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 687

Short Title: Amend Various Coal Ash Provns. (Public)

Sponsors: Representatives Harrison, Ager, Autry, and Reives (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

April 11, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS PROVISIONS RELATED TO COAL ASH CLEANUP.
3 The General Assembly of North Carolina enacts:

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5 **PART I. PROHIBIT AN ELECTRIC PUBLIC UTILITY FROM RECOVERING**
6 **COSTS RELATED TO THE MANAGEMENT OF COAL COMBUSTION ASH AND**
7 **UNLAWFUL DISCHARGES FROM COAL ASH PONDS**

8 SECTION 1. G.S. 62-133.13 reads as rewritten:

9 "**§ 62-133.13. Recovery of costs related to the management of coal combustion residuals**
10 **and unlawful discharges from coal combustion residuals surface**
11 **impoundments to the surface waters of the State.**

12 ~~The Commission shall not allow an electric public utility to recover from the retail electric~~
13 ~~customers of the State costs resulting from an unlawful discharge to the surface waters of the~~
14 ~~State from a coal combustion residuals surface impoundment, unless the Commission~~
15 ~~determines the discharge was due to an event of force majeure. For the purposes of this section,~~
16 ~~"coal combustion residuals surface impoundments" has the same meaning as in G.S.~~
17 ~~130A-309.201. For the purposes of this section, "unlawful discharge" means a discharge that~~
18 ~~results in a violation of State or federal surface water quality standards.~~

19 (a) For the purposes of this section, "coal combustion residuals surface impoundment"
20 has the same meaning as in G.S. 130A-309.201. For the purposes of this section, "costs related
21 to unlawful discharges to the surface waters of the State" include any corrective actions
22 required of the electric public utility under State or federal law.

23 (b) The Commission shall not allow an electric public utility to recover from the retail
24 electric customers of the State any of the following costs:

25 (1) Costs incurred on or after January 1, 2014, that are related to the
26 management of coal combustion residuals disposed of in coal combustion
27 residuals surface impoundments, including costs associated with complying
28 with the provisions of Part 2I of Article 9 of Chapter 130A of the General
29 Statutes.

30 (2) Costs incurred on or after January 1, 2014, that are related to an unlawful
31 discharge to the surface waters of the State from a coal combustion residuals
32 surface impoundment, unless the Commission determines the discharge was
33 due to an event of force majeure."

34
35 **PART II. CLOSURE OF PONDS**



1 **SECTION 2.(a)** G.S. 130A-309.214 is repealed.

2 **SECTION 2.(b)** G.S. 130A-309.213 reads as rewritten:

3 "**§ 130A-309.213. Prioritization of coal combustion residuals surface impoundments.**

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

14 (1) Any hazards to public health, safety, or welfare resulting from the
15 impoundment.

16 (2) The structural condition and hazard potential of the impoundment.

17 (3) The proximity of surface waters to the impoundment and whether any
18 surface waters are contaminated or threatened by contamination as a result
19 of the impoundment.

20 (4) Information concerning the horizontal and vertical extent of soil and
21 groundwater contamination for all contaminants confirmed to be present in
22 groundwater in exceedance of groundwater quality standards and all
23 significant factors affecting contaminant transport.

24 (5) The location and nature of all receptors and significant exposure pathways.

25 (6) The geological and hydrogeological features influencing the movement and
26 chemical and physical character of the contaminants.

27 (7) The amount and characteristics of coal combustion residuals in the
28 impoundment.

29 (8) Whether the impoundment is located within an area subject to a 100-year
30 flood.

31 (9) Any other factor the Department deems relevant to establishment of risk.

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

38 (1) The Department shall make copies of the written declaration issued pursuant
39 to this subsection available for inspection as follows:

40 a. A copy of the declaration shall be provided to the local health
41 director.

42 b. A copy of the declaration shall be provided to the public library
43 located in closest proximity to the site in the county or counties in
44 which the site is located.

45 c. The Department shall post a copy of the declaration on the
46 Department's Web site.

47 d. The Department shall place copies of the declaration in other
48 locations so as to assure the reasonable availability thereof to the
49 public.

50 (2) The Department shall give notice of the written declaration issued pursuant
51 to this subsection as follows:

- 1 a. A notice and summary of the declaration shall be published weekly
2 for a period of three consecutive weeks in a newspaper having
3 general circulation in the county or counties where the site is located.
- 4 b. Notice of the written declaration shall be given by first-class mail to
5 persons who have requested such notice. Such notice shall include a
6 summary of the written declaration and state the locations where a
7 copy of the written declaration is available for inspection. The
8 Department shall maintain a mailing list of persons who request
9 notice pursuant to this section.
- 10 c. Notice of the written declaration shall be given by electronic mail to
11 persons who have requested such notice. Such notice shall include a
12 summary of the written declaration and state the locations where a
13 copy of the written declaration is available for inspection. The
14 Department shall maintain a mailing list of persons who request
15 notice pursuant to this section.
- 16 (3) No later than 60 days after issuance of the written declaration, the
17 Department shall conduct a public meeting in the county or counties in
18 which the site is located to explain the written declaration to the public. The
19 Department shall give notice of the hearing at least 15 days prior to the date
20 thereof by all of the following methods:
- 21 a. Publication as provided in subdivision (1) of this subsection, with
22 first publication to occur not less than 30 days prior to the scheduled
23 date of the hearing.
- 24 b. First-class mail to persons who have requested notice as provided in
25 subdivision (2) of this subsection.
- 26 c. Electronic mail to persons who have requested notice as provided in
27 subdivision (2) of this subsection.
- 28 (4) At least 30 days from the latest date on which notice is provided pursuant to
29 subdivision (2) of this subsection shall be allowed for the receipt of written
30 comment on the written declaration prior to issuance of a final risk
31 classification. At least 20 days will be allowed for receipt of written
32 comment following a hearing conducted pursuant to subdivision (3) of this
33 subsection prior to issuance of a ~~preliminary~~ final risk classification.
- 34 (c) Repealed by Session Laws 2016-95, s. 1, effective July 14, 2016.
- 35 (d) ~~No later than 30 days after expiration of the deadline set forth in~~
36 ~~G.S. 130A 309.211(c1), or any applicable extension granted by the Secretary pursuant~~
37 ~~G.S. 130A 309.211(c1), the Department shall issue a final classification for each impoundment~~
38 ~~as follows:~~
- 39 (1) ~~The Department shall classify an impoundment as low risk if the~~
40 ~~impoundment owner satisfies both of the following criteria:~~
- 41 a. ~~Has established permanent water supplies as required for the~~
42 ~~impoundment pursuant to G.S. 130A 309.211(c1).~~
- 43 b. ~~Has rectified any deficiencies identified by, and otherwise complied~~
44 ~~with the requirements of, any dam safety order issued by the~~
45 ~~Environmental Management Commission for the impoundment~~
46 ~~pursuant to G.S. 143-215.32. No later than July 1, 2018, the~~
47 ~~Department shall conduct the annual inspection of each dam~~
48 ~~associated with a coal combustion residuals surface impoundment~~
49 ~~required for that year, to detect any deficiencies and to ascertain, at a~~
50 ~~minimum, whether the dam is sufficiently strong, maintained in good~~
51 ~~repair and operating condition, does not pose a danger to life or~~

1 ~~property, and satisfies minimum streamflow requirements. The~~
2 ~~Department shall issue written findings of fact for each inspection~~
3 ~~and present such findings to the Environmental Management~~
4 ~~Commission. If the Department detects any deficiencies, the~~
5 ~~Commission shall issue an order directing the owner of the dam to~~
6 ~~take action as may be deemed necessary by the Commission within a~~
7 ~~time limited by the order, but not later than 90 days after issuance of~~
8 ~~the order.~~

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

10 (e) Parties aggrieved by a final decision of the Department issued pursuant to
11 subsection (d) of this section may appeal the decision as provided under Article 3 of Chapter
12 150B of the General Statutes."

13 **SECTION 2.(c)** Part 2I of Article 9 of Chapter 130A of the General Statutes is
14 amended by adding a new section to read:

15 **"§ 130A-309.214A. Closure of coal combustion residual surface impoundments.**

16 (a) Method of Closure. – All coal combustion residuals surface impoundments shall be
17 dewatered, and the owner of the impoundment shall remove all coal combustion residuals from
18 the impoundment, return the former impoundment to a nonerosive and stable condition, and
19 dispose the coal combustion residuals in a municipal solid waste landfill located on the same
20 property as the impoundment. Municipal solid waste landfills that receive coal combustion
21 residuals pursuant to this subsection shall comply with the siting and design requirements for
22 disposal sites established by Section .0503 of Subchapter B of Chapter 13 of Title 15A of the
23 North Carolina Administrative Code, except that in lieu of the liner requirement of that section
24 the landfill shall include a bottom liner system consisting of three components in accordance
25 with this subsection. Of the required three components of the liner system, the upper two
26 components shall consist of two separate flexible membrane liners with a leak detection system
27 between the two liners. The third component shall consist of a minimum of two feet of soil
28 underneath the bottom of those liners with the soil having a maximum permeability of 1×10^{-7}
29 centimeters per second. The flexible membrane liners shall have a minimum thickness of thirty
30 one-thousandths of an inch (0.030"), except that liners consisting of high-density polyethylene
31 shall be at least sixty one-thousandths of an inch (0.060") thick. The lower flexible membrane
32 liner shall be installed in direct and uniform contact with the compacted soil layer. The
33 Department may approve an alternative to the soil component of the composite liner system if
34 the Department finds, based on modeling, that the alternative liner system will provide an
35 equivalent or greater degree of impermeability. The landfill shall otherwise comply with the
36 construction, closure, and post-closure requirements established by Section .1600 of
37 Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code and shall
38 be subject to all applicable requirements of this Chapter and all other applicable rules adopted
39 thereunder.

40 (b) Schedule of Closure. – Impoundments classified pursuant to G.S. 130A-309.213
41 shall be closed according to the following schedule:

42 (1) High-risk impoundments shall be closed as soon as practicable but no later
43 than August 1, 2019.

44 (2) Intermediate-risk impoundments shall be closed as soon as practicable but
45 no later than August 1, 2024.

46 (3) Low-risk impoundments shall be closed as soon as practicable but no later
47 than August 1, 2029."

49 **PART III. EFFECTIVE DATE**

50 **SECTION 3.** This act is effective when it becomes law.