

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1160*

Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
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Short Title: Clean Water Act of 1999.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED
AN ACT TO ENACT THE CLEAN WATER ACT OF 1999.
The General Assembly of North Carolina enacts:

PART I. TITLE.

Section 1.1. This act shall be known as the "Clean Water Act of 1999".

PART II. EXTEND MORATORIA ON CONSTRUCTION OR EXPANSION OF SWINE FARMS.

Section 2.1. Subsection (a1) of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, reads as rewritten:

"(a1) There is hereby established a moratorium on the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms. The purposes of this moratorium are to allow counties time to adopt zoning ordinances under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the completion of the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and to allow the 1999 General Assembly to receive and act on the findings and

1 recommendations of those studies. Except as provided in subsection (b) of this section,
2 the Environmental Management Commission shall not issue a permit for an animal waste
3 management system for a new swine farm or the expansion of an existing swine farm for
4 a period beginning on 1 March 1997 and ending on ~~1 September 1999~~, 1 July 2001. The
5 construction or expansion of a swine farm or animal waste management system for a
6 swine farm is prohibited during the period of the moratorium regardless of the date on
7 which a site evaluation for the swine farm is completed and regardless of whether the
8 animal waste management system is permitted under G.S. 143-215.1 or Part 1A of
9 Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North
10 Carolina Administrative Code 2H.0217."

11 Section 2.2. Section 1.2 of S.L. 1997-458, as amended by Section 3 of S.L.
12 1998-188, reads as rewritten:

13 "Section 1.2. (a) As used in this section, 'swine farm' and 'lagoon' have the same
14 meaning as in G.S. 106-802. As used in this section, 'animal waste management system'
15 has the same meaning as in G.S. 143-215.10B. There is hereby established a moratorium
16 for any new or expanding swine farm or lagoon for which a permit is required under Parts
17 1 or 1A of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i)
18 that has a population of less than 75,000 according to the most recent decennial federal
19 census; (ii) in which there is more than one hundred fifty million dollars (\$150,000,000)
20 of expenditures for travel and tourism based on the most recent figures of the Department
21 of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103.
22 Effective 1 January 1997, until ~~1 September 1999~~, 1 July 2001, the Environmental
23 Management Commission shall not issue a permit for an animal waste management
24 system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon,
25 as defined in G.S. 106-802. The exemptions set out in subsection (b) of Section 1.1 of
26 this act do not apply to the moratorium established under this section.

27 (b) In order to protect travel and tourism, effective ~~1 September 1999~~, 1 July 2001,
28 no animal waste management system shall be permitted except under an individual
29 permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes in any
30 county in the State: (i) that has a population of less than 75,000 according to the most
31 recent decennial federal census; (ii) in which there is more than one hundred fifty million
32 dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent
33 figures of the Department of Commerce; and (iii) that is not in the coastal area as defined
34 by G.S. 113A-103."
35

36 **PART III. EXTEND AND EXPAND PILOT PROGRAM FOR INSPECTION OF** 37 **ANIMAL WASTE MANAGEMENT SYSTEMS.**

38 Section 3.1. Section 15.4(a) of S.L. 1997-443 reads as rewritten:

39 "(a) The Department of ~~Environment, Health, Environment~~ and Natural Resources
40 shall develop and implement a pilot program to begin no later than November 1, 1997,
41 and to terminate ~~October 31, 1998~~, 1 July 2001, regarding the annual inspections of animal
42 operations that are subject to a permit under Part 1A of Article 21 of Chapter 143 of the
43 General Statutes. The Department shall select two counties located in a part of the State

1 that has a high concentration of swine farms to participate in this pilot program. In
2 addition, Brunswick County shall be added to the program. Notwithstanding G.S. 143-
3 215.10F, the Division of Soil and Water Conservation of the Department of Environment
4 and Natural Resources shall conduct inspections of all animal operations that are subject
5 to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes in these
6 ~~two~~-three counties at least once a year to determine whether any animal waste
7 management system is causing a violation of water quality standards and whether the
8 system is in compliance with its animal waste management plan or any other condition of
9 the permit. The personnel of the Division of Soil and Water Conservation who are to
10 conduct these inspections in each of these ~~two~~-three counties shall be located in an office
11 in the county in which that person will be conducting inspections. As part of this pilot
12 program, the Department of ~~Environment, Health,~~ Environment and Natural Resources
13 shall establish procedures whereby resources within the local Soil and Water
14 Conservation Districts serving the ~~two~~-three counties are used for the quick response ~~of to~~
15 complaints and reported problems previously referred only to the Division of Water
16 Quality. Quality of the Department of Environment and Natural Resources."

17 Section 3.2. The two counties that were selected for the pilot program
18 pursuant to Section 15.4(a) of S.L. 1997-443, Columbus County and Jones County, shall
19 remain in the pilot program. In addition, Brunswick County shall be added to the
20 program.

21 Section 3.3. The Department of Environment and Natural Resources, in
22 consultation with both the Division of Water Quality and the Division of Soil and Water
23 Conservation, shall submit interim reports no later than 15 October 1999, 15 April 2000,
24 15 October 2000, 15 April 2001, and a final report no later than 15 July 2001 to the
25 Environmental Review Commission and to the Fiscal Research Division. These reports
26 shall indicate whether the pilot program has increased the effectiveness of the annual
27 inspections program or the response to complaints and reported problems, specifically
28 whether the pilot program had resulted in identifying violations earlier, taking corrective
29 actions earlier, increasing compliance with the animal waste management plans and
30 permit conditions, improving the time to respond to discharges, complaints, and reported
31 problems, improving communications between farmers and Department employees, and
32 any other consequences deemed pertinent by the Department. The final report shall
33 include a recommendation as to whether to continue or expand the pilot program under
34 this act. The Environmental Review Commission may recommend to the 2001 General
35 Assembly whether to continue or expand the pilot program under this act and may make
36 any related legislative proposals.

37 38 **PART IV. INVENTORY INACTIVE LAGOONS.**

39 Section 4.1. The definitions set out in G.S. 143-215.10B apply to this Part.
40 The definitions set out in this section apply only to this Part and shall not be construed to
41 apply to any regulatory program. As used in this Part:

- 42 (1) "Inactive lagoon" means a lagoon into which animal waste has not been
43 lawfully discharged for a period of one year or more.

- 1 (2) "Lagoon" means a lagoon, as defined in G.S. 106-802, that is a
2 component of an animal waste management system that serves an
3 animal operation.

4 Section 4.2. The Department of Environment and Natural Resources shall
5 develop an inventory of all inactive lagoons. The Department shall rank each inactive
6 lagoon on the inventory based on the extent to which the lagoon constitutes a threat to
7 public health, the environment, or the State's natural resources. The Department shall
8 submit this inventory to the Environmental Review Commission on or before 1 March
9 2000.

10
11 **PART V. INCREASE CIVIL PENALTIES FOR VIOLATIONS OF WATER**
12 **QUALITY LAWS; MINIMUM INCREASES OF CIVIL PENALTIES FOR**
13 **REPEATED VIOLATIONS.**

14 Section 5.1. G.S. 143-215.6A reads as rewritten:

15 **"§ 143-215.6A. Enforcement procedures: civil penalties.**

16 "(a) A civil penalty of not more than ~~ten thousand dollars (\$10,000)~~ twenty-five
17 thousand dollars (\$25,000) may be assessed by the Secretary against any person who:

- 18 (1) Violates any classification, standard, limitation, or management practice
19 established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.
20 (2) Is required but fails to apply for or to secure a permit required by G.S.
21 143-215.1, or who violates or fails to act in accordance with the terms,
22 conditions, or requirements of such permit or any other permit or
23 certification issued pursuant to authority conferred by this Part,
24 including pretreatment permits issued by local governments and
25 laboratory certifications.
26 (3) Violates or fails to act in accordance with the terms, conditions, or
27 requirements of any special order or other appropriate document issued
28 pursuant to G.S. 143-215.2.
29 (4) Fails to file, submit, or make available, as the case may be, any
30 documents, data, or reports required by this Article or G.S. 143-355(k)
31 relating to water use information.
32 (5) Refuses access to the Commission or its duly designated representative
33 to any premises for the purpose of conducting a lawful inspection
34 provided for in this Article.
35 (6) Violates a rule of the Commission implementing this Part, Part 2A of
36 this Article, or G.S. 143-355(k).
37 (7) Violates or fails to act in accordance with the statewide minimum water
38 supply watershed management requirements adopted pursuant to G.S.
39 143-214.5, whether enforced by the Commission or a local government.
40 (8) Violates the offenses set out in G.S. 143-215.6B.
41 (9) Is required, but fails, to apply for or to secure a certificate required by
42 G.S. 143-215.22I, or who violates or fails to act in accordance with the
43 terms, conditions, or requirements of the certificate.

1 (10) Violates subsections (c1) through (c5) of G.S. 143-215.1 or a rule
2 adopted pursuant to subsections (c1) through (c5) of G.S. 143-215.1.

3 (b) If any action or failure to act for which a penalty may be assessed under this
4 section is continuous, the Secretary may assess a penalty not to exceed ~~ten thousand dollars~~
5 ~~(\$10,000)~~ twenty-five thousand dollars (\$25,000) per day for so long as the violation
6 continues, unless otherwise stipulated.

7 (b1) The Secretary may assess a civil penalty of more than ten thousand dollars
8 (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars
9 (\$10,000) per day, only if the violator has been assessed a civil penalty within the five
10 years preceding the violation. The Secretary may assess a civil penalty of more than ten
11 thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten
12 thousand dollars (\$10,000) per day for so long as the violation continues, for a violation
13 of subdivision (4) of subsection (a) of this section only if the Secretary determines that
14 the violation is intentional.

15 (c) In determining the amount of the penalty the Secretary shall consider the
16 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall
17 apply to civil penalty assessments that are presented to the Commission for final agency
18 decision.

19 (d) The Secretary shall notify any person assessed a civil penalty of the assessment
20 and the specific reasons therefor by registered or certified mail, or by any means
21 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of
22 receipt of the notice of assessment.

23 (e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand
24 dollars (\$10,000) per month may be assessed by the Commission against any local
25 government that fails to adopt a local water supply watershed protection program as
26 required by G.S. 143-214.5, or willfully fails to administer or enforce the provisions of
27 its program in substantial compliance with the minimum statewide water supply
28 watershed management requirements. No such penalty shall be imposed against a local
29 government until the Commission has assumed the responsibility for administering and
30 enforcing the local water supply watershed protection program. Civil penalties shall be
31 imposed pursuant to a uniform schedule adopted by the Commission. The schedule of
32 civil penalties shall be based on acreage and other relevant cost factors and shall be
33 designed to recoup the costs of administration and enforcement.

34 (f) Requests for remission of civil penalties shall be filed with the Secretary.
35 Remission requests shall not be considered unless made within 30 days of receipt of the
36 notice of assessment. Remission requests must be accompanied by a waiver of the right
37 to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on
38 which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c)
39 and (d), remission requests may be resolved by the Secretary and the violator. If the
40 Secretary and the violator are unable to resolve the request, the Secretary shall deliver
41 remission requests and his recommended action to the Committee on Civil Penalty
42 Remissions of the Environmental Management Commission appointed pursuant to G.S.
43 143B-282.1(c).

1 (g) If any civil penalty has not been paid within 30 days after notice of assessment
2 has been served on the violator, the Secretary shall request the Attorney General to
3 institute a civil action in the Superior Court of any county in which the violator resides or
4 has his or its principal place of business to recover the amount of the assessment, unless
5 the violator contests the assessment as provided in subsection (d) of this section, or
6 requests remission of the assessment in whole or in part as provided in subsection (f) of
7 this section. If any civil penalty has not been paid within 30 days after the final agency
8 decision or court order has been served on the violator, the Secretary shall request the
9 Attorney General to institute a civil action in the Superior Court of any county in which
10 the violator resides or has his or its principal place of business to recover the amount of
11 the assessment. Such civil actions must be filed within three years of the date the final
12 agency decision or court order was served on the violator.

13 (h) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 14.

14 (h1) The clear proceeds of civil penalties assessed by the Secretary or the
15 Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture
16 Fund in accordance with G.S. 115C-457.2.

17 (i) As used in this subsection, 'municipality' refers to any unit of local government
18 which operates a wastewater treatment plant. As used in this subsection, 'unit of local
19 government' has the same meaning as in G.S. 130A-290. The provisions of this
20 subsection shall apply whenever a municipality that operates a wastewater treatment
21 plant with an influent bypass diversion structure and with a permitted discharge of 10
22 million gallons per day or more into any of the surface waters of the State that have been
23 classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is
24 subject to a court order which specifies (i) a schedule of activities with respect to the
25 treatment of wastewater by the municipality; (ii) deadlines for the completion of
26 scheduled activities; and (iii) stipulated penalties for failure to meet such deadlines. A
27 municipality as specified herein that violates any provision of such order for which a
28 penalty is stipulated shall pay the full amount of such penalty as provided in the order
29 unless such penalty is modified, remitted, or reduced by the court.

30 (j) Local governments certified and approved to administer and enforce
31 pretreatment programs by the Commission pursuant to G.S. 143-215.3(a)(14) may assess
32 civil penalties for violations of their respective programs in accordance with the powers
33 conferred upon the Commission and the Secretary in this section, except that actions for
34 collection of unpaid civil penalties shall be referred to the attorney representing the
35 assessing local government. The total of the civil penalty assessed by a local government
36 and the civil penalty assessed by the Secretary for any violation may not exceed the
37 maximum civil penalty for such violation under this section.

38 (k) A person who has been assessed a civil penalty by a local government as
39 provided by subsection (j) of this section may request a review of the assessment by
40 filing a request for review with the local government within 30 days of the date the notice
41 of assessment is received. If a local ordinance provides for a local administrative
42 hearing, the hearing shall afford minimum due process including an unbiased hearing
43 official. The local government shall make a final decision on the request for review

1 within 90 days of the date the request for review is filed. The final decision on a request
2 for review shall be subject to review by the superior court pursuant to Article 27 of
3 Chapter 1 of the General Statutes. If the local ordinance does not provide for a local
4 administrative hearing, a person who has been assessed a civil penalty by a local
5 government as provided by subsection (j) of this section may contest the assessment by
6 filing a civil action in superior court within 60 days of the date the notice of assessment is
7 received."

8
9 **PART VI. AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND**
10 **NATURAL RESOURCES TO DISTRIBUTE FUNDS FROM THE WETLANDS**
11 **RESTORATION FUND, TO AUTHORIZE SOIL AND WATER**
12 **CONSERVATION DISTRICTS TO ACQUIRE EASEMENTS UNDER THE**
13 **CONSERVATION RESERVE ENHANCEMENT PROGRAM, AND TO**
14 **AUTHORIZE THE DEPARTMENT TO CONVEY INTERESTS IN REAL**
15 **PROPERTY ACQUIRED UNDER THE WETLANDS RESTORATION**
16 **PROGRAM OR THE CONSERVATION RESERVE ENHANCEMENT**
17 **PROGRAM TO FEDERAL AND STATE AGENCIES, LOCAL GOVERNMENTS,**
18 **AND PRIVATE NONPROFIT CONSERVATION ORGANIZATIONS.**

19 Section 6.1. G.S. 143-214.12 is amended by adding a new subsection to read:

20 "(a1) The Department may distribute funds from the Wetlands Restoration Fund
21 directly to a federal or State agency, a local government, or a private, nonprofit
22 conservation organization to acquire, manage, and maintain real property or an interest in
23 real property for the purposes set out in subsection (a) of this section. A recipient of
24 funds under this subsection shall grant a conservation easement in the real property or
25 interest in real property acquired with the funds to the Department in a form that is
26 acceptable to the Department. The Department may convey real property or an interest in
27 real property that has been acquired under the Wetlands Restoration Program to a federal
28 or State agency, a local government, or a private, nonprofit conservation organization to
29 acquire, manage, and maintain real property or an interest in real property for the
30 purposes set out in subsection (a) of this section. A grantee of real property or an interest
31 in real property under this subsection shall grant a conservation easement in the real
32 property or interest in real property to the Department in a form that is acceptable to the
33 Department."

34 Section 6.2. G.S. 143-214.13 reads as rewritten:

35 "**§ 143-214.13. Wetlands Restoration Program: reporting requirement.**

36 (a) The Department of Environment and Natural Resources shall report each year
37 by November 1 to the Environmental Review Commission regarding its progress in
38 implementing the Wetlands Restoration Program and its use of the funds in the Wetlands
39 Restoration Fund. The report shall document statewide wetlands losses and gains and
40 compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The
41 report shall also provide an accounting of receipts and disbursements of the Wetlands
42 Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost
43 comparison on a per-acre basis between the State's ~~Wetland~~ Wetlands Restoration

1 Program and private mitigation banks. The Department shall also send a copy of its
2 report to the Fiscal Research Division of the General Assembly.

3 (b) The Department shall maintain an inventory of all property that is held,
4 managed, maintained, enhanced, restored, or used to create wetlands under the Wetlands
5 Restoration Program. The inventory shall also list all conservation easements held by the
6 Department. The inventory shall be included in the annual report required under
7 subsection (a) of this section."

8 Section 6.3. G.S. 113A-235 reads as rewritten:

9 "**§ 113A-235. Conservation easements.**

10 (a) Ecological systems and appropriate public use of these systems may be
11 protected through conservation easements, including conservation agreements under
12 Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic
13 Preservation Agreements Act, ~~Act~~, and conservation easements under the Conservation
14 Reserve Enhancement Program. The Department of Environment and Natural Resources
15 shall work cooperatively with State and local agencies and qualified nonprofit
16 organizations to monitor compliance with conservation easements and conservation
17 agreements and to ensure the continued viability of the protected ecosystems. Soil and
18 water conservation districts established under Chapter 139 of the General Statutes may
19 acquire easements under the Conservation Reserve Enhancement Program by purchase or
20 gift.

21 (b) The Department may convey real property or an interest in real property that
22 has been acquired under the Conservation Reserve Enhancement Program to a federal or
23 State agency, a local government, or a private, nonprofit conservation organization to
24 acquire, manage, and maintain real property or an interest in real property for the
25 purposes set out in subsection (a) of this section. A grantee of real property or an interest
26 in real property under this subsection shall grant a conservation easement in the real
27 property or interest in real property to the Department in a form that is acceptable to the
28 Department.

29 (c) The Department shall report on the implementation of this Article to the
30 Environmental Review Commission no later than 1 November of each year. The
31 Department shall maintain an inventory of all conservation easements held by the
32 Department. The inventory shall be included in the report required by this subsection."

33
34 **PART VII. AUTHORIZE TEMPORARY RULES TO PROTECT THE CAPE**
35 **FEAR, CATAWBA, AND TAR-PAMLICO RIVER BASINS.**

36 Section 7.1. Notwithstanding G.S. 150B-21.1(a)(2) and Section 8.6 of S.L.
37 1997-458, the Environmental Management Commission may adopt temporary rules as
38 provided in this section to protect water quality standards and uses as required to
39 implement basinwide water quality management plans for the Cape Fear, Catawba, and
40 Tar-Pamlico River Basins pursuant to G.S. 143-214.1, 143-214.7, 143-215.3, and 143B-
41 282. Prior to the adoption of a temporary rule under this subsection, the Commission
42 shall:

- 1 (1) Consult with persons who may be interested in the subject matter of the
2 temporary rule during the development of the text of the proposed
3 temporary rule.
- 4 (2) Publish a notice of intent to adopt a temporary rule in the North
5 Carolina Register. The notice shall set out the text of the proposed
6 temporary rule and include the name of the person to whom questions
7 and written comment on the proposed rule may be submitted. The
8 Commission shall accept written comment on the proposed temporary
9 rule for at least 30 days after the notice of intent to adopt the temporary
10 rule is published in the North Carolina Register.
- 11 (3) Hold a public hearing on the proposed temporary rule in the river basin
12 to which the proposed temporary rule applies.

13 Section 7.2. Notwithstanding 26 NCAC 2C.0102(11), Section 7.1 of this act
14 shall continue in effect until 1 July 2001.

15 Section 7.3. This Part shall not be construed to invalidate any development
16 and implementation of basinwide water quality management plans by the Environmental
17 Management Commission and the Department of Environment and Natural Resources
18 that has occurred prior to the date this Part becomes effective.

19
20 **PART VIII. REQUIRE REPORTS TO WASTEWATER SYSTEM**
21 **CUSTOMERS ON SYSTEM PERFORMANCE AND**
22 **PUBLICATION OF NOTICE OF DISCHARGES OF**
23 **UNTREATED WASTEWATER OR ANIMAL WASTE.**

24 Section 8.1. G.S. 143-215.1 is amended by adding two new subsections to
25 read:

26 "(i) The owner or operator of any wastewater collection or treatment works, the
27 operation of which is primarily to collect or treat municipal or domestic wastewater and
28 for which a permit is issued under this section shall provide to the users or customers of
29 the collection system or treatment works and to the Department an annual report that
30 summarizes the performance of the collection system or treatment works and the extent
31 to which the collection system or treatment works has violated the permit or federal or
32 State laws, regulations, or rules related to the protection of water quality. The report shall
33 be prepared on either a calendar or fiscal year basis and shall be provided no later than 60
34 days after the end of the calendar or fiscal year.

35 (j) The owner or operator of any wastewater collection or treatment works, the
36 operation of which is primarily to collect or treat municipal or domestic wastewater and
37 for which a permit is issued under this section shall:

- 38 (1) In the event of a discharge of 1,000 gallons or more of untreated
39 wastewater to the surface waters of the State, issue a press release to all
40 print and electronic news media that provide general coverage in the
41 county where the discharge occurred setting out the details of the
42 discharge. The owner or operator shall retain a copy of the press release
43 and a list of the news media to which it was distributed for at least one

1 year after the discharge and shall provide a copy of the press release and
2 the list of the news media to which it was distributed to any person upon
3 request.

- 4 (2) In the event of a discharge of 10,000 gallons or more of untreated
5 wastewater to the surface waters of the State, publish a notice of the
6 discharge in a newspaper having general circulation in the county in
7 which the discharge occurs and in each county downstream from the
8 point of discharge that is affected by the discharge. The Secretary shall
9 determine, at the Secretary's sole discretion, which counties are affected
10 by the discharge and shall approve the form and content of the notice
11 and the newspapers in which the notice is to be published. The notice
12 shall be captioned 'NOTICE OF DISCHARGE OF RAW SEWAGE'.
13 The owner or operator shall publish the notice within 10 days after the
14 Secretary has determined the counties that are affected by the discharge
15 and approved the form and content of the notice and the newspapers in
16 which the notice is to be published. The owner or operator shall file a
17 copy of the notice and proof of publication with the Department within
18 30 days of the discharge. Publication of a notice of discharge under this
19 subdivision is in addition to the requirement to issue a press release
20 under subdivision (1) of this subsection."

21 Section 8.2. G.S. 143-215.10C is amended by adding a new subsection to
22 read:

23 "(h) The owner or operator of an animal waste management system shall:

- 24 (1) In the event of a discharge of 1,000 gallons or more of animal waste to
25 the surface waters of the State, issue a press release to all print and
26 electronic news media that provide general coverage in the county
27 where the discharge occurred setting out the details of the discharge.
28 The owner or operator shall retain a copy of the press release and a list
29 of the news media to which it was distributed for at least one year after
30 the discharge and shall provide a copy of the press release and the list of
31 the news media to which it was distributed to any person upon request.

- 32 (2) In the event of a discharge of 10,000 gallons or more of animal waste to
33 the surface waters of the State, publish a notice of the discharge in a
34 newspaper having general circulation in the county in which the
35 discharge occurs and in each county downstream from the point of
36 discharge that is affected by the discharge. The Secretary shall
37 determine, at the Secretary's sole discretion, which counties are affected
38 by the discharge and shall approve the form and content of the notice
39 and the newspapers in which the notice is to be published. The notice
40 shall be captioned 'NOTICE OF DISCHARGE OF ANIMAL WASTE'.
41 The owner or operator shall publish the notice within 10 days after the
42 Secretary has determined the counties that are affected by the discharge
43 and approved the form and content of the notice and the newspapers in

1 which the notice is to be published. The owner or operator shall file a
2 copy of the notice and proof of publication with the Department within
3 30 days of the discharge. Publication of a notice of discharge under this
4 subdivision is in addition to the requirement to issue a press release
5 under subdivision (1) of this subsection."
6

7 **PART IX. PILOT PROGRAM FOR INSPECTION OF MUNICIPAL AND**
8 **DOMESTIC WASTEWATER TREATMENT WORKS.**

9 Section 9.1. The Department of Environment and Natural Resources shall
10 develop and implement a pilot program to begin no later than 1 January 2000 and to
11 terminate 1 July 2001 to inspect and provide technical assistance to municipal and
12 domestic wastewater treatment works for which a permit is required under Part 1 of
13 Article 21 of Chapter 143 of the General Statutes. The Department shall select a county
14 in which there is located a representative cross section of the types of municipal and
15 domestic wastewater treatment works in operation in the State for this pilot program.
16 The Technical Assistance and Certification Unit of the Non-Discharge Branch of the
17 Water Quality Section of the Division of Water Quality in the Department shall conduct
18 an inspection of each municipal and domestic wastewater treatment works for which a
19 permit is required under Part 1 of Article 21 of Chapter 143 of the General Statutes at
20 least once each six months to determine whether the treatment works is in violation of
21 any water quality classification, standard, limitation, or management practice or is in
22 violation of any term, condition, or requirement of the permit for the treatment works.
23 The personnel of the Technical Assistance and Certification Unit of the Non-Discharge
24 Branch of the Water Quality Section of the Division of Water Quality who are assigned
25 to conduct these inspections shall be assigned to an office in the county selected for the
26 pilot program.

27 Section 9.2. The Division of Water Quality of the Department of Environment
28 and Natural Resources shall submit interim reports no later than 15 April 2000, 15
29 October 2000, 15 April 2001, and a final report no later than 15 July 2001 to the
30 Environmental Review Commission and to the Fiscal Research Division on the
31 implementation of the pilot program established by this Part. These reports shall indicate
32 the extent to which the pilot program has improved compliance with the laws governing
33 water quality and has resulted in actual improvements in water quality by earlier
34 identification of violations; reduction in the time required to respond to discharges,
35 complaints, and reported problems; improved communication between owners and
36 operators of treatment works and Department employees; and any other factors deemed
37 pertinent by the Department. The final report shall include a recommendation as to
38 whether to continue or expand the pilot program established by this Part. The
39 Environmental Review Commission may recommend to the 2001 General Assembly
40 whether to continue or expand the pilot program established by this Part.
41

1 **PART X. ISSUANCE OF PERMITS FOR NEW OR EXPANDED MUNICIPAL**
2 **OR DOMESTIC WASTEWATER TREATMENT WORKS THAT DISCHARGE**
3 **TO THE WATERS OF THE STATE.**

4 Section 10.1. G.S. 143-215.1(b) is amended by adding a new subdivision to
5 read:

6 "(5) The Commission shall not issue a permit for a new municipal or
7 domestic wastewater treatment works that would discharge to the
8 surface waters of the State or for the expansion of an existing municipal
9 or domestic wastewater treatment works that would discharge to the
10 surface waters of the State unless the applicant for the permit
11 demonstrates to the satisfaction of the Commission that:

12 a. The applicant has prepared and considered an engineering,
13 environmental, and fiscal analysis of alternatives to the proposed
14 facility.

15 b. The applicant is in compliance with the applicable requirements
16 of the systemwide municipal and domestic wastewater collection
17 systems permit program adopted by the Commission."
18

19 **PART XI. ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP**
20 **ENGINEERING STANDARDS AND IMPLEMENT A PERMIT PROGRAM FOR**
21 **MUNICIPAL AND DOMESTIC WASTEWATER COLLECTIONS.**

22 Section 11.1. The Environmental Management Commission shall develop
23 engineering standards governing municipal and domestic wastewater collection systems
24 that will allow interconnection of these systems on a regional basis. The Commission
25 shall report on its progress in developing the engineering standards required by this
26 section as a part of each quarterly report the Commission makes to the Environmental
27 Review Commission pursuant to G.S. 143B-282(b).

28 Section 11.2. The Environmental Management Commission shall develop and
29 implement a permit program for municipal and domestic wastewater collection systems
30 on a systemwide basis. The collection system permit program shall provide for
31 performance standards, minimum design and construction requirements, a capital
32 improvement plan, operation and maintenance requirements, and minimum reporting
33 requirements. In order to ensure an orderly and cost-effective phase-in of the collection
34 system permit program, the Commission shall implement the permit program over a five-
35 year period beginning 1 July 2000. The Commission shall issue permits for
36 approximately twenty percent (20%) of municipal and domestic wastewater collection
37 systems that are in operation on 1 July 2000 during each of the five calendar years
38 beginning 1 July 2000 and shall give priority to those collection systems serving the
39 largest populations, those under a moratorium imposed by the Commission under G.S.
40 143-215.67, and those for which the Department of Environment and Natural Resources
41 has issued a notice of violation for the discharge of untreated wastewater. The
42 Commission shall report on its progress in developing and implementing the collection
43 system permit program required by this section as a part of each quarterly report the

1 Environmental Management Commission makes to the Environmental Review
2 Commission pursuant to G.S. 143B-282(b).

3
4 **PART XII. CLARIFY THAT THE DEPARTMENT OF ENVIRONMENT AND**
5 **NATURAL RESOURCES MAY LIMIT TO TWO MILLION DOLLARS**
6 **RATHER THAN THREE MILLION DOLLARS THE MAXIMUM AMOUNT OF**
7 **CLEAN WATER GRANTS TO LOCAL GOVERNMENT UNITS WITH HIGH**
8 **BOND RATINGS AND, FOR CLEAN WATER LOANS FROM BOND FUNDS,**
9 **TO CHANGE THE TIME BY WHICH A LOCAL GOVERNMENT UNIT MUST**
10 **SATISFY THE REQUIREMENTS FOR HOLDING A PUBLIC HEARING AND**
11 **FILING A PETITION FOR A VOTE PRIOR TO DISBURSEMENT OF THE**
12 **LOAN FUNDS.**

13 Section 12.1. G.S. 159G-3 is amended by adding a new subdivision to read:

14 "(2a) 'Bond rating' means the numerical rating of a local government unit
15 developed by the North Carolina Municipal Council, Inc., or any
16 successor thereto. The rating formula is based on 100 being a
17 theoretically 'perfect' local government unit and is an assessment of the
18 creditworthiness of the unit. Local government units with a rating
19 below 75 or with no ratings have limited, if any, access to the private
20 markets for financing water and sewer or other debt."

21 Section 12.2. G.S. 159G-6(a) reads as rewritten:

22 "(a) Revolving loans and grants.

23 (1) All funds appropriated or accruing to the Clean Water Revolving Loan
24 and Grant Fund, other than funds set aside for administrative expenses,
25 shall be used for revolving loans and grants to local government units
26 for construction costs of wastewater treatment works, wastewater
27 collection systems and water supply systems and other assistance as
28 provided in this Chapter.

29 (2) The maximum principal amount of a revolving loan or a grant may be
30 one hundred percent (100%) of the nonfederal share of the construction
31 costs of any eligible project. The maximum principal amount of
32 revolving loans made to any one local government unit during any fiscal
33 year shall be eight million dollars (\$8,000,000).

34 (2a) The maximum principal amount of grants made to any one local
35 government unit during any fiscal year shall be three million dollars
36 (\$3,000,000). The Department of Environment and Natural Resources
37 may limit the maximum principal amount of the grant to two million
38 dollars (\$2,000,000) or two-thirds of the eligible project cost, whichever
39 is less, when the bond rating of the local government unit equals or is
40 greater than 75 during any fiscal year and when one million dollars
41 (\$1,000,000) or one-third of the eligible project cost, whichever is less,
42 is available to the local government unit as a loan from any source.

1 (3) The State Treasurer shall be responsible for investing and distributing
2 all funds appropriated or accruing to the Clean Water Revolving Loan
3 and Grant Fund for revolving loans and grants under this Chapter. In
4 fulfilling his or her responsibilities under this section, the State
5 Treasurer shall make a written request to the Department of
6 Environment and Natural Resources to arrange for the appropriated
7 funds to be (i) transferred from the appropriate accounts to a local
8 government unit to provide funds for one or more revolving loans or
9 grants or (ii) invested as authorized by this Chapter with the interest on
10 and the principal of such investments to be transferred to the local
11 government unit to provide funds for one or more revolving loans or
12 grants."

13 Section 12.3. Subsection (c) of Section 10 of S.L. 1998-132 reads as rewritten:

14 "(c) Application for Loans; Hearings.

15 (1) ~~Eligibility/Initial Hearing: Eligibility.~~ –

16 a. ~~Prior to filing an application for a loan, a~~ A local government unit
17 shall hold a public hearing. A notice of the public hearing shall
18 be published once at least 10 days before the date fixed for the
19 hearing. The public hearing may be held at any time prior to the
20 disbursement of loan funds under subsection (e) of this section.

21 b. All applications for loans shall be filed with the Department of
22 Environment and Natural Resources. The form of the application
23 shall be prescribed by the Department and shall require any
24 information necessary to determine the eligibility for a loan
25 under the provisions of this section. All applications approved
26 by the Department of Environment and Natural Resources shall
27 be filed with the Local Government Commission. Each applicant
28 shall furnish to the Department of Environment and Natural
29 Resources and the Local Government Commission information
30 in addition or supplemental to the information contained in its
31 application, upon request.

32 c. A local government unit shall not be eligible for a loan unless it
33 demonstrates to the satisfaction of the Department of
34 Environment and Natural Resources and the Local Government
35 Commission that:

- 36 1. The applicant is a local government unit;
- 37 2. The applicant has the financial capacity to pay the
38 principal of and interest on its proposed loan as evidenced
39 by the approval of the Local Government Commission;
- 40 3. The applicant has substantially complied or will
41 substantially comply with all applicable laws, rules,
42 regulations, and ordinances, whether federal, State, or
43 local; and

1 4. The applicant has agreed by official resolution to adopt
2 and place into effect a schedule of fees and charges or the
3 application of other sources of revenue which will provide
4 adequate funds for proper operation, maintenance, and
5 administration of the project and repayment of all
6 principal and interest on the loan.

7 (2) Assessment. —The Department of Environment and Natural Resources
8 may require any applicant to file with its application an assessment of
9 the impact the project for which the funds are sought will have upon
10 meeting the facility needs of the area within which the project is to be
11 located.

12 (3) Hearing by the Department of Environment and Natural Resources or
13 the Local Government Commission. —A public hearing may be held by
14 the Department of Environment and Natural Resources or the Local
15 Government Commission at any time on any application. Public
16 hearings may also be held by the Department of Environment and
17 Natural Resources in its discretion upon written request from any citizen
18 or taxpayer who is a resident of the county or counties in which the
19 project is to be located or a resident of the local government unit that
20 proposes to borrow moneys under this act, if it appears that the public
21 interest will be served by the hearing. The written request shall set forth
22 each objection to the proposed project or other reason for requesting a
23 hearing on the application and shall contain the name and address of the
24 persons submitting it. In deciding whether to grant a request for a
25 hearing on an application, the Department of Environment and Natural
26 Resources may consider the application, the written objections to the
27 proposed project, and the facility needs and shall determine if the public
28 interest will be served by a hearing. The determination by the
29 Department of Environment and Natural Resources shall be conclusive,
30 and all written requests for a hearing shall be retained as a permanent
31 part of the records pertaining to the application.

32 (4) Petition for Vote. —A petition, demanding that the question of whether
33 to enter into a loan agreement with the State under this act be submitted
34 to voters, may be filed with the clerk of the local government unit
35 applying for the loan within 15 days after the public hearing required by
36 this ~~section~~ section and prior to the disbursement of loan funds under
37 subsection (e) of this section. The petition's sufficiency shall be
38 determined and a referendum, if any, shall be conducted according to
39 the standards, procedures, and limitations set out in G.S. 159-60 through
40 G.S. 159-62."

41
42 **PART XIII. STUDIES; REPORTS; MISCELLANEOUS PROVISIONS;**
43 **EFFECTIVE DATES.**

1 Section 13.1. The Department of Environment and Natural Resources shall
2 submit periodic reports to the Environmental Review Commission on the progress of the
3 State Wetlands Stream Management Advisory Committee no later than 1 November
4 1999, 1 April 2000, 1 October 2000, and 15 December 2000. As a part of this report, the
5 Department shall evaluate the current federal and State wetlands protection programs and
6 shall develop recommendations to improve and simplify the State's wetlands protection
7 program. The Department shall present interim findings and recommendations, including
8 any legislative proposals, as a part of the 1 April 2000 report and final findings and
9 recommendations, including any legislative proposals, as a part of the 15 December 2000
10 report.

11 Section 13.2. The Department of Environment and Natural Resources shall
12 prepare a detailed analysis of discharges of untreated and partially treated municipal and
13 domestic wastewater from publicly and privately owned treatment works and collection
14 systems to determine the causes of these discharges. The analysis shall include both
15 unpermitted discharges and violations of permitted discharges. The Department shall
16 evaluate the extent to which more frequent inspection of these systems would reduce the
17 number and severity of these discharges. In addition, the Department shall develop
18 specific recommendations to: (i) reduce the frequency and severity of discharges of
19 untreated or partially treated municipal and domestic wastewater from publicly and
20 privately owned treatment works, (ii) reduce the number of point sources and the quantity
21 of waste that is discharged into the surface waters of the State, and (iii) promote the
22 consolidation of municipal and domestic wastewater collection systems and treatment
23 works on a regional basis. The Department shall present interim findings and
24 recommendations, including any legislative proposals, to the Environmental Review
25 Commission no later than 1 March 2000 and shall present final findings and
26 recommendations, including any legislative proposals, to the Environmental Review
27 Commission no later than 15 December 2000.

28 Section 13.3. The Environmental Management Commission shall study issues
29 related to whether and under what circumstances a privately owned wastewater collection
30 system or treatment works may be required to connect to a publicly owned treatment
31 works in order to protect public health or the environment. The Environmental
32 Management Commission shall report its findings and recommendations, including any
33 legislative proposals, to the Environmental Review Commission no later than 1 March
34 2000.

35 Section 13.4. The Environmental Management Commission shall report on its
36 progress in implementing the Lagoon Conversion Plan pursuant to the letter from
37 Governor James B. Hunt, Jr. to Dr. David Moreau, Chairman, Environmental
38 Management Commission, dated 13 May 1999, as a part of each quarterly report the
39 Environmental Management Commission makes to the Environmental Review
40 Commission pursuant to G.S. 143B-282(b).

41 Section 13.5. The Commission for Health Services shall study issues related to
42 the proper maintenance of septic tank systems. The Commission shall specifically study
43 measures that prevent the failure of septic tank systems and the harm to public health, the

1 environment, and natural resources that results from the failure of septic tank systems.
2 The Commission for Health Services shall report its findings and recommendations,
3 including any legislative proposals, to the Environmental Review Commission no later
4 than 1 March 2000.

5 Section 13.6. The headings to the Parts of this act are a convenience to the
6 reader and are for reference only. The headings do not expand, limit, or define the text of
7 this act.

8 Section 13.7. This act shall not be construed to obligate the General Assembly
9 to appropriate funds to implement the provisions of this act. Every State agency to which
10 this act applies shall implement the provisions of this act from funds otherwise
11 appropriated or available to that agency.

12 Section 13.8. If any section or provision of this act is declared unconstitutional
13 or invalid by the courts, the unconstitutional or invalid section or provision does not
14 affect the validity of this act as a whole or any part of this act other than the part declared
15 to be unconstitutional or invalid.

16 Section 13.9. Part III of this act is effective retroactively to 31 October 1998.
17 Part V of this act is effective 1 October 1999 and applies to violations that occur on or
18 after 1 October 1999. Part V of this act shall not be construed to affect the validity of any
19 civil penalty that is assessed prior to 1 October 1999. G.S. 143-215.1(i)(1), as enacted by
20 Part VIII of this act, becomes effective 1 January 1999. The first report required by G.S.
21 143-215.1(i)(1) shall summarize performance and violations during the 1999 calendar
22 year or the fiscal year that begins 1 July 1999. G.S. 143-215.1(i)(2), as enacted by Part
23 VIII of this act, becomes effective 1 October 1999. Part IX of this act becomes effective
24 1 July 1999. Part X of this act becomes effective 1 October 1999 and applies to any
25 application for a permit that is submitted to the Department of Environment and Natural
26 Resources on or after that date. Part XII of this act is effective when this act becomes
27 law and applies to grants and revolving loans made on or after that date, in accordance
28 with Chapter 159G of the General Statutes and S.L. 1998-132, as amended by Part XII of
29 this act. All other Parts and sections of this act are effective when this act becomes law.