

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2009**

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**HOUSE BILL 1462\***

Short Title: Cement Plant Moratorium and Study. (Public)

Sponsors: Representatives Hughes; Fisher, E. Floyd, Glazier, Hall, Harrison, Insko, Luebke, Mackey, and Weiss.

Referred to: Environment and Natural Resources, if favorable, Commerce, Small Business, and Entrepreneurship.

April 13, 2009

A BILL TO BE ENTITLED

1 AN ACT TO IMPOSE A MORATORIUM ON THE CONSIDERATION OF PERMIT  
2 APPLICATIONS AND ISSUANCE OF PERMITS FOR THE CONSTRUCTION AND  
3 OPERATION OF CEMENT PLANTS IN THE STATE UNTIL SEPTEMBER 1, 2010,  
4 AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY  
5 ISSUES RELATED TO THE ENVIRONMENTAL IMPACTS OF CEMENT PLANTS  
6 AND THE SITING, DESIGN, AND OPERATIONAL REQUIREMENTS GOVERNING  
7 CEMENT PLANTS IN ORDER TO PROTECT PUBLIC HEALTH AND THE  
8 ENVIRONMENT.  
9

10       Whereas, it is declared to be the public policy of this State to provide for the  
11 conservation of its water and air resources; and

12       Whereas, it is the intent of the General Assembly to achieve and maintain a total  
13 environment of superior quality for the citizens of the State; and

14       Whereas, recognizing that the water and air resources of the State belong to the  
15 people, the General Assembly has affirmed the State's ultimate responsibility for the  
16 preservation and development of these resources in the best interest of all its citizens and has  
17 declared the prudent utilization of these resources to be essential to the general welfare; and

18       Whereas, cement plants emit pollutants injurious to the environment and human  
19 health such as sulfur dioxide, nitrogen oxide, volatile organics, particulate matter, and  
20 hazardous air pollutants including dioxins, furans, and mercury; and

21       Whereas, mercury, which is generated from the raw materials and some fuels used  
22 in cement-making, is a toxic metal that can damage the brain and nervous system; and

23       Whereas, mercury emissions are converted to the highly toxic form of  
24 methylmercury in surface waters; and

25       Whereas, mercury bioaccumulates in fish, which makes siting of facilities with high  
26 mercury emissions near public water bodies and in coastal areas of particular concern; and

27       Whereas, consumption advisories for 17 species of ocean fish and eight species of  
28 freshwater fish have been issued for sensitive populations such as pregnant and nursing women  
29 and children under the age of 15, based on the high level of mercury these fish contain and the  
30 potential damaging health effects that may be suffered by these sensitive populations from  
31 exposure to high levels of mercury; and

32       Whereas, section 303(d) of the federal Clean Water Act (CWA) requires states to  
33 develop a list of waters not meeting water quality standards or that have impaired uses, which  
34 waters must be prioritized, and a management strategy or total maximum daily load (TMDL)  
35 must subsequently be developed for all listed waters; and at least 49 segments of water bodies



1 in the State (assessment units) are included on the State's 303(d) list of impaired waters as a  
2 result of fish advisories due to mercury; and

3 Whereas, in 2007 the United States Environmental Protection Agency (USEPA)  
4 initiated a process to collect data from cement kiln companies pertaining to mercury content of  
5 all kiln inputs and the results of any mercury tests that had been performed on cement kilns at  
6 these facilities at any time. USEPA asserted that it would take until mid-September 2008 to  
7 analyze the data, determine the floor levels for emissions limitations, determine whether to  
8 propose more stringent beyond-the-floor emission limitations, and issue a proposed rule for  
9 public comment; and

10 Whereas, in January 2009 the USEPA noticed a proposed settlement agreement  
11 between the USEPA, several environmental groups, the Portland Cement Association, and the  
12 States of New York, Connecticut, Illinois, Maryland, Michigan, New Jersey, and the  
13 Commonwealths of Massachusetts and Pennsylvania wherein USEPA agreed to take action to  
14 establish new mercury emissions limitations from new and existing Portland cement kilns, with  
15 a notice taking final administrative action concerning the proposed rule making to be signed by  
16 the USEPA Administrator no later than March 31, 2010; and

17 Whereas, adequate data on mercury emissions from cement plants and conclusion of  
18 USEPA's final administrative action to establish new emissions limitations for these facilities  
19 are essential to an informed consideration of issues concerning the proper siting, design, and  
20 operation of cement plants in the State; and

21 Whereas, improperly sited, designed, or operated cement plants have the potential to  
22 cause serious environmental damage, including air and surface water contamination, and  
23 threaten human health; and

24 Whereas, it is essential that the State study the siting, design, and operational  
25 requirements for cement plants near schools and other places where children regularly  
26 congregate as children are thought to be more vulnerable to environmental exposures than  
27 adults given that their bodily systems are still developing, and for other reasons; and

28 Whereas, it is essential that the State study the siting, design, and operational  
29 requirements for cement plants in environmentally sensitive areas with nearby waterbodies in  
30 order to protect public health and the environment; and

31 Whereas, it is essential for the protection of public health and the environment to  
32 conduct an environmental review of the primary, secondary, and cumulative impacts of cement  
33 plants to ensure both air and water quality issues are considered together prior to the issuance  
34 of any permits; Now, therefore,

35 The General Assembly of North Carolina enacts:

36 **SECTION 1.** Moratorium Established. – There is hereby established a moratorium  
37 on consideration of applications for permits and on the issuance of permits for cement plants  
38 for construction and operation in the State. The purpose of this moratorium is to allow the  
39 State to study the environmental impacts of cement plants in order to protect public health and  
40 the environment. The Department of Environment and Natural Resources shall not consider a  
41 permit application nor issue a permit for a cement plant for the period beginning on the date  
42 this act becomes law until September 1, 2010.

43 **SECTION 2.(a)** Study. – The Environmental Review Commission, with the  
44 assistance of the Department of Environment and Natural Resources, shall study issues related  
45 to cement plants. In conducting this study, the Commission shall consider the findings of any  
46 environmental impact statements conducted pursuant to the State Environmental Policy Act  
47 and the National Environmental Policy Act for cement plants proposed to be sited in the State.  
48 The Commission shall specifically study issues concerning:

- 49 (1) Impacts of mercury and all other pollutants emitted from cement plants on  
50 public health in nearby communities, with particular attention to the

- 1 potential impacts on children's health in schools located in close proximity to  
2 cement plants.
- 3 (2) Impacts of accumulations of mercury and other dangerous chemicals in  
4 surface waters and aquatic life, and atmospheric deposition of air pollutants  
5 upon surface waters and land.
- 6 (3) Impacts of cement plants on regional groundwater and drinking water  
7 supplies, including the potential for saltwater intrusion into coastal aquifers.
- 8 (4) Impacts of cement facility operations on nearby communities, including, but  
9 not limited to: (i) impacts on local and regional traffic patterns and  
10 infrastructure; and (ii) cumulative impacts of cement plants and other heavy  
11 industry to regional tourism, commercial and residential development, and  
12 recreational activities such as hunting and fishing.
- 13 (5) Siting, design, and operational requirements for cement plants that are  
14 proposed for construction and operation in close proximity to schools,  
15 communities, public lands and waters, and other environmentally sensitive  
16 areas.
- 17 (6) The advisability of requiring the Department to: (i) conduct a study, which  
18 meets all of the requirements set forth in G.S. 113A-4 and rules adopted  
19 pursuant to G.S. 113A-4, of the environmental impacts of all proposed  
20 cement plants; and (ii) consider the study of environmental impacts and any  
21 mitigation measures proposed by an applicant in deciding whether to issue  
22 or deny a permit for a cement plant.

23 **SECTION 2.(b)** Subcommittee. – In order to facilitate the conduct of this study,  
24 the cochairs of the Environmental Review Commission may establish a subcommittee of the  
25 Commission. The subcommittee of the Commission may include nonlegislative members who  
26 have special knowledge, interest, or expertise in various aspects of cement plants, such as air  
27 toxics, atmospheric deposition of airborne pollutants, land conservation, public health, and  
28 hydrology, appointed in consultation with the President Pro Tempore of the Senate and the  
29 Speaker of the House of Representatives.

30 **SECTION 2.(c)** Report. – The Commission shall report its findings, together with  
31 any recommended legislation, to the 2010 Regular Session of the General Assembly upon its  
32 convening.

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