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HOUSE BILL 515

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Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/9/97

Short Title: Clean Water Responsibility Act.

(Public)

Sponsors:

Referred to:

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE CLEAN WATER RESPONSIBILITY ACT, A COMPREHENSIVE AND BALANCED PROGRAM TO PROTECT WATER QUALITY, PUBLIC HEALTH, AND THE ENVIRONMENT.

The General Assembly of North Carolina enacts:

PART I. MORATORIUM ON CONSTRUCTION OR EXPANSION OF SWINE FARMS

Section 1.1. (a) Moratorium Established. – As used in this section, "swine farm" and "lagoon" have the same meaning as in G.S. 106-802. As used in this section, "animal waste management system" has the same meaning as in G.S. 143-215.10B. 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

1 the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and
2 to allow the 1999 General Assembly to receive and act on the findings and
3 recommendations of those studies. Except as provided in subsection (b) of this section,
4 the Environmental Management Commission shall not issue a permit for an animal waste
5 management system for a new swine farm or the expansion of an existing swine farm for
6 a period beginning on 1 March 1997 and ending on 1 March 1999. The construction or
7 expansion of a swine farm or animal waste management system for a swine farm is
8 prohibited during the period of the moratorium regardless of the date on which a site
9 evaluation for the swine farm is completed and regardless of whether the animal waste
10 management system is deemed permitted under 15A North Carolina Administrative Code
11 2H.0217.

12 (b) Exceptions. – The moratorium established by subsection (a) of this section
13 does not prohibit:

- 14 (1) Construction to repair a component of an existing swine farm or lagoon.
- 15 (2) Construction to replace a component of an existing swine farm or
16 lagoon if the replacement does not result in an increase in swine
17 population, except as provided in subdivision (3) or (7) of this section.
- 18 (3) Construction or expansion for the purpose of increasing the swine
19 population to the projected population or to the population that the
20 animal waste management system serving that swine farm is designed to
21 accommodate, as set forth in a certified animal waste management plan
22 filed with the Department of Environment, Health, and Natural
23 Resources prior to 1 March 1997.
- 24 (4) Construction or expansion for the purpose of complying with applicable
25 animal waste management rules and not for the purpose of increasing
26 the swine population.
- 27 (5) Construction or expansion, if the person undertaking the construction or
28 expansion of the swine farm, lagoon, or animal waste management
29 system has been issued a permit under G.S. 143-215.1(a) or Part 1A of
30 Article 21 of Chapter 143 of the General Statutes prior to the date this
31 act becomes effective.
- 32 (6) Construction or expansion, if the person undertaking the construction or
33 expansion of the swine farm, lagoon, or animal waste management
34 system has, prior to 1 March 1997, either:
 - 35 a. Laid a foundation for a component of the swine farm, lagoon, or
36 animal waste management system.
 - 37 b. Entered into a bona fide written contract for the construction or
38 expansion of the swine farm, lagoon, or animal waste
39 management system.
 - 40 c. Been approved for a loan or line of credit to finance the
41 construction or expansion of the swine farm, lagoon, or animal
42 waste management system and has obligated or expended funds
43 derived from the loan or line of credit.

1 (7) Construction or expansion of an innovative animal waste management
2 system that does not employ an anaerobic lagoon and that has been
3 approved by the Department of Environment, Health, and Natural
4 Resources.

5 (c) Establishing Eligibility for an Exemption. – It shall be the responsibility of an
6 applicant for a permit for an animal waste management system for a new swine farm or
7 for the expansion of an existing swine farm under subdivisions (1) through (7) of
8 subsection (b) of this section to provide information and documentation to the
9 Department of Environment, Health, and Natural Resources that establishes, to the
10 satisfaction of the Department, that the applicant is eligible for the permit. In
11 demonstrating eligibility for a permit under this section, the burden of proof shall be on
12 the applicant.

13 14 PART II. AGRICULTURAL ZONING BY COUNTIES

15
16 Section 2.1. G.S. 153A-340 reads as rewritten:

17 "§ 153A-340. Grant of power.

18 (a) For the purpose of promoting health, safety, morals, or the general welfare, a
19 county may regulate and restrict the height, number of stories and size of buildings and
20 other structures, the percentage of lots that may be occupied, the size of yards, courts and
21 other open spaces, the density of population, and the location and use of buildings,
22 structures, and land for trade, industry, residence, or other purposes, and to provide
23 density credits or severable development rights for dedicated rights-of-way pursuant to
24 G.S. 136-66.10 or G.S. 136-66.11.

25 (b) (1) These regulations may not affect property used for bona fide
26 farms, but any farm purposes only as provided in subdivision (3) of
27 this subsection. This subsection does not limit regulation under this
28 Part with respect to the use of farm property for nonfarm purposes is
29 subject to the regulations purposes.

30 (2) Bona fide farm purposes include the production and activities relating or
31 incidental to the production of crops, fruits, vegetables, ornamental and
32 flowering plants, dairy, livestock, poultry, and all other forms of
33 agricultural products having a domestic or foreign market.

34 (3) The definitions set out in G.S. 106-802 apply to this subdivision. A
35 county may adopt zoning regulations governing swine farms served by
36 animal waste management systems having a design capacity of 600,000
37 pounds steady state live weight (SSLW) or greater provided that the
38 zoning regulations may not have the effect of excluding swine farms
39 served by an animal waste management system having a design capacity
40 of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

41 (c) The regulations may provide that a board of adjustment may determine and
42 vary their application in harmony with their general purpose and intent and in accordance
43 with general or specific rules therein contained. The regulations may also provide that

1 the board of adjustment or the board of commissioners may issue special use permits or
2 conditional use permits in the classes of cases or situations and in accordance with the
3 principles, conditions, safeguards, and procedures specified therein and may impose
4 reasonable and appropriate conditions and safeguards upon these permits. Where
5 appropriate, the conditions may include requirements that street and utility rights-of-way
6 be dedicated to the public and that recreational space be provided. When issuing or
7 denying special use permits or conditional use permits, the board of commissioners shall
8 follow the procedures for boards of adjustment except that no vote greater than a majority
9 vote shall be required for the board of commissioners to issue such permits, and every
10 such decision of the board of commissioners shall be subject to review by the superior
11 court by proceedings in the nature of certiorari.

12 (d) A county may regulate the development over estuarine waters and over lands
13 covered by navigable waters owned by the State pursuant to G.S. 146-12, within the
14 bounds of that county.

15 (e) For the purpose of this section, the term 'structures' shall include floating
16 homes.

17 (f) Any petition for review by the superior court shall be filed with the clerk of
18 superior court within 30 days after the decision of the board of commissioners is filed in
19 such office as the ordinance specifies, or after a written copy thereof is delivered to every
20 aggrieved party who has filed a written request for such copy with the clerk at the time of
21 the hearing of the case, whichever is later. The decision of the board of commissioners
22 may be delivered to the aggrieved party either by personal service or by registered mail
23 or certified mail return receipt requested."

24 Section 2.2. Zoning regulations governing swine farms served by animal
25 waste management systems having a design capacity of 600,000 pounds steady state live
26 weight (SSLW) or greater adopted under G.S. 153A-340(b), as amended by Section 2.1
27 of this act, shall not, with respect to a swine farm in existence at the time the zoning
28 ordinance is adopted:

- 29 (1) Prohibit the continued existence of the swine farm.
- 30 (2) Require the amortization of the swine farm.
- 31 (3) Prohibit the repair or replacement on the same site of the swine farm so
32 long as the repair or replacement does not increase the swine population
33 beyond the population that the animal waste management system
34 serving the swine farm is designed to accommodate, as set forth in the
35 permit for the animal waste management system.

37 PART III. CONTROL OF ODOR EMISSIONS FROM ANIMAL 38 OPERATIONS

39
40 Section 3.1. G.S. 143-215.107(a) is amended by adding a new subdivision to
41 read:

42 "(11) To develop and adopt standards and plans necessary to implement
43 programs to control the emission of odors from animal operations, as

1 defined in G.S. 143-215.10B. Standards and plans adopted under this
2 subdivision shall be required only to the extent that economically
3 feasible technology sufficient to satisfy these standards and plans is
4 available."

5 Section 3.2. The Board of Governors of The University of North Carolina
6 shall present its final report and recommendations on economically feasible odor control
7 technologies, as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996
8 Second Extra Session), to the Environmental Review Commission and the Environmental
9 Management Commission not later than 1 November 1997. The Environmental
10 Management Commission shall publish the text of a proposed rule to regulate the
11 emission of odors from animal operations under G.S. 143-215.107(a)(11), as enacted by
12 Section 3.1 of this act, within six months after the date on which the North Carolina
13 Agricultural Research Service at North Carolina State University issues its final report on
14 economically feasible odor control technologies if the report establishes that
15 economically feasible odor control technology for animal operations is available. If
16 economically feasible odor control technology for animal operations is available, the
17 Environmental Management Commission shall adopt a rule to regulate the emission of
18 odors from animal waste management systems no later than 1 March 1999. The
19 Environmental Management Commission shall not adopt a temporary rule to regulate the
20 emission of odors from animal waste management systems. The Environmental
21 Management Commission shall report on its progress in developing and adopting a rule
22 to regulate the emission of odors from animal waste management systems as a part of
23 each quarterly report the Environmental Management Commission makes to the
24 Environmental Review Commission pursuant to G.S. 143B-282(b).

25 26 **PART IV. SWINE FARM SITING ACT AMENDMENTS**

27
28 Section 4.1. Article 67 of Chapter 106 of the General Statutes reads as
29 rewritten:

30 **"ARTICLE 67.**

31 **"SWINE FARMS.**

32 **"§ 106-800. Title.**

33 This Article shall be known as the 'Swine Farm Siting Act'.

34 **"§ 106-801. Purpose.**

35 The General Assembly finds that certain limitations on the siting of swine houses and
36 lagoons for swine farms can assist in the development of pork production, which
37 contributes to the economic development of the State, by lessening the interference with
38 the use and enjoyment of adjoining property.

39 **"§ 106-802. Definitions.**

40 As used in this Article, unless the context clearly requires otherwise:

- 41 (1) 'Lagoon' means a confined body of water to hold animal byproducts
42 including bodily waste from animals or a mixture of waste with feed,
43 bedding, litter or other agricultural materials.

- 1 (2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.
2 (3) 'Occupied residence' means a dwelling actually inhabited by a person
3 on a continuous basis as exemplified by a person living in his or her
4 home.
5 (4) 'Site evaluation' means an investigation to determine if a site meets all
6 federal and State standards as evidenced by the Waste Management
7 Facility Site Evaluation Report on file with the Soil and Water
8 Conservation District office or a comparable report certified by a
9 professional engineer or a comparable report certified by a technical
10 specialist approved by the North Carolina Soil and Water Conservation
11 Commission.

12 ~~Department of Environment, Health and Natural Resources~~

- 13 (5) 'Swine farm' means a tract of land devoted to raising 250 or more
14 animals of the porcine species.
15 (6) 'Swine house' means a building that shelters porcine animals on a
16 continuous basis.

17 **"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto**
18 **which waste is applied at swine farms.**

19 (a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~
20 located:

- 21 (1) ~~at~~ At least 1,500 feet from any occupied ~~residence~~; residence.
22 (2) ~~at~~ At least 2,500 feet from any school, hospital, or ~~church~~; and church.
23 (3) ~~at~~ At least 500 feet from any property boundary.

24 (a1) The outer perimeter of the land area onto which waste is applied from a lagoon
25 that is a component of a swine farm shall be at least 50 feet from any boundary of
26 property on which an occupied residence is located from any perennial stream or river,
27 other than an irrigation ditch or canal.

28 (a2) No component of a liquid animal waste management system for which a permit
29 is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than
30 a land application site, shall be constructed on land that is located within the 100-year
31 floodplain.

32 (b) A swine house or a lagoon that is a component of a swine farm may be located
33 closer to a residence, school, hospital, church, or a property boundary than is allowed
34 under subsection (a) of this section if written permission is given by the owner of the
35 property and recorded with the Register of Deeds.

36 **"§ 106-804. Enforcement.**

37 (a) Any person ~~owning~~ who owns property directly affected by the siting
38 requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil
39 action against ~~a swine farmer~~ the owner or operator of a swine farm who has violated G.S.
40 106-803 and may seek any one or more of the following:

- 41 (1) Injunctive relief.
42 (2) An order enforcing the siting requirements under G.S. 106-803.
43 (3) Damages caused by the violation.

1 (b) A person is directly affected by the siting requirements of G.S. 106-803 only if
2 the person ~~owns~~: owns a facility or property located within the siting requirements
3 specified under G.S. 106-803.

4 (1) ~~An occupied residence located less than 1,500 feet from a swine house~~
5 ~~or lagoon in violation of G.S. 106-803.~~

6 (2) ~~A school, hospital, or church located less than 2,500 feet from a swine~~
7 ~~house or lagoon in violation of G.S. 106-803.~~

8 (3) ~~Property whose boundary is located less than 500 feet from a swine~~
9 ~~house or lagoon in violation of G.S. 106-803.~~

10 (4) ~~Property on which an occupied residence is located and whose boundary~~
11 ~~is less than 50 feet from the outer perimeter of the land area onto which~~
12 ~~waste is applied from a lagoon that is a component of a swine farm in~~
13 ~~violation of G.S. 106-803.~~

14 (5) ~~Property that abuts a perennial stream or river, or on which a perennial~~
15 ~~stream or river is located, and that property and that perennial stream or~~
16 ~~river are less than 50 feet from the outer perimeter of the land area onto~~
17 ~~which waste is applied from a lagoon that is a component of a swine~~
18 ~~farm in violation of G.S. 106-803.~~

19 (c) If the court determines it is appropriate, the court may award court costs,
20 including reasonable attorneys' fees and expert witnesses' fees, to any party. If a
21 temporary restraining order or preliminary injunction is sought, the court may require the
22 filing of a bond or equivalent security. The court shall determine the amount of the bond
23 or security.

24 (d) Nothing in this section shall restrict any other right that any person may have
25 under any statute or common law to seek injunctive or other relief.

26 **"§ 106-805. Written notice of swine farms.**

27 Any person who intends to construct a swine farm whose animal waste management
28 system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General
29 Statutes shall, after completing a site evaluation and before the farm site is modified,
30 ~~attempt to notify all adjoining property owners and owners;~~ all property owners who own
31 property located across a public road, street, or highway from the swine farm; the
32 county or counties in which the farm site is located; and the local health department or
33 departments having jurisdiction over the farm site of that person's intent to construct the
34 swine farm. This notice shall be by certified mail sent to the address on record at the
35 property tax office in the county in which the land is located. Notice to a county
36 shall be sent to the county manager or, if there is no county manager, to the chair of the
37 board of county commissioners. Notice to a local health department shall be sent to the
38 local health director. The written notice shall include all of the following:

39 (1) The name and address of the person intending to construct a swine farm.

40 (2) The type of swine farm and the design capacity of the animal waste
41 management system.

42 (3) The name and address of the technical specialist preparing the waste
43 management plan.

- 1 (4) The address of the local Soil and Water Conservation District office.
2 (5) Information informing the adjoining property owners and the property
3 owners who own property located across a public road, street, or
4 highway from the swine farm that they may submit written comments to
5 the Division of Water Quality, Department of Environment, Health, and
6 Natural Resources."

7 Section 4.2. G.S. 106-803(a2), added to G.S. 106-803 by Section 4.1 of this
8 act, applies to any new liquid animal waste management system for which construction
9 commences on or after the date this act becomes law and to any expansion of an existing
10 liquid animal waste management system for which construction commences on or after
11 the date this act becomes law.

12
13 **PART V. PRIORITY FOR LOANS OR GRANTS FROM THE CLEAN**
14 **WATER REVOLVING LOAN AND GRANT FUND TO ASSIST**
15 **LOCAL GOVERNMENTS IN MEETING THE NITROGEN AND**
16 **PHOSPHOROUS LIMITS FOR SURFACE WATERS; PRIORITY**
17 **FOR FUNDING FROM VARIOUS FUNDING SOURCES BASED**
18 **ON COMPREHENSIVE LAND-USE PLANNING BY LOCAL**
19 **GOVERNMENTS**
20

21 Section 5.1. G.S. 159G-10 reads as rewritten:

22 **"§ 159G-10. Priorities.**

23 (a) Determination. – Determination of priorities to be assigned each eligible
24 application shall be made semiannually by each receiving agency during each fiscal year.
25 Every eligible application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-
26 6(c)(1) shall be considered by the receiving agency with every other application filed
27 under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1), respectively, and eligible
28 for consideration during the same priority period, to determine the priority to be assigned
29 to each application. The same procedure shall apply to every eligible application filed
30 under G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) of this Chapter. Any application which
31 does not contain the information required by this Chapter or regulations adopted by the
32 receiving agency(s) shall not be deemed received until such information is furnished by
33 the applicant to the receiving agency.

34 (a1) **(See note)** Expired.

35 (b) Priority Factors. – All applications for revolving loans or grants under this
36 Chapter eligible for consideration during each priority period shall be assigned a priority
37 for such funds by the receiving agency. The priority factors shall be similar to those
38 developed under the North Carolina Clean Water Bond Act of 1977, as provided in and
39 modified by this subsection.

40 (1) General Criteria. –

- 41 a. The general criteria provided in 1 NCAC 22.0401 through .0403
42 on January 1, 1987, shall apply, except that 1 NCAC 22.0401(c)

1 shall apply only to State funds appropriated to match available
2 federal funds.

3 b. The existence of a comprehensive land-use plan that meets the
4 requirements of subsection (e) of this section is a general
5 criterion for determining which local government units will
6 receive a loan or grant. A local government unit that is not
7 authorized to adopt a comprehensive land-use plan but that is
8 located in whole or in part in another local government unit that
9 has adopted a comprehensive land-use plan shall receive the
10 same priority treatment as a local government unit that has
11 authority to adopt a comprehensive land-use plan. A
12 comprehensive land-use plan that meets the requirements of
13 subsection (e) of this section and that exceeds the minimum State
14 standards for protection of water resources shall receive more
15 points than a plan that does not exceed those standards.

16 (2) Wastewater Treatment Work Projects. – The priority criteria provided in
17 1 NCAC 22.0501 through .0506 on January 1, 1987, shall apply to
18 applications for wastewater treatment work projects, except that 1
19 NCAC 22.0503 shall not apply.

20 (3) Wastewater Collection System Projects. – The priority criteria provided
21 in 1 NCAC 22.0601 through .0606 on January 1, 1987, shall apply to
22 applications for wastewater collection system projects, except that 1
23 NCAC 22.0601(2)(a) and (3), and 1 NCAC 22.0605(2), (3) and (4) shall
24 not apply.

25 (4) Water Supply System Projects. – The priority criteria provided in 1
26 NCAC 22.0701 through .0704 on January 1, 1987, shall apply to
27 applications for water supply system projects.

28 (5) Wastewater Treatment Works Improvements to Meet Nitrogen and
29 Phosphorous Limits. – The Environmental Management Commission
30 shall adopt a rule specifying priority criteria for modifications to
31 existing permitted wastewater treatment facilities that are owned or
32 operated by local government units and that are subject to G.S. 143-
33 215.1(c1) or G.S. 143-215.1(c2) to enable local government units to
34 comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2).

35 ~~(5)~~(6) The total number of points available in the respective categories shall be
36 deemed adjusted in accordance with the provisions of subdivisions (1)
37 through ~~(4)~~(5) of this subsection.

38 (c) Assignment of Priority. – A written statement relative to each priority assigned
39 shall be prepared by the receiving agency and shall be attached to the application. The
40 priority assigned shall be conclusive.

41 (d) Failure to Qualify. – Any application filed under G.S. 159G-5(c), G.S. 159G-
42 6(b) or G.S. 159G-6(c) that does not qualify for a revolving loan or grant as of the
43 priority period in which the application was eligible for consideration by reason of the

1 priority assigned the application shall be considered for a revolving loan or grant during
2 the next succeeding priority period upon request of the applicant. If such application
3 should again fail to qualify for a revolving loan or grant during the second priority period
4 by reason of the priority assigned, the application shall receive no further consideration.
5 An applicant may file a new application at any time, and may amend any pending
6 application to include additional data or information.

7 (e) Land-Use Plan. – Local government units are encouraged to adopt
8 comprehensive land-use plans. The Division of Community Assistance in the
9 Department of Commerce shall, upon request, provide technical assistance to any
10 economically distressed local government unit in preparing a comprehensive land-use
11 plan. To qualify as a comprehensive land-use plan, a plan must meet all of the following
12 requirements:

13 (1) Be adopted by the governing body of the local government unit covered
14 by the plan.

15 (2) Promote economically and environmentally sustainable development.

16 (3) Establish verifiable goals to be met through compliance with the plan.

17 (4) Be approved by the Office of State Planning."

18 Section 5.2. G.S. 159G-3 is amended by adding a new subdivision to read:

19 "(7a) 'Economically distressed local government unit' means a local
20 government unit located, in whole or in part, in a county designated as
21 economically distressed by the Secretary of Commerce under G.S.
22 143B-437A."

23 **PART VI. NITROGEN AND PHOSPHOROUS LIMITS FOR** 24 **SURFACE WATERS**

25
26
27 Section 6.1. G.S. 143-215.1 is amended by adding four new subsections to
28 read:

29 "(c1) Any person who is required to obtain an individual wastewater permit under
30 this section for a facility discharging either to the surface waters of the State that have
31 been classified as nutrient sensitive waters (NSW) under rules adopted by the
32 Commission or to other surface water bodies of the State specifically designated by the
33 Commission where nitrogen is a nutrient of concern shall not discharge more than an
34 average annual mass load of total nitrogen than would result from a discharge of the
35 permitted flow having a total nitrogen concentration of four milligrams of nitrogen per
36 liter (4.0 mg/l). If the Commission determines that the assimilative capacity for nitrogen
37 of a water body has been exceeded, the Commission shall establish a maximum mass
38 load for total nitrogen for that water body. The maximum mass load for total nitrogen
39 established by the Commission may require permitted flows to have a total nitrogen
40 concentration less than those set out in this subsection. The maximum mass load of total
41 nitrogen for all wastewater discharges into a water body shall not exceed that required to
42 meet the wastewater discharge allocation or the annual mass load for nitrogen based on
43 the permitted flow and total nitrogen concentration required by this subsection,

1 whichever is less. The total nitrogen concentration of 4.0 mg/l for NSW and other waters
2 required by this subsection apply only to:

3 (1) Facilities that were placed into operation prior to 1 July 1997 or for
4 which an authorization to construct was issued prior to 1 July 1997 and
5 that have a design capacity to discharge 500,000 gallons per day or
6 more.

7 (2) Facilities for which an authorization to construct is issued on or after 1
8 July 1997.

9 (c2) Any person who is required to obtain an individual wastewater permit under
10 this section for a facility discharging to surface water bodies of the State specifically
11 designated by the Commission where phosphorous is a nutrient of concern shall not
12 discharge more than an average annual mass load of total phosphorous than would result
13 from a discharge of the permitted flow having a total phosphorous concentration of two
14 milligrams of phosphorous per liter (2.0 mg/l). If the Commission determines that the
15 assimilative capacity for phosphorous of a water body has been exceeded, the
16 Commission shall establish a maximum mass load for total phosphorous for that water
17 body. The maximum mass load for total phosphorous established by the Commission
18 may require permitted flows to have a total phosphorous concentration less than that set
19 out in this subsection. The maximum mass load of total phosphorous for all wastewater
20 discharges into a water body shall not exceed that required to meet the wastewater
21 discharge allocation or the annual mass load for phosphorous based on the permitted flow
22 and total phosphorous concentration required by this subsection, whichever is less.

23 (c3) A person to whom subsection (c1) or (c2) of this section applies may meet the
24 limits established under those subsections either individually or on the basis of a
25 cooperative agreement with other persons who hold individual wastewater permits if the
26 cooperative agreement is approved by the Commission. A person to whom subsection
27 (c1) or (c2) of this section applies whose agreement to accept wastewater from another
28 wastewater treatment facility that discharges into the same water body and that results in
29 the elimination of the discharge from that wastewater treatment facility shall be allowed
30 to increase the average annual mass load of total nitrogen and total phosphorous that
31 person discharges by the average annual mass load of total nitrogen and total
32 phosphorous of the wastewater treatment facility that is eliminated. If the wastewater
33 treatment facility that is eliminated has a permitted flow of less than 500,000 gallons per
34 day, the average annual mass load of total nitrogen or phosphorous shall be calculated
35 from the most recent available data. A person to whom this subsection applies shall
36 comply with nitrogen and phosphorous discharge monitoring requirements established by
37 the Commission. This average annual load of nitrogen or phosphorous shall be assigned
38 to the wastewater discharge allocation of the wastewater treatment facility that accepts
39 the wastewater.

40 (c4) A person to whom subsection (c1) of this section applies may request the
41 Commission to approve a total nitrogen concentration greater than that set out in
42 subsection (c1) of this section at a decreased permitted flow so long as the average annual
43 mass load of total nitrogen is equal to or is less than that required under subsection (c1)

1 of this section. A person to whom subsection (c2) of this section applies may request the
2 Commission to approve a total phosphorous concentration greater than that set out in
3 subsection (c2) of this section at a decreased permitted flow so long as the average annual
4 mass load of total phosphorous is equal to or is less than that required under subsection
5 (c2) of this section. If, after any 12-month period following approval of a greater
6 concentration at a decreased permitted flow, the Commission finds that the greater
7 concentration at a decreased permitted flow does not result in an average annual mass
8 load of total nitrogen or total phosphorous equal to or less than those that would be
9 achieved under subsections (c1) and (c2) of this section, the Commission shall rescind its
10 approval of the greater concentration at a decreased permitted flow and the requirements
11 of subsections (c1) and (c2) of this section shall apply."

12 Section 6.2. G.S. 143-215.6A(a) is amended by adding a new subdivision to
13 read:

14 "(10) Violates G.S. 143-215.1(c1), G.S. 143-215.1(c2), or a rule adopted
15 pursuant to G.S. 143-215.1(c1) or G.S. 143-215.1(c2)."

16 Section 6.3. By 1 November 1997, the Environmental Management
17 Commission shall develop a schedule of dates between 1 January 1998, and 1 January
18 2003, by which existing facilities must comply with G.S. 143-215.1(c1) and G.S. 143-
19 215.1(c2), as enacted by Section 6.1 of this act. The schedule of compliance dates shall
20 follow as closely as possible the dates on which permits for existing facilities must be
21 renewed. New facilities and expansions of existing facilities for which an application for
22 a permit is received by the Department of Environment, Health, and Natural Resources
23 on behalf of the Environmental Management Commission prior to the date this act
24 becomes effective shall be treated as existing facilities.

25 26 PART VII. STORMWATER MANAGEMENT

27
28 Section 7.1. G.S. 143-214.7 reads as rewritten:

29 "**§ 143-214.7. Stormwater runoff rules and programs.**

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

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

5 (1) Classified shellfish ~~waters;~~ waters.

6 (2) Water supply ~~watersheds;~~ watersheds.

7 (3) Outstanding resource ~~waters;~~ waters.

8 (4) High quality ~~waters;~~ and waters.

9 (5) ~~Other waters where~~ All other waters of the State to the extent that the
10 Commission finds control of stormwater is needed to meet the purposes
11 of this Article. Provided however, that prior to implementation of rules
12 under this subdivision (5), the Commission shall consult with the
13 Environmental Review Commission.

14 (c) ~~Chapter 150B of the General Statutes governs adoption of rules by the Commission.~~
15 The Commission shall develop model stormwater management programs that may be
16 implemented by State agencies and units of local government. A State agency or unit of
17 local government may submit to the Commission for its approval a stormwater control
18 program for implementation within its jurisdiction. To this end, State agencies are
19 authorized to adopt rules, and units of local government are authorized to adopt
20 ordinances and regulations necessary to establish and enforce stormwater control
21 programs. Units of local government are authorized to create or designate agencies or
22 subdivisions to administer and enforce the programs. Two or more units of local
23 government are authorized to establish a joint program and to enter into any agreements
24 that are necessary for the proper administration and enforcement of the program.

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

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

35 Section 7.2. The Environmental Management Commission shall make the first
36 annual report required by G.S. 143-214.7(e), as enacted by Section 7.1 of this act, on or
37 before 1 October 1998.

38 Section 7.3. The Department of Transportation shall work diligently and in
39 full cooperation with the Division of Water Quality of the Department of Environment,
40 Health, and Natural Resources, using whatever resources may be necessary, to complete
41 the development of a statewide stormwater management permit under the National
42 Pollutant Discharge Elimination System (NPDES). The General Assembly intends that
43 this permit govern all programs administered by the Department of Transportation and

1 that the permit will be issued no later than 1 October 1997. The Department of
2 Transportation and the Division of Water Quality shall jointly report to the
3 Environmental Review Commission as to their progress in meeting the mandate of this
4 section no later than 1 October 1997.

5
6 **PART VIII. COMPLETION OF BASINWIDE WATER QUALITY**
7 **MANAGEMENT PLANS FOR EACH OF THE STATE'S**
8 **SEVENTEEN RIVER BASINS; ADDITIONAL REQUIREMENTS**
9 **FOR BASINWIDE WATER QUALITY MANAGEMENT PLANS;**
10 **ADOPTION OF TOTAL MAXIMUM DAILY LOADS FOR**
11 **EACH RIVER BASIN**

12
13 Section 8.1. The General Assembly makes the following findings:

- 14 (1) There are 17 major river basins in the State.
- 15 (2) Many activities occur in the vicinity of each of these river basins, and
16 the activities and conditions in one river basin may vary greatly from
17 those in another river basin.
- 18 (3) The public is focusing on the swine industry's role in degrading water
19 quality, but, in fact, numerous other industries and even private citizens
20 are responsible for contributing nutrients and toxins to the waters of the
21 State. Among the point source and nonpoint sources of nutrients and
22 toxins in our State's waters are: municipal wastewater facilities,
23 industrial wastewater systems, septic tank systems, stormwater
24 management systems, golf courses, farms that use fertilizers and
25 pesticides for crops, public and commercial lawns and gardens, as well
26 as animal operations.
- 27 (4) The best and most effective approach to protecting and improving water
28 quality is a comprehensive, systemwide management approach.
- 29 (5) Basinwide water quality management is an approach already being
30 taken by the Department of Environment, Health, and Natural
31 Resources to improve the efficiency, effectiveness, and consistency of
32 its water quality protection program. It is not a new regulatory program;
33 it is a watershed-based approach that provides for basinwide permitting
34 and integration of point and nonpoint source controls through existing
35 regulatory and cooperative programs. The Neuse River Basinwide
36 Management Plan has already been released. Seventeen basinwide
37 plans are planned to be prepared by the Department over the next five
38 years.
- 39 (6) The better solution to improving water quality lies not in abandoning
40 efforts under way in an effort to find a new solution, but to accelerate
41 effective efforts currently in progress by establishing a deadline for
42 completing, and expediting the implementation of, the 17

1 comprehensive conservation and management plans for each major river
2 basin in the State.

- 3 (7) The public should be informed of the complexity of the problems
4 regarding water quality so that the public can appreciate the
5 effectiveness of a systemwide approach and the degree of effort that has
6 already been expended to address these problems. Public involvement
7 should be encouraged, and public education should be enhanced.

8 Section 8.2. Part 1 of Article 21 of Chapter 143 of the General Statutes is
9 amended by adding a new section to read:

10 **"§ 143-215.8B. Basinwide water quality management plans.**

11 (a) The Commission shall develop and implement a basinwide water quality
12 management plan for each of the 17 major river basins in the State. In developing and
13 implementing each plan, the Commission shall consider the cumulative impacts of all
14 activities across a river basin and all point sources and nonpoint sources of nutrients and
15 toxins, including municipal wastewater facilities, industrial wastewater systems, septic
16 tank systems, stormwater management systems, golf courses, farms that use fertilizers
17 and pesticides for crops, public and commercial lawns and gardens, and animal
18 operations.

19 (b) Each basinwide water quality management plan shall:

20 (1) Provide that all point sources and nonpoint sources of pollutants jointly
21 share the responsibility of reducing the nutrients and toxins in the State's
22 waters in a fair, reasonable, and proportionate manner, using computer
23 modeling and the best science and technology reasonably available and
24 considering future anticipated population growth and economic
25 development.

26 (2) Incorporate protective buffers along all perennial bodies of water for
27 new developmental activities. The Commission shall consider the
28 ecological reasons for each buffer and shall base any requirements for
29 the buffer on those reasons. The Commission shall also consider and
30 adopt an equitable approach for determining which developmental
31 activities shall be defined as 'new developmental activities.'

32 (3) Require appropriate management of any new developmental activity
33 that is agricultural, residential, commercial, or industrial in nature, if the
34 new developmental activity is to occur on land that is located within a
35 100-year floodplain.

36 (4) If any of the waters located within the river basin are designated as
37 nutrient sensitive water, then the basinwide water quality management
38 plan shall establish a goal to reduce the average annual load of nutrients
39 delivered to surface waters within the river basin from point and
40 nonpoint sources. The Commission shall establish a nutrient reduction
41 goal for the nutrient or nutrients of concern that will result in
42 improvements to water quality such that the designated uses of the
43 water, as provided in the classification of the water under G.S. 143-

1 214.1(d), are not impaired. The plan shall require that incremental
2 progress toward achieving the goal be demonstrated each year. The
3 Commission shall develop a five-year plan to achieve the goal. In
4 developing the plan, the Commission shall determine and allow
5 appropriate credit toward achieving the goal for reductions of water
6 pollution by point and nonpoint sources through voluntary measures.

7 (5) Any other components of the plan that the Commission determines to be
8 necessary.

9 (c) The Commission shall review and revise its 17 basinwide water quality
10 management plans at least every five years to reflect changes in permits that have been
11 renewed during the previous five-year permit renewal cycle, improvements in modeling
12 methods, improvements in wastewater treatment technology, and advances in scientific
13 knowledge.

14 (d) The Commission and the Department shall each report on a quarterly basis to
15 the Environmental Review Commission on the progress in developing and implementing
16 basinwide water quality management plans and on increasing public involvement and
17 public education in connection with basinwide water quality management planning. The
18 report by the Department shall include a written statement as to all concentrations of
19 heavy metals and other pollutants in the surface waters of the State that are identified in
20 the course of preparing the basinwide water quality management plans. The report under
21 this section by the Commission shall be made as a part of the quarterly report required
22 under G.S. 143B-282(b). The report under this section by the Department shall be made
23 on or before the first day of each calendar quarter."

24 Section 8.3. The Environmental Management Commission shall increase its
25 current efforts to involve the public in the development and implementation of the
26 basinwide water quality management plans, including conducting public hearings
27 throughout the State. The Department of Environment, Health, and Natural Resources
28 shall increase public education efforts to inform the public of the complexity of the
29 problems related to water quality, the benefits of taking a comprehensive, systemwide
30 approach to water quality improvement, and the need for all point and nonpoint sources
31 of pollutants to have an active role in reducing nutrients and toxins, either by reducing the
32 amount of nutrients and toxins used or by improving the treatment and disposal of
33 wastewater, or both. The Department shall provide press releases on at least a monthly
34 basis for the purpose of keeping the public well-informed of water quality issues in the
35 State.

36 Section 8.4. G.S. 143B-282 is amended by adding a new subsection to read:

37 "(c) The Environmental Management Commission shall implement the provisions
38 of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired
39 waters and by developing, on a basinwide basis, appropriate total maximum daily loads
40 of pollutants for those targeted waters. The Commission shall incorporate those total
41 maximum daily loads approved by the United States Environmental Protection Agency
42 into its continuing planning process and shall adopt rules setting out strategies necessary
43 for assuring that water quality standards are met by any point or nonpoint source or by

1 any category of point or nonpoint sources that is determined by the Commission to be
2 contributing to the water quality impairment. These strategies may include, but are not
3 limited to, additional monitoring, effluent limitations, supplemental standards or
4 classifications, best management practices, schedules of compliance, and the
5 establishment of and delegations to intergovernmental basinwide groups."

6 Section 8.5. G.S. 143B-282(a)(2) is amended by adding a new sub-subdivision
7 to read:

8 "j. To implement basinwide water quality management plans
9 developed pursuant to G.S. 143-215.8B."

10 Section 8.6. The Environmental Management Commission may adopt rules to
11 implement this Part as provided in Article 3 of Chapter 150B of the General Statutes.
12 The Environmental Management Commission shall not adopt a temporary rule to
13 implement this Part. The Environmental Management Commission shall report on its
14 progress in implementing this Part as a part of each quarterly report the Environmental
15 Management Commission makes to the Environmental Review Commission pursuant to
16 G.S. 143B-282(b).

17 18 **PART IX. FERTILIZER USE AT GOLF COURSES**

19
20 Section 9.1. Article 3 of Chapter 90A of the General Statutes is amended by
21 adding a new Part to read:

22 **"PART 3. CERTIFICATION OF APPLICATORS OF** 23 **SOIL ENRICHING NUTRIENTS AT GOLF COURSES.**

24 **"§ 90A-48. Purpose.**

25 The purpose of this Part is to reduce nonpoint source pollution in order to protect the
26 public health, to conserve and protect the quality of the State's water resources, to
27 encourage the development and improvement of the State's land for the recreational use
28 and enjoyment of private and public golf courses, and to require the examination of
29 persons who apply soil-enriching nutrients onto land at golf courses, and certification of
30 their competency to apply or supervise the application of soil-enriching nutrients onto
31 land at golf courses.

32 **"§ 90A-48.1. Definitions.**

33 As used in this Part:

- 34 (1) 'Application' means spraying, laying, spreading on, irrigating, or
35 injecting soil-enriching nutrients onto land.
36 (2) 'Commission' means the Water Pollution Control System Operators
37 Certification Commission.
38 (3) 'Operator in charge' means a person who holds a currently valid
39 certificate for the application of soil-enriching nutrients onto land at golf
40 courses and who has primary responsibility for their application.
41 (4) 'Soil-enriching nutrients' means fertilizers or soil-enriching substances
42 containing nitrogen, phosphorus, zinc, or other soil-enriching elements
43 or minerals.

1 (5) 'Owner' means the person who owns or controls the land used for a golf
2 course or the person's lessee or designee.

3 **"§ 90A-48.2. Certified operator in charge required; qualifications for certification.**

4 (a) No owner or other person in control of a golf course onto which soil-enriching
5 nutrients are applied shall allow the application by a person who does not hold a valid
6 certificate as an operator in charge of the application of soil-enriching nutrients onto land
7 at golf courses issued by the Commission. No person shall perform the duties of an
8 operator in charge of the application of soil-enriching nutrients onto land at golf courses
9 without being certified under the provisions of this Part. Other persons may assist in the
10 application of soil-enriching nutrients so long as they are directly supervised by an
11 operator in charge who is certified under this Part.

12 (b) The owner or other person in control of a golf course onto which soil-enriching
13 nutrients are applied may contract with a certified operator in charge of the application of
14 soil-enriching nutrients onto land at golf courses to provide for the application of soil-
15 enriching nutrients onto that land. The Commission may adopt rules requiring that any
16 certified operator in charge who contracts with one or more owners or other persons in
17 control of a golf course onto which soil-enriching nutrients are applied file an annual
18 report with the Commission as to which property the services of the operator in charge
19 are provided.

20 **"§ 90A-48.3. Qualifications for certification; training; examination.**

21 (a) The Commission shall develop and administer a certification program for an
22 operator in charge of the application of soil-enriching nutrients onto land at golf courses
23 that provides for receipt of applications, training, and examination of applicants and for
24 investigation of the qualifications of applicants.

25 (b) The Commission, in cooperation with the Division of Water Quality of the
26 Department of Environment, Health, and Natural Resources, and the Cooperative
27 Extension Service, shall develop and administer a training program for an operator in
28 charge of the application of soil-enriching nutrients onto land at golf courses. An
29 applicant for initial certification shall complete 10 hours of classroom instruction prior to
30 taking the examination. In order to remain certified, an operator in charge of the
31 application of soil-enriching nutrients onto land at golf courses shall complete six hours
32 of approved additional training during each three-year period following initial
33 certification. A certified operator in charge of the application of soil-enriching nutrients
34 onto land at golf courses who fails to complete approved additional training within 30
35 days of the end of the three-year period shall take and pass the examination for
36 certification in order to renew the certificate.

37 **"§ 90A-48.4. Certificate renewals.**

38 A certificate holder shall renew the certificate annually. A certificate holder who fails
39 to renew the certificate within 30 days of its expiration shall be required to take and pass
40 the examination for certification in order to renew the certificate.

41 **"§ 90A-48.5. Suspension; revocation of certificate.**

42 (a) The Commission, in accordance with the provisions of Chapter 150B of the
43 General Statutes, may suspend or revoke the certificate of any operator in charge who:

1 (1) Engages in fraud or deceit in obtaining certification.

2 (2) Fails to exercise reasonable care, judgment, or use of the operator's
3 knowledge and ability in the performance of the duties of an operator in
4 charge.

5 (3) Is incompetent or otherwise unable to properly perform the duties of an
6 operator in charge.

7 (b) In addition to revocation of a certificate, the Commission may levy a civil
8 penalty, not to exceed one thousand dollars (\$1,000) per violation, for willful violation of
9 the requirements of this Part.

10 **"§ 90A-48.6. Rules.**

11 The Commission shall adopt rules to implement the provisions of this Part."

12
13 **PART X. GRADUATED VIOLATION POINTS SYSTEM FOR SWINE**
14 **OPERATORS; STUDY OF SWINE INTEGRATORS CIVIL**
15 **PENALTY LIABILITY**
16

17 Section 10.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is
18 amended by adding a new section to read:

19 **"§ 143-215.6E. Violation Points System applicable to swine farms.**

20 (a) The Commission shall develop a Violation Points System applicable to permits
21 for animal waste management systems for swine farms. This system shall operate in
22 addition to the provisions of G.S. 143-215.6A. This system shall not alter the authority
23 of the Commission to revoke a permit for an animal waste management system for a
24 swine farm. The Violation Points System shall provide that:

25 (1) Violations that involve the greatest harm to the natural resources of the
26 State, the groundwater or surface water quantity or quality, public
27 health, or the environment shall receive the most points and shall be
28 considered significant violations.

29 (2) Violations that are committed willfully or intentionally shall be
30 considered significant violations.

31 (3) The number of points received shall be directly related to the degree of
32 negligence or willfulness.

33 (4) The commission of three significant violations, or the commission of
34 lesser violations that result in a predetermined cumulative number of
35 points, within a limited period of time of not less than five years shall
36 result in the mandatory revocation of a permit.

37 (5) The commission of one willful violation that results in serious harm
38 may result in the revocation of a permit.

39 (b) In developing the Violation Points System under this section, the Commission
40 shall determine the:

41 (1) Number of points that lesser violations must cumulatively total to result
42 in the revocation of a permit.

1 (2) Limited period of time during which the commission of three significant
2 violations, or the commission of a greater number of lesser violations,
3 will result in the revocation of the operator's permit. This limited period
4 of time shall not be less than five years.

5 (3) Duration of the permit revocation.

6 (4) Conditions under which the person whose permit is revoked may
7 reapply for another permit for an animal waste management system for
8 a swine farm.

9 (c) In developing the Violation Points System under this section, the Commission
10 shall provide for an appeals process."

11 Section 10.2. (a) The Department of Environment, Health, and Natural
12 Resources shall develop a recommended system of civil penalties applicable to
13 integrators of swine operations. These civil penalties shall be imposed upon the
14 revocation of a permit of an operator under contract with that integrator for the
15 production of swine at the time the violation that resulted in the revocation of the
16 operator's permit occurred, whether or not that operator was under contract with that
17 integrator throughout the period of time all the violations that contributed to this permit
18 revocation occurred. In conjunction with developing this system of civil penalties for
19 integrators of swine operations, the Environmental Management Commission shall
20 provide that the Director of the Division of Water Quality of the Department of
21 Environment, Health, and Natural Resources notify all integrators of all violations
22 assessed against operators who are under contract for the production of swine with that
23 integrator and, upon the written request by the integrator, notify that integrator of all
24 violations assessed an operator with whom the integrator contemplates entering into a
25 contract. The Environmental Management Commission shall also study the issue of
26 liability for cleanup costs and appropriate penalties for integrators of swine operations if
27 an operator commits a willful, wanton, or grossly negligent violation that results in
28 significant environmental damage.

29 (b) No later than 1 March 1998, the Department of Environment, Health, and
30 Natural Resources shall report its findings and recommendations, including legislative
31 proposals, if any, on the issues to be studied under subsection (a) of this section. This
32 report shall include a recommended system of civil penalties applicable to integrators of
33 swine operations for violations by growers who are under contract with that integrator for
34 the production of swine. The Environmental Review Commission shall determine
35 whether to submit a legislative proposal based upon this recommended system to the
36 1997 General Assembly, 1998 Regular Session.

37
38 **PART XI. CRIMINAL ENFORCEMENT FOR REPEATED**
39 **VIOLATIONS; CLARIFICATION OF REQUIREMENT THAT**
40 **PERMIT APPLICANTS DEMONSTRATE THAT THEY ARE**
41 **FINANCIALLY QUALIFIED**
42

1 Section 11.1. G.S. 143-215.6A is amended by adding a new subsection to
2 read:

3 "(a1) The Secretary shall refer to the State Bureau of Investigation for its review as
4 to the possible commission of any criminal offense any person or facility that discharges
5 waste in a manner that significantly violates this Article or rules adopted pursuant to this
6 Article on two or more separate occasions in any three-year period. Upon receipt of a
7 referral under this section, the State Bureau of Investigation may conduct an investigation
8 and, if appropriate, refer the matter to the district attorney in whose jurisdiction any
9 criminal offense has occurred. This subsection shall not be construed to limit the
10 authority of the Secretary to refer any matter to the State Bureau of Investigation for
11 review without regard to the number of possible offenses within any particular period of
12 time."

13 Section 11.2. G.S. 143-215.1(b) reads as rewritten:

14 "(b) Commission's Power as to Permits. –

- 15 (1) The Commission shall act on all permits so as to prevent, so far as
16 reasonably possible, considering relevant standards under State and
17 federal laws, any significant increase in pollution of the waters of the
18 State from any new or enlarged sources. No permit shall be denied and
19 no condition shall be attached to the permit, except when the
20 Commission finds such denial or such conditions necessary to effectuate
21 the purposes of this Article.
- 22 (2) The Commission shall also act on all permits so as to prevent violation
23 of water quality standards due to the cumulative effects of permit
24 decisions. Cumulative effects are impacts attributable to the collective
25 effects of a number of projects and include the effects of additional
26 projects similar to the requested permit in areas available for
27 development in the vicinity. All permit decisions shall require that the
28 practicable waste treatment and disposal alternative with the least
29 adverse impact on the environment be utilized.
- 30 (3) General permits may be issued under rules adopted pursuant to Chapter
31 150B of the General Statutes. Such rules may provide that minor
32 activities may occur under a general permit issued in accordance with
33 conditions set out in such rules. All persons covered under general
34 permits shall be subject to all enforcement procedures and remedies
35 applicable under this Article.
- 36 (4) The Commission shall have the power:
- 37 a. To grant a permit with such conditions attached as the
38 Commission believes necessary to achieve the purposes of this
39 Article.
- 40 b. To require that an applicant satisfy the Department that the
41 applicant, or any parent, subsidiary, or other affiliate of the
42 applicant or parent:

- 1 1. Is financially qualified to carry out the activity for which
2 the permit is required under subsection (a) of this ~~section;~~
3 ~~and section.~~ Financial qualification may be demonstrated
4 through the use of a letter of credit, insurance, surety, trust
5 agreement, financial test, bond, or a guarantee by
6 corporate parents or third parties who can pass the
7 financial test. No permit shall be issued under this section
8 until financial qualification is established and the issuance
9 of the permit shall be contingent on the continuance of the
10 financial qualification for the duration of the activity for
11 which the permit was issued.
- 12 2. Has substantially complied with the effluent standards and
13 limitations and waste management treatment practices
14 applicable to any activity in which the applicant has
15 previously engaged, and has been in substantial
16 compliance with other federal and state laws, regulations,
17 and rules for the protection of the environment.
- 18 3. As used in this subdivision, the words 'affiliate,' 'parent,'
19 and 'subsidiary' have the same meaning as in 17 Code of
20 Federal Regulations § 240.12b-2 (1 April 1990 Edition).
- 21 c. To modify or revoke any permit upon not less than 60 days'
22 written notice to any person affected.
- 23 d. To designate certain classes of minor activities for which a
24 general permit may be issued, after considering:
 - 25 1. The environmental impact of the activities;
 - 26 2. How often the activities are carried out;
 - 27 3. The need for individual permit oversight; and
 - 28 4. The need for public review and comment on individual
29 permits.
- 30 e. To designate certain classes of minor activities for which:
 - 31 1. Performance conditions may be established by rule; and
 - 32 2. Individual or general permits are not required."

34 PART XII. ADDITIONAL STUDIES

35
36 Section 12.1. The Environmental Review Commission shall study the
37 feasibility and the desirability of requiring persons who apply fertilizers or other soil-
38 enriching nutrients onto land other than golf courses to be certified under a certification
39 program that requires training and passing an examination and that is similar to the
40 certification program required of those who apply soil-enriching nutrients onto land at
41 golf courses, as required by Article 3 of Chapter 90A of the General Statutes, as enacted
42 by Section 9.1 of this act. In conjunction with this study, the Environmental Review
43 Commission shall consider the amounts of fertilizers used on public roadways, at public

1 parks and recreation areas, at commercial properties, at churches, at athletic fields and
2 schools, near airstrips at airports, and on residential lawns and gardens that are
3 maintained by commercial lawn services as well as those that are maintained by the
4 residential dweller. During this study, the Department of Transportation shall report to
5 the Environmental Review Commission the amounts of fertilizers and pesticides that it
6 uses to maintain turfgrass, ornamental plantings, and trees along the State roadways. The
7 Environmental Review Commission shall submit its legislative recommendations, if any,
8 resulting from this study to the 1997 General Assembly, 1998 Regular Session.

9 Section 12.2. The Environmental Review Commission shall study the
10 feasibility and desirability of establishing a voluntary education program designed to
11 educate members of the public who maintain residential lawns or gardens concerning the
12 impact nutrients and pesticides have on the environment of the State, the responsible use
13 of nutrients and pesticides, and ways to reduce excessive inputs of nutrients and
14 pesticides into the surface and groundwaters of the State. In conjunction with this study,
15 the Environmental Review Commission shall study the feasibility and desirability of
16 directing the North Carolina Cooperative Extension Service to develop and implement
17 such a voluntary education program. The Environmental Review Commission shall
18 submit its legislative recommendations, if any, resulting from this study to the 1997
19 General Assembly, 1998 Regular Session.

20 Section 12.3. The Department of Agriculture shall submit the next North
21 Carolina Turfgrass Survey to the Environmental Review Commission no later than one
22 month after the survey is published.

23 Section 12.4. The Environmental Review Commission shall study the
24 development of guidelines for best management practices for golf courses. The study
25 shall address golf course planning, siting, design, construction, maintenance, and
26 operation in relation to water usage; stormwater runoff; use of fertilizers, pesticides, and
27 herbicides; waste management; and any other matters necessary to protect water quality,
28 public health, and the environment. The Environmental Review Commission shall
29 submit its legislative recommendations, if any, resulting from this study to the 1997
30 General Assembly, 1998 Regular Session.

31 Section 12.5. The Environmental Review Commission shall study the
32 development of guidelines for best management practices for septic tank systems for both
33 the installation of new septic tank systems and the replacement or improvement of
34 existing septic tank systems that supplement any rules governing septic tank systems that
35 are adopted by the Commission for Health Services, including standards for devices and
36 practices relating to septic tank installation, operation, maintenance, and repair. The
37 Environmental Review Commission shall consider the use of incentives, including tax
38 credits, that could be implemented to encourage the use of best management practices
39 for septic tank systems. The Environmental Review Commission shall submit its
40 legislative recommendations, if any, resulting from this study to the 1997 General
41 Assembly, 1998 Regular Session. As used in this section, the phrase "devices and
42 practices" includes, but is not limited to:

- 1 (1) Filters or other devices designed to improve the efficiency of septic tank
2 systems.
- 3 (2) Risers or other devices designed to facilitate pumping.
- 4 (3) Electronic warning devices that signal when the solid or liquid waste in
5 the system has reached a level such that the septic tank needs to be
6 pumped.
- 7 (4) Alternative and innovative systems for improved wastewater treatment
8 and disposal.
- 9 (5) Any other approved technology or practice that demonstrates improved
10 efficiency for septic systems.

11
12 **PART XIII. ASSUMPTION OF CONTROL OF NONCOMPLYING**
13 **PUBLICLY OWNED TREATMENT WORKS BY THE**
14 **ENVIRONMENTAL MANAGEMENT COMMISSION**

15
16 Section 13.1. G.S. 143-215.3(a) is amended by adding a new subdivision to
17 read:

18 "(18) To assume control and operate a publicly owned treatment works that
19 persistently fails to comply with this Article, rules adopted pursuant to
20 this Article, or other federal and State laws, regulations and rules for the
21 protection of public health and the environment. Before assuming
22 control of a publicly owned treatment works, the Commission shall
23 notify the unit of local government that owns or operates the treatment
24 works that the Commission intends to assume control of the treatment
25 works unless the local government immediately takes whatever steps are
26 necessary to bring the treatment works into compliance with applicable
27 requirements. The Commission shall also consult with the Local
28 Government Commission before assuming control and operation of a
29 publicly owned treatment works. If the Commission assumes control
30 and operation of a publicly owned treatment works, the unit of local
31 government that owns or operates the treatment works is liable to the
32 Commission for all costs associated with the control and operation of
33 the treatment works, including the cost of any repairs and improvements
34 necessary to bring the treatment works into compliance with applicable
35 requirements. If the Commission assumes control and operation of a
36 publicly owned treatment works, it shall continue to operate the
37 treatment works until such time as the Commission, in consultation with
38 the Local Government Commission, is satisfied that the unit of local
39 government is both capable of and willing to operate the treatment
40 works in compliance with all applicable requirements."

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42 **PART XIV. MISCELLANEOUS PROVISIONS; EFFECTIVE**
43 **DATES**

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2 Section 14.1. G.S. 143-215(e) is repealed.
- 3 Section 14.2. The headings to the Parts of this act are a convenience to the
4 reader and are for reference only. The headings do not expand, limit, or define the text of
5 this act.
- 6 Section 14.3. If any section or provision of this act is declared unconstitutional
7 or invalid by the courts, the unconstitutional or invalid section or provision does not
8 affect the validity of this act as a whole or any part of this act other than the part declared
9 to be unconstitutional or invalid.
- 10 Section 14.4. (a) G.S. 143-215.8B, as enacted by Section 8.2 of this act,
11 becomes effective when this act becomes law, except that subdivisions (1) through (4) of
12 G.S. 143-215.8B(l) become effective 1 January 1998. This act shall not be construed to
13 invalidate the development and implementation of basinwide water quality management
14 plans by the Environmental Management Commission and the Department of
15 Environment, Health, and Natural Resources that has occurred prior to the date this act
16 becomes effective.
- 17 (b) G.S. 90A-48.2, as enacted by Section 9.1 of this act, becomes effective 1 July
18 1998.
- 19 (c) Except as otherwise provided, each section of this act is effective when it
20 becomes law.