

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

**SESSION LAW 2001-440  
SENATE BILL 312**

AN ACT TO: (1) AMEND CERTAIN LAWS RELATING TO THE CERTIFICATION OF WELL CONTRACTORS AND TO INCREASE THE MAXIMUM CIVIL PENALTY THAT MAY BE ASSESSED FOR VIOLATIONS OF THE WELL CONTRACTORS CERTIFICATION ACT OR THE WELL CONSTRUCTION ACT; (2) CLARIFY THAT THE REQUIREMENTS OF G.S. 106-660 APPLY ONLY TO INSTALLATIONS THAT HANDLE, STORE, DISTRIBUTE, OR APPLY ANHYDROUS AMMONIA FOR FERTILIZER USE; (3) REQUIRE THAT SOLID WASTE THAT IS TO BE INCINERATED IN CERTAIN INCINERATORS BE VISUALLY INSPECTED IN ORDER TO PREVENT THE INCINERATION OF WASTE THAT MAY NOT BE LAWFULLY INCINERATED; AND (4) AMEND THE EXEMPTION OF CERTAIN ESTABLISHMENTS THAT PREPARE OR SERVE FOOD OR DRINK FROM REGULATION AS FOOD AND LODGING FACILITIES.

The General Assembly of North Carolina enacts:

**SECTION 1.1.** G.S. 87-98.4(a) reads as rewritten:

"(a) Certification Required. – No well contractor shall perform or offer to perform any well contractor activity without being certified under this Article. The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities."

**SECTION 1.2.** G.S. 87-98.7 reads as rewritten:

"§ **87-98.7. Issuance and renewal of certificates; temporary ~~certification.~~certification; refusal to issue a certificate.**

(a) Issuance. – An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

(1) The certificate holder voluntarily surrenders the certificate to the Commission.

(2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. – A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within ~~three months~~30 days of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. – A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article.

(d) Refusal to Issue a Certificate. – The Commission shall not issue a certificate under any of the following circumstances:

- (1) The applicant has not paid civil penalties assessed against the applicant under G.S. 87-94 for a violation of this Article, Article 7 of this Chapter, or any rule adopted to implement either of those Articles.
- (2) The applicant has not conducted all restoration activities ordered by the Department related to a violation by the applicant of Article 7 of this Chapter.
- (3) As determined by the Commission, the applicant has a history of not complying with this Article, Article 7 of this Chapter, or any rule adopted to implement either of those Articles."

**SECTION 1.3.** G.S. 87-98.12 reads as rewritten:

**"§ 87-98.12. Continuing education requirements; requirements; exemption.**

(a) In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

(b) A well contractor who is 70 years of age or more; who has engaged in well contractor activity for more than 20 years; who has no record of having violated any provision of this Article, Article 7 of this Chapter, or order issued pursuant to or rule adopted under this Article or Article 7 of this Chapter in the previous 10 years; and who meets all other requirements for certification under this Article is exempt from continuing education requirements adopted pursuant to this section."

**SECTION 1.4.** G.S. 87-94(a) reads as rewritten:

"(a) Any person who violates any provision of this Article, Article 7A of this Chapter, any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than ~~one hundred dollars (\$100.00)~~ one thousand dollars (\$1,000) for each violation, as determined by the Secretary of Environment and Natural Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed."

**SECTION 1.5.** The Well Contractors Certification Commission may adopt temporary and permanent rules to implement the provisions of Sections 1.1 through 1.4 of this act and to alter the minimum requirements of education, experience, and knowledge for certification of well contractors adopted by the Commission pursuant to G.S. 87-98.6. Sections 1.1 through 1.4 of this act constitute a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Well Contractors Certification Commission may adopt temporary rules as provided in this section until 1 July 2002. Prior to the adoption of a temporary rule under this section, the Commission shall publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name and address of the person to whom questions and written comment on the proposed temporary rule may be submitted. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt a temporary rule is published in the North Carolina Register.

**SECTION 2.** G.S. 106-660(g) reads as rewritten:

"(g) Before any anhydrous ammonia installation that handles, stores, distributes, or applies anhydrous ammonia for fertilizer use shall be built in this State, a general layout of ~~such~~ the installation shall be submitted in duplicate and approved by the Commissioner. In order that ~~such a~~ the layout may be approved it must conform to the minimum standards and rules and regulations, relating to safe handling, storage, ~~distribution and/or distribution~~, or application adopted by the Board of Agriculture. All

storage tanks, transfer or transport containers, applicator containers, and attached equipment for fertilizer use shall conform to the minimum standards adopted by the Board of Agriculture. It shall be the duty of the contractors referred to in G.S. 106-657(4) a contractor, as defined in G.S. 106-657 to obtain, maintain and operate in accordance with the minimum standards and rules and regulations adopted by the Board of Agriculture, any and all equipment which he any equipment that the contractor may use in the application of anhydrous ammonia. It shall be the duty of the Commissioner to inspect and ascertain whether or not the provisions of this section are complied with."

**SECTION 3.1.** G.S. 130A-309.10(h) reads as rewritten:

"(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill ~~or incineration~~ shall not be construed as a violation of subsection (f) ~~or (f1)~~ of this section."

**SECTION 3.2.** G.S. 130A-309.10 is amended by adding new subsections to read:

"(i) The accidental or occasional disposal of small amounts of prohibited solid waste by incineration shall not be construed as a violation of subsection (f1) of this section if the Department has approved a plan for the incinerator as provided in subsection (j) of this section or if the incinerator is exempt from subsection (j) of this section.

(j) The Department may issue a permit pursuant to this Article for an incinerator that is subject to subsection (f1) of this section only if the applicant for the permit has a plan approved by the Department pursuant to this subsection. The applicant shall file the plan at the time of the application for the permit. The Department shall approve a plan only if it complies with the requirements of this subsection. The plan shall provide for the implementation of a program to prevent the incineration of the solid waste listed in subsection (f1) of this section. The program shall include the random visual inspection prior to incineration of at least ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the retention of the records of the random visual inspections and the training of personnel to recognize the solid waste listed in subsection (f1) of this section. If a random visual inspection discovers solid waste that may not be incinerated pursuant to subsection (f1) of this section, the program shall provide that the operator of the incinerator shall dispose of the solid waste in accordance with applicable federal and State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes only of medical waste."

**SECTION 3.3.** If an incinerator that is subject to the new G.S. 130A-309.10(j) as enacted by Section 3.2 of this act has received a permit pursuant to this Article prior to the effective date of Section 3.2 of this act, then a plan that complies with the requirements of G.S. 130A-309.10(j) shall be submitted to the Department for approval within 90 days after Section 3.2 of this act becomes effective. The Department shall review and either approve or disapprove a plan submitted pursuant to this section within 90 days of the day the plan is submitted. Upon approval by the Department, a plan submitted pursuant to this section shall be implemented within 60 days of the date of its approval.

**SECTION 3.4.** The Environmental Management Commission shall adopt temporary rules in accordance with 65 Federal Register No. 235 pp. 76,378 through 76,405 (6 December 2000) by 1 March 2002. These rules shall include a compliance schedule that requires existing small municipal waste combustion units to achieve final compliance with the rules no later than 1 March 2003.

**SECTION 3.5.** The Lower Cape Fear River Research and Education Program, located at and administered by the Center for Marine Science at the University of North Carolina at Wilmington, shall pursue and apply for funding to conduct water quality and sediment sampling for heavy metals and other contaminants in the Lower Cape Fear River.

**SECTION 4.** G.S. 130A-250(7) reads as rewritten:

**"§ 130A-250. Exemptions.**

The following shall be exempt from this Part:

- (7) Establishments (i) that are incorporated as nonprofit corporations in accordance with Chapter 55A of the General Statutes or (ii) that are exempt from federal income tax under the Internal Revenue Code, as defined in G.S. 105-228.90, or (iii) that are political committees as defined in G.S. 163-278.6(14) and that prepare or serve food or drink for pay no more frequently than once a month for a period not to exceed two consecutive days, including establishments permitted pursuant to this Part when preparing or serving food or drink at a location other than the permitted locations. A nutrition program for the elderly that is administered by the Division of Aging of the Department of Health and Human Services and that prepares and serves food or drink on the premises where the program is located in connection with a fundraising event is exempt from this Part if food and drink are prepared and served no more frequently than one day each month.

"  
" **SECTION 5.** This act is effective when it becomes law. Section 1.3 of this act expires 1 September 2008.

In the General Assembly read three times and ratified this the 4<sup>th</sup> day of October, 2001.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 7:42 p.m. this 15<sup>th</sup> day of October, 2001