

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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**HOUSE BILL 119
Committee Substitute Favorable 6/2/11**

Short Title: Amend Environmental Laws 2011.

(Public)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED
AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES
LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.10 reads as rewritten:

"...

(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.

(2) Used oil.

(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.

(4) White goods.

(5) Antifreeze (ethylene glycol).

(6) Aluminum cans.

(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.

(8) Lead-acid batteries, as provided in G.S. 130A-309.70.

~~(9) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~

(10) Motor vehicle oil filters.

(11) Recyclable rigid plastic containers that are required to be labeled as provided in subsection (e) of this section, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor oil or pesticides.

(12) Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.

(13) Oyster shells.

(14) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.

(15) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:



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- 1 (1) Antifreeze (ethylene glycol) used solely in motor vehicles.
2 (2) Aluminum cans.
3 (3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
4 (4) White goods.
5 (5) Lead-acid batteries, as provided in G.S. 130A-309.70.
6 ~~(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
7 (7) **(Effective July 1, 2011)** Discarded computer equipment, as defined in
8 G.S. 130A-309.131.
9 (8) **(Effective July 1, 2011)** Discarded televisions, as defined in
10 G.S. 130A-309.131.
- 11 (f2) ~~Subsection~~ Subsections (f1) and (f3) of this section shall not apply to solid waste
12 incinerated in an incinerator solely owned and operated by the generator of the solid waste.
13 Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be
14 recycled or reclaimed to make it usable as antifreeze in a motor vehicle.
- 15 (f3) Holders of on-premises malt beverage permits, on-premises unfortified wine
16 permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly
17 dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in
18 landfills or by incineration in an incinerator for which a permit is required under this Article.
- 19 (g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
20 (h) The accidental or occasional disposal of small amounts of prohibited solid waste by
21 landfill shall not be construed as a violation of ~~subsection~~ subsection (f) or (f3) of this section.
22 (i) The accidental or occasional disposal of small amounts of prohibited solid waste by
23 incineration shall not be construed as a violation of ~~subsection~~ subsection (f1) or (f3) of this
24 section if the Department has approved a plan for the incinerator as provided in subsection (j)
25 of this section or if the incinerator is exempt from subsection (j) of this section.
- 26 (j) The Department may issue a permit pursuant to this Article for an incinerator that is
27 subject to subsection (f1) of this section only if the applicant for the permit has a plan approved
28 by the Department pursuant to this subsection. The applicant shall file the plan at the time of
29 the application for the permit. The Department shall approve a plan only if it complies with the
30 requirements of this subsection. The plan shall provide for the implementation of a program to
31 prevent the incineration of the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this
32 section. The program shall include the random visual inspection prior to incineration of at least
33 ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the
34 retention of the records of the random visual inspections and the training of personnel to
35 recognize the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. If a
36 random visual inspection discovers solid waste that may not be incinerated pursuant to
37 ~~subsection~~ subsections (f1) and (f3) of this section, the program shall provide that the operator
38 of the incinerator shall dispose of the solid waste in accordance with applicable federal and
39 State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes
40 only of medical waste.
- 41 (k) A county or city may petition the Department for a waiver from the prohibition on
42 disposal of a material described in subdivisions (9), (10), (11) and (12) of subsection (f) of this
43 section and subsection (f3) of this section in a landfill based on a showing that prohibiting the
44 disposal of the material would constitute an economic hardship.
- 45 (l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least
46 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are
47 not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding
48 subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the
49 landfill.

1 (m) (Effective July 1, 2011) No person shall knowingly dispose of fluorescent lights
2 and thermostats that contain mercury in a sanitary landfill for the disposal of construction and
3 demolition debris waste that is unlined or in any other landfill that is unlined."

4 **SECTION 2.** G.S. 143-214.7 reads as rewritten:

5 **"§ 143-214.7. Stormwater runoff rules and programs.**

6 (a) Policy, Purpose and Intent. – The Commission shall undertake a continuing
7 planning process to develop and adopt a statewide plan with regard to establishing and
8 enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the
9 purpose and intent of this section that, in developing stormwater runoff rules and programs, the
10 Commission may utilize stormwater rules established by the Commission to protect classified
11 shellfish waters, water supply watersheds, and outstanding resource waters; and to control
12 stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the
13 intent of this section that the Commission phase in the stormwater rules on a priority basis for
14 all sources of pollution to the water. The plan shall be applied evenhandedly throughout the
15 State to address the State's water quality needs. The Commission shall continually monitor
16 water quality in the State and shall revise stormwater runoff rules as necessary to protect water
17 quality. As necessary, the stormwater rules shall be modified to comply with federal
18 regulations.

19 (b) The Commission shall implement stormwater runoff rules and programs for point
20 and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards
21 and best management practices for the protection of the State's water resources in the following
22 order of priority:

23 (1) Classified shellfish waters.

24 (2) Water supply watersheds.

25 (3) Outstanding resource waters.

26 (4) High quality waters.

27 (5) All other waters of the State to the extent that the Commission finds control
28 of stormwater is needed to meet the purposes of this Article.

29 (b1) The Commission and the Department shall, to the maximum extent practicable,
30 incorporate stormwater capture and reuse standards and best management practices into the
31 implementation of this section.

32 (c) The Commission shall develop model stormwater management programs that may
33 be implemented by State agencies and units of local government. Model stormwater
34 management programs shall be developed to protect existing water uses and assure compliance
35 with water quality standards and classifications. A State agency or unit of local government
36 may submit to the Commission for its approval a stormwater control program for
37 implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of
38 local government are authorized to adopt ordinances and regulations necessary to establish and
39 enforce stormwater control programs. Units of local government are authorized to create or
40 designate agencies or subdivisions to administer and enforce the programs. Two or more units
41 of local government are authorized to establish a joint program and to enter into any
42 agreements that are necessary for the proper administration and enforcement of the program.

43 (c1) Any land-use restriction providing for the maintenance of stormwater best
44 management practices or site consistency with approved stormwater project plans filed
45 pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission
46 shall be enforced by any owner of the land on which the best management practice or project is
47 located, any adjacent property owners, any downstream property owners who would be injured
48 by failure to enforce the land-use restriction, any local government having jurisdiction over any
49 part of the land on which the best management practice or project is located, or the Department
50 through the remedies provided by any provision of law that is implemented or enforced by the
51 Department or by means of a civil action, without first having exhausted any available

1 administrative remedies. A land-use restriction providing for the maintenance of stormwater
2 best management practices or site consistency with approved stormwater project plans filed
3 pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission
4 shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of
5 benefit to particular land, or due to lack of any property interest in particular land. Any person
6 who owns or leases a property subject to a land-use restriction under this section shall abide by
7 the land-use restriction.

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

14 (d1) A retail merchant shall not use more than 400 square feet of impervious surface area
15 within the portion of the merchant's premises that is designed to be used for vehicular parking
16 for the display and sale of nursery stock, as that term is defined by the Board of Agriculture
17 pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

- 18 (1) Collects and treats stormwater on-site using a treatment system that is
19 designed to remove at least eighty-five percent (85%) of total suspended
20 solids. For purposes of this subdivision, a treatment system includes, but is
21 not limited to, a filtration system or a detention system.
- 22 (2) Collects and stores stormwater for reuse on-site for irrigation or other
23 purposes.
- 24 (3) Collects and discharges stormwater to a local or regional stormwater
25 collection and treatment system.

26 (d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

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

31 **SECTION 3.(a)** G.S. 143-135.36 is amended by adding a new subdivision to read:
32 **"§ 143-135.36. Definitions.**

33 As used in this section, the following definitions apply unless the context requires
34 otherwise:

- 35 (1) "ASHRAE" means the American Society of Heating, Refrigerating and
36 Air-Conditioning Engineers, Inc.
- 37 (2) "Commission" means to document and to verify throughout the construction
38 process whether the performance of a building, a component of a building, a
39 system of a building, or a component of a building system meets specified
40 objectives, criteria, and agency project requirements.
- 41 (3) "Department" means the Department of Administration.
- 42 (4) "Institutions of higher education" means the constituent institutions of The
43 University of North Carolina, the regional institutions as defined in
44 G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.
- 45 (5) "Major facility construction project" means a project to construct a building
46 larger than 20,000 gross square feet of occupied or conditioned space, as
47 defined in the North Carolina State Building Code adopted under Article 9
48 of Chapter 143 of the General Statutes. "Major facility construction project"
49 does not include a project to construct a transmitter building or a pumping
50 station.

1 (6) "Major facility renovation project" means a project to renovate a building
2 when the cost of the project is greater than fifty percent (50%) of the
3 insurance value of the building prior to the renovation and the renovated
4 portion of the building is larger than 20,000 gross square feet of occupied or
5 conditioned space, as defined in the North Carolina State Building Code.
6 "Major facility renovation project" does not include a project to renovate a
7 transmitter building or a pumping station. "Major facility renovation project"
8 does not include a project to renovate a building having historic,
9 architectural, or cultural significance under Part 4 of Article 2 of Chapter
10 143B of the General Statutes.

11 (7) "Public agency" means every State office, officer, board, department, and
12 commission and institutions of higher education.

13 (8) "Weather-based irrigation controller" means an irrigation control device that
14 utilizes local weather and landscape conditions to tailor irrigation system
15 schedules to irrigation needs specific to site conditions."

16 **SECTION 3.(b)** G.S. 143-135.37 reads as rewritten:

17 **"§ 143-135.37. Energy and water use standards for public major facility construction and**
18 **renovation projects; verification and reporting of energy and water use.**

19 (a) Program Established. – The Sustainable Energy-Efficient Buildings Program is
20 established within the Department to be administered by the Department. This program applies
21 to any major facility construction or renovation project of a public agency that is funded in
22 whole or in part from an appropriation in the State capital budget or through a financing
23 contract as defined in G.S. 142-82.

24 (b) Energy-Efficiency Standard. – For every major facility construction project of a
25 public agency, the building shall be designed and constructed so that the calculated energy
26 consumption is at least thirty percent (30%) less than the energy consumption for the same
27 building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every
28 major facility renovation project of a public agency, the renovated building shall be designed
29 and constructed so that the calculated energy consumption is at least twenty percent (20%)
30 less than the energy consumption for the same renovated building as calculated using the
31 energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any
32 exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is
33 included in the ASHRAE 90.1-2004 standard.

34 (c) Indoor Potable Water Use Standard. – For every major facility construction or
35 renovation project of a public agency, the water system shall be designed and constructed so
36 that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor
37 potable water use for the same building as calculated using the fixture performance
38 requirements related to plumbing under the 2006 North Carolina State Building Code.

39 (c1) Outdoor Potable Water Use Standard. – For every major facility construction project
40 of a public agency, the water system shall be designed and constructed so that the calculated
41 sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent
42 (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for
43 the same building as calculated using the performance requirements related to plumbing under
44 the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be
45 used for irrigation systems for major facility construction projects. For every major facility
46 renovation project of a public agency, the Department shall ~~determine~~ engage an irrigation
47 contractor licensed under Chapter 89G of the General Statutes to perform an audit of any
48 irrigation system. The Department shall determine, on a project-by-project basis ~~basis~~, what
49 reduced level of outdoor potable use or harvested stormwater use, if any, is a feasible
50 requirement for the ~~project, project, but the~~ The Department shall not require a greater reduction
51 than is required under this subsection for a major facility construction project. To reduce the

1 potable outdoor water as required under this subsection, weather-based irrigation controllers,
2 landscape materials that are water use ~~efficient~~-efficient, and irrigation strategies that include
3 reuse and recycling of the water may be used."

4 **SECTION 4.(a)** G.S. 143-350 reads as rewritten:

5 **"§ 143-350. Definitions.**

6 As used in this Article:

7 ...

8 (3a) "Gray water" means water that is discharged as waste from bathtubs,
9 showers, wash basins, and clothes washers. "Gray water" does not include
10 water that is discharged from toilets or kitchen sinks.

11 (3b) "Gray water system" means a water reuse system that is contained within a
12 single family residence or multiunit residential or commercial building that
13 filters gray water or captured rain water and reuses it for nonpotable
14 purposes such as toilet flushing and irrigation.

15"

16 **SECTION 4.(b)** G.S. 143-355.5 reads as rewritten:

17 **"§ 143-355.5. Water reuse; policy; rule making.**

18 (a) Water Reuse Policy. – It is the public policy of the State that the reuse of treated
19 wastewater or reclaimed water and the use of gray water or captured rain water is critical to
20 meeting the existing and future water supply needs of the State. The General Assembly finds
21 that reclaimed water systems permitted and operated under G.S. 143-215.1(d2) in an approved
22 wastewater reuse program can provide water for many beneficial purposes in a way that is both
23 environmentally acceptable and protective of public health. This finding includes and applies to
24 conjunctive facilities that require the relocation of a discharge from one receiving stream to
25 another under all of the following conditions:

- 26 (1) The relocation is necessary to create an approved comprehensive wastewater
27 reuse program.
28 (2) The reuse program provides significant reuse benefits.
29 (3) The relocated discharge will comply with all applicable water quality
30 standards; will not result in degradation of water quality in the receiving
31 waters; will not contribute to water quality impairment in the receiving
32 watershed; and will result in net benefits to water quality, such as the
33 elimination of a wastewater discharge in a nutrient sensitive river basin.

34 (b) Water Reuse Rule Making. – The Commission shall encourage and promote safe
35 and beneficial reuse of treated wastewater as an alternative to surface water discharge. The
36 Commission shall adopt rules to:

- 37 (1) Identify acceptable uses of reclaimed water, including toilet flushing, fire
38 protection, decorative water features, and landscape irrigation.
39 (2) Facilitate the permitting of reclaimed water systems.
40 (3) Establish standards for reclaimed water systems that are adequate to prevent
41 the direct distribution of reclaimed water as potable water.

42 (c) Gray Water Rule Making. – The Commission shall encourage and promote the safe
43 and beneficial use of gray water. The Commission shall adopt rules to:

- 44 (1) Identify acceptable uses of gray water, including toilet flushing, fire
45 protection, decorative water features, and landscape irrigation.
46 (2) Facilitate the permitting of gray water systems.
47 (3) Establish standards, in coordination with the Commission for Public Health,
48 for gray water systems that protect public health, safety, welfare, and the
49 environment and reduce the use of potable water within individual
50 structures.

1 (d) The Department shall develop policies and procedures to promote the adoption and
2 installation of gray water systems."

3 **SECTION 4.(c)** G.S. 130A-335(b) reads as rewritten:

4 "(b) All wastewater systems shall be regulated by the Department under rules adopted by
5 the Commission except for the following wastewater systems that shall be regulated by the
6 Department under rules adopted by the Environmental Management Commission:

7 (1) Wastewater collection, treatment, and disposal systems designed to
8 discharge effluent to the land surface or surface waters.

9 (2) Wastewater systems designed for groundwater remediation, groundwater
10 injection, or landfill leachate collection and disposal.

11 (3) Wastewater systems designed for the complete recycle or reuse of industrial
12 process wastewater.

13 (4) Gray water systems as defined in G.S. 143-350."

14 **SECTION 4.(d)** Article 8 of Chapter 160A of the General Statutes is amended by
15 adding a new section to read:

16 **"§ 160A-202. Limitations on regulating cisterns and rain barrels.**

17 No city ordinance may prohibit or have the effect of prohibiting the installation and
18 maintenance of cisterns and rain barrel collection systems used to collect water for irrigation
19 purposes. A city may regulate the installation and maintenance of those cisterns and rain barrel
20 collection systems for the purpose of protecting the public health and safety and for the purpose
21 of preventing them from becoming a public nuisance."

22 **SECTION 5.** Section 5 of S.L. 2007-438, as amended by Section 3(b) of S.L.
23 2009-484 and Section 19 of S.L. 2010-180, reads as rewritten:

24 **"SECTION 5.** This act becomes effective 1 September 2007 and applies to all nutrient
25 offset payments, including those set out in 15A NCAC 2B .0240, as adopted by the
26 Environmental Management Commission on 12 January 2006. The fee schedule set out in
27 Section 1 of this act expires ~~1 September 2011~~ when amendments to 15A NCAC 02B .0240
28 and .0274 become effective."

29 **SECTION 6.(a)** Notwithstanding G.S. 150B-19, as amended by S.L. 2011-13, the
30 Commission for Public Health may adopt rules to incorporate all or part of the United States
31 Food and Drug Administration Food Code 2009.

32 **SECTION 6.(b)** G.S. 130A-248 is amended by adding a new subsection to read:

33 "(a5) The Department of Health and Human Services may grant a variance from rules
34 adopted pursuant to this section if the Department determines that the issuance of the variance
35 will not result in a health hazard or nuisance condition."

36 **SECTION 7.** G.S. 113A-54.1 reads as rewritten:

37 **"§ 113A-54.1. Approval of erosion control plans.**

38 (a) A draft erosion and sedimentation control plan must contain the applicant's address
39 and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for
40 the purpose of receiving notice from the Commission or the Secretary of compliance or
41 noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. If
42 Except as provided in subsection (a1) of this section, if the applicant is not the owner of the
43 land to be disturbed, the draft erosion and sedimentation control plan must include the owner's
44 written consent for the applicant to submit a draft erosion and sedimentation control plan and to
45 conduct the anticipated land-disturbing activity. The Commission shall approve, approve with
46 modifications, or disapprove a draft erosion and sedimentation control plan for those
47 land-disturbing activities for which prior plan approval is required within 30 days of receipt.
48 The Commission shall condition approval of a draft erosion and sedimentation control plan
49 upon the applicant's compliance with federal and State water quality laws, regulations, and
50 rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion
51 and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan.

1 If the Commission disapproves a draft erosion and sedimentation control plan or a revised
2 erosion and sedimentation control plan, it must state in writing the specific reasons that the plan
3 was disapproved. Failure to approve, approve with modifications, or disapprove a revised
4 erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of
5 the plan. The Commission may establish an expiration date for erosion and sedimentation
6 control plans approved under this Article.

7 (a1) If the applicant is not the owner of the land to be disturbed and the anticipated
8 land-disturbing activity involves the construction of utility lines for the provision of water,
9 sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation
10 control plan may be submitted without the written consent of the owner of the land, so long as
11 the owner of the land has been provided prior notice of the project.

12"

13 **SECTION 8.** This act is effective when it becomes law. Section 3(b) of this act
14 applies to every major facility construction project, as defined in G.S. 143-135.36, and every
15 major facility renovation project, as defined in G.S. 143-135.36, of a public agency, as defined
16 in G.S. 143-135.36, that has not entered the schematic design phase prior to the effective date
17 of this act.