

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1160\*

Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted  
7/7/99

Short Title: Clean Water Act of 1999.

(Public)

Sponsors:

Referred to:

April 15, 1999

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

**PART I. TITLE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 36 37 **PART IV. INVENTORY INACTIVE LAGOONS.**

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

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

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

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

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

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

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

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

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

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

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

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

15 (b2) In determining the amount of the penalty, the Secretary shall consider the  
16 factors set out in G.S. 143B-282.1(b). After all factors set out in G.S. 143B-282.1(b)  
17 have been considered and the base amount of a civil penalty has been determined, if a  
18 civil penalty has been imposed under this section:

19 (1) In four of the immediately preceding six months, the civil penalty  
20 assessment shall be multiplied by not less than 1.25.

21 (2) In five of the immediately preceding six months, the civil penalty  
22 assessment shall be multiplied by not less than 1.35.

23 (3) In six of the immediately preceding six months, the civil penalty  
24 assessment shall be multiplied by not less than 1.45.

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

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

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

1 (f) Requests for remission of civil penalties shall be filed with the Secretary.  
2 Remission requests shall not be considered unless made within 30 days of receipt of the  
3 notice of assessment. Remission requests must be accompanied by a waiver of the right  
4 to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on  
5 which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c)  
6 and (d), remission requests may be resolved by the Secretary and the violator. If the  
7 Secretary and the violator are unable to resolve the request, the Secretary shall deliver  
8 remission requests and his recommended action to the Committee on Civil Penalty  
9 Remissions of the Environmental Management Commission appointed pursuant to G.S.  
10 143B-282.1(c).

11 (g) If any civil penalty has not been paid within 30 days after notice of assessment  
12 has been served on the violator, the Secretary shall request the Attorney General to  
13 institute a civil action in the Superior Court of any county in which the violator resides or  
14 has his or its principal place of business to recover the amount of the assessment, unless  
15 the violator contests the assessment as provided in subsection (d) of this section, or  
16 requests remission of the assessment in whole or in part as provided in subsection (f) of  
17 this section. If any civil penalty has not been paid within 30 days after the final agency  
18 decision or court order has been served on the violator, the Secretary shall request the  
19 Attorney General to institute a civil action in the Superior Court of any county in which  
20 the violator resides or has his or its principal place of business to recover the amount of  
21 the assessment. Such civil actions must be filed within three years of the date the final  
22 agency decision or court order was served on the violator.

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

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

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

40 (j) Local governments certified and approved to administer and enforce  
41 pretreatment programs by the Commission pursuant to G.S. 143-215.3(a)(14) may assess  
42 civil penalties for violations of their respective programs in accordance with the powers  
43 conferred upon the Commission and the Secretary in this section, except that actions for

1 collection of unpaid civil penalties shall be referred to the attorney representing the  
2 assessing local government. The total of the civil penalty assessed by a local government  
3 and the civil penalty assessed by the Secretary for any violation may not exceed the  
4 maximum civil penalty for such violation under this section.

5 (k) A person who has been assessed a civil penalty by a local government as  
6 provided by subsection (j) of this section may request a review of the assessment by  
7 filing a request for review with the local government within 30 days of the date the notice  
8 of assessment is received. If a local ordinance provides for a local administrative  
9 hearing, the hearing shall afford minimum due process including an unbiased hearing  
10 official. The local government shall make a final decision on the request for review  
11 within 90 days of the date the request for review is filed. The final decision on a request  
12 for review shall be subject to review by the superior court pursuant to Article 27 of  
13 Chapter 1 of the General Statutes. If the local ordinance does not provide for a local  
14 administrative hearing, a person who has been assessed a civil penalty by a local  
15 government as provided by subsection (j) of this section may contest the assessment by  
16 filing a civil action in superior court within 60 days of the date the notice of assessment is  
17 received."  
18

19 **PART VI. AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND**  
20 **NATURAL RESOURCES TO DISTRIBUTE FUNDS FROM THE WETLANDS**  
21 **RESTORATION FUND, TO AUTHORIZE SOIL AND WATER**  
22 **CONSERVATION DISTRICTS TO ACQUIRE EASEMENTS UNDER THE**  
23 **CONSERVATION RESERVE ENHANCEMENT PROGRAM, AND TO**  
24 **AUTHORIZE THE DEPARTMENT TO CONVEY INTERESTS IN REAL**  
25 **PROPERTY ACQUIRED UNDER THE WETLANDS RESTORATION**  
26 **PROGRAM OR THE CONSERVATION RESERVE ENHANCEMENT**  
27 **PROGRAM TO FEDERAL AND STATE AGENCIES, LOCAL GOVERNMENTS,**  
28 **AND PRIVATE NONPROFIT CONSERVATION ORGANIZATIONS.**

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

30 "(a1) The Department may distribute funds from the Wetlands Restoration Fund  
31 directly to a federal or State agency, a local government, or a private, nonprofit  
32 conservation organization to acquire, manage, and maintain real property or an interest in  
33 real property for the purposes set out in subsection (a) of this section. A recipient of  
34 funds under this subsection shall grant a conservation easement in the real property or  
35 interest in real property acquired with the funds to the Department in a form that is  
36 acceptable to the Department. The Department may convey real property or an interest in  
37 real property that has been acquired under the Wetlands Restoration Program to a federal  
38 or State agency, a local government, or a private, nonprofit conservation organization to  
39 acquire, manage, and maintain real property or an interest in real property for the  
40 purposes set out in subsection (a) of this section. A grantee of real property or an interest  
41 in real property under this subsection shall grant a conservation easement in the real  
42 property or interest in real property to the Department in a form that is acceptable to the  
43 Department."

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

2 **"§ 143-214.13. Wetlands Restoration Program: reporting requirement.**

3 (a) The Department of Environment and Natural Resources shall report each year  
4 by November 1 to the Environmental Review Commission regarding its progress in  
5 implementing the Wetlands Restoration Program and its use of the funds in the Wetlands  
6 Restoration Fund. The report shall document statewide wetlands losses and gains and  
7 compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The  
8 report shall also provide an accounting of receipts and disbursements of the Wetlands  
9 Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost  
10 comparison on a per-acre basis between the State's ~~Wetland~~ Wetlands Restoration  
11 Program and private mitigation banks. The Department shall also send a copy of its  
12 report to the Fiscal Research Division of the General Assembly.

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

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

19 **"§ 113A-235. Conservation easements.**

20 (a) Ecological systems and appropriate public use of these systems may be  
21 protected through conservation easements, including conservation agreements under  
22 Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic  
23 Preservation Agreements ~~Act~~ Act, and conservation easements under the Conservation  
24 Reserve Enhancement Program. The Department of Environment and Natural Resources  
25 shall work cooperatively with State and local agencies and qualified nonprofit  
26 organizations to monitor compliance with conservation easements and conservation  
27 agreements and to ensure the continued viability of the protected ecosystems. Soil and  
28 water conservation districts established under Chapter 139 of the General Statutes may  
29 acquire easements under the Conservation Reserve Enhancement Program by purchase or  
30 gift.

31 (b) The Department may convey real property or an interest in real property that  
32 has been acquired under the Conservation Reserve Enhancement Program to a federal or  
33 State agency, a local government, or a private, nonprofit conservation organization to  
34 acquire, manage, and maintain real property or an interest in real property for the  
35 purposes set out in subsection (a) of this section. A grantee of real property or an interest  
36 in real property under this subsection shall grant a conservation easement in the real  
37 property or interest in real property to the Department in a form that is acceptable to the  
38 Department.

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

43



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

3 Section 7.1. Notwithstanding G.S. 150B-21.1(a)(2) and Section 8.6 of S.L.  
4 1997-458, the Environmental Management Commission may adopt temporary rules as  
5 provided in this section to protect water quality standards and uses as required to  
6 implement basinwide water quality management plans for the Cape Fear, Catawba, and  
7 Tar-Pamlico River Basins pursuant to G.S. 143-214.1, 143-214.7, 143-215.3, and 143B-  
8 282. Prior to the adoption of a temporary rule under this subsection, the Commission  
9 shall:

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

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

24  
25 **PART VIII. REQUIRE REPORTS TO WASTEWATER SYSTEM**  
26 **CUSTOMERS ON SYSTEM PERFORMANCE AND**  
27 **PUBLICATION OF NOTICE OF DISCHARGES OF**  
28 **UNTREATED WASTEWATER OR ANIMAL WASTE.**

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

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

39 (j) The owner or operator of a municipal or domestic wastewater collection  
40 system or treatment works for which a permit is issued under this section shall:

- 41 (1) In the event of a discharge of 1,000 gallons or more of untreated  
42 wastewater to the surface waters of the State, issue a press release to all  
43 print and electronic news media that provide general coverage in the

1           county where the discharge occurred setting out the details of the  
2           discharge. The owner or operator shall retain a copy of the press release  
3           and a list of the news media to which it was distributed for at least one  
4           year after the discharge and shall provide a copy of the press release and  
5           the list of the news media to which it was distributed to any person upon  
6           request.

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

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

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

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

- 32           (2) In the event of a discharge of 10,000 gallons or more of animal waste to  
33           the surface waters of the State, publish a notice of the discharge in a  
34           newspaper having general circulation in the county in which the  
35           discharge occurs and in each county downstream from the point of  
36           discharge that is affected by the discharge. The Secretary shall  
37           determine, at the Secretary's sole discretion, which counties are affected  
38           by the discharge and shall approve the form and content of the notice  
39           and the newspapers in which the notice is to be published. The notice  
40           shall be captioned 'NOTICE OF DISCHARGE OF ANIMAL WASTE'.  
41           The owner or operator shall publish the notice within 10 days of the  
42           discharge and file a copy of the notice and proof of publication with the  
43           Department within 30 days of the discharge. Publication of a notice of

1 discharge under this subdivision is in addition to the requirement to  
2 issue a press release under subdivision (1) of this subsection."

3  
4 **PART IX. PILOT PROGRAM FOR INSPECTION OF MUNICIPAL AND**  
5 **DOMESTIC WASTEWATER TREATMENT WORKS.**

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

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

38  
39 **PART X. ISSUANCE OF PERMITS FOR NEW OR EXPANDED MUNICIPAL**  
40 **OR DOMESTIC WASTEWATER TREATMENT WORKS THAT DISCHARGE**  
41 **TO THE WATERS OF THE STATE.**

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

- 1           "(5) The Commission shall not issue a permit for a new municipal or  
2           domestic wastewater treatment works that would discharge to the  
3           surface waters of the State or for the expansion of an existing municipal  
4           or domestic wastewater treatment works that would discharge to the  
5           surface waters of the State unless the applicant for the permit  
6           demonstrates to the satisfaction of the Commission that:  
7           a. The applicant has prepared and considered an engineering,  
8           environmental, and fiscal analysis of alternatives to the proposed  
9           facility.  
10          b. The applicant is in compliance with the applicable requirements  
11          of the systemwide municipal and domestic wastewater collection  
12          systems permit program adopted by the Commission."  
13

14 **PART XI. ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP**  
15 **ENGINEERING STANDARDS AND IMPLEMENT A PERMIT PROGRAM FOR**  
16 **MUNICIPAL AND DOMESTIC WASTEWATER COLLECTIONS.**

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

23           Section 11.2. The Environmental Management Commission shall develop and  
24 implement a permit program for municipal and domestic wastewater collection systems  
25 on a systemwide basis. The collection system permit program shall provide for  
26 performance standards, minimum design and construction requirements, a capital  
27 improvement plan, operation and maintenance requirements, and minimum reporting  
28 requirements. In order to ensure an orderly and cost-effective phase-in of the collection  
29 system permit program, the Commission shall implement the permit program over a five-  
30 year period beginning 1 July 2000. The Commission shall issue permits for  
31 approximately twenty percent (20%) of municipal and domestic wastewater collection  
32 systems that are in operation on 1 July 2000 during each of the five calendar years  
33 beginning 1 July 2000 and shall give priority to those collection systems serving the  
34 largest populations, those under a moratorium imposed by the Commission under G.S.  
35 143-215.67, and those for which the Department of Environment and Natural Resources  
36 has issued a notice of violation for the discharge of untreated wastewater. The  
37 Commission shall report on its progress in developing and implementing the collection  
38 system permit program required by this section as a part of each quarterly report the  
39 Environmental Management Commission makes to the Environmental Review  
40 Commission pursuant to G.S. 143B-282(b).

41  
42 **PART XII. CLARIFY THAT THE DEPARTMENT OF ENVIRONMENT AND**  
43 **NATURAL RESOURCES MAY LIMIT TO TWO MILLION DOLLARS**

1 **RATHER THAN THREE MILLION DOLLARS THE MAXIMUM AMOUNT OF**  
2 **CLEAN WATER GRANTS TO LOCAL GOVERNMENT UNITS WITH HIGH**  
3 **BOND RATINGS AND, FOR CLEAN WATER LOANS FROM BOND FUNDS,**  
4 **TO CHANGE THE TIME BY WHICH A LOCAL GOVERNMENT UNIT MUST**  
5 **SATISFY THE REQUIREMENTS FOR HOLDING A PUBLIC HEARING AND**  
6 **FILING A PETITION FOR A VOTE PRIOR TO DISBURSEMENT OF THE**  
7 **LOAN FUNDS.**

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

9 "(2a) 'Bond rating' means the numerical rating of a local government unit  
10 developed by the North Carolina Municipal Council, Inc., or any  
11 successor thereto. The rating formula is based on 100 being a  
12 theoretically 'perfect' local government unit and is an assessment of the  
13 creditworthiness of the unit. Local government units with a rating  
14 below 75 or with no ratings have limited, if any, access to the private  
15 markets for financing water and sewer or other debt."

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

17 "(a) Revolving loans and grants.

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

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

29 (2a) The maximum principal amount of grants made to any one local  
30 government unit during any fiscal year shall be three million dollars  
31 (\$3,000,000). The Department of Environment and Natural Resources  
32 may limit the maximum principal amount of the grant to two million  
33 dollars (\$2,000,000) or two-thirds of the eligible project cost, whichever  
34 is less, when the bond rating of the local government unit equals or is  
35 greater than 75 during any fiscal year and when one million dollars  
36 (\$1,000,000) or one-third of the eligible project cost, whichever is less,  
37 is available to the local government unit as a loan from any source.

38 (3) The State Treasurer shall be responsible for investing and distributing  
39 all funds appropriated or accruing to the Clean Water Revolving Loan  
40 and Grant Fund for revolving loans and grants under this Chapter. In  
41 fulfilling his or her responsibilities under this section, the State  
42 Treasurer shall make a written request to the Department of  
43 Environment and Natural Resources to arrange for the appropriated

1 funds to be (i) transferred from the appropriate accounts to a local  
2 government unit to provide funds for one or more revolving loans or  
3 grants or (ii) invested as authorized by this Chapter with the interest on  
4 and the principal of such investments to be transferred to the local  
5 government unit to provide funds for one or more revolving loans or  
6 grants."

7 Section 12.3. Subsection (c) of Section 10 of S.L. 1998-132 reads as rewritten:  
8 "(c) Application for Loans; Hearings.

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

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

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

26 c. A local government unit shall not be eligible for a loan unless it  
27 demonstrates to the satisfaction of the Department of  
28 Environment and Natural Resources and the Local Government  
29 Commission that:

- 30 1. The applicant is a local government unit;
- 31 2. The applicant has the financial capacity to pay the  
32 principal of and interest on its proposed loan as evidenced  
33 by the approval of the Local Government Commission;
- 34 3. The applicant has substantially complied or will  
35 substantially comply with all applicable laws, rules,  
36 regulations, and ordinances, whether federal, State, or  
37 local; and
- 38 4. The applicant has agreed by official resolution to adopt  
39 and place into effect a schedule of fees and charges or the  
40 application of other sources of revenue which will provide  
41 adequate funds for proper operation, maintenance, and  
42 administration of the project and repayment of all  
43 principal and interest on the loan.

- 1           (2)    Assessment. — The Department of Environment and Natural Resources  
2           may require any applicant to file with its application an assessment of  
3           the impact the project for which the funds are sought will have upon  
4           meeting the facility needs of the area within which the project is to be  
5           located.
- 6           (3)    Hearing by the Department of Environment and Natural Resources or  
7           the Local Government Commission. — A public hearing may be held by  
8           the Department of Environment and Natural Resources or the Local  
9           Government Commission at any time on any application. Public  
10          hearings may also be held by the Department of Environment and  
11          Natural Resources in its discretion upon written request from any citizen  
12          or taxpayer who is a resident of the county or counties in which the  
13          project is to be located or a resident of the local government unit that  
14          proposes to borrow moneys under this act, if it appears that the public  
15          interest will be served by the hearing. The written request shall set forth  
16          each objection to the proposed project or other reason for requesting a  
17          hearing on the application and shall contain the name and address of the  
18          persons submitting it. In deciding whether to grant a request for a  
19          hearing on an application, the Department of Environment and Natural  
20          Resources may consider the application, the written objections to the  
21          proposed project, and the facility needs and shall determine if the public  
22          interest will be served by a hearing. The determination by the  
23          Department of Environment and Natural Resources shall be conclusive,  
24          and all written requests for a hearing shall be retained as a permanent  
25          part of the records pertaining to the application.
- 26          (4)    Petition for Vote. — A petition, demanding that the question of whether  
27          to enter into a loan agreement with the State under this act be submitted  
28          to voters, may be filed with the clerk of the local government unit  
29          applying for the loan within 15 days after the public hearing required by  
30          this ~~section~~ section and prior to the disbursement of loan funds under  
31          subsection (e) of this section. The petition's sufficiency shall be  
32          determined and a referendum, if any, shall be conducted according to  
33          the standards, procedures, and limitations set out in G.S. 159-60 through  
34          G.S. 159-62."

35  
36 **PART XIII.    STUDIES;    REPORTS;    MISCELLANEOUS    PROVISIONS;**  
37 **EFFECTIVE DATES.**

38           Section 13.1. The Department of Environment and Natural Resources shall  
39           submit periodic reports to the Environmental Review Commission on the progress of the  
40           State Wetlands Stream Management Advisory Committee no later than 1 November  
41           1999, 1 April 2000, 1 October 2000, and 15 December 2000. As a part of this report, the  
42           Department shall evaluate the current federal and State wetlands protection programs and  
43           shall develop recommendations to improve and simplify the State's wetlands protection

1 program. The Department shall present interim findings and recommendations, including  
2 any legislative proposals, as a part of the 1 April 2000 report and final findings and  
3 recommendations, including any legislative proposals, as a part of the 15 December 2000  
4 report.

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

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

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

35 Section 13.5. The Commission for Health Services shall study issues related to  
36 the proper maintenance of septic tank systems. The Commission shall specifically study  
37 measures that prevent the failure of septic tank systems and the harm to public health, the  
38 environment, and natural resources that results from the failure of septic tank systems.  
39 The Commission for Health Services shall report its findings and recommendations,  
40 including any legislative proposals, to the Environmental Review Commission no later  
41 than 1 March 2000.



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

4           Section 13.7. This act shall not be construed to obligate the General Assembly  
5 to appropriate funds to implement the provisions of this act. Every State agency to which  
6 this act applies shall implement the provisions of this act from funds otherwise  
7 appropriated or available to that agency.

8           Section 13.8. If any section or provision of this act is declared unconstitutional  
9 or invalid by the courts, the unconstitutional or invalid section or provision does not  
10 affect the validity of this act as a whole or any part of this act other than the part declared  
11 to be unconstitutional or invalid.

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