

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1997

SESSION LAW 1998-221  
HOUSE BILL 1402

AN ACT TO DISAPPROVE 15A NCAC 2B.0233 (THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY) AS A PERMANENT RULE, TO CONTINUE 15A NCAC 2B.0233 IN EFFECT AS A TEMPORARY RULE, TO SPECIFY HOW THE TEMPORARY RULE IS TO BE IMPLEMENTED, TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) TO ADOPT RULES TO PROVIDE ALTERNATIVES TO MAINTAINING RIPARIAN BUFFERS AND TO ESTABLISH COMPENSATORY MITIGATION FEES, TO ESTABLISH THE RIPARIAN BUFFER RESTORATION FUND, TO REQUIRE THE EMC TO ADOPT RULES TO PROVIDE FOR DELEGATION OF THE RIPARIAN BUFFER PROGRAM TO UNITS OF LOCAL GOVERNMENT THAT SEEK SUCH DELEGATION, TO RECOGNIZE VESTED DEVELOPMENT RIGHTS, TO REQUIRE THE EMC TO REVISE THE TEMPORARY RULE CONTINUED IN EFFECT BY THIS ACT AND TO ADOPT A REVISED PERMANENT RULE WITH THE ASSISTANCE OF A STAKEHOLDER ADVISORY COMMITTEE, TO PROVIDE THAT EROSION CONTROL PLANS WILL BE CONSISTENT WITH RIPARIAN BUFFER REQUIREMENTS, TO REQUIRE THE EMC TO ESTABLISH A RIPARIAN BUFFER MAINTENANCE AND RESTORATION GOAL, TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACCEPT DONATIONS OF REAL PROPERTY, TO PROVIDE FOR PERIODIC REVIEW OF THE IMPLEMENTATION OF THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY AND REPORTS TO THE ENVIRONMENTAL REVIEW COMMISSION, AND TO AUTHORIZE THE EMC TO ADOPT TEMPORARY RULES TO IMPLEMENT PART I OF THIS ACT; TO AUTHORIZE TEMPORARY RULES GOVERNING COASTAL ENERGY FACILITIES; TO PROVIDE THAT FEDERAL CONSERVATION RESERVE ENHANCEMENT PROGRAM OR OTHER AVAILABLE FUNDS MAY BE USED TO PAY ASSISTED FARMER'S SHARE OF THE COST OF CERTAIN PRACTICES UNDER STATE'S AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL; AND TO REVISE REPORTING REQUIREMENTS.

**PART I. DISAPPROVE/REVISE NEUSE RIVER BASIN RULE**

The General Assembly of North Carolina enacts:

Section 1.1. **Definitions.** – Unless otherwise required by the context, the following definitions apply throughout this Part:

- (1) "Commission" means the Environmental Management Commission.
- (2) "Department" means the Department of Environment and Natural Resources.
- (3) "Secretary" means the Secretary of Environment and Natural Resources.
- (4) "Temporary rule 15A NCAC 2B.0233" means 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), adopted as a temporary rule by the Commission effective 22 July 1997, amended by the Commission effective 22 April 1998, and continued in effect by Section 1.2 of this act.

Section 1.2. **Permanent rule disapproved; temporary rule continued in effect.** – Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission and approved by the Rules Review Commission on 19 February 1998, is disapproved as a permanent rule. Notwithstanding G.S. 150B-21.1(d), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission effective 22 April 1998, shall remain in effect as a temporary rule until the revised temporary rule required by Section 1.8 of this act becomes effective. The Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in Section 1.3 of this act.

Section 1.3. **Implementation of the temporary rule: determination of surface waters; forest vegetation defined.** – (a) Until the effective date of the revised temporary rule that the Commission is required to adopt by Section 1.8 of this act, the Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in this section.

(b) For purposes of implementing temporary rule 15A NCAC 2B.0233, the presence of surface waters in the Neuse River Basin, including intermittent streams, perennial streams, lakes, ponds, and estuaries shall be determined solely as provided in this subsection and subsection (c) of this section. Surface water is presumed to be present on a particular parcel or tract of land if surface water appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geological Survey (USGS).

(c) The General Assembly recognizes that the soil survey maps and the USGS topographic maps may be in error in that these maps may indicate the presence of surface water where no surface water is actually present and may fail to indicate the presence of surface water where surface water is actually present. Any question as to the accuracy or application of the maps to a particular parcel or tract of land shall be

referred to the Director of the Division of Water Quality of the Department. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of Chapter 150B of the General Statutes. The Commission shall make the final agency decision in a contested case involving a determination under this section. A determination of the presence of surface waters pursuant to this section applies only to the implementation of temporary rule 15A NCAC 2B.0233.

(d) As used in temporary rule 15A NCAC 2B.0233, "forest vegetation" is not defined by 15A NCAC 2B.0202 but instead means vegetation consisting of trees and woody perennial plants with associated herbaceous vegetation in conjunction with a defined surface layer consisting of leaves, branches, and other plant material. "Forest vegetation" includes mature and successional forest areas and cutover areas.

Section 1.4. **Alternatives to maintaining riparian buffers; compensatory mitigation fees.** – (a) The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain existing riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with the requirements of the revised temporary rule and permanent rule required by Section 1.8 of this act. Alternatives shall include, but are not limited to:

- (1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund.
- (2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property is either:
  - a. A riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost; or
  - b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost.
- (3) Establishment, restoration, or enhancement of a riparian buffer that is not otherwise required to be protected.

(b) Compensatory mitigation is only available for loss of a riparian buffer along an intermittent stream. Compensatory mitigation shall be conducted within the Neuse River Basin.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality by:

- (1) Restoring existing riparian buffers.
- (2) Acquiring land for and creation of new riparian buffers.
- (3) Monitoring and maintaining the restored or created riparian buffers over time.

(d) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 1.5. **Riparian Buffer Restoration Fund.** – (a) G.S. 143-214.15 through G.S. 143-214.20 are reserved for future codification purposes.

(b) Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

**"§ 143-214.21. Riparian Buffer Protection Program: Riparian Buffer Restoration Fund.**

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers and for compensatory mitigation fees paid to the Department. The Fund shall be administered by the Division of Water Quality within the Department. Monies shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers to offset the benefits to water quality, including the removal of nutrients, lost through the loss of buffers. Compensatory mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin."

Section 1.6. **Delegation of riparian buffer protection requirements to local governments.** – (a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements in the Neuse River Basin to units of local government that have the power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government in the Neuse River Basin that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the

State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that any unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Division of Water Quality in the Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

**Section 1.7. Recognition of vested development rights.** – (a) Vested rights recognized or established under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 shall include the right as provided in this section, to undertake and complete development in the Neuse River Basin without application of temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 1.8 of this act. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 1.8 of this act to development with vested rights recognized or established under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to 22 July 1997. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 1.8 of this act to development with vested rights recognized or established under the common law prior to the date this Part becomes effective if the Commission has issued a certification pursuant to G.S. 143B-282(a)(1)u. prior to 22 July 1997.

(b) The Commission shall not adopt rules that confer or restrict a vested right to undertake or complete development.

(c) It is the intent of the General Assembly that this section apply only to the particular circumstances that are the subject of this Part. This section does not establish a precedent as to the application of vesting under a zoning or land-use planning program administered by a local government to any other environmental program.

**Section 1.8. Revision of temporary rule 15A NCAC 2B.0233; adoption of a permanent rule to replace the temporary rule.** – (a) The Commission shall revise temporary rule 15A NCAC 2B.0233 in accordance with this section. The Commission shall:

- (1) Establish a method for determining the presence of surface waters on a particular parcel or tract of land in the Neuse River Basin. The Commission shall establish a method that is scientifically valid, easily understandable, efficient, consistent, reliable, and cost-effective, including a method for resolving disputes regarding the presence of surface waters on any particular parcel or tract of land.
- (2) Establish methods to determine the point from which to measure the landward extent of zones within a protected riparian buffer appropriate to the different regions of the Neuse River Basin.
- (3) Determine, based on drainage area, those segments of intermittent streams to which the riparian buffer protection requirements do not apply. The Commission may establish different drainage areas for segments of intermittent streams located in different parts of the Neuse River Basin on the basis of topography and other relevant factors.
- (4) Define forest vegetation.
- (5) Establish a clearly defined set of exemptions and uses that will be allowed within a riparian area.
- (6) Establish criteria to determine whether there exists a practical alternative to the loss of the riparian buffer.

(b) All provisions that the Commission finds to be necessary to revise temporary rule 15A NCAC 2B.0233 and to implement the revised temporary rule shall be set out in the revised temporary rule. The Commission and the Department may develop and use guidance documents and other statements that concern only the internal management of the Commission and the Department. Neither the Commission nor the Department may develop or use any guidance document or other statement that directly or substantially affects the procedural or substantive rights or duties of any person not employed by the Commission or the Department unless those documents are set out in rules adopted in accordance with the provisions of Article 2A of Chapter 150B of the General Statutes.

(c) The Commission shall develop revisions to temporary rule 15A NCAC 2B.0233 with the assistance and advice of the Stakeholder Advisory Committee appointed for that purpose as provided in Section 1.10 of this act. Notwithstanding G.S. 150B-21.1(d), the revised temporary rule shall not expire until the permanent rule required by subsection (d) of this section becomes effective.

(d) Once temporary rule 15A NCAC 2B.0233 has been revised as required by this section, the Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the revised temporary rule.

**Section 1.9. Commission to review the implementation of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy.** – The Commission

shall review the implementation of the Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy. As a part of this review, the Commission shall assess progress toward implementation of the Management Strategy, achievement of the nitrogen reduction goal established by Chapter 572 of the 1995 Session Laws (1996 Regular Session) and any other milestones related to the effort to improve water quality in the Neuse River and Neuse estuary established by the Commission, and the impact of the implementation of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy on the regulated community. The Commission shall report the results of this review, including any recommendations relative to water quality in the Neuse River and Neuse estuary, to the Environmental Review Commission no later than 1 December 2000. The Commission shall conduct a second review and report the results, including any recommendations, to the Environmental Review Commission no later than 1 December 2001.

Section 1.10. **Stakeholder Advisory Committee.** – (a) The Commission shall develop the rules required by Sections 1.4 and 1.6 of this act and the revisions to temporary rule 15A NCAC 2B.0233 and the permanent rule required by Section 1.8 of this act with the assistance of a Stakeholder Advisory Committee. The Stakeholder Advisory Committee shall consist of 23 members as follows:

- (1) A member of the public at large who shall serve as Chair of the Stakeholder Advisory Committee, appointed by the Secretary.
- (2) A member of the Environmental Management Commission, appointed by the Chair of the Commission.
- (3) The Director of the Division of Water Quality or the Director's designee.
- (4) The Chief, Regulatory Branch, Wilmington District, United States Army Corps of Engineers or the Chief's designee, if the Wilmington District office agrees to make an appointment.
- (5) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
- (6) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
- (7) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
- (8) The Director of the Water Resources Research Institute of The University of North Carolina or the Director's designee.
- (9) The Chair of the Upper Neuse River Basin Association, Inc., or the Chair's designee.
- (10) The President of the Lower Neuse River Basin Association or the President's designee.
- (11) The President of the North Carolina Association of Environmental Professionals or the President's designee.
- (12) The President of the North Carolina Chapter of the American Planning Association or the President's designee.

- (13) The Executive Director of the North Carolina Aggregates Association, or the Executive Director's designee.
- (14) The President of North Carolina Citizens for Business and Industry or the President's designee.
- (15) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
- (16) The Executive Vice-President of the North Carolina Forestry Association, Inc., or the Executive Vice-President's designee.
- (17) The Executive Vice-President of the North Carolina Home Builders Association, Inc., or the Executive Vice-President's designee.
- (18) A commercial land developer appointed by the Secretary.
- (19) The President of the Conservation Council of North Carolina, Inc., or the President's designee.
- (20) The Director of the North Carolina Environmental Defense Fund or the Director's designee.
- (21) The President of the Neuse River Foundation, Inc., or the President's designee.
- (22) The Chair of the North Carolina Chapter of the Sierra Club or the Chair's designee.
- (23) The President of the North Carolina Wildlife Federation, Inc., or the President's designee.

(b) The Director of the Division of Water Quality of the Department shall assign appropriate professional and clerical staff to assist the Stakeholder Advisory Committee in the performance of its duties under this Part.

(c) The Stakeholder Advisory Committee created by this section shall terminate when it makes its final recommendations to the Commission.

Section 1.11. Erosion control plans consistent with riparian buffer requirements. – (a) G.S. 113A-54.1(c) reads as rewritten:

"(c) The Director of the Division of Land Resources shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;



- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."
- (b) G.S. 113A-61(b1) reads as rewritten:

"(b1) A local government shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

Section 1.12. **Temporary rules authorized.** – (a) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Commission may adopt temporary rules to implement this Part and to correct other rules related to the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy until 1 October 1999. It is the intention of the General Assembly that the Commission first address the revisions to temporary rule 15A NCAC 2B.0233 required by subdivision (1) of subsection (a) of Section 1.8 of this act and that the Commission adopt all temporary rules required by or necessary to implement this Part no later than 1 April 1999.

(b) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Sedimentation Control Commission may adopt temporary rules to implement Section 1.11 of this act until 1 October 1999. It is the intention of the General Assembly that the Sedimentation Control Commission adopt any temporary rules that may be necessary to implement Section 1.11 of this act no later than 1 April 1999. If the Sedimentation Control Commission determines that adoption of a temporary rule is necessary to implement Section 1.11 of this act, the Sedimentation Control Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the temporary rule. The Sedimentation Control Commission shall require local erosion control programs approved under G.S. 113A-60 to implement the requirements of G.S. 113A-61(b1), as amended by Section 1.11 of this act.

Section 1.13. **Department may accept donations of real property.** – The Department may accept donations of real property and interests in real property if the real property or interest in real property is a riparian buffer or will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality.

Section 1.14. **Commission to establish riparian buffer maintenance and restoration goal.** – The Commission shall establish a goal for the maintenance and restoration of riparian buffers that is consistent with the thirty percent (30%) nitrogen reduction goal for the Neuse River estuary established by Chapter 572 of the 1995 Session Laws (1996 Regular Session).

Section 1.15. **Report on implementation of Part to the Environmental Review Commission.** – The Commission and the Department shall jointly report to the Environmental Review Commission on progress in implementing this Part on or before 15 January 1999 and 1 April 1999. The reports shall include any proposed legislation that the Commission or the Department recommends as necessary or desirable to achieve the purposes of this Part, to improve water quality in the Neuse River or the Neuse estuary, or to better achieve the purposes of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy.

Section 1.16. **Repeal of unnecessary reporting requirement.** – Section 3 of Chapter 572 of the 1995 Session Laws (1996 Regular Session) is repealed.

Section 1.17. **Effective date of Part.** – This Part is effective when this act becomes law.

## **PART II. TEMPORARY RULES GOVERNING COASTAL ENERGY FACILITIES AUTHORIZED**

Section 2.1. Notwithstanding G.S. 150B-21.1(a) and 26 NCAC 2C.0102(11), the Coastal Resources Commission may adopt temporary rules governing coastal energy facilities until 1 July 2005.

Section 2.2. This Part is effective retroactively to 25 September 1998.

## **PART III. FEDERAL CONSERVATION RESERVE ENHANCEMENT PROGRAM OR OTHER AVAILABLE FUNDS MAY BE USED TO PAY ASSISTED FARMER'S SHARE OF THE COST OF CERTAIN PRACTICES UNDER STATE'S AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL**

Section 3.1. G.S. 143-215.74 reads as rewritten:

"§ 143-215.74. **Agriculture cost share program.**

(a) There is created the Agriculture Cost Share Program for Nonpoint Source Pollution Control. The program shall be created, implemented, and supervised by the Soil and Water Conservation Commission.

(b) The program shall be subject to the following requirements and limitations:

- (1) The purpose of the program shall be to reduce the input of agricultural nonpoint source pollution into the water courses of the State.
- (2) The program shall initially include the present 16 nutrient sensitive watershed counties and 17 additional counties.
- (3) Subject to subdivision (7) of this subsection, priority designations for inclusions in the program shall be under the authority of the Soil and Water Conservation Commission. The Soil and Water Conservation Commission shall retain the authority to allocate the cost share funds.
- (4) Areas shall be included in the program as the funds are appropriated and the technical assistance becomes available from the local Soil and Water Conservation District.
- (5) Funding may be provided to assist practices including conservation tillage, diversions, filter strips, field borders, critical area plantings, sediment control structures, sod-based rotations, grassed waterways, strip-cropping, terraces, cropland conversion to permanent vegetation, grade control structures, water control structures, closure of lagoons, emergency spillways, riparian buffers or equivalent controls, odor control best management practices, insect control best management practices, and animal waste management systems and application. Funding for animal waste management shall be allocated for practices in river basins such that the funds will have the greatest impact in improving water quality.
- (6) Except as provided in subdivision (8) of this subsection, State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted farmer providing twenty-five percent (25%) of the cost (which cost, which may include in-kind support) support of the practice, with a maximum of seventy-five thousand dollars (\$75,000) per year to each applicant.
- (7) Priority designation for inclusion in the program for State funding shall be given to projects that improve water quality. To be eligible for cost share funds under this subdivision, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality.
- (8) For practices that are eligible for funding from the federal Conservation Reserve Enhancement Program, State funding from the program shall be limited to seventy-five percent (75%) of the average cost of each practice, with the remainder paid from funding from the Conservation Reserve Enhancement Program, other available federal funds, other State funds, or the assisted farmer, whose contribution may include in-kind support of the practice.

(c) The program shall be reviewed, prior to implementation, by the Committee created by G.S. 143-215.74B. The Technical Review Committee shall meet quarterly to review the progress of this program.

(d) State funds for the program shall remain available until expended for the program.

(e) The Soil and Water Conservation Commission shall report ~~no later than January 31, 1997, and annually thereafter~~ on or before 31 January of each year to the Environmental Review Commission and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

Section 3.2. This Part becomes effective when this act becomes law.

#### **PART IV. REVISE REPORTING REQUIREMENTS**

Section 4.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

**"§ 143-215.9A. Reports.**

(a) The Department shall submit quarterly status reports to the Environmental Review Commission and the Fiscal Research Division as required by this section. Each report shall include:

- (1) The names and locations of all persons permitted under G.S. 143-215.1(c).
- (2) The number of compliance inspections of persons permitted under G.S. 143-215.1(c) that the Department has conducted since the last report and the total number of inspections for that calendar year.
- (3) The number of violations found during each inspection, including the date on which the violation occurred and the nature of the violation; the status of enforcement actions taken and pending; and the penalties imposed, collected, and in the process of being negotiated for each such violation.
- (4) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission or the Fiscal Research Division.

(b) The information to be included in the reports pursuant to subsection (a) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.

(c) The Department shall submit the quarterly status reports required by this section for the previous calendar quarter no later than 15 October, 15 January, 15 April, and 15 July."

Section 4.2. Part 1A of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

**"§ 143-215.10H. Reports.**

(a) The Department shall submit quarterly status reports to the Environmental Review Commission and the Fiscal Research Division as required by this section. Each report shall include:

- (1) The number of permits for animal waste management systems, itemized by type of animal subject to such permits, issued since the last report and a total for that calendar year.
- (2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation has conducted since the last report and a total for that calendar year.
- (3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation that have been conducted since the last report and a total for that calendar year.
- (4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation since the last report and a total for that calendar year.
- (5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation since the last report and a total for that calendar year.
- (6) The number of compliance inspections of animal waste management systems that the Division of Water Quality has conducted since the last report and a total for that calendar year.
- (7) The number of follow-up inspections associated with compliance inspections conducted by the Division of Water Quality since the last report and a total for that calendar year.
- (8) The average length of time for each category of reviews and inspections under subdivisions (2) through (7) of this subsection.
- (9) The number of violations found during each category of review and inspection under subdivisions (2) through (7) of this subsection, the status of enforcement actions taken and pending, and the penalties imposed, collected, and in the process of being negotiated for each such violation.
- (10) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission or the Fiscal Research Division.

(b) The information to be included in the reports pursuant to subsection (a) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.

(c) The Department shall submit the quarterly status reports required by this section for the previous calendar quarter no later than 15 October, 15 January, 15 April, and 15 July."

Section 4.3. Section 27.13 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) is repealed.

Section 4.4. Section 15.2 of S.L. 1997-443 is repealed.

Section 4.5. Section 12.5 of S.L. 1997-458 reads as rewritten:

"Section 12.5. The Department of Environment and Natural Resources, with the assistance of the Utilities Commission, the Local Government Commission, and the Environmental Management Commission, with the assistance of and other State agencies, agencies as appropriate, shall jointly study issues relating to publically owned treatment works that persistently fail to comply with Article 21 of Chapter 143 of the General Statutes, rules adopted pursuant to that Article, or other federal and State laws, regulations, and rules for the protection of public health and the environment. The ~~Commissions~~ Department shall make a specific finding as to whether a State agency should assume control of a persistently noncomplying treatment works and, if so, how the State agency would assume control and operate the treatment works. ~~The Utilities Commission, the Local Government Commission, and the Environmental Management Commission shall jointly present their~~ The Department shall report its findings and recommendations, including any legislative proposals, to the 1998 Regular Session of the 1997 General Assembly. Environmental Review Commission on or before 1 October 1999."

Section 4.6. This Part becomes effective when this act becomes law.

## **PART V. MISCELLANEOUS PROVISIONS**

Section 5.1. The headings to the Parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 5.2. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 5.3. This Part becomes effective when this act becomes law.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ Harold J. Brubaker  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 1:17 p.m. this 5th day of November, 1998