

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 119

Short Title: Amend Environmental Laws 2011. (Public)

Sponsors: Representatives Gillespie and McElraft (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Environment.

February 17, 2011

A BILL TO BE ENTITLED

1 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES
2 LAWS TO (1) CLARIFY THE PROHIBITION ON DISPOSAL IN LANDFILLS OR BY
3 INCINERATION OF BEVERAGE CONTAINERS THAT ARE REQUIRED TO BE
4 RECYCLED BY CERTAIN ABC PERMITTEES; (2) DIRECT THE ENVIRONMENTAL
5 MANAGEMENT COMMISSION AND THE DEPARTMENT OF ENVIRONMENT
6 AND NATURAL RESOURCES TO INCORPORATE STORMWATER CAPTURE AND
7 REUSE STANDARDS AND BEST MANAGEMENT PRACTICES INTO
8 STORMWATER RUNOFF RULES AND PROGRAMS; AND (3) AMEND THE WATER
9 USE STANDARD FOR PUBLIC MAJOR FACILITY CONSTRUCTION AND
10 RENOVATION PROJECTS TO REQUIRE THE INSTALLATION OF
11 WEATHER-BASED IRRIGATION CONTROLLERS AND AUDITS OF EXISTING
12 IRRIGATION SYSTEMS BY AN IRRIGATION CONTRACTOR LICENSED UNDER
13 CHAPTER 89G OF THE GENERAL STATUTES.
14

15 The General Assembly of North Carolina enacts:

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

17 "...

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

19 (1) Repealed by Session Laws 1991, c. 375, s. 1.

20 (2) Used oil.

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

25 (4) White goods.

26 (5) Antifreeze (ethylene glycol).

27 (6) Aluminum cans.

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

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

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

33 (10) Motor vehicle oil filters.

34 (11) Recyclable rigid plastic containers that are required to be labeled as provided
35 in subsection (e) of this section, that have a neck smaller than the body of the



1 container, and that accept a screw top, snap cap, or other closure. The
2 prohibition on disposal of recyclable rigid plastic containers in landfills does
3 not apply to rigid plastic containers that are intended for use in the sale or
4 distribution of motor oil or pesticides.

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

7 (13) Oyster shells.

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

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

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

14 (1) Antifreeze (ethylene glycol) used solely in motor vehicles.

15 (2) Aluminum cans.

16 (3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.

17 (4) White goods.

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

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

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

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

24 (f2) ~~Subsection~~ Subsections (f1) and (f3) of this section shall not apply to solid waste
25 incinerated in an incinerator solely owned and operated by the generator of the solid waste.
26 Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be
27 recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

28 (f3) Holders of on-premises malt beverage permits, on-premises unfortified wine
29 permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly
30 dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in
31 landfills or by incineration in an incinerator for which a permit is required under this Article.

32 (g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.

33 (h) The accidental or occasional disposal of small amounts of prohibited solid waste by
34 landfill shall not be construed as a violation of ~~subsection~~ subsection (f) or (f3) of this section.

35 (i) The accidental or occasional disposal of small amounts of prohibited solid waste by
36 incineration shall not be construed as a violation of ~~subsection~~ subsection (f1) or (f3) of this
37 section if the Department has approved a plan for the incinerator as provided in subsection (j)
38 of this section or if the incinerator is exempt from subsection (j) of this section.

39 (j) The Department may issue a permit pursuant to this Article for an incinerator that is
40 subject to subsection (f1) of this section only if the applicant for the permit has a plan approved
41 by the Department pursuant to this subsection. The applicant shall file the plan at the time of
42 the application for the permit. The Department shall approve a plan only if it complies with the
43 requirements of this subsection. The plan shall provide for the implementation of a program to
44 prevent the incineration of the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this
45 section. The program shall include the random visual inspection prior to incineration of at least
46 ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the
47 retention of the records of the random visual inspections and the training of personnel to
48 recognize the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. If a
49 random visual inspection discovers solid waste that may not be incinerated pursuant to
50 ~~subsection~~ subsections (f1) and (f3) of this section, the program shall provide that the operator
51 of the incinerator shall dispose of the solid waste in accordance with applicable federal and

1 State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes
2 only of medical waste.

3 (k) A county or city may petition the Department for a waiver from the prohibition on
4 disposal of a material described in subdivisions (9), (10), (11) and (12) of subsection (f) of this
5 section and subsection (f3) of this section in a landfill based on a showing that prohibiting the
6 disposal of the material would constitute an economic hardship.

7 (l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least
8 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are
9 not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding
10 subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the
11 landfill.

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

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

16 **"§ 143-214.7. Stormwater runoff rules and programs.**

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

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

34 (1) Classified shellfish waters.

35 (2) Water supply watersheds.

36 (3) Outstanding resource waters.

37 (4) High quality waters.

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

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

43 (c) The Commission shall develop model stormwater management programs that may
44 be implemented by State agencies and units of local government. Model stormwater
45 management programs shall be developed to protect existing water uses and assure compliance
46 with water quality standards and classifications. A State agency or unit of local government
47 may submit to the Commission for its approval a stormwater control program for
48 implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of
49 local government are authorized to adopt ordinances and regulations necessary to establish and
50 enforce stormwater control programs. Units of local government are authorized to create or
51 designate agencies or subdivisions to administer and enforce the programs. Two or more units

1 of local government are authorized to establish a joint program and to enter into any
2 agreements that are necessary for the proper administration and enforcement of the program.

3 (c1) Any land-use restriction providing for the maintenance of stormwater best
4 management practices or site consistency with approved stormwater project plans filed
5 pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission
6 shall be enforced by any owner of the land on which the best management practice or project is
7 located, any adjacent property owners, any downstream property owners who would be injured
8 by failure to enforce the land-use restriction, any local government having jurisdiction over any
9 part of the land on which the best management practice or project is located, or the Department
10 through the remedies provided by any provision of law that is implemented or enforced by the
11 Department or by means of a civil action, without first having exhausted any available
12 administrative remedies. A land-use restriction providing for the maintenance of stormwater
13 best management practices or site consistency with approved stormwater project plans filed
14 pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission
15 shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of
16 benefit to particular land, or due to lack of any property interest in particular land. Any person
17 who owns or leases a property subject to a land-use restriction under this section shall abide by
18 the land-use restriction.

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

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

- 29 (1) Collects and treats stormwater on-site using a treatment system that is
30 designed to remove at least eighty-five percent (85%) of total suspended
31 solids. For purposes of this subdivision, a treatment system includes, but is
32 not limited to, a filtration system or a detention system.
- 33 (2) Collects and stores stormwater for reuse on-site for irrigation or other
34 purposes.
- 35 (3) Collects and discharges stormwater to a local or regional stormwater
36 collection and treatment system.

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

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

42 **SECTION 3.(a)** G.S. 143-135.36 is amended by adding a new subdivision to read:

43 **"§ 143-135.36. Definitions.**

44 As used in this section, the following definitions apply unless the context requires
45 otherwise:

- 46 (1) "ASHRAE" means the American Society of Heating, Refrigerating and
47 Air-Conditioning Engineers, Inc.
- 48 (2) "Commission" means to document and to verify throughout the construction
49 process whether the performance of a building, a component of a building, a
50 system of a building, or a component of a building system meets specified
51 objectives, criteria, and agency project requirements.

- 1 (3) "Department" means the Department of Administration.
- 2 (4) "Institutions of higher education" means the constituent institutions of The
3 University of North Carolina, the regional institutions as defined in
4 G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.
- 5 (5) "Major facility construction project" means a project to construct a building
6 larger than 20,000 gross square feet of occupied or conditioned space, as
7 defined in the North Carolina State Building Code adopted under Article 9
8 of Chapter 143 of the General Statutes. "Major facility construction project"
9 does not include a project to construct a transmitter building or a pumping
10 station.
- 11 (6) "Major facility renovation project" means a project to renovate a building
12 when the cost of the project is greater than fifty percent (50%) of the
13 insurance value of the building prior to the renovation and the renovated
14 portion of the building is larger than 20,000 gross square feet of occupied or
15 conditioned space, as defined in the North Carolina State Building Code.
16 "Major facility renovation project" does not include a project to renovate a
17 transmitter building or a pumping station. "Major facility renovation project"
18 does not include a project to renovate a building having historic,
19 architectural, or cultural significance under Part 4 of Article 2 of Chapter
20 143B of the General Statutes.
- 21 (7) "Public agency" means every State office, officer, board, department, and
22 commission and institutions of higher education.
- 23 (8) "Weather-based irrigation controller" means an irrigation control device that
24 utilizes local weather and landscape conditions to tailor irrigation system
25 schedules to irrigation needs specific to site conditions."

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

27 **"§ 143-135.37. Energy and water use standards for public major facility construction and**
28 **renovation projects; verification and reporting of energy and water use.**

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

34 (b) Energy-Efficiency Standard. – For every major facility construction project of a
35 public agency, the building shall be designed and constructed so that the calculated energy
36 consumption is at least thirty percent (30%) less than the energy consumption for the same
37 building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every
38 major facility renovation project of a public agency, the renovated building shall be designed
39 and constructed so that the calculated energy consumption is at least twenty percent (20%) less
40 than the energy consumption for the same renovated building as calculated using the
41 energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any
42 exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is
43 included in the ASHRAE 90.1-2004 standard.

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

49 (c1) Outdoor Potable Water Use Standard. – For every major facility construction project
50 of a public agency, the water system shall be designed and constructed so that the calculated
51 sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent

1 (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for
2 the same building as calculated using the performance requirements related to plumbing under
3 the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be
4 used for irrigation systems for major facility construction projects. For every major facility
5 renovation project of a public agency, the Department shall ~~determine~~ engage an irrigation
6 contractor licensed under Chapter 89G of the General Statutes to perform an audit of any
7 irrigation system. The Department shall ~~determine~~, on a project-by-project ~~basis~~ basis, what
8 reduced level of outdoor potable use or harvested stormwater use, if any, is a feasible
9 requirement for the ~~project, project.~~ but the The Department shall not require a greater reduction
10 than is required under this subsection for a major facility construction project. To reduce the
11 potable outdoor water as required under this subsection, weather-based irrigation controllers,
12 landscape materials that are water use efficient ~~efficient~~, and irrigation strategies that include
13 reuse and recycling of the water may be used."

14 **SECTION 4.** This act is effective when it becomes law. Section 3(b) of this act
15 applies to every major facility construction project, as defined in G.S. 143-135.36, and every
16 major facility renovation project, as defined in G.S. 143-135.36, of a public agency, as defined
17 in G.S. 143-135.36, that has not entered the schematic design phase prior to the effective date
18 of this act.