

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2011-394
HOUSE BILL 119**

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) EXEMPT CERTAIN NEW RENEWABLE ENERGY FACILITIES FROM BEST AVAILABLE CONTROL TECHNOLOGY (BACT) REQUIREMENTS; (2) REDUCE CERTAIN OPEN BURNING SETBACK REQUIREMENTS AND PROVIDE THAT MINIMAL, UNINTENTIONAL NONCOMPLIANCE WITH AN OPEN BURNING SETBACK IS NOT A VIOLATION; (3) PROVIDE THAT DRAFT EROSION AND SEDIMENTATION CONTROL PLANS FOR THE CONSTRUCTION OF CERTAIN UTILITY LINES MAY BE SUBMITTED WITHOUT A LANDOWNER'S WRITTEN CONSENT; (4) CLARIFY THE PROHIBITION ON DISPOSAL IN LANDFILLS OR BY INCINERATION OF BEVERAGE CONTAINERS THAT ARE REQUIRED TO BE RECYCLED BY CERTAIN ABC PERMITTEES; (5) CLARIFY THE USE OF STATE FUNDS IN THE CONTEXT OF THE REMOVAL OF MERCURY-CONTAINING PRODUCTS FROM PUBLIC BUILDINGS; (6) DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP MODEL STORMWATER CAPTURE AND REUSE PRACTICES; (7) PROHIBIT THE DIVISION OF WATER QUALITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FROM REQUIRING A WATER QUALITY PERMIT FOR A TYPE I SOLID WASTE COMPOST FACILITY; (8) AMEND THE WATER-USE STANDARD FOR PUBLIC MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS TO REQUIRE THE INSTALLATION OF WEATHER-BASED IRRIGATION CONTROLLERS; (9) PROVIDE THAT NO PERMIT IS REQUIRED FOR THE CONSTRUCTION OR ALTERATION OF A SEWER SYSTEM OR TREATMENT WORKS THAT ALREADY HAS A DISCHARGE PERMIT; (10) EXEMPT SMALL DAMS AND AGRICULTURAL POND DAMS FROM THE DAM SAFETY ACT; (11) MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE'S UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES; (12) PROMOTE THE USE OF GRAY WATER; (13) CLARIFY THAT NUTRIENT OFFSET PAYMENTS SHALL REFLECT ACTUAL COSTS AS ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION; (14) DELAY IMPLEMENTATION OF CERTAIN JORDAN LAKE RULE REQUIREMENTS; (15) AUTHORIZE THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO INCORPORATE THE FEDERAL FOOD CODE; (16) ESTABLISH A VARIANCE PROCESS FOR CERTAIN WATER SUPPLY WELL SETBACK REQUIREMENTS; (17) GRANDFATHER CERTAIN DEVELOPMENT UNDER THE NEUSE AND TAR-PAM RIVER BASIN BUFFER REQUIREMENTS; (18) PROVIDE THAT A GINSENG EXPORT CERTIFICATE MAY BE OBTAINED FREE OF CHARGE; (19) PROVIDE FOR AN EARLY SUNSET OF THE METHANE CAPTURE PILOT PROGRAM; (20) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY STORMWATER MANAGEMENT REQUIREMENTS FOR AIRPORTS IN THE STATE; (21) DIRECT CERTAIN TRANSFERS OF FUNDS FOR NONPOINT SOURCE POLLUTION CONTROL PROGRAMS; (22) CONFORM THE STATUTORY DEFINITION OF "SOLID WASTE" TO FEDERAL LAW; AND (23) TO AMEND CERTAIN FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO HAZARDOUS WASTE FACILITIES.

The General Assembly of North Carolina enacts:



SECTION 2.(a) Definitions. – The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section and its implementation.

SECTION 2.(b) 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(d) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit) shall implement the rule, as provided in Section 2(c) of this act.

SECTION 2.(c) Implementation. – Notwithstanding sub-subdivision (B) subdivision (2) of subsection (b) of 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit), open burning for land clearing or right-of-way maintenance is permissible without an air quality permit if the location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if either of the following conditions is met:

- (1) A signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning.
- (2) An air curtain burner that complies with 15A NCAC 02D .1904 (Air Curtain Burners), as provided in this section, is utilized at the open burning site.

Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it, the location of the burn, and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is occupied.

SECTION 2.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 2.(e) 15A NCAC 02D .1904 (Air Curtain Burners). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(g) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1904 (Air Curtain Burners) shall implement the rule, as provided in Section 2(f) of this act.

SECTION 2.(f) Implementation. – Notwithstanding subdivision (12) of subsection (b) of 15A NCAC 02D .1904 (Air Curtain Burners), the location of the air curtain burning shall be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

SECTION 2.(g) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1904 (Air Curtain Burners). Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(f) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 2.(h) G.S. 113-60.29 reads as rewritten:

"§ 113-60.29. Penalties.

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. It is not a violation of this Article or any permit issued under the authority of this Article if a person unintentionally fails to comply with a setback requirement so long as the difference between the required setback and the actual setback is no more than five percent (5%) of the required setback. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G.S. 113-60.28."