2016-2017 General Assembly

HOUSE BILL 630: Drinking Water Protect'n/Coal Ash Cleanup Act.

Committee:	House Rules, Calendar, and Operations of the House	**Date:**	June 29, 2016
Introduced by:		**Prepared by:**	Jennifer McGinnis Staff Attorney
Analysis of:	Third Edition		

SUMMARY: The Third Edition of House Bill 630 would (1) repeal all provisions related to the Coal Ash Management Commission in the General Statutes; (2) require a coal combustion residuals impoundment owner to provide permanent alternative water supplies for residents in areas surrounding coal combustion residuals surface impoundments; (3) allow reconsideration of risk classifications for coal combustion residuals surface impoundments based on fulfillment of certain criteria; and (4) modify appointments and other provisions governing the Mining Commission and the Oil and Gas Commission.

BILL ANALYSIS:

Section 1of the bill would make the following changes to the Coal Ash Management Act of 2014 (CAMA):

- Repeal the Coal Ash Management Commission, and transfer all of its responsibilities under the CAMA to the Department of Environmental Quality (DEQ).
- Require that the owner of a coal combustion residuals surface impoundment, as soon as practicable, but no later than October 15, 2018, establish permanent replacement water supplies for each household that has a drinking water supply well located: (i) within one-half mile radius from the established compliance boundary of an impoundment, and is not separated from the impoundment by the mainstem of a river, or other body of water that would prevent the migration of contaminants through groundwater from the impoundment to a well and (ii) in an area in which contamination resulting from constituents associated with the presence of an impoundment is expected to migrate, as demonstrated by groundwater modeling, and hydrogeologic, geologic, and geotechnical investigations of the site. Preference would be given to permanent replacement water supplies by connection to public water supplies, however, DEQ would be given authority to determine, after evaluation of information submitted by an impoundment owner, if connection to a public water supply for a particular household would be cost-prohibitive, and authorize installation of a filtration system instead. If installation of a filtration system were authorized, an impoundment owner would be responsible for ongoing periodic required maintenance of the filtration system. The provision would also allow, but not require, eligible households to opt for installation of a filtration system in lieu of connection to public water supply. An impoundment owner would be required to provide temporary water to the eligible households until a permanent water supply is established for each household. DEQ may grant an impoundment owner an extension of time, not to exceed one year, to establish permanent water supplies as required by this section, if DEQ determines that it is infeasible for the impoundment owner to establish a permanent water supply for a household by October 1,

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2018, based on limitations arising from local government resources, including limitations on water supply capacity and staffing limitations for permitting and construction activities.

- Would provide that classifications of impoundments previously issued by DEQ would be "preliminary," and the risk-criteria used to develop such classifications would be repealed. DEQ would then be required, upon expiration of the deadline for establishment of permanent water supplies, or any applicable extension granted, to issue a final classification for each impoundment as follows:
  - DEQ must classify an impoundment as low-risk if the impoundment owner satisfies both of the following criteria:
    - Has established permanent water supplies for the impoundment in accord with the requirements of the bill.
    - Has rectified any deficiencies identified by, and otherwise complied with the requirements of, any dam safety order issued by the Environmental Management Commission (EMC) for the impoundment. In addition, the PCS would require DEQ, no later than July 1, 2018, to conduct an annual inspection of each dam associated with a coal combustion residuals surface impoundment required for that year, to detect any deficiencies and to ascertain, at a minimum, whether the dam is sufficiently strong, maintained in good repair and operating condition, does not pose a danger to life or property, and satisfies minimum streamflow requirements. DEQ must issue written findings of fact for each inspection and present such findings to the EMC. If DEQ detects any deficiencies, the EMC must issue an order directing the owner of the dam to take action as may be deemed necessary by the EMC within a time limited by the order, but not later than 90 days after issuance of the order.
  - All other impoundments not satisfying the aforementioned criteria would be deemed intermediate-risk.
- Would modify the possible closure options for impoundments classified as low-risk to include compliance with the closure requirements established by the United States Environmental Protection Agency as provided in 40 CFR Parts 257 and 261, "Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities". The federal closure requirements, in short, require that closure must be completed: (1) by leaving the coal combustion residuals (CCRs or ash) in place and installing a final cover system (i.e., cap-in-place with requirements for groundwater monitoring, post-closure care, etc.), or through removal of the CCRs and decontamination of the CCR unit; and (2) within five years, with the possibility of one two-year extension for units smaller than 40 acres and five two-year extensions for units greater than 40 acres. Other options for closure under the CAMA would still include:
    - Compliance with closure options available for high- and intermediate-risk ponds, which require excavation of ash for beneficial use or disposal in a sanitary landfill.
    - Compliance with the closure and post closure requirements applicable to sanitary landfills under the Administrative Code (i.e., cap-in-place, including a final cover system, groundwater monitoring system, post-closure care with financial assurance, etc.), except that the impoundments would not be required to have a leachate collection system. Provided, however, this method of closure, commonly referred to as "cap-in-place," would not be approvable unless DEQ finds that the proposed closure plan includes design measures to prevent, upon the plan's full implementation, post closure exceedances of groundwater quality standards beyond the compliance boundary that are attributable to constituents associated with the presence of the impoundment.

The bill provides that the closure method implemented would be at the election of DEQ.

- Would modify the possible closure options for an impoundment classified as intermediate-risk to allow an extension of the current closure deadline of December 31, 2024, to December 31, 2029, if the impoundment is located at a site at which an ash beneficiation project is installed, operating, and processing at least 300,000 tons of ash annually from the impoundment.

- Would modify variance authority established under the CAMA as enacted in 2014 (which allowed extension of a closure deadline applicable to an impoundment by 3 years), to allow the Secretary of Environmental Quality to grant a variance for any deadline under the CAMA on the basis that compliance with the deadline cannot be achieved by application of best available technology found to be economically reasonable at the time and would produce serious hardship without equal or greater benefits to the public.

- Would require an impoundment owner to:

  - On or before January 1, 2017: (i) identify, at a minimum, impoundments at two sites located within the State with ash stored in the impoundments on that date that is suitable for processing for cementitious purposes; and (ii) enter into a binding agreement for the installation and operation of an ash beneficiation project at each site capable of annually processing 300,000 tons of ash to specifications appropriate for cementitious products, with all ash processed to be removed from the impoundment(s) located at the sites. The bill would require that no later than 24 months after issuance of all necessary permits, operation of the ash beneficiation projects must be commenced.

  - On or before July 1, 2017 identify an additional site to process ash for cementitious purposes and enter into a binding agreement for the installation and operation of an ash beneficiation project capable of annually processing 300,000 tons of ash to specifications appropriate for cementitious products, with all ash processed to be removed from the impoundment(s) located at the site. The bill would require that no later than 24 months after issuance of all necessary permits, operation of the ash beneficiation projects must be commenced.

  Additionally, the bill would: (1) require an impoundment owner to use commercially reasonable efforts to produce 300,000 tons of ash to specifications appropriate for cementitious products from each project; and (2) provide that, notwithstanding any deadline for closure under the CAMA, any impoundment classified as intermediate- or low-risk that is located at a site at which an ash beneficiation project is installed, operating, and processing at least 300,000 tons of ash annually from the impoundment, must be closed no later than December 31, 2029.

Section 2 of the bill would decrease the fee imposed on each public utility with a coal combustion residuals surface impoundment (for the purpose of defraying the costs of oversight of coal combustion residuals) from 0.03% to 0.022% (the amount of the decrease represents that portion that would have been credited to the Coal Ash Management Commission).

Section 3 of the bill would provide that notwithstanding any requirements for prioritization and closure under the CAMA, the following impoundments would be deemed intermediate-risk:

(1) Coal combustion residuals surface impoundments located at the H.F. Lee Steam Station, owned and operated by Duke Energy Progress, and located in Wayne County.
(2) Coal combustion residuals surface impoundments located at the Cape Fear Steam Station, owned and operated by Duke Energy Progress, and located in Chatham County.

(3) Coal combustion residuals surface impoundments located at the Weatherspoon Steam Station, owned and operated by Duke Energy Progress, and located in New Hanover County.

These impoundments must be closed as soon as practicable, but no later than August 1, 2028, subject to the following requirements:

- The impoundments would be required to be dewatered.
- All CCR would need to be removed from the impoundments and transferred for: (i) disposal in a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; or (ii) use in a structural fill, or other beneficial use as allowed by law.
- Where groundwater quality is degraded as a result of the impoundment, corrective action would be required to restore groundwater quality.

Section 4 of the bill would appropriate $450,000 to the State Water Infrastructure Authority from the Coal Combustion Residuals Management Fund cash balance on June 30, 2016, to fund grants to local governments operating public water supplies in areas surrounding coal combustion residuals impoundments to provide moneys for additional staff for permitting and construction activities as may be needed to facilitate establishment of permanent water supplies to households eligible for connection to public water supplies under the provisions of the bill.

Section 5 of the bill would make technical changes to the CAMA as enacted in 2014 to reflect repeal of the Coal Ash Management Commission.

Section 6(a) of the bill would:

- Modify the appointments to the Mining Commission by providing, in addition to 2 ex officio positions: 4 appointments to be made by the Governor in conformance with Article III, Section 5(8) of the Constitution of North Carolina[1], 1 appointment upon recommendation of the President Pro Tempore of the Senate, and 1 appointment upon recommendation of the Speaker of the House of Representatives. (The membership as originally enacted provided for 2 ex officio positions, 2 appointments by the Governor, 2 appointments by the President Pro Tempore of the Senate, and 2 appointments by the Speaker of the House of Representatives).
- Decrease the duration of membership terms from six years to four years.
- Add "good cause" to the basis for which the Governor may remove any member of the Commission (in addition to existing authority to remove for misfeasance, malfeasance, or nonfeasance).
- Modify existing law which provides that staff to the Commission shall be supplied by the Secretary of Environmental Quality, to add additional language specifying that such staff shall be housed in DEQ, and supervised by the Secretary of Environmental Quality.

[1] This clause states: “The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.”

Section 6(b) of the bill would provide that the initial appointments made by the Governor to the Commission would not be subject to confirmation by the General Assembly.

Section 7(a) of the bill would:

- Modify the appointments to the Oil and Gas Commission by providing: 5 appointments to be made by the Governor in conformance with Article III, Section 5(8) of the Constitution of North Carolina, 2 appointments upon recommendation of the President Pro Tempore of the Senate, and 2 appointments upon recommendation of the Speaker of the House of Representatives. (The membership as originally enacted provides for 3 appointments by the Governor, 3 appointments by the President Pro Tempore of the Senate, and 3 appointments by the Speaker of the House of Representatives).
- Increase the duration of membership terms from three years to four years.
- Add "good cause" to the basis for which the Governor may remove any member of the Commission (in addition to existing authority to remove for misfeasance, malfeasance, or nonfeasance).
- Modify existing law which provides that staff for the Commission must be supplied by DEQ's Division of Energy, Mineral, and Land Resources and the North Carolina Geological Survey, to add additional language specifying that such staff shall supervised by the Secretary of Environmental Quality.

Section 7(b) of the bill would provide that the initial appointments made by the Governor to the Commission would not be subject to confirmation by the General Assembly.

Section 7(c) would provide that rules set forth in 15A NCAC 05H (Oil and Gas Conservation Rules) are effective until the Oil and Gas Commission, as reconstituted by the bill, amends or repeals the rules.

Section 8 would provide that the provisions of the bill would be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid, the validity of the remainder of this bill would not be affected thereby

EFFECTIVE DATE: The bill would be effective when it becomes law.