This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 56: Amend Environmental Laws.

2017-2018 General Assembly

Committee:	House Environment	**Date:**	April 20, 2017
Introduced by:	Reps. McElraft, Yarborough	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition H56-CSRI-1		

OVERVIEW: The Proposed Committee Substitute (PCS) for House Bill 56 would amend various environmental laws.

CURRENT LAW, BACKGROUND and BILL ANALYSIS:

PART I -- MODIFY REQUIREMENTS FOR PREPARATION OF EMERGENCY ACTION PLANS FOR DAM SAFETY

Current law requires the owners of dams classified as high- or intermediate-hazard to develop an Emergency Action Plan for the dam and submit the plan to the Department of Environmental Quality (Department) and the Department of Public Safety. In addition to requirements for descriptions of actions to be taken in response to an emergency condition at the dam, and emergency notification procedures to aid in warning and evacuations during an emergency condition at the dam, a Plan must include downstream inundation maps depicting areas that would be affected by a dam failure and sudden release of the impoundment. Such maps currently do not require preparation by a professional engineer unless the dam is associated with a coal ash pond.

Section 1 of the PCS would modify existing law to require that a downstream inundation map be prepared by a professional engineer, or a person under their responsible charge, if the Department determines that preparation by a professional engineer is necessary to protect public health, safety, and welfare; the environment; or natural resources.

PART II -- FINANCIAL ASSURANCE MODIFICATIONS FOR RISK-BASED CLEANUPS

Current law requires persons conducting risk-based[1] remediation of a contaminated site to establish financial assurance that will ensure that sufficient funds are available to implement and maintain the actions or controls specified in the remedial action plan for the site.

Section 2 of the PCS would modify financial assurance requirements for persons conducting risk-based remediation by allowing the Department to waive the financial assurance requirement if the Department finds that the only actions or controls to be implemented or maintained as part of the remedial action plan for the site include either or both of the following:

[1] Cleanup using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site, which are generally not as stringent as the applicable unrestricted use standards.

- Annual reporting of land use controls.
- The maintenance of durable or low-maintenance covers for contaminated soil.

PART III. REPEAL OBSOLETE HAZARDOUS WASTE PROVISIONS

Under current law G.S. 130A-294(k) requires generators of hazardous waste and operators of hazardous waste facilities to submit, in association with payment of required fees, a written description of any program to minimize or reduce the volume and quantity or toxicity of such waste.

Section 3(a) of the PCS would repeal this requirement upon recommendation of the Department, which reports that the requirement is not enforced, and that generators meet the waste minimization criteria through other requirements.

Under current law G.S. 130A-309.17 requires registration of persons transporting, collecting, or recycling specific amounts of used oil, and imposes reporting requirements. Associated fees for these activities were repealed in 2015, but the registration and reporting requirement was left intact

Section 3(b) of the PCS would repeal this requirement upon recommendation of the Department, which reports that the requirement is not enforced.

PART IV. LAND USE RESTRICTIONS FOR PROPERTY CONTAMINATED BY A NON-UST PETROLEUM DISCHARGE OR RELEASE

Current law requires that a remedial action plan for cleanup of environmental damage from a discharge or release of petroleum from an underground storage tank (UST) include an agreement by the person responsible for the discharge or release to record a notice of any applicable land-use restrictions on the on the current or future use of the contaminated real property when soil or groundwater contamination will remain in excess of unrestricted use standards after a risk-based cleanup[2].

Section 4(a) of the PCS would add discharges or releases of petroleum from aboveground storage tanks (AST) and other sources (discharges or releases not from an UST or AST) to the requirement that a remedial action plan for cleanup of the contamination or release from these sources include an agreement to record a notice of any applicable land-use restrictions. Provided, however, that sites at which contamination has migrated to off-site properties must be cleaned up to unrestricted use standards (thus eliminating the need for land-use restrictions) unless the person responsible for the release or discharge of petroleum has obtained the informed consent of the owner of the off-site property to conduct a risk-based remediation.

Current law requires that a person responsible for the discharge or release of petroleum from an UST to record a "NOTICE OF RESIDUAL PETROLEUM" if residual petroleum is left on a property after a risk-based cleanup has occurred and record a notice of any applicable land-use restrictions on the current

[2] Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses; are protective of public health, safety, and welfare and the environment; and comply with an applicable program's standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or the Department of Environmental Quality (DEQ). Risk-based cleanup, however, allows cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards.

or future use of the contaminated real property when soil or groundwater contamination will remain in excess of unrestricted use standards after a risk-based cleanup. This notice must be filed in the register of deeds office in the county or counties in which the real property is located (i) before the property is conveyed or (ii) within 30 days after the owner, operator, or other person responsible for the discharge or release receives notice from the Department that no further action is required under the remedial action plan, whichever first occurs.

Section 4(b) of the PCS would add discharges or releases of petroleum from ASTs and other sources (discharges or releases not from an UST or AST) to the requirement for recordation of such a notice. Provided, however, that sites at which contamination has migrated to off-site properties must be cleaned up to unrestricted use standards (thus eliminating the need for recording a notice of residual petroleum) unless the person responsible for the release or discharge of petroleum has obtained the informed consent of the owner of the off-site property to conduct a risk-based remediation.

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PART V. CLARIFICATION FOR REPORTING OF WASTEWATER DISCHARGES

Current law obligates the owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater, ***and for which a permit is required,*** to do all of the following: (i) for those systems having an average annual flow of greater than 200,000 gallons per day, provide an annual report to the system's customers on the system's performance; (ii) ***report discharges of 1,000 gallons or more of untreated wastewater to the surface waters of the State to the Department as soon as practicable, but no later than 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State***, and issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge; (iii) in the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. Similar requirements apply to owners and operators of wastewater collection or treatment works, other than a wastewater collection or treatment works the operation of which is primarily to collect or treat municipal or domestic wastewater.

Section 5 of the PCS would:

- Eliminate the limiting language that only applies these requirements to systems for which a permit is required.
- Modify the reporting trigger, to require that an owner or operator must report discharges of 1,000 gallons or more of untreated wastewater to land, or a spill of any amount that reaches waters of the State, within 24 hours after the owner or operator has first knowledge of the spill.

PART VI. MISCELLANEOUS CHANGES TO WATER QUALITY PROVISIONS

Section 6 of the PCS would make various changes to the statute governing control of sources of water pollution, and establishes permit requirements for the sources of water pollution as follows:

- Repeal a provision regarding high infiltration wastewater disposal systems, which provides that such systems meeting certain standards, are to be considered "nondischarge systems" and states that the "outfall of any associated groundwater lowering device shall be considered groundwater provided the outfall does not violate water quality standards." The Department reports that the

statute should be repealed as: (i) it has been determined by the United States Environmental Protection Agency (USEPA) that the statute allows for a direct conduit to surface waters, which is a violation of the federal Clean Water Act; and (ii) given that the USEPA has determined that such a system allows a discharge for which a National Pollutant Discharge Elimination System (NPDES) permit is required, unless the language is repealed such a system would be required to obtain two separate permits for the same facility, resulting in an undue burden on the facility, and Department staff.

- Amend a provision governing applications for permits and renewals for facilities that discharge to surface waters, which currently provides that the Environmental Management Commission (EMC) must grant or deny an application for a new or renewed permit, no later than 60 days following a notice of intent, or if a public hearing is held, within 90 days following consideration of the matters presented at the hearing.

  The PCS would modify the timeclock under current law to provide that the EMC must issue a decision to grant or deny a permit within 90 days following: (i) any required State or federal review, or (ii) if a public hearing is held, after consideration of materials presented at the hearing.

- Amend a provision governing applications and permits for sewer systems, sewer system extensions and pretreatment facilities, land application of waste, and for wastewater treatment facilities not discharging to the surface waters of the State, which currently provides: (i) the EMC must act on a permit application "as quickly as possible", but providing that if the EMC fails to act on a permit application, including a renewal, within 90 days after the applicant submits all information required by the EMC, the application is considered to be approved; and (ii) that permit and renewals are effective until the date specified therein or until rescinded, unless modified or revoked by the EMC.

  The PCS would modify this provision by: (i) requiring the Department to determine a permit application's completeness within 90 days of receipt of the application, and establishing a process for the Department to procure additional information from an applicant with additional time allowed for review of that information, as necessary; (ii) requiring the Department to issue a permit decision on a permit application within one year after the Department determines that the application is complete; (iii) providing that if the Department fails to act within any required timeframe, the applicant may treat the failure to act as a denial of the permit and may challenge the denial under the Administrative Procedure Act.

- Amend a provision that currently: (i) requires disposal systems permitted under the water quality or solid waste statutes to have a compliance boundary beyond which groundwater quality standards may not be exceeded; and (ii) provides that multiple contiguous properties under common ownership and permitted for use as a disposal system must be treated as a single property with regard to determination of such a boundary.

  The PCS would modify the provision governing multiple contiguous properties under common ownership, to provide that they would also be treated as a single property for the purposes of establishing setbacks to property lines.

PART VII. CONSOLIDATE VARIOUS WATER RESOURCES AND WATER QUALITY REPORTS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY

Current law requires the Department to develop a State water supply plan, with the stated purpose of assuring "the availability of adequate supplies of good quality water to protect the public health and to support desirable economic growth…"

Section 7(a) of the PCS would repeal this provision at the request of the Department, to reflect an approach of combined water quality and quantity planning into a consolidated plan for water resources.

Current law requires the Department to report to the Environmental Review Commission (ERC) on the implementation of the Department's powers and duties as it relates to its management of water resources, including information on the development of the State water supply plan and the development of basinwide hydrologic models.

Section 7(b) of the PCS would repeal the reference to the State water supply plan, at the request of the Department, to reflect an approach of combined water quality and quantity into a consolidated plan for water resources.

PART VIII. COASTAL AREA MANAGEMENT ACT MODIFICATIONS

ALLOW DELEGATION OF CAMA LAND-USE PLAN APPROVAL AUTHORITY TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMEND CAMA PERMIT NOTICE REQUIREMENTS

Under current law, the Coastal Area Management Act (CAMA) requires each coastal-area county[3] to prepare a land-use plan[4], which must be approved by the Coastal Resources Commission (CRC).

Section 8(a) of the PCS would allow the CRC to delegate approval of county land-use plans to any qualified employee of the Department.

Under current law, CAMA requires the Secretary of Environmental Quality to issue public notice of a development permit application, upon receipt of the application. Notice must be made by:

- Mail to persons who have requested notice and interested State agencies.
- Posting a notice at the location of the proposed development.
- And, with the exception of a permit application for minor development[5], by publishing notice of the application at least once in one newspaper of general circulation in the county or counties where the development would be located.

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[3] Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

[4] Under CAMA, land-use plans must consist of statements of objectives, policies, and standards to be followed in public and private use of land within the county, and must give special attention to the protection and appropriate development of areas of environmental concern designated under CAMA.

[5] A "major development" is any development which requires permission, licensing, approval, certification or authorization in any form from the EMC, the Department, the Department of Administration, the North Carolina Oil and Gas Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Commission, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating

Section 8(b) of the PCS would except minor permit applications from the requirement for notice by posting at the location of the proposed development.

PART IX. MISCELLANEOUS CHANGES TO STATUTES GOVERNING THE INTERSTATE WILDLIFE VIOLATOR COMPACT

Under current law, Article II of Chapter 113 of the General Statutes governs the State's participation in the Interstate Wildlife Violator Compact. The Article defines wildlife, in part, to mean:

> "… all species of animals that are protected or regulated by the Wildlife Resources Commission, the Marine Fisheries Commission, or the Division of Marine Fisheries in the Department of Environmental Quality. "Wildlife" also means food fish and shellfish as defined by statute, law, regulation, ordinance, or administrative rule in a party state…"

The governing statutes otherwise assign the Marine Fisheries Commission (MFC) and the Division of Marine Fisheries (DMF) with various powers and duties related to the Compact.

Sections 9(a) and 9(b) of the PCS would delete all references to the MFC and the DMF from the Article.

PART X. USE OF FUNDS FROM THE I & M AIR POLLUTION CONTROL ACCOUNT

Under current law, funds in the I & M Air Pollution Control Account must be applied to the costs of developing and implementing an air pollution control program for mobile sources.

Section 10 of the PCS would delete the reference to "mobile sources", allowing funds from the account to be applied for development and implementation of air pollution control programs for both mobile and stationary sources.

PART XI. EFFECTIVE DATE

This PCS would be effective when it becomes law.

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natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet. A "minor development" is any development other than a "major development."