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:	Senate Finance. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	June 21, 2017
Introduced by:	Reps. McElraft, Yarborough	**Prepared by:**	Jennifer McGinnis Jeff Hudson Staff Attorneys
Analysis of:	PCS to Fourth Edition H56-CSSB-26		

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

The following section relates to finance matters:

- ***Section 15 would direct the Fiscal Research Division to estimate the value of property that is subject to State riparian buffer protection rules and that is being used as a riparian buffer for each county in a river basin to which the rules apply.***
- ***Section 17 would add an annual operating fee of $400.00 per permit for a mining operation, and delete a permit renewal fee of $750 or $1,000 (dependent on acreage of the operation).***

CURRENT LAW, BACKGROUND, AND BILL ANALYSIS:

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 1 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:

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

REPEAL OBSOLETE HAZARDOUS WASTE PROVISIONS

[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.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

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 2.(a) 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 2.(b) would repeal this requirement upon recommendation of the Department, which reports that the requirement is not enforced.

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 3.(a) 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 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

[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 release receives notice from the Department that no further action is required under the remedial action plan, whichever first occurs.

Section 3.(b) 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.

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 4 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.
- Add language to allow the Department, in the event of extraordinary circumstances (such as major floods, named storms, or extreme weather, which make it impracticable to measure or otherwise collect data regarding a discharge), to extend the deadlines for reporting and issuance of public notice associated with the discharge of untreated wastewater.

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 5.(a) 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 5.(b) 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.

COASTAL AREA MANAGEMENT ACT MODIFICATIONS

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 6.(a) 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.

Section 6.(b) would except minor permit applications from the requirement for notice by posting at the location of the proposed development.

CLARIFY SETBACK DETERMINATION FOR PERMITTED DISPOSAL SYSTEMS

Section 9 would 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

---

[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 Environmental Management Commission (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 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."

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. Section 9 would specifically 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.

REPEAL PLASTIC BAG BAN

Under current law, retailers in certain areas of the State are prohibited from providing customers with plastic bags unless the bag (1) is reusable, or (2) is used solely to hold sales of otherwise unpacked portions of fresh fish or fish products, meat or meat products, poultry or poultry products, or produce. Substitution of paper bags is permitted if the bag is a recycled paper bag and the retailer offers one of the following incentives to any customer who uses the customer's own reusable bags instead of the bags provided by the retailer: (1) a cash refund; (2) a store coupon or credit for general store use; or (3) a value or reward under the retailer's customer loyalty or rewards program for general store use.

The prohibition only applies to islands or peninsulas bounded on the east by the Atlantic Ocean and on the west by a coastal sound, which are within counties that have a barrier island or barrier peninsula that both: (1) has permanent inhabitation of 200 or more residents and is separated from the mainland by a sound; and (2) contains either a National Wildlife Refuge or a portion of a National Seashore (Dare, Currituck, and Hyde Counties).

Section 10 would repeal the prohibition providing customers with plastic bags. The repeal would become effective July 1, 2017.

AMEND THE RULE FOR POOL LIGHTING

Current law establishes certain lighting requirements for pools, including:

- Artificial lighting must be provided at all pools that are to be used at night, or when natural lighting is insufficient to provide visibility in the pool area.
- Lighting fixtures must be of such number and design as to illuminate all parts of the pool, the water, the depth markers, signs, entrances, restrooms, safety equipment and the required deck area and walkways.
- Fixtures must be installed so as not to create hazards such as burning, electrical shock, mechanical injury, or temporary blinding by glare to the bathers, and so that lifeguards, when provided, can see every part of the pool area without being blinded by glare. The illumination must be sufficient so that the floor of the pool can be seen at all times the pool is in use.
- If underwater lighting is used, it must provide at least 0.5 watts or 8.35 lumens per square foot of water surface and deck lighting must provide not less than 10 foot candles of light measured at 6 inches above the deck surface.
- Where underwater lighting is not used, and night swimming is permitted, area and pool lighting combined must provide not less than 10 foot candles of light to all parts of the pool and required deck area.

Section 11 would direct the Commission for Public Health to amend the rule governing pool lighting to require pool illumination sufficient to illuminate the main drains of a pool, and the deck area of a pool so

that it is visible at all times the pool is in use. The Commission, however, would be prohibited from requiring specific foot candles of illumination for the deck area.

COASTAL STORMWATER PROGRAM VARIANCE

Under current law, certain development in 20 coastal counties is subject to stormwater regulation to protect surface waters from the impact of stormwater runoff. These regulations control aspects of development such as the maximum amount of allowable built-upon area and the types of stormwater best management practices that must be applied to the development. Development in the following counties is subject to these regulations: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare Gates, Hertford., Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

Section 12 would provide that a subdivision is deemed to be fulfilling its coastal stormwater permitting requirements if the subdivision meets all of the following requirements:

- The subdivision's original declaration of covenants was recorded at least 20 years prior to the effective date of this act.
- The original developer of the subdivision transferred the stormwater permit to the homeowners association for the subdivision and, at the time of the transfer, the homeowners association had no notice from the original developer or any regulatory agency that the subdivision was not in compliance with the impervious surface limitations.

This provision would only apply to impervious surface built prior to January 1, 2017. Any impervious surface built on or after January 1, 2017, would be subject to the State's coastal stormwater laws.

AMEND THE RULES FOR PROTECTION OF EXISTING BUFFERS TO EXEMPT CERTAIN APPLICABILITY REQUIREMENTS FOR PUBLIC SAFETY

Current law requires certain measures for protection of existing riparian buffers in certain river basins in order to maintain the buffers nutrient removal and stream protection functions. The requirements of the applicable rules apply to all landowners and other persons conducting activities in the river basins, including State and federal entities, and to all local governments in the river basins. Generally, vegetated areas in buffer areas must remain undisturbed with limited exceptions.

Section 13 would direct the Environmental Management Commission (EMC) to modify the applicable rules governing protection of existing riparian buffers to exempt from the requirements of the rules buffers that are located in any publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety.

AMEND THE RULE FOR PROTECTION AND MAINTENANCE OF EXISTING BUFFERS IN THE CATAWBA RIVER BASIN TO EXEMPT CERTAIN APPLICABILITY REQUIREMENTS FOR PUBLIC WALKING TRAILS

Current law requires certain measures for protection of existing riparian buffers along the Catawba River in the mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting the water quality of the lakes and connecting river segments.

Section 14 would direct the EMC to modify the applicable rule governing protection of existing riparian buffers along the Catawba River in the mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin to exempt from the requirements of the rule any publicly owned property that will be used for walking trails.

RIPARIAN BUFFER TAX EXCLUSION

Section 15 would direct the Fiscal Research Division to estimate the value of property that is subject to State riparian buffer protection rules and that is being used as a riparian buffer for each county in a river basin to which the rules apply. The Fiscal Research Division would report its estimates and analysis to the Environmental Review Commission and the Revenue Laws Study Committee no later than May 1, 2018.

WATER QUALITY TESTING

Section 16 would require DEQ's Division of Water Resources to conduct a water quality sampling program for nutrients along the mainstem of the Catawba River, and require sampling for nutrients above, in, and below each major tributary of the Catawba River. The Division would be required to report the results of the study to the Environmental Review Commission no later than October 1, 2018.

MINING PERMITTING REVISIONS

Current law provides that an operating permit for a mining operation may be granted for a period not to exceed 10 years. Each applicant for an operating permit must, among other things: (i) pay a fee associated with applications for a new permit, permit modifications, or permit transfers; and (ii) following the approval of the application, file and maintain in force a bond in favor of the State, in an amount based upon the area of affected land to be reclaimed under the reclamation plan approved for the mining operation in question. The amount of the bond associated with a particular permit is set by DEQ based upon a schedule established by the Mining Commission.

Section 17 would:

- Except with respect to mining operations occurring on property leased from a public entity, require DEQ to issue permits for a mining operation for the operation's "life-of-site," which is defined under the bill to mean the period from the initial receipt of a permit from the operation until the mining operation terminates and the reclamation required under the approved reclamation plan is completed. For mining operations conducted on real property that is leased from a public entity, DEQ would be required to issue a permit for the operation's "life-of-lease," which is defined under the bill to mean the duration of the lease between the owner or operator of the mining operation and a public entity. The term "public entity" would include the State, any State agency, State college or university, county, municipal corporation, local board of education, community college, special district, or other political subdivision of the State. A public hearing would not be required for a modification of a mining permit to extend the duration of the permit to a life-of-site, or life-of-lease.

- Limit the amount of the bond an applicant must file and maintain in force to an amount not exceed $1,000,000.
- Add an annual operating fee of $400.00 per permit for a mining operation.

AUTHORIZE PRIVATE CONDEMNATION OF LAND FOR PIPELINES AND MAINS ORIGINATING OUTSIDE OF NORTH CAROLINA

Under current law, private condemnors are given the power of eminent domain, for the public use or benefit, for certain purposes, including: the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. The statute goes on to provide that land condemned for any liquid pipelines shall:

- Not be less than 50 feet nor more than 100 feet in width; and
- Comply with provisions in Chapter 62 (Public Utilities) that govern the right of eminent domain conferred upon pipeline companies.

Section 18 would, with respect to private condemnors power of eminent domain over pipelines and mains, delete the limitation that such pipelines or mains "originat[e] in North Carolina."

MARINE FISHERIES COMMISSION AMENDMENTS

Under current law, the Marine Fisheries Commission is composed of nine members appointed by the Governor, including two appointments of persons having general knowledge of and experience related to activities regulated by the Commission. A supermajority of six members of the Commission is necessary to override recommendations from the Division of Marine Fisheries of the Department of Environmental Quality regarding measures needed to end overfishing or rebuild overfished stocks. The Commission may develop temporary management measures to supplement an existing Fishery Management Plan if the Secretary of Environmental Quality determines that it is in the interest of the long-term viability of the fishery.

Section 20 would make the following changes to the Commission:

- Reduce the membership of the Commission to seven members by eliminating the two appointments of persons having general knowledge of and experience related to activities regulated by the Commission.
- Reduce the supermajority to five members and provide that the supermajority is required to carry out the powers and duties of the Commission.
- Provide that management measures considered in a supplement must be limited to those management strategies contained in the original fishery management plan or subsequent amendments to the plan adopted by the Commission and may not include management measures that either (i) were not originally developed in accordance with this section or (ii) result in severe curtailment of the usefulness or value of equipment.

EFFECTIVE DATE: Except as otherwise provided, the bill would be effective when it becomes law.