



# SENATE BILL 729: Coal Ash Management Act of 2014

2013-2014 General Assembly

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<b>Committee:</b>	House Rules	<b>Date:</b>	August 20, 2014
<b>Introduced by:</b>	Sens. Apodaca, Berger	<b>Prepared by:</b>	Jennifer McGinnis and Jeff Hudson
<b>Analysis of:</b>	Conference Report S729-PCCS45242-RI-14		Staff Attorneys

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The Conference Committee Substitute would make the following changes to the 5th Edition (as passed by the House):

- Change the moratorium deadline applicable to orders of the Utilities Commission to grant an increase in base rates of an electric public utility for costs related to impoundments to January 15, 2015 (from December 31, 2016)
- Modify the appointing authority of two appointments to the Coal Ash Management Commission (Commission), and modify the designation process for the Commission's Chair to require the Governor to appoint the initial Chair by October 1, 2014 (and subsequent Chairs within 30 days of a vacancy), otherwise the Chair would be elected by the membership
- Move the Commission's location to the Division of Emergency Management of the Department of Public Safety (from the Department of Environment and Natural Resources (DENR))
- Clarify the language concerning local government preemption of coal ash management to address coverage for carbon burn-out plants
- Move the date on which the construction of new and expansion of existing impoundments would be prohibited to October 1, 2014 (from August 1, 2014)
- Move the date by which impoundments must be prioritized by DENR to December 31, 2015 (from August 1, 2015)
- Add location in a 100 year floodplain as an additional factor that DENR must consider in prioritizing impoundments
- Clarify language concerning public notice of prioritization decisions
- Clarify dewatering requirements for impoundments to require that impoundments located in whole or in part beneath the water table be dewatered to the maximum extent practicable
- Modify one of the closure options available to impoundments classified as low-risk to provide that DENR may not approve closure by cap-in-place for an impoundment unless DENR 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
- Modify the Commission's consideration of factors for closure plan approval to provide that although costs may be considered, costs may not be a dispositive factor
- Modify the variance provision to provide limitations on issuance and to change the decision maker from the Secretary of Environment and Natural Resources to the Commission
- Change the setbacks applicable to large structural fill projects to reflect those applicable to industrial landfills, except with respect to distance to private wells and drinking water supplies (reduced from 500 feet in previous editions to 300 feet)
- Add an appropriation provision
- Move several dates to accommodate the anticipated effective date of the legislation

O. Walker Reagan  
Director



Research Division  
(919) 733-2578

# Senate Bill 729

Page 2

## **BILL ANALYSIS:**

### **PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; MORATORIUM ON RATE CASES**

**SECTION 1.** of the bill would prohibit the Utilities Commission from allowing an electric public utility to recover from the retail electric customers of the State costs resulting from an unlawful discharge to the surface waters of the State from a coal combustion residuals surface impoundment (impoundment), unless the Commission determines the discharge was due to an event of force majeure. The section would apply to discharges occurring on or after January 1, 2014.

**SECTION 2.** of the bill would establish a moratorium on orders of the Utilities Commission to grant an increase in base rates of an electric public utility for costs related to impoundments prior to January 15, 2015, in order to allow the State to study the disposition of impoundments including any final rules adopted by the United States Environmental Protection Agency (USEPA) on the regulation of coal combustion residuals (CCR).

### **PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL COMBUSTION RESIDUALS**

**SECTION 3.** of the bill would create a new Part in the Article of the General Statutes governing management of solid and hazardous waste to address matters related to management of coal ash. Specifically the Part would include provisions as follows:

#### **SUBPART 1. Short Title, Definitions, and General Provisions**

- **Definitions:** Establish pertinent definitions. *Note that in a subsequent portion of the bill, the definition for "solid waste" is modified to include wet CCR, which has historically been excluded from the definition of solid waste (see Sec. 3(d)).*
- **Coal Ash Management Commission:** Establish a nine member Coal Ash Management Commission (Commission), which would, in recognition of the complexity and magnitude of the issues associated with the management of coal combustion residuals and the proper closure and remediation of coal combustion residuals surface impoundments, have the following powers and duties:
  - To review and approve the prioritization classification of impoundments.
  - To review and approve closure plans for impoundments.
  - To review and make recommendations on the provisions of this legislation and other statutes and rules related to the management of CCR.
  - To undertake any additional studies as requested by the General Assembly.

The Commission would be:

- Administratively located in the Division of Emergency Management of the Department of Public Safety, but exercise all of its powers and duties independently of the agency and would not be subject to the supervision, direction, or control of the agency.
- Required to submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission (ERC).
- Sunset on June 30, 2030.
- **Expedited permit review:** Require expedited review by DENR of permits necessary to conduct activities required by the legislation. In particular, DENR would be required to issue a draft permit decision on an application for a permit within 90 days after DENR determines that the application is

# Senate Bill 729

Page 3

complete. After DENR issues a draft permit decision, it would be required to hold a public hearing and accept written comment on the draft permit decision. DENR would be required to issue a final permit decision on an application for a permit within 60 days after the comment period on the draft permit decision closes. If DENR finds, however, that compliance with the deadlines would result in insufficient review of a permit application that would pose a risk to public health, safety, and welfare, the environment, or natural resources, the applicable deadline would be waived for the application as necessary to allow for adequate review. If a deadline is waived, the Secretary would be required to issue a written declaration, including findings of fact, documenting the need for the waiver.

Notwithstanding the timelines described above, DENR would be required to either issue or deny permits for dewatering of a retired impoundment within 90 days of receipt of a completed application.

- **Reports:** Require a number of reports:
  - Quarterly written reports from DENR to the ERC and the Commission on DENR's operations, activities, programs, and progress with respect to its obligations under the legislation concerning impoundments. At a minimum, the report must include information concerning the status of assessment, corrective action, prioritization, and closure for each coal combustion residual surface impoundment, and information on costs connected therewith, as well as a summary of all surface and groundwater sampling, protection, and restoration activities related to the impoundment for the preceding year.
  - Annual reports from DENR to each member of the General Assembly who has an impoundment in the member's district, including the location, the amount of CCR known or believed to be located in the impoundment, the last action taken at the impoundment, and the date of that last action.
  - Annual reports from a public utility generating CCR and coal combustion products (CCP) summarizing the following:
    - The volume of CCR and CCP produced.
    - The volume of CCR disposed.
    - The volume of CCP used in structural fill projects.
    - The volume of CCP beneficially used, other than for structural fill.
- **Preemption of local regulation:** Invalidate local ordinances that prohibit or have the effect of regulating the management of coal combustion residuals and coal combustion products. The provision closely mirrors a statute preempting local government regulation of hazardous waste facilities (G.S. 130A-293). Specifically, the provision would invalidate ordinances that:
  - Regulate the management of coal combustion residuals and coal combustion products, including regulation of carbon burn-out plants, within any county, city, or other political subdivision.
  - Place any restriction or condition not placed by this legislation upon management of coal combustion residuals and coal combustion products within any county, city, or other political subdivision.
  - In any manner are in conflict or inconsistent with the provisions of this legislation.
- **Federal preemption:** Provide that if any phrase, clause, sentence, or provision of the legislation is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, that provision would be severable and the validity of the remainder of this Part would not be affected thereby.
- **Rulemaking:** Direct the Environmental Management Commission (EMC) to adopt rules as necessary to implement the provisions of the legislation, and exempt such rules from the requirements of G.S. 150B-19.3 (a provision under the Administrative Procedure Act that places limitations on the adoption of certain environmental rules).

## **SUBPART 2. Management of Coal Ash Residuals; Closure of Coal Ash Impoundments**

### **Restrictions on generation, disposal, and use of coal combustion residuals:**

- Prohibit the construction of new and expansion of existing impoundments on or after October 1, 2014.
- Prohibit the disposal of CCR into an impoundment at an electric generating facility where the coal-fired generating units are no longer producing CCR on or after October 1, 2014.
- Prohibit the discharge of stormwater into an impoundment: (i) at an electric generating facility where the coal-fired generating units are no longer producing CCR on or after December 31, 2018; and (ii) at an electric generating facility where the coal-fired generating units are actively producing CCR on or after December 31, 2019.
- Require all electric generating facilities owned by a public utility to convert to disposal of "dry" fly ash, or retire the facility on or before December 31, 2018.
- Require all electric generating facilities owned by a public utility to convert to disposal of "dry" bottom ash, or retire the facility on or before December 31, 2019.

### **Groundwater assessment and corrective action; drinking water supply well survey and provision of alternate water supply; reporting:**

- Require the owner of an impoundment to conduct groundwater monitoring and assessment on a specified timeline, including:
  - Submission of a Groundwater Assessment Plan to DENR for its review and approval, and implementation of the Plan, followed by submission of a Groundwater Assessment Report to DENR describing all exceedances of groundwater quality standards associated with the impoundment.
  - Submission of a Groundwater Corrective Action Plan to DENR for its review and approval, and implementation of corrective action for the restoration of groundwater in conformance with the requirements of Subchapter 2L of Title 15A of the North Carolina Administrative Code.
  - Conduct of a Drinking Water Supply Well Survey that identifies all drinking water supply wells within one-half mile from the established compliance boundary of the impoundment, and submission of the Survey to DENR. DENR would be directed to: (i) determine, based on the Survey, which drinking water supply wells the owner of the impoundment is required to sample and how frequently and for what period sampling is required; and (ii) require sampling for drinking water supply wells where data regarding groundwater quality and flow and depth in the area of any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed well may be adversely impacted by constituents associated with the presence of the impoundment. The owner would be required to initiate sampling and water quality analysis of the drinking water supply wells (or pay the costs of third party sampling upon election of a property owner). If the sampling and water quality analysis indicated that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with the presence of the impoundment, the owner would be required to provide an alternate supply: (i) of potable drinking within 24 hours of a determination by DENR that there is an exceedance of groundwater quality standards in nearby drinking water supply wells attributable to constituents associated with the presence of the impoundment; and (ii) of water that is safe for other household within 30 days such a determination.
  - Submission of an annual Groundwater Protection and Restoration Report to DENR and the Commission, with a summary of all groundwater monitoring, protection, and restoration activities related to the impoundment for the preceding year, including the status of the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any contaminated drinking water supply wells.

# Senate Bill 729

Page 5

## **Identification, assessment, and correction of unpermitted discharges:**

- Require an impoundment owner to identify, assess, and correct all unpermitted discharges from the impoundment to the surface waters of the State on a specified timeline, including:
  - Submission of topographic maps to DENR that identify: (i) the location of all outfalls from engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment; and (ii) the location of all seeps and weeps discharging from the impoundment that are not captured by engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment.
  - Conduct of an assessment of discharges from the impoundment to surface waters of the State including submission of a proposed Discharge Assessment Plan to DENR with information sufficient to allow DENR to determine whether any discharge has reached the surface waters of the State and has caused a violation of surface water quality standards. Within 30 days after DENR approval of a Plan, the owner would be required to begin implementation of the Plan in accordance with the Plan's schedule.
  - Implementation of corrective action to prevent unpermitted discharges from the impoundment to the surface waters of the State. If DENR determines, based on information from a topographic map or a Discharge Assessment Plan that a discharge from an impoundment has reached the surface waters of the State, DENR must notify the owner of the impoundment of its determination. Within 30 days from notification of the determination, the owner of an impoundment must submit a proposed Unpermitted Discharge Corrective Action Plan to DENR for its review and approval. Within 30 days after DENR approval of a Plan, the owner would be required to begin implementation of the Plan in accordance with the Plan's schedule.
  - Submission of a plan for the Identification of New Discharges for DENR's review and approval. Within 30 days after DENR approval of a Plan, the owner would be required to begin implementation of the Plan in accordance with the Plan's schedule.
  - Submission of an annual Surface Water Protection and Restoration Report to DENR and the Commission, including a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State.

**Prioritization of coal combustion residuals surface impoundments:** would require DENR to develop, no later than December 31, 2015, proposed classifications for all impoundments, including active and retired sites, for the purpose of closure and remediation based on these sites' risks to public health, safety, and welfare; the environment; and natural resources, and to determine a schedule for closure and required remediation that is based on the degree of risk to public health, safety, and welfare; the environment; and natural resources posed by the impoundments and that gives priority to the closure and required remediation of impoundments that pose the greatest risk. In assessing the risk, DENR would be required to evaluate information received pursuant to assessments conducted of the impoundments and impacts to groundwater and surface water, and any other information deemed relevant, and, at a minimum, consider all of the following:

- Any hazards to public health, safety, or welfare resulting from the impoundment.
- Structural condition and hazard potential of the impoundment.
- The proximity of surface waters to the impoundment, and whether any surface waters are contaminated or threatened by contamination as a result of the impoundment.
- Information concerning the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.
- The location and nature of all receptors and significant exposure pathways.

# Senate Bill 729

Page 6

- The geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants.
- The amount and characteristics of coal combustion residuals in the impoundment.
- Whether the impoundment is located within an area subject to a 100-year flood.
- Any other factor DENR deems relevant to establishment of risk.

DENR would be required to issue a proposed classification for each impoundment as low-risk, intermediate-risk, or high-risk. Within 30 days after issuance of a proposed classification, DENR would be required to issue a written declaration, including findings of fact, documenting the proposed classification, provide public notice, and conduct public hearings on the proposed classification.

Within 30 days of the receipt of all written comment received through public notice and public hearings, DENR would be required to submit a proposed classification for an impoundment to the Coal Ash Management Commission. The Commission would be required to approve a proposed classification if it determines that the classification was developed in accordance with the relevant requirements of the legislation and that the classification accurately reflects the level of risk posed by the impoundment. The Commission would be required to issue its determination in writing, including findings in support of its determination. Parties aggrieved by a final decision of the Commission on classification could appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

**Closure of coal combustion residual surface impoundments:** An owner of a coal combustion residuals surface impoundment would be required to submit a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for DENR's approval subject to the following requirements:

- High-risk impoundments would be required to close as soon as practicable, but no later than December 31, 2019. A proposed closure plan for such impoundments would need to be submitted as soon as practicable, but no later than December 31, 2016. At a minimum: (i) impoundments located in whole above the seasonal high groundwater table must be dewatered; (ii) impoundments located in whole or in part beneath the seasonal high groundwater table must be dewatered to the maximum extent practicable; to be dewatered; and (iii) the owner of an impoundment could either:
  - Convert the impoundment to an industrial landfill, by removing all CCR from the impoundment temporarily, safely storing the CCR on-site, and complying with the requirements of the applicable statutes and rules for such landfills. At a minimum, such landfills must have a leachate collection system, a closure cap system, and a composite liner system. Such landfills must otherwise comply with the construction, siting, and design requirements for disposal sites established the Administrative Code, except with respect to those requirements that pertain to buffers. In lieu of the buffer requirements under the Administrative Code, the owner of the impoundment would be required to establish and maintain a 300-foot buffer between streams and rivers and disposal areas. After the temporarily displaced CCR's are returned for disposal in the industrial landfill, the owner of the landfill would be required to comply with the closure and post-closure requirements for sanitary landfills established by the Administrative Code. Prior to closure, however, DENR could allow the disposal of CCR, in addition to those originally contained in the impoundment, to the landfill, if DENR determines that the site is suitable for additional capacity, and that disposal of additional CCR would not pose an unacceptable risk to public health, safety, welfare; the environment; and natural resources.
  - Remove all CCR from the impoundment, return the former impoundment to a non-erosive and stable condition, and: (i) transfer the CCR for disposal in a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; or (ii) use the CCP in a structural fill, or other beneficial use as allowed by law. The use of CCP as structural fill would need to be conducted in accordance with the enhanced requirements for structural fill included in the

# Senate Bill 729

Page 7

legislation, and other beneficial uses would need to be conducted in accordance with the applicable requirements of the Administrative Code.

- Intermediate-risk impoundments would be required to close as soon as practicable, but no later than December 31, 2024. A proposed closure plan for such impoundments would need to be submitted as soon as practicable, but no later than December 31, 2017. At a minimum: (i) impoundments located in whole above the seasonal high groundwater table must be dewatered; (ii) impoundments located in whole or in part beneath the seasonal high groundwater table must be dewatered to the maximum extent practicable; and (iii) the owner of such an impoundment would be required to close it in any manner allowed for high-risk impoundments.
- Low-risk impoundments would be required to close as soon as practicable, but no later than December 31, 2029. A proposed closure plan for such impoundments would need to be submitted as soon as practicable, but no later than December 31, 2018. Such impoundments could close in any manner allowed for high- and intermediate risk impoundments.

At a minimum, however: (i) impoundments located in whole above the seasonal high groundwater table must be dewatered; (ii) impoundments located in whole or in part beneath the seasonal high groundwater table must be dewatered to the maximum extent practicable; and (iii) would be required to comply with the closure and post-closure requirements applicable to sanitary landfills under the Administrative Code, except that the impoundments would not be required to have a leachate collection system. Specifically, the owner of an impoundment would be required to install and maintain a cap system and a groundwater monitoring system. In addition, the owner would be required to conduct post-closure care for a period of 30 years and establish financial assurance to ensure that sufficient funds were available for closure, post-closure maintenance and monitoring, any corrective action that DENR may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences arising from the impoundment, and subsequent costs incurred by DENR in response to an incident. Provided, however, this method of closure, commonly referred to as "cap-in-place," would not be approvable unless DENR 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.

Additionally, DENR is authorized to require implementation of any other measure it deems necessary to protect public health, safety, and welfare; the environment; and natural resources, including imposition of institutional controls that are sufficient to protect public health, safety, and welfare; the environment; and natural resources.

DENR would be required to review a proposed Closure Plan for consistency with the minimum requirements for closure established by the legislation, and to determine whether the proposed Closure Plan otherwise complies with the legislation and is protective of public health, safety, and welfare; the environment; and natural resources. Prior to issuing a decision on a proposed Closure Plan, DENR would be required to provide public notice, and conduct public hearings on the proposed classification.

DENR would be required to provide specific findings to support its decision to approve or disapprove a proposed Closure Plan, and within 30 days of an approval of a Closure Plan, DENR would need to submit the Closure Plan to the Coal Ash Management Commission. The Commission could approve a Closure Plan only if it determines that the Closure Plan was developed in accordance with the legislation; that implementation of the Closure Plan according to the Closure Plan's schedule is technologically and economically feasible; and the Plan is protective of public health, safety, and welfare; the environment; and natural resources. The Commission may consider any impact on electricity costs and reliability, but this

# Senate Bill 729

Page 8

factor may not be dispositive of the Commission's determination. The Commission would be required to issue its determination in writing, including findings in support of its determination. Parties aggrieved by a final decision of the Commission on classification could appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes.

An impoundment owner would be required to begin implementation of a Closure Plan within 60 days after Commission approval.

*Notwithstanding the requirements for prioritization and closure methods described above, the following impoundments would be deemed high-priority (see Sec. 3(b)):*

- (1) Coal combustion residuals surface impoundment(s) located at the Dan River Steam Station, owned and operated by Duke Energy Progress, and located in Rockingham County.*
- (2) Coal combustion residuals surface impoundment(s) located at the Riverbend Steam Station, owned and operated by Duke Energy Carolinas, and located in Gaston County.*
- (3) Coal combustion residuals surface impoundment(s) located at the Asheville Steam Electric Generating Plant, owned and operated by Duke Energy Progress, and located in Buncombe County.*
- (4) Coal combustion residuals surface impoundment(s) located at the Sutton Plant, owned and operated by Duke Energy Progress, and located in New Hanover County.*

*Except as preempted by federal law, these impoundments would need to be closed as soon as practicable, but no later than August 1, 2019, as follows:*

- 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.*

**Variance authority:** The bill would authorize the Commission to grant a variance to extend any deadline for closure of an impoundment, but a variance could not extend the applicable deadline for more than three years beyond the date applicable to the impoundment under the act. To request such a variance the owner of an impoundment must, no earlier than two years prior to the applicable deadline, submit an application which must include, at a minimum, all of the following information: identification of the site, applicable requirements, and applicable deadlines for which a variance is sought, and the site-specific circumstances that support the need for the variance. The owner must also provide detailed information that demonstrates (i) the owner has substantially complied with all other requirements and deadlines established by the act; (ii) the owner has made good faith efforts to comply with the applicable deadline for closure of the impoundment; and (iii) 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. If, after evaluation of the information received, the Secretary finds that the information supports issuance of a variance from the deadline, the Secretary is directed to issue a proposed variance, and within 10 days after a proposed variance has been issued, must issue a written declaration, including findings of fact, documenting the proposed variance. DENR would be required to provide public notice and conduct public hearings on the proposed variance, and must take the public input received through the process into account in its decision before submitting the proposed variance to the Commission for approval. The Commission may only approve a variance if it determines that compliance with the deadline cannot be achieved by application of best available technology found to be economically



# Senate Bill 729

Page 9

reasonable at the time and would produce serious hardship without equal or greater benefits to the public. Parties aggrieved by a final decision of the Commission could appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes.

## **SUBPART 3. Use of Coal Combustion Products in Structural Fill**

This portion of the legislation would codify requirements applicable to the use of CCP's in structural fill currently found under the Administrative Code, and would add a number of new requirements to large structural fill projects (those involving the placement of 8,000 or more tons of coal combustion products per acre or 80,000 or more tons of coal combustion products in total per project). In particular, the provisions would do the following:

- Require individual permits for large structural fill projects using CCP (smaller structural fill projects would be deemed permitted), and specify information to be provided to DENR for permitting purposes.
- Codify design and siting requirements for projects using CCP for structural fill currently in rule, and establish new provisions requiring large structural fill projects to have an encapsulation liner system constructed on and around the structural fill to efficiently contain, collect, and remove leachate generated by the CCP, as well as separate the CCP from any exposure to surrounding environs. At a minimum, the components of the liner system would need to include a base liner, a leachate collection system, and a cap liner. In addition the bill would modify current setbacks for structural fill projects established by rule, to increase the required separation to groundwater, and increase required distances to surface waters, drinking water sources, property boundaries, and bedrock outcrop.
- Require groundwater monitoring for large structural fill projects using CCP. Specifically, large structural fills would be required to install a groundwater monitoring system and conduct groundwater monitoring through construction and the post-closure care period. In addition, a constructor or operator of a large structural fill would be required to implement an assessment monitoring program and initiate corrective action measures if exceedances of groundwater standards are detected through monitoring.
- Require financial assurance for large structural fill projects using CCP for structural fill that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that DENR may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by DENR in response to an incident at a structural fill project, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.
- Codify closure requirements for projects using CCP for structural fill currently in rule, and establish new provisions requiring large structural fill projects to submit closure and post-closure plans and conduct post-closure care for 30 years, which period may be increased or decreased by DENR based on evaluations of impacts to public health, welfare, the environment, and natural resources, or decreased upon a determination that a shorter period is sufficient to protect public health, welfare, the environment, and natural resources.
- Codify recordation requirements for projects using CCP structural fill facilities currently in rule.
- Codify an exemption for Department of Transportation projects using CCP structural fill facilities currently in rule.
- Require DENR to prepare an inventory of all structural fill projects with a volume of 10,000 cubic yards or more, and update the inventory at least annually. In addition, DENR would be directed to inspect each structural fill project with a volume of 10,000 cubic yards or more at least annually to determine if the project or facility has been constructed and operated in compliance with governing law.
- Direct the EMC to amend existing rules governing the use of CCP for structural fill as necessary to implement the provisions of the legislation, and exempt these rules from a limitation found in the Administrative Procedure Act on adoption of certain environmental rules.

# Senate Bill 729

Page 10

## **PART III. MORATORIUMS AND STUDY ON: (1) USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL AND (2) DISPOSAL OF COAL COMBUSTION RESIDUALS TO COMBUSTION PRODUCTS LANDFILLS**

**SECTION 4.(a) through (d)** of the bill would prohibit certain uses of CCP's as structural fill until August 1, 2015, in order to allow DENR, the EMC, and the General Assembly time to review and evaluate the use of coal combustion residuals as structural fill.

CCP's used as structural fill for any of the following types of projects would be exempt from the moratorium, provided, however, that they comply with requirements of the legislation:

- A project where the structural fill is used with a base liner, leachate collection system, cap liner, groundwater monitoring system, and with sufficient financial assurance.
- As the base or sub-base of a concrete or asphalt paved road constructed under the authority of a public entity.

During the pendency of the moratorium, DENR and the EMC would be required to jointly review the requirements for structural fills using CCP's included in the legislation, as well as rules for beneficial use under the Administrative Code. In particular DENR and EMC would be required to study all of the following:

- Review the uses of CCP: (i) as structural fill, and the regulation of this use as would be established by the legislation, to determine if the requirements are sufficient to protect public health, safety, and welfare; the environment; and natural resources; and (ii) for other beneficial uses and the regulation of these uses under the rules to determine if the rules are sufficient to protect public health, safety, and welfare; the environment; and natural resources.
- Evaluate additional opportunities for the use of CCP as structural fill and for other beneficial uses that would reduce the volume of CCR that are being disposed of in sanitary landfills while still being protective of public health, safety, and welfare; the environment; and natural resources.
- Monitor any actions of the USEPA regarding the use of CCP as structural fill or for other beneficial uses.
- Jointly report to the ERC no later than January 15, 2015, on their findings and recommendations regarding the use of CCP as structural fill and for other beneficial uses.

**SECTION 4.(e)** of the bill would require all electric generating facilities owned by a public utility that produce CCR's and CCP's to issue a request for proposals (RFP) on or before December 31, 2014, for (i) the conduct of a market analysis for the concrete industry and other industries that might beneficially use CCR's and CCP's; (ii) the study of the feasibility and advisability of installation of technology to convert existing and newly generated CCR's to commercial-grade CCP's suitable for use in the concrete industry and other industries that might beneficially use coal combustion residuals; and (iii) an examination of all innovative technologies that might be applied to diminish, recycle or reuse, or mitigate the impact of existing and newly generated CCR's. The facilities would be required to present the materials and information received in response to an RFP and an assessment of the materials and information, including a forecast of specific actions to be taken in response to the materials and information received, to the Environmental Management Commission and the Coal Ash Management Commission on or before August 1, 2016.

**SECTION 5.** of the PCS would establish a moratorium on construction of new or expansion of existing combustion products landfills through August 1, 2015. During the pendency of the moratorium DENR would be required to evaluate each combustion products landfill currently operating in the State, and, in particular, assess the risks to public health, safety, welfare; the environment; and natural resources, of coal combustion residuals surface impoundments located beneath combustion products landfills to determine the advisability of continued operation of these landfills. DENR would be required to report to the ERC no later than January 15, 2015.

# Senate Bill 729

Page 11

## **PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED**

**SECTION 6.(a) and (b)** of the bill would amend existing requirements for reporting and notification applicable to discharges of wastewater to waters of the State, to: (i) require an owner or operator of any wastewater collection or treatment works to report a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State to DENR 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 (ii) reduce the time periods allowed for a publication of notice of discharge of untreated wastewater from a wastewater collection or treatment works from 48 to 24 hours.

**SECTION 6.(c)** of the bill would require that the 24-hour Operations Center established to serve as a single point of contact for local governments to report the occurrence of emergency and disaster events and to coordinate local and State response assets record all telephone calls to the emergency hotline and maintain the recording of each telephone call for at least one year.

## **PART V. REQUIRE NOTIFICATION TO DENR OF EMERGENCY DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS; REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS**

**SECTION 7.** of the bill would amend requirements applicable to dam safety to require that a dam owner notify DENR as soon as possible, but not later than 24 hours after first knowledge of the necessity for emergency repairs to a dam. In addition, the bill would establish a detailed process for decommissioning an impoundment.

**SECTION 7.1** of the bill would establish a detailed process for decommissioning the dams of coal combustion residuals surface impoundments.

**SECTION 8.** of the bill would amend requirements applicable to dam safety to require that the owner of a dam classified by DENR as a high hazard dam or an intermediate hazard dam develop an Emergency Action Plan for the dam, addressing specific criteria outlined in the legislation, which must be submitted to DENR and the Department of Public Safety for approval.

**SECTION 9.** of the bill would amend legislation enacted in 2009 that brought certain dams used in connection with electric generating facilities, not including those associated with nuclear generating facilities, under the State Dam Safety Act. The 2009 legislation provided that those facilities would be deemed to have received all of the necessary approvals from DENR and the EMC, and were not required to submit application, certificate, or other materials in connection with the continued normal operation and maintenance of those facilities. The bill would eliminate the language exempting these facilities from submission applications, certificates, or other materials.

**SECTION 10.** of the bill would amend dam safety requirements to establish specific inspection requirements for impoundments as follows:

- Require DENR to inspect each dam associated with an impoundment at least annually.
- Require the owner of an impoundment to inspect the impoundment weekly and after storms to detect evidence of any of the following conditions:
  - Deterioration, malfunction, or improper operation of spillway control systems.
  - Sudden drops in the level of the contents of the impoundment.
  - Severe erosion or other signs of deterioration in dikes or other containment devices or structures.

# Senate Bill 729

Page 12

- New or enlarged seeps along the downstream slope or toe of the dike or other containment devices or structures.
- Any other abnormal conditions at the impoundment that could pose a risk to public health, safety, or welfare; the environment; or natural resources.
- Require the owner of an impoundment to have the impoundment inspected annually by an independent registered professional engineer to ensure that the structural integrity and the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. Within 30 days of the inspection, the owner must provide DENR the inspection report and a certification by the engineer that the impoundment is structurally sound and that the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards.

## **PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION**

**SECTION 11.** of the bill would transfer all rule-making authority for matters related to solid and hazardous waste management (Article 9 of Chapter 130A of the General Statutes), from the Commission for Public Health to the Environmental Management Commission, and makes conforming changes throughout the statutes.

## **PART VII. AMEND COMPLIANCE BOUNDARY PROVISIONS**

**SECTION 12** of the bill would amend statutory provisions on compliance boundaries to clarify how compliance boundaries are established and what types of corrective action have to be taken to address exceedances of groundwater quality standards at or beyond compliance boundaries. Section 12 would also direct the Environmental Management Commission to review its compliance boundary and corrective action rules for clarity and internal consistency and direct the Commission to report the results of its review, including any recommendations, to the Environmental Review Commission no later than December 1, 2014.

## **PART VIII. OTHER STUDIES**

**SECTION 13.(a)** of the bill would require the Coal Ash Management Commission, to study whether and under what circumstances no further action or natural attenuation is appropriate for impoundments classified as low-risk. In conducting the study, the Commission must specifically consider whether there is any contact or interaction between CCR and groundwater and surface water, whether the area has reverted to a natural state as evidenced by the presence of wildlife and vegetation, and whether no further action or natural attenuation would be protective of public health, safety, and welfare; the environment; and natural resources. The Commission would be required to report the results of its study, including any recommendations, to the ERC no later than October 1, 2015.

**SECTION 13.(b)** of the bill would require DENR to study all deadlines established by the act, and report its findings and recommendations to the Environmental Review Commission on or before December 1, 2014.

**SECTION 14.** of the bill would require the Department of Transportation to evaluate additional opportunities for the use of CCR in the construction and maintenance of roads and bridges within the State.

# Senate Bill 729

Page 13

The Department would be required to report the results of its study, including any recommendations, to the ERC no later than December 1, 2014.

## **PART IX. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT**

**SECTION 15.** of the bill would create a new regulatory fee to defray the costs to the State of CCR management and appropriates the funds. Currently, all public utilities operating in the State pay a regulatory fee that is a percentage of their jurisdictional revenues. This regulatory fee is used to pay the expenses incurred by the Utilities Commission and the Public Staff in regulating public utilities. Section 15(a) of the bill would create a new regulatory fee that will only be used to pay the costs of the Coal Ash Management Commission and the costs of DENR in providing oversight for CCR. The fee is set at 0.03% of the jurisdictional revenues of public utilities with an impoundment. The fee would sunset April 1, 2030.

The section also appropriates \$1.75 million of the fee to DENR to fund 25 positions to carry out the duties of CCR and CCP management, and appropriates the funds generated by the new regulatory fee remaining after the appropriation to DENR to the Coal Ash Management Commission to fund 5 positions to support the Commission.

## **PART X. SPECIFICATIONS FOR USE OF COAL ASH COAL COMBUSTION PRODUCTS IN PUBLIC PROCUREMENT**

**SECTION 16.** of the bill would require the Department of Transportation to develop recommended technical specifications for the use of coal combustion products that may be used in any construction by the Department of Transportation, and the State Construction Office to develop such specifications for all other State departments, institutions, agencies, community colleges, and local school administrative units. In developing the specifications, the entities must consider safety, best practice engineering standards, quality, cost, and availability of an in-State source of CCPs. Both agencies would be required to report to the ERC and the Joint Legislative Transportation Oversight Committee on or before February 1, 2015.

## **PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

**SECTION 17.** of the bill would provide that if any provision of the act or its application were held invalid, the invalidity would not affect other provisions or applications of the act that can be given effect without the invalid provisions or application, and to this end the provisions of this act would be severable.

**SECTION 18.** Except as otherwise provided, the act would be effective when it becomes law.