

- (3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case.

(c) ~~A~~ When the applicant seeks administrative review of a decision concerning a permit under subsection (a) of this section, the permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the Commission makes a final decision in a the contested case, as appropriate, case, and no action may be taken during that time that would be unlawful in the absence of a permit.

(d) A permit challenged under subsection (b) of this section remains in effect unless a stay is issued by the administrative law judge as set forth in G.S. 150B-33 or by a reviewing court as set forth in G.S. 150B-48."

OPEN BURNING

SECTION 24.(a) The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section.

SECTION 24.(b) 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3.11(d) of this section, the Commission and the Department shall implement 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) as provided in Section 3.11(c) of this section.

SECTION 24.(c) Implementation. – Notwithstanding Paragraph (b) of 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit), no air quality permit is required for the open burning of leaves, logs, stumps, tree branches, or yard trimmings if the following conditions are met:

- (1) The material burned originates on the premises of private residences and is burned on those premises.
- (2) There are no public pickup services available.
- (3) Nonvegetative materials, such as household garbage, lumber, or any other synthetic materials, are not burned.
- (4) The burning is initiated no earlier than 8:00 A.M. and no additional combustible material is added to the fire between 6:00 P.M. on one day and 8:00 A.M. on the following day.
- (5) The burning does not create a nuisance.
- (6) Material is not burned when the North Carolina Forest Service has banned burning for that area.

The burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception described in this subsection.

SECTION 24.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 3.11(c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 24(c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 24.(e) Sunset. – Section 24(c) of this section expires on the date that rules adopted pursuant to Section 24(d) of this section become effective.

SECTION 24.(f) Local Government Air Pollution Control Program Limitation. – G.S. 143-215.112(c) is amended by adding a new subdivision to read:

...
"§ 143-215.112. Local air pollution control programs.

- (c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:
- a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;
 - b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;
 - c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;
 - d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules and standards duly adopted by the Commission; and administration of such rules and standards in accordance with provisions of this section.
 - e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;
 - f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

...
(6) No local air pollution control program may limit or otherwise regulate any combustion heater, appliance, or fireplace in private dwellings. For purposes of this subdivision, "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes."

SECTION 24.(g) G.S. 143-215.108 is amended by adding a new subsection to read:

"§ 143-215.108. Control of sources of air pollution; permits required.

...
(j) No Power to Regulate Residential Combustion. – Nothing in this section shall be interpreted to give the Commission or the Department the power to regulate the emissions from any combustion heater, appliance, or fireplace in private dwellings, except to the extent required by federal law. For purposes of this subsection, "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes."

SECTION 24.(h) G.S. 160A-193 is amended by adding a new subsection to read:
"§ 160A-193. Abatement of public health nuisances.

(a) A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. Pursuant to this section, the governing board of a city may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes.

...

(c) The authority granted by this section does not authorize the application of a city ordinance banning or otherwise limiting outdoor burning to persons living within one mile of the city, unless the city provides those persons with either (i) trash and yard waste collection services or (ii) access to solid waste dropoff sites on the same basis as city residents."

COASTAL STORMWATER GRANDFATHER

SECTION 25.(a) The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 2H .1002 apply to this section.

SECTION 25.(b) 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 26(d) of this section, the Commission and the Department shall implement 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) as provided in Section 25(c) of this section.

SECTION 25.(c) Implementation. – Notwithstanding Paragraph (h) of 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties), the provisions and requirements applicable to any grandfathered development activity subject to Subparagraph (a)(2) of 15A NCAC 02H .1005 shall also be applicable to an expansion of the development activity. For purposes of this subsection, "grandfathered development activity" means development activity that is regulated by provisions and requirements of 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) that was effective at the time of the original issuance of any of the authorizations listed in Subparagraph (h)(2) of 15A NCAC 02H .1005, because the authorization meets the criteria set forth in that Subparagraph; and "expansion of the development activity" means development activity conducted on a contiguous property or properties under a subdivision plat approved by the local government prior to July 3, 2012.

SECTION 25.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) consistent with Section 25(c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 25(c) of this act. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 25.(e) Sunset. – Section 25(c) of this section expires on the date that rules adopted pursuant to Section 25(d) of this section become effective.

AMEND TRANSPLANTING OF OYSTERS AND CLAMS STATUTE

SECTION 26. G.S. 113-203 reads as rewritten:

"§ 113-203. Transplanting of oysters and clams.

- (a) ~~It is unlawful to transplant oysters taken from public grounds to private beds except:~~
- ~~(1) When lawfully taken during open season and transported directly to a private bed in accordance with rules of the Marine Fisheries Commission.~~
 - ~~(2) Repealed by Session Laws 2009-433, s. 6, effective August 7, 2009.~~
 - ~~(3) When the transplanting is done in accordance with the provisions of this section and implementing rules.~~
- (a1) ~~It is lawful to transplant seed clams less than 12 millimeters in their largest dimension and seed oysters less than 25 millimeters in their largest dimension and when the seed clams and seed oysters originate from an aquaculture operation permitted by the Secretary.~~
- (a2) It is unlawful to do any of the following:
- (1) Transplant oysters or clams taken from public grounds to private beds except when lawfully taken during open season and transported directly to a private bed in accordance with rules of the Marine Fisheries Commission.
 - (2) Transplant oysters or clams taken from permitted aquaculture operations to private beds except from waters in the approved classification.
 - (3) Transplant oysters or clams from public grounds or permitted aquaculture operations utilizing waters in the restricted or conditionally approved classification to private beds except when the transplanting is done in accordance with the provisions of this section and implementing rules.
- (a3) It is lawful to transplant seed oysters or seed clams taken from permitted aquaculture operations that use waters in the restricted or conditionally approved classification