

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**HOUSE BILL 1145**

Short Title: Closure of Industrial Lagoons. (Public)

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Sponsors: Representatives Nesbitt and Hunter (Primary Sponsors).

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Referred to: Environment and Natural Resources.

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April 10, 2003

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT  
2 COMMISSION TO ADOPT TEMPORARY AND PERMANENT RULES  
3 GOVERNING CLOSURE OF INDUSTRIAL LAGOONS.  
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 143-213 is amended by adding a new subdivision to read:

7 "(31) The term 'industrial lagoon' means a confined body of water that is  
8 designed to hold industrial waste and that is installed as part of a  
9 treatment works."

10 **SECTION 2.** G.S. 143-215.3(a) reads as rewritten:

11 "(a) Additional Powers. – In addition to the specific powers prescribed elsewhere  
12 in this Article, and for the purpose of carrying out its duties, the Commission shall have  
13 the power:

14 ...

15 (18) To adopt rules governing the maintenance, operation, closure, and  
16 postclosure care of an industrial lagoon as provided in G.S.  
17 143-215.3E."

18 **SECTION 3.** G.S. 143-215 is amended by adding a new section to read:

19 "**§ 143-215.3E. Requirements for industrial lagoons.**

20 (a) An owner of an industrial lagoon shall establish and maintain evidence of  
21 financial responsibility satisfactory to the Department to ensure sufficient availability of  
22 funds for facility closure and postclosure monitoring and corrective measures. The  
23 Department shall establish financial responsibility requirements based on characteristics  
24 of the industrial lagoon, and closure and postclosure requirements for the lagoon.  
25 Financial responsibility may be established through the use of a letter of credit,  
26 insurance, surety, trust agreement, financial test, or financial test and corporate  
27 guarantee.

1       **(b)** An owner of an industrial lagoon shall close the lagoon no later than one year  
2 after cessation of the activities for which the lagoon was permitted, or at such time as  
3 otherwise may be required by law.

4       **(c)** After closure, the owner of an industrial lagoon shall perform any  
5 remediation of the lagoon's site that may be necessary to comply with the requirements  
6 of this Article and the rules adopted by the Commission.

7       **(d)** In the event that the owner of an industrial lagoon fails to perform the closure  
8 or postclosure remediation activities required by subsections (b) and (c) of this section,  
9 the Department shall use staff, equipment, or materials under its control or shall contract  
10 with any agent or contractor it deems appropriate to perform closure or postclosure  
11 remediation activities. When the Department is required to perform closure or  
12 postclosure remediation activities for an industrial lagoon, the Department shall keep a  
13 record of all expenses incurred for the services of State personnel and for the use of the  
14 equipment and material of the State in performing those activities. The Department shall  
15 apply the amount of financial responsibility established by the owner in accordance with  
16 subsection (a) of this section to the expenses incurred by the Department to close or  
17 remediate the site. The Department may seek reimbursement for those expenses  
18 incurred that exceed the amount of financial responsibility established by the owner  
19 through any legal means available. In order to secure collection of expenses incurred by  
20 the State that exceed the amount of financial responsibility established by the owner, the  
21 State is entitled to a lien upon any industrial lagoon site where it has performed closure  
22 and remediation activities, which lien may be foreclosed in the same manner as  
23 provided by law for foreclosure of county tax liens. Any person owning land on which  
24 an industrial lagoon is or has been located or who owned the land while the industrial  
25 lagoon was in operation, or any person who disposed of waste in the industrial lagoon  
26 shall have joint and several liability to the State for any costs incurred by the State to  
27 close or remediate the site that exceed the amount of financial responsibility established  
28 by the owner."

29       **SECTION 4.** G.S. 143-215.3D(e) is amended by adding a new subdivision  
30 to read:

31       **"(8)** Industrial lagoons. – An annual fee of one thousand dollars (\$1,000)  
32 shall be imposed on any treatment works for which a water quality  
33 permit is required under G.S. 143-215.1 that includes an industrial  
34 lagoon. The payment of this fee shall be in addition to any initial  
35 application fee, annual fee, or fee for a major permit modification  
36 imposed by this section."

37       **SECTION 5.** Sections 1, 2, 3, and 5 of this act are effective when it becomes  
38 law. The Commission shall adopt temporary rules pursuant to G.S. 143-215.3(a), as  
39 enacted by Section 2 of this act, by 1 September 2004. The Commission shall adopt  
40 permanent rules pursuant to G.S. 143-215.3(a), as enacted by Section 2 of this act, so  
41 that the permanent rules are subject to legislative review pursuant to G.S. 150B-21.8 by  
42 the 2006 Regular Session of the 2005 General Assembly. Section 4 of this act becomes  
43 effective 1 January 2004.