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Environment and Natural Resources

Most of the environmental and natural resource bills passed by the 2001 General Assembly extend or make incremental changes to existing laws. Major new air quality legislation introduced in the session did not pass.

Agriculture

Foot and Mouth Disease

Early in the 2001 session, the General Assembly addressed the threat of foot and mouth disease by strengthening the powers of the State Veterinarian to respond to imminent threats of foot and mouth disease and other contagious animal diseases. S.L. 2001-12 (S 779). The new law applies to any “contagious animal disease that has the potential for very serious and rapid spread” or other serious consequences as determined by the State Veterinarian (in consultation with the Commissioner of Agriculture and with the approval of the Governor). The expanded powers of the State Veterinarian include the authority to enter private property to examine and test animals, to stop and inspect vehicles transporting animals, to quarantine areas, to prohibit the movement of animals, and to order destruction and proper disposal of infected or exposed animals.

Other Regulatory Measures

Other regulatory legislation enacted this session included:

- S.L. 2001-254 (H 1312), which extends the swine farm moratorium until September 1, 2003, and the Division of Soil and Water Conservation’s swine farm inspection pilot program until September 1, 2002;
- S.L. 2001-326 (S 848), which removes the previous exemption of public livestock markets from permitting requirements for animal waste management systems unless the market has obtained an individual water quality permit under G.S. 143-215.1;

- S.L. 2001-440 (S 312), which specifies that the duty of the Department of Agriculture to regulate anhydrous ammonia installations is limited to fertilizer uses and does not include industrial uses; and
- S.L. 2001-343 (H 1318), which spells out the conditions under which farm machinery dealerships may be terminated by manufacturers or distributors.

Crops

Legislation enacted in 2001 concerning crops included:

- S.L. 2001-488 (H 382), which adopts the scuppernong grape as the state fruit, the strawberry as the state red berry, and the blueberry as the state blue berry;
- S.L. 2001-262 (S 823), which provides for the ABC Commission to issue wine tasting permits, allows wineries to sell imported wine in limited situations, allows small wineries to obtain wine wholesaler permits, and authorizes a wine grower permit to allow growers to have their grapes processed into wine by a winery (annual sales must not exceed 20,000 gallons); and
- S.L. 2001-290 (H 218), which provides for recovery of double damages for intentional injury or destruction of crops, timber, animals, or facilities used in production.

Taxes

Tax legislation enacted in 2001 affecting agriculture included:

- S.L. 2001-514 (H 688), which imposes the sales tax on sales of seed and fertilizer for nonfarm uses and appropriates funds to N.C. State University for a center for turf grass environmental research and to the Department of Agriculture for public education on turf grass research results;
- S.L. 2001-475 (S 970), which raises the cap on funding the Grape Growers Council from \$175,000 to \$350,000 from the proceeds of the North Carolina wine excise tax; and
- S.L. 2001-499 (H 1427), which allows farmer-to-farmer sales of farmland without requiring the seller to pay deferred taxes.

Liability of Soil and Water Conservation Districts and Officials

Legislation concerning the liability of soil and water conservation districts and officials and animal waste management technical specialists is discussed below in the section on “Soil and Water Conservation.”

Miscellaneous

The 2001 Technical Corrections Act [S.L. 2001-487 (H 338)] includes provisions that clarify the criminal penalty for unlawful collection of ginseng. The act also requires the Board of Agriculture to consult with the Joint Legislative Commission on Governmental Operations before entering leases or contracts for improvements at the State Fairgrounds involving estimated revenues of \$100,000 or more.

Soil and Water Conservation

The 2001 General Assembly enacted two laws concerning liability of soil and water conservation districts, supervisors, and employees. These laws had been sought for some years by the districts. The General Assembly also enacted legislation clarifying the powers of the State Soil and Water Conservation Commission.

County Defense of Suits against District Supervisors and Employees

North Carolina counties have long had the authority to defend civil suits against their own officers and employees and to pay civil judgments against them resulting from such suits. G.S. 153A-97, 160A-167. Counties that have been asked to provide these protections to local soil and water conservation district employees have usually done so. Some counties have indicated that they might provide these protections to district supervisors as well, but other counties have been uncertain about their authority to do so, because they were not sure that district supervisors were county officers. S.L. 2001-284 (H 968) eliminates these uncertainties.

S.L. 2001-284 specifically adds district supervisors and local soil and water conservation employees (whether they are technically county or district employees) to the list of those officers and employees who can be defended by the county. The county has the discretion to have such suits defended by the county attorney or to employ special legal counsel or use insurance company attorneys. District supervisors or employees who wish to take advantage of the new law must give pretrial notice to the board of county commissioners of any claim or litigation against them before the claim is settled or a judgment is given.

Small Watershed Project Liability

Early common law decisions imposed a legal duty on landowners to take “reasonable care” to protect business visitors (“invitees”) from being injured while on the landowner’s property. The landowner only owed a legal duty not to intentionally injure nonbusiness visitors, including trespassers and “licensees” (persons on the property by express or implied permission but not on mutual business). For more than two decades there has been a trend in common law decisions to liberalize liability by applying the reasonable care standard to all entrants or at least to licensees as well as invitees. About half of the nation’s state courts have joined this trend, including North Carolina in 1998. (*Nelson v. Freeland*, 349 N.C. 615, 507 S.E.2d 882, applying the reasonable care standard to licensees.)

In a parallel development, more than forty states have enacted statutes that protect rural landowners from liability to people who are injured while hunting, fishing, hiking, swimming, or otherwise recreating on their land without charge. These statutes allow rural landowners to defend liability suits by proving that they did not intentionally injure the people who entered their land without charge. In 1995 North Carolina enacted such a statute, G.S. Chapter 38A, which protects landowners who invite or permit others to use their lands without charge for recreational or educational purposes. The statute probably would protect a private landowner or soil and water conservation district supervisor who helped sponsor a small watershed project and who was sued by an injured recreational or educational user of the project. However, if it happened that the district or a county owned an easement or part of the watershed project property, the district or county could not claim this defense, because G.S. Chapter 38A does not apply to governmental landowners.

Small watershed project sponsors have tried for several years to get legislation enacted that would fill this gap. In 2001, with crucial help from Representative Arlie Culp (a former Soil Conservation Service district conservationist), the General Assembly finally enacted such legislation in S.L. 2001-272 (H 983). The new legislation adopts the text of G.S. Chapter 38A as an amendment to G.S. Chapter 139, the statute dealing with soil and water conservation districts. The new law essentially gives the same protections to districts, supervisors, and other landowners, and it applies only to land associated with watershed improvement projects.

S.L. 2001-272 adds the following sentence: “This statutory rule modifies the common law of North Carolina concerning landowner liability.” This sentence indicates a legislative intent that the new statutory rules—rather than the rules laid down in common-law decisions such as *Nelson v. Freeland*—should govern future liability decisions on this subject.

Technical Specialists and Best Management Practices

Existing legislation authorizes the State Soil and Water Conservation Commission to designate technical specialists who will review and certify animal waste management plans.

S.L. 2001-284 (H 1111) makes it clear that the commission has the authority to develop a program for the approval of these technical specialists and to develop best management practices to be used in the Department of Environment and Natural Resources' (DENR) water quality protection programs. S.L. 2001-284 specifically authorizes the commission to adopt rules that establish criteria for approval of these practices.

Funding

Section 19.2A of the 2001 Appropriations Act [S.L. 2001-424 (S 1005)] allocates \$240,000 for each of the next two fiscal years to support agricultural cost share technical assistance in soil and water conservation districts. This reallocation is designated as permanent, and continuing in subsequent fiscal years unless the General Assembly otherwise directs.

Section 19.12 of the Appropriations Act reallocates funds that were originally allocated in 1995 to the Town Fork Creek Watershed Improvement Project. The reallocations are as follows:

- \$41,680 to Stokes County Water and Sewer Authority for the Germanton Water Project
- \$893,560 to Stokes County Water and Sewer Authority for the Walnut Cove/Industrial Site Connection (with any leftover funds allocated to the Dan River Project)
- \$80,000 to the Stokes County Water and Sewer Authority for the Dan River Project
- \$30,000 to DENR for the Limestone Creek Small Watershed Project in Duplin County
- \$346,640 to DENR for the Deep Creek Small Watershed Project in Yadkin County

Air Quality

Several significant bills relating to air quality were introduced and debated at length. Only S.L. 2001-504 (H 969) passed. S.L. 2001-504 sets fees for the enhanced automobile inspection and maintenance requirements created by S.L. 1999-328 (the debate over these fees had been lingering since 1999). Enhanced inspection of vehicle emissions systems is seen as a way of improving the state's deteriorating air quality.

The new inspection and maintenance fee legislation increases the maximum emissions and safety inspection fee to \$23.50 (effective January 2002) and then to \$23.75 (effective July 2007) and decreases the safety-only sticker fee from \$1.05 to 85 cents. S.L. 2001-504 also modifies the fee distribution formula set out in G.S. 20-183.7(c) and deletes the Highway Trust Fund Repayment Fee. It adds new G.S. 20-183.7(f) and (g) to require inspection stations to post fee information in a highly prescribed manner. The bill also includes enforcement provisions with mandatory penalties for certain stated categories of violations.

Promoted as the "Clean Smokestacks" bill, Senate Bill 1078 (and its equivalent, House Bill 1015) would have required reductions in emissions of nitrogen oxides, sulfur dioxide, and mercury from certain power plants in North Carolina. These fossil-fuel plants are grandfathered (that is, they are out of compliance with current clean air standards but are allowed to remain in operation anyway) under the federal Clean Air Act. The bill passed the Senate by a large majority, but it remained in the House Public Utilities Committee at adjournment. It is eligible for consideration in the 2002 session.

House Bill 1308 would have extended the date for low-sulfur gasoline implementation (mandated in 1999) by at least two years (the current deadline for implementation is 2004). Senate Bill 1037 would have allowed construction of air pollution sources prior to obtaining a permit. Neither of these reductions in air regulation passed both chambers.

Coastal Resources

S.L. 2001-419 (H 1268) provides criteria for exempting some residential construction from coastal buffer requirements. It also allows DENR to condition local Coastal Area Management Act

(CAMA) planning grants on completion of plans and to carry funds for grants forward past the end of the state fiscal year.

S.L. 2001-418 (H 189) authorizes the Coastal Resources Commission to soften its rules on buffers. The new legislation gives the commission temporary rulemaking authority to allow some construction in buffers and to permit some non-water dependent uses next to the water.

Environmental Finance

Bond Proceeds

S.L. 2001-416 (S 247) changes the way in which remaining issues and proceeds of the 1998 Clean Water Bond Act will be handled. It defers the use of proceeds and the issuance of further bonds until after January 1, 2002. The new law reallocates bond proceeds originally designated for use as loans. Those proceeds will become grants to unsewered communities and supplemental grants and will be administered through the Rural Economic Development Center. S.L. 2001-416 also gives the Rural Center some flexibility to reallocate funds between the unsewered and supplemental grant categories and provides administrative funding to the center.

Budget

The Department of Environment and Natural Resources took significant cuts in this difficult budget year, as did all state agencies. However, the cuts were by no means disproportionate to the reductions in state funding at other agencies. In fact, many observers felt that DENR's share was relatively less than expected. One reason, of course, is that after a decade of very close scrutiny and regular reductions in DENR line items, there appears to be little left to cut other than actual program or service delivery. DENR's aggregate funding levels in the appropriations conference report were \$159,072,700 for 2001-2002 and \$158,722,700 for 2002-2003.

Under S.L. 2001-454 (H 1299), DENR is authorized to use \$495,000 in funds each biennial fiscal year from the Noncommercial Underground Storage Tank Fund to administer the underground storage tank program.

Dedicated Funds

The House budget made significant reductions in funding for the Clean Water Management Trust Fund (CWMTF). The House reduced the Senate appropriation to the CWMTF by \$20,000,000 in the first year and by \$40,000,000 in the second year. The conference committee restored the funding levels for CWMTR to \$40,000,000 in 2001-2002 and \$70,000,000 in 2002-2003. Environmental program supporters celebrated the funding of CWMTR as a major victory for the session.

S.L. 2001-114 (H 1108) makes public authorities, as defined in G.S. 159-7, eligible for funding under the Parks and Recreation Trust Fund. The new law applies to a wide variety of local agencies whose budgeting and accounting systems are separate from local governments.

Energy Conservation Revolving Loans

S.L. 2001-338 (H 332) broadens the allowed purposes of state energy improvement loan financing beyond business and commercial interests to local government and the nonprofit sector. It authorizes rulemaking for additional types of energy conservation loans by state-regulated financial institutions. The new legislation also sets the interest rate for energy conservation revolving loans at 3 percent per annum (with certain loans authorized at 1 percent per annum) and increases the maximum term to ten years.

Tax Incentives

S.L. 2001-335 (H 146) changes the treatment of tax credits for partnerships by limiting the amount of credits that can be passed through to partners. The bill was amended to exempt the conservation tax credit program from this change in partnership taxation until tax year 2005. The effect of S.L. 2001-335 on North Carolina's innovative conservation tax credits program would have been to limit the credits on any individual donation of land to \$250,000 for a partnership as a whole, even if there were many individual partners who would each receive only a small amount of tax credit despite having contributed large amounts of capital to purchase land.

Environmental Health

This session, the legislature enacted a variety of laws addressing environmental health issues. These issues ranged from public health authorities, sanitary districts, institutional sanitary requirements, wells, septic tanks, and septage to legal remedies and liability.

Employees of Public Health Authorities

S.L. 2001-92 (S 221) exempts employees of public health authorities from the coverage of the State Personnel Act. It also makes clear that a local public health authority is created by a *joint* resolution of the local board of health and of the board of county commissioners.

Sanitary Districts

S.L. 2001-221 (H 235) empowers sanitary district boards to enter agreements with other sanitary districts or municipal corporations to develop and implement economic development plans. (Sanitary districts already possessed general authority to enter such agreements with a broader group of local governments under the Interlocal Cooperation Act, G.S. 160A-461. The districts, however, did not already have economic development planning authority.) S.L. 2001-221 also contains specific provisions on nonreverting funds and audit responsibilities that are not duplicated in the Interlocal Cooperation Act.

S.L. 2001-301 (H 236) authorizes a sanitary district that contains a municipality, on petition of the municipality, to make a satellite annexation in conjunction with an annexation of the same land by the municipality. The act also addresses differing rates and charges, as well as utility lines in the annexed area that were constructed or are operated by the county.

Sanitary Requirements for Family Foster Homes and Therapeutic Homes

Senate Bill 541 began as a bill to provide for testing and approval of any spring that supplies water to an institution located in a single family home. The bill was rewritten in committee to exempt from sanitation requirements family foster homes and full-time therapeutic homes that provide parent-substitutes in private residences for troubled children and adolescents. The committee rewrite was enacted as S.L. 2001-109.

Wells and Well Contractors

S.L. 2001-113 (H 609) began as a bill to disapprove an October 2000 Environmental Management Commission rule concerning well construction standards. The act was rewritten in committee as a retroactive law establishing separation standards for wells serving single-family dwellings when lot sizes preclude meeting the distances set by rule. Under S.L. 2001-113, setbacks must be the "maximum possible," but no less than twenty-five feet from a watertight sewage or liquid waste collection or transfer facility and fifty feet from septic tanks and drain fields, animal barns, and cesspools or privies.

S.L. 2001-440 makes a number of changes in the Well Contractor Certification Law. The changes

- prohibit offers to work (as well as actual work) by uncertified contractors,
- shorten the time for certificate renewal after expiration,
- increase the maximum civil penalty for violations to \$1000,
- exempt certain older well contractors from continuing education requirements (a provision that expires in seven years), and
- prohibit certification of contractors who have committed certain violations.

Septage Management

S.L. 2001-505 (H 1019) generally revises the septage management law. Among other things, it requires operator training, increases fees for septage management firms, establishes probationary permits for firms that have not operated for two years, provides for temporary tanks and innovative or alternative systems, and provides for twice-a-year inspection of septage land application sites.

Septic Tanks

S.L. 2001-505, which revises the septage management law, also adopts a comprehensive classification system for on-site wastewater systems (septic tank systems). It began as a proposal in the Senate Agriculture/Environment/Natural Resources Committee by a segment of the wastewater equipment industry for legislation to accommodate its products. This proposal inevitably attracted the attention of other segments of the industry and resulted in lengthy markup sessions in committee. A substitute bill emerged that was acceptable to the Division of Environmental Health and to the interested industry groups. The extensive work that produced the new classification system was done by industry spokespersons, state and local environmental health personnel, and George Givens of the Legislative Research Division.

S.L. 2001-505 sets forth a new classification system that defines the following types of on-site wastewater systems:

- *Conventional systems* are traditional septic tanks with gravity flow disposal fields, including nitrification trenches, and “no other appurtenances” (that is, no “bells and whistles”).
- *Experimental systems* and *controlled demonstration systems* are systems approved by DENR for research, testing, or trial use. One difference between these two classifications is that manufacturers may install up to 50 experimental systems for limited trial use and up to 200 controlled demonstration systems. Another difference is that experimental systems may be installed only on lots suitable for conventional systems (including adequate repair areas), but controlled demonstration systems may be installed on unsuitable or provisionally suitable lots if DENR determines that the manufacturer can provide an acceptable alternative method of wastewater treatment.
- *Innovative systems* are systems that have been evaluated by DENR as experimental or controlled demonstration systems or have been evaluated by other states. DENR may approve innovative systems only after published notice, an opportunity for public comment, and suitable findings concerning performance, construction materials, and intended uses. In approving an innovative system, DENR may allow reduction of trench length by more than 25 percent only if the manufacturer provides a minimum five-year performance warranty to each owner or purchaser of the system.

The Commission for Health Services may designate an innovative system as an “accepted system” after five years of general use in North Carolina. (The commission may also designate as accepted systems innovative systems that have been in general use in North Carolina for more than five years and nonconventional systems approved by the commission for general use in specific applications.) An accepted system may be approved for use in applications where a conventional system is unsuitable.

S.L. 2001-505 directs DENR to approve one or more nationally recognized protocols for on-site systems. It also establishes a new fee schedule for review of these systems (ranging from

\$1,000 to \$3,000) and contains a number of transitional provisions for implementation of the new classification system.

Legal Remedies: Civil Penalties and Nuisance Abatement

S.L. 2001-120 (H 837) authorizes a board of county commissioners that exercises the powers of a board of health to enforce local health rules by the imposition of civil penalties (but not as misdemeanors unless specifically declared in the rule). At present, this act applies to Mecklenberg and Wake Counties.

G.S. 160A-193 allows cities a lien for collection of the expenses of a public health nuisance abatement action on the land where the nuisance occurred. S.L. 2001-448 (S 352) expands the coverage of that lien to any other land inside the city or within one mile of the city limits that is owned by the person in default. It also similarly expands the coverage of liens for removal or demolition of unsafe buildings.

Liability

Health departments sought legislation this session to protect environmental health specialists from personal liability for simple negligence in civil suits arising out of their work. The departments made this effort in response to a recent North Carolina Court of Appeals decision holding that specialists are only public employees (who are liable for simple negligence), rather than public officials (who have qualified immunity against civil liability). *Block v. County of Person*, 141 N.C. App. 273, 540 S.E.2d 415 (2000). The health departments' proposal, as summarized in an earlier edition of H 1019, sought statutory recognition of environmental health specialists as public officers with the same status as local building inspectors. House Bill 1019 (5th Edition), Section 3.1, Session 2001, N.C. General Assembly. The proposal also addressed another aspect of the *Block* decision by documenting the established discretionary functions of environmental health specialists. *Block* and other liability cases lay down a two-part test of public officer status: recognition of a position by statute or constitution and performance of "discretionary functions."

The health department proposal received a mixed reaction in Senate Judiciary I. The committee deleted the proposal from H 1019 and instead recommended professional liability insurance coverage—a recommendation that was included in the enacted version of the bill (S.L. 2001-505). Section 3 of the act directs the Public Officers and Employees Liability Insurance Commission to "effect and place professional liability insurance coverage for local health department sanitarians defended by the State" under the North Carolina Tort Claims Act. It also provides that "for insurance purposes only, local health department sanitarians are considered to be employees of the Department of Environment and Natural Resources."

This legislation leaves at least two questions unanswered. First, there is uncertainty in some quarters about the status of the insurance feature of S.L. 2001-505, because the General Assembly failed to provide a supporting appropriation. Second, the impact of S.L. 2001-505 on civil suits against specialists filed in superior court remains uncertain, because specialists who are sued in superior court may be unable to take advantage of the proposed insurance coverage.

Growth/Planning

Several growth and planning-related bills that passed in 2001 have potentially significant environmental consequences. They include S.L. 2001-372 (S 633), which creates a pilot program for revised building codes to assist downtown renovation and reuse; S.L. 2001-266 (S 9), which establishes the Interstate High-Speed Rail Commission; S.L. 2001-239 (S 719), which permits quick-take procedures for Triangle Transit Authority; S.L. 2001-191 (H 910), which authorizes

municipal regulation of clear-cutting by certain municipalities; and S.L. 2001-269 (S 731), which revises the transportation planning process. These bills are summarized in Chapter 15, “Land Use, Community Planning, Code Enforcement, and Transportation.”

Marine Fisheries

Licensing

House Bill 1121 proposed a coastal recreational fishing license. As in each session in recent years, the bill failed to pass.

Management Plans

S.L. 2001-213 (S 202) changes the process for revising fisheries management plans, calling for revision every five years rather than every three years. It also repeals the sunsets on marine fishery licensing statutes, extends the moratorium on issuing new shellfish licenses in Core Sound, and staggers the terms of members of the Marine Fisheries Commission.

Natural and Protected Areas

Parks

S.L. 2001-217 (S 854) codifies changes in the state park system. These include the removal of portions of Jockey’s Ridge State Park and Bushy Lake State Natural Area and other technical and conforming changes. The bill also provides for a referendum on a technical change to the North Carolina Constitution permitting acceptance of property into the state park system by bill rather than by joint resolution.

Wetlands

S.L. 2001-32 (H 702) authorizes Tyrrell County to dispose of wetlands mitigation banking credits.

Permitting

A special provision in the budget bill, S.L. 2001-424, continues DENR’s pilot program to experiment with “one stop permit assistance” in several regional offices. Another provision calls for continued study of DENR permitting processes in the Division of Water Quality, the Division of Coastal Management as it relates to CAMA permits, and the Division of Land Resources as it relates to sedimentation and erosion control plans.

Pollution Prevention

S.L. 2001-144 (S 264) strengthens the mandate to the Department of Administration to develop a model report for all state agencies that is made from recycled paper and printed on both sides of the paper. The act also requires that state publications of historical and enduring value be printed on acid-free paper.

Solid Waste

Littering

S.L. 2001-512 (S 1014) addresses the litter problem in North Carolina in multiple ways. The new legislation makes significant changes to G.S. 14-399, the criminal statute on littering. It also

- adds requirements regarding materials escaping from vehicles,
- gives local governments more specific authority to regulate littering,
- gives direction to boards of elections regarding campaign signs,
- requires reports on enforcement from numerous state agencies,
- directs the Department of Transportation to take steps to reduce litter and aid in cleanups, and
- encourages recycling in numerous ways.

S.L. 2001-512 is the most comprehensive effort to deal with littering ever undertaken by the General Assembly.

Changes to G.S. 14-399. G.S. 14-399 defines the crime of littering and sets forth increasingly severe penalties for illegally disposing of increasingly greater quantities of materials and for disposing of hazardous materials. S.L. 2001-512 amends G.S. 14-399 to establish parallel infractions for the same illegal actions. For example, G.S. 14-399(c) makes littering in an amount not exceeding fifteen pounds a Class 3 misdemeanor punishable by a fine of not less than \$250 or more than \$1,000 for a first offense and the possibility of community service. New G.S. 14-399(c1) makes the same activity an infraction punishable by a fine of not more than \$100 and the possibility of community service. This pattern is continued throughout the statute. An *infraction* is defined by G.S. 14-3.1 as a noncriminal violation of law not punishable by imprisonment. The procedures for disposition of infractions are set out in Article 66, G.S. Chapter 15A. Although all of the protections and procedures that accompany the criminal process do not apply to infractions, the state's burden of proof in establishing responsibility for the violation is still "beyond a reasonable doubt." See G.S. 15A-1114(f). The policy behind enactment of the parallel infractions provisions appears to be that persons charged with an infraction are less likely to contest the charge, because they are not pleading guilty to a crime and the fine is generally smaller. This change means that an officer who charges someone with littering under the statute has a choice of citing the offender under the criminal provisions or under the infraction provisions.

S.L. 2001-512 also makes several other changes to G.S. 14-399. Subsection (b) now provides that if litter is spilled or scattered from a motor vehicle, the operator of the vehicle is presumed to have committed the offense. The scattering or spilling of nontoxic, biodegradable agricultural products or supplies is exempted from this presumption. The act expands this exemption to make clear that it applies to the spilling or scattering of mulch, tree bark, wood chips, and raw logs.

Subsection (i)(3) of G.S. 14-399 formerly contained a long list of law enforcement officers who could enforce the statute. S.L. 2001-512 replaces that list. Under the new law, the statute may be enforced by "law enforcement officer[s] sworn and certified pursuant to Chapter 17C or 17E of the General Statutes, except company police officers as defined in G.S. 74E-6(b)(3)" and by county and municipal employees designated as litter enforcement officers.

Subsection (i)(4) previously excluded from the definition of litter materials such as newspapers and religious tracts that enjoy constitutional protection. S.L. 2001-512 narrows this exclusion to provide that it applies only when the materials are being used or distributed in accordance with their intended uses.

The amendments to G.S. 14-399 became effective March 1, 2002.

Chapter 20 amendments. Effective June 1, 2002, S.L. 2001-512 amends G.S. 20-116(g) to make it clear that the rules regarding the hauling of rock and gravel also apply to sand. That is, a vehicle hauling sand must be securely covered by a tarpaulin or similar covering and must be loaded no higher than six inches below the top of the vehicle's side walls, or the vehicle must be so constructed as to prevent the load from leaking, blowing, or otherwise escaping.

Directions to DOT. S.L. 2001-512 adds new G.S. 136-28.12 to direct DOT, "to the extent practicable," to schedule the removal of litter from highways and highway right-of-ways before mowing right-of-ways. The obvious purpose of this direction is to prevent a bad situation from

becoming worse. The act also adds new G.S. 136-32.3 requiring DOT to place signs on the Interstate Highway System informing motorists of the penalties for littering.

Local government authority. Cities and counties currently have authority to regulate littering under their general powers to manage solid waste. S.L. 2001-512 makes this authority explicit by amending G.S. 153A-136(a) and 160A-185 to provide that counties and cities have authority to regulate the illegal disposal of solid waste, including littering on public and private property, and to enforce such regulations by civil penalties and other remedies. The act also provides that such regulations may be enforced by employees specially appointed as environmental enforcement officers.

Elections provisions. S.L. 2001-512 adds new G.S. 163-22.3 and 163-33.3 to the election laws to require that when a person files a notice of candidacy with the State Board of Elections or the county board of elections—and in certain other circumstances—the appropriate board is to inform the candidate of the provisions regarding the posting of campaign signs.

Reports. S.L. 2001-512 adds new G.S. 147-12(b) to require semiannual (February 1 and August 1) reports to the Governor on the enforcement of the anti-littering laws. The following agencies must file reports: Department of Correction, Department of Transportation, Department of Crime Control and Public Safety, State Highway Patrol, Wildlife Resources Commission, Division of Parks and Recreation, Division of Marine Fisheries, and the Administrative Office of the Courts. The Governor is directed to present a consolidated report to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House and Senate Appropriations Subcommittees on Natural and Economic Resources.

Recycling. S.L. 2001-512 enacts several provisions to encourage recycling. It adds new G.S. 115C-47(4) to require local boards of education to encourage recycling in the public schools and authorizes the boards to implement recycling programs in the schools. The act adds new G.S. 130A-309.14(k) to require the Department of Transportation to provide recycling containers at all highway rest areas for aluminum, newspaper, recyclable glass, and plastic bottles. It further amends G.S. 130A-309.14(a)(1) to require recycling containers on each floor of every state office building for the collection of aluminum, newspaper, sorted office paper, recyclable glass, and plastic bottles. The containers for glass, plastic, and aluminum are to be located near trash receptacles.

Demolition Debris Landfills

G.S. 130A-301.2 allows a landowner to dispose of demolition debris on the land on which the debris was generated without obtaining a permit from DENR, if the disposal area is less than one acre and certain other conditions are met. S.L. 2001-357 (S 783) adds to the list of conditions that must be met a requirement that the perimeter of the landfill be at least fifty feet from any stream or river. The act also amends the statute to require that notice of closure of the landfill must be filed with the appropriate board of county commissioners rather than with DENR, and that the board must then forward the closure documents to DENR, along with certification that all of the statutory requirements have been met. This special statutory authority for certain demolition debris landfills was to expire June 30, 2001. S.L. 2001-357 changes the expiration date to September 30, 2003.

White Goods

G.S. 130A-309.82 requires counties to use funds from the white goods tax only for the disposal of white goods. G.S. 130A-309.83 establishes a grants program in the Department of Environment and Natural Resources for white goods management. Both of these provisions were to expire July 1, 2002. S.L. 2001-265 (H 1062) repeals the provisions of Chapter 471 of the 1993 Session Laws that caused these provisions to expire, thereby making them permanent. S.L. 2001-265 also repeals these provisions.

Effective July 1, 2001, G.S. 130A-309.81 allows counties to levy a disposal fee for white goods.

Waste Incineration

S.L. 2001-440 amends G.S. 130A-309.10 to impose additional requirements on the incineration of waste. The new provisions require an applicant for a permit to operate an incinerator to submit a plan to DENR along with the application. The plan must provide for implementation of a program to prevent the incineration of waste that must not be incinerated (including antifreeze and lead-acid batteries), as listed in G.S. 130A-309.10(f1). The plan must also provide for the random visual inspection of at least 10 percent of the waste delivered for incineration, for the training of the inspectors, and for the retention of records of visual inspections. These new requirements do not apply to incinerators that dispose only of medical waste.

Superfund and Inactive Sites Cleanup

Dry Cleaners

S.L. 2001-265 (S 1010) continues the series of legislative attempts to fix the Dry Cleaning Solvent Cleanup Act of 1997. This year's legislation

- moves the effective date of the increase in the tax on dry-cleaning solvent from October 1 to August 1, 2001;
- reenacts a provision dealing with the cleanup of dry-cleaning solvent contamination prior to the full implementation of the state's dry cleaning cleanup program;
- extends the temporary rulemaking power of the Environmental Management Commission with respect to dry cleaners to 2002; and
- makes other changes to conform to the repeal of the sunset on the white goods disposal tax.

Petroleum Discharges and Residual Contamination

S.L. 2001-384 (H 1301) resolves the lingering controversy over the requirement to record in the chain of title notices of contaminated properties that are not cleaned up to unrestricted use standards (the state's "normal" standards for soil and groundwater contamination). The act also creates a new type of recorded notice for residual petroleum contamination. This notice must be filed for properties that use risk-based cleanup approaches that leave residual petroleum contamination above statewide standards. The procedural approach for notice of petroleum contamination is similar to the template created in the Brownfields Property Reuse Act of 1997. However, the act's provision of a separate agreement for "residual petroleum" acknowledges that many (perhaps most) petroleum products degrade over time into less toxic forms, unlike some hazardous substances subject to the more general recording provisions of the Brownfields Act.

Petroleum Discharges and Cleanup Contracts

S.L. 2001-442 (H 1063) establishes partial authorization for DENR to use "pay for performance" contracts in petroleum site cleanup. DENR is allowed to allocate up to 50 percent of the available funds in the Commercial and Noncommercial Underground Storage Tank Funds for performance-based cleanups. This type of cleanup contracting uses set prices and payment periods to give contractors incentives to complete work within budget and on time, and it has been successfully used in Florida and other states. This is another step in the state's attempts to establish cost controls for payouts under its leaking underground storage tank funds. The act authorizes the Environmental Management Commission to develop temporary rules for the program.

Water Quality

Buffers

S.L. 2001-404 (H 1257) creates a surface water identification training and certification program. This represents an attempt to resolve a controversy arising out of the state's recent efforts to protect buffers along streams in nutrient sensitive watersheds, such as the Neuse River. The problem is identifying surface waters (streams, creeks, and so forth) that require buffers. Intermittent streams, by definition, do not always have water in them; thus there is a need to determine which intermittent streams are subject to the buffer requirements. The new law permits certification of local government employees and employees of the Divisions of Water Quality and Forest Resources (including forestry technicians) to make the call on where the "waters of the State" begin and end.

Water Resources

Neuse River Rules

S.L. 2001-361 (H 612) sets an effective date (July 1, 2004) for an Environmental Management Commission rule on withdrawal of water from the Neuse River, unless a later legislature specifically disapproves the rule. This represents an attempt to resolve a dispute between the Town of Wake Forest and the City of Raleigh and other interested parties on the withdrawal of water from the Neuse River below Falls Lake Dam.

Utilities and Energy

Universal Telephone Service Rules

In 1995 the General Assembly made a statutory commitment to the availability of universal telephone service at reasonable rates but left organization and funding to be worked out under rules of the N.C. Utilities Commission. G.S. 62-110(f1). The legislation established interim arrangements beginning in 1995 and contemplated that the commission would adopt final rules by July 1, 2001, including the designation of the utility service provider and funding mechanism (through interconnection rates or otherwise).

S.L. 2001-252 (S 217) delays until July 1, 2003, the deadline for the commission to complete its investigation and final rulemaking.

Regulatory Fees

S.L. 2001-427 (H 232) sets regulatory fees on public utilities to defray the cost of regulation. Each utility under the Utilities Commission's jurisdiction will pay 0.1 percent of its jurisdictional revenues earned during each quarter that begins after July 1, 2001. (The comparable figure last year was 0.09 percent.) Under S.L. 2001-427, the electric membership corporation regulatory fee is \$200,000 for the 2001-2002 fiscal year.

Energy Improvement Program

In 2000 the General Assembly established a business energy improvement program in the Department of Administration (DOA) to promote energy efficiency and conservation in business and industry through low-interest revolving fund loans. S.L. 2001-338 expands the scope of the program by making the loans available to local governments and 501(c)(3) nonprofit organizations. The act designates the State Energy Office within the Department of Administration

as the lead agency. It also extends the maximum loan term from seven to ten years; lowers the annual interest rate from 5 percent to 3 percent (or as low as 1 percent for recycling and renewal projects); and empowers DOA to adopt rules allowing state-regulated financial institutions to provide secured loans.

Petroleum Overcharge Funds

Once again, the 2001 Appropriations Act allocates petroleum overcharge funds accruing to the state from the case of *United States v. Exxon*. Section 7.8 of the act allocates \$1.3 million in fiscal year 2001–2002 to the Weatherization Assistance Program of the Department of Health and Human Services. S.L. 2001-424 (S 1005). The allocations are made out of the Special Reserve for Oil Overcharge Funds. Additional funding for weatherization and heating air repair and replacement is contained in the Low Income Energy Block Grant, Section 5.1(a) of the 2001 Appropriations Act.

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