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## Environment and Natural Resources

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After the landmark Clean Smokestacks legislation of 2002, the 2003 Regular Session reverted to an older, more contentious, incrementalist pattern. The competing forces for change largely cancelled each other out, leaving many relatively minor adjustments in the environmental and agricultural regulatory schemes. Several bills that were filed, but that did not pass, seemed to signal a harsher stance by legislators toward the environment. For example, bills were introduced to dismiss two particular water regulators and one air regulator from their positions. Another bill sought to restore the “Hardison amendments,” which used to prevent North Carolina’s environmental rules from being more stringent than their federal counterparts. These “rollback” bills generally failed, as did most of the attempts to strengthen the state’s environmental laws, with one clear exception: a bill to codify North Carolina’s policy against hardening the coastal shoreline passed.

### **Agriculture**

#### **Swine Farm Moratorium**

S.L. 2003-266 (S 593) extends the existing moratorium on new or expanded lagoon and sprayfield-based swine farms for four years, until 2007. The bill was the subject of heated debate. Environmental groups pushed for legislation to set a date certain for phaseout of the lagoon and sprayfield system; Governor Easley had pledged to set such a date in his campaign for governor. House Bill 1188, however, which would have required this phaseout, made no progress. The agricultural community and most legislators instead continue to look to the technology assessment effort under way as a result of an agreement between then-Attorney General Easley, Smithfield Foods, and Premium Standard Farms to find an environmentally superior, economically feasible replacement technology. Completion of the assessment effort was originally scheduled for July 2002 but will probably not occur until 2004 or 2005.

S.L. 2003-340 (S 824) creates an exception to the moratorium on new and expanded swine farms. The exception allows farms in Moore County that received agricultural cost share funds on or before August 27, 1997, for farm construction or expansion to receive permits for new or expanded farms and waste lagoons, despite the moratorium.

### **Nondischarge Permits**

S.L. 2003-28 (S 733) delays until October 2004 the effective date of several new general nondischarge permits for swine, dairy, and poultry operations adopted by the Environmental Management Commission and originally scheduled to become effective May 1, 2003. The new permits include more stringent monitoring and reporting requirements than the existing permits.

### **Extension of Special Swine Farm Inspections Program**

In 1997 a pilot program for animal operation inspections was created in which staff from the Division of Soil and Water Conservation rather than the Division of Water Quality perform these inspections in three counties. S.L. 2003-340 extends the pilot for two more years (until September 1, 2005).

### **Air Quality**

S.L. 2003-428 (S 945) clarifies the extent to which a person who needs an air quality permit can begin construction of a facility before being issued the permit for it. The bill spawned a contentious debate between those who favored letting owners proceed with as much construction as they were willing to risk versus those who favored disallowing any construction until the required permits were issued. As enacted, the bill largely codifies current Department of Environment and Natural Resources (DENR) guidelines allowing a person constructing a new facility to level and grade sites, build access roads, install underground pipes and conduits, and erect ancillary buildings—but not to begin foundations or undertake other construction activities in regard to structures that will house pollution sources—before obtaining the required air quality permit.

The legislative compromise relating to modifications of existing permitted structures is less clear. The enacted legislation creates a procedure whereby an entity gives public notice of its intent to modify a structure, submits a package of materials to DENR, and then waits fifteen days for DENR to approve or deny the request to proceed. DENR is to approve the request only if

- the applicant is in substantial compliance with existing permits,
- the modified facility will be put to a similar use as under the existing permits,
- the facility's emissions will remain substantially the same,
- the modification will not result in a "disproportionate" increase in the size of the facility,
- the modification will not have a significant effect on air quality, and
- DENR is likely to issue the permit modification.

The legislation leaves unclear what will occur if DENR takes no action within the fifteen-day period. Despite committee colloquy to the contrary, permittees arguably may undertake an expansion as long as they comply with the notice and submission requirements of the legislation and do not receive an adverse ruling from DENR. S.L. 2003-428 provides exceptions for projects in nonattainment areas or that are otherwise subject to federally imposed preconstruction requirements that exceed those of state law. The legislation also attempts to insulate the final air permit decision from the effects of a prior decision allowing facility expansion. It disallows the use of expansion authorization in contested cases involving permit denials and statutorily indemnifies state officials from liability for authorizing an expansion and then denying an air permit.

## **Coastal Resources**

### **Coastal Shoreline Protection**

S.L. 2003-427 (H 1028) bans the construction of hardened structures on the coastal shoreline and authorizes the creation of offshore sills of stone or other riprap materials to protect the estuarine shoreline. The hardened structure ban amends the Coastal Area Management Act (CAMA), codifying the past Coastal Resources Commission (CRC) practice forbidding permanent breakwaters, bulkheads, groins, jetties, seawalls, and similar structures on the ocean shoreline. This regulatory ban has seen increasingly strident opposition from property owners all along the migrating North Carolina coastline. The legislation, as enacted, allows the small number of permanent structures that have been built (such as the terminal groin on the south side of Oregon Inlet) to remain, but it attempts to prevent further hardening of the shore. The estuarine provisions authorize the CRC to create a new general permit for the construction of offshore structures that will protect coastal wetlands.

### **CAMA Fee Increase**

House Bill 1323 increases CAMA permit fees from \$400 to \$1,000. It passed the House with bipartisan support and is available for consideration in the Senate Finance Committee in the short session.

### **Coastal Habitat Protection Plans**

S.L. 2003-111 (H 1134) extends the period for adoption of coastal habitat protection plans from July 31, 2003, to December 31, 2004. These plans are supposed to result from an unprecedented level of cooperation between the CRC, the Environmental Management Commission, and the Marine Fisheries Commission.

### **South Coast Condemnation Authority**

S.L. 2003-282 (H 542) adds the towns of Caswell Beach, Oak Island, Ocean Isle Beach, Sunset Beach, and the Village of Bald Head Island to the list of local governments allowed to use the power of eminent domain for beach erosion control, flood and hurricane protection, and beach access purposes.

### **Coastal Water Monitoring**

S.L. 2003-149 (S 959) allows the Health Services Commission to include "coastal recreation waters" among the water types for which it will develop quality monitoring methods, thus allowing the state to be included in a federal program involving beach water quality assessment and public notification of water quality around beaches.

## **Environmental Finance**

### **License Plates**

S.L. 2003-424 (H 855) increases the cost of personal license plates by \$10, with the revenue from the sale of these plates divided between the Natural Heritage Trust Fund and the Parks and Recreation Trust Fund. Earlier versions of the bill would have also increased the fees for many of the special license plates that have been authorized by the General Assembly. Concern over the

effect of the fee increases on plate sales, however, led to elimination of these increases and the creation of a study provision. The act authorizes several new special registration plates, including:

- Alternative Fuel Vehicles,
- Be Active NC,
- Blue Ridge Parkway Foundation,
- Breast Cancer Awareness,
- Buffalo Soldiers,
- Celebrate Adoption,
- Crystal Coast Artificial Reef Association,
- Delta Sigma Theta Sorority,
- Fraternal Order of Police,
- Friends of the Appalachian Trail,
- Mothers against Drunk Driving,
- POW/MIA,
- Red Hat Society,
- Retired Law Enforcement Officers,
- Surveyors, and
- Zeta Phi Beta Sorority.

### **Budget Act Special Provisions**

S.L. 2003-284 (H 397), this year's budget act, includes several special provisions concerning the state's environment and natural resources.

**Express permitting.** DENR is authorized to create a pilot program in which applicants for stormwater permits, erosion and sediment control permits, CAMA permits, stream origination certifications, and 401 water quality certifications may pay more in permit fees to receive faster processing. The program will be funded by the increased fees themselves.

**Cost-share funding.** New classes of "limited-resource" and "beginning" farmers are allowed to receive 90 percent cost-share funding for approved practices (and the 10 percent farmer contribution can include in-kind support).

**Study of the tax implications of land conservation practices.** The Property Tax Subcommittee of the Revenue Laws Study Committee is directed to study the fiscal impacts of conservation land acquisition on local property taxes.

**Permanent permitting for transportation projects.** G.S. 136 is amended to provide that DENR permits required for transportation construction projects will remain effective and may not be modified until a project is completed, subject to limited exceptions.

**Use of recycled steel by recipients of state funds.** G.S. 130A-309.14 is amended to require recipients of state funds to specify recycled steel in their procurement processes, provided its price is reasonable and it meets appropriate performance standards.

### **Dedicated Funds**

Despite the fiscal difficulties posed by one of the state's most serious budget deficits in decades, the primary dedicated environmental funds fared reasonably well in this session's budget negotiations. S.L. 2003-284, the budget act, provides \$62 million for the Clean Water Management Trust Fund (CWMTF) each year of the biennium. The statutory authorization for CWMTF for this year was \$100 million. The House budget appropriated only \$25 million, so the final compromise figure seemed satisfactory to most CWMTF proponents. Of its appropriation, CWMTF is authorized to spend up to \$4.1 million in the next year to match federal farmland preservation funds.

CWMTF, the Natural Heritage Trust Fund, and the Parks and Recreation Trust Fund are also given some procedural protection from having their funds transferred by the Governor in the event of a shortfall in the overall state budget. The Office of State Budget and Management

(OSBM) is directed to make transfers from other sources before it can transfer any moneys from these dedicated funds. At that point OSBM is authorized to transfer up to 20 percent of these funds to other areas to contend with a budget deficit. Before OSBM transfers more than 20 percent, the budget director is required to consult with the Joint Legislative Commission on Governmental Operations. Other dedicated environmental funds, such as the Farmland Protection Fund and the various solid waste and contaminated property cleanup funds, received no appropriations.

### **CWMTF Board**

S.L. 2003-422 (S 831) increases the number of CWMTF board members to twenty-one and outlines board member appointing authority. The act also sets a quorum for the board and describes member terms in order to clarify how the terms should be staggered.

### **Bikeway Funding**

S.L. 2003-256 (S 232) adds counties to the list of local governments having the authority to use transportation funding to build bikeways.

### **Certificates of Participation**

In H 1227 and S 683, advocates for increased land conservation, in support of the state's Million Acres mandate (S.L. 2000-23, codified at G. S. 113A-241) and its current DENR embodiment, One NC Naturally, sought express authorization to use certificates of participation (COPS) for conservation land acquisition. Much of the financing structure included in those bills, allowing the use of COPS for state projects, was embedded in the budget act, but there was no express provision authorizing the use of COPS for conservation land acquisition.

## **Contaminated Property Cleanup**

### **Underground Storage Tanks**

The state continues to grapple with the looming insolvency of the two underground storage tank cleanup funds, predicted since the mid-1990s. This year's tank act, S.L. 2003-352 (H 897), restricts funded cleanups to the highest priority problems and requires that they be preapproved by DENR. The act also seeks to advance the performance-based cleanup concept introduced by DENR in 2001 (but still not widely accepted by cleanup contractors). Finally, the act authorizes the Environmental Management Commission to promulgate rules requiring secondary containment for nontank parts of tank systems (such as piping, pumps, and valves).

### **PCB Landfill**

The budget act provides that, if needed, DENR can use up to \$500,000 from the water quality permit fees collected for the 2003–2004 fiscal year to complete the decontamination of the famous PCB landfill in Warren County.

## **Natural Resources**

### **Wildlife Resources**

In response to a news story about someone who was harvesting large quantities of turtles for sale as food in Asia, S.L. 2003-100 (S 825) was enacted to give the Wildlife Resources Commission

authority to issue rules to prohibit the taking of more than four reptiles or amphibians of species with conservation concerns.

### **State Wildflower**

S.L. 2003-426 (H 47) adopts the Carolina lily, *Lilium michauxii*, as the official State Wildflower, with some members expressing hope that this enactment would not preclude future recognition of the Venus flytrap, *Dionaea muscipula*, and the ramp, *Allium tricoccum*.

### **No-Wake Zone**

S.L. 2003-189 (H 655) establishes a no-wake zone on Pembroke Creek in Chowan County.

### **Marine Fisheries**

**Proclamation authority.** S.L. 2003-154 (H 987) substantially rewrites G.S. 113-221 to clarify the relationship between fisheries proclamations and the normal rule-making process of the Marine Fisheries Commission under G.S. 150B. It also increases the time before proclamations can become effective to forty-eight hours.

**Coastal recreational fishing license.** This year's attempt to legislate a requirement for a coastal recreational fishing license, H 831, passed the House near session's end and remains in the Senate Agriculture, Environment, and Natural Resources Committee for consideration in the short session.

**Core Sound shellfishing.** After years of simply extending the moratorium on new shellfish leases in Core Sound, the General Assembly enacted S.L. 2003-64 (S 765), defining an area called "western Core Sound" and permanently limiting new leases in that area.

### **Solid Waste**

Only two bills concerning solid waste management were enacted this session. The first, S.L. 2003-37 (H 1205), involves local government franchises for certain sanitary landfills. In 2002 the General Assembly enacted the Clean Smokestacks Act, S.L. 2002-4, to limit emissions of certain pollutants from coal-fired electrical generating plants. Utilities may wish to dispose of these pollutants in a special-purpose sanitary landfill. G.S. 130A-294, however, requires that before any state permit may be granted for a sanitary landfill, the city or county in which the landfill is to be located must issue the permit applicant a franchise for the facility. S.L. 2003-37 eliminates this procedural hurdle for utilities. It amends G.S. 130A-294(b1) to provide that the franchise requirement does not apply to a sanitary landfill that will be used only to dispose of waste generated by a coal-fired generating unit owned by an investor-owned utility. The second bill, S.L. 2003-386 (H 999), creates new G.S. 75-36 to make void and unenforceable any agreement or contract provision prohibiting toner or inkjet cartridge reuse, remanufacture, or refill.

Senate Bill 970 and House Bill 878 are identical bills that would have established a recycling program for electronic goods. Neither passed the house in which it was introduced and therefore neither is eligible for consideration in the 2004 session.

### **State Parks and Natural Areas**

Several bills made additions and changes to the state parks and natural areas system. Most noteworthy are two new authorized parks in the Piedmont. S.L. 2003-106 (H 1078) authorizes the addition of a new Mayo River State Park in Rockingham County. S.L. 2003-108 (H 1025) authorizes the addition of Haw River State Park in Guilford and Rockingham counties. S.L. 2003-

234 (S 627) makes changes to the system, notably the addition of 6,700 acres to the parks and natural areas system (the last dedication having been made in 2001). The parks affected include Beech Creek Bog State Natural Area, Bushy Lake State Natural Area, Elk Knob State Natural Area, and Lea Island State Natural Area.

## **Water Quality**

### **Swift Creek Reclassification**

One of the most controversial legislative efforts in the environmental arena in the 2003 session involved a bill to disapprove the reclassification of part of Swift Creek in the Tar-Pamlico River Basin. The Environmental Management Commission had reclassified Swift Creek, located in and around Nash County, as Outstanding Resource Waters following over ten years of discussion and debate. S.L. 2003-433 (H 566) permits this reclassification to remain effective for parts of the stream upriver from Nash County State Road 1003, but disapproves the reclassification for the approximately one-third of the watershed below that road.

### **Catawba River Buffers**

Temporary rules adopted by the Environmental Management Commission providing for riparian area management in certain parts of the Catawba River Basin were extended to September 1, 2004, by S.L. 2003-340, the environmental technical corrections bill.

## **Water Resources**

### **Local Water Supply Plans**

Local water supply plans have been required of publicly owned community water systems since the late 1980s. Now S.L. 2003-387 (H 1062) requires them of all water systems, including investor-owned systems, that regularly serve 1,000 or more connections or 3,000 or more individuals. The act also requires that all local water supply plans describe how the water system will respond to drought and other water shortage emergencies. Lastly, the act directs DENR to establish a Drought Advisory Council to improve coordination among water suppliers and to provide consistent information on drought conditions to interested parties.

### **Contiguous System Water Metering**

The definition of *contiguous premises* was adopted by the state to allow submetering of apartments for water use. S.L. 2003-173 (H 1201) extends this definition to include manufactured homes in order that these homes and the parks in which they are located might be submetered in a similar manner.

*Richard Whisnant*

*William A. Campbell*