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Environment and Natural Resources

Although 2006 was a short session of the General Assembly in which an early agreement was reached on the budget, many environmental bills passed. Major legislation included a new stormwater management bill intended to resolve differences in the various past laws implementing federal Phase II stormwater requirements, a moratorium on municipal solid waste landfill permitting, new requirements for local solid waste disposal franchises, a new certification program for on-site wastewater contractors, and a new permitting and inspection program for private drinking water wells.

Agriculture

S.L. 2006-38 (S 1598) extends until September 1, 2007, the time period in which animal waste management technical specialists who are not professional engineers or who have no other specific qualifications can certify waste management plans and systems. The Department of Environment and Natural Resources (DENR) will report to the legislature by November 2006 regarding its opinion about whether additional requirements are needed for technical specialists.

Air Quality

S.L. 2006-73 (S 1591) extends the Commission on Global Climate Change until April 15, 2008 (from November 1, 2006), and requires an interim report by January 15, 2007.

Section 5.4 of S.L. 2006-255 (S 1587) exempts boilers at Duke Energy's proposed new Cliffside facility from compliance with state air quality regulations regarding new sources of emissions.

Coastal Resources

S.L. 2006-229 (H 1523) increases the maximum penalties for violations of the Coastal Area Management Act (CAMA) and allows the recovery of investigative costs along with the penalties. The new maximum penalties are \$1,000 for minor development violations (was, \$250) and \$10,000 for major development violations (was, \$2,500). The act also specifies the factors to be considered by CAMA regulators in setting penalties.

Contaminated Property Cleanup

Brownfields

S.L. 2006-71 (S 1121) makes several noncontroversial changes to the Brownfields Property Reuse Act. It clarifies that the state brownfields statute cannot be applied to sites on the National Priorities List. It clarifies the definition of *unrestricted use standards*. It tightens the definition of *prospective developer* to limit persons eligible for the brownfields program to those with a bona fide, demonstrable desire to redevelop a property. It shortens public comment periods on proposed brownfields agreements.

Underground Storage Tanks

S.L. 2006-200 (S 1584) transfers \$165,000 from the underground storage tank funds to DENR for increased administrative costs of the program.

Energy

S.L. 2006-206 (S 2051) directs the Department of Administration to plan for the conversion of state fuel distribution facilities to facilitate use of ethanol, biofuels, and other gasoline alternatives. It creates new Part 34A in G.S. Chapter 143B setting up a Weatherization Assistance Program for Low Income Persons in the Department of Health and Human Services. It creates a multiagency Biofuels Industry Strategic Plan workgroup to plan the development of biofuels in the state. It calls for studies to assess water and energy conservation and the possibility of utilities commission regulation of petroleum distribution.

Environmental Finance

S.L. 2006-66 (S 1741), the 2006 appropriations act, funds the Clean Water Management Trust Fund at \$100 million for fiscal year 2006–07 and funds the Parks and Recreation Trust Fund and Natural Heritage Trust Fund. It does not include funding for the Agricultural Development and Farmland Preservation Fund. It appropriates \$15 million to expand the new Hickory Nut Gorge State Park and includes a significant increase in funding for the Agricultural Cost Share Program.

Forest Resources

S.L. 2006-102 (H 2570) and S.L. 2006-115 (S 1928) give Greenville (H 2570), the Town of Clayton, and the City of Reidsville (S 1928) the express authority to regulate the removal of trees prior to development, including the authority to deny building permits for up to three years after the illegal removal of trees.

Marine Fisheries

S.L. 2006-254 (S 1242) authorizes the Marine Fisheries Commission to establish gear-specific permits and limits for striped bass taken from the ocean and to charge up to \$10 for permits.

State Parks, Natural Areas, and Land Conservation

A bill titled Land for Tomorrow would have authorized a \$1 billion bond referendum to provide funding for public acquisition of land for conservation, historic preservation, and related economic development purposes. The bill did not pass, but S.L. 2006-223 (S 1122) creates a sixteen-member study commission to evaluate current state funding for these purposes. The commission is charged with holding at least three meetings across the state and delivering a report to the 2007 session of the General Assembly.

S.L. 2006-138 (H 2127) authorizes two new natural areas in the State Parks System, Mountain Bog State Natural Area and Sandy Run Savannas State Natural Area. It also directs DENR to study the feasibility of creating a park at Cabin Lake.

S.L. 2006-231 (S 1621) authorizes, among other things, \$20 million in special indebtedness (COPS financing) for the Wildlife Resources Commission to purchase game lands being sold by the International Paper Company.

Solid Waste

S.L. 2006-244 (S 353) puts a one-year moratorium on permits for new landfills, subject to six exceptions:

- An amendment, modification, or other change to a permit for a landfill issued on or before June 1, 2006
- A permit for a horizontal or vertical expansion of a landfill permitted on or before June 1, 2006
- A permit to construct a new landfill within the facility boundary identified in the facility plan of a landfill permitted on or before June 1, 2006
- A permit to operate a new landfill if a permit to construct the new landfill was issued on or before June 1, 2006
- A permit for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D
- A permit for a sanitary landfill determined to be necessary by the Secretary of Environment and Natural Resources to respond to an imminent hazard to public health or a natural disaster

The act also directs the Environmental Review Commission to study various issues relating to solid waste and sets up a Joint Select Committee on Environmental Justice.

S.L. 2006-193 (S 951) requires local governments that take over solid waste collection from private contractors (either through annexation, franchising, or otherwise) to give notice to the contractors and either provide a period in which the private service continues or compensate the contractor. The period in which private service may continue by statute is two years in the case of annexation or roughly two years from the notice given by a local government that it intends to displace a private firm for a reason other than annexation. Private firms are required under the act to file notice of their waste collection activities with local government clerks, and local governments intending to provide compensation for service displacement can request and receive business information from the private providers.

S.L. 2006-256 (S 1564) clarifies and adds requirements to the process of awarding local solid waste disposal franchises. In the mid-1990s, the state began requiring issuance of a local solid

waste disposal franchise before a private company could get a state permit to construct a disposal facility. However, the DENR solid waste rules regarding the process for local government approvals of solid waste disposal facilities were never revised to reflect the new franchise requirement. As a result there was no requirement under state law for a prior public notice of a proposed solid waste franchise. S.L. 2006-256 requires this notice and specifies the elements of a conceptual solid waste disposal facility plan that the franchisee must reveal before a public hearing is held on the proposed franchise, including the location of the proposed facility. The act does allow a private company to obtain a “preliminary franchise” before developing its conceptual facility plan.

Toxics and Biocides

S.L. 2006-143 (H 1502) directs the State Board of Education to take steps to protect children from toxics at school, particularly arsenic-treated wood, mercury, bus exhaust, pesticides, mold, and mildew.

Water Supply

S.L. 2006-90 (S 402) revises G.S. 143-64.17 to specify that guaranteed energy savings contracts can include savings from water and other utilities, not just electricity. It lengthens the permissible term of guaranteed energy savings contracts from twelve to twenty years and raises the state’s aggregate limit on these contracts from \$50 to \$100 million. It provides for life-cycle analyses when state heating, ventilation, or air conditioning equipment is replaced in buildings of 20,000 or more gross feet.

S.L. 2006-202 (H 2873) sets up a permit, inspection, and testing program for private drinking water wells. It creates a new defined term, *private drinking water well*, in G.S. 87-85. It directs the Environmental Management Commission (EMC) to adopt rules for the permitting and inspection of new private drinking water wells with designed capacities of 100,000 gallons per day or greater or any wells in areas deemed to need protection by the EMC. It requires new private drinking water wells to be sterilized. It also requires each county to develop, through the public health department, a well-permitting, inspection, and testing program. New well sites require a health department inspection, and permits will be conditioned on the proper closing of any abandoned wells already in place. Newly constructed wells must be tested by the county within thirty days of their certificate of completion. The act authorizes fees for well-testing and inspection services.

S.L. 2006-255 (S 1587) establishes an Emergency Drinking Water Fund in G.S. 87-98. The fund is to be used for testing of private drinking water wells within 1,500 feet of known contamination, notification of well-water users in areas at risk from groundwater contamination, and provision of clean water. Disbursements from the fund are to be prioritized by ability to pay and the lack of availability of alternative water supply funding. The fund is not to be used to clean up contamination.

S.L. 2006-238 (H 1099) allows local governments to contract for professional engineering services necessary to meet state certification requirements for managing public water system construction.

S.L. 2006-214 (H 2164) allows sanitary districts to require property owners in the district to connect to water and sewer lines but also limits the size of any availability fee charged to unconnected properties.

Water Quality

Stormwater

In 2004, in the face of litigation over the EMC's stormwater rules, the General Assembly passed a major stormwater act, S.L. 2004-163, which sets out the process and requirements for the federal Phase II program.¹ In 2005, the EMC won its lawsuit against the Rules Review Commission over the "permanent" EMC stormwater rules, which were more stringent in several respects than S.L. 2004-163. So as the 2006 session of the General Assembly convened, the regulated community pressed for yet another stakeholder negotiation over the Phase II stormwater program, hoping to pull back some of the stringent requirements in the current judicially sanctioned EMC permanent rules.

S.L. 2006-246 (S 1566) is the result of these negotiations and ensuing legislative decisions. The 2006 legislation lessens the stringency of certain technical requirements in the stormwater program and also provides vested rights language requested by the regulated community, but it also expands the geographic scope of the program to take in more than twenty-five counties (and their municipalities) that were not covered by the 2004 act. The principal issues negotiated and revised in 2006 include the following:

- Vested rights for current development
- Which counties and cities are covered by the Phase II program
- Important technical provisions of the post-construction stormwater requirements, including low density thresholds, the amount of stormwater for which controls must be designed, high density standards, and a rule for resolving conflicts in overlapping programs
- The designation process for newly covered local governments
- The petition process for covering additional jurisdictions
- Exceptions and variances
- Waivers
- Implementation time frames
- Express authority for cities and counties to create stormwater programs under the broad enabling legislation of their respective chapters in the General Statutes, 153A and 160A
- Express authority for the enforcement of land use restrictions required for maintenance of stormwater best management practices

For stormwater permittees who already are setting up programs under permits issued after the 2004 bill, the new provisions will go into effect when their five-year permits are renewed.

Section 6 of S.L. 2006-250 (H 1413) extends the civil penalty authority of the EMC and the Secretary of Environment and Natural Resources to local governments in administering stormwater programs and riparian buffer protection programs under G.S. Chapter 143. This authority was previously restricted to discharge permit pretreatment programs.

Nutrient Reduction and Mitigation

In response to the water quality problems caused by excess nitrogen and phosphorus in the Neuse and Tar-Pamlico river basins, the EMC put a series of rules in place in the mid-1990s, including rules that limit development in riparian buffers and that regulate the amount of impervious surface near streams. To give developers flexibility in how they build near streams, DENR allows more impervious surface in these basins if developers pay into a mitigation fund that is used to limit nutrient loading in other places. In a rulemaking process concluded and approved in 2006, the EMC raised the mitigation fees from \$11 per pound for nitrogen and \$11

¹ For a summary and the background on Phase II stormwater legislation in North Carolina, see Richard Whisnant, "Environment and Natural Resources," in *North Carolina Legislation 2004*, ed. William C. Campbell, 78–79, (Chapel Hill: School of Government, The University of North Carolina at Chapel Hill, 2004).

per tenth of a pound for phosphorus to \$57 for nitrogen and \$45 for phosphorus. S.L. 2006-215 (S 1862) legislatively rolls back that rulemaking process and sets the offset payment amounts at the original rate, which the EMC considers inadequate. S.L. 2006-218 (S 927) allows DENR to deny an off-site phosphorus mitigation project if it believes the \$11 per-tenth-pound fee is inadequate to cover the costs.

S.L. 2006-255 (S 1587) allows donation of riparian property for mitigation that is in the same river basin as the affected property, but not necessarily on the same stream.

Soil and Water Conservation

S.L. 2006-78 (H 2129) creates a new funding program for community practices that reduce nonpoint source water pollution, administered by the Soil and Water Conservation Commission and a new fifteen-member advisory committee. This program allows the state's soil and water districts to extend their cost-share funding outside of the traditional farm-based practices to a more urban setting. Funding is limited to \$75,000 per applicant, with a 25 percent match required. The act exempts soil and water officials from the state's conflict of interest provisions for grant funding, as is now done for agricultural cost-share funding.

Clean Water Management Trust Fund

S.L. 2006-178 (H 2208) repeals the requirement (imposed by the 2005 session of the General Assembly) that Clean Water Management Trust Fund decisions about funding water, wastewater, and stormwater projects follow the "common criteria" for funding set out at G.S. 159G-23, thus allowing the trustees of the fund to set their own criteria. It also removes a provision authorizing a 20 percent match requirement for these projects.

On-Site Wastewater

S.L. 2006-82 (H 688) sets up a new professional licensing board for on-site wastewater contractors. New G.S. 90A-70 through 90A-81 require anyone, subject to seven exceptions, who constructs, installs, repairs, or inspects an on-site wastewater system to first have a suitable certificate from the newly created North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The board consists of nine members (with designated seats for stakeholders) who will serve three-year terms. The board has rule-making, enforcement, and fee-setting powers.

S.L. 2006-136 (H 1094) creates a pilot program in small counties with a backlog of at least nine hundred pending septic system permits under which private licensed soil scientists can conduct suitability inspections for on-site wastewater systems.

Sedimentation Pollution Control Act

S.L. 2006-250 (H 1413) authorizes local governments to request a limited delegation of authority for sedimentation and erosion control regulation in their jurisdictions. Under the new law, the local government can request delegation only to perform inspections of covered sites and to require fees to cover the costs of those inspections. Enforcement authority, however, is retained by the state. The act also provides for local permitting of reclaimed water utilization systems.

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