12

Environment and Natural Resources

The 2007 session of the General Assembly passed major environmental legislation affecting animal waste management, energy, water resources, and solid waste disposal. Both proponents and opponents of the energy and solid waste bills called them the most significant legislative changes in those areas in the past twenty years. Intense lobbying efforts by conservation organizations and supporters of water and wastewater infrastructure failed to produce a dedicated source of revenue for land and water conservation or for water and wastewater infrastructure.

Agriculture

In 1997 the General Assembly enacted S.L. 1997-458, creating a two-year moratorium on new or expanded swine waste operations that used the lagoon and sprayfield method of waste management. The purpose of the moratorium was to allow counties to pass ordinances regulating the siting of large swine farms and to provide time to study the technical and economic feasibility of alternative swine waste management methods. The moratorium was extended in 1998 and 2003 and set to expire in 2007. Ten years after the original moratorium, S.L. 2007-523 (S 1465) finally creates a framework for conversion to environmentally superior swine waste management methods and makes the temporary moratorium on traditional lagoon and sprayfield methods permanent.

The act sets up performance standards for swine waste handling that generally track the standards used in a large study of alternative waste systems conducted under the leadership of Dr. Michael Williams at N.C. State University over the last eight years. With few exceptions, the standards limit permits for large swine waste systems to those systems that

1. eliminate the discharge of animal waste via direct discharge, seepage, or runoff to surface water and groundwater;
2. substantially eliminate atmospheric emission of ammonia;

3. substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located;
4. substantially eliminate the release of disease-transmitting vectors and airborne pathogens; and
5. substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

The most important exception is that farms with permits for lagoon and sprayfield treatment issued before September 1, 2007, are grandfathered. Existing farms with lagoons that become "imminent hazards" are allowed, under conditions set out in the act, to replace the hazardous lagoons. Thus, the act does not provide for the phase-out of existing swine farms.

The act sets up a voluntary program for existing farms to convert to environmentally superior waste technologies. It creates a grant program, administered by the Division of Soil and Water Conservation in the Department of Environment and Natural Resources (DENR) through the Agricultural Cost Share Program, to provide financial assistance with this process. Unlike traditional state agricultural cost-sharing, the grants are to be given to applicants having a limited ability to pay. The act sets out other criteria for the grants. The amount of grant funding is capped at $500,000 for each applicant, with the ceiling ramping down after 2012 to $450,000 and after 2017 to $400,000. The grants are subject to the funding of a new Swine Farm Waste Management System Conversion Account, which received $2 million in nonrecurring funds in the 2007 budget.

A late addition to the swine waste conversion act focused on using methane from lagoons for energy production. Up to fifty swine farms are authorized to participate in a pilot program to capture methane from lagoons or other waste systems. The program requires electric utilities serving these farms to buy electricity produced by the farms and creates a process for setting a rate for energy purchase, with a cap at 18 cents per kilowatt hour (a rate substantially above current rates, which range between 4 and 5 cents per hour). Many persons who have participated in the study of environmentally superior swine waste technology believe that the sale of by-products from waste technology, especially energy sources, is critical to the economic feasibility of the new technologies. S.L. 2007-397 (S 3), the renewable energy portfolio standard act, contains a provision requiring electric power suppliers in the state to ramp up to at least 0.2 percent of the total electric power sold to retail customers to be generated from swine waste by the year 2018. The same act requires at least 900,000 megawatt hours of electricity to be generated from poultry waste by the year 2014.

S.L. 2007-536 (H 810) addresses several other problems in the current system of swine waste regulation. It authorizes county employees and employees of soil and water conservation districts to continue to plan, design, and implement swine waste management systems, overturning an objection by the engineering licensing board that such work constituted engineering and must be supervised by a professional engineer. The act extends until 2009 a "pilot" program in four counties with major swine operations in which the Division of Soil and Water Conservation, rather than the Division of Water Quality, is primarily responsible for inspection of those operations. The act also clarifies that the regular enforcement provisions for water quality—including civil penalties, injunctions, and criminal penalties—apply to violations of rules for animal waste management systems.

Air Quality

S.L. 2007-296 (H 1646) raises the maximum civil penalty for air pollution violations from $10,000 to $25,000 per day.

S.L. 2007-465 (H 1912) creates a pilot program to fund the conversion of school buses in nonattainment areas to cleaner diesel technology. The act creates an account within DENR that can be used to pay the 20 percent local match required for federal funds available for diesel conversion and also directs the Department of Transportation to allocate $2 million of these federal funds for school bus diesel emissions reductions. The General Assembly appropriated $500,000 for the new account within DENR, providing a funding method for clean diesel for

metropolitan planning organizations that include this approach to emissions reductions in their transportation improvement plans and for school districts in nonattainment areas prepared to retrofit their buses.

Climate Change

The Commission on Global Climate Change continued to meet; its reporting deadline had been extended by the 2006 session of the General Assembly to April 15, 2008. While no comprehensive climate change legislation was enacted in 2007, several bills addressing energy efficiency did pass. See the section entitled "Energy," below.

Coastal Resources

In the 2007 appropriations act, S.L. 2007-323 (H 1473), the General Assembly authorized the use of up to $32.5 million in certificates of participation for the construction of facilities for a Coastal Studies Institute. The act also authorizes waterfront access as a permitted use of up to $120 million in certificates of participation for the Land for Tomorrow conservation effort.

Contaminated Property Cleanup

S.L. 2007-530 (S 1362) makes numerous changes to the Dry-Cleaning Solvent Cleanup Act so that the cleanup program is carried out by contractors hired by the Environmental Management Commission (EMC) rather than by contractors hired by parties responsible for dry-cleaning solvent contamination. In addition, the act broadens the definition of *dry-cleaning solvent* to include all halogenated hydrocarbon solvents. It also simplifies and lowers the financial responsibility amounts a responsible party must pay but imposes a new $1,000 application fee for anyone applying for coverage under the program. It also authorizes DENR to use up to 1 percent of the Dry-Cleaning Solvent Cleanup Fund in each fiscal year to investigate sites where it is believed, but not known, that dry-cleaning solvents have contributed to the contamination. The act includes a novel provision authorizing temporary rules for risk-based cleanup of dry-cleaning solvents that varies from the standard process under the Administrative Procedures Act.

Energy

S.L. 2007-397 (S 3) is groundbreaking legislation that commits the state to a renewable energy and energy efficiency portfolio standard (REPS) and includes a small set-aside for solar energy. North Carolina thus became the first southeastern state (but by no means the first state nationally) to pass a REPS. By the year 2012, electric utilities in North Carolina must derive 3 percent of their retail sales from renewable energy resources and energy efficiency measures, and that percentage rises to 12.5 percent by the year 2021. Electric membership corporations and municipalities also start at a 3 percent requirement in 2012, but must phase up to only 10 percent by 2018 and beyond. The act requires that at least 0.2 percent of total retail sales of electricity be derived from certain specified solar energy technologies by 2018. The act also commits the state to the generation of part of its electric power from swine and poultry waste. The act does not set up a trading system for renewable energy, but it permits power suppliers to purchase credits for up to 25 percent of the REPS. The EMC is directed to determine the best available control technologies for emissions from the REPS power sources and is also authorized to set standards for qualifying renewable energy sources.

S.L. 2007-397 allows power producers to recover the costs of renewable energy investments and energy efficiency measures from their rate base through an annual rider on electric bills, with

caps on the per-account charges. The Utilities Commission is directed to develop rules for the charges and is also authorized to modify or delay the REPS if the Commission considers doing so to be in the public interest. The act also allows electric utilities to begin recovering the cost of construction of new traditionally fueled (coal and nuclear) power plants before the plants are completed and online.

Some environmental groups pledged to continue to work to change some of the provisions of S.L. 2007-397, and the Governor, in signing the bill, noted that it was very ambitious in its goals for renewable sources and might require scaling back in future legislative sessions.

Several other bills collectively commit the state to greater energy efficiency in state buildings. S.L. 2007-546 (S 668) directs the Department of Administration to oversee an ambitious program of energy efficiency in the building, purchase, and renovation of state buildings and to audit and report on the results. Starting in 2008 (with a sunset in 2010), all state construction of buildings larger than 20,000 square feet and all renovations costing at least 50 percent of the building's insurance value must significantly exceed specified standards of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Inc. and must meet certain water conservation standards. The act requires measurement and verification of energy use and water consumption over the year following completion of the construction project. The Department of Administration must also study developments in standards for energy efficiency and report periodically to the legislature on its findings, including a performance review of the program described above for 2008 to 2010. S.L. 2007-546 does not include in its sunset the requirements for all State buildings, including the university system, to implement energy conservation measures, including LED and compact fluorescent lighting, water conservation technologies and management measures, HVAC and minor equipment review, and miscellaneous other measures such as the purchase of only Energy Star–rated office equipment. The act codifies a goal of reducing energy consumption in state buildings 20 percent per square foot by 2010 and 30 percent by 2015, using a 2003–04 baseline.

S.L. 2007-542 (H 1702) authorizes rules in the State Building Code requiring insulation on all hot water pipes larger than a quarter inch in diameter.

S.L. 2007-476 (H 177) authorizes the trustees of the Community College System to enter into loans under the State's Energy Improvement Loan Program.

Another set of laws seek to advance the use of biodiesel and other alternative motor fuels. S.L. 2007-524 (S 1272) exempts from the motor fuels tax homemade biodiesel made for one's personal vehicle. S.L. 2007-423 (S 1452) requires, as of June 2008, that diesel school buses in the state be capable of running on B-20 (20 percent biodiesel) fuel, and that at least 2 percent of the total volume of bus fuel purchased statewide be B-20. S.L. 2007-420 (S 1277) requires, as of January 2008, that every diesel vehicle purchased by the state be warrantied to run on B-20.

S.L. 2007-82 (S 567) allows the dispensing of ethanol blends of up to 85 percent ethanol from gasoline pumps and other equipment if the manufacturer has certified that the equipment is safe for use with ethanol blends, the equipment meets any additional state standards, the manufacturer has begun having the equipment certified by an independent laboratory, and the equipment is clearly labeled as dispensing an ethanol blend.

Environmental Finance

S.L. 2007-153 (S 1472) adjusts the allocation of funds from the tax on tires, raising the amount distributed to counties for handling scrap tire cleanups and nuisance abatement from 68 to 70 percent of the tax proceeds. The act also raises from 5 to 8 percent the amount of the proceeds retained by the state in the Solid Waste Management Trust Fund. These increases are funded by reducing the amount of tax retained in the state's Scrap Tire Disposal Account.

Marine Fisheries

The state has been attempting to collect oyster shells to use in reestablishing oyster habitat in the sounds. However, it has been difficult to gather enough shells without buying them on the open market. S.L. 2007-84 (S 1453) prohibits the Department of Transportation and other units of government from using oyster shells for landscaping or other ground cover purposes, requiring instead that the shells be turned over to the Division of Marine Fisheries.

State Parks, Natural Areas, and Land Conservation

Despite a well-organized "Land for Tomorrow" campaign and other efforts of land conservation proponents, the General Assembly failed to enact a dedicated source of revenue for land and water conservation. The budget does, however, authorize the issuance of $120 million in certificates of participation for the acquisition of state parklands, conservation areas, and land to promote waterfront access. The debt is to be paid from revenues in the Parks and Recreation Trust Fund and the Natural Heritage Trust Fund.

S.L. 2007-307 (H 1724) is the nearly annual act adjusting properties in and outside of the state park system. The act references the following recent major additions to the park system: Chimney Rock State Park, Carvers Creek State Park, Haw River State Park, the Lower Haw River State Natural Area, Mayo River State Park, Mountain Bog State Natural Area, and Sandy Run Savannas State Natural Area. S.L. 2007-437 (S 1431) authorizes the addition of Deep River State Trail to the park system. It also expands the membership of the North Carolina Parks and Recreation Authority, adding four members: two appointed by the Governor and one each by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

S.L. 2007-449 (S 1383) allows cyclists to use state public lands, unless another law prohibits bicycle use or bicycle use would cause substantial harm to the land. The act applies not just to land owned in fee by the state, but also to land purchased or leased with state funds. A usage agreement must be negotiated between the land manager and local cycling groups before access is granted. The Department of Transportation must keep a registry of the public lands open to cyclists and provide this information on request. Any land made available to cyclists is also open to hikers.

S.L. 2007-456 (H 862) amends the Plant Protection and Conservation Act to clarify the language, change the membership of the scientific committee that oversees endangered plant listings, and change the penalties for violation of the act to a Class 2 misdemeanor (from a Class 3 misdemeanor with stated limits on the penalties).

Solid Waste

Many controversial environmental bills in the last decade of the North Carolina General Assembly have been negotiated by stakeholder groups, facilitated by staff from the legislature, that meet in Room 605 of the Legislative Office Building. This method of working out the details of environmental bills has become so pervasive that the term "605 process" has passed into the legislative parlance as the standard method for handling difficult legislation. Room 605, however, holds only about forty people. The number of interested parties assembled to negotiate the details of Senate Bill 1492, the solid waste disposal bill, grew into the hundreds, so that the 605 process had to be moved to Room 643, the large appropriations hearing room in the Legislative Office Building. Industry representatives and their attorneys, local government officials, environmental groups, trade associations, and state agency experts met in Room 643 to debate the proposed laws that would affect disposal of solid waste. The catalyst for the debate was the moratorium placed on permitting new landfills by S.L. 2006-244, which had been triggered by five pending landfill permit applications for large landfills in the coastal plain.

As enacted (there were over thirty versions of the bill released and debated by the stakeholders during the session), S.L. 2007-550 (S 1492) makes changes in (1) technical requirements for new landfills, (2) siting considerations for new landfills, (3) processes for permitting new landfills, (4) fees for solid waste disposal, and (5) other miscellaneous aspects of solid waste handling in North Carolina. However, the main compromise that led to passage of the bill at the end of the session was the grandfathering of existing landfills: landfills permitted as of June 1, 2006, are allowed to continue their operations and expand horizontally, vertically, and within their existing facility boundaries without complying with most of the new requirements. The net effect of the legislation, therefore, will be to make the siting of new landfills in the state much more expensive and thus to raise the value and solidify the strategic position of existing landfills.

Technical Requirements

Despite recently upgraded rules for construction and demolition debris landfills, the act mandates a synthetic liner system for these facilities. Other sanitary landfills must now have four feet of separation between the post-settlement bottom of the landfill liner and the seasonal high water table and bedrock. The act also requires new waste screening procedures. Leachate collection systems are more rigorously regulated as well. The act requires camera inspection of leachate collection lines, and they must be designed to make these inspections possible. Secondary containment of pipes with leachate outside the liner is also required. Finally, the act mandates capacity, height, and disposal area limits for all new landfills.

Siting Considerations

Solid waste disposal facilities in North Carolina historically have been exempt from the environmental review process of the State Environmental Policy Act. S.L. 2007-550 requires a study meeting all the requirements of that act (but codified in the solid waste statutes) for any new proposed landfills. In addition to any mitigation requirements that might arise from this environmental review process, the act requires significant buffers for new landfills: 200 feet from perennial streams or wetlands, with an exception allowed for "critical needs"; outside of the 100-year floodplain; five miles from the outer boundary of a National Wildlife Refuge; one mile from the outer boundary of a state game land; and two miles from the outer boundary of a state park.

Permitting Processes

S.L. 2007-550 rewrites G.S. 130A-294(a)(4) to make numerous changes in the process for getting a solid waste disposal permit. At the outset the language of this statute is changed to state that DENR must deny an application for a permit if it finds one or more of several conditions. Some of these conditions are straightforward translations of past permit requirements; others are less clear and will require interpretation by DENR. For example, applicants will now have to show consistency with state and local solid waste management plans, which include a hierarchy that places reuse, recycling, and reduction ahead of disposal. Applicants will also have to demonstrate the lack of any disproportionate impact on low-income or minority communities. The act provides for "financial responsibility requirements" including both "financial qualifications" to pay design, build, operations, and closure costs for the life of the landfill and "financial assurance" to pay for potential assessment and cleanup of releases. The financial qualification requirements are left to rule making and the discretion of DENR, while financial assurance is required to be at least $3 million. The act broadens the review of the environmental compliance of an applicant to include all affiliated parties, including individuals involved in businesses applying for permits, and to include activities other than solid waste. Permit holders are placed under an ongoing duty to notify DENR of any changes in their business structures or in the business structures of affiliated entities that might affect the permit holder's financial qualifications. Liability is extended beyond owners and operators of facilities to include any business entities with majority ownership in the site

owner or operator and any entities whose assets are used to meet the financial qualification tests. Applicants for landfill and transfer station permits can now be required to conduct a traffic study and to mitigate any adverse effect on traffic as a condition of receiving a permit. The act sets out an explicit process for determining when a permit application is "complete" and requires action on an application (a draft permit decision) after it is complete and within a year. Transfer of permits now explicitly requires DENR approval.

Fees

S.L. 2007-550 creates a $2 per ton excise tax on municipal solid waste and construction and demolition waste that is disposed of in the state or delivered to a transfer station in the state for ultimate out-of-state disposal. The state will retain 50 percent of the tipping tax proceeds to use in cleaning up old unlined landfills; 37.5 percent will be returned to local government units that provide solid waste services directly to citizens, on a per capita basis, to use for solid waste management. The remaining 12.5 percent will go to the state Solid Waste Management Trust Fund to help local recycling programs and for the management of difficult-to-manage waste, such as mobile homes. The act sets up an extensive range of permit fees, intended (for the first time) to help fund state solid waste regulators. For example, new municipal solid waste landfill applications have a fee of from $25,000 to $50,000, depending on the size of the landfill; permit amendments cost up to $30,000. New construction and demolition landfill fees range from $15,000 to $30,000. Annual fees run from $3,500 for municipal solid waste landfills to $500 for land-clearing and inert debris landfills. The authority of counties to charge availability fees to customers that have private waste collection but whose private providers do not offer all the services the county offers is clarified.

Other Provisions

The tipping tax funds that remain with the state for assisting with the problem of old, unlined landfills carry some liability-relief provisions for local governments and private parties. When the state prioritizes and develops a remedial action plan for those landfills, the act prohibits the state from seeking cost recovery for its expenditures if the potentially responsible parties cooperate with the investigation.

S.L. 2007-550 also provides that manufacturers of computer equipment that sell more than 1,000 computers in North Carolina per year must pay an initial $10,000 fee and an annual $1,000 fee to DENR and must develop a plan for the reuse or recycling of the computers they sell. The intent of this provision is for manufacturers to "take back" their dead computers and arrange for recycling and reuse, thus freeing citizens and local government units from the decentralized management of this increasingly large waste stream. Computer equipment is added to the list of materials banned from landfills and incinerators by G.S. 130A-309.10(f) and (f1). The act also provides that DENR must develop a plan for recycling florescent lamps.

Civil penalties for violations of solid waste laws are increased from a maximum of $5,000 to $15,000 per day for nonhazardous waste and from $25,000 to $32,500 per day for hazardous waste. In addition, DENR is expressly authorized to recover its investigation, inspection, and monitoring costs in any civil penalty action. The Secretary of Environment and Natural Resources and local public health directors now have expanded powers to enjoin operations at landfills. The act includes special provisions for landfills dedicated to combustion by-products from coal-fired electric power plants. Cities and counties are authorized to hire local landfill liaisons to monitor private landfill operations. The Environmental Review Commission is to study local franchising of solid waste management and the transportation of solid waste by barge and rail, issues that were dealt with in earlier drafts of the bill but were never resolved.

S.L. 2007-543 (S 6) makes further changes in the statutes amended by S.L. 2007-550. The act specifies that the setback requirements for National Wildlife Refuges, state game lands, and state parks apply at the earliest of (1) the acquisition of the land or an option on the land by the permit holder or applicant, (2) the application for a franchise agreement, or (3) the date of the permit

application. It also clarifies some transitional and effective date provisions for facilities currently in the permit process and includes a procedure for reimbursement of some expenses for facilities in the application process that are no longer eligible for permits. Finally, it revises the formula for distribution of tipping tax proceeds by splitting the 37.5 percent allocated to local governments evenly between counties and cities.

S.L. 2007-142 (H 1758) makes changes to the law requiring the removal of mercury switches from vehicles before they are scrapped. In 2006 the United States Environmental Protection Agency announced the National Vehicle Mercury Switch Recovery Program, and the changes in this act conform the existing state program with the new national one.

A fire at a hazardous waste storage facility in Apex, North Carolina, in October 2006 forced the evacuation of 17,000 people and led to a study commission review of hazardous waste regulation. The resulting legislation, S.L. 2007-107 (H 36), makes changes in the state's regulation of hazardous waste facilities. It amends G.S. 130A-295 to impose financial responsibility requirements on applicants for hazardous waste storage permits (in place of the financial responsibility rules formerly made by the Commission for Health Services and in addition to the permit and annual fees required under G.S. 130A-294.1 and the federal Resource Conservation and Recovery Act [42 U.S.C. § 6924(t)]). The act also requires more formal input from local governments and emergency response providers on the contingency plans that hazardous waste facility owners are required to have. Applicants for new hazardous waste facilities must notify the county in which they are located and any municipalities with planning jurisdiction over them, along with any emergency management entities having a role under the contingency plan, about their proposed operations. The local governments and emergency management entities are to respond in writing within sixty days after receiving this information. Facility owners must maintain an off-site repository of information about the facility, including waste generators and types of waste stored, and make that repository available to DENR, local governments, and emergency responders. S.L. 2007-107 requires a notice to every person who lives or owns property within one-quarter mile of a proposed facility, describing the wastes to be stored and emergency response plans. Commercial hazardous waste facility owners must notify DENR annually of any changes in "sensitive land uses,"—meaning residential housing, places of assembly, places of worship, schools, day care providers, and hospitals—within one-quarter mile of the facility. These changes may trigger more frequent inspections under rules to be made by the Commission for Health Services for "special purpose commercial hazardous waste facilities." The act requires commercial hazardous waste facilities to have security and surveillance systems that work seven days a week, twenty-four hours a day, and wind monitors that can be remotely accessed in real time. Permits for commercial hazardous waste facilities are limited to five years. The act adds a new defined term in G.S. 130A-290, *hazardous waste transfer facility,* and sets up a regulatory scheme for these places where hazardous waste is stored for a short time (more than twenty-four hours, less than ten days). The act amends the statute preempting local hazardous waste ordinances to assert that local zoning and land use ordinances that generally regulate development are presumed to be valid, absent a finding to the contrary by the Secretary of Environment and Natural Resources. The act authorizes additional cost recovery for emergency responses to hazardous waste releases. It clarifies the confidentiality of municipal 911 and reverse 911 systems. It sets up task forces to review the state building code as it pertains to hazardous materials and to examine permanent funding options for State Medical Assistance Teams. Finally, it requires DENR to set up an online chemical information database, requires the Department of Health and Human Services to create a model plan for public health response to events like the Apex fire, and authorizes the UNC System to set up a research program on disaster response.

Technical Corrections

S.L. 2007-495 (S 844), the 2007 environmental technical corrections act, makes technical and clarifying corrections to the state's environmental laws and repeals some agency reports to the

General Assembly. It also makes the following small but significant policy changes: (1) an application for a construction permit for a private drinking water well to be located on a site on which a wastewater system is located may be accompanied by a site plan rather than a plat; (2) proof of completion of any mandatory professional development is required for renewal of a well contractor certificate; (3) the transplant of seed clams and seed oysters of a certain size that originate from an aquaculture operation permitted by the Secretary of Environment and Natural Resources is lawful; (4) members of the Advisory Commission for the North Carolina State Museum of Natural Sciences will serve four-year staggered terms; (5) the exemption for certain well contractors from continuing education requirements is extended for two years; and (6) draft fishery management plans are no longer required to be submitted to the Environmental Review Commission for review.

Water Supply

In the wake of controversy over a proposed interbasin transfer of water from the Catawba River basin to the Yadkin River basin and at the request of the cities of Concord and Kannapolis, S.L. 2007-518 (H 820) calls for a major study of surface water allocation in North Carolina, to be completed by 2009, and rewrites the process and standards for interbasin transfer certificates. The study is assigned to the Environmental Review Commission, which is authorized to hire independent consultants. The study must analyze technical matters relating to interbasin transfers but must also evaluate formal and informal methods for making future water allocation decisions. The act also calls for review of a comprehensive system for regulating surface water withdrawals for nonconsumptive and consumptive uses. The bill also directs DENR, through its Division of Water Resources, to redraw the official map of river basins in the state and to note on the map the extent of river basins outside North Carolina with waters that either flow into or out of the state.

The revised process for interbasin transfer certificates begins with a notice of intent to file a petition, followed within ninety days by two public meetings upstream and downstream of the proposed diversion in the source basin and one public meeting downstream in the receiving basin. The notice and public meetings are to be expressly designed to generate comment on the scope of the environmental documents to be prepared regarding the transfer. Notice of the meetings must be given very broadly, including to all counties downstream, whether in North Carolina or an adjacent state and to all upstream and downstream holders of wastewater discharge permits. (The act does not expressly limit this requirement to adjacent states.)

S.L. 2007-518 requires a full environmental impact statement for every proposed interbasin transfer from one major river basin to another. A public hearing on the draft statement is required, and the adequacy of the statement may be challenged in a contested case on the ultimate decision whether to grant a certificate. The act sets out a much more explicit and lengthy list of details that must be included in a petition for an interbasin transfer. It provides for a mediation process between the petitioner and any parties interested in the transfer. The new process requires a draft determination on the petition within ninety days after the environmental document is complete or the application is filed, whichever is later, and then more public hearings on the draft determination within sixty days after the draft determination is issued. The act then specifies nine factors to be considered in making a final determination on the petition, with a burden of proof on the petitioner, and requires taking into account a declared policy that "the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin." If the transfer is allowed, the act specifies seven required conditions, including limitations on resale, mandatory water conservation measures, a drought management plan, and reopeners to reduce the permitted transfer if new sources are found in the receiving basin or the applicant's projected water needs decline. The new process allows the Secretary of Environment and Natural Resources to authorize emergency transfers for up to six months, with one extension of six months, without having to file

the notices, hold the hearings, or make the findings required of a nonemergency transfer. There is a delayed effective date, until January 2011, for transfers to supplement ground water supplies limited by the Central Coastal Plain Capacity Use Area.

Water Quality

Erosion and Sedimentation Control

The 2007 budget, [S.L. 2007-323 (H 1473), Section 30.1(a)], authorizes a fee increase of $15 per acre of disturbed land for erosion and sedimentation control plan reviews, to create revenue necessary for additional inspectors.

Stormwater

The 2007 appropriations act includes a special provision (Section 6.22) that changes parking lot designs to improve stormwater quality. This provision is discussed in more detail in Chapter 5, "Community Planning, Land Development, and Related Topics."

Nutrient Reduction and Mitigation

S.L. 2006-215 legislatively repealed a rule of the EMC raising the prices for nutrient offset payments that developers can use in the Neuse and Tar-Pamlico river basins to increase the density of development and the extent of impervious surface. The 2006 legislation called for a study of the actual costs of nutrient offsets. As a result of that study, S.L. 2007-438 (H 859) raises the offset payment amounts, but not as high as the EMC rule would have, until the year 2009. The new payment schedule is $28.35 per pound of nitrogen in the Neuse basin, $21.67 per pound of nitrogen in the Tar-Pamlico basin, and $28.62 per tenth of a pound of phosphorus in the Tar-Pamlico basin. The act directs the Ecosystem Enhancement Program to convert the nutrient offset program by September 2009 from a fee-based program to one based on the actual cost of providing credits.

Soil and Water Conservation

The 2007 budget appropriates $250,000 to DENR to expand the Conservation Reserve Enhancement Program beyond the limited watersheds in which the program currently applies. The Division of Soil and Water Conservation in DENR also received $200,000 to continue funding research and development of new management practices and technology for poultry waste, with priority given to grants to small producers with limited ability to pay for new technology themselves. Finally, the Division of Soil and Water Conservation received $2 million to implement a Community Conservation Assistance Program, an effort to convert soil and water conservation from a purely agricultural program to one that is administered in urban areas as well.

Clean Water Management Trust Fund

S.L. 2007-549 (S 1468) allows the Clean Water Management Trust Fund to be used to fund "innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State's waterways, to improve water quality, and to research alternative solutions to the State's water quality problems."

S.L. 2007-185 (H 1370) clarifies that the Clean Water Management Trust Fund can make planning and technical assistance grants for wastewater projects regardless of whether they are intended for areas with high unit costs.

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