

# Environment and Natural Resources

The fall and winter of 2007–08 brought a deep and threatening drought to central North Carolina, including Falls Lake, the water supply for Raleigh and the legislature. The General Assembly responded with significant water supply and drought-related legislation. Among many changes and new provisions, the drought bill gave the governor new powers to require the transfer of water from one system to another in the event of a water shortage emergency. The General Assembly also extended its ongoing study, in conjunction with the UNC School of Government, of water allocation, suggesting that water supply will continue to be a high-priority environmental issue for 2009 and beyond.

## Administration in General

S.L. 2008-181 (H 2431), the studies bill, authorizes the Environmental Review Commission (ERC) to study the feasibility of a fulltime environmental commission, modeled on the Utilities Commission, in place of unnamed existing environmental regulatory programs.

## Agriculture

S.L. 2008-212 (S 847) gives some protection for agricultural workers exposed to pesticides. It adds violations of pesticide laws to the list of “whistleblower” complaints protected under the retaliatory employment discrimination provisions of G.S. Chapter 95, Article 21. It also directs the Pesticide Board to promulgate rules to implement the recommendations of the Governor’s Task Force on Preventing Agricultural Pesticide Exposure, requiring recording of the specific time of day when each pesticide application was completed and extending the retention period for pesticide application records for all pesticides covered under the Worker

Protection Standards for agricultural pesticides from thirty days to two years.

At the request of small organic dairy farmers, S.L. 2008-88 (H 2524) disapproved a rule of the N.C. Board of Agriculture requiring raw milk for animal feed to be dyed charcoal gray. Instead, the statute requires a label stating that the milk is not for human consumption.

## Animal Waste

House Bill 822 started as an environmental technical corrections bill, but after passing the House of Representatives, the bill was amended in the Senate to allow variances and exceptions from the swine farm siting act setback provisions and to change the enforcement of swine farm setbacks. After significant public outcry, the House did not concur in the changes, so the bill did not become law.

## Air Quality

### Climate Change

S.L. 2008-81 (H 2529) extends the Climate Change Commission final report deadline from April 15, 2008, to October 1, 2009.

### Mobile Sources

S.L. 2008-181 authorizes the ERC to study the costs and benefits of adopting California motor vehicle emissions standards in North Carolina.

### Coastal Resources

S.L. 2008-181 authorizes the ERC to study hazard disclosure in coastal real estate transactions.

Senate Bill 599, a bill to allow hardening the coastline at Figure Eight Island through a groin at the inlet, was defeated despite a great deal of lobbying effort on the part of Figure Eight Island property owners.

## Contaminated Property Cleanup

S.L. 2008-195 (H 2498), the almost-annual bill amending the underground storage tank program, raises annual operating fees for owners and operators of tanks to \$420 (the current fee is \$200 for smaller tanks and \$300 for larger tanks). This fee increase is estimated to generate \$4 million in additional revenue for the tank funds. The bill directs the Department of Environment and Natural Resources (DENR) to use up to \$3 million of this annual increase to address problems noted by the U.S. Environmental Protection Agency in a 2006 letter to the state, mostly concerning the need to remove free product (gasoline and other petroleum) from groundwater at sites contaminated by underground storage tanks. The bill also sets a one-year time limit for determinations of eligibility for the tank funds and for requests for reimbursement, creates a process for cost recovery of improperly paid reimbursement funds, clarifies how financial assurance can be demonstrated, directs DENR to create a pilot program for site-specific cleanup standards that differ from the present risk-based standards, and makes other technical changes to the program.

## Energy

S.L. 2008-203 (S 1946) codifies and strengthens the energy and water efficiency requirements for major public building and renovations that were passed in 2007 as a mostly uncodified session law, S.L. 2007-546. The bill requires major new and renovated state-owned, University of North Carolina, and community college system buildings to be 20 to 30 percent more energy efficient and 20 percent more water efficient than designated standards from 2004 and 2006, respectively. It further requires building commissioning and separate metering so that a building's performance can be verified. State buildings that are purchased must be at least as energy and water efficient as comparable state buildings built at the time that the purchased structure was built.

S.L. 2008-146 (S 1878) provides a solar energy tax exemption from property taxes of 80 percent of the appraised value of solar electric energy equipment.

S.L. 2008-107 (H 2436), the appropriations act, directs the University of North Carolina to study the feasibility of establishing wind turbines in the Pamlico and Albemarle sounds. It also creates a sales tax holiday the first weekend of November for certain Energy Star-rated appliances.

S.L. 2008-181 (H 2431) authorizes the ERC to study a state-level permit system and siting requirements for commercial wind energy.

## State Parks, Natural Areas, and Land Conservation

S.L. 2008-155 (H 2496) adds Bear Paw State Natural Area and Yellow Mountain State Natural Area to the state parks system. Bear Paw is on the Avery and Watauga county line; Yellow Mountain is in Avery and Mitchell counties, near Roan Mountain.

S.L. 2008-11 (S 1862) removes a portion of Lake Waccamaw State Park from the parks system to allow realignment of a bridge.

S.L. 2008-13 (S 1646) sets up a trust fund for Swain County from proceeds of a settlement agreement with the U.S. Department of the Interior and the Tennessee Valley Authority. The settlement covers a debt owed to Swain County from the 1940s, when construction of Fontana Dam flooded a road for which Swain County had assumed the debt. A new road could not be built because of environmental impacts to the Great Smoky Mountains National Park. The fund is to be administered by the State Treasurer, with the interest paid out annually to Swain County on request of the commissioners and the principal disbursed only on a referendum of the county residents. The fund is planned to be initially capitalized with \$6 million; another \$46 million is pledged to be paid in the future. Assuming full payment of this amount, the county could have between \$2.5 and \$4 million available yearly from the fund.

S.L. 2008-107 (H 2436), the appropriations act, authorizes up to a \$50 million debt to purchase state park lands and conservation areas under the Land for Tomorrow effort.

S.L. 2008-171 (H 1889) adds "wildlife conservation land" as a classification of land that is taxed under the present-use value system, rather than under normal principles of market-value estimation. The bill also clarifies the use-value status of property with a conservation easement when the property owner receives compensation for the easement. The Department of Revenue had previously maintained that only 100 percent donations of easements entitled an owner to continue being taxed at use-value rates. The clarification sets the threshold at receipt of no more than 75 percent of fair market value to retain use-value taxation.

## Solid Waste

### Recycling

S.L. 2008-208 (H 819) adds televisions to the electronics recycling law passed in 2007 (S.L. 2007-550) but delays the effective date of the law to January 1, 2010, and beyond for certain provisions.

S.L. 2008-181 (H 2431) authorizes the ERC to study the recycling of fluorescent lamps and plastic bags.

### Manufactured Homes

S.L. 2008-136 (H 1134) adds a new Part 2F to Article 9 of G.S. Chapter 130A, providing for the management of abandoned manufactured homes. The act directs each county to consider developing a plan for this wastestream in its solid waste management plan. It prohibits intact manufactured homes from being disposed of in landfills. Counties that do adopt and implement plans for abandoned manufactured homes are authorized to use a new process set out in the statute to notify owners, enter the property of nonresponsive owners, and deconstruct the abandoned homes and dispose of them—and to charge the costs of doing so to the owner as a lien on his or her property. The statute also authorizes reimbursement grants to counties to cover their costs in creating and implementing the plans.

### Tipping Fee

A bill (H 2541) was introduced to delay the start of collecting the statewide tipping fee passed in 2007 (S.L. 2007-550), but the bill did not pass.

## Toxics and Biocides

S.L. 2008-181 (H 2431) authorizes the ERC to study a ban on toxic brominated fire retardants (PBDEs).

## Water Supply

### Drought

In 2007 North Carolina went into one of the quickest and deepest droughts on record. The governor presented a package of proposals to give the state greater authority to deal with drought in February of 2008. The proposals, as amended, passed as S.L. 2008-143 (H 2499). The act strengthens water withdrawal registration and reporting requirements by increasing the possible civil penalties for failure to report, by requiring quicker reporting, by committing the state Department of Agriculture to do an annual inventory of agricultural water withdrawals, and by promising greater priority to those who register withdrawals in the event of a need to allocate water more rigorously than in the past.

The act statutorily defines *essential water uses* as “firefighting, health, and safety; water needed to sustain human and animal life; and water necessary to satisfy federal, State, and local laws for the protection of public health, safety, welfare, the environment, and natural resources; and a minimum amount of water necessary to maintain the economy

of the State, region, or area.” It allows the governor to declare a “water shortage emergency” and to require water systems with water supply in excess of their needs for essential water uses to transfer that water to systems in a water shortage emergency. The act gives the Secretary of DENR authority to pass emergency rules requiring conservation in water shortage emergency areas. It also provides for temporary rights of way for lines to transfer emergency water and for compensation at 110 percent of the cost that would be paid by a customer of the sending system for emergency water.

S.L. 2008-143 specifies elements of a water shortage response plan to be included in the local water supply plans of all large (more than 1,000 customer) community water systems and local governments that supply water. Systems in severe, extreme, or exceptional drought as defined by the U.S. Drought Monitor can be required to implement more severe water shortage response measures than are contained in their plans, if DENR makes written findings that such measures are necessary. In extreme or exceptional drought, the act authorizes DENR to require weekly water use reporting by large community systems and local governments.

The act has water efficiency measures that apply without regard to drought status. Local government and large community water systems must require separate meters for new in-ground irrigation systems connected to their systems. To be eligible for state water infrastructure funds from any funding source allocated by the General Assembly, whether the allocation of funds is to a state agency or to a nonprofit organization for the purpose of extending waterlines or expanding water treatment capacity, these water systems must:

- Establish a water rate structure that is adequate to pay the cost of maintaining, repairing, and operating the system, pursuant to guidelines to be developed by the State Water Infrastructure Commission
- Implement a leak detection and repair program
- Have an approved water supply plan pursuant to G.S. 143-355
- Meter all water use except for water use that is impractical to meter, including, but not limited to, use of water for firefighting and to flush waterlines
- Not use a rate structure that gives residential water customers a lower per-unit water rate as water use increases
- Have evaluated the extent to which the future water needs of the water system can be met by reclaimed water
- Have implemented a consumer education program that emphasizes the importance of water conservation

S.L. 2008-143 declares that the reuse of treated wastewater or reclaimed water is critical to meeting future supply needs of the state, and the act directs the Environmental Management Commission (EMC) to adopt rules to promote water reuse. It directs the Commission for Health Services to pass rules on the use of gray water for irrigation on single-family residential properties. The act also increases the priority accorded funding requests that improve a water system's vulnerability to drought, including interconnections, water reuse, repair or replacement of leaking lines, and meter replacement.

The act refines membership on the Drought Management Advisory Council and its process for making drought designations. It prohibits restrictive covenants that require irrigation of landscaping during designated droughts.

S.L. 2008-143 also directs the State Water Infrastructure Commission, working with the UNC School of Government, the public staff of the Utilities Commission, and the Local Government Commission, to develop guidelines for water rate structures that are adequate to pay the cost of maintaining, repairing, and operating water systems, including payment of principal and interest on indebtedness incurred for maintenance or improvement of the water system. The guidelines are also to consider the effect of water rates on water conservation and recommend rate structures that support water conservation. The Department of Environment and Natural Resources is directed to develop recommendations, in consultation with a technical working group, for water efficiency standards for water-using fixtures in residential and commercial building and for in-ground irrigation systems, as well as recommendations for efficient metering of water use by local government and large community water systems.

The UNC School of Government is assisting the ERC with a study of the fundamental legal and policy choices the state has for water allocation. S.L. 2008-10 (H 2447) extends that study to October 1, 2010.

### **River Basins and Water Transfers**

S.L. 2008-125 (H 821) revises the boundaries of river basins, for purposes of giving notices of interbasin transfers, to include areas outside of North Carolina in adjoining states that are close enough to the state to be directly concerned with the effects of proposed water transfers. The bill also directs the Environmental Review Commission to include a study of the boundaries of river basins for interbasin transfers within North Carolina and to include that study in the work underway with the UNC School of Government.

### **Federal Energy Regulatory Commission Licensing**

S.L. 2008-137 (S 1046) directs the ERC to study the impacts on the state of the potential issuance of a new fifty-year license by the Federal Energy Regulatory Commission to Alcoa Power Generating Inc. on the Yadkin/Pee Dee River. It further directs DENR to consider the study's findings before issuing a water quality certification for the license under Section 401 of the federal Clean Water Act.

### **Drinking Water**

S.L. 2008-140 (S 1259) statutorily exempts community water systems from commercial code warranties, including the warranty of merchantability and warranty of fitness for a particular purpose.

The appropriations act amends G.S. 87-98 to provide for emergency drinking water supplies in some situations where water problems do not involve a pollutant with a federally created maximum contaminant level and to put a cap (\$10,000 per household) and threshold criteria on payments to connect a single house to a public water supply system.

## **Water Quality**

### **Stormwater**

S.L. 2008-211 (S 1967) is a major rewrite of the Coastal Stormwater Program. The EMC finalized rules in 2007 that increased stormwater regulation in the coastal area, in many ways bringing the coastal rules in line with the Phase II stormwater requirements now in place in the urbanized areas of the state, but in other ways going beyond the Phase II requirements. Development interests and concerned coastal local governments introduced a bill to disapprove the EMC rules, which led to a lengthy stakeholder negotiation process facilitated by legislative staff. S.L. 2008-211 is the result of that process and represents, if not a perfect consensus, at least widespread agreement on coastal stormwater rules. The statute supersedes prior coastal stormwater requirements in the administrative code, N.C. Admin. Code tit. 15A, ch. 02H, §.1005 (1995).

S.L. 2008-211 essentially brings the coastal stormwater rules into line with the Phase II requirements. The changes made to the EMC rules clarified the kind of activity that triggered a stormwater permit requirement (from 10,000 square feet of "disturbed area" to 10,000 square feet of "built-upon area," or development requiring an Erosion and Sediment Control Plan or a major Coastal Area Management Permit). One special provision remains: in calculating "built-upon area" for purposes of a 24 percent threshold beyond which structural stormwater controls are required, coastal wetlands are excluded from the area of the site. The EMC rules had proposed to exclude all wetlands from the area of the site. Special requirements also remain for development within one-half mile

and draining to class SA shellfish waters. The special requirements include options for the use of rain gardens, cisterns, and permeable pavement.

S.L. 2008-198 (S 845), the environmental technical corrections bill, makes many changes in the law, including adding additional parameters for testing new private wells before they are certified to be complete and a restriction on further EMC rulemaking on coastal stormwater before October 1, 2011.

S.L. 2008-181 (H 2431) authorizes the ERC to study the feasibility of implementing state stormwater programs without requiring state permits, relying instead on engineers' certifications of stormwater system compliance with state rules.

### **Soil and Water Conservation**

S.L. 2008-107 (H 2436) sets up the Agricultural Drought Response Cost Share Program, which authorizes the use of cost share funds for several

drought response purposes, including pasture renovation and repair of farm ponds. This marks a potentially significant change in the use of the agricultural cost share program beyond just water quality purposes and into water quantity-related needs.

### **Wetlands**

S.L. 2008-152 (S 1885) amends the Ecosystem Enhancement Program statute to make the use of private mitigation banks the required option for stream and wetland mitigation by persons other than the N.C. Department of Transportation, if there is a state or federally approved private mitigation bank in the eight-digit hydrologic unit where the project needing mitigation is located.

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