

# 10

## Environment, Natural Resources, and Solid Waste

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The closing days of the 1999 session produced two major pieces of environmental legislation, the “Ambient Air Quality Act” and the “Clean Water Act,” as well as the withdrawal of North Carolina from the Southeast Compact for disposal of low-level radioactive waste. In addition to its major substantive legislation, the 1999 session authorized a potentially significant study of growth and its management. The General Assembly ratified Phase II of the tobacco settlement agreed to by four major tobacco companies for payments from a trust fund to tobacco growers and allotment holders. These legislative events, along with a handful of other environmental and natural resources bills passed earlier in the session, make 1999 another important year for environmental law in North Carolina.

The key stakeholders and the political leadership of the state continue to find ways to address some of the widely apparent environmental problems. The main problems the legislature attempted to fix in 1999 were air pollution in the form of ground-level ozone, animal waste from intensive swine farming, sedimentation of surface waters, liability for prescribed burning, the regulation of structural pesticides, and the delineation of sites subject to the state’s Inactive Sites Cleanup Program. The fixes offered resulted in large part from consensus-seeking stakeholder negotiations. This approach has succeeded in producing legislation, but it remains to be seen how successful the negotiated fixes themselves will be in solving the environmental problems.

## **Administrative Law**

### **Contested Case Proceedings**

One area in which consensus continued to elude stakeholder discussions was reform of contested case procedures. The issue of how much power and autonomy the administrative law judges have vis-à-vis the agencies is an important one in environmental law. The contested case process determines how disputes over environmental permits and enforcement are resolved. H 968 would have given greater deference to administrative law judge recommendations. It passed the House but was strongly opposed from various quarters and stalled in the Senate. There was talk of a possible veto by the Governor, a threat very rarely raised and as yet unused. The bill remains eligible for consideration in the 2000 session.

### **Licensing**

Professional geologists play important roles in many environmental problems as they gather, analyze, and interpret data on subsurface conditions. S.L. 1999-355 (S 1004) revises G.S. 89E-17 and -19 regarding the process for complaints and enforcement against professional geologists. It broadens the authority of the North Carolina Board for Licensing of Geologists to permit the board to hire investigators and creates an exception to the Public Records Act for investigatory materials. It sets out explicit grounds that the board can use in refusing to grant or renew a geologist's license, including the grounds of "engag[ing] in gross unprofessional conduct, dishonest practice, or professional incompetence." It gives the board civil penalty authority (penalties up to \$5,000) for violations of the general statutes affecting professional geologists, the rules of the board, board orders, and the rules of professional conduct for geologists.

## **Agency Structure**

### **Department of Environment and Natural Resources (DENR) Organization**

The organization and reorganization of the state environmental agencies and, for several years, the health agencies as well, have been regular subjects of study by the agencies themselves and by legislative committees. The 1999 Appropriations Act, S.L. 1999-237 (H 168), authorizes the House and Senate Appropriations Committees to study the organization of the Department of Environment and Natural Resources (DENR) "to determine its effectiveness and efficiency" and to make a report to the General Assembly by May 1, 2000.

## **Agriculture**

### **Appropriations**

Section 13.4 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), authorizes the Department of Agriculture and Consumer Services to lend \$500,000 for start-up costs to the Southern Dairy Compact Commission, if it is approved by Congress. (Section 13.4). The act also directs the Board of Agriculture to adopt rules by October 1, 1999, for mandatory testing of horses for equine infectious anemia.

## **Fees for Agricultural Services**

S.L. 1999-413 (H 1289), which sets fees for a number of state agencies, provides that any board or commission within the Department of Agriculture and Consumer Services may establish fees or charges for services provided. It deletes language that had limited such fees to the cost of service, as specified in G.S. 106-6.1.

## **Crops and Commodities**

**Nickels-for-Know-How Assessments.** G.S. Chapter 106, Article 50A, established the “Nickels for Know-how” program to support agricultural research through assessments on growers of agricultural commodities using commercial feed or fertilizer, with referendum approval. The original assessments in 1951 were five cents per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and plaster). The 1981 General Assembly increased the assessment to ten cents per ton.

S.L. 1999-172 (H 1009) raised the assessments from ten cents to fifteen cents per ton. The related assessments on tobacco producers of ten cents per one hundred pounds of tobacco market, initiated in 1991, were left unchanged.

## **Tobacco Settlement, Phase II Funds**

S.L. 1999-333 (H 74) ratifies Phase II of the tobacco settlement agreed to by four major tobacco companies under which the companies will pay approximately \$5.15 billion (\$5,150,000,000) into the National Tobacco Growers Settlement Trust. The trust will provide payments to tobacco growers and allotment holders in fourteen grower states, including North Carolina, to help them weather the storm of adverse economic consequences of changes in the tobacco market. Legislative actions regarding both phases of the tobacco settlement are discussed in Chapter 2 (The State Budget).

S.L. 1999-333 provides for creation of a nonprofit corporation, as contemplated by the tobacco settlement, that will serve as a certification entity to administer distribution of Phase II funds in North Carolina. The North Carolina Board of Directors of the certification entity will consist of the Governor (as chair), the Commissioner of Agriculture (as vice-chair), the Attorney General (as secretary), and the following appointees:

- four to seven citizens appointed by the Governor,
- two members appointed by the North Carolina congressional delegation,
- a state senator appointed by the President Pro Tempore of the State Senate,
- a state representative appointed by the Speaker of the North Carolina House of Representatives.

The law also contains a number of administrative provisions. It immunizes members of the board of directors from civil liability arising out of the performance of their duties. It authorizes the Secretary of Revenue to cancel licenses to sell tobacco products for certain violations and prohibits the sale of packages of cigarettes for unfair trade practices, including label violations. It exempts from state income tax interest investment earnings and gains of the trust and provides tax credits for manufacturers producing cigarettes for export to foreign countries.

## **Regulation of Cotton Gins, Warehouses, and Merchants**

S.L. 1999-412 (H 1010) requires persons engaged in business as cotton gins, cotton merchants, or cotton warehouses to register annually with the Commissioner of Agriculture, pay a \$25 registration fee, file a \$300,000 surety bond, and meet other records requirements. Violations are Class 2 misdemeanors and subject to injunctive relief.

### **Larceny of Ginseng**

S.L. 1999-107 (S 769) deletes from G.S. 14-79 two elements of the felony of larceny of ginseng: that the ginseng taken was in beds and that the lands where the beds were located was surrounded by a lawful fence. The effect is to make it a felony to intentionally steal or aid in stealing any ginseng growing on the lands of another, not merely ginseng growing in beds located on fenced land.

### **Liquefied Petroleum Gas Appliances**

S.L. 1999-344 (S 785) provides that the Building Code Council rather than (as previously) the Commissioner of Agriculture is to approve the laboratories that certify liquefied petroleum gas appliances designed or built for domestic use. It also repeals statutory prohibitions against installing unvented space heating appliances in manufactured homes or in sleeping rooms with an input of over 30 BTU per cubic foot of enclosure.

### **Roads and Vehicles**

S.L. 1999-281 (H 1030) expands the exemption of certain farm trailers from vehicle registration to include trailers drawn by motor vehicles when transporting loaders owned by a farmer. It also exempts from taillight requirements trailers exempt from registration and certificate of title requirements that weigh less than 6,500 pounds.

### **Highway Signs for Agricultural Facilities**

S.L. 1999-356 (S 7) directs the Department of Agriculture and Consumer Services to provide highway signs at designated locations for agricultural facilities that promote tourism by offering tours and product samples. Facilities must be open for business at least four days a week, ten months of the year, in order to qualify for these directional signs. The department will assess the costs of the signs to the facilities.

### **Repeals of Obsolete Statutes**

S.L. 1999-44 (H 334) continues a practice of systematic repeals of obsolete agricultural statutes that was initiated during the years of an active "sunset" program in North Carolina. The statutes repealed this session were:

- the cotton grading law,
- the statutes that required the licensing of dealers in scrap tobacco and the keeping of accounts and records for tobacco warehouse sales,
- the statutes that created the northeastern and southeastern farmers market commissions,
- the statute that set dimensions and weights for standard loaves of bread sold in North Carolina,
- the statute that authorized the Board of Agriculture to adopt rules prescribing standards of weight or measure for milk or milk products sold at retail.

S.L. 1999-29 (S 27) also repeals an obsolete statutory prohibition against planting Bermuda grass along highways except where the abutting property is not in cultivation or with the consent of the abutting landowner.

## Legislative Studies

Legislative studies of interest to agriculture mandated by Section 2.1 of the omnibus legislative study bill, S.L. 1999-395 (H 163), include:

- control and eradication of red imported fire ants;
- apple industry marketing, production, and pesticide control;
- spaying and neutering of dogs and cats.

Section 13.1 of the 1999 Appropriations Act, S.L. 1999-237, directs the Office of State Budget and Management to study private and public farm loan and grant programs and to report to the Fiscal Research Division by May 1, 2000.

## Related Topics

For related topics, see the following sections of this chapter: “Animal Waste Management” and “Environmental Health: Food and Lodging Law: Country Ham Exemption.”

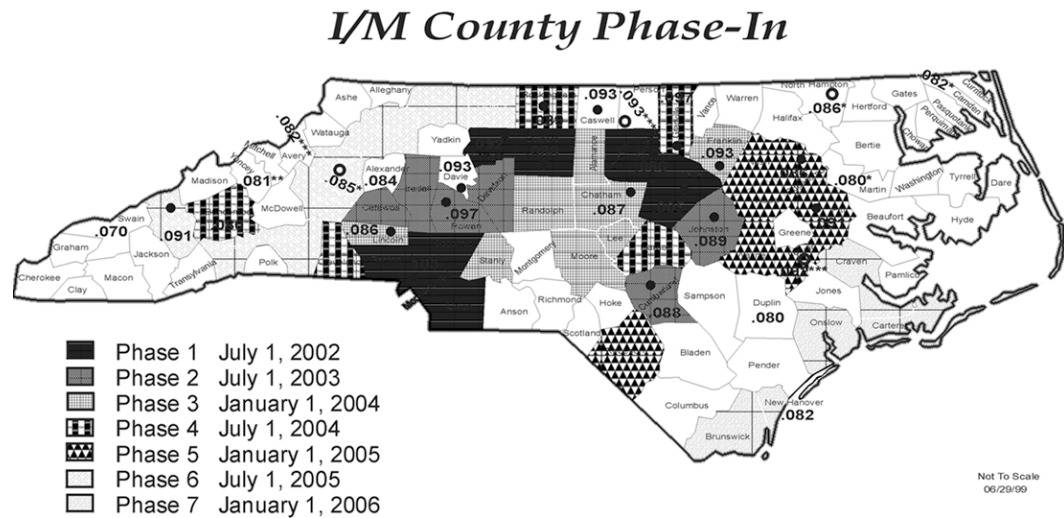
## Air Quality

### Ambient Air Quality

Legislation aimed at reducing emissions from motor vehicles was proposed by Governor Hunt in 1999 and passed as a committee substitute to S 953 (S.L. 1999-328). By the summer of 1999, the levels of ozone on the ground in piedmont North Carolina and on some North Carolina mountains frequently exceeded health standards. Emissions from motor vehicles were believed to be one major cause of the problem. The Division of Air Quality in DENR proclaimed, and the news media broadcast, “code yellow” and “code red” ozone days, corresponding to the degree of ozone predicted to form by the afternoon. On a “code red” day the House tentatively approved S 953 on a 72 to 39 vote. The bill ultimately passed over objections to the cost of the enhanced testing it required for automobiles and was signed into law at the very end of the session.

The bill establishes statewide goals for cutting emissions of nitrogen oxides (25 percent reduction by July 1, 2009), the major ozone-forming pollutant in North Carolina, and for reducing the growth of vehicle miles traveled in the state (25 percent by July 1, 2009). The bill also has more concrete requirements aimed at mobile sources of ozone pollution and its precursors. It requires the use of low-sulfur gasoline (an average of 30 parts per million or less for each seller on a one-year basis) statewide. Removing sulfur from gasoline allows the air pollution controls in cars and trucks to work better and last longer. The effective date of the low-sulfur gasoline requirement is January 1, 2004, unless the United States Environmental Protection Agency (EPA) requires such gas earlier, in which case the Governor is empowered to adopt the earlier date by executive order. If, however, the EPA requires a different sulfur standard, the Environmental Review Commission of the General Assembly will study the federal standard prior to executive branch action.

## Chart 10-1. Phased Expansion of Auto Emissions Testing



The bill also expands and extends the inspection and maintenance (I&M) program for testing exhaust from cars and trucks. The I&M program is expressly limited to a decentralized test-and-repair system (allowing testing by shops that also repair vehicles), prohibiting the Environmental Management Commission (EMC) from using a centralized or a decentralized “test only” approach. The new test requirements include an acceleration simulation mode, a more comprehensive form of testing than the I&M testing carried out in nine counties when the bill passed. Those nine counties will continue to require inspections, and the EMC is authorized to extend inspections in larger counties. The bill also authorizes the use of onboard diagnostic equipment included on newer vehicles. Through a phased-in series of changes to the statute, forty-eight counties will eventually be covered by the enhanced I&M program. These counties, and the phase-in dates, are depicted in Chart 10-1. The fee that can be charged for the tests is not set in the legislation, but DENR and the Department of Transportation are authorized to study the fee issue.

The bill further:

- sets goals for the purchase of low-emission vehicles for the state motor fleet (75 percent of purchases after January 1, 2004) and encourages the purchase of such vehicles for buses used by public school and transportation systems (50 percent of purchases after January 1, 2004, in counties with a population of at least 100,000 and where enhanced inspections are required),
- directs the state EMC to develop an incentives program to promote voluntary reductions in air pollution,
- directs the EMC to develop and adopt rules for the certification of motor fuel transport tanker inspectors,
- directs the EMC to develop and adopt rules governing the sale and service of exhaust emission analyzers,
- directs the EMC to begin rule making to regulate the emissions of nitrogen oxides (NO<sub>x</sub>) from complex sources (such as shopping centers, parking decks, and highways) by October 1, 1999,
- directs the EMC to adopt rules for underground storage tank tightness testing procedures and for certification of persons who conduct tank tightness testing,
- directs the Department of Transportation to consider ways to reduce air pollution in designing transportation projects and in particular to plan for intermodal interfaces.

## **Animal Waste Management**

### **Extension of Swine Farm Moratorium**

On the last day of the session and for the second time in two years the General Assembly extended the moratorium on construction and expansion of swine farms—this time by one year and ten months, from September 1, 1999, to July 1, 2001. S.L. 1999-329 (H 1160), sections 2.1 and 2.2. In effect the General Assembly gave itself one “short” session and one regular biennial session to brood over the long-term future of swine waste management in North Carolina. A trace of ambiguity remains on this point. This year’s amendments left in the moratorium statute the wording, “The purposes of this moratorium are to allow counties time to adopt zoning ordinances . . . to allow time for the completion of the studies authorized by the 1995 General Assembly . . . and to allow *the 1999 General Assembly* to receive and act on . . . these studies” (emphasis added).

The extended moratorium, like its predecessors, applies to new or expanded lagoons and waste management systems as well as to new swine farms. It also applies to both the Moore County and statewide provisions. The extended Moore County moratorium, as before, has two provisions not contained in the statewide moratorium: the exemptions contained in the original statewide moratorium do not apply in Moore, and waste systems must apply for individual permits rather than general permits.

### **Extension and Expansion of Pilot Program**

The 1999 General Assembly also extended (and expanded) the pilot program created in 1997 to evaluate in limited areas the efficacy of substituting annual inspections by soil and water conservation personnel for regular inspections by Division of Water Quality personnel (sections 3.1–3.3, S.L. 1999-329). The original pilot program was applied in two eastern counties, Jones and Columbus, selected by DENR. The extended pilot continues in Jones and Columbus and is enlarged to include Brunswick.

DENR is to submit two interim reports in each fiscal year of the biennium and a final report by July 15, 2001, to the Environmental Review Commission (ERC) and the Fiscal Research Division. The final DENR and ERC reports are to recommend whether to continue or expand the pilot program. DENR’s report is to be prepared in consultation with the divisions of water quality and of soil and water conservation.

### **Inventory of Inactive Lagoons**

Proposals to mandate the phaseout of swine waste lagoons as a method of waste treatment were debated throughout the 1999 session, in the wake of a suggestion by Governor Hunt for a ten-year lagoon conversion plan. No mandated phaseout was enacted, but the Clean Water Act of 1999 requires DENR to develop an inventory of all inactive lagoons ranked according to relative threats to public health, the environment, and the state’s natural resources (sections 4.1 and 4.2, S.L. 1999-329). The Environmental Management Commission is to make quarterly progress reports to the Environmental Review Commission on Governor Hunt’s lagoon conversion plan.

## **Coastal and Marine Resources**

### **Aquariums**

S.L. 1999-49 (H 326) authorizes the DENR Division of Aquariums to dispose of exhibits and objects of collections of the North Carolina Aquariums in accordance with the generally accepted

practice for accredited zoos and aquariums of the American Association of Zoos and Aquariums. The net proceeds of these transactions are to be credited to the North Carolina Aquariums Fund. These transactions may be concluded “notwithstanding” the state surplus property and sealed bid laws. The Division of Aquariums is to submit to the Fiscal Research Division and the Joint Legislative Commission on Governmental Operations an annual report on sources and amounts of funds credited to the fund and the purposes of fund expenditures.

### **Boat Speeds or Operations and No-Wake Zones**

“No-wake zones” are areas in which vessels should proceed at an idle speed or at a slow speed in order not to create an appreciable wake. Three local acts created no-wake zones: for Coinjock Canal Intracoastal Waterway in Currituck County, Lee’s Cut in New Hanover County, and the Intracoastal Waterway within the town of Holden Beach (between Rogers Street and the eastern line of L. S. Holden Subdivision) [S.L. 1999-38 (H 637), S.L. 1999-95 (H 772), S.L. 1999-92 (H 649)]. Each act authorizes the respective town to place and maintain markers and to provide for criminal enforcement after markers have been placed.

S.L. 1999-174 (H 615) authorizes Elizabeth City to regulate the speed of vessels by ordinances that apply to waterways within the city’s boundary or its extraterritorial jurisdiction. The ordinances will be enforceable after markers (buoys or flotation devices) are set out in sufficient numbers to give adequate warning of the speed limit.

S.L. 1999-87 (H 650) authorizes Brunswick County to adopt ordinances regulating the operation of personal watercraft in the Atlantic Ocean and other waterways within its territorial jurisdiction. It also authorizes the governing board of any municipality within the county, by resolution, to allow any such ordinance to be effective within the municipality, consistent with the general statute governing such ordinances, G.S. 153A-122.

### **Licensing (Recreational Fishing License)**

A bill to establish a Coastal Recreational Fishing License, H 1434, passed the House but not the Senate. The version that passed the House was substantially weakened from its original form with an amendment that granted a blanket license for recreational fishing boats. The fee for the blanket license would have been \$1 per boat foot. This meant that only one license would have been required of the owner/operator of a recreational fishing boat and that no license would have been required of any other individuals fishing from the boat. The bill already provided for a blanket license for charter/head/dive boats and commercial fishing piers. Furthermore the bill exempted surf and shore fishermen entirely. In effect the House amendment removed the last remaining requirement for an individual license for any type of coastal recreational fishing.

### **Motor Vehicle Violations on Beaches**

G.S. 7A-273(2) lists certain misdemeanor and infraction cases in which magistrates may accept written appearances, waivers of trial or hearing, and guilty pleas or admissions of responsibility in accordance with a schedule promulgated by the Conference of Chief District Judges. S.L. 1999-80 (H 870) adds to that list of cases those involving the violation of county ordinances regulating the use of dune or beach buggies or other power-driven vehicles on the foreshore, the beach strand, or the barrier dune system.

### **Shellfish Harvesting**

S.L. 1999-143 (S 1047) prohibits the taking of shellfish within 150 feet of a publicly owned pier beneath which the Division of Marine Fisheries has deposited cultch material. It also redefines *oyster rocks* as rocks in the coastal fishing waters on which oysters grow rather than upon which the tides rise and fall. DENR is required, to the extent of available funds, to post oyster

rocks to forbid the taking of clams or oyster rocks by rakes, tongs, or other devices that may disturb or damage oysters.

### **Fees for Water Quality Certifications**

The fee bill, S.L. 1999-413, permits DENR to charge a fee for water quality certifications required in connection with Coastal Area Management Act (CAMA) permitting. Water quality certifications are typically required for development activities in and around wetlands and other waters of the state. The fee cannot exceed the fees charged either for the underlying CAMA permit or for a water quality certification not associated with CAMA permits.

### **Studies**

S.L. 1999-395 (H 163) authorizes the Legislative Research Commission to study coastal beach movement, beach renourishment, and storm mitigation, which were addressed by two bills that were not enacted, H 118 and S 54. The commission may report its findings and recommendations to the 2000 Regular Session or the 2001 General Assembly.

### **Local Acts**

**Yaupon Beach and Long Beach Merged into Oak Island.** S.L. 1999-66 (H 221) combines the towns of Yaupon Beach and Long Beach into the new town of Oak Island, effective July 1, 1999. It enacts a consolidated charter for Oak Island with a town manager as chief administrator. It also combines the alcoholic beverage control boards of Yaupon Beach and Long Beach into a consolidated Oak Island board.

**Carolina Shores 201 Plan.** Section 201 of the Federal Clean Water Act requires local governments to develop long-term plans for approval by the United States EPA in order to obtain grants for improvement of their wastewater treatment systems. Although no new federal wastewater grant money has been appropriated for years, in some places remnants of grants remain unspent. The "Section 201 Plan" process still survives as a framework for wastewater management and for distribution of other federal and state wastewater grants and loans in some places.

S.L. 1999-240 (H 570) removes the town of Carolina Shores from the 201 planning area in Brunswick County. Carolina Shores is a recently created town in an area that was formerly part of the town of Calabash. Carolina Shores's wastewater system is managed by a private water company, Carolina Blythe, whose operations are centered in South Carolina. The intended effect of this law appears to be to remove Carolina Shores from the wastewater planning jurisdiction of South Brunswick Water and Sewer Authority (SUBWASA), which has served as the regional wastewater planning agency for an area that included Carolina Shores. (There has been an extended dispute in and out of court between SUBWASA and other local governments, as well as citizens, over the financing of SUBWASA's proposed stormwater management system, but this law does not literally address that subject.) Opinions differ among state and local officials over whether or not the act achieved this result.

### **Environmental Assessment**

In the wake of concern about the siting of a proposed steel plant and paper plant in northeast North Carolina, the General Assembly added formal environmental checkoffs for the use of state industrial development funding. The amendments to the Bill Lee Act, S.L. 1999-360 (S 1115), direct the Department of Commerce to promulgate rules for the use of the Industrial Development Fund, G.S. 143B-437.01(a), including a rule on environmental assessment. The rule on environmental assessment requires the Secretary of Commerce to find that any project that uses industrial development funding will have no significant adverse effect on the environment. The Secretary of

Commerce can only make this finding after certification by DENR that, after consideration of avoidance and mitigation measures, the project will have no significant adverse environmental effect.

## **Environmental Finance**

### **Compensatory Mitigation and Riparian Buffers**

S.L. 1999-448 (S 1049), the Neuse River Buffer Amendments, provides for compensatory mitigation as an alternative to maintaining riparian buffers and authorizes the EMC to delegate responsibility for the implementation of riparian buffer protection requirements to local governments.

### **Mecklenburg Stormwater Fees**

S.L. 1999-50 (S 313) amends G.S. 153A-277 to allow Mecklenburg County to continue to levy stormwater fees to cover outstanding revenue bonds that were issued based on a pledge of revenue from the stormwater system. The N.C. Supreme Court decided in August 1999 (superceding an earlier opinion) that the city of Durham did not have statutory authority to impose stormwater fees. *Smith Chapel Baptist Church v. Durham*, 350 N.C. 805, 517 S.E.2d 874 (1999). It appears that this bill will permit Charlotte to continue charging at least a portion of its stormwater utility fees, whether or not they accord with the court's opinion in the Durham case.

### **Fishery Grant Program**

S.L. 1999-162 (S 1048) creates a grants committee to set priorities for, review applications to, and award grants under the fishery resources grant program and makes other changes to the grants program statute, G.S. 113-200. The grant review functions were previously handled by the Marine Fisheries Commission. The bill set the membership of the grants committee and provides that priority in funding is to go to projects involving persons involved in "a fishing-related industry" (now priority is to projects involving "fishermen").

### **Drinking Water State Revolving Loan Fund**

S.L. 1999-213 (S 878) allows drinking water revolving loans and grants to be made to nonprofit water corporations that exist solely for the purpose of providing community water or community water and wastewater and that are eligible for a federal loan or a federal loan and grant from the Rural Utilities Services Division, U.S. Department of Agriculture. Loans to a nonprofit water corporation must be approved by the Local Government Commission.

### **County Bonds for Open Space**

S.L. 1999-378 (H 1084) authorizes counties to issue bonds for open space preservation, among other purposes.

## **Environmental Health**

### **Food and Lodging Law**

**Country Ham Exemption.** A popular down-home deregulation bill (forty-three of fifty senators co-sponsored the bill), S.L. 1999-13 (S 560) exempts country ham and salt pork from

health regulation under the food law if “minimal preparation” (such as slicing, weighing, or wrapping) is the only activity that would otherwise subject the product to regulation. The products exempted are uncooked country ham and uncooked cured salt pork.

**Study of Ice Bucket and Coffee Pot Rules.** S.L. 1999-77 (H 1127) directs the State Division of Environmental Health to study the existing state rules concerning coffee pots and ice buckets provided by lodging establishments in guest rooms and to adopt revised temporary rules by January 31, 2000. Until that date, the current rules are suspended. In making its study the division is to consult stakeholders, including the affected industry and the local agencies that implement the rules. This legislation should enable the division, with input from these stakeholders, to better resolve questions that have arisen concerning whether simple in-place washing and rinsing suffice to address health concerns or if more expensive sanitation measures should be taken.

**Other Food Law Changes.** S.L. 1999-247 (H 957) makes several clarifying changes in the definitions and exemptions of the food law. The act redefines an *establishment that prepares or serves drink* as a business that prepares or serves beverages made from raw apples or potentially hazardous beverages made from other raw fruits or vegetables or that otherwise portions, sets out, or hands out drinks for human consumption. (This eliminates the previous qualification that the drinks must be in unpackaged portions reused on the premises. The definition of an *establishment that serves food* also is amended to eliminate this qualification.)

The act makes the following changes in exemptions: (a) It conforms the exemption of drinks provided from single-service containers not reused on the premises to the revised definition of establishments that prepare or serve drinks; (b) it revises the exemption of those who sell at unregulated events from temporary food stands so that it clearly applies to establishments that are already regulated under the food law at permitted locations; and (c) it adds exemptions for establishments that only set out or hand out beverages or food that are regulated by the Department of Agriculture and Human Services.

## On-Site Sewage Systems

**Northeastern Counties, Financing and Management.** In the early 1990s the four-county health district in northeastern North Carolina, Pasquotank, Perquimans, Camden, and Chowan (PPCC), developed a program for managing on-site sewage systems in the district. (The district is being expanded to include a fifth county, Currituck.) This program relied on the authority of counties under the county enterprise statute, G.S. 153A-275, to maintain and operate sewage systems, including on-site systems. The systems installed were either systems provisionally approved by the health department under the state sewage rules or were innovative systems designed to accommodate the prevailing soils and high groundwater tables of the area.

To finance the program the four counties imposed fees under the county enterprise statute. In 1995 those four counties and three others that had joined the program (Currituck, Tyrrell, and Washington) obtained legislation authorizing them to bill the fees they collect as property taxes. 1995 N.C. Sess. Laws Ch. 577. In the intervening years some owners of on-site systems in the area (particularly large systems serving subdivisions and shopping centers) have asked the counties to assume the management of the systems for a fee, and two more nearby counties (Gates and Hertford) have asked to join the program.

S.L. 1999-288 (H 638) adds Gates and Hertford to the program and seeks to accommodate the counties' taking over the managing of some of the systems. To accomplish these purposes the act:

- gives Gates and Hertford the same power as the other seven counties to bill sewage fees as property taxes and to enforce the collection of delinquent fees as liens on real property,
- empowers all nine counties to act as “units of local government” under the Interlocal Cooperation Act (G.S. Ch. 160A, art. 20, pt. 1) and to establish a joint agency pursuant to G.S. 160A-462 for the purpose of owning and operating provisionally approved septic systems or innovative septic systems. Such an agency would be responsible for the maintenance and operation associated with the systems, leaving inspection and regulation

to the local health departments. (Since the district health board and department already exist, it seems clear that these counties have no authority to “establish” either of them as the “joint agency.”) The act makes it clear that the district may own real property, either directly or by transfer from constituent counties.

**Studies.** Under the Clean Water Act of 1999, S.L. 1999-329 (H 1160, sec. 13.5), the Commission for Health Services is to study issues related to the proper maintenance of septic tank systems and report its findings and recommendations to the Environmental Review Commission by March 1, 2000. The commission is to focus on the harm that results from failure of systems and measures that prevent failure.

### **Mass Gatherings Law**

The 1971 General Assembly enacted a Mass Gatherings Law in response to the requests of local health and law enforcement officials who had been overwhelmed by large rural rock music and fiddler conventions that were inspired by Woodstock. (The most highly publicized North Carolina events occurred at Love Valley.) The 1971 law required permits, performance bonds, and liability insurance for open-air gatherings expected to attract 5,000 or more persons for longer than twenty-four hours. It also authorized rule making concerning minimum space requirements, ingress, egress, evacuation and crowd control measures, medical care, water supply and sewage disposal, noise limits, and post-event cleanup.

The Mass Gatherings Law has remained on the books for almost three decades, its origins largely forgotten. During the intervening years changing patterns of large open-air gatherings have led to questions about the appropriateness of such a law for conditions in the late 1990s. This year those questions generated two amendments to this law designed especially to accommodate speedways and dragways.

S.L. 1999-3 (S 23) exempted permanent stadiums with adjacent campgrounds that host annual events attracting crowds of 70,000 people or more. Later in the session S.L. 1999-171 (H 1286) rewrote the earlier measure, making the exemption apply to any permanent stadium with an adjacent campground that hosts an annual event that, within the previous five years, attracted crowds in excess of 70,000. It also defined a *stadium* to include speedways and dragways. Reportedly the first bill was drafted for Charlotte, the second for Rockingham. These fine-tuning changes should make the exemptions easier to administer.

### **Sanitary Districts**

S.L. 1999-94 (S 691) dissolves the Bermuda Center Sanitary District in Davie County and simultaneously creates the town of Bermuda Run. The district is directed to take all actions necessary to transfer assets and liabilities to the town by three days before the district’s dissolution.

## **Natural Resource Management**

### **Forest Resources**

S.L. 1999-121 (H 316) encourages prescribed burning in forests for forestry and wildlife purposes. It immunizes prescribed burning that complies with new G.S. 113-60.43 from liability as a public or private nuisance and from civil damages unless the burning is negligent. The procedure for liability protection requires obtaining a written prescription from a certified prescribed burner, all under the regulatory authority of the Division of Forest Resources within DENR.

## Pesticides

### Structural Pest Control Law Revisions

S.L. 1999-381 (H 1233) enacts a detailed set of revisions of the structural pest control law that licenses and regulates termite control operators and related businesses. This long and complex act was substantially rewritten by a House committee substitute. It is a mixture of changes that reorganize the roles of the Commissioner of Agriculture and the Structural Pest Control Committee (generally strengthening the hand of the committee), strengthen some regulatory provisions, and clarify provisions concerning branch offices.

Major provisions of the act include the following:

- It makes the Director of the Structural Pest Control Division answerable to both the commissioner and the committee and spells out the administrative powers of the commissioner. The director will be appointed by the commissioner from a list submitted by the committee.
- It spells out the powers of the committee, including (a) rule-making authority; (b) authority to consult with the commissioner on supervision of personnel; and (c) authority to issue, deny and revoke licenses, certified applicator cards, and registered technician cards.
- It increases fees for licenses and renewals from \$5 to \$25.
- It requires the committee to adopt rules that allow a licensee to establish at least two branch offices and supervise work performed from the offices covered under the license. It allows a company to act as a structural pest control licensee by engaging a licensee as a full-time employee responsible for the company's work. It allows the committee to grant an additional ninety-day period within a year after the death or disability of a licensee during which a business may operate without a license.
- It provides that enforcement for minor violations is not necessary, allowing instead written notices of violations.
- It authorizes rules for submission of efficacy data by registrants and manufacturers and prohibits use of information not turned over to the committee except in work performed on the individual's own property.
- It prohibits the use of restricted-use pesticides in demonstrations of proper use or in conducting fieldwork unless the person possesses a valid certified applicator's identification card, is conducting laboratory research, or is an M.D. or D.V.M. using the pesticides as drugs or medications.
- It prohibits a licensee from (a) failing to supervise work performed out of his or her offices; (b) allowing a license to be used by those not actively supervised; (c) using pesticides or devices or materials prohibited by the committee; or (d) using restricted-use pesticides in a phase of work for which a person is not licensed or qualified as a certified applicator except under proper supervision.

## Pollution Prevention/Waste Reduction

### Recycling

Several bills were introduced to encourage recycling or to change state policy on incentives for recycling. None of the bills passed. Two bills dealing with recycling passed the house of introduction and are eligible for consideration in the 2000 "short" session of the General Assembly. H 1290 would limit the tax benefits given to the owners of recycling and resource recovery equipment to three years from the date DENR issues a certificate for the equipment. This bill passed the House and at adjournment was in the Senate Committee on Finance. S 1081 would make various amendments to G.S. 136-28.8 to require the North Carolina Department of Trans-

portation to make expanded use of recycled materials in both road construction and maintenance. The bill passed the Senate and was in the House Committee on Transportation at adjournment.

S 1000 would have imposed a two-cent tax on motor oil to fund oil reuse and reclamation. S 500 would have required all reports of state agencies to be copied on both sides of paper pages. Neither bill passed in the Senate, so neither is eligible for consideration in 2000.

## **Protection of Natural Areas**

### **State Parks**

S.L. 1999-268 (S 1127) dedicates properties as part of the State Nature and Historic Preserve. Pursuant to G.S. 143-260.8 and Article XIV of the N.C. Constitution, the bill accepts properties added to the state parks system since the last dedication of lands in 1989 as part of the State Nature and Historic Preserve. The bill also removes other properties from the preserve as requested by the Council of State and updates the names of various parks and historic sites previously dedicated to the preserve.

### **Wetlands Restoration**

S.L. 1999-328 (S 953), the Ambient Air Quality Act, also provides a legislative vehicle for changes that gave the Wetlands Restoration Program in DENR more flexibility. It authorizes DENR to distribute moneys from the Wetlands Restoration Fund and to convey interests in real property acquired under the Wetlands Restoration Program to federal and state agencies, local governments, and private nonprofit conservation organizations. The bill requires recipients of funds to acquire property and recipients of interests in real property under this provision to grant a conservation easement to DENR in a form acceptable to DENR.

### **Wild and Scenic Rivers**

S.L. 1999-147 amends the Natural and Scenic Rivers Act of 1971 to remove the limit on the amount of acreage the state can acquire for inclusion in the New River Scenic River Area of the North Carolina Natural and Scenic Rivers System.

## **Radiation Protection**

### **Low-Level Radioactive Waste Disposal**

At the end of the session, with very little public discussion or debate, the General Assembly passed a committee substitute to S 247 that withdrew the state from the Southeast Compact Commission. The bill eliminates the statutory commitment to license a disposal facility for the Southeast Compact Commission states. S.L. 1999-357 (S 247) thus places the state, for the present, on a "go it alone" path with regard to disposal of low-level radioactive waste. The bill directs DENR not to issue a license for the proposed site in Wake County that had been under study since the 1980s and directs the Commission for Radiation Protection to work on an alternative plan for waste disposal. The State of North Carolina and the Southeast Compact Commission had been at a standstill since 1997, when the commission stopped funding for work at the Wake County site.

## Sediment Control

### Sedimentation Pollution Control Act

S.L. 1999-379 (H 1098) strengthens the Sediment Control Act. The new law requires that sediment control plan approvals (including those from local governments) be conditioned on compliance with all federal and state water quality laws. The changes also require approved sediment control plans that use ditches for dewatering to be forwarded to the Division of Water Quality (presumably out of concern over wetlands draining). The bill raises the maximum civil penalty to \$5,000 (it was \$500, except for stop work orders) counted from the day of the violation (it was counted from the date of receipt of notice of violation). The 30 percent cap on fee revenue used for program administration is eliminated. Finally, the bill requires that applicants for contractor's licenses be tested for knowledge of the Sediment Control Act.

### Relationship to Mining Act

The 1999 legislature also adopted S.L. 1999-82 (H 1008) to provide for regulation of grading and excavating activities under the Sediment Control Act rather than the Mining Act when all of the following apply:

- The excavation or grading is conducted to provide soil or other unconsolidated material to be used without further processing for a single off-site construction project for which an erosion control plan has been approved in accordance with Article 4 of Chapter 113A of the General Statutes.
- The affected land, including nonpublic access roads, does not exceed five acres.
- The excavation or grading is completed within one year.
- The excavation or grading does not involve blasting, the removal of material from rivers or streams, the disposal of off-site waste on the affected land, or the surface disposal of groundwater beyond the affected land.
- The excavation or grading is not in violation of any local ordinance.
- An erosion control plan for the excavation or grading has been approved in accordance with Article 4 of Chapter 113A of the General Statutes.

## Solid and Hazardous Waste

### Littering

S.L. 1999-454 (H 222) increases the penalties and makes certain other changes in G.S. 14-399, the criminal antilittering statute. The penalty increases are:

- first offense in an amount not to exceed 15 pounds and not for commercial purposes: fine of not less than \$250 or more than \$1,000 [G.S. 14-399(c)];
- second or subsequent offense in an amount not to exceed 15 pounds and not for commercial purposes: fine of not less than \$500 or more than \$2,000 [G.S. 14-399(c)];
- offense in an amount greater than 15 pounds but not exceeding 500 pounds and not for commercial purposes: fine of not less than \$500 or more than \$2,000 [G.S. 14-399(d)];
- offense in an amount exceeding 500 pounds or in any amount for commercial purposes: removal of the litter, restoration of any property damaged, and community service must be ordered by the court [G.S. 14-399(e)].

The bill also adds a definition of *commercial purposes* as new G.S. 13-399(i)(2a) to mean the discard of litter by a business entity for economic gain.

## Scrap Tires

The 1999 Appropriations Act, S.L. 1999-237, authorizes DENR to use funds in the Scrap Tire Disposal Account to maintain and support a position for the 1999–2000 fiscal year and for the 2000–2001 fiscal year to provide regulatory assistance to local governments. The assistance is aimed at developing programs to prevent scrap tires from outside the state from being presented for free disposal and to complete the cleanup of nuisance tire collection sites. Funds in the account were previously restricted, pursuant to G.S. 130A-309.63(d), to clean up scrap tire collection sites.

## Out-of-Unit Land Acquisition

G.S. 153A-15 provides that, for certain listed counties, before a unit of local government outside the county may acquire or condemn land in the county, the board of commissioners must approve the acquisition or condemnation. S.L. 1999-6 (H 37) adds Lenoir and Wayne to the list of counties to which this statute applies. This authority can be used to block the acquisition of property by another unit of local government for a variety of uses, such as landfills, wastewater discharge facilities, and water supply intakes and reservoirs.

## Cleanup of Contaminated Property

**Brownfields Fees.** North Carolina passed substantive brownfields legislation in 1997 but did not commit significant resources to the administration of the program. The amendments to the Bill Lee Act, S.L. 1999-360, address the program funding problem. They raise the initial fees charged by DENR for prospective brownfields agreements to \$2,000 (it was \$1,000). They further provide that the prospective developer of a brownfields property for which a brownfields agreement exists is responsible for payment of the full costs to DENR and the Department of Justice of all activities related to the brownfields agreement. The procedure for determining this cost is to be included in the brownfields agreement, and the fee is to be paid in two installments, with interest and a lien imposed on the real and personal property of the developer for unpaid amounts.

**Inactive Sites Program.** S.L. 1999-83 (H 1125) conforms the definition of *site* under the state's inactive sites program to the definition used in the federal Superfund program, thus clarifying an ambiguity that has existed since the start of the state's inactive sites program. The federal definition extends the delineation of a covered "site" or "facility" to any place where hazardous substances have migrated. This clarification expands the potential footprints of sites covered by the North Carolina Inactive Sites Cleanup Program.

**Land-Use ("Institutional") Controls.** S.L. 1999-198 (S 1159) extends the use of "institutional controls," in the form of land-use restrictions, to all DENR remedial cleanup programs. Institutional controls, originally associated just with "brownfields" cleanups, are devices that attempt to remove the risk of exposure to hazardous substances without actually removing or detoxifying the substances themselves. For example, rather than attempting to remove all the solvents that are contaminating an area of groundwater, an institutional control authorized under the bill might include a restriction on the use of that groundwater for drinking or bathing purposes. The restriction is to be recorded in the chain of title of the property and runs with the land. These restrictions must be part of a remedial plan for the site that has been approved by the secretary of DENR. The restrictions may be enforced by the owner or other person responsible for the site or by DENR.

The procedure for approval and recording of land-use restrictions under S.L. 1999-198 corresponds to the procedures authorized in past sessions for such restrictions at brownfields properties and properties contaminated with dry cleaning solvent. The act enacts new G.S. 143B-279.10 to provide for the recording of a notice of these restrictions. The restrictions, along with a surveyed plat of the property, must be submitted to DENR for approval. The plat will be titled NOTICE OF CONTAMINATED SITE. After approval, the department will certify the notice and return it to the owner. The owner is then required to file a certified copy of the notice-plat with the register of deeds. The plat is required to comply with G.S. 47-30 and will have to be certified by a

review officer before the register records it. It should be filed and indexed with other plats. It is to be indexed on the grantor index in the name of the landowner; no grantee indexing is necessary.

A Notice of Contaminated Site may be canceled by DENR after the contamination has been eliminated. DENR will then send a notice of cancellation to the register of deeds. This notice of cancellation is to be recorded in the deed books, indexed on the grantor index in the name of the landowner, and indexed on the grantee index in the name "Secretary of Environment and Natural Resources." If the register makes marginal entries, a marginal entry is to be made on the Notice of Contaminated Site showing the date of cancellation and the book and page where the notice of cancellation is recorded.

**Dry Cleaning Solvent Remediation.** Significant changes were proposed and debated in the state's nascent Dry Cleaning Solvent Act cleanup program. In essence, the private insurance market, which was the foundation for the original act, no longer appeared affordable or even available to dry cleaners. Thus some substitute is needed for funding solvent cleanups if the program is ever to accomplish anything. However, the changes proposed in 1999 in H 1326 (and by committee substitute in S 777) were not passed. The bill, as S 777, remains available for consideration in the "short" session.

**PCB Landfill.** The 1999 Appropriations Act, S.L. 1999-237, transfers \$1 million from the White Goods Management Account, G.S. 130A-309.83, to be used for the detoxification of the Warren County PCB landfill.

## Water Quality

### Clean Water Act Amendments

The General Assembly adopted S.L. 1999-329, the Clean Water Act Amendments, at the end of the 1999 Session. For a discussion of the animal waste provisions of the bill, which were central to debate about the legislation, see the "Animal Waste Management" section in this chapter. In addition to extending the moratorium on swine production and extending and enlarging the pilot program for inspecting large animal operations, the bill:

- requires owners of publicly operated treatment works, wastewater collection systems, and animal waste management facilities to notify the press, customers, and DENR of problems such as spills of untreated waste of 15,000 gallons or more;
- increases civil penalties for water quality violations to \$25,000 (was \$10,000);
- provides DENR with more flexibility in administering the Wetlands Restoration Program and the Conservation Reserve Enhancement Program;
- authorizes temporary water quality rules in the Cape Fear, Catawba, and Tar-Pamlico river basins;
- sets up a pilot program for technical assistance to municipal wastewater facilities in a single county;
- expands permitting alternatives analysis for new or expanded discharges;
- directs creation of engineering standards and permits for regional and systemwide wastewater collection;
- allows DENR to lower the maximum grants under the Clean Water State Revolving Loan Fund to \$2 million from \$3 million in certain circumstances and changes the procedure for local hearings on disbursements from this fund; and
- calls for a variety of studies.

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