

NC DENR

ENVIRONMENTAL LEGISLATION

PASSED IN 2011 REGULAR SESSION

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Environment

Air

Electric Vehicle Incentives SL 2011-206 (S194)

This legislation 1) permits natural gas and fuel cell electric vehicles to operate in HOV lanes regardless of the number of passengers in the vehicle, and 2) exempts fuel cell electric vehicles from emissions inspections.

Coastal

Topsail Beach/Littoral Rights SL 2011-78 (H415)

H415 states that property owners whose property is affected by publicly financed beach nourishment projects shall retain the same littoral rights they possessed prior to any such project. The legislation applies to the towns of Topsail Beach and Nags Head.

Permit Terminal Groins SL 2011-387 (S110)

Terminal groins are hardened structures built perpendicular to the shoreline to trap sand and slow erosion at an inlet. By rule and later by statute, North Carolina has generally prohibited the use of hard erosion control structures on ocean and inlet shorelines for almost 25 years because of impacts on adjacent properties and on the public beach – including the risk of increased erosion further down the beach. Under this bill, the Coastal Resources Commission may issue permits for up to four terminal groins on the North Carolina coast if certain conditions are met. Among other requirements, the applicant for a terminal groin permit must: 1) show that other erosion control techniques are impractical; 2) identify mitigation strategies to be used to offset adverse impacts; 3) indicate how the groin will be modified or removed if these mitigation strategies fail; 4) provide financial assurance for maintenance, mitigation, modification/removal, and restoration of damage to public, private, or public trust property. The bill does not alter the statutory prohibition on use of other types of hard erosion control structures such as seawalls and jetties.

Energy

Natural Gas Exploration Bonds SL 2011-276 (H242)

Section 1: Registration Fees/Bonding

For registration of new exploratory wells, this section adds an additional cost of \$1 per linear foot to the existing \$5,000 cost (via a bond) of registering each well.

Section 2: Permit Fees

Section two increases the fee for obtaining a permit to drill for oil and gas from \$50 to \$3,000 per well. Also increases the fee for abandoning a well from \$15 to \$450.

Section 3: Landowner Protections

This section provides for landowner protections in the context of oil and gas exploration and drilling. Developers are required to give 7 days notice to landowners for any exploration or surveying, and 14 days notice before beginning any activities that would disturb the land's surface (building roads, drilling, etc.). This section also requires that developers compensate landowners for damages to their land or property, and that developers indemnify property owners against adverse impacts on neighboring properties. Finally, this section states that if, after 10 years, a well is non operational for 6 months, property rights from the relevant lease revert back to the property owner.

Section 4: Oil and Gas Study

This section instructs DENR to conduct a study on the oil and gas exploration in North Carolina, specifically with regard to the feasibility of horizontal drilling and hydraulic fracturing ("fracking") techniques. The study is to take into account:

- Existing oil and gas resources in the State;
- Methods of extraction, including horizontal drilling and fracking;
- Potential infrastructural, environmental, economic, and social impacts of exploration and/or drilling;
- Potential oversight and administrative issues involved with exploration and/or drilling;
- In association with the Department of Justice, any consumer and landowner protections relevant to exploration and/or drilling;
- Any other issues deemed relevant by DENR.

The legislation also requests that DENR combine the study outlined in this bill with the oil and gas study outlined in Senate Bill 709. A combined report is due to the Environmental Review Commission by May 1, 2012.

Energy Crops for Biofuels Feedstocks SL 2011-198 (S378)

This bill instructs the Interagency group established in 1995 (SL 1995-626) to determine appropriate agronomic rates for application of swine waste to select energy crops. These crops are: miscanthus, switchgrass, fiber sorghum, sweet sorghum, and giant reed. The Interagency group is instructed to determine rates that would not cause or contribute to violations of groundwater standards, and are to be finalized in a report by Dec. 1, 2014. Interim rates are to be established by July 1, 2011.

REPs Credits and Cleanfield Parks SL 2011-279 (S484)

This bill makes poultry waste eligible for REPS credits for the first 10 megawatts of power generated, and gives poultry waste priority in receiving REPS credits relative

to two other options. Only after the REPS credits for poultry waste are fulfilled will REPS credits be available for generation from electric public utilities and electric membership cooperatives or municipalities. The different sources of potential sources for REPS credits are described in GS 62-133.8.

Energy Jobs Act (S709) Vetoed 6/30

Section 1: Royalties and Revenue

This section states that the first \$500 million in revenues and royalties generated for the state from oil and gas drilling (either on or offshore) will go towards establishing a fund to pay for any emergency response, emergency environmental protection, or mitigation associated with any release of hydrocarbons or associated fluids. This section also establishes the division of revenues and royalties after the \$500 million fund has been established. DENR would receive 30% of any such revenues and royalties.

Section 2: Governor's Regional Compact

This section instructs the Governor to begin developing a regional compact on offshore oil and gas development with the Governors of South Carolina and Virginia. This compact would work together to negotiate with the federal government with regard to leasing and exploration in federal waters. The Governor is instructed to make reports to the legislature on the progress of such a compact every three months, with final recommendations coming no later than May 1, 2012.

Section 3: Onshore Shale Gas Study

This section instructs DENR to conduct a study of onshore shale gas exploration in North Carolina. The study is to examine: potential amendments to existing statutes and regulations regarding drilling, hydraulic fracturing ("fracking"), potential impacts on water supplies, and a regulatory framework for shale gas extraction. The legislation encourages DENR to collaborate with the Energy Jobs Council, and, to the extent possible, combine this study with the one outlined in House Bill 242 (SL 2011-276).

Section 4: Energy Jobs Council

This section adds language to the legislature's findings in GS 113B-1 that encourages the state to increase efforts to develop domestic energy supplies within the State. It goes on to rename the Energy Policy Council, now known as the Energy Jobs Council. The goals of the Council are amended to encourage a greater focus on exploration of new energy sources and job creation within the State. The Council's appointees, previously all designated by the Governor, are now distributed between the Governor, President Pro Tempore of the Senate, and the Speaker of the House. The remainder of section 4 and section 5 are mostly technical changes.

Swine and Poultry Waste RECs SL 2011-309 (S710)

SB 710 allows credits to be earned for electricity and thermal energy produced from a combined heat and power (CHP) system. CHP systems are small scale electric power generators that are combined with heating units to maximize heat input from a single fuel source. In these systems, fuel is combusted to generate electrical power

and the resulting waste heat is re-circulated through a heat exchanger to simultaneously produce hot water or steam. This capability more than doubles the overall fuel efficiency and significantly reduces air emissions when compared with separate electrical power and thermal energy generating units.

Environmental Health

Functionally Equivalent Wastewater Systems SL 2011-261 (H594)

This bill authorizes the Commission for Public Health (CPH) to approve a wastewater treatment system as an “innovative” wastewater trench system if such a system is demonstrated to be functionally equivalent to an accepted system. The manufacturer of the innovative system must provide data and a certified statement from an independent engineer to CPH demonstrating that their system is functionally equivalent to an approved wastewater system. The legislation lists the requirements that the system must meet, along with the information that a manufacturer must provide to CPH. The legislation will likely pertain to a new wastewater trench system that utilizes Styrofoam peanuts to filter the wastewater instead of gravel.

Nursing Homes: Food Service Inspections SL 2011-226 (H622)

H622 changes the frequency of food service inspections in nursing homes or nursing home beds regulated by the state that are also certified by the Centers for Medicare and Medicaid Services from four/year to a minimum of two inspections/year until October 1, 2012 and reduced to one/year after that if the facility achieves a grade ‘A’ sanitation score.

Exempt Cooking Schools from Food Regulations SL 2011-335 (S346)

This bill exempts cooking schools from regulations governing sanitary requirements at public restaurants. To be designated as a “bona fide cooking school,” a facility: 1) primarily provides courses or instruction on food preparation; 2) serves food only to participants during instructional time; 3) do not otherwise serve food to the public.

Modify Public Swimming Pool Requirements SL 2011-39 (S368)

Section 1: Fencing Requirements and Permitting

This section states that DENR shall not deny an operation permit to a public pool solely for failure to meet certain fencing requirements. DENR may deny a permit if at least 50% of the fencing is damaged or destroyed, or if a new fence is constructed.

Section 2: Dressing and Sanitary Facilities at Interactive Play Stations

States that DENR shall not deny a permit to an interactive water play station (as described in 15A NCAC 18A .2508(2)(d)(v) for an owner or operator’s failure to comply with dressing and sanitary facility requirements as described in 15A NCAC 18A .2526.

Section 3: Wading Pool Fence Study

Section 3 directs the Commission for Public Health (CPH) to study whether the safety benefits of wading pool fences outweigh the safety risks of such fences. A final

report is to be delivered by March 1, 2012. In the meantime (now through July 1, 2012), DENR shall not require owners or operators of such pool to meet fencing requirements outlined in 15A NCAC 18A .2531(a)(7).

Section 4: Rule Adoption

This section instructs CPH to adopt rules consistent with sections one and two of this bill by January 1, 2012.

Clarify Water & Well Rights/Private Property SL 2011-255 (S676)

Amends well construction law to prevent delay, refusal or denial of permit for well that can be constructed and operated under the standards. The bill also clarifies definition of water supply well for abandonment purposes.

Waste

Accelerate Cleanup of Industrial Properties SL 2011-86 (H45)

This bill allows for site-specific remediation standards for cleanup in certain cases of environmental contamination. DENR would have the option to allow for site-specific strategies to take the place of a number of existing cleanup programs. No site-specific strategies would be allowed for contaminations involving the LUST program, the Dry-Cleaning Solvent Cleanup program, or the pre-1983 landfill assessment and remediation program (G.S. 130A-310.6(c)-(g)).

The legislation outlines standards to which a risk-based approach must adhere, and allows DENR to make the determination as to which approaches are most appropriate at each site. Any person requesting site-specific remedial action would have to complete a remedial investigation report and action plan, outlining the existing environmental problems and their proposed solutions. Any applicant would also have to provide financial assurance for their plan. DENR would review applications within 120 days and either approve or deny them. If DENR neither approves nor denies the plan, it shall be considered denied.

Once a plan is approved and implemented, the person conducting the remediation must submit a final report to DENR, demonstrating that the plan has been fully implemented and that remediation standards have been attained. DENR can request additional information, and may either make a no further action determination, or require additional remediation. DENR would review requests for no further action determinations within 180 days and either approve or deny them. If DENR neither approves nor denies the request, it shall be considered denied.

Any individual who conducts site-specific remediation would have to pay a fee of \$4,500 per acre that currently is, or will become contaminated. Total fees are limited to \$125,000 per site, regardless of size.

Committee to Investigate Handling of the CTS Contamination Site (HR186)

The legislation established a House Select Committee. The committee is charged is charged to conduct an investigation of the Department of Environment and Natural Resources' handling of the CTS contamination site and other related issues in the discretion of the Committee.

Amend SW Financial Assurance Requirements SL 2011-262 (H209)

This bill amends the minimum amount of financial assurance required of solid waste management facilities from \$3 million to \$2 million. Additionally, the legislation allows the use of a corporate financial test as an allowable mechanism to establish financial assurance necessary for closure, post-closure maintenance and monitoring, and any corrective action that may be required at the facility. The legislation also allows for facilities to meet their financial assurance requirement by establishing a trust fund that must be paid into at annual intervals, and after five years, meet the assurance requirement.

Water Quality

Prohibit Boylston Creek Reclassification SL 2011-24 (H62)

This legislation prohibits the reclassification of Boylston Creek watershed from Class C waters to Trout waters.

Requirements for Mineral Oil Spills SL 2011-38 (H103)

This bill exempts public utilities from notification requirements involving spills of mineral oils, which are discharged from transformers, regulators, and other pieces of electrical equipment. Utilities would be required to notify DENR within 24 hours if any spills: 1) exceed 25 gallons; 2) are directed into surface waters or causes a sheen on surface waters; or 3) are within 100 feet of surface waters and contains 50 ppm or more of polychlorinated biphenyls. The legislation also directs the responsible person(s) to clean up the spill.

Exempt Small Ag Processing from Permit Requirement SL 2011-41 (H162)

This bill allows agricultural processes that produce less than 1,000 gallons of wastewater per day to be exempt from wastewater permit requirements if the activities are carried out by the owner. Wastewater must be disposed of by land application and cannot be generated by an animal waste management system as defined in G.S. 143-215.10B. The bill stipulates, however, that no wastewater disposal may be discharged to surface waters, or result in any violation of surface or groundwater standards.

APA: Disapprove Reclaimed Water Rules SL 2011-48 (H268)

Section 2: Wastewater Permits for Reclaimed Water Uses

This section states that irrigation of agricultural crops supplied by reclaimed water do not require an individual or general permit, so long as those systems do not result in violations of surface or groundwater standards, and that there are no unpermitted

discharges into surface waters. It also instructs the EMC to replace Rule 15A NCAC 02U .0113 to that effect.

Section 3: Setback Waivers for Reclaimed Water Ponds

This section allows for property owners living adjacent to man-made reclaimed water ponds or lakes to waive the setback requirements specified in 15A NCAC 02U .0701(b) with regard to distance between reclaimed water ponds and property lines or wells. It also allows property owners to waive the setback requirements if the wells and reclaimed water ponds/lakes are both on their property. Any waiver must be signed, notarized and presented to DENR. Finally, this section specifies that liners specified in 15A NCAC 02U .0401(f) are not required, so long as the effluent quality of the reclaimed water source protects the groundwater against excessive nitrate deposits (outlined in Subchapter 2L of Title 15A of the NC Administrative Code)

Section 5: 2011 Storm Debris Burning

This section allows for the temporary disposal, temporary storage, and burning of storm-related debris as a result of the tornadoes, floods, and winds in North Carolina on April 16, 2011, running through June 1, 2011.

Maintenance of Prisons/Water Lines SL 2011-412 (H335)

Section 5 of the bill requires DENR to issue waivers to allow additional connections on bond funded public water supply water lines near the uptake of public water systems (area designated as WS-I or the critical areas of any area designated as WS-II, WS-III, or WS-IV) if either of two conditions are met: to address an existing threat to public health or water quality or to provide water to a habitable structure located on a lot zoned for a single family residence.

Reclaimed Water Cross-Connection Control SL 2011-218 (H388)

H388 clarifies rules pertaining to the direct cross-connections between reclaimed water lines and potable water lines and use of back flow prevention devices. The reclaimed water rules adopted by the EMC in 2010 did not allow the use of direct cross-connections, but allowed them in certain instances and prescribed the devices that needed to be used (15A NCAC 02U .0403(f)). This legislation requires the EMC to change the rule to not allow the use of direct cross-connection between reclaimed water and potable water systems unless the department (Division of Water Resources, Public Water Supply) has previously approved the cross-connections pursuant to 15A NCAC 18C .0406.

Stormwater/Isolated Popl. Growth in County SL 2011-220 (H492)

This bill exempts the unincorporated areas of certain counties from phase II stormwater requirements as established in SL 2006-246. Under the session law, county-wide stormwater control programs were required in counties with high population growth rates. Under the bill, a county where the high growth rate is confined to a small urbanized area (<5% of the county's area), will no longer be required to implement new development stormwater controls on a county-wide basis. This bill seems to have been targeted at a particular county; but may affect several counties that "tipped" into county-wide stormwater controls because of high

growth rates in or immediately around a small urbanized area. The lack of current state data on population growth for units smaller than a county may make it difficult to quickly identify exactly how many counties will be affected.

Stormwater Best Mgmt. Responsibility/Asscs./Septage SL 2011-256 (H750)

Section 1: Transferring Stormwater Permits

This section instructs DENR to transfer a stormwater management permit from the owner/developer of a condominium project or planned community to an owners association or equivalent organization. For the permit to be transferred, the stormwater system must comply with the DENR permit, and someone other than the owner/developer must own more than 50% of the units in the development.

Section 2: Sanitary District Board Limitations

This section prevents a local sanitary district board from implementing rules that are more restrictive, or in conflict with, the relevant rules of the county. In case of conflict, the county's rules will control.

Section 3: Portable Toilet Purveyors

This section stipulates that the only entities allowed to rent, lease, manage, or dispose of waste from a portable toilet must have a permit to operate a septage management firm. It also instructs the Commission for Public Health to adopt rules consistent with this provision by January 1, 2014.

Wake Local Stormwater Utility Fee SL 2011-109 (S155)

This bill allows the towns of Garner, Knightdale, Morrisville, Wendell, and Zebulon, and the cities of Durham and Winston-Salem to collect stormwater utility fees in the same manner as they collect delinquent personal and real property taxes.

Swine House Renovations/Site Limits SL 2011-118 (S501)

This bill allows for the renovation or construction of swine houses at preexisting swine farms under certain circumstances. The swine houses may be renovated or reconstructed if they meet the following requirements: does not increase the permitted capacity of the farm (measured by weight); does not result in an increase in the capacity of animal waste; does not violate any of the setback requirements for schools, churches, hospitals, or other sites described in GS 106-803; the renovation or construction does not occur within the 100-year flood plain. If a swine house is to be constructed or renovated in such a way that it moves closer to a residence, school, hospital, church, or property line, written permission must be given by the affected property owner for renovation or construction to occur.

Water Resources

Promote Water Supply Development SL 2011-374 (H609)

Section I

- Instructs DENR to cooperate with local governments to: identify how to meet local water supply needs; plan, estimate costs, and budget for future water supply projects; assist in the state and federal permitting process.
- At the request of local governments, DENR may conduct an analysis of how to adequately supply, develop, and maintain local water resource needs. Analyses would be contracted with local governments.
- Authorizes local water systems to create regional water supply planning organizations.

Section II

- Adds preservation of land for water supply reservoirs to the goals of the Clean Water Management Trust Fund (CWMTF). Instructs CWMTF to develop criteria on awarding grants for water supply projects.

Section III

- Requires that local water supply plans include measures to reduce per-capita demand of potable water.
- Specifies that, in order for applicants to receive grants from the Drinking Water State Revolving Fund or the Drinking Water Reserve, applicant's consumer education program must provide information on water conservation from reduced consumption.
- Instructs DENR to provide statewide outreach and technical assistance regarding water efficiency measures.

Exempt CCPCUA from IBT Requirements SL 2011-298 (H643)

This legislation exempts certain water transfers within the Central Coastal Plain Capacity Use Area (CCPCUA) from Interbasin Transfer certification requirements. It deletes the passage in Section 4 of S.L. 2010-155 that would have required CCPCUA counties to applying for IBT certification as of January, 2013.

Southern Shores Canal Dredging/Maintenance SL 2011-108 (S145)

This bill allows the town of Southern Shores to impose a fee to fund canal dredging and maintenance projects. The fees would be assessed to property owners whose dwelling units could or does benefit from water access through the canal system within the municipality's corporate limits.

Natural Resources

Conservation

Repeal Land Transfer Tax SL 2011-18 (H92)

This bill repeals the option for counties to levy a land transfer tax. The law had allowed counties to levy land transfer taxes of up to .4% upon approval of a referendum by voters of the county.

Property Tax Uniformity for Conservation Land SL 2011-274 (H350)

This bill clarifies the types of activities that conservation nonprofits and other organizations can conduct on conservation land without being subject to property taxes. Tax liens are tracked on the relevant land, but none are assessed unless the nonprofit or conservation organization sells the land to a private entity, earns non-incidental profits from the land, or conducts another “disqualifying event.” If the nonprofit or conservation organization is disqualified from tax exemption, property taxes on the land from the previous five years are levied against the organization.

Selective Vegetation Removal/State Highways SL 2011-397 (S183)

This bill allows for loosened restrictions on how, where, and how many trees and other types of vegetation may be removed from roadsides by outdoor advertisers. The legislation outlines specific areas relative to the advertisement where trees and vegetation may be removed, thinned, or pruned. Owners of outdoor advertising structures would need to obtain a selective vegetation removal permit from the Department of Transportation in order to begin removal of vegetation not meeting these requirements. For removal of trees existing prior to the installation of a given advertisement, owners may be required to pay DOT for each caliper inch of vegetation removed (the reimbursement rate would be determined by DOT). On the private property side of the fence, owners may remove any vegetation (other than native dogwoods or redbuds) within 200 feet of the sign and less than 4 inches in diameter. Permits for vegetation removal will be valid for one year, and will not be granted along any scenic byways.

Devisee/Devise/Statutory Construction SL 2011-284 (S252)

This legislation clarifies and makes consistent across the NC General Statutes the definition of devisee as found in Chapter 28A (G.S. 28A-1-1) of the General Statutes.

Conservation Easements Stewardship Funds SL 2011-209 (S309)

This bill allows governing bodies of Soil and Water Conservation Districts to establish a special revenue fund, provided the fund’s purpose is to maintain the relevant conservation easement. The fund may receive moneys from grants, donations, government appropriations, or other unrestricted funds. The governing body may invest the money in the fund, and may not overdraw the fund’s balance.

Ecosystem Enhancement

Ecosystem Enhancement Program Changes SL 2011-335 (S425)

Section 1.1 requires a local government to first attempt to use a private mitigation bank to supply its mitigation needs, unless the local government already has its own mitigation bank.

Section 1.2 establishes the prioritization of mitigation procurement programs that EEP must follow to fulfill its compensatory mitigation needs, first through Full Delivery or by private mitigation bank, then by Design/Build method, then by Design-Bid-Build method.

Parks

Amend Various Gun Laws/Castle Doctrine SL 2011-268 (H650)

H650 allows any person that has a concealed handgun permit may carry a concealed handgun in State Parks as defined in G.S. 113-44.9, effective December 1, 2011. In addition, parks that are administered by local governments may adopt ordinances to prohibit concealed weapons in certain recreational facilities (playgrounds, athletic fields, swimming pools, and athletic faculties) by posting signs.

Miscellaneous

Amend Environmental Laws SL 2011-394 (H119)

Section 1: Eliminates BACT requirements for certain renewable energy facilities. (In practical effect, the provision only affects a very small number of wood-burning facilities that were already in operation when Senate Bill 3 created the renewable energy portfolio standard).

Section 2: Changes setback requirements for open burning. The bill reduces the open burning setback from residences or other occupied structures from 1000 feet to 500 feet. It also allows DAQ to grant exceptions to the 500 foot setback if: 1) the resident or owner of a structure that is located within 500 of the open burning site grants a waiver; and 2) an air curtain burner is used. An air curtain burner must be located at least 300 feet from a residence or other occupied structure. The bill also provides that unintentional failure to comply with a setback is not a violation as long as the person did not vary from the required setback by more than 5%.

Section 3: Allows a utility planning to install water, gas, sewer, telecommunications or electrical line to submit a draft erosion and sedimentation control plan for approval without the written consent of the property owner as long as the owner has received prior notice of the project.

Section 4: Amends solid waste laws to clarify that the ban on landfill disposal of glass beverage containers only applies to ABC licensees.

Section 5: Clarifies the circumstances in which a local government is required to establish a program for recycling fluorescent lights and thermostats that contain mercury that were used in a public building owned by the local government.

Section 6: Requires the EMC to develop model practices for incorporation of stormwater capture and reuse into stormwater management programs and make that information available to state agencies and local government.

Section 7: Prohibits DWQ from requiring a water quality permit for any Type 1 solid waste compost facility unless required by federal law.

Section 8: Amends energy and water efficiency standards for major facilities constructed or renovated with state funds to require use of weather-based irrigation controllers.

Section 9: Provides that no water quality permit is required to contract for or to construct, install or alter any industrial waste treatment facility if that facility already has a waste discharge permit.

Section 10: Creates a limited exemption from the Dam Safety Act for agricultural impoundments. To be exempt, the dam must be: 1) constructed to provide water for agricultural use, 2) designed and approved by a licensed engineer, and 3) registered with the division of Land Resources. The exemption does not apply to dams that DENR determines to be high-hazard dams. It also changes the maximum sizes for exempting dams from a height of 15 to 25 feet and from an impoundment capacity of 10 to 50 acre-feet.

Section 11: Amends the laws related to petroleum underground storage tanks to:

1. Allow reimbursement from the Commercial Trust Fund for the cost of a site investigation required by the Department even if the investigation finds that the UST on site was not the source of a release;
2. Limit the deductible for a UST owner who elects to clean up a petroleum release for which he or she is not legally responsible;
3. Require DENR to set aside \$1,000,000 from the Commercial Fund and \$100,000 from the Non-Commercial Fund every year to fund assessment and cleanup for tank owners who can show that assessment and cleanup would create a severe financial hardship;
4. Allow a person who owns or operates multiple USTs to request that annual fees be paid in quarterly installments.
5. Clarify that secondary containment requirements only apply to the component of a UST system that is being replaced. (Example: replacement of the tank does not also require replacement and secondary containment of piping);
6. Require DENR to allow corrosion protection to be added to non-tank metallic components of a UST system that do not have it (as an alternative to replacement of the component) as long as it does not have visible corrosion and passes a tightness test;
7. Require DENR to consider the likelihood that a nearby well will actually be affected by the petroleum release in determining levels of risk. (The provision was intended to ensure that DENR considered factors beyond just the distance between the well and the petroleum release -- such as the well being up-gradient of the release.);
8. Require DENR to establish a process for granting variances from setbacks required between USTs and public water supply wells particularly when the well serves only a single facility that is not a community water system;
9. Direct DENR to allow use of steel tanks with cathodic protection.

Section 12: Incorporates use of gray water into water reuse statute and directs the EMC to adopt rules concerning acceptable uses of gray water. Limits the authority of cities to prohibit installation of cisterns and rain barrel collection systems. Instructs DENR to promote the voluntary adoption of gray water systems.

Section 13: Clarifies effective date of nutrient offset fee schedule.

Section 14: Allows additional time for wastewater dischargers in the Jordan Lake watershed to complete upgrades needed to meet nitrogen allocations under the Wastewater Discharge Rule. Currently, nitrogen allocations must be met in calendar year 2016. The bill pushes that compliance date out to calendar year 2018 as long as the discharger has received an authorization to construct from DWQ by Dec. 31 2016 for any upgrades.

Section 15: Authorizes the Commission for Public Health to adopt all or part of the USDA Food Code and to require certification in food protection and grant variances in accordance with the Food Code.

Section 16: Authorizes DENR to grant a variance from the minimum separate distance for public water supply wells that are not community wells under certain conditions.

Section 17: Creates a grandfather provision under the Neuse and Tar-Pamlico buffer rules. The provision applies to lots of less than 2 acres that were platted before August 1, 2000. If full compliance with buffer requirements would prevent construction of a single-family residence and necessary infrastructure (such as a septic system) on the lot, the provision would allow some encroachment on the buffer. The residence would have to be set back the maximum feasible distance from normal high water and no less than 30 feet. No part of the septic system or drainfield would be allowed to encroach on the buffer. Stormwater generated by new impervious surface in the buffer would have to be treated. The bill also directs DENR to study whether the buffer rules could be amended to provide the same level of water quality protection with less impact on property owners and whether all lots platted before August 1 2000 could be exempted from buffer requirements.

Section 18: Eliminates the requirement for Ginseng exporters to purchase export certification for fee of \$3.00 per pound exported.

Section 19: Sunsets the Swine Farm Methane Capture Pilot Program effective September 1 2011. (Session Law 2007-523, which created the pilot program, originally had a sunset date of September 1, 2017). There have been no participants in the pilot program to date.

Section 20: Directs DENR to study stormwater management requirements for airports.

Section 21: Directs DENR to continue providing Sec. 319 grant funding to the Division of Soil and Water Conservation and the Division of Forest Resources following the transfer of those divisions to the Department of Agriculture and Consumer Services consistent with federal grant guidelines and available grant funding.

Section 22: Prohibits a sanitary district board from having rules more restrictive than or in conflict with those of the county.

Section 23: Repeals statute language concerning additional financial assurance requirements for commercial hazardous waste facilities. The facilities would still be required to provide financial assurance for closure; post-closure maintenance and monitoring; corrective action; liability for a sudden event; and costs incurred by DENR in response to an accident at the facility. Compliance with federal financial assurance requirements at 40 CFR Part 264 Subpart H is sufficient to meet the requirements.

Appointments

2011 President Pro Tem's Appointments Bill SL2011-176 (S686)

Senate Pro-Tempore Appointments:

- Environmental Mgmt. Commission: Steve Keen (Wayne Co.), Marvin Cavanaugh (Forsyth), Steve Tedder (Stokes) through June 30, 2013.
- Clean Water Mgmt. Trust Fund: George Howard (Wake), Christene Mele (Pamlico) through July 1, 2015.
- Irrigation Contractor's Licensing Board: Charles Allen (Cumberland) through Sep. 30, 2014.
- Board for Licensing Soil Scientists: Reid Hobbs (New Hanover), Edwin Stott (Rockingham) through June 30, 2014.
- Natural Heritage Trust Fund Board of Trustees: Greer Cawood (Forsyth) through Dec. 31, 2017.
- Parks & Rec. Authority: Monroe Pannell (Catawba), Lisa Wolff (Alamance) through July 1, 2014.
- Seafood Industrial Park Authority: Kory Swanson (Wake) through June 30, 2013.
- Wildlife Resources Commission: Wendell Murphy, Jr. (Duplin), Thomas Berry (Guilford), Mark Craig (Guilford), Doc Thurston (Mecklenberg) through June 30, 2013.
- Rules Review Commission: Margaret Currin (Wake), Addison Bell (Mecklenberg), Pete Osborne (Guilford), Bob Rippey (New Hanover), Faylene Whitaker (Randolph) through June 20, 2013.
- Well Contractors Certification Commission: Billy Yow (Guilford), Thomas Whitehead (New Hanover) through June 30, 2014.

Speaker of the House Appointments:

- Clean Water Mgmt. Trust Fund: Frank Bragg (Mecklenberg) through July 1, 2015.
- Environmental Mgmt. Commission: Christopher J. Ayers (Wake), Clyde E. Smith (Cleveland) through June 30, 2013.
- Natural Heritage Trust Fund Board of Trustees: Troy Kickler (Wake) through Jan. 1, 2014 (filling term of Henry L. Kitchen), Alan D. Briggs (Wake) through Jan. 1, 2018.
- On-Site Wastewater Contractors and Inspectors Certification Board: Steven J. Brown (Wake), Jeffrey A. Knight (Union) through July 1, 2014.
- Parks and Rec. Authority: Lydia Boesch (Moore) through July 1, 2014.
- Rules Review Commission: Garth Dunklin (Mecklenberg), Stephanie Mansur Simpson (Wake) through June 30, 2013.
- Seafood Industrial Park Authority: Fred L. Hines (Wake) through June 30, 2013.
- Board of Licensing for Soil Scientists: Fred W. Burt (Wake) through June 30, 2014.
- Wildlife Resources Commission: John Clark (Sampson), John Coley (Wake), Durwood Laughinghouse (Wake), Mitch St. Clair (Beaufort) through June 30, 2013.

Commissions

Mountain Resources Comm'n/Staggered Terms SL 2011-372 (H567)

This bill adjusts the terms served by members of the Mountain Resources Commission. Previously, all members had served four year terms. Under the new legislation, members serve terms ranging from two to five years, depending on the position. No changes are made to the persons or bodies that make the appointments.

Reorganization/Legislative Oversight Commissions SL 2011-291 (H595)

This bill makes two changes to committees that affect and oversee operations at DENR: 1) the Joint Select Committee on Low-Level Radioactive Waste and the Joint Legislative Committee on Seafood and Aquaculture are both transferred to Joint Legislative Commission on Governmental Operations; and 2) the number of members required for a quorum in the Environmental Review Commission is changed from nine to seven. In addition, additional powers are added to the Joint Regulatory Reform Committee.

Joint Res. to Establish the Joint Reg. Reform Comm. Res. 2011-2 (SJR17)

This resolution establishes the Joint Regulatory Reform Committee. The membership consists of 18 members: nine House members (three from the House Environment Committee and three from the House Commerce and Job Development Committee) and nine Senate members (three from the Senate Agriculture/Environment/Natural Resources Committee and three from the Senate Commerce Committee). The committee is required to submit a final report by May 1, 2012.

Government Reduction Act SL 2011-266 (S593)

The Government Reduction Act eliminates several boards and commissions that have not met recently, are duplicative, or are not deemed critical. Committees that are related to DENR are:

- Petroleum Underground Storage Tank Fund Council,
- Roanoke River Basin Advisory Committee,
- Joint Select Committee on Low-Level Radioactive Waste,
- Small Business Environmental Advisory Panel, and
- Transfers the duties of the NC Solid Waste Management Capital Projects Financing Agency to the CWMTF.

The legislation also eliminates several boards and commissions because statutory requirements have been met, or they are no longer authorized to meet, provide recommendations, or operate in any capacity. Committees related to DENR are:

- Legislative Commission on Global Climate Change,
- Advisory Committee to the NC Members of the Low-Level Radioactive Waste Management Compact Commission,
- Study Commission on NC's Energy Future, and
- Legislative Study Commission on Water and Wastewater Infrastructure.

Paper Reduction

Pesticide Registration Paper Reduction SL 2011-239 (H603)

This bill eliminates the requirement for registration of a pesticide to the NC Pesticide Board to include a "material safety data sheet". All other requirements remain in place as described in GS 143-442(a).