

Chapter 10
Environment and Natural Resources and Energy
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Enacted Legislation

Coastal Issues

Ensure Safe Navigation Channels

S.L. 2013-138 (HB 707) directs the Department of Environment and Natural Resources to work with local governments and the United States Army Corps of Engineers to ensure that the State's shallow draft navigation channels are safe and navigable. S.L. 2013-138 (HB 707) also establishes the Oregon Inlet Land Acquisition Task Force for the purpose of determining, reviewing, and considering the State's options for acquiring the federal government's right, title, and interest in Oregon Inlet and the real property adjacent to Oregon Inlet.

This act became effective June 19, 2013. (JH)

Increase Funding for Dredging

S.L. 2013-360, Section 14.22 (SB 402, Section 14.22). **See Agriculture.**

Amendments to the Coastal Resources Commission

S.L. 2013-360, Section 14.24 (SB 402, Section 14.24) decreases the membership of the Coastal Resources Commission from 15 to 13 members, terminates the membership of individuals serving on July 31, 2013, and directs appointment of a new Commission.

This section became effective July 1, 2013. (MM)

Amendments to the Coastal Resources Advisory Council

S.L. 2013-360, Section 14.25 (SB 402, Section 14.25) decreases the Coastal Resources Advisory Council (Advisory Council) from 45 to 20 members. Members are solely designated by the Coastal Resources Commission (CRC). Counties and cities in the coastal area may nominate candidates for consideration by the CRC. The terms of all Advisory Council members serving on January 1, 2013 expired on July 31, 2013. A new Council must be appointed with terms beginning on August 1, 2013, and expiring on June 30, 2015. Members may be reappointed at the discretion of the CRC, provided that one-half of the membership at the beginning of any two-year term are residents of counties in the coastal area.

This act became effective July 1, 2013. (MM)

Coastal Policy Reform Act of 2013

S.L. 2013-384 (SB 151) amends various laws related to the coastal region of the State as follows:

- Repeals the requirement that the Secretary of Environment and Natural Resources designate at least one license agent in each county bordering coastal fishing waters.
- Repeals various licenses for the taking of menhaden by the use of a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters.
- Amends the law governing terminal groin construction as follows:
 - Amends the definition of terminal groin.
 - Repeals the requirement that an applicant for a terminal groin demonstrate that structures or infrastructure are imminently threatened by erosion and that nonstructural approaches to erosion control, including relocation of threatened structures, are impractical.
 - Provides that an environmental impact statement prepared for a terminal groin pursuant to federal law is sufficient to satisfy the requirements of the State terminal groin law.
 - Provides that the requirements of an inlet management plan must be reasonable and may not impose requirements with costs that outweigh the benefits and provides that an inlet management plan is not required to address sea level rise.
 - Amends the financial assurance requirements.
 - Provides that the Coastal Resources Commission consider the benefits of a terminal groin when determining whether the terminal groin will result in significant adverse impacts to private property or the public beach.
- Clarifies that cities may adopt and enforce ordinances on the State's ocean beaches and abate unreasonable interferences with public trust rights on State's ocean beaches.

This act became effective August 23, 2013. The provisions of this act governing the issuance of terminal groin permits apply to permit applications submitted on or after that date. (JH)

Amend Coastal Area Management Act Minor Permit Notice Requirements

S.L. 2013-413, Sec. 30 (HB 74, Sec. 30) eliminates the newspaper notice requirement for Coastal Area Management Act minor permits.

This section became effective August 23, 2013. (JH)

Energy

Permitting of Wind Energy Facilities

S.L. 2013-51 (HB 484) establishes a permitting program, implemented by the Department of Environment and Natural Resources (DENR), for the siting and operation of wind energy facilities in North Carolina. Under the program, no person may undertake construction, operation, or expansion activities associated with a wind energy facility without first obtaining a permit from DENR.

The program includes pre-permit application criteria that requires: (1) the applicant to request a pre-application site evaluation meeting with DENR to determine if proposed wind energy facility sites pose a serious risk to civil air navigation, military activities, or natural resources; (2) the applicant to submit a pre-application package to DENR that includes a narrative description and map of the proposed facility, a description of potential impacts to civil air navigation, military activities, or natural resources; and a timetable for development through commercial operation; and (3) the applicant to request a scoping meeting with DENR to review the proposed permit within 30 days of filing the permit application.

Permit application requirements. – A permit application for a wind energy facility must include:

- A narrative description and map showing the location of each turbine.
- A description of civil air navigation or military activities that may be affected by the construction or operation of the proposed facility.
- Documentation addressing any potential adverse impacts on military activities as identified by the Department of Defense Clearinghouse and any mitigation actions agreed to by the applicant.
- A study of the noise and shadow flicker impacts of the turbines associated with the proposed facility.
- A study of the proposed facility on natural resources.
- A permit application fee of \$3,500.
- A plan for decommissioning and removal of the facility.

DENR must provide notice of receipt of the complete permit application, accompanied by a request for information related to potential adverse impact of the proposed wind energy facility, to potentially affected military installations and local governments. DENR is directed to hold a public hearing within 75 days of receipt of a complete application in each county in which the wind energy facility is proposed to be located.

Permit approval conditions. – DENR must approve a permit application for a proposed wind energy facility unless it finds that construction or operation of the facility would:

- Be inconsistent with or violate rules of DENR or any other provision of law.
- Encroach upon or otherwise have a significant adverse impact on military operations.
- Result in significant adverse impacts to natural resources, fish, wildlife, or views from State or national parks and other areas with high recreational values.
- Obstruct major navigation channels.
- Be denied based on criteria under the Coastal Area Management Act or prohibited under the Mountain Ridge Protection Act.
- Not comply with all applicable federal, State, or local permitting requirements, licenses, or approvals, including local zoning requirements.

The program requires the applicant or permit holder to establish financial assurance that ensures funds are available for decommissioning the facility and reclamation of the property to its condition prior to commencement of activities on site.

This act became effective May 17, 2013 and applies to wind energy facilities or facility expansions that have not received a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration on or before that date. (JM)

Accelerate Sunset Date of Petroleum Displacement Plan

S.L. 2013-265, Sec. 23 (SB 638, Sec. 23) accelerates the sunset date of the Petroleum Displacement Plan to the effective date of this act. The previous sunset date was July 1, 2016.

This section became effective July 17, 2013. (CS)

Domestic Energy Jobs Act

S.L. 2013-365 (SB 76) modifies provisions related to oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing treatments for that purpose (fracking activities); enacts various provisions related to offshore energy activities; amends the Energy Policy Act and the Energy Policy Council; and, directs the Medical Care Commission to amend a rule governing required emergency fuel for health facilities. In particular the act:

- Directs that all rules required to be adopted to govern fracking activities will be subject to automatic review by the General Assembly, as though 10 or more written

objections had been received in accordance with applicable provisions of the Administrative Procedure Act (APA).

- Provides that, with respect to rules proposed for the creation of a modern regulatory program for fracking activities, the Mining and Energy Commission (MEC), the Environmental Management Commission (EMC), and the Commission for Public Health (CPH) are exempt from the provisions of APA that require the preparation of fiscal notes.
- Modifies the moratorium enacted in 2012 on issuance of permits for fracking activities so that the moratorium is operative until: (i) all rules required to be adopted by the MEC, the EMC, and the CPH have become effective; and, (ii) the General Assembly takes affirmative legislative action, including repeal of the moratorium, to allow the issuance of such permits.
- Directs several studies on various matters, including: (i) development of a coordinated permitting program for fracking activities in order that a single comprehensive environmental permit could be issued for an applicant's fracking activities; (ii) an appropriate rate of severance tax that should be imposed in association with fracking activities; and, (iii) registration requirements for landmen.
- Modifies the membership of the MEC.
- Modifies the MEC's authority to limit the total amount of oil and gas produced in the State (an "allowable") in certain circumstances.
- Clarifies bonding requirements associated with fracking activities.
- Requires that any revenues or royalties paid to the State from offshore leasing, exploration, development, and production of energy be deposited in a special revenue fund until the fund reaches \$250 million. The fund could be used only for emergency purposes in response to a release of liquid hydrocarbons or associated fluids resulting from offshore energy activities. Funds in excess of \$250 million are designated for specific uses.
- Encourages the Governor to develop a compact with the governors of South Carolina and Virginia to develop a regional strategy for exploration of offshore energy resources, and otherwise work with other states, Congressional delegations, and applicable federal agencies to develop strategies for increasing domestic energy supply and to promote a constructive dialogue on offshore energy issues.
- Amends the purpose, goals, and duties of the Energy Policy Council, reconstitutes the Council's membership, and transfers the Council from the Department of Commerce to the Department of Environment and Natural Resources.
- Directs the Medical Care Commission to amend the "Electrical Requirements Rule" to allow facilities licensed by the Department of Health and Human Services to use bi-fuel generators that operate with both liquid fuel and other gaseous fuels that are not stored on the site, in certain circumstances, for the purpose of providing emergency electricity to such facilities.

This act became effective July 29, 2013. (JLM)

Energy Savings Contracting Amendments

S.L. 2013-396 (SB 547). **See State Government.**

Fisheries

Repeal of the Fishery Resource Grant Program

S.L. 2013-360, Section 14.7 (SB 402, Section 14.7) repeals the Fishery Resource Grant Program, a grant program that funded work on new fisheries equipment and gear, environmental studies, mariculture, and seafood technology.

This section became effective July 1, 2013. (JH)

Marine Fisheries Licenses and Permits

S.L. 2013-360, Section 14.8 (SB 402, Section 14.8) increases various marine fisheries license and permit fees in order to support the Marine Fisheries At-Sea Observer Program and makes other changes to marine fisheries license and permit requirements.

This section became effective August 1, 2013. (JH)

Marine Resources Fund and Marine Resources Endowment Fund disbursements

S.L. 2013-360, Section 14.9 (SB 402, Section 14.9) amends the Marine Resources Fund and the Marine Resources Endowment Fund so that disbursements from the Funds must be authorized solely by the Marine Fisheries Commission (MFC), rather than by the MFC and the Wildlife Resources Commission.

This section became effective July 1, 2013. (JH)

Repeal of Marine Fisheries Endowment Fund

S.L. 2013-360, Section 14.10 (SB 402, Section 14.10) repeals the Marine Fisheries Endowment Fund, which has never been appointed or received any funding.

This section became effective July 1, 2013. (JH)

Miscellaneous

Regionalization of Public Utilities

S.L. 2013-50 (HB 488). **See Local Government.**

Plastics Labeling Requirements

S.L. 2013-74 (HB 315) prohibits the sale of rigid plastic containers, including beverage containers, in the State that are labeled as "degradable," "biodegradable," "compostable," or other words suggesting the container will biodegrade, unless the container also includes a label with the statement "Not Recyclable, Do Not Recycle" in print of the same color, contrast, font, and size as the language suggesting the container will biodegrade.

This act became effective June 12, 2013, and applies to any plastic containers distributed, sold, or offered for sale after July 1, 2014. (JLM)

Transfer Environmental Permits

S.L. 2013-121 (HB 279) authorizes the Department of Environment and Natural Resources to transfer stormwater management system permits, sewer system permits, and State administered erosion control plans and authorizes local governments to transfer locally administered erosion control plans without the consent of the permit or plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur under certain conditions.

This act became effective June 19, 2013. (JH)

Tennessee Valley Authority Settlement Funds

S.L. 2013-360, Section 13.3 (SB 402, Section 13.3). **See Agriculture.**

Amendments to the Environmental Management Commission

S.L. 2013-360, Section 14.23 (SB 402, Section 14.23) increases the membership of the Environmental Management Commission from 13 to 15 members, terminates the membership of individuals serving on July 31, 2013, and directs appointment of a new Commission. Members serve terms of four years.

This section became effective July 1, 2013. (MM)

Transfer State Energy Office from Department of Commerce to the Department of Environment and Natural Resources

S.L. 2013-360, Section 15.22 (SB 402, Section 15.22). **See State Government.**

Clarifying and Conforming Changes to Statutes Pertaining to the Management of Snakes and Other Reptiles

S.L. 2013-413, Sec. 38 (SB 74, Sec. 38). **See Criminal Law and Procedure.**

Various Emergency Management Changes

S.L. 2013-415, (HB 15). **See Transportation.**

Parks and Recreation

Special License Plate Revenue for Friends of State Parks, Inc.

S.L. 2013-360, Section 14.3B (SB 402, Section 14.3B). **See Transportation.**

Deed Stamp Tax Proceeds Credited to General Fund from Natural Heritage Trust Fund

S.L. 2013-360, Section 14.4 (SB 402, Section 14.4). **See Finance.**

Amend Parks and Recreation Authority

S.L. 2013-360, Section 14.5 (SB 402, Section 14.5) decreases the membership of the Parks and Recreation Authority from 15 to 9, terminates the membership of individuals serving on July 31, 2013, and directs appointment of a new authority.

This section became effective July 31, 2013. (JLM)

Amendments to the Parks and Recreation Trust Fund

S.L. 2013-363, Section 5.8 (HB 112, Section 5.8) amends the purposes for which moneys in the Parks and Recreation Trust Fund may be used by eliminating authority to use such funds to retire debt incurred for capital projects, repairs, and renovation of facilities that are part of the State Parks System.

This section became effective July 1, 2013. (JLM)

Regulatory Reform

Omnibus County Legislation

S.L. 2013-340 (SB 372). **See Local Government.**

Temporary Limitation on Enactment of Environmental Ordinances by Cities and Counties

S.L. 2013-413, Sec. 10.2 (HB 74, Sec. 10.2). **See Local Government.**

Amend the Lagoon Closure Rule

S.L. 2013-413, Sec. 20 (HB 74, Sec. 20) provides for alternative implementation of a rule governing closure requirements for containment basins, such as lagoons or waste storage structures, permitted at a cattle facility to allow for an alternative closure process if the cattle facility no longer meets the statutory definition of an animal feeding operation and directs the Environmental Management Commission to adopt a rule consistent with the provisions of this section.

This section became effective August 23, 2013. (JM)

Amend the Definition of "New Animal Waste Management System"

S.L. 2013-413, Sec. 21 (HB 74, Sec. 21) amends the definition of "new animal waste management system" in the North Carolina Administrative Code and directs the Environmental Management Commission to adopt a rule consistent with the amended definition.

This section became effective August 23, 2013. (JM)

Repeal 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements

S.L. 2013-413, Sec. 25 (HB 74, Sec. 25) directs the Environmental Management Commission (EMC) to repeal the "Model Year 2008 and Subsequent Model Year Heavy-Duty

Vehicle Requirements" rule on or before December 1, 2013 and provides that until the rule is repealed, the EMC, the Department of Environment and Natural Resources, or any other political subdivision of the State may not implement or enforce the rule.

This section became effective August 23, 2013. (JM)

Provide Environmental Management Commission with Flexibility as to the Necessity of Regulating Complex Sources

S.L. 2013-413, Sec. 27 (HB 74, Sec. 27) provides the Environmental Management Commission with the flexibility to determine whether rules are necessary for controlling the effects of complex sources on air quality. Complex sources are facilities which are or may be an air pollution source or which will induce or tend to induce development or activities which will or may be air pollution sources largely the result of increased emissions from motor vehicles or stationary sources.

This section became effective August 23, 2013. (JM)

Amend Rules that Pertain to Open Burning for Land Clearing or Right-of-Way Maintenance

S.L. 2013-413, Sec. 28 (HB 74, Sec. 28) amends the rules that pertain to open burning for land clearing or right-of-way maintenance to provide that an air quality permit is not required if materials are not carried offsite or transported over public roads for open burning unless the materials are carried or transported to: (1) facilities permitted for the operation of an air curtain burner; or (2) a location where the material is burned no more than 4 times per year. The sites must be at least 500 feet from any dwelling or occupied structure not located on the property; with no more than 2 piles, each 20 feet in diameter burned at one time; and may not be a permitted solid waste facility. This section also makes conforming statutory changes.

This section became effective August 23, 2013. (JM)

Air Quality Permit Duration/Clarify Third Party Filings

S.L. 2013-413, Sec. 29 (HB 74, Sec. 29) provides that with the exception of permits issued pursuant to Title V of the federal Clean Air Act, air quality permits must be issued for a term of eight years. This section also provides that in addition to a permit applicant and a permittee, a third party who is dissatisfied with a decision of the Environmental Management Commission (EMC) may commence a contested case within 30 days of the EMC notifying the applicant of its decision.

This section became effective August 23, 2013. (JM)

Clarify Local Government Authority under the Sedimentation and Pollution Control Act

S.L. 2013-413, Sec. 33 (HB 74, Sec. 33) clarifies the process for appeals from civil penalties assessed by a local government that has established and administers a State-approved erosion and sedimentation control program. This section also provides that civil penalties assessed by a local government under the Sedimentation and Pollution Control Act of 1973 must be remitted to the Civil Penalty and Forfeiture Fund.

This section became effective August 23, 2013. (JM)

Technical and Conforming Changes to Protected Species and Marine/Wildlife Resources Statutes

S.L. 2013-413, Sec. 37 (HB 74, Sec. 37) amends various statutes governing protected species, marine, and wildlife resources to conform to analogous federal law.

This section became effective August 23, 2013. (JM)

Prohibit Public Entities from Purchasing or Acquiring Property with Known Contamination without Approval

S.L. 2013-413, Sec. 40 (HB 74, Sec. 40). **See State Government.**

Clarify the Fees for North Carolina Aquariums

S.L. 2013-413, Sec. 42 (HB 74, Sec. 42) clarifies that the Secretary of Environment and Natural Resources may adopt fees for piers operated by the aquariums, for facility rentals and educational programs.

This section became effective August 23, 2013. (JM)

Repeal Requirements for Increases in Vehicular Surface Areas

S.L. 2013-413, Sec. 54 (HB 74, Sec. 54) repeals the alternative requirements for land-disturbing activity that results in an increase in vehicular surface area of one acre or more.

This section became effective August 23, 2013. (JM)

Amend Notice Procedure for Dredge and Fill Permits

S.L. 2013-413, Sec. 55 (HB 74, Sec. 55) amends the notice procedure to riparian property owners that adjoin property subject to an application for a dredge and fill permit.

This section became effective August 23, 2013. (JM)

Solid Waste

Construction/Demolition Landfill Siting

S.L. 2013-25 (SB 24) decreases the buffer requirement from State gamelands for landfills for the disposal of construction and demolition debris from 1 mile to 500 feet when both of the following apply: (i) the disposal unit would be located within the primary corporate limits of a municipality located in a county with a population less than 15,000; and (ii) all portions of the gameland within one mile of the proposed disposal unit are separated from the disposal unit by a primary highway designated by the Federal Highway Administration as a U.S. Highway. See also Sec. 59.1 of S.L. 2013-413 (HB 74).

This act became effective April 9, 2013, and applies to any application for a permit for a sanitary landfill for the disposal of construction and demolition debris waste pending on that date or submitted on or after that date. (JLM)

Preserve Landfill Space

S.L. 2013-55 (HB 706) allows disposal of demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, on the same site as the decommissioned buildings, and exempts such sites from landfill permitting requirements, in certain circumstances.

This act became effective July 1, 2013. (JLM)

Underground Storage Tanks Eligible for Brownfields

S.L. 2013-108 (HB 789) makes properties with contamination due to releases from underground petroleum storage tanks eligible for participation in the State's Brownfields Program, which encourages redevelopment of contaminated sites by removing barriers to redevelopment posed by a prospective developer's potential liability for clean-up costs. The act also requires the Department of Environment and Natural Resources to report to the Environmental Review Commission no later than April 1, 2014, on the impacts of this change to the Brownfields Property Reuse Program and the Leaking Petroleum Underground Storage Tank Cleanup Program.

This act became effective July 1, 2013. (JLM)

Amend Definition of Special Purpose Project

S.L. 2013-135 (HB 639). **See Local Government.**

Amend Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund

S.L. 2013-360, Section 14.15(a) (SB 402, Section 14.15(a)) modifies the purposes for which the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Fund) may be used, to provide that with respect to releases discovered or reported to the Department of Environment and Natural Resources on or after August 1, 2013, the Fund may only pay for the cleanup of environmental damage in excess of \$2,000 or the sum of the following amounts, whichever is less:

- A deductible of \$1,000 per occurrence.
- A co-payment equal to 10% of the costs of the cleanup of environmental damage, per occurrence.

This section became effective July 1, 2013. (JLM)

Portion of Scrap Tire Disposal Tax Credited to General Fund; Repeal of Scrap Tire Disposal Account

S.L. 2013-360, Section 14.16(a) through (f) (SB 402, Section 14.16(a) through (f)) eliminate the Scrap Tire Disposal Account and redistribute revenues collected from the scrap tire disposal tax so that 30% of the net tax proceeds are credited to the General Fund (in lieu of distributions to the Solid Waste Management Trust Fund, the Scrap Tire Disposal Account, the Inactive Hazardous Sites Cleanup Fund, and the Bernard Allen Memorial Emergency Fund). 70% of the net tax proceeds will continue to be distributed among the counties on a per capita basis. The Department of Environment and Natural Resources retains authorization to make grants to units of local government to assist them in disposing of scrap tires, however, grants to encourage the use of processed scrap tire materials are prohibited under the legislation.

This section became effective July 1, 2013. (JLM)

Portion of White Goods Disposal Tax Credited to General Fund

S.L. 2013-360, Section 14.17(a) through (g) (SB 402, Section 14.17(a) through (g)) redistribute revenues collected from the white goods disposal tax so that 28% of the net tax proceeds are credited to the General Fund (in lieu of distributions to the Solid Waste Management Trust Fund and the White Goods Management Account). 72% of the net tax proceeds will continue to be distributed among the counties on a per capita basis. The legislation also eliminates the White Goods Management Account effective June 30, 2017.

Except as otherwise provided, these sections became effective July 1, 2013. (JLM)

Portion of Solid Waste Disposal Tax Credited to General Fund; Repeal of Solid Waste Management Trust Fund

S.L. 2013-360, Section 14.18(a) through (c) (SB 402, Section 14.18(a) through (c)) eliminates the Solid Waste Management Trust Fund and redistributes revenues collected from the solid waste disposal tax so that 12.5% of the net tax proceeds are credited to the General Fund (in lieu of a distribution to the Solid Waste Management Trust Fund). Of the remaining net tax proceeds, 50% will continue to be distributed to the Inactive Hazardous Sites Cleanup Fund, and 37.5% will continue to be distributed among the cities and counties on a per capita basis. The legislation also directs the Department of Environment and Natural Resources to develop an outreach program to promote waste reduction and recycling.

These sections became effective July 1, 2013. (JLM)

Adjust Landfill Permit Fee Timing

S.L. 2013-408 (HB 135) makes adjustments to the fee schedule for permits for sanitary landfills and transfer stations to reflect extension of the duration of these permits (from 5 to 10 years) as directed by legislation enacted in 2012.

This act became effective August 23, 2013, and applies to permit applications submitted on or after July 1, 2013. (JLM)

Amend Local Solid Waste Planning

S.L. 2013-409 (HB 321) eliminates a requirement that each unit of local government, either individually or in cooperation with other units of local government, develop a 10-year comprehensive solid waste management plan. In addition, the act modifies several requirements applicable to local governments for reports due to the Department of Environment and Natural Resources.

This act became effective August 23, 2013. (JLM)

Amend the Scrap Tire Disposal Program Permit Process

S.L. 2013-413, Sec. 18 (HB 74, Sec. 18) amends a provision enacted in 2012, which required the Department of Environment and Natural Resources to adopt rules to prohibit permitted scrap tire collectors from contracting with a scrap tire processing facility unless the processing facility documents that it has access to a facility permitted to receive scrap tires. The section codifies this requirement in the statutes and eliminates the rulemaking requirement.

This section became effective August 23, 2013. (JLM)

Clarify Rules for Underground Storage Tanks

S.L. 2013-413, Sec. 36 (HB 74, Sec. 36) clarifies legislation enacted in 2011 that provided that underground storage tanks and systems installed after January 1, 1991, were not required to comply with well setback requirements or provide secondary containment until January 1, 2020. The section further limits the applicability of the 2011 legislation to only those tanks and systems installed prior to April 1, 2001.

This section became effective August 23, 2013. (JLM)

Provide an Exemption from Local Government Requirements Regarding the Number of Acres for Property Development for Brownfields Developments

S.L. 2013-413, Sec. 44 (HB 74, Sec. 44). **See Local Government.**

Clarify that Extended-Duration Permits for Sanitary Landfills and Transfer Stations are Permits for Operation as well as Construction

S.L. 2013-413, Sec. 48 (HB 74, Sec. 48) clarifies a provision enacted in 2012 that extended the duration of permits for sanitary landfills and transfer stations, to explicitly provide that these permits are for both construction and operation of a facility.

This section became effective August 23, 2013. (JLM)

Additional Factor for Consideration in Assessing Solid Waste Penalties

S.L. 2013-413, Sec. 49 (HB 74, Sec. 49) codifies in statute factors the Secretary of Environment and Natural Resources must use to determine the amount of a penalty for violations of solid waste management laws (these factors were previously only included in the Administrative Code), and adds the amount of money a violator saved as a new factor for consideration in assessing solid waste penalties.

This section became effective August 23, 2013. (JLM)

Limit Local Government Regulation of Storage, Retention, or Use of Nonhazardous Recyclable Materials

S.L. 2013-413, Sec. 50 (HB 74, Sec. 50) prohibits a local government from impeding the storage, retention, or use of nonhazardous recyclable materials, including asphalt pavement, rap, or roofing shingles in properly zoned storage facilities through regulation of the height or setback of recyclable materials stockpiles, except when such facilities are located on lots within 200 yards of residential districts.

This section became effective August 23, 2013. (JLM)

Solid Waste Reform Provisions

S.L. 2013-413, Secs. 59 through 59.4 (HB 74, Sec. 59 through 59.4), as amended by S.L. 2013-410, Sec. 47.6 (HB 92, Sec. 47.6), makes various changes to laws governing solid waste as follows:

- Modify a basis on which the Department of Environment and Natural Resources (DENR) is statutorily required to deny a permit for solid waste management facilities. DENR must deny a permit if the cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964. The legislation specifies that the provision only applies to the extent required by federal law.
- Modify the requirement that an applicant for a proposed sanitary landfill conduct an environmental impact study of the proposed facility, to provide that the applicant must contract with a qualified third party approved by DENR to conduct the study. This provision is applicable to applications for new permits, as that term is defined under the statutes (which includes expansions), submitted on or after August 23, 2013.
- Modify the one mile buffer from the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission, by providing that only buffers established on or before July 1, 2013 apply.
- Delete requirements for annual cleaning of leachate collection lines, but provide that these lines must be cleaned as necessary for proper functioning and to address buildup of leachate over a liner.
- Add a requirement that, with respect to requirements for daily cover at sanitary landfills, once DENR has approved use of an alternative method of daily cover for use at any sanitary landfill, that method must be approved for use at all sanitary landfills located within the State.
- Add requirements that owners or operators of sanitary landfills permitted to receive more than 240,000 tons of waste per year: (i) research the development of alternative disposal technologies and allow access to nonproprietary information and provide site resources to others for such research; and (ii) perform a feasibility study of landfill gas-to-energy, or other waste-to-energy technology, to determine opportunities for production of renewable energy from landfills in order to promote economic development and job creation in the State, and specifically examine opportunities for returning a portion of the benefits derived from energy produced from the landfill to the jurisdiction within which the landfill is located. This provision is applicable to new landfills for which a permit is issued on or after August 23, 2013.
- Direct the Commission for Public Health to amend a rule governing containers for collection and transport of solid waste to provide that vehicles or containers be designed and maintained to be leak-resistant in accordance with industry standards, rather than be leak-proof. In addition, the legislation amends a statute that requires vehicles to be constructed and loaded to prevent leakage, to provide that "leakage," for purposes of the statute does not include water accumulated from precipitation.
- Define "leachate" to exclude liquid adhering to tires of vehicles leaving sanitary landfills and transfer stations.
- Authorizes cities and counties to: (i) levy a surcharge on existing fees for use of waste disposal facilities provided by them on other cities and counties located within the State that use their disposal facility, and provides that funds accrued in excess of the amount needed to operate the landfill may be used for other governmental purposes; and (ii) include such a surcharge on other local governments' waste as part of a franchise agreement entered into with a private landfill owner or operator.

These provisions became effective August 1, 2013, and the section concerning franchise agreements is applicable to agreements executed on or after that date. Except as otherwise provided, these sections became effective August 23, 2013. (JLM)

Water Quality/Quantity/Groundwater

Environmental Permitting Reform

S.L. 2013-82 (HB 480) directs the Department of Environment and Natural Resources to develop Minimum Design Criteria for stormwater permits and directs the Environmental Management Commission to adopt rules to establish a fast-track permitting process for stormwater permits that comply with the Minimum Design Criteria.

This act became effective June 12, 2013. (JH)

Enact Private Well Water Education Act

S.L. 2013-122 (HB 396) directs the Commission for Public Health to adopt rules requiring local health departments to educate citizens for whom new private drinking water wells are constructed and citizens who contact local health departments regarding testing on an existing well on all of the following: (1) the well water testing required under the North Carolina Well Construction Act (Act); optional well water testing available under the Act; (3) the limitations of both the required and optional testing under the Act; and (4) a description of minimum drinking water standards. Local health departments are required to include information on the required and optional testing with any test results that are provided to an owner of a drinking water well.

This act became effective June 19, 2013. (JM)

Extend Division of Soil and Water Conservation Animal Waste Inspections

S.L. 2013-131 (HB 505) codifies and makes permanent the program for the inspection of certain animal waste management systems by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services.

This act became effective June 30, 2013. (MM)

Eliminate Unnecessary Testing/Animal Waste

S.L. 2013-228 (SB 205) reduces the periodic soil testing requirements at animal operations from at least annually to at least once every three years.

This act became effective August 1, 2013, and applies to any animal waste management plan submitted to or approved by the Department of Environment and Natural Resources after that date. (JM)

Clean Water Management Trust Fund Moved to the Department of Environment and Natural Resources; Repeal Natural Heritage Trust Fund

S.L. 2013-360, Section 14.3 (SB 402, Section 14.3) does the following:

- Transfers staff of the Clean Water Management Trust Fund (Fund) and the administration of the Fund to the Department of Environment and Natural Resources.

- Repeals the Natural Heritage Trust Fund and makes conforming statutory changes.
- Adds the Fund to those accounts that receive revenues from fees for special registration license plates.
- Amends the purposes for which moneys in the Fund may be appropriated to finance projects to include those previously addressed by the Natural Heritage Trust Fund.
- Reduces the membership of the Board of Trustees (Board) of the Fund from 21 to 9 members.
- Adds new criteria to be developed by the Board for awarding grants under the Fund.
- Closes the Natural Heritage Trust Fund and credits the remaining fund balance to the Fund.

This section became effective August 1, 2013. (JM)

Jordan Lake Water Quality

S.L. 2013-395 (SB 515) provides that the implementation dates of the Jordan Lake Rules and Jordan Lake Session Laws that begin July 1, 2013, or later are delayed for a period of three years. S.L. 2013-395 (SB 515) also modifies the implementation of the Jordan Lake Rule: Protection of Existing Riparian Buffers.

This act became effective August 23, 2013. (JH)

S.L. 2013-360, Section 14.3A (SB 402, Section 14.3A) directs the Department of Environment and Natural Resources to:

- Establish a 24-month demonstration project for the management of nutrients in Jordan Lake. The demonstration project will focus on preventing and reducing harmful algal blooms and excessive chlorophyll as well providing other nutrient mitigation measures in the Haw River arm and the Morgan Creek arm of Jordan Lake.
- Enter into a contract with a third party that can deploy floating arrays of in-lake, long-distance circulators to reduce or prevent the adverse impacts of excessive nutrient loads, such as algal blooms, taste and odor problems in drinking water, and low levels of dissolved oxygen.
- Submit an interim report on implementation of the demonstration project to the Environmental Review Commission (ERC) and the Fiscal Research Division of the General Assembly no later than October 1, 2015, and submit a final report on implementation of the demonstration project to the ERC and the Fiscal Research Division of the General Assembly no later than April 1, 2016.

This section became effective July 1, 2013. (JH)

Amend Bernard Allen Memorial Emergency Drinking Water Fund

S.L. 2013-360, Section 14.14 (SB 402, Section 14.14) makes several changes to the Bernard Allen Emergency Drinking Water Fund including:

- Increasing the frequency at which drinking water wells may be tested for contamination.
- Modifying two limitations on the maximum amount of monies that may be disbursed from the Fund to extend waterlines.
- Prioritizing funding for wells contaminated by artificial sources over those with naturally occurring contamination.
- Clarifying a provision concerning an allowance for administrative expenses.

This section became effective July 1, 2013. (JLM)

Create New Division of Water Infrastructure in the Department of Environment and Natural Resources; New State Water Infrastructure Authority; Transfer Water Infrastructure to New Division

S.L. 2013-360, Section 14.21, as amended by S.L. 2013-363, Sec. 5.12 (SB 402, Section 14.21, as amended by HB 112, Section 5.12) does the following:

- Creates a new Division of Water Infrastructure within the Department of Environment and Natural Resources (DENR) responsible for the implementation and administration of water infrastructure programming and funding in the State.
- Establishes the State Water Infrastructure Authority within DENR.
- Repeals the State Water Infrastructure Commission.
- Makes conforming statutory changes.

This section became effective July 1, 2013. (JM)

Amend Interbasin Transfer Law

S.L. 2013-388, Secs. 1, 2, and 3 (SB 341, Secs. 1, 2, and 3) amends interbasin transfer law as follows:

- Modifies the threshold for when an interbasin transfer certificate must be obtained from a transfer of 2,000,000 gallons of water or more per day from one river basin to another to a transfer of 2,000,000 gallons of water or more per day, calculated as a daily average of a calendar month and not to exceed 3,000,000 gallons per day in any one day, from one river basin to another.
- Provides an expedited process for modifying existing interbasin transfer certificates by reducing notice requirements and providing that a full environmental impact statement is not necessarily required.
- Prohibits the Environmental Management Commission from granting a request for a modification that would be inconsistent with the North Carolina/South Carolina settlement agreement for the Catawba River Basin.
- Provides an expedited process for obtaining new interbasin transfer certificates in coastal counties by reducing notice requirements and providing that a full environmental impact statement is not necessarily required.
- Makes other clarifying, conforming, and technical changes to interbasin transfer law.

For the provisions of S.L. 2013-388 (SB 341) that amend S.L. 2013-50, an act to promote the provision of regional water and sewer services by transferring ownership and operation of certain public water and sewer systems to a metropolitan water and sewer district, see **State Government**.

These sections became effective August 23, 2013. (JH)

Amend the Reclaimed Water Irrigation Setback Rule

S.L. 2013-413, Sec. 22 (HB 74, Sec. 22) provides for alternative implementation of a rule that requires various setbacks when reclaimed water is used for purposes of irrigation.

This section became effective August 23, 2013. (JH)

Provide Low-Flow Design Alternatives for Wastewater Systems

S.L. 2013-413, Sec. 34 (HB 74, Sec. 34) amends the North Carolina Administrative Code to provide for reduced flow alternatives to the Daily Flow Rate for Design for wastewater systems. This section exempts proposed wastewater systems from complying with the Daily Flow Rate for Design and any design flow standard established by the Commission for Public Health or the Department of Health and Human Services provided (1) the daily flow rate for design of the system is less than the rate listed by rule, (2) the daily flow rate for design can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies, and 3) the design is prepared, sealed, and signed by a professional engineer licensed in North Carolina. This section further provides that proposed wastewater systems with a daily flow for design of less than 3,000 gallons per day are not required to undergo State-level review.

This section became effective August 23, 2013. (JM)

Provide Notice of Known Contamination and Direct Local Health Departments to Act on a Permit Application for Private Wells within 30 Days

S.L. 2013-413, Sec. 35 (HB 74, Sec. 35) directs the Commission for Public Health to adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for the well is located within 1,000 feet of a known source of contamination. This section also directs local health departments to either issue a permit or deny an application for a permit for the construction, repair, or operation of a private drinking water well within 30 days of receipt of an application, and provides that a permit must automatically be issued if not acted upon within the 30-day period.

This section became effective August 23, 2013, and the provisions of this section that pertain to permit issuance apply to applications to construct or repair a private drinking water well that are received by a local health department on or after that date. (JM)

Clarify Requirements for Compliance Boundaries with Respect to Groundwater Quality Standards

S.L. 2013-413, Sec. 46 (HB 74, Sec. 46) amends the statute that regulates sources of water pollution from disposal systems and the activities for which a permit is required by requiring any source that must obtain a permit must also have a compliance boundary established, either by the permit or by a rule adopted by the Environmental Management Commission (EMC), beyond which groundwater quality standards may not be exceeded. Unless otherwise established by the EMC, the compliance boundary must be established at the property boundary. Multiple contiguous properties under common ownership and permitted for use as a disposal site must be treated as a single property. This section includes provisions for cleanup, recovery, containment, or other response within the compliance boundary when groundwater quality standards are exceeded.

This section became effective August 23, 2013. (JM)

Amend the Definition of "Built-Up Area" for Purposes of Implementing Stormwater Programs

S.L. 2013-413, Sec. 51 (HB 74, Sec. 51) amends the definition of "built-up area" for purposes of stormwater management to include impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface into the subsoil. "Built-up area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel. This section also directs the Environmental Review Commission to study State stormwater programs, including how partially impervious surfaces are treated in the calculation of built-up area under those programs, and report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

This section became effective August 23, 2013 and applies to projects for which permit applications are received on or after that date. (JH)

Exempt Ponds Constructed and Used for Agricultural Purposes from Riparian Buffer Rules

S.L. 2013-413, Sec. 52(a) (HB 74, Sec. 52(a)) exempts freshwater ponds that are constructed and used for agriculture, provided the pond is not a component of an animal waste management system, from State riparian buffer rules. This section provides that the riparian buffer rules must apply if the use of the property adjacent to the pond changes such that it no longer is used for agriculture.

This section became effective August 23, 2013 and applies to ponds used for agriculture that were either in existence on or constructed after July 22, 1997. (JM)

Provide that a Third Party Dissatisfied with a Decision of the Environmental Management Commission Regarding a Water Quality Permit May File a Contested Case

S.L. 2013-413, Sec. 53 (HB 74, Sec. 53) provides that in addition to a permit applicant and a permittee, a third party who is dissatisfied with a decision of the Environmental Management Commission (EMC) regarding a water quality permit may commence a contested case within 30 days of the EMC notifying the applicant of its decision.

This section became effective August 23, 2013. (JM)

Certain Water Treatment Systems with Expired Authorizations May Withdraw Surface Water at the Same Rate as Approved in the Expired Authorization

S.L. 2013-413, Sec. 56 (HB 74, Sec. 56) provides that water treatment systems with expired authorizations may obtain new authorizations that allow the systems to withdraw surface water from the same water body and at the same rate as was approved in the expired authorization and such new authorizations do not require the preparation of an environmental document pursuant to the State Environmental Policy Act.

This section became effective August 23, 2013, and applies only those systems whose authorization for the water treatment plant expired within the last ten calendar years of that date. (JM)

Combine the Division of Water Quality and the Division of Water Resources to Create a New Division of Water Resources in the Department of Environment and Natural Resources

S.L. 2013-413, Sec. 57 (HB 74, Sec. 57) directs the Department of Environment and Natural Resources to combine the Division of Water Quality and the Division of Water Resources to create a new Division of Water Resources. This section also makes conforming statutory and Session Law changes related to combining the Division of Water Quality with the Division of Water Resources.

This section became effective August 23, 2013. (JM)

Referrals to Existing Commissions/Committees

Petition for Greater Flexibility and Opportunity to Perform Stream and Wetlands Mitigation

S.L. 2013-265, Section 22 (SB 638, Section 22) directs the Department of Environment and Natural Resources and the Department of Transportation to jointly petition the United States Army Corps of Engineers to allow for greater flexibility and opportunity to perform wetlands mitigation outside of the watershed where development occurs. The Departments must jointly report on their progress to the Environmental Review Commission no later than January 1, 2014.

This section became effective July 17, 2013. (CS)

Study the Costs and Benefits of the Noncommercial Underground Storage Tank Program

S.L. 2013-360, Section 14.15(b) (SB 402, Section 14.15(b)) directs the Department of Environment and Natural Resources to study the costs and benefits of the noncommercial underground storage tank program and explore options for continued use of the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund and ways to improve its solvency, and report its findings to various legislative entities no later than April 1, 2014.

This section became effective July 1, 2013. (JLM)

Study the Temporary Limitation on Enactment of Environmental Ordinances by Cities and Counties

S.L. 2013-413, Sec. 10.2(c) (HB 74, Sec. 10.2(c)). **See Local Government.**

Water and Sewer Study

S.L. 2013-413, Sec. 24 (HB 74, Sec. 24) directs the Environmental Review Commission to study the statutory models for establishing, operating, and financing certain entities that provide water and sewer services in the State and to report its findings and recommendations to the 2014 Session of the General Assembly.

This section became effective August 23, 2013. (JH)

Study the Continued Need to Conduct Vehicle Emissions Inspections

S.L. 2013-413, Sec. 26 (HB 74, Sec. 26) directs the Department of Environment and Natural Resources (DENR) to study whether all of the counties covered under the emissions testing and maintenance program are needed to meet and maintain the current and proposed federal ozone standards in the State. DENR must report interim findings to the Environmental Review Commission (ERC) on or before April 1, 2015 and submit its final report, including any findings and legislative recommendations, to the ERC on or before April 1, 2016.

This section became effective August 23, 2013. (JM)

Study Review of Engineering Work

S.L. 2013-413, Sec. 58 (HB 74, Sec. 58) directs the Department of Environment and Natural Resources, the Department of Transportation, the Department of Health and Human Services, and certain local governments to study their processes for review of applications and plans submitted for approval, with a focus on the review of the engineering aspects of applications and plans. These entities are required to report their findings and recommendations to the Environmental Review Commission (ERC) no later than January 1, 2014. The ERC will then study this matter, with the assistance of the State agencies, the local governments, the North Carolina State Board of Examiners for Engineers and Surveyors, and the Professional Engineers of North Carolina, and report its findings and recommendations, to the 2014 General Assembly.

This section became effective August 23, 2013. (JH)