



# Legislative Update

August 2014

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The NC General Assembly adjourned this past Saturday, after approving the adjustments to this year's budget. Their adjournment resolution will have them reconvene for a one-day session on August 14, 2014, to consider overriding any vetoes from the Governor, and may address bills related to coal ash management, environmental and natural resources laws, and regulatory / administrative reforms.

After the elections, they will reconvene on November 17, 2014, but the two chambers cannot agree on the bills to be addressed during this session – the Senate plans to finalize the coal ash legislation and the House plans to address funding for Medicaid. The two adjournment resolutions pretty much sums up this year's short session - The two chambers had a difficult time working together.

This session the General Assembly only passed a few bills that are of interest to our industry.

### Energy Modernization Act – SB 786

Part 6 of the bill reconstitutes the Mining Commission. The original Mining Commission had 9 members, 3 from the industry, and all appointed by the Governor. The new Commission will only have 8 members – they added the state geologist (non-voting), reduced the environmental representatives from 5 to 2, and increased the mining industry representatives to 4. The Senate, House, and Governor will each appoint 2 members to the Commission. The chair of the NCSU Minerals Research Lab Advisory Committee will continue to serve on the new Commission. The new Mining Commission will not be reconstituted until the current Mining and Energy Commission completes the rule writing process – which will be August 1, 2015.

### DOT / DMV Changes #2 - HB 272

The bill extends by one year (August 31, 2015) the NCDOT MB and WB Disadvantaged Business Program. NCDOT did not receive the consultant's report in a timely manner and needed additional time to review that report.

### Mitigation Buffer Rule/Wastewater Treatment - SB 883

The bill disapproves the mitigation program requirements for protection and maintenance of the Riparian Buffers Rule that was adopted by the Environmental Management Commission (EMC) on May 9, 2013 and the Rules Review Commission (RRC) on July 18, 2013; and directs the EMC to adopt the April 10, 2014 stakeholder's report – Consolidated Buffer Mitigation Rule Stakeholder Report.

Since the RRC received more than 10 letters of objection to the proposed rule and requested legislative review, DENR assembled a stakeholder group to work through the objections to the rule. Below are several highlights from this report:

- Consolidates mitigations requirements from the original buffer rules for clarity.
- Incorporates contemporary technical and operational techniques.
- Provides mitigation options that are not currently available to NCDOT, developers, industry, and private individuals.
- Provides more flexibility for generating credit at proposed mitigation sites on which existing sanitary sewer easements are present.
- Clarifies the accounting for buffer credit on stream mitigation sites.
- Allows for mitigation credit to be developed using buffer preservation.
- Provides for alternative buffer mitigation options beyond restoration or enhancement of non-forested buffers along mapped streams.
- Provides multipliers for mitigation dependent on the location / proximity of the mitigation to the impacted area.

### **Link to the Stakeholder Report -**

[http://portal.ncdenr.org/c/document\\_library/get\\_file?uuid=98eeae33-e5c4-4b54-9c84-93db3485017f&groupId=38364](http://portal.ncdenr.org/c/document_library/get_file?uuid=98eeae33-e5c4-4b54-9c84-93db3485017f&groupId=38364)

### **EMC's May 9, 2013 Riparian Buffers Rule – (PowerPoint Presentation)**

[http://portal.ncdenr.org/c/document\\_library/get\\_file?uuid=0e3d39eb-3f7f-45be-ab31-0775bb0dfa1e&groupId=61581](http://portal.ncdenr.org/c/document_library/get_file?uuid=0e3d39eb-3f7f-45be-ab31-0775bb0dfa1e&groupId=61581)

With the focus over the last few weeks on passing a budget, several environmental reform bills that are good for the regulated community did not get ratified. Hopefully, during the August 14 session, the General Assembly will revisit these bills.

### **Amend Isolated Wetlands Regulation (H 1141)**

The bill exempts from permitting if the total amount of isolated wetlands is less than 1 acre east of I-95 and 1/3 acre west of I-95. The proposed mitigation ratio shall be 1:1. The bill will also study the thresholds for mountain bog isolated wetlands. That report is due by November 1, 2014.

### **Clarify Gravel Under Stormwater Laws (H 1166)**

The bill removes gravel from the items excluded from the term “build-upon area”. Requires NCSU to study the extent to which different aggregate surfaces are pervious, impervious, or partially pervious. The interim report is due to the General Assembly by September 1, 2014 and the final report by January 1, 2015.

### **Clarify Wetlands Permitting (H 938)**

The bill would not require a Water Quality Permit for activities in wetlands that are not waters of the US.

### **Reform Agency Review of Engineering Work (H 1081)**

The bill will require the regulatory agencies (NCDENR & DHHS) to reform their review process for permit submittals, licenses, and approvals. The agencies must standardize this process by December 1, 2014 and complete / report the results of a pilot study to the General Assembly by April 15, 2015. This process will include the following:

- Require that the revisions and requests for additional information from the agency that are needed to proceed with the permit, license, or approval are clearly delineated from revisions or requests for additional information that constitute suggestions or recommendations by the agency.
- The suggestions or recommendations from the agency are not required in order to proceed with the permit, license, or approval.
- If the initial review was not conducted by a Professional Engineer, then the applicant may request a review by a Professional Engineer. If the agency does not employ a Professional Engineer qualified and competent to perform the review, it may perform the review by a consulting Professional Engineer selected from a list developed by the agency. The agency may charge the applicant for the cost of the review.
- Revise the job title of “engineer” for agency personnel that are not professional engineers.

**Senate Bill 734 (Regulatory Reform Act of 2014)** is in conference committee. If the conferees can find a compromise between the two chambers’ bills, this bill could be considered during either of the two upcoming sessions. Several highlights from that bill:

- Clarifies the practice of engineering and surveying
- Clarifies the re-adoption of existing rules

### **Federal Highway Trust Fund**

Just hours before Congress recessed for the August District Work Session and the FHWA planned to start reducing payments to the states, the Senate passed a \$10.8B bill to fund the Highway Trust Fund (HTF). Without the temporary patch, the HTF would have been insolvent this month. The bill will allow continued funding for road, highway and bridge construction through May 2015.

Now that Congress has a short-term patch, it is extremely important for them to pass a long-term re-authorization bill with a sustainable revenue solution for the HTF before next May. Without a multi-year deal, states are hesitant to start any major road projects in fear of funding running out before the completion of the project.

*Source – Aggman.com*