

2013 Legislative Session Wrap-Up

Certainly, the 2013 session of the North Carolina General Assembly (NCGA) will be recorded as being historic, for many reasons. Lost among the controversial bills that made headlines across the State and across the Country are some that affect solid waste interests. Some were low key and received no fanfare while others were vilified as being a gateway for mega-dumps to come to North Carolina. Some solid waste reform did happen and I will attempt to capture that in this document.

The NCGA has gone home and as of this writing, Governor McCrory has 38 bills on his desk awaiting signature. I decided not to wait for action on all pending bills, but I will follow up with a message when action is taken on those bills.

One thing that was a little unusual this session was that bills were often incorporated into other bills as they made their way through the two chambers. It made it quite difficult to track at times, but the end products were large omnibus bills that rolled many issues into one. For instance, the final regulatory reform bill, House Bill 74, included parts or all of Senate Bill 612, Senate Bill 112, Senate Bill 32, Senate Bill 10, House Bill 94, House Bill 677 and House Bill 890. I am going to stick with telling what passed that's of interest to the solid waste industry, but tell you of a couple of things that are still alive for the short session.

Bills That Passed

House Bill 74, Regulatory Reform Act of 2013

This was probably the most controversial bill related to solid waste interests passed this session and the Governor has expressed concerns about it. He has three options: sign it into law, let it become law without his signature, or veto it. Because it is such a large bill, vetoing it and allowing none of the regulatory reforms to take effect seems very unlikely. That leaves the other two options and if I were to bet on it, I'd say

he will let it become law without his signature. Time will tell and he has until August 25 to decide. Here are sections of the bill of interest to us:

- Part 1 makes changes to the rule-making process and defines the term “policy” in the rule making statutes as “any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency which is intended and used purely to assist a person to comply with the law, such as a guidance document”.
- Part 1 also sets out the periodic rules review and expiration process previously in House Bill 74 under a different title. It requires the Rules Review Commission to set a schedule for all agencies to consider and classify their rules into three categories; (1) rules that are Unnecessary, Necessary Without Substantive Public Interest and Necessary with Substantive Public Interest. The agency will publish and received public comment on the classification report. The classification report will be submitted to the Rules Review Commission along with public comments. Thereafter, rules that are unnecessary will be repealed, those deemed Necessary Without Substantive Public Interest will remain in force and those deemed Necessary With Substantive Public Interest will go through the formal rules adoption process. This procedure will take place every 10 years. Any rules that do not undergo this process will automatically terminate.
- Part 2 covers State and Local Government regulations. Included in Section 5 is a provision that a local government cannot require a contractor to abide by any restrictions that the local government cannot require on all employers. For instance, a local government could not require a solid waste franchisee or contractor to provide health insurance or retirement plans for its employees.
- Section 10.2 places a temporary moratorium on local government ordinances that are more restrictive than state and federal ordinance covering the same issue, and directs that a study of the issue be conducted and reported back to the 2014 short session.

- Section 18 codifies what was previously a rule directive concerning scrap tire disposal. It only makes what was a rule requirement now required by statute.
- Section 46 makes very narrow changes to the compliance boundaries for groundwater compliance. This section is very narrowly crafted and you should look carefully at it to determine its effect, if any. It sets the boundary at the property line, but makes an exception for boundaries already covered by rule or permit.
- Section 48 clarifies that the 10-year permit option allowed under 2012 session laws applies to operating permits and well as permits to construct.
- Section 49 clarifies the criteria used for assessing solid waste penalties. Dexter Matthews said that the EPA wanted for specificity in the process, especially the amount of money saved by the violator by noncompliance.
- Section 50 prohibits local governments from imposing restrictions on the stockpiling of non-hazardous recycled materials such as asphalt or roofing shingles, unless located within 200 feet of a residence.
- Sections 57(a) through 57 (gg) deal with the combination of the Division of Water Quality and the Division of Water Resources into one new Division of Water Resources.
- Section 58(a) directs that a study be made of engineering review by various departments including DENR to determine, among other things, if the agencies are requiring revisions that exceed statutory or rulemaking authority. The Professional Engineers of North Carolina re to be included in the study.
- Section 59 covers various changes to solid waste statutes. They include:
 - A provision that cumulative impact of a facility on minority or low-income communities under Title VI of the federal civil Rights Act shall apply only to the extent of Federal law.
 - provides that environmental impact studies of proposed landfills may be done by third-party contractors, not DENR.
 - Changes the buffer from state gamelands to clarify that the gameland must have been under NC Wildlife management prior to July 1, 1013.

- Changes leachate line cleaning to what is necessary for proper functioning and to address buildup of leachate over the liner, rather than mandating cleaning every two years.
- Allows the use of an approved alternate daily cover at any landfill, once approved for one.
- Requires landfills permitted to receive over 240,000 tons per year to research the development of alternative disposal technologies and to conduct feasibility studies of landfill gas-to-energy.
- Amends the rule requiring collection and transport vehicles of waste to be leak-proof to leak-resistant.
- Clarifies that the terms “load” and “leaking” in the motor vehicles statutes does not include water accumulated from precipitation.
- Changes the definition of “Leachate” to exclude liquid adhering to tires of vehicles leaving landfills and transfer stations.
- Authorizes cities and counties accepting waste from out-of-jurisdiction sources to levy a surcharge on that waste and to transfer excess funds accruing **from that surcharge** to be used to support other services supported by the unit’s general fund. Please note that only the surcharge can be transferred. This language was requested by SWANA and incorporated into the final bill.

I strongly recommend that you look at the entire text of House Bill 74 here:

<http://www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H74v4.pdf>

House Bill 321 Amend Local Solid Waste Planning

This bill eliminates the requirement for local governments to prepare 10-year solid waste plans. It has been sent to the Governor for signature.

Senate Bill 24 Construction/Demolition Landfill Siting

This bill changed the buffers from gamelands under very restrictive circumstances to allow a recycling and C&D facility to get a permit in Jones County, NC. Contrary to what the media reported late in the session, it only affects that one site. This bill has been signed into law.

House Bill 135 Adjust Landfill Permit Fee Timing

This bill implements the fees for landfill permits of either 5 or 10 years. It was held until the end of the session because Senate Bill 328, as introduced, would have provided for permits of up to 30 years and the 10-year option would have been repealed. This bill has been sent to the Governor for signature.

House Bill 706 Preserve Landfill Space

This bill allows certain manufacturing and electrical generating facilities to be demolished and buried on-site. The bill quickly passed both chambers and was signed into law by the governor.

House Bill 480 Environmental Permitting Reform

This bill required DENR to create standard design criteria for stormwater permits. Plans and permit applications signed and stamped by an engineer as meeting those design criteria would not require agency review. This is very similar to the process used for wastewater treatment permits. The bill has been enacted into law.

House Bill 892 No Fiscal Note Required for Rule Repeal

This is a no-brainer clarifying that when an agency wants to repeal an obsolete rule, it does not have to prepare a fiscal note. It has been signed into law.

House Bill 315 Plastics Labeling Requirements

This bill requires plastic containers that are NOT recyclable to be clearly labeled as such. This is to prevent contamination of recyclable feedstocks. It has been signed into law.

Senate Bill 402 Appropriations Act of 2013

The budget bill includes several things that impact solid waste and recycling operations:

- It abolishes the Solid Waste Management Trust Fund and the Scrap Tire Disposal Account.
- It diverts the portion of the \$2/ton tax previously dedicated to the SWMTF to the General Fund, the 30% of the Scrap Tire Tax not allocated on a per capita basis to the General Fund and the 28% of the White Goods tax not allocated on a per capita basis to the General Fund. From there, no appropriation is made for White Goods, \$1.1 million is made for recycling grants and only \$500,000 is appropriated for scrap tire disposal grants. Basically, all those monies now go to the General Fund and the NCGA will appropriate what we get, instead of the money automatically going to grant programs. We will need guidance from the Solid Waste Section on how those programs will be operated going forward.
- The Environmental Management Commission will be re-structured from thirteen members appointed by the Governor, to fifteen members; nine of whom are appointed by the Governor, three by the House and three by the Senate.

Additionally, most of the Governor's appointees are designated "slots" for professionals, while all the Legislature's appointees will be at-large.

Bills That Are In A Coma And Worth Watching For Signs Of Life

The Adjournment Resolution sets out the criteria for bills to be considered in the short session beginning in May of next year. It states in part:

“(3) Bills and resolutions introduced in 2013 and having passed third reading in 2013 in the house in which introduced, received in the other house in accordance with Senate Rule 41 or House Rule 31.1(h) as appropriate, and not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading and which do not violate the rules of the receiving house.”

Senate Bill 580 is a bill entitled “Expedite Cleanup of Orphan Landfill Sites” and would have put a process in place to expedite the cleanup of some of the orphan sites to be addressed by the \$2/ton tax. It passed the Senate and currently resides in the House Environment Committee. It's worth watching.

Senate Bill 328 was our big solid waste reform bill. Parts of it got incorporated into House Bill 74, but the bill is still technically alive in the House Environment Committee. It too is worth watching.

Senate Bill 612 was the original regulatory reform bill for 2013. While it mostly got rolled into House Bill 74, it is still alive in the House Regulatory Reform Committee and could come back to life.

It is very likely that I have missed something in this recap. With issues moving from bill to bill, it was very difficult to keep it straight this year and my tracking methodology got complete trashed (sorry, bad pun). Once we see some movement from the Governor's office on the pending bills, I will let you know and please feel free to shoot me any questions you may have.

Allen Hardison

Policy Committee Chair