
Coates' Canons Blog: Legislation Affecting Environmental Health Programs

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Several significant changes to the laws governing environmental health programs were made during the 2011 General Assembly's regular session. The state Division of Environmental Health was abolished and its programs were transferred to other agencies or eliminated. New laws changed the inspection and permitting requirements for public swimming pools, some cooking schools, and nursing homes. Legislation to repeal local private well programs did not make it out of committee, but a bill placing some restraints on permit denials was enacted, and state staff who supported the local programs were laid off. Finally, a new law provided a means for certain nonstandard on-site wastewater systems to be approved for use.

Reorganization of State Programs

For the last decade or so, most state public health programs have been administratively located in one of two agencies: the Department of Health and Human Services' (DHHS) Division of Public Health, or the Department of Environment and Natural Resources' (DENR) Division of Environmental Health. The 2011 budget bill (**S.L. 2011-145 [H 200]**) significantly reorganized DENR. As part of that reorganization, the Division of Environmental Health was abolished and its programs pared down. Some environmental health programs were eliminated, but many were transferred to other state agencies.

Most of the environmental health programs that are implemented through local health departments were transferred to the Division of Public Health. These programs include food, lodging, and institutional sanitation; on-site wastewater (septic) system permitting; inspection and permitting of public swimming pools and tattoo parlors; children's environmental health programs, including sanitation of child care facilities and the childhood lead poisoning remediation program; the mosquito control aid-to-county financial assistance program; and the education and training functions of the former Division of Environmental Health (DEH).

Two programs were transferred to other divisions within DENR. The shellfish sanitation and recreational water quality program was transferred to DENR's Division of Marine Fisheries. The public water supply section moved to the Division of Water Resources.

Other programs went to other state agencies. The radiation protection section was transferred to DHHS's Division of Health Service Regulation, the agency that licenses health care facilities. The Department of Agriculture and Consumer Services acquired the Grade A milk sanitation program, as well as the sleep products program (which regulates the sanitation and sale of mattresses, pillows, and the like).

The sleep products program had been a part of DEH's public health pest management section. After sleep products was transferred to Agriculture and the mosquito aid-to-county fund was transferred to DPH, the remainder of the section was abolished, resulting in the elimination of the state's vector control and tick control programs. Those programs conducted public health surveillance activities related to vector- and tick-borne diseases, provided technical assistance to counties with pest management problems, and provided educational materials for counties and the public about a variety of pests, including mosquitoes, ticks, rats, fleas, lice, and bedbugs. Local health departments that had equipment on loan from the vector control program will retain it—the budget transferred ownership of such equipment to the local health departments that presently possess it.

The budget eliminated two other DEH programs: the quality assurance program of the on-site water protection section, and the wastewater discharge elimination (WaDE) program. The purpose of the WaDE program was to identify failing septic systems and other on-site wastewater problems. It provided grants or deferred loans to low-income households in need of septic system repairs.

When a program was eliminated, its funding and staff were eliminated as well. When a program was transferred, its staff and funding were transferred along with it, but with some reductions. For example, all state staff positions associated with the local private well program were eliminated as of July 1, except for one that will be eliminated at the end of the 2011-12 fiscal year.

Public Swimming Pools

Part 10 of G.S. Chapter 130A, Article 8 (Sanitation) regulates public swimming pools, a term that includes but is not limited to swimming pools and water play facilities operated by local governments. Other entities subject to regulation include schools, hotels and motels, apartments and boarding houses, athletic clubs, and other membership facility pools and spas. (Private single-family pools are not regulated, nor are therapeutic pools operated by a licensed medical facility or licensed physical therapist.)

Public pools must obtain an operation permit, which may be issued only if the pool meets standards that address matters including construction and design, water quality, and sanitary and toilet facilities. Operation permits are valid for a maximum of 12 months and thus must be reissued annually for pools continuing to operate. **S.L. 2011-39 (S 368)** modifies some of the requirements for some pools and other water play facilities to obtain or retain their permits.

No portion of the session law has been codified, so the statutes and administrative rules regarding public swimming pool permits are presently unchanged. However, the legislation directed that some rule changes be made, and in the meantime it authorized the following variations from the permitting rules:

- *Grandfather provision for inadequate fencing.* If a public swimming pool received an operation permit before April 1, 2010, it may not be denied an operation permit solely because the pool's fence does not meet requirements in the administrative rules regarding fence height, the size of openings in the fence, hand or footholds that facilitate climbing, and other factors that affect the fence's effectiveness in impeding access to the pool. However, if more than 50 percent of the fence has been damaged or destroyed, the fence must be repaired and the repaired fence must meet the requirements or the operation permit may be denied. Likewise, if the pool operator elects to replace the fence, the new fence must meet the requirements or the operation permit may be denied. The Commission for Public Health is directed to adopt rules substantively identical to these provisions by January 1, 2012.
- *Interactive play attractions.* An interactive play attraction is a water play facility that uses jetted or sprayed water but does not collect water in pools for wading or swimming. Interactive play attractions are subject to North Carolina's public swimming pool rules. The new law exempts interactive play attractions from a rule that requires public swimming pools to have dressing and sanitary facilities (including toilets and lavatories). The attractions still must comply with all other requirements necessary to obtain an operation permit. The Commission for Public Health is directed to adopt rules substantively identical to these provisions by January 1, 2012.
- *Wading pool fences.* A state rule requires a wading pool co-located with a larger swimming pool to be separated from the larger pool by a fence or other structure. The new legislation suspends enforcement of this requirement until July 1, 2012. Meanwhile, the Commission for Public Health must review the safety benefits of the rule and specifically consider whether the safety benefits of requiring a fence or structure outweigh the safety benefits of allowing a parent with a child in each pool to move quickly between each pool.

Cooking Schools

Part 6 of G.S. Chapter 130A, Article 8 (Sanitation) requires most food and lodging facilities to be periodically inspected, graded, and permitted by environmental health specialists. G.S. 130A-250 exempts some facilities from these requirements. **S.L. 2011-335 (S 346)** extends an exemption to cooking schools that (1) primarily teach food preparation techniques for use in the home (not restaurants or other commercial food preparation facilities), (2) prepare or serve food for course participants during instructional time only, and (3) do not otherwise prepare or serve food to the public.

Food Service Inspections in Nursing Homes

Under G.S. 130A-235, the North Carolina Commission for Public Health is required to adopt rules regarding the sanitation of certain institutions and facilities, including nursing homes. The Commission's rules presently require inspections to occur at least quarterly for hospitals, nursing homes, and adult care homes that prepare and serve meals to 13 or more

patients or residents. **S.L. 2011-226 (H 622)** alters this requirement for nursing homes that meet two conditions: (1) licensure under either Article 5 Part 1 or Article 6 Part 1 of G.S. Chapter 131E, and (2) certification by the federal Centers for Medicare and Medicaid Services. For nursing homes that meet those requirements and achieve a sanitation grade of “A,” the frequency of inspections is reduced to a minimum of twice per year until October 1, 2012 and once per year thereafter. However, if a facility receives a sanitation grade of “B” or lower, inspections may be conducted until the “A” is achieved. Further, local health departments may conduct inspections in response to a complaint or in the interest of public safety.

Private Wells

In 2006, the General Assembly enacted a law requiring local health departments to operate programs for the testing, inspection and permitting of private drinking water wells. Each local health department was required to have a program in place and operating by July 1, 2008. During the 2011 session, a bill was introduced that would have repealed the statute that requires the local health department well programs, but the General Assembly did not act on the bill. Therefore, the programs remain in place and subject to the state statutes and rules under which they were created. The state budget eliminated the positions of DEH staff members who provided technical assistance to the local programs, but it did not eliminate the programs themselves.

However, legislation was enacted that affects the permitting aspect of the local health department programs. **S.L. 2011-255 (S 676)** amends G.S. 87-97 to:

- Prohibit any person from unduly delaying or refusing to permit a well that can be constructed or repaired to operate in compliance with state statutes and rules.
- Prohibit a permit denial that is based on a local government policy that discourages or prohibits the drilling of new wells, if the well is in compliance with state statutes and rules.

Functionally Equivalent Wastewater Systems

On-site wastewater (septic) systems are subject to state statutes and rules that address system design, location, construction and operation. Local health departments are responsible for conducting inspections and issuing permits before an on-site wastewater system is constructed, and again before it is put into operation. **S.L. 2011-261 (H 594)** amends G.S. 130A-343 to allow for some nonstandard wastewater systems to be approved if they are functionally equivalent to a standard system. Specifically, it allows the manufacturer of a wastewater trench system to petition the Commission for Public Health to have the system approved as an “innovative wastewater system”—a designation created for systems that perform as well or better than conventional systems and meet certain construction criteria. The new law sets forth the information the manufacturer must provide in its petition, as well as the criteria the Commission must use to determine whether the system is functionally equivalent to a standard system.

Links

- www.ncleg.net/Sessions/2011/Bills/House/HTML/H200v9.html
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=h+200
- www.ncleg.net/Sessions/2011/Bills/Senate/HTML/S368v5.html
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=s368
- www.ncleg.net/Sessions/2011/Bills/Senate/HTML/S346v4.html
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=s346
- www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2011-2012/SL2011-226.html
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=h622
- www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2011-2012/SL2011-255.html
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=s676
- www.ncleg.net/Sessions/2011/Bills/House/HTML/H594v5.html
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=h594&submitButton=Go