

July 1, 2015

Members of the Senate,

The Department's primary objective is to protect North Carolina's environment and natural resources. In executing this mission, DENR operates under the premise that science should direct policy.

Upon first receiving the legislative text on Monday of this week and at the behest of many of your colleagues in committee, DENR legislative affairs staff requested and compiled Departmental comments regarding House Bill 765 and the potential environmental impacts of the bill as written. In a memorandum that was dispatched to you yesterday, our legislative affairs team shared these comments that cited several provisions in the bill that generated serious initial concern within the Department. General Assembly staff has since engaged the Department to adequately address DENR's initial concerns. Based on these efforts and the changes we believe are being offered to the bill today, the Department can support this bill and believes it accomplishes the goal of responsible regulatory reform while facilitating the continued protection of our state's environmental resources.

In order to best understand how these concerns have been addressed, I offer the following section by *section analysis* of the potential changes as understood by the Department:

SECTION 4.1(a) ENVIRONMENTAL SELF-AUDIT PRIVILEGE AND LIMITED IMMUNITY

The amendment offered to the previous language adequately addresses the concern expressed by the Department by requiring EPA approval before these provisions become effective. In addition, it is our understanding that through legislative efforts made today, this provision will not apply to violations associated with coal ash.

SECTION 4.7(a) AMEND RISK-BASED REMEDIATION PROVISIONS

As stated in our previous comments, DENR would encourage changes that are based on existing risk-based programs that have a proven track record of protecting the environment and returning land to productive use (e.g. Underground Storage Tanks and the Dry Cleaning Solvent Cleanup Act Program).

SECTION 4.9(a) AMEND THE LAW GOVERNING BROWNFIELDS REDVELOPMENT TO EXTEND ELIGIBILITY UNDER THE PROGRAM TO BONA FIDA PROSPECTIVE PURCHASERS, IN ACCORDANCE WITH FEDERAL LAW:

DENR is not opposed to the bill's reference to federal CERCLA. DENR continues to believe there are other ways to achieve the common goal of allowing for owners who have not caused or contributed to contamination at the property to redevelop that property under a Brownfields agreement.

SECTION 4.18(a) AMEND ISOLATED WETLANDS LAW

DENR believes that removing the bill's reference to the Wetland Assessment User Manual will clarify the proposed language. Isolated wetland provisions were revised last year to define the scope of North Carolina's isolated wetlands to bogs and basin wetlands. DENR's prior comments were a result of confusion created by the reference to the Wetland Assessment User Manual.

SECTION 4.19(a) AMEND COASTAL STORMWATER REQUIREMENTS

DENR believes that the amendment to delay implementation of these provisions is a reasonable compromise that will allow the Department to adequately review the scientific data associated with the 2007 and 2008 change from 24% to 12% built upon area.

SECTION 4.21 EXEMPT LINEAR UTILITY PROJECTS FROM CERTAIN ENVIRONMENTAL REGULATIONS

In order to protect environmental quality, DENR supports the proposed amendment to require a study of impacts be completed before exemptions are put in place.

Section 4.25 AMBIENT AIR MONITORING

As stated in previous comments, efforts to accomplish the goals of this section are already underway at DENR. Air quality has improved in North Carolina over the last decade to the point that these monitors can be removed without the potential for adverse health effects. Furthermore, the Department supports eliminating non-required monitors in order to reallocate resources (monitors and staff time) that will be needed to satisfy upcoming EPA standards with regard to sulfur dioxide.

SECTION 4.37 AMEND STORMWATER MANAGEMENT LAW

DENR supports the amendment to strike this section.

The Department believes that House Bill 765 as amended would accomplish the goals of regulatory reform in a manner that addresses the Department's concerns. As this process moves forward and in the event that the bill enters the conference process, the Department would welcome the opportunity to provide additional input.

We stand ready to implement sound policy that protects the environment and allows for good stewardship of North Carolina's resources.

Matthew Dockham



Director of Legislative Affairs

NCDENR