1973 REPORT

OF THE

LEGISLATIVE RESEARCH COMMISSION

TO THE

GENERAL ASSEMBLY

OF

NORTH CAROLINA

ENVIRONMENTAL PROBLEMS

JANUARY, 1973
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27602

1973 REPORT

LEGISLATIVE RESEARCH COMMISSION

ENVIRONMENTAL CONTROLS

STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

TO THE MEMBERS OF THE 1973 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1973 General Assembly its findings and recommendations concerning environmental problems. This report is made pursuant to Senate Resolution 961 of the 1971 General Assembly, which directed the Commission to study the need for legislation concerning seven specific problem areas, and such other environmental protection or natural resource management subjects as the Commission deems appropriate. (Copies of the resolution directing the study are carried in the appendices of the various reports.)

This Report was initiated by the Environmental Problems Committee of the Legislative Research Commission. The names of members of the Committee, and its subcommittees, and an outline of the studies in the report are contained in the pages following this letter of transmittal.

Respectfully submitted,

Representative Philip P. Godwin Senator Gordon P. Allen
Co-Chairmen, Legislative Research Commission

REPORT

LEGISLATIVE RESEARCH COMMISSION

COMMITTEE ON ENVIRONMENTAL PROBLEMS

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LEGISLATIVE RESEARCH COMMISSION

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Mr. Peter Feistman

1973 REPORT

LEGISLATIVE RESEARCH COMMISSION

SEDIMENTATION CONTROL

TO THE MEMBERS OF THE 1973 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1973 General Assembly its findings and recommendations concerning legislation for the control and abatement of water pollution from sedimentation. This report is made pursuant to Senate Resolution 961 of the 1971 General Assembly, which directed the Commission to study the need for legislation concerning the "prevention and abatement of pollution of the State's waters by sedimentation and siltation, particularly that occurring from runoff of surface waters and from erosion," and to report its findings and recommendations to the 1973 General Assembly.

This study was initiated by the Environmental Studies Committee of the Legislative Research Commission. This Committee consisted of:

Senator William W. Staton, Co-Chairman

Representative William R. Roberson, Jr., Co-Chairman

Representative Jack Gardner

Representative W. S. Harris, Jr.

Senator Hamilton C. Horton, Jr.

Representative W. Craig Lawing

Senator L. P. McLendon, Jr.

Senator Marshall A. Rauch

Senator Norris C. Reed, Jr.

Representative Charles H. Taylor

Senator Stewart B. Warren, Jr.

The Subcommittee to which this study was referred consisted of Representative Harris, Chairman, Senator Horton, Senator Rauch, Mr. Joseph Gentili, Mr. David S. Howells, and Mr. Cameron W. Lee.

Respectfully,

Representative Philip P. Godwin Senator Gordon P. Allen
Co-Chairmen, Legislative Research Commission

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Introduction

Senate Resolution 961, adopted by the 1971 General Assembly, directed the Legislative Research Commission to study the need for legislation on eight topics of environmental concern and to report its findings and recommendations to the 1973 General Assembly. This report is addressed to the study directed to be made of one of those topics: "Prevention and abatement of pollution of the State's waters by sedimentation and siltation, particularly that occurring from runoff of surface waters and from erosion." (See Appendix C.)

It is our recommendation that legislation be enacted in 1973 to control siltation and sedimentation to the greatest extent practicable. A bill embodying this recommendation is included in this report as Appendix A. Appendix B contains a section by section analysis of the bill.

The Sedimentation Problem

To conclude that soil erosion and the resultant sedimentation are serious problems in North Carolina it is only necessary to observe what is happening at the construction sites of many shopping centers, apartment complexes, and subdivisions, and then to look at the nearby muddy streams and mudflats in lakes and reservoirs. Dr. Arthur W. Cooper, Assistant Secretary for Resource Management, Department of Natural and Economic Resources, stated at one of the meetings of the Sediment Control Subcommittee that sediment is the major pollutant in North Carolina's rivers and streams.

This is echoed at the national level by William D. Ruckelhaus, Administrator of the Environmental Protection Agency, who stated in a letter of February 8, 1972, that sediment is the major pollutant of the nation's waters by volume. Earl C. Hubbard, Assistant Director of the Office of Water and Air Resources, Department of Natural and Economic Resources, informed the Sediment Control Subcommittee of sediment loads carried by certain North Carolina rivers in 1968 as determined by the department's monitoring stations: the Yadkin, 575,000 tons; the Tar (near Nashville), 935-990 tons per day; the Eno (near Hillsborough), 400 tons per day; the Haw (near Pittsboro), 18,000-24,000 tons per day.

The causes of erosion are many and various. Some natural erosion occurs where man has engaged in no earth disturbing activities and some occurs despite man's best efforts to prevent it. The soil type, rainfall characteristics, topography, vegetative cover, activities taking place on the land, and erosion control practices all effect in greater or lesser degree the amount of erosion and resulting sedimentation. The harmful effects of sedimentation are almost as numerous as the causes of erosion. There is first the esthetic nuisance problem: a river or lake's recreational value is greatly diminished if it carries a large sediment load. Other pollutants, such as pesticides, adhere to sediment particles and are thereby carried into streams. Sediment is harmful to fish and other aquatic life because it covers eggs, clogs gills, and reduces the depth at which photosynthetic activity can take place. The useful lives of lakes and reservoirs are shortened when they are filled with sediment. Sediment in municipal water supplies greatly interferes with the purification process. The costs of sedimentation are difficult to measure and so are the benefits accruing from erosion control. A 1968 report esti-

mated the total national cost of sediment problems to be one billion dollars. Professor C. G. Bell of the University of North Carolina at Charlotte told the subcommittee that every scholar that he knew of that had studied the matter was convinced that the benefits to be gained from erosion control measures far outweigh the costs of such measures when balanced against the damage costs of sedimentation.

Soil erosion and sedimentation are not new environmental problems in North Carolina, but they have recently appeared in a new guise. In the early decades of the twentieth century, attention in North Carolina, as in the rest of the South, was focused primarily on prevention of erosion from farmland. The problem was viewed not in the context of water pollution but rather as one of how to preserve valuable topsoil. Over the past thirty years, the efforts of the Soil Conservation Service of the U.S. Department of Agriculture, the State Soil and Water Conservation Committee and the local Soil and Water Conservation Districts have greatly reduced erosion from agricultural land. As the state has become increasingly urbanized and as more roads have been built, the source of the problem has shifted away from rural land to such urban and suburban activities and sites as subdivision development, shopping centers, and the whole panoply of earth disturbing activities that accompany urban growth. In many instances the sediment causing activities take place beyond municipal boundaries and therefore beyond the reach of municipal subdivision and other land use ordinances. Although it is true that many of the techniques developed over the years for dealing with control of erosion from agricultural land can be adapted for the control of erosion in urban areas, at least two marked differences in the problems should be noted: First, it is in a farmer's own economic self-interest to retain as much of his

topsoil as possible, but it is usually of no concern to the developer how much topsoil leaves the site. Second, the erosion from farmland is usually topsoil, that from construction sites is usually subsoils.

Present Erosion Control Efforts and Capabilities

The techniques and devices for controlling erosion in areas of urban growth are well known and fall into two categories. In the first category are building and grading practices that minimize the risk of potential erosion, such as natural terrain building, rearranging the order of construction (building driveways and garage floors first), uncovering only a limited amount of ground at any one time and leaving it uncovered for only a brief time, and reducing to a minimum the traffic of heavy construction vehicles over uncovered ground and through streams. The second category includes techniques to minimize erosion on uncovered ground and to reduce the velocity of water and increase the holding power of the soil. These include the placing of brush barriers between graded areas and streams or ditches, the use of sediment collection basins, diversion berms, sodded ditches, and grass seeding and reforestation. To say that most of the techniques for erosion control are known is not to imply that additional research is not needed or that soils scientists, botantists, and civil engineers and landscape architects know all they need to know about the effectiveness of various techniques and combinations of techniques in the many different circumstances in which earth disturbing activities are carried on and erosion and sedimentation may occur. Rather, it is to show that the central problem in devising a control program for North Carolina is not lack of knowledge of erosion control techniques, but is rather how to structure an administrative arrangement that will most effectively re-

quire the application of known techniques to earth disturbing activities. To illustrate this problem we have listed below the agencies and programs with existing or potential authority in erosion control.

1. State Soil and Water Conservation Committee. As stated above, the State Soil and Water Conservation Committee, Office of Earth Resources, Department of Natural and Economic Resources, in conjunction with the federal Soil Conservation Service, and working through the local Soil and Water Conservation Districts has for over thirty years been conducting a program of education, advice, and demonstration in efforts to hold erosion of farmland to a minimum, on the whole successfully. The State Soil and Water Conservation Committee has no authority to enforce compliance with any conservation plans or rules that it might promulgate. Land use regulations having the effect of law may be adopted in any individual soil and water conservation district only upon a two-thirds vote of the land occupiers in the district (N.C.G.S. § 139-9). The State Committee and the local districts have concentrated their efforts on rural land and they have not been enforcement oriented. They possess, however, in conjunction with the Soil Conservation Service the largest body of knowledge and experience in the field of erosion control of any agencies in state or local government.

2. State Highway Commission. The State Highway Commission has promulgated certain standard special provisions for erosion control that are included in all contract construction projects. The first sentence of Article 7.13(A) of these specifications sets the tone: "The Contractor shall take whatever measures are necessary to minimize soil erosion. . . caused by his operations." The projects are inspected from time to time to check for compliance with specifications and when the contractor completes the project it must be left in such a condition as to minimize any

erosion. This may involve seeding, mulching, concrete drains with rip-rapping, and many other control techniques.

3. Division of Mining. The Division of Mining, Office of Earth Resources, Department of Natural and Economic Resources, is headed by the State Mining Engineer and was created in 1969. The legislation under which the Division of Mining operates (N.C.G.S. § 74-39 through § 74-68) defines mining generally as the removal of solid matter from the ground and the related processing operations. Persons planning to engage in such activities must obtain a permit from the State Mining Engineer and as part of the permit application present a reclamation plan for the mined area. When a permit is issued it is conditioned specifically upon compliance with the approved reclamation plan. The Division of Mining also requires a bond of persons engaged in mining activities to ensure compliance with the reclamation plan. The amount of the bond may vary, but the minimum is $2,500 and the maximum is $25,000. Excluded from coverage of the statutes are mining operations that affect less than one acre of land and those aspects of underground mining that affect less than one acre of surface land. Also excluded are excavations and gradings when conducted solely in aid of on-site farming or on-site construction for purposes other than mining. Operations of the State Highway Commission and its contractors on highway rights of way and at borrow pits are exempted provided that the Highway Commission adopts reclamation standards and obtains approval of such standards from the State Mining Council.

4. North Carolina Forest Service. The Forest Service, Office of Forest Resources, Department of Natural and Economic Resources, is charged with the responsibility of managing the state forests (N.C.G.S. 113-29 et seq.). Although the statutory provisions contain no specific directions

concerning erosion control, it is obvious that the policies and procedures concerning the planting and cutting of trees in the state forests has a substantial impact on sedimentation of streams. The Forest Service is also directed and authorized to advise owners of private forests in management practice. This too can have substantial effect on erosion control. The Forest Service works in conjunction with the U.S. Soil Conservation Service in administering Public Law 566, Small Watershed Program. The Forest Service is responsible for soil stabilization with trees on critical erosion areas where the SCS designates areas as suitable for such stabilization.

5. Division of Commercial and Sport Fisheries. The Division of Commercial and Sport Fisheries, Office of Fisheries and Wildlife Resources, Department of Natural and Economic Resources, administers the dredge and fill permit program. Before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or state-owned lakes, the person desiring to carry out the project must obtain a permit therefor. The permit application is then circulated among all state and federal agencies having jurisdiction over the subject matter. An application may be denied upon any of the following grounds: (1) that there will be significant adverse effect of the proposed project on the use of the water by the public; (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; (3) that there will be significant adverse effect on public health, safety, and welfare; (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries.

6. Office of Water and Air Resources. The Office of Water and Air Resources, Department of Natural and Economic Resources, has primary re-

sponsibility for the management and maintenance of water quality in North Carolina. The Board of Water and Air Resources, working through the office, has authority to classify the streams of the state, to control new sources of pollution through a permit program, and to control existing sources through abatement orders. Although the definition of "water pollution" [N.C.G.S. § 143-213(19)] appears to be broad enough to include sedimentation, the definition of "wastes" [N.C.G.S. § 143-213 (18)], upon which the enforcement powers of the board depend, appears to cover pollution caused by sedimentation only if the offending materials are discharged directly into the water or are "placed in such proximity to the water that drainage therefrom may reach the water" [N.C.G.S. § 143-213(18)c.]. In addition to this jurisdictional shortcoming, the primary thrust of the office's control authority and efforts is toward "point" sources of water pollution, such as industrial plants, rather than toward "non-point" sources, such as sedimentation caused by erosion.

7. Council on State Goals and Policies and Department of Administration. The Council on State Goals and Policies and the Department of Administration have an important contribution to make to erosion control in two major areas. First, they have a major role in administering the environmental impact statements program under the Environmental Policy Act of 1971 (N.C. G.S. Chapter 113A). This Act requires the submission of a detailed statement of the environmental impact for any major project or program involving expenditure of public funds and a statement of the alternatives to the proposed project. Clearly, the effects on stream sedimentation should be one aspect to be covered in every impact statement. Second, the Council is charged with the duty of recommending objectives concerning the use of state resources, and the Department of Administration has the major role in state government in planning and in assisting local governments in their planning efforts. Wise and effective land-use planning is a major element in the control of erosion.

8. Department of Agriculture. The North Carolina Department of Agriculture has no specific charge to develop erosion control programs but it does have a general interest in the problem, especially as it effects farm and timber lands. The Soil Testing and Seed Testing Divisions of the department conduct programs that are of existing and potential value in seeking appropriate vegetative covers for different types of soil and climate.

9. Agricultural Extension Service. The North Carolina Agricultural Extension Service of North Carolina State University, in cooperation with the U.S. Department of Agriculture, conducts extension and educational programs in each of the state's one hundred counties through facilities at N. C. State and the one hundred county agents located throughout the state. Erosion control education has been one of the major projects of the service, and it has promoted the use of sound tillage methods, in-service training programs in the interpretation and use of soil surveys, and workshops and training programs to disseminate erosion control information to developers, planners, and public officials.

10. Agricultural Experiment Station. At the North Carolina Agricultural Experiment Station at North Carolina State University, research is conducted in agricultural and related activities by soil scientists, forestors, zoologists, and agricultural engineers. The products of this research, as they relate to sediment control, should be of value to any agency administering a control program.

11. Agricultural Stabilization and Conservation Service. The Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture provides financial assistance to farmers on a cost-share basis, usually fifty-fifty, for carrying out approved conservation and erosion control practices on their farms that they would not normally do without financial assistance. The Appalachian Regional Development Act provides additional cost-share assistance to land owners in the Appalachian region to prevent erosion and sedimentation. This program is conducted on a watershed basis.

12. U.S. Army Corps of Engineers. The programs of the Corps of Engineers are directed toward the prevention of erosion of the banks of rivers and reservoirs and with a few exceptions are concerned only with publicly-owned lands. Much of the Corps of Engineers' work is concerned with allowing for the build-up of sediment in reservoirs and in dredging sediment out of river channels, rather than the prevention of erosion in the first place.

13. Environmental Protection Agency. At the present time the U.S. Environmental Protection Agency has no statutory authority for the institution of erosion control programs. Pending in Congress, however, are two water pollution control bills, H.R. 11896 and S. 2770--which have almost identical sediment control provisions--that would greatly expand the federal government's role in sediment control. The major features of the sediment control provisions of the bills are these: (1) The Environmental Protection Agency shall promulgate guidelines for the effective control of sedimentation from land disturbing activities, including the construction of public and private buildings, roads, and highways, but excluding uses of land for agricultural, silvicultural, ranching or grazing purposes; (2) the guidelines shall prescribe categories of land disturbing activities for which

(a) permits are required, or (b) general regulation is required, or (c) no regulation is required; (3) within one year after the promulgation of the federal guidelines, each state must submit a sedimentation control program to the EPA for approval, such plan to be designed to control erosion in the areas of critical sedimentation in the state; (4) once a state plan has been approved and is in effect, land disturbing activities may be conducted only in accordance with regulations adopted pursuant to the state plan, or after the responsible person has submitted a sediment control plan to an appropriate and qualified agency and has received a permit from that agency; and (5) the lead state agency may delegate its approval and enforcement authority to other state agencies and to local governmental units qualified to administer the state plan, subject to state monitoring by the lead agency. It is to be noted that the proposed federal legislation makes three classifications of land-disturbing activities, those to be covered by general regulation, those for which a permit is required, and those subject to no regulation; apparently the states are expected to follow the same course and are to focus on the areas of critical sedimentation.

14. Local governments. North Carolina counties and municipalities would appear to have considerable authority to pursue erosion control programs through the power to enact zoning and subdivision regulations and the general ordinance power. Through this combination of powers much could be accomplished through effective land use planning and grading and clearing ordinances. Additionally, two counties, Wake and Forsyth, obtained special legislation from the 1971 General Assembly to empower them to enact erosion control ordinances.

The Work of the Legislative Research Commission

Acting under Senate Resolution 961, we appointed a subcommittee of the Environmental Studies Committee to consider the subject of sedimentation pollution consisting of Representative W. S. Harris, Jr., Chairman, and Senators Hamilton C. Horton, Jr. and Marshall A. Rauch. Public members appointed to the subcommittee were Joseph Gentili, Department of Landscape Architecture, North Carolina State University, David H. Howells, Director, Water Resources Research Institute, North Carolina State University, and Cameron W. Lee, Carolinas Branch Associated General Contractors of America.

The subcommittee held three hearings. The first meeting developed general information about the sedimentation problem and existing techniques for erosion control. The primary purpose of the second meeting was to learn about existing state and local programs for erosion control and to discuss possible administrative arrangements for a state-wide control program. The third meeting was devoted to discussions of actions presently being taken by builders and developers to control erosion at construction sites and of the problems that various regulatory approaches might present to builders. Pending federal sediment control legislation was also discussed. At the fourth meeting of the subcommittee, tentative agreement was reached on the major features of the bill to be recommended, and the subcommittee directed its staff, the Institute of Government, to draft a bill for further discussion. The draft bill and other recommendations were then discussed and amended, and a draft report with recommendations, including a bill, was submitted to the Environmental Studies Committee. After receiving suggestions from the committee, the subcommittee perfected its recommendations. We have adopted the findings and recommendations of the subcommittee.

Findings

The Commission makes the following findings concerning water pollution from sedimentation:

(1) Sedimentation from soil erosion and runoff constitutes a major pollution problem in North Carolina's rivers, lakes, and reservoirs.

(2) Although the optimum level of erosion control from agricultural land has not yet been achieved, erosion from such land has been greatly minimized through the continuing efforts of the State Soil and Water Conservation Committee and the U.S. Soil Conservation Service.

(3) The major sources of soil erosion and the consequent sedimentation in North Carolina are construction sites in urban areas and road construction and maintenance activities.

(4) The costs of controlling erosion appear to be small when compared to the benefits to be derived from such control.

(5) At the state level there presently exist at least nine agencies or subagencies with some degree of authority over erosion control. Most of these offices and divisions are located in the Department of Natural and Economic Resources. There appears to be no formal coordinating mechanism for erosion control programs among the various agencies.

(6) Local governments appear to have the necessary legal authority for the enactment of erosion control regulations but need technical advice and assistance in drafting, implementing, and enforcing such regulations.

(7) There is presently pending in Congress legislation that would require every state to develop a sediment control program within federal guidelines or else face the prospect of a federally administered program within critical sedimentation areas of the state.

(8) There is a need for legislation and funds that would empower a state agency to develop state-wide regulations concerning sediment control, to coordinate the erosion control efforts of other agencies, to

advise and assist local governments in developing sediment control programs, and to serve as liason with the Environmental Protection Agency for the coordination of state and Federal programs.

Recommendations

The Commission makes the following recommendations concerning a sediment control program for North Carolina:

(1) The Department of Natural and Economic Resources, the Department of Agriculture, the North Carolina Agricultural Experiment Station, and the Department of Transportation and Highway Safety should continue and stimulate research into the various aspects of erosion control and sedimentation, including, but not limited to, the following general areas: the location and status of rivers, lakes and reservoirs, where sedimentation appears to be a critical problem; effective erosion control techniques for the varying conditions of soil, slope, rainfall, and land use that exist in the state; fast-growing vegetative covers appropriate to the various soils and other conditions; and economic studies of the costs and benefits of different combinations of control techniques. State and federal funds should be made available for appropriate research projects as necessary.

(2) The State Soil and Water Conservation Committee, working through the local Soil and Water Conservation Districts, and the Agricultural Extension Service should continue and if possible increase their training and general educational activities in the area of erosion control and they should be directed insofar as possible towards builders and public officials involved in erosion control in urbanizing regions.

(3) The bill set forth as Appendix A of this report should be enacted by the General Assembly to implement the findings of this report.

In summary, the recommended legislation establishes the Department of Natural and Economic Resources as the lead agency of state government in developing and implementing a sediment control program. The department

is charged with the responsibility for developing state-wide regulations, for coordinating the erosion control efforts of other agencies, and for assisting local governments in establishing and enforcing sediment control programs.

Appendix A

Proposed Bill to Implement Study Findings and Recommendations by Establishing State Sediment Control Program

A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PROGRAM FOR THE CONTROL OF POLLUTION FROM SEDIMENTATION.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as and may be cited as the "Sedimentation Pollution Control Act of 1973."

Sec. 2. Preamble.--The sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters, principally from construction sites and road maintenance. The continued development of this State will result in an intensification of pollution through sedimentation unless timely and appropriate action is taken. Control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare. It is the purpose of this act to provide for the creation, administration, and enforcement of a program which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation.

Sec. 3. Definitions. As used in this act, unless the context otherwise requires:

(a) "Department" means the North Carolina Department of Natural and Economic Resources.

(b) "District" means any Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

(c) "Erosion" means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

(d) "Land disturbing activity" means any use of the land by man in residential, industrial, or commercial development, and highway and road construction and maintenance that may result in a change in the natural cover or topography and that may cause or contribute to sedimentation.

(e) "Local government" means any county, incorporated village, town, or city.

(f) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, local government, interstate body, or other legal entity.

(g) "Secretary" means the Secretary of the Department of Natural and Economic Resources.

(h) "Sediment" means solid particulate matter, both mineral and organic, that has been moved from its site of origin and is in suspension in water.

Sec. 4. Powers and Duties of the Secretary.--(a) The Secretary shall, in cooperation with the Secretary of the Department of Transportation and Highway Safety and other appropriate state and federal agencies, develop and administer a comprehensive state erosion and sediment control program. To assist him in the development of such a program the Secretary shall appoint an advisory board of not more than eleven members, consisting of representatives of the affected industries and such public representatives as the Secretary may select.

(b) to implement this program the Secretary shall develop and adopt on or before July 1, 1974, rules and regulations for the control of erosion and sediment resulting from land disturbing activities, which rules and regulations may be revised from time to time as may be necessary. Prior to the adoption or revision by the Secretary of any rules or regulations authorized by this section 4, he shall conduct one or more public hearings with respect to such proposed action in accordance with the following procedures:

1. Notice of any hearing shall be given not less than 20 days before the date of the hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action that the Secretary proposes to take. The notice shall either include details of the proposed action, or where the proposed action is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of the detailed proposed action can be obtained upon request from the Secretary in sufficient quantity to satisfy the requests of all interested persons.

2. Any such notice shall be published at least once in a newspaper of general circulation in the eastern, western and central regions of the state.

3. Any person desiring to be heard at any public hearing shall give notice thereof in writing to the Secretary on or before the date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any public hearing.

The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed action at any time within 30 days following the conclusion of any public hearing or within any additional time as he may allow by notice given as prescribed in this section.

When the Secretary has completed hearings and considered the submitted evidence and arguments with respect to any proposed action pursuant to this section 4, he shall adopt his final action with respect thereto and shall publish such final action as part of the official regulations of the Department.

(c) The rules and regulations adopted pursuant to subdivision 4(b) for carrying out the erosion and sediment control program shall:

1. be based upon relevant physical and developmental information concerning the watershed and drainage basins of the State, including, but not limited to, data relating to land use, soils, hydrology, geology, grading, ground cover, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

2. include such survey of lands and waters as may be deemed appropriate by the Secretary or required by any applicable laws to identify those areas, including multi-jurisdictional and watershed areas, with critical erosion and sedimentation problems; and

3. contain conservation standards for various types of soils and land uses, which standards shall include criteria and alternative techniques and methods for the control of erosion and sediment resulting from land disturbing activities, and shall specify those land disturbing activities that may be controlled by general regulation and those for which an erosion control plan must be submitted and approved.

(d) In implementing the erosion and sediment control program, the Secretary is authorized and directed to:

1. Assist local governments in developing erosion and sediment control programs and as part of such assistance to develop a model erosion control ordinance, and approve, approve as modified, or disapprove such local plans submitted to him pursuant to section 8 of this act;

2. Assist other state agencies in developing erosion and sediment control programs to be administered in their jurisdictions, and to approve, approve as modified, or disapprove such programs submitted pursuant to section 5 of this act and from time to time review such programs for compliance with regulations issued by the Secretary and for adequate enforcement.

3. Prepare and make available for distribution publications and other materials dealing with erosion control techniques appropriate for use by persons engaged in land disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of erosion control regulations, ordinances, and plans.

(e) All rules and regulations of the Secretary promulgated pursuant to this act shall be incorporated either in the Secretary's official regulations or his rules of procedure. All such rules and regulations shall upon adoption be printed and a duly certified copy thereof shall be filed with the Secretary of State and with the several clerks of court of the counties of the State as required by Sections 143-195 through 143-198.1 of the North Carolina General Statutes. Copies shall at all times be kept at the office of the Secretary in sufficient numbers to satisfy all reasonable requests therefor. The Secretary shall codify his regulations and rules promolgated under this act and shall from time to time revise and bring up to date such codifications.

Sec. 5. Authority of the Secretary.--(a) The Secretary shall have exclusive authority over land disturbing activities that are:

1. conducted by the state;

2. conducted by the United States;

3. conducted by persons having the power of eminent domain;

4. conducted by local governments;

5. licensed by the United States; or

6. financed in whole or in part by the state or the United States.

The Secretary may delegate the authority conferred by this subdivision 5(a), in whole or in part, to any other State agency that has submitted an erosion control program to be administered by it, and such program has been approved by the Secretary as being in conformity with the general state program.

(b) The Secretary shall have concurrent authority with local governments over all other land disturbing activities.

Sec. 6. Enforcement authority of the Secretary.--(a) In implementing the provisions of this act the Secretary is authorized and directed to:

1. Require the submission of erosion control plans by persons engaged in land disturbing activities specified pursuant to section 4(c)3 of this act;

2. Inspect or cause to be inspected the sites of land disturbing activities to determine whether applicable regulations or erosion control plans are being complied with;

3. Make requests of the Attorney General or solicitors for prosecutions of violations of this act.

(b) Any person adversely affected by any action of the Secretary may seek judicial review of such action pursuant to Sections 143-306 through 143-316 of the North Carolina General Statutes.

Sec. 7. Educational Activities. The Secretary in conjunction with the Soil and Water Conservation Districts, the North Carolina Agricultural Extension Service, and other appropriate state and federal agencies shall conduct educational programs in erosion and sedimentation control, such programs to be directed towards state and local governmental officials, persons engaged in land disturbing activities, and interested citizen groups.

Sec. 8. Local erosion control programs.--(a) Any local government may submit to the Secretary for his approval an erosion and sediment control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances, rules and regulations necessary to establish and enforce such control programs, and they are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into such agreements as are necessary for the proper administration and enforcement of such program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Secretary.

(b) The Secretary shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved.

The Secretary shall only approve a program upon determining that it complies with the regulations adopted pursuant to section 4 of this act.

(c) Local governments are authorized to levy property taxes, without restriction as to rate or amount, for the purpose of administering and enforcing erosion and sediment control programs.

(d) If the Secretary determines that any local government is failing to administer or enforce an approved erosion and sediment control program, he shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Secretary, the Secretary shall assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

Sec. 9. Approval of plans.--(a) Each local government's erosion and sediment control program shall require that for those land disturbing activities requiring prior approval of an erosion control plan, such plan shall be submitted to the appropriate Soil and Water Conservation District at the same time it is submitted to the local government for approval. The Soil and Water Conservation District or Districts, within 10 days after receipt of the proposed plan, or within such additional time as may be prescribed by the local government, shall review the plan and submit its comments and recommendations to the local government. Failure of the Soil and Water Conservation District to submit its comments and recommendations within 10 days or within the prescribed additional time shall not delay final action on the proposed plan by the local government.

(b) Local governments shall review each erosion control plan submitted to them and within 30 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. A local government shall only approve a plan upon determining that it complies with all applicable state and local regulations for erosion and sediment control.

(c) The disapproval or modification of any proposed erosion control plan by a local government shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. Judicial review of the final action of the local government on the proposed plan may be had in the superior court of the county in which the local government is situated.

(d) With respect to approved plans for erosion control in connection with land disturbing activities, the approving authority, either the Secretary or a local government, shall provide for periodic inspections of the land disturbing activity to insure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting fron the land disturbing activities. Notice of such right of inspection shall be included in the certificate of approval for the plan. If the approving authority determines that the person engaged in the land disturbing activities has failed to comply with the plan, the authority shall immediately serve upon that person by registered mail a notice to comply. The notice shall set forth the measures needed to come into compliance with the plan and shall state the time within which such measures must be

completed. If the person engaged in the land disturbing activities fails to comply within the time specified, he shall be deemed in violation of this act.

Sec. 10. Cooperation with the United States. The Secretary is authorized to cooperate and enter into agreements with any agency of the United States government in connection with plans for erosion control with respect to land disturbing activities on lands that are under the jurisdiction of such agency.

Sec. 11. Financial and other assistance. The Secretary and local governments are authorized to receive from federal, State, and other public and private sources financial, technical, and other assistance for use in accomplishing the purposes of this act.

Sec. 12. Penalties.--(a) Civil Penalties.--

1. Any person who violates any of the provisions of this act or any ordinance, rule, regulation, or order adopted or issued pursuant to this act by the Secretary or by a local government, or who initiates or continues a land disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of

not more than $100.00. Each day of a continuing violation shall constitute a separate violation under this subdivision 12(a)(1).

2. The Secretary, for violations under his jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under this subdivision 12(a) and shall make written demand for payment of the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached with 60 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty, and local governments shall refer such matters to their respective attorneys for the institution of a civil action in the name of the local government in the appropriate division of the General Court of Justice of the county in which the violation is alleged to have occurred for recovery of the penalty. Any sums recovered shall be used to carry out the purposes and requirements of this act.

(b) Criminal penalties.--Any person who knowingly or willfully violates any provision of this act or any ordinance, rule, regulation, or order duly adopted or issued by the Secretary or a local government, or who knowingly or willfully initiates or continues a land disturbing activity for which an erosion control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed $5,000.00, or by both, in the discretion of the court.

Sec. 13. Injunctive relief.--(a) Violation of State program.--Whenever the Secretary has reasonable cause to believe that any person is violating or is threatening to violate any rule, regulation, or order

adopted or issued pursuant to this act, or any term, condition or provision of an erosion control plan, he may, either before or after the institution of any other action or proceeding authorized by this act, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur, and shall be in the name of the state upon the relation of the Secretary.

(b) Violation of local program.--Whenever the governing body of a local government having jurisdiction has reasonable cause to believe that any person is violating or is threatening to violate any ordinance, rule, regulation, or order adopted or issued by the local government pursuant to this act, or any term, condition or provision of an erosion control plan over which it has jurisdiction, may, either before or after the institution of any other action or proceeding authorized by this act, institute a civil action in the name of the local government for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

(c) Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under subdivisions (a) or (b) of this section 13 shall not relieve any party to such proceeding from any civil or criminal penalty prescribed for violations of this act.

Sec. 14. Citizen suits.--(a) Any person injured by a violation of this act or any ordinance, rule, regulation, or order duly adopted by the Secretary or a local government, or by the initiation or continuation of a land disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions, and provisions of an approved plan, may bring a civil action against the person alleged to be in violation (including the State and any local government). The action may seek:

1. injunctive relief;
2. an order enforcing the rule, regulation, ordinance, order or erosion control plan violated; or
3. damages caused by the violation; or
4. both damages and injunctive relief; or
5. both damages and an enforcement order.

Any award of damages under this subdivision 14 (a) shall be in an amount that is three times the actual damages as found by the court or jury.

(b) Any person may bring a civil action in his own behalf against the Secretary or a local government where there is alleged a failure to perform any action required by this act for an order directing the appropriate agency to bring an enforcement or other action.

(c) Civil actions under this section 14 shall be brought in the superior court of the county in which the alleged violations occurred.

(d) The court, in issuing any final order in any action brought pursuant to this section 14, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever it determines that such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in an amount not to exceed $5,000.00.

(e) Nothing in this section 14 shall restrict any right which any person (or class of persons) may have under any statute or common law to seek injunctive or other relief.

Sec. 15. If any provision of this act or the application thereof to any person or circumstance is declared invalid, such invalidity shall not effect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 16. This act shall become effective July 1, 1973.

Appendix B

Section-by-Section Analysis

of Proposed Bill

to Implement Study Recommendations

SECTION-BY-SECTION ANALYSIS OF PROPOSED BILL ESTABLISHING PROGRAM FOR CONTROL OF SEDIMENTATION POLLUTION

Sections 1 and 2.

Section one states the title of the act and section two is the preamble or statement of purpose. The major points made in the preamble are that pollution from sedimentation is a serious problem in North Carolina and is likely to grow more serious, that control of sedimentation pollution is deemed essential to the public health and welfare, and that the object of the act is the control of sedmimentation pollution.

Section 3.

Section three contains the definitions of special terms used in the act. The definition of "land disturbing activity" is of special importance. It is designed to cover only certain uses of land that may cause or contribute to erosion and sedimentation. Those uses are construction activities and road building and maintenance. Thus, agricultural and silvicultural activites are excluded from the coverage of the act. Definitions of "erosion" and "sediment" are included because they are used generally throughout the act and are, after all, what the act is attempting to control; they are not, however, operative words in the sense of having any enforcement authority depend upon them.

Section 4.

Section four is divided into five subdivisions. Subdivision (a) sets forth the broad grant of authority to the Secretary of the Department of

Natural and Economic Resources to develop and administer a comprehensive program for erosion and sediment control. The Department of Natural and Economic Resources was selected for this role because most of the sub-agencies with existing authority and experience in erosion control are within the Department. It is therefore believed that the Secretary is in the best position to take advantage of existing knowledge and experience in erosion control and to coordinate existing and future erosion control activities in a comprehensive program. The Secretary is specifically directed to cooperate with the Secretary of the Department of Transportation and Highway Safety and other appropriate agencies; presumably these would include the Department of Administration and the federal Environmental Protection Agency.

Subdivision (b) deals with the procedures for adopting regulations to implement the program. At least one hearing is required at which all interested persons may express their views on any proposed action.

Subdivision (c) contains the standards that are to control the substance of any implementing regulations. These standards have been drawn with as much specificity as the circumstances permit and should provide adequate guidance to the Secretary. This subdivision contemplates that erosion from certain land disturbing activities will be controlled through the use of general regulations. Erosion from other land disturbing activities, those that are more severe in their impact on the land, will be controlled by the use of erosion control plans that must be submitted and approved before the land disturbing activity may be initiated. The construction of shopping centers, subdivisions, and industrial plants will most likely fall into this second category.

Subdivision (d) sets forth certain specific duties of the Secretary with regard to assisting local governments in developing local erosion and sediment control programs and other state agencies in developing programs to be administered in their jurisdictions. The Secretary is also charged with the duty of preparing and distributing instructional publications dealing with soil erosion, sedimentation, and control techniques therefor.

Subdivision (e) requires the printing and codification of regulations adopted pursuant to the act.

Section 5.

Section five sets forth the land disturbing activities over which the Secretary has exclusive authority or jurisdiction and those over which he has concurrent authority with local governments. In general, the Secretary has exclusive authority over activities conducted or financed by a government agency. This authority may be delegated to other state agencies that have developed erosion and sediment control programs that have been approved by the Secretary. The Secretary has concurrent authority with local governments over all other land disturbing activities.

Section 6.

Section six gives to the Secretary the same enforcement powers that are given to local governments by sections eight and nine, namely the powers to require the submission and approval of erosion control plans, to make inspections, and to recommend prosecutions.

Section 7.

Section seven directs the Secretary, in conjunction with other appropriate agencies, to conduct educational activities and programs on erosion and sediment control. The responsibility for conducting educational programs is set out in a separate section for emphasis because of the critical importance to the control program of the development of information and control techniques and their effective dissemination to affected parties.

Section 8.

Section 8 deals with local erosion and sediment control programs. Local governments are encouraged to establish their own programs but they are not required to do so. A local government desiring to conduct its own program must obtain approval thereof from the Secretary, and to be approved the program must meet the guidelines laid down by the Secretary. Authority is provided for two or more local governments to establish a joint program, and it is expected that many of the smaller towns will join the county program, and that several counties will join together in regional programs. If after having a program approved, a local government fails to adequately enforce it, the Secretary is directed to take action to assume enforcement for the local government until such time as the local unit is willing and able to resume enforcement.

Section 9.

Section nine provides in detail for the approval of erosion control

plans for those land disturbing activities for which plans are required. For activities within the authority of a local government, plans must be submitted to the local Soil and Water Conservation District for comment at the same time that they are submitted to the local government for approval. The Districts do not have veto authority over the plans, but it is expected that local governments will attach substantial weight to the views of the Districts. Judicial review is provided for any person whose plan is disapproved or approved as modified. Subdivision (e) grants authority to the Secretary and to local governments to inspect projects for which erosion control plans have been approved to determine whether the plan is being complied with and whether it is adequate.

Section 10.

Section ten authorizes the Secretary to cooperate with any federal agency in connection with erosion control plans for land disturbing activities conducted on lands under that agency's jurisdiction.

Section 11.

Section eleven authorizes the Secretary and local governments to receive financial assistance for the implementation of the act. This section is intended to provide the enabling mechanism whereby the Secretary or federal agencies, as funds become available, may make grants of funds to local governments to assist them in the development and enforcement of erosion and sediment control programs.

Section 12.

Section twelve establishes the civil and criminal penalties for violations of the act. Subdivision (a) sets the maximum civil penalty at $100 per each day of violation. The total penalty may be compromised by the Secretary or local government having jurisdiction. If not paid, it may be sued for in an appropriate court.

Subdivision (b) sets the maximum criminal penalties at imprisonment for 90 days, or a fine of $5,000, or both, in the discretion of the court.

Section 13.

Section thirteen empowers the Secretary and local governments to seek injunctive relief against persons violating any regulations or ordinances adopted pursuant to the act or engaging in land disturbing activities except in compliance with an approved erosion control plan.

Section 14.

Section fourteen brings a new concept to environmental legislation in North Carolina, although it is contained in legislation of other states and the federal government. This concept is that of conferring standing to sue to enforce the act upon private citizens. Subdivision (a) permits an injured private citizen to sue any person who violates any ordinance or regulation adopted pursuant to the act, or who is not in compliance with a required erosion control plan. A suit under this subdivision may seek either an order enforcing the regulation or plan that is alleged to have been violated or money damages caused by the violations or an injunction

halting the project. If damages are sought and awarded, the award must be in an amount triple the actual damages found. The provision for treble damages is included because in many instances the actual damages from sedimentation pollution are small, and the treble damages award is necessary if the threat of private suit is to be an effective deterrent.

Subdivision (b) confers standing upon any person to bring an action against the Secretary or local governments to enforce any duty imposed by the act.

Subdivision (d) provides that in any citizen suit, the court may award the costs of litigation, including attorney's fees, to either party. This should be of assistance to persons of moderate means and to modestly endowed conservation groups in bringing suits, but it should also act as a deterrence against unfounded or frivolous actions. The court may require a bond of up to $5,000 in any action in which a temporary restraining order or temporary injunction is requested. This is for the protection of developers and builders.

Subdivision (d) provides that nothing in the citizen suit provisions is to restrict or abrogate any common law or statutory rights that any person may have against persons engaged in land disturbing activities. For example, the traditional tort action in nuisance for damages caused by sedimentation remains available.

Section 15.

Section fifteen contains a standard severability clause.

Section 16.

Section sixteen sets the effective date of the act on July 1, 1973.

Appendix C

Senate Resolution 961 of the 1971 General Assembly, Which Directed the Legislative Research Commission to Study the Need for Legislation Concerning Prevention and Abatement of Pollution of the State's Waters by Sedimentation and Siltation

A RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE NEED FOR LEGISLATION CONCERNING CERTAIN ENVIRONMENTAL PROBLEMS.

Be it resolved by the Senate:

Section 1. The Legislative Research Commission is hereby authorized and directed to study the need for legislation concerning the following subjects:

(1) Regulation of septic tank wastes;

(2) Prevention and abatement of oil pollution, including measures for prevention or cleanup of oil spills;

(3) Regulation and management of animal and poultry wastes;

(4) Prevention and abatement of pollution of the State's waters by nutrient waste, particularly compounds of phosphorus and nitrogen;

(5) Prevention and abatement of pollution of the State's waters by sedimentation and siltation, particularly that occurring from runoff of surface waters and from erosion;

(6) Recovery by agencies providing water services of damages from persons polluting the water supply;

(7) The reporting of industrial wastes and other wastes containing toxic materials to public waste disposal systems.

(8) Such other environmental protection or natural resource management subjects not specifically assigned by law or resolution to another Legislative Study Commission as the Commission may deem appropriate.

Sec. 2. With respect to the subjects enumerated in Section 1, the Commission shall examine and evaluate previous relevant experience in North Carolina, legislation and proposals in other jurisdictions, and the experience

of other jurisdictions in applying such legislation. In connection with the studies directed by Section 1, the Commission, where desirable and feasible in its judgment, may include non-legislator members on the study subcommittees assigned these studies.

Sec. 3. The Commission shall report its findings and recommendations to the 1973 General Assembly.

Sec. 4. This resolution shall become effective upon its adoption.

Appendix D

List of Witnesses Who Appeared at Hearings Held by

Sediment Control Subcommittee

Witnesses Who Appeared at Hearings Held by Sediment Control Subcommittee

Mr. Tom Anderson, Chairman, Land Use and Environmental Design Committee, North Carolina Home Builders Association

Professor Carlos G. Bell, University of North Carolina at Charlotte

Mr. Chester F. Bellard, Deputy State Conservationist, U.S. Soil Conservation Service

Mr. Paul W. Brooks, Division of State Planning, Department of Administration

Dr. Arthur W. Cooper, Assistant Secretary for Resource Management, Department of Natural and Economic Resources

Mr. Fred J. Herndon, Chairman, Legislative Committee, North Carolina Home Builders Association

Mr. Earl C. Hubbard, Assistant Director, Office of Water and Air Resources, Department of Natural and Economic Resources

Mr. Ray Lester, Research Triangle Regional Planning Commission

Mr. W.E. Mangum, President and General Manager, C. C. Mangum, Inc.

Dr. Ralph J. McCracken, Assistant Director, Agricultural Experiment Station, North Carolina State University

Mr. Craig McKenzie, State Mining Engineer, Office of Earth Resources, Department of Natural and Economic Resources

Mr. Charles C. McLaurin, President, North Carolina Home Builders Association

Dr. Joseph A. Phillips, Department of Soil Science, North Carolina State University

Mr. Travis Porter, Counsel, North Carolina Home Builders Association

Mr. Ben Rouzie, Planning Department, City of Winston-Salem

Mr. J.A. Saunders, Landscape Engineer, State Highway Commission

Mr. H. A. Smith, Director, State Soil and Water Conservation Committee, Office of Earth Resources, Department of Natural and Economic Resources

Mr. Pearson Stewart, Research Triangle Regional Planning Commission

In addition to these witnesses, the subcommittee used as a resource material Proceedings, Workshop on Sediment Control, a compilation of statements, comments, and recommendations made at a workshop held February 10, 1972, and published by the Water Resources Research Institute of the University of North Carolina.

1973 REPORT

LEGISLATIVE RESEARCH COMMISSION

ANIMAL WASTE POLLUTION CONTROL

TO THE MEMBERS OF THE GENERAL ASSEMBLY

The Legislative Research Commission herewith reports to the 1973 General Assembly its findings and recommendations concerning animal waste pollution control. This report is made pursuant to Senate Resolution 961, adopted by the 1971 General Assembly, which directed the Commission to study "the need for legislation concerning regulation and management of animal and poultry wastes," and to report its findings and recommendations to the 1973 General Assembly.

This report was initiated by the Committee on Environmental Studies of the Legislative Research Commission to which the Commission assigned its study on animal waste pollution control. The Committee on Environmental Studies consisted of:

Sen. William W. Staton, Co-Chairman

Rep. William R. Roberson, Jr., Co-Chairman

Rep. P. C. Collins, Jr.

Rep. Jack Gardner

Rep. W. S. Harris, Jr.

Sen. Hamilton C. Horton, Jr.

Rep. W. Craig Lawing

Sen. Lennox P. McLendon, Jr.

Sen. William D. Mills

Sen. Marshall A. Rauch

Sen. Norris C. Reed, Jr.

Rep. Carl M. Smith

Rep. Charles H. Taylor

Sen. Stewart B. Warren, Jr.

The Subcommittee to which this study was specifically referred consisted of Senator Stewart B. Warren, Chairman, Representative P. C. Collins, Jr., Representative W. Craig Lawing, and three public members--Dr. Arthur Cooper, Dr. George Kriz and Mr. W. E. "Pete" Lane.

Respectfully,

Philip P. Godwin, Speaker

Senator Gordon Allen

Co-Chairmen, Legislative Research Commission

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APPENDICES

INTRODUCTION

Senate Resolution 961, adopted by the 1971 General Assembly, directed the Legislative Research Commission to study and report back to the 1973 Assembly on the need for legislation concerning the "regulation and management of animal and poultry wastes."

Acting under Senate Resolution 961 we appointed a Committee on Environmental Studies to study this and related environmental problems. The Environmental Studies Committee in turn appointed a Subcommittee on Animal Waste Control to consider this subject. The Subcommittee included three legislator members--Sen. Stewart Warren (Chairman), Representative P. C. Collins, Jr., and Representative Craig Lawing. It also included three public members reflecting the agricultural, conservation and professional interests most directly concerned with the subject--conservationist Dr. Arthur Cooper, Assistant Director of the Department of Natural and Economic Resources; animal waste specialist Dr. George Kriz of N. C. State University; and agriculturalist "Pete" Lane, Assistant to the Commissioner of Agriculture.

The Subcommittee has recommended and the full Committee has approved proposed legislation to provide a program for the control of animal waste pollution. We have adopted the findings and recommendations of the Subcommittee. A bill that embodies our recommendations is included in this report as Appendix C. Following the bill, in Appendix D, is a section-by-section analysis.

The Subcommittee profited greatly from detailed testimony presented at its public hearings by spokesmen for farm organizations, farm producer groups,

poultry processors, affected state agencies, conservationists, and university faculty members. The work of a faculty study committee appointed by the Dean of Agriculture and Life Sciences at N. C. State was especially helpful. The Subcommittee was provided general staff assistance by the Institute of Government.

BACKGROUND OF THE PROBLEM

At a recent national conference on animal waste management the U.S. Under Secretary of Agriculture observed that:

> The management of animal waste requires immediate attention. Animal wastes in this country are one of the significant sources of waste in our agricultural-industrial-commercial-domestic complex.[1]

As one of the major agricultural states, North Carolina has its share of the animal waste problem.

There is no significant animal waste problem as long as farm animals and poultry are grown and managed in relatively small numbers, largely for family needs. This has been characteristic of most of North Carolina's farms for much of its history. But times are changing. Several important current developments especially require attention:

* The modern farm, like modern industry, requires mass production in order to be competitive. Mass production of farm animals and poultry means the confinement of large numbers of animals and poultry in small areas.

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[1] Remarks by Under Secretary of Agriculture, J. Phil Campbell on "Improved Control of Animal Wastes." Proceedings of National Symposium on Animal Waste Management. Airlee House, Warrenton, Virginia. 1971. Page 7.

* Wastes generated by confined feeding units for animals and poultry can generate serious water pollution problems. Because of the intensity of these wastes they cannot safely be discharged untreated directly into streams, and the cost of complete waste treatment by known methods is uneconomical in most cases.
* Confined feeding units may also generate significant odor problems. And without careful management, they may attract or breed insects, vermin and pests beyond acceptable levels.
* Aggravating the animal waste problem is the growth of population in hitherto rural areas. The spread of suburbia into the Carolina countryside has brought many former city dwellers into closer contact with the pollution caused by some confined feeding units.

These are hard facts which are generating hard problems. Events of the last two years testify to the serious attention that is being given these problems by concerned citizens and officials.

Existing pollution control laws do not leave our state agencies totally without authority to control pollution from animal wastes. But these laws both fail to pinpoint responsibility in any single agency, and do not adequately cover all aspects of the subject. Prompted by these deficiencies and by the growing scope of the problem, Governor Scott in his 1971 special legislative message on the environment recommended that a new program for management of animal and poultry wastes be adopted in North Carolina.

Rather late in the 1971 legislative session identical bills implementing the Governor's recommendation were introduced in both houses "to control pollution from animal and poultry production units" (S 774 and H 1229). Key features of these bills were: (a) a general survey to be conducted by

the Department of Water and Air Resources; (b) a requirement for the owner of every animal or poultry production unit to file with the Department a plan for control of his waste discharges into or near streams, for reduction of odors, and for suppression of insects, vermin and pests; and (c) authorization for the Board of Water and Air Resources to adopt regulations governing waste disposal, odor problems and pest control.

Between the delivery of Governor Scott's environmental message and the introduction of S 774 and H 1229, officials of the State Departments of Water and Air Resources, Health and Agriculture worked diligently to reach agreement on the details of the bill among themselves and with spokesmen for farm organizations and producer groups. But, though much progress resulted, complete agreement was not achieved on all issues. Reflecting this situation, as well as the late introduction of the bill, H 1229 was given an unfavorable report by the standing committee to which it was referred. No further action was taken on this bill or its Senate counterpart by the 1971 General Assembly. Instead, the subject was assigned to the Legislative Research Commission by Senate Resolution 961 for further study and report.

The Work of the LRC Subcommittee

Our Subcommittee on Animal Waste Control, acting on our behalf pursuant to Senate Resolution 961, held two days of public hearings and met in several committee sessions totalling as many working days. The Subcommittee was furnished background memoranda by the Institute of Government reviewing earlier developments on the subject in this State and analyzing animal waste control legislation that has been enacted in other states. The Subcommittee also received the benefit of proposed model state legislation on the subject that has been developed by the Council of State Governments in cooperation

with the U. S. Environmental Protection Agency and with federal and State agricultural agencies. And the Subcommittee profited by the availability of the published proceedings of a National Symposium on Animal Waste Management held in 1971.

While the Subcommittee was engaged in its work, a faculty advisory committee within the School of Agriculture and Life Sciences (hereafter "SALS") at N. C. State University was conducting a similar study of its own on the subject of animal waste control. This advisory committee had been appointed by Dean James E. Legates of SALS for the purpose, among other things, of assisting and advising us in our study of the need for legislation on this subject. Liaison between our Subcommittee and the SALS advisory committee was provided by Professor George Kriz, who served as a member of both groups. Our Subcommittee benefited greatly from the information and recommendations generated by this study group at North Carolina State University.

Some 20 witnesses appeared at the Subcommittee's hearings. (See Appendix B.) Among these witnesses were spokesmen for the principal farm organizations and producer groups, animal and poultry processors, interested state agencies, and conservation groups.

A variety of proposals was offered at the Subcommittee hearings, ranging from comprehensive waste control programs to steps such as increased research, tax reduction for farm land, agricultural zoning, and cost-sharing for farmers on pollution control. The range of these proposals is indicated below by an outline of alternatives considered by the Subcommittee.

ANIMAL WASTE CONTROL ALTERNATIVES

1. 1971 N.C. Bill

   (a) OWAR inventory-survey of problems.

   (b) Owner's plan for control of waste discharges, odor reduction, and vermin control.

   (c) BWAR rule-making powers on same subjects.

   (d) Advisory Committee for farmer representation.

2. Model Bill

   (a) Construction and operating permits required from State environmental agency for "confined feeding facilities."

   (b) Complying feedlots deemed prima facie not a nuisance.

   (c) Inspection and entry rights, with sanitary precautions.

   (d) Rule-making powers given agency.

3. Amendments to State water pollution control statutes designed to eliminate any possible questions re applicability of law (make animal waste control subject to existing permits).

4. Proposals supported by some or all farm witnesses

   (a) Increased research on animal waste control.

   (b) Survey-inventory of problems.

   (c) Farm land tax bill plus zoning for agricultural use.

   (d) Cost-sharing or indemnification for farmers on pollution control.

   (e) Sanitary restrictions on right of entry.

   (f) Permits that are admissible as prima facie evidence in civil suits.

While some farm witnesses at the hearings expressed the hope that no waste control program would be required, a majority of the witnesses

including farm spokesmen recognized the need for some additional controls in order to maintain a clean, healthy and livable environment and to ensure farmers a reasonably stable regulatory climate. Commissioner of Agriculture James Graham expressed a view that found support from many quarters when he observed that:

> A system of permits issued to producers which would be admissible as prima facie evidence in a court of law is the path that I recommend.

FINDINGS

(1) New legislation is needed to establish a sound legal foundation for a comprehensive program of animal waste pollution control. The continuance of piecemeal, partial efforts serves neither the interest of farmers nor the general public. It contributes to increasing deterioration of the environment while exposing the farmer to the threat of haphazard litigation.

(2) The elements of a sound animal waste control law include:

(a) Control of the principal recognized health and environmental problems associated with confined animal feeding units--water pollution, odor and pests. All of these problems are found in connection with some confined feeding units. A program that omits either adequate water pollution controls, or odor or pest suppression measures, is likely to leave large segments of the public dissatisfied and unconvinced.

(b) A stable permit mechanism tailored to the requirements of animal waste control. Permit provisions were omitted from the 1971 animal waste control bill in a compromise gesture to the farm

community. It now seems plain that this gesture missed the mark. Our hearings indicate that a strong permit system is viewed as being just as necessary to protect legitimate farm interests as to safeguard the environment and the public health. The unique nature of farm animal waste problems, and the importance of animal farming to our agricultural economy, point to the need for a permit system that is tailored specifically to animal waste control rather than one that simply incorporates the procedures that have been developed for municipal and industrial pollution control.

(c) Protections written into the permits for the legitimate interests and concerns of regulated agriculture. Two safeguards especially are deemed essential: provisions that operation of an approved waste disposal system is to be deemed prima facie evidence that no nuisance exists, and that State inspectors must comply with prescribed sanitary measures as a protection against the spread of contagious disease.

(d) A unified system of administration. The present situation of divided powers between the State Health Department and Office of Water and Air Resources confuses the public and dissipates regulatory resources. A unified system of administration of animal waste controls under the Office of Water and Air Resources will be in the best interests of the State. The concerns of the various interested parties and groups can best be reflected through participation in a strong Advisory Committee.

(3) The Commission is not now prepared to extend its recommendations beyond an animal waste control permit system. Other elements that might supplement or complement a permit system include zoning of land for agricultural use and appraisal of farm lands as such for property tax purposes. However, these subjects are too large and complex for this Commission to consider at this time.

RECOMMENDATIONS

The Commission recommends the enactment of the bill set forth in Appendix C of this Report. ("A bill to be entitled an Act to control pollution from animal and poultry production units.")

The recommended legislation would establish a permit system for the control of animal waste pollution. It contains adequate protection for farmers and the general public. Administrative responsibility would be unified in the Office of Water and Air Resources.

This legislation would carry forward the strengths of the 1971 bill--notably the provisions for controls as comprehensive as the problem and for establishment of an Advisory Committee to represent all major affected interests. These elements would be combined with others recommended in model legislation, including strong permit procedures, protections against spread of disease by inspectors, and assurance that permits will be admissible as prima facie evidence in civil suits against farmer-permittees.

The recommended legislation will fill an important gap in pollution controls in a fair and orderly fashion.

APPENDIX A

SENATE RESOLUTION 961

GENERAL ASSEMBLY OF NORTH CAROLINA
1971 SESSION

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SENATE RESOLUTION 961

ADOPTED July 14, 1971

Sponsors: Senators Allen and Patterson.

Referred to:

A RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE NEED FOR LEGISLATION CONCERNING CERTAIN ENVIRONMENTAL PROBLEMS.

Be it resolved by the Senate:

Section 1. The Legislative Research Commission is hereby authorized and directed to study the need for legislation concerning the following subjects:

(1) Regulation of septic tank wastes;

(2) Prevention and abatement of oil pollution, including measures for prevention or cleanup of oil spills;

(3) Regulation and management of animal and poultry wastes;

(4) Prevention and abatement of pollution of the State's waters by nutrient waste, particularly compounds of phosphorus and nitrogen;

(5) Prevention and abatement of pollution of the State's waters by sedimentation and siltation, particularly that occurring from runoff of surface waters and from erosion;

(6) Recovery by agencies providing water services of damages from persons polluting the water supply;

(7) The reporting of industrial wastes and other wastes containing toxic materials to public waste disposal systems.

(8) Such other environmental protection or natural resource management subjects not specifically assigned by law or resolution to another Legislative Study Commission as the Commission may deem appropriate.

Sec. 2. With respect to the subjects enumerated in Section 1, the Commission shall examine and evaluate previous relevant experience in North Carolina, legislation and proposals in other jurisdictions, and the experience of other jurisdictions in applying such legislation. In connection with the studies directed by Section 1, the Commission, where desirable and feasible in its judgment, may include non-legislator members on the study subcommittees assigned these studies.

Sec. 3. The Commission shall report its findings and recommendations to the 1973 General Assembly.

Sec. 4. This resolution shall become effective upon its adoption.

APPENDIX B

LIST OF WITNESSES WHO APPEARED OR WERE INVITED TO APPEAR AT HEARINGS OF ANIMAL WASTE POLLUTION CONTROL SUBCOMMITTEE

LEGISLATIVE RESEARCH COMMISSION

ENVIRONMENTAL STUDIES COMMITTEE

ANIMAL WASTE POLLUTION CONTROL SUBCOMMITTEE

Witnesses Who Appeared at Subcommittee Hearings

William Austin,
North Carolina Cattlemen's Association

William Beech,
National Farmers Organization

Ford Brendle,
State Board of Health

Robert H. Caldwell,
North Carolina Grange

Charles Colvard,
North Carolina Milk Producers

Z. T. Farmer,
North Carolina Pork Producers Association

James A. Graham,
Commissioner of Agriculture

Hayes Gregory

John Guglielmi,
North Carolina Feed Manufacturers Association

John Hamby,
North Carolina Egg Producers and Packers Association

Bryan Hawkins,
North Carolina Poultry Processors Association

Earle C. Hubbard,
Office of Water and Air Resources

Dr. Frank Humenik
North Carolina State University

Henry T. Rosser,
Assistant Attorney General

Archie Sink

John Sledge,
North Carolina Farm Bureau

T. C. Smith

Elwood Walker,
North Carolina Turkey Federation

James Wallace,
Conservation Council of North Carolina

Edward Woodhouse,
North Carolina Poultry Federation

APPENDIX C

PROPOSED BILL TO IMPLEMENT RECOMMENDATIONS

A BILL TO BE ENTITLED AN ACT TO CONTROL POLLUTION FROM ANIMAL AND POULTRY PRODUCTION UNITS

The General Assembly of North Carolina do enact:

Section 1. Title. - This act shall be known and may be cited as the Animal Waste Pollution Control Act of 1973.

Sec. 2. Intent. - An adequate supply of livestock, poultry and other animals which is essential to the health and economy of North Carolina and the nation, is dependent upon a competitive opportunity and a fair profit. The proper management and disposal of animal wastes are necessary to prevent water pollution and other health hazards and to maintain a quality environment. It is the intent of this Act that the operation of animal and poultry production units in this State shall be conducted in such manner that the impact of such operations upon the environment shall be controlled by all reasonable efforts consistent with practicable technology and management, and that the probability of litigation against permittees shall be minimized.

Sec. 3. Definitions. - As used in this Act, unless the context otherwise requires:

(1) "Animal" shall mean any species of food, fur or pleasure animal, including, but specifically not limited to, beef and dairy cattle, goats, horses, sheep and swine.

(2) "Poultry" shall mean any species of bird, including, but specifically not limited to, chickens, ducks, geese and turkeys.

(3) "Animal or poultry production unit" shall mean any area designed or used, in whole or in part, for the confined feeding or holding of animals or poultry.

(4) "Animal waste" shall mean

(a) feces;

(b) urine; and

(c) associated waste-waters which shall mean all liquid or water-borne

wastes, deriving from or created by the operation of an animal or poultry production unit, and shall include, without limitation, milking parlor wastes from raw milk dairies.

(5) "Board" shall mean the North Carolina Board of Water and Air Resources.

(6) "Confined feeding" shall mean the feeding of animals or poultry for food, fur or pleasure purposes in confined lots, pens, pools, or ponds which are not normally used for raising crops and in which no vegetation, intended for animal feedstuffs, is growing. This shall not include a wintering operation in lots or on farming ground unless the operation causes a pollution problem.

(7) "Director" shall mean the director of the Office of Water and Air Resources.

(8) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of animal waste into the waters over which the State has jurisdiction or the placement of animal waste in such proximity to the waters of the State that drainage therefrom may reach the water.

(9) "Holding" shall mean recurring, short-term confinement of animals or poultry.

(10) "Office" shall mean Office of Water and Air Resources, Department of Natural and Economic Resources or its successor agency.

(11) "Person" shall mean natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations, organized or existing under the laws of this State or any other state or country.

Sec. 4. Survey of animal wastes. - The Board, with the aid of the advisory committee established by Section 9 of this Act, shall conduct a preliminary survey and appraisal of the animal waste disposal problem in North Carolina. The survey shall

be completed within 12 months after the effective date of this Act, and shall be carried out with the cooperation and the assistance of the Commissioner of Agriculture and the Agricultural Extension Service.

Sec. 5. Production unit operation. - Every person owning or operating an animal or poultry production unit shall conduct the operation of the production unit in such manner that:

(1) No animal wastes shall be discharged in any waters of the State in violation of the water quality standards applicable to the classification assigned to such waters. There is excepted from this Act any animal waste applied to land according to approved agricultural practices, and, carried into the waters of the State by rainfall runoff. Approved agricultural practices shall be those recommended by the North Carolina Agricultural Extension Service and adopted by the Board in its rules and regulations.

(2) Foul or noxious odors caused by the operation of the production unit shall be suppressed by all means consistent with practicable technology and waste management.

(3) Insects, vermin or pests breeding in or attracted by the operation shall be suppressed by all means consistent with practicable technology and waste management.

Sec. 6. Permits. (a) Permit Required for Construction, Modification, and Operation: Voluntary Registration; Tax Amortization.

(1) No person shall construct, maintain, operate, modify, or extend any waste disposal system of any animal or poultry production unit after January 1, 1975, except in accordance with terms of a permit obtained from the Board pursuant to the provisions of this Act, and as specified in the Rules and Regulations to be developed with the assistance of the Advisory Committee

and subsequently adopted by the Board, unless specifically exempted under the provisions of this Act or Rules and Regulations adopted thereto.

(2) Any person operating an animal or poultry production unit not required to obtain a permit under the provisions of this Act or rules or regulations adopted by the Board, may voluntarily apply for and be entitled to receive such a permit from the Board, upon compliance with the provisions of this Act. Such person, upon receipt of a permit shall be subject to all provisions of this Act and to all rules and regulations promulgated thereunder.

(3) Any person who obtains a permit shall be eligible to amortize over a five year period as provided in G.S. 105-130.10 for corporations and G.S. 105-147 for individuals, the cost of construction or modification of waste disposal facilities necessary to comply with the provisions of this Act.

(b) Permit Applications: Conditions; Issuance. -

(1) Each application for a permit under Subsection 6 (a) shall be made to the Office on a form prepared by it pursuant to regulations promulgated by the Board. In addition to information supplied in the application form, the Office may require that the operator furnish any additional data that it deems necessary for proper consideration of the application.

(2) A permit shall be issued by the Office upon determination that the construction, modification, or operation of any waste disposal system of an animal or poultry production unit is in accordance with the rules and regulations as developed under Subsection 6 (a) of this Act. The Office shall act on all applications for permits as rapidly as feasible. Failure of the Board to approve or deny an application for a permit within 90 days shall be treated as approval of such application, unless

the Office advises the applicant in writing within such period that an additional 90 days is required to properly consider his application in which case failure of the Board to act within a total of 180 days shall be treated as approval. Any waste disposal system of an animal or poultry production unit constructed, modified, or operated in compliance with the Permit and the rules and regulations duly adopted by the Board shall be deemed to be prima facie evidence that a nuisance does not exist.

(3) The Office may grant a special permit pursuant to the rules and regulations adopted by the Board, for the construction, modification, and operation of a waste disposal system of an animal or poultry production unit as a research, experimental, or demonstration project, if the Office determines that such facility has the potential to or would contribute substantial benefits toward environmental improvement.

(4) When a permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the applicant's right to file a subsequent application.

(c) Permits: Terms, Periods, and Conditions. - Permits for the construction, modification, and operation of waste disposal systems for animal or poultry production units shall be issued for a fixed term not to exceed five years. Such permits may contain such terms and conditions consistent with this Act as the Board may require, including but not limited to requirements for data and information collection and reporting.

(d) Permits: Revocation, Modification, or Suspension; Hearings and Appeals. -

(1) Any permit issued under this Section of this Act may be revoked, modified, or suspended in whole or in part during its term for cause, including but specifically not limited to the following:

a. Violation of any terms or conditions of the permit or any appli-

cable criteria, standard or prohibition established by law or rules or regulations of the Board; and

b. Misrepresentation in obtaining a permit or failure to disclose fully all facts relevant to issuance of the permit.

(2) Any person whose application for a permit is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the Board upon making request therefor within 30 days following receipt of notice given by the Board of such modification or revocation or of its decision on such application. Unless such a request for a hearing is made, the decision of the Board on the application shall be conclusive. If request for a hearing is made, the procedure with respect thereto shall be as specified in G.S. 143-215.4(d) and in any applicable rules of procedure of the Board. Thirty days' notice of hearing shall be given in accordance with G.S. 143-215.1(e).

(3) Any person against whom any final order or decision has been made shall have a right of appeal to the Superior Court of Wake County or of the county where the order or decision is effective within 30 days after such order or decision has become final as specified in G.S. 143-215.5.

(e) Permits: Exemptions. -

(1) The Board through adoption of appropriate rules and regulations may provide for the exemption of certain classes of animal or poultry production units from the permit requirements of this Section.

(2) In developing such rules and regulations, the Board shall consider, with regard to class of units to be excepted:

(a) Size of animal or poultry production unit;

(b) Location of animal or poultry production unit in relation to applicable

land use regulations, established land use patterns, and existing or potential public water supply watersheds;

(c) Methods of animal waste disposal; and

(d) Any other factors that the Board, in its discretion, shall deem necessary or appropriate.

Sec. 7. Inspection and entry. - To carry out the purposes of this Act or any rule, regulation or permit issued thereunder, the Board or its authorized representatives, upon presentation of appropriate credentials;

(1) Shall have the right of entry to, upon, or through any lands, buildings, or premises on which any waste disposal system of an animal or poultry production unit is operated, or which the Board or its authorized representative has reasonable grounds to believe is operated, or in which records required by this Act are maintained for the purpose of inspecting such waste disposal system or records to determine that they are constructed, operated, or maintained in accordance with provisions of the permit, rules or regulations of the Board, and this Act; except that he shall not enter the animal or poultry production unit until sanitary measures prescribed by the State Veterinarian to prevent the spread of contagious diseases have been complied with or whenever a contagious or exotic animal disease is determined to exist by the State Veterinarian, or as may be otherwise prescribed by rules and regulations of the Board; and

(2) May at all reasonable times have access to and copy records required to be maintained by this Act.

(3) No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

Sec. 8. Powers of the Board. - In order that it may carry out the intent of this part and provide for its proper administration, the Board, in addition to any other powers granted in this Act, shall have the power:

(1) To adopt, modify, and revoke rules and regulations, after notice and public hearing in the manner provided by G.S. 143-215.3(a)(1), governing the location of animal and poultry production units; the construction, modification, or operation of animal waste disposal facilities, and the suppression of foul or noxious odors and of insects, vermin, and pests arising from the operation of such units. Any rules or regulations adopted by the Board shall be filed with the North Carolina Secretary of State as provided in Article 18, Chapter 143, North Carolina General Statutes.

(2) To require the construction or modification of such disposal systems as it deems necessary and appropriate to control pollution from the operation of animal and poultry production units and to require approval by it of the plans and specifications for any such systems prior to construction or modification.

(3) To require the suppression of foul or noxious odors, and of insects, vermin and pests breeding in or attracted by the operation of an animal or poultry production unit by all means consistent with practicable technology and waste management.

(4) To inspect any waste disposal system of an animal or poultry production unit in order to insure compliance with the provisions of this Act and of any rules and regulations adopted hereunder, to evaluate any animal waste disposal, insect and vermin control plans or procedures, and to issue any approval of waste disposal systems for animal or poultry production units and suppression of foul or noxious odors, and vermin

and pests as may be provided for in rules and regulations by the Board.

(5) To grant a temporary permit which, including extensions thereto, may not exceed a term of twelve months, as the Board shall specify even though the action allowed by such permit may result in pollution or increase pollution where the Board finds that conditions make such temporary permit essential.

(6) To issue (and from time to time modify or revoke) pursuant to notice and hearing as specified in Section 6(d)(2) of this Act, a special order; or to enter into an assurance of voluntary compliance, agreement, or consent order with any person whom it finds responsible for causing or contributing to pollution of any of the waters of the State, or violating any provisions of this Act or any rules and regulations adopted or Permit issued pursuant hereto, or whom it finds may cause or contribute to such pollution or may violate any such provisions, rules, regulations or permits. Such special order, assurance of voluntary compliance, agreement, or consent order may direct such person to take or refrain from taking such action, or to achieve such results within a period of time specified in the instrument issued as the Board deems necessary and feasible in order to alleviate or eliminate such pollution.

(7) To delegate such of the powers of the Board as the Board deems necessary to one or more of its members, to the director, assistant director, or to any other qualified employee of the Board; provided that the provisions of any such delegation of power shall be set forth in the official regulations of the Board; and provided further that the Board shall not delegate to persons other than its own members and its own qualified employees the power to conduct hearings with respect to implementation of any of the provisions, rules, or regulations pursuant to this Act except in the case of an emergency under Subsection (10) for the abatement of existing water or air pollution. Any employee of the Board to

whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Board for decision.

(8) To institute such actions in the superior court of Wake County or in its discretion in the county in which any defendant resides, or has his animal or poultry production unit, as the Board may deem necessary for the enforcement of any of the provisions of this Act or of any official actions of the Board, including proceedings to enforce subpoenas or for the punishment of contempt of the Board.

(9) To declare an emergency when it finds that a generalized condition of water pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Office finds that such a condition of water pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the director, with concurrence of the Governor, shall order persons causing or contributing to the water pollution in question to reduce or discontinue immediately the discharge of wastes from animal or poultry production units. Immediately after the issuance of such order, the chairman of the Board shall fix a place and time for a hearing before the Board to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Board shall either affirm, modify or set aside the order of the director.

In the absence of a generalized condition of water pollution of the type referred to above, if the director finds that the discharge of waters from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may, with the concurrence of the Governor, order the person or persons responsible

for the animal or poultry production unit or units in question to immediately reduce or discontinue the discharge of waters or to take such other measures as are, in his judgement, necessary without regard to any other provisions of this act. In such event, the requirements for hearing and affirmance, modifications, or setting aside of such orders set forth in the preceding paragraph of this provision shall apply.

Nothing in this subsection shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provisions, or inheres in the office.

Sec. 9. Advisory committee. - There is established an advisory committee for the purpose of assisting and advising the Board in the development of criteria, standards, rules and regulations to be adopted by the Board, to carry out the intent and administration of this Act. The advisory committee shall study and make timely recommendations to the Board on all matters and things relative to the control of animal waste disposal systems referred to the advisory committee by the Board or undertaken by the advisory committee on its own motion.

(a) Membership. - The advisory committee shall be composed of five permanent members who shall be the Chairman of the North Carolina Board of Water and Air Resources, the Commissioner of the North Carolina Department of Agriculture, the State Health Director of the North Carolina State Board of Health, the Chairman of the North Carolina Soil and Water Conservation Committee, and the Chairman of the Wildlife Resources Commission, or their designees; four members who are employed in the School of Agriculture and Life Sciences of North Carolina State University to be appointed by and to serve at the pleasure of the Dean of the School of Agriculture and Life Sciences of North Carolina State University, one of whom shall be a person experienced in the management or production of animals or poultry, one of

whom shall be a person experienced in biological and agricultural engineering, one of whom shall be a person experienced in aquatic biology, and one of whom shall be a person experienced in soil science; and six members, to be appointed by and to serve during the term of and at the pleasure of the Governor, one of whom shall be actively engaged in commercial poultry production, one of whom shall be actively engaged in commercial swine production, one of whom shall be actively engaged in commercial dairy production, and one of whom shall be actively engaged in commercial beef production, and two of whom shall be members at large who are professionally trained in ecology or natural resource conservation and not be persons engaged in animal or poultry production.

(b) Chairman. - The Chairman of the Board of Water and Air Resources shall convene the advisory committee to elect a chairman and vice-chairman from its membership.

(c) Meetings. - The chairman or in his absence or incapacity, the vice-chairman, from time to time shall call meetings of the committee to be held at such time and place designated for the purpose of transacting the business of the committee. The chairman shall call a meeting at any time upon request in writing of any five of the members of the committee. A written notice shall be given to every member at least seven days in advance of the day of the meeting. A simple majority of the committee shall constitute a quorum.

(d) Compensation. - Members of the committee shall receive the usual and customary per diem allowed for members of other boards and commissions of the State, and as fixed in the biennial appropriation act, and, in addition, shall receive subsistence and travel expenses according to the prevailing State practices and as allowed and fixed by statute for such purposes. These funds shall be paid from monies allocated to the Board. Per diem and subsistence payments shall be made for time necessarily spent by committee members in traveling to and from their places of residence within the State to any committee meeting.

(e) The Office shall furnish to the committee any necessary supplies and clerical or stenographic services and shall maintain the official minutes and proceedings of the committee.

Sec. 10. Injunctive relief. - Whenever the director has reasonable cause to believe that any person has violated or may violate any of the provisions of this Act or any rules or regulations of the Board adopted pursuant to this Act, the director may, either before or after the institution of any other action pursuant to this Act, institute a civil action in the name of the State upon the relation of the director for injunctive relief to restrain the violation or threatened violation and for such other and further relief as the court shall deem proper. The action may be brought in the Superior Court of Wake County, or at the discretion of the director, in the superior court of the county in which the violation occurred or is threatened. Upon a determination by the court that a violation of the provisions of this Act or of the rules or regulations of the Board adopted pursuant thereto has occurred or is threatened, the court shall issue such orders as are necessary to abate or prevent the violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Act.

Sec. 11. Penalties. - Any person who willfully violates any provision of this Act or any rule, regulation, order, agreement, or permit adopted or issued by the Board pursuant to this Act shall be guilty of a misdemeanor punishable by a fine of not more than one hundred dollars ($100.00) per day for each day that the violation continues and not to exceed one thousand dollars ($1000.00) during any consecutive 30 day period.

Sec. 12. G.S. 105-130.10, which relates to amortization of air cleaning devices and waste treatment facilities under the corporation income tax, is hereby amended by inserting therein, after the first sentence thereof, the following additional sentence:

"The deduction provided herein shall also apply to facilities or equipment installed pursuant to the provisions of the Animal Waste Pollution Control Act of 1973."

Sec. 13. Subdivision (13) of G.S. 105-147, which relates to deductions under the individual income tax, is hereby amended by inserting therein, after the first sentence of said subdivision, the following additional sentence:

"The deduction provided herein shall also apply to facilities or equipment installed pursuant to the provisions of the Animal Waste Pollution Control Act of 1973."

Sec. 14. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 15. This Act shall become effective July 1, 1973.

APPENDIX D

SECTION-BY-SECTION ANALYSIS OF PROPOSED ANIMAL WASTE CONTROL BILL

SECTION-BY-SECTION ANALYSIS OF PROPOSED BILL TO CONTROL POLLUTION FROM ANIMAL AND POULTRY PRODUCTION UNITS

Section 1

Bill Section 1 entitles the bill as "The Animal Waste Pollution Control Act of 1973."

Section 2

Bill Section 2 contains a statement of the intent of the proposed legislation. It stresses the need for an adequate supply of livestock and poultry, as well as the need for proper management and disposal of animal wastes for the protection of the environment and the public health. It is intended that the impact of the operations of animal and poultry production units on the environment "shall be controlled by all reasonable efforts consistent with practicable technology and management, and that the probability of litigation against permittees shall be minimized."

Section 3

This section defines the key terminology used in the bill. From a reading of these definitions, in the context of the bill, it becomes clear that:

(1) The controls provided by the bill apply only to production units used for confined feeding of animals or poultry, not to other operations involving animals (such as grazing of cattle) which do not generate concentrated wastes.

(2) The animals and poultry covered by the bill include (a) any species of bird (specifically--chickens, turkeys, ducks and geese); and (b) any species of food, fur or pleasure animal (specifically--beef and dairy cattle, goats, horses, sheep and swine).

(3) "Animal wastes" covered include all liquid or water-borne wastes derived from animal or poultry production units--excreta as well as associated wastes, such as milking parlor wastes.

(4) The provisions of the bill concerning water pollution control apply to drainage into streams from wastes placed near streams, as well as to direct discharges into streams. (That is, "discharges" are defined to include indirect as well as direct discharges into streams.)

Section 4

This section requires that the proposed program be initiated by a one-year survey of animal waste disposal problems in the State.

Section 5

Section 5 states the basic standards for animal waste control that would be established by this bill:

(1) That no animal wastes shall be discharged into the waters of the State in violation of established water quality standards. (This would not affect application of animal wastes to land under agricultural practices approved by the Agricultural Extension Service and the Board of Water and Air Resources.)

(2) That (a) foul or noxious odors, and (b) insects, vermin and pests, associated with production units shall be suppressed in every way that practicable technology and waste management will permit.

Section 6

This section sets out the details of a permit procedure, which is the basic control mechanism used by the bill. After January 1, 1975, waste disposal systems for animal or poultry production units could not be built, modified

or operated without a permit from the N. C. Board of Water and Air Resources (hereafter referred to as "the Board"). Among the significant provisions of this section are the following:

(1) All production units in the State would be required to obtain permits unless exempted by the Board. The Board could develop regulations exempting specified classes of production units on the basis of such factors as size, location and method of waste disposal. While it is recognized that the wastes from some units will have little or no adverse effect on receiving waters, it is felt that in the present limited state of knowledge and experience, the development of appropriate exemptions should be left to the control agency.

(2) Permit holders would be eligible for rapid amortization allowances under the State income tax laws, for the capital costs of their waste disposal facilities.

(3) Another important advantage to the permit holder of complying with control requirements is provided in paragraph (b)(2) of this section. Under this provision, operation of an approved waste disposal system is deemed to be prima facie evidence that a nuisance does not exist. This protection against purely harassing lawsuits has been recommended by model legislation approved by the Council of State Governments and the Environmental Protection Agency. Paragraph (b)(2) of this section also protects permit applicants against undue administrative delays by requiring action upon applications within 90 days under routine circumstances.

(4) A procedure is set forth allowing voluntary permit applications by exempted operators in order to encourage maximum compliance.

(5) Detailed procedures are established for applications, hearings, appeals, and permit revocations. Procedures tailored to the problems of animal waste pollution control are established directly in this bill, rather than by reference to existing pollution control laws, in recognition of the unique nature of the problems of animal and poultry production.

Section 7

Section 7 empowers authorized representatives of the Board to enter and inspect the premises of production units, and to have access to their records at reasonable times, in order to enforce compliance with the Act. To protect against spread of contagious disease, the inspectors are required to comply with sanitary measures prescribed by the State Veterinarian.

Section 8

This section spells out the powers given to the Board for the implementation of the bill if it becomes law. Like Section 6, it is tailored to the special conditions of the animal and poultry production business. Under this section the Board is empowered, among other things:

(1) To adopt rules and regulations to carry out the purposes of the bill.

(2) To enter consent orders, to issue special enforcement orders to violators, to bring enforcement suits, and to delegate its powers to Board members or qualified employees.

(3) To declare water pollution emergencies in appropriate cases. When it is found that there is imminent danger to health and safety or to fish and wildlife, the Director of Water and Air Resources with the Governor's concurrence may set in motion an expedited procedure that will permit prompt action in response to the emergency.

Section 9

Section 9 establishes a 14-member Advisory Committee to assist and advise the Board in the development of criteria and regulations under this bill. Among the important functions of this Advisory Board will be to assist the Board in conducting the preliminary survey of animal waste problems under Section 4 and in developing the basic rules and regulations to implement the bill.

Membership of the Advisory Committee would be as follows:

(1) Five ex officio members consisting of the following officials or their designees--the Chairman of the Water and Air Resources Board, the Commissioner of Agriculture, the State Health Director, the Chairman of the State Soil and Water Conservation Committee and the Chairman of the Wildlife Resources Commission.

(2) Four appointees of the Dean of the School of Agriculture and Life Sciences at N. C. State University, from his faculty, representing a cross section of the School.

(3) Six appointees of the Governor-four representing animal and poultry production, and two citizens not engaged in animal or poultry production. and two animal waste management consultants.

Sections 10 and 11

Section 10 authorizes the Director of Water and Air Resources to seek injunctions against actual or threatened violations of this bill or regulations adopted under it. Section 11 makes it a misdemeanor to violate the bill, or regulations, orders, or permits issued under the bill. Violations are punishable by a fine of up to $100 a day (not exceeding $1,000 for any 30-day period).

Sections 12 and 13

These sections allow deductions for corporate and personal income taxes.

Sections 14 and 15

These sections contain a standard severability clause and make the bill effective July 1, 1973 if it is enacted.

1973 REPORT

LEGISLATIVE RESEARCH COMMISSION

OIL POLLUTION CONTROL

TO THE MEMBERS OF THE GENERAL ASSEMBLY

The Legislative Research Commission herewith reports to the 1973 General Assembly its findings and recommendations concerning oil pollution control. This report is made pursuant to Senate Resolution 961, adopted by the 1971 General Assembly, which directed the Commission to study "the need for legislation concerning prevention and abatement of oil pollution, including measures for prevention or cleanup of oil spills," and to report its findings and recommendations to the 1973 General Assembly.

This report was initiated by the Committee on Environmental Studies of the Legislative Research Commission to which the Commission assigned its study on oil pollution control. The Committee on Environmental Studies consisted of:

Sen. William W. Staton, Co-Chm.
Rep. William R. Roberson, Jr., Co-Chm.
Rep. P. C. Collins, Jr.
Rep. Jack Gardner
Rep. W. S. Harris, Jr.
Sen. Hamilton C. Horton, Jr.
Rep. W. Craig Lawing
Sen. Lennox P. McLendon, Jr.
Sen. William D. Mills
Sen. Marshall A. Rauch
Sen. Norris C. Reed, Jr.
Rep. Carl M. Smith
Rep. Charles H. Taylor
Sen. Stewart B. Warren, Jr.

The Subcommittee to which this study was specifically referred consisted of Senator Lennox P. McLendon, Jr., Chairman, Senator Norris C. Reed, Jr., Representative Jack Gardner, and three public members--Mrs. D. G. Sharp, Dr. John Lyman, and Mr. Richard Dorney.

Respectfully,

Philip P. Godwin, Speaker
Senator Gordon Allen

Co-Chairmen, Legislative Research Commission

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INTRODUCTION

Previous Legislative Efforts

*The specter of a major oil spill off our coastline or in our harbor waters is not a pleasant thought. I propose strong measures to attack this problem.**

With these words, Governor Robert Scott introduced his proposals to the 1971 General Assembly for state legislation concerning oil pollution. "Strong measures" he did propose, including cleanup procedures for oil spills; required permits for major oil terminal facilities and pipelines; and triggering and strengthening of the existing Oil and Gas Conservation Law.

One segment of this program was enacted into law, the amendments to the Oil and Gas Conservation Law of 1945. S.L. 1971, Ch. 813. As a result, this dormant statutory scheme for regulation of oil and gas wells was activated. (Prior to 1971 the law required that oil and gas be discovered "in commercial quantities" before the regulations became effective. The 1971 amendments eliminated this requirement.) In addition, statutory language was added to make plain that regulations for the purpose of environmental protection could be included in these oil and gas well controls. Thus, North Carolina now has a legal framework for protecting the surrounding environment if oil and gas wells are successfully drilled within the State.

Governor Scott's other proposals--for oil spill cleanup procedures and permit controls over terminal facilities and pipelines--were not adopted in 1971. A series of hearings on these proposals held in May 1971 by the Senate Committee on Conservation and Development raised more questions than could be

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* Governor Robert Scott, Environmental Message to the General Assembly. April 8, 1971.

answered in the late stages of a legislative session. At that time cases were pending in the courts challenging the constitutionality of oil spill control legislation enacted by Florida and other states as an invasion of federal authority. Because of the resulting uncertainty, the Senate Committee recommended no legislation on this subject and none was enacted. Rather, the Committee urged that the matter be studied in depth by the Legislative Research Commission between the 1971 and 1973 sessions.

The Work of the Subcommittee

The Senate C & D Committee's recommendation for in-depth study was reflected in Senate Resolution 961, adopted by the 1971 Assembly. This resolution directed the Legislative Research Commission to study and report back to the 1973 Assembly on the need for legislation concerning the "prevention and abatement of oil pollution, including measures for prevention or cleanup of oil spills."

Acting under Senate Resolution 961 we appointed a Committee on Environmental Studies to study this and related environmental problems. The Environmental Studies Committee in turn appointed a Subcommittee on Oil Pollution Control to consider this subject. The Subcommittee included three legislator members--Senator Lennox P. McLendon, Jr., (Chairman); Senator Norris C. Reed, Jr.; and Representative Jack Gardner. It also included three public members reflecting the conservation, business and professional interests most directly concerned with the subject--conservationist Mrs. D. G. Sharp, Environmental Quality Chairman of the League of Women Voters of North Carolina; marine science specialist Dr. John Lyman of the University of North Carolina at Chapel Hill; and Mr. Richard Dorney of the Humble Oil Company.

The Subcommittee has recommended and the full Committee has approved proposed legislation to provide a program for the control of oil pollution. We have adopted the findings and recommendations of the Subcommittee. A bill that embodies our recommendations is included in this report as Appendix C. Following the bill, in Appendix D, is a section-by-section analysis.

The Subcommittee benefited very much from testimony presented at its public hearings. Special appreciation is extended to three federal agencies--the Environmental Protection Agency, the U. S. Coast Guard and the Department of Transportation--for the valuable testimony of experts from their out-of-state offices.

General staff assistance was furnished to the Subcommittee by the Institute of Government. Because legal uncertainties figured so largely in the rejection of the 1971 oil spill control bill, a special effort was made to clarify these issues. Three lengthy memoranda were prepared for the Subcommittee analyzing federal oil pollution legislation, oil pollution control statutes of other states, and a federal district court decision concerning the constitutionality of the Florida oil pollution statute.

Our findings from the work of the Subcommittee, including its hearings and the staff papers produced for it, are set forth in the following section.

FINDINGS

(1) New legislation is needed in North Carolina to lay the basis for a comprehensive state program of oil spill control and surveillance over the siting, construction and operation of major facilities for transporting, storing, processing and refining oil.

Few events have more dramatized the problem of water pollution than the devastating major oil spills of recent years off the coasts of California, England and other maritime lands. The breakup of the tanker *Torrey Canyon* in 1967 spewed 30,000,000 gallons of crude oil into the ocean off the coast of England, polluting 120 miles of English shoreline. 3,000,000 gallons of oil were dumped into San Juan Harbor in 1968 when the tanker *Ocean Eagle* ran aground a shoal. And the "blowout" of offshore oil wells into the Santa Barbara Channel spilled oil at the estimated rate of 500 to 20,000 barrels (20,000 to 850,000 tons) per day into an area of 400 square miles of water, polluting ten miles of beaches. The notoriety of these incidents makes it unnecessary to belabor the details of damage to wildlife, coastal areas and other environmental resources.

Testimony before the LRC Subcommittee on Oil Pollution points up North Carolina's exposure to the risk of major oil spills in convincing terms. According to U. S. Coast Guard figures 1,400,000,000 barrels of oil per year go north past Cape Hatteras, distributed approximately as follows:

Gasoline	250,000,000 barrels
Jet fuel	65,000,000 barrels
Domestic heating fuel	200,000,000 barrels
Residual fuel	565,000,000 barrels
Crude oil	235,000,000 barrels
Miscellaneous	85,000,000 barrels

(7.5 barrels equal about 1 ton.)

The record of North Carolina's recent experience with coastal and inland oil spills is far from reassuring. Testimony by a spokesman for the Southeastern Regional Office of the U. S. Environmental Protection Agency (EPA)

made this quite plain. During the first three months of 1972, North Carolina--though not an oil producing state--experienced one-third of the significant reported spills in the 8-state Southeastern Region of EPA. While praising the cooperation of our state pollution control officials, the Chief of EPA's Environmental Emergency Branch for the Southeast expressed understandable concern at these statistics.

Congress has responded to the threat of oil spills by enacting far-reaching oil pollution controls and spill cleanup requirements in the Water Quality Improvement Act of 1970. At least 13 coastal states have adopted significant oil pollution control statutes comparable to the legislation proposed for North Carolina in 1971.

Spokesmen from the Washington as well as the regional offices of the leading federal oil pollution control agencies responded generously to the request of our Subcommittee to testify at its hearings. The two federal agencies responsible, respectively, for coastal and inland oil pollution control (the Coast Guard and EPA) sent their leading oil pollution control experts to testify. Both recommended the adoption of state oil spill control laws. Their recommendations were echoed by the pollution control experts of the N. C. Board of Water and Air Resources. None of these experts felt that our general water pollution control laws can alone answer to the need for a solid legal basis for oil pollution control programs.

The evidence received by our Subcommittee strongly emphasizes, both our good fortune at escaping serious damage from oil pollution so far, and our increasing need for a comprehensive state oil pollution control statute.

(2) Legal obstacles to State oil pollution control legislation are not, in our judgment, insurmountable.

(a) Legal studies by the Subcommittee.--The LRC Subcommittee on Oil Pollution was charged among other things to explore in depth the legal issues that had blocked legislative action on oil pollution in 1971. At an early stage of its work, the Subcommittee decided to make whatever inquiries were needed to resolve these issues to its satisfaction. Pursuant to this decision the Institute of Government was asked to make the necessary studies. The Institute's research was reflected in a series of reports to the Subcommittee,as follows:

* An Introductory Report to the Subcommittee on Oil Pollution (March 1972. 7 pages. A general review of the events leading up to the resolution directing the LRC study and of federal legislation on oil pollution.)

* A Memorandum on the Decision Concerning Constitutionality of Florida Oil Pollution Statute by 3-Judge Federal District Court. (April 20, 1972. 8 pages. A legal analysis of a decision by a 3-Judge Federal District Court that invalidated Florida's oil spill control statute in November, 1971, as an invasion of federal maritime jurisdiction--after the adjournment of the 1971 N. C. General Assembly.)

* A Memorandum Concerning Federal Oil Pollution Legislation. (April 24, 1972. 20 pages. A detailed review of federal oil pollution control legislation. This memorandum emphasized the Congressional response to the recent oil spill disasters in the Water Quality Improvement Act of 1970.)

* A Memorandum Concerning State Oil Pollution Control Statutes. (June 5, 1972. 38 pages. A comprehensive summary of recent legislation enacted by 13 coastal states concerning oil pollution control. The memorandum reviews litigation interpreting and testing these statutes, as well as the statutes themselves.)

With these studies in hand, the Subcommittee believed that it had secured the information and evaluation needed to get on with its job.

(b) Pertinent legal issues.--When North Carolina's oil spill control bill was under legislative consideration, a major source of legal uncertainty was a pending lawsuit challenging the constitutionality of Florida's 1970 oil pollution statute. This Florida statute resembled North Carolina's 1971 bill in a number of ways. It provided for state licensing of oil terminal facilities; for a blanket prohibition against discharges of oil into Florida's waters except in accord with a state-issued permit; for cleanup and restoration procedures; and for fees and penalties comparable to those that were proposed for North Carolina.

In November, 1971 a partial answer was given to the questions raised by the Florida test case, when a 3-Judge Federal District Court held the Florida statute unconstitutional. American Waterways Operators et al. v. Askew et al., 335 F. Supp. 1241 (D. C. Fla., 1971). The Florida statute was attacked on several grounds--as an invasion of exclusive federal maritime jurisdiction; as an invalid regulation of foreign and interstate commerce; and on due process and equal protection grounds. The court disposed of the case solely on the maritime jurisdiction issue, and did not consider the remaining questions. In finding the Florida statute unconstitutional on the ground of conflict with federal maritime law, the court rejected the plaintiffs' broad contention that a state cannot legislate at all in the admiralty field, holding that states are restricted only from legislating in a way that conflicts with federal maritime law. The court found the Florida statute invalid on the ground that it conflicted with federal maritime law (a mixture of statutes and common law), as most recently modified by the Water Quality Improvement Act of 1970.

The Water Quality Improvement Act (WQIA) prohibits the discharge, intentional or unintentional, of oil in harmful quantities into or upon the navigable waters of the United States. This prohibition applies to vessels, onshore facilities and offshore facilities. There are civil and criminal penalties for violations. In addition, the United States may recover from the discharger its expenses in cleaning up the spill, up to limits of $14,000,000 or $100 per gross ton of vessel (in the case of vessels) or $8,000,000 (in the case of offshore or onshore facilities). These limits are likely to be much higher than under traditional maritime law. The only available defenses to liability under WQIA are an act of God, act of war, negligence by the federal or state governments, or an act or omission of a third party. Under traditional maritime law there may be no recovery without proof of negligence or unseaworthiness.

In an effort to ensure a maximum recovery for the largest possible number of items, the Florida statute attempted to do two things that the 3-Judge District Court found to be in conflict with federal law. First, it failed to allow the discharger the four defenses set forth in WQIA as a matter of right, but identified them only as privileges within the discretion of the State agency. Second, it sought to permit the State to recover for items in addition to those specified in WQIA, specifically for costs of restoring damaged public or private property (in addition to the cleanup costs allowed by WQIA).

The decision of the 3-Judge Court has been appealed and certiorari has been granted by the Supreme Court. North Carolina and other coastal states have joined Florida in this appeal, and they have hopes of overturning the decision against the Florida statute.

It has been suggested that we should await the final decision of the Supreme Court before considering the enactment of state oil spill control legislation. The Supreme Court may dispose of the case this year or at least before the end of the 1973 legislative session in North Carolina. Thus, the argument goes, we should withhold any further legislative recommendations pending the Supreme Court decision.

If we believed that effective state legislation could not be enacted unless the 3-Judge decision were reversed, we might accept this argument. It is our belief, however, that useful state controls supplementing federal law can be enacted without contravening the limits identified in the 3-Judge decision. Essentially, we believe that this can be accomplished by preserving the federal defenses and limiting the recovery to items allowable under the federal law. Neither of these limitations, in our judgment, is unacceptable.

Another, but lesser, legal question that might be raised concerning the 1971 North Carolina bill involves its reporting requirements. As drafted, the bill requires persons responsible for oil spills to report the spills to State authority or suffer criminal and civil penalties. Because the bill also absolutely prohibits discharges with few exceptions, it is quite likely that the discharger will be required by the reporting provision to report his own violation. The U. S. Supreme Court has recently held that reporting requirements may be unconstitutional under the self-incrimination clause in these circumstances.* We believe that the risk of unconstitutionality in the reporting provision of the 1971 North Carolina bill can be avoided by eliminating the criminal sanction for non-reporting, leaving only the civil penalty, which should serve as a sufficient incentive for reporting.

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* California v. Byers, 402 U.S. 424 (1971).

In summary, it is our judgment that there are no serious legal obstacles to enactment and enforcement of an effective State oil pollution control statute.

(3) The elements of a sound State oil pollution control law include:

(a) Those responsible for oil spills should be held strictly and fully accountable for the consequences, unless the cause was truly beyond their control.--In today's business world, economies of scale have made their imprint on every phase of the expanding oil industry. Oil is processed in large refineries, stored in correspondingly large storage areas, and transported in increasingly large tankers and pipelines. The network of oil facilities stretches over ever larger reaches of land and sea. These facilities enable the oil industry to economically serve more people in larger quantities. But the other side of the coin is the growing capacity of the oil industry to inflict spectacular damage upon others and on the environment when things go wrong.

Time was when society could perhaps afford the luxury of holding the oil industry responsible only for injuries to others clearly resulting from its negligence. The growing frequency and severity of oil spills, though, makes it essential to tighten the standard of care expected of this industry.

Along with a heightened standard of care should go sanctions for oil spills sufficient to encourage the industry to take every reasonable precaution against future spills. Hopefully, strict liability together with tougher sanctions and remedies will strengthen the motivation of the industry enough to control the mounting and intolerable toll of oil spills.

The need for state programs to supplement federal programs in these respects is supported by federal and state officials alike.

(b) Funds should be reliably available on call for the State to take necessary cleanup and control measures promptly when the need arises.--The usual method of financing state activities via appropriations alone is not likely to be equal to the task of enabling the State to respond fully and immediately to the need for control and cleanup of oil spills. A revolving fund initiated by appropriations and maintained by fees, penalties and other recoveries under an oil pollution control program is required to meet this need.

(c) In order to establish a stable and effective oil pollution control program in the face of adverse decisions on the validity of some state oil pollution statutes, the legal risks should be minimized in every way consistent with a sound state law.--The Florida 3-Judge decision illustrates the legal hazards that state oil pollution control legislation may face. In light of this decision it makes sense to allow all of the defenses permitted by WQIA and to limit the permissible items of recovery to those authorized by WQIA. The 1971 North Carolina bill, with minor modifications, passes these tests.

It also makes sense to take other reasonable precautions in drafting an oil pollution bill, such as avoiding the self-incrimination problems identified in California v. Byers. Another reasonable precaution is the inclusion of a detailed special severability clause that gives the courts more than the usual guidance in approaching the problem of severability.

In one respect we believe it may be worthwhile to test the allowable reach of state regulation. The 1971 North Carolina bill contained a section imposing liability to the State for damage to public resources caused by oil spills. We believe that the interest of the State in protecting its waters,

lands, flora and fauna from damaging oil spills is sufficient to justify this provision. We would suggest, however, that this matter might appropriately be given further consideration.

(d) A permit system should be established to help control the risk of oil pollution from facilities for refining, processing, and storing oil.--Through such a permit system, guidance could be given in the selection of sites, the design and construction of the facilities, and the proper maintenance of facilities once installed. Such a mechanism will promote preventive action to avoid oil pollution problems before they arise.

We recommend one change in the provisions of the 1971 bill concerning permits: deletion of its permit requirement for oil pipelines. Pipelines should be subject to the oil spill control requirements of Part 2 of the bill, in the same manner as other facilities, but we do not believe they should be covered by the permit requirements of Part 3. Unlike refineries and storage areas, pipelines are now subject to federal permit requirements that control their design, construction, and operation. To require a State permit, as well as a federal permit, would be superfluous and quite possibly illegal under the supremacy clause of the United States Constitution.

(e) The oil pollution controls that are adopted should apply in inland areas as well as coastal areas.--The most publicized and spectacular recent oil pollution incidents have indeed occurred in coastal areas. But the record of recent oil spills in North Carolina shows a fine impartiality in their choice of inland or coastal sites. The protection of an oil pollution control law is plainly needed on a statewide basis.

(4) The Commission is not prepared at this time to offer further recommendations.

Testimony before the Oil Pollution Subcommittee identified other needs in addition to oil spill control and oil terminal facility licensing. Specifically, the problem of waste oil disposal is an unsolved one that may be amenable to legislative control. Legislation concerning waste oil disposal has apparently been successfully administered for several years, at least, in Germany. However, time does not allow us to consider this subject, or others not previously discussed, with sufficient care to warrant further legislative recommendations.

RECOMMENDATIONS

The Commission recommends the enactment of the bill set forth in Appendix C of this Report. ("A bill to be entitled an Act to provide for the protection and conservation of the natural resources of the State of North Carolina through regulation and control of sources of oil pollution.")

The recommended legislation would provide for a program of oil spill control and of regulation over the location, construction and operation of major oil facilities, such as refineries, and storage sites. It carries forward the substance of the 1971 oil spill control bill, with revisions designed to minimize exposure to legal attack.

The threat of gross damage from oil spills knows no territorial bounds. North Carolina has already experienced significant spills of moderate size, both inland and coastal. With our extended coastline and the vast tonnage of oil shipped along our coast, we are more vulnerable than most states to major spills. Federal and state oil pollution experts alike join in recommending that we enact legislation along the lines set forth in Appendix C.

The recommended legislation will close an important and potentially serious gap in our pollution control armor. Enactment of this legislation before major damage is caused by oil spills would reflect wise legislative planning and statesmanship.

APPENDIX A

SENATE RESOLUTION 961

GENERAL ASSEMBLY OF NORTH CAROLINA

1971 SESSION

SENATE RESOLUTION 961

Sponsors: Senators Allen and Patterson.

Referred to: Calendar Committee.

July 12

A RESCLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE NEED FOR LEGISLATICN CONCERNING CERTAIN ENVIRONMENTAL PROBLEMS.

Be it resolved by the Senate:

Section 1. The Legislative Research Commission is hereby authorized and directed to study the need for legislation concerning the following subjects:

(1) Regulation of septic tank wastes;

(2) Prevention and abatement of oil pollution, including measures for prevention or cleanup of oil spills;

(3) Regulation and management of animal and poultry wastes;

(4) Prevention and abatement of pollution of the State's waters by nutrient waste, particularly compounds of phosphorus and nitrogen;

(5) Prevention and abatement of pollution of the State's waters by sedimentation and siltation, particularly that occurring from runoff of surface waters and frcm erosion;

(6) Recovery by agencies providing water services of damages from persons polluting the water supply;

(7) The reporting of industrial wastes and other wastes containing toxic materials to public waste disposal systems.

(8) Such other environmental protection or natural resource management subjects not specifically assigned by law or resolution to another Legislative Study Commission as the Commission may deem appropriate.

Sec. 2. With respect to the subjects enumerated in Section 1, the Commission shall examine and evaluate previous relevant experience in North Carolina, legislation and proposals in other jurisdictions, and the experience of other jurisdictions in applying such legislation. In connection with the studies directed by Section 1, the Commission, where desirable and feasible in its judgment, may include non-legislator members on the study subcommittees assigned these studies.

Sec. 3. The Commission shall report its findings and recommendations to the 1973 General Assembly.

Sec. 4. This resolution shall become effective upon its adoption.

APPENDIX B

LIST OF WITNESSES WHO APPEARED OR WERE INVITED TO APPEAR

AT HEARINGS OF OIL POLLUTION CONTROL SUBCOMMITTEE

LEGISLATIVE RESEARCH COMMISSION

ENVIRONMENTAL STUDIES COMMITTEE

OIL POLLUTION CONTROL SUBCOMMITTEE

Witnesses Who Appeared at Subcommittee Hearings

Dr. Kenneth Biglane, Chief, Oil and Hazardous Materials Division,
Environmental Protection Agency

William Black, Federal Railroad Administration,
United States Department of Transportation

Darwin Coburn
Office of Water and Air Resources

Dr. Arthur Cooper, Assistant Director,
Department of Natural and Economic Resources

Ensign Roger Hansen, United States Coast Guard,
Assistant Captain of the Port of Wilmington

Earle C. Hubbard
Office of Water and Air Resources

Henry T. Rosser, Assistant Attorney General

A. J. Smith, Environmental Protection Agency,
Atlanta Regional Office

Captain Sidney Wallace, Environmental Officer,
United States Coast Guard

APPENDIX C

PROPOSED BILL TO IMPLEMENT RECOMMENDATIONS

The proposed bill is modeled on House Bill 685 introduced into the 1971 Session of the General Assembly.

GENERAL ASSEMBLY OF NORTH CAROLINA

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE PROTECTION AND CONSERVATION OF THE NATURAL RESOURCES OF THE STATE OF NORTH CAROLINA THROUGH REGULATION AND CONTROL OF SOURCES OF OIL POLLUTION.

The General Assembly of North Carolina enacts :

Section 1. G.S. Chapter 143 is hereby amended by adding thereto a new article, to be numbered Article 53, and to read as follows:

"Article 53.

"Oil Pollution Control.

"Part 1.

"General Provisions.

"§ 143-471. Title.--This Article shall be known and may be cited as the 'Oil Pollution Control Act of 1973.'

"§ 143-472. Purpose.--It is the purpose of this Article to promote the health, safety, and welfare of the citizens of this State by protecting the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products. It is not the intention of this Article to exercise jurisdiction over any matter as to which the United States Government has exclusive jurisdiction, nor in any wise contrary to any governing provision of federal law, and no provision of this Article shall be so construed. The General Assembly further declares that it is the intent of this Article to support and complement applicable provisions of the Federal Water Quality Improvement Act of 1970 (Public Law 91-224), as amended, and the National Contingency Plan for Removal of Oil adopted pursuant thereto.

"§ 143-473. Definitions.--As used in this Article, unless the context otherwise requires:

(1) 'Barrel' shall mean 42 U. S. gallons at 60 degrees Fahrenheit.

(2) 'Board' shall mean the North Carolina Board of Water and Air Resources.

(3) ' Office ' shall mean the North Carolina Office of Water and Air Resources.

(4) ' Director ' shall mean the North Carolina Director of Water and Air Resources.

(5) 'Discharge' shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil upon the lands of this State or into the waters over which it has jurisdiction or the placement of oil in such proximity to the waters of the State that drainage therefrom may reach the water, but shall not include discharges in amounts determine by the Board not to be harmful to the public health or welfare (including , but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches).

(6) 'Having control over oil' shall mean, but shall not be limited to, any person using, transferring, storing, or transporting oil immediately prior to a discharge of such oil onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil.

(7) 'Land' shall mean only land from which it is reasonably likely that oil will flow into the waters of this State.

(8) 'Oil' shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons regardless of

specific gravity, whether singly or in combination with other substances.

(9) 'Oil terminal facility' shall mean any facility of any kind and related appurtenances located in, on or under the surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A vessel shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another vessel to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or is used to store oil.

(10) 'Operator' shall mean any person owning or operating an oil terminal facility or pipeline, whether by lease, contract, or any other form of agreement.

(11) 'Person' shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(12) 'Pipeline' shall mean any conduit, pipe or system of pipes, and any appurtenances related thereto and used in conjunction therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.

(13) 'Restoration' or 'restore' shall mean any activity or project undertaken in the public interest or to protect public

interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.

(14) 'Transfer' shall mean the transportation, on-loading or off-loading of oil between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.

(15) 'Vessel' shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and shall include, but shall not be limited to, barges and tugs.

(16) 'Waters' shall mean any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction.

"§ 143-474. Oil Pollution Control Program.--The Board shall establish within the Office an Oil Pollution Control Program for the administration of this Article. The Board may employ and prescribe the duties of employees assigned to this activity.

"§ 143-475. Inspections and investigations; entry upon property; records.--The Board, through its authorized representatives, is empowered to conduct such inspections and investigations as shall be necessary to determine compliance with

the provisions of this Article; to determine the person or persons responsible for violation of this Article; to determine the nature and location of any oil discharged to the land or waters of this State; and to enforce the provisions of this Article. The authorized representatives of the Board are empowered to enter upon any private or public property, including boarding any vessel, for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil discharges or to perform any restoration necessitated by an oil discharge. Authorized representatives of the Board shall have access to pertinent books and records of any person when necessary to the conduct of any investigation or inspection. Neither the State nor its agencies, employees or agents shall be liable in trespass or damages arising out of the conduct of any inspection, investigation, or oil removal or restoration project or activity other than liability for damage to property or injury to persons arising out of the negligent or willful conduct of an employee or agent of the State during the course of an inspection, investigation, project or activity.

"§ 143-476. Confidential information.--Any information relating to a secret process, device or method of manufacturing or production discovered or obtained in the course of an inspection, investigation, project or activity conducted pursuant to this Article shall not be revealed except as may be required by law or lawful order or process.

"§ 143-477. Authority supplemental.--The authority and powers granted under this Article shall be in addition to, and not in

derogation of, any authority or powers vested in the Board under any other provision of law, except to the extent that such other powers or authority may conflict directly with the powers and authority granted under this Article; and the Board is empowered to adopt such rules and regulations as are necessary to administer and carry out the purposes of this Article.

"§ 143-478. Local ordinances.--Nothing in this Article shall be construed to deny any county, municipality, sanitary district, metropolitan sewerage district or other authorized local governmental entity, by ordinance, regulation or law, from exercising police powers with reference to the prevention and control of oil discharges to sewers, disposal systems, streams or upon the land as to discharges to streams or upon land, only within their jurisdiction; provided, however, that such ordinances, regulations or special acts as are more stringent than the provisions of this Article and any rule, regulation or order of the Board adopted under the authority of this Article shall be valid.

"§ 143-479. Local responsibilities.--Municipalities, counties, and other local governmental entities are authorized to adopt and enforce local ordinances or regulations prohibiting and controlling the discharge of oil, petroleum products or their by-products into any stream, disposal system, or storm sewer system within their jurisdiction, which discharges to the waters of the State or upon any land in such manner as to permit its drainage into the waters of the State.

"§ 143-480. Orders not stayed.--No rule, regulation or order of the Board made pursuant to this Article shall be stayed by an appeal from any action taken by the Board pursuant to the provision of this Article.

"Part 2.

"Oil Discharge Controls.

"§ 143-481. Discharges.--(a) Unlawful discharges. It shall be unlawful, except as otherwise provided in this Part, for any person to discharge, or cause to be discharged, oil into or upon any waters, tidal flats, beaches, or lands within this State, or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person owning or having control over the oil, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

(b) Excepted discharges. This section shall not apply to discharges of oil in the following circumstances:

(1) When the discharge was authorized by an existing regulation of the Board.

(2) When the person having control over the oil can prove that a discharge was caused by any of the following:

a. An act of God.

b. An act of war or sabotage.

c. Negligence on the part of the United States Government or the State of North Carolina or its political subdivisions.

d. An act or omission of a third party, whether or not negligent.

(c) Permits. Any person who desires or proposes to discharge oil onto the land or into the waters of this State shall first make application for and secure the permit required by G.S. 143-215.1. Application shall be made pursuant to the rules and regulations adopted by the Board. Any permit granted pursuant to this subsection may contain such terms and conditions as the Board shall deem necessary and appropriate to conserve and protect the land or waters of this State and the public interest therein.

"§ 143-482. Removal of prohibited discharges.--(a) Person discharging. Any person owning or having control over oil discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Board.

(b) Removal by Board. Notwithstanding the requirements of subsection (a) of this section, the Board is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect,

investigate, perform surveillance over, remove, contain, treat or disperse oil discharged onto the land or into the waters of the State and to perform any necessary restoration. The Director shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingenct Plan established pursuant to the Federal Water Quality Improvement Act of 1970 (Public Law 91-224), as amended.

"§ 143-483. Required notice.--Every person owning or having control over oil discharged in violation of the provisions of this Article, upon notice that such discharge has occurred, shall immediately notify the Office , or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the Office receiving the notification shall immediately notify the Director or Assistant Director of the Board or such member or members of the permanent staff of the Office as the Director may designate.

"§ 143-484. Other State agencies.--(a) Cooperative effort. The North Carolina State Highway Commission, the North Carolina Department of Conservation and Development, the North Carolina Wildlife Resources Commission, and any other agency of this State shall cooperate with and lend assistance to the Board by assigning to the Board upon its request personnel, equipment and material to be utilized in any project or activity related to the

containment, collection, dispersal or removal of oil discharged upon the land or into the waters of this State.

(b) Planning. Subsequent to ratification of this Article and prior to its effective date, designated representatives of the Board, the State Highway Commission, the Department of Conservation and Development and the Wildlife Resources Commission and any other agency or agencies of the State which the Board shall deem necessary and appropriate, shall confer and establish plans and procedures for the assignment and utilization of personnel, equipment and material to be used in carrying out the purposes of this Part. Every State agency involved is authorized to adopt such rules and regulations as shall be necessary to effectuate the purposes of this section.

(c) Accounts. Every State agency participating in the containment, collection, dispersal or removal of an oil discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the Board upon completion of the project or activity.

"§ 143-485. Oil Pollution Protection Fund.--There is hereby established under the control and direction of the Board an Oil Pollution Protection Fund which shall be a non-lapsing, revolving fund consisting of any monies appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The monies shall be used to defray the expenses of any project or program for the containment, collection, dispersal

or removal of oil discharged to the land or waters of this State or for restoration necessitated by the discharge. In addition to any monies that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, penalties or other monies paid to or recovered by or on behalf of the Board under the provisions of this Part. In the event that the Fund is inadequate to defray the cost and expenses of any project or activity authorized by this section, necessary additional funds shall be allocated from the Contingency and Emergency Fund. The method of disbursing and accounting for funds allocated from the Contingency and Emergency Fund under the provisions of this section shall be in accordance with the standards and procedures prescribed by the Director of the Budget, pursuant to the Executive Budget Act. Any monies paid to or recovered by or on behalf of the Board as fees, charges, penalties or other payments as damages authorized by this Part shall be paid, first, to the Oil Pollution Protection Fund in an amount equal to the sums expended from the Fund for the project or activity, and any sums in excess thereof shall be paid to the Contingency and Emergency Fund up to the amount dispersed therefrom for conduct of the project or activity. Any additional sums remaining shall be paid to the Oil Pollution Protection Fund.

"§ 143-486. Payments to State agencies.--Upon completion of any oil removal or restoration project or activity conducted pursuant to the provisions of this Part, each agency of the State that has participated by furnishing personnel, equipment or material shall deliver to the Board a record of the expenses incurred by the agency. The amount of incurred expenses shall be

disbursed by the Director to each such agency from the Oil Pollution Protection Fund. Upon completion of any oil removal or restoration project or activity, the Director shall prepare a statement of all expenses and costs of the project or activity expended by the State and shall make demand for payment upon the person owning or having control over the oil discharged to the land or waters of the State, unless the Board shall determine that the discharge occurred by reason of an act of God, an act of war or sabotage, negligence on the part of the United States Government or the State of North Carolina or its political subdivisions, or an act or omission of a third party, whether or not negligent. Any person owning or having control of oil discharged to the land or waters of the State in violation of the provisions of this Part and any other person causing or contributing to the discharge of oil shall be directly liable to the State for the necessary expenses of oil cleanup projects and activities arising from such discharge and the State shall have a cause of action to recover from any or all such persons. If the person owning or having control over the oil discharged shall fail or refuse to pay the sum expended by the State, the Director shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion, in the superior court of the county in which the discharge occurred, to recover such cost and expenses.

"§ 143-487. Multiple liability for necessary expenses.-- Any person liable for costs of cleanup of oil under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the entry of oil into the waters of the State, including any amount recoverable by the State as necessary expenses.

The total recovery by the State for damage to public resources pursuant to G.S. § 143-488 and for the cost of oil cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by federal law with respect to the United States government on account of any such discharge.

"§ 143-488. Liability for damage to public resources.--Any person who violates any of the provisions of this Article, or any order, rule or regulation of the Board adopted pursuant to this Article, or fails to perform any duty imposed by this Article, or violates an order or other determination of the Board made pursuant to the provisions of this Article, including the provisions of a discharge permit issued pursuant to G.S. 143-215.1, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the State or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Board of Water and Air Resources, shall be liable to pay the State damages in an amount equal to the sum of money necessary to restock such waters, replenish such resources, or otherwise restore the rivers, streams, bays, tidal flats, beaches, estuaries or coastal waters and public lands adjoining the seacoast to their condition prior to the injury, as such condition is determined by the Board of Water and Air Resources in conference with the Board of Conservation and Development, the Wildlife Resources Commission, and any other State agencies having an interest affected by such violation. Such damages shall be recoverable in an action brought by the Attorney General in the name of the State in the Superior Court of Wake County or in the superior court of the county in which the damage occurred, as he shall elect; provided, that if damages occurred in more than one county, the Attorney General may bring an action in any of the counties where the

damages occurred. Any money so recovered by the Attorney General shall be transferred by the Board to appropriate funds administered by the State agencies affected by the violation for use in such activities as food fish or shellfish management programs, wildlife and waterfowl management programs, water quality improvement programs and such other uses as may best mitigate the damage incurred as a result of the violation. No action shall be authorized under the provisions of this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to G.S. 143-215.1 and the provisions of this Part.

"§ 143-489. Penalties.--(a) Civil penalties. Any person who intentionally or negligently discharges oil, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-483, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed fifty thousand dollars ($50,000) for every such violation, the amount to be determined by the Board after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1, and such other considerations as the Board deems appropriate. Every act or omission which causes, aids or abets a violation of this section shall be considered a violation under the provisions of this section and subject to the penalty herein provided. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Board describing the violation with

reasonable particularity and advising such person that the penalty is due. The Board may, upon written application therefor, received within 15 days, and when deemed in the best interest of the State in carrying out the purposes of this Article, remit or mitigate any penalty provided for in this section or discontinue any action to recover the penalty upon such terms as it, in its discretion, shall deem proper, and shall have the authority to ascertain facts upon all such applications in such manner and under such regulations as the Board may adopt. If the amount of such penalty is not paid to the Department within 15 days after receipt of notice, or if an application for remission or mitigation has not been made within 15 days as herein provided, and the amount provided in the order issued by the Board subsequent to such application is not paid within 15 days of receipt thereof, the Attorney General, upon request of the Board, shall bring an action in the name of the State in the Superior Court of Wake County or of any other county wherein such violator does business, to recover the amount specified in the final order of the Board. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise in this Article provided.

(b) Criminal penalties. Any person who intentionally or knowingly or willfully discharges or causes or permits the discharge of oil in violation of this Part shall be guilty of a

misdemeanor punishable by imprisonment not to exceed six months or by fine to be

not more than fifty thousand dollars ($50,000), or by both, in the discretion of the court.

"§ 143-490. Lien on vessel.--Any vessel (other than one owned or operated by the State of North Carolina or its political subdivisions or the United States Government) from which oil is discharged in violation of this Part or any regulation prescribed pursuant thereto, shall be liable for the pecuniary penalty and costs of oil removal specified in this Part and such penalty and costs shall constitute a lien on such vessel; provided, however, that said lien shall not attach if a surety bond is posted with the Board in an amount and with sureties acceptable to the Board, or a cash deposit is made with the Board in an amount acceptable to the Board. The Board may adopt regulations providing for such conditions, limitations, and requirements concerning the bond or deposit prescribed by this section as the Board deems necessary.

"§ 143-491. Liability for damage caused.--Any person owning or having control over oil which enters the waters of the State in violation of this Part shall be strictly liable, without regard to fault, for damages to persons or property, public or private, caused by such entry, subject to the exceptions enumerated in G. S. 143-48(b).

"§ 143-492. Joint and several liability.--In order to provide maximum protection for the public interest, any actions brought pursuant to G.S. §§143-486 through 143-489(a), §143-491 or any other section of this Article, for recovery of cleanup costs or for civil penalties or for damages, may be brought against any

one or more of the persons owning or having control over the oil or causing or contributing to the discharge of oil. All said persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common law principles.

"Part 3.

"Oil Terminal Facility Permits.

"§ 143-493. Operating permits required.--No person shall initiate the operation of any new oil terminal, facilities for the handling, storage or refining of oil after January 1, 1974, nor shall any person continue the operation of any such existing facilities for a period of more than 12 months after such date unless such person shall have applied for and shall have received from the Board an operating permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit.

"§ 143-494. Permit fees and procedures.--(a) Applications for permits under this Part shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a fee to be prescribed by the Board, not in excess of two hundred dollars ($200.00). All permits issued under this Part shall expire on December 31 of the year for which they are issued.

(b) Permits may be renewed annually upon application to the Board, accompanied by a fee for each permit in the same amount as for an original permit, on or before the first day of January of the calendar year for which the permit is issued.

(c) The amount of a permit fee shall be established and may be revised from time to time by the Board after a public hearing, with a view to producing sufficient revenue to provide for the minimum expenses of carrying out the program provided for by this Article, not to exceed $100,000 per annum. Any excess revenues above $100,000 realized from such fees in any year shall revert to the General Fund. The Board may prescribe different fees for different categories of permits. The public hearing required by this subsection shall be held pursuant to the provisions of G.S. 143-215.13(c) concerning public hearings under the Water Use Act, except that the notice of hearing need be published only in one newspaper of general circulation in the State.

(d) If an application for renewal permit is not filed on or before January 1 of any year, a penalty of twenty-five percent (25%) of the renewal fee shall be assessed and added to the fee, and shall be paid by the applicant before the renewal permit is issued, but such penalty shall not apply if the applicant furnishes an affidavit that he has not actively operated the facility subsequent to the expiration of his prior permit.

(e) Every permit holder who changes his address or place of business shall immediately notify the Board.

(f) The Board shall issue to each applicant that satifies the requirements of this Part a permit which entitles the applicant to operate the oil terminal facilities described in the application for the calendar year for which the permit is issued, unless the permit is sooner revoked or suspended.

(g) The Board may suspend for not longer than 10 days, pending inquiry, and, after opportunity for a hearing, the Board may deny, suspend, revoke, or modify the provision of any permit issued under this Part, if it finds that the applicant or permittee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(1) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(2) Failed to pay the original or renewal permit fee when due and continued to operate the facility without paying the permit fee or without a permit;

(3) Was guilty of gross negligence, incompetency or misconduct in acting as an operator of a facility covered by a permit;

(4) Refused or neglected to keep and maintain the records required by or pursuant to this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;

(5) Made false or fraudulent records, invoices, or reports;

(6) Used fraud or misrepresentation in making an application for a permit or renewal of a permit;

(7) Refused or neglected to comply with any limitations in or restrictions on a duly issued permit;

(8) Aided or abetted a person to evade the provisions of this Article, or combined or conspired with such a person to evade the provisions of this Article.

(h) Any permittee whose permit is revoked under the provisions of this Article shall not be eligible to apply for a new permit hereunder until such time has elapsed from the date of the order revoking said permit as established by the Board (not to exceed two years), or if an appeal is taken from said order or revocation, not to exceed two years from the date of the order or final judgment sustaining said revocation."

"§ 143-495. Powers of the Board.--In order that it may carry out the intent of this Part and provide for its proper administration, the Board, in addition to any other powers granted under the laws of this State, shall have the power:

(a) To adopt, modify and revoke rules and regulations governing the design, location, construction, operation and maintenance of oil terminal facilities and such rules and regulations may include, but shall not be limited to, the following matters:

(1) Requirements for submission of engineering reports, plans and specifications for the location and construction of oil terminal facilities.

(2) Establishment of operating and inspection requirements for oil terminal facilities, personnel and other matters relating to the permittee operations under this Part.

(3) Establishment of procedures and methods of reporting discharges and other occurrences prohibited by this Article.

(4) Establishment of procedures, methods, means and equipment to be used by persons, subject to regulation by this Part.

(5) Establishment of procedures, methods, means, and equipment to be used in the removal of oil pollutants.

(6) Development and implementation of criteria and plans to meet oil pollution occurrences of various degrees and kinds.

(7) Requirements for the safety and operation of vessels, motor vehicles, motorized equipment and other equipment relating to the use and operation of oil terminal facilities and the approach and departure from such facilities.

(8) Adoption of such other rules and regulations as the exigencies of any condition may require or such as may be necessary to carry out the intent of this Part.

(b) To grant permits for the operation of existing or proposed oil terminal facilities and to impose such terms and conditions therein as it shall deem necessary and appropriate;

(c) To grant temporary permits for the operation of existing oil terminal facilities for such periods of time as the Board may deem reasonable for full compliance with the provisions of this Part, but no such permit may be issued for a period exceeding 12 months;

(d) To require the installation of such facilities and the employment of such protective measures and operating procedures as are deemed necessary to prevent, insofar as possible, any oil discharges to the waters or lands of the State.

"§ 143-496. Penalties.--(a) Civil penalty. Any person who violates any provision of this Part, or any rule, regulation or order of the Board made pursuant to this Part, shall be subject to a civil penalty of not more than ten thousand dollars ($10,000) for each violation. When the Board shall determine that a violation has occurred, it shall set the amount of the penalty and shall give written notice

to the person responsible for the violation and shall demand payment. If the person responsible for the violation fails or refuses to pay within 15 days after receipt of demand for payment, the Board may refer the matter to the Attorney General of North Carolina for the institution of an action in the name of the State in the Superior Court of Wake County or in the superior court of the county in which the violation occurred, as the Attorney General shall elect. Any sums recovered under this subsection shall be payable to the Oil Pollution Protection Fund.

(b) Any person who knowingly or willfully violates any provision of this Part or any rule, regulation or order of the Board made pursuant to this Part (other than a rule, regulation or order that requires reporting of violations), shall be guilty of a misdemeanor punishable by imprisonment not to exceed three months or by fine not to exceed five thousand dollars ($5,000), or by both, in the discretion of the court. Any fines recovered under this subsection shall be payable to the Oil Pollution Protection Fund.

--(a) General severability clause.

"§ 143-497. Severability. / If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

(b) Special severability clause. Without limiting the effect of subsection (a) of this section, the following provisions of this Article are hereby specifically declared to be severable:

(i) This Article in its entirety is intended to be severable

from the general water pollution control laws of North Carolina (G.S. Chapter 143, Article 21, Part 1 and related statutes).

(ii) The provisions of this Article, in their application to inland waters and related lands, are intended to be severable from those provisions in their application to coastal and marine waters and related lands.

(iii) The various liability and penalty provisions of this Article--including G.S. §§ 143-486, 143-487, 143-488, 143-489(a) and 143-489(b), as well as the severable components of each of said sections and subsections--are intended to be severable from one another.

(iv) Part 3 of this Article is intended to be severable from Part 2.

Sec. 2. This act shall be effective from and after September 1, 1973.

APPENDIX D

SECTION-BY-SECTION ANALYSIS OF PROPOSED OIL POLLUTION CONTROL BILL

SECTION-BY-SECTION ANALYSIS OF PROPOSED OIL POLLUTION CONTROL BILL

Introduction

This bill adds a new Article 53 to Chapter 143 of the General Statutes entitled "Oil Pollution Control." Supplementing existing controls over oil wells, the bill would provide the statutory basis for a comprehensive program of oil spill control and of regulation over the location, construction and operation of oil refineries, pipelines and oil terminals. The new Article 53 is subdivided into three Parts:

Part 1 (§§ 143-471 to 143-480)--General Provisions.

Part 2 (§§ 143-481 to 143-491)--Oil Discharge Controls (i.e., oil spill controls).

Part 3 (§§ 143-481 to 143-491)--Oil Terminal and Oil Pipeline Facility Permits.

Part 1. General Provisions

§ 143-471

This section entitles the new Article 53 as the "Oil Pollution Control Act of 1973."

§ 143-472

This section contains a simple statement of the purpose of the Act to protect the land and waters of the State against oil pollution. It expressly disclaims any intent to intrude upon federal jurisdiction.

§ 143-473

In defining the key terms used in the act, this section makes it clear that:

(1) The "oil" that comes under this act includes everything from petroleum, crude oil, gasoline, diesel oil and lubrication oil, to oil refuse and oil sludge--in short, all liquid hydrocarbons.

(2) Harmful Oil "discharges" covered by the oil spill control provisions include not only direct discharges to waters by pumping, leakage, spilling or otherwise, but also indirect discharges by drainage of oil placed in proximity to waters, e.g., on land from which it is reasonably likely that oil will flow into waters of the State.

(3) "Oil terminal facilities", for which permits are required by Part 3, include all refineries, oil storage facilities, and oil transport or processing facilities that have a capacity of 500 barrels or more, other than retail gasoline stations.

§ 143-474

This section directs the Board of Water and Air Resources (hereafter "the Board") to establish within the Office of Water and Air Resources an Oil Pollution Control Program.

§§ 143-475 and 143-476

These sections (1) provide the authority for inspections, investigations, and entries upon private property, and (2) protect confidential information thereby acquired from disclosure except as required by law.

§ 143-477

This section authorizes the Board to adopt implementing regulations and makes it plain that the Act is supplemental to other related laws (such as the water pollution control laws).

§§ 143-478 and 143-479

These sections empower and direct local governments to adopt specified kinds of supplementary controls over oil discharges by ordinances.

§ 143-480

This section provides that orders and regulations of the Board shall not be stayed by appeals to the courts.

Part 2. Oil Discharge Controls

§ 143-481

This section states the basic prohibition against oil spills, or "discharges", in the language of the statute. It prohibits not only discharging oil directly but also causing oil to be discharged--into waters, beaches, or lands from which oil is likely to flow into waters, or into sewers or drains. The duty not to discharge is virtually absolute. Negligence or fault need not be proved; even accidental discharges are prohibited. The only valid defenses against a charge of illegal oil spilling are an act of God, an act of war or sabotage, negligence by the federal or state government, or an act or omission of a third party.

Subsection (c) provides a procedure for discharge of oil under permit from the Board, with such conditions as the Board may prescribe.

§ 143-482

This section establishes the procedures for control and removal of oil spills. Initially it places a duty upon the discharger to collect and remove the oil and restore the affected area. If collection and removal are not feasible, there is a duty to contain, treat and disperse in a manner that is not detrimental to the environemnt. The Board is authorized, with its own forces or by contract, to take necessary actions to control and clean up a spill. Provision for collection of the cost of such actions is in § 143-486.

§ 143-483

Under this section, persons responsible for an oil spill must immediately

notify the Office of Water and Air Resources of the incident and of the control measures underway or proposed.

§ 143-484

This section makes it the responsibility of the Highway Commission, the Wilflife Resources Commission and the Department of Conservation and Development to cooperate with the Board in spill control and cleanup activities, in developing plans and procedures, and in keeping records of their expenses in carrying out control and cleanup measures.

§ 143-485

A non-lapsing, revolving fund, the "Oil Pollution Protection Fund", is established by this section. Into this fund would go appropriated monies for oil pollution control, as well as all fees, charges, penalties and other monies recovered by the Board under the Oil Pollution Control Act. Out of this fund would be paid the expenses of control and cleanup programs. If the Fund proves inadequate to meet these expenses, additional expenditures are authorized from the Contingency and Emergency Fund.

§ 143-486

This section establishes the procedure for reimbursement from the Oil Pollution Protection Fund to state agencies for their expenses in conducting cleanup and restoration activities. It also establishes the procedure for the Board to follow in collecting the costs of cleanup and removal from the responsible parties, including if necessary the bringing of a lawsuit for this purpose.

§ 143-487

Under this section a person liable to the State for cleanup costs is given a cause of action to recover from other contributors their share of

the damage. Total recovery by the State is limited to the applicable limits under federal law for recovery of federal cleanup costs. (Currently these limits are $8 million for a spill from onshore facilities and $14 million for a spill from a vessel, but not over $100 per gross ton of such vessel.)

§ 143-488

This section imposes upon the responsible parties liability for damage to public resources by oil spills and establishes a procedure, analogous to that under the present "Fishkill Law," for collecting the cost of repairing such damage from the culprit. It covers injuries to fish, animals, vegetation or other resources of the State, as well as reduction in water quality below established standards. Liability is imposed for sums necessary to restock the waters, replenish the resources, or otherwise restore the waters or lands to the status quo--a condition which is to be determined by the Board in conference with other interested State agencies. Sums recovered under this section are to be allocated to the responsible agencies for use in mitigating the damages. A holder of a valid water pollution control permit who is operating in compliance with his permit cannot be held liable under this section.

§ 143-489

Subsection (a) of this section prescribes civil penalties for oil spills and for failure to report a spill. The penalty may be as high as $50,000 for any violation, and the amount is to be determined by the Board. A procedure is established for assessment and collection of these civil penalties.

Subsection (b) prescribes criminal penalties for oil spills, though not for failure to report violations. Intentional or knowing or willful spills

are declared to be misdemeanors, punishable by up to six months' imprisonment or $50,000 fine, or both.

§ 143-490

This section subjects offending vessels to a lien for the costs of clean-up and civil penalties. The lien may be avoided, however, by posting an adequate bond, or cash deposit. The bond-or-deposit alternative is included so that vessels in transit can continue on their way after giving assurances of ability to respond to penalties and claims under the Act.

§ 143-491

This section expresses a rule of strict liability for damages to persons or property from oil spills, subject to the exceptions expressed in § 143-481, above (Act of God or third party, etc.).

§ 143-492

This section provides for joint and several liability in the various actions that may be brought under the statute, leaving ultimate liability between the parties to common law principles.

Part 3. Oil Terminal Facility Permits

§ 143-493

Under this section a permit from the Board is required to operate an oil terminal facility for handling, storage or refining of oil. (See § 143-473 above for the definition of "oil terminal facilities".) The permit requirement applies to new facilities initiated after January 1, 1974, as well as to existing facilities continued in operation after January 1, 1975.

§ 143-494

This section spells out the detail framework for permit fees under Part 3 of the Act and for permit procedures.

§ 143-495

This section empowers the Board to adopt implementing regulations governing the design, location, construction and operation of oil terminal facilities and indicates by example the allowable scope of these regulations. It also expresses the authority of the Board to grant temporary and definitive permits, and to require facilities to be installed and protective measures taken to prevent oil spills.

§ 143-496

Subsection (a) of this section prescribes civil penalties for violations of this Part or of the Board's implementing rules, regulations or orders. The penalty may be as high as $10,000 for any violation, and the amount is to be determined by the Board. A procedure is established for assessment and collection of these civil penalties.

Subsection (b) prescribes criminal penalties for violations,other than reporting violations. Knowing or willful violations are declared to be misdemeanors, punishable by up to three months' imprisonment or $5,000 fine, or both.

§ 143-497

Subsection (a) of this section contains a standard general severability clause. Subsection (b) goes one step further by including a "special severability clause." This special severability clause gives the courts more explicit legislative directions than are usually provided by statute, in order to guard against the risks of invalidation of segments of this Act that can be identified in light of the test cases that have been brought against the oil spill control statutes of Florida and other states.

Bill Section 2

Bill section 2 makes the Act effective September 1, 1973 in order to allow ample time for preparation to be made for implementation of the Oil Pollution Control Act.

1973 REPORT

LEGISLATIVE RESEARCH COMMISSION

SEPTIC TANK WASTES

TO THE MEMBERS OF THE GENERAL ASSEMBLY

The Legislative Research Commission herewith reports to the 1973 General Assembly its findings and recommendations concerning the regulation of septic tank waste. This report is made pursuant to Senate Resolution 961, adopted by the 1971 General Assembly, which directed the Commission to study "the need for legislation concerning the regulation of septic tank waste," and to report its findings and recommendations to the 1973 General Assembly.

This report was initiated by the Committee on Environmental Studies of the Legislative Research Commission to which the Commission assigned its study on the regulation of septic tank waste. The Committee on Environmental Studies consisted of:

Sen. William W. Staton, Co-Chm.	Sen. Lennox P. McLendon, Jr.
Rep. William R. Roberson, Jr., Co-Chm.	Sen. William D. Mills
Rep. P. C. Collins, Jr.	Sen. Marshall A. Rauch
Rep. Jack Gardner	Sen. Norris C. Reed, Jr.
Rep. W. S. Harris, Jr.	Rep. Carl M. Smith
Sen. Hamilton C. Horton, Jr.	Rep. Charles H. Taylor
Rep. W. Craig Lawing	Sen. Stewart B. Warren, Jr.

The Subcommittee to which this study was specifically referred consisted of Representative Charles Taylor, Chairman, Senator William Mills, Representative Carl Smith, and three public members--Mrs. Ruth Cook, Mr. Peter Feistman, and Dr. Charles Smallwood.

Respectfully,

Philip P. Godwin, Speaker

Senator Gordon Allen

Co-Chairmen, Legislative Research Commission

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Introduction

At the authorization and direction of the 1971 General Assembly (Senate Resolution 961) the Legislative Research Commission undertook this study of septic tank waste regulation. The Commission appointed a Committee on the Need for Environmental Legislation co-chaired by Senator William W. Staton and Representative William R. Roberson, Jr. This committee, in turn, appointed a subcommittee chaired by Representative Charles Taylor to consider separately the question of septic tank wastes and report its findings to the full committee.

The subcommittee included as legislative members, in addition to Representative Taylor, Senator William Mills and Representative Carl Smith. Public members included Mrs. Ruth Cook, Executive Secretary of the State Council for Social Legislation, Mr. Peter Feistman, a builder, and Dr. Charles Smallwood, a professor of environmental science.

The subcommittee held hearings and invited witnesses to discuss the problems and recommend possible solutions. It particularly sought input from persons working in the environmental field and from the State Board of Health, the state agency primarily concerned with regulation. It heard testimony from the Sanitary Engineering Division of the State Board of Health, the North Carolina Office of Comprehensive Health Planning, a county health department, homebuilders, consumers, regional planners, a septic tank manufacturer and septic tank cleaners and personnel having responsibility for supervision of package treatment plants. (A list of witnesses appears in the appendix.)

Based on the information gathered, we recommend that the Committee on the Need for Environmental Legislation appoint a subcommittee to

consider the need for an omnibus land use legislation package to report to the Legislative Research Commission prior to the opening of the 1973 General Assembly and that legislation be enacted to curb pollution resulting from septic tank wastes.

I.

Structure and Functioning of the Septic Tank System

An understanding of the structure and functioning of the septic tank system is necessary to a meaningful consideration of environmental and public health problems resulting from septic tank wastes and to a sensible approach to corrective legislation.

A septic tank system consists of two basic components: a container for holding and settling and a drainage system to transport and distribute effluent to the soil. The tank used in North Carolina is usually of precast concrete and ranges from 300 to 900 gallons holding capacity for residential uses. The function of the tank is to trap some of the solids in ordinary household waste and retain it to allow decomposition or fragmentation so that some of it can be carried through the drain system to the soil. In the normal case, less than 50% of received solids are retained wtihin the tank. Very little of the solids volume which quickly begins to fill a tank is reduced through decomposition. Rather, reduction is accomplished through compacting and through flushing of solids into the soil. The drainage system is basically perforated pipe laid over a wide soil area so as to allow the effluent to percolate into the soil for absorption.

From the foregoing, it is clear that the most important part of the septic tank system really is the ground. Ordinary soil is the leaching agent, the waste treatment plant, if you will, of the septic tank system.

Thus the kind and quality of the soil is crucial to the proper operation of a septic tank system. For a septic tank system to be environmentally safe, the soil in the ground absorption field which receives its effluent must be of a kind which will purify wastewater. To purify wastewater, it must be porous enough to receive the water and possess particular leaching attributes. Problems associated with the tank and drainfield are discussed below.

Septic tank effluent reaching the soil usually contains chemicals and bacteria harmful to man should they be able to enter the ground water supply. The chemicals include phosphate, surfectants from synthetic detergents, chloride and nitrates. Significant bacteria include Salmonella typhoso and Vibriosa comma.

Evidence available to the subcommittee indicated that phosphate mobility through soil, particularly in areas of hard groundwater, is severely restricted so as to constitute little danger to the groundwater supply. It was indicated that certain synthetic detergents have great mobility through soil but that the biodegradable ones now coming into extensive use tend to break down rapidly in soil. Chlorides have greater mobility through soil but represent no threat to the public health unless they are released in extremely high concentrations. Nitrogen, rapidly converted to nitrates, also has high mobility and is a factor in methemoglobinemiae and thus requires large ground absorption fields for safety.

Turning to the bacterial agents, the evidence is somewhat conflicting but indicates that bacteria have a fair mobility through porous soil and a relatively long life in the soil, indicating a need for large fields and proper soil selection.

II.

Use Patterns and Practices in North Carolina

The septic tank first came to North Carolina, and to other states, as a rural sewage disposal device. Bringing urban convenience to the farmer it quickly achieved great popularity and gained extensive use throughout rural North Carolina. It soon became the fashion to install septic tanks wherever community sewage systems were not available. Since soil is the primary treatment agent in a septic tank system and since all soil is not suitable for the treatment of wastewater, problems developed early. However, state and county officials moved into the field and began prescribing guidelines and standards for septic tank use and installation. As long as our population was relatively sparse and relatively poor so taht the real economic demand for septic tanks was small, the problems that arose, while serious, were handled without great difficulty in the majority of cases. When, however, changing economic conditions quickened the pace of land development and a more prosperous populace began to disdain the venerable privy, the built-in limitations of the septic tank system brought the incidence of unsolvable problems to an uncomfortably high level. Today, we find ourselves in a situation where a population still growing in size and affluence is demanding more housing as well as convenience in sewage disposal in a state where community sewer systems are found only in cities and a very few "urban counties." In response to this demand, developers are bringing into being new subdivisions, resorts and shopping centers with increasing rapidity. On another level, individual citizens, aided in some cases by federal programs, are erecting homes in areas not served by community sewer systems. Finally, the great popularity of the mobile home is stimulating the movement of

citizens, requiring sewage disposal, to areas not served by community systems. It is significant to note that this movement is stimulated also by the generally unfavorable attitude taken towards mobile homes by municipalities.

Thus the pattern which has developed is that a large number of subdivisions in North Carolina are serviced by septic tanks. The economics of development as well as the economics of consumer purchasing exert limiting pressures on the most important part of the system - soil. The same is true of enterprise developments such as shopping centers, although the need may be reduced somewhat here. Where individual consumer purchase of lots is concerned, this pressure is heightened as well as complicated by the poor condition of some of our present housing stock.

III.

Operational Problems and Environmental Effects

The Tank

Functioning primarily to retain solids for settling, the holding tank itself is not often a source of trouble. Over a period of time however, solids necessarily accumulate to such an extent that there is no longer sufficient space for settling and rapid clogging of the absorption field causes the system to fail. When this occurs removal of the sludge is necessary to prevent overloading of the field. Sometimes a tank becomes so filled with sludge that no more sewage can be received and back-up into plumbing fixtures occurs.

The subcommittee considered the need for structural modification of the tank to allow for easier sludge removal but concluded that the significant problems do not result from holding tank troubles.

Drainage System and Ground Absorption Field

The drainage system is basically a device for distributing effluent over a large ground area. It is composed of a pipe system with perforations or other openings to allow percolation of sewage into the soil. The efficiency of the system is increased by lengthening distribution lines, laying the pipe in the proper soil stratum and the use of gravel or other material to increase filtration capacity. Assuming that the drain system is properly laid, it, like the tank, poses no significant problems.

The testimony of installers and health officials alike make it abundantly clear that proper installation of the drainage system is very important to the operation of the system. The subcommittee therefore includes a proposal for greater training of operators in its recommendations.

Soil is the treatment mechanism in a septic tank system and the bulk of problems are caused by the absence of proper soil. If a drainage system is laid in improper soil there is no treatment of the effluent. In addition raw sewage, not being absorbed, rises to the ground posing a significant health problem.

The effectiveness of soil absorption is determined by (1) soil permeability, (2) groundwater level, (3) slope of ground and (4) depth of rock sand or gravel beneath the surface. Thus in areas of very tight soil, in regions with a high water table, where ground inclination is slight and where rock or sand lies near the surface, the use of the septic tank is difficult if not impossible. The subcommittee determined that the great bulk of problems in the whole septic tank field results from allowing septic tank installation in areas where the soil is not suited to it. Our recommendations include legislation designed to prevent

installation of tanks in areas where the soil has little reception or absorption capacity.

Any septic tank system will eventually fail. This is so because the soil, even the best soil, finally loses its absorptive ability or clogs so that effluent can no longer percolate into the ground. When this occurs the drainage system must be relaid in fresh soil. Soil may be physically clogged by sewage solids in the effluent, or chemically clogged through the swelling of soil particles resulting from sodium and potassium ion exchange, or biologically, in certain soil and under certain conditions, through plugging of soil pores by fecal organisms. Naturally, clogging is increased by concentration, as in subdivisions.

Conclusion

On the basis of the evidence presented the subcommittee reached these conclusions:

(1) - If properly sited, installed and maintained the septic tank system is an effective method of sewage disposal posing no significant threat to the environment or public health;

(2) - Tighter regulation is required to insure proper siting and installation;

(3) - Greater training is required for septic tank installers in order to achieve safe use;

(4) - The public needs to be informed as to the inability of septic tank systems to function in certain soil so as to prevent consumers from investing in unuseable lots;

(5) - The septic tank system will continue to be needed if the state is to be able to house its low income populace, make use of rural areas and avoid increased urban blight;

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(6) - Though the concentration of septic tanks in a limited area quickens the pace of clogging, the septic tank, properly regulated, can continue to be useful and avoids the community sewer systems vice - release of great quantities of effluent into our waters;

(7) - Small community "package plant" type systems may be useful in replacing septic tanks in rural and suburban areas of high population density but local governments should be responsible for their maintenance and operation;

(8) - Septic tank misuse is but one aspect of land related environmental problems in this state and a land use police and plan is required for optimum environmental maintenance;

(9) - In subdivisions and in other areas too many septic tanks are sometimes installed in a small land area making adequate absorption of the effluent impossible.

Recommendations

(1) - The Committee on the Need for Environmental Legislation should appoint a committee to study comprehensive land regulation including (a) land sales registration, (b) the environmental impact of developments and (c) land use planning.

(2) - The General Assembly should enact a law requiring approval of lots in areas not served by community sewer systems for septic tank use and approval of the particular installation for issuance of an occupancy permit. All other permits and electrical service must follow the issuance of this permit.

(3) - The General Assembly should enact a law requiring training for septic tank installers before they are permitted to offer services.

(4) - The General Assembly should enact a law requiring mobile home dealers to give a copy of the occupancy permit law to prospective purchasers.

APPENDIX A

PROPOSED BILLS FOR IMPLEMENTATION OF SUBCOMMITTEE RECOMMENDATIONS

A Bill to Be Entitled An Act to Protect The Public Health By Regulating The Installation of Ground Absorption Sewage Disposal Systems

The General Assembly of North Carolina enacts:

Section 1. Chapter 130 of the General Statutes is hereby amended by inserting therein a new article.

Section 2. This article shall be known and may be cited as the "Ground Absorption Sewage Disposal System Act of 1973."

Section 3. Preamble: The General Assembly finds and declares that continued installation, at a rapidly and constantly accelerating rate, of septic tanks and other types of ground absorption sewage disposal systems in a faulty or improper manner and in areas where unsuitable soil and population density adversely affect the efficiency and functioning of these systems has a detrimental effect on the public health through contamination of the ground water supply. Recognizing, however, that ground absorption sewage disposal can be rendered ecologically safe and the public health protected if such methods of sewage disposal are properly regulated and recognizing that ground absorption sewage disposal will continue to be necessary for the adequate and economical housing of an expanding population, the General Assembly intends hereby to provide for the regulation of ground absorption sewage disposal systems so that such systems may continue to be used, where appropriate, without jeopardizing the public health.

Section 3. Definitions. As used herein, unless the context otherwise requires:

(a) "construction" means any work done for the purpose of preparing a dwelling or mobile home for initial occupancy;

(b) "location" means the initial placement of a mobile home;

(c) "relocation" means the displacement of a dwelling or mobile home from one site to another;

(d) "septic tank system" means a ground absorption sewage disposal system consisting of a holding or settling tank and a ground absorption field;

(e) "ground absorption sewage disposal system" means a sewage disposal method relying primarily on the soil for leaching and removal of dissolved and suspended organic or mineral materials from human waste;

(f) "health department" means any county, city, district, consolidated city-county or other health department authorized to be organized under Chapter 130 of the General Statutes;

(g) "mobile home dealer" means every person or firm offering mobile homes for sale within this state;

(h) "mobile home lot" means any place where two or more mobile homes are displayed and offered for sale.

Section 4. Improvements Permit Required

(a) No person shall commence the construction, or relocation of any dwelling nor shall any person locate, relocate or cause to be located or to be relocated any mobile home intended for use as a dwelling, other than a mobile home park, on a site in an area not served by a public or community sewage disposal system without first obtaining an improvements permit from the local health department having jurisdiction.

(b) The local health department shall issue an improvements permit authorizing work to proceed and the use of a septic tank or other ground absorption disposal system when it has determined that such a system can be installed at the site in compliance with the rules and regulations of

the local board of health governing such installations; provided, however, that no ground absorption disposal system which is attempted to be installed shall be covered with soil until the local health department determines that the system as installed is in compliance with the rules and regulations governing such installations.

Section 5. Certificate of Occupancy

Upon determining that the ground absorption system is properly installed, the local health department shall authorize it to be covered with soil and shall issue a certificate authorizing the dwelling or mobile home to be occupied. No dwelling or mobile home shall be occupied until a certificate of occupancy is issued.

Section 6. Certificate of Occupancy Required Before Other Permits To Issue

No permit required for electrical, plumbing, heating, air-conditioning or other initial construction, location, or relocation activity under any provision of general or special law shall be issued until after a certificate of occupancy has issued.

Section 7. Limitation on Electrical Service

It shall be unlawful for any person, partnership, firm or corporation to allow any electric current for use at the locating or relocating of a mobile home intended to be used as a dwelling, other than one in a mobile home park, or to allow any electric current except that furnished through a temporary service pole to a dwelling upon construction or relocation, unless the owner or builder has in his possession a valid certificate of occupancy for that site.

Section 8. Appeals

Any owner or builder denied an improvements permit or a certificate

of occupancy under this article shall have a right of appeal to the local board of health, provided such action is taken within fifteen days of denial. Notice of appeal shall be given by filing with the local health director a demand for a hearing. Upon filing of such notice the local health director shall, within three days transmit to the board of health all papers and materials constituting the record upon which the decision appealed from was made.

The local board of health shall hold a hearing with fifteen days of its receipt of the notice of appeal. The board shall give the appellant not less than five days notice of the date, time and place of the hearing. Any party may appear in person or by agent or attorney. In considering appeals, the board shall have authority only to determine whether a ground absorption system can be installed in compliance with its rules or regulations or whether the work done so complies.

No person denied an improvements permit or certificate of occupancy shall proceed with any work or improvement activity whatsoever or shall occupy any dwelling or reside in any mobile home unless and until the board issues the necessary permit.

Section 9. Judicial Review

Any owner or builder denied a permit under this article shall have a right of appeal to the superior court having jurisdiction, if such appeal be made within 10 days after the date of the denial by the board.

Section 10. Training for Septic Tank Installation and Certificate of Attendance

(a) Local health departments are authorized and directed to offer a training course for all persons installing septic tanks for a fee in North Carolina. From and after two years from the effective date of this

article, no person shall install septic tank systems nor hold himself out as a septic tank contractor or cleaner unless he holds a certificate of attendance at one such course.

(b) The content of the course shall be prescribed by the State Board of Health and shall include instruction in the functioning and operation of all components of septic tank systems, familiarization with basic soil characteristics of the major geographic regions and sub-regions of the state, identification of recurrent problems in septic tank installation and use as well as instruction relating to laws pertaining to septic tank installation. No training course shall be more than sixteen hours in length and a certificate of attendance shall be issued to every person present for the required number of hours. Every ~~person~~ desiring to attend a school shall be admitted.

(c) Local health departments may offer the training course cooperatively with other local health departments, through contracting with other health departments, technical institutes or other competent agencies to offer the course or by other means; provided however, every local health department shall insure that all applicants from its jurisdiction have an opportunity to attend a course within three months of application.

(d) Applicants are entitled to admission to a training course in any county upon proper registration.

Section 11. Duties of Mobilehome Dealers

(a) Every mobile home dealer doing business in this state shall be required to furnish each purchaser of a mobile home a copy of this article.

The State Board of Health is authorized and directed to furnish each mobile home dealer sufficient copies of this article.

(b) Each mobile home dealer shall be required to post conspicuously at the office of each mobile home lot the following:

NOTICE: State law requires that the local health department determine the suitability of private lots for septic tank installation before a mobile home is placed on the premises.

Section 12. Exemptions

No provision of this section shall apply to persons developing land in areas not served by community sewer systems who present acceptable plans for installation of community sewer systems to the local health department and the State Board of Air and Water Resources and who certify that such system will be installed before permitting occupancy.

Section 13. Penalties

Any person who knowlingly violates any provision of this act shall be guilty of a misdemeanor and shall be punishable by a fine not to exceed $200.00.

Section 14. Severability

If any provision of this act or the application thereof to any person or circumstances is declared invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared to be severable.

A Bill To Be Entitled An Act To Appropriate Funds For Publication and Dissemination of Changes in State Law Regulation Installation of Septic Tanks

The General Assembly of North Carolina enacts:

Section 1. There is hereby appropriated from the General Fund of the State the sum of $15,000 to enable the State Board of Health to supply mobile home dealers with copies of the "Ground Absorption Sewage Dosposal Act of 1973" for delivery to purchasers of mobile homes.

Section 2. This act becomes effective upon ratification.

Appendix B

List of Subcommittee Members

Representative Charles Taylor, Chairman

Mrs. Ruth Cook, Raleigh

Mr. Peter Feistman, Asheville

Senator William Mills

Dr. Charles Smallwood, Raleigh

Representative Carl Smith

Staff services.....Ernest E. Ratliff
Institute of Government

List of Witnesses

Marshall Staton, Director, Sanitary Engineering Division, North Carolina State Board of Health

Stacy Covil, Assistant Director, Sanitary Engineering Division, North Carolina State Board of Health

Ray Paul, Division of State Planning

Dr. Millard Bethel, Health Director, Wake County

Mitchell Duke, R.S., Sanitarian, Wake County Board of Health

William Smith, Soil Scientist, Consultant to Wake County Board of Health

Douglas Franks, Septic Tank Contractor, Raleigh

Woody Wilson, Septic Tank Contractor, Raleigh

Ed Kilpatrick, Sanitary Engineering Division, North Carolina State Board of Health

Jack Delaney, North Carolina Homebuilders Association, Charlotte

Fred Herndon, North Carolina Homebuilders Association, Charlotte

Mrs. E. J. Crittenden, Feltonville Water Association, Apex, North Carolina

John Scott, Research Triangle Planning Commission

Ms. Joan Beal, Research Triangle Planning Commission

Thomas Bruce, Assistant Director, Water Resources Department, Durham, North Carolina

Arnold Grigsby, Water Resources Department, Durham, North Carolina

1973 REPORT

LEGISLATIVE RESEARCH COMMISSION

WATER SUPPLY DAMAGES, REPORTING OF INDUSTRIAL WASTES AND OTHER TOXIC WASTES, AND NUTRIENT POLLUTION CONTROL

TO THE MEMBERS OF THE GENERAL ASSEMBLY

The Legislative Research Commission herewith reports to the 1973 General Assembly its findings and recommendations concerning water supply damages, reporting of industrial wastes and other toxic wastes, and nutrient pollution control. This report is made pursuant to Senate Resolution 961, adopted by the 1971 General Assembly, which directed the Commission to study, and to report findings and recommendations on, the need for legislation concerning:

* Recovery by agencies providing water services of damages from persons polluting the water supply.

* The reporting of industrial wastes and other wastes containing toxic materials to public waste disposal systems.

* Prevention and abatement of pollution of the State's waters by nutrient waste, particularly compounds of phosphorus and nitrogen.

This report was prepared by the Committee on Environmental Studies of the Legislative Research Commission to which the Commission assigned its study on the environmental topics covered by Senate Resolution 961. The Committee on Environmental Studies consisted of:

Sen. William W. Staton, Co-Chm.
Rep. William Roberson, Jr., Co-Chm.
Rep. P. C. Collins, Jr.
Rep. Jack Gardner
Rep. W. S. Harris, Jr.
Sen. Hamilton C. Horton, Jr.
Rep. W. Craig Lawing
Sen. Lennox P. McLendon, Jr.
Sen. William D. Mills
Sen. Marshall A. Rauch
Sen. Norris C. Reed, Jr.
Rep. Carl M. Smith
Rep. Charles H. Taylor
Sen. Stewart B. Warren, Jr.

Respectfully,

Philip P. Godwin, Speaker

Senator Gordon Allen

Co-Chairmen, Legislative Research Commission

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I

WATER SUPPLY DAMAGES

Background of the Problem

Extensive fishkills caused by water pollution have been a source of great concern, not only to commercial and sports fishermen, but to the public at large.* The resulting loss of fishlife is serious enough, but this represents only part of the problem. Waters fouled by rotting fish and contaminated by pollution are rendered unfit for swimming, boating, and consumption.

Recent events have brought to light another undesirable by-product of water pollution incidents and chronic polluted conditions in the waters of the State: damage to public water supply systems. Water plant equipment and operation have been affected. Water supply intakes have been clogged and fouled. Additional expenditures have been made necessary for chemicals to maintain drinking water quality and safety.

These problems were dramatized by the Yadkin River fishkills of 1970. One of the reported effects of these pollution incidents on the upper Yadkin was damage to water supply systems of downstream cities along the Yadkin.

In response to these conditions a bill was introduced in the 1971 General Assembly to authorize agencies providing water supply services to recover damages in the courts from persons polluting the water supply (H 781). The bill sought to establish a procedure looking toward recovery of such damages, if necessary by lawsuit. A proposed measure of damages was set forth in the bill. The procedures proposed in H 781 were modelled after an existing

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* Fishkills are sometimes the product of natural conditions beyond human control. But investigations have established that many fishkills have been caused by careless or inadequate pollution control measures.

statute that directs the N. C. Board of Water and Air Resources (BWAR, hereafter) to administratively assess and enforce fish and wildlife damages resulting from fishkills. (G.S. § 143-215.4(a)(7).) The introducer of H 781, Rep. Nash, suggested to the BWAR that the existing fishkill law merely be extended to include water supply damages, but BWAR spokesmen had reservations concerning this approach. Their reservations went partly to manpower needs and partly to policy considerations--it was thought undesirable that the BWAR should become an arbiter between one city and another, as might happen if the fishkill procedure were extended to cover water supply damages.

H 781 was reported to the floor by the House Committee on Water and Air Resources by a split vote, with the understanding that it would be re-referred to a Judiciary Committee for review of legal aspects of the bill. The bill was re-referred to Judiciary #2, which later reported it unfavorably. After H 781 died in committee,the subject of water supply damages was listed among the items to be considered by the LRC under Senate Resolution 961.

The Work of the Committee on Environmental Studies

Pursuant to S.R. 961, we appointed a Committee on Environmental Studies to consider the water supply damage issue and related environmental problems. At its public hearings the Committee on Environmental Studies gave interested persons an opportunity to air their views on this subject.

Public officials and citizens of the Salisbury area appeared and testified in favor of the enactment of legislation along the lines of H 781. Their description of the water supply damage problem mirrored our own (see page 1 above).

Spokesmen for the BWAR reiterated the agency's reservations about extending the fishkill procedure to cover water supply damages, with the BWAR

as potential arbiter between contending municipalities. However, the BWAR did express its support for legislation similar to H 781, with prospective application. Such a law, it was urged, would fit well with the water quality protection concept as an added incentive to effective pollution abatement and control.

Further light was also shed by these hearings on the need for a bill such as H 781, that would ensure a judicial forum for water supply damages suits. It was pointed out that under present law any of several procedural barriers might prevent consideration of such suits on their merits. Among these procedural barriers might be technical questions concerning riparian rights or riparian status of municipalities; possible assertion of sovereign immunity as a defense by public agencies; and possible questions concerning standing to sue. It became apparent from testimony before the Committee that the City of Salisbury has been deterred by these potential procedural barriers from bringing suit for water supply damages.

On the basis of its inquiries and hearings the Committee on Environmental Studies recommended the enactment of legislation in 1973 along the lines of H 781.

Findings and Recommendations

(1) New legislation is needed in North Carolina to ensure that the courts will be available as a forum to hear and resolve meritorious claims for water supply damages caused by water pollution. The hearings of our Committee on Environmental Studies have shown that purely technical and procedural considerations may bar judicial consideration of meritorious claims of this nature. We believe that a forum should be reliably open, where these claims can be heard on their merits. Any purely procedural or technical barriers to the hearing of such claims should be eliminated.

For the reasons that have been expressed by the BWAR (see pp. 2-3 above), we are not inclined to propose the expansion of the administrative fishkill procedure to encompass water supply damages claims. Therefore, we recommend that the courts be made available for the hearing and resolution of these claims.

(2) Legislation concerning water supply damages should: (a) establish a procedure facilitating recovery of valid damage claims, if possible out of court, but if necessary by lawsuit; (b) eliminate all technical defenses to the hearing of such claims by the courts; (c) specify the grounds for such claims (e.g., for violation of water quality standards); and (d) prescribe a reasonable measure of damages. A law embodying these features would establish a fair and orderly basis for resolution of meritorious claims. The 1971 bill, H 781, is a satisfactory vehicle for such legislation, if modified as indicated in the next paragraph.

(3) The recommended legislation should be prospective in its effect, and should not apply retroactively to previously accrued claims. A major basis of the objections raised in 1971 to H 781 was that it might have applied retroactively to disputed claims that arose prior to enactment. Another retroactive bill would probably encounter the same objections in 1973. We recommend, therefore, that legislation be enacted to establish the principle of an open forum for water supply damage claims arising after its enactment.

(4) The Commission recommends enactment of the bill set forth in Appendix C ("A bill to be entitled an Act to authorize public agencies providing water services to recover damages from persons polluting the water supply.") The recommended legislation would authorize any agency

providing water service to recover damages from persons polluting its water supply. It would eliminate purely procedural objections to the recovery of such damages, establish the principle of an open forum for water supply damage claims, and prescribe the necessary procedures for an orderly resolution of these claims. It embodies the provisions of the 1971 bill on this subject (H 781), without the retroactive feature that invited objections to the bill in 1971.

II

REPORTING OF INDUSTRIAL WASTES AND OTHER TOXIC WASTES

Background of the Problem

Introduction

Municipalities in North Carolina and nationwide today confront a monumental task in meeting the need for adequate treatment of domestic and industrial wastes. One side of the problem is financial--the demand for sufficient funds to build and maintain collection, treatment and disposal facilities. The citizens of North Carolina have responded to that challenge by approving, this year, the $150 million Clean Water Bond Issue, to provide state assistance for local water and sewer plant facilities.

The other side of the problem is management. A critical and largely unmet need of municipal treatment plant management today is informational--especially, the requirement for accurate and comprehensive information concerning industrial and commercial waste loads discharged into muncipal sewers. Without such information, municipalities cannot hope to keep their treatment facilities abreast of current demands. And the lack of such information has been a major weakness of municipal waste treatment systems in North Carolina in recent years. (The information gap in municipal systems also impairs the State's water pollution control information base, which obviously can be no better than its local sources.) This report is addressed to the need for a reliable mechanism to fill the information gap in municipal waste treatment systems.

Prior Legislative Efforts

Legislation was proposed in 1971 seeking to strengthen the water pollution information sources of both state and local governments.

The General Assembly enacted an administration program bill addressed to the need for information at the state level, the "Water and Air Quality Reporting Act of 1971." (S.L. 1971, Ch. 1167.) This new law established a comprehensive State reporting and monitoring system to enable the BWAR to maintain full and up-to-date information concerning wastes discharged to the State's waters by industries, municipalities and others.

Legislation aimed at the need for information at the local level was also seriously considered in 1971. Rep. Payne introduced a bill to require that persons who discharge into municipal or county sewage treatment systems industrial wastes or other wastes containing toxic substances should provide regular detailed reports to the city or county concerning the nature, content, and volume of their wastes. (H 409). The "teeth" in this bill consisted of civil penalties for failure to comply with the reporting requirements, plus requirements that the polluters must keep their waste loads within prescribed tolerances (on the order of 5-10 per cent) during each reporting year. This bill generated much discussion and controversy within the House Water and Air Resources Committee to which it was referred. The Committee and expert witnesses who appeared before the Committee had considerable sympathy for the purposes of H 409, but disagreed on details. After many meetings on the subject, the bill was reported favorably in substitute form with numerous amendments but failed to pass second reading in the House, and was later listed among the items for LRC study by SR 961.

The Work of the Committee on Environmental Studies

The subject of H 409 was included in the agenda of our Committee on Environmental Studies, and the Committee gave interested persons an opportunity to air their views on this subject. Testimony before the Committee

supported the development of a bill along the lines of H 409.

Spokesmen for the BWAR recommended that such legislation be enacted in 1973, as an essential link in the water pollution control review and planning process. It was observed that the development of a waste discharge information system would permit both local and state governments to analyze and project the adequacy of waste treatment facilities. It would also serve as a base upon which local governments might predicate sewer use charges. It would help also to identify specific discharges that were beyond the capacity of existing waste treatment facilities. The particular importance of information concerning toxic wastes was stressed, because of their potential adverse effect upon collection and treatment facilities, and the need for handling and treatment adapted to the particular waste.

It was also pointed out to the Committee that H 409 had undergone substantial refinement during its consideration by the General Assembly in 1971. The substitute bill that finally emerged from committee in 1971 met most of the specific objections that had been made to the bill during committee consideration.

On the basis of its hearings and inquiries,the Committee on Environmental Studies recommended the enactment in 1973 of legislation along the lines of H 409.

Findings and Recommendations

(1) New legislation is needed to establish the legal foundation for requiring industries and businesses that discharge wastes to municipal sewers to report the nature and volume of these waste discharges to the units of local government receiving the discharges. The compelling need for current and comprehensive data concerning waste discharges is painfully obvious. This information is of vital importance both to the local governments themselves

and to state government in connection with its water pollution control program. The development of information concerning toxic wastes is especially pressing.

(2) The proposed waste discharge reporting legislation should be modelled along the lines of H 409, and should contain the following elements:

a. A requirement that defined persons report the nature and volume of wastes discharged to the appropriate unit of local government at specified intervals.

b. A requirement that parameters be established for the waste discharged by such persons, which are not to be exceeded without prior approval.

c. A requirement that persons advise the appropriate unit of local government in advance when any activity is undertaken that will increase the volume or change the characteristics of the waste being discharged.

d. A requirement that periodic projections of future waste discharges be furnished the unit of local government.

e. A requirement that units of local government periodically advise the Department of Water and Air Resources of the results of the analysis of reports received by the local government.

f. Establishment of a permit system regarding the discharge of waste to the waste treatment facilities of any unit of local government.

g. Establishment of penalties sufficient to deter violations of the Act.

Legislation containing these features should effectively fill the existing information gap for waste discharge data at both local and state levels.

(3) The Commission recommends the enactment of the bill set forth in Appendix E of this Report. ("A bill to be entitled an Act to provide for the monitoring of the discharge of industrial and other waste.") The bill that we recommend is substantially identical with the committee substitute for H 409, as considered by the 1971 General Assembly. Amendments contained in the committee substitute met most of the specific objections raised concerning the bill in 1971. We believe that this is a fair and reasonable bill which responds to the serious need that has been amply documented in this report.

III

NUTRIENT POLLUTION CONTROL

Background of the Problem

Introduction

One of today's most publicized water pollution problems is nutrient pollution or "eutrophication." This is the process by which a body of water becomes well nourished or overnourished from an increase in essential plant nutrient elements. This conditions encourages heavy growths of green plants, especially algae, which interfere with recreational uses of waters and impart an unpleasant taste to drinking waters. Fishlife may be adversely affected, and boating, swimming and fishing discouraged.

Eutrophication is not a problem of all surface waters, either presently or potentially. It affects only slow moving waters, such as lakes, estuaries and lower reaches of large rivers. The receiving water must receive nutrients that can support algae; phosphorus, nitrogen and carbon are the most important of these. And the receiving water must be favored with enough sunshine for photosynthesis. Thus, clear and shallow waters are more likely to become eutrophic than deep turgid waters.

The nutrients that generate eutrophication are found abundantly in sewage and other wastewaters, and in urban and agricultural runoff. But not all wastewaters or runoff are potential culprits. It has been estimated that approximately 85% of the U. S. population makes no contribution to eutrophication in natural waters--that is, only 15% of the population discharges wastes into waters susceptible to eutrophication.

While eutrophication may be a limited problem, this does not detract from its importance and undesirability where it occurs. And

though domestic sewage (and specifically, phosphate detergent waste) is most commonly painted as the villain in the piece, the matter of pinpointing the sources of eutrophication is not so simple. Agricultural runoff, as well as urban runoff, appears to be an important source in some places. And industrial wastes may be significant also. We need only point to recent disclosures that industrial wastes could be an important contributor to eutrophication of the Chowan River that came to light only this year.

Many studies and surveys of eutrophication are being carried forward in this State and elsewhere. The N. C. Office of Water and Air Resources is in the early stages of surveys on eutrophication in North Carolina's waters. The UNC Water Resources Research Institute and other university researchers are conducting studies of agricultural and urban runoff sources. The subject of domestic waste sources has been under intensive study here and throughout the nation for some years.

Progress in appraising the problem and in identifying possible solutions varies from one aspect of the subject to another. For example, the likely solutions in terms of treatment and waste management for industrial sources appear to be reasonably well identified. On the other hand, much more needs to be learned about the solutions to agricultural and urban runoff problems. Currently the most controversial issue revolves around the problem of reducing phosphate detergent wastes in domestic sewage. On this matter, some experts argue vigorously for bans or sharp controls over phosphate content of detergents. Other experts urge with equal vigor that this cure generates problems that are as serious as the disease, and that improved municipal waste treatment is the most reasonable and economic solution. Not long ago the two leading federal experts on the subject, the U. S. Surgeon General and the

Administrator of EPA, were sharply at odds over this issue. (As noted below at page 14, however, they have recently resolved this disagreement, at least for the time being.)

Against this background we can now turn to a review of proposals that have been made in North Carolina for control of nutrient pollution.

Prior Legislative Efforts

A bill introduced in 1971 would have empowered the Board of Water and Air Resources to adopt regulations limiting phosphate, nitrate and other plant nutrient content of detergents used in North Carolina, looking toward ultimate elimination of all nutrient content. After hearings before the House Committee on Water and Air Resources, at which the wisdom of this measure was questioned by expert testimony, the bill was reported unfavorably (H 118, introduced by Rep. Bryan).

After the failure of H 118 in 1971, the subject of nutrient pollution control was listed among the items for LRC study by SR 961. It is worthy of note that this study direction contemplated a consideration of, not merely control of detergent nutrient content, but the broader subject of "prevention and abatement of pollution of the State's waters by nutrient waste."

The Work of the Committee on Environmental Studies

The subject of nutrient pollution control was included in the agenda of our Committee on Environmental Studies. The Committee held public hearings that gave interested persons an opportunity to air their views on this subject. The Committee heard testimony on several different aspects of the subject, including the detergent nutrient controversy as well as broader aspects of nutrient pollution control. Part of that testimony served as the basis of the introduction to this report.

As to the detergent nutrient controversy, testimony was again received on both sides of the issue--i.e., both supporting and opposing proposals to empower a state agency to impose restrictions on detergent nutrient content. There was one significant new development on this front. The Committee learned that the U. S. Surgeon General and the Administrator of EPA, according to the latest available information, had settled their previous disagreement on the issue. (At an earlier date EPA had specifically recommended governmental controls over detergent nutrient content, while the Surgeon General had opposed this position because of his concern about the public health risks of household cleansers that could serve as alternatives to phosphate detergents.) The Committee was informed that the Surgeon General and the Administrator of EPA, late in 1971, issued a statement advising states and localities of their joint recommendation against laws and policies that unduly restrict the use of phosphates in detergents. This recommendation was based upon their conclusion that the health hazards of effective substitutes for phosphate detergents made reliance on these substitutes unwise at this time.

Suggestions were also received on broader aspects of nutrient pollution control. The BWAR advised that its ability to administer nutrient pollution controls, as well as other water pollution controls, would be much strengthened if it were explicitly authorized to adopt effluent standards and limitations. (While the BWAR might attempt to adopt effluent standards under its present legal powers, its authority to do so is debatable and would be likely to be contested.) The use of effluent limitations on nutrient content, for example, would make BWAR policies much more readily enforcible with respect to industries and municipalities discharging wastes containing nutrients.

It appears likely that the next round of federal water pollution control legislation will assume that states are empowered to adopt effluent standards.

For these reasons, BWAR urged that we recommend legislation that would explicitly authorize adoption of effluent standards and limitations. No objections were made to this proposal. BWAR spokesmen also indicated that continuing surveys, studies and surveillance are needed with respect to emerging and potential nutrient pollution problems.

On ths basis of its hearings and inquiries, the Committee on Environmental Studies proposed the recommendations that are set forth in the next section of this report.

Findings and Recommendations

(1) Nutrient pollution is a problem of sufficient present or potential concern to warrant careful, continuing surveillance, and imposition of appropriate controls where such controls are shown to be needed. Partly because the results of nutrient pollution are often highly visible, it is probably true that exaggerated anxiety has been expressed and publicized about the problem in some instances. It is also true that nutrient pollution is not a universal problem, but a territorially limited one. But concrete evidence of developing nutrient pollution problems in North Carolina, and interim findings of current studies, indicate a need for continuing surveillance and for exercise of control powers where warranted.

(2) New legislation is needed in North Carolina to explicitly authorize adoption of effluent standards and limitations by BWAR, in order to strengthen pollution control programs generally and nutrient pollution controls specifically. It seems plain that pollution control activities will be hampered

until the BWAR can act, with clear authority, to place specific standards and limits on particular discharges. The evidence before us indicates that the BWAR's present authority to do this is sufficiently debatable to have deterred positive action on the matter. The evidence also indicates that this authority is needed, not only with respect to nutrient pollution, but also as to water pollution problems generally. Similar authority (to adopt emission standards) already exists with respect to air pollution, and this proposal essentially gives the BWAR the same powers as to water pollution.

(3) The Commission recommends enactment of the bill set forth in Appendix G ("A bill to be entitled an Act to amend Chapter 143 of the General Statutes of North Carolina, so as to empower the North Carolina Board of Water and Air Resources to adopt effluent limitations or standards for sources of water pollution.") The recommended bill would strengthen enforcement ability for nutrient pollution controls and for water pollution controls generally. The language and definitions used in this bill are modelled closely after pending federal water pollution bills, so as to facilitate consistent administration of federal and state laws.

(4) The Commission recommends that the BWAR continue and strengthen, if feasible, its survey and surveillance activities concerning nutrient pollution, and that the BWAR take such action as it deems appropriate concerning nutrient pollution, in light of its emerging findings. We also urge that university-based research into the origins, nature and effect of nutrient pollution be continued. It seems obvious that our understanding of nutrient pollution mechanisms and solutions is more nearly complete in some areas than others. Where this understanding is reasonably thorough and where symptoms

of nutrient pollution are apparent, the time for action has come. Where understanding is deficient or symptoms are not plain, more study and surveillance are in order.

The evidence that we have received of the need for detergent nutrient controls at the state or local levels is not sufficient to clearly outweigh contrary indications at this time. Thus, we are not prepared to recommend that the BWAR be authorized to impose limitations on phosphatic or other nutrient content of detergents. However, we would not wish to deter the BWAR from continuing its own examination of this subject, nor from making such recommendations as its findings may suggest.

APPENDIX A

SENATE RESOLUTION 961

GENERAL ASSEMBLY OF NORTH CAROLINA
1971 SESSION

S

SENATE RESOLUTION 961

Sponsors: Senators Allen and Patterson.

Referred to: Calendar Committee.

July 12

A RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE NEED FOR LEGISLATION CONCERNING CERTAIN ENVIRONMENTAL PROBLEMS.

Be it resolved by the Senate:

Section 1. The Legislative Research Commission is hereby authorized and directed to study the need for legislation concerning the following subjects:

(1) Regulation of septic tank wastes;

(2) Prevention and abatement of oil pollution, including measures for prevention or cleanup of oil spills;

(3) Regulation and management of animal and poultry wastes;

(4) Prevention and abatement of pollution of the State's waters by nutrient waste, particularly compounds of phosphorus and nitrogen;

(5) Prevention and abatement of pollution of the State's waters by sedimentation and siltation, particularly that occurring from runoff of surface waters and from erosion;

(6) Recovery by agencies providing water services of damages from persons polluting the water supply;

(7) The reporting of industrial wastes and other wastes containing toxic materials to public waste disposal systems.

(8) Such other environmental protection or natural resource management subjects not specifically assigned by law or resolution to another Legislative Study Commission as the Commission may deem appropriate.

Sec. 2. With respect to the subjects enumerated in Section 1, the Commission shall examine and evaluate previous relevant experience in North Carolina, legislation and proposals in other jurisdictions, and the experience of other jurisdictions in applying such legislation. In connection with the studies directed by Section 1, the Commission, where desirable and feasible in its judgment, may include non-legislator members on the study subcommittees assigned these studies.

Sec. 3. The Commission shall report its findings and recommendations to the 1973 General Assembly.

Sec. 4. This resolution shall become effective upon its adoption.

APPENDIX B

LIST OF WITNESSES WHO APPEARED OR WERE INVITED TO APPEAR

AT HEARINGS OF ENVIRONMENTAL STUDIES COMMITTEE ON THE SUBJECTS OF THIS REPORT

LEGISLATIVE RESEARCH COMMISSION

ENVIRONMENTAL STUDIES COMMITTEE

WATER SUPPLY DAMAGES, TOXIC WASTE REPORTING,

AND NUTRIENT POLLUTION CONTROL

Witnesses Who Appeared at Committee Hearings

D. L. Coburn
Chief, Water and Air Resources Division
Department of Natural and Economic Resources
Raleigh, N. C.

Dr. B. J. Copeland
Department of Zoology
N. C. State University
Raleigh, N. C.

Dr. Donald E. Francisco
Deputy Director, UNC Wastewater Research Center
Chapel Hill, N. C.

Milton S. Heath, Jr.
Assistant Director
Institute of Government
Chapel Hill, N. C.

James Hudson

Andrew F. McRorie
Assistant Chief, Water Quality Division
Department of Natural and Economic Resources
Raleigh, N. C.

Representative Robie L. Nash
Rowan County

Representative Robert Odell Payne
Guilford County

Thomas Rosser
Assistant Attorney General
Raleigh, N. C.

William Stanback
Member Salisbury City Council

APPENDIX C

PROPOSED BILL TO IMPLEMENT RECOMMENDATIONS ON WATER SUPPLY DAMAGES

The proposed bill is modeled on House Bill 781 introduced into the 1971 Session of the General Assembly.

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PUBLIC AGENCIES PROVIDING WATER SERVICES TO RECOVER DAMAGES FROM PERSONS POLLUTING THE WATER SUPPLY.

The General Assembly of North Carolina enacts:

Section 1. Definitions.--As used in this act, unless the context otherwise requires:

(1) "Person" shall mean any natural person, firm or partnership, association, public or private institution, municipality, political subdivision, governmental agency, or public or private corporation organized or existing under the laws of this State or any other state or nation.

(2) "Public agency" shall mean any city, town, incorporated village, county, water authority, political division or subdivision, or other entity of local or State government of the State of North Carolina which owns or operates a water system.

(3) "Water system" shall mean all plants, systems, facilities or property used in connection with the supply or distribution to the public of water and any integral part thereof, including, but not limited to: water, supply systems; water distribution systems, sources of water supply, including lakes, reservoirs and wells; intakes; mains; laterals; aqueducts; pumping stations;

standpipes; filtration plants; purification plants; hydrants; meters; valves; and all appurtenances, equipment and property necessary or convenient for operation of the system.

Sec. 2. Recovery authorized.--Every public agency is authorized to recover, as damages, any additional costs or expenses incurred in acquiring, processing, purifying or distributing a public water supply as the result of a violation by any person of the water quality standards applicable to classifications assigned to waters of this State pursuant to G.S. 143-214.1 or of a violation of any other law of this State relating to pollution of waters or watersheds.

Sec. 3. Demand for payment; suit.--(a) Written demand for payment of damages from the person responsible for a violation shall be made by a public agency within six months of the time that the damages were sustained. Damages will be deemed to have been sustained as of the date that additional costs or expenses caused by the violation were incurred.

(b) If the violation giving rise to a claim for damages is a continuing one, a public agency may determine its damages from time to time and make written demand for payment; but each demand shall be made within six months of the time when the damages claimed for were sustained.

(c) If payment or settlement of any claim is not made within a reasonable time, the public agency may institute an action to recover its damages in the superior court of the county in which the agency is located, or, at its election, in the superior court of the county in which the violation occurred. If the violation

is a continuing one, the agency may defer institution of the action until all damages have accrued.

Sec. 4. Damages.--(a) Measure. The person responsible for a violation of the water quality standards or other laws relating to pollution of waters or watersheds shall be liable to a public agency for any costs or expenses of acquiring, processing, purifying or distributing a water supply which would not have been incurred by the agency but for the violation; and such costs and expenses shall include the installed cost of any additional water acquisition, processing, purifying, or distributing facilities or equipment which were made necessary by the violation to acquire or adequately process, purify or distribute water.

(b) Apportionment. If it is determined, upon the evidence, that the costs of any additional equipment or facilities was excessive with regard to the nature or extent of the violation, or that the additional equipment or facilities would have been necessary within a reasonable time to acquire or properly process, purify or distribute the water in the absence of the violation, the court may apportion the costs of the additional facilities or equipment in such manner as it, in its discretion, shall determine to be equitable.

(c) When the violation of water quality standards or other laws relating to pollution of waters or watersheds by two or more persons concur to cause damages to a public agency, such persons shall be jointly and severally liable to the agency.

Sec. 5. If any provision of this act or the application thereof to any person or circumstances is held invalid, such

invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 6. This act shall become effective upon ratification, but shall not apply to any claims that accrued prior to its ratification.

APPENDIX D

SECTION-BY-SECTION ANALYSIS OF PROPOSED WATER SUPPLY DAMAGES BILL

SECTION-BY-SECTION ANALYSIS OF PROPOSED WATER SUPPLY DAMAGES BILL

Section 1

In defining the key terms used in the proposed act, this section makes it clear that:

(1) The agencies that are authorized by the act to bring suit for pollution-caused damages to their water supply systems include every entity of local government or State government that owns or operates a public water supply system.

(2) The persons against whom suit may be brought under the act include anyone--whether an individual, a governmental entity or a private entity--responsible for causing damage to a public water supply system by polluting the waters of the State. Under the act such pollution may be proved by showing a violation of water quality standards or a violation of any other water pollution law.

Sections 2 and 3

These sections authorize any public water supply agency to bring suit and recover for damages caused to its water supply system by polluted water that can be traced to a violation of a state water quality standard or a violation of any state water pollution law. The intended effect is to ensure that no threshhold procedural barriers--such as a claim of sovereign immunity or lack of standing to sue or technical lack of riparian status--will prevent a lawsuit of this nature from going to trial on the merits.

Section 3 requires, as a prerequisite to bringing suit in reliance on this act, that a written demand for payment be made within six months after damages were sustained. It also prescribes the procedure for claims of continuing damage and the venue for bringing suit.

Section 4

This section (and Section 2) specify the measure of damages to be applied in lawsuits based upon this act: any additional expenses incurred in acquiring, processing, purifying or distributing a public water supply that would not have been incurred but for the water quality violation that gave rise to the suit. These expenses include additional equipment costs made necessary by the violation, but the court is directed to apportion the costs of additional equipment in an equitable way. Concurrent violators are declared to be jointly and severally liable, under subsection 4(c).

Sections 5 and 6

These sections contain a standard severability clause and make the act effective upon ratification. Section 6 specifies that the act shall be applied only prospectively. This law is designed,not to settle pending disputes,but to establish a policy to be applied to circumstances that arise after enactment.

APPENDIX E

PROPOSED BILL CONCERNING REPORTING OF INDUSTRIAL WASTES AND OTHER TOXIC WASTES

The proposed bill is modeled on House Bill 409 introduced into the 1971 Session of the General Assembly.

GENERAL ASSEMBLY OF NORTH CAROLINA

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MONITORING OF THE DISCHARGE OF INDUSTRIAL AND OTHER WASTE.

The General Assembly of North Carolina enacts:

Section 1. Short Title. This act shall be known and may be cited as the "Waste Discharge Reporting Act."

Sec. 2. Purpose. It is the purpose of this act to require regular reports which shall provide adequate information to local governments as to the volume and content of certain wastes being discharged to waste disposal systems, and thus serve as a basis for controlling and planning for the discharge and the treatment of such wastes so that the growth of this State may continue with the least detrimental impact upon the environment and upon water resources. This act requires that persons discharging certain wastes to waste disposal systems owned or operated by any county, municipality, or other public agency shall file reports of such discharges with appropriate county, municipal or other public officials.

Sec. 3. Household wastes. This act shall not apply to household wastes or sewage discharged from any residence or dwelling; provided, however, that this act shall apply to

industrial wastes and other wastes containing toxic materials, as herein defined, discharged from a residence or dwelling as the result of any commercial, business or industrial activity conducted on the premises.

Sec. 4. Definitions. As used in this act, unless the context otherwise requires:

(1) "Average daily discharge period" shall mean the time obtained by dividing the total number of hours per calendar month during which industrial wastes or other wastes containing toxic materials are discharged by the number of days on which discharges are made during a calendar month.

(2) "Concentration" shall mean the weight per unit volume of any single component of the waste being measured.

(3) "Content" shall mean the various components contained in the waste discharge.

(4) "Discharge" shall mean the emission, flowage, spillage, ejection or throwing off of any liquid, gas, or solid, or combination thereof, directly or indirectly, to the air, water or earth.

(5) "Maximum deviation" shall mean the percentage by which any twenty-four hour discharge volume during a calendar month exceeds the monthly average twenty-four hour discharge rate for that month.

(6) "Monthly average twenty-four hour discharge rate" shall be the average rate of discharge per twenty-four hour period obtained by determining the twenty-four hour discharge volume for each day that a discharge occurred during a calendar month and by dividing the total of the twenty-four hour discharge volumes by

the number of days that a discharge occurred during the calendar month.

(7) "Other public agency" shall mean any commission, board, committee, district, authority, council, department or other division or subdivision of local or State government, other than a county or municipality.

(8) "Persons" shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(9) "Toxic material" shall mean any liquid, solid or other substance or combination thereof which is inherently harmful or destructive to the health, well-being or life of plants, animals or humans.

(10) "Twenty-four hour discharge volume" shall mean the volume of wastes expressed in gallons, discharged during a period of twenty-four consecutive hours.

(11) "Waste" shall mean anything left over or superfluous which is unused, unproductive, or not subject to utilization; and shall include the following:

a. "Sewage", which shall mean water-carried human body waste discharged from residences, dwellings, buildings, industrial or commercial establishments or any other places.

b. "Industrial waste", which shall mean any liquid, or water-borne solid or other waste substance, or a combination thereof resulting from any process or

industry, manufacturing, trade or business, or from the development of any natural resource, but shall not include sewage.

c. "Other waste", which shall mean all liquid, water-borne solid or other waste substance, or a combination thereof, except industrial waste and sewage, including, but specifically not limited to: sawdust; shavings; lime; offal; oil, bitumins, and petroleum products or by-products; radio-active materials; poisons, pesticides, metals and other toxic materials; animal wastes and carcasses; fertilizer; and garbage and other refuse.

(12) "Waste disposal system" or "disposal system" shall mean a system for disposing of sewage, industrial wastes or other wastes, and shall include: pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage, industrial wastes or other wastes to a point of ultimate disposal; and any plant, disposal field, lagoon, pumping station, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other waste.

Sec. 5. Authority to act. When any provision of this act requires or provides for action to be taken by a county, municipality or other public agency, it shall be appropriate for such action to be taken by the duly constituted governing body of the county, municipality or other public agency or by the person or agency lawfully designated by such body.

Sec. 6. Adoption of ordinances, etc. Every county, municipality or other public agency owning or operating a waste disposal system shall adopt, on or before July 1, 1974, or within thirty (30) days after such ownership or operation begins, whichever occurs later, rules, regulations or ordinances governing the discharge of waste to its disposal system. All such rules, regulations or ordinances shall be at least equivalent to the latest edition of the model ordinance recommended by the Water Pollution Control Federation.

Sec. 7. Reports. (a) Contents. Every person who discharges industrial wastes or other wastes containing toxic materials to a waste disposal system owned or operated by a county, municipality or other public agency shall file with the person whom the board of county commissioners, the city council or other public agency shall designate, a report which shall set forth such information as the county, municipality or other public agency may require by adoption of ordinances or regulations, but shall contain at least the following:

(1) The monthly average twenty-four hour discharge rate of industrial wastes and other wastes containing toxic materials, measured with such frequency and for such periods of time as the appropriate county, municipality or other public agency may require.

(2) The average daily discharge period, as defined herein.

(3) The maximum deviation, as defined herein.

(4) The pH and color of the industrial wastes or other wastes containing toxic materials discharged and

the weight per unit volume of total dissolved solids, suspended solids, volatile suspended solids, biochemical oxygen demand, heavy metals and toxic materials contained in such wastes, measured with such frequency and for such periods of time as the appropriate county, municipality or other public agency may require.

(5) A projection of any change in content, or of any increase or decrease in the volume or any variation in the concentration of the industrial wastes or other wastes containing toxic materials discharged, projected on a monthly basis for the twelve month period next following the date the report was filed.

(b) Certification. Every person filing a report required by this section shall certify in writing upon the face of the report that the information set forth therein was determined by measurement or analysis and is correct; but certification of a report filed pursuant to subsection (c)(2) of this section may state that any estimated volumes, rates, weights, concentrations or other qualitative or quantitative measurements are impossible to determine accurately but that such estimates will not vary more than ten percent (10%) from the actual discharge.

(c) Filing.

(1) Existing discharges. All persons discharging industrial wastes or other wastes containing toxic materials to a disposal system owned or operated by a county, municipality or other public agency as of

January 1, 1974, shall file the original report required by this section on or before July 1, 1974.

(2) Future discharges. Any person who desires to begin discharging industrial wastes or other wastes after January 1, 1974, to a disposal system owned or operated by a county, municipality or other public agency shall file with an application for permit the report required by this section, setting forth estimates of volumes, weights, concentrations and other qualitative and quantitative measurements when the actual data is not known or cannot be accurately determined; and shall file a report setting forth the actual data as determined by measurement and analysis of the discharge within 60 days after discharge of industrial wastes or other wastes begins, which shall be deemed an original report for purposes of this act.

(d) Annual reports. Every person discharging industrial wastes or other wastes containing toxic materials on and after January 1, 1975, to a disposal system owned or operated by a county, municipality or other agency shall file on or before January 31 of each year with the owning agency a certification to the effect that, by actual measurement and analysis, there has been no change in the content or increase exceeding ten percent (10%) in the volumes, rates, weights, concentrations or other qualitative or quantitative measurements of the industrial wastes or other wastes containing toxic materials discharged to the disposal system since the date of the original report filed or date of a

permit duly granted, whichever shall be most recent. The certification shall also set forth any projected change in content or increase or decrease in the volume or any variation in the concentration of industrial wastes or other wastes containing toxic materials to be discharged to the disposal system during the year next following the date of the certification.

Sec. 8. Permits. (a) When required.

(1) No person discharging industrial wastes or other wastes containing toxic materials as of January 1, 1974, to a disposal system owned or operated by a county, municipality or other public agency shall, after July 1, 1974, cause or allow any change of the contents of such discharge or cause or allow any volume, rate, weight, concentration or other qualitative or quantitative measurement of such waste in the discharge to exceed by more than ten percent (10%) any volume, rate, weight, concentration or other qualitative or quantitative measurement previously reported under this act without first having secured a permit from the county, municipality or other public agency, allowing a change in content or allowing a permanent or temporary deviation in excess of ten percent (10%).

(2) No person shall begin discharging industrial waste or other waste containing toxic materials after January 1, 1974, to a waste disposal system owned or operated by a county, municipality or other

public agency without first having secured a permit from the county, municipality or other public agency. The permit shall prohibit the discharge to vary in content from or to exceed by more than ten percent (10%) any estimated volume, rate, weight, concentration or other qualitative or quantitative measurement set forth in the report filed with the application for permit, without a variance first having been secured from the appropriate county, municipality or other public agency.

(b) Issuance. Every county, municipality or other public agency that owns or operates a waste disposal system shall adopt rules, regulations and procedures to receive applications for and to issue permits required by this act. The permit may contain such conditions as the county, municipality or other public agency shall deem to be appropriate. In determining whether a permit should be issued, the issuing authority shall consider, but shall not be limited in its consideration to, the existing capacity of its waste disposal system; any planned increases in capacity or efficiency of the existing disposal system; the effect of the applicant's wastes upon the disposal system; and the effect of the wastes discharged from the system upon the waters of the State. Any permit which is issued in violation of law or which allows a violation of water quality standards applicable to any waters classified pursuant to G.S. 143-214.1 shall be void.

Sec. 9. Exemption. (a) Applicability. This act shall apply to every person who discharges either industrial or other

wastes that contain toxic materials as herein defined. Any person who discharges wastes that do not contain toxic material may be exempt from the provisions of this act, except as provided by this section, upon a determination by the appropriate county, municipality or other public agency that the wastes discharged by such person do not constitute a significant discharge with relation to the existing waste disposal system capacity of the county, municipality or other public agency; Provided, however, that any twenty-four hour discharge volume that exceeds twenty-five thousand gallons shall constitute a significant discharge as a matter of law.

(b) Statement. Every person who desires or has received the exemption provided for in this section shall file a sworn statement on or before January 31 of each year with the appropriate county, municipality or other public agency which shall set forth:

(1) The nature of the industry, trade or business producing the waste discharge.

(2) The processes involved in the conduct of the industry, trade or business.

(3) The estimated twenty-four hour discharge volume expressed in gallons per day.

(4) Any increase in waste discharge volume or change in processes in the conduct of the industry, trade or business, that has occurred since the filing of the next preceding statement or that is projected for the calendar year next following the date of the filing of the statement.

(5) Any other information that the county, municipality or other public agency may require relating to the conduct or operation of the industry, trade or business.

(c) Other laws, ordinances, etc. This section shall not be construed to exempt any person from any other applicable law, rule, regulation or ordinance, local, State or federal.

Sec. 10. Measurement, analysis and monitoring. (a) Duties of persons discharging. Every person filing a report required by this act shall make such measurements and analysis or perform such monitoring of the waste discharge as are necessary to assure that there is no variance of content and that the actual volumes, weights and concentrations discharged thereafter do not vary more than ten percent (10%) from the reported volumes, weights and concentrations.

(b) Authority of agencies. Any county, municipality or other public agency may require any person responsible for the discharge of industrial or other wastes to its disposal system to perform such measurement, analysis or monitoring as the county, municipality or other public agency shall deem necessary; and the county, municipality or other public agency may measure, analyze or monitor the source of any discharge of industrial or other wastes to its disposal system and may charge the costs thereof to the person responsible for the discharge; and in any event, every county, municipality or other public agency providing liquid waste disposal for more than 25,000 people shall analyze and measure, at least once every six months, the industrial or other wastes discharged by every person required to report to determine

the accuracy of the reports of persons discharging to a disposal system; and may charge the costs to the person responsible for each discharge.

Sec. 11. Inspection of records. All reports or statements filed pursuant to this act shall be retained by the county, municipality or other public agency, as the case may be, for at least two years and shall be available for public inspection at reasonable times and places.

Sec. 12. Board of Water and Air Resources; copies of reports. Every county, municipality or other public agency shall furnish to the North Carolina Board of Water and Air Resources, upon its written request, a copy of any report or statement filed with and retained by it pursuant to this section.

Sec. 13. Penalties. (a) Failure to file report. Any person failing to file a report or statement required by this act shall be subject to a civil penalty of not more than two hundred fifty dollars ($250.00) per day for each day of delay after the required filing date.

(b) Violation of permit. Any person who shall discharge industrial or other wastes without a permit required by this act or who shall discharge such wastes in violation of the terms of a permit shall be subject to a civil penalty of not more than five thousand dollars ($5,000) for each day that such discharge occurs.

(c) False information. Any person who shall file a report or statement required by this act, knowing it to contain false information, shall be subject to a civil penalty of not

more than two thousand five hundred dollars ($2,500).

(d) Action to recover penalty. Recovery of the penalties provided for in this section shall be by civil action instituted by the county, municipality or other public agency in the superior court of the county in which it is located, and any sums recovered shall be a part of the general funds of the county, municipality or other public agency.

Sec. 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 15. This act shall become effective January 1, 1974.

APPENDIX F

SECTION-BY-SECTION ANALYSIS OF PROPOSED TOXIC WASTE REPORTING BILL

SECTION-BY-SECTION ANALYSIS OF PROPOSED TOXIC WASTE REPORTING BILL

Section 1

This section entitles the proposed act as the "Waste Discharge Reporting Act."

Section 2

This section states that it is the purpose of the proposed act to require regular reporting concerning the volume and content of wastes discharged into waste disposal systems. The objective is to make possible better planning and management of waste treatment systems by cities, counties and other agencies responsible for waste treatment.

Section 3

This section exempts most household wastes or sewage from the Act. It would be unnecessary to report household waste discharges except where they are combined with industrial wastes or other wastes containing toxic wastes discharged from the premises.

Section 4

In defining the key terms used in the proposed act, this section makes it clear that the reporting requirements of the act would apply to all individuals, private entities and public entities that discharge industrial wastes or other wastes containing toxic materials to a sewer or any other part of a waste disposal system. "Toxic materials" are defined as any substance that is inherently harmful or destructive to health, well-being or life of humans, animals or plants. "Wastes" are defined, as in the State Stream Sanitation Law, to include sewage, industrial wastes and other designated wastes. This section also defines several technical and measurement terms used in the act (such as "average daily discharge period," "maximum deviation" and "monthly average twenty-four hour discharge rate").

Section 5

Section 5 authorizes the responsible local or state agency to implement the act through its governing body or to delegate the performance of its functions to an appropriate person or agency.

Section 6

Section 6 requires each waste disposal agency by July 1, 1974 to adopt implementing ordinances governing discharge of wastes to its system, with requirements at least equivalent to the latest model ordinance recommended by the Water Pollution Control Federation.

Section 7

This section contains the essential features of the act's reporting requirements. It requires that every person discharging industrial wastes or other toxic wastes to a public waste disposal system must file certain reports with the agency. In summary these requirements are:

(1) An original certified report must be filed that contains monthly and daily average discharge data, deviations from the average, specified data concerning the content of the wastes, and projections of anticipated monthly changes in volume and content during the succeeding twelve months.

(2) Annual certified reports must be filed showing changes in the information from the preceding report, and projections for the year ahead.

Section 8

Section 8 establishes a permit mechanism to enable public waste disposal agencies to exercise control over increased volumes and concentrations of wastes discharged into their systems. Before increasing the volume or

concentration of wastes by more than 10% above projected discharges, an existing discharger must obtain a permit from the disposal agency allowing a permanent or temporary deviation. Any person proposing to initiate a new discharge must secure a permit in advance; under such a permit averages above estimated discharge in excess of 10% require a variance.

Section 9

This section establishes a procedure by which a discharger of relatively small volumes of non-toxic wastes may secure an exemption from the reporting requirements. Exemptions are not available if the volume discharged exceeds 25,000 gallons in any day.

Section 10

This section imposes a duty on all who file reports under this act to monitor their wastes in order to ensure that actual discharges do not exceed reported discharges by more than 10%, by volume, weight or concentration. It also enables the disposal agencies to require additional monitoring where needed, and to conduct their own monitoring, the costs of which may be charged back to the discharger.

Sections 11 and 12

These sections require that reports filed under the act be retained for at least two years as public records, and that copies of the reports be furnished to the N. C. Board of Water and Air Resources on request.

Section 13

Section 13 prescribes civil penalties for violations of the act, specifically:

* Up to $250 per day for each day of delinquency in filing required reports.

* Up to $5,000 per day for each day of delinquency in violations of permit requirements.

* Up to $2,500 for filing false reports. Recoveries of these penalties (by civil action) are to accrue to the benefit of the general fund of the city, county or other public agency bringing suit.

Sections 14 and 15

These sections contain a standard severability clause and make the proposed act effective January 1, 1974.

APPENDIX G

PROPOSED EFFLUENT STANDARDS BILL

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 143 OF THE GENERAL STATUTES OF NORTH CAROLINA, SO AS TO EMPOWER THE NORTH CAROLINA BOARD OF WATER AND AIR RESOURCES TO ADOPT EFFLUENT LIMITATIONS OR STANDARDS FOR SOURCES OF WATER POLLUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-213 is hereby amended by renumbering existing subdivisions (12) - (14) as (13) - (15), by renumbering existing subsections (15) - (21) as (17) - (23), by inserting therein two new subdivisions,to be numbered subdivisions (12) and (16) and to read as follows:

"(12) The term 'effluent limitation' means any restrictions established by the Board on quantities, rates, and concentrations of chemical, physical, biological, and other constituents of effluents which are discharged from point sources into the waters of the State, including schedules and timetables for compliance."

"(16) The term 'point source' means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."

Sec. 2. Subsection (a) of G.S. 143-214.1 is hereby amended by deleting the word "and" at the end of paragraph (2) of said subsection; by changing the period at the end of paragraph (3) of such subsection to a semicolon; by adding the word "and" following said semicolon; and by adding thereafter a new paragraph (4) to read as follows:

"(4) To develop and adopt such effluent limitations and standards (or prohibitions) as in the judgment of the Board may be necessary

to prohibit, abate or control water pollution commensurate with established water quality standards. Such effluent limitations and standards (or prohibitions) may be applied uniformly to the State as a whole or to any area of the State designated by the Board. Such provisions may include, without limitation, effluent limitations for point sources, effluent standards (or prohibitions) for toxic pollutants or combinations of such pollutants, and pretreatment standards for discharges of pollutants in treatment works."

Sec. 3. This Act shall become effective upon its ratification.

APPENDIX H

SECTION-BY-SECTION ANALYSIS OF PROPOSED EFFLUENT STANDARDS BILL

SECTION-BY-SECTION ANALYSIS OF PROPOSED EFFLUENT STANDARDS BILL

Section 1

This section adds two new definitions to the present State pollution control law in order to make plain the meaning of the key terminology used in this bill. The first provision would define "effluent limitations" as restrictions established on quantities, rates, and concentrations of constituents of effluents that are discharged from point sources of pollution. The second provision would define a "point source" of pollution as any discernible, confined and direct conveyance (with certain examples) from which pollution may be discharged. Both definitions are modelled closely upon pending federal water pollution control legislation, so as to facilitate consistent administration of federal and State laws.

Section 2

This section amends the present authority of the N. C. Board of Water and Air Resources over water quality standards by making explicit the authority of the Board to establish effluent limitations, standards and (if necessary) prohibitions. Although the Board may already have the powers provided by this section, this is not explicit in present law. Clarifying the Board's authority in this respect will be a useful assist to many aspects of water pollution control wherein effluent standards are needed for effective control of pollution.

The language of the new provision on water pollution effluent standards is similar to that used in G.S. 143-215 in authorizing emission control standards for air pollution. The specific references to effluent limitations for point sources, effluent standards (or prohibitions) for toxic pollutants, and pretreatment standards incorporate provisions in pending federal legislation.

Section 3

This section would make the proposed act effective upon ratification.

1973 REPORT

LEGISLATIVE RESEARCH COMMISSION

A SALT WATER SPORTS FISHING PROGRAM

TO THE MEMBERS OF THE GENERAL ASSEMBLY

The Legislative Research Commission herewith reports to the 1973 General Assembly its findings and recommendations concerning a salt water sports fishing program. This report is made pursuant to Senate Resolution 961, adopted by the 1971 General Assembly, which directed the Commission to study certain listed subjects and "such other environmental protection or natural resource management subjects not specifically assigned by law or resolution to another legislative study commission as the Commission may deem appropriate." This study was initiated at the request of Commissioner of Commercial and Sports Fisheries, Dr. Thomas Linton, by the Committee on Environmental Studies. This Committee, which was appointed by the Commission to carry out its study functions under SR 961, consisted of:

Sen. William W. Staton, Co-Chm.
Rep. William R. Roberson, Jr., Co-Chm.
Rep. P. C. Collins, Jr.
Rep. Jack Gardner
Rep. W. S. Harris, Jr.
Sen. Hamilton C. Horton, Jr.
Rep. W. Craig Lawing
Sen. Lennox P. McLendon, Jr.
Sen. William D. Mills
Sen. Marshall A. Rauch
Sen. Norris C. Reed, Jr.
Rep. Carl M. Smith
Rep. Charles H. Taylor
Sen. Stewart B. Warren, Jr.

Respectfully,

Philip P. Godwin, Speaker

Senator Gordon Allen

Co-Chairmen, Legislative Research Commission

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APPENDICES

INTRODUCTION

At the request of the Commissioner of Commercial and Sports Fisheries, Dr. Thomas Linton, the Committee on Environmental Studies heard a request for support of a salt water fishing program. A number of witnesses from the coastal area appeared to testify in support of this program (see Appendix B). The program is also endorsed by the Department of Natural and Economic Resources.

Evidence Submitted for the Proposal

The requested program would provide increased state support for the promotion and improvement of salt water sports fisheries in North Carolina. It would enlarge the activities of the Division of Commercial and Sports Fisheries, so as to enable that Division to conduct a more balanced program of sports fishing as well as commercial fishing.

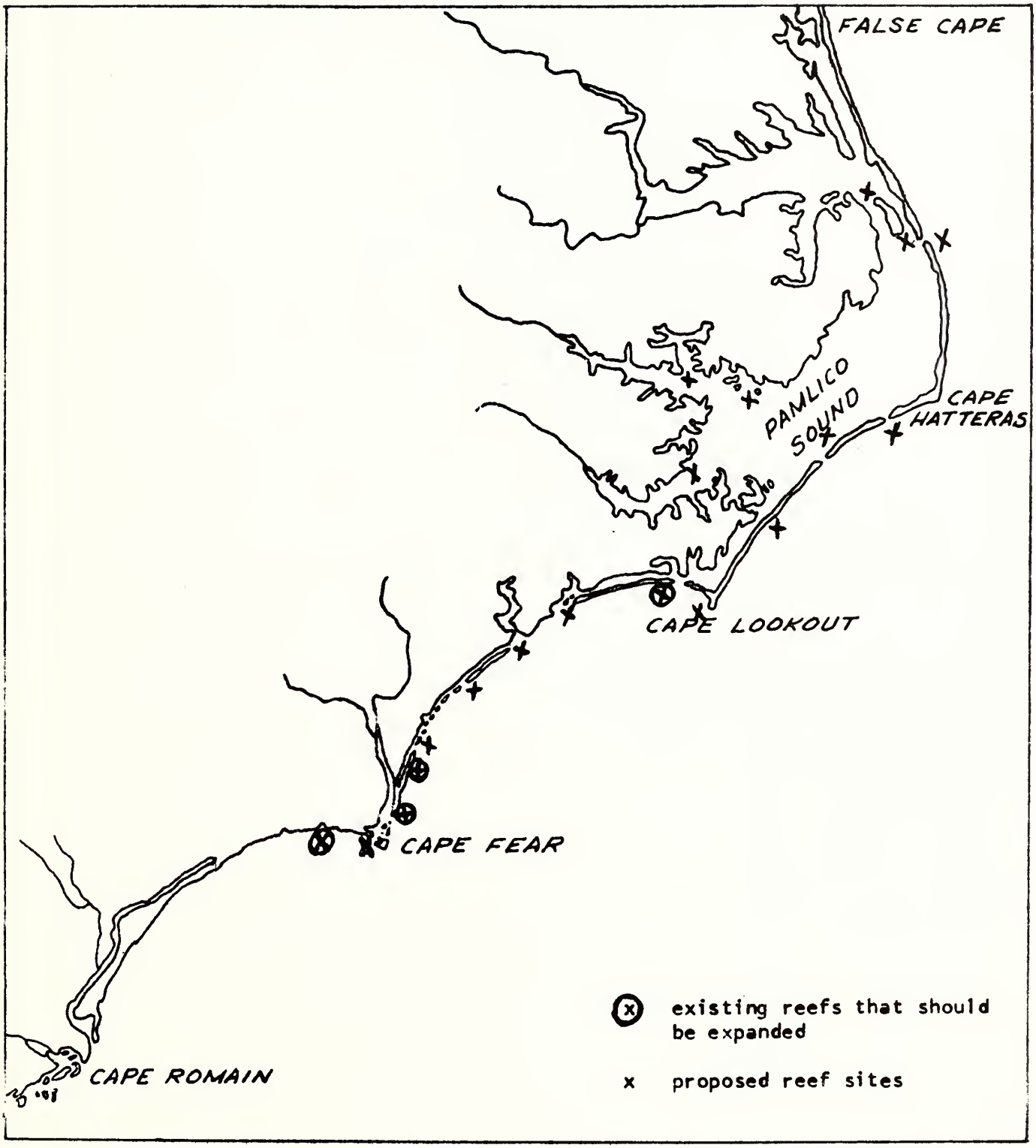
Essentially, the request seeks additional state financial support for a program of artificial reef construction to foster offshore fisheries, and for promotional activities to stimulate an increase in salt water sports fishing and tourism. The requested support involves a small additional appropriation and an allocation of gasoline tax revenues.

The reef construction proposal would utilize discarded automobile tires, primarily, in the construction of artificial reefs. Such a program would have the beneficial effect of providing a partial solution to the disposal of solid waste, such as automobile tires. Expertise and interest exists in this State through federal, state, local and private elements to conduct such a program. Offers providing partial funding have been made by private interests as well as municipal. The program could take the form of a matching funds operation between the federal and state government and the county. In

addition, funds from private sources could be incorporated for execution of the program. The benefit to the inland counties would be in the form of the disposal of a major solid waste (tires). The coastal counties would benefit also by enhancing their fishing potential and increased tourist trade.

In the reef construction phase of the program, it is proposed that cities such as Southport, Wilmington, Morehead City and Manteo be designated as staging areas. There the tires that are to be used in reef construction could be brought in and made ready for deposition at the reef site. A more thorough investigation of the reef sites would be made by Division of Commercial and Sports Fisheries personnel. Tentative sites already have been located based upon an investigation previously conducted by the Division (see attached map). Inquiries to areas within approximately twenty-five miles of the coast would be made to determine their interest in participating in a cost-sharing type program to move the discarded automobile tires from these counties to the staging sites mentioned above. Under the supervision of the Division of Commercial and Sports Fisheries, a system would be developed for movement of the tires from the staging areas to the reef sites and placed thereon. This could either be done by a cooperative arrangement with sports fishing clubs, county units of government, or through the use of fishing vessels manned by Division personnel. Marking of the reef sites with floating buoys would be the responsibility of either a specific fishing club or the Division of Commercial and Sports Fisheries.

Another possible approach to artificial reef development would involve the use of surplus "Liberty Ships" recently made available to the states for this purpose by act of Congress. A request has been made by the Governor's Office for a tentative reservation of ten ships for the use of this state, contingent on the availability of funds.



Lockwood Folly Inlet
near Caswell Beach
off Carolina Beach
off Wrightsville Beach
near Mason Inlet
near New Topsail Inlet

near New River Inlet
near Bogue Inlet
near Atlantic Beach
near Cape Lookout
near Drum Inlet
near Hatteras Inlet

near Oregon Inlet
north and south ends of Roanoke Island
near Ocracoke in Pamlico Sound
near Swanquarter
near Pamlico Beach
near Oriental

A second phase of the proposed program would be the promotion of the salt-water sports fishing industry, to increase the tourist industry that is based upon salt-water sports fishing along the coast. The State of Virginia, some eleven years ago, established a citation and awards program where awards are given for record sized fish and unusual fish. If a species of low population is involved, such as the blue marlin, a certificate of release is given. The weight of the fish is estimated and an affidavit sworn to by the boat captain or some other responsible person. Instead of bringing the trophy fish in and letting it lie on the dock to be discarded, as they are in most cases, the fish are returned to the water. This approach has worked quite well in Virginia. In North Carolina, the citation and awards program could be coupled with promotional support from the Division of Travel and Promotion.

Proposed Financing

It was proposed that the artificial reef portion of this program and the citation and awards portion of this program be funded through a combination of a small appropriation from the General Fund and the commitment of a portion of the State Motor Fuel Tax. $25,000 per year was requested in appropriations for each year of the 1973-75 biennium. In addition it was proposed that 1/8 of 1% of the net proceeds of the gasoline tax be permanently allocated and earmarked to the Division of Commercial and Sports Fisheries for support of sports fishing programs. This allocation would probably yield approximately $250,000 in net annual revenues.

The Outboard Boating Club of America estimates North Carolina boat owners pay over one million dollars in fuel taxes annually. It has been estimated by the Research Triangle Institute that of those individuals eligible to receive a rebate through the non-highway use provision of the law, a relatively

small percentage do so. As a result money approaching 3/4 million dollars accumulates in the Highway Commission's non-designated fund each year.

More than half of the motor boats used in North Carolina are used in coastal fishing waters. Thus, it appears that the requested allocation would probably average about one-half of the unclaimed revenues attributable to coastal fishing. To support the sports fishing program through the use of a small portion of motor fuel tax fund, it was urged, would therefore be simply returning monies to the area where they were generated to provide a needed service. The success of the Wildlife Resources Commission's program of service to the boating public through the use of funds they receive from the one-eighth of one per cent of the motor fuel tax substantiates this contention (i.e., in excess of one hundred boating access facilities have been constructed and maintained using a portion of these funds).

FINDINGS AND RECOMMENDATIONS

(1) The Commission finds that the proposed program of artificial reef construction and promotion of salt water sports fishing would bring great benefits, especially to the coastal region of North Carolina, by:

(a) Increasing salt water fish populations.

(b) Promoting increased tourism.

(c) Providing a partial solution to the problem of disposing of solid wastes, particularly discarded tires.

(2) The Commission recommends the approval of the funding requested to support the proposed programs, that is:

(a) A General Fund appropriation of $25,000 per year for each year of the 1973-75 biennium.

(b) The permanent allocation and earmarking of 1/8 of 1% of the net proceeds of the gasoline tax to the Division of Commercial and Sports Fisheries (DNER) to support its expanded activities.

To implement these recommendations, the Commission proposes the enactment of the bills set forth in Appendix C of this report. ("A bill to be entitled an Act to provide the Division of Commercial and Sports Fisheries, Department of Natural and Economic Resources, with partial net proceeds of gasoline taxes." Also, "A bill to be entitled an Act to provide appropriations to the Division of Commercial and Sports Fisheries, Department of Natural and Economic Resources, for the construction of artificial reefs."

The requested funding will enable the Division of Commercial and Sports Fisheries to strengthen its ervices to the people of North Carolina by maintaining a balanced program in support of sports fishing as well as commercial fishing. It would be simple justice to allocate a small share of the gasoline tax receipts to this program, thereby returning revenues to the area where they were generated.

APPENDIX A

SENATE RESOLUTION 961

GENERAL ASSEMBLY OF NORTH CAROLINA
1971 SESSION

S

I

SENATE RESOLUTION 961

Sponsors: Senators Allen and Patterson.

Referred to: Calendar Committee.

July 12

A RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE NEED FOR LEGISLATICN CONCERNING CERTAIN ENVIRONMENTAL PROBLEMS.

Be it resolved by the Senate:

Section 1. The Legislative Research Commission is hereby authorized and directed to study the need for legislation concerning the following subjects:

(1) Regulation of septic tank wastes;

(2) Prevention and abatement of oil pollution, including measures for prevention or cleanup of oil spills;

(3) Regulation and management of animal and poultry wastes;

(4) Prevention and abatement of pollution of the State's waters by nutrient waste, particularly compounds of phosphorus and nitrogen;

(5) Prevention and abatement of pollution of the State's waters by sedimentation and siltation, particularly that occurring from runoff of surface waters and from erosion;

(6) Recovery by agencies providing water services of damages from persons polluting the water supply;

(7) The reporting of industrial wastes and other wastes containing toxic materials to public waste disposal systems.

(8) Such other environmental protection or natural resource management subjects not specifically assigned by law or resolution to another Legislative Study Commission as the Commission may deem appropriate.

Sec. 2. With respect to the subjects enumerated in Section 1, the Commission shall examine and evaluate previous relevant experience in North Carolina, legislation and proposals in other jurisdictions, and the experience of other jurisdictions in applying such legislation. In connection with the studies directed by Section 1, the Commission, where desirable and feasible in its judgment, may include non-legislator members on the study subcommittees assigned these studies.

Sec. 3. The Commission shall report its findings and recommendations to the 1973 General Assembly.

Sec. 4. This resolution shall become effective upon its adoption.

APPENDIX B

LIST OF WITNESSES WHO APPEARED OR WERE INVITED

TO APPEAR AT HEARINGS OF ENVIRONMENTAL STUDIES COMMITTEE

CONCERNING SALT WATER FISHING

LEGISLATIVE RESEARCH COMMISSION

ENVIRONMENTAL STUDIES COMMITTEE

SALT WATER SPORTS FISHING PROGRAM

Witnesses Who Appeared at Committee Hearings

Andy Anderson
Rt. 1, Sneads Ferry, N.C.

W. K. Bradley
Rt. 1, Box 44, Morehead City, N.C.

Claire Bullington, President
N. C. Beach Buggy Association, Nags Head, N.C.

Ray Couch
Red Drum Tackle Shop, Buxton, N.C.

Oliver Davis
Highland Park, Beaufort, N.C.

Gil Dunn
Swans Point Marina, Sneads Ferry, N.C.

Lew Dunn, Executive Secretary
N. C. Fisheries Association, New Bern, N.C.

Alex Eley
Ocracoke, N.C.

Bill Hales
Triple Ess Pier, Atlantic Beach, N.C.

J. J. Harrington
Lewiston, N.C.

Meares Harriss, Chairman
New Hanover County Board of County Commissioners

Milton Heath, Associate Director
Institute of Government, Chapel Hill, N.C.

Dr. Gene Huntsman
National Marine Fisheries Service, Pivers Island, Beaufort, N.C.

Edgar Hurdle
Elizabeth City, N.C.

Vernon James
Weeksville, N.C.

Bob Johnson
Johnny Mercer's Fishing Pier, Wrightsville Beach, N.C.

J. W. Johnson, President
New Hanover Fishing Club

Richard Kepley, Mayor
Carolina Beach, N.C.

Denny Lawrence
Iron Steamer Pier, Morehead City, N.C.

Jerry Lewis, County Manager
Brunswick County

Representative Ronald Earl Mason
Carteret County

Jack McCann
Harkers Island, N.C.

Ken Newsom
Board of County Commissioners, Carteret County

Gary Oliver
P. O. Box 95, Nags Head, N.C.

Dick O'Neal
New Holland, N.C.

Lewis Orr
Topsaid Beach, N.C.

Bobby Owens
Board of County Commissioners, Dare County

Dr. Bob Poston, M.D.
Elizabeth City, N.C.

Capt. Otis Purifoy
Otis' Fish Market, Morehead City, N.C.

Bill Schultz, President
Kelly-Springfield Tire Co., Fayetteville, N.C.

Bob Simpson
Morehead City, N.C.

Dale Speicher, Secretary
Brunswick County Fishing Club

D. Livingston Stallings
New Bern, N.C.

Jackie Stephenson
Brunswick County Development Commission

Roy Stevens
Economic Dev. Council, Inc., Morehead City, N.C.

Dick Stone
National Marine Fisheries Service, Pivers Island, Beaufort, N.C.

Dan Stryk, Manager of Engineering
Kelly-Springfield Tire Company, Fayetteville, N.C.

Bump Styron
Morehead City Yacht Basin, Morehead City, N.C.

Jim Sykes
National Marine Fisheries Service, Pivers Island, Beaufort, N.C.

Bill Wade, Director
Outer Banks Chamber of Commerce

Stanford White, Representative
Manns Harbor, N.C.

Sidney Williams, President
Topsail Island Fishing Club

APPENDIX C

PROPOSED BILLS TO IMPLEMENT RECOMMENDATIONS

1. Gasoline Tax Allocation Bill

2. Appropriations Bill

Introduced by:

Short Title: Gas Tax Share for Coastal Resources

A BILL TO BE ENTITLED AN ACT TO PROVIDE THE DIVISION OF COMMERCIAL AND SPORTS FISHERIES, DEPARTMENT OF NATURAL AND ECONOMIC RESOURCES, WITH PARTIAL NET PROCEEDS OF GASOLINE TAXES.

The General Assembly of North Carolina does enact:

Section 1. Chapter 105 of the General Statutes of North Carolina is hereby amended by adding immediately following G. S. §105-446.3 a new section to be designated as G. S. §105-446.4 to read as follows:

"G. S. §105-446.4. Department of Natural and Economic Resources Entitled to Partial Net Proceeds of Gasoline Taxes.--(a) The North Carolina Department of Natural and Economic Resources shall receive one-eighth of one percent (1/8 of 1%) of the net proceeds of the taxes on motor fuels levied under §105-434 and the same shall be paid in accordance with the accounting periods as set forth under §105-446(1). As used in this section "net proceeds" shall mean the entire tax collected less one cent (1¢) per gallon nonrebatable tax required to be segregated by Chapter 1250 of the Session Laws of 1949, as amended by Chapter 46 of the Session Laws of 1965.

"(b) Payments made to the North Carolina Department of Natural and Economic Resources under the provisions of this section shall be earmarked for the Division of Commercial and Sports Fisheries and to be used by that Division for carrying on its duties."

Sec. 2. This act shall become effective upon ratification.

APPENDIX D

ANALYSIS OF PROPOSED BILLS

1. Gasoline Tax Allocation Bill

2. Appropriation Bill

ANALYSIS OF PROPOSED SALT WATER FISHING BILLS

1. "A bill to be entitled an Act to provide the Division of Commercial and Sports Fisheries, Department of Natural and Economic Resources, with partial net proceeds of gasoline taxes."

This bill would add a new section to the gasoline tax law, to be numbered G.S. 105-446.4. The effect of the bill is to direct that a small portion of the revenues from the state motor fuels tax--1/8 of 1% of the net proceeds of the tax--be permanently allocated and earmarked to the Division of Commercial and Sports Fisheries, Department of Natural and Economic Resources. The Division would use these revenues for carrying out its program responsibilities. The "motor fuels" or gasoline tax referred to is levied pursuant to G.S. 105-434, currently at the rate of 9¢ per gallon. In arriving at the "net proceeds" of the motor fuels tax, the 1¢ per gallon nonrebatable tax for secondary road bond repayment is to be disregarded.

A precedent for this bill exists in G.S. 105-446.2. Under that law the Wildlife Resources Commission is entitled to 1/8 of 1% of the net proceeds of the gasoline tax to help support its programs.

It is estimated that the 1/8 of 1% allocation to the Division of Commercial and Sports Fisheries would probably yield annual revenues on the order of $250,000 per year. Available estimates indicate that boat owners now pay over $1,000,000 annually in motor fuel taxes, and that almost $750,000 annually accumulates as a result of unclaimed boat tax refunds. (Under G.S. 105-446, gasoline tax refunds may be claimed on fuels not used in vehicles on the highways.) Studies indicate that about two-thirds of boats licensed in North Carolina are used in coastal

waters. Thus, it appears that the revenues earmarked to the Division of Commercial and Sports Fisheries by this bill would run much less than unclaimed coastal boat tax refunds, probably averaging about one-half of the unclaimed refunds.

2. "A bill to be entitled an Act to provide appropriations to the Division of Commercial and Sports Fisheries, Department of Natural and Economic Resources, for the Construction of Artificial Reefs."

This bill would appropriate $25,000 per year for each year of the 1973-75 biennium to the Division of Commercial and Sports Fisheries, Department of Natural and Economic Resources. These funds would be used to develop artificial reefs off the North Carolina coast to improve fishing in these waters.

LRC ENVIRONMENTAL STUDIES COMMITTEE

Land Use Planning Resolution

The Environmental Studies Committee today adopted the following resolution addressed to the Legislative Research Commission:

WHEREAS, the Environmental Studies Committee has received a report from State Planning Officer Ronald Scott concerning the role of State Government in land use planning and management; and

WHEREAS, the subject of land use planning is of vital concern to all of the citizens of North Carolina; and

WHEREAS, there is a need for further study of this subject to identify and elaborate alternative approaches to a state land use planning policy for consideration by the 1973 General Assembly; now, therefore be it:

RESOLVED, that the Legislative Research Commission is hereby requested to designate an appropriate working group to seek, during the period preceding the 1973 General Assembly, to identify and develop options for land use planning and management policies and programs.

/The Legislative Research Commission received and acknowledged the above resolution of its Committee on Environmental Problems, but decided that it would be inappropriate for an essentially study oriented agency as the Research Commission to designate a working group./

THE NORTH CAROLINA

ENVIRONMENTAL POLICY ACT

July, 1972

Governor Robert W. Scott

A report to the Legislative Research Commission on experiences with the Environmental Policy Act of 1971, with recommendations for refinement.

CONTENTS

A. MAJOR PROVISIONS OF THE ACT[1]

The North Carolina Environmental Policy Act of 1971 is a statement of policy concerning the environment of our State. It is patterned after Federal legislation of a like nature, the National Environmental Policy Act of 1969. While most provisions are similar in both acts, there also exist differences in adapting the intent of the legislation to the particular needs of our State.[2]

1. The most basic component of the Act is a statement of principles. It declares a general policy that the State shall conserve and protect natural resources and assure a continuing high quality of environment for future generations.

2. Any proposal for State actions concerning expenditures "significantly affecting the quality of the environment" is to include a statement setting forth:

   a. the environmental impact.
   b. significant unavoidable adverse effects.
   c. mitigation measures to reduce effects.
   d. alternatives to the proposed action.
   e. short-term uses of the environment versus maintenance of long-term productivity.
   f. any irreversible environmental changes.

   Such statements are to be prepared and reviewed in cooperation with other agencies and made available to the public. The Governor or a designated agency will decide whether to proceed with projects detrimental to environmental quality.

3. All State agencies are required to review present policies for any inconsistencies with this act, and propose to the Governor any needed changes by July 1, 1972.

4. Local governments are authorized (but not required) to require environmental impact statements for major private development projects of two acres or more in extent.

5. The Governor is required to report on experiences with this act by August 1, 1972. The act terminates on September 1, 1973, unless extended or made permanent by the General Assembly.

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[1]The full text of the Act is attached in Appendix A.

[2]The North Carolina Environmental Policy Act differs from the Federal Act in items numbered 2.f., 4, and 5.

B. A SUMMARY OF RECOMMENDED REFINEMENTS IN THE ACT

1. The Act, as written, requires that agency proposals for legislation affecting the environment contain an environmental impact statement. This is deemed impractical by agency representatives, and may be deleted.

2. The Act requires an analysis of the environmental impact of a proposed project. This is highly desirable, but is sometimes carried out late in the planning of a project. In order to receive the full benefit of an environmental analysis and to avoid wasting State resources on undesirable projects, an environmental analysis should be a part of the early planning stages of a project and a part of the decision to proceed with it.

3. Experiences with environmental impact analyses have shown that alternative means of achieving State objectives are not always understood and are often poorly articulated. Clearly stated alternatives should be required as part of any environmental analysis.

4. Procedures for planning of projects presently involve interested citizens only during the final review stages. This creates the potential for public opposition, if only because interested parties are not always kept informed. The involvement of interested citizenry should be sought in the early stages of project planning.

5. The Act, as written, requires environmental impact statements of all State programs. As a practical matter, it is the programs with regulatory powers that have the most significant impact upon the environment. These programs should include in their annual work programs a program plan which serves as an environmental impact analysis or guide explaining how decisions affecting the environment will be made.

6. The Act, as written, does not specifically explain how it is to be implemented. It should provide for the issuance of supplementary guidelines, as required for efficient administration of the Act.

7. The N. C. Environmental Policy Act has proved to be a valuable tool for ensuring that actions of State government reflect the aspirations of our people for an environment of high quality. It should be made a permanent policy for the years to come.

C. SUMMARY OF THE IMPLEMENTATION OF THE ACT

On February 9, 1972, the Governor circulated a memorandum to heads of all State agencies and institutions regarding the Environmental Policy Act of 1971. He designated the N. C. Council on State Goals and Policy as the agency to review, at its discretion, proposed projects with adverse environmental effects. This agency is to act as an intermediary to study such projects and take one of three alternative actions concerning the environmental impact statement:

(1) Accept the statement and approve implementation.
(2) Approve implementation subject to conditions.
(3) Submit the statement to the Governor for final action (such as disapproval).

By this means the Council aids the Governor in carrying out his role and represents the interests of the citizens of the State in the particular project.

The Secretary of the Department of Administration was asked to develop the necessary administrative mechanisms under the Act. Guidelines were issued to establish such procedures on February 18, 1972, to become effective March 1, 1972, and these may be summarized as follows:

1. Each agency will adopt its own internal procedures in accord with the general policy and procedures.

2. The decision on whether a project requires an environmental impact statement is in the hands of the project agency. The following considerations are relevant to the decision:

   (a) Future effects of the project as well as its immediate effects.
   (b) The total effects of a number of actions related to the project under consideration.
   (c) Potential for controversy over the project.
   (d) Conflict with any national standards.

3. Appropriate officials will be contacted early in the development of a project proposal.

4. Environmental impact statements are to contain a cover sheet and adequate data as well as the items listed in the Act.

5. Statements are routed to the State Clearinghouse and Information Center and thence to various interested parties for review.

6. Comments are collected within a 30 day period and

returned to the project agency and to the Goals and Policy Council. Seven days are allowed to decide whether the project will be reviewed by the Council.

7. Legislative proposals include reports for initiation by the reporting agency or for implementation by any other agency and require a statement.

8. Individual actions of regulatory agencies do not require a statement, but must conform to the policy.

9. Highway projects follow Federal criteria.

(The full text of the implementing guidelines are attached as Appendix B)

D. A DISCUSSION OF POINTS REQUIRING CLARIFICATION

To date, a number of training sessions and planning meetings have been held to discuss implementation of the Federal and State Environmental Policy Acts. A workshop on environmental impact statements was conducted by the Department of Natural and Economic Resources in Reidsville on April 17-19, 1972. This session was attended by fifty interested state and local officials who discussed, among other subjects, possible refinements in the N. C. Environmental Policy Act. Another conference was held in Greensboro to examine implications of the Federal and State Acts for programs of the Department of Housing and Urban Development which impact upon North Carolina. Finally, a subcommittee of the Interagency Task Force on Environmental and Land Use Planning, sponsored by the Department of Administration, studied the North Carolina Act during June and July. One result of this study was the recommendations of this report. Nevertheless, it is felt that further work is needed to fully implement the basic provisions of the North Carolina Environmental Policy Act.

The Project Review Process

One means of implementing the statement of policy in the Environmental Policy Act is through a review of construction projects to be financed by State government. This parallels the National Act, which uses this device as a primary tool for implementation. Unlike traditional regulatory tools, however, no fines or detailed strictures are involved. It is simply a process whereby the agency responsible for a project writes a description of the environmental impact of the project, and subjects this paper (an environmental impact statement) to a review by other agencies with expertise in the environment and to the scrutiny of the general public.

The Act does not require that all projects having an impact upon the environment be stopped; it merely requires that this impact be considered in any decision to proceed. It also requires that the full facts be made known, thereby giving agency officials and the Governor sufficient information to make an informed decision. If the impact upon the environment is too great to bear for a small amount of benefit to be derived, the State has an opportunity to retract an unsound investment that may be contrary to the best public interest.

Between January and May, 1972, only one project was reviewed under the project review provisions of the N. C. Environmental Policy Act. This may be compared to sixty-one projects that were reviewed under the National Act during the same period. The State Act affects very few projects in

North Carolina because most construction undertaken by State and local governments is financed in part by grant programs of the Federal government and must therefore be reviewed under the National Act. Only those projects which bear no Federal funds are reviewed solely under the State Act; in cases of combined State and Federal funding, the review conducted under the Federal Act also fulfills State requirements.

The first project reviewed under the State Act provides an example of how an environmental review process works. In March, 1972, Onslow County applied to the Board of Water and Air Resources for an 80% matching grant to dredge a canal to serve a boat manufacturing firm called Uniflite, Inc., which intended to locate near Swansboro, N. C. The project was justified on the basis that employment opportunities would be provided to a depressed area of the State.

The environmental impact statement reported no significant adverse affects associated with the project. Although the project impinged upon an estuary which helped produce fish life, the principle mitigating measure was to locate the site in a relatively non-productive section of the estuary. Alternative sites were not analyzed in this particular statement, but it was said that the selected site would have the least impact. In considering the relationship between short-term uses and long-term productivity, it was said that this type of industry was very desirable, that increased fish habitat might result, that few pollutants would be emitted from boat-building, and that the site would be developed in any case because it was already subdivided into lots. It was said that there were no irreversible or irretrievable environmental changes.

This statement was forwarded to the State Clearinghouse located in the Department of Administration on March 17. The Clearinghouse acts as coordinator in the review process. Copies were circulated to the Department of Archives and History to ensure that the contruction did not coincide with any site of historic or scientific (archaelogical) interest. The State Board of Health commented that no county water plan had been submitted that could serve this manufacturer and that a sewage pump-out facility would be needed at some point in the future. The State Highway Commission had no comment. The Department of Natural and Economic Resources replied that the statement and evaluation of alternatives was weak, but probably adequate. Copies of this statement were also circulated to the regional clearinghouse, the Neuse River Regional Planning Commission, to ensure that the project conformed to local and regional plans and policies. The response was affirmative.

Twice a month the State Clearinghouse publishes a list of environmental impact statements under review in a circular called The North Carolina Environmental Bulletin. This permits citizens or any interested party to obtain copies of such statements and comment upon them, in fulfillment of the Act.

In the case of the Uniflite canal, no comments were received from citizens. On the basis of the review comments received, no review was required by the N. C. Council on State Goals and Policy. The originating office was notified that the review showed the project statement to be satisfactory and the review was completed within 30 days after submission of the statement. While the primary purpose of review is to ensure that facts about the environmental impact of projects are properly documented, it has been found that this can be accomplished with reasonable speed and efficiency.

One issue has been raised concerning the timing of environmental impact analyses. In the current procedures for planning State-funded construction projects, the environmental analysis is sometimes viewed as an administrative barrier to be overcome and the environmental impact statement is tacked onto the project to pass muster during the last stages of planning. This was not exactly the case for the Uniflite canal project, but the State was actively seeking to locate this industry within its boundaries for about one year before an analysis of the environmental impact was formally set down on paper and reviewed. (The impact of various canal sites upon the estuary was actually determined early, but not written down or reviewed.)

By contrast, it is the intent and spirit of the Environmental Policy Act that environmental quality should be considered in the actual decision-making process, just as project costs and socio-economic benefits are considered and weighed. Once a project has advanced to its final stages, there is a degree of momentum and commitment in terms of resources already expended, so that an objective analysis is less feasible. For these reasons, it is recommended that the Act be refined so as to specify that the environmental impact analysis be documented in the earliest identifiable plan, report, or document.

A second and related issue is that of citizen participation. The review process permits citizens or parties affected by a project to participate by comments that go into the record. In the case of the Uniflite canal no comments were received, but some Federally sponsored actions have received many. The statement on the controversial New Hope dam, for example, received a large volume of pointed comments, some of which were answered in the final statement on the project by the Army Corps of Engineers. Such commentary is valuable to State government, for they arise from persons vitally interested and often from the "grass roots". If projects are to serve the people, the people should be involved.

The Act presently requires that an agency considering a project should obtain the views of other agencies in formulating the impact statement. In order to ensure that citizens' views can be heard, it is recommended that interested citizens also be consulted when environmental statements are

being formulated.

A third observation on the project review process is that alternatives to proposed projects are frequently not clearly stated and an analysis of the environmental impact of alternatives is usually weak. In the example of the Uniflite boat canal there were alternative sites that might have been chosen if such sites could have been acquired. However, at the time of the filing of an environmental impact statement, the State had foreclosed on the opportunity of alternative sites. If sound judgements are to be made in decision-making, alternative methods of achieving State objectives should be clearly stated. It is recommended that environmental impact statements be required to contain a clear statement of the objectives of proposed projects and alternative methods of achieving those objectives.

A fourth issue concerns the general capability to implement and properly administer the Act. There are many details about the project review process that must be instituted and revised as the need arises. For example, the approach to analyzing environmental impact is generally agreed upon, but differences in opinion arise among professionals on specific projects. It is desirable to have a set of guidelines for minimum components of an environmental impact statement, yet these procedures are new and in a state of development whereby the minimum elements are likely to change over the next few years. It would not be desirable to embody these administrative details in law, but there is a need for issuance of guidelines that can be frequently updated. It is recommended that this be specifically allowed in the Act.

One of the immediate uses of a guideline might be to help define what is meant by "projects significantly affecting the quality of the environment". Agency officials have the responsibility of determining which projects are significant enough to require an impact statement or analysis. It has been suggested that a guideline on this subject may be of considerable assistance. Other subjects could include methods of citizen participation and guidelines for local governments.

Legislation

The Environmental Policy Act, as currently written, requires an environmental impact statement for legislation proposed by agencies which significantly affect the quality of the environment. A similar measure is present in the National Act, but has been implemented only superficially.

It is the current view that the legislative process should not be burdened by a requirement of this nature. During the last General Assembly over 2000 bills were considered or enacted. While it is required that agencies and lawmakers consider environmental quality in their work, it is

deemed impractical to write detailed statements on all the proposals that may have environmental effects. It is suggested that this requirement be deleted.

Programs

The current Act requires that programs having a significant environmental effect should be covered by an environmental impact statement. In analyzing the need for such a requirement, it was found that many programs are of such nature that a statement is not warranted. Educational programs have environmental effects through their curricula, but it is clear that coverage of this nature was not intended. What was intended was an analysis of programs which may affect private or local projects of a physical nature which in turn have environmental effects. A grant program falls in this category, but this is adequately covered under the project review process for State-financed projects. Programs of technical assistance may have environmental effects indirectly, but it is unfeasible to control the advise offered by professionals. The programs that are of concern are those which regulate or control private or local projects or local actions, but which are not directly covered under project review processes.

In regulatory programs many decisions are made every year which affect the environment in small ways but which add up over a period of time to a very real and significant effect on environmental quality. Some examples might be the dredge and fill permit program of the Commercial and Sports Fisheries Division, the water quality regulatory program, and the fishing licensing program. It would be inefficient to analyze the environmental effects of individual actions within a program, but a "blanket statement" covering the entire program would represent a desirable component of a program plan.

The recommended method for implementing the "blanket statement" is to require a program plan as a part of the annual work program which contains an environmental statement. Programs are already required to be analyzed, but the wording of the present Act is not sufficiently clear or explicit to be understood. It should be made clear that an analysis of a program is concerned with essentially the same considerations as projects. The plan should include the rules and regulations associated with the program, as well as a guideline on how these rules will be applied, taking into account the environment in each case. Where appropriate, the program plan could use maps to show where various rules will be applied. In the case of the dredge and fill permit program, maps could be used to show where dredging is permitted or not permitted. The guideline could also be expressed as a set of criteria to be met in applying the rules and regulations uniformly and equitably. This program plan would not only help carry out the intent of the Environmental Policy Act, but would also help the legislature and the general public understand the nature of State regulatory programs.

Local Government

The Act allows local governments to require environmental impact statements for private developments, such as shopping centers and subdivisions that are two acres or more in size. To date, only Holden Beach has passed an ordinance with such a requirement, (see text of ordinance in Appendix C), but others are considering this action, such as Greensboro, Raleigh, and Chapel Hill among others. Until more experience is gained, no refinements are desirable.

E. TEXT OF RECOMMENDED REFINEMENTS IN THE NORTH CAROLINA ENVIRONMENTAL POLICY ACT

The following changes are recommended to implement the refinements discussed in Section D. of this report:

1. Change paragraph 113A-4 to read as follows (Changes are denoted by underlining):

G. S. 113A-4 Cooperation of agencies; reports; availability of information---The General Assembly authorizes and directs that, to the fullest extent possible:

(1) The policies, regulations, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this Article; and

(2) Any projects, or any plan or policy concerning projects, financed totally or in part by the State or to be approved by any State agency and which involve construction, building, modification of a landscape, or site, or any similar actions involving major changes in the environment shall be planned with full consideration for their impact upon the environment. The earliest identifiable plan, report, or other documentation of a project shall contain a detailed statement setting forth the following:

   (a) The major objectives of the proposal
   (b) Alternative methods for achieving these objectives
   (c) The environmental impact of the proposal and alternatives
   (d) Measures proposed to reduce the environmental impact
   (e) Any significant environmental effects which cannot be avoided should the project be implemented, including diminishment of non-renewable resources or other irreversible or irretrievable environmental changes
   (f) The relationship between the short-term uses of the environment involved in the proposed action and maintenance and enhancement of long-term productivity

Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law of special expertise with respect to any environmental impact involved, as well as with citizens, individuals, or representatives of organized groups with professed interests related to the environmental impact involved. Copies of such detailed statements and such comments shall be made available to the Governor and to such agencies as he may designate, in sufficient numbers to facilitate a review of the proposal through the existing agency review process. A copy of such detailed statements shall be made available to the public and to counties, municipalities, institutions and individuals upon request. The Governor or a designated agency may issue such supplementary guidelines as required for the expeditious administration

of the provisions of this Act.

(3) State programs involving regulation or control through permits or licenses over State, local, or private projects which, in the aggregate, have a significant environmental impact, shall present in their annual work program a program plan which delineates the rules and regulations of the program and a detailed guideline on how these rules and regulations shall be administered, including how officials shall make decisions under the program which take into consideration the environmental impact of those decisions, including items a-f of paragraph (2) above. Such plans may be changed at any time, but should be reviewed and updated at least biennially.

(4) Same as previous paragraph (3).

2. Delete paragraphs in previous Session law 1203, s. 11, referring to a report to the Legislative Research Commission and an expiration date.

APPENDIX A.

THE TEXT OF THE ENVIRONMENTAL POLICY ACT OF 1971

§ 113A-1. **Title.** — This Article shall be known as the North Carolina Environmental Policy Act of 1971. (1971, c. 1203, s. 1.)

Editor's Note. — Session Laws 1971, c. 1203, s. 11, provides: "In order to assist the General Assembly in evaluating the administration of this act and the desirability of extending the life of this act beyond the expiration date prescribed by Section 12, the Governor shall report to the Legislative Research Commission on or before August 1, 1972, concerning the experience in the administration of this act, together with his recommendations, if any, for amendment or extension of this act."

Session Laws 1971, c. 1203, s. 12, provides: "This act shall become effective on October 1, 1971, and shall remain in effect until September 1, 1973. No act or proceeding required or authorized under this act shall be initiated after September 1, 1973, but any such act or proceeding pending on said date shall be brought to its conclusion as if this act continued in effect."

§ 113A-2. **Purposes.**—The purposes of this Article are: To declare a State policy which will encourage the wise, productive, and beneficial use of the natural resources of the State without damage to the environment, maintain a healthy and pleasant environment, and preserve the natural beauty of the State; to encourage an educational program which will create a public awareness of our environment and its related programs; to require agencies of the State to consider and report upon environmental aspects and consequences of their actions involving the expenditure of public moneys; and to provide means to implement these purposes. (1971, c. 1203, s. 2.)

§ 113A-3. **Declaration of State environmental policy.** — The General Assembly of North Carolina, recognizing the profound influence of man's activity on the natural environment, and desiring, in its role as trustee for future generations, to assure that an environment of high quality will be maintained for the health and well-being of all, declares that it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance. (1971, c. 1203, s. 3.)

§ 113A-4. **Cooperation of agencies; reports; availability of information.**—The General Assembly authorizes and directs that, to the fullest extent possible:

(1) The policies, regulations, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this Article; and

(2) Any State agency shall include in every recommendation or report on proposals for legislation and actions involving expenditure of public moneys for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth the following:

a. The environmental impact of the proposed action;
b. Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;
c. Mitigation measures proposed to minimize the impact;
d. Alternatives to the proposed action;
e. The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity; and
f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the Director of the Department of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions and individuals, upon request.

(3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, the University Council on Marine Sciences, and the Institute of Government. (1971, c. 1203, s. 4.)

§ 113A-5. Review of agency actions involving major adverse changes or conflicts.—Whenever, in the judgment of the responsible State official, the information obtained in preparing the statement indicates that a major adverse change in the environment, or conflicts concerning alternative uses of available natural resources, would result from a specific program, project or action, and that an appropriate alternative cannot be developed, such information shall be presented to the Governor for review and final decision by him or by such agency as he may designate, in the exercise of the powers of the Governor. (1971, c. 1203, s. 5.)

§ 113A-6. Conformity of administrative procedures to State environmental policy.—All agencies of the State shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit or hinder full compliance with the purposes and provisions of this Article and shall propose to the Governor not later than July 1, 1972, such measures as may be necessary to bring their authority, regulations, policies and procedures into conformity with the intent, purposes and procedures set forth in this Article. (1971, c. 1203, s. 6.)

§ 113A-7. Other statutory obligations of agencies. — Nothing in this Article shall in any way affect nor detract from specific statutory obligations of any State agency

(1) To comply with criteria or standards of environmental quality or to perform other statutory obligations imposed upon it,
(2) To coordinate or consult with any other State agency or federal agency, or
(3) To act, or refrain from acting contingent upon the recommendations or certification of any other State agency or federal agency. (1971, c. 1203, s. 7.)

§ 113A-8. Major development projects. — The governing bodies of all cities, counties, and towns acting individually, or collectively, are hereby authorized to require any special-purpose unit of government and private developer of a major development project to submit detailed statements, as defined in G.S. 113A-4(2), of the impact of such projects. (1971, c. 1203, s. 8.)

§ **113A-9. Definitions.**—As used in this Article, unless the context indicates otherwise:

(1) The term "major development project" shall include but is not limited to shopping centers, subdivisions and other housing developments, and industrial and commercial projects, but shall not include any projects of less than two contiguous acres in extent.

(2) The term "special-purpose unit of government" includes any special district or public authority.

(3) The term "State agency" includes every department, agency, institution, public authority, board, commission, bureau, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include local governmental units or bodies such as cities, towns, other municipal corporations or political subdivisions of the State, county or city boards of education, other local special-purpose public districts, units or bodies of any kind, or private corporations created by act of the General Assembly, except in those instances where programs, projects and actions of local governmental units or bodies are subject to review, approval or licensing by State agencies in accordance with existing statutory authority, in which case local governmental units or bodies shall supply information which may be required by such State agencies for preparation of any environmental statement required by this Article.

(4) The term responsible "State official," as used in this Article, shall mean the Director, Commissioner, Secretary, Administrator or Chairman of the State agency having primary statutory authority for specific programs, projects or actions subject to this Article, or his authorized representative. (1971, c. 1203, s. 9.)

§ **113A-10. Provisions supplemental.**—The policies, obligations and provisions of this Article are supplementary to those set forth in existing authorizations of and statutory provisions applicable to State agencies and local governments. In those instances where a State agency is required to prepare an environmental statement, or comments thereon, under provisions of federal law, such statement or comments will meet the provisions of this Article. (1971, c. 1203, s. 10.)

§§ **113A-11 to 113A-20**: Reserved for future codification purposes.

APPENDIX B.

THE TEXT OF IMPLEMENTATION GUIDELINES

STATE OF NORTH CAROLINA
GOVERNOR'S OFFICE
RALEIGH 27611

ROBERT W. SCOTT
GOVERNOR

February 9, 1972

MEMORANDUM

TO : Heads of all State Agencies and Institutions

FROM : The Governor RWS

SUBJECT : The North Carolina Environmental Policy Act of 1971

Enclosed for your information is a copy of the "Environmental Policy Act of 1971" enacted by the 1971 General Assembly.

I am delegating to the North Carolina Council on State Goals and Policy, also authorized by the 1971 General Assembly, the authority to review environmental statements prepared in compliance with this Act, and to take on of the following actions relative to a proposal for legislation or administrative action:

1. Accept the environmental statement and authorize the responsible state official to implement the proposal.

2. Conditionally approve implementation of the proposal contingent upon: (a) commitment to satisfactory measures to mitigate environmental effects, or (b) modification of proposed actions.

3. Submit the environmental statement to the Governor for final disposition, along with a summary of the findings of the Council relative to: (a) the extent of adverse environmental effects anticipated; (b) the potential economic or other benefits to be derived through implementation of the proposal; and (c) a recommendation as to whether the responsible state official should be authorized to implement the proposal, or alternative action to accomplish the project purpose.

A period of 45 days will be allowed for action by the Council on State Goals and Policy after receipt of any environmental statement. The Council on State Goals and Policy will promptly notify the responsible state official of its action relative to any environmental statement, but in all cases within 45 days after receipt. In the event that an environmental statement is referred to the Governor, the responsible state official will be notified by the Governor's Office or the Council on State Goals and Policy when a decision is made.

The Secretary of the Department of Administration has been given the responsibility to develop and implement the necessary administrative procedures to assure compliance with the North Carolina Environmental Policy Act, including interagency review of environmental statements and transmittal of the statements and comments thereon to the Council on State Goals and Policy for action.

Enclosure

STATE OF NORTH CAROLINA
DEPARTMENT OF ADMINISTRATION
RALEIGH 27603

ROBERT W. SCOTT
GOVERNOR
W. L. TURNER
SECRETARY

February 18, 1972

MEMORANDUM

TO : Heads of all State Agencies and Institutions

FROM : W. L. Turner

SUBJECT : Implementation of the Environmental Policy Act of 1971

The Environmental Policy Act passed by the 1971 General Assembly requires all agencies of State government to "consider and report upon environmental aspects and consequences of their actions involving the expenditure of public monies." Section 4 of the Act requires agencies to submit an Environmental Impact Statement prior to recommending legislation or actions involving expenditure of public monies for projects and programs significantly affecting the environment of this State.

Therefore, pursuant to this legislation, all State agencies to the fullest extent possible, should direct their policies, plans, and programs so as to meet state environmental goals. The objective of Section 4 of the Environmental Policy Act and this directive is to build into the agency decision making process appropriate and careful consideration of the environmental aspects of proposed action and to assist agencies in implementing not only the letter, but also the spirit, of the Act.

Compliance with the National Environmental Policy Act of 1969 relative to any project to be financed wholly or in part by federal funds, and therefore requiring an environmental statement under the Council on Environmental Quality Guidelines, will constitute compliance with state law.

I. Policy

As early as possible and in all cases prior to decision State agencies should, in consultation with other appropriate state, federal, and local agencies, assess in detail the potential environmental impact of agency actions in order

that adverse effects are avoided, and environmental quality is maintained, restored or enhanced to the fullest extent practicable. In particular, alternative actions that will minimize adverse impact should be explored.

II. Procedure

Each agency should, in conformance with the broad general guidelines contained in this directive, establish its own formal procedures for:

A. Consulting with and taking account of the comments of appropriate state, local, and federal agencies, and the public if deemed appropriate.

B. Identifying those agency actions requiring environmental statements.

C. Designating the officials who are to be responsible for the statements.

D. Obtaining information required in their preparation.

The state official required to prepare an environmental statement will consult with any and all State agencies which have either jurisdiction by law or special expertise with respect to any environmental impact involved, prior to preparing the statement.

The environmental statement will include:

A. A completed title page (CIC Form # 4) as provided by the Clearinghouse and Information Center (copy attached).

B. A complete description of the legislation to be proposed or actions to be undertaken.

C. The total estimated cost of the proposal, sources of funds, and amounts anticipated from each source.

D. A separate section addressed to each of the six areas of concern set forth in the Act:

1) the environmental impact of the proposed action;
2) any significant adverse environmental effects which cannot be avoided should the proposal be implemented;
3) mitigation measures proposed to minimize the impact;
4) alternatives to the proposed action;
5) the relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity; and
6) any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

E. Specific data as needed to enable State agency personnel to evaluate the probable environmental effects of any proposed project.

Upon completion of the environmental statement, 12 copies will be transmitted to the Clearinghouse and Information Center in the State Planning Division, the designated State Clearinghouse for implementation of OMB Circular No. A-95. The State Clearinghouse will then refer copies to appropriate State agencies, and to the appropriate Regional Clearinghouse where one has been designated, for review and comment.

When this review is completed, normally within 30 days, copies of all comments received will be forwarded to the responsible state official who will take one of the following steps:

A. Approve the action and notify the State Clearinghouse of his intention to begin implementation, unless he is notified within seven days that the Council on State Goals and Policy staff will recommend CSGP review.

B. Forward to the State Clearinghouse a request for CSGP review of the proposed action to resolve any environmental issues which may have arisen during the earlier State agency review.

C. Submit a revised environmental statement to the State Clearinghouse for a follow-up Clearinghouse review.

The Council on State Goals and Policy staff will notify the responsible state official within seven days whether formal CSGP review is recommended. Formal review will be completed within 45 days, and the Council on State Goals and Policy will either authorize implementation or make a recommendation to the Governor.

The enclosed chart and step-by-step processing table illustrate more fully the sequence of processing actions.

III. Criteria

The following general criteria will be applied by the responsible state official in determining whether an impact statement is required for a proposal for legislation or agency action:

A. Actions "significantly affecting the quality of the environment of this State," should be determined by the agency with a view to the overall, cumulative impact of the action proposed (and of further actions contemplated). Even though localized in their impact, if a potential exists for affecting the environment in the future, a statement is to be prepared.

B. A complex project made up of several actions which have relatively insignificant individual impact may have significant cumulative effect and would therefore require a statement.

C. Proposed actions which are likely to be environmentally controversial should be covered by a statement regardless of the extent of impact.

D. "Reports or proposals for legislation" shall include:

1) agency recommendations on their own proposals for legislation, and
2) agency reports on legislation, the subject matter of which the agency has primary responsibility for, but which is initiated elsewhere.

E. Proposed action which involves inconsistency with any national standard relating to the environment; will have a detrimental impact on air or water quality or on ambient noise levels for adjoining areas; involves a possibility of contamination of a public water supply system; or will affect ground water, flooding, erosion or sedimentation; shall require a statement.

F. Normal regulatory activities of State agencies do not require impact statements, but they must be in conformance with an agency policy which meets the objectives of the Act.

Any assessment of "significant" effect obviously covers a broad range. Adverse effects will include, but not be limited to, those effects that degrade the quality of the environment, curtail the range of beneficial uses of the environment, observe short-term, to the disadvantage of long-term. environmental goals. Significant effects can also include actions which may have both beneficial and detrimental effects, even if, on balance, the agency believes that the effect will be beneficial.

The requirements for environmental statements on state financed highway projects will be determined by applying the criteria prescribed by FHWA for federally-assisted projects.

These criteria are subject to change at the discretion of the Council on State Goals and Policy.

IV. Effective Date

Any projects which are not actually under construction or under contract by March 1, 1972, will be subject to the environmental statement requirements. All agencies are asked to expedite the review of environmental statements for projects which might be delayed as a result of these requirements during the next few weeks. Planning for future legislative proposals or projects should allow adequate time for environmental statement preparation, review, and action by the Council on State Goals and Policy.

V. Agency Conformity

State agencies are reminded that Section 6 (113A-6 of the G. S.) of the North Carolina Environmental Policy Act requires all agencies to review their existing policies, procedures, and regulations for any conflicts with the spirit and provisions of the Environmental Policy Act. They are further required to report to the Governor no later than July 1, 1972, on steps they have taken to resolve such conflicts.

VI. Provisions Supplementary

The policies, obligations, and provisions of the North Carolina Environmental Policy Act are supplementary to existing legislation, and therefore do not derogate from the regulatory or supervisory authority of any State agency.

Enclosures

ENVIRONMENTAL STATEMENT
in compliance with
THE NORTH CAROLINA ENVIRONMENTAL POLICY ACT

Submitted by: _____
(State Department or Institution Initiating the Proposal)

Responsible State Official: _____
(Name and Title of Chief Executive Officer)

Kind of Proposal: Administrative Action ☐ Legislation ☐

Title of Proposal:

_____

Individual Responsible for Preparing Environmental Statement:

Name and Title _____

Administrative Unit _____

Address _____ Telephone No. _____

Agencies Consulted Prior to Preparing Statement:

_____

_____

_____

_____

_____

_____

_____

_____

_____

Date Submitted to Clearinghouse

_____ 19__

Responsible State Official

_____
(Signature)

THIS BLOCK FOR CLEARINGHOUSE USE

Date Received _____ 19__

File Number _____

Referred to CSGP Staff _____ 19__

_____
(No CSGP Review, or Review Requested)

Agency Action: _____ 19__

_____
(No CSGP Review, Review Requested, or Revised Statement)

CSGP Action: _____ 19__

_____
(Approval, Conditional, or Referred to Governor)

Governor's Action: _____ 19__

_____
(Approved or Disapproved)

CIC Form 4

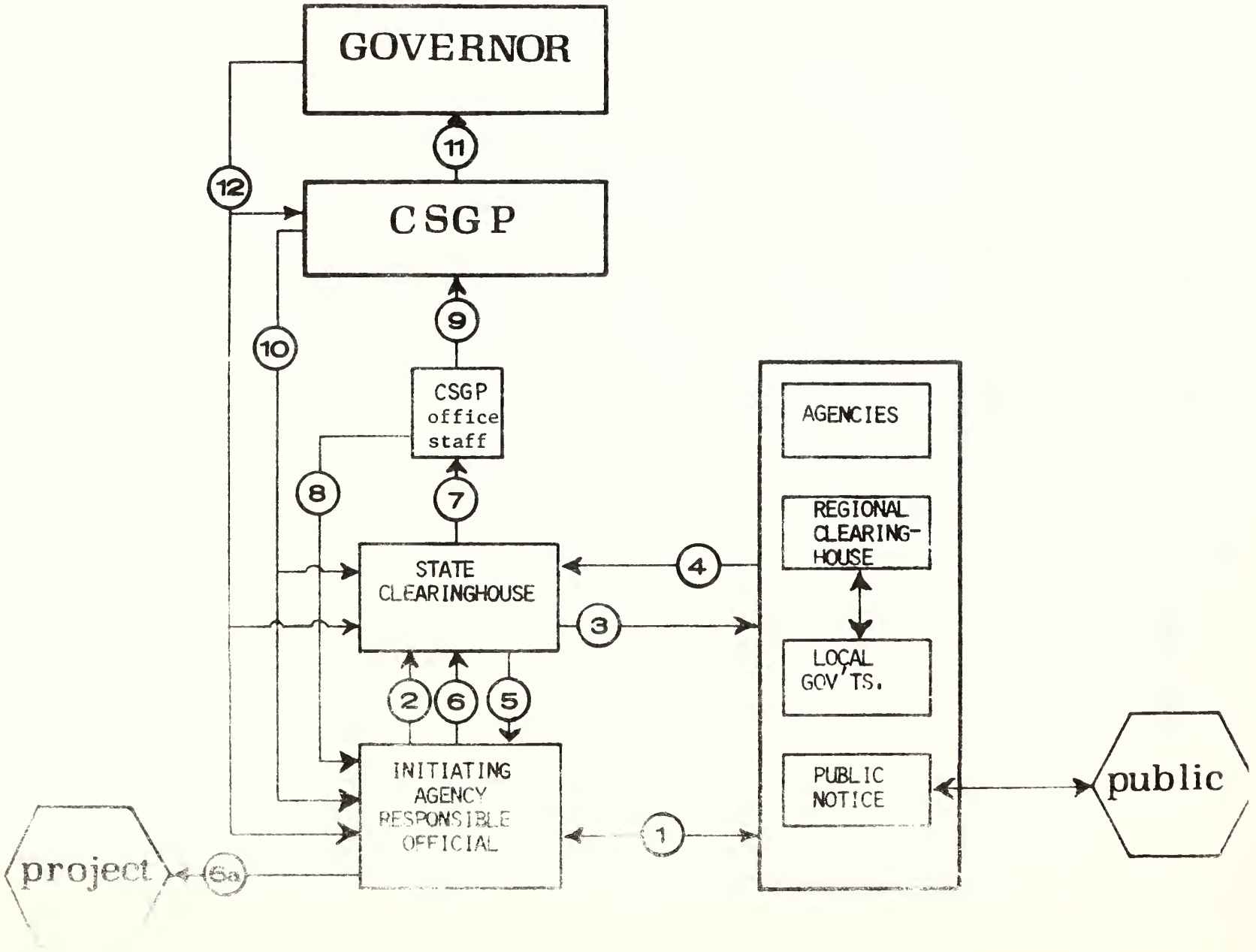
PROCESSING CHART
State Environmental Statements

ALLOW APPROXIMATELY 14 DAYS FOR STEPS 11 AND 12

ALLOW 45 DAYS FOR STEPS 7,8,9 AND 10

ALLOW 7 DAYS FOR STEPS 7 AND 8

ALLOW 30 DAYS FOR STEPS 3,4, AND 5



PROCESSING TABLE
STATE ENVIRONMENTAL STATEMENTS

1. The "responsible official" of the initiating agency consults informally with agencies (having "jurisdiction or expertise"), local governments, and gives public notice if advisable.

2. If the official determines "significant effect," he prepares an environmental statement in conformance with his agency guidelines and transmits it to the State Clearinghouse.

3. Clearinghouse disseminates the statement to

   A. Agencies with jurisdiction or expertise.
   B. Regional Clearinghouse for review and concurrence by local governments and public notice.
   C. Local governments which are to be contacted directly.
   D. Public by summarizing the statements in a bimonthly publication available on request.

4. State Clearinghouse receives comments from agencies, regional clearinghouses, local governments which have been contacted directly and comments from the public.

5. State Clearinghouse summarizes these comments and returns one copy to the initiating agency.

   Allow 30 days for steps 3, 4, and 5.

6. The responsible official makes a determination (based on comments received) to either

   A. Approve the project and notify the State Clearinghouse of intention to take action to begin if further review is not recommended by CSGP staff within seven days.
   B. Forward to State Clearinghouse a request for CSGP review of the project to resolve any environmental issues which may have arisen during the earlier agency review.
   C. Submit a revised statement to the State Clearinghouse which will be processed through steps 3, 4, 5, and 6.

7. Based on action taken in step 6, the State Clearinghouse

A. Forwards the original statement to CSGP along with the initiating agency's intent to "go ahead" with the project.
B. Forwards the original statement to CSGP along with the initiating agency's "request for CSGP review."
C. Forwards the revised statement to CSGP along with the initiating agency's intention to "go ahead" or "request CSGP review."
D. Submits the revised statement for processing through steps 3, 4, 5, and 6.

8. CSGP staff perfunctorily screens all statements received from the State Clearinghouse and (a) notifies the responsible official within seven days of intent to request CSGP review, or (b) takes no action thereby indicating that no Council review will be requested.

Allow seven days for steps 7 and 8.

9. CSGP, at a regular meeting, receives and reviews statements according to the following priority:

1st - those projects for which review has been requested by the initiating agency and CSGP staff.

2nd - those review requests received from initiating agencies but not recommended for review by CSGP staff.

3rd - recommendations received from CSGP staff but without agency requests for review.

10. CSGP takes one of its three action alternatives and notifies the State Clearinghouse and the initiating agency.

Allow 45 days from the time CSGP office receives the statement until the Council transmits its decision, steps 7, 8, 9, and 10.

11. CSGP submits to the Governor those projects recommended for disapproval.

12. The Governor makes the final decision and sends notification to CSGP, the State Clearinghouse, and the initiating agency.

Allow approximately 14 days for this process, steps 11 and 12.

APPENDIX C.

HOLDEN BEACH ORDINANCE

HOLDEN BEACH ORDINANCE REQUIRING ENVIRONMENTAL IMPACT STATEMENT

WHEREAS the North Carolina General Assembly has authorized the governing bodies of all cities, counties, and towns acting individually, or collectively, to require any special-purpose unit of government or private developer of a major development project to submit detailed statements reflecting the environmental impact of such projects; NOW THEREFORE, the City Council of Holden Beach hereby ordains pursuant to G.S. 113A-8 that any special-purpose unit of government or major developer of any major development project significantly affecting the quality of the environment of this State submit a detailed statement setting forth the following:

(a) The environmental impact of the proposed action;

(b) Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;

(c) Mitigation measures proposed to minimize the impact;

(d) Alternatives to the proposed action known to the person submitting the statement, including;

(i) alternative uses of the land in question, and

(ii) alternative ways (involving other lands) to achieve the purposes of the proposed project;

(e) The relationship between the short-term uses of the environment involved in the proposed action, and the maintenance and enhancement of long-term productivity; and

(f) Any irreversible and irretrievable environmental changes which would be involved in the proposed action, should it be implemented.

At least ten (10) copies of the environmental impact statement shall be filed with the Town Clerk for review by the Town Council and transmittal to affected State and Federal Agencies. One (1) copy shall be placed in a file at the Office of the Town Clerk and shall be made available for inspection by the public.

Guidelines relating to the preparation of environmental impact statements under G.S. 113A-8 shall apply in the preparation of the statement required by this ordinance. Specifically and without limitation of other existing or future guidelines, the guidelines set forth in Schedule 1 of this ordinance shall apply to environmental impact statements required by this ordinance. (The material set forth in Schedule 1 is included for the convenience and information of persons submitting environmental impact statements.)

DEFINITIONS

The term "major development project" includes, without limitation, shopping centers, subdivisions and other housing developments, industrial and commercial projects, and projects involving dredging or filling, and any project which involves any change (by bulldozing, cutting of trees or vegetation, or otherwise) of more than 50% of the surface area of any proposed project, but shall not include any projects of less than two contiguous acres in extent.

A "project significantly affecting the quality of the environment" includes (without limitation) projects that may have a detrimental impact on air or water quality or on ambient noise levels for adjoining areas; that involve a possibility of contamination of public or domestic water supply system or source; or will affect ground water, flooding, erosion or sedimentation.

ENFORCEMENT

Construction of any major development project shall not be commenced until sixty (60) days subsequent to the filing of the environmental impact statement. Within said 60-day period the Town Council shall nold a public hearing on the environmental impact statement. Notice of the hearing shall be published in a newspaper of general circulation within the area no less than one week prior to the date of the hearing. The Building Inspector shall not issue any building permit or certificate of occupancy or compliance for any structure within a major development project except upon a finding by the Town Council that the requirements of this ordinance have been met. Nor shall any approval, permit, license, certificate or filing provided for by any zoning ordinance, subdivision control ordinance or other land use control ordinance be granted or allowed by the Town Council, the Building Inspector or any other town official or body except upon a finding by the Town Council that the requirements of this ordinance have been met.

EFFECTIVE DATE

This ordinance shall be in full force and effect from and after the date of its adoption by the Town Council of Holden Beach, North Carolina, this the _____ day of _____, 1972.

ATTEST:

_____ _____

Town Clerk Lucille C. Burks Mayor John P. Holden