This Bill Analysis reflects the contents of the bill as it was presented in committee.

SENATE BILL 469:
Amend Environmental Laws - 4.

2017-2018 General Assembly

Committee:	House Environment	**Date:**	June 22, 2017
Introduced by:	Sen. Brown	**Prepared by:**	Jeff Hudson
Analysis of:	PCS to Second Edition S469-CSSB-28		Jennifer McGinnis Committee Counsel

OVERVIEW: The Proposed Committee Substitute (PCS) for Senate Bill 469 would amend various environmental and natural resources laws.

CURRENT LAW, BACKGROUND, AND BILL ANALYSIS:

PRESERVE MUNICIPAL SOLID WASTE CAPACITY

Section 1 of the PCS would prohibit units of local government from enacting ordinances to prohibit the disposal of C&D debris in a C&D landfill.

C&D waste or debris is defined under the statutes to mean "solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land clearing debris or yard debris." Such debris may be disposed in C&D landfills, municipal solid waste landfills, and portions of the C&D waste stream, including clean wood and clean brick, block, etc., could be eligible for disposal in a land clearing and inert debris landfill. In addition, demolition debris from the decommissioning of manufacturing buildings may be disposed of on the same site as the decommissioned buildings if certain requirements are met.

The statutes currently authorize units of local government to, by ordinance, require that all solid waste generated within the geographic area and placed in the waste stream for disposal, be delivered to a permitted solid waste management facility or facilities serving the geographic area. Such ordinances are often called "flow control" ordinances, which are provisions that allow state and local governments to designate the places where solid waste must be taken for processing, treatment, or disposal. Flow controls ordinances are tools sometimes used by local governments to plan and fund solid waste management systems.

WASTEWATER MODIFICATIONS

Sections 2 through 2.2 would make various changes to the statutes governing wastewater systems, including:

- Changes to the definition of "repair" to exclude replacement of damaged distribution device by an onsite wastewater contractor, thereby omitting the potential need for a repair permit in some jurisdictions.
- Modification of language governing the issuance of operation permits for wastewater systems, by:

- Deleting a factor on which a local health department must base their determination as to whether to issue a permit, specifically, whether the system is capable of being operated in accordance with the conditions of the improvement permit, the rules, the Article, and any conditions to be imposed in the operation permit.
- Adding language that would require issuance of an operation permit upon the written release of an on-site wastewater contractor certifying that the system has been installed or repaired as per the conditions of the improvement permit and authorization for wastewater system construction (in addition to the language under existing law that requires a determination that the system is properly installed).
- Adding language that subsequent findings or interpretation by a local health department of rules adopted by a local board of health outside the initial site evaluation and conditions of the initial improvement permit and authorization for wastewater system construction shall not be used to deny issuance of the operation permit.

- Require permitting authorities to approve evaluations of soil conditions and site features by a licensed soil scientist or licensed geologist for the production, design, and construction features of a new proposed wastewater system or a repair project, if the evaluations meet the requirements of the governing Article, and the licensed soil scientist or licensed geologist maintains an errors and omissions liability insurance policy in an amount commensurate with the risk.
- Require local boards of health to use historical experience to establish modifications or additions to rules established by the Commission for Public Health (CPH).
- Strike language that requires that rules of local boards of health be at least as stringent as State rules, and strikes language requiring their rules to be necessary to safeguard public health.
- Prohibit rules of the CPH and a local board of health from: (i) establishing limitations on depths to suitable, provisionally suitable, or unsuitable soils or saprolite, or limitations based solely on gallons per day; or (ii) requiring sufficient available space for a replacement wastewater system of 480 gallons per day or less of domestic wastewater. The PCS also includes a provision requiring the CPH to modify its current rules governing these matters accordingly.

REPORT ON RULES FOR REMEDIATION OF CERTAIN UNDERGROUND STORAGE TANKS

Section 3 would direct the Environmental Management Commission (EMC) to adopt temporary rules implementing a provision in the 2015 Appropriations Act no later than October 1, 2017, and provide that the temporary rules will remain in effect until permanent rules are adopted, and have become effective. The provision would also require that the EMC report on the status of the rulemaking to the Fiscal Research Division and the chairs of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later than December 31, 2017.

The provision in the 2015 Appropriations Act directed the Department to amend several rules pertaining to risk-based assessment and corrective action for USTs to do the following:

"(1) Not require a responsible party to take immediate action or initial abatement actions with respect to a discharge or release from a noncommercial underground storage tank until such time as the Department has classified the risk posed by the discharge or release, except for those actions determined by the Department to be necessary to protect public health, safety, and welfare and the environment, and to mitigate any fire, explosion, or vapor hazard.

(2) Notify the responsible party that no cleanup, no further cleanup, or no further action will be required by the Department if the risk posed by a discharge or release from a

noncommercial underground storage tank is determined by the Department to be low risk, without requiring soil remediation pursuant to 15A NCAC 02L .0408. The Department may, however, reclassify the risk if it later determines that the discharge or release poses an unacceptable risk or a potentially unacceptable risk to human health or the environment."

SHELLFISH ENTERPRISE AREAS

Section 4 would authorize the Marine Fisheries Commission (MFC) to adopt rules to provide for advanced siting and preapprovals of shellfish aquaculture leases.

MARINE FISHERIES CLARIFYING CHANGES

Section 5 would make the following changes to State law on shellfish aquaculture:

- It is unlawful to transplant shellfish from public grounds or permitted aquaculture operations utilizing waters in the prohibited classification to private beds.
- It is lawful to transplant shellfish in the seed stage from permitted aquaculture operations that use waters in the prohibited, restricted, or conditionally approved classification unless the Secretary determines that it would present a risk to public health.
- It is lawful to sell fish reared in a hatchery or aquaculture operation to the holder of an Aquaculture Operation Permit, an Underdock Culture Permit, or a shellfish cultivation lease.

Current State law on shellfish aquaculture provides:

- It is unlawful to transplant shellfish from public grounds or permitted aquaculture operations utilizing waters in the restricted or conditionally approved classification to private beds.
- It is lawful to transplant shellfish in the seed stage from permitted aquaculture operations that use waters in the restricted or conditionally approved classification to private beds as approved by the Secretary of Environmental Quality (Secretary).
- It is lawful to sell oysters or clams from a hatchery or aquaculture operation to the holder of an Aquaculture Operation Permit, an Underdock Culture Permit, or a shellfish cultivation lease.

RIVER HERRING FISHERIES MANAGEMENT

Section 6 would direct the Division of Marine Fisheries (DMF) to review its Fishery Management Plan (FMP) for River Herring regarding the validity and scientific basis for the status of the species as overfished. If DMF determines that it does not have an adequate scientific basis to review the status of the species, then DMF should develop costs estimates for the restoration of spawning and nursery area surveys and age composition work for all coastal streams within the State that historically contained significant river herring fisheries.

STATE PARTICIPATION IN SITING OF ATLANTIC INTRACOASTAL WATERWAY DREDGED MATERIAL DISPOSAL EASEMENTS

Section 7 would authorize the Division of Water Resources of the Department of Environmental Quality and the State Property Office to negotiate an agreement with appropriate agencies of the federal government for the State to assume responsibility for acquiring dredged material easement sites appropriate for maintenance dredging of the Atlantic Intracoastal Waterway between Beaufort Inlet and the border with the Commonwealth of Virginia in exchange for the reduction in size and possible change in location of dredged material disposal easement sites currently held by the federal government. The agreement shall provide for the federal government to relinquish certain dredged material disposal

easements that are excess to maintenance project needs in exchange for the acquisition and furnishing to the federal government other easements that are sited and permitted by the Division and acquired by the State Property Office under its powers of condemnation or otherwise using such funds as may be appropriated by the General Assembly from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund (Fund). Section 7 modifies the statutory permissible uses of the Fund for this purpose.

ESTABLISH COASTAL STORM DAMAGE MITIGATION FUND

Section 8 would establish the Coastal Storm Damage Mitigation Fund that would consist of General Fund appropriations, gifts, grants, devises, monies from non-State entities, and any other revenues allocated to the Fund by the General Assembly. Revenue in the Fund could only be used for beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to ocean beaches and dune systems. The Fund could not be used for any project to construct, repair, or maintain a terminal groin or other permanent erosion control structure. Funding for projects in tier one areas would require a non-State match of one dollar for every three dollars from the Fund and funding for projects not located in tier one areas would require a non-State match of one dollar for every two dollars from the Fund. Non-State entities that contribute to the Fund may request the return of funds that haven't been spent or encumbered within two years of receipt by the Fund.

EFFECTIVE DATE

Except as otherwise provided, the bill would become effective when it becomes law.