

THE WAR ON WETLANDS

Regulatory Reform bill is a goodie bag for polluters and coastal developers

BY AARON LAKE SMITH

YOU'VE PROBABLY SEEN THEM on your way to the beach: the marshy bogs, micro-ecosystems for frogs, snakes and native coastal fauna, hidden behind the interstate tree line. These are isolated wetlands, and the majority of them are less than an acre in size. And now they are in danger.

Last week state Republicans passed an eleventh-hour regulatory reform bill removing environmental protections from isolated wetlands that are under one acre in size. That equates to 94 percent of them in the eastern part of the state.

This is significant, given the larger environmental context. More than half of North Carolina's wetlands have already been destroyed, according to the Environmental Protection Agency, placing it on the list of the top six states where these crucial habitats have been systematically bulldozed, developed and paved over in the past 40 years.

Wetlands are a vital part of Eastern North Carolina's ecosystem.

"They store a lot of water and reduce flooding during tropical storms. They provide habitat for endangered species. They recharge the groundwater for drinking water," said John Dorney, a 28-year veteran of North Carolina's Division of Water Quality, and now a scientist for Moffatt and Nichol.

In 2001, Dorney helped establish a DENR rule that protected eastern wetlands over a third of an acre. It required developers who wanted to fill in the wetlands to get a permit from the N.C. Department of Environment and Natural Resources and mitigate the damage, often financially.

To developers (and the lawmakers who cater to them) wetlands on their coastal property were an expensive nuisance. Under Dorney's rule, now undone by the recent legislative action, developers had to mitigate wetlands: Preserving or creating two acres of wetlands for every one that was destroyed. That's expensive. Wetland mitigation can run \$50,000 an acre.

This recent change is part of the McCrory administration's campaign to make



exploiting natural resources hassle-free for utilities, large corporations and good old boy developers. Last September, the Division of Water Resources rejected more than \$600,000 in federal grants that could have been used to study the effects of fracking on wetlands ecosystems. This March, DENR eliminated 14 staff positions in the Division of Water Quality streams and wetlands restoration program.

The regulatory reform bill relaxed regulations for polluters. Buried among the casual provisions about permitting community colleges to teach classes on beer brewing are adjustments that rig the game in favor of developers at the expense of environmentalists and citizens:

- A provision that allows groups to petition for speed-limit waivers in North Carolina's state parks. This seems benign, but is the gateway drug toward opening the parks for business—we all know how McCrory loves a good *public-private partnership*—the back-door way to privatization. This tidbit was inserted as a gift to McCrory campaign donors who want to have a vintage car event on Pilot Mountain without having to drive 25 mph.

- Stormwater pollution is a direct result of development. It is also the primary cause

of pollution in North Carolina's waterways. Under the previous rules, older coastal developments were grandfathered in, and not expected to have stormwater mitigation systems.

But a provision in last week's bill further erodes the regulation. Now new developments *adjacent* to these older developments don't have to manage their runoff. Once again, this allows coastal developers to cut costs at the expense of the environment. When runoff is uncontrolled, more fertilizers, pesticides, toxic sediments, and slurry can flow into the rivers, creeks and lakes that we swim in and drink from.

"This defeats the whole purpose of having stormwater protections for new development," said Derb Carter, director of the Southern Environmental Law Center.

- North Carolina's 1973 Coastal Area Management Act tried to organize development in line with environmental preservation. Developers are expected to file for CAMA permits before beginning construction. If an organization or an individual files a legal challenge alleging the development could harm the environment, under the previous rule, construction halted until the issue was resolved. However, the new rule shifts the burden

**Carver's Creek cypress wetlands,
Spring Lake, N.C.** PHOTO COURTESY OF

CREATIVE COMMONS

of proof to the person or organization filing the CAMA challenge. Meanwhile, development can proceed as planned.

- The Rose Acre Farm lawsuits: Buried inside the bill, which Gov. McCrory could sign in the next few weeks, is a two-line clarification on “discharge of waste” with serious implications for industrial farms in North Carolina.

In 2012, as a gift to big ag that defied the federal Clean Water Act, North Carolina decided that airborne pollution would not be considered “discharge” or “waste.” The poultry industry lobbied for the bill as a way to avoid lawsuits against their Concentrated Animal Feeding Operations, CAFOs for short.

This relaxation of airborne pollution rules leads back to Rose Acre Farms in Hyde County. A self-described “family-owned” farm “with small-town values” Rose Acre is the largest CAFO in North Carolina, a massive industrial egg-laying facility housing 3.5 million hens.

Rose Acre’s pit fans discharge the feathers, feed and pollutants from these 3.5 million birds into nearby streams and rivers. Lawsuits over this airborne discharge have been ongoing in several courts since 2010, but this buried provision gives polluters a G-pass.

There are a couple of upsides to the bill. It does establish a 10,000-acre marine shellfish sanctuary on the Pamlico Sound. It makes poaching rare Venus flytraps a felony and eases oyster and mussel permitting.

But it’s hardly a fair trade.

“The public shouldn’t have to swallow the poison pill to get the good things in this bill,” Cassie Gavin, director of Government Affairs at the Sierra Club, said. “There’s no need to repeal decades worth of protections to get these things through.” ▲

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