



Chapter One

In 2011, a state legislator did something that foreshadowed the coming relentless attacks on North Carolina's longstanding air, water, and land protections. A window in his office overlooked the building which housed the Department of Environment and Natural Resources, now known as the Department of Environmental Quality, the state agency charged with protecting and conserving North Carolina's air, water, and land.

The legislator drew a bullseye on the window with the Department of Environment and Natural Resources in the center.

In doing so, he created a perfect - and unforgettable - warning of things to come. In 2013, the administration brought the artist on board, and made that legislator an assistant secretary at the Department of Environment and Natural Resources, despite his clear disdain for environmental safeguards.

Since 2011, when the current majority took control of the North Carolina General Assembly, every legislative session has seen new laws and amendments to existing laws that have eroded and dismantled important protections for the state's environment. North Carolina's water, air, land, energy, and coastal policies have been assaulted by the state's current leadership. The results have been catastrophic.

During these six legislative sessions, the legislature has targeted many other rights and needs that North Carolina citizens may have taken for granted, and people might have lost track of the damage wrought by six years of dismantling the state's environmental protections. On the heels of the 2016 legislative short session, the Southern Environmental Law Center here provides an overview of six years' worth of harm to the state's environment and the programs that protect it. We will then recount how the legislature and the executive branch have mistreated our water, coast, air, and land.

Consider.

North Carolina has a strong history of protecting our natural resources for the use and enjoyment of all citizens. Indeed, Article XIV Section 5 of the North Carolina Constitution states "[i]t shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry."

In 1973, Governor Jim Holshouser worked with the legislature to enact one of the nation's first coastal management programs to protect fragile resources on the state's coastline. Among its various provisions, the law prohibited building sea walls and other hardened structures on our coast, to ensure that the public and future generations could continue to enjoy the beaches. These

resources, after all, belong to all North Carolinians and not only to the private interests the seawalls are intended to protect.

In his last term, Governor Jim Martin successfully opposed drilling for oil and gas off of the Outer Banks, and the legislature repealed state laws prohibiting North Carolina agencies from adopting environmental regulations that are more stringent than federal regulations. The repeal of these laws enabled the state to adopt environmental standards that reflect the state's unique circumstances without being handcuffed to minimal federal standards that may be inadequate to address North Carolina's particular needs.

In 1997, after a hog farm spilled 25 million gallons of manure into the New River, killing 10 million fish and contaminating hundreds of thousands of acres of coastal shellfish habitat, Governor Jim Hunt and the legislature imposed a moratorium on new factory hog farms housing over 250 hogs and employing sprayfields and lagoons. In 2003, Governor Mike Easley signed a bill extending that important moratorium to 2007. While other states wondered what to do about water problems caused by large confined animal feeding operations, North Carolina took action.

In 1999, former Governor Jim Hunt and the legislature launched the "million acre initiative" to acquire and protect an additional one million acres of open space, parks, farmland, forests, and other natural areas, to provide recreational opportunities to the state's growing population and to preserve important parts of the state's natural heritage. By 2009, the state had acquired an additional 683,460 acres of parks, gamelands, and other lands for the public to enjoy.

In collaboration with former Governor Easley, the legislature in 2002 enacted the Clean Smokestacks Act to improve air quality by substantially reducing emissions of pollutants from coal-fired power plants. This not only helped clear the air across the state, but also allowed the state to

pursue further reductions in air pollution from upwind states, which are essential to clean air in the mountains that are so important to our tourism industry. In 2007, the legislature passed the Renewable Energy and Energy Efficiency Portfolio Standard, which requires utilities operating in the state to derive 12.5 percent of their energy from renewable sources - like wind or solar power - by 2021. It also passed a 35 percent tax credit for renewable energy investment. These policies advanced North Carolina to third in the country in solar energy development and created thousands of jobs for its citizens.

For decades, North Carolina leaders recognized that protecting the state's environment and natural resources is important to economic development and the quality of life of the citizens of the state. Other states admired North Carolina's ability to maintain a vibrant economy while protecting the health of its citizens and ecosystem.

Now, consider this.

Basic Environmental Protections

By 2013, the legislature had [cut the budget](#) of the Department of Environment and Natural Resources (now the Department of Environmental Quality) [by 40 percent](#), greatly diminishing its capacity to protect the state's air, water, and land. In 2013, the new state administration even changed the mission of the agency to clarify that it is a "customer service" agency where science contains a "diversity of perspectives," and employees were admonished not to be "obstacles of resistance" in carrying out their charge to protect the environment. With each passing week and each new policy, it becomes clearer that the customers the Department of Environmental Quality serves are the polluters, not the citizens of North Carolina.

In 2011, the legislature, reviving failed policies of the past, enacted a law prohibiting state agencies from adopting regulations to protect the environment that are more stringent than minimal federal regulations. It also targeted all regulations, including environmental regulations, for [automatic repeal](#) absent legislative action to retain them. It has [prohibited local governments](#) from regulating any aspect of fracking in their borders. In [2015](#) the legislature amended one of North Carolina's oldest environmental laws, the State Environmental Policy Act, to exempt from environmental review any taxpayer funded state projects that cost less than \$10 million, regardless of their potential environmental impact. This revision will eliminate environmental review of most state projects. It has removed scientific, health, and nonprofit seats on environmental boards and [replaced them](#) with industry and professional seats. It has limited [citizens' right to challenge](#) permits to pollute.

Our rivers and other waters

Our rivers supply drinking water, provide habitat for our wildlife, and draw tourists, fishermen, hunters, and recreational users from all over the world. Despite this, our leaders have rolled back regulations and let the pollution pour in. In early 2013, newly appointed regulators at the Department of Environment and Natural Resources tried to block citizens from enforcing the Clean Water Act at Duke Energy's poorly maintained coal ash pits, and [consulted with Duke on how "it wanted to be sued"](#) on violations stemming therefrom, resulting in a preposterous proposed settlement of \$99,100 for two sites that would have required no cleanup action on the part of the largest energy company in the nation. Then the 2014 Dan River coal ash spill occurred when a poorly maintained corrugated metal pipe failed, dumping millions of gallons of coal ash and polluted wastewater into the Dan River. After the spill, and following thousands of public comments opposing the deal, the Department of Environment and Natural Resources withdrew its proposed \$99,100 sweetheart deal. By contrast, when the federal government stepped in and criminally

prosecuted Duke Energy companies for its crimes under the Clean Water Act, it secured 18 guilty pleas to nine crimes committed across North Carolina and \$102 million in penalties.

In 2014, the legislature passed a law creating the legislatively appointed Coal Ash Management Commission to decide if and to what extent Duke Energy would be required to clean up its coal ash. After the North Carolina Supreme Court ruled that the Commission was unconstitutional, the legislature, in the recently concluded 2016 session, passed a [new law](#) that allows Duke Energy to leave most of its coal ash in place, ignoring the pollution of rivers, lakes, and groundwater.

Then there was the [SolarBee fiasco](#). The legislature, with great support from the executive branch, has repeatedly postponed implementation of the plan to clean up pollution in Jordan Lake, the Triangle's major drinking water source. Instead, it allotted \$1.3 million taxpayer dollars in 2013, and an additional \$1.5 million on 2015, on the pretense that floating propellers called SolarBees would clean up the lake without requiring polluters to stop polluting. [Not surprisingly, it didn't work](#). This year, [in the budget](#), the legislature endorsed not only delaying the Jordan and Falls Lake rules, but allowing them to [sunset before they have been implemented](#).

Our wetlands have not been spared. The legislature has [almost completely erased](#) any state protections for these important waters that provide habitat, filtration, and protection from flooding. Indeed, almost 90 percent of our isolated wetlands are now excluded from state protection.

Our air

Once a leader in the southeast in clean air, North Carolina began to backtrack in 2011. That year, at the request of five of the state's major polluters, [the legislature](#), with the full support of the Department of Environment and Natural Resources, [passed a bill to repeal North Carolina's health-based regulations protecting citizens from toxic air pollutants](#). In [2015](#), it legislated a dramatic

reduction in the number of air quality monitors in North Carolina. This came soon after the passage of [a bill](#) that limited citizens' rights to protest air-pollution permits.

Our land

Between 1999, when former Governor Hunt and the legislature launched the “million acre initiative,” and 2010, North Carolina acquired and protected nearly 700,000 acres of land, after which land conservation slowed considerably. The Clean Water Management Trust Fund, created in 1996 to purchase open land for the purpose of protecting water quality, and disbursing \$100 million annually as recently as 2007-2008, was [reduced to \\$11.5](#) million by the 2011, and hasn't climbed back much since. In the four years preceding this reduction, the North Carolina State Parks System acquired an average of more than 5,900 acres of land per year. In 2011, the legislature more than halved that: the system averaged about 2,200 acres of land acquisition per year from 2011-2014. In 2013, the legislature [terminated](#) the Mountain Resources Commission, whose mission was to protect the mountains and their communities while encouraging healthy and equitable development. The message in all of these actions seems to be that North Carolina no longer values open space.

The coast

After generations of reaping the benefits of natural shorelines, which provide a healthy alternative to the overbuilt and hardened shores of the northeastern coast of the United States, another blow to the coast came when the legislature [repealed the ban](#) on hardened structures on our beaches in 2011. [Allowing terminal groins](#) on our coast will open our beaches to the waves of erosion, collapse, and further hardening that have devastated beaches in other states.

In another shortsighted move, the legislature has decided to address the incredibly pressing and complex problem of sea-level rise by ignoring it, trivializing it, and actually [trying to outlaw the study](#)

[of the problem](#). Everyone from the BBC to the [Colbert Report mocked North Carolina](#) when the legislature [attempted to make](#) even the study of rising seas illegal in the state.

Energy

After decades of protecting its citizens against the dangers of hydraulic fracturing (or fracking) for natural gas, in 2012 the [legislature lifted the ban on horizontal drilling](#) which is used to frack for natural gas. Not only did the legislature open North Carolina to the [risks of fracking](#), it actually [sought more than \\$2 million in taxpayer subsidies](#) to market the practice to energy companies, who seem reluctant to invest here. As if that were not bad enough, the [legislature also criminalized the disclosure of what companies put in the toxic fluids](#) injected into the ground to frack. Despite the fact that the citizens of North Carolina did not want fracking, the legislature not only legalized it, but asked the citizens to pay for it and made it a criminal offense for citizens to know what toxins are injected into the ground.

In addition to promoting onshore drilling, state leaders are asking that oil drilling platforms be allowed off of our coast as well. The state even asked the federal government to allow drilling closer to our precious shore than the Bureau of Ocean Energy Management proposed. For the moment we are in the clear: this spring, the Bureau of Ocean Energy Management, in response to overwhelming citizen and local government opposition to offshore drilling, presented a plan that [does not include drilling off the North Carolina shore](#) in the near future.

Even the policies that have led North Carolina to be the [state with the third-highest capacity for solar energy](#) in the nation are at risk. This year, two state Senators floated a [bill requiring a 1.5-mile buffer around any solar- or wind-power installation](#), supposedly to protect citizens' health (though you can have a swine waste lagoon within 500 feet of your neighbor and you can pile fracking waste right up to the property line). That bill did not move. The legislature also tried to [fight](#)

[wind installations this year, based on their alleged inconvenience to the military,](#) though similarly sized broadcast towers were not found to be problematic and the military did not request the bill.

This is not just an approach by leaders who believe in streamlining regulation and applauding development. This is not an approach that is simply less stringent than environmentalists would prefer. Rather, these actions undermine and cut protections for the clean air, clean water, healthy landscapes and beaches that North Carolina families deserve and enjoy.

Our state constitution says it is the policy and proper function of the state to conserve and protect its lands and waters for the benefit of all its citizenry. Instead, the legislature and executive branch have launched a brutal and relentless attack on our environment and natural resources. Please read along with us as we continue to address the dismantling of North Carolina's environmental protections and damage to our state's environment, and then share this sad story with others.



Chapter Two

The North Carolina General Assembly finished its 2016 short session on July 1, 2016. Though the session was short, legislators found time to continue dismantling North Carolina's environmental safeguards. Here we will address the state's waters - rivers and lakes on the surface and groundwater below the surface. We will also discuss the legislative assault on our coast.

Surface water

North Carolina has 38,205 miles of rivers, which means our state's total river mileage runs nearly as long as the nation's entire Interstate Highway System. From the waterfalls in Transylvania County to the tea-colored creeks of the Great Dismal Swamp, these miles of rivers, as well as 311,236 acres of lakes, attract tourists, provide habitat for fish and wildlife, and slake the thirst of the majority of the state's 10 million residents. These rivers, streams, and lakes are also a major recreational resource for the state's citizens. In 1709 explorer John Lawson described his travels among "many pleasant and delightful Rivulets," commonly mentioning their clear waters and stony bottoms.

Unfortunately, this is no longer the case. According to the Environmental Protection Agency, North Carolina's waters are polluted by mercury, resulting in fish consumption advisories, and thousands of additional miles are impaired by excessive nutrients, sediment, and various chemicals, some toxic to aquatic and human life. They are silted with runoff and overloaded with nutrients from farming, construction, and stormwater. They are polluted by effluent from industry and wastewater treatment. They have been treated harshly in the roughly three centuries since colonists first arrived in the state.

In the second half of the 20th century, many important steps were taken to protect surface waters. The Clean Water Act of 1972 required "point source" polluters, such as factories and wastewater treatment plants that discharge their wastewater through pipes, to clean up their acts, and it worked, substantially reducing pollution from cities, manufacturing, and other industries. Since then the main source of pollution in North Carolina waters has been "non-point source" pollution: runoff from farms, construction sites, parking lots, and developed areas. When fish kills in the late 1990s made it clear just how poisoned the rivers remained, stakeholders across the state got busy. Property owners, developers, municipalities, state government, and citizens' groups spent many years hashing out rules to restore the state's waters and protect them from both point source and non-point source pollution.

One of the biggest water quality problems affecting our coastal rivers and estuaries and drinking water reservoirs is excessive nutrients – nitrogen and phosphorus – entering our waters from sewage treatment plants, hog and chicken farms, farm fields, golf courses, and densely developed areas. In response to algae blooms and fish kills from excessive nutrients, the North Carolina Environmental Management Commission adopted nutrient management plans for many of the state's problem waters. The approach of these nutrient management plans is to spread the

responsibility among the many contributors to the problem so all the burden does not fall on the point source dischargers – typically cities and industries – that must obtain permits and reduce or even eliminate their discharges if necessary to address excessive nutrients. It will not be cost-effective for the permit holders alone to meet the Clean Water Act mandated nutrient reduction target.

Falls Lake and Jordan Lake are drinking water reservoirs supplying the Triangle, the fastest growing region in North Carolina. Stakeholders in the region spent years developing a plan to reduce nutrient loading to reservoirs to ensure quality drinking water for the cities and towns that depend on these sources. Beginning in 2011, the legislature has postponed implementation of the Jordan Lake Rules three times. The recently signed state budget (H1030) includes section 14.13, which for the fourth time delays cleanup of Jordan Lake and for the first time delays the cleanup rules for Falls Lake - a drinking water supply for nearly a half-million Raleigh citizens and then restarts the stakeholder negotiation that took years to hammer out the first time. If cleaning Falls Lake is the goal, postponing current action and scheduling a years-long discussion before future action is not the best way to get there. Every year of delay will make any plan more expensive, as nutrient loading continues to increase.

Jordan Lake, a larger reservoir a few miles away, fared worse this session than Falls Lake. The same section of the budget that delays cleanup of Falls Lake also delays again any cleanup of Jordan Lake, launches a new multiyear stakeholder process, and completely replaces the existing plan in 2019. In a handout to land developers, one section of the new law retroactively prohibits the application of any nutrient management rules to development in the Jordan Lake watershed that occurred or will occur between 2013 and 2020. It is as if the pollution caused by the developers who were not required to play by the rules magically does not exist.

But magically trying to make pollution disappear is not unusual in the legislature or the Department of Environmental Quality. The recently concluded two-year, multi-million dollar, waste of tax payer money, experiment with SolarBees - floating machines that were claimed to clean Jordan Lake water by simply stirring it up - mercifully ended in 2016 when studies proved the machines utterly ineffective. Political appointees at the Department of Environmental Quality were less convinced by the data about the ineffectiveness of so-called “in situ treatment options” than were the scientists, and withdrew the report to the Environmental Management Commission that included the data, replacing it with a sanitized version instead. Fortunately, the Environmental Management Commission stuck to its principles and submitted the original [report](#) to the legislature.

Undeterred, some in the legislature this year proposed [introducing an exotic species of freshwater mussel to the lakes](#), continuing to ignore the sensible solution to stop the pollution at its source, which is also the approach required by the federal Clean Water Act. Thankfully, this proposal did not survive, but the legislature still allotted \$1.3 million to study other in situ treatments in the 2016 budget. Any attempt to treat polluted lakes without addressing the source of pollution is headed for failure. Preventing pollution through proven programs that control the amount of nitrogen and phosphorus that reach the water body, such as those the state spent years devising, is the best strategy for our state’s waters. Yet, for the [last six years the](#) legislature has assaulted that proven solution.

In early July, massive fish kills returned to the Neuse River near New Bern, with hundreds of thousands of rotting fish washing ashore in a “dead zone” created by excessive nutrients. One of the most simple and cost effective approaches to reducing nutrients entering our waters is to maintain narrow vegetated buffers to absorb nutrients in runoff before it enters waterways. The undisturbed soil and natural ground absorb runoff, and foliage roots take up excess nutrients (like phosphorus and nitrogen) and naturally clean the water at very little cost. Over the years, our state

environmental agencies developed, and the legislature authorized, maintenance of existing vegetated buffers and mitigation if they are removed in the watersheds of our rivers and lakes most threatened by excessive nutrients – such as the Neuse and Tar Pamlico Rivers, and Jordan and Falls Lake drinking water reservoirs.

Various bills have been introduced in the legislature to repeal or reduce buffer protections for our nutrient sensitive waters. In 2015, the legislature directed the Environmental Management Commission to study the effectiveness of buffers and report back to the legislature. The state water quality experts in the Department of Environmental Quality prepared a draft report confirming what scientists have been saying for decades: vegetated buffers along waterways reduce nutrients entering the waters and protect and improve water quality. As they did with the in-situ treatment report, the political leadership at the Department of Environmental Quality withdrew the buffer report from their own technical staff and substituted a report with recommendations calling into question the effectiveness of buffers. In a stunning rebuke to the political leadership at the Department of Environmental Quality, the Environmental Management Commission voted this spring to reject their proposed report and send to the legislature instead the original report endorsing the effectiveness of buffers.

The legislature has also [slashed](#) the [amount](#) of [money available to agencies for](#) enforcement of compliance with pollution permits and other environmental protections. The number of water quality permit enforcement actions by state regulators has dropped by more than 50 percent - from an average of 567 per year before 2012 to 268 per year since then. Not only are regulations being systematically repealed, our environmental agency is not adequately enforcing the regulations that remain - with predictable results.

Groundwater

Underground waters have fared no better in the legislature or the Department of Environmental Quality. The legislature [has repeatedly tried](#) to protect Duke Energy from having to clean up the many problems caused by its leaking, unlined coal ash pits, which pollute drinking water supplies. When the state tested wells on properties within 1500 feet of these pits, it found concerning levels of poisons like hexavalent chromium, leading state public health officials to issue letters urging homeowners not to drink the water. In 2016, under political pressure, officials abruptly changed their minds, issuing letters telling homeowners that their water was safe to use. After considerable media scrutiny, the Department of Public Health sent a third letter to some of the same residents telling them that their water might not be safe to drink after all. While some families in North Carolina were trying to understand conflicting letters from the state agency charged with making sure their drinking water is safe, legislators even proposed [H1005](#) (S779), which would have prevented state authorities from issuing health advisories unless they complied with new standards, set not by scientists and physicians but by legislators.

Only after environmental organizations sent required notices to Duke Energy stating their intent to file lawsuits to clean up polluting coal ash sites did the state environmental agency in 2013 file its own enforcement actions against Duke. And it filed these “enforcement” actions only after it consulted with Duke on how it wanted to be sued. It promptly entered into a proposed settlement agreement with Duke, requiring a penalty of only \$99,100 for violations at two sites. Shortly thereafter, a pipe at one of Duke Energy’s coal ash pits collapsed spilling coal ash and contaminated water into the Dan River. Thousands of North Carolina citizens spoke at public hearings or sent written comments objecting to the proposed settlement, and the agency withdrew it. The federal government criminally prosecuted Duke Energy for crimes under the Clean Water Act at coal ash sites in North Carolina and secured 18 guilty pleas for nine crimes and a \$102 million penalty. [Two years later the Department of Environment and Natural Resources fined Duke \\$6.6 million](#) - only \$1.8 million of which resulted from the Dan River spill.

In 2015, the Department of Environmental Quality entered into yet another sweetheart settlement agreement with Duke Energy, this time promising not to enforce groundwater pollution laws against Duke Energy companies for past, present, and future violations at all its coal ash sites across the state. After citizens challenged this proposal, a court questioned whether the agreement was prompted by [“ulterior motives,”](#) and the state disavowed portions of its agreement with Duke Energy.

The legislature enacted the Coal Ash Management Act in 2014, creating a Coal Ash Management Commission with a majority of legislative appointees to receive recommendations from the Department of Environmental Quality on the risks posed by disposal sites, and direct the type of clean up required. Two significant decisions followed in 2016. First, the North Carolina Supreme Court ruled the Coal Ash Management Commission unconstitutional, violating separation of powers because of the legislative appointment of Commission members. Second, the Department of Environmental Quality technical staff evaluated each of the coal ash disposal sites and recommended that all be excavated and removed to safe storage to protect water quality.

In the 2016 short session, the legislature first passed a bill reconstituting the Coal Ash Management Commission with a majority of the commissioners appointed by the Governor. The Governor vetoed this bill, and after negotiations between the Governor’s Office and the legislature enacted [H630](#), a bill supported by Duke Energy and providing Duke relief from its duty to fully clean up its coal ash pollution. Duke Energy is under court order to excavate and remove coal ash from seven of its 14 ash pond sites. For the remaining sites, under the legislation, Duke can cover the site with a cap, as long as it provides safe drinking water to nearby residents and complies with existing dam safety laws, neither of which will stop the unlined pits from continuing to pollute our water supplies for decades to come.

State legislators and agency officials in charge of protecting our clean water have instead invited more pollution. They have removed protections to our rivers and lakes and allowed polluters to foul our groundwater. The waters of North Carolina need protection. At the moment, state government has turned its head.

The Coast

North Carolina has 321 miles of coastline - more than any East Coast state except Florida. Our coast and beaches are among our state's most important economic and environmental assets, attracting millions of visitors annually and billions of dollars in tourism revenue. Protecting this resource should be vital to the interest of legislators and state environmental regulators.

In 2009, when producer Ben Kalina began researching his documentary "Shored Up," about the dangers to the East Coast that result from poor environmental policies and sea-level rise, he planned to use North Carolina as the positive example. In comparison to the seawalls and groins that rendered New York and New Jersey so vulnerable to Hurricane Sandy and other catastrophic storms, North Carolina had for decades enforced a prohibition on almost all hardened structures on our coast, including terminal groins, jetties, and seawalls. Such structures interfere with natural currents and processes, commonly building up sand in one location but causing catastrophic erosion in other locations.

Instead, seeing the rollback of decades of enlightened coastal policy, he used North Carolina as a warning.

In 2011, the legislature's abandoned the longstanding prohibition under the Coastal Area Management Act against seawalls and other hardened structures on our public beaches to protect

private property, and enacting [S110](#) sanctioned construction of four terminal groins. And again in 2015, the legislature [authorized](#) two terminal more groins, jeopardizing the natural beaches for which the state is famous, and continuing the state's march to hardened shorelines instead of natural beaches.

In 2015, the legislature [allowed](#) more construction of sandbag seawalls on the oceanfront with no limit on how far seaward the sandbags can be piled. Rows of houses with overlapping sandbag seawalls create huge problems. The walls do as much damage to the beach as hardened structures, prove difficult to remove without damaging neighboring properties, create hazards during storms, and cause difficulty for tourists walking on the armored stretches of beach.

In a move that was as short sighted as it was embarrassing, in 2012 the legislature attempted to outlaw planning for sea-level rise after a Coastal Resources Commission report predicted 39 inches of sea-level rise over the coming century. From the BBC to the Colbert Report to Scientific American, those that trust science shook their heads at the legislature. Ultimately it enacted [H819](#), which mandated what the Coastal Resources Commission can and cannot consider when setting a standard for coastal development based on anticipated future sea-level rise. It limited the allowed prediction of sea level rise to 30 years, avoiding consideration of the rapid acceleration in sea level rise predicted by scientists. If billions of dollars in likely investment in public and private projects along our coast was limited to projects and structures with an expected life of 30 years, this might make sense. But since this is not the case, ignoring science will come at a high price to our coastal economy and natural resources.

Next we will discuss our air and our power to make responsible choices about energy production.



DISMANTLED

THE NORTH CAROLINA GOVERNMENT'S ATTACK ON AIR & ENERGY PROTECTIONS

Chapter Three

In 2011, the North Carolina General Assembly began to turn back the clock on the quality of the air we breathe. Starting that year, the state's leaders did an about-face, pulling North Carolina away from a period of Carolina blue skies that resulted from two decades of removing carbon and other pollutants from the atmosphere and advances in clean energy development.

We have told you about the results of six years of dismantling environmental safeguards at the hands of the legislature and agencies like the Department of Environmental Quality to our state's waters, including the postponement of protections for drinking water sources, contradictory communications with citizens about water safety, and sweetheart deals for Duke Energy and its notorious leaking coal ash pits. Here we consider the state government's recent record on air and energy.

Air quality

In response to the enactment of federal environmental protection laws of the early 1970s, the legislature passed a series of laws that prevented state agencies or local governments from passing any environmental rule more stringent than federal regulation. This meant that regardless of the specific circumstances of a city or county - or even the state as a whole - lawmakers could not provide needed regulation if it was more stringent than federal rules. This greatly limited the capacity of the state and its local governments to address their own environmental realities. Since every state has to comply with the minimum federal regulations, these laws handcuffing North Carolina to minimum requirements assured the state would be at the bottom of the class in protecting water and air quality.

In 1991, the legislature repealed the last of the laws handcuffing the state to federal standards, ushering in a period of environmental protection and stewardship in North Carolina. Freed from artificial limitation, North Carolina sped to the head of the class in protection of our water and air.

In 2011, after twenty years of progress on restoring the states air quality, the legislature reenacted the handcuff law, again prohibiting state agencies from adopting environmental protections more stringent than minimum federal regulations. Additionally, in an attempt to ferret out state protections that might exceed minimum federal requirements, the legislature targeted all regulations, including environmental regulations, for [automatic repeal](#) without the Department of Environmental Quality review and legislative approval to retain them.

Since that inauspicious beginning, in each year since 2011 the legislature has chipped away at the state's air quality protections. In 2011, at the request of five of the state's major polluters and with the full support of the Department of Environment and Natural Resources, [the legislature passed a bill to repeal North Carolina's health based regulations regarding toxic air pollutants](#) emitted by

industrial facilities. These longstanding regulations were designed to protect citizens from breathing air containing toxic chemicals that pose significant threats to their health.

In 2015, the legislature enacted [H765](#), nicknamed “the Polluter Protection Act” by opponents and the media. Among many other things, the law eliminated restrictions on heavy-duty vehicles’ idling. Trucks that once would have had to turn off their engines instead of spewing exhaust during periods longer than five minutes per hour can now idle away, even when parked next to playgrounds. [H765](#) also allows farmers to burn recyclable plastics - sending pollutants directly into the air. To provide further protection to polluters, the legislature included an “environmental self-audit privilege” in [H765](#). This provision shields companies that violate environmental laws from penalties if they self-report the violation, though the degree of disclosure is presumably at the discretion of the polluter. It also hides evidence from injured neighbors seeking a remedy in court. Thankfully, this far-reaching immunity requires approval from the Environmental Protection Agency, which has not yet been granted.

Finally, in 2015 the legislature passed [a bill](#) that dramatically reduced the number of air quality monitors in North Carolina. This came soon after the passage of [a bill](#) that limited citizens’ rights to protest air-pollution permits. By taking away the means by which citizens would be aware of pollution in their area, and then limiting their ability to address the problem if discovered, the legislature rolled out the red carpet for polluting industries.

Energy

Beginning with the Clean Smokestacks Act in 2002 that closed down old polluting coal-fired power plants, and continuing with the Renewable Energy and Energy Efficiency Portfolio Standard in 2007 that requires utilities to utilize an increasing percentage of renewable energy sources in their

generation of electricity, North Carolina emerged as a national leader in the development of clean energy. The results were astonishing. North Carolina eventually became the state with the third-highest solar capacity, with more than 2,000 megawatts of solar capacity - enough to power 223,000 homes. This boom led to the creation of more than 450 solar companies in North Carolina, more than \$4 billion in investment, and some 4,000 jobs in the state.

Despite the success of this industry and its benefit to North Carolina's economy, the legislature and the executive branch have attacked clean, renewable energy. In 2015, the legislature voted to sunset the tax credit for installation of residential and commercial solar generation that was partially responsible for spurring this job growth and investment. In addition, certain legislators have relentlessly [tried to repeal or freeze](#) the Renewable Energy and Energy Efficiency Portfolio Standard every year since 2012. Despite some legislators' best efforts, the Renewable Energy and Energy Efficiency Portfolio Standard remains in place, improving the way North Carolina utilities produce energy, keeping carbon pollution out of the atmosphere, and generating economic growth.

For now.

In 2016 two state Senators introduced [S843](#), which would "protect" citizens by requiring 1.5 mile setbacks from each property line for all clean energy installations. This would have rendered virtually all of the state's current clean energy installations illegally sited, and would make further development nearly impossible. Also this year, spurred by the head of the Department of Environmental Quality, some members of the Energy Policy Council, an appointed board that advises the governor on energy issues, proposed extremely onerous permitting and bonding requirements for solar facilities. Thankfully, business leaders on the Council rejected the proposition.

Even as the legislature attempts to thwart renewable energy development, it is inviting dirtier, conventional energy production to our state. Since 1945 North Carolina banned underground horizontal drilling in order to protect our groundwater and drinking water. In 2012, however, the legislature passed [S820](#), which legalized horizontal drilling, opening the state to hydraulic fracturing (fracking) pending the passage of rules regulating the practice. Because of the many documented dangers of fracking, many legislators did not back the plan. Governor Perdue vetoed the bill, but the legislature overrode the veto and fracking became legal in North Carolina. Two years after the passage of [S820](#), and before the state's Mining and Energy Commission had even finalized the rules, the legislature passed [S786](#), the "Energy Modernization Act," fast-tracking fracking, and breaking the promise to carefully review the Mining and Energy Commission rules before giving final approval.

In the bill that legalized fracking, the legislature gave itself the power to name the majority of the members of the Mining and Energy Commission. The executive branch resisted, believing that unless the governor has the capacity to appoint the members of an executive commission, the commission is unconstitutional. And indeed, the North Carolina Supreme Court agreed, finding the Mining and Energy Commission's successor, the Oil and Gas Commission, unconstitutional in 2016. It remains to be determined whether an unconstitutional body can create valid regulations. For now, there is a *de facto* moratorium on fracking in North Carolina until the legal landscape is clear.

Although the legislature did not ensure that the state's citizens are protected from the dangers of fracking, it did protect the frackers from the citizens. The Energy Modernization Act allows energy companies to keep secret the brew of chemicals they use when fracking, and it even criminalizes the release of that information. Any citizen who reveals the makeup of fracking fluid to the public, even an emergency medical professional, is guilty of a crime. The next year, the legislature also

included \$500,000 [in the budget](#) for the state to spend to assist the fracking industry by drilling test wells in Lee, Stokes, and Cumberland Counties, even though this type of testing is typically funded by the industry. This funding stands in stark contrast to the more than \$500,000 in grants from the Environmental Protection Agency that the Department of Environment and Natural Resources actually turned down in 2013. The grants would have funded water quality monitoring stations in wetlands and areas likely to be adversely affected by fracking.

Not only did the legislature authorize fracking, it [prohibited local governments](#) from passing any regulation to manage the dangerous practice. Under cover of night, in the final hour of the 2015 legislative session, after 4:00 a.m., the state Senate slipped a provision into a “technical corrections” bill that attempts to prohibit local governments from regulating fracking in any manner. This language was not in any prior bill that legislative session, and received no committee hearing or vetting of any kind by the public or by the affected local governments. This preemption represents another attempt by the state to lure the fracking industry to North Carolina over the objection of those who would be most directly impacted.

The state government has embraced dangerous energy development practices, discrimination against clean energy development, the dissolution of the capacities of local governments to adopt regulations to control pollutants in their own borders, and the criminalization of information sharing – everything short of legalizing pollution.

To summarize: In the last six years the legislature has authorized fracking and [prohibited local governments](#) from passing any regulation of the dangerous practice. It has repealed state air pollution protections and required the Department of Environmental Quality to eliminate air quality monitors. It has weakened or removed prohibitions on the idling of heavy-duty trucks and the unregulated open burning of plastics. It ended the Renewable Energy Tax Credit. Some legislators

have continually labored to weaken or repeal the Renewable Energy and Energy Efficiency Portfolio Standard that requires the state's utilities to work towards greater reliance on safe, environmentally friendly renewable energy, and some have tried to pass preposterous limits on renewable energy installation, while authorizing the use of taxpayer funds to support fracking research. Meanwhile, the executive branch has supported environmentally harmful propositions like offshore drilling and fracking, and enabled Duke Energy to leave half of its leaking coal ash pits right where they are, leaking lead, arsenic and mercury into our ground and surface waters for decades to come.

Next, we discuss our land and special places.



Chapter Four

Thus far, we have discussed how the North Carolina General Assembly and the executive branch, including the “customer-service” based Department of Environmental Quality, formerly the Department of the Environment and Natural Resources, have done enormous damage to our state’s water, air, energy, and coastal policies over the past six years.

In our focus on those depredations, we run the danger of taking our eye off something vital: simply the land. The dismantling of North Carolina’s environmental protections has also polluted the land. Pollution is not just leaky landfills or blowing trash. We pollute our land by developing it irresponsibly and by failing to maintain enough open space to absorb rain and runoff to recharge our aquifers and protect our waters; enough open space to support vegetation that naturally cleans our air and provides habitat to our wildlife; enough open space to absorb the natural insults hurled at the land by the sea; and enough open space throughout North Carolina to give its residents room to recreate and to enjoy our beautiful state.

In 1996, North Carolina leaders created the Clean Water Management Trust Fund in an effort to protect our waters by conserving open land. For more than a decade the Fund did unimaginable good, though it ran into trouble during the recent recession. In 1999 the legislature and former Governor Hunt established the Million Acre Initiative with the goal of adding an additional one million acres to the state's 2.8 million acres of conserved land. By 2008 the Fund had saved 643,209 acres toward its one million acre goal. Starting in 2009, however, progress slowed considerably. In the midst of the recession, public and private land conservation projects only saved an additional 40,251 acres in 2009, and limited funding has continued to hinder the state's ability to conserve land since.

Beginning in 2011, the legislature made the bad situation created by the recession worse by backing away from the State's commitment to conserving land. In 2007, North Carolina granted \$172.1 million through various trust funds to land conservation. In contrast, in 2011, the state trust funds granted only \$34.5 million - [a drop of 80 percent](#). During a time when land was inexpensive because of the recession, and developers were gobbling up forests and farmlands at a clip of 100,000 acres per year, the trust funds were reduced from funding nearly all requested purchases to funding less than one-sixth of requests.

The North Carolina State Parks system shows the devastation this lack of commitment has wrought. In 2008, the Division of Parks spent over \$48 million acquiring land, but by 2013 [had decreased this spending](#) to less than \$6 million, despite the 2011 identification of \$1.4 billion in unmet needs. In acreage, this translates to an average acquisition of 5,940 acres per year in the seven years leading up to 2011, and only 1,288 acres of land in 2011. In the years since 2011, the Division of Parks has only acquired an average of 2,218 acres of land per year.

In 1976, Governor James Holshouser wisely created the Natural Heritage Program, to establish a publicly accessible database of North Carolina's most rare and endangered plants and animals and their habitats, as well as the State's most unique natural ecosystems. The goal was to help state agencies make good decisions about conserving the most important land in the State. But in 2014, the legislature cut the program's budget almost in half, from \$1.3 million to \$750,000. The following year, another 40 percent was cut, slashing the budget to a mere \$450,000. Almost half of the program's employees were let go. This greatly impacted the Program's ability to assist state and local agencies and conservation groups in deciding where to establish new parks and nature preserves and to help the North Carolina Department of Transportation and private companies comply with environmental regulations, such as the federal Endangered Species Act, the State Environmental Policy Act, and the National Environmental Policy Act.

Despite these cuts, land conservation is one of the few areas in which the current legislature has begun taking small steps towards responsible action. In 2015, it approved a [bond referendum](#), including \$75 million for park acquisitions and facility improvements, which was placed on the March 2016 primary ballot. The citizens of North Carolina overwhelmingly approved the bond, illustrating the public's commitment to preserving land when given the choice. This is a fitting gesture for the 100th anniversary of our state parks. The 2016-2017 budget included \$22.4 million for the Clean Water Management Trust Fund -- the highest amount it has received in years. The Agricultural Development and Farmland Preservation Trust Fund also received an increase, receiving \$3.6 million.

It is not surprising that legislators who have been educated on the value of land conservation recognize its importance to the state. One study, by the Trust for Public Land, found that lands protected by the state's various trust funds provide an estimated \$3.67 billion of value, which means that for every dollar invested in land conservation, the state reaps four dollars in benefits.

Another study estimated that every million dollars invested in conservation, reforestation, and land or watershed restoration created 40 new jobs, and that the agriculture supported by the Agricultural Development and Farmland Preservation Trust Fund employs 120,000 North Carolinians.

It is promising to see that at least regarding land conservation the state government is showing the beginnings of awareness of the value of our environment, though we still have years of damage to repair. On other environmental fronts, as we have discussed, our leaders have not yet begun to change course back to North Carolina's history of strong environmental stewardship.

For six years, the North Carolina state government has dismantled the safeguards for our state's air, water, land, and coastline to the detriment of North Carolinians. In one area – land conservation – we are beginning to see a turnaround, illustrating that North Carolina can do better.

But the point is not that North Carolina *can* do better.

The point is that North Carolina *has to* do better.