



ENVIRONMENTAL REVIEW COMMISSION
April 13, 2016
Room 643 of the Legislative Office Building

The Environmental Review Commission met on Wednesday, April 13, 2016 at 9:00 AM. The meeting was held in Room 643 of the Legislative Office Building. Members present were: Co-Chairman Senator Trudy Wade, Co-Chairman Representative Chuck McGrady, Co-Chairman Jimmy Dixon, seven Senators, Representative Hager, Representative Harrison, Representative Steinburg, and Representative Yarborough.

Senator Trudy Wade presided.

Senator Wade called the meeting to order and recognized the Sergeant-at-Arms for the meeting as Young Bae, Jim Moran, and Terry McCraw from the House, and Donna Blake, and Hal Roach from the Senate. Senator Wade encouraged any speakers from the audience to sign up in order to speak during the meeting. Senator Wade introduced her Co-Chairmen Representative Jimmy Dixon and Representative Chuck McGrady. Senator Wade asked for any comments from her Co-Chairmen, hearing none, began discussion on the next item on the agenda.

PRESENTATION 1-Report on Pre-Regulatory Landfills (orphan), and use of proceeds from the solid waste disposal tax for those purposes-Michael Scott, Acting Director for the Division of Waste Management, Department of Environmental Quality (DEQ)
(Attachment 1)

Senator Wade introduced Mr. Scott. Mr. Scott began his presentation by defining the pre-regulatory landfill as any land area, publicly or privately owned, on which municipal solid waste disposal occurred prior to January 1, 1983, but not thereafter and excluded industrial waste. The program is funded through the collection of a disposal fee levied on all municipal solid waste and construction and demolition waste; with \$1.00/ton going exclusively to the NC Pre-Regulatory Landfill program. Since inception in 2007, a total of \$61,022,173 has been collected as of the second quarter of 2016. The funding provides assessment, remediation, and administration for these sites.

The program has identified 677 total sites, including 184 additional locations discovered since 2009. Activity includes water testing, cap repair, and safe redevelopment. To date, the program has completed seven sites, and manages 1,342 acres representing 44,522,596 tons of waste. Mr. Scott's presentation (Attachment 1) is attached at the end of these minutes.



Senator Wade opened the floor for any questions of comments.

Representative Dixon thanked Mr. Scott and acknowledged it was a new position for him. Representative Dixon asked for a list of the seven sites that had been remediated, and stated that it always seems that government finds a way to cut red tape lengthwise. He stated that the state had taken in a lot of money and had very little to show for it. Representative Dixon asked Mr. Scott if he knew how many of these sites were one acre or less?

Mr. Scott answered that he did not know the exact percentage but believed a large number were less than an acre.

Representative Dixon stated that he believes that 40% were less than an acre in size. Mr. Scott said he would send that info to the Commission.

Representative Dixon was also concerned about the time it took to take a site from assessment to remediation. He stated to the Commission that unless we see more done in this area the State needs to eliminate the tax.

Senator Wade asked for Representative Dixon to specify the information he had requested.

He restated that staff should provide the Commission with a list of sites of one acre or less and the location of the seven completed sites.

Representative Hager wanted the Commission to know that without the efforts for remediation by the State, the Lake Lure School would never have been built. This was very helpful for the community because it saves the students a one hour bus ride. He thanked Mr. Scott.

Representative Yarborough asked Mr. Scott to explain the standards for testing drinking water near these landfills. He also asked if there were incentives offered for redevelopment.

Mr. Scott replied that the only incentives were the assistance provided to the developer to handle questions that may arise during development and navigate through the regulations.

Representative Yarborough went on to point out that the program had only fixed 7 out of 677 sites and used half the money. Representative Yarborough asked if local governments could help fund this remediation?

Mr. Scott answered that local governments were allowed to fund or do the work themselves with State supervision.



Senator Rabin pointed out that the least effective way to speed up a program is usually through internal supervision. He suggested the use of an external consultant using lean six sigma methods to speed the program along.

Mr. Scott said that a grant program is being discussed to award a contract to an external firm to select a site and handle the assessment and remediation.

Senator Smith-Ingram asked Mr. Scott how what the estimate cost was to do the sites on the priority list?

Mr. Scott answered that it was more than the \$9 million raised each year and as remediation begins there will be a need for more and more money as it is spent.

Representative Dixon asked for a list of the contracts for assessment, the amount of each, and how much money has been spent to date.

PRESENTATION 2-Report on the study of the State's recycling requirements for discarded
Computer equipment and televisions-Tom Reeder, Assistant Secretary
For the Environment DEQ
(Attachment 2)

Senator Wade introduced Mr. Reeder. Mr. Reeder began by giving a brief review of the history of electronic recycling in the state. In 2010 the General Assembly passed legislation requiring proper recycling of discarded televisions, computers, and other electronic equipment. The legislation also enacted a ban from landfills for any such equipment. It created manufacturers and retailers fees that had to be paid in order to continue in the electronics business in NC. Fees for computer manufacturers ranged from \$2,500 to \$15,000 a year.

Fees for television manufacturers were set at \$2,500 a year. Since 2010 the program recycled 90,000 tons of electronic equipment. The funds raised totaled \$4,087,500, or \$618,416 a year. However, due to recent market fluctuations, recycling markets have decreased and have created a financial loss for cities and counties to find reliable companies to take this electronic waste. DEQ and the EPA consider it safe to remove the landfill ban for electronics in times of market fluctuations and therefore, have recommended repeal of the total ban on electronics placed in lined landfills. Mr. Reeder's presentation (Attachment 2) is attached at the end of these minutes.

Senator Wade recognized Allen Hardison to speak. Mr. Hardison represents the Solid Waste Association of North America (SWANA) with 400 members in North Carolina. Mr. Hardison spoke to the ban as creating an untenable situation for the solid waste industry in NC. In some locations, recyclers are charging \$600 to \$800 per ton to remove electronics and recycle them. This indicates to him that the market has evaporated. He believes they need the flexibility to landfill when the market fluctuates or doesn't exist. Mr. Hardison felt it was much better to



place electronics in a lined landfill than to allow them to be stockpiled in warehouses, vacant parking lots, or wooded areas.

Senator Wade asked Mr. Hardison if his group would be in favor of lifting the ban on electronics in the landfill. Mr. Hardison answered that they support lifting the ban.

Representative McElraft -stated that she felt it was a great idea to landfill electronics with the approval of the EPA and DEQ. However, she was concerned about all the remaining electronics stockpiled in warehouses and parking lots.

Mr. Reeder believes that most of these situations were controlled by local governments and therefore, could be transferred to their landfill if you remove this ban.

She asked if others states nearby also have a ban on electronics in landfills.

Mr. Reeder responded that he believed only South Carolina has such a ban.

Representative Harrison stated that she was the co-sponsor of a companion bill on this and that she asked would the lifting of the ban only apply to televisions.

Mr. Reeder responded that the choice is entirely up to the commission. DEQ has made a recommendation to lift the ban on all electronics. He pointed out that the biggest concern is the televisions.

Representative Harrison stated she still firmly believed that electronic waste should be kept out of the landfill. She mentioned that there had been a large number of recycling companies they heard from during discussion of HB765 and thought this could put them out of business.

Mr. Reeder did not know if this was true or not but stated the state is losing a lot of money on this program.

Representative Harrison asked if the mercury program monies may be used for this.

Mr. Reeder said that there were many ways the state could throw more money at this situation.

Senator Bingham asked if a dry shelter was required for the stockpiling of these electronics.

Mr. Reeder answered that there was no such requirement.

On follow-up, Senator Bingham asked if the recyclers were handling these products safely.



Mr. Reeder answered that the state only uses certified recyclers so that we limit the amount of product that ends up in developing countries like India and Indonesia, where there are no environmental rules. Mr. Reeder stated that much of this goes to a location in New York and Canada.

Representative Yarborough asked if the financial requirements by retailers and manufacturers was being supervised and if they were in compliance.

Mr. Reeder answered that there was good compliance.

Senator Lowe pointed out that his church has a dumpster that regularly receives discarded electronics or sees it in abandoned yards in certain areas. He felt this is a large problem and supports finding a way to place this in landfills.

Representative Hager felt like there were fewer of the older televisions.

Mr. Reeder said that is correct, however, they still see them out there in the waste stream because they last so long.

Representative Yarborough wondered if storage for 5 years out in the open created more environmental concerns.

Mr. Reeder said it was a concern especially if water runs off the lot into the environment. He felt the landfill was a better solution.

Representative McElraft felt it may be better to just to ease the ban on the televisions which would help the local governments and non-profits.

Senator Bingham felt that it makes sense to landfill these items.

Representative Dixon asked if the \$1.00 from the orphan landfill funding be used for this electronics shortfall by local governments.

Jennifer McGinnis, Staff Counsel, answered that in her opinion there was enough flexibility that could potentially permit that use.

Representative Dixon said he would like more information on that potential use of the \$1.00 disposal tax.

Senator Wade recognized Representative Dixon for a motion.

Representative Dixon moved to accept the recommendation from DEQ to lift the ban on electronics.



Senator Rabin seconded the motion.

Representative McElraft asked that there be a friendly amendment to only lift the ban on certain televisions.

Senator Wade asked if there could be some future hearings on this in the House and the Senate.

Representative McGrady stated that he opposed this motion. He felt there needed to be more meetings to hear input from various groups and other views. He felt the motion is premature.

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Representative Dixon stated he was committed to an efficient Short Session but there are mountains of this waste and it needed to be addressed. At least, this motion will get the ball rolling.

Representative McElraft stated that she was sure this would get public information and input.

Senator Wade asked staff to clarify how this motion would be treated. Staff clarified that the report from the ERC would include this as a recommendation that a repeal should be made on the ban for electronic waste in landfills and to repeal the recycling program for electronic waste.

Senator Wade called for the vote, and having heard the vote ruled that the motion passed.

Senator Wade asked Mr. Reeder to comment on any concerns or problems with the “life of site” legislation so far.

Mr. Reeder stated that not very many companies have asked for “life of site” and DEQ believes this will continue at the time these companies renew their permits. There was not a large rush for this as some folks had predicted.

Senator Wade asked if there was a way to expedite new technologies for solid waste.

Mr. Reeder responded that if the owner of the new technology will produce a pilot study in action at one of the landfills, DEQ will move quickly to evaluate and allow the technology be permitted at that location. Mr. Reeder cited aerosolization as an example.

PRESENTATION 3-Report on declaration of capacity use areas by the Environmental Management Commission-Tom Reeder, Assistant Secretary for the Environment
(Attachment 3)

Senator Wade introduced Mr. Reeder.



Mr. Reeder started by explaining that generally, North Carolina does not have much discussion of water quantity issues. Mr. Reeder gave the history of riparian rights in NC where everyone has the same rights to water whether they are a corporation or a private citizen. All the other states except NC and AI have water withdrawal programs. The estimates done by DEQ, model water consumption and supply for 50 years. Based on that research, only the Raleigh area has water quantity problems. The capacity use method has only been used in one area prior to the current one in the Central Coastal Plain established in 2002.

NC has continued to be blessed with adequate water quantity. Mr. Reeder ended by suggesting that Capacity Use Areas are a useful tool, but should be used vary sparingly, in emergency type situations, when all other possible options have been excluded. Mr. Reeder's presentation (Attachment 3) is attached at the end of these minutes.

Representative Harrison recalled that there had been a salt water encroachment and subsidence problem in the coastal area.

Mr. Reeder confirmed that, saying that the salt water problem had been corrected.

PRESENTATION 4-Discussion of acceptable piping materials used in water, wastewater, and stormwater drainage projects-Michael Power, Director, State Affairs, American Chemistry Council; D'Lane Wisner, Consultant; Lorrie Critchfield, Quality Assurance/Quality Control MGR., National Pipe, Colfax, NC; Rob Ferguson, Technical MGR., TEKNOR APEX, Jamestown NC; Charles Laws, Factory Sales Rep., Silver-Line Plastics, Asheville, NC
(Attachment 4)

Senator Wade invited all four presenters to come forward and introduced Michael Power to begin the presentation. Mr. Power began his discussion by citing statistics from the American Chemistry Council showing that plastics manufacturing, at 56.4 billion dollars, is the largest manufacturing industry in NC. It provides 41,900 jobs and has an average wage of \$77,070, which is 45% higher than the average manufacturing wage. Mr. Power was concerned that the PVC pipe business was not allowed to bid on certain public works projects that favored materials such as concrete and ductile iron. He felt the state would benefit from more open competition.

Senator Wade introduced Mr. D'Lane Wisner for comments. Mr. Wisner is a consultant and offered comparisons of pricing for PVC pipe versus ductile iron or concrete in public works bids. In Ohio, the difference was \$100,000 per mile cheaper to use PVC pipe. In Charlotte, NC where PVC is used versus Raleigh, NC where PVC is not used, Charlotte saved \$125,000 a mile.

Senator Wade introduced Lori Critchfield. Ms. Critchfield works for a PVC manufacturer located in Colfax, NC. The company employs 125 people and has been in business 46 years. She impressed on the commission that PVC pipe is well tested, cheaper to install, non-corrosive, lead free, and last longer than iron. She requested more open competition.



Senator Wade introduced Rob Ferguson. Mr. Ferguson works for a company in Jamestown, NC that employs 75 people and has been in business 1994. This company makes custom compounds for plastic manufacturing. All Mr. Ferguson requests is open and fair competition for PVC piping in bid proposals.

Senator Wade introduced Charles Laws. Mr. Laws works for a plastic manufacturer in Asheville, NC. This company has been in business since 1962 and employs 175 people. He also urged more open competition. Handouts from the previous four speakers (Attachment 4) are attached at the end of the minutes.

Senator Wade opened the floor to speakers in the audience for no more than 2 minutes to share their opinion on the topic.

Senator Wade introduced Jon Carr. Jon Carr, Attorney, representing the NC Rural Water Association spoke against the bill that had been introduced in Regulatory Reform legislation favoring PVC pipe, because he believes it overlooks the local control, differing soil conditions, and opens the client to bid protests and litigation. In the 9 states that had similar legislation introduced, none passed.

Senator Wade introduced Marc Finlayson. Mr. Finlayson is the Executive Director of the Carolinas Concrete Pipe and Products Association. He is opposed to the Regulatory Reform legislation that mandates PVC be included in bid processes. He believes the current market works well, which takes into account each type of pipe has different attributes and may not fit in every situation.

Senator Wade introduced Laurie Onorio. Ms. Onorio represents the Professional Engineers of NC. She believes that engineers should have the choice to determine which material works best in certain situations. Otherwise she believes there will be litigation as a result of the bid process.

Senator Wade thanked the speakers and informed the Commission that this topic had been provided for knowledge and discussion on the subject. She opened the floor for any questions or comments from the members.

Representative Yarborough asked if more conversation was held with the municipalities to learn what was needed to change the requirements. Mr. Power stated that most of the conversations were ongoing and the research on various regulations came from internet searches. Representative Yarborough felt more study is needed.

Representative McElraft asked if there were cities in the U.S. that have used PVC for a long time. She felt the engineers were the audience that needed this information more than elected officials. She reminded everyone that most cities purchase by best material not least cost. She also suggested more study.



Senator Bingham mentioned that in Davidson County they have 25,000 miles of pipe and do not use PVC because of pressure cracks. He believed it depends on the terrain and soil.

Senator Wade asked if PVC is used for remediation when ductile iron pipe fails.

Mr. Power answered that in many situations, PVC pipe is injected into the iron or concrete pipe to make the repair.

Representative Hager reminded the group that as an engineer, he was hesitant to try and tell another engineer what material to use with all the variables in their area.

Representative Dixon asked Senator Wade if he could make a motion.

Senator Wade recognized Representative Dixon for a motion.

Representative Dixon moved to rescind the motion on the electronics ban in landfills and the ending of electronics recycling.

The motion was seconded by Representative Sternburg.

Representative Dixon felt after talking to Staff that it was premature to do this and that there would need to be more study.

Senator Wade called for the vote and it passed unanimously.

PRESENTATION 5-Report on the work of the UNC Institute for the Environment-
Dr. Lawrence E. "Larry" Band, Director, UNC Institute for the
Environment (**Attachment 5**)

Senator Wade introduced Dr. Band. Dr. Band explained the roles of the UNC Institute for the Environment. Founded in 1998, the Institute provides campus-wide research funded by several sources including Federal agencies, private foundations, and corporations. The mission involves research, education, and service. Dr. Band highlighted two examples of research including drought proofing studies in the Triangle area, and the work for the Forest Service in predicting wildfires. Dr. Band described the education area as semester long curriculum offered at one of the campus locations at UNC, Morehead City, the Outer Banks, or Highlands NC. Senator Cook invited participation of the students in the Oyster restoration program for the state. The final area mentioned was the Service area which includes training for proper food disposal in restaurants and the convening of meetings in a neutral setting at UNC. Dr. Band's presentation (Attachment 5) is attached at the end of these minutes.

PRESENTATION 6-Consideration of legislative proposals-Staff (**Attachment 6**)



Senator Wade introduced Jeff Hudson, Commission Counsel to explain the process to consider each proposal.

Mr. Hudson explained that each legislative proposal would be introduced by a member of the staff, discussed by the Commission, and voted by the Commission to introduce in the 2016 Short Session.

Senator Wade introduced Layla Cummings, Commission Counsel to present the first proposal:

Bill Draft 2015-TSz-4 Eliminate and Consolidate Reports to ERC

Ms. Cummings read the draft bill to the Commission.

Representative Dixon complemented Staff and urged, wherever possible, to consolidate or eliminate reports.

Representative McGrady also, complemented Staff.

Senator Wade asked for a vote of the Commission and the proposal passed unanimously.

Senator Wade recognized Staff for the next proposal.

Bill Draft 2015-SBz-26A Prohibit Certain Stormwater Control Measures

Mr. Hudson explained the purpose of the proposal. Senator Wade asked for any questions or comments.

Representative Harrison asked if this would effect controls to meet the requirements of the Clean Water Act.

Mr. Hudson answered it did not effect that Federal law.

Senator Wade asked for a vote of the Commission and the proposal passed unanimously.

Senator Wade recognized Staff for the next proposal.

Bill Draft 2015-RIz-33 Issuance of Advisories/Drinking Water Stds

Ms. McGinnis explained the purpose of the proposal.

Senator Wade asked for any questions or comments.

Senator Rabin asked if this proposal will preclude the Lee County situation where confusion occurred because there were two sets of standards.



Ms. McGinnis answered that DEQ and HHS have agreed to work out interim agreements internally, but no, there is not one standard.

Senator Rabin asked that Staff find a way to create one standard and eliminate this confusion.

Senator Wade reminded the group that if this goes forward there was time in the Short Session to discuss this issue.

Representative Harrison asked, in the absence of a state standard, are neighbors of an industrial site notified of contamination.

Ms. McGinnis replied not necessarily, there still is an interim maximum allowable concentration and the departments are authorized to issue health advisories.

Representative Harrison stated she was not comfortable with this and would be opposed to the proposal.

Representative McElraft agreed with Senator Rabin, about the need for consistent standards so we don't confuse and scare citizens about their drinking water.

Representative Harrison asked Ms. McGinnis, if this proposal, in the absence of a State health warning, eliminates the need for the polluter to clean up the pollution or provide alternative drinking water.

Ms. McGinnis answered that this proposal only pertains to advisories.

Senator Wade called for the vote with the proposal passing with one nay vote.

Bill Draft 2015-RIz-27 Solid Waste Amendments

Ms. McGinnis explained the purpose of the proposal. Changes made in 2015 for sanitary landfills included a provision for "life of Site" and this proposal makes technical changes to the franchise agreements for existing agreements. It allows up to 60 years of use, and does not preclude both parties from renegotiation.

Senator Wade called for the vote with the proposal passing unanimously.

Bill Draft 2015-RIz-29 Repeal Yard Waste Permitting Rqmts

Ms. McGinnis explained that this proposal eliminates the permit required for Yard Waste. Notice must still be given and local governments may still regulate the operation.

Senator Wade called for the vote with the proposal passing unanimously.

Bill Draft 2015-MHz-176 DACS Enforcement Authority/Bedding



Mr. Cherry explained the enforcement for bedding materials.

Senator Wade called for the vote with the proposal passing unanimously.

Bill Draft 2015-TAz-11 DHHS/Develop State Chemical Action Plan

Ms. Mundt explained the proposal for the creation of a state chemical action plan that will address the toxic chemicals used in flame retardants in children's products.

Senator Wade called for the vote with the proposal passing unanimously.

Bill Draft 2015-TQz-41A DEQ Study Rip. Buffers for Intermittent Streams

Mr. Hudson spoke to the nature of this proposal which studies the size and activities of buffers for intermittent streams.

Senator Wade called for the vote with the proposal passing unanimously.

Bill Draft 2015-TSz-5A DEQ to Study Nutrient Management Strategies

Mr. Hudson spoke to the nature of this proposal which studies the effectiveness of nutrient management on overall water quality.

Senator Wade called for the vote with the proposal passing unanimously.

Bill Draft 2015-MHz-172 DOT to Study SEPA reform impacts

Mr. Hudson spoke to the nature of this proposal which requires DOT to study fiscal impacts on transportation projects from reforms enacted by the State Environmental Policy Act.

Senator Wade called for the vote with the proposal passing unanimously.

Bill Draft 2015-SBz-27A DEQ to Comment to Corps on Stream Mitigation

Mr. Hudson spoke to the requirement for DEQ to present information to the Army Corps of Engineers regarding the Clean Water Act requirements to increase the threshold for mitigation for loss of streambed, from 150 linear feet to 300 linear feet.

Senator Wade called for the vote with the proposal passing unanimously.

Bill Draft 2015-SBz-28 DEQ to Study Intrabasin Transfers

Mr. Hudson spoke to the study by DEQ on intrabasin water transfers.

Senator Wade called for the vote with the proposal passing unanimously.



Senator Wade called for a motion to approve the Environmental Review Commission minutes for February 10, 2016 and March 9, 2016. Upon a motion by Co-Chairman Representative Chuck McGrady the minutes were approved.

Senator Wade called for a motion to adopt the Environmental Review Commission Report dated April 13, 2016, and to allow staff to edit or make changes for presentation to the 2016 Regular Session of the 2015 General Assembly. Co-Chairman Representative Chuck McGrady made the motion and it passed unanimously.

There being no further business, the meeting adjourned at 11:45 AM.

Senator Trudy Wade
Presiding

Robert Mays, Committee Clerk