

## **ROBERT H. CUTTING, ATTORNEY**

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**TO: COMMISSION CHAIR SENATOR TRUDY WADE**

**FROM: ROBERT CUTTING**

**DATED: 23 AUGUST 2017**

**RE: GEN X**

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Please accept the following remarks into the record for the public hearing held 23 August 2017.  
Thanks. RC

## **ERC MEETING Wilmington, NC**

**GEN X 23 August 2017**

### **ROBERT H. CUTTING (Bio attached)**

I am the Father of two sons who grew up drinking water with a substance that the company calls “unregulated” and that now requires millions to study after it has been released into public water supply since 1980, by the firms’ own admission.

I am also an attorney old enough to have been on the beaches at Santa Barbara in 1969, for the oil spill worked for Gov. Reagan in the first 3 years of CARB. I also served as aide to New Hanover County legislators Sen. Frank Block and Rep. Karen Gottovi. I was head of Santa Barbara County white collar crime unit, chair of the CDAA CPC and have spent hours reviewing the record in this case - including hours in the Fayetteville office.

Two related comments:

First, thanks to the members of the GA and ERC for taking the time to witness the real effects firsthand on tens of thousands of folks who, like myself, do not know whether GenX is the Fountain of Youth, or another Camp Lejeune. In this case, the past five years of budget cuts, re-organizations and repeal of health and safety laws designed to protect the public, though, reveals a larger reality: We are ALL used as guinea pigs for all the GenX’s out there, and there are tens of thousands for which little data is available.

Using the human population as test subjects for the effects of pollutants has had spectacularly tragic results. Thousands have been affected by the dangers of asbestos, PCBs, dioxin, hormone disrupters and various pesticides. The people of Flint, Michigan are still without safe drinking water. Marines and their families at Camp Lejeune were provided tainted drinking water for decades. When the problem was finally discovered, it was covered up rather than corrected. The list goes on.

Think of it this way: each source of pollution to the water, air and soil allows the waste property of the source to enter either private property or public property – for free and without requiring detailed long or short-term studies of health or property effects such as air pollution on trees in NC NW. Because there is little data available, agencies must set “safe” levels as they go, as occurred with GenX. In Flint, a legal discharge was ingested by water treatment plant and caused the release of lead into the water.

Economists call this a subsidy and it is a clear market failure that gives these companies a competitive advantage. Here by the firms admission, approx. 3 tanker trucks per day would have eliminated this issue at the start, so that is one cost savings. The legal system has a difficult time recovering the costs to others such as those incurred by the GA and the CFPWA, not to mention those incurred by anyone who might be victims. Those are also cost savings enjoyed by the discharger.

Cape Fear River Watch estimates at least 800 materials in the river. So use GenX as a case study:

- (1) More science is necessary, especially since NC relies on surface water for drinking water. Air and soil also. FUNDING

- (2) Exercise Vigilance over existing facilities. Somehow the information as to the significant discharge of “byproduct” of the “same molecule” (according to company) never made it to the record in the GenX case. Elimination of enforcement has that effect: No cop, no stop. FUNDING
- (3) Lobby Congress to require more extensive testing so states not at disadvantage or competing in a “race to the bottom”
- (4) Charge for the Privilege: Immediately institute charges that reflect both the cost to the state and potential effects to third parties. Require insurance and bonding – think A Civil Action where firms became insolvent or bankrupt
- (5) Protect property rights: Did anyone in this room consent to substances in public property (CFR) or private property (tap water)? This is repeated THOUSANDS OF TIMES OVER! Self described conservative Property Rights advocates such as Prof. Jonathan Adler argue that charging is not enough without the consent of property holders – or condemnation if consent is not obtained.

As citizens even more than public servants, wouldn't you like to know what the chemistry in the environment can do to your kids, alone or in combination with other materials? Do you want your property and public properties to be used without your consent for low-cost waste disposal? Should more extensive research be required prior to the release of chemicals—and on those that have been released for decades? How do you know without research that there aren't localized effects or some long-term effects downstream? How can permits be issued with so little known about much of the chemistry of the discharge?

That is what the folks I know want to know – for themselves – and for their kids and grandkids.

## ROBERT H. CUTTING

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CA State Bar #056828 (1973 presently inactive) & NC State Bar #24650 (1997)

**Academic Status**                      **UNC Wilmington:** Associate Professor, Department of Environmental Studies, retired 2016

### Education

1973                      **J.D., Martin Luther King, Jr., Hall School of Law, U.C. Davis**  
1970                      **A.B., U.C. Santa Barbara, Political Science**, Blue Key Honorary.  
1997                      **Duke Private Adjudication Center**, North Carolina and nationally recognized Certificate in Mediation techniques.  
1973-2017              Numerous seminars and continuing education classes in environmental law, real property, business organizations, complex litigation, alternative dispute resolution, trade regulation and construction.  
2008                      Courses in Global Climate Change and Ocean and Coastal Law, on scholarship, Vermont Law School, South Royalton, VT.

**Teaching:**                              Graduate and Undergraduate courses in environmental law & policy, forensics, business law and coordinator of internships

### Research and Scholarship: Refereed Publications

#### *Published:*

**2012 "LOCATION, LOCATION, LOCATION" should be "ENVIRONMENT, ENVIRONMENT, ENVIRONMENT!": A Market-Based Tool to Simplify Environmental Considerations in Residential Real Estate**, a discussion of the problems of fraud and misrepresentation of environmental issues in residential real estate transactions and a suggestion of market-based tools, Robert H. Cutting, Lawrence B. Cahoon and Jack C. Hall, 6 Golden Gate U. Env'tl. L.J. 83, symposium issue: The City as Ecosystem (2012),  
[http://digitalcommons.law.ggu.edu/gguelj/?utm\\_source=digitalcommons.law.ggu.edu%2Fgguelj%2Fvol6%2Fiss1%2F7&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](http://digitalcommons.law.ggu.edu/gguelj/?utm_source=digitalcommons.law.ggu.edu%2Fgguelj%2Fvol6%2Fiss1%2F7&utm_medium=PDF&utm_campaign=PDFCoverPages)

**2011 'If the Tide is Rising, Who Pays for the Ark?'**, Coastal Management, 39: 3, 282 — 295, Cutting, Robert H. , Cahoon, Lawrence B. and Hall, Jack C.(2011) First published on: 20 April 2011 (iFirst)  
URL: <http://dx.doi.org/10.1080/08920753.2011.566470>

**2011 "Spill the Beans: Goodguide, Walmart and EPA Use Information as Efficient, Market-Based Regulation."** Tulane Environmental Law Journal 24 (2011): 291-334  
[http://www.law.tulane.edu/uploadedFiles/Tulane\\_Journal\\_Sites/Tulane\\_Environmental\\_Law\\_Journal/Vol.24\\_2.pdf](http://www.law.tulane.edu/uploadedFiles/Tulane_Journal_Sites/Tulane_Environmental_Law_Journal/Vol.24_2.pdf) A review of EPA, Walmart and NGO efforts to provide information on compliance and enforcement as well as product lifecycle footprints to consumers and investors. Tulane Environmental Law . Lead author with Lawrence B. Cahoon, Jefferson F. Flood, Laura Horton, and Michael Schramm.

**2009 The Gift that Keeps on Giving: Global Warming Meets the Common Law.** This is an effort to bring the legal and policy arguments of "Thinking Outside the Box" to the issue of Climate Change, with emphasis on current public nuisance cases filed by

attorneys general and others. With Lawrence B. Cahoon. Winter 2008-2009 issue (Volume 10, Issue 1) <http://www.vjel.org/journal.php?vol=2008-2009>

**2009 Forensic Water Quality Investigations: Identifying Pollution Sources and Polluters:** Chapter in Book on Water Quality issues with Lawrence B. Cahoon . Published in *Handbook of Water Purity and Quality*, edited by Satinder Ahuja by Elsevier, Science and Technology Books.

**2007 Property Rights: Generators versus Receptors;** Athens Technical Research Institute: Proceedings of the Conference on Environment held August 3-5, 2006, Athens, Greece Robert H. Cutting, Lawrence B. Cahoon, and Jack C. Hall This is a discussion of the property rights model discussed in earlier articles (below) in an international context through a discussion keyed to a cross-disciplinary audience.

**2007 Requirements For A Workable Intern/Practicum Program In The Environmental Sciences: Experience For Careers & Grad School,** Journal of Geoscience Education, with Jack C. Hall. Many science programs find it difficult to offer practica and internships, even though it is widely agreed that they are desirable. This article discusses the utility of an internship program and offers suggestions on how it can be done with limited resources.

**2006 Abstract: “Practica and Internships in Environmental Studies Curricula”,** Geological Society of America Annual Meeting, Philadelphia, October 2006 -Robert H. Cutting and Jack C. Hall.

**2006 Abstract, “Property Rights as a Key to Environmental Management: Generators versus Receptors”,** International Symposium on the Environment, Athens Technical Institute for Research (ATINER), Athens, Greece, August 2006 - Robert H. Cutting, Lawrence B. Cahoon, and Jack C. Hall.

**2006 “Enforcement Data: A Tool for Environmental Management”,** 36 *Environmental Law Reporter* 10060-10072 (January 2006) (this is the most widely cited environmental law journal and has been in existence since the 1970’s). The project analyzed the utility of publicly available compliance and enforcement data on polluters as a tool to influence consumers, investors, the regulated community and even regulators themselves, who often cannot get data. The article features an extensive electronic table of all enforcement data available nationwide, verified by a survey conducted of all state programs (former graduate student Ryan Leggette is third author) and synchronized with a website that displays both EPA and state Compliance and Enforcement Data. 2004-2006 EPA Enforcement Data: <http://fire.cis.uncw.edu/EVS/databases.php> State Enforcement Data: [http://fire.cis.uncw.edu/EVS/full\\_state\\_enf.php](http://fire.cis.uncw.edu/EVS/full_state_enf.php) Robert H. Cutting, Lawrence B. Cahoon, and Ryan Leggette

**2006 Forensic Environmental Science:** Ecological Society of America, in *Ecology* 101, [http://www.esapubs.org/bulletin/current/pdfweb87\\_2/ecol101\\_forensic.pdf](http://www.esapubs.org/bulletin/current/pdfweb87_2/ecol101_forensic.pdf), (March 2006) This article explores the need for and the mean to equip both policy and science students with the tools to conduct forensic investigations and is keyed to presentation of the evidence in a criminal court context (the highest level of proof). Robert H. Cutting and Lawrence B. Cahoon

**2005 Thinking Outside the Box,** 21 *Pace Environmental Law Review* 1 (Spring 2005). This article is a multi-disciplinary assessment of (1) regulatory strategies, (2) the “Data Deficit” of basic and essential environmental information and (3) a property

rights perspective as an alternative method to reach the goals of the present system. Pace is the third ranked environmental law program in the nation<sup>1</sup>. Robert H. Cutting and Lawrence B. Cahoon

**2005 Abstract**, Proceedings of Geological Society of America Annual Meeting, Salt Lake City, Utah, October 2006, *Property Rights as a Key to Environmental Protection*, Abstract #95491, Robert H. Cutting and Jack C. Hall. This is the first multi-disciplinary presentation of the property rights concepts raised in the article below.

**2001 “One Man’s Ceilin’ is Another Man’s Floor: Property Rights as the Double-Edged Sword”**, 31 *Environmental Law* 819-900 (December 2001). This is an 81-page treatise published in the journal of the #1 rated environmental law school program at Lewis & Clark Law School). The article explores the shortcomings of current regulatory approaches as well as common law remedies in addressing the reconciliation of the Economy of Nature with the Transformative Economy, which respected Boalt Hall Professor Joseph Sax calls, “one the most important problems of our time.” It then suggests a partial solution based on historic property concepts. The article has been cited in numerous subsequent legal publications. Robert H. Cutting

**1977 “The Integration of Air Quality/Land Use Strategies: Legal Considerations”**, *Office of Environmental Quality, County of Santa Barbara* (1977): groundbreaking article that was used as a model for all counties in the State of California by the California Air Resources Board, and that discusses the utility of various land use techniques to achieve air quality goals. Robert H. Cutting

**1974 “A Many-Layered Wonder: Non-Vehicular Air Pollution Control Law in California”**, 26 *Hastings Law Journal* 109 (1974) a detailed analysis of legal issues related California’s air quality management framework just after passage of the Clean Air Act in 1970, co-authored with the Executive Office of the Air Resources Board, C. William Simmons and Robert H. Cutting

*Submitted*: Take off Invisibility Cloak: Property Rights Trump Polluters’ Rights (2016); Property Rights as a Solution to Pollution (2016) (both with Lawrence B. Cahoon)

#### Professional History:

**Admitted to California Bar November, 1973 (#056828 now inactive), and North Carolina Bar, July, 1997 (#24650)**

7/81-present Private practice, Santa Barbara, CA and Wilmington, NC. Including general civil business and business litigation practice, including trade regulation, real estate, advertising, business organizations (formation and operation), publishing and direct mail, construction, environmental, and use and planning law. Representative clients included County of Santa Barbara, Goleta Water District (primarily litigation), title insurance companies, specialty contractors and approximately 25 attorneys in their private lives. Consultant for the County of Santa Barbara’s Air Quality Attainment Plan. Mr. Cutting also represented numerous NGO’s (arts and community associations) such as the Sierra Club, Get Oil Out, Santa Barbara Rape Crisis Center. Santa Barbara Summer Solstice Celebration

11/97- present Mediator, certified by NC Administrative Office of the Courts including complex construction, property and personal injury cases.

7/88- present Principal, Cutting & Co., Inc., brokers and consultants (licensed real estate corporation incorporated 1997): provided professional real estate consultation and brokerage in both California and North Carolina, representing primarily purchasers.

- 4/91-11/94      Administrative Assistant to State Senator Franklin Block and Representative Karen E. Gottovi. Duties included research, drafting, analysis and strategy concerning legislation; appearance before committees; analysis of legal issues; communications and correspondence with governmental agencies and constituents. Special projects included intensive livestock legislation, Smithfield processing plant, and the NC hazardous waste incinerator
- 11/82-1990      Instructor, California, Southwest Regional Training Center (Cal. State Dominguez Hills), developed and taught 40-hour seminar, "Investigation and Prosecution of White Collar Crime", certified by State of California for Law Enforcement personnel statewide. Subjects included complex crime investigation and presentation, real estate, securities, banking and computer-related crime.
- 2/77-6/81      Deputy-in-Charge, Consumer/Business Law Section, Santa Barbara County District Attorney, responsible for operation of entire white collar crime unit, including management of investigators, law students and paraprofessional personnel and responsibility for fiscal planning. Carried extensive civil and criminal caseload including trade regulation, complex fraud, (e.g., securities, real estate), sensitive investigations (including Secret Meeting Law, Political Reform Act, grand jury). Responsible for public relations and extensive presentations to citizens as well as trade groups such as Apartment Association of SB County. Created countywide Economic Crime Project and training of local law enforcement; worked with state, local and federal agencies; award for Outstanding Service'81.
- 1/75-1/78      Invited Lecturer, University of California, Santa Barbara, courses on Philosophy of the Law (Dr. Thomas Schrock).
- 11/74-2/77      Director, Legal Aid Foundation of Santa Barbara County, responsible for extensive caseload (family violence, tenant rights, general litigation); reported to board of directors; responsible for public and private fundraising and fiscal operations, relations with agencies and bar; managed professional staff and both attorney and lay volunteers.
- 9/71-2/73      State of California, Air Resources Board, Student Legal Assistant responsible to staff counsel for management of legislative activities, (drafting, analysis, strategy), special projects, preparation of enforcement cases, revision of law and regulations (motor vehicle and stationary sources).

**Additional Licenses**

- California Real Estate Broker - July, 1988 (now inactive)
- North Carolina Real Estate Broker - August, 1991 to present
- Instrument-rated Private Pilot (approximately 550 hours flight time PIC)

**Membership in Professional Associations**

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|-----------|---|
| 1973-2016 | California State Bar  |
| 1997-2016 | North Carolina State Bar  |
| 1997-2016 | Certified Mediator, North Carolina Courts   |
| 1991-2004 | American Arbitration Association Panel of Neutral Arbitrators   |
| 1994-2016 | National Association of Realtors® and North Carolina Assoc. of Realtors®  |
| 1981-2016 | Arbitrator, California and North Carolina Courts  |
| 1979-1981 | California District Attorneys Association, Chair, Consumer Protection Council (statewide umbrella organization of white collar prosecutors)   |
| 1978-1981 | Chair, Santa Barbara County Economic Crime Project: created umbrella organization of economic/environmental crime officers to share resources, improve enforcement efforts and train person |

**Professional Consulting:**

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| University: | 2007-2013 Invited reviewer, Kubasek & Silverman, Environmental Law & Policy (6 <sup>th</sup> , 7 <sup>th</sup> and 8 <sup>th</sup> editions) Pearson |
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Law-Related: Private caseload including ADR. Pro bono work has included representation of many environmental organizations (local, statewide and national) as well as on issues, political process and consulting with political figures on legislative and environmental issues.

Real Estate: Real estate consulting