



**ENVIRONMENTAL REVIEW COMMISSION**  
**December 13, 2017**  
**Room 643 of the Legislative Office Building**

The Environmental Review Commission (ERC or Commission) met on Wednesday, December 13, 2017 at 1:00 PM. The meeting was held in Room 643 of the Legislative Office Building. Members present were: Co-Chairwoman Senator Trudy Wade, Co-Chairman Representative Chuck McGrady, Co-Chairman Representative Jimmy Dixon, Vice-Chairwoman Pat McElraft, Representative Ted Davis, Representative Kyle Hall, Representative Pricey Harrison, Representative Frank Iler, Representative Bob Steinburg, Representative Larry Yarborough and six Senators.

Representative Chuck McGrady presided.

The Sergeant-at-Arms are listed in and labeled Attachment #1 and the visitors to the ERC are listed in Attachment #2. Documents were distributed to the ERC members and are listed as Attachments 3 -7. All attachments will be attached at the end of these minutes.

The meeting was called to order at 1:10 PM.

Representative McGrady made introductory remarks and reminded anyone in the audience that wished to speak that they would need to sign in on the form provided and would be allowed to speak at the conclusion of the presentations. He recognized the Sergeant-at-Arms for the meeting. Representative McGrady introduced Co-Chairwoman Senator Trudy Wade and Co-Chairman Representative Jimmy Dixon and asked for any comments from his Co-Chairmen. Hearing none, discussion began on the next item on the agenda.

Representative McGrady called for a motion to approve the minutes from April 13, 2016 and upon a motion by Senator Bill Cook the minutes were approved and adopted as written. The ERC then moved on to the next item on the agenda.

**PRESENTATION 1 –Report on Solid Waste Disposal Tax and Related Matters – Michael Scott, Acting Director for the Division on Waste Management, Department of Environmental Quality (DEQ) (Attachment 3)**

Representative McGrady introduced Mr. Scott. Mr. Scott began by saying his presentation would be divided into three parts: an overview of the solid waste disposal tax, the history of the



tax and the current and past uses of the tax. The solid waste disposal tax is a tax that was created by Session Law 2007-550 and implemented in July of 2008. It is a \$2 per ton tax for disposal of municipal solid waste, construction and demolition waste, and the transfer of waste outside of the state. Mr. Scott shared the historical data of the tax collected since 2009 and how the allocated funding has been used, in particular related to the study and clean-up of pre-regulatory landfills. Mr. Scott referenced a larger version handout of the slide detailing pre-regulatory landfill fund expenditures (Attachment 7).

Upon completion of Mr. Scott's explanation of expenditures, Representative Dixon clarified that \$18 million had been spent on assessing the hazards of these pre-regulatory landfills, \$1 million by local governments and \$16 million on remediation and clean-up. He asked how the local government portion was paid and whether actual clean-up had occurred with the remediation costs.

Mr. Scott verified that the local governments pay out the funds and are reimbursed and that remediation included clean-up with removal of waste, proper disposal and placement of engineering caps when needed.

Representative Dixon asked how many of the 677 sites have been completely remediated to date and if there are completion dates available to the ERC regarding those sites.

Mr. Scott replied that 12 sites have been completed with plans for an additional 16 to be completed in the next two years. He said that the DEQ would be able to supply dates regarded to the completed sites for the ERC.

Representative Dixon wanted clarification of the administrative costs included in the line item for Administrative Pre-Regulatory Landfill Fund (PRLF). Mr. Scott explained that the statute allows for administrative costs to be paid to technical staff, including departmental hydrogeologists and engineers and a program manager.

Representative Dixon asked whether the encumbered funds included the award of contracts to vendors for clean-up that has not begun but been awarded.

Mr. Scott said that all of the \$32.5 million currently in the account is encumbered.

Representative Dixon noted that he believes if the assessments have been completed and the contracts, issued, there is a need to move on spending the \$32.5 million as soon as possible.

Chairman McGrady asked if there were further questions related to this financial portion before Mr. Scott continued his presentation.



Senator Wade inquired as to how sites are prioritized for clean-up and whether sites completely remediated can then be used for economic development or whether they still require monitoring. Mr. Scott verified that the DEQ works off risk assessments for highest risk sites to be remediated first and agreed to provide a detailed breakout of the 12 sites that have been completed. Some of these have no land use restrictions while others have some that would prevent certain types of development.

Senator Wade followed up with inquiry of whether any private money is being used in clean-up in addition to state funds and whether any private companies are operating with DEQ oversight.

Mr. Scott explained that this will be covered in an upcoming slide and that a majority of funding has come from the solid waste disposal tax although there is some interest in allowing private industry clean and oversee low risk sites.

Representative Yarborough asked what services are being provided for the 37.5% of tax going to the counties.

Mr. Scott answered that the question will be answered in the later portion of the presentation.

Representative Harrison followed up with a question related to private contractors being utilized in the remediation of low risk sites and whether DEQ was providing oversight or were the contractors remediating without oversight.

Mr. Scott said currently the DEQ oversees the work of private consulting firms but a later slide will address a pilot program that will address the possibility of smaller projects being remediated and overseen by private firms and will answer the question more specifically.

Representative Harrison asked whether all the pre-regulated landfills identified are municipally owned.

Mr. Scott said that they are all municipal or state owned.

Mr. Scott continued his presentation showing changes over time in how disposal tax is spent from assessments to remediation, projecting expenditure forecasts for the next few years and explaining the pilot studies that will compare the efficiency and effectiveness of utilizing private contractors in an expanded role in cleaning and closing sites. He also presented several examples of sites that have been remediated and are now closed out. He concluded his presentation on how disposal tax funds have been utilized historically in the pre-regulatory landfill program.

Senator Bryant asked if Mr. Scott could differentiate between the slide handouts related to the pre-regulatory program sites as they seem similar, if there is a 1:1 correlation to the lists and if he could explain the DEQ role in the redevelopment activities and allocation of funding.



Mr. Scott replied that the two slides were an effort to provide the information requested of the DEQ related to the most up to date list of how funds were being allocated and used and the second is a list of redevelopment activities around the state and the prioritization of these activities and that the two do not have a 1:1 correlation. When a redevelopment priority is requested, the DEQ will work with the developer to expedite the assessment, identify remedies and determine caps and land use restrictions that will work with the developer's plan of use and then put the prioritization and remediation into place.

Senator Wade asked whether privately owned pre-regulatory sites could qualify for state funded clean up if they knowingly purchased property with a pre-regulatory site or if they decided to change the use of a site that would then require remediation and redevelopment.

Mr. Scott explained that many properties have changed hands without the pre-regulatory site being identified on the deed and are unknowingly purchased by developers. At this time, all of these sites have been identified and are on the prioritization list for remediation. The program would require assessment of the site in regards to the use or "new" use, remediation plans and an establishment of a cover cap for redevelopment. These expenses would be allocated by the fund to facilitate redevelopment.

Senator Wade followed up with questions related to identifying how many of the 677 sites are low risk and the expense related to clean up so that perhaps more sites could be cleaned up quickly and reduce the number of sites to be cleaned quicker and put more land into use or redevelopment.

Mr. Scott asked staff to prepare a list of the low risk sites for Senator Wade and asked to defer to Charlotte Jesnech of the Division of Waste Management to more accurately address Senator Wade's concerns.

Ms. Jesnech informed the committee that 77% of the sites are judged to be high risk due to their proximity to homes, wells, and community areas. The remaining lower risk sites are still being assessed to determine the cost and hazard.

Senator Wade followed up with a series of questions related to the \$18 million spent on assessing these sites and how they are assessed, since there is still further assessments to be completed. She would like a clarification of the work that has been done on the assessments.

Ms. Jesnech explained that much of the preliminary work in assessments was done to identify site that were pre-regulatory landfill sites. These were unlined and accepted various levels of hazardous materials from the community. Once the sites are identified, they are assessed as to how close they are to community areas, homes, and water sources to determine the risk of human exposure. After the priority of risk exposure is set, further assessment is done to determine the



exact nature of the risk and that is a separate classification of high or low risk. At this time approximately 1/6 of the sites have been fully assessed with complete delineation.

Representative Dixon posed questions related to the staffing at DEQ and the number of positions that were put in place when the \$2/ton tax was imposed, from inception to present.

Mr. Scott said the program was built from the ground up and that there are eight positions, a program manager and seven technical positions. These were set up at the inception and continues through today.

Representative Dixon asked whether DEQ has considered grouping smaller sites and allowing contractors to bid on bundles of sites for remediation. He asked for a list of private contractors that are currently working to remediate these pre-regulatory landfill sites and to understand the purpose of dividing the \$2/ton tax and the percentage allocation.

Mr. Scott explained that the Pilot Study referenced in his presentation will allow for the process of allowing contractors more involvement in the assessment and remediation of sites and they will be judging the efficiency and cost of this endeavor for future recommendations. Mr. Scott explained that the projections of the needed funds and the solid waste being handled was at the root of the division of funds, although he does not know the exact details of how the percentages were derived and defers to fiscal experts. He believes that the next segment of his presentation will show how the legislation was meant to be comprehensive solid waste management and not just aimed at cleaning up pre-regulatory landfills.

Senator Smith-Ingram asked whether there had been any investigation to extracting methane and gasses from these sites as additional revenue.

Mr. Scott responded that it has not been determined to be a cost effective measure at this time but will be glad to follow up with staff and the contractors currently being used in the pilot studies.

Senator Bryant had questions related to the solid waste tax fund, the funding in the solid waste trust fund and whether there are issues related to electronic recycling.

Mr. Scott explained the relationship between private solid waste companies and local government landfill operators as well as stating that this tax is specific to only certain types of solid waste.

Representative Harrison asked how the work to remedy these sites was paid for prior to the 2007 legislation and to the history of the allocation of the funds back into the general fund.



Mr. Scott responded that prior to the legislation in 2007, sites would be inventoried into an inactive hazardous sites list and there would be no funds to pay for assessments that have been conducted to date or to fund the remediation of 12 sites. His continued presentation will show the history of the allocations of the solid waste tax.

Representative Harrison followed up with a question related to the need for legislation for the disclosure of hazardous waste sites in the transfer of property.

Mr. Scott said the legislation already exists but that once the full footprint is determined, the information can be shared more effectively.

Ms. Jennifer McGinnis (Staff Counsel) explained that a bill introduced earlier this year by Representative Turner and Chairman McGrady will enhance this process with notice required to be given of contaminated sites that are identified to counties.

Chairman McGrady reminded the ERC that as an oversight commission they are dealing with some difficult subjects but have the authority to report out legislation based on these discussions moving forward.

Senator Wade followed up with questions related to whether any of the sites could be classified as Superfund sites under the federal program and if a breakdown of funds spent for assessment could be provided to her.

Mr. Scott said the sites do not qualify under federal superfund standards.

Senator Wells commented that he believes now that the sites have been assessed and boundaries determined that the GIS information (Geographic Information Systems) should be sent to counties and linked to the county GIS so that the information can be disseminated with real estate searches.

Representative Yarborough would like to call attention to the fact that a valuable resource in identifying the location of the sites are county employees and commissioners and some are at the point of retirement so expediting requests to them may be helpful in the location of the boundaries of these sites.

PRESENTATION 2- Local Governments and the Solid Waste Disposal Tax – Amanda Bader, P.E., S.C. acting Harnett County Engineer and Solid Waste Director and North Carolina Solid Waste Association of North America (SWANA) Chapter Board Member (Attachment 4)

Ms. Bader presented information on how the solid waste disposal tax fund is utilized in Harnett County, including expenditures and revenues generated by the Solid Waste Tax Program. She



also shared what the solid waste tax distributions have funded or purchased for the county over several years.

Senator Wells and Representative McElraft asked the actual number of the tax, tipping fees, and revenues returned and whether private companies are contributing to this funding.

Ms. Jennifer McGinnis (Staff Counsel) answered that the numbers could be obtained from fiscal services if needed. She also explained that the list referenced by the legislators is a list DEQ supplied regarding state portions of the tax, not municipal. The funding comes from two streams: if the county operates a solid waste disposal service and if they have inactive hazardous sites in their jurisdiction.

Representative Yarborough asked whether private waste companies are charging customers to subsidize municipalities.

Mr. Rob Taylor, State Recycling Program which is a section of Division of Environmental Assistance and Consumer Services (DEACS), verified that any community is eligible for solid waste disposal tax funds if they provide any source of recycling and solid waste disposal. All 100 counties receive funds and most municipalities.

Chairman McGrady recognized speakers that wish to address the Commission.

Mr. Joe Hack, NC SWANA and Senior Project Manager of Mecklenburg County Solid Waste Program, spoke to advocate for the Solid Waste Tax Fund, declaring the funding has been very important to the operation of solid waste programs and in creating job opportunities within the recycling operations. He complimented DEQ on their dedicated staff for professionalism and efforts. He stated that in his experience the time taken to perform the assessments identifying the hazards of the pre-regulatory landfills is realistic.

Senator Wade followed up with questions for Mr. Scott related to the amount of space left in our current landfills, how much is contracted versus what is available and how it is determined.

Mr. Scott responded that detailed information regarding this topic will be provided in January and DEQ would be glad to follow up on any specific questions.

Rep. Dixon stated that the legislators should consider whether legislation is too restrictive as the state will continue to generate trash.

Chairman McGrady thanked the DEQ and staff for their responsiveness and the Commission for their efforts and time.

There being no further business, the meeting adjourned at 3:24 PM.



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Presiding

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Kimberly Neptune, Committee Clerk