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MINUTES
ENVIRONMENTAL REVIEW COMMISSION
9 October 2006

The Environmental Review Commission (ERC) met on Monday 9 October 2006 at 9:30 a.m. in Room 643 of the Legislative Office Building. Senator Charlie Albertson presided.

The following members were present: Senators Albertson, Bingham, Dorsett, and Weinstein; and Representatives Gibson, Harrison, Justice and McComas. Mr. George Givens, Commission Counsel; Jeffrey Hudson, Assistant Commission Counsel; Jennifer McGinnis, Assistant Commission Counsel; Jennifer Mundt, Commission Analyst; and Mary Watson, Acting Commission Clerk, were also present.

On 15 September 2006, notice was sent to members and interested parties via e-mail and regular mail. A copy of the notice is included in the attachments to these minutes as **Exhibit A**. Copies of the agenda for the meeting and visitor registration sheets are included in the attachments as **Exhibits B** and **C**.

Senator Albertson called the meeting to order and asked George Givens to give his report and explain the agenda items. Mr. Givens noted that since the previous meeting, Tim Dodge has resigned to attend law school, and Jennifer Mundt has been hired as Commission Analyst. He noted for the record that the Commission's authorizing legislation was amended during the 2006 regular session to authorize the Commission to contract for consultant services with the approval of the Legislative Services Commission. He pointed out that a memorandum from Ms. Jennifer Mundt (see **Exhibit D**) transmitting two reports to the Commission had been placed at each member's desk. The reports are Implementation of the "Clean Smokestacks" Act (see **Exhibit D-1**) and a status report on the study of potential costs and benefits of enacting a renewable energy portfolio standard in North Carolina (see **Exhibit D-2**). The reports that concern today's agenda items have been removed from the package and are inserted at the appropriate place in the minutes. The package also included a memo re the status of legislation recommended by the ERC to the 2006 session (see **Exhibit D-3**), brief descriptions of environmental legislation enacted during the 2006 session (see **Exhibit D-4**), a list of studies to be conducted by the ERC (see **Exhibit D-5)**, and status of reports to the ERC required by law (see **Exhibit D-6)**.

Mr. Givens reported on discussions he had had with the co-chairs on each of the studies to be conducted by the ERC. He said that because there had been an agenda item on mercury during the last interim it would probably not be reconsidered during this interim. With regard to abandoned homes, he intends to discuss the issues with stakeholders to determine how to proceed. With regard to issues related to solid waste management, the study will begin with a report given today by the Department of Environment and Natural Resources (DENR) on options for the Commission. The study will continue in a manner yet to be resolved. With regard to studying the merger of the Ecological Enhancement Program with the Clean Water Management Trust Fund, the Joint Legislative Transportation Oversight Committee will take the lead. Issues related to the nutrient offset program will be discussed at a working group to determine the best way to proceed with the study. He believes a consultant will be hired to investigate that matter. An executive branch committee is looking at amendments to the Mercury Switch Act, which needs to be reported to the next session. The swine moratorium is set to expire on 1 September 2007 and he expects the ERC will spend some time and attention on that issue in the upcoming months.

The focus of today's meeting is on water quantity issues and on solid waste. An update on the Underground Storage Tank Program has also been added. The final report today will be on the Apex fire. Mr. Givens also noted for the record that the planning meeting for this meeting was held on 21 September, 2006.

Senator Albertson recognized Ms. Robin Smith, Assistant Secretary for Environment, DENR, to inform the ERC of organization and personnel changes within the department (see **Exhibit E**). Richard Rogers will serve in the newly created Assistant Secretary for Natural Resources position. Ms. Smith will serve as Assistant Secretary for Environment. A third assistant secretary will be for information systems.

The latter position was created in response to direction from the State Office of Information Technology Services to exercise more control over information technology decision-making and purchases. Ms. Smith also introduced Ms. Elizabeth Self as the new legislative liaison.

Senator Albertson next recognized Dr. David Moreau, Chair of the Environmental Management Commission, to give his report on activities of the Commission for the previous two quarters (see **Exhibit F** for his PowerPoint presentation, **Exhibit G** and **Exhibit H** for copies of the quarterly reports, and **Exhibit I** for a timeline of activities on the Concord and Kannapolis IBT Petition. He said the Clean Air Mercury Rule and the Petition for an Innovation Transfer by the cities of Kannapolis and Concord have occupied a lot of the Commission's time over the past two to three years.

The Clean Air Mercury Rule was issued by the US Environmental Protection Agency (EPA) in May of 2005. The states had 18 months to revise or submit a state implementation plan to execute the program. It was estimated by EPA that this rule would reduce mercury emissions by about 20 percent by 2010 and by 70 percent by 2018. They chose to regulate mercury emissions from electric power plants as a cap and trade program. There is a lawsuit concerning this program in the courts. The EMC took almost a year of study and negotiations to get a rule out to public hearing. It was approved to go to public hearing in March of 2006. Hearings were held across the state in Raleigh, Charlotte and Winterville. The impact of the program on North Carolina is that it set allowances of about 33,700 ounces of mercury emissions per year for Duke Energy and Progress Energy for the period 2010 to 2017. In Phase 2, the allocation was reduced to about 14,000 ounces per year. Meeting the 2018 cap would require about 80 percent reduction of mercury emissions from the 2004 level. The cap and trade program works as follows: if the utilities exceed the allocated credits, they must go on the national market to purchase credits to meet the cap. The problem is that the market does not yet exist, and when it comes into being, it is uncertain how many credits will be available and at what price. If the utilities reduce their emissions to a level below their allocated cap, they can market the excess emission credits to other utilities. A minimum for mercury emissions is set for new utility sources. The Commission looked into whether the federal performance standard is sufficient for North Carolina, if the emission limits should be more stringent than the federal limits, if the state should allow the use of the national trading program, and how growth and new facilities will be handled with respect to the caps.

A key point of confusion is the baseline. The Director of the Division of Air Quality (DAQ) has been quoted as saying that the state can expect about a 60 percent reduction in mercury emissions as a co-benefit of the Clean Smokestacks Act (CSA). Advocates for more stringent controls want a 90 percent reduction. One baseline used is the mercury in the coal that is burned with 90 percent reduction relating to the mercury in the coal that is burned. The other baseline is the estimated emissions in 2004. The estimate is that the current controls (electrostatic precipitators) on all of the power plants reduced the mercury emissions currently by 30 percent, so that the 2004 emissions are about 67,500 ounces; and the mercury in the coal is about 96,000 ounces. The Commission estimates that under the Clean Smokestacks Act, about 41 percent of the mercury in the coal will be controlled to the 90 percent level; 45 percent will be controlled to about the 66 percent level, and the non-CSA facilities will account for about 13 percent of the total. The best guess is that the utilities will be able to meet the 2010 objective. There are no plans in place for 2018, so the level of emissions in 2018 is still an uncertainty. The estimate is that it will require a state-wide reduction of utility emissions of 85 percent if the cap is to be achieved in North Carolina. The EMC is currently in the process of drafting language for resolving the outstanding issues and hope to have a draft of the rules within the next two weeks. They will then make a decision about whether to go back to public hearing.

The other matter Dr. Moreau discussed is the petition for inter-basin transfers (IBTs) for Kannapolis and Concord. The two cities have requested transfers from the Catawba basin and from the Yadkin basin (see **Exhibit I**). The decision on the transfer is expected to be made in January of 2007. Most of the discussion has focused on the impacts on the Catawba basin; however, the Yadkin basin is being given more attention at the present time. The Commission is obligated to make findings of fact, put them in writing, and satisfy a list of requirements within the statute. The decision criterion is that the EMC has to make their decision based on the findings of fact by weighing the beneficial and adverse effects and insuring that any adverse effects are mitigated. The Commission is given the authority to grant the

petition in whole, deny it, or grant it in part. It also has the authority to set whatever conditions on those permits it deems necessary. The impacts are being measured in a variety of ways, mostly on the impact on water availability. Most of the impact is being measured by the elevation duration curves, frequency with which the levels of the lake are at certain elevations, and comparison with and without the transfers. It is hard to find differences with and without the transfers at various magnitudes. Staff has focused on the worst case, the drought period from 2001-2002, and look at the details of what would have happened with the transfer during the worst period of hydrologic record. The systems are dominated by hydroelectric power generation, and the new low inflow protocol, which has been adopted as a part of the relicensing on the Catawba, imposes the low inflow protocol. With the IBT, the protocol is triggered earlier, thus reducing the amount of hydroelectric power being generated. Curiously enough, the lake levels actually as a rise as a result of the IBT. One of the difficulties of the analyses is that they are being run with proprietary software. The EMC has been trying to get outside of the simulation model to see what the impacts would be of the transfers independent of power generation. One effort to determine the impact is to find out how lake levels would drop if the transfer was skimmed off the top with no inflow for six months.

Senator Bingham asked Dr. Moreau if there were any adverse effects of IBTs on power generation. Dr. Moreau said there would be an adverse effect on power generation because the low inflow protocol reduces power generation. Duke Energy has agreed to the low inflow protocol as a part of the federal energy relicensing process. Senator Bingham then asked how future effects of IBTs would be addressed. Dr. Moreau replied that the issue is under consideration. Senator Bingham went on to ask if there was a process for reconsidering transfers when one area began to have water supply problems. Dr. Moreau answered in that case, the area could come to the EMC and request a capacity use designation to cause the EMC to re-examine all the transfers and demands on the basin.

Dr. Moreau added that there is a problem with the statute for IBTs in that the statute is silent on any time limit for the certificate. He said he personally would be more comfortable if there were time limits on the transfers.

Representative McComas asked why there were no public hearings on the mercury rule on the coast. Dr. Moreau replied that Winterville was selected as the eastern public hearing site. Representative McComas commented that the focus of the hearings on mercury emissions is on the power companies. He asked if other generators of mercury emissions are being considered. Dr. Moreau said the EPA rule is specific to electric utility generators and the state must adopt a rule in concert with the EPA requirements. It does not address municipal incinerators or other industrial boilers. Dr. Moreau said he does not know what portion of mercury emissions is being covered at the current time. The general assumption is that the dominant source of the mercury emissions is the electric power generating units.

Mr. Givens asked if there are existing regulations that regulate emissions of mercury from other types of smokestacks. Dr. Moreau said he did not have any knowledge of any. Senator Albertson asked Dr. Moreau to find out the answer and report back to the ERC.

Representative Gibson asked Dr. Moreau if he believes the General Assembly needs to change some of the statutes concerning IBTs. Dr. Moreau replied that he does not find much wrong with the current statute. The only provision he would change is to place the burden of proof somewhere. He suggested adding a presumption against IBTs to increase the level of burden of proof. Dr. Moreau said there is plenty of water in the state, but people have to be careful about making withdrawals in the worst drought conditions. Mr. Givens commented that the current statutory evidentiary standard for IBTs is the preponderance of evidence standard, which is the lowest (51 percent) of the three generally established judicial standards.

Senator Albertson recognized Mr. John Morris, Director, Division of Water Resources DWR), DENR, to discuss issues related to the IBTs (see **Exhibit J,** Analysis of Reservoir Levels and Water Supply: Impacts of Proposed Concord Kannapolis Interbasin Transfer and **Exhibit K**, Information on Interbasin Transfers in South Carolina). Mr. Morris said the report on water resources would address

three subjects: (1) the context of IBTs and how they have worked in the three transfer cases to date, (2) the annual report on state water supply planning activities, and (3) a report on progress being made with the new statute on the Drought Management Advisory Commission that will be made by Mr. Woody Yonts.

Many North Carolina towns, cities, counties and economic regions are divided by the 38 water basin lines. Many of them are in two or three different basins. IBTs occur when a city or county in two different basins tries to arrange for their water supply needs. There are over 160 IBTs in North Carolina. Many are very small. There are over 40 IBTs that are over 1 million gallons a day. The threshold for permitting is 3 million gallons a day. Three IBTs have been permitted by the EMC. The first is Cary, Apex and other communities in the Triangle area. Cary and other Triangle communities have had tremendous growth recently, and they have found that Jordan Lake, a large federal reservoir, has a substantial amount of water storage available. The lake is in the Cape Fear basin, and Cary is partly in the Cape Fear basin, but more in the Neuse basin. Use of water from Jordan Lake results in a transfer from the Cape Fear basin to the Neuse basin. The new growth in Cary is westward toward the Cape Fear basin, so now Cary is developing a new wastewater plant that will return the water used in the western area back into the Cape Fear basin. The City of Durham is partly in the Neuse basin and partly in the Cape Fear basin. Historically, their reservoirs have been developed in the Neuse basin, and when the reservoirs provide water to the part of the City of Durham that is in the Cape Fear basin, some of that water is discharged to the Cape Fear River. To a significant degree, then, the transfer from the Neuse to the Cape Fear by Durham cancels out the transfer in the other direction by Cary and Apex.

The second transfer approved by the EMC is in the Piedmont Triad area, particularly involving Greensboro and High Point. The two cities are in the upper end of the Cape Fear basin where the natural availability of water is somewhat limited. The local governments decided to take a regional approach, and founded the Piedmont Triad Regional Water Authority, which involves Greensboro, High Point, Archdale, Jamestown, Randleman and Randolph County. Over a period of years they planned to build a new reservoir project, Randleman Lake, which is on the Deep River. Building a reservoir does not create water, but it provides for storage of water from wet periods to use during dry periods. The use of water from the lake involves some IBTs. Water that goes to Greensboro goes from the Deep River basin to the Haw River basin, both part of the Cape Fear basin; however, the statute defines them as two separate basins. A much smaller amount of water used by High Point goes from the Deep River to the Yadkin River basin. One of the conditions placed on the lake project by the EMC is that the stored water in the reservoir is to be used to provide a higher flow in the Deep River during drought periods.

The third transfer permitted by the EMC is in the Charlotte Mecklenburg area. The City of Charlotte is in two different river basins, the Catawba basin and the Rocky River basin. The University of North Carolina at Charlotte and the associated economic development is outside the Catawba basin in the Rocky River basin. Charlotte found it was cost effective and sustainable to use water from their existing sources and investments in the Catawba basin to serve the area just across the basin divide in the Rocky River basin.

Mr. Morris shared four conclusions about the present status of IBTs in the state. First, the IBT is a long range commitment of water resources, so it needs to be carefully regulated to assure that the source river basin is fully protected and that there is good long range water availability in the source river basin. The Commission has been very careful in the three permits they have given to date. The have put some substantial conditions on the use of water that protect the source river basin. Second, it does not appear that the IBT mechanism is a rapidly growing trend in the state. Third, IBT is not at this time a significant factor in any of the river basins, so it is a very small factor in overall state water management. Fourth, IBTs are very critical local or regional water supply solutions, allowing reliable and cost effective water sources to be provided, and the transfers can be done in a way that is carefully regulated and protective of the source river basin.

Essentially, the statutes for IBTs require a very detailed environmental analysis to document all the impacts of a proposed transfer. The analysis has to stand public scrutiny in the public hearing process. The Department is responsible for considering all comments and criticisms made and correcting

the document if needed to respond to those comments and criticisms. The goal is to have a thorough and accurate document that tells all interested parties exactly what the impact of the transfer will be. Then the analysis goes to the EMC, and the statute gives them very specific guidance as to how they weigh the positive and negative factors and make their decision. Mr. Morris added that South Carolina does not have the same procedures for making IBTs. They do not have the same kind of public notice, there is no requirement for mandatory public hearings, and no environmental impact statement is required.

Senator Weinstein asked if there is any long range planning to assure a sufficient water supply as our state grows. Mr. Morris replied that the Division looks 50 years into the future.

Mr. Givens asked about IBTs that were grandfathered when the legislation was passed. Mr. Morris said two of the three transfers discussed above were given certificates under old legislation. If there were transfers in place in 1993, they were grandfathered to the extent that physical facilities were in place to transfer that amount of water. Transfers below the threshold of 2 million gallons a day are allowed, but if the transfers increase to above 2 million gallons a day, a certificate will be required. Mr. Givens asked Mr. Morris about Dr. Moreau's concerns with the statute (the time limit of certificates and the evidentiary standard the EMC uses to determine if a petition should be granted). Mr. Morris said the time limit could be considered; South Carolina does use time limits. He added that the EMC inserts a statement into their certificates that says if the environmental analysis on which the certificate was based turns out to have errors in it or new information comes to light, the Commission can reopen the certificate and reconsider it. He went on to say that if there is a capacity use area declared for an entire basin it should override the IBT certificate. That would happen if it was perceived that in the entire river basin there is a potential depletion of water resources. Mr. Givens asked if he believed that the statutory delineation of river basins and sub-basins is correct. Mr. Morris said counting the 38 basins was a compromise between the 17 major river basins and the over 100 basins that some identified.

Mr. Morris said he was in favor of the North Carolina approach to sustainability of the water supply through the Water Use Act. If the EMC determines there is a region of the state where water use has grown to the extent that it threatens to deplete water resources within the region, or if there is a harmful competition between water users, the EMC can adopt an administrative rule to define the area. Then water users of over 100,000 gallons a day have to get a permit from DENR. There is only one capacity use area in the state at this time, a 15-county region in the coastal plan where there was a problem of overuse of the groundwater. The solution involves a 16-year transition period where groundwater users will reduce their withdrawals from certain aquifers in three stages, while developing other water sources that will be sustainable.

Mr. Morris continued with agenda item 7, a status report on water supply planning (see **Exhibit L**). He discussed water quantity monitoring, water use monitoring, local water supply plans, the North Carolina Water Supply Plan (NCWSP), river basin water supply plans, water use during droughts, central coastal plan capacity use area, southern coastal plain capacity use investigation, IBT certifications, IBT requests, and hydropower facility relicensing. He said he believes that when the long range plans and water supply models are completed for each river basin, the state will have a good basis upon which to evaluate any kind of future demand on water supply.

Senator Weinstein asked about the overuse of aquifers, specifically by Smithfield Foods. Mr. Morris replied that the EMC has asked DWR to investigate that area as a potential capacity use area. DWR has talked to Smithfield Foods and the Lumber River Council of Governments to find a solution. If the area users can make rapid progress toward solving the problem, a regulatory solution will not be needed. An agreement has been reached between Smithfield Foods and the Lower Cape Fear Water and Sewer Authority to develop a new water source from the Cape Fear River and reduce the impact on groundwater. DWR is hopeful and encouraged that the new surface water source will be able to serve local governments in the area as well.

Representative Gibson asked if the model for water supply can reflect new water uses and sources to determine the effect on long range water availability. Mr. Morris replied that it can.

Representative Gibson asked if local authorities get the information regularly. Mr. Morris answered that the models are made available to the local governments for their use in looking at future scenarios based on prospective changes.

Senator Albertson recognized Mr. Woody Yonts, Water Resources Engineer, to discuss the annual report by the Drought Management Advisory Council (see **Exhibit M**). Mr. Yonts said the State of North Carolina is leading the nation in water supply planning, ground monitoring, and communicating with communities in order to respond to droughts.

Senator Albertson recognized Mr. Dexter Matthews, Director, Division of Waste Management, DENR, to discuss issues related to solid waste management (see **Exhibit N**). Mr. Matthews commented on the strides made in the early 1990s in the area of solid waste legislation: goals were established for waste reduction, scrap tire and white good management programs were implemented, programs to address medical waste were implemented, the first bans on disposal of certain kinds of waste were instituted, all unlined landfills were required to be closed by 1 January 1998. As a result of these actions, North Carolina closed all unlined landfills, cleaned up all the major scrap tire sites in the state, addressed the disposal of medical waste was through new regulatory requirements, and developed waste reduction programs.

Mr. Matthews said to prepare for his presentation he has surveyed 16 states across the country on their solid waste laws and regulations. He addressed the following issues:

- Owner and operator liability and solvency – need to be sure that Limited Liability Companies (LLCs) have enough financial resources to take on the responsibility of solid waste disposal, and to be sure all companies have financial responsibility requirements for closure and post closure care for landfills
- Compliance with North Carolina bans on disposal of certain waste types – there needs to be a way to insure that banned substances do not make their way into our landfills
- Alternative analysis and impact study – DENR does not require landfill impact studies to look for the best place for landfills to be sited; the permitting process does not require looking at alternatives to landfills
- Local government franchise/host fees – recent franchises have led to local governments being a partner in the financial success of private landfill projects, and raise the question if these partnerships bring liability to the local government as an owner/participant in the success of the project
- State regulatory program resources –a permit fee should be imposed to provide additional resources for the oversight of landfills
- Old landfill sites – there has been no adequate cleanup of the approximately 700 old landfill sites, even identification of their locations, and resources should be provided to do so, probably with a tip fee at the point of disposal in North Carolina
- Technology/design and operational enhancements – there have been many advances in landfill technology and design and additional rulemaking is desirable

Mr. Matthews reported that DWM is talking with other states about buffer requirements, including separation from groundwater and vertical requirements, cover requirements, critical and sensitive areas, facility size, groundwater sampling, leachate controls, landfill gas controls, liner design and construction, LLC questions, local government approvals, traffic studies, and waste acceptance. He said DWM is hoping to have a report for the December ERC meeting with requests for changes to rules. Currently the Division is looking at double containment for all leachate appurtenances located outside the lined disposal area, full leak detection for the liner with electrical methods that are now available, leak detection under pumps, and elimination of penetrations of liners such as leachate and gas collection pipes.

Representative Harrison asked what changes Mr. Matthews would suggest in the statute to ensure the financial resources of LLCs to handle releases from private landfills. He replied that legislation to make it clear that DWM has the authority to require financial assurance prior to the release of a facility

would be helpful. Representative Harrison then asked about waste screening legislation. Mr. Matthews said the franchise operators would be violating a law if they disposed of waste not allowed in landfills. Waste screening has been in place for public landfills because of federal requirements concerning hazardous and liquid waste in landfills. There is a potential for a problem when a person from another state, not knowing North Carolina laws and not knowing where their waste would ultimately be disposed of, could place something into their waste that is not allowed in our state. Mr. Matthews suggested the requirements need to be enhanced to protect against that kind of problem. Representative Harrison asked why landfills are exempt from the State Environmental Protection Act (SEPA). Mr. Matthews replied that was done years ago. Federal law, the Resource Conservation and Recovery Act (RCRA) is very comprehensive, and much of the criteria involved siting a landfill under RCRA is the same as under SEPA. The biggest difference is the alternative analysis. Another concern is for DWM to be able to place additional requirements on a particular landfill site because it is a marginal site. Mr. Matthews added that a number of states require impact analyses as part of their landfill permitting process.

Representative Harrison asked how other states handle tipping fees and how have states that have tipping fees been able to overcome resistance to the fees. Mr. Matthews replied that about 21 states have tipping fees, and the fees have been used to meet a variety of needs. He said DWM would want to use the fees generated by charging a tipping fee for the cleanup of orphan sites in the state.

Representative Gibson asked if the Division is in conversation with regulated parties to let them know that the financial responsibility issue is a DENR concern. Mr. Matthews replied the operators are aware of the LLC issue. There is no committee in place looking at possible rules; however, he has talked with a number of associations and mentioned the issues he has discussed today. Representative Gibson asked if DWM would be looking at the ERC to help get additional resources to handle backlog and reduce time for permitting. Mr. Matthews said they would. Representative Gibson asked how much funding it would take to clean up orphan sites. Mr. Matthews answered that he did not have the information today, but said he would have it available at the next meeting.

Mr. Givens asked what percentage of the solid waste management budget is receipts supported, what percentage is federally supported and what percentage is funded from the General Fund. Mr. Matthews replied that solid waste is almost completely funded by General Fund appropriations. Mr. Givens asked if DWM has information on what other states charge for tipping fees. Mr. Matthews said the outside ranges are from 50 cents to $10.

Senator Bingham asked if in states with high tipping fees waste is disposed of responsibly or have regulators noted an increase in illegal dumping. Mr. Matthews said he did not believe a $2 a ton tip fee would make a lot of difference. He added that what will make a difference in an individual's decision to dispose of waste responsibly is the adequacy of disposal options. He added that he would ask his counterparts in states with high tip fees to see if they have seen any changes because of the high fee.

Mr. Givens asked if there is a known figure for the amount of waste disposed of by an average household in a year. Mr. Matthews said DWM looks at those figures based on the total population divided by the total number of tons of solid waste disposed. That figure is just over 1 ton per person per year in the state; however, that figure includes commercial waste as well as household waste. He said residential waste would be about one-third of a ton per person, which would result in about a $2 tip fee per year for a 3-person household with a fee of $2 per ton..

Representative Justice asked about the capacity of landfills and if counties would be more inclined to participate in regional landfills. Mr. Matthews said there is no capacity problem in North Carolina taken as a whole, but there is a capacity issue in particular areas of the state. He added that a number of enhancements being discussed for legislation or rule-making will have an impact on local governments. He said the changes may make a difference to local governments in whether or not they want to operate their own landfills or transfer waste to other facilities.

Representative Gibson asked how long it takes for a typical county in North Carolina to get a solid waste landfill permitted. Mr. Matthews said that it would take about 3-5 years, including all the work done prior to submission and the permitting process.

Representative Harrison asked if the enhancements Mr. Matthews foresees will require legislative action. Mr. Matthews said there may be some, although many of the changes could be effected through rulemaking.

Representative McComas asked if DWM has looked at the requirements for getting a permit to operate a mine concerning financial responsibility to see if those requirements might apply to landfills. Mr. Matthews said he has not. He added that DWM does require financial assurance for closure and post-closure care, but they do not have financial assurance up front for potential releases from the site. DWM has looked at requirements for financial responsibility in regard to hazardous waste regulations. They are proposing that the operator have financial assurance on the front end for potential releases, so if a company that has a permit becomes insolvent, the Division knows they have the resources to respond to the release.

Senator Albertson recognized Mr. Grover Nicholson, Chief, Underground Storage Tank Section, DWM, DENR, to give the annual report on the status of leaking petroleum underground storage tank (UST) program and the State cleanup funds (see **Exhibit O** for the report, and **Exhibit P** for notes on his presentation).

In addition to his notes, Mr. Nicholson said that prevention in the form of owner and operator training and UST inspections and compliance are the best ways to reduce the number and severity of releases and thereby reduce the amount of money required to be spent to clean up the problems. The Federal Energy Act recognizes that prevention is important. It mandates an increased inspection frequency and training, and requires secondary containment for many UST systems. EPA is also changing the law so that some of the money from the LUST fund can be used for prevention. There are many different kinds of UST leak prevention systems; therefore it is better to train the owner and operator on the site. Secondary containment is required by the Federal Energy Act for any system that is being installed within 1,000 feet of a water supply. North Carolina rules promulgated to be in place by July of 2007 will require any new or replacement UST system to have secondary containment for the entire system.

Mr. Nicholson spoke about the effects of Session Law 2004-124, which was implemented in October of 2004. The law said that if the State could not reimburse approved cleanup claims within 90 days of claim approval, no more work could be directed. As a result of the law, DWM has developed a balance sheet showing demands against the fund as well as the resources the fund has. Because of that law and Session Law 2003-352, DWM work is prioritized, so they work on the riskiest sites first. Every release is given a priority number, and every week they look at the list and include more incidences they can direct, depending on available resources. Mr. Nicholson said they were directing 60 incidents at the beginning of the process, and now are directing over 300, good but not close to the 8300 active incidents already known. EPA has continued to be uncomfortable with the implementation of the law and the use of North Carolina's Trust Fund as a mechanism for financial responsibility. There are mechanisms other than a state trust fund to ensure financial responsibility, such as private insurance, self insurance, bonding, and a personal trust fund. Many states have state trust funds.

EPA has a minimal federally mandated cleanup requirement for USTs, which is removal of "free product" as soon as possible and as much as possible. When a UST leaks, free product in the form of a type of petroleum flows down through the soil and stays on top of groundwater, forms a lens of whatever is leaking. That lens continues to dissolve into the groundwater, so it acts continually as a source of groundwater contamination. It also rises up and down through the soil layer as the groundwater level fluctuates seasonally, recontaminating the soil. Removal of this free product is a positive action. There are about 714 commercial sites and 190 non-commercial sites with free product. Under the present implementation of Session Law 2004-124, 35 of the sites are being addressed, sites that are already contaminating or threatening to contaminate a well. EPA is becoming increasingly uncomfortable with

this approach, because the state is not meeting the federal law minimum (see the copy of a letter from EPA to Secretary Ross dated 19 September 2006 in the Annual Report—the last two pages of **Exhibit O**).

With the Federal Energy Act, it is still possible for EPA to approve a State program, but to withdraw their approval of the state fund as a sufficient financial responsibility mechanism. Conceivably, EPA could decide that North Carolina's trust fund is not providing the financial responsibility that it needs to, and they could require all tank owners to use another mechanism to assure financial responsibility.

Senator Bingham asked what would happen if EPA did make that decision. Mr. Nicholson replied that owners would be required to find another approach to providing financial responsibility, or the state could put more money in the trust fund so they would be able to address the free product sites. He added that it would be good to take a longer term look to see if North Carolina still needs to be in the subsidy business for commercial tanks. He went on to say that DWM staff had a meeting of a stakeholders group that came up with consensus legislation in 2005 that included both ideas—put more money in the fund to enable funding of the releases they are already responsible for, and the other equally important part is to sunset the financial responsibility by the State and transition into other means of financial responsibility. The State does not have the resources to address all of the approximately 900 sites with free product and to address all the sites that have already contaminated or are threatening someone's well.

Representative Gibson asked that the agenda of the meeting be sent to all members of the General Assembly because several of the items would be of interest to them. He also asked that the reports be made available on the NCGA website so members could have access to them.

Senator Albertson recognized Mr. Dexter Matthews again, this time to report on the fire that occurred the previous weekend in Apex, North Carolina. The facility, Environmental Quality Industrial Services of North Carolina, Inc. (EQ), was permitted by the Division in April 2005. The permit and accompanying regulations control all aspects of management of waste at the facility. Prior to issuance of the draft permit, they went through full public notice and comment, both on the application from the applicant and then on the draft permit. EQ was permitted to receive, consolidate and ship a wide variety of regulated hazardous waste, including solids, liquids and lab packs. The wastes are collected at EQ, repackaged and sent for final disposal, recycling or use as a fuel. .

On 6 October 2006, explosions and a fire caused thousands of people to be evacuated from the area around the EQ facility. Response to the fire and explosions was very good. Local Wake County responders did exactly what they needed to do—they got people out of harm's way and let the fire burn out. Since the incident, the Divisions within DENR have done a very good job as well.

EQ is one of eleven hazardous waste management companies that are part of a 15-year old resident inspector program. The sites are inspected a minimum of four times each month. The resident inspector program is a North Carolina program that allows DWM to have the resources to conduct the four monthly inspections. If it were not for the resident inspectors program, facilities would be inspected once a year or every two years. Violations noted during inspections are usually corrected while inspectors are there. If there are violations that rise to the level warranting a penalty, the penalty is punitive, not one to get them to get into compliance, because they will be in compliance well before the penalty is issued.

Waste containers are subject to standards governing labeling, dating, storage practices, and spill containment. The penalty that was issued to EQ in March of 2006 primarily addressed the company's failure to respond appropriately when strong odors were generated during the pumping of waste from 55 gallon drums into a tanker truck. In addition to the penalty that addressed the container management violations, there were also failure to properly maintain an inspection log, failure to label a particular container, storage of two containers of incompatible waste next to each other, and failure to maintain 24 inches of aisle space between containers at the site.

The Hazardous Waste Section (HWS) is currently working with investigators to determine the cause of the fire, and to assist in the cleanup of the site, including proper identification and disposal of residual waste materials. A meeting of several government environmental officials, both federal and state, was held on site at 10:00 a.m. the day of the meeting to begin development of a sampling plan for the facility as the initial step to clean up the site. The cause or causes of the explosions and fire are not known yet, but will be determined before any further operations are allowed at the facility.

Senator Dorsett asked what the penalty was, and if the state has any liability. Mr. Matthews replied the penalty was in the area of $32,000, and the liability rests with the company, not the state.

Mr. Givens said the resident inspector program legislation has been amended a number of times to create a large number of inspections so that some facilities are not required to have a resident inspector. He asked where the EQ facility fell in that categorization. Mr. Matthews replied that there is a tiered approach, based on the amount and toxicity of waste managed at a facility as to how many inspections they receive. EQ falls in the category of facilities that are inspected a minimum of four times a month. Mr. Givens asked what significance Mr. Matthews attached to press reports that this is the second fire the company has experienced within the last two years. Mr. Matthews replied there was another event in Michigan. He does not know whether or not it was the same type of facility. Federal investigators are currently looking at that issue.

Representative McComas asked if the permits specify what chemicals and solvents may be stored or consolidated at the site, or is it a broad listing of "hazardous materials." Mr. Matthews replied that the particular type of waste that can be managed at the facility is in the permit. During the operation of the site, they receive waste in during the day, and they export waste during the day, so what particular chemicals are on the site at any particular point in time cannot be identified. A broad spectrum of waste types could be at the facility at any given time.

Senator Albertson recognized two Humphrey Fellows brought to the meeting by Senator Kinnaird—Dr. Roger Williams F Nascimento from Brazil, and Mr. Nguyen (Yim) Ngoc Deim from Vietnam. He invited them to return to visit the Commission at any time.

The meeting adjourned at 12:50 p.m.

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Senator Charlie Albertson, Co-Chair
Presiding

_____
Representative Pryor Gibson, Co-Chair

_____
Dot Waugaman, Commission Assistant

_____
Senator Daniel Clodfelter, Co-Chair

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LIST OF EXHIBITS

Exhibit A Notice of Meeting dated 15 September 2006

Exhibit B Agenda of Meeting

Exhibit C List of Attendees

Exhibit D Package of Reports with memorandum from Jennifer Mundt dated 9 October 2006

D-1 Implementation of the "Clean Smokestacks Act", a report to the ERC and Joint Legislative Utility Review Committee, dated 1 June 2006

D-2 Status report on the study of potential costs and benefits of enacting a renewal energy portfolio standard (RPS) in North Carolina, dated 30 June, 2006

D-3 Status of recommended legislation, memorandum from George F. Givens, dated 9 October 2006

D-4 Enacted environmental legislation, 2006 session

D-5 Studies to be conducted by the ERC, dated 9 October, 2006

D-6 Status of reports to the ERC required by law, dated 9 October, 2006

Exhibit E Organization Chart, NC Department of Environment and Natural Resources

Exhibit F PowerPoint presentation by Dr. Moreau on his report to the Commission

Exhibit G Quarterly Report to the Environmental Review Commission on Environmental Management Commission Activities dated July 2006

Exhibit H Quarterly Report to the Environmental Review Commission on Environmental Management Commission Activities dated September 2006

Exhibit I Timeline of Activities on the Concord and Kannapolis IBT Petition, Dr. Moreau

Exhibit J Analysis of Reservoir Levels and Water Supply: Impacts of Proposed Concord Kannapolis Interbasin Transfer, 31 August, 2006

Exhibit K Information on Interbasin Transfers in South Carolina, dated 26 September 2006

Exhibit L Status Report to the General Assembly on Water Supply Planning, 1 September 2006 through 31 August, 2006

Exhibit M Annual Report on the Implementation of the Drought Management Advisory Council, 1 October, 2006, transmitted by memorandum dates 29 September 2006

Exhibit N Outline of Issues, Solid Waste Study

Exhibit O Annual Report to the ERC on the Status of Leaking Petroleum Underground Storage Tanks, the State Cleanup Funds and the Groundwater Protection Loan Fund, 1 September 2006

Exhibit P Presentation on the NC Underground Storage Tank Program presented by Grover Nicholson, 9 October 2006