



MINUTES
ENVIRONMENTAL REVIEW COMMISSION
February 14, 2008

The Environmental Review Commission met at 9:30 a.m. Thursday, February 14, 2008 in Room 544 of the Legislative Office Building. Co-Chairperson Charlie Albertson presided. The meeting was called to order at 9:41 a.m.

Welcome and Attendance

Members present were Co-Chairperson Charlie Albertson, Co-Chairperson Pryor Gibson, III, Senator Stan Bingham, Senator Katie Dorsett, Senator James Forrester, Senator Ellie Kinnaird, Senator A. B. Swindell, Senator David Weinstein, Representative Jim Harrell, Representative Pricey Harrison, Representative Carolyn Justice, Representative Ruth Samuelson Representative Edith Warren, and advisory member Senator Fletcher Hartsell. Commission staff present were Commission Counsel George Givens, Assistant Counsel Jeffrey Hudson, Assistant Counsel Jennifer McGinnis, Commission Analyst Jennifer Mundt, Research Assistant Mariah Matheson and Commission Clerk Jessica Kozma Bennett.

A meeting notice was distributed to staff, members and outside parties via regular mail and electronically and is included as an attachment to the minutes as **Exhibit A**. A reminder was sent electronically February 13. The meeting agenda and visitor's registration sheets are attachments to these minutes and referred as **Exhibit B and Exhibit C**, respectively.

Report to the Commission and Explanation of Agenda Items

Mr. Givens was recognized by the Co-Chairperson to review the day's agenda. Mr. Givens welcomed membership and introduced Jeff Cherry of the Bill Drafting Division, and told the Commission that Mr. Cherry's legal focus is with water issues. Mr. Givens then discussed the "read only" packet (**Exhibit D**), stating that this month there were no reports included for the month. Those reports will be distributed in future months.

A planning meeting for this meeting was held February 5 at 10 a.m. in Room 605 of the Legislative Office Building. Mr. Givens announced the date of the next Commission meeting, March 18, and noted that an out of town meeting regarding parks and recreation tentatively scheduled for March would be moved to April. Mr. Givens also announced an upcoming public hearing for the matter of House Bill 1756, the Safe Artificial Slope Construction Act, scheduled for March 10 in Boone.

Approval of the Minutes of the 27 November 2007 and 19 December 2007 meetings

Representative Samuelson asked that the minutes be partitioned by subject. With that noted for the record, Representative Samuelson moved for approval of the Minutes. With no discussion the minutes were approved

Update on the Status of North Carolina Board of Pharmacy v. The Rules Review Commission Case

Responding to an inquiry by Senator Kinnaird, Mr. Hudson reported that in 1998 the Board of Pharmacy adopted a rule to limit the amount of hours a pharmacist could work and allow for minimal lunch and other breaks. However, the Rules Review Commission objected to the rule, saying the Board of Pharmacy lacked the statutory authority to adopt such a rule. In response, the Board of Pharmacy sued the Rules Review Commission saying that the Board did have statutory authority and that the Rules Review Commission acted unconstitutionally in its objection to the rule. Both trial and appeals courts upheld the decision of the Rules Review Commission, saying that the Pharmacy Board did not have statutory authority to adopt the rule and could not challenge the constitutionality of the Rules Review Commission's actions. These decisions were reversed by the Supreme Court, which found that the Pharmacy Board did have statutory authority to adopt the rule. On the constitutional matter, the court opined that the lower courts should not have reached the constitutional issue and offered no opinion of its own.

Representative Gibson asked if there would be something further on this because of the court's silence regarding constitutionality. Mr. Hudson said that the case is disposed of and that the court does not rule on matters of constitutionality when ruling in favor of the plaintiff on another issue.

Mr. Givens commented that there is no judicial determination on the constitutionality of the Rules Review Commission.

Update on Current Drought Conditions In Light of Conservation Efforts and Recent Rain Event

Co-Chairperson Albertson recognized Mr. Thomas C. Fransen, Chief of the River Basin Management Section with the Division of Water Resources (DENR). Mr. Fransen began saying that the state remained in extreme or exceptional drought with rainfall deficits ranging from 8 to 12 inches in the Piedmont and 20 to 24 inches in the mountains and southeastern North Carolina. Since the beginning of the year rainfall deficits have continued to increase and the worst categories of drought continue to slowly expand.

However, Mr. Fransen also reported that agricultural conditions had improved slightly from periodic rainfall that soaks into topsoil quickly. Crop moisture is at a small surplus.

Two lakes—Falls and Michie—continue to drop in flow despite being in a time of year when lake levels typically rise. The drought is expected to continue at least through April, he reported, and said that the State needed “to plan for the worst.”

A copy of his presentation is included in the minutes as **Exhibit E**.

Mr. Fransen then reviewed a list of water system's differences in water use from the September 2007 through February. Mr. Fransen noted page four of the handout, showing non-reporting systems. He said that the message he wants to get out is for people to stay at current water levels.

Senator Bingham asked if the number of non-reporting systems is a problem for him for long range planning. Mr. Fransen said that non-reporting systems are scattered around and now all systems have to report annually. Co-Chairperson Albertson commented that it would be good to have all information. Senator Hartsell asked that if this was an indication there are too many systems.

Senator Weinstein asked if there were any plans to desalinate waters, of which Mr. Fransen commented that there was a "lot of thinking going on."

Annual Report on the Dry –Cleaning Solvent Cleanup Act of 1997

Co-Chairperson Albertson recognized Mr. Jonathan A. Powers, Head, Special Remediation Branch, Superfund Section with the Division of Waste Management (DENR). Mr. Powers is recognized to report on an annual report on the Dry Cleaning Solvent Cleanup Act of 1997.

A copy of this report is included in the minutes as **Exhibit F**.

Currently, the program has 172 sites, and Mr. Powers added that there would likely be 17 will require no action, and 7 or 8 additional sites will qualify for public notice in July. Statutory changes have also occurred (SB 1362), and those changes include deductions, instated a \$1000 application fee and allows the program to use one percent of its fund balance to investigate contaminated groundwater areas.

Mr. Powers then emphasized his report to explain the program's financial status, and said last year expenditures were greater than \$3 million. He added that site work across the state was increasing, spending to address the increase rose 250 percent. There are an estimated 2000 active or abandoned dry cleaning sites in the State, and compared data gathered from similar programs in other states, an estimated 75 percent of those sites are contaminated, roughly 1500 sites. Cleaning up all sites at roughly \$250,000 a site, total cost would be roughly \$188 million.

Co-Chairperson Albertson asked when existing sites in the program would be cleaned up, of which Mr. Powers noted that site projects come in at various times. Co-Chairperson Albertson then asked what would need to do to stop the continuation of the system. Mr. Powers said that a "drop dead" date was established in Florida. Mr. Given noted that if a "drop dead" date was instituted sites found after that date would be orphaned. Senator Bingham inquired on the communication between the program and actual cleaners. He also asked if poorer operators were excluded from liability, of which Mr. Powers said he would defer to legal advice to determine liability. Senator Hartsell commented that dry cleaners in his district are not happy with the program, and asked how many sites had actually been cleaned up. Mr. Powers said no sites had been totally cleaned up but 17 sites would be completed by the end of the year. Senator Hartsell said that \$22 million has been collected, and the complaints heard questioned the effectiveness of the program. Senator Hartsell then asked why the price of the wall calendar had increased from \$1 to \$13. Mr. Powers said the new calendar is quite a bit

more expensive and that the current calendar is presented in a format that is dry cleaner friendly.

Presentation on the Science of PBDEs

Dr. Heather Stapleton, Assistant Professor of Environmental Science at the Nicholas School of Environmental and Earth Sciences, Duke University was recognized by the Co-Chairperson. A copy of her report is included in the minutes as **Exhibit G**.

Her presentation “Human Exposure to Brominated Flame Retardants,” included background on brominated flame retardants, including a focus on polybrominated diphenyl ethers, its types, uses and commercial formulations. She also discussed human exposure to PBDE and new and alternate BFRs.

Concerns were raised by members including effects of the PBDEs on both children and adults. Senator Forrester asked if there were studies on possible toxicity among pregnant women. Dr. Stapleton said there were prior studies on rats and that currently studies were being compiled on humans. Representative Harrison asked if PBDEs and PCB have a similar nerve toxin effect, of which Dr. Stapleton said that both can metabolize.

Report on Actions Taken by Other Governmental Units In the Use and Regulation of PBDEs

Kathleen A. Curtis, Policy Director of Clean New York was recognized by Co-Chairperson Albertson. A copy of her presentation is included in the minutes as **Exhibit H**. Ms. Curtis said that decaBDE restrictions were already in place in Sweden, Norway, Washington State, Maine and the European Union. Sweden restricted decaBDEs on 1 January 2007; Norway had an existing ban. The European Union had restrictions on toys and cosmetics, and Ms. Curtis said the Union was far ahead of the United States in regulations.

Discussing restrictions in Maine, Representative Samuelson asked if a flame retardant is banned, could you still sell it for manufacturing. Ms. Curtis said that the ban affects manufacturing, selling or distributing the retardant. Co-Chairperson Albertson asked what are the symptoms of deca, which Ms. Curtis said a pregnant mother could have no symptoms but could have a baby with a harmed brain. Representative Justice commented that health issues from flame retardants are similar to cigarette smoking, that one has no symptoms until one is very sick.

Ms. Curtis reviewed current legislation in numerous states, including deca bans in television and computer enclosures. Co-Chairperson Albertson then asked how one would know if their mattress was contaminated. Ms. Curtis suggested a website, www.safer-products.com, to research various products that have or have not used flame retardants. She continued to review other state’s progress with bans.

Reports from other states show that there are safer alternatives for television cabinets and textiles, two items that consume the most decaBDE. Also, the Illinois ERC determined that decaBDE can be broken down by light and organisms under certain conditions and that exposure can cause thyroid, reproductive and neurological effects.

Regarding mattress alternatives from deca, fabric may be back coated with phosphate and cotton padding can be treated with boric acid. Also, there are halogen free alternatives. A majority of mattress companies are already manufacturing mattresses without PBDEs, noting that often industry is ahead of legislation.

She warned the Commission—if legislation is indeed to be drafted—to avoid amendments for agency rule making, narrowing the definition of “safer alternative,” and requiring the State’s fire marshal to adopt state fire safety standards.

Concluding her presentation, Ms. Curtis reiterated that reports had proven the health issues of PBDEs and said that legislation had quickly grown from 1 to 15 states.

Representative Harrison asked how much of the market is safe given that other brominated chemicals may be used in products. Ms. Curtis said there was the potential for industries to use what may be an equally toxic chemical but one that had not yet been studied. She also said that emerging economies—such as Southeast Asia—could have relaxed industrial standards allowing for the use of toxic flame retardants. Representative Harrison commented that she did not know what kind of chemical studies are currently completed in the State and noted the importance of the issue.

Senator Kinnaird was recognized by the Co-Chairperson and asked if the health profession was aware. Ms. Curtis said that the profession was and that there is participation and outcry over the issue. Senator Kinnaird followed up asking if family practitioners know, which Ms. Curtis said varied from doctor to doctor. Senator Kinnaird again followed up asking about the switch to digital televisions and how that would impact. Ms. Curtis said that most televisions—roughly 95 percent—are made by manufacturers that have committed to not using deca. Representative Justice asked for what reasons legislation failed in one state. Ms. Curtis said that deca is the most tested chemical in the world and an argument is made that newer products have not been tested yet and therefore the public knows not if its health effects.

Mr. Givens asked what other groups have proposed bans. Ms. Curtis replied that firefighters have supported bans and firefighting association officials have considered deca products a serious occupational hazard.

Issues Related to the Administration of the Bernard Allen Memorial Drinking Water Fund

Ms. Robin Smith, Assistant Secretary for Environment with DENR was recognized by Co-Chairperson Albertson. She began her presentation reviewing legislation from years 2006 and 2007 (**Exhibit I**). An emergency drinking water fund was established in 2006 with an appropriation of \$300,000. In 2007, the fund was renamed after former Representative Bernard Allen and established risk and income levels. For risk, the fund adheres to federal drinking water standards. For income, the fund is for those less than three times the federal poverty level. For the 2007 session \$615,000 was appropriated. After ratification, DENR officials created a working group to develop criterion and possible eligible sites were identified.

She noted a project in Jackson County with one contaminated well serving four dwellings and four people. The well had five times the federal drinking water standard for benzene. Contamination had spread to three nearby residences, but those residences were ineligible for assistance from the fund due to their proximity to the original site.

Total costs for the project are roughly \$900,000. Upon completion, new water supply will support six homes and a rest home with 55 residents.

Representative Justice asked what would have happen had this fund not existed. Ms. Smith said that the county could have possibly funded the project but did not have an answer to who would be able to assist. Representative Justice followed up asking if the State has an obligation to step in when such a situation occurs. Ms. Smith answered that the State does not, and that before there was no funding except for underground storage tanks.

Representative Harrison said she realized that the General Assembly gave the fund to DENR without the resources to manage it. She then asked how people have access to information regarding the program and how the State could do a better job of notifying residents on contaminated lands. Ms. Smith said that a challenge is with limited state resources it is very difficult to fully characterize extent of contamination for a limitless amount of time. Representative Harrison then asked if there is a program set up in recent legislation to test new wells. Ms. Smith said the items tested through the new legislation were relatively limited. Representative Samuelson suggested that the State create a program similar to the flood buyout rather than incur the costs of running new water lines.

Senator Bingham asked if testing was consistent in all 100 counties and also asked why new wells were not tested for solvents. Ms. Smith said to her knowledge she did not know what solvents were tested. Commission Analyst Jennifer Mundt reported to the Commission the items tested.

Status of the Alcohol and Beverage Control Recycling Program

Mr. Scott B. Mouw, Chief of the Community and Business Assistance Program with the Division of Pollution Prevention and Environmental Assistance (DENR) was recognized to report on a recent recycling program for ABC permitted establishment. There are 8,000 establishments participating in the program with a density of those in urban, university and tourism counties. A majority participating in the program are bars and restaurants but theaters, golf courses, AFW halls and also participating. Affected containers include aluminum cans, plastic bottles and glass beverage bottles.

A copy of his presentation is included in the minutes as **Exhibit J**.

Forty exemptions have been granted so far but there have been no exemptions granted for the recycling of aluminum cans. Fifty to 75,000 tons are anticipated as additional recycling, doubling current recycling tonnage. Ms. Mouw reported on energy savings, noting that it was significant.

There was no discussion following Mr. Mouw's report.

Commission Discussion and Announcements

Senator Hartsell reported that he attended the Catawba-Wateree Bi-state Commission meeting and that he attended a presentation from officials from Colorado. He complimented the presentation, and said that he thought the commission was working on a compact. He asked to find out the status of the Yadkin-Pee Dee Bi-State Commission. Mr. Givens said there were three commissions including the Yadkin-Pee

Dee commission, and that neither North nor South Carolina had aggressively sought to activate the commission.

The meeting was adjourned at 1:29 p.m.