

**MINUTES**  
**ENVIRONMENTAL REVIEW COMMISSION**  
**December 19, 2007**

The Environmental Review Commission met Wednesday, December 19, 2007 at 9:30 a.m. in Room 544 of the Legislative Office Building. Co-Chairperson Charlie Albertson presided.

Members present were Co-Chairperson Albertson, Co-Chairperson Lucy Allen, Co-Chairperson Pryor Gibson, Senator Katie Dorsett, Senator A. B. Swindell, Senator Eleanor Kinnaird, Representative Pricey Harrison, Representative Ruth Samuelson, Representative Edith Warren and Representative Larry Womble. Staff present were Commission Counsel George Givens, Assistant Counsel Jeffery Hudson, Assistant Counsel Jennifer McGinnis, Assistant Counsel Susan Iddings, 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 in these minutes as **Exhibit A**. The meeting agenda and visitor's registration sheets are attachments to these minutes and referred as **Exhibit B** and **Exhibit C**, respectively.

Co-Chairperson Albertson called the meeting to order at 9:40 a.m. and welcomed members after dealing with technical issues with the microphones. Co-Chairperson Albertson then called on Commission Counsel Givens to give an overview of the day's agenda. Mr. Givens began noting a ready only packet (**Exhibit D**) and said that the agenda was largely self-explanatory. Read only reports, he said, are held for future presentations. He then said that minutes were distributed for members and would be voted on shortly (**Exhibit E**).

Continuing to review the day's agenda, Mr. Givens noted that Item Five was a follow up on the drought following an extensive series of presentations on the drought at the October 31 meeting. In Item 6, the Hazardous Waste management presentation, Mr. Givens highlighted the subject of transferring numbers of sites to other areas. He continued saying there were two reports on legislative initiatives in recent years on the day's agenda, including a Title Five Air Quality Program. Mr. Givens announced that the first of five Water Allocation Public Hearings was scheduled for December 21 in Charlotte. He also noted two meetings in Asheville January 9 and 10, one for Water Allocation and another for House Bill 1756 regarding construction on steep slopes in mountainous areas. He then briefly reviewed the remainder of the agenda and the meeting moved to Agenda Item Four.

Co-Chairperson Gibson asked Mr. Givens for a 30-second review of the Water Allocation Public Hearing December 21. Mr. Givens said he would look at how many would attend, and that hopefully there would be enough to form a colloquy. Mr. Givens then said it was not his intention to have people speak in the order they arrive but to beckon as many ideas from the public as possible. Co-Chairperson Gibson followed up asking how the public was informed of the meeting. Mr. Givens the various media outlets had contacted him, but the public hearing was not a media event, rather to gather as much public input as possible. Co-Chairperson Gibson then asked if there was a second date

chosen for the January 10 Steep Slope Public Hearing in Asheville in the event of inclement weather. Mr. Givens replied that a second date had not yet been selected.

Co-Chairperson Albertson then asked the Commission for approval of the October minutes. With no discussion that minutes were approved through unanimous vote.

Co-Chairperson Albertson then called on Mr. Thomas Fransen, Chief of the River Basin Management Section of the Division of the Division of Water Resources of DENR. Mr. Fransen was called to give an update on current drought conditions in light of current conservation efforts and rain events. Although a copy of Mr. Fransen's presentation was not given to member or the audience, a copy of the presentation is included for reference in the attachments and is noted as **Exhibit F**.

Mr. Fransen opened his presentation showing current drought conditions statewide. A rain event at the end of October, he said did not give the State the relief needed from the drought, "I wished our recent inch and a half of rain helped us but it didn't," he said. Despite the rain, the State's drought conditions had returned to the same severity as before the rain within weeks following. He showed how the drought moved eastward and now the entire state shared the same intensity of drought. The past 180 days were the driest on record in 80 years, he said, continuing that this was a long-term deficit that greatly impacts water supplies.

He then moved to a slide showing stream- and groundwater levels, noting that they are all in exceptional drought conditions. Mr. Fransen said that there had been slight improvement of stream- and groundwater levels in the West but not enough improvement to alleviate the drought in that region.

Following the groundwater slide Mr. Fransen discussed public water supply systems' statistics. Of the 292 public water supply systems in North Carolina 163 are under voluntary conservation and 173 under mandatory conservation. None were considered an "emergency," but there were 800,000 people living in Tier 1 (extreme drought) areas. At the December 20 meeting, 14 public water systems were classified as Tier 1. Senator Kinnaird asked if Charlotte was Tier 1. Mr. Fransen replied that Charlotte had more than a 100-day water supply. Senator Dorsett asked about the City of Greensboro's water supply. Mr. Fransen said that he had been in communication with the City but did not personally know what Greensboro's water supply was. If Greensboro had only 30 days of water supply remaining it would be on the list, but purchasing water may have helped Greensboro remain off the Tier 1 list. He also explained the fluidity of the list, some systems one the list currently were not in the list before.

Mr. Fransen said that forecast conditions were bleak and that the State is in a La Nina effect, meaning conditions would continue or worsen through the winter. Again, far western North Carolina may potentially see some slight relief later but the rest of the state will remain the same, he said.

He then spoke of Army Corps of Engineers projects at Falls Lake, noting that Falls Lake is running at nine percent of normal flow, adding that Jordan and Scott lakes are down but not as severely as Falls Lake. Information from the Corps shows that water at Falls Lake—if current conditions continue—will be depleted of water by April.

Co-Chairperson Albertson called for questions and asked what will happen in a community that falls into emergency situation and what constitutes an emergency. Mr. Fransen answered that emergency is a function and that the only system that had been in

emergency was Siler City. In Siler City, water was trucked in for industry. Current thinking on the emergency situations, he said, was to solve it when an emergency happened.

Co-Chairperson Albertson followed up and asked if we are doing as much as we can. Mr. Fransen answered that we were. Co-Chairperson Albertson then recognized Senator Kinnaird.

Senator Kinnaird asked if the State was likely to start looking at statewide programs to save wastewater, citing a current program in California.

Mr. Fransen answered that the drought is starting to make people rethink how water is used in North Carolina. North Carolina has two issues: one, how to get through the current crisis and two, how do we deal with the long-term.

Senator Dorsett was then recognized and asked if there was anything we could do at the state level to encourage those in Tier 1 status to be more serious about conservation.

Mr. Fransen said that he had worked with municipalities to encourage more conservation, including incorporating outreach with the League of Municipalities.

Representative Allen then asked if the state is working with private water supply companies. Mr. Fransen said that such companies fall under the control of the North Carolina Utilities Commission and that there had been communication between the two entities.

Senator Kinnaird questioned rates for water use. Mr. Fransen said that there is a downside to conservation and that there is a proposed drought rate structure to more appropriately charge those conserving. Sen. Kinnaird added that she knew of a rate structure similar to the suggested drought structure.

Co-Chairperson Albertson thanked Mr. Fransen and recognized Elizabeth W. Cannon, Chief of the Hazardous Waste Section of the Division of Waste Management with DENR. A report entitled "Resident Inspector Program, 2007 Annual Report" was distributed to Commission members and is attached to the minutes as **Exhibit G**.

Ms. Cannon opened her remarks thanking the Commission. She said she would discuss the hazardous waste report distributed to members and also the implementation status of SL 2007-107, which are recommendations from the Governor's Task Force on Hazardous Materials. The Resident Inspector Program began in 1991 to ensure a high rate of compliance among hazardous waste storage facilities by subjecting those facilities to frequent and unannounced inspections. On average, she said, a facility may be inspected two to six times a month depending on the "size and complexity" of the operation. Inspections are solely for commercial facilities that manage hazardous waste from other companies.

She continued that when an inspection occurs the inspector looks at not only compliance with hazardous waste regulation but also compliance with other regulatory programs, including workplace safety, transportation, air omissions and wastewater discharge. If an inspector finds a violation other than for hazardous waste regulation, proper authorities, such as OSHA, are alerted.

There are ten facilities across North Carolina, she continued, consisting of four in the Charlotte area, three in the Greensboro-Triad area, one in metropolitan Raleigh, one in Granville County and one in Robeson County. The largest facility is in Reidsville and receives more than half of all facilities combined. In all, some 6 million gallons of

hazardous waste is processed annually by these ten facilities, or 26,000 tons. Looking over the past two years there is a decline in processed waste: 3 million less gallons were processed in 2006-2007 as were in 2005-2006.

The program is staffed by a supervisor, four inspectors and an administrative assistant, she continued, and is funded through fees from the facilities totaling \$295,000 per year. In the past year there were two notices of violation at the ten facilities, two-compliance order and six corrected deficiencies. The primary order was issued to the EQ Hazardous Waste facility in Apex based on conditions that preceded a fire in March of 2007. Penalties of roughly \$500,000 settled for more than \$400,000, and EQ has voluntarily agreed to withdraw permit for facility. The facility is currently in the "cleaning" process and Ms. Cannon said she expects EQ to have a "clean closure."

She then moved to the implementations of S. L. 2007-107 and explained the sections major provisions, including requiring facilities to have two new types of financial assurance to cover offsite sampling and onsite cleanup should a catastrophic event occur. Also because of the new law, the State is currently working with facilities and local governments to better communication between the two, facilities have to notify residents within a quarter-mile of the facility's existence, 24-hour security is required, and daily inventory information must be kept in a off-site location.

Co-Chairperson Albertson asked if Ms. Cannon felt good about the implementation of new regulation. Ms. Cannon replied that she did. Senator Dorsett was then recognized and asked what happens to funds collected from violations. Ms. Cannon replied that they go to the respective school district general funds as pursuant to State law.

Co-Chairperson Albertson thanked Ms. Cannon and then recognized Dexter R. Matthews, director of the Division of Water Management of DENR, to discuss a recent report on the Inactive Hazardous Sites Program. The report was distributed to Commission members and is included with the minutes as **Exhibit H**. A second report entitled "Annual Report to the North Carolina General Assembly: The N. C. Brownfields Program" was also distributed to members and is included in the minutes as **Exhibit I**.

Mr. Matthews began his discussion saying that he had two reports and that the majority of his discussion would focus on reorganization within his department. He opened saying the prior presentation on the ground "really" focused the issue "throughout North Carolina so far as groundwater contamination" is concerned. He said the State needed to move as quickly as possible for groundwater contamination cleanup and that 50 percent of North Carolinians get their drinking water from groundwater sources.

Returning to the discussion of reorganization, Mr. Matthews said he was directed late last year to combine with the Division of Water Quality because of limited resources in the two divisions and crossed-remediation programs. The consolidation occurred February 20. Formerly both divisions as well as others may have remediation authority over a given site, including the Superfund. Divisions could have duplicate sites.

As a result of the consolidation, 16 positions and 300 cases were transferred from the Division of Water Quality to Waste Management.

Even with the consolidation the Division still sees 1200 sites a year for remediation, and those sites have to be handled on a priority basis due to limited resources. Even so, Mr. Matthews said the reorganization was an "excellent step" and that given the drought and its impact on groundwater.

Co-Chairperson Albertson thanked Mr. Matthews and asked for questions. He recognized Representative Harrison, who asked what program the Department uses to test groundwater in areas near schools. Mr. Matthews said such sites were being surveyed to figure how to rank and go after.

Representative Harrison followed up asking if this pertained to all sites, of which Mr. Matthews said no, just for old landfills. The reason, he continued, was because of funding. Currently, there is no funding from the EPA for inactive sites and existing money for orphan sites is running out. Mr. Givens asked why 1200 sites are coming in every year, and Mr. Matthews said that sites are taken from a number of sources and that a lot of sites come from real estate transactions.

Co-Chairperson Albertson asked if he saw 1200 sites coming in year after year, of which Mr. Matthews replied he did as numbers from recent years have remained consistent.

Representative Gibson asked if there is any way to model what kind of resources are needed and what kind of costs necessary to deal with the increase in sites. Mr. Matthews said sites are remediated on a priority basis, he continued but that costs for remediation are not established. Representative Gibson followed up asking if budgetary considerations were made for the reorganization. Mr. Matthews replied that there were considerations.

Representative Allen then gave an example of a site in Franklin County of a country store when a gas line was torn. When investigated the store had an underground leak in a 5,000-gallon tank. She noted that there is no money to deal with these situations.

With limited discussion among member Co-Chairperson Albertson thanked Mr. Matthews. Mr. Givens then told the Commission that Waste Industries and Blackbear Landfill had recently filed a suit against the State in Wake County Superior Court and a report would be given to the Commission at a later date.

Edythe M. McKinney was recognized by Co-Chairperson Albertson to discuss the One-Stop Permit Assistance Program regarding environmental permits taking more than 90 days. She began saying a complete report would be ready in March. Today, she said, would be a progress report. A brochure was then distributed to Commission members and is in the minutes as **Exhibit J**. She explained that the brochure was to capture the attention of permittee and to outline “if you are doing certain things you need a permit.”

An overview of the program was also distributed and is included in the Minutes as **Exhibit K**. **Exhibit L** is a graph showing express permits by program in the years of 2006 and 2007. She asked the Commission to understand that the program is new and getting an overview of the program will take time. But, in 2007 there was a 12 percent increase in permits—roughly 1200—with the vast majority in stormwater permits and sedimentation and erosion control permits. Ms. McKinney said that program began as a coastal program but has spread through the State.

One item of success she noted was processing time had reduced including during the internal process among her staff. She noted having a stable, consistent staff with the program and that the staff was surveyed on how to do a better job. Responses included adding engineers and adding another assistant.

Co-Chairperson Albertson called for questions among Commission members. Representative Samuelson commented that while serving as a town commissioner in Charlotte additional fees were added for those dragging on permits. Senator Kinnaird

suggested that the General Assembly fund a program for all to have access to the One-Stop Program. Senator Kinnaird follow up asking how small businesses afford fees. Ms. McKinney said that the program's permitting did not cover residential homes and would not cover convenience marts.

Representative Harrison commented that she had heard concerns regarding review time from residents in the coastal area and asked when fee revenue could provide for more staff.

Ms. McKinney replied that one issue is whether there is a balance between compliance and permitting. Particularly in the coastal area, she added, there had been a decrease in permits.

Co-Chairperson Albertson thanked Ms. McKinney and then recognized Mr. Keith Overcash, Director of the Division of Air Quality of DENR to discuss the "Title V Air Quality Permit Program Accountability Report," included in these minutes as **Exhibit L**.

Mr. Overcash said that the Division of Air Quality is fee supported and does not receive appropriations from the General Assembly. He then explained that Title V refers to the Clean Air Act of 1990, which put in a permitting program for major facilities with emit 25 tons or more of hazardous air pollutants or 100 tons of regulated pollutants. Authority for the program is statutory, he continued, and a rules process sets fees. Mr. Overcash said that regarding funding there had been a surplus for several years and because of such funding revenue remained stable until recently. Most industries covered under Title V include major utilities, major paper manufacturers and other large chemical users.

Mr. Overcash said there is a one-time application fee for a five-year permit. Permits last five years and there is not a renewal fee. Industries pay according to a rate of currently \$18.10 per ton. He then said there was a potential of deficits due to an increased Consumer Price Index and increases in expenses. Because of the State economy the program's workload as well as regulatory demands are increasing, adding additional financial stress to the program, he added. He continued through his presentation that is included in the Minutes as **Exhibit M**.

Co-Chairperson Albertson thanked Mr. Overcash and asked for questions from the Commission. With limited discussion, Co-Chairperson Albertson recognized the next speaker.

Mr. Terry L. Pierce, Director of the Division of Environmental Health was recognized by the Co-Chairperson to discuss an interim report on a pilot program streamlines the issuance process for improvement permits. The report also covers efforts to improve authorizations to construct for an on-site subsurface wastewater system in certain counties. In this program soil scientists are used to complete soil and site evaluations for those participating. A Power Point presentation shown to Commission members and its text is included in the Minutes as **Exhibit N**. A second hand out of the report is also included in the Minutes as **Exhibit O**.

Mr. Pierce's presentation began with the background of the project. Previously several counties had experienced backlogs while development increased. Cherokee County, he noted, had the largest backlog for Improvement Permits.

After the program began, selection for participation included the following three criteria: one, that the population of the county does not exceed 25,000; two, that the county must have more than 900 applications for improvement; and three, that the local

governing authorities, those of county and health boards, must approve a resolution to participate in the project. The process evaluates the site and upon review issues an Improvement Permit.

His findings included that currently there were 450 backlogged applications, and that in Cherokee County full-time employees assigned to on-site wastewater activities increased from three employees in 2004 to nine employees in 2007. Also, the number of applications for Improvement Permits dropped significantly during the summer of 2007. Continuing his findings, 117 proposals were received since May 17, 2007; 56 of those proposals were permitted for installation. Six of the 117 are currently awaiting further information for approval and eight Permits granted were installed and received Operation Permits. He noted that he was concerned about staff limitations compared to increases in proposals. Also of concern is that very few of the systems permitted had been installed and of those installed not enough time had elapsed to evaluate any environmental impacts or failures. He recommended that the program continue for at least a full year to determine its effectiveness.

Co-Chairperson Albertson called for questions among Commission members. Co-Chairperson Allen asked what training resources there are for licensed soil scientists who wish for better training. Mr. Pierce said there were programs through the university systems and sponsorship was often available to participate in those programs. Senator Kinnaird asked if when receiving training if the soil scientists receive certificates or titles after their names. Mr. Piece replied that the additional training gives a better understanding of regulating. Senator Kinnaird followed up asking if it was worth a scientist's time to participate, of which Mr. Pierce said it was and was not of great financial cost. Co-Chairperson Albertson thanked Mr. Piece and recognized Mr. Walter "Walt" T. Haven, Head of the Private Water Supply Branch of the On-Site Water Protection Section with the Division of Environmental Health of DENR. Mr. Haven thanked Co-Chairperson Albertson and began his own presentation. He discussed the "Annual Report on the Wastewater Discharge Elimination Program" and a hard copy of his presentation is included in these Minutes as **Exhibit P**.

The program was created pursuant to State Law and established in 1996 and is charged to identify and eliminate discharges from straight pipes and failing septic systems to land surfaces and streams. The program currently has varied funding sources that include State appropriations. Showcasing the accomplishments of the program, Mr. Haven said five survey projects were conducted within the first four years and 17 survey projects were conducted since January of 2002. Approximately 11,336 homes were visited since the advent of the program and 1,335 violations were identified through the visits.

Continuing discussing the program's accomplishments, Mr. Haven said that new policy was implemented in 2006 allowing personnel to issue repair permits on behalf of counties increased the rate of corrected violations by 44 percent. He then said that 51 percent of all violations since 2002 were corrected. The last year's program included had Certified Intern Training authorized agendas of the State to assist counties and visitations were limited to homes with existing violations.

Questions were asked of the Commission by the Co-Chairperson and Representative Samuelson asked if Mr. Haven was surprised with the amount of failed systems. Mr. Haven said that there could be as many as 100,000 systems statewide

existing in violation. Co-Chairperson Albertson asked about education among inspectors, of which Mr. Haven said there were “in-house” opportunities for continuing education but stressed his limited staff. Senator Kinnaird asked where funding for the program comes from, and Mr. Haven said that it came from grants and State appropriations. Closing discussion Co-Chairperson Albertson asked the Commission for announcements. Co-Chairperson Allen thanked the staff for a “much more condensed work session” and Co-Chairperson Albertson then adjourned the meeting at 12:17 p.m.

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Co-Chair Charlie Albertson  
Presiding

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Co-Chair Lucy Allen

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Jessica Kozma Bennett  
Commission Clerk

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Co-Chair Pryor Gibson