



**MINUTES  
ENVIRONMENTAL REVIEW COMMISSION  
January 23, 2008**

The Environmental Review Commission met Wednesday, January 23, 2008 at 9:30 a.m. in Room 544 of the Legislative Office Building. Co-Chairperson Pryor Gibson presided.

**Welcome and Attendance**

Members present were Co-Chairperson Dan Clodfelter, Co-Chairperson Lucy Allen, Co-Chairperson Pryor Gibson, Senator Stan Bingham, Senator Katie Dorsett, Senator James Forrester, Senator Eleanor Kinnaird, Senator A. B. Swindell, Representative Jim Harrell, Representative Pricey Harrison, Representative Carolyn Justice, Representative Ruth Samuelson, and Advisory member Senator Fletcher Hartsell. Commission staff present were Commission Counsel George Givens, Assistant Counsel Jeffery Hudson, Assistant Counsel Jennifer McGinnis, 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**. A reminder was sent electronically on January 23. The meeting agenda and visitor's registration sheets are attachments to these minutes and referred as **Exhibit B** and **Exhibit C**, respectively.

**Introductory Remarks from Chairs and Counsel**

Co-Chairperson Gibson called the meeting to order at 9:35 a.m., recognizing Co-Chairpersons Allen and Clodfelter. Asking for comments from the other chairs and hearing that the Chairpersons had none, Co-Chairperson Gibson recognized staff and asked Commission Counsel Givens for his comments. Mr. Givens began thanking the Chair noted the receipt of reports submitted to the Commission. He reported that there were three segments of reports, with some reports held back and others to be distributed at this meeting. A packet of "read only" reports was distributed to members and is included in the minutes as **Exhibit D**. A planning meeting to prepare for the day's meeting was held Friday, January 11, 2008, he said. Reviewing the agenda, Mr. Givens said that recent changes in stormwater rules may result in legislative review, adding that stormwater rules have been reviewed for the past three short sessions. He then announced that the next Commission meeting will be held February 14 in Room 544 of the Legislative Office Building.

Three of five scheduled public hearings regarding an upcoming Water Allocation Study were well attended, Mr. Givens continued, then encouraging Commission members to attend one or both of the remaining meetings, to be held in Raleigh and

Wilmington. Co-Chairperson Gibson asked that ERC members get notice of working groups. Mr. Givens replied that members receive notices and reminders of the meetings.

### **Quarterly Report by the Environmental Management Commission**

In concluding his comments, Co-Chairperson Gibson recognized Mr. Charles H. “Pete” Peterson, vice chairman of the Environmental Management Commission (EMC) to discuss the quarterly report of the EMC. This report is included in the minutes and it is referred to as **Exhibit E**.

The EMC had one meeting during the last quarter and little action was taken, Mr. Peterson began his report saying. The EMC is working with Session Law 2005-190, regarding assessing and maintaining nutrient control strategies to prevent excess nutrient loading in drinking water reservoirs. The EMC is working with both Falls and Jordan lakes. An eleventh Falls Lake Technical Advisory meeting was held November 15, 2007, he reported, and a project schedule and review of the monitoring study was presented to members. The next meeting is scheduled for March 20. He then reviewed other actions of the EMC. One, hearing for revisions to well construction rules was approved by EMC members, and a variance for Rockwell Collins in the Charlotte area was also approved.

### **Report on the Coastal Stormwater Rule**

Co-Chairperson Gibson thanked Mr. Peterson for his comments and recognized Mr. Thomas A. Reeder, Chief of the Waterlands and Stormwater Branch of the Surface Water Quality Section (DWQ) with DENR. A copy of Mr. Reeder’s presentation is included with the minutes and is noted as **Exhibit F**. Discussing stormwater rules, Mr. Reeder began his presentation explaining the status of rulemaking action, noting that revisions were adopted by the EMC on January 10 and that such rules will be subject to legislative review. In noting why the stormwater rule was revised, Mr. Reeder said Division of Water Quality staff determined that there were inadequacies in the current rule. Major changes of the rule include a reduction in the low density development from 25 percent to 12 percent within one-half mile of shellfishing waters. Development further than one-half mile of shellfish waters was reduced from 30 percent to 24 percent. Controversial aspects, he continued, include an expansion of setbacks from 30 to 50 feet, and a proposed 10,000 square foot threshold for coverage, changing from a previous one-acre threshold. Setbacks for redevelopment are grandfathered and remain at 30-feet. Mr. Reeder noted that a 50-foot buffer is already in place for the entire Neuse and Tar-Pamlico River Basins.

As Mr. Reeder concluded his presentation Mr. Givens noted that Senator Fletcher Hartsell had joined the meeting and was recently appointed as an advisory Commission Member by President Pro Tempore Marc Basnight.

### **In Lieu Fee Program for Stream and Wetland Impacts Mitigation**

Co-Chairperson Gibson thanked Mr. Reeder and again recognized Mr. Peterson to report on the in-lieu fee program for stream and wetland impacts mitigation. Such mitigation is administered by the Ecosystem Enhancement Program. Also recognized by

the Co-Chair is Mr. Manly S. Wilder, Assistant Secretary for Natural Resources with DENR.

Mr. Peterson began reporting that the program is a fee-supported program offered by DENR, allowing mitigation in development areas near streams and adjacent creeks. Mandated federally but operated by the state, staff recently determined that fees needed to increase in order to properly support the program. The EMC voted the fee increase by unanimous vote and adopted a two-tier fee structure, allowing lower fees in rural areas and higher in urban or wealthier areas. Mr. Peterson then introduced Mr. Wilder.

Mr. Wilder reiterated that the program was fee supported, adding that since the last EMC meeting several actions had taken place. For one, he said, an interim policy had been enacted. Also, project costs from the past two years support the proposed fee increase, and while he appreciated the EMC passing the resolution, Mr. Wilder said he preferred for the legislature to resolve the issue.

Discussion ensued regarding the fee increase. Representative Harrison asked if the program needed statutory authority to increase fees, of which Mr. Wilder said his office had discussed that question with attorneys and that “it is a gray issue.” Representative Harrison followed up asking if a range of fees would be adopted, in particular to deal with inflation. Mr. Wilder said the increase did factor in inflation.

Co-Chairperson Gibson commented that he had been disappointed for ten years with how program processes had not progressed, continuing saying that legislative solutions have not worked to help the program. With little more discussion Co-Chairperson Gibson thanked Mr. Wilder and Mr. Peterson.

### **Proposed Rules Concerning the Water Supply Nutrient Strategy for the Jordan Reservoir**

Mr. Alan Clark, chief of the planning section with DWQ was recognized by Co-Chairperson Gibson. He is called by the chair to report on proposed rules concerning the Water Supply Nutrient Strategy for the B. Everett Jordan Reservoir. He began his presentation saying that there was a slate of public hearings that closed September 15. Five hearing officers are assigned to address concerns from those meetings and conceive how to reduce nutrient loading in Lake Jordan, particularly in the wake of increased development. Phosphorous is the nutrient of concern, he continued, and current rules for Lake Jordan were patterned from previous work on the Tar-Pamlico River. More than 400 people participated in the meetings and roughly 5000 form lettered comments were received. Total cost to pay for this implementation is estimated at \$1 billion.

Mr. Clark said “the target” to bring rules back for adoption is May 2008, and will be reviewed by the Commission prior to introduction into the General Assembly in 2009.

Senator Kinnaird said that she worked with watershed rules when serving as a mayor and added that local political will is important for watershed protection. Representative Samuelson asked how many years work is included in the estimated cost of the project. Mr. Clark answered 30 years.

### **Update on Current Drought Conditions**

Co-Chairperson Gibson called Mr. Thomas C. Fransen, Chief of the River Basin Management Section, with the Division of Water Resources of DENR. A copy of Mr. Fransen's presentation is included in the minutes as **Exhibit G**. Mr. Fransen began saying that the drought situation had improved but the State remained classified in an exceptional drought. Eighty water systems were under some kind of water restrictions, he said, and water usage was "holding flat." La Nina effects were still affecting water plans, and Mr. Fransen said that the forecast was for some improvement. Representative Samuelson asked if people from the Green Industry continued attend meetings regarding the drought, which Mr. Fransen answered that they have continued and he expects that they will continue to attend. Although there had been some improvement, Mr. Fransen said until furthers rains came the State would continue to be considered in an exceptional drought. Co-Chairperson Gibson said that the Commission will continue to expect a monthly update on the drought. Senator Bingham asked if there is a list of water systems that have greatly complied with water restrictions compared to those that have not. Mr. Fransen said that he could create such a list.

### **Annual Report on the Dry-Cleaning Solvent Cleanup Act of 1997—Deferred**

#### **Presentation of the Finding of the Annual Solid Waste Management Report**

Co-Chairperson Gibson recognized Mr. Paul S. Crissman, Chief of the Solid Waste Section of the Division of Waste Management. A copy of Mr. Crissman's presentation is included in the Minutes as **Exhibit H**.

For another year, solid waste disposal increased in the State, Mr. Crissman began, and solid waste is expected to continue to increase. He said that there could be some variable given the current recession. On per capita basis, solid waste reduced, however, part of such a reduction came because of economic factors including the closing of a Kannapolis mill. Municipal solid waste, he reported, increased. He also noted two other items that may have helped the reduction, the drought and increased recycling.

Mr. Crissman then reviewed what the amount of solid waste would be in 20 years, given current circumstances. If the State continues to experience solid waste disposal reductions total tons disposed would drop from a current 11,865,829 to 11,627,459 in 2027, rather than 18 million tons. To date: 155 million tons of waste is in landfills. If his projections remain correct, the State could save 68 million tons of waste within this period of time. Recycling in many forms—through C and D recycling, residential recycling and restaurant and bar recycling—would be the most positive way to achieve this, he added.

Mr. Crissman then said that the State continues to rely on out of state disposal sites, and uses transfer stations to harbor waste until it is exported. He showed photos of transfer centers to Members. A map showing proximities of landfills was reviewed as well as a map of landfill capacity in years, tons and volume. He ended the first part of his presentation saying that the State had a "lot of waste to manage."

Mr. Crissman then gave a status report of Senate Bills 6 and 1492, Amending the Solid Waste Act and the Solid Waste Act of 2007, respectively (S. L. 2007-543). Positions to support changes to the Acts were added immediately, he said, and permits in

several categories had increased. More permits have been processed in this year so far than were processed for all of last year and construction and industrial permits had also increased. One hundred invoices have been sent so far, with \$800,000 raised to date.

Co-Chairperson Gibson called for questions and recognized Senator Kinnaird. The Senator mentioned that some other states were outlawing plastic bags, adding that banning plastic bags was “an interesting approach.” She then focused on the importance of recycling. Mr. Crissman was thanked by Co-Chairperson Gibson.

### **Discussion of the Waste Industries USA, Inc. and Black Bear Disposal, LLC. V. State of North Carolina and North Carolina Department of Environmental and Natural Resources Complain and Request for Declaratory Relief**

Mr. Mark A. Davis, Special Deputy Attorney General, Special Litigation Section with the North Carolina Department of Justice was recognized by Co-Chairperson Gibson. Mr. Davis said there is pending litigation against the State because of Senate Bills 6 and 1492. A complaint has been filed against Senate Bill 1492 regarding a requirement for a five mile buffer between national wildlife refuges and landfills. Senate Bill 6 is challenged specifically to allow those denied a permit because of the prior challenge to receive reimbursement from the State for costs accrued before and during the application process. The bill is currently filed in Wake Superior Court and a deadline to answer the challenges is set for February 4.

Mr. Givens asked if the plaintiffs in the lawsuit were also the applicants for reimbursement, of which Mr. Davis said they were. Co-Chairperson Gibson asked if there is precedent for this in other states. Mr. Davis replied that there is and that a ruling should come within six to nine months of the February 4 deadline.

### **Status of Recycling and Recycling Markets in North Carolina**

Co-Chairperson Gibson recognized Mr. Scott Mouw, Chief of the Community and Business Assistance Section of the Division of Pollution Prevention and Environmental Assistance, DENR. A copy of his presentation is included in the minutes as **Exhibit I**.

Mr. Mouw summarized the main points of his presentation: 1) markets are still very strong for many materials; 2) increases in local government recycling helped reduce land-filled tonnage in the 2007 fiscal year, but there is much room for improvement; 3) ABC permit holder recycling requirements are now in force; 4) product stewardship is helping tackle difficult waste streams; and, 5) there are issues and concerns still left to be addressed. He then noted a slide showing an increase in paper pricing for mixed paper, newsprint and cardboard, and followed showing that prices for aluminum were also increasing.

In reviewing market developments, Mr. Mouw noted that Coca Cola is in the process of opening a \$60 million plastic bottle recycling plant in Spartanburg, S.C. and the PRC Industries, an appliance refurbisher, is opening a new plant—with 288 jobs—in McDowell County. In reviewing Material Recovery Facilities, Mr. Mouw commented that capacity was at an all time high.

Average local government recycling programs are collecting 243 pounds of recyclable items per household, he reported, and noted that although the number of curbside programs is down, the number of homes served by curbside programs has increased. New recycling programs are beginning in Cabarrus County, Mooresville, Fayetteville and other towns, he said, and there are 8,000 permit restaurants and bars holding permits to recycle.

Recycling businesses needing more material to recycle was one concern, he reported and added that local governments needed to do a better job of modernizing their programs, including increasing participation and adding materials. Materials such as fluorescent lights and pharmaceuticals may require special attention, he added, and closed saying the State needs an overall increase in public commitment.

Representative Samuelson said she was aware of media stories depicting an awful experience with the ABC program and asked if indeed such awfulness had occurred. She followed up saying that she has constituents who do not believe recycling is economically viable and wanted a “sound bite” answer for their concerns.

Mr. Mouw replied that his office had received hundreds of calls and the calls “by and large have been positive.” In the Charlotte area, he said, several “drop off” centers have recently opened. Regarding her second request, Mr. Mouw said that recycling is creating business and therefore creating jobs and also said most products people use have recycled materials.

Representative Harrison asked for Mr. Mouw to specifically explain fluorescent light recycling. Mr. Mouw said that there has been a substantial increase in light sales and the issue is getting lots of attention nationally.

Senator Dorsett commented that years ago there was a lot of education about recycling in schools, and that students shared the enthusiasm with their parents, which in turn created a surge in recycling. She then said that she did not believe that still existed. Mr. Mouw agreed and said there had been a lull in education across the State but added that he does see where there is education in schools. Co-Chairperson Allen asked what percent of grocery bags are recycled. Mr. Mouw answered that a third of all bags are biodegradable. Co-Chairperson Allen followed up commenting that most grocery stores have recycling places.

Co Chairperson Clodfelter was recognized and thanked Mr. Mouw for discussing a program in Wake Forest. Representative Samuelson asked if there are any efforts to reduce packaging in the United States. Mr. Mouw replied that there is some activity going on but that there had never been a “real policy push.” Retailers, he said, were the leaders, including Wal-Mart and Target. Co-Chairperson Gibson commented on tipping fees in increased recycling efforts.

Co-Chairperson Clodfelter commented to Representative Samuelson that if she filed a Bill to outlaw “clamshell” packaging he would sponsor the same Bill in the Senate.

### **Presentation of the Annual Report on the Recycling Efforts of Public Schools in the State**

Dr. Benjamin Matthews, Director of the Division of School Support with the Department of Public Instruction was recognized by the Co-Chairperson and began his

report commenting that the top five LEA recycling programs are, in order from top down: Wake County, Charlotte-Mecklenburg County, Guilford County, Durham County and Forsyth County. Among the lowest are Macon County, Montgomery County, Washington County, Caswell County and Clinton City Schools. He then pointed out page three of a report (**Exhibit J**) charting statewide programs over the past five years. In 2003, there were 14 programs without recycling programs that number has dropped to four in 2008. The counties without programs are Anson, Bladen, Haywood, Moore and Sampson counties.

Dr. Matthews then noted increases of recycled of cardboard, paper and newspaper. The report shows that the three are the most recycled items in North Carolina schools. He said he feels recycling efforts across the state have improved.

Representative Harrison commented that the State needed to be a “leading by example” and said that there should be no excuse for a school system to not recycle what is banned from landfills. Senator Dorsett thanked him for a good report.

### **Status of Litigation between North Carolina and South Carolina Over the Allocation of Surface Water Resources in the Catawba River**

Chairperson Gibson recognized Mr. James C. Gulick, Senior Deputy Attorney General with the Environmental Division of the North Carolina Department of Justice. Mr. Gulick began saying that the State of South Carolina seeks relief against the former Inter-basin Transfer statute in North Carolina. The United States Supreme Court has allowed South Carolina to file because it has the sole jurisdiction over any equitable portion of water between the two states. The State filed an answer to the complaint November 30, and since then Duke Energy and the Catawba River Water Supply Project have filed motions to intervene.

Mr. Gulick continued saying that the court has appointed a Special Master to work with the case, Ms. Christine Winslow Miles of the San Francisco Bar. Ms. Miles’ duties include issuing subpoenas, submitting reports as to the complaints, allowing time for additional pleadings. There is not a lot of background litigation to set precedents, and the case may take several years to resolve, he said.