



MINUTES
ENVIRONMENTAL REVIEW COMMISSION
November 27, 2007

The Environmental Review Commission met Wednesday, November 27, 2008 at 9:30 a.m. in Room 544 of the Legislative Office Building. Co-Chairperson Lucy Allen presided.

Members present were Co-Chairperson Lucy Allen, Co-Chairperson Dan Clodfelter, Co-Chairperson Charlie Albertson, Co-Co-Chairperson Pryor Gibson, Senator Stan Bingham, Senator Katie Dorsett, Senator James Forrester, Representative Jim Harrell, Representative Carolyn Justice, Representative Pricey Harrison, Senator Eleanor Kinnaird, Representative Ruth Samuelson, Representative Edith Warren and Rep. Larry Womble. Staff members present were Commission Counsel George Givens, Assistant Counsel Jeffery 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 in these minutes as **Exhibit A**. A reminder was sent electronically on November 26. The meeting agenda and visitor's registration sheets are attachments to these minutes and referred as **Exhibit B** and **Exhibit C**.

Rep. Allen called the meeting to order shortly after 9:30 a.m. and recognized her co-chairs Senator Albertson, Co-Chairperson Clodfelter and Representative Gibson. She then recognized Commission Counsel George Givens and asked for comments from co-chairs. Co-Chairman Clodfelter noted that the day's agenda was long. A new member, Representative Larry Womble, was recognized by Co-Chairwoman Allen and he introduced himself from District 71 in Winston-Salem. Co-Chairwoman Allen then reiterated the length of the meeting agenda and asked members to hold questions until after the meeting, if possible.

Mr. Givens thanked Chairwoman Allen and asked members to note a packet of "read only" reports distributed to members. These are included the minutes as **Exhibit D**. One report, "Annual report on the status of leaking underground storage tanks, the State cleanup funds and the Groundwater Protection Loan Fund, was included in the read only reports but was mistakenly recorded. Mr. Givens noted that the "leaking underground storage tanks" report was listed but indeed the physical report was not included in the "read only" packet.

Mr. Givens noted that on the agenda there was a presentation concerning the drought that followed after an extensive series of drought presentations at the October meeting. He continued saying that one speaker on today's agenda, Mr. Marc Thigpen, was invited on behalf of a request by Co-Chair Albertson (Agenda Item 6). He continued

noting that there were three water reports on the day's agenda, and asked members to pay attention to the last report for Item 7, an update on the implementation of the Lagoon Conversion Program and the Swine Methane Capture Pilot Program, adding that the program was authorized by Senate Bill 1465.

Mr. Givens noted several other items on the agenda including item 8, a report on the Catawba/Wateree River Basin Advisory Commission. He told members that there are two other river bi-state commissions and that there is a need simplify the membership selection process and gaining funding for public members, allowing the commissions to function more effectively. Continuing, he noted Item 9 of the agenda regarding pervious pavement legislation mandated in the 2007 Appropriations Act. Mr. Givens said that effective date was not until August 2008 and that discussion of the legislation would continue over several meetings. Mr. Givens then explained that Item 10 of the agenda, the Ecosystem Enhancement Program was added due to a fee increase. This increase, he added, was approved by the Rules Review Commission but received ten letters of objection and as a result will probably come before the 2008 Regular Session.

Mr. Givens continued to explain the agenda noting each item. He then told the Commission that as was authorized at the October ERC meeting, scoping sessions for a proposed water allocation study have been scheduled. At the time of this meeting, three cities, Charlotte, Asheville and Greenville were selected and dates also selected. He added that a meeting in Raleigh was likely as well as a meeting in Wilmington. The meetings are planned for public response to a draft contract between the State and the University of North Carolina at Chapel Hill School of Government. A meeting concerning the construction of artificial slopes follows the Asheville scoping session and is scheduled for January 10.

He continued explaining the agenda and noted for the record that a planning meeting was held at 10 a.m., Thursday, November 15 in room 605 of the Legislative Office Building.

Closing his comments, Co-Chair Allen thanked Counsel and recognized that Rep. Edith Warren was now in attendance. Rep. Samuelson asked if locations were selected for the scoping sessions in Charlotte, Greenville and Asheville. Mr. Givens replied that specific locations had not been decided upon but it was expected that locations would be selected within the upcoming week. Co-Chair Allen then called on the next item, newly appointed staff with the North Carolina Department of Natural Resources, and recognized DENR Secretary William G. Ross.

Mr. Ross thanked Co-Chair began introducing Richard Rogers, who recently was promoted to head the Clean Water Management Trust Fund. He previously worked as Assistant Secretary of Natural Resources. Replacing Rogers is Manly Wilder, who previously worked as director for the Department's Division of Soil and Water Conservation. And replacing him, he continued, is Pat Harris, who was promoted within the Department. He said that his new appointees represented a "wealth of experience and leadership." After discussing his appointees a bit more, the Chairperson moved to Item Five, an update on current drought conditions and recognized Thomas C. Fransen, Chief of the River Basin Management Section with the DENR Division of Water Resources. A copy of his presentation is included in the attachments and is labeled **Exhibit E**.

Co-Chairperson Allen thanked Mr. Ross for his comments and then recognized Mr. Thomas Fransen, Chief of the River Basin Management Section with the Division of

Water Resources (DENR) to address the Commission on current drought conditions. Mr. Fransen began his presentation by noting that his primary job this year was to coordinate with reservoir operators. He then said he would report previous and current drought conditions.

Showing a map from January 2007, Mr. Fransen pointed out that there was no drought. By August 21, however, the entire State had some level of drought, he continued, and added that October 23 had the worst levels. Water levels for the last 30 days were at 77 percent of normal capacity. For a 180-day perspective, the State has lower water levels than a previous drought in 1954. Mr. Fransen continued saying that he participated in a conference call every week to determine a national drought map and that he had been in discussion with officials from public water systems. His office is tracking 628 water systems, he said, and then showed consumption levels following the Governor's request for residents to conserve water. Water use had dropped, however, a recent rain created a backslide in consumption, a backslide created through false hopes that the drought had indeed ended. Drought conditions would continue through the next quarter, he said, adding that there would be rain, but not enough to stabilize water levels.

Mr. Fransen concluded his presentation and Co-Chairperson Allen thanked him. Robin Smith, Assistant Secretary for Environment with DENR was then recognized by the Co-Chairperson. Ms. Smith began saying that she would update the Commission on activities since the last ERC meeting. Her office is largely working with water systems categorized as Tier 1, the most vulnerable water supply systems. Health and Water Resources officials are meeting with staff from each public water system to determine what alternative supplies may be available. She continued saying that her office had specifically worked with some systems to expedite permitting and funding of water-related infrastructure projects, noting projects in Siler City, Sanford, Rocky Mount and Goldsboro. The expediting has allowed Siler City to connect with Chatham County water lines, Goldsboro into the Wayne County public system, and Rocky Mount into the City of Wilson system. She then noted that the City of Raleigh is reducing its water consumption from Falls Lake and is supplementing the deficit with water from Lake Wheeler and Lake Benson.

Moving to her next topic, Ms. Smith said that at the last meeting she discussed gaps in drought management. One gap she has recently discovered, she continued, is the "obvious lack of current information of water use" from public water systems. Until the Governor's call to conserve water, systems had no requirements to report usage.

To remedy this, Ms. Smith suggested creating and maintaining an electronic system and database that could receive all usage information. She said that one was not put in place before because there had been no regulatory concern to do so.

In calling for questions from Commission members, Co-Chairperson Clodfelter asked about oversight of intake construction and levels, and cited high intakes on the Catawba River. Sen. Clodfelter then asked if the State needed "assist or compel" the relocation of intakes. Mr. Fransen said a pending study would look at that issue. Ms. Smith added that many impoundments are often licensed for energy uses or managed by the Army Corps of Engineers, in such impoundments federal approval is needed for any changes. Co-Chairperson Clodfelter followed up saying that the State "need(s) to leave impoundments on the table." Mr. Givens added that placement of intakes is a matter of regulatory concern. Ms. Smith replied that she was not sure of the answer but would

assume that Mr. Givens comment is correct. Mr. Givens then added that there would later be legal and engineering considerations.

Senator Forrester asked Ms. Smith if DENR had guidelines for restructured well water. Ms. Smith replied that private wells were a current issue for DENR because of the State's lack of regulatory authority, Co-Chairperson Allen asked about car washes using well water and if the State had any authority over such businesses. Co-Chairperson Gibson then said he would like to meet with staff and added that he felt that during the upcoming 2008 session, legislators will deal with the issue of regulating drinking wells.

Co-Chairperson Gibson noted that he was concerned with the economic impact that drought will have. Representative Harrison asked about the PCS Phosphate Plant in Aurora and if the State had yet addressed a water rights issue. Ms. Smith replied that she did not know. Representative Samuelson asked if using a private well impacted other surface waters, of which Ms. Smith replied it did. Representative Allen thanked Mr. Fransen and Ms. Smith.

Mr. Marc Thigpen was then recognized by Co-Chairperson Allen. Mr. Thigpen is owner of Thigpen Farms in Duplin County and is an advocate of global positioning systems used in fertilizing farms and golf courses. Mr. Thigpen opened saying he was here to "educate the committee" on the potential of nutrient management in global agriculture. He said that water quality was essential for the future of farming. When Mr. Thigpen began using nutrient management on his farm, he witnessed a 30 percent reduction in fertilizer costs after the first year, and was one of possibly only five growers using nutrient management across the State. Mr. Thigpen also noted higher yields because of nutrient management.

He continued saying he realized that he could take nutrient management to a higher level: golf courses. At this point in his presentation Mr. Thigpen showed a series of golf course photos. His presentation is included in the minutes as **Exhibit F**. He noted that benefits for both golf courses and farms include optimum growth performance and good environmental stewardship. He continued and discussed his business' successful projects using nutrient management the State.

As his slide presentation continued, he showed a slide of Eagle Point Golf Course and application maps from 2004. Ending his presentation, Mr. Thigpen said "precision farming is the future ... it will be worldwide ... it will be global." Lastly, Mr. Thigpen noted that Co-Chairperson Albertson's farm was now under nutrient management.

Co-Chairperson Allen then called on Mr. Manly Wilder, Assistant Secretary for Natural Resources from DENR to discuss precision farming under the Agriculture Cost Share Program. Mr. Wilder began noting the precision farming would be agriculture's future.

Mr. Manly's office determined a need to look at precision farming a few years before and DENR sat up experiment station in Eastern North Carolina. Three conservation districts, Beaufort, Hyde and Pitt have asked to participate in the program, he said, and said that nutrient management was much more applicable in the larger fields of Eastern North Carolina.

Co-Chairperson Albertson thanked Mr. Thigpen and Mr. Wilder. She then recognized Mr. Paul E. Rawls to discuss an annual report on water quality law compliance and enforcement for water discharging facilities. Mr. Rawls is Chief of the

Surface Water Protection Section with the Division of Water Quality (DENR). A copy of his presentation is included in the minutes as **Exhibit G**.

Opening his presentation Mr. Rawls noted that there are 1319 individual permitted facilities in North Carolina. Of those, 296 are municipal facilities and 1023 are private. Some communities had interconnecting facilities, he said, adding that the number of facilities declined especially because of closings in the textile industry. As for inspecting these facilities, in 2007 there were 1293 inspections with 613 various enforcements. Total civil penalties levied were \$844,181, with \$587,144 collected.

In showing a slide with penalty assessment, Mr. Rawls said that assessment trends remained steady and his office had a 93 percent compliance rate.

For the future, a letter was mailed May 31 to all collection systems. The letter informed facility managers that as of June 1, oversight would be “ramped up,” including more frequent notices of violation.

Mr. Todd A. Bennett was then recognized to present to the Commission an “Animal Feeding Operations Compliance and Inspection Report.” A copy of this report is included in the minutes as **Exhibit H**. Mr. Bennett began his presentation noting permitting actions during the past fiscal year of 2006-2007, including 46 swine permits, nine cattle permits, one poultry permit and zero horse permits. He added that most permits were issued because of “changes of ownership and operations,” and seldom are there permits for new operations or expansions.

In addressing the number of inspections, he said required inspections slightly dropped from 2500 to 2486. Closing operations and rescinding permits add to the drop, he said, and began discussing what issues were determined from inspections. The most noted issues among inspections were inadequate freeboard and evidence of over-applications. This accounted for a majority of violations, some 187 and 143 respectively.

Mr. Wilder and Patricia K. Harris, Director of the Division of Soil and Water Conservation (DENR) were recognized by the Co-Chairperson to give an update on the implementation of the Lagoon Conversion Program and the Swine Methane Capture Pilot Program (**Exhibit I**). Mr. Wilder’s title is noted previously in these minutes.

Mr. Wilder began saying that authorizing legislation for the program was “landmark legislation for its impact on the environment.” He said he was pleased with the cooperation among participating parties, the State, environmental groups, North Carolina State University and others, and noted that the program was a “tremendous effort” and “making excellent progress.”

Ms. Harris confirmed Mr. Wilder’s comments by saying that the program was making good progress and that the proposed rule could be adopted in early 2009. She then directed Commission members to look at a flow chart included in Exhibit J describing the process of program application, selection, funding and implementation. Tax credits and markets for value added products are currently being looked at, she said.

Representative Justice thanked Senator Albertson for bringing such legislation forward, saying that the program was something for the General Assembly to be proud of.

Mr. Fransen was then again recognized by Co-Chairperson Allen to discuss a report on the Catawba/Wateree River Basin Advisory Commission. Mr. Fransen’s title is given previously in the minutes. Mr. Fransen began saying that he was happy to discuss something other than the drought.

The advisory commission, he said, was very active and leading the State in managing resources. He then reviewed a handout included in the minutes as **Exhibit J**. At the commission's January 5, 2007 meeting, a report was given on water use permitting legislation currently under consideration in the South Carolina General Assembly. The commission also adopted a resolution urging the North Carolina Environmental Management Commission to delay action on a proposed interbasin transfer from the Catawba basin as a water source for Concord and Kannapolis. At a second meeting held April 27, 2007, the commission reviewed the status of water management bill at both general assemblies. During that same meeting the commission discussed relicensing Duke Energy reservoirs in the basin. At their last meeting October 5, 2007 the commission updated members of a bill being considered in South Carolina to establish a statewide water use permitting system.

Co-Chairperson Clodfelter said that the next meeting, to be held in January, will focus on establishing parameters for interstate water allocation. He added that there is a good interest in reaching consensus agreement and that his personal hope is for recommendations that make a possible outline. All working with the river basin commission hope for resolution rather than litigation, he said.

Mr. Thomas A. Reeder was then recognized to present and comment on the use of pervious pavement for vehicle parking. This is required from Section 6.22 of Session Law 2007-323. A copy of his presentation is included in the minutes as **Exhibit K**. Mr. Reeder began noting that the legislation applies statewide and affects all new uncovered residential and commercial parking areas. Its requirements include that 20 percent of parking areas must be permeable pavement or the runoff from 20 percent of that area must go into a stormwater management system. He then gave an example of a depleted stream near a shopping center to show the impact of impervious pavement.

Mr. Reeder noted that gravel was not considered permeable because it can become compacted. He then explained that permeable pavement included either porous asphalt or porous concrete and ended his comments saying that permeable pavement could help reduce impacts from the drought.

Speaking of her concerns with the legislation, Ms. Elizabeth Dalton, director of government relations for the North Carolina Retail Merchants Association was recognized. Ms. Dalton began saying she understood the need to reduce stormwater runoff, but that she did not see any reason why the legislation should not apply to churches, schools, day cares and other facilities considered neither commercial or residential. She continued saying that there could be limitations for use, particularly with stores that have deliveries and stores with people loading purchases into vehicles. Also of concern, she noted is that there are very few contractors in the State qualified to install such pavement.

Mr. Duane Coen, Engineering Manager for Lowe's Companies was then recognized. He began saying that "Lowe's is committed to being a responsible corporate citizen." His company implements stormwater prevention programs at their stores in the western hemisphere. Stores control and treat runoff by using lots of standard systems and some surface retention. In limited areas stores have rainwater harvesting and reuse, and in some other areas green roofs are included in construction plans. He also noted that to his knowledge there were only two or three contractors qualified to install such pavement.

A last speaker on the subject, Mr. Todd Simmons of Freeland and Kauffman was recognized. Mr. Simmons said he works with national retailers and now better understands the legislation. His concerns included water quality and inconsistent application of the regulation. He added that he was glad officials at DENR would allow alternative suggestions. Co-Chairperson Allen asked for questions.

Representative Samuelson asked Mr. Coen if Lowe's stormwater management systems are meeting the 20 percent reduction in runoff. Mr. Coen said they were not. Representative Gibson said that an immediate workgroup of building code professionals, residents from East and West need to meet. He followed saying he wanted to know "where rule making is going with this."

Senator Dorsett asked if existing parking areas were grandfathered. Mr. Reeder replied that they were. Monitoring, enforcement and implementation were currently the most relevant issues, he said, and his division was working to come up with a methodology allowing outreach with local governments.

Senator Dorsett asked if cooperation will begin October 1, 2008. Mr. Reeder replied that he hoped to work with local governments during the summer. Co-Chairperson Clodfelter asked about areas with heavy clay such as Charlotte, in areas of which permeable pavement cannot be installed.

Mr. Reeder was thanked by the Co-Chairperson. Mr. William D. Gilmore, director of the Ecosystem Enhancement Program (EEP) (DENR) and Mr. Wilder were recognized to present a report on the EEP program and discuss an in-lieu fee for the program. Mr. Wilder presented two other items on the day's agenda.

Mr. Gilmore began saying that the program was "receiving accomplishments" including national and state recognition, participation in the Top 50 Innovative Government Program through Harvard University's Kennedy School of Government, a year of mitigation with the Department of Transportation, and being named the state Natural Resources Agency of the Year. He thanked fellow employees and began to explain the program. The EEP report is included in the minutes as **Exhibit L**. Mr. Gilmore discussed the EEP's four programs, the Memorandum of Agreement (MOA) Stream and Wetland Program for NCDOT, the MOU Stream and Wetland Program, the Riparian Buffer Program and the Nutrient Offset program. He then reviewed funds included on pages three and four of his report. He then covered his Executive Summary found on pages I and II of his report.

Mr. Manly told Commission members that the in-lieu fee program allows military bases, school systems and the like to pay EEP. EEP, in turn satisfies the responsibility of mitigation, allowing development to ensue. As a totally fee-based program, costs for stream restoration ran seventy dollars more than what fees charged (\$223 per linear foot charge compared to a \$293 actual cost). Program costs have increased, he said, because of increases in design, land and construction costs. EMC approved a two-tier fee process, but the approval will come before the legislature for review as has received more than 10 objections.

Mr. Manly concluded that the EMC and the program are taking a guarded approach in accepting new mitigation.

Co-Chairperson Allen recognized Mr. William E. Holman, Emeritus Chair of the State Water Infrastructure Commission to present a report by that commission on its activities and findings.

Mr. Holman began with “quick refreshers” noting that the commission was created in 2005, and the commission’s purpose is to identify the State’s water infrastructure needs and develop a plan to meet needs as well as monitor implementation of that plan. He also noted federal funding for State infrastructure projects.

In 2007, the commission decided to focus efforts on regional collaboration and partnerships, and found that although there is some general encouragement, there is no state policy to make that happen. A copy of Mr. Holman’s report is included in the minutes as **Exhibit M**.

Continuing to discuss regional collaborations, Mr. Holman noted that most regional efforts organize in response to local needs and that state funding is the only way to recognize the value of regional collaborations. Mr. Holman then reviewed water and sewer regionalization, included in Exhibit N. For water, 48 percent produce for own use, purchase none and sell none and 26 percent purchase all water. For sewer, 71 percent treat either their own sewage or treat their own and other systems sewage and 29 percent have sewage treated by others.

Mr. Holman reviewed benefits of regional collaborations, including reducing the numbers of treatment plants regulated by the State, making better tolerance of emergencies. Barriers included funding and higher per unit costs in smaller regions, “emotional” barriers and regulatory barriers.

Other barriers include imperfections in systems, such as lots of leaks or a lack of sound fiscal management. Also, he noted, are systems unable to collaborate due to topography and distance between systems.

Mr. Holman then reviewed nine recommendations included in Exhibit N and concluded his discussion noting the importance of working through drought issues.

Senator Kinnaird commented that some years ago another senator filed a collaboration bill that provoked “emotional” issues between systems.

Jean Crews-Klein, commission staff, said the commission had discussed the relationship between regional water planning and the Interbasin Transfer Act.

Co-Chairperson Allen recognized Co-Chairperson Clodfelter. Co-Chairperson Clodfelter asked to read a finding by the North Carolina General Assembly. In reading, he read “findings by the North Carolina General Assembly (show) the existing pattern of public water supply development in North Carolina is dominated by small systems serving few customers. Of the 1782 public water systems on record, according to the Department of Health and Human Services, 80 percent were serving less than 1000 people each. These systems are underfinanced, inadequately designed and maintained, difficult to coordinate with regional systems and in general inferior to larger systems serving larger communities.”

Senator Clodfelter continued reading the findings that called for county-wide or regional systems for better quality and drought control. He then stopped reading and gave the date of the report: 1971. Senator Clodfelter continued saying that the recommendations he heard at the meeting were “tepid after 36 years.” A time for encouragement, education and explaining had long since passed, and that the General Assembly did recognize a need and had not yet addressed it. He ended saying he hoped to get more aggressive about recommendations.

Due to time constraints, Item 12 was moved from the agenda and will be taken up at the December meeting.

The meeting was adjourned at 1:42 p.m.

Co-Chair Charlie Albertson
Presiding

Co-Chair Lucy Allen

Jessica Kozma Bennett

Co-Chair Pryor Gibson