



# North Carolina General Assembly

## ENVIRONMENTAL REVIEW COMMISSION MINUTES

October 9, 2008

The Environmental Review Commission was scheduled to meet at 9:30 a.m., Thursday, October 9, 2008 in Room 544 of the Legislative Office Building. Co-Chairwoman Lucy Allen presided. The meeting was called to order at 10:25 a.m.

### Welcome and Attendance

Members present were Co-Chairman Charlie Albertson, Co-Chairman Pryor Gibson, III, Senator Stan Bingham, Senator Ellie Kinnaird, Representative Ruth Samuelson Representative Edith Warren, and advisory member Senator Fletcher Hartsell. Commission staff present was Commission Counsel George Givens, Assistant Counsel Jeffrey Hudson, Assistant Counsel Jennifer McGinnis, Research Assistant Mariah Matheson and Committee Assistant Jessica Kozma Bennett.

A meeting notice was distributed to staff, members and outside parties electronically and is included as an attachment to the minutes as **Exhibit A**. A reminder was sent electronically October 8. The meeting agenda and visitor's registration sheets are attachments to these minutes and referred as **Exhibit B and Exhibit C**, respectively.

Co-Chairwoman Allen recognized co-chairs of the Commission; she then recognized staff, thanking them for their work for the Commission.

Representative Womble recognized Faith Wambui, a visiting student to North Carolina from Nairobi, Kenya, saying that he was encouraging her to complete college in North Carolina. Ms. Wambui thanked the Commission and said she had a desire to study medicine.

### Report to the Commission and Explanation of Agenda Items

Commission Counsel Givens thanked the chairwoman and began reminding members to sign and return reimbursement forms. He then announced the birth of Susannah Louise Mundt, born to Commission Analyst Jennifer Mundt and husband Karl on September 6. He noted that Ms. Mundt would return to work in early 2009. He then asked for members to note a table of reports bound by law to be reported to the Commission. This report is referred to as **Exhibit D** in the attachments. A second packet of reports, **Exhibit E**, include two read only reports and three reports to be distributed at

future meetings. Mr. Givens noted for the record that a planning meeting for this regular meeting was held September 29 at 10 a.m. in Room 605 of the Legislative Office Building. He then reviewed the agenda. In reviewing Mr. Givens said that a meeting schedule for November 5 and 6 was cancelled. The next regular meeting would be November 25 with a planning meeting scheduled for November 13.

### **Approval of the March 20, 2008 and April 7 and 8, 2008 Minutes**

With a motion by Representative Womble and seconded by Representative Samuelson, minutes from the March 20 and April 7 and 8 meetings were approved by unanimous vote.

### **Quarterly reports by the Environmental Management Commission (EMC) as to its operations, activities, programs and progress for the period of 1 April 2008 through 30 September 2008**

Chairwoman Allen recognized Dr. David H. Moreau to deliver the EMC's two quarterly reports from July and October of this year. Dr. Moreau's retirement was announced after serving with the commission for 16 years. Dr. Moreau is being replaced by Steve Smith, who previously served as a commission member. Chairwoman Allen welcomed and thanked Dr. Moreau for his presentation, that he delivered although already in retirement, and also thanked him for his service to the commission.

Two reports are included as attachments are listed as exhibits **F and G**.

Dr. Moreau thanked the Commission and said he had finished his chairmanship with the EMC. He then said he wanted to reflect on issues pertinent to the EMC during his 16 year tenure. Among items he noted:

- Wetlands were protected from the establishment of a 401 Certification process under the Clean Water Act.
- That water allocation had been addressed through establishing a base for usage in the coastal plane, with the State acting as a cautionary partner in water supply storage at Jordan Lake
- That the EMC will continue under the leadership of Mr. Smith to address ozone issues impacting the State.
- The Mercury rule of the Clean Smokestacks Act was concluded as a very strong protective rule for the State.

Dr. Moreau continued that when he was preparing to step down as commission chairman Mr. Givens asked him if he had frustrations. There were frustrations, he said, but most "had been self imposed." Among frustrations Dr. Moreau mentioned a challenge by the Rules Review Commission that was eventually over turned by court action. He then suggested that the State establish an administrative clearinghouse. His second frustration, if you will, was the interaction between the EMC and the General Assembly. A majority of the time, he said, the General Assembly delegated authority to the EMC and in turn the EMC operated to the satisfaction of the General Assembly. But in some cases it took years to develop rules, with numerous hearings and deliberation among

hearing officers to arrive at a well balanced rule. He then commented that sometimes “the ink is hardly dry ... before another process is started at the General Assembly.”

Despite any frustrations Dr. Moreau said it was an honor and privilege to serve with the EMC staff, the Legislature and the Office of the Governor. He thanked staff, including Mr. Givens, and said that the State had been well served by the large number of people who have given their time and professional expertise to the State and the EMC.

Dr. Moreau was loudly applauded by the audience after Chairwoman Allen asked for a round of applause. She then welcomed Mr. Smith.

Mr. Smith began saying that since Dr. Moreau announced his retirement, Dr. Moreau smiled much more. Mr. Smith said that the EMC met three times since the last quarterly report. He also said that because of the passage of Senate Bill 3, a committee is formed to follow the direction of the bill. He then reviewed actions of the EMC as listed in the attached exhibits **F and G**.

Chairwoman Allen recognized Senator Bingham who asked about the use of wind in Denmark as a renewable energy and then followed up asking about using wood pellet producing plants. He added that North Carolina State University was conducting research on such energy. Mr. Smith said he did not know about the wood pellets.

#### **Annual Report on the EMC’s progress in developing and implementing nutrient management strategies for certain water supply reservoirs**

Senator Kinnaird thanked Dr. Moreau for his service and discussed development on Jordan Lake, noting that there were problems because the lake was a source for multiple water systems. She asked if this issue would be addressed in the future. She added that she hoped the EMC would look at watershed issues.

Mr. Smith said that in August 2008 officials with the Division of Water Quality began a stakeholder process to look at a management strategy for Falls Lake. Regarding Jordan Lake Mr. Smith gave a brief history. In years 2003 and 2004 an 18-month study was conducted on nutrient rules. In 2005, EMC staff solicited public comment. Additional meetings occurred in 2006, and in May of 2008 hearing officers recommended rules for the EMC.

#### **Report on the progress in developing and implementing a new fee structure for the nutrient offset program**

Chairwoman Allen called on Mr. James B. Stanfill, strategic planning coordinator for the Ecosystem Enhancement Program through DENR. A report and handout were distributed to members and are attached to the minutes as **Exhibits H and I**.

Mr. Stanfill thanked Chairwoman Allen and said his report this day was a progress report for the existing program. He began his presentation.

The nutrient offset program is in place for development along the Neuse and Tar-Pamlico rivers. The program began in 1996 because of massive fish kills stemming from nutrient runoff from development. The goal of the program was to assist developers in meeting reduction requirements. Initially, the charge was \$11 per pound. From May 2001 until 2005 the fee stayed the same, until officials realized collected fees were not enough to support the project. In 2006, new fees passed, increasing to \$57 per pound for nitrogen

and \$45 per pound for phosphorus. The new fees also covered costs of land acquisition and new projects such as wetland restoration. The first payments under the new fee structure were received in May 2006.

The increased fees, however, would lower through legislation from the 2006 legislative session, returning to \$11 per pound for both nitrogen and phosphorus. This legislation came as the result of a study conducted by RTI International.

Objectives of the program are to incorporate the actual costs of generating the program. Mr. Stanfill said. Also, that all costs must be accounted for and the program needed to be understandable and easy to use given the spectrum of clients' knowledge. Another objective was that the program needed to be predictable and equitable, he continued. Builders have to financially plan projects prior to breaking ground, so the program must give accurate estimates of costs.

Mr. Stanfill then reviewed project and administration cost models. The program has received hundreds of payments, he said. To better serve clients a prototype was created to produce cost calculations. He added that the program works closely with the Division of Water Quality.

Finishing his report, Chairwoman Allen called for questions and discussion.

Representative Samuelson asked about adjustment factors for projects that needed to be recalculated. Mr. Stanfill said the subject would be discussed in a future stakeholder process. Representative Samuelson followed up and asked if there would be times when an applicant would contract with a private bank. Mr. Stanfill replied that this does occur. Senator Kinnaird asked about refunded money to builders from rate adjustments. Mr. Stanfill said that refunds came from existing fees paid. Senator Bingham asked Mr. Stanfill to break down cost per acre. Mr. Stanfill said that charges were by the pound. Senator Bingham followed up asking for a range of fees for builders. Mr. Stanfill replied that a low fee would be a few hundred dollars to a high fee in the thousands. Representative Harrison asked if there was a backlog of projects from fee variability. Mr. Stanfill said projects did slow down but process was restarted as soon as the new fees were established in 2007.

### **Annual report on the One-Stop Permit Assistance Program and the Express Permit and Certification Review Program**

Chairwoman Allen thanked Mr. Stanfill and then recognized Ms. Edythe M. McKinney, director of the Customer Service Center and Small Business Ombudsman for DENR. Ms. McKinney thanked membership for allowing her to speak today.

She began her presentation noting that there is a report distributed to members, **Exhibit J**, and called for members to note two charts in the report.

Ms. McKinney reported that the program she oversees tracks seven programs and has also tracked 13,000 permits since its inception.

One trend of the program is that a large percentage of permits were tracked in less than 90 days: eighty-four percent of regularly filed permits and 99 percent of expressly filed permits. For those permits that take more than 90 days, delays come from permit complexities; for example, acquiring a major source air permit or design issues. A second trend is that an express review is much quicker than a regular review. One goal of the program is expediency, she noted. The program's ability to handle reviews quickly stems

from having adequate staff and stringent oversight in the early steps of the application process. A third trend is working to ensure a lack of incomplete transactions. Currently her program is offering additional training and aids to assist employees in helping clients file completed permit applications.

Ms. McKinney told the Commission that it would be unfair not to note that applications had declined. She said there is not a panic, as some months still show increases and some months remain reciprocal on a year to year basis.

Finishing her report, Chairwoman Allen asked for questions of comments.

Representative Samuelson said she was attending a conference on stormwater in the next week and asked Ms. McKinney to forward any information she could take to the conference. Ms. McKinney said she would be delighted to.

**Report on the analysis of whether rate structures, policies, and measures, including decoupling, that promote a mix of generation involving renewable energy sources and demand reduction should be implemented in this State**

**Annual report on the Renewable Energy and Energy Efficiency Portfolio Standard**

Mr. Edward S. Finley, Jr., Chairman of the North Carolina Utilities Commission was recognized by Chairwoman Allen for two reports, one concerning Senate Bill 3 and another regarding rate structures. These reports are attached to the minutes as **Exhibits K and L**.

Mr. Finley began reporting on where the commission and utility company currently stand with regard to the legislation. Rules proceedings began and an order was issued in February of 2008. These rules are in Exhibit K, pages 1 through 3. In all, 105 issues were addressed, some of smaller and larger scopes, he reported. Currently there is an open topic for net metering, whether to allow generators up to 1 megawatt to qualify for metering. He added that solar generator operators are not pleased with the current rules. Two public hearings were held regarding the issue, one in Charlotte and one in Raleigh.

Compliance plans were received by the commission as required by Senate Bill 3. Plans are due December 1, 2008. Some utilities have requested extensions. As for the larger utility providers, Progress Energy has submitted plans; Duke Power is currently on extension.

Issues to note for future consideration are presented on pages 30 and 31 or Exhibit K. They include:

- Establishing what percentage of electrical sales is needed to meet required goals during in between years. For example, by statute there is a three percent increase in 2012; a six percent increase in 2014. Currently no thresholds are set in years between.
- Whether existing hydroelectric plants may be accepted under compliance standards.
- Determining whether it is a joint requirement to purchase energy derived from poultry and swine waste and solar set-asides.

- Whether electric utilities headquartered in other states but providing service in the State are required by statutory authority to comply with Senate Bill 3.
- Whether electric power providers could meet REP requirements through energy reductions among consumers.

Noting Exhibit L, Mr. Finley added that his commission is waiting to see further implementation of Senate Bill 3 before recommending rate adjustments.

**Update on air quality issues, including the annual report on implementation of S. L. 2002-4 (Improve Air Quality/Electric Utilities)**

Mr. James C. Gulick, Senior Deputy Attorney General of the Division of Air Quality with DENR was recognized by the Chairwoman to discuss actions stemming from Session Law 2004-4, an Act to Improve Air Quality/Electric Utilities. Mr. Gulick thanked Chairwoman Allen and began his report.

A report entitled “Implementation of the Clean Smokestacks Act” is attached to the minutes as **Exhibit M**.

Mr. Gulick reported that both of the State’s major utilities met the requirements of the Act. Duke Power is required to further reduce oxides in 2009, and is currently prepared to do so. Details of this are included in Exhibit M, pages 21 and 22.

Both utilities are “well suited” for next year. He then reported that after Exhibit M was completed the State’s two largest coal burning plants, in Roxboro and Blues Creek, had been effectively “scrubbed” for cleaner smokestacks. He also estimated that obligations to be completed by 2013 will be met.

Mr. Gulick continued that both major utility companies met a required 70 percent amortization of costs in the first five years. He then discussed Section 10 of the legislation. Currently, the State is awaiting a Supreme Court judgment on a suit filed against the Tennessee Valley Authority. He said he was confident that the ruling would be in favor of the State.

Senator Bingham asked what benefit the State would receive from such a ruling. Mr. Gulick answered that the State seeks to require the TVA to install sufficient pollution controls with the same requirements Duke Power and Progress Energy must respond to. Senator Bingham wished Mr. Gulick the best.

**Commission discussion and announcements**

**Adjourn**

With no further discussion, the meeting was adjourned at 1:22 p.m.

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Co-Chair Lucy Allen  
Presiding

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Co-Chair Dan Clodfelter

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Jessica Kozma Bennett  
Commission Clerk

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Co-Chair Pryor Gibson