

**MINUTES**  
**ENVIRONMENTAL REVIEW COMMISSION**  
**October 12, 2011**

The Environmental Review Commission (ERC or Commission) met on Wednesday, October 12, 2011 at 9:00 a.m. in Room 544 of the Legislative Office Building. Senator Rouzer presided.

The following members were present: Senator David Rouzer, Co-Chair, Representative Mitch Gillespie, Co-Chair, Representative Ruth Samuelson, Co-Chair, Senator Stan Bingham, Senator Don East, Senator Fletcher Hartsell, Senator Brent Jackson, Representative William Brisson, Representative Carolyn Justice, and Representative Chuck McGrady. Mr. Jeff Hudson and Ms. Jennifer McGinnis, Commission Counsels; Ms. Mariah Matheson, Research Assistant; Ms. Sarah Neunzig, Commission Clerk, Sergeants-at-Arms Dedrick Anders, Ernie Sherrell, Martha Gadison, Martha Parrish, and Bill Bass. Attachments #1 and #2.

On October 5, 2011, notice was sent to members and interested parties via e-mail. A copy of the notice is included in the attachments to these minutes as Attachment #3. Copies of the agenda for the meeting and visitor registration sheets are included in the attachments to these minutes as Attachment #4 and Attachment #5, respectively.

**Call to order and introductory remarks**

Senator Rouzer called the meeting to order and welcomed members, staff, and visitors in attendance. He recognized his Co-Chairs, Representative Gillespie and Representative Samuelson, for introductory remarks. Senator Rouzer recognized Mr. Jeff Hudson, Commission Counsel, to provide an overview of the meeting agenda. Mr. Hudson explained that the agenda consisted of (i) a continuation of the discussion of the State Air Toxics Program (State Program) from the September 28, 2011 meeting, including follow-up information from the Department of Environment and Natural Resources (DENR), a presentation on the science and health benefits of the State Program, and, at Representative Gillespie's request, comments from the regulated community regarding the impacts of the State Program on them; (ii) an update from DENR on the use of directional and horizontal drilling and hydraulic fracturing or "fracking" for the purpose of oil and gas exploration in the State; and (iii) a report from the Chair of the Environmental Management Commission (EMC) on the EMC's activities for the last year.

**Follow-up and discussion of the State Air Toxics Program**

**Response to request for additional information on the State Air Toxics Program**

Senator Rouzer recognized Ms. Sheila C. Holman, Director, Division of Air Quality (DAQ), DENR and Robin Smith, Assistant Secretary for Environment, DENR, to provide a follow-up report on the State Air Toxics Program. Ms. Smith provided a basic overview of the State Program and explained the differences between the State and federal programs. A copy of the presentation is included in the attachments to these minutes as Attachment #6.

Representative Samuelson asked if there were multiple sources at a facility would emissions from sources covered by the federal program be included in calculating emissions from the entire facility. Ms. Smith responded that they would. Under the State Program, emissions from sources covered by the federal program are still considered when determining if emissions from the facility as a whole meet the State's health-based air toxics standards.

Senator Bingham asked about the measurement of the levels of air toxics emitted from a facility. Ms. Smith explained that under the State Program levels of air toxics are measured at the property line of a facility in order to determine what levels of air toxics could be affecting nearby people and businesses. Senator Bingham asked why there are 21 air toxics that are included in the State Program that are not included in the federal program. Ms. Smith explained that the federal program covers air toxics that present problems at the national level. Some air toxics that aren't a problem at the national level can be problematic at the State level. An example of an air toxic that is problematic at the State but not national level and that is included by the State Program but not the federal program is ammonia. Such air toxics make up the 21 air toxics that are covered by the State Program but not the federal program.

Ms. Holman and Ms. Smith then provided information in response to questions that were asked about the State Program at the September 28, 2011 meeting. This information is included as Attachment #7.

Senator East asked about how agricultural dust is treated under the State Program. Ms. Smith explained that generally, agricultural activities are exempted from the State Program and the federal program. This would not be true if an agricultural operation had some type of industrial type source of emissions such as a combustion source. This type of source could potentially be covered by the State Program and federal program. Senator East asked about air quality monitors near agricultural facilities. Ms. Smith explained that these monitors are not monitoring for toxic air pollutants.

Senator Rouzer asked how many monitors there are in the State. Ms. Holman answered that there are approximately 65 monitoring stations. Senator Rouzer asked about how their location is determined. Ms. Holman explained that the location is based on guidance from the United States Environmental Protection Agency (EPA). Senator Rouzer asked if the monitors are located on both public and private property. Ms. Holman responded that the monitors tend to be located on public property, such as a school or county or city property.

Representative Justice asked about emissions from a facility with sources that aren't subject to the federal program. Ms. Smith responded that such facilities could be subject to the State Program and could be subject to modeling requirements to determine if the levels of air toxics at the property boundary exceed the State's health-based standards. Representative Justice asked how DENR responds to the assertion that the State Program is duplicative of the federal program and therefore unnecessary. Ms. Smith responded that the State Program looks at the cumulative effect of air toxics emitted from a facility and that some of those emissions may not be covered by the federal program. The State Program can also look at the actual levels of air toxics leaving a facility and determine if they are affecting neighboring persons or properties. Ms. Smith also noted the federal program has been behind in establishing standards for some air toxics that it has identified as problematic.

Representative Samuelson asked if other states have programs like ours and, if so, how is ours similar or dissimilar to the other programs? Ms. Smith referred to the follow-up information contained in Attachment #7, which shows the lists of air toxics covered by our State Program, the federal program, and South Carolina's air toxics program. She noted that the federal program covers 187 air toxics, that our State Program covers an additional 21 air toxics, the South Carolina program covers an additional 59 air toxics, and the Virginia air toxics program covers the same 187 air toxics as the federal program. Representative Samuelson asked if most other states have programs that include air toxics not covered by the federal program. Ms. Smith responded that several States do and that they could provide additional information on this. Representative Samuelson noted that our State Program looks at potential impacts to people at neighboring properties and asked about neighboring properties that aren't inhabited. Ms. Holman responded that there is an inhabitability provision in the State Program that takes this into

account. Ms. Smith noted that just because a property is currently uninhabited doesn't mean that it will remain so. Representative Samuelson asked several questions about the list of emissions of air toxics by facility contained in Attachment #7. Ms. Smith explained that the list includes all facilities required to report emissions of air toxics and that the facilities are listed in order from greatest to least emissions.

Senator Bingham noted that paper manufacturing facilities and electric power generation facilities produced the majority of emissions of air toxics and asked what types of air toxics these facilities emit. Ms. Holman explained that most of the emissions from electric power generation facilities are from the combustion of coal. She also directed the Commission's attention to page 53 of Attachment #7, which shows emissions from select industry sectors, including paper mills and electric power generation facilities. Senator Bingham referenced the Clean Smokestacks Act (S.L. 2002-4) and its reduction of certain air pollutants. He then asked about air toxics originating in neighboring states. Ms. Smith noted that most air toxics tend to be more local in effect and that the State doesn't have very good data on air toxics coming from other states. Senator Bingham asked about pollutants emitted from the Tennessee Valley Authority's (TVA) coal-fired power plants. Ms. Smith explained that the Clean Smokestacks Act required emissions reduction technology to be applied to a number of coal-fired power plants in North Carolina. It also required the State to examine air pollution generated by neighboring states. Based on this, the State filed a lawsuit against TVA seeking reductions in emissions of air pollution. The lawsuit was ultimately settled with TVA agreeing to implement significant reductions. Senator Bingham asked about international sources of air pollution, like China. Ms. Smith responded that the State does not have good information on this because China doesn't require sources and facilities to report their emissions as is required in the United States. She reiterated that air toxics have mostly localized impacts, so although China is a source for other types of air pollution that affect the United States, its air toxics emissions probably have little to no impact on air quality in the United States. Senator Bingham asked about the contribution of automobiles to air pollution in North Carolina. Ms. Smith directed the Commission's attention to the information provided under Question #5 on page 1 of Attachment #7. Based on EPA estimates, mobile sources (automobiles) emitted over 89 million pounds of air toxics in North Carolina in 2008, which represents 65% of total air toxics emissions in the State for that year.

Senator East asked Ms. Smith about the history, implementation, and cost of the State Air Toxics Program. Ms. Smith explained that the State Program had its origins in 1989 based on an Executive Order from then Governor Jim Martin. The Executive Order to establish the State Program was issued because the EPA was making little progress in regulating air toxics at the federal level. A number of other states also established air toxics programs. Ms. Smith further explained that the federal program covers air toxics that present problems at the national level. Some air toxics that aren't a problem at the national level can be problematic at the State level. This is why the State Program regulates air toxics that are not regulated at the federal level. Ms. Lanier McRee, Fiscal Analyst with the Fiscal Research Division, provided information on the costs of the State Program. She explained that the Division of Air Quality (DAQ), including the State Toxics Program, is entirely receipt supported and receives no funding from the General Fund. The annual budget for DAQ in its entirety is about \$29.1 million, and the total annual cost to operate the State Program is \$645,574. Senator East asked about fees under the State Program. Ms. Smith explained that the fees are annual, that they are paid by permitted facilities, and that they are based on EPA estimates for operating the State Program. She noted that for 2010, permit fees accounted for \$17 million of DAQ's budget while the rest of the budget came from a portion of the motor fuels tax, federal funds, and other sources. Senator East asked if the fees were based on the amount of air toxics emitted at a facility. Ms. Smith explained that the fee amount is based on the type of facility. Ms. Holman added that the fees are based on the tonnage of emissions of air toxics from each facility in a given year.

Senator Jackson asked which facilities have to get permits and how often facilities are inspected. Ms. Smith responded that permit requirements are based on the amount of air toxic emissions and that the Department tries to inspect larger facilities annually and smaller facilities once every 2 years. Senator Jackson asked how a new facility determines if it needs a permit. Ms. Smith responded the facility should contact the Department and the Department can determine if the facility meets the threshold for needing a permit.

Representative Justice asked whether cumulative effects are considered under the State Program and whether emissions from existing facilities could determine the amount of emissions allowed at a new facility. Ms. Smith explained that under the State Program the cumulative effects from all sources at a particular facility are considered. Ms. Holman explained that under the State Program only the cumulative effects from a single facility are considered; the cumulative effects from multiple facilities are not considered under the State Program. She further explained that this is not the case for other types of air pollutants under other programs where regional or even national cumulative impacts may be considered.

Senator Rouzer asked about the information in Attachment #7 regarding estimates of sources and amounts of air toxics. Ms. Holman responded that the information is based on EPA estimates that are produced every 3 years.

#### **Information on the science behind and health benefits of the State Air Toxics Program**

Senator Rouzer recognized Dr. George Lucier, Past Chair of the State Air Toxics Program's Scientific Advisory Board and Former Associate Director of the National Toxicology Program to speak on the science behind and health benefits of the State Program. Dr. Lucier's credentials and presentation are included in the minutes as Attachments #8 and #9 respectively.

Representative Samuelson asked about the reasonable estimate of risk and if the goal of the State Program is to allow no increase in risk. Dr. Lucier explained that acceptable levels of risk are allowed. For example, with a known human carcinogen, the acceptable risk is considered to be 1 in one million additional incidences of cancer. Dr. Lucier also noted that there are a number of factors that go into calculating acceptable levels of risk.

Senator East asked if air toxics are such a problem, why are people living longer. Dr. Lucier responded that because of various environmental programs, including the State Program, levels of many pollutants have decreased as has people's exposure to them. He also noted that various improvements in medical care and public health have contributed to longer lifespans.

Representative Gillespie asked how the health-based standards of our State Program compare with the standards of other states. Dr. Lucier explained that in some cases our standards are stricter, but in other cases they are less strict.

Senator Bingham asked whether the State Program or the federal program consider the economic impact of compliance. Ms. Holman explained that the State Program considers technical and economic feasibility. Senator Bingham asked how levels of risk are determined for different air toxics and specifically asked about mercury. Dr. Lucier explained how and to what extent mercury is transported. He further explained mercury is very biologically and ecologically persistent, which is one of the reasons that it is so toxic. Senator Bingham asked if PCBs (Polychlorinated biphenyls) bioaccumulate in fish like mercury does. Dr. Lucier responded that it does and added that the bioaccumulation of both mercury and PCBs in fish is one of the reasons it is difficult to assess the risks of eating fish.

Senator Hartsell asked about arsenic, fluoride and cyanide. Dr. Lucier answered that these substances are like PCBs because they are or form multiple compounds. Some of these substances are not persistent in the environment while others are.

### **Comments from the regulated community on the State Air Toxics Program**

Senator Rouzer recognized Preston Howard, President of the Manufacturers and Chemical Industry Council of North Carolina. Mr. Howard introduced himself and his organization and spoke about how the State Air Toxics Program impacts his members. His presentation is included in the minutes as Attachment #10.

Senator Hartsell asked about the relationship between State and federal air quality programs. Mr. Howard responded that the federal Title V Program has been delegated to the State and that the State implements and enforces the program.

Representative Samuelson asked if the same people are administering the State Air Toxics Program as well as federally delegated air quality programs. Mr. Howard responded yes, that one agency, the Division of Air Quality in DENR, implements all of the air quality programs. Representative Samuelson asked about when changes to a facility require new modeling to be performed. Mr. Howard responded that new modeling would be required if the modification resulted in an increase in emissions.

Representative McGrady asked about what changes to the State Program Mr. Howard was suggesting. Mr. Howard responded that he thinks the State Program should be amended so that a source that must comply with the requirements of the federal program would not be covered by the State Program. He also said that modeling requirements should be consolidated so that facilities don't have to perform multiple modeling exercises. He said the "Director's call" provision of the State Program would still allow DENR to address situations where a facility was demonstrably impacting the health of adjacent neighbors.

Senator East asked about the recent decision by a tire manufacturing company not to locate in North Carolina and whether that decision was based on incentives or on the stringency of North Carolina's environmental rules. Mr. Howard responded that he didn't know the basis of this decision. He added that companies do look at regulatory environment when deciding where to locate and that some smaller companies are choosing other states because they believe they can begin operating their facilities more quickly. He also added that it is his understanding that another manufacturing facility chose to locate in South Carolina instead of North Carolina, in part, because of the stringency of our State Air Toxics Program.

Senator Bingham asked Mr. Howard to provide recommendations to make North Carolina more competitive with other southeastern states. Representative Gillespie responded that he intended to get Mr. Howard to do this.

Senator Hartsell asked why companies choose to locate in South Carolina when South Carolina regulates more air toxics than North Carolina. Mr. Howard noted that there are a number of states that regulate more air toxics than North Carolina, but that many of those states, such as South Carolina, exempt sources that are regulated under the federal program.

Senator Rouzer recognized Lew Ebert, President and Chief Executive Officer of the North Carolina Chamber for his comments. Mr. Ebert introduced himself and explained the importance of regulatory efficiency, consistency, and predictability to the business community in North Carolina. His presentation is included in the minutes as Attachment #11.

**Quarterly reports by the Environmental Management Commission (EMC) as to its operations, activities, programs, and progress for the period from October 2010 through September 2011 (G.S. 143B-282(b))**

Senator Rouzer recognized Stephen Smith, Chair of the Environmental Management Commission (EMC). Mr. Smith gave a brief overview of the EMC's quarterly reports from October 2010 through September 2011. A cover memo and the four quarterly reports are included in the minutes as Attachments #12, #13, #14, #15 and #16, respectively.

Representative Samuelson asked Mr. Smith to explain the background and rationale for the repeal of the combustion source exemption under the State Air Toxics Program. Mr. Smith stated the original exemption was based upon the expectation that EPA was going to issue an emissions control standard for combustion sources and that a State standard wouldn't be necessary. After 13 years of waiting, the EMC decided it couldn't wait any longer and eliminated the exemption for new and expanding facilities. For existing facilities, the "Director's call" provision of the State Air Toxics Rules was used to review those sources and only those that exceed certain thresholds were required to implement measures to control emissions. Representative Samuelson asked if a source would lose its grandfather status if it was modified. Ms. Holman responded that it would if the modification caused an increase in emissions beyond certain thresholds.

Mr. Smith asked if Ms. Holman could explain the use of the "Director's call" provision in the case of combustion sources. Ms. Holman explained that under the "Director's call" the Division of Air Quality in DENR reviewed 1,800 combustion sources at approximately 450 facilities. The Division did a further review of 40 of those facilities where there was evidence that there could be some adverse health effects at the property line. Upon further review and modeling, it was determined that 18 of the facilities were actually creating adverse health impacts at the property line.

Senator East asked Mr. Smith to explain the last entry on the EMC Quarterly Report for the period April 1, 2011 through June 30, 2011 (Attachment #14). Mr. Smith explained the item designated as "*Denied the petition for rulemaking to amend the Underground Storage Tanks Secondary Containment Rules*" concerned a petition for rulemaking filed by the Steel Tank Institute Plate Fabricators Association requesting an amendment to the rule governing underground storage tank (UST) secondary containment standards. At the time of the petition, the rule required that tanks must be protected from external corrosion by specific means in accordance with the Code of Federal Regulations, but did not allow the use of cathodically protected steel tanks for that purpose. The petition requested that use of cathodically protected tanks be allowed for that purpose. The EMC denied the petition.

Senator Rouzer stated that he believed the General Assembly had enacted legislation on this issue, and asked Ms. Jennifer McGinnis, Commission Counsel, for information in that regard. Ms. McGinnis confirmed that a provision had been enacted during the 2011 Session in House Bill 119 (Amend Environmental Laws) to allow use of cathodically protected steel tanks for corrosion protection purposes, thereby overriding the EMC's decision on the issue.

**Update on DENR's study of the use of directional and horizontal drilling and hydraulic fracturing or "fracking" for the purpose of oil and gas exploration in the State**

Senator Rouzer recognized Robin Smith, Assistant Secretary for Environment, DENR, to provide an update on DENR's study of the use of directional and horizontal drilling and hydraulic fracturing or

“fracking” for the purpose of oil and gas exploration in the State. Her presentation is included in the minutes as Attachment #17

### **Commission discussion and announcements**

Senator Hartsell informed the Commission that he had submitted a letter to Attorney General Roy Cooper concerning the ownership of the submerged bed of the Yadkin River at the site of the Yadkin Hydroelectric Project during the last meeting. He stated today, he has not received a response from the Attorney General and would like to submit the motion to intervene submitted by the Attorney General on behalf of DENR in the Yadkin Hydroelectric Project reauthorization. The basis for intervention stated in the motion is that the State retains title to navigable waters and that the navigable waters themselves are a public resource. The motion is included in the minutes as Attachment #18.

Senator Rouzer thanked the members and staff, and announced the next meetings to be held would be Wednesday, November 9, 2011, at 9:00 a.m. and Wednesday, December 14, 2011, at 9:00 a.m. The dates and times are subject to change and notice will be given if they do change.

### **Adjournment**

The meeting was adjourned at 12:20 p.m.

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Co-Chair Senator David Rouzer

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Co-Chair Representative Mitch Gillespie

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Co-Chair Representative Ruth Samuelson

Attest:

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Sarah Neunzig, Committee Clerk