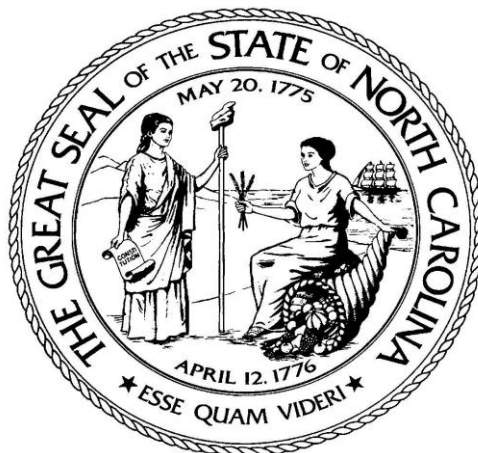


NORTH CAROLINA GENERAL ASSEMBLY



ENVIRONMENTAL REVIEW COMMISSION

REPORT TO THE
2013 SESSION
of the
2013 GENERAL ASSEMBLY

DECEMBER 13, 2012

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TRANSMITTAL LETTER

December 13, 2012

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TO THE MEMBERS OF THE 2013 REGULAR SESSION
OF THE 2013 GENERAL ASSEMBLY

Pursuant to Article 12D of Chapter 120 of the General Statutes, the Environmental Review Commission submits its report and recommendations to the 2013 Regular Session of the 2013 General Assembly.

Respectfully submitted,



Senator David Rouzer



Representative Mitchell Gillespie



Representative Ruth Samuelson

Co-Chairs
Environmental Review Commission

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STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES ARTICLE 12D.

Environmental Review Commission.

§ 120-70.41. Commission established.

The Environmental Review Commission is hereby established.

§ 120-70.42. Membership; cochaIRS; vacancies; quorum.

(a) The Environmental Review Commission shall consist of six Senators appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the Chair or a Cochair of the Senate Committee on Agriculture, Environment, and Natural Resources or the equivalent committee, the Chair or a Cochair of the House of Representatives Committee on Environment and Natural Resources or the equivalent committee, the Chair or a Cochair of the Senate Committee on Appropriations – Natural and Economic Resources or the equivalent committee, and the Chair or a Cochair of the House of Representatives Committee on Appropriations – Natural and Economic Resources or the equivalent committee.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as cochair and the Speaker of the House of Representatives shall designate one Representative to serve as cochair.

(c) Except as otherwise provided in this subsection, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the Commission who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from service on the Commission. Any vacancy that occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment.

(d) A quorum of the Environmental Review Commission shall consist of nine members.

§ 120-70.43. Powers and duties.

(a) The Environmental Review Commission shall have the following powers and duties:

- (1) To evaluate actions of all boards, commissions, departments, and other agencies of the State and local governments as such actions relate to the environment or protection of the environment, including but not limited to an evaluation of:

- a. Benefits of each program relative to costs;
 - b. Achievement of program goals;
 - c. Use of measures by which the success or failure of a program can be measured; and
 - d. Conformity with legislative intent;
- (2) To study on a continuing basis the organization of State government as it relates to the environment or to the protection of public health and the environment, including but not limited to:
- a. Improvements in administrative structure, practices, and procedures;
 - b. Increased integration and coordination of programs and functions;
 - c. Increased efficiency in budgeting and use of resources;
 - d. Efficient administration of licensing, permitting, and grant programs;
 - e. Prompt, effective response to environmental emergencies;
 - f. Opportunities for effective citizen participation; and
 - g. Broadening of career opportunities for professional staff;
- (3) To make any recommendations it deems appropriate regarding the reorganization and consolidation of environmental regulatory agencies and the recodification of statutes relating to the environment, including but not limited to:
- a. Ways in which agencies may operate more efficiently and economically;
 - b. Ways in which agencies can provide better services to the State and to the people; and
 - c. Instances in which functions of agencies are duplicative, overlapping, incomplete in scope or coverage, fail to accomplish legislative objectives, or for any other reason should be redefined or redistributed;
- (4) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the environment or protection of the environment;
- (5) To review existing and proposed State law and rules affecting the environment or protection of the environment and to determine whether any modification of law or rules is in the public interest;
- (6) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and
- (7) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, or the Joint Select Committee on Low-Level Radioactive Waste and to make such reports and

recommendations to the General Assembly regarding such studies as it deems appropriate; provided that the Environmental Review Commission shall not undertake any study which the General Assembly has assigned to another legislative commission or committee.

(b) The Environmental Review Commission may continue the study of environmental agency consolidation and reorganization. The study of environmental agency consolidation shall include, but is not limited to:

- (1) Monitoring the implementation of Session Laws 1989, c. 727;
- (2) Evaluation of the organization, programs, and operation of the Department of Environment and Natural Resources;
- (3) Evaluation of the organization, functions, powers, and duties of the components of the Department of Environment and Natural Resources, including boards, commissions, councils, and regional offices; and
- (4) Recodification of the General Statutes relating to the environment and environmental agencies.

(c) In addition to its general powers and duties, the Environmental Review Commission shall have the following powers and duties with respect to hazardous waste management:

- (1) To study the current and projected need for hazardous waste treatment, storage, and disposal capacity in the State in light of anticipated generation of hazardous waste and alternatives for hazardous waste treatment and disposal;
- (2) To evaluate the potential for the development of additional hazardous waste treatment, storage, and disposal capacity by the private sector;
- (3) To study the necessity for and scope of hazardous waste treatment, storage, and disposal facilities which are sited, owned, or operated by the State;
- (4) To review progress in securing a volunteer county to host a hazardous waste treatment facility;
- (5) To study incentives and compensation for the community which hosts, either voluntarily or involuntarily, a hazardous waste treatment facility, including any additional incentives and compensation which may be needed, whether there should be differential compensation for a volunteer county, options for use of funds by local governments, distribution of compensation among local governments, and methods of providing flexibility in the development of an incentives and compensation package for a particular local community;
- (6) To review progress in developing interstate agreements for the treatment, storage, and disposal of hazardous waste;
- (7) To assist in the development of cooperative, comprehensive regional approach to hazardous waste treatment and disposal;
- (8),(9) Repealed by Session Laws 2001-474, s. 12.
- (10) To study the capacity assurance requirement under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended,

and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended as it relates to the continued eligibility of North Carolina for remedial actions under Superfund;

- (11) To study alternatives available to the State for dealing with hazardous waste and the ramifications of those alternatives; and
- (12) To receive and evaluate reports of every State agency, board, and commission which has any power or duty with respect to hazardous waste management.

§ 120-70.44. Additional powers.

The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

§ 120-70.45. Compensation and expenses of members.

Members of the Environmental Review Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

§ 120-70.46. Staffing.

The Legislative Services Officer shall assign as staff to the Environmental Review Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Environmental Review Commission through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Environmental Review Commission.

§ 120-70.47. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Environmental Review Commission.

COMMISSION MEMBERSHIP

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ENVIRONMENTAL REVIEW COMMISSION

2012-2013 Membership

Pursuant to G.S. 120-70.42, the Environmental Review Commission consists of six members appointed by the President Pro Tempore of the Senate, six members appointed by the Speaker of the House of Representatives, the Chair or a Cochair of the Senate Committee on Agriculture, Environment, and Natural Resources, the Chair or a Cochair of the House of Representatives Committee on Environment and Natural Resources, the Chair or a Cochair of the Senate Committee on Appropriations – Natural and Economic Resources, and the Chair or a Cochair of the House of Representatives Committee on Appropriations – Natural and Economic Resources.

President Pro Tempore of the Senate

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COMMISSION PROCEEDINGS

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The Environmental Review Commission met three times during the interim between the 2012 and the 2013 Regular Sessions of the General Assembly. The Commission's Charge can be found [here](#). The following is a brief summary of the Commission's proceedings. Detailed minutes and information from each Commission meeting are available in the Legislative Library and [online](#).

October 11, 2012

AGENDA

9:30 a.m. Thursday

Room 544 Legislative Office Building
Raleigh, North Carolina

1. Call to order
Representative Ruth Samuelson, Presiding
2. Introductory remarks by Cochairs (*5 minutes*)
Senator David Rouzer
Representative Mitch Gillespie
Representative Ruth Samuelson
3. Report from the Commission Counsel (*5 minutes*)
Jeff Hudson, Commission Counsel
4. Quarterly reports by the Environmental Management Commission (EMC) as to its operations, activities, programs, and progress for the period from January 2012 through September 2012 (G.S. 143B-282(b)) (*30 minutes*)
Stephen T. Smith, Chairman
Environmental Management Commission
5. Annual State Water Supply Plan Report (G.S. 143-355(n)) (*45 minutes*)
Thomas A. Reeder, Director
Division of Water Resources, Department of Environment and Natural Resources (DENR)
6. Report on the 2011 Agriculture Water Use Survey (G.S. 106-24(b)) (*30 minutes*)
Vernon Cox, Environmental Programs Specialist
Department of Agriculture and Consumer Services

7. Presentation on the State Erosion and Sedimentation Control Program (30 minutes)

Robin Smith, Assistant Secretary for Environment, DENR

Tracy Davis, Director

Division of Energy, Mineral, and Land Resources, DENR

8. Plastics Recycling (1 hour)

Scott B. Mouw, Chief

Community and Business Assistance Section

Division of Environmental Assistance and Outreach, DENR

Scott Booth

Chief Operating Officer

Envision Plastics

Chris Bradley

Vice President of Operations

Clear Path Recycling, LLC

Terry Turner

Product Development Manager

Unifi, Inc.

Charles J. Lancelot, Ph.D.

Executive Director, Plastics Environmental Council

9. Commission discussion and announcements

10. Adjourn

The first meeting of the Environmental Review Commission (ERC or Commission) was held on Thursday October 11, 2012 at 9:30 a.m. in Room 544 of the Legislative Office Building. Representative Samuelson presided.

Mr. Jeff Hudson, Commission Counsel, gave an overview of the meeting agenda and the reports received by the Commission.

Mr. Stephen Smith, Chairman of the Environmental Management Commission (EMC), provided the Commission with quarterly reports on the operations, activities, programs, and progress for the EMC from January 2012 through September 2012.

The Commission discussed various issues relating to the buffer rules, including making the buffer rules more efficient and elective cutting by a forester. Commission members asked about the 303(d) list process. Mr. Smith explained that the 303(d) list process refers to a section of the federal Clean Water Act, which gives the State the

authority to determine which waters should be designated as impaired. The Clean Water Act requires that a list of impaired waters be prepared and sent to the United States Environmental Protection Agency (USEPA) for either approval or disapproval. Each state develops a strategy and process to deal with those impaired waters.

There was Commission discussion on ecological flow, the methodology that the Department of Environment and Natural Resources (DENR) uses to create a list of impaired waters, and whether or not the EMC should be involved in developing that method. The Commission requested more information on ecological flow at the November meeting.

Mr. Thomas A. Reeder, Director of the Division of Water Resources (DWR) in DENR, provided an annual report on the State Water Supply Plan and other information related to water resources in the State, including water efficiency, hydrologic modeling, ecological flows, assistance to local governments, storage alternatives, coastal plain aquifers, shale gas and water quantity, drought response preparation, pending interbasin transfers (IBT), and protecting drinking water sources.

Mr. Reeder noted that there are several dozen water systems in the State that cannot account for 31% to 50% of their water. According to Mr. Reeder, this water loss is partially due to geography. The mountain region of the State may be subject to more water loss, as the water must be pumped at increased pressures through mountainous terrain. In addition to geography, Mr. Reeder said that improper metering, antiquated systems, and lack of staff could contribute to pervasive water loss.

Mr. Reeder noted that there are several water systems that will require an IBT by 2050. Mr. Reeder said that he would provide the Commission with the specific water systems at the ERC meeting in November.

There was additional Commission discussion on aquifer incursion, desalination, leakages, water efficiency, pressure in the aquifers, and the OASIS modeling system versus the CHEOPS modeling system.

Mr. Vernon Cox, Environmental Programs Specialist in the Department of Agriculture and Consumer Services, provided a report on the 2011 Agriculture Water Use Survey. Mr. Cox discussed agricultural average daily withdrawals, historical comparisons, ground water withdrawals, and surface water withdrawals.

There was Commission discussion on aquaculture and hydroelectric withdrawals and the percentage of agriculture water usage. Mr. Cox said that agriculture water usage in North Carolina is about 1% of total water consumption in the State.

Ms. Robin Smith, Assistant Secretary for Environment in DENR and Mr. Tracy Davis, Director of the Division of Energy of the Mineral and Land Resources in DENR, presented on the State Erosion and Sedimentation Control Program, including permitting, express permitting, inspections, and enforcement.

Mr. Davis explained how the local sedimentation programs are delegated by the State and noted that DENR still monitors the local programs. If the local sedimentation program is not performing it could be placed on probation and if problems persist, DENR will take back control of the program.

There was Commission discussion on engineering reviews and why erosion control plans sealed by a licensed engineer were not adequate. Mr. Davis indicated that DENR typically reviews plans within 20 days. A Commission member asked why the mountain counties and jurisdictions have a higher percentage of delegated programs? Some Commission members were concerned about the State program's solvency, express permits, and DENR's responsiveness. One member remarked that the sedimentation program's funding has been cut by the Legislature, resulting in fewer people on staff to inspect the sites.

Mr. Scott Mouw, Chief of the Community and Business Assistance Section of the Division of Environmental Assistance and Outreach in DENR, presented an update on the degradable plastics study. Mr. Mouw also discussed basic kinds of plastics, products made from plastic feedstocks, recovery of plastic bottles, and recycled plastic markets.

Mr. Mouw explained the difference between high-density polyethylene (HDPE) and polyethylene terephthalate (PET) plastic bottles. Commission members asked if there was an increase in jobs in the plastic industry? Mr. Mouw said that North Carolina has had major investments in plastic bottle reclamation. According to Mr. Mouw, plastics recycling has doubled in the past five to six years.

Mr. Scott Booth, Chief Operating Officer of Envision Plastics, spoke about Envision Plastics history, HDPE recycling, recycling process cycle, environmental impacts, and the customers and companies that use Envision Plastics' products. Mr. Booth discussed certain types of agricultural products and plastics with contaminants, such as motor oil, battery acid, and antifreeze. Mr. Booth said that Envision Plastics has a wastewater treatment plant, which aids in the recyclability of those products. Mr. Booth noted that Envision Plastics does not typically recycle hazardous chemical containers. Mr. Booth also discussed the separation of plastics by color, degradable plastics, and bioresins.

Mr. Chris Bradley, Vice President of Operations of Clear Path Recycling, LLC, spoke about Clear Path Recycling's history, impacts on the State recycling market, markets served, degradable additives and impacts, and threats to PET recycling. According to Mr. Bradley, 80% of the landfill impact is eliminated by the reclamation of PET bottles and byproducts. Mr. Bradley explained that the tolerance level of degradable plastics in the recycling waste stream is unknown. Mr. Bradley further explained recycling feedstocks.

Mr. Terry Turner, Product Development Manager of Unifi, Inc., spoke about Unifi's history, the synthetic yarn the company produces, the manufacturing process, and the product's uses, which include fabrics and clothing.

Dr. Charles J. Lancelot Executive Director of Plastics Environmental Council, discussed the biodegradability of conventional plastics in landfills, degradable plastics in the recycling stream, and bioplastics versus conventional plastics. Dr. Lancelot explained that most plastics are permanent if no degradable additives are included.

November 15, 2012

AGENDA

9:30 a.m. Thursday

Room 544 Legislative Office Building
Raleigh, North Carolina

1. Call to order
Representative Mitch Gillespie, Presiding
2. Introductory remarks by Cochairs (*5 minutes*)
Senator David Rouzer
Representative Mitch Gillespie
Representative Ruth Samuelson
3. Report from the Commission Counsel (*5 minutes*)
Jeff Hudson, Commission Counsel
4. Presentation on development and prioritization of the State's list of impaired waters, pursuant to Section 303(d) of the federal Clean Water Act (*30 minutes*)
Chuck Wakild, Director
Division of Water Quality, Department of Environment and Natural Resources (DENR)
5. Presentation on ecological flow determinations for development of hydrologic models (*1 hour*)
Thomas A. Reeder, Director
Division of Water Resources, DENR
6. Presentation on potential mining for uranium in Virginia and possible impacts and issues for North Carolina (*30 minutes*)
Thomas A. Reeder, Director
Division of Water Resources, DENR
7. Presentation on L&S Hydro v Piedmont Triad Regional Water Authority litigation (*45 minutes*)
Richard B. Whisnant, Associate Professor of Public Law and Government
School of Government, University of North Carolina at Chapel Hill
8. Annual report on the Inactive Hazardous Sites Program (G.S. 130A-310.10) (*1 hour*)

Dexter Matthews, Director
DWM, DENR

9. Commission discussion and announcements
10. Adjourn

The second meeting of the Environmental Review Commission (ERC or Commission) was held on Thursday November 15, 2012 at 9:30 a.m. in Room 544 of the Legislative Office Building. Representative Gillespie presided.

Mr. Chuck Wakild, Director of the Division of Water Quality (DWQ) in the Department of Environment and Natural Resources (DENR), provided the Commission with a presentation on the development and prioritization of the State's list of impaired waters pursuant to Section 303(d) of the federal Clean Water Act. Mr. Wakild described that the Environmental Management Commission (EMC) is statutorily authorized to implement the federal Clean Water Act, and specifically authorized to identify and prioritize impaired waters and developing total maximum daily loads (TMDLs) for impaired waters. The "303(d) list" includes those waters that are identified by the State that do not meet any water quality standard. The 303(d) list is prepared and sent to the U.S. Environmental Protection Agency (USEPA) for approval by April 1 in even-numbered years. Under the Clean Water Act, states adopt standards for in-stream water quality and the 303(d) listing process is conducted to determine if water bodies meet water quality standards. The 303(d) list is used for basin plans, targeting DWQ and other entities for technical and financial assistance, informing permitting, and developing TMDLs as required by federal law. The EMC adopted a new 303(d) assessment methodology at the November 8, 2012 meeting that involves public review and comment, Water Quality Committee (of the EMC) approval, and EMC approval.

Mr. Tom Reeder, Director of the Division of Water Resources (DWR) in DENR, provided the Commission with a presentation on ecological flow determinations for development of hydrologic models. Mr. Reeder described ecological flows as the site-specific flow needed to remain in a water body in order to maintain instream uses. Mr. Reeder explained the difference between ecological flow and minimum flows which are defined as the minimum threshold to maintain aquatic life for short periods of time. Mr. Reeder updated the Commission with DENR's activities including those required by S.L. 2010-143 to identify the flow necessary to maintain ecological integrity, the creation of a Science Advisory Board to assist in characterizing and determining ecological flows, incorporating ecological flows into hydrologic river basin models, and determining if ecological flows will be adversely impacted by existing or future water withdrawals. DENR views ecological flows as a planning rather than policy tool. Mr. Reeder identified utilities, public water supply, industry, agriculture, and mining as the withdrawals with the greatest potential to impact ecological flow. Public water supply systems on run-of-the-river systems have the greatest potential to impact ecological flow. Mr. Reeder discussed potential positive impacts of ecological flows and promotion of water security.

Mr. Tom Reeder, Director of DWR in DENR, provided the Commission with a presentation on the potential for uranium mining in Virginia and the possible impacts and issues for North Carolina. Mr. Reeder identified the location of the proposed mining site in Coles Hill, Virginia and its location proximate to Kerr Lake in the Roanoke River Basin. Mr. Reeder briefly explained the process of uranium mining and milling and how the proposed process may produce 11 million cubic yards of radioactive tailings stored in aboveground impoundments of up to 40 acres in size. Mr. Reeder listed potential physical impacts to North Carolina from tailing containment failure to include: radioactive tailings washing downstream; increased radiation levels more than 10 to 20 times the Safe Drinking Water Act levels in Kerr Lake; the possibility of taking more than two years to flush contamination; and the potential for re-suspension of particulate contamination during periods of high flow. Presently, the uranium mining ban in Virginia remains in place, the study ordered by Governor McDonnell is being finalized, and the Virginia Legislature may consider lifting the mining ban during the 2013 legislative session. To date, North Carolina has handled the situation through the Roanoke River Basin Bi-State Commission which adopted a resolution opposed to mining in August 2012 that was sent to the legislatures and governors of both Virginia and North Carolina.

Mr. Richard Whisnant, Associate Professor of Public Law and Government at the School of Government at the University of North Carolina at Chapel Hill, presented the Commission with an overview of the *L&S Hydro v Piedmont Triad Regional Water Authority* litigation. Mr. Whisnant listed some significant water law issues at stake in the trial including the nature of riparian water rights and how they stack up against nonriparian users, such as public water supply and the difference between the law of beneficial use of water in streams and lakes versus the law of liability for damages for water flowing across land. Mr. Whisnant also noted the concern about contingent liability of all other entities with eminent domain powers who have responsibility for water withdrawals that may reduce flows to downstream riparian owners, specifically are there temporal or spatial limits to the injuries? Mr. Whisnant also discussed some of the implications of this litigation on efforts to improve water security in North Carolina and recommended the legislature adopt clearly stated policy goals to help guide administrative and judicial decisions and to regulate large withdrawals or uses.

Mr. Dexter Matthews, Director of the Division of Waste Management in DENR presented the Commission with the annual report of the Inactive Hazardous Sites Program and the Bernard Allen Memorial Drinking Water Fund. Mr. Matthews described the Inactive Hazardous Sites Program, the types of sites that are included in the Program, and an overview of the current inventory of sites contaminated with hazardous substances for the 2011-2012 fiscal year. Mr. Matthews stated that sites are designated as "high-risk" when there are exposure concerns including contaminated drinking water supplies, direct contact with contaminated soils on residential properties, and vapors from contaminated groundwater entering homes or other buildings. Mr. Matthews described orphan sites and the inherent difficulty with determining responsible parties. Mr. Matthews identified sources of funding for orphaned sites, discussed pre-regulatory

landfills, and use of the Bernard Allen Memorial Drinking Water Fund and the Inactive Hazardous Sites Cleanup Fund. Lastly, Mr. Matthews provided the Commission with the history and an update on the Stony Hill Road private well contamination and made numerous recommendations.

December 13, 2012

AGENDA

9:30 a.m. Thursday

Room 544 Legislative Office Building
Raleigh, North Carolina

1. Call to order
Senator David Rouzer, Presiding
2. Introductory remarks by Cochairs (*5 minutes*)
Senator David Rouzer
Representative Mitch Gillespie
Representative Ruth Samuelson
3. Report from the Commission Counsel (*5 minutes*)
Jeff Hudson, Commission Counsel
4. Approval of the minutes for the October 11 and November 15, 2012 meetings of the Commission (*5 minutes*)
5. Annual report on the activities of the Mining and Energy Commission (G.S. 113-391(e)) (*30 minutes*)
Jim Womack, Chair
Mining and Energy Commission
6. Presentation on the reports required by the State Air Toxics Program Reform legislation (Sections 3 and 4, S.L. 2012-91) (*20 minutes*)
Sheila Holman, Director
Division of Air Quality, Department of Environment and Natural Resources (DENR)
7. Presentation on the study of fee schedules for permits for sanitary landfills and transfer stations (Section 15.1, S.L. 2012-187) (*15 minutes*)
Michael Scott, Chief, Solid Waste Section
Division of Waste Management, DENR
8. Commission consideration of its legislative recommendations and report to the 2013 Regular Session of the 2013 General Assembly
 - Adjust Landfill Permit Fee Timing

- DENR Support for Regional Water Supply System
- Bernard Allen Fund Modifications
- Amend Environmental Laws 2013
- Uranium Mining Resolution
- Sedimentation Control/Financial Assurance
- Environmental Review Commission Report to the 2013 Regular Session of 2013 General Assembly

9. Commission discussion and announcements

10. Adjourn

The third meeting of the Environmental Review Commission (Commission) was held on Thursday, December 13, 2012 at 9:30 a.m. in Room 643 of the Legislative Office Building. Senator Rouzer presided.

Mr. Jeff Hudson, Commission Counsel, gave an overview of the meeting agenda.

Mr. Jim Womack, Chairman of the Mining and Energy Commission (MEC), provided the Commission with an annual report on the activities of the MEC. Mr. Womack discussed the standing committees and study groups assembled by the MEC and how the MEC plans to interact with stakeholder groups. Mr. Womack gave an overview of the MEC's meeting schedule and ongoing actions.

Mr. Womack noted that the MEC is requesting additional appropriations to support its activities. The Commission discussed the specifics of the request, which includes recurring appropriations for four positions to support MEC activities and for operating funds, as well as a non-recurring appropriation for start-up expenses such as furniture, computers, and storage.

Ms. Sheila Holman, Director of the Division of Air Quality (DAQ) in the Department of Environment and Natural Resources (DENR), provided the Commission with a report on the implementation of the State Air Toxics Program Reform legislation. Ms. Holman discussed DAQ's review of the State air toxics rules, recommendations for rule changes, the implementation of the air toxics legislation, and emissions trends.

The Commission discussed whether the flaring of excess methane and natural gas at a natural gas drilling site would be exempt from the requirements of the State Air Toxics Program. Ms. Holman informed the Commission that such activities would not be regulated because a natural gas drilling site is not considered a combustion unit. The Commission also discussed whether the decrease in air toxics emissions over the past

several years was a permanent decrease or whether it was a temporary decrease due to the economic downturn. Ms. Holman stated that some of the air toxics emissions reductions are the result of plant closures, however, most is due to a reduction of air toxics.

Mr. Michael Scott, Chief of the Solid Waste Section in the Division of Waste Management (DWM) in DENR, provided the Commission with DWM's proposed permit fee changes for new 10-year permits. Mr. Scott discussed the fees for the 10-year permits and compared those fees to the existing fees for 5-year permits. Mr. Scott also discussed the language of the proposed rule and the timeline for its adoption.

The Commission discussed whether facility operators would pay the increased fee upfront for a 10-year permit when its total cost is the same as two 5-year permits. The Commission asked Mr. Scott how other states considered permit modifications. Mr. Scott explained that other states typically amend the existing permit and charge a fee. The Commission further discussed the impact that the new fee option would have on local governments and municipalities that have contracted with private solid waste transfer stations and landfills. The Commission inquired about the differences between the three types of solid waste landfills. The Commission also inquired as to why the upfront cost of a 10-year permit was greater than the upfront cost of a 5-year permit. Lastly, there was Commission discussion as to how industry groups were consulted in the development of the proposed rule.

The Commission next considered proposed legislation:

- Adjust Landfill Permit Fee Timing. Ms. Jennifer McGinnis described the proposed legislation that accompanied Mr. Scott's presentation. The Commission discussed whether it was the intent of the legislature to double the period of a permit and also double permit fees. A motion to approve the proposed legislation passed.
- DENR Support for Regional Water Supply System. Mr. Hudson described the proposed legislation that would require that DENR support a regional water supply system's application for various federal environmental permits rather than be a co-applicant. The Commission discussed whether such support should be mandatory or discretionary. Ms. Robin Smith, Assistant Secretary for the Environment in DENR, stated that under the proposed legislation DENR can still exercise discretion during the process of picking the preferred alternative. A motion to approve the proposed legislation passed.
- Bernard Allen Fund Modifications. Ms. McGinnis described the proposed legislation that would expand the availability of Fund resources as well as increasing the amount that may be spent on each incident. Mr. Dexter Matthews, Director of DWM in DENR, stated that DENR is not currently using all of the funds because the current statute limits its uses. A motion to approve the proposed legislation passed. Rep. Gillespie moved that the Commission recommend that the General Assembly appropriate an additional \$500,000

annually for the Inactive Hazardous Sites Cleanup Fund, as the number of contaminated and high-risk sites is increasing faster than the Fund can address them. Mr. Matthews noted the differences between the Bernard Allen Fund and the Inactive Hazardous Sites Cleanup Fund for the Commission. Representative Gillespie's motion was passed.

- Amend Environmental Laws 2013. Ms. McGinnis described the proposed legislation that would allow a 10-year landfill permit and would clarify the process for appeals from civil penalties assessed by a local government that has established an erosion and sedimentation control program and provide that such civil penalties be remitted to the Civil Penalty and Forfeiture Fund. The Commission discussed the implications of requiring local governments to handle such appeals. A motion to approve the proposed legislation passed.
- Uranium Mining Resolution. Ms. Jennifer Mundt described the proposed joint resolution expressing the North Carolina General Assembly's opposition to uranium mining in Virginia and the proposed letter to Virginia Governor Bob McDonnell expressing the Commission's concern regarding such mining. The Commission discussed whether the resolution would be necessary if Virginia acts prior to the convening of the North Carolina General Assembly's 2013 Session. The Commission also discussed the status of the Roanoke River Basin Bi-State Commission. A motion to approve both the resolution and the letter passed.
- Sedimentation Control/Financial Assurance. This legislation was presented for information use only. The Commission heard public comment from Ms. Lisa Martin, representing the North Carolina Homebuilders Association, in opposition to the proposed legislation. The legislation was not adopted by the Commission.

The Commission considered its Report to the 2013 Regular Session of the 2013 General Assembly. A motion to approve the Report, including the adopted legislative proposals and the proceedings of the meeting, passed.

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LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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BILL DRAFT 2013-Rifz-4 [v.4] (11/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/7/2012 11:57:17 AM

Short Title: Adjust landfill permit fee timing.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE ADJUSTMENTS TO THE FEE SCHEDULE FOR
3 PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS
4 TO REFLECT EXTENSION OF THE DURATION OF THESE PERMITS
5 AS DIRECTED BY S.L. 2012-187, AS RECOMMENDED BY THE
6 ENVIRONMENTAL REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 130A-294 is amended by adding a new subsection
9 to read:

10 "(a2) Permits for sanitary landfills and transfer stations shall be issued for: (i)
11 a design and operation phase of five years, or (ii) a design and operation phase of
12 ten years. A permit issued for a design and operation of phase of ten years shall be
13 subject to a limited review within five years of the issuance date."

14 **SECTION 2.** G.S. 130A-295.8 reads as rewritten:

15 **"§ 130A-295.8. Fees applicable to permits for solid waste management**
16 **facilities.**

17 (a) The Solid Waste Management Account is established as a nonreverting
18 account within the Department. All fees collected under this section shall be
19 credited to the Account and shall be used to support the solid waste management
20 program established pursuant to G.S. 130A-294.

21 (b) As used in this section:

22 (1) "New permit" means any of the following:

- 1 a. An application for a permit for a solid waste management
2 facility that has not been previously permitted by the
3 Department. The term includes one site suitability review,
4 the initial permit to construct, and one permit to operate
5 the constructed portion of a phase included in the permit
6 to construct.
- 7 b. An application that proposes to expand the boundary of a
8 permitted waste management facility for the purpose of
9 expanding the permitted activity.
- 10 c. An application that includes a proposed expansion to the
11 boundary of a waste disposal unit within a permitted solid
12 waste management facility.
- 13 d. An application for a substantial amendment to a solid
14 waste permit, as defined in G.S. 130A-294.
- 15 (2) "Permit amendment" means any of the following:
- 16 a. An application for a permit to construct and one permit to
17 operate for the second and subsequent phases of landfill
18 development described in the approved facility plan for a
19 permitted solid waste management facility.
- 20 b. An application for the five-year renewal of a permit for a
21 permitted solid waste management facility or for a permit
22 review of a permitted solid waste management facility.
- 23 c. Any application that proposes a change in ownership or
24 corporate structure of a permitted solid waste management
25 facility.
- 26 (3) "Permit modification" means any of the following:
- 27 a. An application for any change to the plans approved in a
28 permit for a solid waste management facility that does not
29 constitute a "permit amendment" or a "new permit".
- 30 b. A second or subsequent permit to operate for a
31 constructed portion of a phase included in the permit to
32 construct.
- 33 c. An application for a five-year limited review of a ten-year
34 permit, as required by G.S. 130A-294(a2), including
35 review of the operations plan, closure plan, post-closure
36 plan, financial assurance cost estimates, environmental
37 monitoring plans, and any other applicable plans for the
38 facility.
- 39 (4) "Major permit modification" means an application for any
40 change to the approved engineering plans for a sanitary landfill
41 or transfer station permitted for a ten-year design capacity that
42 does not constitute a "permit amendment," a "new permit," or
43 "permit modification."

1 (c) An applicant for a permit shall pay an application fee upon submission
2 of an application according to the following schedule:

3 (1) Municipal Solid Waste Landfill accepting less than 100,000
4 tons/year of solid waste, ~~New Permit~~—Permit (Five-Year) –
5 \$25,000.

6 (1a) Municipal Solid Waste Landfill accepting less than 100,000
7 tons/year of solid waste, New Permit (Ten-Year) – \$38,500.

8 (2) Municipal Solid Waste Landfill accepting less than 100,000
9 tons/year of solid waste, ~~Amendment~~—Amendment (Five-Year)
10 – \$15,000.

11 (2a) Municipal Solid Waste Landfill accepting less than 100,000
12 tons/year of solid waste, Amendment (Ten-Year) – \$28,500.

13 (3) Municipal Solid Waste Landfill accepting less than 100,000
14 tons/year of solid waste, ~~Modification~~—Modification
15 (Five-Year) – \$1,500.

16 (3a) Municipal Solid Waste Landfill accepting less than 100,000
17 tons/year of solid waste, Major Modification (Ten-Year) –
18 \$7,500.

19 (4) Municipal Solid Waste Landfill accepting 100,000 tons/year or
20 more of solid waste, ~~New Permit~~—Permit (Five-Year) – \$50,000.

21 (4a) Municipal Solid Waste Landfill accepting 100,000 tons/year or
22 more of solid waste, New Permit (Ten-Year) – \$77,000.

23 (5) Municipal Solid Waste Landfill accepting 100,000 tons/year or
24 more of solid waste, ~~Amendment~~—Amendment (Five-Year) –
25 \$30,000.

26 (5a) Municipal Solid Waste Landfill accepting 100,000 tons/year or
27 more of solid waste, Amendment (Ten-Year) – \$57,000.

28 (6) Municipal Solid Waste Landfill accepting 100,000 tons/year or
29 more of solid waste, ~~Modification~~—Modification (Five-Year) –
30 \$3,000.

31 (6a) Municipal Solid Waste Landfill accepting 100,000 tons/year or
32 more of solid waste, Major Modification (Ten-Year) – \$15,000.

33 (7) Construction and Demolition Landfill accepting less than
34 100,000 tons/year of solid waste, ~~New Permit~~—Permit
35 (Five-Year) – \$15,000.

36 (7a) Construction and Demolition Landfill accepting less than
37 100,000 tons/year of solid waste, New Permit (Ten-Year) –
38 \$22,500.

39 (8) Construction and Demolition Landfill accepting less than
40 100,000 tons/year of solid waste, ~~Amendment~~—Amendment
41 (Five-Year) – \$9,000.

- 1 (8a) Construction and Demolition Landfill accepting less than
2 100,000 tons/year of solid waste, Amendment (Ten-Year) –
3 \$16,500.
- 4 (9) Construction and Demolition Landfill accepting less than
5 100,000 tons/year of solid waste, ~~Modification~~—Modification
6 (Five-Year) – \$1,500.
- 7 (9a) Construction and Demolition Landfill accepting less than
8 100,000 tons/year of solid waste, Major Modification (Ten-Year)
9 – \$4,500.
- 10 (10) Construction and Demolition Landfill accepting 100,000
11 tons/year or more of solid waste, New ~~Permit~~—Permit
12 (Five-Year) – \$30,000.
- 13 (10a) Construction and Demolition Landfill accepting 100,000
14 tons/year or more of solid waste, New Permit (Ten-Year) –
15 \$46,000.
- 16 (11) Construction and Demolition Landfill accepting 100,000
17 tons/year or more of solid waste, ~~Amendment~~—Amendment
18 (Five-Year) – \$18,500.
- 19 (11a) Construction and Demolition Landfill accepting 100,000
20 tons/year or more of solid waste, Amendment (Ten-Year) –
21 \$34,500.
- 22 (12) Construction and Demolition Landfill accepting 100,000
23 tons/year or more of solid waste, ~~Modification~~—Modification
24 (Five-Year) – \$2,500.
- 25 (12a) Construction and Demolition Landfill accepting 100,000
26 tons/year or more of solid waste, Major Modification (Ten-Year)
27 – \$9,250.
- 28 (13) Industrial Landfill accepting less than 100,000 tons/year of solid
29 waste, New ~~Permit~~—Permit (Five-Year) – \$15,000.
- 30 (13a) Industrial Landfill accepting less than 100,000 tons/year of solid
31 waste, New Permit (Ten-Year) – \$22,500.
- 32 (14) Industrial Landfill accepting less than 100,000 tons/year of solid
33 waste, ~~Amendment~~—Amendment (Five-Year) – \$9,000.
- 34 (14a) Industrial Landfill accepting less than 100,000 tons/year of solid
35 waste, Amendment (Ten-Year) – \$16,500.
- 36 (15) Industrial Landfill accepting less than 100,000 tons/year of solid
37 waste, ~~Modification~~—Modification (Five-Year) – \$1,500.
- 38 (15a) Industrial Landfill accepting less than 100,000 tons/year of solid
39 waste, Major Modification (Ten-Year) – \$4,500.
- 40 (16) Industrial Landfill accepting 100,000 tons/year or more of solid
41 waste, New ~~Permit~~—Permit (Five-Year) – \$30,000.
- 42 (16a) Industrial Landfill accepting 100,000 tons/year or more of solid
43 waste, New Permit (Ten-Year) – \$46,000.

- 1 (17) Industrial Landfill accepting 100,000 tons/year or more of solid
2 waste, ~~Amendment~~—Amendment (Five-Year) – \$18,500.
- 3 (17a) Industrial Landfill accepting 100,000 tons/year or more of solid
4 waste, Amendment (Ten-Year) – \$34,500.
- 5 (18) Industrial Landfill accepting 100,000 tons/year or more of solid
6 waste, ~~Modification~~—Modification (Five-Year) – \$2,500.
- 7 (18a) Industrial Landfill accepting 100,000 tons/year or more of solid
8 waste, Major Modification (Ten-Year) – \$9,250.
- 9 (19) Tire Monofill, New Permit – \$1,750.
- 10 (20) Tire Monofill, Amendment – \$1,250.
- 11 (21) Tire Monofill, Modification – \$500.
- 12 (22) Treatment and Processing, New Permit – \$1,750.
- 13 (23) Treatment and Processing, Amendment – \$1,250.
- 14 (24) Treatment and Processing, Modification – \$500.
- 15 (25) Transfer Station, New ~~Permit~~—Permit (Five-Year) – \$5,000.
- 16 (25a) Transfer Station, New Permit (Ten-Year) – \$7,500.
- 17 (26) Transfer Station, ~~Amendment~~—Amendment (Five-Year) –
18 \$3,000.
- 19 (26a) Transfer Station, Amendment (Ten-Year) – \$5,500.
- 20
- 21 (27) Transfer Station, ~~Modification~~—Modification (Five-Year) –
22 \$500.
- 23 (27a) Transfer Station, Major Modification (Ten-Year) – \$1,500.
- 24 (28) Incinerator, New Permit – \$1,750.
- 25 (29) Incinerator, Amendment – \$1,250.
- 26 (30) Incinerator, Modification – \$500.
- 27 (31) Large Compost Facility, New Permit – \$1,750.
- 28 (32) Large Compost Facility, Amendment – \$1,250.
- 29 (33) Large Compost Facility, Modification – \$500.
- 30 (34) Land Clearing and Inert, New Permit – \$1,000.
- 31 (35) Land Clearing and Inert, Amendment – \$500.
- 32 (36) Land Clearing and Inert, Modification – \$250.
- 33 (d) A permitted solid waste management facility shall pay an annual permit
34 fee on or before 1 August of each year according to the following schedule:
- 35 (1) Municipal Solid Waste Landfill – \$3,500.
- 36 (2) Post-Closure Municipal Solid Waste Landfill – \$1,000.
- 37 (3) Construction and Demolition Landfill – \$2,750.
- 38 (4) Post-Closure Construction and Demolition Landfill – \$500.
- 39 (5) Industrial Landfill – \$2,750.
- 40 (6) Post-Closure Industrial Landfill – \$500.
- 41 (7) Transfer Station – \$750.
- 42 (8) Treatment and Processing Facility – \$500.
- 43 (9) Tire Monofill – \$500.

- 1 (10) Incinerator – \$500.
- 2 (11) Large Compost Facility – \$500.
- 3 (12) Land Clearing and Inert Debris Landfill – \$500.

4 (e) The Department shall determine whether an application for a permit for
5 a solid waste management facility that is subject to a fee under this section is
6 complete within 90 days after the Department receives the application for the
7 permit. A determination of completeness means that the application includes all
8 required components but does not mean that the required components provide all
9 of the information that is required for the Department to make a decision on the
10 application. If the Department determines that an application is not complete, the
11 Department shall notify the applicant of the components needed to complete the
12 application. An applicant may submit additional information to the Department to
13 cure the deficiencies in the application. The Department shall make a final
14 determination as to whether the application is complete within the later of: (i) 90
15 days after the Department receives the application for the permit less the number
16 of days that the applicant uses to provide the additional information; or (ii) 30 days
17 after the Department receives the additional information from the applicant. The
18 Department shall issue a draft permit decision on an application for a permit
19 within one year after the Department determines that the application is complete.
20 The Department shall hold a public hearing and accept written comment on the
21 draft permit decision for a period of not less than 30 or more than 60 days after the
22 Department issues a draft permit decision. The Department shall issue a final
23 permit decision on an application for a permit within 90 days after the comment
24 period on the draft permit decision closes. The Department and the applicant may
25 mutually agree to extend any time period under this subsection. If the Department
26 fails to act within any time period set out in this subsection, the applicant may treat
27 the failure to act as a denial of the permit and may challenge the denial as provided
28 in Chapter 150B of the General Statutes."

29 **SECTION 3.** This act is effective when it becomes law, and applies to
30 permit applications submitted on or after July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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D

BILL DRAFT 2013-TPz-2 [v.6] (11/28)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/7/2012 3:54:57 PM

Short Title: DENR Support for Regional Water Supply System. (Public)

Sponsors: (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE DEPARTMENT OF ENVIRONMENT AND
3 NATURAL RESOURCES TO SUPPORT THE APPLICATION OF A
4 REGIONAL WATER SUPPLY SYSTEM FOR ALL REQUIRED FEDERAL
5 APPROVALS, AS RECOMMENDED BY THE ENVIRONMENTAL
6 REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. § 143-355.7 reads as rewritten:

9 **"§ 143-355.7. Water supply development; State-local cooperation.**

10 (a) At the request of one or more units of local government, the Department
11 may assist the local government in identifying the preferred water supply
12 alternative that alone or in combination with other water sources will provide for
13 the long-term water supply needs documented in the local water supply plan and
14 meet all of the following criteria:

- 15 (1) Are economically and practically feasible.
- 16 (2) Make maximum, practical beneficial use of reclaimed
17 wastewater and stormwater.
- 18 (3) Comply with water quality classifications and standards.
- 19 (4) Avoid or mitigate impacts to threatened or endangered species to
20 the extent such species are protected by State or federal law.
- 21 (5) Maintain downstream flows necessary to protect downstream
22 users.
- 23 (6) Do not have significant adverse impacts on other water
24 withdrawals or wastewater discharges.
- 25 (7) Avoid or mitigate water quality impacts consistent with the
26 requirements of rules adopted by the Environmental Management
27 Commission to implement 33 U.S.C. § 1341.

1 (b) During the alternatives analysis, the Department shall request relevant
2 information regarding the potential alternatives, including the establishment or
3 expansion of the water supply reservoir or other water supply resources, from
4 other State agencies with jurisdiction over any natural resources that will be
5 impacted under the potential alternatives identified by the Department. Unless the
6 local government agrees to an extension of time, the Department shall determine
7 the preferred alternative within two years of the execution of a contract with the
8 requesting local government for the costs of the analysis.

9 (b1) The determination of the preferred alternative shall be binding on all
10 State agencies unless the Department determines from its further evaluation during
11 its review of any State or federal permit applications for the project that another
12 preferred alternative should be selected in light of additional information brought
13 forward during the permit reviews. The Department shall provide its full support
14 and favorable endorsement of any State or federal permit applications for the
15 preferred alternative when all of the following conditions are met:

16 (1) The regional water supply system has acquired or will acquire
17 the property necessary for construction of the water supply
18 reservoir or other water supply resource.

19 (2) The local water supply plan shows that the regional water supply
20 system has implemented appropriate conservation measures
21 similar in effect to the measures in comparably sized North
22 Carolina regional water supply systems.

23 (3) The regional water supply system has developed and is
24 implementing measures to replace existing leaking infrastructure
25 that is similar in effect to the measures being implemented by
26 comparably sized North Carolina regional water systems.

27 (4) The regional water supply system has entered into a contractual
28 agreement to pay the expenses incurred by the Department under
29 this section.

30 (c) If the Department provides an analysis of practicable alternatives for
31 meeting a water supply need under this section, the analysis shall be accepted by
32 the Department and the Department of Administration for purposes of satisfying
33 the requirements of the North Carolina Environmental Policy Act and any State
34 permit or authorization that requires identification and assessment of practicable
35 alternatives, including, but not limited to, a request for an interbasin transfer
36 pursuant to G.S. 143-215.22L.

37 (d) The Department may provide technical assistance to a unit of local
38 government in obtaining federal permits for the preferred water supply alternative
39 identified pursuant to subsection (a) of this section. For purposes of providing
40 technical assistance and conducting studies in support of a proposed water supply
41 project under this section, the Department may enter into an agreement with one or
42 more units of local government to conduct studies or modeling. The agreement

1 shall specify the allocation of costs for any studies or modeling prepared by the
2 Department in support of the project.

3 ~~(e) When the Department has identified the most practicable alternative, a~~
4 ~~regional water supply system may request that the Department become a~~
5 ~~co-applicant for all required federal approvals for the alternative identified by the~~
6 ~~Department. The Department may become a co-applicant when all of the~~
7 ~~following conditions are met:~~

8 ~~(1) The regional water supply system has acquired or will acquire~~
9 ~~the property necessary for construction of the water supply~~
10 ~~reservoir or other water supply resource.~~

11 ~~(2) The local water supply plan shows that the regional water supply~~
12 ~~system has implemented appropriate conservation measures~~
13 ~~similar in effect to the measures in comparably sized North~~
14 ~~Carolina regional water supply systems.~~

15 ~~(3) The regional water supply system has developed and is~~
16 ~~implementing measures to replace existing leaking infrastructure~~
17 ~~that is similar in effect to the measures being implemented by~~
18 ~~comparably sized North Carolina regional water systems.~~

19 ~~(4) The regional water supply system has entered into a contractual~~
20 ~~agreement to pay the expenses incurred by the Department as a~~
21 ~~co-applicant for the project approval.~~

22 (f) Nothing in this section shall be construed to limit the authority of the
23 Department to require environmental permits or to apply and enforce
24 environmental standards pursuant to State law."

25 **SECTION 2.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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D

BILL DRAFT 2013-RIz-5 [v.5] (11/15)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/7/2012 11:53:26 AM

Short Title: Bernard Allen Fund Modifications.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MODIFY THE BERNARD ALLEN MEMORIAL EMERGENCY
DRINKING WATER FUND TO ALLOW GREATER FLEXIBILITY FOR
USE OF MONIES IN THE FUND, AS RECOMMENDED BY THE
ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-98 reads as rewritten:

"§ 87-98. **Bernard Allen Memorial Emergency Drinking Water Fund.**

(a) The Bernard Allen Memorial Emergency Drinking Water Fund is established under the control and direction of the Department. The Fund shall be a nonreverting, interest-bearing fund consisting of monies appropriated by the General Assembly or made available to the Fund from any other source and investment interest credited to the Fund.

(b) The Fund may be used to pay ~~for notification, for:~~

- (1) Notification, to the extent practicable, of persons aged 18 and older who reside in any dwelling unit, and the senior official in charge of any business, at which drinking water is supplied from a private drinking water well or improved spring that is located within 1,500 feet of, and at risk from, known groundwater contamination. The senior official in charge of the business shall take reasonable measures to notify all employees of the business of the groundwater contamination, including posting a notice of the contamination in a form and at a location that is readily accessible to the employees of the business. ~~The Fund may also be used by the Department to pay the~~
- (2) The costs of testing of private drinking water wells and improved springs for suspected contamination up to once every three years upon request by a person who uses the well and for the well, or

1 more frequent testing if the concentration of one or more
2 contaminants in a private drinking water well is increasing over
3 time and there is a significant risk that the concentration of a
4 contaminant will exceed the drinking water action levels set forth
5 in subsection (c) of this section within a three year period.

6 (3) Additional testing to confirm the results of a previous test.

7 (4) The temporary or permanent provision of alternative drinking
8 water supplies to persons whose drinking water well or improved
9 spring is contaminated. Under this ~~subsection,~~section, an
10 alternative drinking water supply includes the repair, such as use
11 of a filtration system, or replacement of a contaminated well or
12 the connection to a public water supply.

13 (5) Monitoring of filtration systems used in connection with
14 temporary or permanent alternative drinking water supplies
15 provided pursuant to this section.

16 (c) The Department shall disburse monies from the Fund based on financial need
17 and on the risk to public health posed by groundwater contamination and shall give
18 priority to the provision of services under this section to instances when an alternative
19 source of funds is not available. The Fund shall not be used to provide alternative water
20 supply to households with incomes greater than three hundred percent (300%) of the
21 current federal poverty level. The Fund may be used to provide alternative drinking water
22 supplies if the Department determines that the concentration of one or more contaminants
23 in the private drinking water well or improved spring exceeds the federal maximum
24 contaminant level, or the federal drinking water action level as defined in 40 Code of
25 Federal Regulations § 141.1 through § 141.571 (1 July 2007) and 40 Code of Federal
26 Regulations § 143.3 (1 July 2007). For a contaminant for which a federal maximum
27 contaminant level or drinking water action level has not been established, the State
28 groundwater standard established by the Environmental Management Commission for the
29 concentration of that contaminant shall be used to determine whether the Fund may be
30 used to provide alternative drinking water supplies. The Fund may also be used to
31 provide alternative drinking water supplies as provided in this section if the Department
32 determines that the concentration of one or more contaminants in a private drinking water
33 well is increasing over time and that there is a significant risk that the concentration of a
34 contaminant will exceed the federal maximum contaminant level or drinking water action
35 level, or the State groundwater standard. A determination of the concentration of a
36 contaminant shall be based on a sample of water collected from the private drinking
37 water well within the past 12 months.

38 (c1) In disbursing monies from the Fund, the Department shall give preference to
39 provision of permanent replacement water supplies by connection to public water
40 supplies and repair or replacement of contaminated wells over the provision of temporary
41 water supplies. In providing alternative drinking water supplies, the Department shall
42 give preference to connection to a public water supply system or to construction of a new
43 private drinking water well over the use of a filtration system if the Department
44 determines that the costs of periodic required maintenance of the filtration system would
45 be cost-prohibitive for users of the alternative drinking water supply.

1 (c2) If the Department provides an alternative drinking water supply by extension
2 of a waterline, the Department may disburse from the Fund no more than ~~ten~~fifty
3 thousand dollars ~~(\$10,000)~~(\$50,000) per household or other service connection. For
4 projects where more than ten residences are eligible for alternative water supplies under
5 this section, no~~No~~ more than one-third of the total cost of the project may be paid from
6 the Fund. The Department may combine monies from the Fund with monies from other
7 sources in order to pay the total cost of the project.

8 (c3) The Fund shall be used to provide alternative drinking water supplies only if
9 the Department determines that the person or persons who are responsible for the
10 contamination of the private drinking water well is or are not financially viable or cannot
11 be identified or located and if the Department determines that one of the following
12 applies:

- 13 (1) The contamination of the private drinking water well is naturally
14 occurring.
- 15 (2) The owner of the property on which the private drinking water well is
16 located did not cause or contribute to the contamination or control the
17 source of the contamination.
- 18 (3) The source of the contamination is the application or disposal of a
19 hazardous substance or pesticide that occurred without the consent of
20 the owner of the property on which the private drinking water well is
21 located.

22 (c4) The Department may use up to one hundred thousand dollars (\$100,000)
23 annually of the monies in the Fund to pay the personnel and other direct costs associated
24 with the implementation of this section.

25 (c5) The Fund shall not be used for remediation of groundwater contamination.

26 (c6) Nothing in this section expands, contracts, or modifies the obligation of
27 responsible parties under Article 9 or 10 of Chapter 130A of the General Statutes, this
28 Article, or Article 21A of this Chapter to assess contamination, identify receptors, or
29 remediate groundwater or soil contamination.

30 (c7) In disbursing monies from the Fund for replacement water supplies, the
31 Department shall give priority to circumstances in which a well is contaminated as the
32 result of non-naturally occurring groundwater contamination in the area over
33 circumstances in which a well has naturally occurring contamination.

34 (d) The Department shall establish criteria by which the Department is to evaluate
35 applications and disburse monies from this Fund and may adopt any rules necessary to
36 implement this section.

37 (e) The Department, in consultation with the Commission for Public Health
38 and local health departments, shall report no later than ~~1-October~~October 1 of each
39 year to the Environmental Review Commission, the House of Representatives and
40 Senate Appropriations Subcommittees on Natural and Economic Resources, and
41 the Fiscal Research Division of the General Assembly on the implementation of
42 this section. The report shall include the purpose and amount of all expenditures
43 from the Fund during the prior fiscal year, a discussion of the benefits and
44 deficiencies realized as a result of the section, and may also include
45 recommendations for any legislative action."

46 **SECTION 2.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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D

BILL DRAFT 2013-TFz-1 [v.3] (12/06)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/7/2012 2:53:31 PM

Short Title: Amend Environmental Laws 2013.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL
3 RESOURCES LAWS TO: (1) ALLOW 10-YEAR PHASE LANDFILL
4 DEVELOPMENTS TO APPLY FOR A PERMIT TO OPERATE; AND (2)
5 CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES
6 ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED
7 AND ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL
8 PROGRAM APPROVED UNDER G.S. 113A-60, AND TO PROVIDE THAT
9 CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT
10 PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT
11 OF 1973 SHALL BE REMITTED TO THE CIVIL PENALTY AND
12 FORFEITURE FUND, AS RECOMMENDED BY THE ENVIRONMENTAL
13 REVIEW COMMISSION.

14
15 The General Assembly of North Carolina enacts:

16
17 **SECTION 1.** Section 15.1 of S.L. 2012-187 reads as rewritten:

18 "SECTION 15.1. No later than July 1, 2013, the Commission for Public
19 Health shall adopt rules to allow applicants for sanitary landfills the option to (i)
20 apply for a permit to construct and operate a five-year phase of landfill
21 development and apply to amend the permit to construct and operate subsequent
22 five-year phases of landfill development; or (ii) apply for a permit to construct and
23 operate a 10-year phase of landfill development and apply to amend the permit to
24 construct and operate subsequent 10-year phases of landfill development, with a
25 limited review of the permit five years after issuance of the initial permit and five
26 years after issuance of each amendment for subsequent phases of development. No
27 later than July 1, 2013, the Commission shall also adopt rules to allow applicants
28 for permits for transfer stations the option to (i) apply for a permit with a five-year

1 duration to construct and operate a transfer station; or (ii) apply for a permit with a
2 10-year duration to construct and operate a transfer station, with a limited review
3 of the permit five years after issuance of the initial permit and five years after
4 issuance of any amendment to the permit. In developing these rules, the
5 Department of Environment and Natural Resources shall examine the current fee
6 schedule for permits for sanitary landfills and transfer stations as set forth under
7 G.S. 130A-295.8 and formulate recommendations for adjustments to the current
8 fee schedule sufficient to address any additional demands associated with review
9 of permits issued for 10-year phases of landfill development and the issuance
10 permits with a duration of up to 10 years for transfer stations. The Department
11 shall report its findings and recommendations, including any legislative proposals,
12 to the Environmental Review Commission on or before December 1, 2012. The
13 rules required by this section shall not become effective until the fee schedule set
14 forth under G.S. 130A-295.8 is amended as necessary to address any additional
15 demands associated with review of permits issued for 10-year phases of landfill
16 development and the issuance of permits with a duration of up to 10 years to
17 construct and operate transfer stations."

18 **SECTION 2.** G.S. 113A-64 reads as rewritten:

19 **"§ 113A-64. Penalties.**

20 (a) Civil Penalties. –

- 21 (1) Any person who violates any of the provisions of this Article or any
22 ordinance, rule, or order adopted or issued pursuant to this Article by
23 the Commission or by a local government, or who initiates or
24 continues a land-disturbing activity for which an erosion and
25 sedimentation control plan is required except in accordance with the
26 terms, conditions, and provisions of an approved plan, is subject to a
27 civil penalty. The maximum civil penalty for a violation is five
28 thousand dollars (\$5,000). A civil penalty may be assessed from the
29 date of the violation. Each day of a continuing violation shall
30 constitute a separate violation.
- 31 (2) The Secretary or a local government that administers an erosion
32 and sedimentation control program approved under
33 G.S. 113A-60 shall determine the amount of the civil penalty and
34 shall notify the person who is assessed the civil penalty of the
35 amount of the penalty and the reason for assessing the penalty.
36 The notice of assessment shall be served by any means
37 authorized under ~~G.S. 1A-1, Rule 4, and G.S. 1A-1.~~ A notice of
38 assessment by the Secretary shall direct the violator to either pay
39 the assessment or contest the assessment within 30 days by filing
40 a petition for a contested case under Article 3 of Chapter 150B of
41 the General Statutes. If a violator does not pay a civil penalty
42 assessed by the Secretary within 30 days after it is due, the
43 Department shall request the Attorney General to institute a civil
44 action to recover the amount of the assessment. A notice of

1 assessment by a local government shall direct the violator to
2 either pay the assessment or contest the assessment within 30
3 days by filing a petition for hearing with the local government as
4 directed by procedures within the local ordinances or regulations
5 adopted to establish and enforce the erosion and sedimentation
6 control program. If a violator does not pay a civil penalty
7 assessed by a local government within 30 days after it is due, the
8 local government may institute a civil action to recover the
9 amount of the assessment. The civil action may be brought in the
10 superior court of any county where the violation occurred or the
11 violator's residence or principal place of business is located. A
12 civil action must be filed within three years of the date the
13 assessment was due. An assessment that is not contested is due
14 when the violator is served with a notice of assessment. An
15 assessment that is contested is due at the conclusion of the
16 administrative and judicial review of the assessment.

17 (3) In determining the amount of the penalty, the Secretary or a local
18 government shall consider the degree and extent of harm caused by the
19 violation, the cost of rectifying the damage, the amount of money the
20 violator saved by noncompliance, whether the violation was
21 committed willfully and the prior record of the violator in complying
22 or failing to comply with this ~~Article.~~ Article, or any ordinance, rule, or
23 order adopted or issued pursuant to this Article by the Commission or
24 by a local government.

25 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

26 (5) The clear proceeds of civil penalties collected by the Department or
27 other State agency or a local government under this subsection shall be
28 remitted to the Civil Penalty and Forfeiture Fund in accordance with
29 G.S. 115C-457.2. ~~Civil penalties collected by a local government~~
30 ~~under this subsection shall be credited to the general fund of the local~~
31 ~~government as nontax revenue.~~

32 (b) Criminal Penalties. – Any person who knowingly or willfully violates
33 any provision of this Article or any ordinance, rule, regulation, or order duly
34 adopted or issued by the Commission or a local government, or who knowingly or
35 willfully initiates or continues a land-disturbing activity for which an erosion and
36 sedimentation control plan is required, except in accordance with the terms,
37 conditions, and provisions of an approved plan, shall be guilty of a Class 2
38 misdemeanor that may include a fine not to exceed five thousand dollars
39 (\$5,000)."

40 **SECTION 3.** This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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D

BILL DRAFT 2013-TAz-1 [v.3] (11/15)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/10/2012 4:42:27 PM**

Sponsors: (Primary Sponsor).

Referred to:

1 A JOINT RESOLUTION EXPRESSING THE NORTH CAROLINA GENERAL
2 ASSEMBLY'S OPPOSITION TO URANIUM MINING IN VIRGINIA,
3 INCLUDING THE PROPOSED VIRGINIA URANIUM, INC. PROJECT AT
4 COLES HILL, AND TO THE ELIMINATION OF THE EXISTING
5 LEGISLATIVE MORATORIUM ON URANIUM MINING IN VIRGINIA,
6 AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
7 COMMISSION.

8 Whereas, in the past four years there have been a number of studies relating to
9 uranium mining in Virginia, several of which have dealt specifically with the
10 proposed Virginia Uranium, Inc. mine and milling facility at Coles Hill in
11 Pittsylvania County, upstream of the John H. Kerr Reservoir, Lake Gaston, and
12 communities in northeast North Carolina; and

13 Whereas, two of the studies consisted of economic assessments of the proposed
14 Coles Hill project, and both studies found that one large, or several small,
15 accidents or releases would significantly reverse the economic benefit of the
16 project, even if no serious harm to people or the environment occurred; and

17 Whereas, at the request of the Virginia Coal and Energy Commission, the
18 National Academy of Sciences (NAS) has completed a study entitled "Uranium
19 Mining in Virginia: Scientific, Technical, Environmental, Human Health and
20 Safety, and Regulatory Aspects of Uranium Mining and Processing in Virginia,"
21 the purpose of which was to address a series of detailed questions about uranium
22 mining, processing, and reclamation in order to assist the Commonwealth of
23 Virginia in making decisions concerning the proposed uranium mining project;
24 and

25 Whereas, the NAS study indicates that: (1) disposal cells in which radioactive
26 tailings are stored represent significant long-term risks for radiological and other
27 contamination; (2) limited data exists to confirm the long-term effectiveness of
28 uranium tailings disposal cells; and (3) extreme natural events combined with
29 human error have the potential to result in the release of contaminants if disposal

1 cells are not designed, constructed, or maintained properly, or if such cells fail to
2 perform as envisioned; and

3 Whereas, the NAS study concluded that the Commonwealth of Virginia has no
4 experience with uranium mining, that the federal government has little or no
5 experience applying existing laws and regulations to states with wet climates and
6 extreme precipitation events, and that "there are gaps in legal and regulatory
7 coverage for activities involved in uranium mining, processing, reclamation, and
8 long-term stewardship...[and]...steep hurdles to be surmounted before mining
9 and/or processing could be established within a regulatory environment that is
10 appropriately protective of the health and safety of workers, the public, and the
11 environment."; and

12 Whereas, Michael Baker Engineers and the National Center for Computational
13 Hydroscience and Engineering, under contract to the City of Virginia Beach,
14 completed a study (the "Michael Baker Study") of the downstream water quality
15 impacts that would occur from a hypothetical, catastrophic breach of a single,
16 above-grade uranium mine tailings cell located near Coles Hill; and

17 Whereas, it is acknowledged that if all of the tailings are secured in properly
18 designed, constructed, and maintained below-grade disposal cells, the likelihood
19 of a major release of tailings to surface water is significantly reduced; and

20 Whereas, although existing regulations indicate that below-grade disposal of
21 uranium tailings is preferable to above-grade disposal, exceptions have been made
22 for environmental reasons, such as conflict with groundwater conditions, or for
23 reasons of economic feasibility, both of which may exist at the Coles Hill site or
24 at heretofore undiscovered uranium mining sites; and

25 Whereas, the NAS study specifically dismissed the notion that below-grade
26 disposal of tailings would automatically be required, noting that the first mine and
27 mill permit to be issued in more than three decades allowed partially above-grade
28 disposal cells, notwithstanding the fact that the safest and most environmentally
29 sound solution was below-grade disposal; and

30 Whereas, the Michael Baker Study indicates that in the aftermath of an
31 assumed catastrophe, radioactivity in the main body of Kerr Lake and Lake
32 Gaston would remain above United States Environmental Protection Agency
33 Maximum Contaminant Levels for up to three months during wet years and up to
34 sixteen months during dry years; and

35 Whereas, for a number of legal, regulatory, political, institutional, and
36 technical reasons, it is highly likely that a major release of tailings downstream
37 from the Coles Hill site would force the North Carolina communities downstream,
38 including Kerr Lake, Lake Gaston, and Roanoke Rapids to discontinue water
39 withdrawals for indefinite periods of time; and

40 Whereas, release of radioactive tailings such as that modeled in the Michael
41 Baker Study would have devastating adverse economic and other effects on the
42 communities in northeastern North Carolina; and

1 Whereas, even a release of radioactive tailings of lesser proportions than the
2 worst-case scenario modeled in the Michael Baker Study would result in serious
3 economic impacts to those areas even after radioactivity levels declined to levels
4 within legal limits because of the inevitability of negative public perceptions and
5 the resultant damage to the region's image and reputation as attractive business and
6 vacation destinations; and

7 Whereas, while the probability of a major tailings release is small, the adverse
8 consequences of such a release would be enormous and unacceptable; and

9 Whereas, on July 9, 2012, the North Carolina delegation to the Roanoke River
10 Basin Bi-State Commission stated, by resolution, its opposition to uranium mining
11 in Virginia, including the proposed Virginia Uranium, Inc. project at Coles Hill,
12 and to the elimination of the existing legislative moratorium on uranium mining in
13 Virginia; and

14 Whereas, on July 9, 2012, the North Carolina delegation to the Roanoke River
15 Basin Bi-State Commission requested, by resolution, that the Roanoke River
16 Bi-State Commission concur with the North Carolina delegation to the
17 Commission by official resolution; and

18 Whereas, on August 27, 2012, the Roanoke River Basin Bi-State Commission
19 adopted a resolution advising the General Assemblies and the Governors of the
20 Commonwealth of Virginia and the State of North Carolina on the mining and
21 milling of uranium in Virginia; and

22 Whereas, on August 27, 2012 the Roanoke River Basin Bi-State Commission,
23 by resolution, supported the prohibition on uranium mining in Virginia, and stated
24 its opposition to elimination or modification of the existing legislative moratorium
25 in Virginia; and

26 Whereas, the Roanoke River Basin Bi-State Commission transmitted its
27 resolution to the General Assembly of North Carolina; Now therefore,

28 Be it resolved, by the House of Representatives, the Senate concurring,

29 **SECTION 1.** The General Assembly of North Carolina expresses its
30 opposition to uranium mining in Virginia, including the proposed Virginia
31 Uranium, Inc. project at Coles Hill, and further opposes the elimination of the
32 existing legislative moratorium on uranium mining in Virginia.

33 **SECTION 2.** The Secretary of State shall transmit certified copies of
34 this resolution to each member of the North Carolina Congressional delegation,
35 the General Assembly of Virginia, and the Governor of Virginia.

36 **SECTION 3.** This resolution is effective upon ratification.

LETTER OF OPPOSITION TO POSSIBLE URANIUM MINING IN VIRGINIA

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General Assembly of North Carolina

Environmental Review Commission State Legislative Building Raleigh, North Carolina

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December 14, 2012

Honorable Bob McDonnell
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

Re: Opposition to possible uranium mining in Virginia

Dear Governor McDonnell,

The Environmental Review Commission is a permanent joint commission of the North Carolina General Assembly. The Commission is charged with reviewing, studying, and recommending actions that relate to the environment, public health, and the protection of the environment and public health in North Carolina.

The Commission has received information about the possible elimination of the legislative moratorium on uranium mining in the Commonwealth of Virginia and the mining project proposed by Virginia Uranium, Inc. in Coles Hill in Pittsylvania County. The proposed Coles Hill uranium mining site is located upstream from John H. Kerr reservoir, Lake Gaston, and many communities in northeast North Carolina. The proposed mining and milling operations may produce 11 million cubic yards of radioactive tailings stored in aboveground impoundments of up to 40 acres in size.

The Commission learned that the modeled impacts of a catastrophic breach of an aboveground uranium tailings impoundment on downstream water quality in Kerr Lake and Lake Gaston could result in radiation above the United States Environmental Protection Agency Maximum Contaminant Levels for up to three months during wet years and up to sixteen months during dry years. The North Carolina Department of Environment and Natural Resources stated that a release of radioactive tailings could have devastating adverse socioeconomic impacts on the communities of northeastern North Carolina including:

- Impacts to the public water supply of more than 118,000 North Carolinians

- Impacts to numerous industrial facilities
- Impacts on over 60 agricultural operations in Bertie, Granville, Halifax, Vance, and Warren counties
- Impacts on recreation and tourism at Kerr Lake and Lake Gaston with possible economic losses of more than \$15 million per year

At its December 13, 2012 meeting, the Commission expressed significant concern regarding the potential lifting of the existing legislative moratorium on uranium mining in Virginia. The Commission requests that you consider the possible adverse impacts to Kerr Lake, Lake Gaston, and many communities in northeastern North Carolina if the existing legislative moratorium on uranium mining is lifted and mining activities commence by Virginia Uranium, Inc. at Coles Hill.

Thank you for your consideration of this matter.

Sincerely,

Senator David Rouzer

Representative Mitch Gillespie

Representative Ruth Samuelson

Co-chairs, Environmental Review Commission

cc: Senator Richard Burr
 Senator Kay Hagan
 Representative G.K. Butterfield
 Representative Renee Elmers
 Representative Walter B. Jones, Jr.
 Representative David E. Price
 Representative Virginia Foxx
 Representative Howard Coble
 Representative Mike McIntyre
 Representative Larry Kissell
 Representative Sue Myrick
 Representative Patrick McHenry
 Representative Heath Shuler
 Representative Mel Watt
 Representative Brad Miller
 Members of the North Carolina Environmental Review Commission
 Tom Reeder, Division of Water Resources, Department of Environment and Natural Resources
 Jeffrey Hudson, Commission Counsel, North Carolina Environmental Review Commission