



MINUTES
ENVIRONMENTAL REVIEW COMMISSION
October 9, 2013
Room 643

The Environmental Review Commission (ERC) or Commission met on Wednesday, October 9, 2013 at 9:30 A.M. The meeting was held in Room 643 of the Legislative Office Building. Representative Mike Hager presided.

Members present were: Representative Mike Hager, Chair, Senator Austin M. Allran, Senator Stan Bingham, Senator Andrew Brock, Senator Bill Cook, Senator Fletcher L. Hartsell, Jr., Senator Gene McLaurin, Senator Ronald Rabin, Representative William D. Brisson, Representative Rick Catlin, Representative Jimmy Dixon, Representative Pricey Harrison, Representative Pat McElraft, Representative Chuck McGrady, Representative Chris Millis, and Representative Roger West. Dr. Jeff Warren, Senate Senior Policy Advisor; Emily Wilson, House Senior Policy Advisor; Mr. Jeff Cherry, Commission Counsel; Ms. Jennifer Mundt, Commission Analyst; Ms. Mariah Matheson, Research Assistant; Lindsey Dowling, Tori Bragg, and Towers Mingledorff, Commission Clerks; and Sergeants-At-Arms Garland Shephard, Larry Elliott, Ashley Mickens, Ed Kesler, Billy Fritscher, and Steve Wilson. (Attachment #1 and #2.)

Notice was sent to members and interested parties via e-mail on October 2, 2013. 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.

Call to Order and Introductory Remarks

Representative Hager called the meeting to order and welcomed members, staff, and visitors in attendance. Representative Hager introduced staff and asked the members of the Commission to introduce themselves. He then recognized Ms. Jennifer Mundt for an overview of the meeting. Ms. Mundt reviewed the agenda and explained the following handouts: 2013 Environment and Natural Resources and Energy Summaries Chapter, Reports Received by the ERC, Studies to be Conducted by the ERC, ERC Reports and Due Dates, and copies of PowerPoint presentations for today's agenda items. Copies of these handouts are included in the attachments to these minutes as Attachment #6, Attachment #7, Attachment #8, and Attachment #9, respectively. There were no questions.



Explanation of Commission Studies

Representative Hager discussed the four studies the ERC will conduct (Attachment #8).

- Study Group 1: The circumstances under which cities and counties should be authorized to enact ordinances. Group Leaders: Senator Brock and Representative McGrady. Presentation dates: January and March.;
- Study Group 2: The statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State. Group Leaders: Senator Hartsell and Representative Hager. Presentation dates November and December.;
- Study Group 3: The State stormwater programs, including how partially impervious surfaces are treated in the calculation of built upon area under those programs. Group Leaders: Senator Jackson and Representative Samuelson. Presentation dates: December and February.; and
- Study Group 4: The review of engineering work. Group Leaders: Senator Bingham and Representative Millis. Presentation dates: November and January.

The study group discussions will take place within the working group meetings, not during the Commission meetings. The study groups will present their findings and goals to the Commission. Solutions will be voted on by the full Commission. After which, any legislative recommendations will be introduced during the 2014 Legislative Session. Each study group will have two months between their introduction and final presentation. A copy of the handout is included with the minutes as Attachment #8, respectively. Representative Brisson asked if the study groups can bring forward any additional concerns to the full Commission prior to the presentation dates?

Report from the Secretary of Environment and Natural Resources

Representative Hager recognized Secretary John Skvarla, Department of Environment and Natural Resources (DENR) to provide DENR's report. Secretary Skvarla gave an overview of the Department. DENR manages over \$750 million annually, has 4,000 employees, 3,000 permanent employees, and 1,000 temporary employees. Temporary employees play a vital role, especially in the parks system. Secretary Skvarla explained the difference between temporary employees and annual employees. According to the Secretary, temporary employees routinely support the park system. The Secretary is interested in how the federal Affordable Care Act will affect DENR's temporary employees, and the Department is working through those issues now. Secretary Skvarla has been with DENR for nine months and has initiated 18 reorganizations within DENR. The biggest road block has been the human resources system, which has never undergone a reorganization, let alone a reorganization of this magnitude. DENR is working with the other agencies to eliminate duplicative costs and be more efficient. Historically, DENR is broken down into two primary divisions, Environment and Natural Resources. In January 2013



DENR was considered the number one obstacle to growth in the State of North Carolina. DENR was more of a bureaucracy than a customer service agency.

Secretary Skvarla discussed DENR's new mission statement: 1.) DENR is a customer service agency, not a bureaucratic obstacle of resistance. DENR is here to help. 2.) DENR will not go backwards with the environment. DENR will not reduce regulation or environmental underpinning. 3.) DENR will not make things difficult for companies in the State. DENR is here to assist them. Secretary Skvarla discussed a meeting with Ashley Furniture in Davie County.

Ashley Furniture's permits were pending with DENR for 18 months, with nine submissions, and more than \$1 million spent. This was brought to Secretary Skvarla's attention in January 2013 and was resolved by April 2013. Ashley Furniture is just one example of how DENR's new approach is customer service-focused. DENR will also consider cost/benefit analysis in every decision they make.

For example, DENR refused an U.S. Environmental Protection Agency (USEPA) grant. The grant was for water quality testing in anticipation of hydraulic fracturing. DENR recognized several problems with the grant: 1.) The grant was for surface testing only. DENR wants to find out what is under the surface, not what is on the surface; 2.) No drilling units have been established; 3.) Rules have not yet been adopted for hydraulic fracturing. DENR saved tax payers \$600,000 by not accepting the USEPA grant.

The last part of the mission statement is fundamental science. According to Secretary Skvarla, science is not political, science is data, science is empirical, and DENR is not going to get caught up in the crossfire of political science. DENR is a community of scientists and DENR will work on the data collected from their scientists. We are public servants, our job is to do the work for the citizens of North Carolina, to protect the environment, and also help grow the economy.

The third division added to DENR is the Division of Environmental Assistance and Customer Service, which was consolidated to 50 employees who handle customer issues. The manager of this Division reports directly to Secretary Skvarla.

In closing, Secretary Skvarla thanked Representatives Catlin and Millis who helped DENR get a well water notification bill passed during the 2013 Regular Session. The bill passed both chambers unanimously. Representative Hager opened the floor for questions and comments. The following questions and comments were made:

Representative Harrison asked how the federal government shutdown is affecting DENR? Are there any associated costs with DENR's federally-funded employees? Secretary Skvarla said that the federal government shutdown originally affected 600 DENR employees. After shifting employees around, the federal shutdown now only affects four employees.



Representative Harrison asked why DENR applied for an USEPA grant for wetland delineation and stream mapping in April and then refused it? Secretary Skavarla responded that this was a grant that DENR applied for every year, but no one in the State utilized it.

Senator Rabin commented that there is more customer service to usher people through the process and asked if there was a link between DENR and the Department of Commerce? If so, how does that process work? And if it's a small business and does not have the visibility of a multi-million business, is there a mechanism in place to facilitate that link to save costs between DENR and the Department of Commerce?

Secretary Skavarla noted that the Tony Tata, Secretary of the Department of Transportation; and Sharon Decker, Secretary of Commerce, are joined at the hip. The three Secretaries are involved with all of the commerce and DOT activity at an early stage. For example, there was a distribution center planned in Alamance County. The center is on a large tract of land that would have normally taken 18 months to permit. Secretary Skvarla asked why they couldn't permit half and let the other half wait? This allowed the project to get permitted in a timely fashion.

There has been a planned expansion of the 64 Bypass near the Asheboro Zoo. The Zoo has 750,000 visitors per year, but could likely increase that number if there was a highway exit near the Zoo. Despite 10 years of planning, the DOT never included an exit for the Zoo. Now there is a plan for an exit to the Zoo.

Senator Cook thanked Secretary Skvarla for his hard work in turning DENR around.

Representative Hager thanked DENR for the Department's assistance in Rutherford County.

Report on the Environmental Protection Programs within DENR

Representative Hager recognized Assistant Secretary for Environment, Mr. Mitch Gillespie, to provide his nine month overview of the Environmental Divisions of DENR, including success stories and challenges. A copy of Mr. Gillespie's PowerPoint presentation is included in the attachments to these minutes as Attachment #10. Mr. Gillespie received a number of questions about the Environmental Division.

Representative Harrison noted that many of the operations are receipt supported. In the Budget, the General Assembly eliminated a lot of special funds, like the Scrap Tire Fund and tipping fees. How will this affect DENR? Mr. Gillespie responded that the elimination of funds will affect DENR. The more DENR receives the more it can distribute in grants. With regard to the Scrap Tire Fund, there were not enough people to give grants to.



Representative Harrison asked how the Regulatory Reform Act of 2013 (House Bill 74) will affect DENR? Does DENR have adequate staff and resources to work on water quality rules due in 2014? Mr. Gillespie said that DENR will have everything done by December 31, 2013.

Representative Harrison wanted more information on the coal ash ponds and potential groundwater contamination by the power companies? Mr. Gillespie explained that North Carolina has filed a lawsuit against the power companies on this issue and the Southern Environmental Law Center has joined the suit. DENR has followed the guidelines when imposing fines on Progress Energy. The penalty DENR has imposed is five times higher than normal.

Representative Harrison asked about new EPA rules on power emissions for power plants. Mr. Gillespie responded that the EPA has been directed to apply the rules to existing and new plants. The Division of Air Quality is trying to figure out how to address this. The new rules will have an impact on existing power plants.

Representative Catlin asked about Sulfur Dioxide (SO₂). Does North Carolina have any areas in nonattainment? If so, where are they? Mr. Gillespie responded that the nonattainment areas are in the Charlotte region. Representative Catlin asked what the effect would be if ground level ozone standards were lowered to 60 parts per billion? Mr. Gillespie said that the EPA is leaning towards the 60 to 70 parts per billion range. Representative Catlin noted that if the EPA lowers the ground level ozone standards designations to 60, then 50% of North Carolina counties would be in non-attainment. Mr. Gillespie concurred.

Senator Rabin asked if there was a point of contact in the Department of Commerce when permit issues come up? Mr. Gillespie responded that division directors have an established process on how permits are done. DENR follows the statutes as adopted by the General Assembly.

Senator Bingham asked Mr. Gillespie to discuss the merger between the Division of Water Quality and the Division of Water Resources, specifically related to efficiencies. Mr. Gillespie responded that during the merger DENR removed unfilled positions, shifted some employees, laid off 20 people, and saved \$4.5 million.

Senator Bingham noted that Sampson County saved \$1.6 million in mitigation fees. Senator Bingham asked how it was first determined that a permit was needed, then later determined that a permit was not needed? Mr. Gillespie indicated that he would follow-up with the Commission on this issue, which is included as Attachment #12.

Representative Millis asked if DENR was aware of potential EPA regulations on water quality, specifically nitrogen and phosphorus limits, including the wetlands? This could be devastating for the State. Representative Gillespie responded that the DENR plans to hold a public hearing in the next few weeks to receive comment on this.



Representative McElraft asked if North Carolina bands together with other coastal states to contest certain federal regulations? Representative McElraft noted that there was a dilemma in North Carolina with regard to flood insurance. Mr. Gillespie said that DENR does not deal with flood insurance issues. However, there is a southeast alliance with other coastal states, but different states have different priorities.

Representative Hager asked if there has been any outlook or modeling on future carbon capture regulations from energy generated from coal? For example, 37% of our energy and 50,000 gigawatt hours of electricity in 2012 were generated by coal. What would the loss of that fleet mean to our economy? Mr. Gillespie indicated that he would follow-up on this question, which is included as Attachment #12.

Senator Brock noted that if the EPA proceeds with their proposed regulations on coal emissions there will be a loss of about 28,000 jobs throughout Southwestern Virginia and West Virginia. Those that live in northwest North Carolina will see about 25,000 people move here if we are creating jobs, which will drive our labor rates down for employees. Which in turn will make it harder for North Carolinians to find employment because the jobs in the Virginia area will be gone.

Report on the Natural Resources Programs within DENR

Representative Hager recognized Assistant Secretary for Natural Resources, Mr. Brad Ives, to provide his report on the natural resources programs within DENR. A copy of Mr. Ives' PowerPoint presentation is included in the attachments to these minutes as Attachment #10. Mr. Ives's received a number of questions about the Natural Resources divisions. Mr. David Griffin, Director of North Carolina Aquariums, was present for any questions. The following questions were asked:

Senator Bingham asked Mr. Ives to discuss hydrilla (an aggressive water weed), particularly in the lakes? What is the problem and what is the solution? If someone has hydrilla problems would they contact the Department of Agriculture and Consumer Services or DENR? Mr. Ives explained that hydrilla is treated with an aquatic herbicide. However, hydrilla forms underground spores, so even if you kill it, it may still be there. In response to this problem, DENR has introduced sterilized Carp fish to counteract the hydrilla. The fish are sterilized so they cannot reproduce. Lake Waccamaw could not support Carp, so an aquatic herbicide was used. Mr. Ives believes that an educational program would be helpful, because hydrilla is traveling on boat propellers. Boaters need to wash off their propellers before taking their boats from one lake to another. Mr. Ives said that the Department of Agriculture and Consumer Services has an Invasive Species Division, but there is limited funding available.

Senator Bingham asked about commercial versus recreational fishing, which one has the greatest economic impact? Senator Bingham believes that recreational fishing has five times the economic impact and one fifth of the poundage. Thus, it seems that the State should favor



recreational fisherman. Mr. Ives responded that DENR protects the resource for the entire State. Mr. Ives also noted that there are different economic impacts in different parts of the State. There are some areas that benefit more from commercial fishing and some areas that benefit more from recreational fishing.

Senator Cook asked about the economic impact of the federal government shutdown to North Carolina beaches and parks. Mr. Ives said that DENR has put out a press release that the State parks, aquariums, and zoos are still open. However, the average citizen does not know the difference between State and federal parks, so there may be an economic decline, as some people are cancelling vacations.

Representative Brisson asked why DENR decided to raise the aquarium admission fee from \$8.00 to 10.95? Mr. Ives responded that the main reason was to convert part-time employees to full-time employees. This change required \$1.2 to \$1.4 million in additional revenue. For example, one of DENR's primary divers is still considered a temporary employee. DENR is also limited by the Affordable Care Act. Under current law, DENR can employ part-time employees up to 11 months. The new law will allow part-time employees to be employed up to nine months, with three months off.

Representative Brisson asked if the \$10.95 admission would be for adults and children? David Griffin, Director of the North Carolina Aquariums, DENR, was recognized. Mr. Griffin responded that currently admission prices are as follows: \$8.00 for adults, \$7.00 for seniors, and \$6.00 for school age children. The North Carolina Aquariums will continue to admit all school groups for free.

Representative McElraft asked why does the State pay for lifeguards on Carolina Beach when there are no lifeguards on any other beaches in the State? Mr. Ives responded that Carolina Beach is a State park area.

Representative Millis asked if there were any differences between in-state versus out-of-state admission fees? Mr. Ives said that DENR has looked into the possibility, but decided against it.

Representative Harrison asked if DENR retained the Natural Heritage Inventory Program? If so, is that funded out of the \$750,000 allocated for the Natural Heritage Trust Fund? Does DENR maintain the Natural Heritage Inventory Program? Mr. Ives responded yes, DENR does maintain the Program. Representative Harrison asked if DENR has adequate funding to maintain that inventory program? Was the Program impacted by the Budget? Mr. Ives responded that DENR has adequate funding to maintain the Program.

Representative Harrison asked about the \$10.4 million appropriation to SolarBee for the Jordan Lake clean-up? Mr. Ives said that he would follow-up with the Commission on this issue, which is included as Attachment #12.



Representative Hager asked Mr. Ives what his favorite State Park was? Mr. Ives responded that his favorite park was South Mountain, but not enough people visit it.

Report on the Proposed Construction of a Wastewater Treatment Plant by the City of Creedmoor

Representative Hager recognized Mr. Thomas Reeder, Director of the Division of Water Resources, DENR. Mr. Reeder provided an update on the proposed Creedmoor wastewater treatment plant. A copy of Mr. Reeder's PowerPoint presentation is included in these minutes as Attachment #11. Mr. Darryl Moss, Mayor of the City of Creedmoor, was also recognized to answer any questions. The following questions were asked:

Senator Hartsell asked which river basin the City of Creedmoor draws water from? Mayor Moss responded that the City of Creedmoor's water comes from Lake Hope and is in the Neuse river basin.

Senator Cook asked if Mr. Reeder could give an update on the Martin Marietta Materials Inc. project in Blount's Creek, with regard to pH balance and solidity of water due to discharge? Mr. Reeder said that there is a proposal to discharge fresh water into a swamp-like acidic environment. The pH in the immediate vicinity will go up by one point. This is why DENR made the decision to issue the permit, however, a judge will now decide the case. The discharge will impact the salinity of Blount's Creek by one part per 10,000, but not enough to affect the quality of the creek. None of the evidence has determined an impact except the pH balance increase in the immediate discharge point.

Senator Cook said that there a lot of people who disagree with DENR's analysis. Hopefully we can mediate their concerns. Can DENR hold a town hall to provide scientific information? Mr. Reeder said that DENR has already held a couple of public hearings.

Representative Harrison asked if proposed project fell under the State Environmental Protection Act (SEPA)? Mr. Reeder responded that the project falls under National Environmental Protection Act (NEPA) because federal money is being used.

There being no further business, the meeting adjourned at 12:02 PM. The next meeting will be held on November 13, 2013 at 9:30 AM.

Representative Mike Hager
Presiding

Lindsey Dowling, Committee Clerk