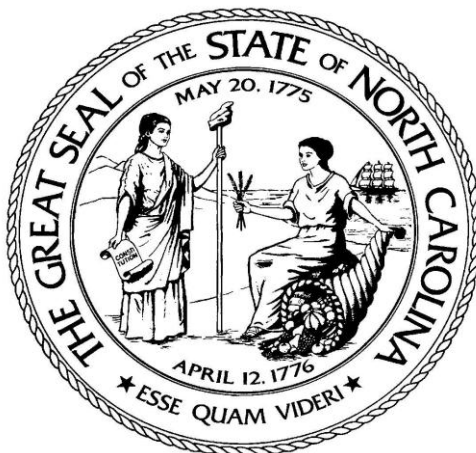


# NORTH CAROLINA GENERAL ASSEMBLY



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## ENVIRONMENTAL REVIEW COMMISSION

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**REPORT TO THE  
2014 SESSION  
of the  
2014 GENERAL ASSEMBLY**

APRIL 9, 2014

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DRAFT

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# TRANSMITTAL LETTER

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April 9, 2014

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TO THE MEMBERS OF THE 2014 REGULAR SESSION  
OF THE 2014 GENERAL ASSEMBLY

Pursuant to Article 12D of Chapter 120 of the General Statutes, the Environmental Review Commission submits its report and recommendations to the 2014 Regular Session of the 2014 General Assembly.

Respectfully submitted,

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**Senator Brent Jackson**

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**Representative Mike Hager**

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**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.

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# COMMISSION MEMBERSHIP

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## ENVIRONMENTAL REVIEW COMMISSION

### 2013-2014 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.

#### **Co-Chairs**

Rep. Mike Hager (Co-Chair)

[Mike.Hager@ncleg.net](mailto:Mike.Hager@ncleg.net)

Rep. Ruth Samuelson (Co-Chair)

[Ruth.Samuelson@ncleg.net](mailto:Ruth.Samuelson@ncleg.net)

Sen. Brent Jackson (Co-Chair)

[Brent.Jackson@ncleg.net](mailto:Brent.Jackson@ncleg.net)

#### **Legislative Members**

Rep. William D. Brisson

[William.Brisson@ncleg.net](mailto:William.Brisson@ncleg.net)

Rep. Jimmy Dixon

[Jimmy.Dixon@ncleg.net](mailto:Jimmy.Dixon@ncleg.net)

Rep. Pricey Harrison

[Pricey.Harrison@ncleg.net](mailto:Pricey.Harrison@ncleg.net)

Rep. Chuck McGrady

[Chuck.McGrady@ncleg.net](mailto:Chuck.McGrady@ncleg.net)

Sen. Austin M. Allran

[Austin.Allran@ncleg.net](mailto:Austin.Allran@ncleg.net)

Sen. Stan Bingham

[Stan.Bingham@ncleg.net](mailto:Stan.Bingham@ncleg.net)

Sen. Bill Cook

[Bill.Cook@ncleg.net](mailto:Bill.Cook@ncleg.net)

Sen. Gene McLaurin

[Gene.McLaurin@ncleg.net](mailto:Gene.McLaurin@ncleg.net)

Sen. Ronald J. Rabin

[Ron.Rabin@ncleg.net](mailto:Ron.Rabin@ncleg.net)

Sen. Michael P. Walters

[Michael.Walters@ncleg.net](mailto:Michael.Walters@ncleg.net)

#### **Advisory Members**

Rep. Rick Catlin

[Rick.Catlin@ncleg.net](mailto:Rick.Catlin@ncleg.net)

Rep. Chris Millis

[Chris.Millis@ncleg.net](mailto:Chris.Millis@ncleg.net)

Sen. Fletcher L. Hartsell, Jr.

[Fletcher.Hartsell@ncleg.net](mailto:Fletcher.Hartsell@ncleg.net)

#### **Ex Officio Members**

Sen. Andrew C. Brock

[Andrew.Brock@ncleg.net](mailto:Andrew.Brock@ncleg.net)

Rep. Pat McElraft

[Pat.McElraft@ncleg.net](mailto:Pat.McElraft@ncleg.net)

Rep. Roger West

[Roger.West@ncleg.net](mailto:Roger.West@ncleg.net)

**Commission Staff:**

[Jeff Hudson](#), Commission Counsel

[Jennifer McGinnis](#), Commission Counsel

[Jeff Cherry](#), Commission Counsel

[Jennifer Mundt](#), Commission Analyst

[Mariah Matheson](#), Commission Assistant

Commission Clerks: [Tori Bragg](#), [Lindsey Dowling](#), and [Towers Mingledorff](#)

**Commission Contact Information:**

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27603

(919) 733-2578

FAX: (919) 715-5460

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# COMMISSION PROCEEDINGS

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The Environmental Review Commission met seven times during the interim between the 2013 and the 2014 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 9, 2013**

**AGENDA**

**9:30 a.m. Thursday**

Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Representative Mike Hager, Presiding
2. Introductory remarks by Cochairs  
Senator Brent Jackson  
Representative Mike Hager  
Representative Ruth Samuelson
3. Introduction of Members and Staff
4. Report from Commission Staff  
Jennifer Mundt, Commission Analyst
5. Discussion of studies to be conducted by the Commission  
Representative Mike Hager
6. Report from the Secretary of Environment and Natural Resources  
John Skvarla, Secretary  
Department of Environment and Natural Resources (DENR)
7. Report on the environmental protection programs within DENR  
Mitch Gillespie, Assistant Secretary for Environment  
DENR
8. Report on the natural resources programs within DENR  
Brad Ives, Assistant Secretary for Natural Resources  
DENR

9. Report on the proposed construction of a wastewater treatment plant by the City of Creedmoor  
Thomas A. Reeder, Director  
Division of Water Resources, DENR
10. Commission discussion and announcements
11. Adjourn

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

Ms. Jennifer Mundt, Commission Analyst, gave an overview of the meeting agenda and the reports received by the Commission.

Mr. John Skvarla, Secretary of Environment and Natural Resources, gave an overview of the Department of Environment and Resources (DENR), its budget, its reorganization, employees, and its role. Secretary Skvarla explained the difference between temporary employees and annual employees. The Secretary also discussed DENR's new mission statement, U.S. Environmental Protection Agency (U.S.EPA) grants, the Division of Environmental Assistance, and DENR's collaboration with the Department of Commerce and the Department of Transportation.

There was Commission discussion on the federal government shutdown, DENR's federally-funded employees, DENR's customer service, DENR's cooperation with the Department of Commerce, and the new planned expansion of the 64 Bypass near the Asheboro Zoo.

Mr. Mitch Gillespie, Assistant Secretary for Environment, DENR, provided a nine month overview of the environmental divisions of DENR, including success stories and challenges.

There was Commission discussion on how the elimination of receipt-based funds and the [Regulatory Reform Act of 2013](#) would affect DENR and if DENR had adequate staffing and resources. The Commission also discussed the merger between the Division of Water Quality and the Division of Water Resources, specifically related to efficiencies.

The Commission discussed coal ash ponds and potential groundwater contamination, the U.S. EPA rules on emissions for power plants, and how the new rules will impact existing North Carolina power plants. There was additional Commission discussion on non-attainment areas in the State, flood insurance, and modeling.

Mr. Brad Ives, Assistant Secretary of Natural Resources, DENR, provided the Commission with a report on all of the natural resources programs within DENR. The Commission discussed possible solutions to hydrilla (an aggressive water weed) in North Carolina lakes, commercial versus recreational fishing economic impacts, the effect of



the federal government shutdown on North Carolina beaches and parks, the increase in aquarium admission prices, and the Natural Heritage Trust Fund Program.

Mr. Thomas Reeder, Director of the Division of Water Resources, DENR, provided an update on the proposed Creedmoor wastewater treatment plant. Mr. Darryl Moss, Mayor of the City of Creedmoor, was also recognized to answer any questions.

There was Commission discussion on the river basin that the City of Creedmoor draws water from. Mr. Reeder was asked to 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.

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**November 13, 2013**

**AGENDA**

**9:30 a.m. Thursday**

Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order Senator Brent Jackson, Presiding
2. Introductory remarks by Cochairs  
    Senator Brent Jackson  
    Representative Mike Hager  
    Representative Ruth Samuelson
3. Background presentation on the statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State (Sec. 24, S.L. 2013-413)  
    Richard Whisnant, Gladys Coates Professor of Public Law and Government  
    School of Government, University of North Carolina at Chapel Hill (UNC-CH)  
    Shadi Eskaf, Senior Project Director  
    Environmental Finance Center, School of Government, UNC-CH
4. Background presentation on the State stormwater programs, including the annual report on implementation of stormwater runoff rules and programs (Sec. 51(e), S.L. 2013-413) (G.S. 143-214.7(e), October 1, 2013)  
    Tracy Davis, Director  
    Division of Energy, Minerals, and Land Resources, Department of Environment and Natural Resources (DENR)
5. Report on activity of DENR related to development of a modern regulatory program for the management of oil and gas exploration and development activities in the State, and use of horizontal drilling and hydraulic fracturing (fracking) for that purpose (Sec. 2(l) of S.L. 2012-143, as amended by Sec. 12(c) of S.L. 2012-201, October 1, 2013)  
    Mitch Gillespie, Assistant Secretary for the Environment  
    DENR
6. Report on activity of the Mining and Energy Commission (MEC) concerning the rule development process for the management of oil and gas exploration and development activities in the State, and use of fracking for that purpose (Sec. 1(b), S.L. 2012-143)  
    James Womack, Chairman  
    MEC
7. Report on the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter (Sec. 2(l) of S.L. 2012-143, as amended by Sec. 12(c) of S.L. 2012-201, October 1, 2013)

Dr. Ray Covington, Vice Chairman  
MEC

8. Report on levels of appropriate funding and potential sources for that funding deemed necessary in connection with management of oil and gas exploration and development activities in the State (Sec. 2(j) of S.L. 2012-143, as amended by Sec. 12(a) of S.L. 2012-201, October 1, 2013)

Dr. Ray Covington, Vice Chairman  
MEC

9. Report on local government regulation of oil and gas exploration and development activities, and the use of fracking for that purpose (Sec. 2(k) of S.L. 2012-143, as amended by Sec. 12(b) of S.L. 2012-201, October 1, 2013)

Charles Taylor, Member  
MEC

10. Report on ongoing study of development of a coordinated permitting program for oil and gas exploration and development activities, and the use of fracking for that purpose (Sec. 2(a) of S.L. 2013-365, March 1, 2014)

Dr. Kenneth Taylor, State Geologist,  
Ex Officio Member, MEC

11. Commission discussion and announcements

12. Adjourn

The second meeting of the Environmental Review Commission (ERC or Commission) was held on Thursday November 13, 2013 at 9:30 a.m. in Room 643 of the Legislative Office Building. Senator Brent Jackson presided.

Mr. Richard Whisnant, Gladys Coates Professor of Public Law and Government, School of Government (SOG), University of North Carolina at Chapel Hill (UNC-CH), and Mr. Shadi Eskaf, Senior Project Director, Environmental Finance Center, SOG, UNC-CH gave a presentation on the statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State.

Mr. Whisnant gave an overview of North Carolina water service providers and explained the differences between the federal and State view of classifying "public water systems."

There was Commission discussion on the differences between public versus privately operated water systems, including their regulatory framework, capital funding, and water system behavior.

Mr. Eskaf spoke about different types of community water systems and their responsibilities. Mr. Eskaf provided the percentages of population served by these active

community water systems, named the community water systems owned by multi-system water companies, gave examples of new regional utilities in recent years, spoke about the numbers regarding water system interconnections, and discussed what water and wastewater rates cover.

There was Commission discussion on the Cliffside Sanitary Sewer District, changes in commercial user water supply demand, trailer park water systems, whether or not water systems were responsibly meeting their expenditures, regional utilities, and utilities sharing resources.

Mr. Tracy Davis, Director, Division of Energy, Minerals, and Land Resources (DEMLR), Department of Environment and Natural Resources (DENR), gave a presentation on the State's stormwater programs, including the annual report on implementation of stormwater runoff rules and programs. Mr. Davis gave a quick summary on transferring the Stormwater Permitting Program from the former Division of Water Quality (DWR) to DEMLR, an overview of the different stormwater programs, an update on legislative change to Built-Up Area and associated definition of gravel as pervious, and highlights from the October 1, 2013 Annual Stormwater Program Report.

The Commission discussed the reasons for the transfer of the Stormwater Permitting Program, the current structure of the Best Management Practices (BMP) manual, Built-Up Area and gravel definitions, and stormwater rules for oil and gas development.

Mr. Mitch Gillespie, Assistant Secretary, DENR, gave his presentation on DENR's activities related to the development of a modern regulatory program for the management of oil and gas exploration and development activities in the State, and the use of horizontal drilling and hydraulic fracturing (fracking) for that purpose. Mr. Gillespie gave an update on the merger of the State Energy Office with DENR, new hires for the Energy Program in DEMLR, consideration of expenditures of 2013 appropriations, and findings and recommendations of DENR regarding compulsory pooling. Mr. Gillespie explained the makeup of the State Energy Office as of July 2013 and the State Energy Office within DENR currently.

There was Commission discussion on potential shale resources in the Camden/Pasquotank Counties. Secretary Gillespie indicated that the Albemarle area has been identified as a shallow shale basin. There was additional Commission discussion on possible water contamination from hydraulic fracturing, amount budgeted for research, and future rules.

Mr. James Womack, Chairman, Mining and Energy Commission (MEC), gave a presentation on the activity of the MEC concerning the rule development process for the management of oil and gas exploration and development activities in the State, and use of fracking for that purpose.

Mr. Womack discussed [Senate Bill 820](#) (S.L. 2012-143, Clean Energy & Economic Security Act) and [Senate Bill 76](#) (S.L. 2013-365, Domestic Energy Jobs Act). Mr.

Womack discussed the MEC's accomplishments, proposed future milestones, and the anticipated development milestones. Mr. Womack gave updates on the Administration of Oil and Gas Operations Committee, the Water and Waste Management Committee, the Environmental Standards Committee, and the Rules Committee.

Dr. Ray Covington, Vice Chairman, MEC, gave a presentations on the issue of integration of compulsory pooling and other states' laws on the matter and the appropriate funding and potential sources for that funding deemed necessary in connection with management of oil and gas exploration and development activities in the State.

Dr. Covington discussed the Compulsory Pooling Study Group, the Funding Levels and Potential Funding Sources Study Group, the Coordinated Permitting Study Group, and the Local Government Study Group. Dr. Covington spoke on behalf of Dr. Kenneth Taylor, State Geologist, Ex Officio Member, MEC. He was unable to attend the meeting. Dr. Covington spoke about Dr. Taylor's contributions to the new and revised MEC.

The Commission discussed the balance of public interest versus private, core samples, procedures for landmen, how municipalities are treated during the hydraulic fracturing process, how water will be treated before it goes to a water treatment facility, baseline water testing, compulsory pooling, impact fees, landowner protections, local authority over hydraulic fracturing, setbacks, and mineral rights.

**January 15, 2014**

**AGENDA**

**9:30 a.m. Thursday**

Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Representative Ruth Samuelson, Presiding
2. Introductory remarks by Cochairs  
Senator Brent Jackson  
Representative Mike Hager  
Representative Ruth Samuelson
3. Approval of the minutes for the October 9, 2013 meeting of the Commission
4. Background presentation on the review of engineering work (Sec. 58, S.L. 2013-413)  
Representative Chris Millis and Senator Stan Bingham  
Working Group Leaders  
  
Tracy Davis, Director  
Division of Energy, Mineral, and Land Resources, Department of  
Environment and Natural Resources (DENR)  
  
William G. "Gus" Simmons, PE  
Cavanaugh & Associates PA
5. Discussion of the University of North Carolina at Chapel Hill's Bingham Facility  
Robert Lowman, Ph.D.  
Associate Vice Chancellor for Research  
Research Professor of Psychology  
University of North Carolina at Chapel Hill  
  
Cliff Leath, Owner of property adjoining the Bingham Facility
6. Background presentation on the circumstances under which cities and counties should be authorized to enact certain environmental ordinances (Sec. 10.2(c), S.L. 2013-413)  
Representative Chuck McGrady and Senator Andrew Brock  
Working Group Leaders  
  
Erin Wynia, Legislative & Regulatory Issues Manager  
North Carolina League of Municipalities

Johanna Reese, Director of Government Relations  
North Carolina Association of County Commissioners

Elizabeth Robinson, Director of Government Relations  
North Carolina Retail Merchants Association

Chris Thomas, Partner  
Childress Klein Properties

Lisa Martin, Director of Government Affairs  
North Carolina Home Builders Association

7. Quarterly reports by the Environmental Management Commission as to its operations, activities, programs, and progress for the period July 2013 through December 2013 (G.S. 143B-282(b))  
Benne Hutson, Chair  
Environmental Management Commission
8. Report on the State Water Supply Plan and the reorganization of the Division of Water Resources of DENR  
Tom Reeder, Director  
Division of Water Resources, DENR
9. Overview of the history of Yadkin Hydroelectric Project  
Jennifer McGinnis, Commission Counsel
10. Commission discussion and announcements
11. Adjourn

The third meeting of the Environmental Review Commission (ERC or Commission) was held on Wednesday, January 15, 2014 at 9:30 a.m. in Room 643 of the Legislative Office Building. Representative Ruth Samuelson presided.

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

Representative Chris Millis and Senator Stan Bingham gave an overview of the Review of Engineering Work Working Group and its goals.

Mr. Tracy Davis, Director of the Division of Energy, Mineral, and Land Resources (DEMLR) of the Department of Environment and Natural Resources (DENR), gave a presentation on the provision in [House Bill 74](#) (Session Law 2013-413, Sec. 58), which required the review of engineering work. Mr. Davis explained what the study group examined, the stakeholders, and recommendations.

There was Commission discussion on additional expenses associated with being an engineer, such as professional license fees, unnecessary rules and regulations, and engaging with the engineering community.



Mr. William G. "Gus" Simmons, PE, Cavanaugh & Associates PA, gave a presentation on the evaluation of regulatory review of engineering work, on behalf of the Professional Engineers of North Carolina (PENC). Mr. Cavanaugh stated that the PENC supports the review of applications that require regulatory approval, including those requiring the work of a Professional Engineer, as prescribed by State law. PENC encourages all members of the public, including regulatory reviewers, refer any work completed by a professional engineer that is purported to be negligent or incompetent, to the North Carolina Board of Examiners for Engineers and Surveyors (NCBELS).

Mr. Simmons discussed inconsistencies in review processes and practices among and between groups within a given regulatory agency and further inconsistencies among staff within the same grouping. PENC encourages regulatory agencies to develop and implement programs and practices that establish an improved standardization process and increased consistency among regulatory reviewers. Lastly, Mr. Simmons discussed PENC's findings and recommendations.

Mr. Robert Lowman, PhD, Associate Vice Chancellor for Research, Research Professor of Psychology, University of North Carolina at Chapel Hill, discussed the Bingham Research Facility wastewater treatment problems and gave an overview of the research that the Bingham Research Facility conducts.

There was Commission discussion on what types of animals the facility conducts its research on, the replacement costs of noisy chillers, the wetland violations and spray irrigation issues, the total costs of errors and overruns, and potential grant opportunities lost and other negative consequences.

Mr. Cliff Leath, Owner of property adjoining the Bingham Facility, gave a timeline of the Bingham Research Facility and showed photos of the facility's leaking wastewater lagoons. Mr. Leath is concerned about the facility's environmental impact to nearby property owners. Mr. Leath believes that the Bingham Research Facility should not have been repurposed, as they have a facility in Carrboro that is closer and can be utilized in the same manner.

Rep. Chuck McGrady gave an overview on the City and Counties Environmental Ordinance Working Group. Rep. McGrady said that the Working Group will determine what constitutes an environmental ordinance. The cities and counties want to be heard and other groups want to bring concerns forward.

Ms. Erin Wynia, Legislative and Regulatory Issues Manager, North Carolina League of Municipalities, discussed what cities and counties regulate, existing limits on ordinance powers, and legislative considerations.

There was Commission discussion on the Unified Development Ordinances, statutory grant of power for cities and towns, and how ordinances protect certain environmental areas that are economically important, such as beaches and lakes.

Ms. Johanna Reese, Director of Government Relations, North Carolina Association of County Commissioners, gave an overview on local control, ordinances to meet State or federal requirements, local conditions, or energy efficiencies. There was Commission discussion on local regulations for steep slopes.

Representative Millis spoke about the focus of the working group. Rep. Millis explained that the working group will review regulations that are already in the State purview, that local governments have started to regulate. The Working Group will review any overlaps.

Ms. Elizabeth Robinson, Director of Government Relations, North Carolina Retail Merchants Association, was recognized to discuss issues related to the Working Group. Ms. Robinson explained that North Carolina prohibits the regulation of commerce. The North Carolina Retail Merchants Association has tried to combat local governments who impact commerce. Ms. Robinson gave several examples.

Mr. Chris Thomas, Charlotte Real Estate Association, spoke about stormwater rules and their impacts on development.

Ms. Lisa Martin, Director of Governmental Affairs, North Carolina Home Builders Association, spoke about the North Carolina Building Code and how local governments try to implement ordinances through the Code.

There was Commission discussion on the effect of [House Bill 74](#) (Regulatory Reform Act of 2013) on local ordinances, concerns about onerous local ordinances, constitutional provision to prevent the local regulation of health and safety, as well as the local regulation of commerce.

Mr. Benne Hutson, Chair of the Environmental Management Commission (EMC), gave a presentation on the EMC's quarterly reports, its operations, activities, and progress from July 2013 through December 2013.

Mr. Hutson explained that the EMC is attempting to create rules that are easy to understand and not duplicative. Mr. Huston also noted that the EMC will be required to submit fiscal notes for all rules, which will be time consuming. Mr. Hutson recommends the EMC's reporting requirement be changed to as needed, in lieu of quarterly.

There was Commission discussion on the fiscal notes for rules, the process of repealing a rule, and gravel. Mr. Hutson explained the need for a definition of "gravel." The Commission discussed the temporary rule process.

Mr. Tom Reeder, Director of the Division of Water Resources (DWR), DENR, gave a report on the State Water Supply Plan and the reorganization of DWR. Mr. Reeder also explained water efficiency, water supply assistance to local governments, hydrologic modeling, ecological flows, coastal plain aquifers, interbasin transfers, and the Jordan Lake Pilot Test.

There was Commission discussion on DWR's employee organizational chart, the Jordan Lake Pilot Test and SolarBee's success rate, DENR's oversight and monitoring of Jordan Lake, the recent chemical spill in West Virginia, and recovery and withdrawal of aquifers during drought.

The overview and history of Yadkin Hydroelectric Project was postponed to the March 12, 2014 meeting.

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# **February 17, 2014**

## **AGENDA**

**10:00 a.m. Monday**

Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Senator Brent Jackson, Presiding
2. Introductory remarks by Cochairs  
Senator Brent Jackson  
Representative Mike Hager  
Representative Ruth Samuelson
3. Approval of the minutes for the November 13, 2013 meeting of the Commission
4. Report from the Secretary of Environment and Natural Resources  
John Skvarla, Secretary  
Department of Environment and Natural Resources (DENR)
5. Report on the January, 27, 2014 release of untreated sewage from the East Burlington Wastewater Treatment Plant into the Haw River
  - a. Description and timeline of events  
Tom Reeder, Director  
Division of Water Resources, DENR  
  
Harold Owen, City Manager  
City of Burlington  
  
Michael Layne, Stormwater Manager  
Water Resources, City of Burlington
  - b. Water quality conditions  
Elaine Chiosso, Haw Riverkeeper  
  
Tom Reeder, Director  
Division of Water Resources, DENR
6. Report on the February 2, 2014 release of coal ash from the Duke Energy Dan River Station into the Dan River
  - a. Description and timeline of events  
George Everett, Director of Environmental and Legislative Affairs  
Duke Energy  
  
Tom Reeder, Director

Division of Water Resources, DENR

b. Water quality conditions

Rick Gaskins, Executive Director  
Catawba Riverkeeper Foundation

George Everett, Director of Environmental and Legislative Affairs  
Duke Energy

Tom Reeder, Director  
Division of Water Resources, DENR

7. Public comment period
8. Commission discussion and announcements
9. Adjourn

The fourth meeting of the Environmental Review Commission (ERC or Commission) was held on Monday, February 17, 2014 at 10:00 a.m. in Room 643 of the Legislative Office Building. Senator Brent Jackson presided.

Mr. John Skvarla, Secretary of Environment and Natural Resources, Department of Environment and Natural Resources (DENR), gave a report on DENR's response to the coal ash spill into the Dan River and the East Burlington Wastewater Treatment Plant spill into the Haw River.

Mr. Tom Reeder, Director of the Division of Water Resources (DWR), DENR, gave a detailed report and a timeline of events on the January, 27, 2014 release of untreated sewage from the East Burlington Wastewater Treatment Plant into the Haw River.

There was Commission discussion on the statutory notice requirements and DENR's discretion to enforce the rules versus the enforcement of the statutes. The Commission also discussed the elimination of the Clean Water Management Trust Fund. Mr. Reeder noted that the Clean Water Revolving Trust Fund and the Drinking Water Trust Fund were still operational.

The Commission discussed how to prevent pipe failures, source water protection plans, GIS (Geographic Information System) use to identify public water supplies, water treatment plants, and waste water treatment plants, and remedial action plans. There was additional Commission discussion on different reporting requirements for facilities that were in close proximity to a drinking water source. Mr. Reeder explained that the reporting requirements are the same. Commission members asked about failing infrastructure and fines levied by DENR against the City of Burlington.

Mr. Harold Owen, City Manager of the City of Burlington, introduced Mr. Michael Layne, Stormwater Management of Water Resources for the City of Burlington. Mr. Layne explained the City of Burlington's treatment plant overflow. Mr. Layne gave an overview of the facility, a timeline of the overflow, potential environmental impacts, probable contributors to pipe failure, and the repair plan.

There was Commission discussion on the 48-hour reporting requirement, the specific place the pipe broke, the pump bypass, whether or not engineers reviewed the pump bypass, the plant's capacity, the increase in pump pressure, the system's age and lifespan. Some Commission members recommended a plan in the high risk areas to consider the age of the pipes and evaluate the conditions of the pipe. Mr. Layne stated that the City of Burlington is currently relining a sewer main and does look at the integrity of the pipe before deciding to reline or replace.

Ms. Elaine Chiosso, Haw Riverkeeper, discussed water quality conditions in the Haw River. Ms. Chiosso said that 3.5 million gallons of raw sewage spilled from the Wastewater Treatment Burlington Plant into the Haw River from January 27, 2014 to January 29, 2014. This was the largest spill in recent history in North Carolina. Ms. Chiosso said that had the spill occurred during a warmer time of year, it could have been a major public health disaster. There was Commission discussion on whether or not this spill would make its way to Jordan Lake.

Mr. Rick Gaskins, Executive Director of the Catawba Riverkeeper Foundation, gave a summary and background on the recent coal ash spill into the Dan River. Mr. Gaskins discussed water quality issues, risk of catastrophic failures, legislative issues, existing law, and potential major health and economic impacts.

Mr. George Everett, Director of Environmental and Legislative Affairs, Duke Energy, discussed the coal ash spill into the Dan River and Duke Energy's response. Mr. Everett gave a timeline and background of coal ash ponds in north Carolina. Mr. Everett said that pipes are regularly inspected and that Duke Energy will address any impacts to the community and their customers.

Mr. Tom Reeder, Director of DWR, DENR, gave a presentation on the Dan River coal ash release and water quality conditions. Mr. Reeder discussed water quality sampling results, field parameters, heavy metals, sedimentation impacts, and long-term monitoring and assessment.

The Commission discussed water quality sampling, potential cleanup costs, the reason coal ash ponds were unlined, the lack of cameras in the pipes, plans for closure of coal ash ponds, whether or not the cleanup costs will be borne by the ratepayers or the shareholders, potential fish contamination, potential impacts on well users, current status of fishing and recreation in the Dan River, how many ponds are covered under National Pollutant Discharge Elimination System (NPDES) permits, what steps are being taken to prevent future coal ash releases, and potential deadlines to remove all coal ash ponds.

The Commission received public comments.

There was Commission discussion on what other states are doing to decommission their coal ash ponds. Secretary Skvarla stated South Carolina has a decommissioning plan. DENR has assembled a taskforce to review coal ash ponds.



**March 12, 2014**

**AGENDA**

**1:30 p.m. Wednesday**

Room 544 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Representative Mike Hager
2. Introductory remarks by Cochairs  
Senator Brent Jackson  
Representative Mike Hager  
Representative Ruth Samuelson
3. Report from the Stormwater Working Group on the study of State stormwater programs, including how partially impervious surfaces are treated in the calculation of built-upon area (Sec. 51(e), S.L. 2013-413)
  - Legislative Proposal: Clarify Gravel under Stormwater Laws
  - Legislative Proposal: Amend Isolated Wetlands Regulation  
Senator Brent Jackson  
Representative Ruth Samuelson
4. Report from the Water and Sewer Working Group on the study of statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State (Sec. 24, S.L. 2013-413)
  - Legislative Proposal: DENR Study IBT Laws
  - Legislative Proposal: PED Study of Water and Sewer Systems  
Senator Fletcher Hartsell  
Representative Mike Hager
5. Report from the Review of Engineering Work Working Group (Sec. 58, S.L. 2013-413)
  - Legislative Proposal: Reform Agency Review of Engineering Work  
Senator Stan Bingham  
Representative Chris Millis
6. Report from the Environmental Ordinance Working Group on the circumstances under which cities and counties should be authorized to enact certain environmental ordinances (Sec. 10.2(c), S.L. 2013-413)
  - Legislative Proposal: Authority to Adopt Certain Ordinances  
Senator Andrew Brock  
Representative Chuck McGrady
7. Report on additional legislative proposals

- Reporting and Notice of Wastewater Spills
  - Amend Hotel Carbon Monoxide Alarm Requirement
  - Legislative Oversight of Fish and Wildlife Management
  - Terminate Certain Executive Orders
8. Overview of the history of Yadkin Hydroelectric Project  
Jennifer McGinnis, Commission Counsel
  9. Commission discussion and announcements
  10. Adjourn

The fifth meeting of the Environmental Review Commission (ERC or Commission) was held on Wednesday, March 12, 2014 at 1:30 p.m. in Room 544 of the Legislative Office Building. Representative Mike Hager presided.

The following legislative proposals were distributed and briefly discussed:

- Legislative proposals from the Stormwater Working Group
  - Clarify Gravel under Stormwater Laws
  - Amend Isolated Wetlands Regulation
- Legislative proposals from the Water and Sewer Working Group
  - DENR Study IBT Laws
  - PED Study of Water and Sewer Systems
- Legislative proposal from the Review of Engineering Work Working Group
  - Reform Agency Review of Engineering Work
- Legislative proposal from the Environmental Ordinance Working Group
  - Authority to Adopt Certain Ordinances
- Report on additional legislative proposals
  - Reporting and Notice of Wastewater Spills
  - Amend Hotel Carbon Monoxide Alarm Requirement
  - Legislative Oversight of Fish and Wildlife Management
  - Terminate Certain Executive Orders

Ms. Jennifer McGinnis, Commission Counsel, gave a presentation on the overview of the history of Yadkin Hydroelectric Project. The full brief can be found [here](#).

## **April 9, 2014**

The sixth meeting of the Environmental Review Commission (ERC or Commission) was held on April 9, 2014 at 8:00 a.m. in Room 643 of the Legislative Office Building. Senator Brent Jackson presided. The Commission adopted this report.

## **April 22, 2014**

The seventh meeting of the Environmental Review Commission (ERC or Commission) was held on April 22, 2014 at 1:30 p.m. in Room 643 of the Legislative Office Building to discuss the Dan River coal ash release. Representative Ruth Samuelson presided.

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# WORKING GROUP PROCEEDINGS

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## **Stormwater Working Group**

*Submitted to the full Environmental Review Commission on March 12, 2014.*

### **Background:**

Section 51.(e) of Session Law 2013-413 directed the Environmental Review Commission (ERC) to study State stormwater programs, including how partially impervious surfaces are treated in the calculation of built-upon area under those programs. The ERC was further directed to report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

In response to the study directive, the ERC Co-Chairs established the Stormwater Working Group, led by Senator Jackson and Representative Samuelson. In addition to studying stormwater issues, the Stormwater Working Group also studied issues related to regulated streams and wetlands. The following is a summary of the activities and the recommendations of the Stormwater Working Group.

### **Stormwater Permeability of Different Surfaces and Materials; Gravel**

#### **November 13, 2013 Meeting of the ERC:**

The ERC heard a background presentation on the State stormwater programs, including the annual report on implementation of stormwater runoff rules and programs, from Tracy Davis, Director, Division of Energy, Minerals, and Land Resources, Department of Environment and Natural Resources (DENR). ([PowerPoint Presentation](#))

#### **December 10, 2013 Stormwater Working Group Meetings:**

On December 10, the Stormwater Working Group had the following meetings:

- 1:30 PM The Stormwater Working Group met with Dr. Bill Hunt, Associate Professor and Extension Specialist, Department of Biological and Agricultural Engineering, North Carolina State University, regarding the stormwater permeability of different surfaces and materials, especially gravel.
- 2:30 PM The Stormwater Working Group was briefed by staff from DENR and the Environmental Management Commission (EMC) on various issues related to stormwater management, including:
  - The stormwater permeability of different surfaces and materials.
  - Issues related to the exclusion of gravel from built-upon area as defined by Section 51.(a) of S.L. 2013-413.
  - The possibility of the EMC adopting a temporary rule to define gravel.

([DENR Document](#); [EMC Document](#))

December 11, 2013, Stormwater Working Group Meetings and Site Visits:

On December 11, the Stormwater Working Group had the following meetings and site visits:

- 9:00 AM The Stormwater Working Group held a public comment meeting on stormwater permeability of different surfaces and materials, especially gravel, where it heard from the following:
  - Dave Canaan, Director, Mecklenburg County Water and Land Resources
  - Erin Wynia, Legislative and Regulatory Issues Manager, NC League of Municipalities ([League Document](#))
  - Dave Mayes, Stormwater Services Manager, Wilmington
  - Rich Cappola, Town Engineer, Morrisville
  - Natalie Berry, NC Association of County Commissioners and Assistant County Engineer, Henderson County ([County Document](#))
  - Connie Wilson and Bill Arndt, The Carolinas Ready Mixed Concrete Association
  - Grady McCallie, NC Conservation Network
  - Rick Gaskins, Catawba Riverkeeper Foundation
  - John Cox, Water Quality Manager, Durham
  - Don O'Toole, Senior Assistant City Attorney, Durham
  - Jennifer Buzun, Engineer, City of Durham ([City of Durham Document](#))
  - Chris Estes, President, Estes Design (landscape architect from Charlotte)
- 12:30 PM The Stormwater Working Group heard a presentation on the water quality assistance programs of the Department of Agriculture and Consumer Services (DACS) ([DACS Soil and Water Conservation Districts Document](#); [DACS Voluntary Approaches to Stormwater Document](#))
  - Pat Harris, Director, Division of Soil and Water Conservation
  - David Williams, Deputy Director, Division of Soil and Water Conservation
  - Julie Henshaw, Section Chief, Non-point Source Section, Division of Soil and Water Conservation
- 1:30 PM The Stormwater Working Group went on several site visits with DENR and NC State staff at the following:
  - American Institute of Architects North Carolina Center for Architecture and Design where the Stormwater Working Group observed stormwater management structures and practices, such as the facility's rain garden and parking lot surfaced with pervious pavers.
  - Carter-Finley Stadium where the Stormwater Working Group observed various road and parking surfaces, including asphalt, gravel, and grass.

- Wake Stone Corporation quarry where the Stormwater Working Group was introduced to various types of gravel/aggregate. ([Aggregate Gradation Table Document](#))

The Stormwater Working Group also received a proposed study regarding stormwater permeability of gravel from NC State staff. ([NC State Study Proposal Document](#))

Based on the meetings, site visits, and public comment, the Stormwater Working Group, submits the attached legislative proposal: Clarify Gravel under Stormwater Laws

### **Regulated Streams and Wetlands**

#### **January 13, 2014 Stormwater Working Group Site Visits:**

On January 13, the Stormwater Working Group had the following site visits:

- 12:30 PM The Stormwater Working Group and DENR staff met Art Alexander at his Highway 70/Yeargan Road property to view and discuss the different types of streams (ephemeral and/or intermittent) found on the property.
- 1:15 PM The Stormwater Working Group and DENR staff visited the Walnut Creek Wetland Center in Raleigh to view and discuss urban wetlands.
- 3:00 PM The Stormwater Working Group and DACS staff met John Langdon at his Johnson County farm to discuss water quality issues and best management practices.

#### **January 14, 2014 Stormwater Working Group Meetings and Site Visits:**

On January 14, the Stormwater Working Group had the following meetings and site visits:

- 9:00 AM The Stormwater Working Group heard a presentation from DACS staff on various DACS programs to assist farmers with water supply and water quality issues. ([DACS Ag Cost Share Program Brochure](#), [DACS AgWRAP Implementation Plan](#), and [Soil and Water Conservation Cost Share Programs](#))
- 9:30 AM The Stormwater Working Group heard a presentation from DENR staff on regulated streams and wetlands. ([DENR Document](#))
- 11:00 AM The Stormwater Working Group and DENR staff visited the Brookhaven Nature Park in Raleigh to view and discuss different types of streams (ephemeral, intermittent, and perennial).
- 2:00 PM The Stormwater Working Group held a public comment meeting on regulated streams and wetlands where it heard from the following:
  - Peter Raabe, North Carolina Conservation Director, American Rivers
  - Art Alexander, property owner ([Document Linked](#))
  - Jim Spangler, President, Spangler Environmental Consultants
  - Tom Bean, Director of Government Affairs, NC Wildlife Federation
  - Jennifer Buzun, Engineer, City of Durham

Based on the meetings, site visits, and public comment, the Stormwater Working Group, submits the attached legislative proposal: Amend Isolated Wetland Regulation.

### **Water and Sewer Working Group**

*Submitted to the full Environmental Review Commission on March 12, 2014.*

#### **Background:**

Section 24 of Session Law 2013-413 directed the Environmental Review Commission (ERC) to study the statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State. These organizations include sanitary districts, water and sewer authorities, metropolitan water districts, metropolitan sewerage districts, and county water and sewer districts, as well as any similar organizations. The ERC was directed to determine whether, how, and to what extent the number of statutory models should be reduced and consolidated, considering and addressing any impacts that changes would have on the ongoing operations and financing of existing organizations. The ERC was further directed to report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

In response to the study directive, the ERC Co-Chairs established the Water and Sewer Working Group, led by Senator Hartsell and Representative Hager. The following is a summary of the activities and the recommendations of the Water and Sewer Working Group.

#### **November 13, 2013 Meeting of the ERC:**

The ERC heard a [background presentation](#) on the different statutory models specified in S.L. 2013-413 from Richard Whisnant from the University of North Carolina at Chapel Hill (UNC) School of Government and Shadi Eskaf from the UNC School of Government Environmental Finance Center.

#### **December 10, 2013 Water and Sewer Group Meeting:**

On December 10, the Water and Sewer Working Group met at 1:00 P.M. in Room 421 of the Legislative Office Building regarding the statutory models specified in S.L. 2013-413, financing for organizations operating under those statutory models, and future water supply planning assistance, where it heard from the following:

- [Richard Whisnant](#), Professor, UNC School of Government
- [Jeff Hughes](#), Director, UNC School of Government Environmental Finance Center
- [Tom Reeder](#), Director, Department of Environment and Natural Resources (DENR) Division of Water Resources

#### **January 14, 2014, Water and Sewer Working Group Meeting:**

On January 14, the Water and Sewer Working Group met at 1:00 P.M. in Room 421 of the Legislative Office Building regarding the goals of various interested parties, methods available to improve water service and quality, and the DENR's Division of Water Infrastructure, where it heard from the following:



- Erin Wynia, Legislative and Regulatory Issues Manager, North Carolina League of Municipalities
- Daniel Wilson, Executive Director, North Carolina Rural Water Association
  - [Document 1](#)
  - [Document 2](#)
- [Dr. Gregory Characklis](#), Professor, Department of Environmental Sciences and Engineering, UNC
- [Neal Robbins](#), Legislative Liaison, DENR

February 6, 2014, Water and Sewer Working Group Meeting:

On February 6, the Water and Sewer Working Group met at 9:00 A.M. in Room 421 of the Legislative Office Building to discuss the Working Group's recommendations for draft legislation. The Working Group considered recommendations for various studies to be conducted by the General Assembly Program Evaluation Division and DENR.

Recommendations of the Water and Sewer Working Group:

Based on its work, the Water and Sewer Working Group, submits the following legislative proposals on water and sewer services in the State.

**Engineering Review Working Group**

*Submitted to the full Environmental Review Commission on March 12, 2014.*

Background:

Sections 58.(a) and (b) of Session Law 2013-413 directed the Departments of Environment and Natural Resources, Health and Human Services, and Transportation, along with local governments that operate delegated permitting programs to study their internal processes for review of applications and plans submitted for approval and to report their findings and recommendations to the Environmental Review Commission (ERC) by January 1, 2014.

Section 58.(c) of Session Law 2013-413 further directed the ERC to study the matter with the assistance of the departments, the local governments, the North Carolina State Board of Examiners for Engineers and Surveyors (NCBELS), and the Professional Engineers of North Carolina (PENC) and to report its findings and recommendations to the 2014 General Assembly upon its convening. In response to the study directive, the ERC Co-Chairs established the Engineering Review Working Group, led by Senator Bingham and Representative Millis. The following is a summary of the activities and the recommendations of the Engineering Review Working Group.

**Monday December 9, 2013**

On December 9, the Engineering Review Working Group Co-chairs met with staff and Ms. Betsy Bailey (President, PENC), Mr. Andrew Ritter (Executive Director of the NCBELS), and Mr. Gus Simmons, PE for information gathering and informal discussion.

**Wednesday January 15, 2014**

The Environmental Review Commission received reports from DENR and PENC pursuant to Section 58.(b) of S.L. 2013-413.

**Monday February 3, 2014**

On February 3, staff to the Engineering Review Working Group met with Andrew Ritter and David Tuttle, Counsel to NCBELS, for information gathering.

**Thursday February 6, 2014 1:00pm – 3:00pm**

On February 6, the Engineering Review Work Group Cochairs convened stakeholders to provide an informal, open forum for discussion and to specifically address the recommendations that the Environmental Review Commission received from DENR and PENC at its January 15, 2014 meeting. Stakeholders invited to participate included staff from DENR in the Ecosystem Enhancement Program; and the Divisions of Water Resources; Waste Management; Energy, Mining and Land Resources; Coastal Management; and Air Quality, staff from DHHS in the Division of Public Health, staff from DOT, representatives from the League of Municipalities and the Association of County Commissioners, and representatives from NCBELS and PENC.

Based on the meetings with stakeholders, the Engineering Review Working Group submits the attached legislative proposal: Reform Agency Review of Engineering Work.

Many positive recommendations were proposed by the regulatory agencies, PENC, and NCBELS in the conduct of this Working Group that may be accomplished without legislation. To that end, the Working Group Co-Chairs recommend that the stakeholders continue to work together to develop and implement their suggested recommendations to the fullest extent practicable.

**Environmental Local Ordinances Working Group**

*Submitted to the full Environmental Review Commission on March 12, 2014.*

**Background:**

Section 10.2(c) of Session Law 2013-413 directed the Environmental Review Commission (ERC) to study the circumstances under which cities and counties should be authorized to enact ordinances (i) that regulate a field that is also regulated by a State or federal statute enforced by an environmental agency or that regulate a field that is also regulated by a rule adopted by an environmental agency, and (ii) that are more stringent than the State or federal statute or State rule. Sections 10.2(a) and 10.2(b) imposed a temporary limitation on the enactment of ordinances in fields regulated by environmental agencies within the State, except when the ordinance is approved by a unanimous vote of the members present and voting. The ERC was further directed to report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

In response to the study directive, the ERC Co-Chairs established the Environmental Local Ordinances Working Group, led by Senator Brock and Representative McGrady.

The following is a summary of the activities and the recommendations of the Environmental Local Ordinances Working Group.

February 4, 2014, Environmental Local Ordinances Working Group Meeting:

On February 4, the Environmental Local Ordinances Working Group met at 4:30 P.M. in Room 512 of the Legislative Office Building to hear input from the North Carolina Department of Agriculture (NCDA) regarding local ordinances that have conflicted with agency regulations. The Working Group heard from the following:

- Keith Larick, Manager, Environmental Programs, NCDA
- Vernon Cox, Director, Plant Industry Division, NCDA
- Joy Hicks, Legislative Liaison, NCDA
- Jim Burnette, Director, Structural Pest Control and Pesticides Division, NCDA

February 4, 2014, Environmental Local Ordinances Working Group Meeting:

On February 4, the Environmental Local Ordinances Working Group met at 5:00 P.M. in Room 512 of the Legislative Office Building to hear input from the North Carolina Department of Environment and Natural Resources (DENR) regarding local ordinances that have conflicted with agency regulations. The Working Group heard from the following:

- Dexter Matthews, Director, Division of Waste Management, DENR
- Tom Reeder, Director, Division of Water Resources, DENR
- Carr McLamb, Legislative Liaison, DENR
- Tracy Davis, Director, Division of Energy, Mineral, and Land Resources, DENR ([Document](#))

February 17, 2014, Environmental Local Ordinances Working Group Stakeholders Meeting:

On February 17, the Environmental Local Ordinances Working Group met at 2:30 P.M. in Room 512 of the Legislative Office Building to hear input from various stakeholders. The Working Group heard from the following:

- Jay Stem, NC Aggregates Association
- Cassandra Skinner, NC Association of County Commissioners
- Lisa Martin, NC Home Builders ([Document](#))
- Steven Webb, NC Home Builders
- Elizabeth Robinson, NC Retail Merchants
- Andy Ellen, NC Retail Merchants
- Erin Wynia, League of Municipalities
- Cady Thomas, NC Association of Realtors
- Christie Barbee, Carolina Asphalt and Pavement Association

February 17, 2014, Environmental Local Ordinances Working Group Public Comments Hearing:

On February 17, the Environmental Local Ordinances Working Group met at 3:30 P.M. in Room 414 of the Legislative Office Building to receive comments from members of the public. The Working Group heard from the following:

- Jon Carr, NC Rural Water Association ([Document](#))
- Mary Maclean Asbill, Southern Environmental Law Center
- John H. Cox, Water Quality Manager, City of Durham Department of Public Works
- Dan McLawhorn, Office of the City Attorney, City of Raleigh ([Document](#))
- Berry Williams, CFM, NC Association of Floodplain Managers ([Document](#))
- Don O'Toole, City of Durham
- Bill Terry, Mayor, Town of Pittsboro ([Document](#))
- Darryl Norris, Stormwater Specialist, City of Wilson
- Michael Fiocco, Commissioner, Town of Pittsboro
- Jim Ionucci, Chief Engineer, New Hanover County
- Chris O'Keefe, Planning Director, New Hanover County

The Working Group also received written comments from:

- Brian Bock, Chatham County Board of Commissioners ([Document](#))
- W. Lane Bailey, City Manager, City of Lenoir ([Document](#))
- Chris Thomas, President, NAIOP Charlotte ([Document](#))
- Robin Smith, Chair, NC Sedimentation Control Commission ([Document](#))
- David Holec, City Attorney, City of Greenville ([Document](#))

#### Recommendations of the Water and Sewer Working Group:

Based on its work, the Environmental Local Ordinances Working Group submits the following legislative proposal: Authority to Adopt Certain Ordinances.

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## LEGISLATIVE PROPOSALS

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