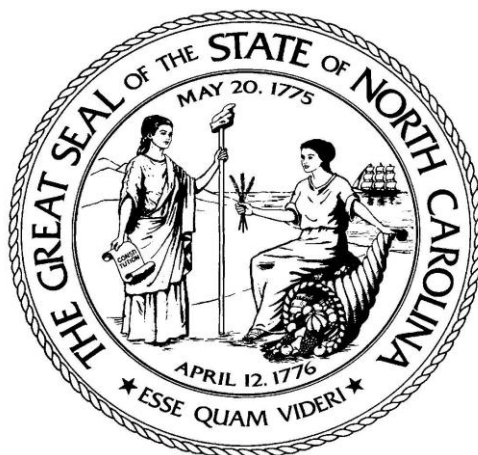


# NORTH CAROLINA GENERAL ASSEMBLY



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## ENVIRONMENTAL REVIEW COMMISSION

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REPORT TO THE  
2012 SESSION  
of the  
2011 GENERAL ASSEMBLY

APRIL 26, 2012

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## TRANSMITTAL LETTER

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April 26, 2012

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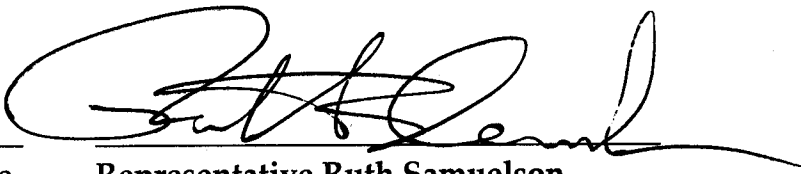
TO THE MEMBERS OF THE 2012 REGULAR SESSION  
OF THE 2011 GENERAL ASSEMBLY

Pursuant to Article 12D of Chapter 120 of the General Statutes, the Environmental Review Commission submits its report and recommendations to the 2012 Regular Session of the 2011 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.

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# COMMISSION MEMBERSHIP

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## ENVIRONMENTAL REVIEW COMMISSION

### 2011-2012 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**

**Appointments:** (expiring on January 30, 2013)

##### **Senator David Rouzer, Co-Chair**

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**Appointments:** (expiring on January 15, 2013)

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# COMMISSION PROCEEDINGS

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The Environmental Review Commission met eight times during the interim between the 2011 and the 2012 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](#).

**September 28, 2011**

**AGENDA**

**9:30 a.m. Wednesday**

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. Introduction of Members and Staff (*10 minutes*)
4. Report from the Commission Counsel (*5 minutes*)  
Jeff Hudson, Commission Counsel
5. Report on the State Air Toxics Program (*45 minutes*)  
Sheila C. Holman, Director  
Division of Air Quality, Department of Environment and Natural Resources (DENR)
6. Report on the State Water Supply Plan (G.S. 143-355(n)) (*30 minutes*)  
Thomas A. Reeder, Director  
Division of Water Resources, DENR
7. Commission discussion and announcements
8. Adjourn

The first meeting of the Environmental Review Commission (ERC or Commission) was held on Wednesday September 28, 2011 at 9:30 a.m. in Room 544 of the Legislative Office Building. Representative Gillespie presided.

Mr. Jeff Hudson, Commission Counsel, gave an overview of the meeting agenda, the Summaries of Substantive Environmental and Natural Resources Ratified Legislation, and the reports received by the Commission.

Representative Gillespie directed the members' attention to a handout, which contained language from House Bill 773, The Studies Act of 2011 (not enacted). Section 20 of House Bill 773 would have directed the Department of Environment and Natural Resources (DENR) to study the implementation of the State and federal rules related to emissions of toxic air pollutants.

Ms. Sheila C. Holman, Director, Division of Air Quality (DAQ), DENR, provided the Commission with a report on the State Air Toxics Program. Ms. Holman discussed the history of the State Air Toxics Program, including the annual amount of toxic air pollutants emitted by sources in North Carolina; the differences between the State and federal programs; examples of how sources of toxic air pollutants have complied with State regulations; and a comparison of the North Carolina Air Toxics Program with South Carolina's and Virginia's air toxic programs.

The Commission discussed various issues in relation to the State and federal air toxic programs, including the list of regulated toxins and the quantities, types, and measurements of toxins emitted. Several Commission members asked about the locations from which the toxins were emitted and the approximate worldwide tonnage of toxic emissions.

There was additional discussion on the effectiveness of the State program, with regard to the expense and frequency of modeling. The Commission also discussed public health statistics in comparison with other states; applicable federal and State rules; and maximum achievable control technology (MACT). Ms. Holman and Ms. Robin Smith, Assistant Secretary of Environment and Natural Resources, said they would provide the Commission with a follow-up presentation on the subject at the Commission's October meeting. Ms. Holman presented a follow-up presentation on [October 12, 2011](#).

Mr. Thomas A. Reeder, Director, Division of Water Resources (DWR), DENR, provided an annual report on the State Water Supply Plan and other information related to water resources in the State, including the status of hydrologic modeling in the State, the development of water supplies in the State, efforts to improve water use efficiency, interbasin transfers (IBTs), the Central Coastal Plain Capacity Use Area (CCPCUA), and drought conditions.

The Commission discussed State liability if the State serves as a co-applicant on a water resource project, as authorized by legislation enacted earlier this year. Lastly, the members requested information on the Randleman Dam litigation and water rights.



**October 12, 2011**

**AGENDA**

**9:00 a.m. Wednesday**

Room 544 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Senator 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. Follow-up and discussion of the State Air Toxics Program (*1 hour, 30 minutes*)  
  
Response to requests for additional information on the State Air Toxics Program  
Robin Smith, Assistant Secretary for Environment  
Department of Environment and Natural Resources (DENR)  
  
Sheila C. Holman, Director  
Division of Air Quality, DENR  
  
Information on the science behind and health benefits of the State Air Toxics Program  
Dr. George Lucier, Past Chair  
Scientific Advisory Board, State Air Toxics Program and  
Former Associate Director of the National Toxicology Program  
  
Comments from the regulated community on the State Air Toxics Program  
Preston Howard, President  
Manufacturers and Chemical Industry Council of North Carolina  
  
Lew Ebert  
President and CEO  
North Carolina Chamber
5. Update on DENR's study of the use of directional and horizontal drilling and hydraulic fracturing or "fracking" for the purpose of oil and gas exploration in the State (*10 minutes*)  
Robin Smith, Assistant Secretary for Environment  
DENR

6. Quarterly reports by the Environmental Management Commission (EMC) as to its operations, activities, programs, and progress for the period from October 2010 through September 2011 (G.S. 143B-282(b)) (*30 minutes*)  
Stephen T. Smith, Chairman  
Environmental Management Commission
7. Commission discussion and announcements
8. Adjourn

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

Mr. Jeff Hudson, Commission Counsel, provided an overview of the meeting agenda, which consisted of:

- i. A continuation of the discussion of the State Air Toxics Program from the September 28, 2011 meeting, including follow-up information from the Department of Environment and Natural Resources (DENR);
- ii. At Representative Gillespie's request, comments from the regulated community regarding the impacts of the State Air Toxics Program;
- iii. An update from DENR on the use of hydraulic fracturing or "fracking"; and
- iv. A report from the Chair of the Environmental Management Commission (EMC) on the EMC's activities for the last year.

Ms. Sheila C. Holman, Director, Division of Air Quality (DAQ), DENR, and Ms. Robin Smith, Assistant Secretary for Environment, DENR, provided a follow-up report on the State Air Toxics Program.

Ms. Smith provided a basic overview of the State Air Toxics Program and explained the differences between the State and federal programs. Ms. Smith also explained how North Carolina's Air Toxic Program and pollution compares to other states.

Ms. Holman explained which toxic air pollutants are emitted in North Carolina, where the toxins were emitted, in what amounts, and how those numbers were calculated. She then explained both the federal and State approach when regulating toxic air pollutants.

According to Ms. Holman, the federal approach is to identify known emitting sources, for which technology standards could be developed. The facilities are then required to comply with the technology-based standards, which are revised as necessary.

Ms. Holman explained that the State approach is to identify toxic air pollutants of concern in North Carolina. The Secretary's Science Advisory Board on Toxic Air Pollutants studies exposure data and makes recommendations on a health-based standard. The Environmental Management Commission then adopts the health-based standard by rulemaking. Then they evaluate whether the health based standard is being met at the property boundary.

The Commission discussed the emissions covered by the State and federal programs and why the State program included 21 air toxics that are not included in the federal program. There was additional discussion on agricultural emissions, air monitoring stations, pollution generated by neighboring states, the cost of the State Air Toxics Program, and the cost of permitting.

Dr. George Lucier, Past Chair of the Science Advisory Board on Toxic Air Pollutants and Former Associate Director of the National Toxicology Program, spoke on the science behind and health benefits of the State Air Toxics Program. Dr. Lucier noted that North Carolina has the 10<sup>th</sup> highest level of toxic air emissions in the country. Dr. Lucier said that the health-based standard used by DENR was standard practice. Dr. Lucier also explained how air toxics settle in bodies of water through tributaries, stormwater runoff, streams, etc. Certain toxins are particularly harmful to public health, such as polychlorinated biphenyls (PCBs), mercury, arsenic, fluoride, and cyanide.

There was Commission discussion on reasonable and acceptable levels of risk; health-based standards in other states; economic impacts of compliance; and levels of differing air toxics in biology and ecology.

Mr. Preston Howard, President of the Manufacturers and Chemical Industry Council of North Carolina, spoke on how the State Air Toxics Program impacts his members. Mr. Howard noted that in addition to the 38 million pounds of air toxics emitted from stationary sources (power plants and factories), 61 million pounds of air toxics are emitted from mobile sources, such as vehicles. Mr. Howard advocated for the State Air Toxics Program to be reformed, especially with regard to modeling.

The Commission discussed the regulatory environment when deciding where to locate a facility and the impact of the State Air Toxics Program on North Carolina businesses.

Mr. Lew Ebert, President and Chief Executive Officer of the North Carolina Chamber, explained the importance of regulatory efficiency, consistency, and predictability to the business community in North Carolina.

Mr. Stephen Smith, Chair of the Environmental Management Commission (EMC) gave a brief overview of the EMC's quarterly reports from October 2010 through September 2011.

There was additional Commission discussion on the repeal of the combustion source exemption under the State Air Toxics Program; the “Director’s Call” provision in the case of combustion sources; and the ‘denial petition for rulemaking to amend the Underground Storage Tanks Secondary Containment Rules.’

Ms. Robin Smith, provided an update on DENR’s study of the use of hydraulic fracturing or “fracking” for the purpose of oil and gas exploration in the State.

Senator Hartsell informed the Commission that he had submitted a letter to Attorney General Roy Cooper concerning the ownership of the submerged bed of the Yadkin River at the site of the Yadkin Hydroelectric Project [during the last meeting].

## **November 9, 2011**

### **AGENDA**

**9:00 a.m. Wednesday**

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. Approval of the minutes for the September 28, 2011 meeting of the Commission
5. Presentation on State water resources and water law (*1 hour*)  
Richard B. Whisnant, Associate Professor of Public Law and Government  
School of Government, University of North Carolina at Chapel Hill  
  
William E. Holman, Director of State Policy  
Nicholas Institute for Environmental Policy Solutions, Duke University
6. Presentation on the permitting of drinking water reservoirs in North Carolina (*20 minutes*)  
Thomas A. Reeder, Director  
Division of Water Resources, Department of Environment and Natural  
Resources (DENR)
7. Report on the 2011 Agriculture Water Use Survey (G.S. 106-24(b)) (*30 minutes*)

Herb Vanderberry, Director  
United States Department of Agriculture, National Agricultural Statistics  
Service North Carolina Field Office

8. Report on the transfer of the Division of Soil and Water Conservation, the Division of Forestry, the Sleep Products Program, and the Grade A Milk Inspection Program to the Department of Agriculture and Consumer Services (20 minutes)  
David Smith, Chief Deputy Commissioner  
Department of Agriculture and Consumer Services
9. Annual report on the status of leaking petroleum underground storage tanks and the State cleanup fund (G.S. 143-215.94M) (30 minutes)  
Dexter Matthews, Director  
Division of Waste Management, DENR
10. Commission discussion and announcements
11. Adjourn

The third meeting of the Environmental Review Commission (ERC or Commission) was held on Wednesday November 9, 2011 at 9:00 a.m. in Room 544 of the Legislative Office Building. Representative Gillespie presided.

Mr. Richard Whisnant, Associate Professor of Public Law and Government School of Government, University of North Carolina at Chapel Hill and Mr. William Holman, Director of State Policy, Nicholas Institute of Environmental Policy Solutions, Duke University, gave an overview of State water resources and water law.

According to Mr. Whisnant, water use in North Carolina is rising faster than population growth, while water supply is finite and possibly shrinking. Mr. Whisnant said that water conflicts will continue to rise in the State. Currently the courts are the only recourse to settle conflicts over water. Mr. Whisnant and Mr. Holman believe that a change in North Carolina law is necessary to avoid the potential for future drought conditions. Mr. Whisnant and Mr. Holman made the following recommendations:

1. Continue to develop and update hydrologic models of each river basin (per S.L. 2010-143).
2. Request reports on the Upper Neuse and Catawba-Wateree River Basins regarding future water shortages.
3. Integrate water quality and water quantity planning starting with Neuse River Plan in 2012 and Cape Fear River in 2013.
4. Not favoring one set of users over another until a better understanding of the “water budget” picture is clarified.
5. Work on design for multi-stakeholder process.
6. Preserve and increase water storage.

7. Support increased financial sustainability of public and private water utilities.
8. Increase water efficiency.

The Commission discussed acquiring water from Kerr Lake, water desalination, and existing surveys of abandoned quarries.

Mr. Tom Reeder, Director, Division of Water Resources, Department of Environment and Natural Resources (DENR), gave a presentation on the permitting of drinking water reservoirs in North Carolina. Mr. Reeder described the permitting process in detail, including permitting timelines, modeling, studies, and potential issues that would significantly extend the permit review process.

Ms. Robin Smith, Assistant Secretary for Environment, DENR, provided a historical account of the permitting process for Randleman Reservoir, from the original proposal made in 1937 through the beginning of the dam's construction in 2001.

There was Commission discussion on the Lancaster/Union project; efficiency standards vis-a-vis building code requirements; lands taken by eminent domain in 1991 for Randleman Dam; the lag time between the "taking" and when construction began in 2001; and DENR's liability when providing assistance and cooperation to local governments as required by [House Bill 609 \(Promote Water Supply Development/Efficiency\)](#).

Mr. Herb Vanderberry, Director, United States Department of Agriculture, National Agricultural Statistics Service North Carolina Field Office, gave a presentation on the 2011 Agricultural Water Survey. The Department of Agriculture annually collects water use data from operations using 10,000 gallons of water or more per day. The reporting is voluntary and confidential, with a 92% response rate.

Mr. David Smith, Chief Deputy Commissioner, Department of Agriculture and Consumer Services (DACS) reported on the transfer of several divisions and programs into DACS, including the Division of Soil and Water Conservation; the Division of Forestry; the Sleep Products Program; and the Grade A Milk Inspection Program. Mr. Smith reported that the transfers were the largest transfer of assets and employees in the history of the State. Mr. Smith noted that the Office of State Budget and Management is working on guidelines for future transfers.

Mr. Dexter Matthews, Director, Division of Waste Management, DENR, gave a presentation on the annual report on the status of leaking petroleum underground storage tanks and the State cleanup program. Mr. Matthews discussed the status of funds available to businesses and homeowners; third party claims; funding for the program; and recommendations for the future.

**December 14, 2011**

**AGENDA**

**8:30 a.m. Wednesday**

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 12, 2011 meeting of the Commission
5. Adoption of the Commission budget
6. Parks and Conservation Matters (*1 hour 30 minutes*)
  - a. Annual report on the Parks and Recreation Trust Fund, Fiscal Year 2010-2011 (G.S. 113-44.15(c)) (*30 minutes*)  
Lewis R. Ledford, Director  
Division of Parks and Recreation  
Department of Environment and Natural Resources (DENR)
  - b. Annual report on awards from the North Carolina Natural Heritage Trust Fund, Fiscal Year 2010-2011 (G.S. 113-77.9(e)) (*15 minutes*)  
Lisa D. Riegel, Executive Director  
North Carolina Natural Heritage Trust Fund, DENR
  - c. Annual report on the implementation of the Clean Water Management Trust Fund (G.S. 113A-257) (*20 minutes*)  
Richard E. Rogers, Jr., Executive Director  
Clean Water Management Trust Fund
  - d. Annual report on the activities of the North Carolina Development and Farmland Preservation Trust Fund Committee (G.S. 106-744(i)) (*15 minutes*)  
D. Dewitt Hardee, Environmental Program Manager  
Department of Agriculture and Consumer Services

- e. Update on Land for Tomorrow (*10 minutes*)  
Tom Cors, Director of Government Relations  
The Nature Conservancy, North Carolina Chapter
- 7. Presentation on the use of vegetative buffers for the protection of water quality (*30 minutes*)  
Coleen H. Sullins, Director  
Division of Water Quality, DENR
- 8. Presentation on the use of ecological flow in hydrologic modeling (*15 minutes*)  
Thomas A. Reeder, Director  
Division of Water Resources, DENR
- 9. Commission discussion and announcements
- 10. Adjourn

The fourth meeting of the Environmental Review Commission (ERC or Commission) was held on Wednesday December 14, 2011 at 9:00 a.m. in Room 544 of the Legislative Office Building. Senator Rouzer presided.

Mr. Jeff Hudson, Commission Counsel provided an overview of the meeting agenda and the Commission's budget.

Mr. Lewis Leford, Director, Division of Parks and Recreation, Department of Environment and Natural Resources (DENR), gave a presentation on the 2010-2011 Parks and Recreation Trust Fund Annual Report. Mr. Leford discussed how and why the trust fund was established; operation funding and funding rankings; grant opportunities and geographic distribution; certificates of participation (COPS) repayment; park maintenance; extension of water and sewer service through Pilot Mountain State Park; and private and public fees.

Ms. Lisa D. Riegel, Executive Director, North Carolina Natural Heritage Trust Fund, DENR, gave a presentation on the awards from the 2010-2011 North Carolina Natural Heritage Trust Fund. Ms. Riegel explained the Natural Heritage Trust Fund's mission, which is to protect natural and cultural heritage lands. Ms. Riegel also discussed protective easements; funding for the trust fund; projects through COPS; land acquisition costs; wastewater matching funds; and the diversity of applicants.

Mr. Richard E. Rogers, Jr., Executive Director, Clean Water Management Trust Fund, gave a presentation on the Clean Water Management Trust Fund Annual Report. Mr. Rogers discussed how and why the trust fund was established and the purpose of the trust fund. According to Mr. Rogers, the trust fund has allocated \$970 million for wastewater infrastructure; restoration/stormwater; land acquisition/conservation easements; riparian buffers; and greenways. Mr. Rogers also discussed changes made to the trust fund by [House Bill 609 \(Promote Water Supply Development/Efficiency\)](#).



Mr. D. Dewitt Hardee, Environmental Program Manager, Department of Agriculture and Consumer Services (DACS), gave a presentation on the North Carolina Development and Farmland Preservation Trust Fund Committee Annual Report. Mr. Hardee discussed the grant's priorities, including conservation easements (permanent easements), agricultural agreements (term easements), and sustainable and viable agriculture programs. Mr. Hardee also explained the definition of a voluntary agricultural district.

Mr. Tom Cors, Director of Government Relations, The Nature Conservancy, North Carolina Chapter, gave a presentation on the Land for Tomorrow. Mr. Cors discussed how the various trust funds complement one another.

Ms. Coleen H. Sullins, Director, Division of Water Quality, DENR, gave a presentation on the use of vegetative buffers for the protection of water quality. Ms. Sullins explained the effects of certain nutrients and other effects on water quality, including phosphorus, pesticides, heavy metals, soil types, plant and tree types, erosion, boat ramps and variance, and wet weather impacts. Ms. Sullins explained the benefits of vegetative buffers on water quality, such as removal of pathogens. Ms. Sullins also discussed other possible studies of areas of the State outside of the Neuse River Basin and in other areas of the country.

Mr. Thomas A. Reeder, Director, Division of Water Resources, DENR, gave a presentation on the use of ecological flows in hydrologic modeling. Mr. Reeder explained that ecological flows are needed to maintain in-stream uses, such as habitats (wetlands), recreation, aquatic life, wastewater assimilation, and drainage. Ecological flows are also needed for out-stream uses such as agriculture, thermoelectric energy, water supply, and hydropower. Mr. Reeder described the needs for ecological flows and how North Carolina and other states handle ecological flows.

There was Commission discussion on how many years it takes to make a recommendation on ecological flow; how to protect the flow that is in place today; invasive species and plants; the definition of 7Q10 (seven-day, consecutive low-flow with a ten year return frequency); coastal interbasin transfer (IBT) problems; and Alcoa diverting water from North Carolina for use in Tennessee.

## **January 26, 2012**

### **AGENDA**

**9:00 a.m. Thursday**

Room 643 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. Approval of the minutes for the November 9, 2011 meeting of the Commission
5. Solid Waste Management (*50 minutes*)  
  
Overview of the Division of Waste Management (DWM) of the  
Department of Environment and Natural Resources (DENR) (*20 minutes*)  
Dexter Matthews, Director  
DWM, DENR  
  
Presentation of the findings of the annual solid waste management report  
(G.S. 130A-309.12(c), G.S. 130A-309.14, G.S. 130A-309.06(c)(6), G.S. 130A-  
309.06(c)(8), G.S. 130A-309.06(c)(9), G.S. 130A-309.06(c)(10), G.S. 130A-  
309.06(c)(11), G.S. 130A-309.06(c)(12), G.S. 130A-309.06(c)(14), G.S. 130A-  
309.63(e), G.S. 130A-309.85, G.S. 130A-309.140, G.S. 136-28.8(g)). (*15  
minutes*)  
Michael Scott, Chief  
Solid Waste Section, DWM, DENR  
  
Presentation on the status of recycling and recycling markets in North  
Carolina (*15 minutes*)  
Scott B. Mouw, Chief  
Community and Business Assistance Section  
Division of Environmental Assistance and Outreach, DENR
6. Annual report on the Inactive Hazardous Sites Program (G.S. 130A-310.10) (*15  
minutes*)  
Charlotte Jesneck, Head  
Inactive Hazardous Sites Branch, Superfund Section  
DWM, DENR
7. Annual report on the effectiveness of the Brownfields Property Reuse Act (G.S.  
130A-310.40) (*15 minutes*)  
Bruce Nicholson, Brownfields Program Manager  
DWM, DENR
8. Annual report on the Dry-Cleaning Solvent Cleanup Act of 1997 (G.S. 143-  
215.104U) (*10 minutes*)  
Pete Doorn, Supervisor  
Special Remediation Branch, Superfund Section

## DWM, DENR

### 9. Commission discussion and announcements

### 10. Adjourn

The fifth meeting of the Environmental Review Commission (ERC) was held on Thursday January 25, 2012 at 9:00 a.m. in Room 643 of the Legislative Office Building. Representative Samuelson presided.

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

Mr. Dexter Matthews, Director, Division of Waste Management (DWM), Department of Environment and Natural Resources (DENR), gave an overview of DWM and the Division's budget. Mr. Matthews explained DWM's mission within DENR and described the Solid Waste Section, Hazardous Waste Section, Superfund Section, Underground Storage Tank Section, and the Brownfields Program.

The Commission discussed military base releases; abandoned landfills and possible methane capture; status of the Superfund; and leaking underground storage tanks and the viability of the Leaking Underground Storage Tank Trust Fund.

Mr. Michael Scott, Chief, Solid Waste Section, DWM, DENR, gave a presentation on the Solid Waste Management Report Annual Report. Mr. Scott explained the types of waste regulated by the Solid Waste Section, including municipal solid waste; industrial waste; construction and demolition waste; land-clearing waste; scrap tires; medical waste; compost; septage; and electronics. Mr. Scott also discussed the North Carolina Solid Waste Disposal 20-Year Forecast.

The Commission discussed scrap tires and disposal fees, leaking from unlined landfills, percentage of recycling, study on capacity of exports, other state's capacity, and portable toilets and septage volume.

Mr. Scott B. Mouw, Chief of the Community and Business Assistance Section of the Division of Environmental Assistance and Outreach of DENR, gave a presentation on the status of recycling and recycling markets in North Carolina. Mr. Mouw discussed recycling trends in North Carolina, landfill disposal bans, recovery of recyclable products, local government collection, and job and business growth.

Ms. Charlotte Jesneck, Head, Inactive Hazardous Sites Branch, Superfund Section of DWM, DENR, gave a presentation on the Inactive Hazardous Sites Program Annual Report. Ms. Jesneck discussed the federal Superfund program, the Inactive Hazardous Sites Cleanup Fund, the number of inactive hazardous waste sites, and funding cuts. Ms. Jesneck noted that of the 3,044 inactive hazardous sites cataloged, 452 have been closed and require no further action.

Mr. Bruce Nicholson, Brownfields Program Manager of DWM of DENR, gave a presentation on the Brownfields Property Reuse Act Annual Report. Mr. Nicholson explained the Brownfields Property Reuse Act of 1997 and the roles of the federal and State programs. Mr. Nicholson noted that 296 acres were redeveloped during 2011.

The Commission discussed chemical disposal and their types, the Brownfield's agreement in Baden, North Carolina; and property tax incentives.

Mr. Pete Doorn, Supervisor, Special Remediation Branch, Superfund Section of DWM, DENR, gave a presentation on the Dry-Cleaning Solvent Cleanup Act of 1997 Annual Report. Mr. Doorn explained the history and purpose of the fund and why a cleanup program was needed. Mr. Doorn noted that there are 705 active dry-cleaners, 2000 active and abandoned dry-cleaners, and 1,500 contaminated dry-cleaning sites in North Carolina. Seventy-Five percent of the dry-cleaners have contamination. Mr. Doorn explained how the fund is funded and the sales tax directed to the fund.

## **February 23, 2012**

### **AGENDA**

**9:00 a.m. Thursday**

Room 643 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. Discussion of the State Air Toxics Program (*20 minutes*)  
Representative Mitch Gillespie  
  
Jeff Hudson, Commission Counsel
4. Report on the implementation and application of the Neuse and Tar-Pamlico Riparian Buffer Rules (*30 minutes*)  
Chuck Wakild, Director  
Division of Water Quality, Department of Environment and Natural Resources (DENR)
5. Report on results of customer surveys and listening sessions conducted by the Department of Environment and Natural Resources during the fall of 2011 (*30 minutes*)  
Edythe McKinney, Director

Division of Environmental Assistance and Outreach, DENR

6. Commission discussion and announcements

7. Adjourn

The sixth meeting of the Environmental Review Commission (ERC) was held on Thursday February 23, 2012 at 9:00 a.m. in Room 643 of the Legislative Office Building. Representative Samuelson presided.

Representative Gillespie gave a brief introduction on the State Air Toxics Program draft legislation. Ms. Sheila Holman, Director, Division of Air Quality (DAQ), Department of Environment and Natural Resources (DENR), was recognized to discuss the State Air Toxics Program. Ms. Holman said that there would be continual monitoring of those units not subject to federal standards. She reiterated that DAQ will consider everything when reviewing air permit applications.

There was Commission discussion on the opportunity for public comments with regard to public health. Mr. Jeff Hudson, Commission Counsel, said that the bill would allow a "Director's Call" to be based upon epidemiological (or public health) information.

The Commission discussed had other states regulate air toxics and how they've changed their protocol. Ms. Holman said that DAQ can provide detailed information on both Virginia and South Carolina and other states as well.

Mr. Chuck Wakild, Director, Division of Water Quality (DWQ), (DENR), presented the report on the implementation and application of the Neuse and Tar-Pamlico Riparian Buffer Rules.

The Commission discussed the removal of riparian buffers and how that would increase the burden on other nutrient sources. Mr. Wakild said that the removal of such buffers would add an additional burden of 30% on all sources to the rivers, which would require the other sources to reduce even more. Mr. Wakild continued by explaining the purpose of buffers and the definition of buffer mitigation. The Commission discussed objections to buffers, allowances made within the buffers, and restrictions placed on the buffers.

There was Commission discussion on the contribution of nitrogen from wildlife and stormwater. Mr. Wakild explained how trees are an essential component to buffers. Tree root systems pull nitrogen out of the water and into the trees.

Ms. Edythe McKinney, Director, Division of Environmental Assistance and Outreach, DENR, presented a report on the results of customer surveys and listening sessions conducted by DENR during the fall of 2011. Ms. McKinney said that out of 200 respondents, three out of five respondents gave DENR a score of five on a 5-point scale.

The Commission discussed how the respondents were chosen, invited, and how the survey was publicized. Ms. McKinney said that the listening sessions were publicized and announced via email and press release. Ms. McKinney noted that DENR wanted to limit the listening sessions to 25 to 35 people.

There was additional Commission discussion on who was surveyed and from what categories of business. Some Commission members were concerned that some smaller facilities would feel uncomfortable speaking with DENR candidly, as DENR is the regulating agency.

## **March 22, 2012**

### **AGENDA**

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

Room 544 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Senator Rouzer, Presiding
2. Introductory remarks by Cochairs (*5 minutes*)  
Senator David Rouzer  
Representative Mitch Gillespie  
Representative Ruth Samuelson
3. Approval of the minutes for the December 14, 2011 meeting of the Commission
4. Quarterly report by the Environmental Management Commission (EMC) as to its operations, activities, programs, and progress for the period from October 1, 2011 through December 31, 2011 (G.S. 143B-282(b)) (*30 minutes*)  
Stephen T. Smith, Chairman  
Environmental Management Commission
5. Discussion of the State Air Toxics Program and legislative proposals to amend the Program (*1 hour, 40 minutes*)  
Representative Mitch Gillespie (*5 minutes*)  
  
Jeff Hudson, Commission Counsel (*5 minutes*)

Presentation on potential implementation of legislative proposals to amend the State Air Toxics Program (*30 minutes*)

Sheila C. Holman, Director

Division of Air Quality, Department of Environment and Natural Resources (DENR)

Comments from the environmental community on the State Air Toxics Program and legislative proposals to amend the Program (*30 minutes*)

David T. Tayloe, Jr., M.D.

Past-President, American Academy of Pediatrics

Dan Conrad, Legislative Counsel  
North Carolina Conservation Network

Comments from the regulated community on the State Air Toxics Program  
and legislative proposals to amend the Program (*30 minutes*)

Preston Howard, President  
Manufacturers and Chemical Industry Council of North Carolina

6. Report on the study of the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially viable responsible party (Section 7 of S.L. 2011-186/HB 45), and implementation of S.L. 2011-186/HB 45 ("Accelerate Cleanup of Industrial Properties" (risk-based remediation)) (*30 minutes*)

Charlotte Jesneck, Head  
Inactive Hazardous Sites Branch, Superfund Section  
DWM, DENR

7. Update on DENR's study of the use of directional and horizontal drilling and hydraulic fracturing or "fracking" for the purpose of oil and gas exploration in the State (*30 minutes*)

Robin Smith, Assistant Secretary for Environment  
DENR

8. Commission discussion and announcements

9. Adjourn

The seventh meeting of the Environmental Review Commission (ERC) was held on Thursday March 22, 2012 at 9:30 a.m. in Room 544 of the Legislative Office Building. Representative Samuelson presided.

Mr. Stephen T. Smith, Chairman, Environmental Management Commission (EMC), presented the quarterly report by EMC on its operations, activities, programs, and progress for the period from October 1, 2011 through December 31, 2011.

Mr. Smith discussed the contents of the EMC's quarterly report, including nutrient loading, chlorophyll-A water quality standards, water quality standards for metals, buffer mitigation rules, and basin wide water allocation in Jordan Lake.

The Commission discussed controlled forest burning and whether those activities were exempt from the open burning setback distances. Mr. Smith discussed the EMC's recent open burning resolution, which asked the General Assembly to reconsider its decision on open burning with regard to setbacks. Mr. Smith continued that the EMC was

concerned that the change to the open burning requirements would exasperate health problems in the most vulnerable populations, especially the young and the elderly.

There was Commission discussion on the evidence of problems associated with changes in the open burning rules. Mr. Smith said that there is a substantial amount of data showing that proximity to open burning has a direct negative impact on the elderly and young children. Mr. Smith said that the data is directly from the medical community.

Representative Gillespie gave an introduction on the air toxics draft legislation. Representative Gillespie said that he took some suggestions from the environmental community. Representative Gillespie noted that the bill draft will be revised before the start of the Legislative Session.

Sheila Holman, Director of DAQ, DENR, explained that the federal program, administered by the United States Environmental Protection Agency (U.S. EPA), is a technology-based program for which technology standards are developed. According to Ms. Holman, those technology standards are fairly stringent and have resulted in emission reductions. The U.S. EPA is required evaluate these standards every eight years.

Ms. Holman described how the State Air Toxics Program is currently implemented and how it would be implemented under the new legislation. Ms. Holman said the legislation still provides DENR the authority to act when a public health risk is found and would require DAQ to review the rules for public health and report back to the Commission in November 2012.

There was Commission discussion on examples of other states air toxic programs. Mr. Holman responded that both South Carolina and Virginia have had similar type exemptions. South Carolina's exemption covers pollutants under the federal standard. Both states have the ability to make a Director's Call for public health.

The Commission discussed the bill draft's support from other branches of government, including the Governor's office. Ms. Robin Smith, Assistant Secretary of Environment and Natural Resources, said that the Governor was supportive of a proposal that strongly protects public health.

Dr. David T. Tayloe, Jr., M.D., Past-President, American Academy of Pediatrics, gave a presentation on potential impacts of the proposed legislation on respiratory disease resulting from exposure to air toxics. Dr. Tayloe said that the State program helps protect children and the elderly from respiratory disease. According to Dr. Tayloe, in 2003, North Carolina released 34 million pounds of toxic cancer causing carcinogens, currently covered under State program. The State Air Toxics Program ensures that facilities close to citizens (hot spots) are covered and regulates 21 toxins not covered by federal program.

Mr. Dan Conrad, Legislative Counsel, North Carolina Conservation Network, spoke on behalf of Environment North Carolina, the Sierra Club, and the Southern



Environmental Law Center. Mr. Conrad noted that numerous studies have shown the benefits of regulation to the economy and that regulation has minimal effects on industry's effectiveness. Mr. Conrad said that businesses choose to locate here because of North Carolina's high quality of life.

Mr. Conrad also expressed concern over indemnification; reduction of modeling requirements; shifting the program's emphasis from preventative to retroactive; industrial sites near schools; challenges to the "Director's Call" (due to Senate Bill 781 [Regulatory Reform Act of 2011, S.L. 2011-398](#)); and the proper funding of DENR.

Mr. Preston Howard, President, Manufacturers and Chemical Industry Council of North Carolina, presented comments from the regulated community on the State Air Toxics Program and the legislative proposal. Mr. Howard said that North Carolina is currently at a distinct disadvantage, as other states in the southeast have already implemented similar revisions to their air toxics programs. According to Mr. Howard, there are duplicative processes within the State Air Toxics Program that can be removed. Since 2000, the level of air toxics emissions in the State has declined by 70%. The reduction coincides with implementation of federal MACT program. The manufacturing community does not want the State program eliminated, but wants it to be more consistent. Health protections can be provided for with the "Director's Call."

Ms. Charlotte Jesneck, Head, Inactive Hazardous Sites Branch, Superfund Section, Division of Waste Management (DWM), DENR, presented a report on the study of the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially viable responsible party and the implementation of [S.L. 2011-186/HB 45 \(Accelerate Cleanup of Industrial Properties\)](#).

Ms. Jesneck gave an update on the status and an overview of the orphaned sites under the Inactive Hazardous Sites Response Act. According to Ms. Jesneck it's difficult to determine responsibility, as businesses were not required to keep records prior to the 1980s.

The Commission discussed sites with land use restrictions and standards, treating underground storage tank leaks with injectant, property owner notification procedures and instructions, program funding, and liens on contaminated property.

There was Commission discussion on the 450 sites with a "no further action" status. Ms. Jesneck said the list is publicly available and published on the DENR website.

Ms. Robin Smith, Assistant Secretary of Environment, DENR, provided an update on DENR's study of the use of directional and horizontal drilling and hydraulic fracturing or "fracking" for the purpose of oil and gas exploration in the State.

Ms. Smith said that current data is limited to two gas wells in Lee County. As such, this data may not be representative of the entire Sanford Sub-basin, let alone the entire State of North Carolina. Ms. Smith indicated that DENR is still researching the fracking

impact on communities, as the oil and gas industry can impact infrastructure. Currently, DENR is relying on observed impacts in other states.

Ms. Smith noted that there were a number of areas identified for further study, including groundwater study and the separation between groundwater and gas and oil wells. Ms. Smith discussed the studies recommendations, which included the following:

1. Collect pre-drilling baseline data on resource quality.
2. Water management.
3. Enhance existing oil and gas well construction standards to address the additional pressures of hydraulic fracturing and horizontal drilling.
4. Develop setback requirements and identify areas where oil and gas activities should be prohibited.
5. Develop a state stormwater regulatory program for oil and gas drilling sites.
6. Develop specific standards for management of oil and gas wastes.
7. Require:
  - Full disclosure of hydraulic fracturing chemicals and constituents to regulatory agencies, and
  - Public disclosure of hydraulic fracturing chemicals, except for trade secrets, through FracFocus or state agency website.
8. Prohibit the use of diesel fuel in hydraulic fracturing fluids.
9. Develop a robust data management system to:
  - Include GIS capabilities.
  - Store baseline water and air quality data.
  - Track production for royalties / severance tax.
  - Facilitate public disclosure of data.
  - Provide electronic permitting to the industry.
  - Enable effective permitting, inspection and enforcement.
10. Ensure state agencies, local first responders and industry are prepared to respond to a well blowout, chemical spill or other emergency.
11. Develop a modern oil and gas regulatory program while preventing physical and economic waste of oil and gas resources
12. Keep environmental permitting in DENR where it will benefit from the expertise of state geological staff and the ability to coordinate air, land and water quality permitting.
13. Develop a coordinated permitting process.
14. Address the distribution of revenues from oil and gas excise taxes and fees.
15. Identify a source of funding for repair of roads damaged by truck traffic and heavy equipment.
16. Clarify the extent of local government regulatory authority over oil and gas activities.
17. Complete additional research on impacts to local governments and local infrastructure.
18. Complete additional research on potential economic impacts.

## **April 26, 2012**

The eighth meeting of the Environmental Review Commission was held on April 26, 2012 at 9:30 a.m. in Room 544 of the Legislative Office Building. Representative Gillespie presided. The Commission adopted this report.

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# LEGISLATIVE PROPOSALS

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## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2011

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**BILL DRAFT 2011-SBz-25 [v.21] (11/28)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
4/24/2012 1:04:06 PM**

Short Title: State Air Toxics Program Reforms.

(Public)

Sponsors: .

Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO EXEMPT FROM STATE AIR TOXICS EMISSIONS CONTROLS  
3 THOSE SOURCES OF EMISSIONS THAT ARE SUBJECT TO CERTAIN  
4 FEDERAL EMISSIONS REQUIREMENTS, TO DIRECT THE  
5 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO  
6 REQUIRE PERMIT CONDITIONS THAT ELIMINATE UNACCEPTABLE  
7 RISKS TO HUMAN HEALTH, TO DIRECT THE DIVISION OF AIR  
8 QUALITY TO REVIEW THE STATE AIR TOXICS PROGRAM, AND TO  
9 REQUIRE REPORTS ON THE IMPLEMENTATION OF THIS ACT, AS  
10 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** G.S. 143-215.107(a) reads as rewritten:

13 "(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby  
14 directed and empowered, as rapidly as possible within the limits of funds and  
15 facilities available to it, and subject to the procedural requirements of this Article  
16 and Article 21:

17 ...

18 (5) To develop and adopt emission control standards as in the  
19 judgment of the Commission may be necessary to prohibit, abate,  
20 or control air pollution commensurate with established air quality  
21 standards. ~~This subdivision does not apply to that portion of the~~  
22 ~~National Emission Standards for Hazardous Air Pollutants for~~

1 ~~asbestos that governs demolition and renovation as set out in 40~~  
2 ~~C.F.R. § 61.141, 61.145, 61.150, and 61.154 (1 July 1993~~  
3 ~~edition).~~ The Department shall implement rules adopted  
4 pursuant to this subsection as follows:

5 a. Except as provided in sub-subdivision b. of this  
6 subdivision, rules adopted pursuant to this subdivision that  
7 control emissions of toxic air pollutants shall not apply to  
8 an air emission source that is any of the following:

- 9 1. Subject to an applicable requirement under 40 C.F.R.  
10 Parts 61 (as amended).  
11 2. An affected source under 40 C.F.R. Parts 63 (as  
12 amended).  
13 3. Subject to a case-by-case maximum achievable control  
14 technology (MACT) permit requirement issued by the  
15 Department pursuant to 42 U.S.C. § 7412(j) (as  
16 amended).

17 b. Upon receipt of a permit application for a new source or  
18 facility, or for the modification of an existing source or  
19 facility, that would result in an increase in the emission of  
20 toxic air pollutants, the Department shall review the  
21 application to determine if the emission of toxic air  
22 pollutants from the source or facility would present an  
23 unacceptable risk to human health. Upon making a  
24 written finding that a source or facility presents or would  
25 present an unacceptable risk to human health, the  
26 Department shall require the owner or operator of the  
27 source or facility to submit a permit application for any or  
28 all emissions of toxic air pollutants from the facility that  
29 eliminates the unacceptable risk to human health. The  
30 written finding may be based on modeling,  
31 epidemiological studies, actual monitoring data, or other  
32 information that indicates an unacceptable health risk.  
33 When the Department requires the owner or operator of a  
34 source or facility to submit a permit application pursuant  
35 to this sub-subdivision, the Department shall report to the  
36 Chairs of the Environmental Review Commission on the  
37 circumstances surrounding the permit requirement,  
38 including a copy of the written finding.

39 ...."

40 **SECTION 2.** The Environmental Management Commission shall  
41 amend its rules adopted pursuant to G.S. 143-215.107(a) so that they are  
42 consistent with the provisions of Section 1 of this act.

1           **SECTION 3.** The Division of Air Quality of the Department of  
2 Environment and Natural Resources shall review toxic air pollutant rules adopted  
3 pursuant to G.S. 143-215.107(a) and the implementation of those rules to  
4 determine if changes could be made to the rules or their implementation to reduce  
5 unnecessary regulatory burden and increase the efficient use of Division resources  
6 while maintaining protection of public health. The Division shall conduct this  
7 review in consultation with interested parties. The Division shall report the results  
8 of its review, including recommendations, if any, to the Environmental Review  
9 Commission no later than December 1, 2012.

10           **SECTION 4.** The Division of Air Quality in the Department of  
11 Environment and Natural Resources shall report on the implementation of this act  
12 to the Environmental Review Commission no later than December 1 for the years  
13 2012, 2013, and 2014. The report shall include an analysis of air toxic emissions  
14 changes and a summary of results of the Division's analysis of air quality impacts.

15           **SECTION 5.** This act is effective when it becomes law.

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**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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D

**BILL DRAFT 2011-SBz-32 [v.3] (03/15)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
4/23/2012 3:09:08 PM**

Short Title:    Protect DENR from Co-Applicant Liability. (Public)

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Sponsors:       .

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Referred to:

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1                                    A BILL TO BE ENTITLED  
2 AN ACT TO PROTECT THE DEPARTMENT OF ENVIRONMENT AND  
3 NATURAL RESOURCES AND THE STATE FROM POTENTIAL  
4 LIABILITY ASSOCIATED WITH BECOMING A CO-APPLICANT WITH  
5 A REGIONAL WATER SUPPLY SYSTEM ON THE FEDERAL  
6 APPROVALS NEEDED FOR THE ESTABLISHMENT OR EXPANSION  
7 OF A WATER SUPPLY RESERVOIR OR OTHER WATER SUPPLY  
8 RESOURCE, AS RECOMMENDED BY THE ENVIRONMENTAL  
9 REVIEW COMMISSION.

10 The General Assembly of North Carolina enacts:

11            **SECTION 1.** G.S. 143-355.7(e) reads as rewritten:

12            "(e) When the Department has identified the most practicable alternative, a  
13 regional water supply system may request that the Department become a  
14 co-applicant for all required federal approvals for the alternative identified by the  
15 Department. The Department may become a co-applicant when all of the  
16 following conditions are met:

- 17            (1) The regional water supply system has acquired or will acquire  
18 the property necessary for construction of the water supply  
19 reservoir or other water supply resource.  
20            (2) The local water supply plan shows that the regional water supply  
21 system has implemented appropriate conservation measures  
22 similar in effect to the measures in comparably sized North  
23 Carolina regional water supply systems.  
24            (3) The regional water supply system has developed and is  
25 implementing measures to replace existing leaking infrastructure

1 that is similar in effect to the measures being implemented by  
2 comparably sized North Carolina regional water systems.

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

6 (5) The regional water supply system has entered into a contractual  
7 agreement with the Department to indemnify, defend, and hold  
8 the Department and the State, its officers, employees, agents and  
9 assigns harmless from any liability or other costs incurred related  
10 to (i) personal injury or injury to real or personal property of any  
11 kind, accruing or resulting to any other person or entity in  
12 connection with any federal approvals, arising out of the ordinary  
13 negligence, willful, wanton, or gross negligence, intentional acts  
14 or omissions or unlawful conduct of the regional water supply, its  
15 officers, employees, agents, assigns, or subcontractors, and (ii)  
16 any violation or alleged violation of the federal approval or other  
17 law or regulation related to federal approval, whether or not  
18 caused by the regional water supply. The obligations of the  
19 regional water system under this subdivision shall include all  
20 fees, costs, penalties, fines, judgments, orders, and other  
21 obligations to which the State may be subject or that the State  
22 may incur."

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

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

U

D

**BILL DRAFT 2011-TFz-3 [v.10] (09/26)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
4/24/2012 11:22:43 AM**

Short Title: Environmental Technical Corrections 2012.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED  
AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL  
AMENDMENTS TO VARIOUS LAWS RELATED TO ENVIRONMENT  
AND NATURAL RESOURCES, AS RECOMMENDED BY THE  
ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 113-182.1(e) reads as rewritten:

"(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment and Natural Resources shall report to the ~~Joint Legislative Commission on Seafood and Aquaculture~~ Joint Legislative Commission on Governmental Operations within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Governmental Operations shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Governmental Operations may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary."

**SECTION 2.(a)** G.S. 113A-151.1 is amended to add a new subsection to read:

**"§ 113A-115.1. Limitations on erosion control structures.**

...

1        (i) No later than September 1 of each year, the Commission shall report to  
2 the Environmental Review Commission on the implementation of this section.  
3 The report shall provide a detailed description of each proposed and permitted  
4 terminal groin and its accompanying beach fill project, including the information  
5 required to be submitted pursuant to subsection (e) of this section. For each  
6 permitted terminal groin and its accompanying beach fill project, the report shall  
7 also provide all of the following:

- 8            (1) The findings of the Commission required pursuant to subsection  
9 (f) of this section.  
10          (2) The status of construction and maintenance of the terminal groin  
11 and its accompanying beach fill project, including the status of  
12 the implementation of the plan for construction and maintenance  
13 and the inlet management plan.  
14          (3) A description and assessment of the benefits of the terminal groin  
15 and its accompanying beach fill project, if any.  
16          (4) A description and assessment of the adverse impacts of the  
17 terminal groin and its accompanying beach fill project, if any,  
18 including a description and assessment of any mitigation  
19 measures implemented to address adverse impacts."

20        **SECTION 2.(b)** Section 5 of S.L. 2011-387 is repealed.

21        **SECTION 3.** The title of Part 2 of Article 3B of Chapter 143 of the  
22 General Statutes reads as rewritten:

23        "Part 2. ~~Guaranteed Energy Savings Contracts for~~ Energy Saving Measures for  
24 Governmental Units."

25        **SECTION 4.(a)** G.S. 143-214.11 is amended to add two new  
26 subsections to read:

27        **"§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.**

28        ...

29        (i) The Ecosystem Enhancement Program shall exercise its authority to  
30 provide for compensatory mitigation under the authority granted by this section to  
31 use mitigation procurement programs in the following order of preference:

- 32            (1) Full delivery/Bank credit purchase program. - The Ecosystem  
33 Enhancement Program shall first seek to meet compensatory  
34 mitigation procurement requirements through the Program's full  
35 delivery program or by the purchase of credits from a private  
36 compensatory mitigation bank.  
37            (2) Existing local compensatory mitigation bank credit purchase  
38 program. - Any compensatory mitigation procurement  
39 requirements that are not fulfillable under subdivision (1) of this  
40 subsection shall be procured from an existing local compensatory  
41 mitigation bank provided that the credit purchase is made to  
42 mitigate the impacts of a project located within the mitigation  
43 bank service area and hydrologic area of the existing local  
44 compensatory mitigation bank.  
45            (3) Design/build program. - Any compensatory mitigation  
46 procurement requirements that are not fulfillable under  
47 subdivisions (1) or (2) of this subsection shall be procured under  
48 a program in which Ecosystem Enhancement Program contracts  
49 with one private entity to lead or implement the design,  
50 construction, and post-construction monitoring of compensatory

mitigation at sites obtained by the Ecosystem Enhancement Program. Such a program shall be considered the procurement of compensatory mitigation credits.

(4) Design-bid-build program. - Any compensatory mitigation procurement requirements that are not fulfillable under either subdivisions (1) or (2) of this subsection may be procured under Ecosystem Enhancement Programs design-bid-build program. Ecosystem Enhancement Program may utilize this program only when procurement under subdivisions (1) or (2) of this subsection is not feasible. Any mitigation site design work currently being performed through contracts awarded under the design-bid-build program shall be allowed to continue as scheduled. Contracts for construction of projects with a design already approved by Ecosystem Enhancement Program shall be awarded by Ecosystem Enhancement Program by issuing a Request for Proposal (RFP). Only contractors who have prequalified under procedures established by Ecosystem Enhancement Program shall be eligible to bid on Ecosystem Enhancement Program construction projects. Construction contracts issued under this subdivision shall be exempt from the requirements of Article 8B of Chapter 143 of the General Statutes.

(j) The regulatory requirements for the establishment, operation, and monitoring of a compensatory mitigation bank or full delivery project shall vest at the time of the execution of the mitigation banking instrument or the award of a full delivery contract."

**SECTION 4.(b)** Sections 1.2 and 1.3 of S.L. 2011-343 are repealed.

**SECTION 5.** G.S. 143B-279.8(f) reads as rewritten:

"(f) The Secretary of Environment and Natural Resources shall report to the Environmental Review Commission and the ~~Joint Legislative Commission on Seafood and Aquaculture~~ ~~[Joint Legislative Commission on Governmental Operations]~~ Joint Legislative Commission on Governmental Operations within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission and the Joint Legislative Commission on Governmental Operations shall concurrently review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted by the Secretary. The Environmental Review Commission and the Joint Legislative Commission on Governmental Operations may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

**SECTION 6.** This act is effective when it becomes law.

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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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D

BILL DRAFT 2011-TFz-4 [v.9] (04/02)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
4/24/2012 1:25:29 PM

Short Title: ENR Reports Consolidation.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED  
AN ACT TO AMEND OR REPEAL VARIOUS ENVIRONMENTAL AND  
NATURAL RESOURCES REPORTING REQUIREMENTS, AS  
RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 130A-294 reads as rewritten:

**"§ 130A-294. Solid waste management program.**

...

(i) ~~The Department shall develop a comprehensive hazardous waste management plan for the State and shall revise the plan on or before 1 July of even-numbered years.~~ The Department shall report to the General Assembly, the Fiscal Research Division, the Senate Appropriations Subcommittee on Natural and Economic Resources, the House Appropriations Subcommittee on Natural and Economic Resources, and the Environmental Review Commission on or before ~~4 October~~January 1 of each year on the implementation and cost of the ~~comprehensive hazardous waste management plan.~~program. The report shall include an evaluation of how well the State and private parties are managing and cleaning up hazardous waste. The report shall also include recommendations to the Governor, State agencies, and the General Assembly on ways to: improve waste management; reduce the amount of waste generated; maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste which must be disposed of. The report shall include beginning fund balance, fees collected under G.S. 130A-294-1, anticipated revenue from all sources, total expenditures by activities and categories for the hazardous waste management program, ending fund balance, any recommended adjustments in annual and tonnage fees which may be necessary to assure the continued availability of funds sufficient to pay the

1 State's share of the cost of the hazardous waste management program, and any  
2 other information requested by the General Assembly. In recommending  
3 adjustments in annual and tonnage fees, the Department may propose fees for  
4 hazardous waste generators, and for hazardous waste treatment facilities that treat  
5 waste generated on-site, which are designed to encourage reductions in the volume  
6 or quantity and toxicity of hazardous waste. The report shall include a description  
7 of activities undertaken to implement the resident inspectors program established  
8 under G.S. 130A-295.02. In addition, the report shall include an annual update on  
9 the mercury switch removal program.

10  
11 The report required by subsection (i) of this section shall include, at a  
12 minimum, all of the following:

- 13 (1) A detailed description of the mercury recovery performance ratio  
14 achieved by the mercury switch removal program.
- 15 (2) A detailed description of the mercury switch collection system  
16 developed and implemented by vehicle manufacturers in  
17 accordance with the NVMSRP.
- 18 (3) In the event that a mercury recovery performance ratio of at least  
19 0.90 of the national mercury recovery performance ratio as  
20 reported by the NVMSRP is not achieved, a description of  
21 additional or alternative actions that may be implemented to  
22 improve the mercury switch removal program.
- 23 (4) The number of mercury switches collected and a description of  
24 how the mercury switches were managed.
- 25 (5) A statement that details the costs required to implement the  
26 mercury switch removal program including a summary of  
27 receipts and disbursements from the Mercury Switch Removal  
28 Account.

29 **SECTION 1.1.** G.S. 130A-294 reads as rewritten:

30 **"§ 130A-294. Solid waste management program.**

31 ...  
32 (i) The Department shall report to the General Assembly, the Fiscal  
33 Research Division, the Senate Appropriations Subcommittee on Natural and  
34 Economic Resources, the House Appropriations Subcommittee on Natural and  
35 Economic Resources, and the Environmental Review Commission on or before  
36 January 1 of each year on the implementation and cost of the hazardous waste  
37 management program. The report shall include an evaluation of how well the State  
38 and private parties are managing and cleaning up hazardous waste. The report  
39 shall also include recommendations to the Governor, State agencies, and the  
40 General Assembly on ways to: improve waste management; reduce the amount of  
41 waste generated; maximize resource recovery, reuse, and conservation; and  
42 minimize the amount of hazardous waste which must be disposed of. The report  
43 shall include beginning fund balance, fees collected under G.S. 130A-294-1,



1 anticipated revenue from all sources, total expenditures by activities and  
2 categories for the hazardous waste management program, ending fund balance,  
3 any recommended adjustments in annual and tonnage fees which may be  
4 necessary to assure the continued availability of funds sufficient to pay the State's  
5 share of the cost of the hazardous waste management program, and any other  
6 information requested by the General Assembly. In recommending adjustments in  
7 annual and tonnage fees, the Department may propose fees for hazardous waste  
8 generators, and for hazardous waste treatment facilities that treat waste generated  
9 on-site, which are designed to encourage reductions in the volume or quantity and  
10 toxicity of hazardous waste. The report shall include a description of activities  
11 undertaken to implement the resident inspectors program established under G.S.  
12 130A-295.02. In addition, the report shall include an annual update on the  
13 mercury switch removal program.

14 The report required by subsection (i) of this section shall include, at a  
15 minimum, all of the following:

- 16 ~~(1) A detailed description of the mercury recovery performance ratio~~  
17 ~~achieved by the mercury switch removal program.~~
- 18 ~~(2) A detailed description of the mercury switch collection system~~  
19 ~~developed and implemented by vehicle manufacturers in~~  
20 ~~accordance with the NVMSRP.~~
- 21 ~~(3) In the event that a mercury recovery performance ratio of at least~~  
22 ~~0.90 of the national mercury recovery performance ratio as~~  
23 ~~reported by the NVMSRP is not achieved, a description of~~  
24 ~~additional or alternative actions that may be implemented to~~  
25 ~~improve the mercury switch removal program.~~
- 26 ~~(4) The number of mercury switches collected and a description of~~  
27 ~~how the mercury switches were managed.~~
- 28 ~~(5) A statement that details the costs required to implement the~~  
29 ~~mercury switch removal program including a summary of~~  
30 ~~receipts and disbursements from the Mercury Switch Removal~~  
31 ~~Account.~~
- 32 (1) A detailed description and documentation of the capture rate  
33 achieved.
- 34 (2) In the event that a capture rate of at least ninety percent (90%) is  
35 not achieved, a description of additional or alternative actions  
36 that may be implemented to improve the mercury minimization  
37 plan and its implementation.
- 38 (3) The number of mercury switches collected, the number of  
39 end-of-life vehicles containing mercury switches, the number of  
40 end-of-life vehicles processed for recycling, and a description of  
41 how the mercury switches were managed.
- 42 (4) A statement that details the costs required to implement the  
43 mercury minimization plan.

1           ..."

2           **SECTION 2.** G.S. 130A-294.1(p) is repealed.

3           **SECTION 3.** G.S. 130A-295.02(m) is repealed.

4           **SECTION 4.** G.S. 130A-310.2(b) is repealed.

5           **SECTION 5.** G.S. 130A-310.57 is repealed.

6           **SECTION 5.** G.S. 130A-310.10 reads as rewritten:

7   **"§ 130A-310.10. Annual reports.**

8       (a) The Secretary shall report on inactive hazardous sites to the Joint  
9   Legislative Commission on Governmental Operations, the Environmental Review  
10   Commission, and the Fiscal Research Division on or before ~~1-October~~ October 1  
11   of each year. The report shall include at least the following:

12       (1) The Inactive Hazardous Waste Sites Priority List.

13       (2) A list of remedial action plans requiring State funding through  
14       the Inactive Hazardous Sites Cleanup Fund.

15       (3) A comprehensive budget to implement these remedial action  
16       plans and the adequacy of the Inactive Hazardous Sites Cleanup  
17       Fund to fund the cost of said plans.

18       (4) A prioritized list of sites that are eligible for remedial action  
19       under CERCLA/SARA together with recommended remedial  
20       action plans and a comprehensive budget to implement such  
21       plans. The budget for implementing a remedial action plan under  
22       CERCLA/SARA shall include a statement as to any  
23       appropriation that may be necessary to pay the State's share of  
24       such plan.

25       (5) A list of sites and remedial action plans undergoing voluntary  
26       cleanup with Departmental approval.

27       (6) A list of sites and remedial action plans that may require State  
28       funding, a comprehensive budget if implementation of these  
29       possible remedial action plans is required, and the adequacy of  
30       the Inactive Hazardous Sites Cleanup Fund to fund the possible  
31       costs of said plans.

32       (7) A list of sites that pose an imminent hazard.

33       (8) A comprehensive budget to develop and implement remedial  
34       action plans for sites that pose imminent hazards and that may  
35       require State funding, and the adequacy of the Inactive  
36       Hazardous Sites Cleanup Fund.

37       (8a) The amounts and sources of funds collected by year received  
38       under G.S. 130A-310.76, the amounts and sources of those funds  
39       paid into the Inactive Hazardous Sites Cleanup Fund established  
40       pursuant to G.S. 130A-310.11, the number of acres of  
41       contamination for which funds have been received pursuant to  
42       G.S. 130A-310.76, and a detailed annual accounting of how the  
43       funds collected pursuant to G.S. 130A-310.76 have been utilized

1 by the Department to advance the purposes of Part 8 of Article 9  
2 of Chapter 130A of the General Statutes.

3 (9) Any other information requested by the General Assembly or the  
4 Environmental Review Commission.

5 (a1) On or before October 1 of each year, the Department shall report to each  
6 member of the General Assembly who has an inactive hazardous substance or  
7 waste disposal site in the member's district. This report shall include the location  
8 of each inactive hazardous substance or waste disposal site in the member's  
9 district, the type and amount of hazardous substances or waste known or believed  
10 to be located on each of these sites, the last action taken at each of these sites, and  
11 the date of that last action.

12 (b) Repealed by Session Laws 2001-452, s. 2.3, effective October 28,  
13 2001."

14 **SECTION 7.** G.S. 143-215.94M reads as rewritten:

15 **"§ 143-215.94M. Reports.**

16 (a) The Secretary shall present an annual report to the Environmental  
17 Review Commission which shall include at least the following:

18 (1) A list of all discharges or releases of petroleum from  
19 underground storage tanks;

20 (2) A list of all cleanups requiring State funding through the  
21 Noncommercial Fund and a comprehensive budget to complete  
22 such cleanups;

23 (3) A list of all cleanups undertaken by tank owners or operators and  
24 the status of these cleanups;

25 (4) A statement of receipts and disbursements for both the  
26 Commercial Fund and the Noncommercial Fund;

27 (5) A statement of all claims against both the Commercial Fund and  
28 the Noncommercial Fund, including claims paid, claims denied,  
29 pending claims, anticipated claims, and any other obligations;  
30 and

31 (6) The adequacy of both the Commercial Fund and the  
32 Noncommercial Fund to carry out the purposes of this Part  
33 together with any recommendations as to measures that may be  
34 necessary to assure the continued solvency of the Commercial  
35 Fund and the Noncommercial ~~Fund; and Fund.~~

36 ~~(7) A statement of the condition of the Loan Fund and a summary of~~  
37 ~~all activity under the Loan Fund.~~

38 (b) The report required by this section shall be made by the Secretary on or  
39 before ~~1-September~~November 1 of each year."

40 **SECTION 8.** Section 1.1 is effective December 31, 2017. Except as  
41 otherwise provided, this act is effective when it becomes law.