

**MEETING OF THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION**

**Raleigh, North Carolina
December 3, 2012
Minutes**

The North Carolina Environmental Management Commission met in the Ground Floor Hearing Room of the Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina. Chairman, Stephen T. Smith presided. The following persons attended for all or part of the meeting.

COMMISSION MEMBERS:

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|---------------------|----------------------|--------------------------|
| Marvin S. Cavanaugh | Kevin Martin | Amy E. Pickle |
| Tom Ellis | Jeff Morse | Clyde "Butch" Smith, Jr. |
| William L. Hall | Mayor Darryl D. Moss | Stephen Smith |
| Steve P. Keen | Dr. David Peden | Steve W. Tedder |

DIVISION OF WATER QUALITY:

| | | | |
|-----------------|-------------------|------------------|--------------|
| Ted Bush | Gary Kreiser | Susan Massengale | Lois Thomas |
| Kevin Bowden | Evan Kane | Matt Matthews | Chuck Wakild |
| Connie Brower | Elizabeth Kountis | Diane Reid | Debra Watts |
| Linda Culpepper | Keith Larick | Jon Risgaard | |

DIVISION OF WASTE MANAGEMENT: Debra Watts

ATTORNEY GENERAL'S OFFICE: Frank Crawley
Kathryn Jones Cooper
Don Laton

I. Preliminary Matters

Chairman Smith: The chairman called the meeting to order at 11:00 a.m.

First of all let me inquire of any member whether that member knows of a conflict of interest or believe the language, believe the language has been changed to potential of a conflict of interest. If you do notify us at this time or when that becomes apparent to you and let me announce that Mr. Phillips has already recused himself and is not present. Mr. Hutson has recused himself and is not present.

12-41 Presentation of Request for Declaratory Ruling by Petitioners Cape Fear River Watch, Sierra Club, Waterkeeper Alliance, and Western North Carolina Alliance as to the application of 15A NCAC 2L .0106 to the factual situation of coal ash ponds permitted before December 1983 as set forth in the Request for Declaratory Ruling and the Factual Stipulations filed jointly by Petitioners and the Division of Water Quality

Summary:

Petitioners Cape Fear River Watch, Sierra Club, Waterkeeper Alliance, and Western North Carolina Alliance were represented by D. J. Gerken, Esquire and Patrick Hunter, Esquire with the Southern Environmental Law Center in Chapel Hill, NC. The Division of Water Quality was represented by Special Deputy Attorney General Kathryn J. Cooper and Assistant Attorney General Donald W. Laton. Intervenor Duke Energy Carolina, LLC and Carolina Power & Light Company, an indirect subsidiary of Duke Energy Corporation, d/b/a Progress Energy Carolinas, was represented by Charles D. Case, Esquire of Hunton and Williams, LLP in Raleigh, NC.

Counsel for the parties presented legal arguments, in addition to the written arguments previously filed, before the Commission. The Commission, pursuant to N.C.G.S. § 150B-4, considered the entire request for declaratory ruling and arguments of the parties in extensive deliberations. Commissioner Tedder made a motion to issue a ruling that the Division of Water Quality properly applied the regulation, 15A NCAC 2L .0106 to the factual situation presented and coal ash ponds permitted prior to December 30, 1983 have a compliance boundary, even though they are deemed unpermitted. Mr. Morse seconded the motion.

After further deliberations, the Chairman called for a vote on the motion. The motion carried by a vote of nine in favor and two opposed (Pickle, Peden)

With no further comments the meeting adjourned at 12:25 p.m.

NOTE: Attachments are on file in the Division of Water Quality with the Official Minutes.

Lois C. Thomas, Recording Clerk

By Commission Members
 By Directors
 By Counsel
 By Chairman

Adjournment AG012-03-12