



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

AUG 09 2012

Mr. Dee Freeman, Secretary
North Carolina Department of Environment
and Natural Resources
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

The Honorable Julian Mann, III
Chief Administrative Law Judge
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714

Dear Secretary Freeman and Judge Mann:

Thank you for your letter of July 19, 2012, setting forth the North Carolina Department of Environment and Natural Resources' (DENR's) and Office of Administrative Hearings' (OAH's) interpretation of Senate Bill 781 (Session Law 2011-398). The interpretation relates to the roles and responsibilities of your respective Offices in contested cases challenging DENR environmental actions taken under federal environmental statutes. Because, as summarized below, you indicate that the described application of this interpretation will result in no change to either DENR's permit/enforcement issuing authority or to EPA's ability to effectuate its statutory and regulatory role in the permitting context, no further program revision submittals from North Carolina appear warranted at this time.

Under your joint interpretation of Senate Bill 781, you note that the OAH role in contested cases is to provide only a hearing function – one that will be limited in scope to an APA-type review, *i.e.*, determining whether DENR acted erroneously, failed to use proper procedure, exceeded its authority or jurisdiction, acted arbitrarily or capriciously, or failed to act as required by law or rule. Because of this limitation, you note that OAH will not undertake the drafting or redrafting of permit terms or conditions (including, presumably, penalty action terms or conditions) or otherwise endeavor to correct any determined error by DENR. Rather, you represent that DENR will remain the permit/enforcement issuing authority for matters arising under the Clean Air Act (CAA), the Clean Water Act (CWA), and the Resource Conservation and Recovery Act (RCRA), and that EPA's role in the permitting process, as provided for in the current Memoranda of Agreement (MOA), will not change. Consequently, OAH and DENR assert that the existing MOA need not be amended and further clarify that OAH is not seeking to be an agency responsible for administering programs under the CAA, CWA, and RCRA.

EPA's understanding of this interpretation is that Senate Bill 781 has effected no changes to the roles and responsibilities of DENR as described in the current CAA, CWA, and RCRA MOA and program approvals/authorizations, nor has it impacted EPA's statutory and regulatory permitting role under our federal environmental programs. In light of this, no MOA amendments or program revision submissions to EPA seem necessary at this time. However, please note that should the application of Senate Bill 781 in the future result in changes to the roles and responsibilities of OAH and DENR with regard to

permit/enforcement issuing authority; or should EPA's statutory and regulatory permitting role, in fact be impacted, then the procedural and legal requirements described in our June 11, 2011, letter to DENR would have to be reexamined.

Thank you for your efforts on this matter. If you have any questions, please contact me at (404) 562-9556 or Nancy Tommelleo, Deputy Regional Counsel, at (404) 562-9571.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary J. Wilkes", written in a cursive style.

Mary J. Wilkes
Regional Counsel and Director
Office of Environmental Accountability

cc: Bill Cary, General Counsel, DENR
James Gulick, Senior Deputy Attorney General, NC DOJ
A. Stanley Meiburg, Deputy Regional Administrator, EPA Region 4