**Agenda Item: 12-40 Request by Cape Fear River Watch, Sierra Club, Waterkeeper Alliance, and Western North Carolina Alliance for a Declaratory Ruling on the applicability of 15A NCAC 2L .0106 - Corrective Action to unlined coal ash lagoons for any concentration of substances in ground water around the lagoons that exceeds groundwater standards**

**Explanation**: The Request for Declaratory Ruling was submitted October 10, 2012 by the above identified nonprofit conservation organizations that contend their members reside near ground water contaminated by coal ash lagoons and recreate and work in rivers and lakes that are at risk due to their connection to contaminated ground water, and whose staff and volunteers are engaged in addressing contamination from coal ash lagoons.

The Request states that DENR has not required the electric power plant owners to take corrective action to address groundwater contamination from coal ash lagoons because the rule has been misread to conclude that (1) no action is required until contamination crosses the compliance boundary, (2) coal ash lagoons are not required to immediately eliminate the source of ongoing groundwater contamination, and (3) closed or inactive coal ash lagoons are not subject to the rule.

The Request seeks three rulings from the Commission:
(1) Operators of coal ash lagoons with NPDES permits first issued on or before December 30, 1983, must take corrective action pursuant to 15A NCAC 2L .0106(c) when their activity results in an increase in the concentration of a substance in excess of groundwater quality standards, whether or not groundwater quality standards have been exceeded at or beyond a compliance boundary around the lagoon;

(2) Operators of coal ash lagoons with NPDES permits first issued on or before December 30, 1983, must take immediate action to eliminate sources of contamination that cause a concentration of a substance in excess of groundwater quality standards, in advance of their separate obligations to propose and implement a corrective action plan for the restoration of groundwater quality contaminated by those sources; and

(3) Operators of closed and inactive coal ash lagoons must implement corrective action as unpermitted activities pursuant to 15A NCAC 2L .0106(c) when they cause an increase in the concentration of a substance in excess of groundwater quality standards.

G.S. § 150B-4 provides in part that a person aggrieved may request, and the agency shall issue, a declaratory ruling as to the applicability to a given state of facts of a statute administered by the agency or of a rule or

order of the agency. The ruling is binding on the agency and the person requesting the ruling.

The agency shall respond to a request for a declaratory ruling within 30 days of receipt of the request for a declaratory ruling and shall make a written decision to grant or deny the request. Failure to make a written decision to grant or deny the request within 30 days is deemed a decision to deny the request.

If the agency grants the request, the agency shall issue a written ruling on the merits within 45 days of the decision to grant the request. Failure to issue a declaratory ruling within 45 days of the decision to grant the request shall be deemed a denial on the merits.