

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

**Raleigh, North Carolina
September 12, 2013
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, Benne C. Hutson presided. The following persons attended for all or part of the meeting.

COMMISSION MEMBERS:

David W. Anderson	E. O. Ferrell	Manning W. "Bill" Puette
Gerard A. "Jerry" Carroll	Benne C. Hutson	Clyde "Butch" Smith, Jr
Charles "Charlie" Carter	Steve P. Keen	Steve W. Tedder
Tommy Craven	Kevin Martin	Julie A. Wilsey

DIVISION OF WATER RESOURCES:

Kevin Bowden	Richard Gannon	Gary Kreiser	Cam McNutt
Janice Bownes	Karen Higgins	Jeff Manning	Diane Reid
Connie Brower	Cyndi Karoly	Susan Massengale	Kathy Stecker
Amy Chapman	Elizabeth Kountis	Matt Matthews	Lois Thomas

ATTORNEY GENERAL'S OFFICE: Frank Crawley

DIVISION OF AIR QUALITY: Sheila Holman
Michael Abraczinskas
Joelle Burleson
Patrick Knowlson
Angela Terry

DIVISION OF WATER RESOURCES: Tom Reeder
Tom Fransen
Sarah Young

SECRETARY OF STATE: Deputy Secretary Haley Haynes

I. Preliminary Matters

(Chairman Hutson called to order the September 12, 2013 meeting of the North Carolina Environmental Management Commission at 9:05 a.m.)

I do want to welcome everyone here today. I will say that it is refreshing to have such a large crowd when we have such a few action items on our agenda. I'm sure everybody wanted to see and meet the new faces.

We're going to begin because we can't do anything until we have official members with a swearing-in ceremony for all of the members except me. I had a very elegant swearing in by my assistant next to my printer about two weeks ago, because they had to have a chairman who could actually take some official action. Haley Haynes who is the Deputy Secretary of State from the Office of Secretary of State is here to administer the Oaths of Office to all of the Commissioners because of the legislative's actions in terminating all the terms effective July 31st, everyone here is in a new term and will be sworn in now. Ms. Haynes, thank you for coming.

Deputy Secretary Haley Haynes: Thank you. I believe there are bibles. What I'm going to do is read out at the Oath and at the end, if you all will say I do. But everyone who would like to swear on a bible needs to get their hand on a bible. The stack is over here. If you would like to affirm you don't have to put your hand on a bible. It will be swear or affirm, either way.

Chairman Hutson: We can have multiple hands on the bible and once we get those passed around everyone will need to stand for the Oath. I know that there are some official photographers here and some family photographers and friend photographers. We'll have an opportunity. If you remain standing so those can take photos that want to.

Deputy Secretary Haley Haynes: Put your hands on the bible and raise your right hand. Do you solemnly swear or affirm that you will support the Constitution of the United States and do you solemnly swear or affirm that you will be faithful and bear true allegiance to the State of North Carolina and to the Constitution powers and authorities which are or may be established for the government thereof; and will you endeavor to support, maintain and defend the Constitution of said state, not inconsistent with the Constitution of the United States and do you solemnly swear or affirm that you will well and truly execute the duties of your office as a Member of the North Carolina Environmental Management Commission according to the best of your skill and ability according to law so help you God.

(All the Commissioners were present said, "I do".)

Deputy Secretary Haley Haynes: Congratulations.

Chairman Hutson: Did everyone get the photographs that they wanted? We can make people stand up again.

Hearing none we are done with the photography. First of all, as everyone knows we have a lot of new faces here which means that a lot of the familiar faces who served a long number of years doing a lot of good work for the State of North Carolina citizens and its environment have come off of the Commission. So I have prepared for each of those who have left the Commission a Resolution of Appreciation. I will read one of them, not all of them. Then I will have the names. It is something that those of us who have been here before know this is a great undertaking. Those of you who have agreed to accept the new appointment and I want us to make sure that we give thanks to those who came before us. I will read the one that will apply to

Pete Peterson, and it will be similar for all the rest. “The Resolution of Appreciation to Charles H. Peterson, Ph. D. Whereas, Charles H. Peterson served the people of North Carolina with honor and dignity as a member of the North Carolina Environmental Management Commission. Including service as Vice Chairman of the Commission, Chairman of the Water Quality Committee and member of the Steering, NPDES and Renewable Energy Committees and Whereas, his immeasurable contribution and long standing dedication have resulted in conspicuous and significant progress to the citizens of North Carolina for many years to come; Whereas, his sound judgment and warm personal demeanor have facilitated his accomplishments and have earned for him the respect and admiration of his peers; Now, Wherefore Be It Resolved by the Environmental Management Commission of North Carolina, Charles H. Peterson is recognized and commended for his devoted service to the citizens of North Carolina and is presented this resolution as a token of the high esteem in which he is held. Be it further resolved that the Environmental Management Commission of North Carolina extends to Charles H. Peterson its best wishes for his future endeavors and orders that a copy of this resolution be spread upon the minutes of this board meeting this 12th day of September 2013.”

We will have similar resolutions to Stephen T. Smith, our former Chairman, Christopher Ayers who is now with the Utilities Commission, Yvonne Bailey, Marvin Cavanaugh, Marion Deerhake, Tom Ellis, Les Hall, Ernie Larkin, Jeff Morse, Darryl Moss, David Peden and Dickson Phillips and Amy Pickle. If I could have a motion from a member for adoption of these Resolutions of Appreciation and a second?

(Motion by Commissioner Martin and second by Commissioner Steve Tedder.)

Chairman Hutson: Any discussion of comments? (Hearing none the motion passed unanimously.) This will be mailed out to the Commissioners along with a letter of thanks immediately following this meeting.

That is not the only change we have in terms of this Commission. We have a, I guess I would call it a backup lawyer who is now our primary lawyer. Jennie Hauser has stepped in to be Counsel to the Commission because the long time Counsel for the Commission, Frank Crawley retired July 30th which was done, not through legislative act but through his own choosing. I would also like to read into the record and then consider a motion of approval of a Resolution of Appreciation to Francis W. Crawley. “Whereas, Francis W. Crawley served the people of North Carolina with honor and dignity as the Counsel for the North Carolina Environmental Management Commission; Whereas, Francis W. Crawley served with honor and dignity in that role, and Whereas, his sound judgment and warm personal demeanor have facilitated his accomplishments and earned him the respect and admiration of his peers; Now, therefore Be it resolved by the Environmental Management Commission of North Carolina. Francis W. Crawley is recognized and commended for the devoted service to the Environmental Management Commission and is presented this resolution as a token of the highest esteem in which he has held. Be it further resolved that the Environmental Management Commission of North Carolina extends to Francis W. Crawley its best wishes for his future endeavors and orders that a copy of this resolution be spread upon the minutes of this board meeting this 12th day of September 2013.

(Motion by Commissioner Keen and seconded by Commissioner Ferrell.)

Chairman Hutson: Any discussion? (Hearing none the motion passed unanimously.) Thank you.

Also previously circulated prior to this meeting were the minutes of the July 11, 2013 meeting. I will need a motion and a second for adoption and approval of those minutes.

(Motion by Commission Tedder and second by Commissioner Keen.)

Chairman Hutson: Any comments, changes, revisions or questions regarding those minutes? (Hearing none the motion passed unanimously.)

Let me explain what we're going to do today. Since until seven minutes ago we did not have a Commission and there are so many new faces, we only have a couple of minor action items as they're called that we will actually have motions and take votes on. But I wanted to use this meeting as an opportunity for new members, and quite frankly probably some of us who have been on, to learn who we are dealing with within the agency, what we have responsibility for, who are the point people that you need to, if you have questions to be able to contact regarding issues that come before the Commission. The Commission cannot do its job without the great help, support, experience and expertise that we have from the various divisions with DENR that we work with. You'll see that it's primarily the Division of Air and Water Quality but we actually have some responsibilities that fall under the Division of Waste Management. Now with a legislative action that did some reorganization, we now will deal with the Division of Mining, Energy and Land Resources. They now have responsibility for the stormwater programs. What we're going to do is hear presentations from the heads of each of those divisions. I've also asked them and I previously met with them and their senior staff, and they'll have their senior staff here as well; after the meeting we've got a little reception afterwards, where hopefully everybody will stay around. And you can start to place some faces with names with expertise. We recognize all of us, that we've got a learning curve here and will get through this curve and be in position to move forward with action at our November meeting. The other thing that we have to cover is that we are a public body. We're subject to a variety of laws and regulations because of that. So I have asked Jennie to do a presentation on our open meetings laws, our public record laws, conflict of interests and ethics requirements. I know that each of you have gone through an ethics review. At the next meeting we're required by law to read into the record the portions of your ethics review that impose any cautionary or explicit restrictions or things to beware of as you go from there. I will read into the record now what I will read in at the beginning of every meeting which deals with conflicts of interests. That is, General Statute 138A-15 mandates that I, as the Chairman inquire as to any members know of any known conflict of interest or the appearance of a conflict of interest with respect to the matters before the Commission today, if any member knows of a conflict or appearance of conflict, please so state at this time. That relates to the agenda items for today.

Is there anyone now wishing to raise that they have a conflict on any item that we are to consider today? I would also point out that even if you don't do so at the beginning of the meeting, if you realize during the course of the meeting that a conflict may exist raise it at that point and time. It is not unusual as we had at the last meeting, midway through the discussion on a matter, one of our members realized that they had a potential conflict of interest and recused themselves at that point. So it is something just to be aware of as we go through this. I'd also asked just for sake of having some order, if you would please speak into the microphone when you're speaking. Please ask to be recognized. Try not to speak over each other. These meetings

are recorded and they are broadcast so we just need to keep straight. I will keep where there's discussion where there's multiple people, I'll keep a running list and make sure that people are called in the order that they've raised their hands. Any questions about that?

I'd like to introduce Sheila Holman who is the Director of the Division of Air Quality and let me just ask. I know there was a powerpoint presentation that was attached to the agenda. It appeared on the website. I also understand there may have been a problem opening some of the powerpoint materials. If after the meeting you could let Lois know which ones were not able to open, we'll make sure that is corrected. In the future if you get something and you're not able to open it please contact Lois and she will take care of that right away. So Director Holman I will turn the podium over to you.

II. Action Items

13-12 Overview of Division of Air Quality

Director Holman: Thank you Chairman Hutson. As Chairman Hutson indicated I am Sheila Holman. I am the Director of the Division of Air Quality in the Department of Environment and Natural Resources, and yes, that is a mouth full. I would like to welcome each of you. Congratulations on your nomination and I'll say I look forward to working with you as we address air issues in North Carolina. It is certainly a great honor to serve on the EMC and it's also a great responsibility. The first message I will leave you with is one that I've heard a lot in July. I had the opportunity to attend orientation with my youngest daughter at UNC Chapel Hill and the Vice Provost and other leaders there kept telling the parents as their children embark on this new college adventure, remind them to use their resources. So for you all we are your resource, one of your many resources so as you have questions, please don't hesitate to contact us. Before you today it's actually a one pager back and front that gives you a quick summary of the Division of Air Quality and it also has our website. There's a lot more information on the website that just in the interest of trying to give you something to walk away with. This is just a quick overview of the division. What I will do briefly is talk at a very high level of what the air program does in North Carolina. I'll also talk about the Division of Air Quality's organization. I'll introduce some key staff so you can start to put names and faces together. Then I'll touch on what are those upcoming regulatory actions that you'll be seeing from the Division of Air Quality over the next six months or so, and finally some emerging issues. There's a lot going on in the air program at the national level and there's a lot that you may hear about in the media and otherwise. I just want to give you some highlights of what those issues are. I'm not going into a lot of depth. I will probably say this may be your easiest EMC meeting through your tenure here, because we're not getting into the depths of any particular issue. This is just to orient you to the program and to the issues we are addressing.

So I'll start first with our mission and it's fairly a simple mission. Our overall objective is to protect and improve the outdoor air quality in North Carolina. The way that we do that is the Environmental Protection Agency sets what are called national ambient air quality standards. Those are national standards set to protect public health that every state must adhere to. So in North Carolina we monitor to see, how do we compare to those national standards and if we address problems with the standards, then we have to determine how do we solve that problem. So we have a monitoring program throughout the state measuring different pollutants. We have the permitting program, rule development program, which you all will be most involved with,

and, of course a compliance aspect as well. A little bit about how we're organized – in our Central office here in Raleigh there's basically five sections. First, administration, which includes the Director's Office and that is basically the overall management and budget operations for the division. Next is our ambient monitoring program, remember I said we need to be monitoring across the state to see where we have air quality problems. Currently, the division operates about fifty monitoring stations across the state. Some of those stations monitor for one pollutant and some of them monitor for ten or fifteen pollutants. The next key section is the permit section. There are a lot of air quality regulations back at the federal level, and then obviously the North Carolina rules. So as different industries want to operate in North Carolina we receive permit applications and we have to evaluate those permit applications to determine compliance with the federal and state rules. Planning (and this is the group that you will probably see most during your tenure here.), planning has both rule development as well as what I'll call the problem evaluation. As we have violations of a given standard, they're the ones understanding, what are the sources of pollution that can be contributing to that air quality problem and what do we need to do to solve the problem. Finally, we have technical services. This group is responsible for issuing compliance not only with stationary sources, but also mobile sources. They are involved with the vehicle inspection and maintenance program. They also deal with the various enforcement actions, if it leads to that. We have staff in seven regional offices across the state. Those are the red push pins. Those were designed years ago, basically for convenient delivery of services. They are assigned a certain number of counties. In those counties the regional staff would operate any monitoring sites located in those counties. They would inspect the facilities in those counties. For the smaller sources they would actually issue the permits for those facilities and they would also respond to citizen complaints. The three grey shaded areas where our local air programs are located and I'll talk more about that in just a moment. This is our overall organizational chart. While we're on this, what I'd like to do briefly is introduce to some of the key staff. First off, our Deputy Director, Mike Abraczinskas. The Ambient Monitoring Section Chief is on vacation today and I told it was okay to stay at the beach but you will get to see Donnie Redmond at the November meeting. Our permit section Chief, Don Van der Vaart and we also have with us Don Evans who heads up one of the branches in our permit section. Technical Services we have Lee Daniels. Thank you, Lee. Do you have any other staff here today? Then planning, I want to spend a little more time because we have a few more staff, and obviously these are the staff that you'll see meeting in and meeting out. First off the planning section Chief, Sushma Masemore. Thank you Sushma. Joelle Burleson is our rule development branch supervisor and two of Joelle's staff are here today, Patrick Knowlson and Steve Schleisser. Then finally Angela Terry who is one of our office administrative assistants. She helps staff and the EMC and will be taking really good care of you through the years.

I want to touch on the three local programs. Forsyth County, Mecklenburg County and Buncombe County all have local air programs. They basically serve the purpose that our regional offices do with the exception that they also will adopt their own rules. They more than likely mirror the rules that the Division of Air Quality have adopted. The EMC does provide oversight to those three local programs. The one exception here is if there is a statewide plan needed many times that falls to the Division of Air Quality. It's not actually done by the local air program and we work that out on a situation by situation basis. There're upcoming rulemaking actions. I'm not going to get into any detail of the first one because it's on the agenda later and Joelle Burleson will be giving a very quick summary of where we are in this particular

rulemaking process. The next two are in response to a couple of different pieces of legislation from the 2012 session of the General Assembly. The first is proposed revisions to North Carolina's air toxics rules that's to implement the exemption provided for in the legislation as well as to adopt some recommendations that the Division believes are appropriate. We are having a public hearing on these rules next Thursday, I believe at 3:00 p.m. in the DENR office building. The next set of rules, proposed revisions to the Vehicle Inspection and Maintenance Program, again that was in response to some legislation from 2012, in which we were directed to exempt the three newest model year vehicles from the Vehicle Inspection Program. Again, we have a public hearing on those particular rules next week as well. That's set for September 18th at 6:00 p.m. in the DENR building. We do anticipate coming to you with some recommendations resulting from the review of the rules under House Bill 74. That will be likely in January or March. There were also some changes to the open burning rules and to the permit term in House Bill 74. Those will be additional rulemaking actions that you'll be seeing in the near future. Finally an initiative that the Division undertook about six months ago is to revise our, what we call our permit exemption rule. It lays out what activities at a given facility should be exempt from permitting and let me just say our existing rule is complicated and difficult for the division to understand. I see Mr. Carter shaking his head. We're trying to streamline this rule and make it more understandable, not only for ourselves but for the regulated industry. Those are some highlights of what's coming up in the next six months. Emerging issues, and again these are issues happening at the national level and you may be hearing more about these particular issues in the news. First up is the sulfur dioxide standard. In 2010 EPA adopted a new one hour sulfur dioxide standard and they are about to propose what they call their implementation rule. That is what states should be doing to address the short term standard. That proposal is due to come out at the end of this year. One of the things that we try to do is brief at the Air Quality Committee as these proposed rules come out so that you understand some of the changes that we made, we mainly make to our rules to address the new federal requirements. Next up in roughly January or February EPA did a finding of deficiency for North Carolina's start up shut down malfunction provisions. This finding of deficiency is basically telling us we need to get back and revise our rules. We didn't necessarily agree with that proposal and we provided comments to EPA during the proposal comment period. They are scheduled to finalize that action later this month and so we'll be talking about this particular action at the November meeting. Let me also say that we were not the only state, I believe 36 states were named in that finding of deficiency. Air Quality transport – EPA has through the years tried to address air quality transport and that is the impact of emissions from one state on a down-wind state. That may cause that down-wind state to not be able to meet a given national ambient air quality standard. EPA started addressing the transport in the 1990s. They issued something called the Nitrogen Oxide State Implementation Plan. Again it's a deficiency call that went out to 20 some states in the eastern United States. That rule is challenged but EPA successfully defended it. Following that, EPA in the early 2000s proposed a rule called the Clean Air Interstate Rule. That was looking at reducing nitrogen oxides and sulfur dioxide from primarily power plants. That rule is challenged and it was remanded back to EPA in about 2008 and then EPA came out with something called the Cross State Air Pollution Rule. That was to be the replacement rule for the Clean Air Interstate Rule. That rule was also challenged and was actually vacated last August. EPA then requested that the Supreme Court rehear that case and that is due to be heard by the Supreme Court this fall. I say all this because air quality transport, there's a lot of time and energy that goes into these assessments. It's a complicated issue. It's, how do you equitably say how much a given

state's contributing to another state. You've got to consider not only that state's impacts but also all of the emissions in the down-wind state. It's not an easy issue but I just let you know this because there's a lot of effort at the federal level to address air quality transport. We are participating actively in EPA's work.

Earlier this summer in June President Obama announced his Climate Action Plan and it's a pretty broad based plan. The two items I'll put this on today are again rules that will impact North Carolina. The first is EPA is due to re-propose a new source performance standard for new power plants. That's actually due to come out next week and there will be a comment period. EPA will then finalize that rulemaking. That would be what standards a brand new power plant would need to meet as we go forward. The second item that President Obama directed EPA to do is to promulgate guidelines for existing power plants for greenhouse gas emissions. That proposed guidance is due out next June. It's supposed to be finalized the following June and then the states all have one year to basically develop a plan to address those guidelines. There's a lot of dialogue happening again at the national level on what this is going to mean to states. The next item we talked about EPA adopting standards. The Clean Air Act requires that they revisit the national ambient air quality standards every five years. They are in the middle of evaluating the ozone standards. So we're expecting a proposed new ozone standard in 2014. As each of these issues evolve, we'll be briefing at a minimum the Air Quality Committee. As I said a lot going on at the federal level and it's certainly keeping us busy.

In summary a lot of the rulemaking actions are driven by federal action that EPA, in particular, court decisions on those federal actions, legislative action by the North Carolina General Assembly and the new emerging information. As we get any new air issues we have to talk the thing through. Is our current statutory regulatory structure available or adequate to address those? For the remissions those that are serving on one of the Remissions Committees, the remission cases in air quality are mostly open burning cases. But occasionally you will receive a case where a company is contesting a civil penalty. There will be one permit that will be heard by the Special Air Permit Appeals Committee. The challenge was filed prior to Senate Bill 781 passing, which changes the process for those contested cases. I will leave you with our contact information. Thank you very much for your time.

Chairman Hutson: Let me just add to Sheila's comments so you understand how the rulemaking process goes forward. We are subject to the North Carolina Administrative Procedure Act, which governs both rulemaking by agencies and challenge of agency decisions where it may be a permit, penalty assessment or the like. Here's how we're involved in the rulemaking process. A rule can be developed either by staff or Commissioners working with staff or a private party has the right to file a petition for rulemaking. That petition or that package, are called the rulemaking package initially goes to the EMC Committee that has responsibility for that matter. So if it were a proposed new groundwater standard it would go to our Groundwater Committee. Something on the air side, we'd go to the Air Committee. Water quality would go to our Water Quality Committee. That committee is the one that takes the initial action. They will hear a presentation at their committee meeting and then vote whether or not to make a recommendation to the full EMC to proceed to public hearing. The process, let's say they do that at a November meeting. Our bylaws then say the full Commission cannot consider it for thirty days after that. The purpose of that is so that the full Commissioners can read the background on it and the like, and bring themselves up to speed, so we'll not have a committee approve something and then just put in front of the rest of the committee and basically

having the committee become the Commission. What happens then is at the following meeting we will have a discussion debate and vote whether or not to proceed to public hearing. We're not adopting the rule yet. We're going to public hearing. There is both a public hearing and a written public comment period. I will be asking one of you to serve as the hearing officer at the public hearing. There is no questioning. You don't have to make any statements other than basics that are read into the record, but it is to receive comments from members of the public. Staff will be there to assist you in that role. Following the public hearing and the close of the public comment period, the hearing officer working with staff will develop a hearing officer's report. At an EMC meeting after that public hearing whoever served as the hearing officer will make the report to the committee, but the committee will not take action on it. Then the next day they make a hearing officer's report to the full Commission. It is at that point and time that we are voting whether or not to adopt the rule. That's the final decision by this Commission on the rule. There'll be debate back and forth. There is not the opportunity for members of the public. The public comment period is done. So we will be voting on whether or not to adopt the rule. After that under North Carolina law, it's not a final rule yet. It then has to be reviewed by what is called the Rules Review Commission and that is a Commission that reviews it to make sure that it meets statutory standards in terms of the rule. It's necessary the rule is clear and easy to understand and does not exceed agency authority. At that point if the Rules Review Commission either approves it or does not turn it down, shortly after that the rule becomes a final regulation. For example, on the vehicle inspection and maintenance and air toxics; at our July meeting we voted to proceed to public hearing. That's what's being held next week and the public comment period is open on those rules now. It will conclude sometime in October. I believe is the case. Because we didn't have any Commissioners, we have staff serving as hearing officers in that. So likely at the November meeting there will be a presentation from the hearing officers as to the public comments that were received, responses to those comments. Then we will vote after discussion and debate as to whether or not to adopt those rules at that point and time, and then we'll go through the Rules Review Commission and then become a final rule. Jennie knows the process. There are a couple of other environmental lawyers now on this Commission who purport to know the process and feel free to ask us questions. But that's how the rulemaking process works. Normal rulemaking can take anywhere from 6-8 months. In one case before I came on the Commission brought a petition it was about seven years. But that was a little bit unusual in that regard. So I encourage you to ask questions about the process and procedure. But that's what we have to go through to satisfy the requirements for what is called "Notice and Comment Rulemaking". Sheila also touched on remissions and you saw that I sent her an email. We'll talk at the end about the committees. If somebody is assessed a penalty they have a right to request that the amount of the penalty be reduced. Each of us will be on one of the two remission committees. One handles water and one handles air matters. Sheila talked at the end that we will be hearing a permit challenge and Jennie will get into more of this later. Until the law changed about two or three years ago, if someone did not like a penalty that had been assessed to them or did not like a permit that had been issued to them, or a third party did not like a permit that had been issued, they had the right to file what is called a Petition for contested case which is similar to filing a lawsuit in the Office of Administrative Hearings where an administrative law judge hears evidence just like a regular trial. Witnesses are called, motions are filed and that administrative law judge issues a ruling. Prior to the law change the administrative law judge issued a recommended decision which then, if it was in the air or water field came to this Commission sitting as a quasi-judicial body, basically judges (you'll hear

restrictions on that) where we would make the final decision. We're not going to have any of those cases because the law was changed to say the appeal now goes from the administrative law judge to the Superior Court. But there are a couple of old cases that are out there that are going to come before us (and I'll let Jennie speak more in her details) where we sit in a different capacity and we are subject to different restrictions on our behavior than it is in the rulemaking process. That's what I paid a semester worth of tuition to take administrative law, which you can really summarize in 10 minutes. That's what we got.

I open it up now if anyone has any questions, comments or issues for either what I just talked about or for Director Holman.

Commissioner Ferrell: Sheila I appreciated your presentation. You did a great job. The mission is broad. How do you measure success?

Director Holman: It really comes back to those national ambient air quality standards. Obviously the goal is to make sure that we're meeting those standards everywhere in North Carolina. We've had a fairly successful adventure, if you will over the last twenty years that I've been with DENR addressing those standards. Right now we have only two monitors in the Charlotte area that are currently violating the 2008 ozone standard. All monitors everywhere else in the state for all other pollutants are measuring compliance with the standard.

Commissioner Ferrell: Thank you.

Commissioner Puette: I just wondered. I've been away for a while. Do we have any new ambient standards or are we still stuck with the six that were originally promulgated under the Clean Air Act?

Director Holman: We still have the six criteria pollutants. EPA has adopted multiple forms of standards for certain pollutants. For example, PM2.5 are fine particles. There's both an annual standard and a 24 hr. standard.

Commissioner Ferrell: Yes that was my question. Thank you.

Chairman Hutson: Director, we thank you. Staff thank you for being here. Those of us who have worked with you thank you for all you've done and we look forward to working with you in the future and know that you will be patient with us in these early months. Thank you.

Now we will have Director of what is now the Division of Water Resources, Tom Reeder who will do an overview of that division. Director Reeder thank you for being here.

13-13 Overview of Division of Water Resources

Director Reeder: Thank you very much Mr. Chairman. Welcome to all the new Commission members. I'm Tom Reeder, the Director of the Division of Water Resources and we certainly look forward to working with you in your official capacities here as we move into the future. I guess. I don't know how any of you have following what's been going on in the department. But I guess the biggest news on the water side is up to about forty days ago we actually had two water divisions in the department. We had the Division of Water Quality and the Division of Water Resources. On August 1st those divisions were consolidated into a single division which

is now called the Division of Water Resources. We have about 497 people total in that combined division. Basically what we do is we work with all the state level issues that deal with water except for two issues. But everything else we handle and I'm going to go through that. We handle all the other water issues from a state level, whether it's drought management, regulatory issues, implementation of the Clean Water Act, implementation of the Safe Drinking Water Act, buffers, HQW, ORW classifications, basin-wide planning, all of that we handle. Two things we don't deal with at a state level that deal with water are, one, stormwater rules which were transferred to the Division of Mining, Land and Energy Resources, Tracy Davis' division. He's going to talk about that in a minute. That's the one thing that we don't deal with and the other thing is we don't do infrastructure financing any more. That's been moved to the new Division of Water Infrastructure headed up by Kim Colson. Anything else that deals with water in the state of North Carolina is dealt with by the Division of Water Resources except for those two things, water infrastructure financing and stormwater rules. You can see how our personnel is distributed. The vast majority are in the Central Office here in Raleigh, 314 people in the Central Office, and then the rest are disbursed throughout the seven regional offices located throughout the state. This is what our new organizational chart looks like. This was effective by Monday of this week so all of this is still in lot of transition associated with this consolidation. But this is our new organizational chart. I will go through each one of these sections individually but the only thing you should take away from this is, in accordance with some guidance we got from the Secretary, we tried to keep the new organization as flat and as kind of concise and as mission oriented as possible. That's kind of what it came out to look like once we were done with everything. On the administrative side of the house there's only two points I want to make about this. One is Lois Thomas who does all the work with the EMC, the scheduling and provides you your assistance, and things like that. She's part of the Division of Water Resources in our administrative services section. Also, one thing a lot of people don't know is that we do all the water projects with the state like beach nourishment, dredging projects and all those things that are down on the coast, dredging of lakes and things like that. We are the state sponsors for all those projects so anything to do with beach nourishment, dredging we have a Water Resource Grant Program that provides a lot of recreational water opportunities, and things like that. We actually manage that through our office and a lot of people aren't familiar that we actually do that.

Going through looking at the actual sections the first one I'll talk about is the planning section because that's probably the one you actually deal with the most on a regular recurring basis. That's headed up by Tom Fransen. We have 82 people in the planning section. Tom has about 30 years, I'd say roughly of water resource management experience. You may have heard about our Hydrologic Modeling Program. That's where we actually take all the water resources in North Carolina. We have a very complex modeling program. We looked at our projected uses for that. That's part of the planning section's responsibility and Tom actually developed that program himself, personally. One of the big things that we're trying to accomplish now in our planning section is what we call integrated watershed management. Because we had these two divisions before, we had the Water Resource Division and we had the Water Quality Division. We really didn't look at watershed or water resource management from an integrated perspective. You know we had water resources that looked at it from a quantity side and then we had water quality that looked at it from the Clean Water Act or water quality side. So now we're trying to get all that together. So in the past we've had two different models, maybe that dealt with the river basin, one on the water quantity side, one on the water quality side. Same thing

with our basin-wide plans we had the same dichotomy there with our basin-wide plan. We're trying to get that all now together in one thing, so we only have one basin-wide plan, one model for river basins and it will deal with all the issues associated with water in that basin, both water quality and water quantity or water resource management. Some of the other things that are in the planning section is they manage our standards program, classifications, the actual classification of waterbodies, whether they're classified for safe water supply or whether they're classified for recreation, things like that. The 303(d) listing is where waters are listed impaired based on the monitoring of the waters. That's where they're listed on impairment. They become impaired. We have to develop what's called a total maximum daily load or a TMDL which is supposed to bring that water back to its unimpaired status. Some of the other things in there are we do groundwater planning. They run the CCPCUA program which is the only program we have in the state of North Carolina that actually deals with water withdrawal. North Carolina's riparian right state which means that if you have water underneath the property you own or adjacent to the property you own, you have a right to make a reasonable use of that water. We only have water withdrawal permitting in one area of the state, and that's called the Central Coastal Plain Capacity Use Area. It's a 15 county area and the coastal plains, they were using the aquifers unsustainably so the EMC initiated a program where they now have to get a permit if they withdraw more than a hundred thousand gallons per day. We do local water supply planning in our planning section. That's where all local governments that have a public water supply have to project out their use for 30 years. We put all that information in our models and that determines how long the water is going to last in North Carolina. Water conservation, drought management, some of these things are regulatory. Some are non-regulatory in nature. These things are all done in the planning section. They mainly do all of our new rule development, development of our nutrient management strategies. One thing I should have put on this that I didn't and it's a huge oversight because it's one of the most controversial programs in the state. It's the Interbasin Transfer Program, which is also done in our planning section. That's where if you going to transfer, if you look at that map right here. We have our 17 major river basins in North Carolina. If you're going to transfer two million gallons of surface water from one of those river basins to another in North Carolina, you have to go through an incredibly stringent process to get permission to transfer that water. It will take you 3-5 years and it will cost you 3-5 million dollars to get that permission to transfer those waters, that surface water from those major river basins. That's another program that's under Tom's purview there in the planning section and you'll be hearing a lot more about that.

Moving on to the next section, Environmental Sciences Section headed by Dianne Reid. Dianne's our section chief for that, about 45 people there. How many years of experience do you have?

Dianne Reid: A little over thirty.

Director Reeder: I'm very lucky in that I have extremely good section chiefs in the Division of Water Resources. It's a huge organization. You know we have all these complex responsibilities. I couldn't possibly be knowledgeable or have any kind of management skills to manage these things on a daily basis. So I'm extremely fortunate in that I have very, very good section chiefs that have a lot of experience, a lot of technical expertise and they take care of running these programs on a day to day basis for me, so I can do what I do best which is sit behind a desk and answer the telephone. Environmental Services Section has about 40 people in it. The reason I

follow that is that I followed up planning with the ESS section is because they actually go out and do all the sample collections. They go out and collect the samples in the riverbodies and the waterbodies throughout North Carolina. We analyze those samples and that determines how healthy our waterbodies are, whether they're impaired or not impaired, things like that. They go out and do a lot of the field work. They do fish sampling and all that kind of thing. They do special studies. They're going out on a daily basis collecting samples all over the state, running an ambient monitoring network, that again determines how healthy our waters really are in North Carolina. The next section I want to talk about is the Permitting Section headed up by Matt Matthews. How many years you go Matt?

Matt Matthews: Thirty

Director Reeder: See! Everybody's got. I only have 15 years in the department. All these guys have twice the experience I have. That's why I let them run things because they're so good at it. Matt's got about 58 people in his section. Basically this section, like it says, like the name implies they actually do the major bulk of the permitting for the water resource section. They're broken down into a point source branch and a wetlands branch. Basically point source does what you normally think of in terms of surface water discharge permitting for the state of North Carolina. That's in compliance with the Federal Clean Water Act. They also do land application permitting which is non-discharge permitting, instead of say dumping your wastewater into a stream. You apply it to a land. They permit that and they also do our emergency response planning. Then on the wetlands side they do a lot of programs that you're going to hear a lot about. It's very controversial. They do your 401 permitting or certification in which you're going impact water in North Carolina or wetlands in North Carolina, you have to get this thing called a 401 permit. They do that. They do isolated wetlands permits. They do the buffer authorizations. We have these buffers in the Neuse, the Tar Pamlico and places like that. They have these authorizations that allow you to impact those buffers. They also oversee our mitigation program, both these branches. Both the wetlands and point source branch do a lot of compliance enforcement actions; too, if you don't follow the requirements in your permit we're going to take an enforcement action against you to bring you back into compliance. They do a lot of that type of work and you'll be hearing more about that in the future. The next section is our Aquifer Protection and Regional Office Section which is headed up by Jay Zimmerman. Jay what do you have, about 28 years? Twenty six and counting. It has 137 people and is one of our largest sections. Basically what Jay manages is our aquifer protection section which is headed up by our CAFO program which, of course, is the permitting for these confined animal feeding operations. I'm sure you've all heard about the big pork operations and cattle operations. We have dairy operations. In North Carolina they're called CAFOs. He issues the water quality permits for those operations. He runs that program. They also manage the programs that do any kind of underground injection. Like if you want to inject anything into the ground, you'll have to go through them. They manage that program. Another thing they are heavily involved with right now, you've probably heard about is the coal ash, the Duke coal ash lawsuits and things like that. That's also under the purview of Jay's group. The other section he manages is all our seven regional offices on the water quality side. In the regional office structure, and I don't want to get too confusing here, but in the regional offices for Division of Water Resources, we actually have two sections. We have one sections that deals with water quality issues and then we have another section that deals with public water supply issues, and I'll talk about the public

water supply side here in a minute. But on the water quality section all those report to Jay here in the central office. The regional offices, for us are really our eyes and our ears, and often the face of the division because these are the people that most people deal with in reality more often than anybody else in the division. They go around and they're doing things like making stream calls and determining whether a stream is waters of the state or not. They're making wetlands delineations. They're going out to determine what the boundaries of a wetlands are. They're doing field visits and compliance inspections. They're responding to complaints. We get a lot of those. They respond to disasters. If a public water supply has been knocked out or wastewater treatment plants are having overflows, they respond to those disasters and try to help those things out, do a lot of outreach in the systems and technical training. They're very valuable to us and they have an extremely difficult job. The regional offices, I feel have the most difficult job in the division and our regional supervisors do an excellent job of implementing all those requirements they have. They're really the people that the citizens of North Carolina most often deal with, very customer service oriented. Like I said they're really the face, eyes and ears of the division. The Laboratory Section is headed up by Kent Wiggins. I don't think Kent is here today. They have 47 people. Basically like I said earlier, Dianne's group goes out and they collect all the samples around the state. Somebody has to analyze and do a chemical analysis of those samples and that's done by our laboratory section. They can also do analysis of samples from people external to the department. Basically they do just that. They do chemical analysis of different samples. They also run a certification branch which is basically they certify labs both internal and external to North Carolina. They go all around the country and certify these labs. So they can do chemical analysis of samples for their customers that comply with the NC regulatory requirements. If you going to comply with North Carolina laws you have to make sure that your samples are analyzed in a way that meets our requirements. So they go out and certify these labs to say they can analyze samples for NC requirements. Last but not least the section I want to talk about is public water supply section headed up by Jessica Godreau and Jessica is not here today. She had to go to a training opportunity out in Winston Salem region. There are 110 people in this section and they implement the Safe Drinking Water Act. I can't emphasize enough how important the job is at that public water supply section does. They basically ensure that everybody that's serviced by a public water supply in North Carolina is getting safe, healthy drinking water. I don't think anything is more important than that. We actually have over 6,000 public water supplies in North Carolina serving over 8 million people. So they with the staff of 110 people go out and make sure that those 8 million citizens in North Carolina are being provided with safe and healthy drinking water on a daily basis. I have to say they do a fantastic job at it. We have right now the highest compliance rates we've ever had in the history of the program, right now today. So really it's not a leap to say that North Carolina citizens are receiving the safest, healthiest drinking they every received in the history of the state today. That's a result of these 110 people. It's probably one of the most effective and efficient programs in the United States in terms of implementation of the Safe Drinking Water Act, what we have here in North Carolina. I take absolutely no credit for this at all and I don't deserve any credit for it at all because the public water supply section only came to the Division of Water Resources in 2011, and they were doing this long before they came under my purview. So you have some really outstanding people in that section doing a really outstanding job for the state of North Carolina. One point and the last point I want to make about public water supply is you won't ever have anything to deal with them, whether it's fortunate or unfortunate, I don't know. But the other rulemaking and everything goes to the Commission for Public health. So although

they're in the department, they're in the Division of Water Resources, they basically report to the Commission of Public Health. You won't ever see them but I just wanted to point out to you that they're part of the division and they do a truly outstanding job.

A couple of points I want to make here, then I'll wrap up. One of the things you may hear about is we're undergoing something in the division called a program review. We have hundreds upon hundreds of rules in the Division of Water Resources, in the waters here if you will, Clean Water Act and everything else. Many of these rules have been around for a long time. Many of these rules, in my opinion are conflicting. There are probably a lot of them that are outdated and that's unnecessary. There are probably a lot of them that aren't really providing any environmental benefit anymore. So what we're doing is we're going through and looking at all these rules. We're going to have this completed by December 31, 2013. We're looking at all these rules and we're going to make up a comprehensive list of all the rules we think we don't need anymore, or all the rules that we think we could amend to make them more customer service friendly to the state of North Carolina. We hope to have that done by the end of the year and then we're going to begin a massive, either through the rules review process or the rulemaking process through legislation, we're going to have a massive amendment process. We're either going to repeal these rules or we're going to amend them to make them what they should be and relieve the conflicting nature of them and things like that. Three rules that I want to make you aware of that are going to be under heavy scrutiny as part of this program, there are some of them that are more controversial such as the buffer rules. We're looking at making some major changes to those as part of this program review. Our isolated wetlands rules which are extremely controversial, we'll be recommending some major changes to those as part of this review. We have a lot of rules dealing with what you can and can't do around SA waters that we're going to be taking a hard look at too. Because some of those rules just don't make any sense. At least they don't make any sense to me so we're going to be looking at changing some of those also. One other point I want to make about this is we've formed up what I call an Outside Involvement Committee. Actually, Sheila was the first person in the department to form an Outside Involvement Committee so I kind of stole her idea. But we formed up this Outside Involvement Committee of external stakeholders and we're going to also solicit their input as part of this program review, add terms of what rules do they think we have, these external stakeholders have think that really we don't need anymore. So we'll get their input in too as part of the process. Actually the first meeting of that Outside Involvement Committee is next week, next Thursday if I'm not mistaken in this room at 1:30. One last thing I want to talk about before I sit down is the Chairman asked me to bring this up and this deals with a recent thing dealing with the waiver of a 401 permit that we did for the Cleveland County Reservoir Project. Been in a lot of newspapers and the Chairman asked me to just clarify what was going on there for you all, just in case some of you had read about in the newspaper or something like that. I talked a little bit earlier about 401 certification. Basically, if you're going to impact waters of the United States or waters of the state or wetlands of the U.S. or wetlands of the state, you have to get what's called a 401 certification from the state of North Carolina, which allows you to conduct these impacts. Now there's another document that goes along with that which is called a 404 permit. The 404 permit makes sure that, (that's issued by the Army Corps of Engineers), all your federal requirements are complied with. Then the state has a chance to go in and say from a state perspective maybe we want to add some things on that the feds didn't add in their permit. Maybe we want to make some things more stringent so we have a chance to issue what's called a 401 certification. So these things kind of go hand in hand. 401 from the state and 404 from the

feds. Obviously, Cleveland County wants to construct a major reservoir out there. So they need both a 401 and a 404 permit because it has major impacts to the French Broad River, which is an interstate water body. Cleveland County has been dealing with the Federal government, the Army Corps of Engineers since about 2005. Right Butch? 2005 on this project at a cost of 1.5 million dollars to their rate payers and it has become extremely controversial just to be honest with you. It's very controversial. The Feds keep telling Cleveland County that they don't need the reservoir and Cleveland County keeps telling the Feds, yes we do, and they really can't come to any kind of agreement over this. So this thing has been dragging out and dragging out and we have been privy to all these meetings. We've been attending all these meetings from a state's perspective. Earlier this year, actually this summer Cleveland County submitted their 401 application for this project. They submitted the 404 application back around 2005 timeframe that they've been trying to work out with the Federal government. Then they submitted their 401 earlier this summer. So what I thought and I went to my boss, Assistant Secretary Mitch Gillespie and talked to him about this. I said I didn't really see any value added in the state getting involved in the middle of this process because this thing was a long drawn out process with the Federal government. We certainly wouldn't, if the project did come to fruition, I can't see that we would add any requirements in there that the Federal government wouldn't already do. Not only that; we would just cost the taxpayers and the rate payers of Cleveland County more money. They've already spent 1.5 million trying to get their 404 permit. More money to try to resolve this issue that on the state side when the Feds have already been dragging this thing out for years and years. So I went to Assistant Secretary Gillespie and I said that I don't really see any value added to the state to inject ourselves in the middle of this thing. From the state perspective, because we have limited resources and why should we go get involved in something that the Corps is already doing. Or from Cleveland County's perspective because it's just going to cost them more money for something that I'm sure is one day going to be settled in the courts, maybe 5 or 10 years from now, because that's how much longer this process is going to last. Assistant Secretary Gillespie agreed with me. What we did was we basically refused to act on the 401. So section 401 of the Clean Water Act says that if the state refuses to act within a certain time period, the 401 is considered met and the permit applicant can move on with getting their 404 permit. So that's exactly what we did. We refused to act. The permit was deemed waived and Cleveland County is still battling it out with the Corps as they will, like I said for another 10 years or so. There was a lot of speculation in the media that the reason we waived this 401 was due to pressure that Mr. Smith put on me in his purview as a member of the EMC or political pressure that I received from the legislature or you know my boss here in the department. Actually, none of that is true. It was just a practical decision that was initiated by myself that I got my boss' concurrence on, a practical decision to say that there would be no value added to anybody including the environment for us to get in the middle of a battle that's been going on between Cleveland County and the Corps for basically nine years or so now. So we exercised our rights under Section 401 of the Clean Water Act to refuse to take action and waive the 401. That's where we are on that. Subsequently, I think we're being sued over that decision which I will tell you that's really not a big deal to us. Because in the Division of Water Resources we assume now that we're going to be sued over every decision we make and we pretty much are. So we issue a permit, we're sued by the people that didn't want us to issue the permit. If we don't issue the permit we're sued by the permit applicant. So basically now we're sued on every decision we make now in this division. In fact, I remember Lacy Presnell the General Counsel for the department told me the other day that the department as a whole has

over 1500 pending lawsuits. So I guess that keeps the people in the AG's office happy and busy. So we get sued over everything. Being sued over something is no big deal to us. That's where we are on that. Commission Chairman just wanted me to mention that to you. That really concludes my presentation. That's my contact information. If you ever have a question about anything to deal with water, feel free to give me a call. I talk to Chairman Hutson on a regular basis and that's pretty much it unless you have any questions.

Chairman Hutson: Thank you Director Reeder. Those of us who have been in the environment field for a number of years can speak code because everything is in acronyms. As those acronyms come up I'll try to make sure that the speakers explain them. Director Reeder if you could just say what is an HQW and ORW and SA water. That would be great.

Director Reeder: Right. I'm sorry about that. We have different classifications of our waterbodies. All waterbodies regulated by the state of North Carolina have a classification and those classifications run from C which is the lowest classification. That just means it's basically a water of the state and it's safe to eat the fish that comes out of that water, what we call fishable and swimmable. So you can swim in it and hopefully not get sick and if you catch fish in it you can eat those fish, and hopefully not get sick. The next step up from that—so that's your basic classification. So everything in North Carolina, at least has a classification of Class C. The next step up from that is Class B. Class B means it's approved for recreation. So those are your highly used recreation waters. So if you have a lake with a beach, like say up in Falls Lake or you know a coast with a beach, that where there's a lot of people that are constantly recreating in that, that would be classified as Class B. That's held to a slightly higher standard in terms of bacteriological pollutants again, and of course the goal there is to make sure people can swim and boat, and do whatever else they want in that water, ski and not get sick. Next up from that is you have your water supply classifications of water and those run through WS-4 which is your lowest water supply classification all the way up to WS-1 which is your highest. Basically, if you want to use the water in a water body for consumption, for drinking purposes or for public water supply purposes, that water has to be classified as a water supply watershed. That carries a lot of restrictions with it. So that's your next level of classification. That's for public water supply purposes. Then above that you have what's called HQW which is high quality waters and ORW which are outstanding resource waters. These waters have some special significance in North Carolina. Maybe they have an endangered species in them. Maybe they're used for trout fishing, things like that. So they carry this even higher classification than some of these other waters in the state. At the far end of the spectrum you have what's called SA waters which are waters that are used for shellfishing and those have to have the most stringent standard because basically what we're saying, in those waters you can go and harvest shellfish and go eat those shellfish and not get sick. So they have some very stringent requirements on them in terms of bacteriological pollutants and things like that. Really that is probably, in my opinion the most, that and ORW are the most stringent, outstanding resource waters, are the most stringent waters in terms of classifications in the state, the shellfishing waters.

Chairman Hutson: Thank you. Other questions or comments for Director Reeder? Thank you all the staff that came here. We appreciate you making sure that the young guy with little experience doesn't make a mistake when he speaks. Now we are going to hear from – I would consider our newest participant in front of this Commission. Tracy Davis from the Division of

Energy, Mineral and Land Resources who will describe the new responsibilities his division has and how those come within the premier of the Environmental Management Commission. Director Davis thank you for coming today.

13-14 Overview of the Division of Energy, Mineral, and Land Resources

Director Davis: Thank you very much, Mr. Chairman and Commission members. My name is Tracy Davis. I'm the Director of the Division of Energy, Mineral, and Land Resources. I thank you for having me today to talk about our Division. We don't appear before this Commission very often so I thought I would overwhelm you with a lot of slides. I promise I won't go through each and every one of those. I will stay within my timeframe but I want to make sure you have the information on our programs as complete as I can provide it so you can see what we do. This is kind of an outdated overall O-chart. I am in the same situation as Tom Reeder with Division of Water Resources. Our division is going through quite a bit of restructuring with some additional programs that have been added recently since August 1. One is the stormwater program that came from the former DWQ, our water quality division, into the Land Quality Section of our Division. We also have two programs from the Department of Commerce, the State Energy Office and the Weatherization Assistance Program that came into our division effective August 1 as well. So this O-chart is out of date but what I wanted to show here is just that we have a Geological Survey Section which is more of a service agency that do geological mapping, mineral identification and our outreach activities. They are a non-regulatory branch of our Division. The Land Quality Section, which is the one I'll focus on today, has all our regulatory programs. Then there are the Weatherization Assistance Program and the State Energy Program that will be off to the side until we can decide on how we're going to structure the Division on the energy side of things. So now I would like to focus on the Land Quality Section, again that's our regulatory section. I'd like to recognize Toby Vinson. He's our Chief Engineer and our Acting Section Chief so he has two hats as well as several others that we've charged them here with the Mining and Energy Commission functions. Toby is overseeing the Land Quality Section at the present time because Mell Nevils who was our previous Section Chief for about 29 or 30 years just retired in July. It was not good timing for us for him to leave with his expertise in the five programs listed here. The Dam Safety Program, Mining Program, Erosion Control Program, Stormwater Program - effective August 1 - and the Energy Program, which is the program that works with the Mining and Energy Commission on the rulemaking that's underway that you've heard about. Here are the supervisors for each of those programs.

Where our central office program heads and their administrative programs are based out of Raleigh, they give guidance to our regional offices and make sure that we implement the programs properly. Our regional office staff is cross-trained across all the programs in each regional office, so one inspector who's assigned certain counties in the region will go out and do dam safety inspections, sediment inspections and mining inspections and etc. all in the same trip sometimes. So staff is responsible for enforcing at least four laws and maybe eventually, with the energy program, five laws under their purview. We see that as a very effective and efficient use of regional resources for implementation of our programs across the state. One thing I'll mention is we only have one regional supervisor to oversee these five programs in the regional offices and they all report directly to that regional supervisor. So all the engineers that do permit review and application comments, senior specialists, specialists that do inspections all directly

report to the regional supervisor. So we have a very flat O-chart and this does not include all the stormwater folks that we received from Water Quality. This will need to be updated as well.

The first program I'd like to touch on is the Dam Safety Program. That program's responsibility is to prevent property damage and loss of life from the failure of dams in the state. We have 4,100 jurisdictional dams that we regulate and about 1,100 of those are high hazard dams. That means that if they were to fail they could cause loss of life downstream. We have assigned emergency action plans to make sure we have protection for the downstream public if there is an emergency so that certain measures can be taken to prevent loss of life. We did have a recent statutory change, that should HB 119, that passed a couple of years ago that changed the threshold for jurisdiction from 15 ft. high and 10 acre-feet for dams to 25 ft. high and 50 acre-feet of impounded capacity. So since that threshold was raised, we had about 2,000 low and intermediate hazard dams that dropped off of our jurisdiction for inspection. If it's a high hazard dam, where it can cause loss of life downstream, it doesn't matter what size or capacity it is still under our jurisdiction. Here are a couple of pictures of where you'll have the very old and historic masonry type dams. We also have very highly engineered, large dam structures across the state. Basically, most of our dams are embankment or earthen dams that we review through the design review process to make sure they don't overtop and cause failure from the structure itself. We have had a few dam failures. No loss of life in several decades. A lot of people say that the dam safety law was written in blood because we didn't have one. Then we had loss of life from dams that were not regulated. Then we were given a statute and staff to do that. Every time there's a high hazard dam failure, there's a potential for loss of life. There's a lot of attention obviously given to the program and the resources to ensure that this does not happen. So I think the great work our folks are doing on permit reviews and inspections are preventing failures from occurring. We have only had a few failures in the past couple of years; and none of those have caused loss of life in recent decades. This is just to show the high hazard dam locations across the state, mostly focused around the metropolitan areas of North Carolina. I've already touched on this about the change in the jurisdictional height and impoundment capacity. Since we do have cross training and we have appropriations that come into Land Quality as a whole, we allocate our appropriated money to staff our different programs. So we have about 18 total staff and about nine of those staff are housed in the Archdale Building to oversee the program. Then we allocate 9.18 full time equivalents to our seven regional offices. Each person gets so many hours of dam safety, so many hours of sedimentation and so many hours of mining to do their inspections and other activities. I talked about high hazard dams. This is based on the probable damage that would occur if the structure failed. We have them classified as low hazard which would be no significant impacts, no loss of life. Intermediate is where there's no loss of life, but there is significant property or environmental damage. A high hazard would be when there's potential for loss of life.

I'll touch on the Mining Program. Our mission as provided in the statute is to provide for mining of mineral resources in the state while ensuring usefulness and productivity of the land and also restoration of those mine lands when mining is completed. We have about 866 permitted mines. We permit mines that are one acre or more that removes material from the site, to excavate material and haul it off the site. We are required to inspect sites a minimum of once per year. We have various commodities that are mined that are in your packet. One of the most well-known is ones that can be most visible for public input and public hearings are the crushed stone operations. Even within this industry, we have different types of geological formations that they mine. On the left is more of a granite quarry in the piedmont and western part of the

state, whereas on the right is a limestone quarry that they don't have to blast to remove rock. They actually rip the material with the excavators and then crush it into products. Just under 10 FTE's are available for staffing the mining program statewide. Five of that staff are in the central office and a little less than five are spread across regional offices to do inspections and application review and feedback back to the central office. This just shows the permitted acres we have across the state. Fifty-seven percent of that acreage is bonded to be disturbed and then only 41% of what's approved to be disturbed is what's actually affected. Folks have not reached the bonded acreage at this point and of course, we only bond the affected land that they propose to mine. This just shows the diversity of different types of mines that we permit across the state, the number and percentage of the total. This is a map that's showing the diverse commodities that we have across the state that we regulate. The main purview as the chairman said that I think would interact with this Commission would be the Sedimentation Program and the Stormwater Program. However, the Dam Safety Program also integrates with this Commission and we, from time to time have come before the Commission to report on our progress with the Dam Safety Program. But we also now have the Stormwater Program which is a water quality program under the Clean Water Act so we'll likely come before this Commission more often than we have before. We will probably come before you again in the near future with some of the legislation that has recently passed. Just to give you an idea, the Sedimentation Program's mission is to allow for development while preventing pollution by sedimentation. It covers all land disturbing activities except for agriculture and mining because the Mining Act covers mining permits that's exempted from sedimentation. You also have a conditional forestry exemption that if they meet forestry best management practices, they are exempt from the Sedimentation Act. But if we get a referral from the North Carolina Forest Service, we can take that jurisdiction under the Sedimentation Act. There are five mandatory standards in our program which we call the cornerstones of the program. It's the erosion control plan approval which is for sites over one acre, implementation of the plan, buffer zones along streams and lakes, prevention of sedimentation damage, and establishment of ground cover when areas of the sites are completed. The activities include permitting which are the plan review approvals, compliance inspections, and staff to the Sedimentation Control Commission. We also have delegated programs from the Sedimentation Control Commission to local governments and DOT. So those are monitored and reviewed annually and reported to the Commission. We have education outreach efforts. We have a Technical Advisory Committee that looks at technical standards and design criteria for new measures and technology and ways of enhancing measures so that we can continue to enhance our planning and design manual for erosion control plans. We also integrate our erosion control plan approvals with construction stormwater permits. We were doing this before the merger. Now we're trying to streamline that even more, now that it's all within the same section, the Land Quality Section. So we're looking at combining inspection reports instead of having as we did before, two inspectors, and one coming from Stormwater Unit in DWQ, one from Land Quality Sedimentation Program. We'll have one inspection where the inspector will check boxes for the Clean Water Act and the stormwater permit provisions as well as the sedimentation plan provisions. We also are combining our self-monitoring and self-inspection forms and we're working on doing the same with correspondence and other items as well at the present time. Here are the Sediment Program activity numbers for this last year. We had 2,000 new sedimentation projects, 2,800 reviews, over 24,500 acres disturbed last year. We're still compiling numbers for disturbed acreage approved from this past fiscal year which looks like it is going to be right over 24,000 again. So you see we've had a downward trend in

the number of new projects that follows a trend when the economy went sour. So did the development industry and the affected land that we were permitting under erosion sedimentation control as you can see here. We had 15,000 inspections done last year, 195 NOVs and 6 enforcement case referrals. I've already spoken to this about the delegation for the DOT. They have the Roadside Environmental Unit do the plan reviews and their staff does the inspections of their own forces that are doing road construction projects as well as their contractors. Then we do this annual review and also work with them quite a bit on trying to enhance measures and efficiency of measures. Also as mentioned before regarding delegation of local programs, we have 52 of those delegations. The reason for those is the local government sees that they can get out to the sites more often than the state staff can, so they take on that responsibility. We review or look over their programs and report back to the Commission. We also have an annual workshop where we get all local programs together with our state staff and talk about consistency, procedures and policies to make sure that they're implementing the program in a similar fashion to the state program. We do have some outreach efforts that are underway. The Technical Advisory Committee is always looking for program improvements. The integration of erosion and sedimentation control and construction stormwater, as I said started in August 1, so we are still working through the cross training and combining of some procedures and processes. But project coverage under the NPDES general construction stormwater permit is provided when the erosion control plans are approved. We're looking at one inspection to visit the site for compliance for both approvals. Coordinated enforcement activities, we're looking at possibly combining NOVs. We're trying to look at the legal side working with the AG's office whether we can have one NOV, if it goes to that level of enforcement, to cover the Site Sedimentation State Law as well as the Clean Water Act federal provisions. If that gets to be too cumbersome legally, we may start to branch out from the consolidated inspection to separate notices of violations, and then we will determine which path we want to enforce on, whether it's the Sedimentation Act or the Clean Water Act. It will depend on the site situation. But we will continue to work with Division of Water Resources, with Tom and his group, on restoration plans when streams and waterbodies have been impacted, screen calls and that kind of thing. We'll still be interacting cross boundaries as we had before with our fellow agencies. Right now we have 8,000 active construction projects that are not closed out that have been approved. We have around 35 sediment positions across the regional offices. We're adding the 20 stormwater positions and we're working on that cross training and integration right now. We have five sediment positions in Raleigh Central Office to oversee the sedimentation plan and sedimentation program implementation. Then Bradley Bennett and his group of nine folks in the central office will be a separate program within Land Quality to oversee the stormwater side of things. We looked at sites on an average around 12-14 months based on our existing sedimentation staff, and that may be reduced now that we have the additional resources from stormwater going into the field offices. We hope to see that once we get the cross training and integration done; and we'll have more folks out there looking at sites and hopefully would be able to get down to less than 12 months. The one note I want to make is even though we're combining stormwater with construction, construction stormwater with sedimentation program, they're still the other components of the stormwater program that still have to be implemented which is the industrial stormwater, municipal stormwater and the post construction stormwater. So that's where Bradley and his group in Central office will be handling those as they have been and then we'll have some sort of contacts as we do now with the stormwater folks in the regions working through those permits. I won't go through this in detail but just to show that there's

increased training being provided by staff and in compliance with just basic inspections, whether a site is in compliance or not in compliance, is what this slide shows. We have 75% passed the test just in compliance with the plan. Those sites that go to notice of violation, only about 3% of those go to notice of violation. Ninety seven percent of our sites are compliance. With civil penalties, we have a very low number of civil penalties right now, so there are 99% of our sites that have not been assessed with civil penalties. We contribute that to ongoing education, design workshops, time in the field trying to work with folks to understand the provisions and have some flexibility on how to get compliance achieved before we have to go to the enforcement stage. Real quickly, the energy program, which could be another whole presentation, we have an energy program that serves as staff to the Mining and Energy Commission to work on the oil and gas rulemaking and to set up a modern regulatory program. We're in the midst of that. We have deadlines to complete rulemaking by October 1, 2014 and we have various committees and study groups that are meeting right now to study issues, and try to get those rules researched and drafted for Commission's approval. We were given three FTEs, full time equivalents, from the legislature last session which are these three listed here. We've added an administrative position from the department. So they have four staff members at the present time. We just got an expansion request approved for four additional positions to help with this initiative this past session by the legislature and monies for additional studies on this Shale gas resource. Lastly, as I mentioned earlier, there are three programs that came over from Commerce as part of the Budget Bill. Two of those as I mentioned, Weatherization and State Energy Office came to our Division, the Utilities Savings Initiative went to the Division of Environmental Assistance and Customer Service. We're still looking, as I said at how to restructure our Division to accommodate for these different programs that came from Commerce that have not been within the general purview of what our Division has been doing in the past. We're going to be working through continued reorganization within our Division. With that, I'll answer any questions.

Chairman Hutson: Thank you, Director Davis. Any questions for Director Davis? This is one of the more fundamental changes and additions to combining water allocation and water quantity into water quality in our Water Resources Division is the transfer of stormwater. I'll also point out there are two other Commissions that Director Davis has to deal with. One is the Sedimentation and Erosion Control Commission, the other is the Mining and Energy Commission. Both of those Commissions require under statute that a member of the Environmental Management Commission be appointed to serve on that. I am awaiting direction from the Governor's Office as to who they would like to direct to serve on those Commissions. With regard to the mining and energy rules, those are more commonly known as the hydraulic fracking rules that are being developed, and they're getting a little bit of media attention. There are aspects of those rules or there are rules regarding activity that will have to be developed by this Commission. Some may relate to air emissions and some may relate to stormwater. So there was a presentation about six months ago before the Commission as to what our involvement will be. As the Mining and Energy Commission go through its work, there's some work that we will be doing on those as well, and I believe we are subject to the same deadline. Those rules that are being developed are unique and that the statute provides that after they are developed and go through this notice and comment that I talked about, those rules by statute have to go back to the legislature for final approval. The legislature can either approve the rules as they might come up for that activity or they can reject them and send them back, or do the rules themselves. So that is one that will be coming back to us at some point.

Any other questions or comment? Director Davis, thank you very much.

13-15 Overview of the Division of Waste Management

Director Matthews: Thank you Mr. Chairman and Members of the Commission. My name is Dexter Matthews. I'm Director of the Division of Waste Management. Let me congratulate you as well on your appointment or reappointment to the Commission. We certainly look forward to working with you on some of our programs which in my presentation I'll distinguish those programs that will be coming before this Commission vs the Commission for Public Health. We have a very simple mission statement for the Division of Waste Management and that is to prevent harmful releases of waste to the environment and to clean up existing contamination. All of our programs fall under that mission, and probably a majority, well definitely a majority of our programs deal with cleanup of waste releases. You'll see that as we go through some of the core program areas that implement that mission. There are four sections and one program under the Division of Waste Management. We have the Underground Storage Tank Section that handles petroleum releases, both underground and aboveground. That section permits commercial underground storage tanks across the state. Normally you would associate these operations with the gas stations and convenience stores. We permit those and also require cleanup of releases and manage a trust fund that I'll have more information on in a moment. The Underground Storage Tank Program is delegated as a part of the Resource Conservation Recovery Act from EPA. The division has a Superfund Section that handles superfund cleanups. There are a number of state programs as well as the federal program within that section. There's a Dry-Cleaning Solvent Program that handles direct state cleanup of sites that are certified into our dry-cleaning cleanup program. The Inactive Hazardous Sites Program handles state level cleanup of releases of hazardous substances. The Federal Remediation Program works on contaminated sites under the Comprehensive Environmental Response Compensation and Liability Act at the federal level. That program is not delegated to the state but we do receive grants from EPA to work with them on the highest priority sites across the country that are located in North Carolina. These sites are part of the National Priorities List. We also have a Hazardous Waste Program in the hazardous waste section that both inspects, generators of hazardous waste across the state and issues permits for treatment, storage and disposal facilities for hazardous waste. We have a Solid Waste Program in the solid waste section that permits all landfills, compost facilities, incinerators, septage haulers and land application sites that manage solid waste across the state. The Brownfields Redevelopment Program gives liability protection to those that did not cause or contribute to contamination, but want to purchase a site and redevelop that site. We basically encapsulate the liability for that developer and they only have to clean up the site to the point that it's safe for their proposed redevelopment. It's a very popular program in the state concerning redevelopment.

Within the Division of Waste Management, the Underground Storage Tank Program that oversees releases of petroleum from all sources reports to this Commission. Also under the Superfund Section the Dry-cleaning Solvent Cleanup Act Program also comes to this Commission. The rest of the programs under the Superfund Section, Cleanup, Hazardous Waste Section, Solid Waste Section and Brownfields Redevelopment Program go to Commission for Public Health for rulemaking. So we really have two primary programs involving petroleum releases and dry-cleaning solvent programs that come to this Commission.

I want to talk a little bit more about contaminated sites across the state and then give more detail on the UST program and the Dry-cleaning program. First, I want to point out the number of sites that we're dealing with across the state so far as remediation is concerned. There are about 1,900 inactive hazardous substance sites and an additional 676 pre-regulatory landfills. The Pre-regulatory Landfill Program receives a portion of a tax on disposal of solid waste that is used to clean up landfills that existed prior to our permitting program. So we are now addressing those sites across the state. There are 302 dry-cleaning solvent cleanup releases that have been certified into our dry-cleaning program. A large number of sites being addressed are under the underground storage tank program. We have 8,000 active releases that we're working on across the state. There are approximately 2000 above ground petroleum releases that we're dealing with. Within the Underground Storage Tank Program just to give you a little bit more of information on it, there are these branches, the Permits and Inspection Branch, the Corrective Action Branch and the Trust Fund. We permit about 9,000 UST systems across the state. There are a little over 27,000 registered tanks across North Carolina. We have almost 6,000 open commercial UST incidents which are from regulated tanks across the state and a little over 2,000 non-commercial incidents, which are primarily heating oil tanks. They're not regulated but when you have releases from them, then we get involved with the cleanup of those releases. There is a trust fund, as I mentioned that assists with cleanup. Under the federal requirements for underground storage tanks, you have to meet federal financial assurance requirements. The state assists owners and operators of underground storage tanks, commercial underground storage tanks, by operating a trust fund that receives part of the state gas tax and tank fees. That fund is used to reimburse owners and operators of the cost to remediate releases once a deductible is met. There's also a non-commercial fund that assists homeowners with their costs of releases from home heating fuel tanks. The revenue in the commercial fund was approximately 26 million last year and 7.2 million for the non-commercial fund. I will mention that the revenue on the non-commercial fund has been cut substantially because the inspection tax that was directed to the fund now is diverted the highway fund. So actually the 7.2 million reflects an appropriation of about 4.8 million. Funding has dropped substantially and we've been directed by the General Assembly to do a study of the non-commercial cleanup fund and whether or not we can incorporate any measures to streamline that program or also to bring additional revenue to the program. We're currently working on the study and have to report next year. The Dry-cleaning Solvent Cleanup Act Program as I mentioned, also comes to this Commission. We estimate that there are about 1,500 dry-cleaning sites across North Carolina. There have been 320 sites certified in the program. Basically the DSCA program is a voluntary program. We receive revenue from a dry-cleaning tax on solvents to help with remediation of dry-cleaning sites across the state. Also, part of the sales tax, where you have your dry-cleaning done, goes into that fund. Roughly 9 million to 9.5 million a year is coming into that fund. A dry-cleaner has a release, that is meeting our minimum standard requirements, can petition into the program. We have state contractors go out and handle the cleanup of those sites. There are 33 sites that have received no further action notices. There are 32 sites with notices that are currently pending. As I mentioned, we have minimum management practices that the dry-cleaners have to meet. We also have an agreement with the Air Quality Program since we have staff going out to do inspections. Our staff do air quality inspections for NESHAP requirements and also do hazardous waste inspections at the same time. We've brought some efficiency with that program by having our inspectors handling those requirements as well as the minimum management practices. The program is also involved with education and outreach for the dry-cleaning

community and provides technical assistance on meeting our requirements. The program also conducts inspections and takes enforcement action where warranted. That pretty covers the Division of Waste Management and those programs that come before this Commission. I'd be happy to answer any questions.

Chairman Hutson: Thank you Director Matthews. Any questions, comments? Thank you. You know your staff doesn't show up very often, but when they do usually it's something very important that we're dealing with.

Director Matthews: Thank you. I appreciate that. I do want to mention all the experience that Tom discussed he has in his division. The down side of that is losing people. I have two section chiefs that are currently out, just retired in the last two months. One of them is the underground storage tank section chief so we are in the process of filling that one and the hazardous waste section chief. We'll certainly miss staff members and the experience they have with the programs.

Chairman Hutson: I appreciate that. In the interim I believe you are the underground storage tank section chief. Is that true?

Director Matthews: You're right.

Chairman Hutson: That completes the presentations regarding the various divisions of DENR. Now we get one that is just as important and I encourage you to listen carefully because this is a presentation by our lawyer, Jennie Hauser on all the requirements that apply, because we are a public body and subject to those requirements. So Jennie if you could come forward and talk about those issues, please.

13-16 Overview of Public Record and Meetings Laws, Conflicts of Interest, Commission By-Laws and Penalty Remissions

Jennie Hauser: Good Morning, Ladies and Gentlemen of the Commission. It's such a pleasure to be with you here today, and some of you I've had the opportunity to meet and some I have not yet met, but I look forward to meeting you all. The Chairman has asked me to touch on five different topics that are very important for your work on this Commission. I'm going to try to go through this material very quickly, but I have provided to you at your place a folder that contains some written information that you can refer to once you're back to your offices and thinking about your work. So I'm going to be going through this quickly -- but we have given you some written materials -- to orient you to those written materials. The first document is one published by our office dealing with open meetings and public records. Behind the tab is your Internal Operating Procedures. I wanted to give these to you in a hole-punched fashion so that you can add them to the notebook that Ms. Thomas has provided for you at your place, especially these operating procedures so that you'll have them when you come to meetings in the future. The next tab is a memorandum that I actually prepared for the Coastal Resources Commission, but there are some general provisions within the memo that deal with the concept of conflict of interests and recusal. I thought that might be helpful for you in the future. And the very last thing that's in there is a copy of the statute that governs your penalty remission work. The

Chairman has notified each of you that you will be on one of the two remission groups that will hear these requests to remit civil penalties. We will touch on that just briefly today as well. I wanted to read to you just one provision out of the state statute that I think frames all of the work that you're going to be doing. Some of you may be familiar but I think that the language is important. It's from the North Carolina General Assembly.

"Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina . . . exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly." From that proposition we get all of our open meetings and public records concepts.

In the very first document in your handout, the one that's published by our office, if you would turn to page 8, it's actually Part III of the document. I'm going to start out with the open meetings concepts. So the Legislature by the language that I just read to you has ensured the ability of the people of North Carolina to watch their government in action and to have access to public records. That's our Overarching Principle. Official meetings – that would be any meetings of this Commission or of its committees or any study groups that would be established. A gathering of the majority of this Commission or of the majority of the committees enables the committees or the body to conduct their public business, and that's an official gathering. What I want to caution you about is deliberations. Deliberations are a fundamental part of what you do, and it's required that those deliberations occur in public; so each of you should focus your deliberative process in your meetings, whether it's the Commission meeting or the committee meeting. What you cannot do is evade the open meetings law by circulating emails discussing decisions that will be made here and you cannot hold so-called social gatherings which are in effect meetings because you are discussing the Commission's business. That most often arises unfortunately when there is a day-long meeting or multi-day meeting and the Commission members decide to get together after or in between the meeting, perhaps for lunch or for dinner, but they continue their discussions during the social gathering. So I caution you against that practice and encourage each of you to make sure that you focus your deliberations and discussions about decisions being made to the actual meeting. The document is set up as a frequently asked question format so you will see the questions asked and questions answered within the document. I'm not reading through that document for you. I'm just trying to get you oriented to those written materials as we talk through these concepts.

So for an official meeting there must be notice of that meeting to the public. Your staff does a super job for you in getting all those notices as required. There are three different types of meetings. There's your regular meeting which is a meeting such as today, and you'll be adopting in the future a schedule for your next year's meetings. Those regular meetings are noticed to the Secretary of State. They're normally put on your website. There's also a concept of the Specially Called Meeting and that would be a situation if you would need take an action, say on a petition for rulemaking or request for declaratory ruling, and that action needs to be taken in between your regularly scheduled meetings, the Chairman can call a special meeting. That has to be done with 48 hours' notice and notification to the proper parties. The notification requirements are set out in the statute, and again since your staff does a great job with that, I'm not going to burden you with that information. But if anybody wants that information I can provide you with a copy of the statute itself. There's also what's known as an emergency meeting and that is primarily for some sort of disaster situation or something that could not be contemplated: A court ruling has just come down and they're required to comply within a very

short time period, those types of unanticipated situations would qualify for an emergency meeting. Again that is set out specifically in the statute. You are allowed to meet by teleconference. So oftentimes with your specially called meetings since it might not be convenient for a quorum of you to come to Raleigh, some portion or all of you might choose to participate by telephone, and the requirement there is that the public be given notice of that and given the opportunity to maybe, come to a place so that they can listen to the phone call, much as they are allowed to come and listen to their meeting in person. Just wanted to make you aware that DENR is using a lot of webcasting these days, and though not at this meeting, but perhaps at future meetings, the meeting will actually be broadcast. Also at meetings there is the entitlement of the press to be present. Any member, not just the press but any member, of the public is entitled to record and that could be an audio recording or a visual recording of the meeting. The caveat on that is that it cannot impede the progress of the meeting and so the Chairman has flexibility to establish where the equipment can be set up or how it can be operated. Sometimes pooling of equipment's required if it's a small meeting space. But I did just want to make you aware that it is part of our open meetings statute that both the public and the press be allowed to broadcast or to film during that meeting.

So the things that you do most often in your meetings include deliberation which we've touched on and after your deliberation on a topic you will normally take a vote. For voting the one thing that I wanted to bring to your attention is in North Carolina there cannot be voting by secret ballot. There can be written ballots. But if it's going to be a written ballot situation each person must sign their ballot and those ballots are retained until the meeting minutes are actually approved, and anyone has access to those ballots. So there is no secret voting in North Carolina. Sometimes people come to this group with different concepts about that, and I just wanted to get that out. Normally this group does not take votes by ballots at all. But certainly there can be no secret ballot.

For closed session, that's really available to you only in the situation where you need to discuss legally confidential information or have attorney-client discussions. Now you have a special statute that allows you to look at confidential information or information that has been claimed to be confidential and to determine in the first instance whether you agree that it is, in fact, confidential. So that would be the type of information that would perhaps be considered in a closed session, at least partially. Attorney-client discussions, what's called out in the statute is when you have litigation pending and you need information or advice from your counsel or your counsel needs advice from the body as to how to proceed in the litigation. So those closed sessions, their minutes, some summary minutes of those closed sessions must be kept but they do not have to be disclosed until such time as it would not frustrate the purpose of having the closed session. Sometimes it might be the case that once having had the closed session you would come back into an open session and you would actually give the public the results of your discussion, but not always. Also for closed sessions in order to move from your open meeting into a closed session there has to be a motion and that motion has to contain the statutory authority for moving into the closed session. Of course, your legal counsel will help whoever is the motion maker in getting that stated correctly. From the closed session there must be a motion to move back into the open session and you must always start in an open session and finish in an open session. So the closed session is just to happen there. If there's just a meeting of your staff members among themselves, that's not subject to the open meetings law at all, to the extent that some or all of you might participate in a meeting of staff, then it would be advisable to ensure that you have not violated the quorum. Check with your attorney. We will be glad to weigh in on that. The

normal practice for this group is to have open meetings. The Chairman periodically meets with division directors as he mentioned earlier in the day. Obviously, he can do that and that is not a violation of the open meetings law.

If you flip back to the beginning of this document, which is where the information about public records is shown, when you are at home and wanted to look about the public records up at the beginning of this document. Again the concept is that any information that's generated by an agency of North Carolina or received by an agency of North Carolina is the property of the people of North Carolina. That can include written materials and can include other types of information such as in the Mining and Energy Program wherein that Commission we're currently struggling with what types of physical samples, core logs, etc. might actually fall into this and how they might be protected as confidential information. So it's anything that is received by the agency. It could be a disc or some sort of electronic file, some sort of database. But if it's received in connection with public business, then it's subject to the Public Records Act and any request would be filed under that. I will let you know that the Public Information Office for DENR coordinates with your staff in responding to public records requests. But because you have records as an individual member of the EMC it may be the case that those staff persons, the PIO or one of the division directors have to come to you to see whether or not you have a record that's responsive to the request that's been filed. I wanted to alert you to the fact that some of you may have initially provided your business email address to staff to be published on the website. I would highly recommend that you consider having a dedicated Commission email address so that you can receive all of your Commission material at that address and generate all of your Commission related correspondence from that address. We will need to check with your staff to see what's been set up, but some of the divisions have their Commission members periodically send all of those emails into a site so that they're already collected in case public records requests come in. So that will be something that we'll be working through with this newly constituted Commission and its staff and what's available to you. Just know if you have all of your email in one EMC dedicated email address it's going to be much easier for you to respond to a public records request, and you will not have to search through your business's email or potentially even have to disclose some of your business email. That's the real concern for most people that have private businesses. That's just a suggestion to you about how you might handle that. Any other documents that you generate in your work for the EMC are also going to be public records. If it's something that this staff has provided to you it's a safe assumption that staff has a copy of that. It might be significant that you received it on a certain date or didn't receive it on a certain date. But if things are being transmitted electronically, normally that's going to be captured in that type of communication. But if you should err on the side of keeping all of your EMC materials together and if at whatever time you leave the Commission, you need to make sure that you have provided those materials to staff, because they are public records in the conduct of your business. What happens if you don't provide those records when they're requested, anyone who has made a request and has been denied a request, or think they have been denied a request because they don't think the response has been adequate can bring a civil action in Superior Court against either, the EMC, DENR or you individually. That's what I wanted to point out if you have denied access. We have not had a case in North Carolina where an individual or official has been, state official has been sued for denying public records, but the statute is written in such a way that an official can be sued for that. The problem or the penalty associated with that is if the court orders more disclosure for the public records request, the court has to order that the agency or the official pay attorney fees, unless the denial

Comment [j1]: I think this is "shown"

of access was without substantial justification. So there are some legal tests that go along with that and it doesn't mean in every situation that attorney's fees will be ordered or they will be ordered against an official. But that possibility exists and so I want you to take your public records responsibilities very seriously. That was the first two topics, open meetings and public records.

The Chairman also asked me to speak with you about conflict of interests and that's the memo that I mentioned to you in your folder that was written for the Coastal Resources Commission. But if you look in the middle of that, on the first page, the third paragraph and then moving through the body of the memo, you'll see that there's a discussion of needing to remove yourself to the extent necessary to protect public interests from any proceeding in which you have an actual conflict of interest or your impartiality might be questioned due to your familiar, personal or financial relationship with any participant in the proceeding. Each of you is subject to the State Ethics Act. I'm sure you are aware of that because you are required to provide a form to them and they provided you with an evaluation. Unfortunately, right now we only have in hand the evaluation from Mr. Anderson but we have been told that each of you have received your evaluation. If you would not mind providing a copy to Ms. Thomas, then we can -- these have to be read into the record so that each of you can be aware of each other's potential conflicts of interests and help each other in monitoring this for your decision making. If you could just send that in any time, we'll have that for the November meeting. The requirement to remove yourself, and the technical word for that, is "recuse" yourself. I use that word and that's not a common word so I apologize. But the requirement to recuse yourself applies both to your rulemaking activities which are your quasi-legislative powers and to your quasi-judicial decisions. That includes remissions which I will be touching on in just a moment, declaratory rulings and variances. There are a number of processes and decisions that this body makes that we will bring to your attention and make sure you understand the process at the time those come before you. We're just touching on the biggest of those today and the ones that are most immediate for you. The duty falls on the member to determine whether or not you have a conflict of interest. That is not the duty of the Chairman. It is not the duty of your attorney. It is not the duty of your fellow Commission members, although all of those persons can help you with your decision about whether or not you have a conflict of interest. But it's your duty to determine that. I would encourage you to confer with your Chairman and confer with your legal counsel and to do that prior to the meeting if you have an idea that something may arise that's going to be a problem or a concern for you. You can also seek an official opinion from the Ethics Commission and in many situations I advise the Commission member to do that. Because if you receive a formal ethics opinion, then that confers immunity upon you for taking an action once you have received that opinion. But in each situation where you have a concern or even if it arises during the middle of the meeting as the Chairman mentioned earlier, please pull me aside. I'm happy to speak with you. That's one of the primary reasons that we are here is to help you avoid these situations if possible and to help you decide when you must recuse yourself from participation.

Here's what we're dealing with, an actual conflict of interest or potential for conflict of interest. I'm going to assume although I have not seen your evaluations, that none of you have an actual conflict of interest that would have precluded you from serving on this body or you would not be here. But I would assume that many if not all of you have the potential for a conflict of interest. That's the second paragraph. Your bylaws actually have specific procedures depending on whether it's an actual conflict of interest or potential conflict of interest. The

Comment [J2]: We aren't missing material, which is what the ellipsis suggests, I just switched direction in the middle of my statement.

reason actual conflict is there is because although you might not have a conflict that makes you unsuitable to serve on the body, for a particular agenda item you might have a financial interest in either the participant who's before or the rulemaking activity that's before you that would affect you much differently or uniquely than it would affect anyone else. So if you have an actual conflict of interest your bylaws require you to immediately discontinue any involvement and file a written statement with the Chairman and that would be read at the next meeting, or you're required to announce the conflict at the next meeting after having removed yourself. But the first rule is to remove yourself. The potential conflict of interest your bylaws require you to withdraw from participation unless you disclose the nature of the potential conflict. If you disclose the nature of the potential conflict and decide to continue you must explain why you are not required to remove yourself. If you decide not to participate, if you identify the potential conflict, then it is adequate if you just remove yourself from participation by saying, "I recuse myself from that matter", and that'll take care of it. This is in your internal operating procedures, your bylaws and that is in your book as well. That's behind the second tab so that you can refer to that in the future. Your conflict of interest provisions are in Article 14. So what I have up there is a summary and a slight rewording for a sense of the information that's in the Article 14.

So your bylaws, we're moving into your operating procedures now. That's why I used that as the segue for your operating procedures. I'm just going to touch briefly on some things that I haven't touched on with regard to conflicts or that I am going to touch on in the future with regard to remissions. But your regular meetings are set for January, March, May, July, September and November. Your standard order of business in that is it's a general statement to say your action items normally precede your informational items. Today was an exception to that because of the nature of how the body is coming together. One thing that the Chairman touched earlier when he was explaining rulemaking that I want to touch on again, because sometimes it's a source of consternation, although I think it need not to be, is that you take no actions on rulemaking until the appropriate committee has taken an action on the rulemaking and that action by the committee has occurred at a meeting previous to the meeting where the Commission is going to take action. As the Chairman mentioned, the purpose of that is to make sure that people who are not on the committee have a chance to educate themselves before they're required to take action as a full Commission. This rule has a provision whereby it can be suspended upon a two-thirds vote. (I'm dealing with so many Commissions that I may have misspoken, but I'll find that and make sure that you have that.) It's hidden in here. Unfortunately, it is not set out separately. But there is a provision whereby you can vote to suspend that rule. So if you're, say Air Quality Committee heard a matter, a rulemaking matter on Wednesday and the next day Thursday, you're having your meeting and you need to take action on what the Air Quality Committee heard and is reporting on, then you can vote and suspend this rule. But you have this rule for your normal conduct of business.

Chairman Hutson: It is two-thirds.

Jennie Hauser: Ok. Thank you Mr. Chairman. I appreciate it.

So the Chairman appoints the committees and he also designates the committee chairman and he participates in each of the committees as an ex-officio member. That means that he can be at the meeting or he can choose not to be at the meeting. It doesn't affect your quorum but he is a full voting member in each of the committees. You have a Steering Committee that's set out in your bylaws comprised of the Chairman, the Vice Chairman and the Chairman of each of the

standing committees. If your bylaws, your statute, your other rules don't govern your meeting, Roberts Rules of Order governs the conduct of the meeting. Your Chairman is very adept at all the parliamentary procedures and we'll try to step through things as efficiently as possible. We appreciate your indulgence of sticking to that as a method of moving the meeting forward and not getting bogged down unnecessarily. I had mentioned that the Chairman has the ability to vote or not to vote. Each of the committee chairmen likewise has the ability to vote or not to vote, and if a tie occurs, then the motion fails. That's set out in your bylaws.

As mentioned earlier the Chairman also appoints hearing officers. Those can be one of the EMC members or more of the EMC members or it can be staff members. Normally those are used for the rulemaking activities but there are other times when you have plans or certificates that require a public hearing, and again might need a hearing officer. When you have quasi-judicial matters and that primarily for you is going to be the variances, remissions and approvals of interbasin transfer plans, those types of activities, you have to refrain from communicating outside of the formal proceedings to any person unless all parties are given the opportunity to participate. That's important and there's more information about this in your operating procedures. I would encourage you to read back through that several times. But it's all about a fair process and making sure that everyone understands that they have received a fair process. In order to achieve that, communications have to be much more formal when you're sitting, as the Chairman mentioned, basically as judges. You have to comport yourself that way. It's not a legislative function and it's not appropriate to network with other folks outside of the decision making forum. You have the responsibility to review and become familiar with all of your hearing records and that's primarily, at this point and time, going to be your rulemaking records. Some of those can be quite voluminous. So I just encourage you that as soon as you receive your materials from staff for preparation for the meeting, that you begin your preparation so that you can understand the issues that are going to be raised. There are certain motions that will come in these proceedings that you have given your Chairman the authority to determine on his own, that's such as to file and make amicus curiae briefs in quasi-judicial proceeding or leave to intervene in a quasi-judicial proceeding. Sometimes you might have perhaps parties to an interbasin transfer plan, the applicant for the permit, but there might be third parties from outside that want to intervene, and there might be opportunity, and there might not be opportunity legally for that to happen. But if there is, the Chairman gets to make that determination. Another responsibility of each and every Commission member is to attend the meetings and to participate in the meetings. Those of you who are Governor Appointees also have additional attendance requirements in terms of the percentage of meetings that you have to attend. I'd be happy to make you aware of that. Staff keeps track of that and it has to be reported to the Governor's office. So I just wanted to make those of you that are Governor Appointees aware.

Now we're to remissions and this is also set out in your bylaws. Then there's the statute at the very end of the document that I provided to you that sets out the criteria upon which you make your remission determinations. The Chairman has let you know that this applies to civil penalties. The other thing I want to let you know is that in order for a violator to avail him or she of this process, they have to stipulate that the facts that were included in the notice of violation and assessment that they received are true. The facts in these proceedings are not open for discussion. They're not subject to dispute. The only information that you will be receiving will be the assessment and the supporting documents that go with that assessment. Now when a violator wants to follow the remission process they send their information to the Director of the division that assessed the penalty. The Director has the opportunity to look again at the penalty

assessment and determine in the first instance whether there is some need to reduce the penalty. Sometimes these matters are handled at that level, and you never see them. It is worked out between the Director and the violator. If the Director and the violator do not agree, then it comes to one of your remission groups. There is a process that -- all of this is detailed in your bylaws. There is a process whereby the Chairman determines whether or not an oral presentation by the violator is allowed. But in making that decision he brings together a Subgroup of at least three other members on the remissions committees to review the request and determine whether or not there's need for an oral presentation. The Chairman makes the determination regarding the oral presentation. So all of the matters come to the groups for their decision, their final decision, however not all of the matters will receive an oral presentation. That will have been predetermined before the matters come to the groups. That's currently how the bylaws are set up.

When you receive one of these you have to consider the factors that are set out in the statute. That's the last document in your handout. If you look at paragraph C and then look at the numbered items in paragraph C, these are the criteria upon which a remission decision must be made. The group must identify at least one of these criteria in making its reduction in the penalty and it has to be done at the time they are making the reduction, so that the attorney who is assisting to draft the orders has that. The attorney can't decide which one of these factors has been the basis for the remission. The group must decide that. These are the factors of which you will need to become most familiar in doing your remissions work. Now the ability to remit the entire amount of the penalty is also constrained by the statute, and that's the last bullet up there. You can only do that when the violator has not been assessed civil penalties for previous violations and when the payment of the civil penalty will prevent payment for the necessary remedial actions. There are cases where not both of those criteria can be met, and even though the committee might want to remit the entire amount, doesn't have the ability to do that.

Thank you for your attention. We'll be working these issues every meeting. We'll have ample opportunity to revisit, but I'm happy to help you with any questions you may have.

Chairman Hutson: Thank you, Ms. Hauser. Just so everyone is clear, Jennie is an employee of the Department of Justice. She works for the attorney general; she's not an employee of DENR. She is assigned to represent this Commission and other Commissions, but she is our attorney. We are her clients and I have discussions with her, and typical rules of communications between attorney and client with regard to privileged and confidentiality do not apply.

Jennie Hauser: So that's a good thing for everyone to know. There will be certain situations where I provide legal advice and I will clearly mark that as attorney-client privilege. Of course, there are communications and then there are communications. You should know that if you ask me a question, normally I'm going to try to give the answer to the entire group if it's appropriate. Then it's very clear that is normally not legal advice. Legal advice occurs if we're in litigation or we anticipate litigation. Those are the most clear cut instances for that. But, now I will say if you have a question about a conflict of interest or a State Ethics Act question and you contact me, and I contact the Ethics Board on your behalf, that communications may very well be protected.

Chairman Hutson: Any questions for Ms. Hauser? Thank you.

Just a couple of things, that, I'll follow up on her presentation. First of all, with regard to the Chairman of a committee or me as the Chairman voting or not voting, there have been previous Chairmen of the EMC whose decision is they're only going to vote in a tie or where a vote would create a tie. That will not be my position. I plan to vote on every matter that comes before us and not use my vote in just situations where the vote would make a difference. That's my conclusion. I was appointed here like the rest of you were appointed to make decisions, and I will be part of that decision making process. One thing I will be discussing with Ms. Hauser in coming to you, which I guess would be a bylaw change. We're not going to get many of these appeals anymore. As I said they go to Superior Court. But the last appeal we got the brief by one side was 90 some odd pages and the other side was 120 pages. I will plan to work with Ms. Hauser to this group; we are going ...all other courts including the Supreme Court of the United States Court of Appeals have page limits on briefs. This group should be no different and we will be bringing to you the proposal to impose page limits before that first appeal comes. Because I think it was 2:00 a.m. when I stopped reading the last brief that we had. I'll also say my predilection on remission cases. If a party wants to make an oral presentation I think they should be given that right. It should not be a judgment that we'll hear some or not others. So if a party does request an oral presentation and wants to be heard, we're going to give them that opportunity. Other questions about that point to be made?

We have two now specific information items that are being brought before you because some activities are going on that are going to be coming before us in future meetings for official action in terms of votes and approvals. The first of which deals with the interbasin transfer provisions of our laws and this was described earlier where a community wishes to bring water from one water basin into a different water basin. If you may remember a couple of years ago there was a fairly significant legal controversy in the Catawba River Basin with Kannapolis and Concord in Cabarrus County wanting to bring water from the Catawba Basin into the Rocky River Basin. There was litigation that came from that. Tom Fransen is here on a request involving Union County which is Monroe in the Greater Charlotte Metropolitan Area, a request for an interbasin transfer that they have given notice of and so Tom, I yield the podium to you to make your presentation.

13-17 Union County Interbasin Transfer Notice of Intent

Tom Fransen: Thank you, Chairman Hutson. I talked to the Chairman and we said this would be a good opportunity to start, at least getting a high level overview of what interbasin transfer is. Luckily in Union County because of where we're at this stage, you don't have any action but it is a good opportunity for education.

I think it's important to understand what interbasin transfer is, how it's defined legally in North Carolina. It is the movement of surface water between basins. If we have a system with groundwater, they could move that from one end of the state to the other, if it was economically feasible to do, and it wouldn't qualify as a transfer. So we're only talking about moving surface water which is kind of the key component. There are a few things about this whole IBT transfer statute. The Commission has an unusual role here. You're going to be in the role of a permitter. The authority to do transfers has never been delegated to the department, so you're acting as the permitter. Tom talked about the sections. You'd be like one of the permitters in Matt's section. You're the group that will be making the final decision on this transfer. The attorneys that I've worked with over the years have described this in a number of different ways. It's an environmental permit but we don't call it a permit. It's called a certificate. Applicants have to;

instead of submitting an application they submit a petition. Even our terminology isn't standard. It's been called a pseudo-property right because there's no expiration on it. Once you get it, you've got it. Really in a large respect you're making state policy when you're making this decision. The way I've described the statute to folks is the General Assembly designed a process on purpose to be slow so that they can pause to make sure it's good public policy to move water from one basin to another. So you're really kind of making that policy decision. Tom also mentioned, to go through this process it typically takes three to five years, probably a million dollars a year depending upon what you're doing. At the end of the day the utility that's gone through that process has not designed anything, has not built anything. That's just the process to get permission to move water. They still have to go through all the other permits necessary to build the infrastructure and all these other additional studies. So this is just a very special case. Tom told you to look at the map on the wall. Forget that he told you to do that.

Typically we talk about 17 major basins in the state. We talk about planning and other regulations. The General Assembly back into 1991 decided we had 18 major basins. They don't divide the sub-basins up on a typical way. We actually end up with what we refer to as 38 IBT transfer basins. The only reason to distinguish between a sub-basin and a major basin is it was changed back in 2007. It says if you're transferring between major basins you're required to do an Environmental Impact Statement. If you're transferring just between sub-basins and the same major basins you have the option of doing an Environmental Assessment. Basically you're following the Standard State Environmental Policy Act procedures to determine in that case whether you can do an EA vs. an EIS. We've tried several times to change the map but that doesn't seem to be very politically popular. One of the things that confuse folks is consumptive losses. You have a town that the receiving basin is different than the source basin and they're withdrawing and returning their wastewater 100% back to the source basin. They're still doing a transfer because the way we define transfers is it's the withdrawal minus the return amount. So towns never return 100% of what they withdraw. So they actually are doing a transfer back. There is a transfer occurring from what we would refer to as consumptive loss. This is typical. Towns are on the ridge in North Carolina, so trying to figure how much actually transfers gets complicated. I'll show you an example in a minute. I won't spend time trying to explain all these different diagrams we have up here. The important point is whoever owns the facility or the pipe where the water crosses the basin boundary, they're the entity that's responsible for receiving that, going through the transfer process. Under certain special circumstances, like number 2 up there, if Town A isn't doing any transfer but selling the water to B, Town A could ask the director for permission to have that responsibility transferred to Town B. In 20 years of doing this we've only had one request and under that particular circumstance we denied it. As I mentioned earlier, this is actually a map that we have received dealing with transfers. If you look at the hundred counties in North Carolina we only have five counties, if you want to do a county system that would not run in the potential, to have to deal with interbasin transfer. You're looking at the map provided to us from Moore County, looking at doing some type of regional county-wide system. The way the basins are defined, Moore County broke up into actually has to deal with concerns on three different basins. This is more typical than atypical. If you look at the General Assembly from the controversy, you'd think we were issuing hundreds of these certificates every year. The truth is in twenty years we've only issued five certificates. Actually one of those is grandfathered in, so in twenty years we've only done four. As you saw from the previous example a lot of our communities are on ridge lines by the way we define transfers or do transfers. We've identified over a hundred systems that are doing some level of

transfer. Most of them are under the 2mgd threshold or been grandfathered in and have not needed to increase the capacity. The process for making this a deliberate slow process has worked. We've only done five and it's amazing how many times we've talked to somebody, and after talking to us they've gone back to the drawing board to find a way to meet their demand without having to do a transfer. The way most folks find out about whether they're going to be involved in the basin transfer, there is a requirement that they do a local water supply plan. That's required to be updated every five years. We do have some annual reporting requirements with that. As part of that process we work with them so they understand that they, either their system does or does not have a transfer involved or if their future is going to make it look like the transfer that they're well aware of it ahead of time. The other way we pick it up is during the SEPA or the State Environmental Policy reviews as projects come through. We'll pick up in that process that somebody's proposing a project that's going to cause a transfer to make sure we deal with that before it becomes a problem. Interbasin transfer is not new. The General Assembly's been doing this statute since 1955. So, we've been doing this 58 years and I've been doing it 29 of the 58. The basin definition occurred in '91, kind of what I refer to as the framework of how we deal with it. We dealt with in 1993. There were some major changes in 2007. We had more major changes this session this year. I think when I went back and looked one time since '93 the General Assembly has entered this statute every year except two. Didn't mean we passed one every year but they've introduced a potential change in the statute every year except two since '93. I don't know of any other environmental regulation that's been modified more than we've actually issued permits for. The change that occurred this year is we're now basing transfers on an average daily flow up until this change was based on a maximum day. So we're actually calculating transfers now on a more realistic basis. To be quite honest, even on the average day, we have to do estimates. We can do better estimates on an average. People don't measure wastewater. For example, as a general rule even on the water supply side, if you think about a community when they read water meters, they don't read every water meter the same day at the same time. It's usually spread out over the course of the month. Trying to figure out how much is a true transfer is an estimate. It's as much an art as it is science. People don't have to do small transfers is something under 2mgd. It's not a required certificate. We got quite a few of those what we have identified, have large grandfathered capacities. If you think of some of the middle towns and things like that which had industries that were high water users? They've now moved out and shut down. A lot of them have large capacity there that's unused. I got to keep referring to like public water systems. They're the ones that, except for two cases that we know of that do the transfers but this statute does not. It applies to anybody that does a transfer could be, for some reason if we had a farmer doing it or self-supplied industry, they would be subject to this statute, the same as the municipality. A lot of detail up there and I'm not going to try to go through all of this. The point is, basically the transfer process is broken into three major steps. We've got the first one up here that we're dealing with Union County right now. That's when they filed a notice of intent that they're planning to start the process. That's when things get going. At this point it just becomes an information item for the Commission. All the public meetings and all the initial work is done by the department and the applicant. Once we get the pipe out of the scoping in gathering what needs to be studied, we start the second step which is the State Environmental Policy Act or the EIS process. Unlike most environmental documents that are prepared, the Commission wouldn't have an involvement in it. You make the determination at this point when we get finished with it whether it is adequate or not before we proceed. There's also something unique in here that we've fortunately not had to do. During

this process if disagreements come up or controversies come up, there is a process by which a settlement process can be requested. We do have some guidance documents that previous Commissions put together for that. That's unique in the whole SEPA process. There are some very specific requirements to notice for public involvement in this and I'll show you this on another slide in a minute. But once we get through that second step with the environmental documentation, then the applicant would actually submit us the package, they completed document plus the petition. At that point you get involved again in terms of helping us do that, developing a draft certificate that goes out for public hearing and public comment, then ultimately coming back to you for final decision.

I'm not going to read what the public comment is on this, but this is showing the area that we had to provide public comment to for the Kerr Lake Regional Water System. You're talking about 36 North Carolina counties, 23 Virginia and 37 newspapers. We have to notify all the wastewater discharge permittees and all the registered withdrawals. So for that one transfer coming out of Kerr Lake up here that yellow highlighted area is the area we had to provide public notice to, either email, first class mail or through newspapers. As I mentioned earlier, in 2007 we had a number of major changes that are currently impacting folks. It's now required that anybody that receives water from a system that does a transfer and they've got a public water supply need, they have to be a co-applicant on that certificate. The important point there is under most certificates the Commission has required conditions to that certificate like potentially stormwater regulations. So if you're a co-applicant you are subject to whatever conditions are put on that certificate. There's a required drought management plan. The whole concept here is they did not want somebody doing a transfer to be using water without concern about where the source is. They didn't want a receiving basin to be washing cars and watering lawns when the people that are already in the source basin are having to do some sort of major cutback because of a drought going on. So the drought plan gets a careful review and the water conservation piece is also important. We take a hard look at whether they're using water efficiently.

?? I have a quick question. On the co-applicant, what about a circumstance where the certificate has already been issued and then there's a proposal to sell water to another entity?

Tom Fransen: Under the previous statute an applicant to modify a certificate would need to go through the whole process as if it was a new certificate. There was no modification/reopener process.

Tom Fransen: Well luckily this year we actually had a change to the statute that allows us to actually amend the certificate without having to go through the whole process. Up until this year, that would have been the answer.

So changes that appear this year, like I said we went from max daily average which really helped a lot of the folks. It's going to help a lot of our permit writers, our staff that are helping you go through this. For the first time we now actually have a way to modify a certificate. We were kind of in a grey area in the past if we needed to modify one. We actually got a spelled out process in the statute. We had kind of a hodgepodge of how we dealt with things in the coastal area. Up until this year we had separate requirements. If they were in the Central Coastal Plain Capacity Use Area and they developed something a few years ago called isolated basins for the coastal area that has special requirements. So we kind of got those all uniform into what we're referring to as a coastal county requirement. For modifications for coastal counties they have a

slightly less rigorous process than for those going through it in the other part of the state. Just a quick mention. We do have on the website quite a bit of available information about how to work through developing what we call water balance which really helped us get a handle on how much water is being transferred, guidance documents to explain the statutory requirements and the process by which, if you want to initiate a settlement, what would be involved in that, plus contacts of staff.

Finally got to why we're here today, why I was asked to be on – Union County Notice of Intent. We did receive in August a notice that Union County started the process officially. We've got three public meetings scheduled. One's in Albemarle, one's in Salisbury and one's down in South Carolina. There is a requirement that we have to give notice out of state when we have basins that extend out of the state. This request actually is for a transfer between a sub-basin within the Yadkin that would be a 28 mgd. The main purpose of this isn't just to provide water but to make sure....they have an existing transfer from the Catawba over into the Rocky which is a sub-basin of the Yadkin. But because of all the controversy in the Catawba this transfer is to help minimize their existing Catawba transfer, and try to keep that one from having to be expanded. This one actually just came up Monday. You're in a fortunate position. You get to see the start and the end of a transfer process. That doesn't happen often. Based on our public hearing Monday, it looks like we will have ready for your action in November a final decision on the Brunswick County interbasin transfer. The comment period closes the 1st of October. Unless we get a huge surge of comments at the last minute, it looks like we should be able to have the hearing officer's report wrapped up and bring back to both the Water Allocation Committee and the EMC for your agendas for approval in your next meeting in November. There's my contact information. I'll be glad to answer any questions.

Chairman Hutson: Any questions for Mr. Fransen? Thank you very much for the education and also what we have coming before us. Just so it's clear this is not rulemaking so when we come in November, it's not subject to the previous meeting rule. We will not have the 30 day rule. It will be considered by the Water Allocation Committee and then come to the EMC the next day for final action. Thank you.

Next is a presentation by Dianne Reid in an ongoing effort with regard to Nutrient Criteria Development Plan. Just to give folks a little bit of a perspective that may be redundant. Dianne said this is a big national issue. The question is whether or not you have quantitative limits for things that cause nutrient pollution, phosphorus, nitrogen or if you have what are called narrative limits which are descriptive, and usually come up when a problem is identified when there's an algae bloom or some other degradation like that. EPA went through a major and is still going through a major battle with Florida and environmental groups and industry groups there. There was a major decision involving three municipalities in New Hampshire as to the establishment of these. I just saw today in the Trade Press there is an agreement between the State of Iowa and EPA with regard to nutrient loading coming from concentrated animal feed operations. Illinois is also involved in discussion with EPA. So this is an issue that has been around nationally. It's been worked on here for a while and it'll be something that whether your term is two or four years, it's going to be something that's going to be before us on a periodic basis. I hope I didn't steal too much of your presentation, Dianne, but I'll turn the podium over to Ms. Reid for her presentation.

13-18 North Carolina Nutrient Criteria Development Plan Background and Status

Dianne Reid: That was great. Thank you Chairman Hutson. Welcome to the new EMC members and to the returning members. As Chairman Hutson indicated I want to bring you up to date on the current activities here in the state regarding the North Carolina Nutrient Criteria Development Plan. I was told to keep it to ten minutes so please fasten your seat belts. The good news is this is just an information item and you'll be getting more information before we will be asking you to make any decisions. Nutrients in this case for surface water are nitrogen and phosphorus and I'll also refer to them as NP. These are the two nutrients that in over-abundance and under the right environmental conditions can result in noxious algae blooms, fishkills, and taste and odor issues. North Carolina has been addressing the effects of nutrient over-enrichment since the late 1970s. This map shows the areas of the state that are currently under nutrient management strategies based on the current chlorophyll-a standard. Chlorophyll-a is used as a measure of the amount of algae or plankton present. It's a pigment in the phytoplankton. Our standard was adopted in the early 1980s as a result of massive blooms in the Chowan River. Since the Environmental Protection Agency or EPA has published national eco-regional numeric nitrogen and phosphorus criteria as Chairman Hutson referred to and they've asked to develop state plans for developing state specific nitrogen and phosphorus criteria. North Carolina's first Nutrient Criteria Development Plan was mutually agreed upon in 2004 with EPA. It included looking at periphyton and also a proactive threshold type approach. Due to the lack of necessary resources the state proposed extensions to the deliverables for that original plan in 2011. EPA did not concur with the proposal for the extensions. In the meantime EPA has been busy as Chairman Hutson noted in Florida promulgating and in removing the promulgation of nitrogen phosphorus as Florida moved forward with adopting nitrogen and phosphorus criteria. In the meantime the Division and the EMC have been working on revising North Carolina's Nutrient Criteria Development Plan to address EPA's and/or our stakeholder comments. In early 2010 the EMC approved proposed revisions to our current chlorophyll-a standards. They approved those to go to public hearing. Let me make that clear. They approved proposed revisions to our current chlorophyll-a standards to address concerns that naturally loan nutrient load chlorophyll-a upper Piedmont and mountain reservoirs are not protected by the 40 Mg/l standard that we currently have. The standards for those reservoirs were proposed to be 25Mg/l. This is part of the Triennial Review and I'll be discussing that more in the next item. The EMC also considered proposing chlorophyll-a threshold concentrations as part of the previous criteria development plan. However, after review and public input the EMC charged the division instead with collecting more information and we held the 2012 North Carolina Forum on Nutrient Over-Enrichment. The Forum was held to explore the current status in understanding science policy and economics surrounding nutrient management. The EMC wanted to know about alternatives to nitrogen and phosphorus to numeric nitrogen and phosphorus. Our clear understanding of the science, are there other things besides chlorophyll-a that we might use besides nitrogen and phosphorus? Are there trending or change indicators that are available out there? They wanted a better review of cost and savings that might be seen in other locations around the nation. Based on the presentations and discussions at the Forum the panelists who represented the EMC dischargers, local government and environmental interest found that any approach that includes the bullets you see on this slide, overall fits the goal of improving our current approaches, which brings us to the current iteration of the Nutrient Criteria Development Plan. Using the panelists' highlights an internal working group for the

division put together what we considered to be a backbone for criteria development. The stakeholder, part of that is stakeholder participation which is seen as vital to guiding the development of criteria and implementation that considers environmental protection and economics. The basics currently included in the plan provide for evaluation of current parameters used in evaluating nutrient over-enrichment, incorporates waterbody specific approaches per what we've heard at the Forum, and focuses on response variables. The chlorophyll-a, dissolved oxygen, phytoplankton and periphyton. We've also included looking at nitrogen and phosphorus per EPA's indication that they could not concur on a plan that did not include a commitment to nitrogen and phosphorus criteria at some point in the future. We've held public meetings and gathered comments over the past year and have scheduled another stakeholder meeting with folks that have commented on the previous versions of the plan to clarify the type of stakeholder input and involvement that they would like to see included in the final plan. To clarify that, we see that this plan is the backbone that we'll be working on with our stakeholders and EPA as we move forward and to get feedback on committing in the plan to actually developing N&P criteria down the road. After that meeting we'll make final modifications to the plan and have it before the EMC for approval in early 2014. Once we've done that and EMC approves us moving forward with the plan, the plan then goes to EPA for their agreement. Then we would begin implementation. That would include significant stakeholder participation, at some point drafting criteria to bring back to the EMC and definitely including discussions of how we're going to be implementing the criteria to allow refinements. Of course, this is a rulemaking process. It would come back to the Environmental Management Commission for consideration on how to move forward. That's all. Questions?

Commissioner Ferrell: What bodies of water does this rulemaking apply to?

Dianne Reid: Well the EPA would like to see us have nitrogen and phosphorus criteria for all waterbodies of the state. What we've heard at our stakeholder meetings and what we're seeing across the nation is that the other states are moving forward looking at specific waterbody types. So we might begin with estuaries. There's a possibility that there's some money out there from EPA to do some additional in our sound areas. So we might focus on those areas and then move to the rivers and streams. We've got chlorophyll-a that we've used in our lakes and reservoirs that EPA would like to see us do some work on to kind of tweak it a little bit. It's all waters of the state. It's just that based on the resources and the information we have we'll probably move forward with just a few at a time.

Chairman Hutson: Other questions?

Commissioner Carroll: You say that EPA is looking for nitrogen and phosphorus but the state's plan doesn't include those criteria. I'm just curious what the rationale for that was?

Dianne Reid: In terms of response instream to nitrogen and phosphorus loading the amount of concentrations that are coming into a waterbody, different waterbodies react differently. Based on flow it can be light regime, how far it penetrates, is there a lot of turbidity in the water? So we in North Carolina have traditionally taken the approach of looking at the response variables. So are we seeing elevated chlorophyll-a? Does dissolved oxygen indicate there might be an issue or are pH values high? All those can indicate that an algae bloom is underway. So if you go with

straight nitrogen and phosphorus it can be difficult. That's why a lot of states and what we're considering is looking at more site-specific waterbodies-specific type criteria. If you go with nitrogen and phosphorus the ability to use something like chlorophyll-a for the whole state, you really can't do that. You'll going to have to look more closely at individual waterbodies.

Commissioner Carroll: What's going to happen when the state develops a plan and it doesn't include nitrogen or phosphorus, and goes back to the EPA again?

Dianne Reid: Well I think that we'll probably propose using an approach something like Florida is working on right now, where you have a hierarchy system. You do have nitrogen and phosphorus criteria that you can use but you also rely on your biology or your chlorophyll-a, those kind of response variables before you kick in with nitrogen and phosphorus as criteria.

Chairman Hutson: Other questions for Ms. Reid? I'll just add to that Commissioner Carroll. The national debate has been, this question of, if you have a specific number for nitrogen and phosphorus that applies statewide, that may be unnecessary in some waters because more could go in and it would not have adverse effects, and you may need a more stringent number in other waterbodies because it could have less effects. The national debate is, to what extent do you look at response factors, to what extent do you look at input factors and there's a variety of viewpoints on that. Hopefully, all those viewpoints will be expressed as we go through this process. Thank you Ms. Reid.

We're now moving into the action item portion of our agenda. Normally we would do this first. We reversed it today at the Chairman's discretion but for the next two items we will be requesting action to require motions, second, discussion and a vote for the actions being requested. The first action item is a request to approve to proceed to public hearing on the Triennial Review of the surface water quality standards, and I will turn it back over to Ms. Reid for her presentation.

III. Action Items

13-23 Request for Approval to Proceed to Public Hearing on the Triennial Review of Surface Water Quality Standards

Dianne Reid: So I'm here to request permission to go to public hearing to gather comments from the public on changes to our current surface water quality standards, which include classifications for all North Carolina waters. I'm going to kind of set the state so you understand why I'm here making this request. I'll be going over the current package and making the request. So why a Triennial Review?

The state has an agreement with EPA to implement the Clean Water Act in North Carolina and under the Clean Water Act we are required to hold a public hearing at least every three years for the purpose of getting recommendations from the public on changes to the standards. Further, we are also required to update the standards as appropriate. Our last Triennial Review was completed in 2007. Before I go into why it has taken such a long time to get to this Triennial Review, let me make sure we all understand what constitutes the surface water quality standards. Basically, the standards are defined as the best uses, beneficial use designations allowable concentrations, conditions and antidegradation language, which states that waters with

quality higher than the standards must be protected to maintain that quality. For example, Tom mentioned outstanding resource waters and high quality waters. Those are waters that through rulemaking we're designating as having higher water quality than the standards and we have additional protections that go in for those waters. The standards are used to evaluate the quality of the waters or the uses of a particular waterbody being protected. They are also used to determine what levels of contamination waterbodies need to be cleaned up to, and they're used for development of permit limits for wastewater treatment dischargers that won't impact the uses of the receiving strength. As Tom told you earlier we have a variety of classifications that protect the uses of different waterbodies. I won't go back through what he presented. I think he did a very good job talking about the different classifications that we have. I will note that a particular waterbody may have several classifications based on the uses of that water. A stretch of river may have, for instance, a water supply intake above a swimming beach. That stretch could be classified in the rules as a WS-II, III or IV and B to protect the swimming uses also. Of course, that is done through rulemaking including EMC approval.

Now here you see some examples of numeric and narrative standards of what they might look like. One thing to note here in talking about different uses and special classifications, you'll notice for the dissolved oxygen the numeric standard for trout waters is not less than 6 mg/l. For non-trout waters the daily average can be 5.0 mg/l with an instantaneous measurement of 4.0 mg/l. That is done because the trout are a more sensitive species and they're found in limited waters in the state. They like colder waters. So we have the two different numeric standards there for protecting trout and non-trout waters, and then, of course we have the narrative standards. Then just for reference this slide includes the rules that are part of the Triennial Review each three years. You may remember from my presentation I just did that EPA has published National Ecoregional Nutrient Criteria. They're charged under the Clean Water Act to publish criteria for all potential pollutants and the states can either adopt the national criteria or states can develop state-specific criteria to address conditions that are different from those upon which the national criteria were based, or if there's new data that becomes available after the national criteria is developed, and it makes sense for states to include that in the development of a new standard. Once the state has adopted a new standard the standard must be approved by EPA for use under the Clean Water Act. That would be for our permitting purposes in those kinds of activities. We do have a proposed rule package, a change package that was approved by the EMC to take to public hearing back in early 2010. Several things have contributed to that package not having gone to public hearing yet. The division wanted to make sure that we were fully representing the potential economic impact, both the costs and benefits from the proposed changes to the rules. Due to legislative action there were increases in the requirements around the fiscal note, development and approval. We kind of got caught up in the changes that were happening there. But we really wanted to do a good job in identifying what the actual costs would be. The major changes proposed in that package included, as I mentioned before, chlorophyll-a for mountains and upper Piedmont. Going from total metals to dissolved metals and including equations to allow more waterbody specific evaluation of metals where it is appropriate. We're proposing to reduce the 2,4 D standard. There were some other changes that were proposed to support the implementation of the metal standards for permitting purposes and for evaluation in a stream. That package is posted on the division's website and we will send that link to all the Commissioners so that you can find that easily. What we need to do right now, though is have the public hearing per EPA and the Clean Water Act. We're requesting that you, as a Commission, instruct us to put the current proposed changes on hold to allow for

refinement after holding a public meeting. Then we are requesting permission to hold the public hearing to obtain public input regarding changes to the standards rules. We'll work with the hearing officer to refine the current proposed package based on the input from the public hearing. We have to complete that by the end of the year. We'll also continue working on the fiscal note and make modifications based on what we hear at the public hearing. Our goal is to refine the package and bring it back along with the fiscal note to the EMC in early 2014 and then complete rulemaking by the end of 2014. That's our request. Are there any questions?

Chairman Hutson: Questions for Ms. Reid?

Commissioner Carter: Perhaps I missed it. You mentioned the delay and I was looking at the slide that indicates that these were originally proposed in March of 2010. What has been the timing issue here?

Ms. Reid: Well the EMC approved them in March of 2010 and they approved them to go to public hearing. So then we begin the process of developing the fiscal note. We put out a request for information from the dischargers and anyone that might be impacted by the changes to the standards for information on what they felt the economic impact to them might be. We kept that open until September of 2010. Then we took that and begin work. Well in the meantime the legislature had made some changes just to the APA process and what they wanted to see included in the fiscal analyses. We also found that it was, the more we looked at the cost, specifically for the metals and some people think that the only thing in the package is metals, and that's not the case. There are some other ones. But metals are the ones that are going to have the largest fiscal impact. As we started looking at that we continued to work on our numbers to make sure we were clear on which facilities we felt would be impacted and what the costs and the varying costs might be, because some facilities may not have any metals at all or very minimal metals. Some facilities may have systems that handle removal of metals very well. Some may be older facilities that would need to be doing more upgrades. So it is very complicated getting that information together.

Commissioner Carter: Ok.

Chairman Hutson: Other questions of Ms. Reid?

Let me just make sure I'm clear so I know what I have to do in my role as Chair. We're going to have a public hearing as soon as possible because this really has sat on the shelf for a while, and there could be new comments. So we don't want to approve a rulemaking and then it's really outdated and we got to start over. So there's that and this will also satisfy the requirements that EPA says apply in the Clean Water Act. So that's the purpose of this first public hearing as I understand it.

Ms. Reid: Correct.

Chairman Hutson: Then the rule package will be modified based on the comments from the public hearing, if necessary and the fiscal note will be modified as well to the extent that there are modifications to the rule package. Is that correct?

Ms. Reid: Yes.

Chairman Hutson: Then you'll come to us with a proposed rule package and a fiscal note for our review and approval to go to public hearing that leads to the adoption of the rule.

Ms. Reid: Yes.

Chairman Hutson: Knowing the fiscal note requirement, if it exceeds the threshold, and I believe it's now, if it's a cost of in excess of a million dollars. Are we still subject to still having three alternatives to consider as part of the rulemaking process before we can go out to final rule?

Ms. Reid: I don't think that was changed.

Jennie Hauser: My understanding is that it still applies if you meet that threshold and I'm seeing nods from the back there.

Chairman Hutson: Ok. At the 2010 timeframe that didn't apply, so we didn't have three alternatives. Is that correct?

Ms. Reid: Yes. But we have three alternatives that we considered. When we came to the EMC we only came with one proposal.

Chairman Hutson: Alright.

Ms. Reid: But in working through that we have other things that were considered. We don't have to do anything, particularly we could see if the EPA wants to promulgate changes to our metal standards or we could go with updates to the metal standards to include the equations, but stick with the total. We've got something in the fiscal note at this point.

Chairman Hutson: For the other Commissioners who are new, the statute that was passed two years ago that changed the fiscal analysis and was amended this year says, "If a rule has a potential cost to the economy of North Carolina in excess of one million dollars, then before you can go out with a rulemaking package, three alternatives have to be proposed for us to consider for us to choose from as to which rulemaking we will go forward with." That's my understanding of it. Staff can correct me if I'm wrong. That's sort of it in a nutshell because fiscal considerations are now mandatory byCommissioner Carroll?

Commissioner Carroll: Just to clarify when you say cost, that's a net cost?

Chairman Hutson: Yes, net cost. The only exception to that as I remember is if you are repealing a rule. I'm not sure our fiscal analysis requires that. Let me ask as one of the ones that has some experience I'll just ask two things of staff as they go through this. First of all that you are in really good communication with the Office of State Budget and Management. These fiscal analyses take entirely too long in my opinion to get there. Second, I hope that we don't have to restart the fiscal analysis from scratch, that if there are modifications to this rule package that the analysis of the fiscal impacts will be what are the impacts of the changes, and not a rulemaking

is an action item is that this matter was considered at our July meeting. At the end of the discussion there was a lot of discussion of this. A motion was made to table this for action at the September meeting. As you are about to hear this is an extensive package for rulemaking. There are a lot of comments. So at the end of this the only action item that we'll be asking for is a motion to defer consideration and action on this until the November meeting. But since it had only been deferred until September I wanted to make sure there was an official action to move it to the next meeting.

13-24 Preview of Hearing Officer's Report on Revision of Arsenic Acceptable Ambient Level (AAL)

Joelle Burleson: Good afternoon and welcome new Commissioners and returning Commissioners. It's a pleasure to be here. As Chairman Hutson said, I am Joelle Burleson and I work in the Division of Air Quality's planning section in our rules branch. Today I am here to just give a very brief review of the status of this particular rulemaking action.

As the Chairman mentioned earlier in the day for those of us who work in these areas on a daily basis, it's very easy for us to slip into code talk as he called it. So here for your reference I've provided several of the acronyms that will be used throughout this presentation. Many of you may know that North Carolina has a Health Risk Based State Air Toxics Program. Under that program it actually establishes acceptable ambient levels or AALs that are guidelines and associated emission rates requiring a permit for particular air toxics pollutants, against which a particular industrial facilities calculated emissions impact to ambient air at or beyond its property boundary, is reviewed and compared for permitting purposes. In support of that program the Department Secretary's has a Science Advisory Board or SAB. That body in support of the program studies toxicological effects of the various toxic air pollutants under North Carolina's program or TAPs, and advises this body, the EMC, regarding the necessary level of control for protection of human health and the environment relative to each of those pollutants. They do so by providing information on what an appropriate AAL would be for a particular given compound. In this case we're talking about the compound arsenic in inorganic compounds in particular in our rule. That in the March timeframe the Environmental Management Commission approved moving forward with proposed rule revisions to revise the arsenic, AAL from 2.3×10^{-7} mg/m to 2.1×10^{-6} mg/m. The proposed rule also revises the associated emission rates requiring a permit also known as TPER or Toxics Permitting Emission Rates from 0.016 lbs/yr to 0.053 lbs/yr. We held our hearing in May and Donnie Redmond who is chief of our ambient monitoring section, but not here today, was the hearing officer in this instance. The comment period closed on June 14 of this year and subsequent to that we came back at the July 11 EMC meeting with the hearing officer's report, which Mr. Redmond presented recommending adoption of the proposed amendments. At that time the EMC members raised concerns regarding several rule issues, one of which was the methodology used by the Science Advisory Board in calculating its recommended acceptable ambient level. In particular, there were concerns regarding whether there was a different calculation methodology used or whether new data was being used, new data on health effects. There was also a question as to whether what atmospheric deposition and resulted ingestion of arsenic had been considered in development of that AAL. Also, some concern about an ongoing EPA update that has been initiated. EPA maintains something called the Integrated Risk Information System or IRIS and they are currently in the process of updating their health related values for arsenic. As a result of the

concerns raised by the various Commission members the EMC voted to delay action until this September meeting. At this point based on consultation with Chairman Hutson we would anticipate coming back to you (pending your action today) in November with the full hearing record which is available to you now as part of the July EMC meeting materials. I've listed them at the website for you. The meeting minutes from July which you approved earlier today also contain a very detailed discussion of these concerns. We intend to have staff, both DAQ and Division of Water Resources available to respond to questions along with representatives of the Science Advisory Board to help answer any concerns you might have at the November meeting. The earliest potential effective date, if you acted to adopt rules in November would be January 1, 2014. I'd be happy to try and answer any questions now or between now and the November meeting.

Chairman Hutson: Questions for Ms. Burleson?

You need to mark down those websites. The hearing record in this matter is approximately 750 pages.

Joelle Burleson: 740.

Chairman Hutson: 740 pages and so you've got a few months to review. Also, reading the minutes you can see the concerns and questions that were raised the last time. It was a lot of public interest in this and we need to give this close attention. Questions/comments beyond that? Otherwise, I'll entertain a motion.

Commissioner Tedder: Chairman, I'd like to move that we defer this until the November meeting.

Commissioner Carter: Second.

Chairman Hutson: Second from Commissioner Carter Any discussion on the motion? (Hearing none the motion passed.)

Thank you Ms. Burleson and congratulate Mr. Redmond for being on vacation at the right time. We have a section at the end of the meeting for concluding remarks. Do any of the Commission members have any concluding remarks? Any concluding remarks by any of the division directors? Counsel, is there any concluding remarks?

IV. Concluding Remarks

Chairman Hutson: I have a few. First of all we didn't go around and do introductions. But there's one person there's a misconception that the Chairman runs these meetings and runs the EMC. That is not correct. The person most responsible for what we do, keeping us up to date and everything sits over at this table and never has a microphone. But that's Lois Thomas. Lois, I don't think you ever faced this many new Commissioners, this many ethics reviews at this late of a notice and I still hope that the Governor's staff responsible for appointments is talking to you. Because I know you kept in touch with them. Thank you for all you've done for this meeting today. Lois has also given me a reminder that before you leave today, each of you needs to sign your Oaths so that we have executed copies of those. We also have reimbursement forms

that need to be filled out for your parking and mileage and hotel. There's also parking validations if you parked in the lot over there. Lois is strict. Unless you sign that oath, you're not getting your parking pass today.

I also wanted to recognize out in the audience. Joe Harwood is here. Joe is the Director of Customer Service for the Department of Natural Resources. Joe has willingly offered any questions you have about issues within the division regarding problems that you hear about or anything like that. That's Joe's job and he has done a great job in the short time he has been there. So Joe welcome and thank you. I just want to give a couple of concluding remarks. First of all I do want to thank all of you for agreeing to serve in these positions. I don't know if anybody at this point is ready to turn in their resignation after their first meeting. But it is very important public service that we do. It's the first time I've done public service and I find it to be incredibly rewarding over the last year or so. I would ask that, sort of like everything that I needed to know, I learned in Kindergarten. I just hope, we've always had it here and it will continue that we treat each other with respect and the courtesy that everyone deserves no matter in what situation in life you're involved, and that we do all this with good humor. I also ask, and it's just a perception that everyone's aware of with the political change that occurred over the last election. All the Commissions that I've been in front of, those that I was on before and this one, we have to remember that we represent all the citizens of North Carolina. In talking with each of you despite what may be perceptions there, we're not bringing agendas. We may bring different experience, different viewpoints but we need to be open to all of the ideas and thoughts that are brought to us and thoughtfully consider those whether the people making them believe that they have someone who shares their interests on the Commission or believe that they don't have someone. It is remarkable that in my short time here as to how many motions and seconds were made that would make heads spin or I never thought those two people would agree on anything. I suspect if we do that thoughtfully; as Ernie Larkin said in a note to me, "We have to remember that we represent everyone in North Carolina, even those who don't even know what the Environmental Management Commission is." So if we keep that in mind I'm sure we'll have a very successful tenure for all of us.

We have some refreshments in the room across the hall. I invite everybody over there so you get a chance to meet each other. It is not a violation of the public meeting law, I believe. Is it Counsel?

Jennie Hauser: I think you just extended the invitation to everyone.

Chairman Hutson: Good. It is open to everyone. If there's no other business I will call the meeting adjourned. Our next meeting is in November. We will also approve the schedule for meetings for 2014. Thank you very much for everybody coming. With no further comments the meeting adjourned at 12:20 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 AG09-12-13