

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

**Raleigh, North Carolina
March 10, 2011
Minutes**

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

COMMISSION MEMBERS:

Yvonne C. Bailey	Tom Ellis	Jeffrey V. Morse	J. Dickson Phillips III
Donnie Brewer	William L. Hall	Dr. Charles H. Peterson	Stephen Smith
Thomas F. Cecich	Dr. Ernest W. Larkin	Mayor Darryl D. Moss	Forrest R. Westall, Sr.
John S. Curry	Kevin Martin	Dr. David B. Peden	
Marion E. Deerhake	Dr. David H. Moreau	Thomas H. Percival	

DIVISION OF WATER QUALITY:

Bradley Bennett	Alan Clark	Elizabeth Kountis	Jason Robinson
Janice Bownes	Nora Deamer	Susan Massengale	Jay Sauber
Ted Bush	Bethany Georgoulas	Matt Matthews	Coleen Sullins
Kevin Bowden	Deborah Gore	Sandra Moore	Lois Thomas
Connie Brower	John Huisman	Diane Reid	Julie Ventaloro
Amy Chapman	Steve Kaasa	Jon Risgaard	Chuck Wakild

DIVISION OF AIR QUALITY:

Sheila Holman
Joelle Burleson
Angela Terry
Michael Petratjic

DIVISION OF WASTE MANAGEMENT:

Debra Watts
Betty Gatano

DIVISION OF WATER RESOURCES:

Tom Reeder
Sarah Young
Toya Ogallo
Tom Fransen
Steve Reid

ATTORNEY GENERAL'S OFFICE:

Frank Crawley
Jim Holloway
Ellen Lorscheider

I. Preliminary Matters

Chairman Smith: called the March 10, 2011 meeting to order at 9:10 a.m. He then read the Ethics General Statute § 138A-15, which mandates that the Chairman inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Commission. Commission members were asked if they knew of any conflict of interest or appearance of a conflict to please so state at this time.

Ms. Deerhake: I will say that on the contested case before us we did have some discussion on rulemaking on a portion of it but this past winter it is actually on the books now. Also there was discussion about some aspects of the case but we think that has all been remedied. The other thing I would just say is that my employer, RTI International, does have a contract with the Department of Interior National Park Service. I don't work on that and I don't see that I have a conflict so I would like to participate in today's discussion.

Chairman Smith: Thank you. We move to the minutes. Are there any additions, edits or changes to the January 13, 2011 minutes?

Forrest Westall: moved approval of the minutes. **Mayor Moss** seconded. There was no discussion and the motion carried.

II. Action Items

11-10 Request Approval of Proposed Rule Amendments and Rule Adoptions in accordance with Session Laws (S.L.) 2006-246 (Phase 2 Stormwater Rules) and 2008-211 (Coastal Stormwater Rules)

Summary (Robert Patterson): This is an action item requesting approval of the proposed rules as they were publicly noticed in November 2010. I will move through the background section of this presentation pretty quickly and it is pretty much the same one I've given two other times to the Water Quality Committee and the EMC. The Phase II rules were originally adopted by the EMC in 2006 and following that the legislature disapproved them and put in place Session Law 2006-246. Those have been effective since July of 2006 and we've been implementing those requirements since that time and currently. The proposed rules just moved the exact same session law requirements back into the rule structure. The public notice closed on January 14, 2011. No comments were received. I have just a little detail about that session law. They include both federal stormwater requirements that are proposed to be placed back into 2H .0100 and state stormwater requirements that are to be integrated into 2H .1000. Those do include the technical corrections that were in a separate S.L. 2008-198. Again, I just want to make it clear that there are no substantive changes to the requirements from the session laws that are proposed to be put back into the rules.

In the coastal stormwater background, the EMC adopted rules back in 1995 which had been implemented up until 2008 when they were revised again. The Legislature again disapproved that set of rules and replaced it with S.L. 2008-211 and that has been effective since October 2008, which we have been implementing since that time. We are putting these requirements back into the rules, and as with the phase II session law noticed to be moved to the rules, there

were not any comments received. S.L. 2008-211 includes the coastal stormwater requirements that apply to the 20 coastal counties. They're being proposed to be put back into the 2H .1005 section where the original 1995 rules were. It includes the technical corrections from that third S.L. 2008-198. Again no substantive changes from what's in the session law that is proposed to be in the rules. We went to public notice November 15, 2010 which closed January 14, 2011. No comments were received. We're here in front of the Commission today to get final approval of those proposed rules which will then go to the Rules Review Commission, hopefully next month. Following that, based on the language in the session laws, any rules that the Commission adopts related to these session laws has to then go back to the General Assembly for final approval and that will be in the 2012 session most likely.

Chairman Smith: Are there any questions or discussions?

Forrest Westall: I move approval of the rules. **Mr. Curry** seconded. There was no further discussion and the motion carried.

11-11 Request to Approve Delegation of the Neuse Buffer Program to the Town of Morrisville

Summary (Amy Chapman): The Town of Morrisville is requesting delegation of the Neuse Buffer Program within their ETJ. Currently they have the Jordan buffer rules within their ETJ that they designated. If they get this delegation of the Neuse buffer rule it will be easier for the applicants to know whom to go to for permitting, for buffer authorizations and for minor variances, because they always go to the town. The town has adequate staff to handle these buffer authorizations and minor variances, and they do have staff that's certified to do the buffer terminations that's with certifications, surface water identification training certification class that we have. So the division feels that this delegation request is good and we think that they should be approved. That is the request for today.

Kevin Martin: I move that we delegate the program as proposed to the Town of Morrisville. **Mr. Morse** seconded.

Chairman Smith: There was no discussion and the motion carried.

11-12 Request to Approve Model Programs for New Development Stormwater under Jordan and Falls Nutrient Strategies

Summary (Jason Robinson): I did present this yesterday to the Water Quality Committee. Jordan and Falls Lake nutrient management strategies were effective August 2009 and January 2011 respectively. Both contained new development rules. The new development rules required DWQ to develop model programs that embody the criteria of the rule including a model ordinance and a nutrient loading accounting tool. The implementation timelines for the Jordan and Falls Lake rules almost coincide and the model programs parallel each other allowing for the differences in the rule requirements. So we will be presenting them together today. I will be presenting on the Jordan rules and John Huisman will follow and touch briefly on the Falls Lake program. We will be requesting your approval of both model programs today.

The new development rule required DWQ to provide a model program that embodies the criteria of the rule and also include a model ordinance and to develop a nutrient loading accounting tool.

The materials you have today in your package include the attachment A. The first 8 pages is a list of administrative components that local governments will have to submit as part of their local program to get EMC approval. The remaining 20 pages of the attachment A is implementation guidance to help local governments and developers meet these requirements. Attachment B has a 230 page appendix of supporting information, some that's referenced in the program including text of the rules and example forms that local governments may choose to use. The appendix also contains the model ordinance which is found in appendix E and a print-out of a user's manual and weblink to the accounting tool is found in appendix O. Then attachment C and D are the same for the Falls Lake program.

This is what we will be asking local governments to submit to DWQ for review and EMC approval [list on screen] as part of their programs. This will be six months after the Commission approves this model program when the local governments will have to submit this. The model program lists out the administrative components that local governments need to submit. They also need to submit the ordinance they plan to use to enforce the new development rule and tell us if they plan to use DWQ's accounting tool, or if they propose to use another tool.

Jordan model ordinance is found in Appendix N in Attachment B We will be asking your approval on this. This is a 319 funded project that was done with UNC School of Government. It was created for the Jordan rules and then adapted for Falls Lake. It was developed similar to the Phase II in water supply/watershed model ordinances for those communities that also implement these programs to duplicate any similarities. The model ordinance is comprehensive and contains the requirements of the rules and what the School of Government thinks is the best example of how to meet these requirements, sometimes mirroring Phase II in Water Supply Watershed ordinances. If local governments adopted the model ordinance DWQ would recommend to the EMC to approve these. However it is just a model ordinance. Local governments do have the option of revising the model ordinance or revising one of their existing ordinances to contain the requirements of the rule.

In response to a comment yesterday, we have requested if they plan to use the model ordinance and make changes to make it clear as to what changes they make. We will, in announcing when they have to start developing their rule, ask that if they plan on revising their existing ordinances if they could tell us where that is so we could know where to look. So if it's a 500 page ordinance or so, we could go through and tell where they made the changes.

The nutrient loading accounting tool was another 319 project and this tool should be used by developers in local governments to determine if new development meets the nutrient loading accounting tools that are set up by the rules. Again, this 319 funded project was with N.C. State Biological and Ag Engineering Group, their stormwater group, who also developed the Tar-Pamlico accounting tool in 2003. A lot of the research has been done since then.

The new tool is improved over the Tar-Pamlico tool in several ways. One, it uses fixed effluent concentrations instead of flat removal efficiencies. This was done because it has been recognized nationwide and locally at N.C. State that the flat removal efficiencies of BMPs is not really what's going on in the real world. Basically, it is been shown that a specific BMP usually releases about the same concentration regardless of the water coming in, so dirtier water would have a higher removal efficiency than that same BMP that was accepting cleaner water. That's

one of the improvements. The new tool also accounts for volume reduction of BMPs through infiltration, and evapotranspiration, depending upon the region. It also uses updated nutrient concentrations from runoff for a larger variety of land types in the Tar-Pamlico tool. The new tool can be used across different physiographic regions.

Basically, the model that we processed was developed in collaboration with local governments. The model ordinance was posted to a wiki water page by the North Carolina School of Government in October 2010. Public comments were solicited and the model went through several versions as a result of the comments. DWQ also held a meeting on November 30th with local governments to review the documents and solicit input, and two rounds of comments were sought from local governments, each time revisions were made to the model program. Two training classes were offered for the accounting tool back in July 2010 and comments were taken and some revisions were made to the accounting tool as well.

This is a timeline of the Jordan New Development Rule [screen]. If approved here today the local governments will have six months to go back and develop their local programs and submit to DWQ for EMC approval. This will be in September 2011. DWQ will then have nine months to review this program and provide recommendations to the EMC which will be May 2012. If local government programs are approved they will have three months to go back, adopt and implement, so this will be in August 2012 when they actually begin implementing their new development programs. This concludes the Jordan portion. John Huisman will speak on the Falls Lake.

John Huisman: I will for the next two or three minutes highlight the Falls Lake portion of this agenda. As Jason pointed out, the Falls Lake nutrient management strategy, as in Jordan, includes a new development stormwater rule. The rules are fairly similar and as such we are able to take all the hard work that went into developing the Jordan model ordinance guidance and document and adapt those for the Falls Lake program. So essentially, the Falls Lake model program has the same program submittal requirements for local governments as in Jordan and proposes using the same accounting tool. The only real difference between the Jordan and Falls Lake model programs are where they're tailored with specific rule requirements for the two different watersheds. There is a table that highlights those differences in the requirements. I'd like to point out that the main drive between the differences in the Falls Lake and Jordan Lake stormwater requirements is the fact that Falls Lake calls for more stringent reductions in nutrients than Jordan. The differences are primarily the post-construction nitrogen and phosphorous rates that have to be met by new development projects. The Falls Lake has targets for the entire watershed where Jordan has three sets of targets for the three sub-watersheds. There are also the differences in the land disturbance threshold. That essentially establishes the area that can be disturbed before triggering a project being subject to the new development rule. There are also differences in the stormwater on-site treatment criteria. That establishes how much treatment the developer has to do on-site before they are allowed to go off-site to do a nutrient buy down. As in the Jordan process, DWQ also collaborated with local governments in developing the Falls Lake model program. We coordinated with the upper Neuse River Basin Association to hold a meeting in January with local governments. There was a pretty quick turnaround for us because you know the RRC only approved the Falls Lake rules in December with an effective date of January 15th. The rules gave DWQ a short timeframe for developing the model program so we had to do it within two months. We held that meeting in January where the local governments reviewed the draft model program. We had Cathy Debusk at N.C.

State to give an overview of the accounting tool. We received comments from the local governments and we also allowed them to submit written comments into the first week of February, and we do have plans as they did in Jordan. They've already held accounting tool training sessions in Jordan. We're going to work with N.C. State to set up some additional training sessions for the Falls Lake local governments, homebuilders, and consultants in the future. This is a quick recap of the Falls Lake timeline and it is similar to Jordan's, just a few shorter timeframes. As Jason pointed out, anticipating acceptance by the EMC of these programs, local governments will then have five months in Falls Lake to come back in August of 2011 with their local programs to DWQ. DWQ will then come to the EMC in January 2012 with recommendations to either approve or disapprove those programs. Once approved, the local governments are required to implement the local programs by July 2012. With that I'd like to request approval of the Jordan and Falls Lake model programs, specifically the local programs submittal requirements, model ordinance and accounting tool.

Jeff Morse: Have all the local governments in these basins now supported the numbers that you have projected in terms of the loading? Is there any controversy or any questions being raised about the loading numbers?

John Huisman: Nothing has been raised. In the meeting we had during the Falls Lake stakeholder process specifically there was lots of discussion in establishing those numbers. There really hasn't been much controversy around those. We all recognize that they are fairly stringent in Falls Lake and we've talked about the concerns. But nobody has come right out and argued against them.

Jeff Morse: I don't know if any members of the Commission have received any objections. I know that I haven't heard of any.

John Huisman: There were no letters of objection submitted to the RRC during the process either.

Jeff Morse: Thank you.

Tom Cecich: Have there been any open or contentious issues remaining with local governments as a result of your consultation on the model ordinances?

John Huisman: Nothing came up really. I'm speaking to the Falls Lake process during the Falls Lake meeting we had with local governments. It was more about tailoring certain aspects and some clarification questions that they came up with about how we're going to treat downtown development projects and on-site treatment requirements, how we would define on-site for downtown. They were concerned about if they did an offset anywhere downtown could that be considered like on-site for a downtown project. We had a lot of discussion about that. But no contentious issues were really raised. It was just more clarifications during the meetings with the local governments.

Forrest Westall: Just to comment on that. The Water Quality Committee on yesterday, a couple of issues: Kevin raised some and I did, and you all incorporated those in your

presentation today about notice and we appreciate that. Also, in relation to the program, this is a guidance package for the local governments. They can modify it as long as it meets the basic or the minimum requirements in the rules. That gives them some flexibility in doing so. I also noted for the full Commission, I'd say this: that with the schedules, they have a tremendous amount of work. Local governments have a tremendous amount of work. The staff described in the water quality meeting that three people would be doing all the reviews of over 50 programs to be submitted between now and September. We will be reviewing them, and I think trying to look at those is going to be something of a burden for us as well, because we will have to review all of those. But I do appreciate all the work incorporating those on short notice.

John Curry: They will be reviewing most of them in August.

Dr. Larkin: I would like to move approval of these model programs. **Mr. Westall** seconded. There was no further discussion so the motion carried.

11-13 Presentation of William B. Freedman v. NCDENR, DWQ, and EMC , (DV 2005-006, 05 EHR 0905), Remand from Superior Court, 09 CVS 0360, Bladen County

Chairman Smith: This item, the contested case involving William B. Freedman, has been removed because Mr. Freedman filed a Notice of Appeal with the Superior Court opting for that appeal rather than coming to us with a contested case. So that is off our agenda.

11-14 Presentation of Administrative Law Judge's Decision, U.S. Department of the Interior, Fish and Wildlife Service v. NC DENR and Respondent-Intervenor PCS Phosphate Company, Inc., 08 EHR 1067

The Department of the Interior was represented by Charles P. Gault, Esquire, of the Office of the Field Solicitor, U. S. Department of the Interior, Knoxville, Tenn. The DENR was represented by Assistant Attorney General James C. Holloway. The Respondent-Intervenor, PCS Phosphate Company, Inc elected not to participate in the oral presentations.

Charles Gault presented petitioner's argument for upholding the decision by the ALJ and adopting it as the final agency decision. The petitioner argued that the State and Federal PSD rules provide that the Federal Land Manager receives prior notice of an application for a PSD Permit and that associated required modeling by the permit applicant for visibility impairment at a Class I area use "natural conditions" and not "current conditions" as is currently the policy of the Division of Air Quality. Petitioner also supported the ALJ's recommendation not to suspend or revoke the PSD Permit issued to PCS Phosphate Company.

Assistant Attorney General Holloway presented the DENR's argument that the decision by the ALJ should not be adopted because the case was moot; the notification rule has been changed to require notice of applications for PSD Permits to the Federal Land Manager; where there is no Class 1 increment exceedance, it is the FLM's responsibility to perform a case-by-case AQRV (visibility) analysis and submit it to the State to rebut the presumption of no adverse impact; and that the use of "natural background" for visibility modeling stated in FLAG is just a recommendation and North Carolina's PSD rule does not indicate "natural background" is to be

used in the visibility modeling that accompanies the permit application, and thus the use of “current conditions” for modeling was not arbitrary or capricious or erroneous as a matter of law.

A motion was made by **Ms. Bailey** to adopt as the final decision the parts of the decision by the ALJ stating that the PSD Permit issued to PCS Phosphate Company should not be revoked or suspended and that the Federal Land Manager was not given the required notice of the permit application, but not adopt the part requiring “natural conditions” to be used in visibility modeling for Class I areas, and instead hold in the final decision that the DENR did not act contrary to law or arbitrarily or capriciously by having PSD applicants use “current conditions” in modeling for impacts to visibility at Class I areas. There was a second to the motion.

Chairman Smith called for discussion or questions from Commission members.

Ms. Deerhake made a substitute motion to adopt ALJ Conclusion of Law 16 to use “natural conditions” because the State rule requires compliance with 51 FCR 301. The motion received a second but failed by a majority vote.

Dr. Moreau made a motion to amend to accept the exceptions by the DENR to the ALJ decision instead of the recommendation that “natural conditions” are to be used by the Division in the PSD modeling. The motion received a second and passed by majority vote.

After further discussion, the Chairman called for a vote on the amended main motion. The motion carried.

Having considered the whole record and arguments by the parties and by duly made motion and unanimous vote, the Environmental Management Commission adopted the ALJ decision in part and rejected it in part. The Commission found and concluded that the PSD Permit issued to PCS Phosphate should be affirmed and not suspended or revoked; that the DENR did not follow lawful procedure when it failed to notify the Federal Land Manager of the application for the PSD Permit by PCS Phosphate Company; and that the DENR did not act erroneously or arbitrarily or capriciously in having the permit applicant use “current conditions” and not “natural conditions” in modeling for impacts to visibility to the Swanquarter Wildlife Refuge, a Class I area.

(This information is on file in the Division of Water Quality)

11-15 Fiscal Analysis of Proposed Changes to Injection Well Rules (15A NCAC 2C .0200)

Chairman Smith: Let me say by way of clarification we are only considering today here the action item on the fiscal analysis. It is not for consideration of the rule package itself and I’ll take part of the responsibility. That was not properly noticed as an action for the rule package itself. At our May meeting we will take up the injection well rules as a rule package to determine whether or not we send those out to public hearing. Because of internal mix-ups I don’t think action on the rule package was properly noticed for today. But we will hear the report on the fiscal analysis.

Summary (Thomas Slusser): On to something a little more simple and straightforward than the previous issue. I'd like to present to you our fiscal analysis of the injection well rules. As Chairman Smith mentioned these rules were presented to the Commission in November and we were asked to come back when the fiscal analysis of these rule changes was completed. That was completed at the beginning of this month. Basically we are going to go over some of the basics of why the rules were revised. You heard all the details back in November and I will kind of refresh your memory on why we are doing that, how the fiscal analysis was conducted and what we see as our schedule moving forward. We had undertaken the effort to revise these rules because they needed some work for reorganization of the content to make it easier to read, to follow and understand, clarifying some statements, addressing some changes in technology that occurred since the rules were last amended in 1997. We're also looking at expanding the use of permitting by rule for certain injection well types that pose little to no environmental risk that staff has experienced over the years. Then we will also get up to speed with respect to federal requirements.

Even if we had undertaken to do all of this of our own when Executive Order 70 came out they would have required us to make all of these changes anyway. So we are kind of ahead of the game on that. In preparation of the fiscal note we had collected data from our staff to implement the program as well as our partners in the regulated community and we got some excellent assistance from the Department's Division of Budget, Planning and Analysis, and had a sort of appropriate analysis to do and how to present that information. Other costs are presented normalized to each facility which can consist of multiple types and multiple wells per facility, and when appropriate the costs have been annualized over a five year period. The types of changes that can result in cost include grouting the entire length of a well boring, also being able to locate for geothermal system components and being able to locate the subsurface system component, and also for adjusting some mechanical integrity testing for certain types of injection wells.

Examples of proposed changes that resulted in savings included the permitting by rule, certain injection well types not requiring quarterly monitoring and also limiting the scope of financial responsibility demonstrations which is something that we feel is more appropriate to be reserved for some of the more complex types of injection wells that could potentially have greater impact on the groundwater resource. The fiscal note format of the Office of State Budget Management likes to know which parties are affected by proposed rule changes and so following that same format I'm going to go through each group: federal, state and local governments, and private sector.

The federal government group consists of mostly the military bases for groundwater remediation activities at those sites, as well as for some of the base housing that use geothermal heating and cooling to service those buildings. For state government that includes the Division of Water Quality who implements these rules, Department of Transportation mostly for groundwater remediation activities and a couple of geothermal systems. The Division of Cultural Resources has got a couple of permits as well as some of the university research stations on the coast. For local governments that's consisting of water utilities for the states two aquifer storage recovery projects. We've also had a number of injection wells used for groundwater remediation at landfills, and there's also some schools that use geothermal heating/cooling systems for classrooms and other buildings, with the private sector which is anything from a single family residential structure to businesses, colleges and universities and a whole host of other businesses and industries.

The total cost for all of these, we've got a quarter of a million dollars worth of costs and about a 1.3 million dollars worth of savings that will be expected to result from any proposed rule changes, doing the math on those that result in about a million dollars worth of net savings that we expect to result from the proposed rule changes. The Office of State Budget Management reckons these numbers differently, and they look at the total combined impact, and that cost plus savings expects to result in about 1.6 million dollars annually.

Summarizing where we're headed here again the fiscal note was completed on March 1, 2011. We basically need approval of this fiscal note and the rules to be able to submit the certification to be able to submit the fiscal note and the rules to the Office of State Budget Management which we would expect or hope that they would be able to approve in the summer, which would enable us to conduct the public comment period in the fall, and get final EMC review approval on that, which could give us a possible effective date of the winter of this year or early 2012.

Tom Cecich: What are some of the examples of the savings that are going to result? There's some pretty large numbers there.

Thomas Slusser: The specific types of savings again were for permitting by rule. Basically that saves the regulated community time and materials in preparing permit application packages. It saves our staff time in reviewing those. So basically, instead of completing the full application package, they just send a notification of how many wells are going to be constructed and where they're going to be located and what's going to be used. That's just for the basic inventory inflation that we are required to report to EPA. As far as the quarterly reporting, the current rules require quarterly reporting. We don't think that is appropriate for each noted facility. In many instances just an annual or semi-annual reporting is more appropriate. We think it is also good rule drafting language to have the flexibility to require more frequent reporting if necessary. So we are changing the rule from it being just strictly quarterly reporting to "frequency other than quarterly". Again, we expect that to be annually for almost all facilities, but we would certainly have the ability to reserve the right to require more frequent monitoring if necessary.

Chairman Smith: We will have the rule package before us in May and we will then vote on whether to send it out to public hearing. It would have occurred today but we bobbled it internally. So with that we move to the only information item.

III. Information Items

11-02 Management of Medical Waste in North Carolina

Summary (Ellen Lorscheider): I am going to start by giving you the definition of what medical waste is, and then I am going to go on and talk about the different regulations that we have in North Carolina having to do with medical waste.

Medical waste is any solid waste which is generated in a diagnosis, treatment and immunization of human beings and animals. This is a very, very general definition which is within our public health statutes where medical waste is regulated underneath the public health statutes. There are three kinds of regulated medical waste which the Division of Waste Management has regulations for and those three kinds are blood and body fluids when it is

greater than 20 ml per small test tube or bottle, microbiological waste, and pathological waste. Those are actually the only three types of medical waste that the Public Health Commission deemed that they needed specific regulations as to how those kinds of waste had to be handled. The rest of medical waste can go to a regular municipal solid waste landfill and is regulated under our solid waste rules. Approximately 9-15 percent of the waste at hospitals is regular medical waste and just goes to a regular landfill. It doesn't have to be handled in a different manner. The regulated medical waste has to be treated prior to going to the landfill.

The first kind is blood and body fluids which is pretty much exactly what it says. It could be liquid blood, serum or plasma. It has to be incinerated or disposed of into a sewer as long as the wastewater treatment plants are notified ahead of time. Microbiological waste is infectious waste and it includes specimens from medical, pathological, pharmaceutical, research, commercial and industrial laboratories. We find a lot of the microbiological waste does come out of laboratories in addition to hospitals. It can be autoclaved (which is steam sterilization), incinerated or it can be treated with chemicals. Pathological waste is body parts, human tissue and organs. It is also the carcasses of animals that are known to have diseases such as rabies or mad cow disease. The only treatment in our regulations is incineration.

In North Carolina we have permitted facilities which take regular medical solid waste, our MSW landfills. We have forty of those and one municipal solid waste incinerator in North Carolina. But then the regulated medical waste facilities which can take other kinds of medical waste but the regulated medical waste, those are three types required to go to these facilities. The facilities that are active right now are incinerators in North Carolina. They work under our waste management rules which of course came from the Commission for Public Health. The incinerators require an air quality permit. Some of the other types of facilities that take regulated medical waste, if and when they are operating in North Carolina, do also discharge to the wastewater treatment plants, so they require approval.

The first kind of facility that I was going to talk about (we have one in North Carolina but it's not active right now) is an autoclave or steam sterilizer of the waste. What happens with all of these facilities is that the waste comes in bags and bins and this is one of the problems that it all comes in red bags, and a red bag is a clue to the operator for the landfill that regulated medical waste could be in the bag. It comes in to these facilities and at an autoclave it is shredded and then put into these huge steam bins, and pressurized steam goes through the waste. Then once it is treated that waste can go to a regular landfill.

We have several incinerators in North Carolina. We actually have a facility at Haw River that has two incinerators and another one in Matthews. This is where all of the regulated medical waste that is treated in North Carolina now goes to. It comes in the bins; the bins are emptied into the incinerators and burned. A third of the waste ends up as ash and goes to the landfill. Solid waste regulations for medical waste allow us to approve alternative technologies and actually microwaving is approved in our regulations, but we don't have any active right now. But we are allowed to approve alternative technologies. The only chemical treated technology that is allowed by regulation is bleach and you would shred the regulated medical waste, and then treat it with bleach. Other things that we are seeing are (and this is happening all over the country), pyrolizers are being researched to see if they can treat different kinds of waste. This is just like a big kiln that would heat the waste to a very high degree. This is could go to landfills. We have approved alternative types of technologies in North Carolina, but so far they haven't been marketed to anybody in North Carolina to use. That is shredding the material and treating it

with calcium oxide or ozone. These are actually up and running in other states. I think we have other alternative technologies for very small scale treatment that are used just in laboratories.

Tom Cecich: In your discussion are you talking about just commercial facilities or also private facilities (the different technologies that are being used around the state)?

Ellen Lorscheider: All of these are privately owned. These are all industry facilities. Does that answer your question?

John Curry: Did you mean the generator itself has its own internal?

Ellen Lorscheider: Ok. I do not believe that there are any incinerators left at medical hospitals right now. There have been a lot in the past and I am not sure how many hospitals use their internal autoclaves, for example, or steaming processes to clean up their waste. That is a question that I cannot answer.

I am going to get back to the types of non-regulated medical waste because the non-regulated medical waste is the majority of the waste stream going to the medical waste facilities, the incinerators. Of course it includes everything as far as dressings, bandages, sponges, even blood-soaked biohazardous waste such as what comes out of a trauma scene, and animal carcasses other than those that have zoonotic diseases, a lot of household medical waste and pharmaceuticals that are increasingly going into the incinerators.

Sharps are a big question by a lot of the regulated community. We get a lot of questions with sharps. There is a very narrow regulation of them in our rules. It says that you have to (at a facility) put sharps in a hard side plastic container and then it can go to the regular trash.

Pharmaceutical, we have always advised that it is Best Management Practice to let the pharmaceuticals go to the landfill and that they should not be flushed. About ten percent of the pharmaceutical waste in hospitals is hazardous. It's separated from the regular trash and sent to hazardous waste treatment and processors. There's no disposal for hazardous waste in North Carolina. The closest disposal is in Alabama. The hospitals are only 3% of the generators, the rest of them being doctors' offices, dentists and laboratories, but they account for 70% of the medical waste. With some facilities the generators produce little or no regulated medical waste, but they still handle their medical waste stream as if it is regulated in many instances.

Landfills (and this is problem that has come up) are not required to take anything they don't want to take. They are allowed to turn something away and the landfills in North Carolina very often do turn away medical waste. Not regulated medical waste but medical waste because it is bagged in a way that they don't know if it is regulated or they turn it away because they feel like it is a hazard to the landfill. It's a liability or it's a hazard to the operators in the landfill. As I said before there's a lot of sharps in this waste and there's just a lot of unknowns. That's one reason it ends up at an incinerator. OSHA, and this is a confusion that the landfills have to deal with, OSHA requires the generators to put all of their medical waste in bags that is marked with the biohazards symbol, very often in red bags. We require the regulated medical waste to go in red bags. They often put everything in red bags.

What kind of transportation and storage regulations do we have in North Carolina? DOT requires that the biohazard symbol is on the trucks. Our regulations say that all medical waste has to be delivered or treated within 7 days, and if kept longer than 7 days it has to be refrigerated and manifests have to be kept up for 3 years.

There are ways that we are trying to reduce the amount of medical waste. I know that my branch goes out and talks to the health industry on a regular basis trying to help them reduce the amount of waste that they handle like it is regulated. Ways that they can do this is by reducing and reusing. An example of the reductions that have happened in the past are that there are several organizations that have popped up that invite the hospitals or the nursing homes to give them leftover, what would be considered waste, such as, this is one of an example that's in North Carolina: there are bins of syringes that were actually at the autoclave and this is the kind of waste that can be recycled and reused. There are huge steps that can be taken to have this done.

The different types of medical waste, sharps can be just put in a package and sent to the landfill. The regulated medical waste which is pathological, microbiological and the liquids has to be either incinerated, autoclaved, microwaved or other approved methods, and then it goes to the landfill. The non-regulated medical waste, everything else, can go directly to the landfill if the landfill chooses to take it. The medical waste is making great strides and I would also like to say that we do believe that North Carolina health regulations and our solid waste management regulations pertaining to storage transportation and disposal as well as the management of solid waste which is the majority of medical regulated waste are protective of the health and environment.

Forrest Westall: I have a question about dental offices. I assume those are included as part of that, for instance removing the amalgamated fillings which have mercury in them, those are taken as well.

Ellen Lorscheider: Actually there has been some back and forth as to whether or not teeth are pathological waste, and I'm not sure what the final answer is right now.

Forrest Westall: The reason I mentioned it is we had issues when I was working with the Division about mercury contamination at wastewater plants. A lot of times small municipalities at one dental office would have an effect on mercury. We actually worked with them to get a reclamation system installed at the dental office.

Jeff Morse: We deal with that all the time. There's no control. They can discharge into our waste system .

Chairman Smith: Have you given consideration to recommending or undertaking to regulate that pharmaceuticals have to be incinerated?

Ellen Lorscheider: That they have to be incinerated? That is something that I believe we have not. I don't know if the Health Commission has looked at that from health perspectives.

Chairman Smith: We're starting to see a rise in water levels of various residuals from pharmaceuticals.

John Curry: As you mentioned I did make the request that you make your presentation and I very much appreciate the detail contained in your presentation. My concern was motivated by the fact that I was the hearing officer for the air quality permit for the medical waste incinerators. I noticed and developed concerns about, first of all, the fact that the Stericycle

facility in Haw River, the majority of the waste that it accepts is from out of state. As your photographs indicated that waste is shipped in steel boxes but then it is removed, but it is essentially in cardboard boxes, and because of the OSHA regulations they're not allowed to open those boxes. So neither you nor anybody, the company included, knows what is contained in those boxes.

For example, the issue of mercury. The company Stericycle, for example, certainly has a policy of eliminating mercury from the waste stream, and apparently has been fairly effective in doing that, but they're still depending on the generators to eliminate mercury from the waste stream, and nobody really knows what's in those boxes.

Because of the centralization in the industry, which I think that you are aware of, more and more of the waste from the eastern part of the country is going to be coming and delivered to those two incinerators in Haw River. So North Carolina has a significant interest in what is in those boxes, the amount of waste that's delivered and so on. Both of those incinerators currently operate 24 hours per day. Going back to the chair's question about disposing of pharmaceuticals, more and more pharmaceuticals are being detected in wastewater treatment plants. Therefore, action needs to be taken about procedures and regulations to remove them from the water way stream or they're going to be delivered to the incinerators. Therefore, more of them are potentially going to be in the air emissions. That issue exists. There are many issues. One question that I have and I wasn't aware of, is you mentioned that the only autoclave in North Carolina is not currently operating.

Ellen Lorscheider: It is not currently operating. It's changing ownership so we believe it will be operating again. Right now it's just acting as a transfer station.

John Curry: In any case, many components of the medical waste stream can be properly handled by an autoclave, as I understand it. There are many types of waste now that are going to incinerators that really don't have to go to an incinerator.

Ellen Lorscheider: Or if one of these other alternative technologies chooses to come into North Carolina and set up business, it could be handled with one of those.

John Curry: There are a great many issues associated with this, although I certainly agree with your statement that the Division of Waste Management is, as far as we know, adequately protecting the public health and I haven't heard of medical waste causing health problems in the state. Another issue is that all of these processes end up with something that has to go in a solid waste landfill. That's another concern. What if we began to get rejections from the solid waste landfills of more and more because people become concerned and they began to reject some of the waste streams?

Even the Stericycle incinerator has a sewage treatment component. Besides the solid waste that is created we also have the sewage that needs to be treated secondarily and then shipped to the local Mebane sewage treatment plant.

There are any numbers of issues that are created by not only the medical waste that's generated in the state, but also the waste that is coming into the state by virtue of the presence of these incinerators. I do thank you very much. I was going to suggest to the chair that you consider creating a task force that would look into this in more detail. We don't have a committee that this broader issue would logically go to. We don't have a Solid Waste

Committee on the EMC. The Air Quality Committee dealt with it because we had an air permit and the staff was involved in issuing a Title V permit as well. But we don't have a committee that this topic would logically be addressed by. I would move that the chair consider creating some kind of a task force that can follow up on these issues and make certain that some integrated look is given at the adequacy of the existing regulations, and whether or not some additional work needs to be done to make sure that overall public health is protected.

Chairman Smith: I don't think that requires a motion and a vote but I do think that it is a good suggestion. You and I can sit down and talk about that.

Tom Cecich: Does that create a bit of a jurisdictional problem? Doesn't some of that fall under Commission of Health Services?

Chairman Smith: That's something we have to talk about. You're exactly right.

Ms. Deerhake: I'm curious about the shredding process for the autoclave. Are there liquids generated during that shredding process?

Ellen Lorscheider: There are liquids. I'm not sure about the shredding process itself but definitely in the sterilization process there are liquids generated. I'm not sure about the shredding.

Ms. Deerhake: I think one direction that we are thinking may be necessary is better information coming from the generator about the contents of the shipments, each package, to help make a decision as to whether or not autoclaving is appropriate because it's unknown. Perhaps clearer manifests or statements from the generator that they have well defined the contents, they've segregated in a way that minimizes perhaps the need for incineration. Approach to such as that could be examined in this task force.

Chairman Smith: Thank you very much for being here. Would you extend our thanks to Ms. Culpepper. We now move to the committee reports. Mayor Moss is not here. The Water Allocation Committee did meet and we heard an update on the Central Coastal Plain Capacity Use Area. Mr. Hall is going to give us that report.

IV. Status Reports by EMC Committee Chairmen

A. Water Allocation Committee Les Hall reporting for Mayor Moss

The Water Allocation Committee heard an update on the Central Coastal Plains CUA and also an update on the Western Wake Partnership. I just want to hit a couple of highlights from those. The capacity use area has been in operation for several years. There are 236 permit holders within that CUA area. It encompasses about 8,000 squares in 15 counties in this part of the state. Since they have been in operation the users have had to reduce their withdrawal in groundwater between 30-75% over 16 years in three phases. The first phase has already been put in operation in 2007 and you begin to see just prior to that, upper trend in the groundwater levels. Then in 2008 when the Neuse River Water Treatment Plant went online you saw a greatly accelerated

increase in groundwater levels at that time. In January of this year the groundwater levels had recovered to the point that they had not been measured since 1983. I see that as a success story for some of the actions this Commission has taken.

The other issue that was presented, as to the Western Wake Partnership, was the results of a meeting convened by Chairman Smith on February 3rd to get all the stakeholders together with representation of this Commission. That representation included Dr. Moreau, Chairman Smith, Mayor Moss and me. We met here in the Archdale Building with representatives of Apex, the Town of Cary, Chatham County and Progress Energy and DENR staff was appropriately represented by different divisions, the Division of Water Resources and DWQ. There was a good discussion, a lot about the history of the project issues that occurred and some discussion about why certain alternatives were chosen or not chosen. Within a couple of weeks after that Chatham County Commissioners who have been in opposition to the project because they were not going to allow the Western Wake Partnership to get easements in Chatham County in order to run a pipeline from the plant down to the Cape Fear River. The Board voted three to two to allow that to happen. The Chairman of the Chatham County Commissioners basically made a statement that said based on the discussion of the February 3rd meeting, "I'm convinced that the other routes and other discharge points were explored but rejected by one or more state department agencies or another." I think from hearing that and them being in the same room that might have been just enough information to get the tipping point to where Chatham County Commissioners would approve moving ahead. That project is moving ahead and it's on schedule to comply with our IBT requirements.

Chairman Smith: Thank you **Mr. Hall**. I do want to give due credit to **Dr. Moreau**. That meeting was his idea. I implemented it and so forth but it originated with him.

B. Water Quality Committee Dr. Charles H. Peterson, Chairman

We had at our meeting yesterday a request for approval of the model programs and model ordinances for new development stormwater under the Jordan and Falls nutrient strategies, and we moved that on the full EMC. We also had two reclassification requests and we have moved those along to the EMC too. They both had to do with drinking water removal and water supplies from rivers. One of them was a section of the Haw River in Alamance, Caswell, and Guilford and Rockingham counties in the Cape Fear Basin. That was a change from Class WS-V to Class WS-IV critical area and WS-IV. Then our other one was a request for reclassification of the South Fork New River in Ashe and Watauga counties around Boone to include Class IV critical area and WS-IV. These will come to the full Commission and they have some oddity to them in the sense that we don't have the normal letters of approval and agreement from some of the affected municipalities. We may have some interesting issues to deal with as they come to us. But we hope with our passage in the Water Quality Committee that will spur action and interaction between the local governments asking for the approval of WS locations to remove potable water, and the other governments that would be affected in their land use. We granted a major variance for the Neuse River Riparian Air Protection rules for U.S. Food Service facility expansion in Zebulon, North Carolina. We also moved to the full EMC the delegation of the Neuse Buffer Program to the Town of Morrisville that came up on the agenda already today. Then our big item which has been a big item for quite some time now is the consolidated buffer rules and we made some additional changes and suggestions. But that package of rules will now

come to the full EMC and we don't anticipate that earlier than July because there are some changes still to make in it that staff will render by the time we get it.

C. Groundwater Committee Kevin Martin, Chairman

The Groundwater Committee did meet and had three items. Two action items and one of which was a petition for rulemaking which was to request an amendment of an underground storage tank secondary containment rules. That request was made by the Steel Tank Institute. We heard testimony from them as well as from staff. After a substantial amount of debate and trying 3 or 4 times to get an amendment or a motion that would accomplish what we were really trying to say, we were finally able to do it. That motion was approved by the Groundwater Committee where we do not recommend that the Commission undertake rulemaking related to this request. However, this will come to the full Commission in May and my understanding is that there will be testimony presented again by both sides and the full Commission will make the final decision on that. We also had an item of the fiscal analysis of proposed changes to the injection well rules which the Commission heard today, so I won't elaborate on that. But just remind you that the injection well rules were approved with four changes by the Groundwater Committee in September and recommended that the EMC send that to public hearing. That is scheduled to be on the agenda in May for the EMC to consider. Our final item was an information item and the director was notifying us that she, in accordance with the statute, had request from the Division of Waste Management, Monsanto and Brewster Environmental to establish IMACs for 20 groundwater standards and those are interim standards that are in effect until the triennial rule review takes place which will be upcoming. At that time those IMACs as well as some others that have been established by the director will be considered by the full EMC, put out to hearing and rulemaking will progress related to that.

Chairman Smith: On the Steel Tank Institute petition for rulemaking which will come before us in May, **Mr. Cecich** asked in the committee meeting yesterday whether or not the parties would have an opportunity to be heard at the full EMC meeting. As you know, it is our policy that we don't hear from the parties on various things that work their way to us. This struck me and I think struck **Mr. Cecich** as similar to what we had experienced in January when information was presented to the Air Quality Committee on a matter that was not presented to the EMC on the matter. At that time I think our consensus was it probably would have been better for us to have heard that additional information even though it might not have changed our decision. With that you can expect that at the May meeting we will be hearing from the Steel Tank Institute folks and from the Division. It won't formally be a contested case, but it will be similar.

Tom Cecich: I think the point was that we articulated why we denied their petition so they have to make a determination whether they have an argument that would override that. It differed slightly from the air quality issue that we dealt with in January in that the Air Quality Committee didn't make a recommendation to the full Commission. Then we had to make the decision. I think they may or may not, whether or not they have a substantial argument of why the Groundwater Committee denied the petition.

Chairman Smith: Good point. Specifically what he is speaking of is that we as a committee found that the science on this particular type of underground storage tank was valid, but that the maintenance and upkeep of the ones that were in existence had been a problem causing

environmental damage. Our concern was not on the effectiveness of this type of tank if it is properly maintained, but the extent to which it was maintained.

Kevin Martin: In addition I think Tom pointed out (and staff) that the tanks in question, even prior to the rules that would prevent their installation in a 5 year period between 2002 and 2007, there had only been two such tanks installed. There was a question on best use of the state's resources and economics that also played into the argument by the Division of Waste Management as to why we shouldn't promulgate the rules in addition to the environmental concerns you had.

The Air Quality Committee and the Steering Committee did not meet.

D. NPDES Committee

Dr. David H. Moreau, Chairman

The NPDES Committee met to continue its discussion of a request for variances from Mt. Olive Pickle and Bay Valley Foods - a variance for chlorides. The discussion of the meeting in January satisfied us on most of the issues regarding satisfaction of criteria for issuance of a variance. We did raise questions in January about any long term impacts on benthic organisms, the extent of that damage and any potential groundwater contamination resulting from the discharge of high levels of chloride. The SIC variance was originally issued in 1996 and renewed in 2005. In the original assessment there were studies of benthic impacts from these facilities. The studies were done in 1993 and no subsequent analysis has been done. As a result of the review that we added at the recommendation of staff we added requirements for assessment of benthic impacts as a condition of the variance. There was also a question about potential impacts on groundwater. One of the facilities had to have groundwater monitoring in 1993 but none since then. The other facility had no groundwater monitoring. So we added conditions of groundwater monitoring to the variances and then proceeded to approve the variances with those conditions. Be mindful that the NPDES Committee is a statutory committee that is a final decision maker on these matters and is not subject for review by the Commission.

Jeff Morse: In a related matter, it has been brought to my attention that the NPDES Committee's variance given to Champion Paper has been appealed. Can we get an update on what the status of that appeal is? Is this an appropriate time to ask this?

Chairman Smith: It is in litigation and the NPDES Committee went into executive session and heard a litigation report from our counsel. But the appeal is in active litigation so it is ongoing.

Jeff Morse: Should the hearing officers be brought up to date on the status of this?

Chairman Smith: One of the things that we talked about yesterday was exactly that, with you not being a member of the NPDES Committee but having served as a hearing officer. Our counsel is going to be in touch with you to give you an update.

E. Renewable Energy Committee

Dickson Phillips, Chairman

The Renewable Energy Committee heard reports from two folks who are involved in ongoing work trying to assess the biomass feed stock availability to supply the renewable portfolio standard as well as the renewable fuel standard. We first heard from Professor Bob Abt from

N.C. State who is a leading modeler of forest supply and late in the day we were treated to some supply and demand curves that we all really enjoyed chewing on. Then Will McDowell from the Environmental Defense Fund presented a model which had just been put out the day before that had been developed by Christopher Gallick at Duke based on Professor Abt's models that allows one to look at the potential impacts on material forest, existing industry displacement and greenhouse gas effects from 46 different demand scenarios, according to what extent the renewable fuel standard will actually be satisfied out of North Carolina and according to how much of the energy portfolio will be satisfied through woody biomass. There's also ongoing work from Le Capre with the consultant that did work back in 2006 to assess the availability of renewable energy resources in North Carolina. It's doing an update to that work and as a part of that is looking at the woody biomass feed stock. This is ongoing work and I think the model is going and then the tool developed by Duke is going to be out for use and comment over the next period of time. The conclusions from it are by everybody's admission unclear what the future likely holds in terms of potential impacts on the forest. The interesting thing is that it is pretty clear that the introduction of some additional demand is by most counts likely to have beneficial effects encouraging more planting and keeping more land in forest. But there is at some point a tipping point where there would appear that we would be likely to start losing mature forest, at least through the higher levels of demand, and might also have untoward greenhouse gas and existing forest industry impacts. I'm sure there will be a lot of debate about where that tipping point is and the likelihood that we may reach it, and we'll continue to try to keep up with that discussion.

V. Concluding Remarks

Ms. Deerhake: I'd like to thank the Commission members for the careful time and thought that they put into the case today on this very important air quality issue. We will plan at the next Air Quality Committee meeting to invite speakers and discuss not only the notice issue and the modeling, but also seek counsel's opinion about how to apply 51.301.

I'll also say quickly that you know we've had a lot of fires in the past few weeks associated with the drought and the air quality issues. Just watching the news stories about one issue that was associated with controlled burns, air quality issues that could be impacted from fires even when controlled burns were allowable caused significant amounts of pollution. But the other story that really moved me and I was most sensitive to, a gentleman down east, a highly regarded gentleman who had a heart attack and died while trying to put out a trash fire that had gotten out of control. The fact that he did not know or did not observe the open burning rules and the fact that it is so difficult to communicate this to the public, a story like that concerned me, even though we don't see that as a high profile issue that we face. We certainly see it every week, every month that we meet with these contested cases and it is still a challenge that we can't minimize but have to address.

Forrest Westall: I'd like to request. We've started out with our nutrient control program on the coast. We've worked mostly with the Chowan, Tar-Pamlico and Neuse and then Jordan, Randleman, Falls, and the Division of Water Quality is looking extensively right now at the Yadkin River Basin. The Catawba will probably be next but right now the Yadkin is under a Technical Advisory Group meeting who is working on the model for that. I'd like to request that DWQ provide a summary of the approach being taken in the Yadkin. I had quite a few inquiries

from folks in the Yadkin about this particular relation to High Rock Lake, south of Winston Salem. So there is a process underway to develop a nutrient control program for that and the division has taken a certain approach to that. I think the EMC needs to know how that's going and what's happening with that and the status of the modeling.

Chairman Smith: Ms. Sullins will you make a note of that?

Coleen Sullins: I can even give a slight update right now if you'd like me to. It will just take a few minutes. We are in the development of the model at this point in terms of a summary of how the approach is going to be taken up. We haven't gotten to that stage yet. We're merely in the model development stage and we will be happy to come back and talk to the Commission members about how we are going about that.

Chairman Smith: I think **Mr. Westall's** suggestion is a good one. Would you be able to put something together for the May meeting?

Coleen Sullins: Let me check with staff and I'll get back with you where it stands to see if that will be workable.

Jeff Morse: I was going to say the same thing as Forrest but also I wanted to pass on a compliment. Recently we've had some severe rains in western North Carolina and waste treatment plants are experiencing some challenges. Coleen, I want to respond on how supportive and helpful your regional office has been in working with our plant operators and providing technical assistance on how to resolve some of our challenges. Just wanted to pass that compliment along.

Sheila Holman: I did want to give you guys a brief update on the greenhouse gas tailoring rule that the Environmental Management Commission passed at the November meeting. That went on to the Rules Review Commission's December meeting. The RRC subsequently received more than 10 letters of objection. If you all will remember, at the federal level the greenhouse gas permitting requirements were triggered as of January 2, 2011. The purpose of the tailoring rule was to take the thresholds from currently either 100 tons per year or 250 tons per year depending upon the classification up to 75,000 tons per year which would put the focus on those large sources of greenhouse gases submissions. I just want to report that the Governor did issue Executive Order 81 on January 28, 2011. So right now our tailoring rule is in effect in North Carolina and we are following the same federal thresholds.

Let me talk briefly about two pieces of legislation that we're following. First Senate Bill 123 proposes the elimination of the motor vehicle safety inspection program. The impact that may have on air quality is that we take some credit for the anti-tampering portion of that program. Basically the emission control units are inspected to make sure that the catalytic converter has not been tampered with and so forth. We are talking with EPA to better understand that may become a backsliding issue. If the safety program goes away does the division need to come up with additional credits that may be lost from the elimination of the safety program? Obviously that may result in rules that we would bring back to the Air Quality Committee and the Commission. Finally, just this morning I learned of Senate Bill 308 which basically says that the state's regulation of greenhouse gas emissions cannot be more stringent

than federal regulations or federal law. Both of these bills are still being debated in the General Assembly but I just wanted to give you a quick update. Coleen is going to give a similar kind of update and one in particular on the change to the Administrative Procedures Act rules increasing cost prohibition. She has the verbiage on that bill so I will let her update you on that.

Coleen Sullins: We will continue to work on the portal and see if we can't get that situation stabilized for the Commission. We have been putting some effort into that and I wanted to let you know that.

I do have a couple of bills that I wanted to go through with you. Senate Bill 22 which is the modification to the Administrative Procedures Act. That bill has passed the House and there have been several efforts to amend it that have not yet made the amendments. It's been voted on twice in the Senate so I don't know if it will be amended. In essence, some additional criteria is added to the Administrative Procedures Act that requires that an adoption of the rule, if it results in additional cost that it may not be adopted unless it meets a series of criteria, the score is a foreseen threat to the public health, safety or welfare, after the General Assembly or the United States Congress that expressly requires the agency to adopt the rules, a change in federal or state budgetary policy, a federal regulation or a court order. There are some discussions that have been going on up at the General Assembly trying to address some of these issues. Additionally, there is a new subdivision added that gets a substantial additional cost which means an aggregate cost on all persons subject to the rule of \$500,000 so it lowers that threshold that we've been dealing with. That one is moving forward quickly.

Jeff Morse: Hasn't it has passed the Senate and is now in the House?

Chairman Smith: That's correct Ms. Sullins.

Coleen Sullins: Sorry about that. I got them in reverse order. It has passed the Senate and is in the House currently. Another bill that you all may be interested in is the bill to prohibit Boylston Creek reclassification. That's an action that you all took to reclassify Boylston Creek for trout waters. That one is also proceeding forward quite quickly to undo that classification, basically negate it.

There is another bill to delineate coastal wetlands riparian buffers. That is in essence the coastal major variance issue and we're talking to the representative who introduced that particular bill to see if we can't work on it.

I should back up to Boylston Creek. We are still working with some of the sponsors of that, particularly legislation on possible alternatives that could address the issues that have specifically risen on Boylston Creek and trying to make sure everyone understands what that classification actually does and what it doesn't do. Because there is a lot of confusion so we're trying to work on that one as well.

There's a bill to amend environmental laws. This one typically comes up every year. Right now there is one in there that may be of interest to all of you that requires the EMC and DENR to move forward with the captured reuse of stormwater in implementation and BMPs so that stormwater can be actually captured and reused.

There is a bill that was recently introduced to exempt small ag processing operations. These are things like small goat dairies that are producing cheese, to exempt them from permitting.

We're working with the Farm Bureau on that particular issue to see if we can come to a resolution of that.

Finally there was a bill recently introduced, House Bill 268 that disapproves the reclaimed water rules and this has to do primarily with some concerns that have been raised by the container landscape folks, and we are trying to work through those issues to see if we can get those resolved in a positive manner as well. There are a couple of other bills that are flying about.

On the budgetary side, I did want to say that for the Division of Water Quality the Governor's recommended budget consisted of a 15% cut to the Division of Water Quality. I think for the department as a whole it was a 13% cut so it is a significant impact. Of course we support the Governor's budget. The NER Committee, under which the department falls, target was significantly lower than the budget proposals that the Governor had for those of us who report to the NER Sub-Committee. So budget remains a significant concern for all of us and we will just continue to try and do our best to meet the needs of the Commission and implement the program.

Forrest Westall: There is a Commission for regulatory reform that the Legislature passed in and there are five meetings scheduled around the state. The first one is in Wilmington, I think Friday for public input on issues they would like to see addressed in regulatory form. The rules we have are certainly on that list.

Coleen Sullins: I will be attending that meeting on Friday so I can report back to you.

Frank Crawley: In May you'll have an open burning contested case so we have to get the record which shouldn't be very voluminous to you in plenty of time to review.

Chairman Smith: I want to echo Ms. Deerhake's comments to commend you all on the care and diligence you worked your way through the thorny procedure on issues raised by the Department of Interior contested case. Also to add Mr. Crawley to that for his invaluable assistance today and to note that Mr. Crowe was absent today because he needed to stay home to attend a funeral. Mayor Moss had to leave because he has a new boss who is in town today that he had not met yet. Dr. Peterson had to attend a meeting of a bunch of vice chancellors who didn't have a lot of scheduling flexibility.

Dr. Moreau: I want to acknowledge that Dr. Peterson's son received special recognition at half time of one of the ball games as a Patterson Medal Award Winner at the University of North Carolina for outstanding, athletic and academic achievement.

Hearing no further comments the meeting adjourned at 2:30 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 AG03-10-11