



ENVIRONMENTAL REVIEW COMMISSION

August 23, 2017

**Andre Mallette Training Center, Human Resources Suite
New Hanover County Government Center, Wilmington, N. C.**

The Environmental Review Commission (ERC) met on Wednesday, August 23, 2017 at 1:38 PM. The meeting was held in the Andre Mallette Training Center, Human Resources Suite, of the New Hanover County Government Center, Wilmington N. C. Members present were: Chairwoman Senator Trudy Wade, Co-Chairman Representative Chuck McGrady, Co-Chairman Representative Jimmy Dixon, Vice-Chairwoman Representative Pat McElraft, six Senators, Representative Kyle Hall, Representative Pricey Harrison, Representative Chris Millis, Representative Bob Steinburg, Representative Larry Yarborough, Representative William Brisson, Representative Ted Davis, Representative Holly Grange, and Representative Frank Iler.

Senator Wade presided.

Senator Wade called the meeting to order and informed the audience and members that the meeting today was to hear about water safety and peace of mind for our communities. Senator Wade announced that this was an official meeting of the ERC. This Commission is appointed every two years to look into matters concerning the environment in North Carolina. Senator Wade pointed out that typically the ERC meets in Raleigh, however, because of the time sensitivity of this issue, and to hear from the local communities, the ERC is meeting today in Wilmington to address water safety in southeastern North Carolina and to specifically address the discharge of GenX compound (GenX) into the Cape Fear River.

Senator Wade also stated that while the ERC could not solve these problems today, our effort here is a crucial first step to finding out what happened and how North Carolina can support our friends and families throughout the lower Cape Fear region.

Senator Wade encouraged any speakers from the audience to sign up in order to speak by 3:00 PM and cautioned the audience about clapping or disruptions during the meeting. Senator Wade also asked that all comments be limited to two minutes and informed the group that written comments may be offered during and after the meeting through our website. Senator Wade recognized the Sergeant-at-Arms for the meeting as Dean Marshbourne, and Jonas Cherry from the House, and Giles Jeffreys, and Becky Myrick from the Senate.



Senator Wade introduced her Co-Chairmen Representative Chuck McGrady, and Representative Jimmy Dixon. Senator Wade asked for any comments from her Co-Chairmen.

Representative McGrady pointed out that the ERC is an oversight committee over all things dealing with the environment including recommendations of legislation to other departments, committees, or the General Assembly. Representative McGrady emphasized that the ERC was there to listen and ask some critical questions. He felt that this is a broader process and will not end with one meeting. As with coal ash, as an example, Representative McGrady said there were many meetings over a two year period of time to understand the issue and pass legislation. He said that the ERC was in Wilmington today because this is the critical place.

Representative Dixon stated that he was well pleased that the ERC has the authority to investigate and make recommendations to the General Assembly regarding all aspects of the Gen X issue. He stated that our number one concern is to have a safe reliable source of contaminate-free water. He also stated that funding for the Department of Environmental Quality (DEQ) was not related to the current problems. Representative Dixon stated that citizens deserve discussion based on strong facts and science. He stated that he will oppose any other approach as the ERC discusses and investigates this critical public safety issue. He also cautioned the public that this is only the beginning of an investigative process that will likely need many additional meetings before a recommendation will be made to the General Assembly. He expressed his delight to be in Wilmington today.

PRESENTATION 1-Comments from Senator Michael Lee and other legislators representing
the lower Cape Fear Region
(Attachment 1)

Senator Wade introduced Senator Michael Lee. Senator Lee thanked the ERC for coming to Wilmington. He discussed the emotional effect of water contamination saying it is very personal to him and his family in addition to the lives of other people living in this region with families and children. He pointed out that GenX is a new chemical but it has been in the water supply for 37 years. Senator Lee pointed out that there are federal and state investigations being conducted and no one knows who to trust. Senator Lee showed a presentation about GenX and how it is created at the Dupont Chemours site in Fayetteville and discharged into the Cape Fear River. He said that Dupont Chemours had signed a consent order with the United States Environmental Protection Agency (EPA) to capture the majority of the GenX, however, the treatment process for water was not effective at filtering it out.

Senator Lee asked the Commission to direct the staff to work with local officials, the administration, and University of North Carolina at Wilmington (UNCW), to develop an action plan to prevent the contamination of the water supply by GenX, and remove GenX from the water supply. He also asked the Commission to investigate the failure in government as to how



this chemical was allowed to remain in the water supply for 37 years. Senator Lee's presentation (Attachment 1) is attached at the end of these minutes.

Senator Wade asked if there were other legislators from the region wishing to speak.

Representative Deb Butler introduced herself and stated that she requests the North Carolina General Assembly fully fund the request from Governor Cooper to clean up the water. She also stated that she does not want the Cape Fear Public Utility Authority (CFPUA) to receive money to clean the water. She also asked for an investigation to determine what caused the problem.

Representative Holly Grange thanked the Commission and does not consider this a political issue. She wants the water to be clean and safe.

Representative Ted Davis stated he is concerned for his constituents and wants to make sure they have clean water to drink. He is not there to point fingers or place blame; he wants information and a healthy dialogue. Representative Davis wants to proceed in a positive and productive manner and supports money going to UNCW and the CFPUA.

Representative Iller wants everyone to do their job. He wants to know why permits are issued before we know what is in the water. He also wants an investigation of what happened for the past 37 years and how can it be corrected.

Representative Millis represents the 6th District. He was alarmed by the timeline. He stated that he visited the water treatment plant today, and the treatment is secondary to the primary problem, because, the contaminates, should have never been in the water in the first place. He asked why did it happen and how do we prevent it from happening again.

PRESENTATION 2-Comments from the local elected officials. Woody White, Chairman of the New Hanover County Board of Commissioners; Bill Saffo, Mayor, Wilmington, NC; and Frank Williams, Chairman, Brunswick County Board of Commission.

Senator Wade introduced Commissioner White. Commissioner White pointed out that it was June 8, 2017 that they first heard about GenX in the water. He stated that there is plenty of blame somewhere, and the enforcement process needs to change to ensure that the water is safe. He continued his remarks by pointing out that this process has exposed systemic regulatory failures at the federal and state levels. He ended by thanking the Commission for coming to Wilmington.

Senator Wade introduced Mayor Bill Saffo. Mayor Saffo stated that they want safe drinking water. He pointed out that federal and state agencies use different processes and do not talk to each other. Furthermore, these chemicals exist in every river of the State of North Carolina, and the U. S. EPA has issued studies that should be shared with everyone. Mayor Saffo ended his



remarks by saying that no one should be able to put anything in the drinking water that we do not know about. Mayor Saffo thanked the Commission for coming to Wilmington.

Senator Wade introduced Commissioner Williams. Commissioner Williams pointed out that many of their constituents in Brunswick County are afraid. He said his Commission had passed two resolutions on this matter but they have two basic requests: If we do not know what impact something will have, do not put it in the water. Secondly, the issue should not be a political issue. Fix it and do not let it happen again. He ended his remarks by asking the Commission not to forget about Brunswick County.

PRESENTATION 3-Staff overview of general water quality permit requirements and the issue Of emerging contaminates. Jeff Hudson, Commission Counsel, and Jennifer McGinnis, Commission Counsel

Senator Wade introduced Jeff Hudson. Mr. Hudson explained the U. S. Clean Water Act and the federal and state regulation of the waters in the United States. Many states, including NC, choose to assume the delegation of responsibility to administer their own water. In NC the department in charge is DEQ. The permit process requires significant detail of what will be discharged into the water from the manufacturing process. The permit requires limits to total discharge and includes requirements for monitoring amounts of chemicals in the discharge. EPA sets limits for certain pollutants but the state may set additional limits on a case by case basis. EPA and DEQ may send inspectors to verify compliance with the permit. EPA and DEQ have several enforcement measures including monetary penalties or criminal charges. Citizens also have the right to review all the data from the permits and review all inspections.

Jennifer McGinnis gave a brief overview about the regulation of toxic chemicals in the water. In 1976 the Toxic Substances Control Act (TSCA) was passed by congress to regulate existing or already existing chemicals excluding foods, drugs, cosmetics, and pesticides. EPA was placed in charge of TSCA, but has been seen as largely ineffective; since its inception only 5 chemicals have been banned and only 4 chemicals were prevented from coming to the market out of 23,000 new chemicals. In 2016, there were some reform measures made to TSCA, including the addition of chemical evaluations, safety standards, and chemical information (previously considered trade secrets, however, TSCA is still viewed as ineffective).

Senator Wade opened the floor for any questions and asked the Commission to limit their questions of staff to allow more time for public input.

Representative Harrison asked if TSCA leaves open a window where the state cannot regulate a chemical stronger than the EPA, and because of Senate Bill 16, Business Regulatory Reform Act of 2017, we could not act to enforce stronger rules.

Jeff Hudson replied that SB 16 would not be a factor since there were exceptions concerning public threats or the General Assembly could enact legislation. He will do more research and let Representative Harrison know.



PRESENTATION 4-Comments on local scientific perspective. Dr. Larry Cahoon, Biological Oceanographer & Professor, UNCW
(Attachment 2)

Senator Wade introduced Dr. Cahoon. Dr. Cahoon began by explaining that the term Gen X is a slang term and is “sloppy” chemistry. The problem is that Gen X is really a host of compounds or a “cocktail” of industrially produced chemicals that are little known to science.

He pointed out that thousands of compounds have been synthesized and most are never studied. It is known that many of these compounds react poorly with the human body in relatively small concentrations consumed by humans in drinking water. So far, Gen X has been shown to effect the liver, ovaries, and testes in humans at a higher degree. Dr. Cahoon closed by saying that most of the water treatment techniques fail to remove these compounds. In his opinion, the key to water safety is to never allow these compounds in the water in the first place. Dr. Cahoon’s presentation (Attachment 2) is attached at the end of these minutes.

Senator Wade opened the floor to questions for Dr. Cahoon.

Senator Bishop asked Dr. Cahoon how he arrived at the conclusion that he disagreed with Secretary Regan as to the legality of disclosures from Dupont Chemours about the chemicals in the Dupont Chemours discharge?

Dr. Cahoon stated that the compounds found in the Cape Fear River do not match the permitted compounds by Dupont Chemours or the permits themselves. In his opinion, this discharge from Dupont Chemours is not properly disclosed or permitted.

Senator Bishop stated that the 15 year old letter to DEQ would have been sufficient to raise concerns or cause more questions to be asked, and concluded that DEQ does not have the level of knowledge or technical expertise to evaluate the risk.

Dr. Cahoon said he had no idea how DEQ decided that Dupont Chemours was not in violation.

Representative Dixon asked if any comparative analytical testing has been done?

Dr. Cahoon stated that he was not able to perform such testing and thought that such testing may be done by North Carolina State University (NCSU) or one of his colleagues.

Representative Millis thanked Dr. Cahoon and asked if there was a lack of knowledge to regulate these cocktail of compounds, and, how do we know what the proper levels should be for our health?

Dr. Cahoon said there are really two areas of concern: the health effects which take many years to test, and the regulations available with existing testing and understanding. He did not know if these two approaches should be placed together.



Representative Harrison stated that more was understood and studied about perfluorooctanesulfonate (PFOS) and perfluorooctanoic acid (PFOA) and many of those had been phased out, however Gen X is slightly different.

Dr. Cahoon agreed saying more data was needed on the health effects of both types of compounds and we tend to use sickness after the fact rather than prevention.

Representative Iler asked about reverse osmosis and charcoal as water treatment techniques for the elimination of these compounds.

Dr. Cahoon stated that this was a hot topic because each method has advantages and disadvantages. The size of the molecules and the size of the filters can affect osmosis, while charcoal has proven successful at treating some of the cocktail. Dr. Cahoon stated that more work and research needs to be done.

Representative Yarborough asked if we know the source of these fluorocarbons (PFCs)?

Dr. Cahoon stated that it is known from discharge studies that some of the source is Dupont Chemours. He also stated that the river and the environment will forever accumulate PFOA because these chemicals never breakdown and go away.

Senator Smith-Ingram asked what laws were being broken?

Dr. Cahoon stated that Dupont Chemours knows these compounds are present in their discharge, and they are at higher levels than their permit. This is a failure to disclose and violates the law. Dr. Cahoon also stated that this was not a TSCA issue because TSCA is about what you produce, not what you discharge.

Representative Harrison asked if there was a risk to the air quality from these chemicals?

Dr. Cahoon stated that there is very little known about Gen X but there could be an effect from the cocktails of chemicals.

PRESENTATION 5-Questions for Chemours-Michael Johnson, Environmental Manager, Dupont Chemours

Senator Wade stated that last week the Co-Chairs invited the Dupont Chemours Company to send a representative to appear today to help the Commission understand the problem we are facing, but also take a first step to be a part of the solution.

We directed our invitation to Michael Johnson, Environmental Manager at Dupont Chemours. Mr. Johnson has spoken publically on behalf of the company and he seemed to have both the expertise and a willingness to speak. Dupont Chemours lawyers responded yesterday afternoon



indicating that neither Michael Johnson, nor anyone else with Dupont Chemours, will appear today before the Commission.

We are disappointed with Dupont Chemours' choice especially because so many of us and you chose to be here today on short notice. Nonetheless, we will not let their absence today lessen our understanding of the problem. We will, find a way to help North Carolina.

PRESENTATION 6-Questions for the Secretaries of the Department of Health and Human Services (DHHS) and DEQ.
Mandy Cohen, Secretary, DHHS
Michael Regan, Secretary, DEQ

Senator Wade introduced the item, and in lieu of opening statements by the panel, opened the floor for members of the Commission for comments or questions.

Senator Jackson began by asking Secretary Cohen about the letter dated June 8, 2017.

Secretary Cohen gave the initial health goal and added that very little was known about Gen X. She stated that they received proprietary information from the EPA that 140,000 parts per trillion was a safe goal.

Senator Jackson said he was bewildered that it could be safe to go from 71,000 parts per trillion to 140,000 parts per trillion.

Secretary Cohen stated that they used peer reviewed data. She stated that they worked with the EPA and shared additional information. She added that it was a joint effort with DEQ and the numbers were based on science. When talking about health, Secretary Cohen, added that their calculation was based on having 70 years of exposure to Gen X, at a level where there are no adverse impacts. They also build in uncertainty factors.

Senator Jackson added that he hoped we could come to some solutions to address this issue to make the water safe to drink and use. He added that there had been discussion about additional funding, even after Dupont Chemours had voluntarily stopped discharging Gen X in the river. Senator Jackson asked how this additional funding would be used?

Secretary Regan of DEQ stated that they want to make sure that Dupont Chemours discontinues the use of Gen X in the water supply. He added that some of their funding to test had come from Dupont Chemours and that would be removed. He said that the General Assembly had cut some of their funding, and they have a backlog for testing, and they do not have adequate staff to focus on these permits.

Senator Jackson stated that DEQ has \$ 2.58 million dollars out of a \$200 million dollar budget and yet you cannot find the money?



Secretary Regan stated that they direct a lot of resources. They requested 7 new positions and this time they really need 16 positions including scientists and support staff to monitor emerging new compounds.

Senator Jackson asked how the additional money could best be used to handle the situation in Wilmington today?

Secretary Regan stated that their plan was to engage the local delegation and if they received the extra money, they would hire more staff. He said they need more resources to monitor new permits that require additional review.

Representative Millis stated that he understood that the past budget and current budget did not affect DEQ.

Secretary Regan stated that there were cuts to DEQ as a result of a transfer.

Representative Millis voiced his concern over a shielding provision in the Clean Water Act. He asked are there other companies that may not have disclosed and did Dupont Chemours break the law?

Secretary Regan stated that they were in the beginning phases of their investigation and did not have any evidence of illegal activity or compromise of the permit. He added that at this moment in time, we do not have evidence that there was any wrongdoing.

Representative Millis asked why no Notice of Violation (NOV) had been issued.

Secretary Regan stated that they were conducting a thorough investigation, including 3,000 pages of documents from Dupont Chemours. He stated that it is a complex issue because Gen X is a chemical compound that is known by a variety of names over decades of information.

Senator Smith-Ingram asked if Secretary Regan had received reports on Gen X in the transitional documents from the prior administration when you assumed or were appointed to your position?

Secretary Regan answered that there was no mention of Gen X in those transitional materials. He stated that this issue had not been raised to that level. He said that once they became aware of the matter, DEQ took steps to discourage further release of the compound, began monitoring, and launched an investigation.

Senator Smith-Ingram asked the same question to Secretary Cohen. Secretary Cohen replied that there was no information regarding Gen X in the transition materials. She further stated that additional funds are needed for one toxicologist for the entire state, and one additional toxicologist for a total of four new employees.



Senator Smith-Ingram asked Secretary Regan if he thought DEQ needed additional resources to ensure our current permit process works efficiently?

Secretary Regan answered that they did need to streamline the permit process.

Representative Dixon stated that Representative Butler said DEQ had to fire 70 people. In the 2013 budget we consolidated DWQ and DWR and that initiated a \$2 million recurring deduction. DEQ chose to reduce 70 positions 35 of which were vacant. Have you or would you review the 2013 process?

Secretary Regan stated that the information he has is that DEQ lost 35 positions relating to permitting, compliance, and reporting. He stated that they also lost many support positions. Many of those 70 positions are no longer there. He has a 40% backlog, a 2 year wait, and not enough staff.

Senator Bishop asked about the first letter that was based on peer-reviewed studies. Senator Bishop asked if Secretary Cohen could characterize what the proprietary data said?

Secretary Cohen said they were able to use the results to factor into our assessment. She said that these were not human studies; they were animal studies. The data was light and the team looked at the incidence of cancer in this region. There was not an unusual pattern of cancer and the same types of cancer are seen in the rest of the state.

Senator Bishop asked Secretary Cohen if the proprietary data you gained access to dramatically changed your assessment of the risk?

Secretary Cohen answered yes, and they explained it in a study on their website. She stated that the proprietary information remains proprietary.

Senator Bishop asked what is the basis that it remain proprietary?

Secretary Regan answered that as part of the 2009 consent decree between the EPA and Dupont Chemours, they were able to gain access to proprietary information. He stated they are still trying to get confidential information.

Senator Bishop asked why there is not enough information to issue a NOV?

Secretary Regan answered that it was important to gain access to all of the information.

Representative Harrison asked Secretary Regan if DEQ has the statutory authority to investigate these emerging chemicals?

Secretary Regan stated that typically they use the data from the EPA. He said it is a huge resource drain to go at it alone and there are a lot of data gaps.



Representative McElraft stated to Secretary Regan that she knew he was at the EPA before coming to DEQ. She asked if the EPA issued the permit to allow Gen X to be discharged into the water?

Secretary Regan stated that the last National Pollutant Discharge Elimination System (NPDES) permit was issued by the state. In 2010 and 2015, when the company spoke to DEQ directly, they described a closed loop process. It was discussed as technology in a closed loop. We now have a lot of questions about how this information comes together and what did the agency know. We also need to know what was disclosed and look at all the chemical compounds that are in the family.

Representative McElraft asked if CFPUA should be included in the study of this issue

Secretary Cohen says they have multiple calls to CFPUA each week. She believes they will need academic partners because the science is light and they will need all the help they can get.

Senator Sanderson stated that we heard from local and state representatives. What needs to be done to ensure safe drinking water for these folks in the next 30 days?

Secretary Regan stated that they need to demand that Dupont Chemours not discharge any additional chemicals and perform more testing. He stated that they needed to determine the timing it will take and pointed out that Secretary Cohen has outlined the process to set health standards that are the most protective. He stated it is their goal to make sure the numbers come down as quickly as possible.

Senator Wells asked is this going on in the Catawba and Neuse Rivers? He asked if we were dealing with this or if it is a structure problem? He asked if the individuals that had the letter from Dr. Detlef Knappe, Professor, Department of Civil, Construction, and Environmental Engineering, North Carolina State University, shared the information with the new administration and are any of those individuals still working for DEQ?

Secretary Regan answered that he would not speak to conspiracy. He believes the real question was if there was adequate disclosure and understanding of the chemicals in Gen X?

PUBLIC COMMENT- (Attachment 3)

Senator Wade with the help of the Sergeant-at-Arms asked the public to share up to two minutes of comments or offer written comments to the Commission. A total of 101 people signed up to speak and by the end of the meeting the Commission received 37 public comments and written comments from 17 individuals or groups. Copies of the written comments are attached **(Attachment 3)** at the end of these minutes, in addition to the sign up list, and the business cards from several speakers.



Senator Wade thanked the public for their time and comments. She thanked Secretary Cohen and Secretary Regan for their attendance and the members of the local delegation.

Senator Wade recognized Senator Lee for closing remarks. Senator Lee mentioned the Governor's call for more funding but believed that an action plan that addresses the first line of defense at CFPUA would be the most important first step with a coordinated effort between UNCW and the state agencies.

Representative Millis made a motion that the General Assembly staff coordinate with UNCW, CFPUA, Pender County, Brunswick County, and New Hanover County to begin dialogue on a proper plan of action including DHHS and DEQ.

Senator Bishop seconded the motion.

Senator Wade asked for any other discussion.

Senator Smith-Ingram asked if we anticipate supporting the Governor's \$2.5 million appropriation?

Senator Wade asked for further discussion and hearing none asked for the vote. The motion was passed.

Senator Wade thanked the New Hanover County staff for their hospitality, and the staff at the water treatment plant for their tour.

There being no further business, the meeting adjourned at 5:25 PM.

Senator Trudy Wade
Presiding

Robert Mays, Committee Clerk