

### Department of Environmental Quality

#### **1. When did the Noncommercial Underground Storage Tank Cleanup Fund begin?**

The General Assembly created the fund in 1988 along with the Commercial LUST program. The noncommercial program, however, has no federal requirements attached to it, and the General Assembly eliminated it as of December 31st, 2016.

#### **2. What is the status of the State's coal ash efforts?**

The State's efforts toward coal ash inspections and cleanup are funded through a 0.022% fee on the State's jurisdictional revenues of each public utility with a coal combustion residuals surface impoundment, which is projected to generate about \$1.7M in FY 2017-18.

These funds support 21.22 full time equivalents (FTE) across various divisions within DEQ.

- Division of Energy, Mineral, and Land Resources (DEMLR) – 6.62 FTE. Of these four are involved in the Dam Safety Program and two with the Stormwater Program. The remaining 0.62 FTE are spread across other positions within DEMLR that assist with coal ash management for a portion of their time.
- Division of Waste Management – 3.7 FTE. These staff perform coal ash facility inspections and permit the disposition of residuals.
- Division of Water Resources – 10.9 FTE. These staff issue permits under the National Pollutant Discharge Elimination System and perform hydrogeological duties.

*Note:* The Governor's recommended budget would return the coal combustion residuals fee to 0.03%, the level that it was under the Coal Ash Management Act of 2014 until it was reduced in SL 2016-95. The revenue generated by this change would support operational costs, not additional FTE.

#### **3. What is the history and status of hydraulic fracturing in NC?**

Session Law 2011-276 directed the former Department of Environment and Natural Resources (DENR) and the Department of Commerce to study oil and gas exploration in the State and the use of directional and horizontal drilling and hydraulic fracturing for that purpose.

- DENR issued its report in April 2012, suggesting that “production of natural gas by means of hydraulic fracturing can be done safely as long as the right protections are in place.”

Session Law 2012-143, the Clean Energy and Economic Security Act directed the Mining and Energy Commission (MEC) to establish a modern regulatory program for the management of oil and gas exploration and development in the State.

- DEQ staffed the MEC through a rule-making process, resulting in the adoption of 15A NCAC 05H “Oil and Gas Conservation Rules” in April 2015.

The General Assembly began providing four FTE as well as recurring and nonrecurring funds in FY 2013-14 to support shale gas exploration. As of FY 2016-17, the State provides a recurring \$400K and three FTE for this purpose.

Since 2012, DEQ, in contract with private oil and gas companies, have undertaken various studies exploring opportunities for shale gas extraction in the Deep River, Cumberland-Marlboro, and Dan River Basins. The results were published in four publications and 17 American Association of Petroleum Geologists abstracts. *Links to these publications are available upon request.*

DEQ continues to study shale gas resources within NC’s Triassic Basins and beneath the outer Coastal Plain.

#### **4. What is the history of \$2 per ton solid waste tax?**

Session Law 2007-550 created an excise tax on the disposal of municipal solid waste and construction and demolition debris in any landfill permitted pursuant to Article 9 of Chapter 130A of the General Statutes at a rate of two dollars (\$2.00) per ton of waste.

- The proceeds of the tax were to be distributed as follows:
  - \$225,000 for Department of Revenue administration
  - 50% Inactive Hazardous Sites Cleanup Fund
  - 37.5% to local governments that provide solid waste management services directly to residents, distributed on a per capita basis
  - 12.5% to the Solid Waste Management Trust Fund
    - Session Law 2013-360 reallocated this portion to the State’s General Fund on a recurring basis.
- A detailed breakdown of the revenues and distributions of the tax is available at [http://dornc.com/publications/abstract/2015/table46\\_table46a.pdf](http://dornc.com/publications/abstract/2015/table46_table46a.pdf)
- The cash balance of the Inactive Hazardous Sites Cleanup Fund was about \$33.3M at the end of February 2017; of that, \$25.9M was encumbered, and DEQ was in the process of encumbering an additional \$6.5M, which would leave just under \$1M unencumbered.

#### **5. Are there opportunities for efficiencies in the regional offices?**

DEQ operates seven regional offices around the State.

- The offices are administered by the Division of Environmental Assistance and Customer Services (DEACS) and staffed by members of nearly all of the other divisions within DEQ.
- The offices provide technical assistance as well as perform permitting and inspection operations for the various regulatory programs that DEQ operates.

- Many of the regional staff are cross-trained and split-funded across various programs to allow for greater efficiency in permitting and inspecting.
- Fiscal Research Division performed a justification review of the regional office structure in 2011. The report is available at [http://www.ncleg.net/fiscalresearch/justification\\_reviews/DENR\\_RegionalOffices\\_Review\\_2012-05-01.pdf](http://www.ncleg.net/fiscalresearch/justification_reviews/DENR_RegionalOffices_Review_2012-05-01.pdf).

Decision-making authority is handled differently by the divisions within DEQ.

- Division of Waste Management (DWM) – central office staff make permitting decisions while compliance decisions (like Notices of Violations) are often made at the regional level. DWM does not have metrics to determine how many of those decisions are overturned at the central office.
- Division of Water Resources (DWR) – central office staff generally make decisions based on information from the regional offices. DWR does not maintain any statistics on differences of opinion between the central and regional offices.
- Division of Energy, Mineral, and Land Resources (DEMLR) - central office staff process and approve applications for mining permits, dam safety approvals, state stormwater permits, MS4 and DOT stormwater permits, and NPDES stormwater permits. Regional office staff review and approve erosion and sedimentation control plans and coastal state stormwater permits, and provide review comments to the Central Office staff on other permits noted above. Regional offices have authority over compliance decisions, issuing some directly and recommending some to the central office. DEMLR notes that in almost all the Central Office staff concurs with the Regional Offices plan approvals and enforcement case actions.

#### **6. Why is poultry litter sometimes treated as agricultural waste and sometimes as industrial waste when it is used for electricity generation?**

- Poultry litter as such is permitted under regulation 15A NCAC 02T .1303 and is treated as solid waste.
- When poultry litter is used in an industrial digestion process to produce methane gas for conversion to electricity, the byproducts of that conversion process is no longer treated as permitted under 15A NCAC 02T .1303 and must have their own waste disposal permit that is applicable to the relevant industry.
  - Digesters located on farms with an existing animal waste management permit may dispose of the waste as part of that farm's animal waste management permit and nutrient management plan, provided that the animal waste permit has capacity to handle the waste, and the waste is incorporated into the certificate of coverage/waste management plan.