



November 27, 2012

ATTACHMENT C

Mr. Stephen T. Smith, Chairman  
North Carolina Environmental Management Commission

Re: Request for Declaratory Ruling on the Interpretation of 15A NCAC §2L.0106(c) with Respect to Coal Ash Lagoons, Cape Fear River Watch et al., Petitioners

Mr. Smith:

The North Carolina Chamber is submitting the following statement in opposition to the suggested interpretation set forth in the Request for Declaratory Ruling of 15A NCAC §2L.0106(c) with Respect to Coal Ash Lagoons (the "Request") filed by Cape Fear River Watch, Sierra Club, Waterkeeper Alliance, and Western North Carolina Alliance ("Petitioners") on or about October 10, 2012. The North Carolina Chamber opposes the Petitioners' interpretation of the rule, and supports the interpretation currently implemented by the Division of Water Quality, for the following reasons:

- The North Carolina Chamber is a nonpartisan business advocacy organization that works in the legislative, regulatory and political arenas to proactively drive positive change to ensure that North Carolina is a leading place in the world to do business. At the core of the North Carolina Chamber's advocacy mission is job creation.
- If the regulation is interpreted as requested by the Petitioners, the Environmental Management Commission will issue a declaratory ruling requiring that facilities holding permits issued before December 30, 1983 do the following:
  - Initiate corrective measures pursuant to 15A NCAC 2L.0106(c) when the activity at issue results in an increase in the concentration of substance in excess of the groundwater standards, whether or not groundwater quality standards have been exceeded at or beyond a compliance boundary around the facility;
  - Take immediate action to eliminate source of the contamination that causes a concentration of a substance in excess of groundwater quality standards, even before the initiation of corrective measures; and
  - For closed or inactive facilities, implement corrective action as described above when they cause an increase in the concentration of substance in excess of the groundwater standards, again whether or not groundwater quality standards have been exceeded at or beyond a compliance boundary around the lagoon.

- Although the Request specifically asks for a determination of the application of 15A NCAC 2L.0106(c) to coal ash lagoons, the interpretation of the rules as requested by the Petitioners would not be limited to such facilities.
- Our members own and operate facilities that will be adversely affected if the rule is interpreted as requested.
- This approach is not consistent with the way in which our members' facilities have historically been regulated.
- As requested, the interpretation would require changes in the actions that must be taken to address exceedances of groundwater standards within a compliance boundary if a site was permitted by the agency prior to December 30, 1983.
- The North Carolina Chamber supports the long standing interpretation of the rule as applied by the staff in the Division of Water Quality.
- The North Carolina Chamber urges the Environmental Management Commission to uphold the historical interpretation of the rules on which regulated entities around the state have relied.
- If the Environmental Management Commission believes the current approach is inadequate, any changes to the rule should be accomplished by undertaking rulemaking procedures.

Respectfully submitted,



S. Lewis Ebert  
President and CEO  
November 27, 2012