



CIVITAS INSTITUTE

805 Spring Forest Rd Ste 100
Raleigh, NC 27609

*web: nccivitas.org
phone: 919.834.2099
fax: 919.834.2350*

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Via Email

Chairman J. D. Solomon
Environmental Management Commission
512 North Salisbury Street
Raleigh, NC 27604

Dear Chairman Solomon:

I write to you today to request you find the petition for rulemaking you have recently received from the Duke University Environmental Law and Policy Clinic (ELPC) on behalf of a number of young petitioners incomplete. The petition is for rulemaking by the Environmental Management Commission for rules that would reduce Greenhouse Gas emissions from all “sources” to zero by the year 2050.

Pursuant to 15A NCAC 02I .0501(b)(3), the petition shall contain “a statement of the effect [the proposed rule would have] on existing rules or orders.” However, the petition only includes the following,

Petitioners anticipate that adopting a carbon dioxide rule or rules pursuant to this Petition would require the EMC to add provisions to existing subchapters within the North Carolina Administrative Code (“Administrative Code”), rather than amend current rules. For example, it would be logical for the EMC to add carbon dioxide emissions rules to Title 15A, Chapter 02, Subchapter D of the North Carolina Administrative Code. This rulemaking Petition, however, does not dictate a particular method of implementing the requested rule(s), and therefore the actual additions or amendments to the Administrative Code will depend upon the particular implementation strategies the EMC adopts.

While it would appear this response does not even adequately address the existing rules under the EMC, it is non-responsive to the rules governing the two industries that this petition seeks to regulate. Those are our utility and agricultural industries. Nothing in the petition addresses the effect this rule would have on North Carolina’s Public Utilities. In addition, the petition is not limited to carbon dioxide alone and specifically notes agricultural operations as a source of methane, which the petition explains in detail is a powerful GHG. By not mentioning either the public utility rules of North Carolina or the various regulations governing agricultural operations in North Carolina, including those under the authority of the EMC, the petition can only be described as completely deficient.

In addition, the petition is not limited to carbon dioxide alone and specifically notes agricultural operations as a source of methane, which the petition explains in detail is a powerful GHG. By not mentioning either the public utility rules of North Carolina or the various regulations governing agricultural operations in North Carolina, including those under the authority of the EMC, the petition can only be described as clearly deficient.

I would note that a petition that seeks to regulate such a large portion of North Carolina's economy should, at a minimum, provide the information required under your rules.

Additionally, my attorneys have raised a troubling question regarding the ethics of the Duke University ELPC. As you know, the Duke University EPLC is chartered to represent, according to their website, no individuals, but only communities. Perhaps more importantly, the ELPC is only allowed to practice law under the following exception in our general statutes: (NCGS 84-7.1):

Any law school conducting a legal clinic and receiving as its clientage *only those persons unable financially to compensate for legal advice* or services rendered and any law student permitted by the North Carolina State Bar to act as a legal intern in such a legal clinic. [*emphasis added*]

By information and belief, it would appear that the petitioners in this case are not only not a community, but, instead individuals, but they are also financially able to compensate for legal advice and services. To ensure the valuable legal resources provided by Duke University is available to those who are truly in need, my attorneys have drafted a complaint for the NC Bar.

With the gravity of these concerns, and the fact that your completeness determination will not be subject to judicial review unless the petition is denied, I would ask that you find the petition incomplete, and allow the petitioner to correct these deficiencies.

Respectfully Submitted,



Col Francis X. De Luca USMCR(Ret)