



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

December 21, 2018

Senator Harry Brown
N.C. Senate
300 N Salisbury Street, Room 300-B
Raleigh, NC 27603-5925
Via email and Hand Delivery

Representative Dean Arp
N. C. House of Representatives
300 N Salisbury Street, Room 529
Raleigh, NC 27603-5925
Via email and Hand Delivery

Subject: Response to questions in letter to The Honorable Roy Cooper from September 7, 2018

Dear Senator Brown and Senator Newton:

Please find responses to the included questions from your September 7, 2018 letter to Governor Cooper.

Q. Please explain why the Director of the Division of Water Resources (DWR), Mr. Stanley "Jay" Zimmerman, was relieved of his duties as Division Director in November 2017, when according to notes in the permit file for the ACP 401 Certification dated November 1, 2017, Mr. Zimmerman appeared to be making significant progress in the final issuance of the permit?

A. *The personnel action was not related to the ACP 401 water quality certification.*

Q. Please provide an explanation for the composition of the attached Draft Denial Letter for the ACP 401 Certification, dated January XX, 2018 (Attachment 1). Please explain why this document was drafted, the date that it was drafted, who requested that it be drafted, and what purpose it served. Please also explain if it is a normal process for DWR to compose a draft denial letter when reviewing an application for a 401 certification. If not, please explain why this draft denial letter was composed in this specific instance. Please provide examples of other instances where a draft denial letter has been composed for a 401 Certification while undergoing application review?

A. *It is common practice to prepare both an approval letter and a denial letter for 401 certification projects that have a public hearing with the decision being made by the division director. DEQ leadership did not direct the denial letter to be drafted. The denial letter was drafted on January 18, 2018.*

Here are links to another example from ALCOA'S Yadkin Project:

- *Hearing Officer's Report:* <https://edocs.deq.nc.gov/WaterResources/0/doc/198382/Page1.aspx>
- *Draft Approval Letter:* <https://edocs.deq.nc.gov/WaterResources/0/doc/239988/Page1.aspx>
- *Denial letter:* <https://edocs.deq.nc.gov/WaterResources/0/doc/239994/Page1.aspx>



Q. Please provide the earliest date that Mr. Brian Wrenn, the DWR Hearing Officer for the ACP 401 Certification, submitted a draft Hearing Officer's Report to the Director of DWR. Please describe any changes to the Hearing Officer's Report that were enacted in the final Hearing Officer's Report between the date of this first submission and the date of the submission of the final Hearing Officer's Report on January 22, 2018. Please provide a detailed explanation of what was discussed between Mr. Wrenn and DEQ Secretary Regan in their meeting on January 12, 2018 and, specifically, if Secretary Regan, or anyone else in attendance, made suggestions or comments at this time that ultimately delayed the issuance of the 401 Certification?

A. *Mr. Wrenn submitted a final Hearing Officer's Report to Linda Culpepper, Interim Director of DWR on January 22, 2018. Prior to that date, the hearing officer shared draft versions with Jennifer Burdette and Karen Higgins who were both working on the 401 water quality certification application from ACP.*

The January 12, 2018 meeting with Secretary Regan included Brian Wrenn, Karen Higgins, Linda Culpepper and Sheila Holman. The purpose of the meeting was to brief Secretary Regan on the status of the review of the 401 application for ACP and the Hearing Officer's Report. During the meeting the latest response from the company to address lingering questions about cumulative impacts was discussed. The question of real expected growth and environmental impact of areas along the pipeline route compared to what the company had shared with the Department of Commerce concerning economic development was also discussed. Karen Higgins was asked to report conclusions to Assistant Secretary Holman.

Q. Please provide the name of the individual who rejected the initial draft Hearing Officer's Report submitted by Mr. Wrenn for further revisions and for what reasons the draft report was rejected?

A. *No report was rejected. Drafts of the Hearing Officer's Report were produced, and changes were made based on comments from staff including comments on Environmental Justice concerns.*

Q. What are the attached redacted documents present in the official permit file for the ACP 401 Certification (Attachments 2, 3, and 4)? Please provide unredacted copies of these documents. Who redacted these documents and why? Is it a normal practice for DEQ to redact official public documents?

A. *DEQ has provided documents related to the ACP 401 certification. Three of those documents were partially redacted. Attachment 2 should not have been redacted and has been made available in an unredacted format on DEQ's public Laserfiche website at <https://edocs.deq.nc.gov/WaterResources/0/doc/631501/Page1.aspx>. Attachments 3 and 4 have been partially redacted because each contains notes from a discussion with an attorney on personnel or litigation matters. In responding to requests for public records, DEQ redacts information in responsive documents when the redacted information qualifies under an exemption in the Public Records Act or other applicable law.*

Q. Please provide copies of the additional information that was received from the ACP Partners on January 17 and 18, 2018. Please provide the request to which this additional information responded?

A. *The request was made on January 16th and both the request and additional information submitted are captured in two emails that have been available to the public since Jan. 29, 2018 through a website link to the DEQ public Laserfiche repository. Links to the emails are below:*

<https://edocs.deq.nc.gov/WaterResources/0/doc/624214/Page1.aspx>

<https://edocs.deq.nc.gov/WaterResources/0/doc/624212/Page1.aspx>

Q. Please explain why on December 6, 2017, at a weekly meeting on the ACP 401 Certification, DEQ employees were told that they had to "notify the Department before sending communications to the Company" while these employees were still actively engaged in requesting additional information from the ACP Partners. Is it a normal process at DEQ to restrict communications between a permit applicant and the DEQ regulators while a permit application is under review? If so, please provide other instances during your administration when this has occurred. Please explain why this is conducive to government business to restrict communications between a permit applicant and public employees?



A. Employees were asked to inform DEQ leadership when communication with ACP Partners was happening to better manage across divisions the different permits and the timing of DEQ actions and public outreach. At each part of the permit process DEQ was striving to conduct an open and transparent process so knowledge of when communication was occurring with the company was necessary to plan notifications with the public and the news media of the permitting process. At no time were employees restricted from communicating with ACP Partners.

Q. Why did senior leadership at DEQ implement a weekly meeting with the individuals working on the ACP 401 Certification beginning in September 2017? Please provide any other instances when senior leadership at DEQ implemented a weekly meeting regarding the review of a permit application?

A. DEQ leadership routinely convenes meetings with program staff either weekly or bi-weekly on issues that cross multiple divisions. Examples of regular meetings besides the ACP and MVP pipelines that are regularly scheduled: Coal Ash, Emerging Compounds and Permit Transformation. ACP meetings covered all applications pending before different divisions at DEQ and were not limited to the 401 water quality certification.

Please let me know if I can be of further assistance.

Sincerely,

Sheila Holman
Assistant Secretary of the Environment
Enclosures

