Good afternoon. My name is Ross Smith and I represent PotashCorp – PCS Phosphate Company, Inc. as Manager of Environmental Affairs and Energy at the facility near Aurora in Beaufort County.

I appreciate the opportunity to address regulatory reform in North Carolina.

**Tiered Enforcement**

PCS Phosphate supports modification to the Department of Environment and Natural Resources (DENR) enforcement policies – commonly referred to as “tiered enforcement.” Current DENR policies encourage issuance of a Notice of Violation (NOV) for all environmental infractions – even paperwork errors and infractions that result in no real, or even potential, environmental harm. DENR has issued NOVs for very minor administrative errors, such as a missed signature. Most publicly traded companies, like PotashCorp, take issuance of NOVs very seriously, including the potential negative impact to the company’s reputation. Significant resources are required to resolve internal issues related to NOVs, no matter the severity of the infraction. Corporate management and environmental staff resources would be best used to address real environmental stewardship issues, and avoid wasting these valuable resources on insignificant issues. We propose that the General Assembly direct DENR to modify its enforcement policies to establish a “tiered enforcement” approach – one that requires that the level of regulatory response be commensurate with the degree to which an environmental infraction causes harm to the environment. This is consistent with the approach taken by many of our surrounding states.

**Eliminate Duplicative Regulations**

PCS Phosphate supports review of state (DENR) regulations in light of existing federal regulations in order to identify and eliminate all duplicative regulations. Duplicative regulations are burdensome to business and industry and add additional costs while doing nothing to improve the environment. For example, within the State air toxics program, there are requirements that duplicate the Maximum Achievable Control Technology (MACT). In order to avoid confusion and to eliminate unnecessary duplicative regulations, we propose that the General Assembly direct DENR to exempt emission sources from the State air toxics program when these sources are required to comply with MACT. Another example is related to Greenhouse Gas (GHG) regulations. DENR has contemplated the promulgation of state rules to regulate GHGs during the same time that the federal government is considering GHG rules. We request that the General Assembly direct DENR to postpone any regulations related to GHGs until such time that federal regulations for GHGs are promulgated.

Thank you again for the opportunity to address regulatory reform.

**Ross M. Smith**
Manager, Environmental Affairs and Energy
PotashCorp-Aurora (PCS Phosphate Company, Inc.)
1530 NC Hwy 306 South
Aurora, NC 27806

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E-mail: rsmith@pcsphosphate.com
April 15, 2011

Regulatory Reform Comments
16 West Jones Street
Room 2007
Raleigh, NC 27601

Re: Comments to Regulatory Reform Committee

Dear Committee Members,

As part of the Regulated Community, we appreciate this opportunity to comment on regulations that can be improved and wish to present the following seven items for your review.

- State Air Toxics – This program was established a few years prior to the Federal Rules in the late 1980s, just before enactment of the Federal Clean Air Act Amendments of 1990, because the State didn’t think that the EPA was moving fast enough; however, since that time, EPA has implemented rules under the 1990 Amendments that serve the purpose intended by the State Toxic Air Pollutant (TAP) program. Now the regulated community is burdened by duplicative efforts and sometimes conflicting requirements between the Federal and State programs. We are still experiencing continued addition of changes to the State rules. For example, in that past year a new rule associated with the original rule went into effect that requires our facility to go back and model for 22 individual TAPs on what had previously been considered “insignificant sources” just to accommodate a minor modification to our facility. The emissions involved are truly insignificant and pose no threat to human health or the environment, especially since the point of compliance for the modeling is our fence line, where no one lives. The bottom line is that the State TAPs program has outlived any need and should be eliminated.

- Green House Gas (GHG) Rules – In-line with what we learned from the State Air Toxics Programs, we believe that it makes sense to not be too eager to move forward with rules requirements that are already being considered at the Federal Level. Jumping the gun on issues like this only leads to hampering development in the State by adding an additional level of complexity that is not necessarily present in neighboring States. Currently, North Carolina has NO statutory program or requirements for GHGs, and the Environmental Management Commission has adopted No rules setting requirements for GHGs. Yet, the Department of Environment and Natural Resources (DENR) is devoting scarce resources, both personnel and money, on GHG programs. One of the worst examples was a contribution of $100,000 by DENR to fund establishment of the Climate Registry, a California-based GHG program. DENR also paid an additional $3,500 to join as a member and sent letters on departmental stationary, signed by an air quality official, to permittees soliciting contributions to the Registry. None of these activities had any
statutory direction from the General Assembly. Stopping these unauthorized activities will apparently require an explicit prohibition on them by the General Assembly.

- Renewable Portfolio Standards (RPS) – North Carolina initiated an RPS program in 2007. Given the current economic conditions we should look at removing it or at least not strengthening it any further, as has been proposed in a recently introduced bill. RPSs are simply Cap and Tax Light. They drive up energy costs that prevent industry from standing a chance and thus drive industry overseas where energy can still be had by burning US Coal without the same pollution controls that we require in our country. Until an industry, such as the renewable energy sector here, can stand on its own, the government shouldn’t subsidize it. So far, the RPS program has resulted in payment by North Carolina utilities to out-of-State renewable sources which do not provide a single kilowatt of electricity into the State. Many of these RPS sources are located in the Western States and could not feasibly provide electricity here. The only result has been to provide “credits” to the utility companies to satisfy their obligations under SB 3, with North Carolina ratepayers paying the bills for these phantom kilowatts.

- RCRA Definition of Waste Rule – In late 2008, The EPA redefined Solid Waste to allow opportunities for companies to recycle, reclaim, and reuse byproducts from their manufacturing processes. The new definition allowed these materials to be utilized on site or sold to other companies for use in their processes. The key was that the new definition authorized these activities to be conducted without the imposition of burdensome and unnecessary waste regulatory requirements. EPA had determined that its hazardous waste rules were limiting or eliminating options for reuse of many materials and forcing them to be disposed as wastes. Instead of recognizing the benefits of the new definition and implementing the new definition, DENR immediately implemented a Temporary Rule to prevent adopting the new EPA Rule from becoming effective in North Carolina. At the time, the agency told the regulated community that it would review the new definition and consider ways to implement it. However, in early 2009, agency staff were instructed to stop that review and instead push ahead with a Permanent Rule to prevent implementation of the new definition. That Permanent Rule was adopted by the Health Service Commission in September 2009, and remains in force. The new EPA definition would allow us to ship a dry dust as Non-Hazardous, saving us hundreds of thousands of dollars each year, because we take the time and costs to recycle the material, instead of disposing of it. Other companies have similar situations and could be saving hundreds of thousands, if not millions, of dollars, and creating new jobs in the State. The General Assembly should override the DENR prohibition and implement the new EPA definition.

- Tiered Enforcement – Most States have a tiered enforcement process, allowing “Letters of Warning” so that if you respond to a non-recurring incident in a timely manner, it doesn’t automatically go to an Notice of Violation (NOV). For instance, a couple of years back, we received an NOV for a minor paper work error that posed no threat to human health or the environment and had not happened prior to or since this specific event. As a result, we now have an NOV on our record, and we are listed in EPA’s enforcement database as a violator, where in other States this same incident would not have been addressed as severely.

- Particulates and Dust control from non-process operations – This is a new rule that essentially results in an automatic NOV for any dust leaving our site, even if it is natural
dust, and not dust from our manufacturing process, due to drought and wind from an otherwise grassy or undeveloped area. This is a bit ridiculous and unnecessary imposition on manufacturing facilities. In effect, it imposes an obligation for the facility owner to clean up nature. Visible emissions from operations such as equipment or trucks are addressed in another regulation already. There is simply no need to put this additional rule on the books, when the State already has dust rules available to them. Relatedly, DENR still has on the books a standard for large particulate matter (PM) known as Total Suspended Particulates. This was the original PM standard adopted by EPA in 1970. Since then, EPA has determined that only fine PM is a health problem, adopted standards for the smaller particles and rescinded its TSP standard in the 1980s. Despite EPA’s rescissions and requests by industry to rescind the TSP standard, DENR continues to include this obsolete standard on its books. This is a classic example of the type of outmoded and unnecessary rules that DENR and other agencies should be instructed to purge from their regulations.

- More Stringent State Standards – In many cases, DENR and other State agencies have adopted standards and requirements that are more stringent than necessary and more stringent than mandated by the EPA and other Federal agencies. Three examples are described above: the State TAP program, the prohibition on the EPA solid waste redefinition, and retention of the TSP standard. The General Assembly should instruct DENR and all State agencies to purge their books of these types of more stringent and unnecessary standards and requirements.

If you have any questions or would like additional information about these subjects, please call me at 252-356-3707.

Very truly yours,

Terry Hairston
Environmental Manager
April 12, 2011

To The Joint Committee on Regulatory Reform

Regarding: Burdensome Regulations in NC
Comments from Domtar Paper Company, LLC – Plymouth, NC

Dear Sirs:

Thank you for the opportunity to share information concerning burdensome regulations in North Carolina. Domtar Paper Company, LLC owns and operates a fluff pulp manufacturing facility in Plymouth, NC. Currently, this 1,250 tons/day mill directly employs over 500 people and indirectly supports approximately 5,000 other regional jobs, largely in the Forest Products industry. In your quest to identify and resolve regulations that infringe on the ability of manufacturers to successfully and cost effectively operate in North Carolina, Domtar-Plymouth offers the following comments concerning, Senate Bill 3, the NC Air Toxics Program, and NPDES Stormwater Permit requirements.

Senate Bill 3

Senate Bill 3 mandates a renewable portfolio standard for electric utilities. In doing so, NC encourages a lower value end use for tree fibers. While the use of tree refuse like bark and fines may help utilities meet renewable fuel targets, the use of a tree chip removes from manufacturing and the marketplace the higher end value that can be obtained from wood. The Forest Products Industry, specifically the Pulp and Paper manufacturing sector, must strive to maintain sustainability. Using all parts of a tree, to its highest end value, enables this. When consumed by an electric utility provider, a tree can only produce electricity. When consumed by a Pulp and Paper manufacturing facility, a tree sustains and creates jobs, produces consumer pulp and paper products (from the chip) and generates steam and electricity (from the bark and fines) to run mill processes and sell to the utility grid. The use of wood fibers in Pulp and Paper manufacturing generates between 11 and 13 times more economic impact than if consumed in a stand-alone utility. Senate Bill 3 generates unhealthy competition for wood between the Forest Products Industry and Electric Utilities, by providing the latter with opportunities for cost recovery. It hinders the Forest Products Industry from maintaining sustainability and jobs as well as producing products in a cost effective manner.

Domtar-Plymouth respectfully requests that the Joint Committee on Regulatory Reform reconsider the merits of Senate Bill 3 and the renewal energy portfolio standards currently imposed on NC’s utilities. Agricultural/plant materials are a renewable, viable fuel source.
However, a tree is most efficiently used when all of its attributes can be optimized and not wasted.

**NC Air Toxics Program as codified in 15A NCAC 2D .1100 and 2Q .0700.**

- NC’s Air Toxic’s program redundantly regulates Hazardous Air Pollutants (HAPs) from all the major sources present at a pulp manufacturing facility many of which are already regulated federally through the National Emission Standards for Hazardous Air Pollutants (NESHAP rules) of 40 CFR Part 63. These sources include:
  - Digesting, screening and washing operations
  - Bleaching operations, including oxygen delignification
  - By-product gas collection and control of HVLC, LVHC and SOG streams
  - Recovery boilers
  - Smelt tanks
  - Lime Kilns
  - Condensate collection and control
  - Sludge combustion
  - Landfill operation
  - Power Boilers

- Demonstrating compliance with NC’s Air Toxic Program costs Domtar-Plymouth $10,000 - $30,000/year in air emission monitoring, record keeping, reporting and modeling activities.

- Likewise, maintaining the regulatory Air Toxic program within NC’s Division of Air Quality requires additional human and financial resources above what is necessary to manage compliance with the federal air quality rules which regulate the same compounds.

Domtar-Plymouth respectfully requests that the Joint Committee on Regulatory Reform study the merits of continuing the upkeep of NC’s Air Toxic Program and the burdensome impact to industry and NC’s regulatory agencies. We believe that the federal NESHAP rules more than adequately regulate potentially toxic emissions from our industry.

**NPDES Stormwater Permit Requirements**

The increased sampling and reporting requirements included in NPDES stormwater permits issued by the Division of Water Quality since 2006, to facilities outside of coastal counties, add unjustifiable burden to industry. The further inclusion of benchmark values, additionally adds burdensome challenges to industry as the DWQ treats these values as regulatory limits. Until 2009, the stormwater permit for Domtar-Plymouth required quarterly sampling and reporting of permitted outfalls once per quarter, for one year, only once within the permit cycle. The revised permitted issued by DWQ to Domtar-Plymouth in 2009 requires semiannual sampling and reporting of all outfalls, indefinitely. This is a cost and resource intensive effort. Further, Domtar-Plymouth was allowed no input in selecting of appropriate benchmark values now listed in our permit. These values are not proven by DWQ as appropriate or even protective of the
mitigation if runoff exceeds benchmark values, which is costly to our mill. Stormwater outfall sampling costs Domtar-Plymouth approximately $15,000 a year.

Domtar-Plymouth respectfully requests that the Joint Committee on Regulatory Reform instruct the DWQ to restructure stormwater permits for facilities outside of coastal counties, to include reasonable sampling and reporting requirements and eliminate benchmark values or at a minimum, allow facilities to provide technical input in selecting appropriate benchmark values.

Again, Domtar appreciates this opportunity to express our concerns regarding burdensome regulations in North Carolina. Should you have any questions concerning the information provided in this letter, please contact me at dennis.askew@domtar.com or by phone at 252-793-8191 or Ms. Diane Hardison by email at diane.hardsion@domtar.com or by phone at 252-793-8611.

Sincerely,

[Signature]
Dennis Askew
Mill Manager/Vice President

[Signature]
Diane R. Hardison
Environmental Manager
Mr. Paul Dickens  
Evergreen Packaging  
175 Main Street  
Canton, NC 28716  

Category: Regulatory Reform  

Comments: Eliminate Duplicate Regulation under North Carolina Air Toxics Rule  

Businesses operating in North Carolina are subject to a state-only air toxics rule that duplicates and sometimes conflicts with Federal Law. The NC Air Toxics Rule evolved 20 years ago prior to establishment of Federal Maximum Available Control Technology (MACT) and Generally Available Control Technology (GACT) standards for hazardous air pollutants (HAPs) under Section 112(d) of the Clean Air Act. Now that the Federal EPA has established MACT and GACT standards under the Clean Air Act, the North Carolina rules (15 NCAC 2D .1100 and 2Q .700) are redundant. South Carolina and other states have recognized this duplication with Federal requirements and have modified their state air toxics rules to exempt permitted sources subject to a Federal technology standard for Hazardous Air Pollutants. North Carolina businesses need similar regulatory relief.

Specifically, any permitted air emission source that is covered by a Federal MACT or GACT standard should be exempt from the NC Air Toxics Rule. Duplicate state regulation of air toxics adds $10,000 or more of unproductive expense for air modeling demonstrations each time that the Evergreen Packaging Canton Mill needs an air permit modification to support on-going and expanded operations. Similar unproductive costs to comply with the duplicate, state-only air toxics rule are incurred by other manufacturing companies in North Carolina.

Respectfully submitted –

Paul Dickens  
Manager - Environment, Health and Safety Evergreen Packaging Canton Mill  
175 Main Street, Canton, NC 28716  
828-646-6141  
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Mr. Paul Dickens  
Evergreen Packaging  
175 Main Street  
Canton, NC 28716  

Category: Regulatory Reform  
Comments: Restore the North Carolina Combustion Source Exemption  

The 1998 North Carolina Air Toxics Rule wisely exempted combustion sources burning unadulterated fuels because these sources would be covered by Federal Maximum Available Control Technology (MACT) and Generally Available Control Technology (GACT) Standards under Section 112(d) of the Clean Air Act. In March 2008, the North Carolina Environmental Management Commission (EMC) decided to remove the combustion source exemption subjecting these sources in North Carolina to duplicate regulation under state and Federal law. Final rules eliminating the combustion source exemption in North Carolina (15A NCAC 02Q. 0700) were implemented by the EMC in July 2010. The NC Division of Air Quality (DAQ) is charged with implementing the EMC’s decision to eliminate the combustion source exemption.

The loss of this common sense exemption means that every stationary engine and every small boiler in North Carolina, even those burning natural gas or distillate oil, must prepare a costly air toxics modeling demonstration as part of air permitting.

The March 2008 EMC decision also resulted in the April 2008 DAQ Director’s Call in which 42 North Carolina facilities with existing combustion sources that comply with state and Federal air rules had to prepare modeling demonstrations costing $10,000 and more to show compliance with North Carolina air toxics. Of these 42 facilities, 18 were required to take permit limits restricting operations, restricting fuels or requiring additional controls to meet state-only air toxics limits. During 2010, the DAQ realized that the NC air toxic standard for arsenic is not supported by current science. Twelve (12) of the 18 facilities that took permit limits or special orders related to arsenic under the Director’s Call were unnecessarily burdened. In April 2011, the North Carolina Science Advisory Board is reviewing the arsenic standard and is expected to raise that limit.

The Evergreen Packaging Canton Mill has spent in excess of $250,000 on modeling and engineering studies related to elimination of the North Carolina Combustion Source Exemption. Similar sources in neighboring states do not have these costs to comply with unnecessary state-only rules.

The General Assembly should direct the NC EMC to restore the combustion source exemption in the state Air Toxics Rule. In addition, combustion sources covered by a Federal Maximum Available Control Technology (MACT) or Generally Available Control Technology (GACT) standard should be fully exempt from state-only air toxics regulation.

Respectfully submitted –

Paul Dickens  
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EVERGREEN PACKAGING LISTENING TOUR ISSUES
NC General Assembly Joint Committee on Regulatory Reform

The following five (5) pages are detailed comments in support of public statements by Evergreen Packaging representatives at Listening Tour meetings in Flat Rock, NC on 15 April and in Raleigh, NC on 21 April 2011. Evergreen Packaging operates three (3) manufacturing facilities in North Carolina employing more than 1400 and generating more than $500 million of annual economic activity for the North Carolina economy.

Our regulatory reform comments involve six (6) issues. We include the financial and other impacts on our company and similar manufacturing businesses in North Carolina.

- North Carolina Needs Corporate Financial Test for Solid Waste Financial Assurance
- Eliminate Duplicate Regulation under North Carolina Air Toxics Rule
- Restore the North Carolina Combustion Source Exemption
- Restore Fairness in Environmental Permitting (specific amendments to NC GS 143)
- Tiered Enforcement by DENR
- Workers Compensation Reform

North Carolina Needs Corporate Financial Test for Solid Waste Financial Assurance

North Carolina statutes and rules for solid waste financial assurance (15A NCAC 13B .1628) preclude some assurance mechanisms that are allowed under Federal law and rules for solid waste management (40 CFR 258.74). Specifically excluded is the Corporate Financial Test for North Carolina manufacturing companies that operate solid waste management facilities for their own process wastes. There is a Local Government Financial Test for North Carolina cities and counties that operate solid waste facilities. However, private companies are not allowed an equivalent financial assurance mechanism. Manufacturers who require solid waste financial assurance to operate in North Carolina must use letters of credit, surety bonds or insurance. These are more costly and lock up working capital that could be put to productive use. This North Carolina specific requirement is costing the Evergreen Packaging Canton Mill more than $300,000 per year in unnecessary and unproductive expense.

The Manufacturers and Chemical Industry Council of North Carolina has prepared draft language to add the Corporate Financial Test to the state’s landfill financial assurance statute. That language should be part of 2011 regulatory reform legislation.
Eliminate Duplicate Regulation under North Carolina Air Toxics Rule

Businesses operating in North Carolina are subject to a state-only air toxics rule that duplicates and sometimes conflicts with Federal Law. The NC Air Toxics Rule evolved 20 years ago prior to establishment of Federal Maximum Available Control Technology (MACT) and Generally Available Control Technology (GACT) standards for hazardous air pollutants (HAPs) under Section 112(d) of the Clean Air Act. Now that the Federal EPA has established MACT and GACT standards under the Clean Air Act, the North Carolina rules (15 NCAC 2D .1100 and 2Q .700) are redundant. South Carolina and other states have recognized this duplication with Federal requirements and have modified their state air toxics rules to exempt permitted sources subject to a Federal technology standard for Hazardous Air Pollutants. North Carolina businesses need similar regulatory relief.

Specifically, any permitted air emission source that is covered by a Federal MACT or GACT standard should be exempt from the NC Air Toxics Rule. Duplicate state regulation of air toxics adds $10,000 or more of unproductive expense for air modeling demonstrations each time that the Evergreen Packaging Canton Mill needs an air permit modification to support on-going and expanded operations. Similar unproductive costs to comply with the duplicate, state-only air toxics rule are incurred by other manufacturing companies in North Carolina.
April 20, 2011

Regulatory Reform Comments
16 West Jones Street, Room 2007
Raleigh, N.C. 27601

To: Joint Committee on Regulatory Reform

Duke Energy very much appreciates the opportunity to provide input to the Joint Committee on Regulatory Reform. Duke Energy has attended and spoken at several of the public hearings around the state that have been offered by the Committee.

For decades Duke Energy has worked diligently to improve air and water quality and to reduce waste volumes to comply with advancing environmental regulations – often ahead of compliance deadlines and acting as an industry leader for new programs, such as North Carolina’s landmark Clean Smokestacks Act. However, several state regulatory programs that remain in place have served their purpose and no longer provide value to the citizens and the environment of North Carolina, especially where federal requirements have been established. Examining or eliminating these regulatory burdens would in no way compromise the environmental progress North Carolina has made.

Several state regulations and programs which Duke Energy strongly believes can be eliminated or improved are described in the attachment. These regulations, due to their redundancy with federal rules or for other reasons, are no longer in the best interest of State and Duke Energy resources or the ratepayers and citizens of North Carolina.

Thank you for your time and consideration of these issues. If additional information is needed, please contact me at 919-235-0955.

Sincerely

[Signature]
George Everett, Director
Environmental and Legislative Affairs

Attachment
NC Air Toxics Permitting Program - 15A NCAC 2D.1100 and 2Q.0700

Federal hazardous air pollutant (HAPS) regulations established under Section 112 of the Clean Air Act set stringent emission limits for specific industrial source categories at major facilities, based on Maximum Achievable Control Technology (MACT) standards. MACT is determined by review of the best controlled sources for the category. In addition, the Environmental Protection Agency (EPA) requires states to identify and control HAPS associated with smaller (area source) facilities that may contribute to significant risk to health in urban areas, under Generally Available Control Technology (GACT) standards.

The NC Air Toxics program was adopted prior to the implementation of any federal air toxics rules. Now the NC Air Toxics program imposes an additional layer of regulatory requirements on facilities that are or will be subject to these federal requirements. The federal requirements are sufficient to assure that these sources will be well controlled, and therefore the NC Air Toxics program is unnecessary and creates an unreasonable additional burden on these sources in NC. In addition, the evaluations required by the NC Air Toxics program will provide little or no environmental protection beyond the control requirements imposed by the federal standards.

Requirements to evaluate air toxics emissions and conduct air quality modeling analyses for any new source or modification add a significant burden and cost to the permitting process. The effort to compile information, develop a modeling protocol, conduct modeling, and then submit the data for review during the permitting process can add a month or more to the permitting process. Facilities that must perform air quality modeling will typically incur costs of up to $10,000 for a simple analysis, or more if it is necessary to run several iterations of the model. In addition to the resources committed from the regulated community, air toxics review requires significant time from the Division of Air Quality (DAQ) permitting and air quality modeling staff. The resources committed to the air toxics permitting effort likely interfere with DAQ’s ability to manage other permit applications which can impose delays on new projects that require a permit prior to construction.

Recent revisions to the NC Air Toxics program have eliminated certain provisions that exempted combustion sources that burn unadulterated fuels. The emissions from such sources are well understood, and MACT or GACT standards are being developed and implemented for those sources. The wording of the revised regulation does not provide any exemption even for very small combustion sources or sources that are operated infrequently, such as emergency generators that may operate less than 100 hours per year. These emergency generators alone have created a significant new effort for DAQ and the regulated community, even though the analysis required by the regulations shows that these sources are not by themselves creating any measurable risk associated with air toxics.

Duke Energy recommends that the exemptions be restored for combustion sources that burn unadulterated fuels. Further, Duke Energy believes the air toxics program should entirely exclude sources that are regulated or scheduled to be regulated under MACT or GACT requirements because those requirements will assure that the sources are well controlled and pose little risk for air toxics.
In addition, NC should undertake an evaluation of the overall cost and benefit of operating the ambient standards-based NC Air Toxics program, which includes a comprehensive and intensive scientific and administrative effort that is either duplicative or unnecessary in light of expanded federal requirements for control of HAPS. By nature, sources that are not subject to MACT or GACT requirements pose limited risk associated with air toxics, and the NC Air Toxics program provides an inefficient use of NC resources to devote a significant regulatory program to address those minor sources.

**Mercury Rules for Electric Generators – 15A NCAC 2D.2500**

The NC mercury rule for electric generators was adopted in 2007 in response to a federal requirement for states to adopt the EPA’s Clean Air Mercury Rule (CAMR). CAMR was intended to regulate new and existing coal-fired power plants for mercury by establishing a cap and trade system which would achieve an overall reduction in nationwide mercury emissions but would not set specific limits or require mercury controls on any individual plant. CAMR also set specific federal mercury control standards that would apply to new or modified sources under a New Source Performance Standard (NSPS). The NC mercury rule adopted the federal provisions of CAMR but also established a requirement that all existing power plants must either install mercury controls by 2018 or shut down. A plan for how each unit will be controlled must be submitted by 2013. The rule also required that any new unit must not only meet the federal NSPS but must also evaluate whether more stringent limits should be imposed under a case-by-case Best Available Control Technology (BACT) requirement.

The federal CAMR program was overturned by federal court, and the court required EPA to develop regulations to control Hazardous Air Pollutants (HAPS) including mercury under the Clean Air Act Section 112 MACT provisions that would apply to individual power plants. EPA has recently issued its proposed MACT standards and final regulations are set to be finalized by November 2011 under court order.

Utility efforts to comply with the federal MACT standards for all HAPS will make the NC mercury regulation superfluous and will also result in unnecessary evaluations and commitment of NC regulatory staff to address these duplicative rules. MACT standards will require that each existing facility must achieve HAPS emissions reductions equivalent to the average of the best performing facilities in the nation. Any new source being permitted would be required to achieve performance equal to or better than the best performing single facility in the nation.

Therefore, the NC mercury rule provides no benefit beyond the federal requirement but will require significant resources for both the utilities and NC regulatory staff in order to prepare evaluations and assess compliance with the NC mercury rule. The NC Mercury Rule (15A NCAC 2D.2500) should be repealed in its entirety.
NC Annual Average Opacity Provisions - 15A NCAC 2D.0535

Duke Energy recommends that NC eliminate the Annual Average Opacity (AAO) provisions because these provisions are outdated, are of limited or no additional benefit in light of recent federal requirements, and actually interfere with the decisions for utilities to adopt newer emissions monitoring technologies. As a minimum, the regulation should be revised to eliminate AAO requirements for units that have installed flue gas desulfurization systems (FGD or scrubbers).

The AAO requirements were adopted in the early 1980s as part of the particulate emissions regulations for electric utilities to assure that facilities would operate and maintain control equipment to minimize total particulate emissions well below the allowable maximum emissions. The AAO limits have been successful and were ahead of federal requirements that now accomplish similar objectives.

However, recent federal regulations now require DAQ to include Compliance Assurance Monitoring (CAM) provisions in the Air Permit. CAM requires continuous monitoring of emissions or operating parameters, and if monitoring values point to problems, the operator must identify the cause and take necessary corrective action. CAM monitoring values are set for short-term emissions (for example 3-hour average compared to the 365-day average for the AAO limits). This CAM requirement for more immediate response to changes in performance renders the AAO limits superfluous.

In addition, on units where FGDs or scrubbers have been installed, it is not possible to monitor the actual opacity of the flue gas leaving the stack because of the presence of water vapor from operation of the scrubbers. In order to comply with the Annual Average Opacity requirement, utilities have been forced to retain opacity monitors in ducts prior to the FGD systems. This means the monitored AAO does not account for the additional particulate emissions capture in the FGD system, and the AAO values being reported have no significance with respect to actual emissions from the stack. Tests have shown that the FGD systems significantly enhance particulate emissions control, typically by at least 50% additional removal. Because these FGD systems inherently provide this supplemental particulate control, the original basis of the AAO is no longer valid — that is, the FGD systems provide an additional buffer that compensates for normal variations in performance of the particulate control systems.

The mandatory requirement to monitor and report AAO values also has created a situation where utilities have opted not to install newer continuous particulate monitoring (CPM) technologies that would provide more representative monitoring of stack emissions, rather than the opacity values measured in ductwork prior to the FGD systems. CPM technology is not currently required by regulation but is allowed as an option under federal requirements in place of opacity monitoring, and NC DAQ has encouraged utilities to consider use of CPM. However, because of the cost and the administrative burden of operating both opacity and CPM systems, NC utilities do not have an incentive to use CPM unless this would exempt them from the requirement to monitor and report AAO values.
NC DWQ Groundwater Standards - 15A NCAC 02L.0202

The current regulatory methodology used to derive groundwater standards is inflexible and yields unrealistic standards that do not account for site-specific characteristics. The state groundwater standards are established per 15A NCAC 02L.0202 (d), (e):

(d) Groundwater quality standards for substances in Class GA and Class GSA groundwaters are established as the least of:

(1) Systemic threshold concentration calculated as follows: [Reference Dose (mg/kg/day) x 70 kg (adult body weight) x Relative Source Contribution (.10 for inorganics; .20 for organics)] / [2 liters/day (avg. water consumption)];

(2) Concentration which corresponds to an incremental lifetime cancer risk of 1x10-6;

(3) Taste threshold limit value;

(4) Odor threshold limit value;

(5) Maximum contaminant level; or

(6) National secondary drinking water standard.

(e) The following references, in order of preference, shall be used in establishing concentrations of substances which correspond to levels described in Paragraph (d) of this Rule.


(2) Health Advisories (U.S. EPA Office of Drinking Water).

(3) Other health risk assessment data published by U.S. EPA.

(4) Other appropriate, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.

By requiring that the most restrictive of these six factors in paragraph (d) be utilized to determine groundwater quality standards, there is no regulatory flexibility such that site or regional characteristics can be considered. These six factors are also given equal weight, which is at odds with the EPA drinking water assessments. EPA maintains that aesthetic groundwater qualities, such as taste and odor, should be listed as a secondary, rather than a primary drinking water Maximum Contaminant Level (MCL).

The North Carolina Groundwater Quality standards in 15A NCAC 02L.0202 state that these standards are for the protection of the groundwaters of the state and “are the maximum allowable concentrations resulting from any discharge to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage.” Per the NC DENR Fiscal and Economic Analysis for the Proposed Amendment to the
Groundwater Quality Standard for Arsenic (September 2, 2008), 52% of North Carolina’s population use groundwater for its drinking water supply. The NC DENR fiscal document surveyed 13 states to ascertain how these states were addressing arsenic. It should be noted that 10 of the 13 were using the former or current arsenic drinking water MCL (50 and 10 ppb, respectively) and two states calculated arsenic groundwater standards as needed on a risk-based approach. Duke Energy believes that other states utilize the federal drinking water MCL as the basis for groundwater standards because: 1) The federal primary drinking water standards are established through a scientifically based, toxicological evaluation of impacts to human health, using a rigorous peer review process (including the EPA Science Advisory Board and the National Drinking Water Advisory Council); 2) A consistency of approach is maintained between surface and groundwater. The current NC groundwater regulations are inconsistent with 15 NCAC 02L .0103 which states, “It is the policy of the Commission that the best usage of the groundwaters of the state is as a source of drinking water.” If the drinking water standard is fully protective of consumers of drinking water produced by surface water treatment, there is no rationale to require treatment of groundwater to much lower concentrations for the identical intended end use.; and 3) The federal drinking MCLs are established with consideration of cost and best available technology, whereas the NCAC 2L groundwater regulations only allow for cost considerations after a site has been deemed contaminated.

Therefore, based on the rationale outlined above, Duke Energy recommends that NC DENR DWQ adopt the primary federal drinking water standards by reference as the state groundwater standards.

**Clean Water Act Section 316(a) Thermal Variances**

Under federal rule, a variance from the water quality standard for temperature can be conditionally granted in the NPDES permits of steam electric generating facilities in North Carolina when supported by 316(a) demonstrations and ongoing balanced, indigenous population (BIP) monitoring programs. Duke Energy has conducted, and continues to conduct and report results of monitoring programs to support site-specific 316(a) thermal variances at seven steam-electric generating facilities in NC. These monitoring programs have been ongoing for decades, representing numerous NPDES permit renewal cycles. The five-year permit renewal process and periodic reports summarizing the 316(a) monitoring programs for each steam station are typically grouped by watershed.

In past years, the NC DENR staff (DWQ Environmental Science and NPDES sections) have found consistently that Duke’s 316(a) site-specific monitoring programs and reports have furnished sufficient scientific documentation that a BIP (i.e., aquatic communities) remains established in the receiving waters below the thermal discharge of each Duke facility where such a study has been undertaken. Beginning with the latest cycle of NPDES permit renewals starting in 2009, however, the US EPA Region 4 has issued “form letters” to dischargers granted a thermal variance by the state authorities under section 316(a). These form letters, which have been received by Duke Energy and other power plant operators in the Southeast, in essence label the discharger’s prior 316(a) submittal as inadequate, and request that for the upcoming permit period, a 316(a) BIP study plan be submitted and approved by EPA prior to
implementation. These form letters have been issued even as the state biological staff (NC DENR DWQ Environmental Sciences Section) have indicated to Duke Energy scientists and permitting professionals that the ongoing studies were adequate to serve the purpose of a 316(a) demonstration under the types of information required by 40 CFR §124.73(c)(1) (i.e., a demonstration of no prior appreciable harm to biota when permitting an existing, operational facility). The EPA form letters, in both their apparent consistency in the Southeast and across-the-board lack of specificity regarding any criticism relevant to the 316(a) BIP studies undertaken, are indicative of an EPA unwarranted administrative policy being imposed on delegated states such as NC (see: EPA Office of Wastewater Management memorandum, 28 October 2008).

The State of NC retains primacy for administration of NPDES permitting and EPA Region 4 reviews of draft permits should be looked upon by NC as being provided to state authorities in an advisement or oversight role. Unfortunately during recent NPDES permit renewals, the permitting arm of NC DENR DWQ appears to have aligned with the EPA policy (that ongoing BIP study efforts are not adequate). This policy adoption is apparent due to the EPA form letter language being included as a permit condition in each of Duke’s newly re-issued permits. This 316(a) study finding is in contrast to the expressed opinions of the state water quality and biological professionals, and it is not apparent that the appropriate NC DENR staff was consulted prior to issuance of the permits. The newly routine request of Duke Energy of 316(a) study plans for approval by EPA prior to implementation (where there was no clear indication of any specific problems with prior implementation), is wasteful of State and company resources with no apparent benefit.

Duke Energy therefore requests consistency in interpretation and implementation from all sections of NC DENR DWQ on the adequacy of our 316(a) program and application of NC DENR DWQ expertise in state waters over the regional view of US EPA Region IV.

**Authorizations to Construct Wastewater Treatment Facilities**

After a wastewater discharge permit has been issued by NC DENR-Division of Water Quality (DWQ), construction of wastewater treatment systems (including sewer systems, treatment facilities, and alteration of existing systems or facilities) cannot begin until final plans and specifications have been submitted to the Construction Grants and Loans Section (NC DENR DWQ) and an Authorization to Construct (ATC) has been issued to the permittee. This authorization is currently required for publicly-owned facilities and privately-owned facilities. The original basis of this program was to ensure that public funds were being spent on sound/effective wastewater treatment facilities and wastewater compliance would be achieved. As the program developed over time, private facilities were required to obtain ATCs in addition to public facilities.

Duke Energy believes that it is appropriate to ensure that public funds are spent wisely. However, Duke Energy also feels that ATCs for privately-owned facilities are unnecessary, burdensome, costly (to private entities and the state), and provide minimal benefit since these systems are required to be designed by
professional engineers in all cases. The current statute (NCGS 143-215.1 (a)(8)) prohibits an owner even from entering into a contract for installation of a system or facility without the ATC. There is no analogous federal requirement. It should be noted that permittees must meet permit discharge limits regardless of whether or not ATCs have been issued.

Duke Energy feels that NCGS 143-215.1(a)(8) and the corresponding regulations (15A NCAC 02H) should be amended or rescinded such that ATCs are no longer required for wastewater construction activities at privately owned facilities. This additional approval process adds cost and delays projects that improve water quality leaving our facilities.

**NC Right-to-Know Act - N.C. Gen. Stat. § 95-191**

Duke Energy recommends that the North Carolina Right-to-Know Act (NCRTK) provision (requiring paper submittal) in N.C. Gen. Stat. § 95-191 be eliminated because these provisions are of no additional benefit in light of the federal Emergency Planning and Community Right-to-Know Act (EPCRA). Under EPCRA 312, any single hazardous chemical (as defined by the Occupational Safety and Health Act (OSHA)) is already being reported annually to both local emergency planning agencies as well as to local fire departments based on the reporting requirements below:

- 10,000 pounds for hazardous chemicals; or
- lesser of 500 pounds or the threshold planning quantity (TPQ) for extremely hazardous substances.

The NC General Assembly passed the Hazardous Chemicals Right to Know Act in 1986 in response to the methyl isocyanate gas release in Bhopal, India, establishing a threshold of 55 gallons or 500 pounds or more of any single hazardous chemical as defined by OSHA. These low state thresholds were established prior to the enactment of the federal Emergency Planning and Community Right-to-Know Act.

The purposes of the NCRTK Act were to ensure fire chiefs have access to all hazardous chemical information necessary for emergency response and citizens have access to sufficient hazardous chemical information to assess any hazards posed by local workplaces.

Duke Energy believes that submittal of this NCRTK information in paper form provides no additional benefit to the more readily available EPCRA electronic data. The mandatory NCRTK Act reporting requirement on the lower thresholds creates an additional unnecessary administrative burden to companies as the Act's stated purposes are being sufficiently met by EPCRA 312. In addition, South Carolina as well as other states in which Duke Energy conducts business, have no state-specific requirement and simply use the EPCRA 312 report to provide fire and emergency response workers and citizens the information on hazardous chemicals stored on our sites.