



Clean Water for North Carolina

Clean Currents

Summer 2015

A newsletter of clean water and community environmental justice issues

Challenge Filed to Mining and Energy Commission's Authority to Pre-empt Local Ordinances

After more than two years of working with the Duke Environmental Law and Policy Clinic to advise local groups on ordinances to protect their communities from the impacts of fracking, Clean Water for North Carolina filed a constitutional challenge to the power of the NC Mining and Energy Commission to overturn local government ordinances by preemption. Residents of three counties (Chatham, Anson and Granville) that lie over shale formations in the Deep River Basin joined the suit.

The case was filed in Wake County Superior Court for CWFNC and other plaintiffs by Attorneys Ryke Longest and Shannon Arata of the Duke Environmental Law and Policy Clinic, naming the Mining and Energy Commission (MEC), NC DENR and the State of NC as defendants. Clean Water for NC and other plaintiffs argue that the MEC should not have been granted the authority to rule on ordinances by the General Assembly in Senate Bill 786 last year, as it violates the "separation of powers" between the executive and judicial branches of state government.

"Local governments are the first line of defense to protect our citizens and resources from potential harms of any kind, and especially an industry that could provide only a few temporary jobs, and profits only to a few landowners and contractors," says Darryl Moss, Mayor of Creedmoor, whose city government passed an ordinance in 2011. "We're particularly concerned about our limited and vulnerable water supply."



Mayor Darryl Moss

CWFNC's Exec. Director Hope Taylor points out, "The courts, and not the Mining and Energy Commission, which is stacked with pro-industry legislative



Hope Taylor

appointees, should rule on ordinances enacted by local governments. If local governments decide democratically to enact protections their citizens need, the MEC shouldn't be able to toss them out."

Chatham County co-plaintiff Martha Girolami says, "There are good reasons for effective statewide regulations, but when that regulatory process is used as a tool to protect industry, rather than people and the environment, people will turn to the officials they connect with most directly and hold most directly accountable—their local governments. I can't allow my taxes to be used against me and my neighbors to support a Commission that creates a weak statewide system of regulations and then allows that same pseudo-regulatory body to decide whether our local regulations will be allowed to stand."

Other Suits Against Commissions Cause Halt in Permitting, No Industry Interest

Two suits filed earlier in 2015 have raised another key constitutional issue—does legislative appointment of most members of a Commission (Environment, Coal Ash or Mining and Energy) violate the constitutional "separation of powers" between the legislative and executive branches? The first suit was filed by Governor McCrory and former Governors Hunt and Martin, calling for preservation of the executive branch's authority to implement laws passed by the legislature. The Superior Court agreed with the Governors that such legislative appointments were unconstitutional, and the legislature appealed to the NC Supreme Court.

Haw River Assembly and Keely Wood of Lee County are represented by the Southern Environmental Law Center in the other case, aimed specifically at the Mining and Energy Commission. On May 1, the Court granted an injunction against all drilling and fracking permits until a final ruling on the Governor's case.

In the meantime, after many inquiries from the public about pending fracking permit applications, the Mining and Energy Commission started posting the number on its website—and that number is ZERO!

WHO WE ARE

Clean Water for North Carolina

Clean Water for North Carolina is a private, non-profit organization based in Asheville, NC. CWFNC works to ensure that all people have a right to live, work, and play in clean and safe communities. Together, we have the power and responsibility to work for a healthy and sustainable environment. Our staff works with an active and diverse board of directors, as well as members, to increase grassroots involvement in environmental decisions.

CWFNC spearheads action statewide and helps grassroots and environmental groups, individuals, and local governments develop strategies to address threats to the environment.

Our Mission

Clean Water for North Carolina promotes clean, safe water and environments and empowered, just communities for all North Carolinians through organizing, education, advocacy, and technical assistance.

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Farewell and Happy Trails to Sally Morgan

Organizer, Fiddler, Artist and Activist Researcher!



Sally Morgan, Energy and Water Justice Researcher and Organizer in our Asheville office since 2013, left Clean Water for NC in late June to pursue her long-time passions for music and art on a full-time basis. She'll continue playing fiddle with her band, the Black Twig Pickers, and hopes to perform as a solo artist, too. She has designed thank you cards and other graphics

for CWFNC and custom printed them on her letterpress—we are richer for her artistic skills and we know she'll enjoy using them.

We'll miss Sally enormously—her organizing work has helped build the movement against fracking in the mountains, and her research has deepened our knowledge of fracking impacts and the risks of natural gas pipelines. Her final “adieu” was coordinating a statewide Frack Free NC Festival at Hanging Rock State Park on June 20, drawing over 80 activists from as far as Fayetteville (see page 8). She's happy to have contributed to Clean Water's work, which she knows is cut out for us in this anti-regulatory climate, and plans to stay involved as a member. Good luck and a joyous future, Sally!

“Fracking Stories” Film Tour

Fracking Stories is a series of six short documentaries assembled by Working Films that explore the public health and environmental consequences of hydraulic fracturing (fracking), and the ways communities are coming together to protect themselves. Clean Water for NC co-sponsored 5 screenings of *Fracking Stories* in Durham, Asheville, Salisbury, Fayetteville and Pembroke. The events provided an opportunity for the audience to learn about the issues, speak with active leaders working to protect North Carolina from fracking, and find out how to get involved. Fayetteville is one of 4 locations where a shallow core drilling sample was taken recently to determine whether the Cumberland Marlboro basin could potentially have gas or oil containing shales, and also will be close to the Atlantic Coast Gas Pipeline from West Virginia. CWFNC plans to stay engaged with local collaborator, Sustainable Sandhills.

Pembroke is also in the Cumberland-Marlboro basin, and is 90% American Indian. Robeson County, an impoverished area where a new

Duke gas fired power plant will be the southern end of the Atlantic Coast Pipeline, may be targeted for fracking as well. *Fracking Stories* helped us to connect with Robeson residents who will join us later this summer for a meeting on the impacts of fracking, pipelines and coal ash.



Drinking Water & Water Privatization

Coal Ash: “Don’t Drink Your Water” Notices Go Out to Over 200 Households

Over 90% of households in North Carolina within 1000 feet of a coal ash waste pit, whose water supply wells have been tested, have been sent notices not to drink their water. The Dept. of Environment and Natural Resources tested the wells and gave notice to residents after samples of their well water showed contamination by one or more of the following toxic metals: mercury, manganese, arsenic, vanadium and hexavalent chromium. At least 224 households who live near a Duke Energy owned coal ash pit have been told their health may be at risk from drinking contaminated water. Another 200+ wells have been identified for possible testing. Clean Water for NC staff and interns are helping with outreach to well users around Roxboro and Mayo Steam Stations (Person County), Weatherspoon Plant (Robeson County), and the Asheville Plant.



One of three coal ash dumps around the huge Roxboro Steam Station, with drainage from the landfill.

Duke has denied that the contamination is a result of leaching from its coal ash pits, saying that other indicators of coal ash pollution are not present in the samples, and that the contaminants could be naturally occurring. In a shamefully small gesture, Duke is providing a small amount of bottled water to a fraction

of the affected residents. Duke’s minimizing, denying and evading responsibility for the contamination only increases resentment, especially as many realize their water may have been contaminated for many years before their wells were tested.

The first “Do Not Drink Your Water” notices arrived shortly before Duke pled guilty to nine violations of the Clean Water Act, and was fined \$102 million for illegally discharging pollution at their coal ash dumps.

Though this is the largest federal environmental fine in NC history, it is too little, too late, to hold the nation’s largest power utility accountable. After the 39,000-ton Dan River coal ash spill in February 2014, the NC legislature passed the Coal Ash Management Act, which required coal ash removal from unlined pits, but also required testing of water supply wells close to all coal ash pits. Duke’s continuing refusal to listen to repeated warnings about problems at its coal ash containments from its own engineers

and from regulators is having significant consequences for the company, but even more serious consequences for nearby well users and the NC public having to deal with this mega monopoly utility.

Residents in Pajamas Demand Transparency for Polk County Water Contract

Polk County residents are protesting the lack of transparency and public input for a 75-year water contract with a neighboring water authority in SC, which they say is not in their county’s best interests.

The deal would give the Inman-Campobello Water District in SC, near the border, rights to withdraw millions of gallons of raw water a day from the Green River and Lake Adger in Polk County. In exchange, the ICWD agrees to construct and operate additional water treatment capacity to serve Polk County residents.

Regional cooperation *can* be a mutually beneficial solution to water needs, but local residents, like Sky Conard of Columbus, NC, fear the county commissioners are rushing into a deal because the SC utility would cover the high costs for urgent projects such as dam repairs. Meanwhile, several sections of the contract leave open the possibility that the ICWD could prioritize SC water needs over local uses once they are permitted to

withdraw from the NC reservoir and river.

The lack of transparency or public input on such a weighty decision has residents angry. In May, about a dozen folks showed up in pajamas to a 6AM commissioners’ work session on the contract, calling attention to the absurdity of the pre-dawn meeting time! “We are not sleepwalking through this unacceptable contract proposal,” said Sky.

Residents plan to speak out at commission meetings this summer to call for a more thorough review before jumping into a long-term water deal!



Meet Our Summer Interns

Welcome to Stanback summer intern for our Durham office, Nicole Bautista

Welcome to our summer 2015 intern, Nicole Bautista. Nicole is a rising senior at Duke University studying Environmental Science with a concentration in Energy and Sustainability. Her interests include advocating for renewable energy development, institutionalization of environmental sustainability measures in the workplace, and promoting capacity building for marginalized communities. She was born in the Dominican Republic and has conducted outreach and volunteer work in rural communities in Honduras as part of an effort to help the local people create a sustainable system for protecting their water source and personal health. In the future, Nicole plans to earn a Ph.D. and become a college professor within her field to help her institution become carbon neutral and serve as a mentor for minority students.

This summer, Nicole's work involves conducting door-to-door outreach to communities threatened by

coal ash and potential fracking, to learn how Clean Water for North Carolina can best assist them in organizing to protect their water and land. Focusing on communities of color and/or low income, her outreach will help inform them and build connections with similarly impacted communities. Another major aspect of Nicole's project involves research on regulatory and social justice links between pipelines, coal ash, and hydraulic fracturing issues to determine how they have influenced one another. She is also looking into the economic connections between the energy industries involved in gas and electrical power by analyzing their political contributions to legislators who influence policy making. She is especially interested in the role of the American Legislative Exchange Council (ALEC) in drafting policies and model state laws, at the behest of ALEC member businesses, rather than in the best interest of most Americans or our environment's health.



Meet our Asheville office Stanback Intern, Yiling Fu

Yiling Fu is a Master of Environmental Management candidate at Duke University, nearing the end of her summer Stanback internship working with Katie. She has her undergraduate degree in geology and mathematics at Oberlin College, OH. She now studies water resources management and has a strong interest in ecology and stream restoration. Yiling excitedly joined the team of CWFNC in May. Through her first months in the Asheville office, Yiling has found CWFNC a warm and energetic organization that dedicates itself to promoting safe and equitable drinking water for all levels of society.

Yiling was born in Hangzhou, a coastal city within 3 hours drive from Shanghai, China. She enjoys playing with dogs and she has a 5-pound fluffy poodle at home. During her spare time, she likes exploring different world renowned media to learn different perspectives

on international economic and social affairs. Yiling also likes watching movies and TV, especially reality shows.



She has researched hydraulic fracturing and its links to water transportation, water availability, wastewater disposal and Environmental Justice in North Carolina. Her research also critiques the role of private water companies, particularly Aqua America and American Water, in their new focus of supplying fresh water to the oil and gas industry. She particularly enjoys using digital maps (ArcGIS) to effectively present the information she finds; for example,

she created a map showing the roads and bridges water trucks might use (and damage) to bring water to future fracking sites in the Deep River Basin in NC. Yiling hopes her research will provide some insights on water-related fracking topics that are often overlooked or de-emphasized. Look for a summary of her research in our next issue!



Hydraulic Fracturing

Frack Free NC Activists Tour Heavily Fracked West Virginia County

Four Frack Free NC activists from Chatham, Stokes and Granville counties traveled to Doddridge County, West Virginia in late May for two days of exploring environmental and social impacts of fracking in a rural area. This beautiful county is sometimes referred to as “the sweet spot” for Marcellus shale “wet gas,” or gas containing a high content of heavier gases such as ethane, propane and butane, which have a higher market value to the chemical industry than methane. The density of well pads, often containing well heads for a dozen

horizontal fracking wells, condensate tanks, pipelines and other gas treatment facilities is partly hidden by the hilly, forested terrain, but it’s as thick as aerial views we’ve seen of Colorado and Texas. We encountered the choking smell of oil and organic gases frequently as we drove down tiny roads where huge sand, water and chemical trucks lurched and sped. The pictures by John Wagner and Peggy Wert below are just a tiny taste of what we saw. For more photos and some aerial views, see frackfreenc.org/wp-content/uploads/WVphotos.pdf.



“Man Camp”: As most workers in the fracking industry come from far away, even in a state like WV with a long history of extracting “conventional” oil and gas, workers stay in small trailers near businesses, farms and on roadsides throughout the county. (Photo: Peggy Wert)



Staging area for a new drill site (see rig at top of hill), with trucks to haul drill cuttings. A school bus uses this as a regular drop point and turn-around. (Photo: John Wagner)



A company just getting established in Doddridge County has prepared for huge volumes of flowback water from its Marcellus fracking wells. These 3 huge tanks will hold about 6 million gallons of flowback each. They are open and liquids are allowed to come within a foot of the top. (Photo: John Wagner)



The county’s steep hillsides and creek bottoms are laced with gas pipelines, often from two or three companies in the same cut. The pipeline cuts are often badly eroded and cause significant damage when they cross streams. (Photo: Peggy Wert)



Polluter Accountability

NAACP Investigates Stokes County Core Drilling, Coal Ash

The NAACP is investigating environmental racism in Stokes County, northwest of Winston-Salem, due to the selection of a core drilling site in an African-American neighborhood, and the threats of coal ash to low income residents and well-users.

The NC Geologic Survey recently named four core test drilling sites for potential fracking in Stokes, Cumberland, Hoke and Scotland Counties. The core drilling in Stokes County is an attempt to assess what shale gas resources may lie in the Dan River basin. Though Stokes County's population is predominantly white, the cord drilling is planned in the predominately African American community Walnut Tree, which fears that it may face disproportionate impacts if the drilling indicates significant natural gas in the shale. The community of Walnut Tree is speaking out because they are tired of lawmakers trading their health and well-being for short sighted economic gains.

Nearby, the huge Belews Creek coal plant's ash pond, from which contaminants have leached into the groundwater, already poses a threat to a mostly low income community and has been suspected of

contaminating local private wells with high levels of iron, vanadium and acidic pH levels. Dr. William J. Barber II, the President of the NC NAACP, held a rally before a town government meeting in June, and drew hundreds of protesters, many of whom have committed to join an NAACP suit expected to be filed later this year. Dr. Barber stated that "extremist policies that undermine healthcare and environmental protections cost lives, and therefore are immoral and a violation of our most sacred values regarding equal protection under the law."

The NC NAACP created the Moral Monday movement that has swept across the state and has tackled many issues from voting rights to environmental racism. Jacqui Patterson, the director of the NAACP Environmental and Climate Justice Program says, "We wish we didn't have to, but we are committed to doing so, to investigate and really bring justice around this issue of coal ash and about fracking, and about the injustices of these industries that operate without any regard for the human rights of the people who are impacted by this pollution."

Core Drilling in Cumberland-Marlboro Basin

The Cumberland-Marlboro basin, about which much less is known than the Deep and Dan River Triassic basins, known

to have shale formations with gas reserves, extends about 120 miles through Robeson, Scotland, Hoke, Cumberland, Sampson and Wayne Counties in southeastern NC. In June, the NC Dept. of Environment and Natural Resources hastily contracted with Russ Patterson, a drilling operator from Sanford, to drill cores in Raeford, Fayetteville and Laurinburg. According to Patterson, "the whole purpose of the exercise is to find out what lies under all the sedimentation. To find out whether or not it has any economic potential." The core samples are being examined for organic carbon, which will help



The light gray area indicates the Cumberland-Marlboro basin in southeastern NC.

determine if deposits of natural gas and oil exist in an underground formation. The drilling went down between 230 and 270 feet, extracting samples of rock that might indicate a Triassic basin that might hold gas reserves.

Five out of the six Cumberland-Marlboro Basin counties host a large population of American Indians from two tribes, the Lumbee and the Coharie, and several counties have a large African American population, reaching as high as 37% in Scotland County. Scotland County is the poorest county in the state, and Lumberton is one of the poorest cities in the US, so fracking operations in this region could have substantial

Environmental Justice implications.

Clean Water for North Carolina

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*Supporters of the Frack Free NC Alliance (Clean Water for NC is the "fiscal agent" for this Alliance).

Don't miss our new YouTube video on water and sewer privatization in NC!

Hear from neighborhoods whose basic access to drinking water or sewage treatment is controlled by a private, for-profit corporation, and learn how they're coming together to fight for their rights to safe, affordable water.

www.cwfnc.org/water-justice/#Video



A special thanks to Loretta's Kitchen, Green River Picklers and Highland Brewing Company for hosting events benefiting CWFNC in the Asheville area this spring.

Join Clean Water for North Carolina (or renew your membership):

\$25 \$50 \$100 Other I would like to volunteer I'll give monthly at www.cwfnc.org/donate



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“Polluter Protection Bill” Advances in NC Legislature - ACT TODAY

In July, the legislature considers House Bill 765, the “Regulatory Reform Act of 2015,” a laundry list of damaging provisions shoved into one mega-bill with serious consequences for environmental justice.

Among other things, the Senate’s version of the bill lets polluters off the hook for preventing spread of contaminated groundwater to neighboring properties, slaps fees on attorneys for civic and environmental groups suing the state for stronger regulations, and lets private firms inspect and permit septic systems in place of local health departments, removing essential oversight!

Find out where this monster bill is now and how to contact your legislators to oppose it at cwfn.org.



Festival at Hanging Rock Park Enlivens the Frack Free NC Movement!

Over 80 people from as far away as Fayetteville and Asheville gathered together on June 20th at the beautiful Hanging Rock State Park, northwest of Winston-Salem, to learn, strategize, and celebrate that opposition to fracking continues to grow and our state has remained free of fracking.

The fracking permit moratorium was lifted in March by the NC Legislature, but lawsuits, low natural gas prices, and statewide resistance have all helped to turn the “rush-to-frack” to a fizzle. The

Festival featured workshops on citizen monitoring and direct action, an update on the state of fracking in NC, updates and photos from a recent trip to the frack fields of West Virginia, a potluck lunch, live music, and collaborative art projects. We saw dozens of new faces along with many long time Frack Free NC activists. Three cheers for all of the continuing to work to keep NC Frack Free!

If you’re interested in being part of a trained team to help with water or air monitoring, just email info@frackfreenc.org and we’ll put you in touch.

