

Pricey Harrison

Representative of the 57th District of North Carolina

National Caucus of Environmental Legislators

Testimony on "The Role of the States in Protecting the Environment Under Current Law" before the House Committee on Energy and Commerce, Subcommittee on Environment and the Economy

February 15, 2013

Thank you Chairman Shimkus and members of the Subcommittee for the opportunity to speak. My name is Pricey Harrison and I am serving in my fifth term representing the 57th district in the North Carolina House of Representatives. I am here as a member of the Board of Directors of the National Caucus of Environmental Legislators, an organization of nearly 850 environmentally progressive legislators from around the country.

On the topic of today's hearing, "The role of the states in protecting the environment under current law," I assume that most panelists and members of the committee agree that states have always had — and always will have — an important role in protecting the environment. My own state of North Carolina has a tradition of environmental leadership and passed a landmark law in 2002 called the Clean Smokestacks Act, which put our coal-fired power plants on a significantly more ambitious timescale for

reducing air pollution emissions than federal rules require. A recent study by Duke University concluded that the passage of the Clean Smokestacks Act allowed North Carolina to stagger the cost of pollution-control technologies over a longer period and positioned the state to comply with the EPA rules while providing health benefits, reduced costs and protection from a sudden spike in consumer electricity rates.

However, state efforts to protect the environment and public health have time and again proven insufficient to attain the level of environmental protection demanded by the American people. It was the demonstrable failure of many state agencies to regulate polluting industries effectively that created the overwhelming bipartisan support for a federal role in environmental protection in the first place, resulting in the National Environmental Policy Act and establishment of the Environmental Protection Agency in 1970. The spectacle of the Cuyahoga River fires and cities cloaked in smog provided sufficient evidence for most Americans that states were unable to go it alone.

The question is not whether states or the federal government have a role in environmental protection, but whether each is playing its appropriate role under current law. The purpose of my testimony today is to illustrate how my state of North Carolina is not playing an effective role in environmental protection and how our agencies' inability to address the growing problem of water pollution from coal ash disposal sites perfectly demonstrates the need for a proactive and forceful role of the federal government.

I'm also here to speak on behalf of people that my state is failing to protect — people

like Sara Behnke, a mother and cancer survivor living near Mountain Island Lake who worries about the slow contamination of leaking coal ash ponds at Duke Energy's Riverbend plant into groundwater and into the lake near her home. She worries about the threat of a health and safety crisis should the dam break into the lake, which is the drinking water supply of 860,000 people in the Charlotte, N.C. area. And now that Duke Energy has announced Riverbend will be retired this year, Sara is particularly concerned about the lack of any state or federal plan to deal with legacy coal ash pond sites, which, if the state doesn't act, could pose an ongoing threat to her family and community and leach heavy metals into groundwater for decades to come.

Another coal ash dam located near the Sutton plant in Wilmington, N.C., was breached in 2010. Fortunately, that dam was not a "high hazard" dam and there was no loss of life or environmental damage on the scale that occurred at TVA's Kingston plant in 2008. The greater concern about coal ash ponds at the Sutton plant for the low-income communities living nearby are the high arsenic levels — up to 29 times the federal maximum contaminant levels — that have been found within a half mile of their wells.

These citizens' situation is made worse by the growing power of utilities to influence state lawmakers and a wave of anti-regulatory fervor that has swept across state government. The bottom line is that a strong federal role in environmental protection is the only hope these citizens have to gain basic protections for their health, environment and quality of life.

A Growing Problem of Coal Ash Pollution in North Carolina

After the TVA disaster prompted EPA to evaluate the risks posed by hundreds of similar coal ash dams at power plants across the country, the agency published a report documenting 70 known cases of groundwater pollution and 44 coal ash dams that are considered “high hazard” because a failure would likely result in loss of life. Thirteen of those high hazard dams are in North Carolina.

Environmental watchdog groups then reported 681 exceedances of arsenic, boron, cadmium, chloride, chromium, iron, lead, manganese, pH, sulfate and total dissolved solids in voluntary groundwater monitoring reports conducted by Progress and Duke Energy near their coal ash ponds. Another report documented 31 additional cases of groundwater pollution from coal ash dams that were not included in EPA’s report, six of which were in North Carolina.

All of this new information prompted *The Charlotte Observer* to write in March 2010, “The reports of additional contamination at N.C. sites, such as Duke's Belews Creek power plant, suggest that state and federal officials have not been as aggressive as they should in monitoring pollution, informing the public about hazards and taking appropriate steps to safeguard water supplies.”

As a result of all the new information and media attention, the N.C. Division of Water Quality required Duke and Progress Energy to drill additional monitoring wells 500 feet

from the edge of coal ash dams to determine whether groundwater contamination had spread further. Thanks to these new reporting requirements and research by academic and public interest groups, a clear picture is emerging of the threat North Carolinians face from poorly regulated coal ash sites. The new reporting has not, however, resulted in any enforcement actions against polluters or any substantive efforts by the state to actually reduce or eliminate the pollution originating from coal ash ponds.

For example, little has been done to reduce the threat of water contamination from coal ash ponds at the Sutton Plant where levels of arsenic, boron, manganese and iron in groundwater testing at the plant all exceed North Carolina standards. Monitoring also indicates that the contamination is migrating outside of the state designated compliance boundary on-site. Despite the N.C. Department of Environment and Natural Resources issuing a notice of violation and request for corrective action, no action has been taken.

Now, as Duke-Progress modernizes its fleet, retiring the oldest coal plants in the state and converting them to natural gas generation, there is no clear plan to deal with legacy coal ash sites. Duke announced that in April it will close the Riverbend Plant, which has operated since the 1920s. The utility, however, has not said what it plans to do with the two coal ash ponds at the plant that contains 2.7 million gallons of waste.

Removal of the coal ash would be expensive and likely require a private partnership, as no municipal landfill would be large enough to store it. Duke will likely propose a plan to cap the basin, which, if approved, will require N.C. Division of Water Quality to continue

monitoring groundwater at the legacy site for years to come.

North Carolina is Moving Too Fast on Fracking

At the same time that state agencies are struggling to protect the environment and human health by effectively regulating coal-burning utilities, the North Carolina General Assembly is rushing to bring hydraulic fracturing for natural gas to the state. Last year, an industry dominated Mining and Energy Commission was created to develop a comprehensive set of regulations to protect Piedmont landowners and communities where drilling will likely take place. In the meantime though, a moratorium on drilling permits was issued to allow the commission to promulgate regulations and give the General Assembly the opportunity to review those regulations before allowing the issuance of permits.

A new bill in the state Senate, which cleared a committee this week, would allow permitting of hydraulic fracturing to begin in North Carolina in two years, no matter the status of the state's regulatory development, resources, or staffing. To change the timeline now and limit the General Assembly's and the public's opportunity to provide input on regulations eliminates a critical step in the review process.

Experienced state regulators, industry and environmental representatives have identified more than 70 recommended regulatory needs for a North Carolina oil and gas program. But in the absence of strong federal standards, the race to the bottom and the

threats to water and air quality, and the health of residents and Piedmont communities in the path of gas development are very real.

As the North Carolina General Assembly recklessly pushes to allow fracking sooner rather than later, our state agencies may be ill equipped to do the work needed to properly regulate and enforce natural gas drilling. Strong federal oversight is needed to ensure that state regulatory programs have standards that will protect our citizens from harm.

Handcuffing The State Enforcers of Environmental and Human Health Protections

North Carolina's tradition of environmental leadership has been turned on its head in the past few years. We brought much of it on ourselves through a series of legislative measures designed to eviscerate the state's ability and authority to enforce environmental protections.

The state effectively abdicated its responsibility for developing science-based health and environmental protections when the General Assembly passed S781, which says, "An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest."

Some legal analysts are concerned with changes to the administrative review process concerning who has final decision-making authority in Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act legal issues. The changes run counter to the Memorandum of Agreement between the state and the EPA, which outlines federal legal requirements under which the state has the authority to administer the Clean Air Act, Clean Water Act and RCRA, or risk de-delegation of these programs.

It could get far worse if the Assembly passes S10, the “Government Reorganization and Efficiency Act,” legislation that seeks to remove 131 members of state boards and commissions, including the Environmental Management Commission, the Utilities Commission and the Coastal Resources Commission. S10 will disrupt institutional knowledge and experience, allow the appointment of commissioners with financial conflicts of interest and will allow commissioners with no specialized and diverse knowledge and experience in the various areas related to the subject matter of the commission.

Budget issues have also increased challenges state agencies face when attempting to protect and manage environmental resources in a responsible manner.

Not only was DENR's budget cut the last biennium by 40% of 2005 funding levels, there was the threat of DENR regional offices being defunded. The final version of the state budget did subject DENR and other agencies to a “justification review” in order to keep their regional offices open.

Industries who benefit from this regulatory scarcity have a part to play as well. Duke and Progress Energy merged last year, making them the largest utility in the country. Duke Energy has been the top contributor to more than 140 members of Congress for at least one year for the past 13 years. Duke Energy also spent almost \$5 million dollars on lobbying efforts in 2012. Significant funds have been contributed to state level races as well. And I can speak from personal experience that it is nearly impossible to enact legislation that the public utilities have not agreed to.

Congress should let EPA do its job

The obvious inability of North Carolina to protect the health of our citizens and environment from coal ash is partially the result of factors that are unique to the state at this time, but my conversations with other members of the National Caucus of Environmental Legislators indicate that many other states are performing just as badly. Moreover, any state is likely to be ill-equipped to confront problems like coal ash disposal because an effective solution requires the involvement of federal agencies.

For instance, the Congressional Research Service issued a report in December 2012, on pending legislation (entitled H.R. 2273 and S.3512 in the 112th Congress) that was designed to eliminate the federal government's role in regulating coal ash and other

coal combustion residuals (CCR) by putting permitting and enforcement authority entirely in the hands of the states. The report described the approach taken by the bill's authors as "unprecedented" and criticized the bills for lacking a clear purpose and for failing to ensure state adoption and implementation of minimum standards "necessary to protect human health and the environment."

Overall, the harsh CRS report serves as a warning to members of Congress against reckless and single-minded attempts to bypass established federal authority for environmental enforcement. The attached document entitled "New CRS Report Finds Coal Ash Bills Will Not Ensure Protection of Public Health" provides a summary of eight major failings the CRS report found in the bills' attempts to circumvent federal authority, including:

- Lack of any standard to protect human health and the environment;
- Creating unclear, ambiguous, and altogether missing standards;
- Failure to ensure federal backstop authority and minimum standards;
- Lack of deadlines to issue permits or compel compliance with permits;
- Lack of requirements to reduce threats from ash ponds and toxic dust.

The bottom line is that the federal role in protecting the environment is essential and irreplaceable for protecting the health of Americans and the quality of our environment. While federal attempts to establish minimum safety standards and ensure effective

enforcement by state agencies can be inconvenient for specific industries at times, members of Congress would serve their constituents best by allowing agencies like the EPA to do their job and providing them the resources they need to do it effectively.