North Carolina on the 30th Anniversary of the Clean Water Act

"Keeping the Promise… or…Down the Drain?"

A Challenge to the NC General Assembly, NC-DENR and the Public

Will starvation funding of water protection programs,
low regulatory expectations,
client relationships with polluters,
and inadequate data management
be allowed to degrade NC waters?

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Executive Summary

Since 1996, the "Peoples' Environmental Enforcement Campaign," a coalition of North Carolina grassroots groups frustrated with the failure of North Carolina's environmental agency to protect their communities and public resources, has demanded aggressive action to stop chronic violators and issuance of weak permits that don't hold polluters accountable. Clean Water for North Carolina (CWFNC), the environmental justice non-profit which has coordinated the campaign, works with communities for more protective permits and swift, effective enforcement against polluters.

This year, the 30th Anniversary of the federal Clean Water Act, our organization's water quality enforcement research shows that North Carolina facilities with permits to discharge to public waters continue to have hundreds of water quality violations for which little or no enforcement action has been taken. As a result, the state is failing to recover the economic benefits that facilities gain by violating their permits, is setting a standard of low expectations for water discharging facilities, and is failing to protect communities and water quality.

While water quality enforcement actions reached a record level in 2000, under the leadership of NC Department of Environment and Natural Resources (DENR) Secretary Bill Holman, there were still issues on which the environmental community had to take forceful action to make the agency enforce its own policies. In 2001, Attorney General Mike Easley became Governor Easley and chose Bill Ross to be DENR Secretary. Since that time, there has been a shift away from enforcement, and toward incentives and compliance assistance to polluters.

We lay the blame for our state's failure to meet the intended goals of the Clean Water Act squarely at the feet of the NC General Assembly and the power and influence of industrial and development interests. Legislators have refused to fund even a minimum critical number of enforcement positions or an upgrade in data management. The General Assembly continues to entertain industry-proposed legislation to undercut accountability and environmental protections. On occasion, members even intervene directly on behalf of polluters in their districts or industry associations to prevent effective enforcement.

This severe lack of support by the legislature results in:

- chronic funding shortfalls for a "captive" agency and environmental staff at the Attorney General's Office,
- low expectations for permitting, monitoring, inspection and penalty assessments,
- failure to aggressively support penalty assessments, to seek injunctive relief or deny permits to chronic polluters, or to follow up on unpaid penalties,
- poor data management that makes oversight by Region 4 EPA or citizens nearly impossible.

In order to get DENR on a "fast track" for polluter accountability, particularly in its water quality protection programs, Clean Water for North Carolina calls for the following measures:

For the NC General Assembly:

- Pass legislation to reduce conflicts of interest by General Assembly members and regulatory staff;
- Fully fund all DENR positions, including those currently vacant, to assure permitting and enforcement activities can return to 2000 levels quickly;
- Plan strategically for budgeting an incremental increase in much-needed agency positions and data management for the next three years;
- Create a system of "pre-permit bonding," for compliance assurance in new permits; and permit renewals, where there is not a five-year period of substantial compliance with NC and federal regulations.

F**or the NC Department of Environment and Natural Resources:**

- Eliminate all non-public means of appealing assessed penalties available to permittees, including discretion by regional supervisors, and the Director of the Division of Water Quality. Require that all considerations of penalty reduction involve public notification, with opportunity for testimony by the impacted public;
- Establish leadership for "zero tolerance" at the DENR for chronically out of compliance facilities, requiring deadlines for compliance activities with stipulated penalties and aggressive pursuit by the Attorney General's office for non-payment;
- Set a workload limit for permit writers and compliance staff to prevent issuance of new permits until staff time permits adequate inspections and compliance monitoring;
- Separate the functions of "compliance assistance," which should **only** be available for **publicly-owned** facilities, and compliance inspections and penalty assessments, in order to keep "client" relationships from reducing effective enforcement;
- Immediately develop and implement a simple electronic format for submitting facility Discharge Monitoring Reports, linked to daily, weekly and monthly limits for each permit, allowing for rapid identification of violations and trends at a facility, as well as accurate posting to public databases for oversight functions.

For the Citizens of North Carolina:

- Meet the challenge of the polluter lobby at the NC General Assembly, committing time to legislator education and accountability on water quality and other environmental issues;
- Demand uncompromising campaign finance reform, with public financing of candidates to free "the best legislature money can buy" for public interest lawmaking;
- Get involved in monitoring conditions in your local community, reporting concerns to agencies, and planning for sustainable infrastructure;
- Take advantage of all possible existing opportunities for public participation and work to expand them;
- Monitor and report local environmental problems to state and non-profit agencies right away.
- "Adopt A Permit" for a facility in your area, especially one showing compliance problems in EPA's "Permit Compliance System" Database, by contacting Clean Water for North Carolina or your local watershed organization.

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Introduction

In an era of increasing public demands for transparent accountability and in the midst of a four year drought causing major challenges to water resources, it is critical that North Carolina's water protection programs—especially its enforcement of water quality regulations—come under close scrutiny. At this writing, at least 36 of NC's 100 counties are under some measure of water use restrictions, and water quality managers are acknowledging that water quality degradation is an unavoidable consequence of lower natural flows while municipal and industrial discharges are steady or rising.

2002 is the 30th anniversary of the federal Clean Water Act, whose framers intended to make almost all of our rivers and streams "fishable and swimmable" by 1983! It is high time for North Carolina to do its part to keep the promise of the Clean Water Act to all Americans by establishing firm and uncompromising accountability for all sources of pollution discharge.

Like most states, North Carolina has an EPA "delegated program" of water quality permitting as part of the National Pollutant Discharge Elimination System (NPDES) for "point sources"—discharges directly from pipes or channel into public waters. The Division of Water Quality in the Department of Environment and Natural Resources is responsible for regulating these permits as well as investigating contamination of water from facilities without permits, and "non-point" pollution such as construction runoff.

In 2000, after years of pressure from "downstream" communities and grassroots environmental groups, and the Enforcement Campaign of Clean Water for North Carolina (CWFNC), North Carolina's Division of Water Quality assessed a record number and dollar amount of water quality penalties. The leadership of DENR Secretary Bill Holman, whose strong communication with environmental groups deepened his awareness of the real impacts on communities of weak or failed enforcement and permitting, was important in this effort.

NC Attorney General Mike Easley, whose office had defended the state's decision not to enforce its own regulations preventing spraying of hog waste on saturated fields after Hurricane Floyd in 1999, became Governor Easley in early 2001, and selected attorney Bill Ross as DENR Secretary. Since that time, water advocacy groups have reported a decreased emphasis on water quality enforcement and a shift in policies toward compliance assistance and incentives to "work with" polluters to bring them into

compliance. Such approaches are unproven in their effectiveness and distrusted by the public, as strongly indicated in focus groups organized by CWFNC for DENR in 2000.

Staffing levels, skill, leadership and morale at the Division of Water Quality and DENR as a whole determine the quality of our state's environmental stewardship. The completeness and enforceability of water quality permits, the ability to carefully and frequently inspect facilities and follow up on public complaints, and the capacity to review self-reported facility data and act promptly to correct and penalize problem facilities all depend on adequate funding for the agency.

While portions of this report are quite critical of agency enforcement and data management, let there be no mistake: CWFNC believes that the deepest rooted problem in NC water quality accountability is chronic funding shortfalls for an agency continually dependent on the regulated community's good will. We are acutely aware, from conversations with deeply concerned DENR staff, that there are very principled and talented employees who are willing to work hard to protect NC's waters, but are very discouraged at this time about the future of their agency and our state's environment.

While unfilled DENR positions are being held hostage in current legislative budget proposals, it is nearly impossible for the Division of Water to plan and carry out their program mission. In this critical time, when the value of water to human and ecological health, economy, and quality of life have never been more clear, an immediate and long term strategy for INCREASING budgetary commitment to water protection programs is imperative for North Carolina.

We hope that this report's critique and recommendations will be taken very seriously in funding and implementation of water regulatory policy by Governor Easley, the NC General Assembly, DENR Secretary Bill Ross, Division of Water Quality Director Alan Klimek and program managers at all levels.

CWFNC believes that there are some effective, relatively low cost responses to the deficiencies we describe, but we know that NC has historically ranked low in per capita spending for environmental protection (Green Index, Institute for Southern Studies). A short-sighted, "industrial-strength" economic development strategy by 20th century NC administrations has left our people dependent on jobs created by external investment that have no loyalty to our environmental quality or economic sustainability. These "outside interests" have also made our legislators particularly subject to influence from polluting economic interests and has kept our regulatory agencies weak and tragically lacking in resources.

It is time for a completely new era in NC environmental policy, hopefully signaled by our state's leadership on air quality issues through passage of the Clean Smokestacks Act, and leading to more aggressive and well-funded programs to protect water quality and quantity.

1. A "Captive Bureaucracy"—Strangulation Funding for NC-DENR

North Carolina's General Assembly has failed to provide funding for even minimal staffing requests from DENR for regulatory positions in recent years, much less competitive salaries to inspectors, permit writers, and scientists. Stresses associated with heavy workloads and lack of support from elected officials result in poor recruitment, low morale and rapid turnover of even talented and committed personnel.

In discussions with senior permitting personnel, we have been told that a person with comparable engineering training could have a lighter workload and at least $12,000 more in salary per year working in one of the industries regulated by DENR, particularly after agency experience. Staff turnover is, therefore, a very serious problem. "We have trouble getting and keeping good staff," admitted one manager in the NPDES program, resulting in unfilled positions and workloads so heavy that he admits that permits may sometimes contain mistakes or have unenforceable provisions.

While part of the enforcement role of the Division of Water Quality consists of issuing Notices of Violation and assessing penalties for self-reported violations of effluent limits, more time-consuming tasks include compliance inspections and responding to reports of water contamination events. Due to low staffing levels, response time to complaints is long, investigations are often quite limited, and public access only adds to the heavy staff workload.

Recommendations:

- Fully fund all DENR positions, including those currently vacant, to assure permitting and enforcement activities can return to 2000 levels quickly.
- Plan strategically for budgeting an incremental increase in much-needed agency positions and data management for the next three years;

2. DENR's "Revolving Door"

Elected officials often make appointments to top environmental regulatory positions of persons who know they will be able to look forward to a typical lucrative post-DENR career in an industry that they have regulated.

A look at the recent history of top Water Quality officials shows the depth of the problem. Tommy Stevens, immediate past director of the Division of Water Quality, recently announced his retirement—and simultaneously his new job with the NC Pork Council. As the director of DWQ, Mr. Stevens ran programs that were supposed to regulate hog farms.

Stevens' predecessor was Preston Howard, who had also been in charge of the state's air quality program. Howard now is president of the Manufacturers and Chemical Industry Council, a trade association that fought the Clean Smokestacks Act and continues to lobby to weaken industry regulations. Before him, the DWQ was headed George Everette, who retired to become chief lobbyist for Duke Energy. And his predecessor,

DWQ director Paul Wilms, retired to became a lobbyist with the Homebuilders Association, now working to undercut enforcement for what is probably the state's greatest single water quality problem—sediment and erosion.

Should we be surprised that NC communities can't get protective permits and enforcement to prevent damage to our resources, with expertise from our agencies being used by the "regulated community" to weaken regulations, permits and enforcement?

Recommendations:

- Reduce conflicts of interest and interference with agency mission by drafting and implementing legislation creating a five-year period in which regulatory staff could not be employed or contracted by industries they had regulated.

3. Legislative Interference with DENR Mission

Like legislators everywhere, members of the NC General Assembly are expected to provide constituent services. When those services include intervening to prevent the application of environmental laws, either through granting of an inappropriate permit or preventing fair enforcement on a polluter, they work directly against the health and public resources interests of the member's broader constituency.

Business and industry in a member's district, or industrial associations interested in keeping regulatory burdens light, are often given special access to legislators. then are reported to have intervened, especially at the Division Director level, to seek special favors, most often to facilitate a particular industrial activity or to seek relief from assessed penalties.

Recommendation:

- Create penalties for legislators who intervene against the public interest to prevent fair application of environmental laws and regulations or who seek special permitting or enforcement favors for polluters.

4. NC DENR Failure to Fulfill Commitments to EPA

In September of 2000, The Office of Inspector General of EPA issued a report critical of North Carolina Water Quality permitting and enforcement and Region 4 EPA oversight. The OIG report documented that the NC Division of Water Quality had:

- failed to review and report violations from daily or weekly discharge reports, and failed to take into account records of repeat polluters
- been slow and inconsistent in its enforcement, often treating small permit violators at least as punitively as major ones
- failed to assess fines that will remove the economic benefits of non-compliance
- allowed permit holders to use methods of chemical water quality analysis which are not sensitive enough to detect violations

- granted permits that don't meet EPA standards for livestock feeding operations

NC water activist groups and concerned citizens followed with a group of letters to federal and Region 4 EPA officials, as well as NC DENR and Division of Water Quality, documenting a severe local problem and agency failure to hold a polluter accountable. In February of 2001, the OIG investigator for the report, John Walsh, responded to Clean Water for North Carolina that NC DENR had committed to substantive responses to all of these issues by July1 of 2001. The contrast with the results accomplished is telling.

- DENR committed to incorporating in its penalty assessment the economic benefit gained by violators from non-compliance into penalties for egregious and chronic repeat violations, to begin implementation on July 1, 2001.
  Results: Region 4 has provided training to DWQ compliance staff in use of the standard "BEN" software but, "Have we implemented this for any enforcement action yet? No, we believe it would slow us down to enter the necessary data."

- In order to move quickly to compliance schedules for chronic violators, DENR committed to seeking delegation from North Carolina's Environmental Management Commission (EMC) for the authority to issue unilateral Special Orders by Consent (SOCs) to establish compliance deadlines for chronic violators.
  Results: No such delegation has been sought (and some environmentalists are concerned that DWQ might write even weaker SOC's without EMC oversight).

- DENR agreed to timely identification of exceedances of daily and weekly permit limits**.**
  Results: In file searches thus far, we have found some identification of daily and weekly violations, but these seldom result in more than Notices of Violation, and, in the rare cases that penalties are assessed, it is only a $250 weekly average violation, none for daily limit violations. By contrast, the maximum daily violation is $10,000 per violation per day).

- DENR committed to working with EPA Region 4 to phase in the use of better test methods for total residual chlorine and mercury, sensitive enough to *actually detect violations* of water quality standards.
  Results: While compliance staff assured us that these test methods were actually implemented ahead of schedule, a senior permit writer tells us they were still under study early this year. We have found that, in at least one major permit, mercury was eliminated from the permit altogether, following an analysis of "potential to exceed" that was based on the higher detection limit for the less sensitive test.

5. Low Expectations, Multiple Escape Routes for Violators

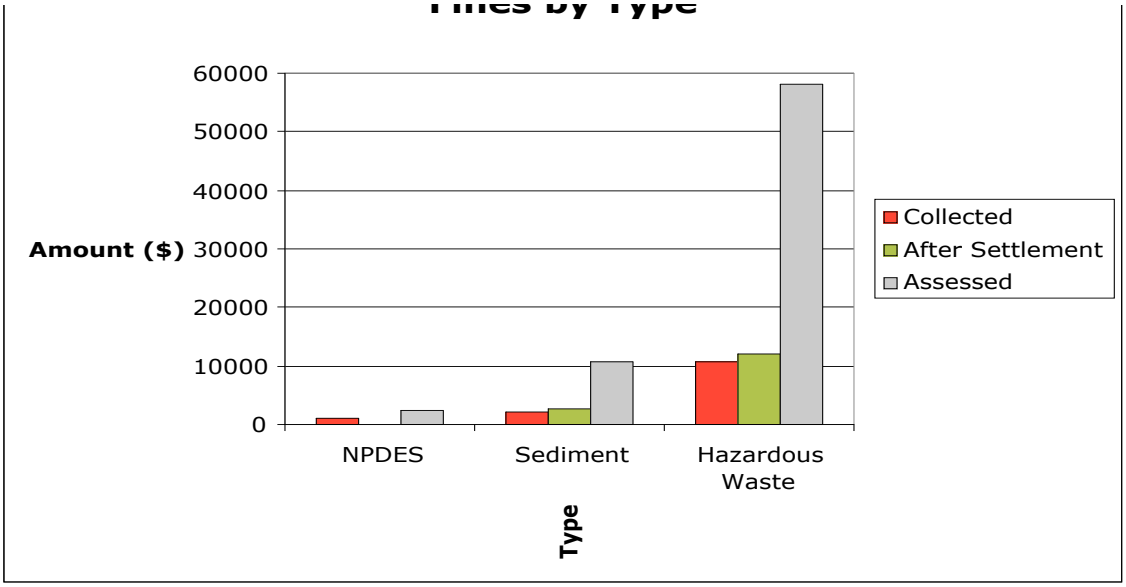
When a violation is detected either on a facility's self-reported Discharge Monitoring Report or in a compliance inspection, a Notice of Violation is to be issued by the agency. Often these NOV's are issued several months after the violation (an improvement from over a year, as EPA found in 2000!), and may be accompanied by assessed penalties. DWQ does not post NOVs on its website, so there is no way to determine the percentage of these notices that result in penalty assessments. Some Regional Offices appear to use penalty worksheets based on the 1998 Policy Guidance issued by DWQ, others do not.

In any case, there is little or no documentation for the decision to assess penalties in the first place. Where they occur, *initial penalty are a very small percentage of the maximum daily fine of $10,000, even for weekly or monthly average violations*, which would tend to indicate that the facility is likely to have violated limits for several days during the period. Regional staff from two DENR offices have told us that they tend to start with very low assessments, even for repeat violators, to save time in fighting later appeals. The result is often exactly as we see in the case of the modest $74,000 penalty for hundreds of sludge and other violations by Raleigh's Neuse River Wastewater Treatment Plant—the facility knows a "good deal" when they see it and simply decide to pay the fine, far below compensation for economic benefit of non-compliance.

There is no involvement of the public in these appeals, so the pressure on regulators comes only from the self-interested polluter. An NOV issued with penalty assessment offers the permit holder the opportunity to provide mitigating information to staff in writing. Responses from chronically non-compliant facilities have included such excuses as plant "upsets" which continue for several months, or that operators "sought help" to deal with the problem.

NC-DENR's "Compliance 2000" Report gave us an overall look at the extent to which fines are upheld in each division during settlement processes which allow extended appeals by polluters with no input from impacted communities. The comparison is helpful for seeing how the various programs function in holding violators accountable at different stages. Note that the penalty per violation isn't even available for the NPDES program, so dollar amounts may represent multiple violations. Nevertheless, the penalties for water quality violations start at a very low level and, by the time the fines are paid, less that 44% of that amount is collect by the agency. Sediment violations in the Land Quality Section have a relatively high assessment per NOV ($10,670), but settlements reduce them to only 26% of this level, almost all of which is collected.

By contrast, in the state's Hazardous Waste program, a high frequency of inspections and willingness to assess high penalties have resulted in greater credibility with citizens and higher compliance levels. Note that even after settlement (see chart), the penalty amount collected is over $10,000, enough to get a company's attention. Other programs have much to learn from this leadership. The Land Quality Section, for example, which admits that it only issues NOVs for a tiny fraction of inspection violations, and assesses fines even more rarely, is estimated to need about four times as many inspectors in order to protect water quality. (The Homebuilders Association regularly lobbies legislators to vote against increases in DENR staff.)



Analysis of Fines from Several DENR Programs in 2000

Recommendations:

- Eliminate all non-public means of appealing assessed penalties available to permittees, including discretion by regional supervisors, and the Director of the Division of Water Quality. Require that all considerations of penalty reduction involve public notification, with opportunity for testimony by the impacted public;

- Establish leadership for "zero tolerance" at the DENR for chronically out of compliance facilities, requiring deadlines for compliance activities with stipulated penalties and aggressive pursuit by the Attorney General's office for non-payment;

- Use the example of penalty assessment in the Hazardous Waste program of DENR to assess tough penalties closer to maximum allowed fines. Even after negotiation, the resulting fine is enough to lead a facility to invest in pollution prevent and/or negotiate a strictly enforceable compliance schedule.

- Create a system of "pre-permit bonding," for compliance assurance in new permits and permit renewals where there is not a five-year period of substantial compliance with NC and federal regulations. This would provide essentially an escrow fund for ready collection of penalties for permit violations;

6. Fewer Inspections, Weakened Enforcement

In the current wave of corporate scandals involving "off the books" accounting, there has been little attention to the long history of polluting industries piling up profits while passing along most of the expenses for natural resources used or degraded to the public. EPA has estimated that 74% of publicly traded companies are in violation of Securities and Exchange Commission disclosure requirements of "environmental debt" for clean ups and evading regulatory requirements. Governor Mike Easley and the NC Dept. of Environment and Natural Resources have touted reduced penalties in 2001 as evidence of "success" in enforcement, resulting in what they interpret as higher compliance rates, but which may only be moving more environmental damage "off the books".

In our analysis of recent enforcement data for water quality, we have come to a quite different conclusion. In fact, even the EPA Inspector General's call in 2000 for the Division of Water Quality to impose penalties that would "compensate for the benefits of non-compliance" has fallen on deaf ears—water pollution penalties actually FELL by more than 36% in 2001.

Using EPA's Permit Compliance System database (described in section below), CWFNC researchers Andy Hecht and David Herbert found a similar number of "limits and monitoring" violations in 2000 and 2001, with similar numbers and sizes of penalties assessed (see Table 2), so there is no evidence of improving compliance by dischargers.

TABLE 2: COMPARISON OF ASSESSED PENALTIES -WATER QUALITY

	2000		2001	
	Number	Amount($)	Number	Amount($)
ALL ASSESSED WQ PENALTIES	764	2,255,044	678	1,422,430
EFFLUENT LIMITS, MONITORING	533	877,115	540	803,329
ALL OTHER TYPES OF WQ PENALTIES	231	1,377,929	138	619,101

Enforcement action has decreased dramatically, however, for the kinds of nonpermitted discharge violations that can **only be found by inspectors**, rather than paper reviews. While 231 penalties were assessed for such violations in 2000, only 138 were assessed in 2001, with the penalty amounts also dropping by an average of nearly $1,500 per violation!

The amount assessed per Effluent Limit or Monitoring penalty by permitted facilities is far lower ($1,646 per penalty for 2000, $1,488 per penalty in 2001, often including multiple violations) than the inspector-dependent penalties resulting from non-permitted discharges ($5,965 per penalty in 2000 and $4,486 per penalty in 2001). While we agree that nonpermitted discharges can be quite serious, the rate of penalty assessment for discharge violations from permitted facilities, even for repeat violators, is only a small fraction of the maximum possible penalty, indicating that the ongoing regulator-permittee relationship may lead to greatly reduced initial penalty assessments.

7. DENR-Client Relationships with Permit-Holders

Budget problems and failed agency leadership for true polluter accountability keep DENR morale low and workloads nearly impossible for permitting and enforcement staff. Division of Water Quality staff concerned about the effectiveness of the agency have told us that DENR Secretary Bill Ross has demonstrated that he believes in incentives and compliance assistance, both of which grass roots community activists deeply distrust as creating new rights for polluters. Some concerned current and former staff members have told us that Ross "doesn't have the stomach" for the kind of stiff enforcement that

citizens and advocacy groups DO trust as the method for achieving community justice and protection.

Enforcement is acknowledged in DENR's "Compliance 2000" report, issued last November, to be the "most trusted" tool the Department has for achieving compliance, as it provides a mechanism for holding permitted facilities strictly accountable for performance. In contrast, incentives and "compliance assistance" are perceived by most citizens as creating new "rights" for regulated facilities, rather than getting effective action, and may even nurture conflicts of interest for regulators providing these services.

Citizens frustrated with failure of the agency to hold polluters accountable are often told by DENR officials, "our job is to work with the facility to get them in compliance." This response only deepens resentment about the use of state's limited resources to provide services to polluter clients instead of collecting fines that compensate for the economic benefit to polluters of failing to meet state or federal laws.

CWFNC believes that "client relationships" established between regulatory personnel and permit holders, coupled with weak minimum fine guidelines issued in DENR's 1998 policy, make payment of penalties a minor cost of doing business for polluters. Regional office files show that regulators are inclined to accept excuses ("tried to get help", or "continuing upset at facility") for reducing or eliminating fines for repeat violators, with no hearing or further review.

There is an intrinsic conflict of mission for engineers and other regional office personnel to be providing taxpayer funded compliance assistance and also to be expected to recommend and support assessment of penalties. Under such conflicted professional circumstances, penalty assessments would appear to represent a failure of DENR personnel in their compliance assistance as well as performance failure by the permittee.

DENR must realize their mission is protection of public resources means that the "regulated community" must not be seen as their primary clients. The citizens and the ecosystems of North Carolina are their true clients, and service to these clients must be foremost in the agency's policy and actions.

Recommendations:

- Set a workload limit for permit writers and compliance staff to prevent issuance of new permits until staff time permits adequate inspections and compliance monitoring;
- Separate the functions of "compliance assistance," which should **only** be available for **publicly-owned** facilities, and compliance inspections and penalty assessments, in order to keep "client" relationships from reducing effective enforcement;

7. The Problem of Permits

The ultimate accountability for pollution prevention rests in the permits granted for potentially polluting activities. Permits are complex and often beyond the non-technical understanding of concerned local citizens. While permitting staff have recently been

attempting to hold pre-permit meetings with citizens where there is a history of controversy, those meetings seldom result in substantive changes to the actual conditions in draft permits. Citizens have strong reason to believe that the discretionary parts of permits have been determined well in advance of public notice with the polluter and that participation is simply a waste of time.

Santeetlah Lake Sacrificed—In Graham County in the late 1980's, a trout farm pond was partially constructed on a tributary to Santeetlah Lake before a permit had been issued. Rather than refusing to permit the facility, DWQ staff assessed a small fine and then expedited a general permit, with only monitoring requirements, and no permit limits. Within the first year of operation, signs of excess nutrients were clear, with citizens reporting algal blooms as well as sewage-like odors in the Lake. Despite this early experience, DWQ proceeded to permit 3 other trout ponds on this stream and two more on another arm of the Lake, and to renew all of those permits in both 1992 and 1997, still imposing no limits on the trout farmers. Large portions of this beautiful mountain lake have been a sickly shade of blue green for most of the period from 1989 through 2001.

Still, DWQ refused to reopen the permits and pointed to the trout farmers' "rights" created by the granting of the permits. Not until the Clean Water Management Trust fund set a requirement for strict limits for, as a condition of a grant to buyout the trout ponds, did conditions start improving in the Lake. We hope that the buyout will be completed this year, but these are permits that should never have been granted and renewed.

A Betrayal on Paper—In preparation for Blue Ridge Paper Products' permit renewal for discharging 29 million gallons a day of pulp and bleach waste streams from the Canton Mill to the tiny Pigeon River, environmental groups tried to work cooperatively. Several of these groups had sued DWQ along with the state of Tennessee over a weak 1996 permit, and achieved a very successful settlement, requiring the Mill to continue improving water quality at the "fastest possible pace."

A joint environmental coalition/Blue Ridge Paper study of oxygen-based pulping processes showed that there would be major improvements in water quality, particularly reductions in dark color and chlorinated chemicals, from installing six affordable technologies. An EPA study selected two of those six technologies as most promising and proposed reducing the limits for the Mill's discharge accordingly. The permit issued by DWQ failed to meet even EPA's lowest expectations of color reductions, and will not require even those most feasible technologies to be installed. Environmental group and downstream participants in this disappointing process told Region 4 EPA that they had been given the message that "cooperation doesn't work," and that agencies should expect more confrontation, as that is what had achieved progress previously.

It is left to non-profit groups, with even more limited resources, working with local citizens to build capacity for public participation. Even after citizens learn to evaluate technical issues in a draft permit, their comments are often marginalized and rationalized away, and the impetus to continue to reduce pollutant discharges is lost.

Recommendations:

- DENR must implement a policy of placing strict numerical limits for all discharged pollutants justifying any failure to reduce pollutant levels in successive permits. Further, DENR must be responsible for acquiring all available literature on ecosystem and human health impacts of components of each discharge and fully disclosing those in permit fact sheets. Instead of providing an opportunity to laud permit holders for accomplishments often made because of citizen pressure and legal action, fact sheets must portray an accurate and complete picture of the regulatory history of a permit under review.

- As reasonable precautionary measure, CWFNC calls for development of a "pre-permit bonding" system, where all new permits or renewals of permits for facilities with a history of compliance problems, would require posting of a bond proportional to the extent of potential environmental damage. The burden of proof and costs of polluting operations must be borne by the regulated community, not the public, if we want to have a liveable North Carolina for future generations.

- DENR should require certification of substantial compliance, with public review, for permit renewal. The model of the Shellfish Sanitation program, where facilities must be certified as in compliance to retain their permits is a powerful one for achieving accountability.

8. Unreliable Data Prevents Effective Oversight by Citizens and EPA

The "Truth in Penalties" policy trumpeted by Governor Easley is far from a reality. For years, CWFNC has been calling for "cradle to grave" tracking and public disclosure of violations and enforcement. While some penalty data are now available on DENR's website, DWQ offers the least information of any DENR division, with no linkage to date, number or severity of violations. Penalty listings don't show whether the penalty was reduced and if it has been paid. Inspectors who recommend higher penalties for repeat or blatant violations often do not know the final outcome of their efforts, but are aware of the multitude of opportunities for polluters reduce assessed fines.

The U.S. Environmental Protection Agency (EPA) administers the Envirofacts Data Warehouse, containing publicly accessible environmental data from all fifty states. One of those databases, the Permit Compliance System (PCS), contains information about NPDES water discharge permit limits, actual concentrations and violations, made available to the public so that citizens may review water permits and compliance records for licensed dischargers.

The online PCS database information is based on self-reported data from dischargers on their monthly Discharge Monitoring Reports (DMRs). In North Carolina, the DMRs are submitted on paper by dischargers to the Division of Water Quality (DWQ), which then enters the data into a computer, and periodically uploads it to the EPA PCS database.

It should go without saying that, for public access to the PCS database to provide meaningful citizen "right-to-know," the data reported in the database must be accurate. Based on our review of a portion of the NC data corresponding to three of DENR's seven regional offices, the data reported by North Carolina to the PCS database is rife with errors that seriously compromise this data for EPA and citizen oversight of performance and enforcement of polluting facilities.

Examples of Data Problems

Recent file searches in the Raleigh and Asheville Regional Offices for 3 permitted facilities revealed that over 50% of the violations reported in the PCS database to be in error. Here are a few examples of the types of discrepancies that exist between the actual Discharge Monitoring Reports and the data entered into the PCS database:

1) Weekly and daily violations are not reported to the PCS database.

> To pick but one of many examples, the Wilson City Wastewater Treatment Plant April 1999 Notice of Violation (NOV) shows one Monthly "Biological Oxygen Demand" (BOD) violation, and 4 Weekly BOD violations. The monthly violation appears in the PCS database list of effluent violations, but the weekly violations do not. Perhaps indicating a data entry error in the other direction, the PCS database shows a Fecal Coliform and a Mercury violation for April, even though neither appears on the paper Notice of Violation sent to the company.

2) Fahrenheit temperature measurements for discharges are compared to permit limits in Celsius degrees, resulting in incorrect violations returned by searching the PCS database:

> According to the PCS database, the Duke Power Cliffside Steam plant has 6 temperature violations that occurred between 1998 and 2001. With a limit of 35°C, values between and 48.7 and 62.9 seem like major violations. However, a file search revealed that these high numbers were in actuality the measurements as given in Fahrenheit. They were being compared, without conversion, to the limit as it was listed in Centigrade. After proper conversion, it is evident that none of these violations had actually occurred.

3) Dissolved Oxygen (a measure of oxygen level in the water for sustaining life, higher values are better) concentrations are sometimes incorrectly flagged as violations when the value is **greater** than the permit limit:

> The DuPont Kinston Fiber plant has a Dissolved Oxygen (DO) minimum limit of 2.5 mg/L, unusually low because it is measured inside the plant before adding oxygen to the discharged water (usually the lower limit at the discharge point is 6 mg/L). The PCS database reports DO "concentration average" effluent violations by DuPont for every month between 1999 and 2001. In fact, there is no "concentration average" limit required by the permit, only a daily minimum. None of the reported DO violations had actually occurred. DENR staff we spoke with said they would correct this error in the PCS data .

Selected NC Violation/Enforcement Examples from the PCS Database:
Despite these data shortcomings, there are dozens of facilities across the state with a large number of apparently authentic violations in the PCS database for the 1998-2001 period, but showing only a small number of enforcement actions during the same period.
(The authors almost hope that the following data from the EPA data are **not** accurate!)

High Point East Side Wastewater Treatment Plant had about 120 violations with 17 assessed penalties totaling $45,000;
Tuckaseegee Water and Sewer Authority had over 120 Discharge Monitoring Report violations, with only 4 assessed penalties, totaling $2,800;
CNA Holding, a plastics manufacturer in Shelby, accumulated 37 violations with 5 assessed total penalties of about $8,000;
Charlotte Municipal Utility District Mallard Creek Wastewater Treatment Plan had over 125 violations with $22,000 assessed for 6 penalties;
PCS Phosphate Company in Aurora had 92 PCS violations for which apparently no penalties were assessed.

Recommendations:
As it stands, our tax dollars are financing a database packed with unreliable data. With data in this condition, it is impossible for policy makers, advocacy groups and citizens to stay informed about water quality compliance in our state.

While DENR has generally been responsive to our requests to investigate and clean up these errors, there is no reason for the errors to occur in the first place. The most likely reason is that the analytical data and permit limits are wrongly transcribed from the DMRs into the DENR computer system. Therefore, our strongest recommendation for increasing public accountability is that DENR provide a simple computer interface for dischargers to submit their DMRs to DENR and then to EPA.

- Direct Computer Interface for DMR Submissions: The paper DMR is an unnecessary step in reporting, since the data ultimately ends up in a computer system. When DMR data is entered electronically into the system, the possibility of transcription error is eliminated. Additionally, dischargers can be held accountable for the numbers appearing in the PCS database, because they were entered by the dischargers themselves.

- "Cradle to Grave" Violations and Penalty Reports Must be Available Online. As it stands, the PCS database reports enforcement actions, but it does not link them to particular violations. In order to gauge the effectiveness of water quality enforcement, researchers must be able to tell whether DWQ has followed up on any given violation. To do this, the penalty reports should be made available online and linked to the specific violations, the dates on which they occurred and the ultimate settlement and payment status of the penalty. All NOV's should also be posted on DENR's website, to provide public accountability for a system that assesses penalties

in a minority of cases, even in the case of some facilities operating under consent decrees with stipulated penalties.

9. Public Participation Not Facilitated

In order to make regulatory efforts "visible", citizen involvement must be deepened in developing protective permits and reporting violations and pollution events. With few, but increasing exceptions, concerned citizen reports have not been treated as credible by agencies, and follow up is limited. Regional staff time is very limited to spend time explaining to citizens the relationship between permit provisions and the concerns that they are conveying, so complainants tend to get discouraged and communications can become quite polarized. Though documentation is now required for all agency public contacts, even Clean Water for NC staff and other organizations experienced in dealing with the agency receive little or no follow up from some regional office personnel and need to make repeated contacts to get a response.

Recommendations:

- Increase staffing for all DENR offices to allow more time for responding to citizen input, needs for capacity building and access, and complaints.

- Expand community "right-to-know." Communities in Asheville, Oxford and elsewhere North Carolina are demanding public posting of discharge locations, swift and effective notification of any untreated sewage spills, and public labeling of all toxic discharging facilities to protect public health by reaching everyone potentially effected. Community awareness is a powerful tool for holding polluters accountable, and should be expanded quickly to provide widespread citizen support to the agency mission of DENR.

- Clean Water for NC encourages community groups and concerned citizens to "Adopt-A-Permit" in order to build participation in protective permitting and continuous citizen monitoring. Training and certification of citizen monitors by regulatory programs, as done in Delaware and several other states, could achieve high quality documentation to be used by the agency without compromising principles of fairness to permit holders.

Conclusion

Any degradation of our state's waters without forceful accountability, is a theft from all of us. When unenforceable permits are granted at a rapid pace, with little hope of sufficient oversight to ensure effective enforcement to deter polluters, it's a set up for "off the books" environmental accounting. Clean Water for North Carolina calls on our General Assembly, conscientious DENR staff and involved citizens to change the balance, so that we can finally keep the promise of "fishable, swimmable" North Carolina waters.