



STATE ETHICS COMMISSION

COMPLAINT FORM

ETHICS VIOLATIONS

Official Use Only: Date Received: _____ Case Number: _____ Type of Official: _____
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The State Ethics Commission has the authority to investigate complaints against those persons covered by Chapter 138A, North Carolina General Statutes, "The State Government Ethics Act," for alleged violations of the Act. Please see section 138A-12. The complaint must be filed within two years of the date you, the Complainant, knew or should have known of the conduct upon which this complaint is based. Please note that the Ethics Commission does **NOT** have jurisdiction over all public officials or state employees.

CONTACT INFORMATION
(Please Type or Print clearly)

The Ethics Act requires that a complaint contain the name, address, and telephone number of the person filing the complaint. The Commission cannot accept anonymous complaints.

Therese L Vick
Blue Ridge Environmental Defense League
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Raleigh North Carolina 27610

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Email Address: therese.vick@gmail.com

NATURE OF THE COMPLAINT

The Ethics Commission does **NOT** have jurisdiction over all public officials or state employees. G.S. 138A applies to legislators, legislative employees, certain public servants, and judicial officers. Please refer to G.S. 138A-3(30) for a list of those State employees included in the category of "public servants." Also, a list of covered persons is posted on the State Ethics Commission's website: www.ethicscommission.nc.gov.

1. Identify the person that you believe may have violated specific provisions of the Ethics Act:

Name: Patrick Lloyd McCrory

Job Title or Appointive Position of the person against whom this complaint is filed:

Governor of North Carolina

2. Provide the date(s) the alleged violation occurred: June 1, 2015, February 8 and 16, March 14, 2016, April 7, 11 and 29, 2016, May 5 and 9, and June 9 and 15 2016.

3. Please provide a concise statement of the nature of your complaint **and** specific facts indicating that a violation of Chapter 138A (the Ethics Act) *or* Chapter 120 (the Legislative Ethics Act) of the North Carolina General Statutes has occurred. Please provide as much detail as possible and attach any documentation you have that supports your claim. ***Attach additional pages if needed.***

On June 1, 2015 Governor Pat McCrory entertained Duke Energy CEO Lynn Good, North Carolina Department of Environmental Quality (DEQ) Secretary Donald van der Vaart (a McCrory appointee), and various legal counsel at the Governor's Mansion, 200 North Blount Street, Raleigh North Carolina, 27601. This dinner meeting was not disclosed to the public- in fact the only way the public knew about it was because of a media report January 6, 2016 (copy attached). Excerpt from the report: *"But on June 1, while in the midst of pressing legal action against and issuing news releases critical of the nation's largest utility, top state officials met for a private dinner at the Executive Mansion with Duke executives, according to calendar entries and other records reviewed by WRAL News."*

On June 7, 2015 Blue Ridge Environmental Defense League (BREDL) submitted public records requests to DEQ asking for information related to DEQ staff meeting with representatives from Duke Energy. The information on the June 1st meeting was withheld. Also troublesome, the meeting was not disclosed during the discovery process related to challenges to two environmental permits regarding coal ash disposal. 26 NCAC 03.0112 states that: *(a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening or complicating the hearings process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties are obliged to exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.* The responses from the DEQ to BREDL's June 7th records request came in late August and late September 2015; the hearing on the legal challenge to the permits was held December 7, 2015. This was more than ample time for the DEQ to have disclosed the June 1st dinner meeting. To date, the purpose of the June 1st meeting has not been disclosed. Conversation could have included ongoing investigations of Duke Energy, ranking of coal ash pits pursuant to the Coal Ash Management Act, fines, the issuance of the Lee and Chatham County coal ash landfill permits, "do not drink" advisories and many other issues of vital importance to the people of North Carolina .

- Two weeks previously, Duke Energy pleaded guilty to environmental crimes and agreed to pay a \$102 million fine regarding the February 2014 Dan River Coal Ash Spill. Four days after the meeting between the Governor, Duke Energy, and the DEQ Secretary, permits were issued for two controversial coal ash landfills in Lee and Chatham Counties. Testing of private wells near Duke Energy facilities resulted in "do not drink" letters being sent to well owners in April 2015.
- A May 4, 2016 deposition of Dr. Megan Davies, State Epidemiologist and Epidemiology Section Chief at the Department of Health and Human Services (DHHS) revealed that Josh Ellis, Communications Director for Governor McCrory was present on numerous conference calls regarding the "do not drink letters" issued to residents near Duke Energy coal ash impoundments in 2015. In her deposition (page 45), Dr. Davies stated that Mr. Ellis expressed "Concern over wording on the Health Risk Evaluation form." Link to full deposition here: http://dig.abclocal.go.com/wtvd/docs/davies_deposition.pdf. This concern from the Governor's office appeared to have led the DEQ and the DHHS to ignore their own health experts. Subsequently, some of the advisories were rescinded particularly those concerning elevated levels of hexavalent chromium. (Article from Winston-Salem Journal attached).

The proximity of this meeting to these and other events is disquieting.

Additionally, during 2016 the DEQ has issued press releases and blog posts touting “the McCrory Administration” which at best skirt the law regarding using state resources for political campaigns (examples attached). Composing, issuing, and posting the press releases and blog posts use state funds and staff time. NCGS 126-13 defines what political activities state personnel may, and may not take part in:

Appropriate political activity of State employees defined

- (a) As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America; however, no State employee subject to the Personnel Act or temporary State employee shall:*
- (1) Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the State;*
 - (2) Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof.*

A review of DEQ 2015 press releases confirms that this is a new trend in 2016—also coincidentally an election year.

The State Government Ethics Act, NCGS 138A states that the Act’s purpose is:

The purpose of this Chapter is to ensure that elected and appointed State agency officials exercise their authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence. To this end, it is the intent of the General Assembly in this Chapter to ensure that standards of ethical conduct and standards regarding conflicts of interest are clearly established for elected and appointed State agency officials, that the State continually educates these officials on matters of ethical conduct and conflicts of interest, that potential and actual conflicts of interests are identified and resolved, and that violations of standards of ethical conduct and conflicts of interest are investigated and properly addressed. (2006-201, s. 1.)

These and other actions are reason for concern and should be investigated. We appreciate the Commission’s attention to this serious matter

4. Provide the names and contact information, if known, of other persons who may have information that would support your allegations.

(1) Secretary Donald van der Vaart, North Carolina Department of Environmental Quality, 217 West Jones Street, Raleigh, North Carolina 27603 (919) 707-8600

(2) Josh Ellis, Communications Director, Office of the Governor, 20301 Mail Service Center, Raleigh, North Carolina 27699-8001 (908) 814-2100

(3) Dr. Megan Davies, State Epidemiologist, Epidemiology Section Chief, North Carolina Department of Health and Human Services, 1931 Mail Service Center, Raleigh, North Carolina, 27699-1931 (919) 733-3421

There are likely others, such as public information officers who could contribute but they are unknown at this time.

5. State whether the individuals and conduct complained of have been the subject of a prior complaint or proceeding of any kind. If so, state the place where the prior complaint was filed and its current status.

I do not know.

SWORN COMPLAINT

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that the information provided in this complaint is true, correct, complete, and of my own personal knowledge, or if not, I believe the information to be true based upon: _____

(Signature) Date: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

SWORN TO (or affirmed) and subscribed before me this day by: _____

Date: _____
_____ Official Signature of Notary Public

Notary's printed or typed name: _____

My Commission Expires: _____

(Official Seal)

**Submit the completed sworn complaint to:
State Ethics Commission
1324 Mail Service Center
Raleigh, NC 27699-1324.**