

Blue Ridge Environmental Defense League

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Attorney General Roy Cooper
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

March 12, 2014

Dear Attorney General Cooper:

I write on behalf of Blue Ridge Environmental Defense League concerning the Division of Air Quality's apparent violation of the State Personnel Act. In 2013, an unprecedented number of Department of Environment and Natural Resources' (DENR) staff were named "exempt" from many of the protections afforded to state employees. NC Gen. Stat. §126-5 (b) (1)¹ defines an "exempt" position as:

"an exempt managerial position or an exempt policymaking position."

The statute also describes what an "exempt managerial position" applies to at (2):

"Exempt managerial position" means a position delegated with significant managerial or programmatic responsibility that is essential to the successful operation of a State department, agency, or division, so that the application of G.S. 126-5 to an employee in the position would cause undue disruption to the operations of the agency, department, institution, or division."

The statute as applied to hearing officers (d) (1) (7):

"Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision."

That an exempt employee not be allowed to be a hearing officer is clear. However, our research has indicated that on several occasions, the Division of Air Quality (DAQ) has utilized exempt employees as hearing officers. In such a capacity, they were improperly appointed, and unqualified by law to take that role.

One of the most concerning examples of this violation of state law involves the hearing to receive comments on revisions to the Air Toxics Rules held on September 29, 2013.² Mr. Brad Newland was the DAQ representative at that hearing. Mr. Newland's report is scheduled to be presented to the North Carolina Environmental Management Commission (EMC) on March 13,

¹ [Chapter 126-State Personnel System](#)

² North Carolina Environmental Management Commission Public Notice:
<http://www.ncair.org/rules/hearing/NoticeAirToxics.pdf>

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2014. According to an investigative report done by WRAL-TV, Mr. Newland was exempted effective July 1, 2013, and should not have been appointed as a hearing officer³:

Department	DENR
Exemption type	Exempt Managerial
Name	Bradley Taylor Newland
Age	46
Original hire date	11/10/1993
Agency hire date	9/1/2009
Position title	Environmental Program Supervisor IV
Job title	Environmental Program Supervisor IV
action	
action date	
Salary change date	7/1/2012
Salary change reason	Pub Info-Legislative Increase
Salary change	\$856.00
Salary	\$72,207.00
Salary minimum	\$61,696.00
Salary maximum	\$103,089.00
Salary percentile	25.39%
Exempt letter date	7/1/2013

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³ [WRAL. Database Exempt Employees. Updated 3 March 2014.](#)

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Because the hearing officer was exempted prior to presenting his findings and recommendations to the EMC, they should not be considered. In fact, the public hearing itself should be declared invalid, and a new hearing scheduled following state law.

We appreciate your attention to this serious matter.

Sincerely,



Therese Vick

Cc: Louis Zeller

John Runkle, Esq.

Sheila Holman, Director, Division of Air Quality

Benne Hutson, Esq.

Lacy Presnell III, Esq.