

April 4, 2013

Attorney General Roy Cooper
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Dear Attorney General Cooper:

Public officials in North Carolina are trying to fast track hydraulic fracturing, or fracking, for natural gas, citing the oil and gas industry's false and misleading talking points about jobs and energy security. And, in addition to opening up the Piedmont to fracking, they also want to see oil drilling off of North Carolina's world-renowned beaches, despite the harm that a big spill would bring to the state's entire coastal economy. What is happening in North Carolina is part of a larger trend in which the fossil fuels industry uses its financial might to steer the public debate.¹

Food & Water Watch looked into the public officials who are rolling out the carpet for the oil and gas industry in North Carolina. What we found are serious conflicts of financial interest and a pattern of political patronage that we urge your office to investigate. The McCrory administration and members of the Mining and Energy Commission and the General Assembly have disturbingly close ties to an industry they seek to regulate, as outlined in more detail below.

North Carolinians are being told that to lure the oil and gas industry to the state, promises of low taxes and favorable rules and regulations are needed. As State Senator E.S. "Buck" Newton has put it, "[we] wanted to give companies an incentive to come earlier rather than later."² Senator Newton added, "We're trying our best to introduce standards and practices the industry finds helpful and familiar."³ Governor Pat McCrory promises to send a "signal to outside companies that North Carolina is getting into the energy business."⁴

This is a classic race to the bottom, and those in control of North Carolina's state government appear eager to win it at North Carolinians' expense. We therefore urge your office to investigate the conflicts presented by the financial ties of prominent figures pushing fracking in North Carolina that we outline below.

How did it come to this?

Fracking is short for fracturing. After drilling down to a targeted rock formation, and then drilling sideways through the layer of rock with natural gas, operators inject millions of gallons of water mixed with sand and chemicals underground, at extreme pressure, to create fractures.⁵ These fractures, held open by the injected sand, provide pathways for the natural gas to flow into the well.⁶

Drilling and fracking industrializes rural communities, bringing air pollution, water pollution, noise pollution, light pollution, marred landscapes and caravans of trucks full of toxic waste.⁷

North Carolina has three potential “plays” for natural gas that could be targeted for intensive fracking. First, the Deep River basin runs southwest beneath the Piedmont from Granville County, passing under portions of Durham, Wake, Chatham, Lee, Sanford, Moore, Montgomery, Richmond and Anson Counties.⁸ Second, the southern portion of the Dan River-Danville basin, also in the Piedmont, lies beneath a portion of Rockingham and Stokes Counties.⁹ A third potential play, the Cumberland-Marlboro basin, lies in North Carolina’s Coastal Plain.

According to the U.S. Geological Survey (USGS), the two potential plays in the Piedmont, taken together, contain about 1.7 trillion cubic feet of “technically recoverable” natural gas resources.¹⁰ Note that this does not take into account whether extracting this natural gas would be economic at current or future natural gas prices.¹¹ Assuming 1.7 trillion cubic feet of natural gas could be extracted, it only amounts to enough to cover North Carolina’s demand for about six years.¹² The USGS has not assessed how much gas might be extracted from the Cumberland-Marlboro basin.

In May of 2012, North Carolina Senators Robert Rucho, Harris Blake and Michael Walters introduced Senate Bill 820 to authorize horizontal drilling and hydraulic fracturing, or fracking, for natural gas.¹³ The introduction of the bill came just a month after a final report from then-Governor Beverly Perdue’s Department of Environment and Natural Resources (DENR), which rigorously and honestly addressed the potential impacts of allowing fracking in the state.¹⁴ As Food & Water Watch commented at the time, the report left open at least eight serious questions about the impacts of fracking on North Carolina.¹⁵ These unanswered questions included how pollution from drilling and fracking operations would impact public health, how contamination of potential drinking water resources could be avoided, whether the state could manage the large volumes of wastes, and whether the net economic impact would be positive or negative in the state.¹⁶

Senate Bill 820 nonetheless passed and was sent to Governor Perdue for her signature, but she vetoed it, explaining that the bill did not do enough to protect drinking water, landowners and public health.¹⁷ Her objection reflected the serious but unanswered questions highlighted in the DENR study. The House, however, quickly held a vote to override Perdue’s veto and, in a bizarre turn of events, the override passed because Rep. Becky Carney mistakenly voted in favor.¹⁸ Now, it is routine to allow members to correct any miscast votes, but in this case the Speaker of the House, Rep. Thom Tillis, stopped Rep. Carney from correcting her vote.¹⁹

The McCrory Administration

Serious conflicts of interest

It’s no secret that Governor Pat McCrory comes from the energy industry, having spent almost thirty years at Duke Energy, a Fortune 250 company and the largest electric power company in the U.S.²⁰ Duke Energy distributes natural gas and uses it to generate electricity.²¹ In the past, as Mayor of Charlotte, McCrory has used public office to protect private interests.²² That record

does not bode well for North Carolinians aware of the risks and costs that accompany fracking for natural gas.

While doubling as Mayor of Charlotte and an employee of Duke Energy, McCrory voted or testified twice against regulations that would have made operations more costly for his company.²³ He has since retired from Duke Energy, but he received over \$240,000 from the company, its PAC, and its employees and their families in campaign contributions during his campaign for governor.²⁴ Also, his Statement of Economic Interest indicates that he has over \$10,000 at stake in Duke Energy and in Spectra, a company in the natural gas pipeline industry.²⁵ Note that North Carolina only requires disclosure of investments up to \$10,000, and that after his nearly 30 years of work it is extremely likely that McCrory's stake in Duke Energy is worth much more.

But Duke Energy is just the beginning of McCrory's ties to the oil and gas industry. During his campaign, McCrory maintained his position as Senior Director of Strategic Initiatives at the law firm Moore & Van Allen, which maintains a large lobbying practice in Raleigh. The firm and its employees donated over \$80,000 to his campaign.²⁶ The firm's clients include the American Petroleum Institute and Piedmont Natural Gas Company, which are lobbying for legislation favorable to fracking in the North Carolina Piedmont as well as offshore drilling.²⁷

Again, McCrory has a record that raises questions about such conflicts of interest. In March 2013, he announced that MetLife would be moving about 2,600 jobs to North Carolina from Northeastern states, lured by over \$87 million in tax rebates and another \$6 million in grants and worker training programs for the company at the state's expense.²⁸ In a tangled web, Metlife hired Moore & Van Allen to secure the deal, having at least begun negotiations to do so while McCrory was still working for the firm.²⁹ McCrory denies being involved in Moore & Van Allen's efforts on behalf of Metlife, but it is doubtful that Metlife was not aware of the potential benefits of selecting Moore & Van Allen over other larger lobbying outfits in Raleigh, given McCrory's campaign for governor.

A pattern of political patronage

In addition to his personal conflicts of interest, McCrory has engaged in a disturbing amount of political patronage, appointing campaign donors and friends to high-level positions in his administration. Notably, he has raised salaries for these friends and donors in the cabinet by up to 11 percent, while raising state employee salaries only 1.2 percent.³⁰

McCrory appointed John Skvarla to be his Secretary of Environment and Natural Resources. Skvarla has said, "I believe climate change is a science and I think science is constantly in need of scrutiny," adding there is "a great divergence of opinion on the science of climate."³¹ Skvarla, who along with his business partners gave \$20,000 to McCrory's campaign,³² neglects to mention that this "great divergence of opinion" is not really among scientists.³³ In truth, the only significant divergence of opinion is among those who are not trained in evaluating climate science.

For years, Art Pope, the conservative multimillionaire and current State Budget Director under Governor McCrory, has been a major campaign contributor in North Carolina.³⁴ The vast majority of spending by independent groups in the state's 2010 elections — about 75 percent — was connected to Pope and his family.³⁵ Since 2008, Pope and his family have donated at least \$272,000 to the McCrory campaign and the state's Republican Party, and Pope's corporate contributions to the outside groups that spent money to elect McCrory amounted to \$886,500.³⁶ In his Statement of Economic Interest, upon being appointed as the State Budget Director, Pope disclosed significant investments in the oil and gas industry, namely ConocoPhillips and the BP Prudhoe Bay Royalty Trust.³⁷

McCrory appointed Kieran Shanahan, a major donor to Republican campaigns in recent years, to be North Carolina's Secretary of Public Safety.³⁸ Through his law firm and his family, Shanahan accounts for about \$27,000 in donations to the McCrory campaign.³⁹

Aldona Wos, McCrory's former campaign chair, is now North Carolina's Secretary of Health and Human Services.⁴⁰ Through her family and her family business, she accounts for about \$250,000 in donations to the McCrory campaign.⁴¹

Finally, McCrory appointed three longtime Duke Energy coworkers, Sharon Decker, Neal Alexander, and Tony Almeida, to high-level positions.⁴² Decker is Secretary of Commerce and Alexander leads the Office of State Personnel. Former Duke Energy executive Almeida is now McCrory's senior economic advisor. In her Statement of Economic Interest, Decker claimed at least \$10,000 in SCANA Corporation, a natural gas utility.⁴³ Although she is resigning from the corporation's Board of Directors, Decker's stake in the natural gas utility would present a clear conflict of interest at Cabinet level discussions about opening the state to fracking.⁴⁴

The Mining and Energy Commission

Senate Bill 820, its veto having been overridden by mistake, established a Mining and Energy Commission (MEC) to put in place a regulatory framework for fracking in the state.⁴⁵ Governor Perdue, the Senate President Pro-Tem Phil Berger and the Speaker of the House Thom Tillis each appointed four members of the MEC, with three additional state employees as "ex officio" members.⁴⁶ This appointment process led to an MEC with significant pro-oil and gas industry bias.

James Womack, who sits as Chairman of the MEC, says "I don't think there's any question that the shale gas industry is good for North Carolina," adding that environmental concerns are not "logical" and that "'slow down' is not in my lexicon."⁴⁷

This is disturbingly close-minded and absolutist, given that Womack is tasked with crafting regulations to lessen the negative impacts that fracking would bring to North Carolina's economy, public health and environment. Womack should know better, having spent over 15 years working on public health information systems, first as a state employee and then as a private businessman crafting and selling health information systems software to North Carolina.⁴⁸ Consider that the American Public Health Association, in a recent policy statement, determined that modern fracking "poses potential risks to public health and the environment,

including groundwater and surface water contamination, climate change, air pollution, and worker health....”⁴⁹

Halliburton, the notorious oil and gas industry contractor well known for pioneering many of the technologies now used in modern fracking, has a former high-level employee on the MEC.⁵⁰ Dr. Vikram Rao was at Halliburton for over 30 years, ultimately as the company’s Senior Vice President and Chief Technology Officer.⁵¹ He maintains significant financial stakes in Halliburton, and also has over \$10,000 invested in BioLargo, which is capitalizing on the oil and gas industry’s problems with disposing of fracking wastewater.⁵²

Even the two spots on the Commission reserved for “conservationists” went to members who stand to benefit financially from opening up the state to fracking.⁵³ Ray Covington co-founded North Carolina Oil and Gas, a company that offers to help landowners negotiate oil and gas leases in exchange for a portion of the profits, is on the MEC.⁵⁴

Also on the MEC as a “conservationist” is George Howard, who runs Restoration Systems, a company that restores streams, creeks or wetlands polluted by industry to obtain “mitigation credits” from state and federal agencies.^{55,56} Restoration Systems then turns around and sells those credits to various industries that need them in order to destroy streams, creeks or wetlands in their future operations.⁵⁷ Industrializing rural North Carolina will only mean increased demand for such credits, and increased business for Howard’s Restoration Systems. Finally, in his Statement of Economic Interest, Howard disclosed investments of at least \$10,000 in ITT Corporation, which among other things supplies the oil and gas industry with diverse equipment and services.⁵⁸

The General Assembly

The American Legislative Exchange Council (ALEC) is an organization that helps corporations ensure that their ideal legislation is drafted and introduced by participating legislators.⁵⁹ For example, ExxonMobil has sponsored model legislation on public disclosure of fracking chemicals, with a sizeable loophole allowing companies to withhold information they deem to be “trade secrets.”⁶⁰

ALEC now has a firm hold on North Carolina’s capital. Indeed, the director of ALEC’s Energy, Environment and Agriculture Task Force, Todd Wynn, listed North Carolina as an important battleground state for ALEC’s so-called Electricity Freedom Act, which attempts to pull the rug out from under the renewable energy industry.⁶¹ The Speaker of the House, Thom Tillis, is on ALEC’s Board of Directors⁶² and was named 2011 ALEC State Legislator of the Year.⁶³ Fred Steen II, McCrory’s chief lobbyist, is ALEC’s North Carolina State Chairman.⁶⁴

Over forty North Carolina legislators are known to be involved with or have previously been involved with ALEC.⁶⁵ One of them, Senator Tom Apodaca, is leading Senate Bill 10, the so-called Government Reorganization and Efficiency Act.⁶⁶ This bill would remove current members of the Coastal Resources Commission and the Utilities Commission, allowing McCrory to remake them as he sees fit.⁶⁷ According to Greenpeace, Duke Energy and its affiliate Progress Energy gave a total of \$102,500 in contributions to Sen. Apodaca and the two other lead

sponsors of Senate Bill 10.⁶⁸ Sen. Apodaca alone has hauled in \$72,300 from Duke Energy, Progress Energy, and PSNC Energy from 2004-2012.⁶⁹

ALEC's heavy influence in Raleigh reveals that many powerful public servants are perfectly comfortable aligning themselves with the interests of large corporations. This does not bode well as many of these same legislators try to roll out the carpet for the oil and gas industry.

Why the rush to frack North Carolina?

When Governor Perdue's veto of Senate Bill 820 was overridden, fracking became legal in North Carolina, but the bill put in place a two-year moratorium to allow the MEC time to develop regulations. At the end of the two years, the General Assembly would then have to vote again on whether or not to grant drilling permits for fracking in North Carolina. In February of 2013, Senators Buck Newton, Bob Rucho, and Andrew Brock led the introduction of new legislation, Senate Bill 76, which they called the "Domestic Energy Jobs Act."⁷⁰ This bill, if passed and signed by Governor McCrory, would automatically lift the fracking moratorium and grant drilling permits as early as 2015, without any other votes from the legislature.

In addition to promising permits in March of 2015 without a legislative vote considering the Energy and Mining Commission's proposed regulations, Senate Bill 76 would enact an industry-friendly severance tax, encourage offshore drilling, legalize the disposal by injection of wastewater from drilling and fracking operations, require DENR to streamline the fracking permit process, and keep local governments from imposing local taxes or other impact fees that would allow them to recoup the costs of road damage, among other costs.⁷¹ This is the legislation that Senator E.S. "Buck" Newton, a lead sponsor, is referring to when he says he "wanted to give companies an incentive to come earlier rather than later," adding that, "We're trying our best to introduce standards and practices the industry finds helpful and familiar."⁷²

Bill Weatherspoon, a lobbyist who heads the American Petroleum Institute's North Carolina Petroleum Council, characterizes the state's push to allow drilling and fracking by saying "the state is trying to take a very calm, study-type approach."⁷³ But this is ironic given that those currently in power are ignoring the many unanswered questions raised by the exhaustive DENR study of fracking's potential impacts on the state, particularly regarding the cumulative public health impacts and the long-term risks to North Carolina drinking water resources.⁷⁴

The oil and gas industry's proponents in Raleigh want North Carolinians to believe that drilling and fracking will be a jobs bonanza for the state, and that it will improve the state's energy security. The fact remains, however, that North Carolina has no proven gas reserves, and its unproven resources, even if they become economically feasible to develop, would amount to less than six years of supply for the state. As for jobs, almost all the industry jobs would go to out-of-state workers who already have experience working in the industry. For this reason, states like Louisiana and Texas might benefit from a fracking boom in North Carolina, but North Carolinians would be left with the bust.

Given that North Carolina has so little natural gas, the push for fracking in state does not add up. With current prices of natural gas below what they need to be for the industry to break even

drilling and fracking new wells, much less make a profit,⁷⁵ the oil and gas industry itself isn't likely to sweep into the state.

A plausible explanation for the current push is that many of the state's lawmakers hope to gain the support of the industry by helping North Carolina win the race to the bottom. This would allow the industry to pit North Carolina against other states that may be taking a more careful approach to protecting their own environment and public health from the impacts of fracking.

Accountability Needed

To keep from being enlisted in this race to the bottom, the North Carolina Department of Justice should investigate the aforementioned conflicts of interest in regard to the development of fracking regulations in North Carolina. We are also working within the community and in coalition with [groups XYZ? Local groups?] to encourage North Carolinians to:

- Urge that their legislators to oppose Senate Bills 10 and 76
- Participate in public hearings of the MEC and scrutinize its draft rules and statements for policies that prioritize the oil and gas industry over the public interest; and
- Insist that their legislators investigate the conflicts of interest behind the push to open up North Carolina to the oil and gas industry.

It is not too late for the North Carolina to avoid going down this self-destructive path. Long-term energy security and independence can actually be achieved, but the state needs to act now to deploy existing energy efficiency and renewable energy solutions and to invest in future technologies that expand these solutions.⁷⁶ The state should hold accountable politicians with cozy ties to an industry that could so negatively impact North Carolina's environment, communities, and public health.

Sincerely,



Jorge Aguilar
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Endnotes

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