

STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR

PAT McCrORY  
GOVERNOR

ROBERT C. STEPHENS  
GENERAL COUNSEL

VIA EMAIL AND US MAIL

March 11, 2016

Mr. Michael Jacobs  
North Carolina Coal Ash Management Commission  
4299 Mail Service Center  
Raleigh, North Carolina 27699

Re: Status of the Coal Ash Management Commission Subsequent to *McCrory v. Berger*

Dear Mr. Jacobs:

The North Carolina Coal Ash Management Commission (hereinafter the "Commission") has worked diligently over the past year to meet its responsibilities set forth in the Coal Ash Management Act. You, the other members of the Commission and the Commission staff are to be commended for your efforts and the work product resulting from those efforts.

However, on January 29, 2016, the North Carolina Supreme Court issued its opinion in *McCrory, et al. v. Berger et al.* In the opinion, the Supreme Court held that the Commission is an unconstitutional body in violation of the separation of powers principle in the Constitution.

This letter is to advise you that as a result of the Supreme Court's decision, the Commission no longer exists as a legal entity and does not have any legal authority to take any further action. It cannot and should not attempt to exercise any of the powers and duties assigned to it by the Coal Ash Management Act or otherwise. The Commission can neither be convened nor can it meet.

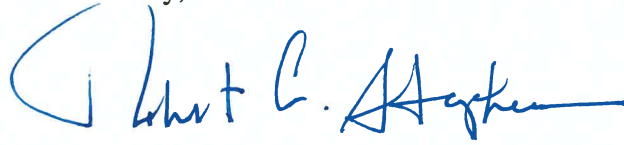
This inability to act includes the duties assigned to the Chair of the Commission to organize and direct the work of Commission staff. Since the Commission no longer exists as a legal entity, the three staff members of the Commission cannot be supervised and directed by the Commission's Chair. Until further notice, the staff of the Commission shall be supervised and

directed by the Director of the Division of Emergency Management within the Department of Public Safety, where they are administratively housed.

Accordingly, you, the other members of the Commission, and the Commission staff should take no further action in the name of the Commission. The Office of the Governor and the Department of Environmental Quality are studying options to deal with coal ash management. As soon as those options are identified, we will discuss them with you.

Again, on behalf of the Governor and this office, we would like to thank you for your previous work and for the time you have devoted to helping the people of North Carolina.

Sincerely,



Robert C. Stephens  
General Counsel

CC: Frank Perry, Secretary, NC Department of Public Safety  
Mike Sprayberry, Director, NC Division of Emergency Management  
Donald van der Vaart, Secretary, NC Department of Environmental Quality