

The following are my opinions concerning the proposed Solid Waste Health Rule

Concerning the penalty section, the board is keeping it a Class 1 by referencing 14.3. I believe from the following that this should not be the case.

Mr. Swanger read a portion of Andrea Kellers letter at the 3-1-2010 workshop. It is the letter to Stephen King and Carmine Rocco that I sent you recently.

"Therefore, in the service of preserving the environment and to protect public health, safety, and welfare, the onus lies with the counties to enact and enforce ordinances to control disposal activities outside of the managed waste stream."

Mr. Swanger asked if Chip Killian agreed with her, (Ms. Keller). Chip Killian said, "Well it can be either the county or a Board of Health, but it's a local responsibility. To me it pretty well tells me that what we're doing here is consistent with the regulatory fabric of what the state and local is intended."

I don't believe this is consistent with what the state intended.

Ms. Keller is saying to enact ordinances, (Class 3 misdemeanor), and this board is saying rule with a Class 1 misdemeanor.

Later Mr. Swanger read the rest of the statement from Andrea Keller:

Therefore, in the service of preserving the environment and to protect public health, safety, and welfare, the onus lies with the counties to enact and enforce ordinances to control disposal activities outside of the managed waste stream. Clearly, Haywood County took steps in the past to put in place an ordinance to allow the county to manage this type of public hazard and it is in your best interest, and in the best interest of the constituency of Haywood County, to enforce and/or improve upon these rules."

Ms. Keller clearly states several times ordinances. In the same letter she wrote to Stephen King and Carmine Rocco she said

"Additionally, I have attached a memo to "Local Health Directors" dated June 17, 1987 - which verifies much of what has been discussed - and may have been the basis for the Haywood County Health Department ordinances that are currently in question. Specifically, the memo addresses limitations of the State and the authorization of the counties to address these issues through local ordinances."

When I asked what she meant by "Haywood County Health Department Ordinances" she said:

The "Haywood County Health Department Ordinance" that I was referring to was the original document that Carmine Rocco (Health Dept. Director) and Stephen King provided. It was dated January 1, 1977. It was the version which amended the "Rules and Regulations Governing the Storage, Collection, Transporting, and Disposal of Solid Waste in Haywood County, North Carolina."

Why does she refer to the old rule as an ordinance?

Could it be that the regulations governing the above are suppose to be just that, an ordinance?

Ms. Keller believes Statute 14-4 is the penalty used for violating an ordinance. This is a Class 3 misdemeanor. The maximum penalty is \$500, no fine shall exceed \$50 unless the ordinance expressly states the maximum fine is greater than \$50.

This is immensely different than Statute 14-3 that this board wants to use for a violation of the Solid Waste rule.

Why is the Board of Health not following the advice of Ms. Keller and going with an ordinance?

Why does the Board of Health insist upon giving Haywood County residents a more stringent penalty for violating a Solid Waste rule?

If this board is so sure that what they are doing is right, why aren't they able to provide us with a list of other counties doing the same thing?

We have not heard of one county in NC that has a similar rule and penalty.

Why have we been told this does not have to be a Class 1 misdemeanor, yet the board is insisting on leaving it in?

According to the Health Board, this rule originally dealt mostly with hauling and permit issues, and those are now covered in the Solid Waste Ordinance, which has a fine up to \$50, maximum 30 days imprisonment. One of the purposes of the Solid Waste Ordinance is to protect and promote health. I find it odd that some of the issues this Solid Waste Rule dealt with are now a Class 3 misdemeanor under the ordinance, but everything left in the Rule is now a Class 1.

Could it be that what was left in the 1989 rule was put in the Public Nuisance Ordinance, which the Commissioners rejected? So now the Health Board will use the rule with a Class 1 misdemeanor, which is clearly not mandated. Guilford County has a health rule using the same 130A Statute, yet their penalty is a Class 3 misdemeanor. Attorney's have said this does not have to be a Class 1 misdemeanor, yet the board is keeping it in.

The 1977 Solid Waste rule, which the 1989 rule was amended from, had a fine not exceeding \$50 and imprisoned not exceeding 30 days. (Class 3)

So from the above it is my opinion that it should be an ordinance, Class 3 misdemeanor.

Ms. Keller believes GS 14-4 directs counties on how to prosecute local county ordinances. This is a Class 3 misdemeanor.

The rule penalty exceeds what the penalty of violating an ordinance would be.

I believe the rule is unconstitutional for the following reasons:

Amendment IV

The right of the people to be secure in their persons, houses, paper, and effects, against unreasonable searches and seizures.

Yes, they will have to get a search warrant, but have you looked at what all is on the list that could be considered a health risk violation?

At the January 12, 2010 Board of Health meeting the question was asked, What would be such an imminent hazard, that you would bypass the Constitution, and not get a search warrant to come on our property? Mr. Rocco stated "Mosquitoes"

I requested the January tape but was told it is no longer available. GS 132-1 states this is public record, and property of the people.

At the next meeting a Doctor spoke to the board and said he knew of no bacteria that could grow so fast that they would not have time to get a search warrant.

Amendment VI

The right to be confronted with the witnesses against him

We were told when someone gives a complaint they will get the name of the caller.

What will they do if they don't get a name, or they get a name that is not verified?

I believe we may have a nameless, complaint driven rule.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The penalty in this rule is excessive, cruel, and unusual.

The question was asked at the July 13th meeting if there was another county that had a similar rule like they were giving us. Lynise Paschke said "Guilford County". I received a copy of their rule.

There is a vast difference between

"Regulations Governing Health Hazards And Potential Health Hazards in Guilford County"

Where the penalty is a Class 3 misdemeanor (maximum \$500, and or 30 days imprisonment),

AND

Haywood County "Amended Rules and Regulations Governing the Storage, Collection, Transporting, and Disposal of Solid Waste" which has a Class 1 (maximum fine?, maximum 6 months or more imprisonment).

The public and all the Health Board members deserve the truth regarding this matter. I request this be clarified at the August 10th meeting to the public and to the Board members before the vote takes place.

So as of today, we know of no other county in the State with a rule and penalty that even comes close to being as severe as the Haywood County Rule.

The Board told the public they were making this less stringent. From what I have seen it is the most stringent in the State.

In my opinion, the Health Board lead the public to believe when they developed the Policy and Procedures plan, that the Rule would be dropped. That didn't happen. We now have the State Statute, The Solid Waste Rule, and The Policy and Procedure.

Public Hearing

Following are just a few of the reasons I believe there should be a public hearing.

We did not receive the letter from Andrea Keller until after the July 13th Board Meeting. I believe the information in the letter needs to be discussed from the public's point of view.

The penalty is still a Class 1 misdemeanor by reference.

It was my understanding there would be changes regarding animal matter, but I have not been able to find it in the new revision.

The information regarding Guilford County needs to be clarified to the Board and the Public

Public records regarding the rule-making are not available (January tape)

The Administrative penalties have not even been discussed

The public has not had an opportunity to comment on the final rule

This Health Department still has the ability to add to the rule as they deem necessary

There have been changes made in the current proposed rule that were not discussed in the meeting

I'm sure there are others that have valid concerns that should be addressed

My Proposal

We currently have a judicial system to resolve disputes among citizens and remedies for conditions harmful to other citizens and the environment.

To add another bureaucratic set of rules where they are not needed is costly, confusing, counter productive and can often lead to government abuse of power.

This new set of rules, policy, and procedures is an invitation for some government worker to abuse their power and trample on the rights of other citizens.

This Rule is not a requirement. Ms. Paschke said they needed to update the rule or repeal it.

If I were on the Health Board I would

VOTE THIS PROPOSAL DOWN

Please let me know your thoughts on this.

Denny King