



# CLEAN WATER AFTER SACKETT

## A SYMPOSIUM ON THE LEGAL, POLICY, AND CONSERVATION IMPLICATIONS OF *SACKETT V. EPA*

November 10, 2024 | Wake Forest University

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### **Keynote Speaker: Elizabeth Biser**

*Secretary, NC Department of Environmental Quality*

Moderated by Stan Meiburg, Sabin Center Executive Director, Wake Forest University

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**Stan Meiburg:** Good afternoon again, everybody. Why don't we go ahead and get started? We have a very distinct honor today in this room because we have both the current Secretary and two former Secretaries of the North Carolina Department of Environmental Quality here with us. We are going to get a chance to hear from one of them right now, and that is, of course, Secretary Elizabeth Biser, who is the current secretary of DEQ.

This is, in fact, Secretary Biser's second time at DEQ. She was the Director of Legislative and Intergovernmental Affairs back when it was still known as the Department of Environment and Natural Resources, which is a long story we won't go into. But she had the advantage of working for Secretary Bill Ross back in those days. Then, fortunately, for North Carolina, when the former Secretary, Michael Regan, got another job, it created a vacancy. The Governor had enough sense to turn to Secretary Biser to step in to fill the position. She's done a wonderful job, but it is a wonderful job that has a few slings and arrows of outrageous fortune as well.

She has also been the president of Biser Strategies LLC and the Vice President of Policy and Public Affairs at the Recycling Partnership; that must connect with Edgar in some way, shape, or form. She was also policy adviser at Brooks Pierce, and holds the Bachelor of Arts and Master of Public Administration degrees from the University of North Carolina at Chapel Hill. So, she's not conflicted like Robin Smith was, being connected to both Duke and Carolina, although Robin was very clear about where her loyalties lay in a pinch.

We are quite honored to have Secretary Elizabeth Biser here, and let me turn the floor over to you. Thank you very much.

**Elizabeth Biser:** Well, thank you, Stan. It's an honor to be here, also with esteemed alumni over here, from former secretaries from the department. And it's good to be here with folks who really care about protecting our state's natural resources. One of the things I think about often is if you don't have clean air to breathe, if you don't have clean water to drink, nothing else matters.

Today, I am going to talk a little bit about the DEQ's work and our priorities. But also, I understand that it's been a little depressing at times, so my goal is also to bring in some hope.



Some great things are happening at the agency, and there are resources that we're able to invest in North Carolina as well.

To start with, our mission is to provide science-based environmental stewardship for the health and prosperity of all North Carolinians. We do that in a number of different ways. Most folks are familiar with our regulatory programs protecting air, water, land, as well as our non-regulatory assistance programs, including technical assistance to businesses and local governments, grants for water and wastewater, for electric school buses, charging infrastructure, and environmental education.

There is so much this Department does, and I would love to talk about all of it, but I could fill up the full hour, Stan, talking about that, and I figured nobody wanted to hear all of that. So, today, I'm going to focus on some of the water quality challenges and opportunities that we're facing: looking specifically at the challenges that we're facing with emerging compounds, the opportunities that we have with the record investment of infrastructure funding, and the partnerships that are driving our efforts to improve water quality and address flooding in our state.

I'm going to start with a topic I know is top of mind for us right now, which is PFAS, or "forever chemicals." This year, earlier this year here in North Carolina, EPA Administrator and former DEQ Secretary Michael Regan came here to announce proposed federal drinking water standards for a number of PFAS compounds. This is the result of efforts going back to 2017, when GenX, a PFAS compound, was found in the Cape Fear River as a result of operations from the Chemours facility. This is where a lot of this work began for us.

In North Carolina, we've been a leader by necessity because we dealt with that early on, and we have a PFAS manufacturer in our state. We knew, based on EPA's strategic roadmap, that we were going to see federal action on drinking water standards, and so we've been working across the state to make sure North Carolina is ready to meet those.

Under North Carolina's action strategy for PFAS, we have three priorities: research, regulate, and remediate. We want to find out where it is and make sure we've got the data and the science to make decisions; we want to make sure that we're taking steps to regulate these compounds, since it's better to stop the releases in the first place than to clean them up after the fact; and we want to remediate the current PFAS contamination that's already out there. Underlying all of that is making sure that we're protecting North Carolina's communities.

We've been anticipating that federal proposed Maximum Contaminant Level announcement, and we started working with public water systems throughout our state. We used 2019 data collected by the North Carolina Collaboratory to see which systems were looking like they were going to exceed that minimum reporting level of four parts per trillion. There were 50 total systems that we tested; of those 50, 43 will not meet the proposed federal drinking water standards. We also can't forget that we have a number of small water systems throughout the state, too, so we've been in the process of testing those, over 600, and so far about 20% of those are coming back as having levels that will exceed the proposed MCLs.

At the same time, we're also taking regulatory actions to address the sources of PFAS contamination in our state. When I talk to businesses, I tell them a couple of things. One is. a



healthy environment and healthy economy go hand in hand. We have to have one to support the other. The other is, you need to know what's in your discharge; you need to know what's coming out of your facility. Ignorance is not a defense, and knowing what's in your discharge is going to save a lot of headaches down the road.

To that end, we are taking a close look at all the facilities that are coming into the state. One piece of good news: North Carolina is a great place to be. CNBC has named it, for the second year in a row, the best state in the country for doing business, which is pretty remarkable. At the same time, that means that our responsibility as an agency is very high. We have to make sure that we are protecting residents as these industries come in, to make sure that we are not exacerbating the current issues that residents across the states are dealing with.

So, we've added permit conditions where appropriate to address potential PFAS discharges from air emissions or wastewater, and requiring additional disclosure and monitoring. Because we know firsthand, it is cheaper, more cost-effective to prevent those releases in the first place than to clean them up after the fact.

There was a study done by my counterparts in Minnesota recently, and I thought this was interesting. It costs \$50 to \$1,000 per pound to buy PFAS and make consumer products. It costs, get this, \$2.7 million to \$18 million per pound to remove and destroy PFAS from municipal wastewater. It is a huge cost disparity.

So, as we're looking to remediate existing PFAS contamination, we are prioritizing those locations where PFAS have been used or discharged, and we are having to go through a pretty extensive process to identify where those locations are. But we are doing other things to help us with that process, like requiring most landfills to include PFAS analyses for their samples going forward. And that data is going to help us make more informed, data-driven decisions going forward.

We are also providing technical assistance and utilizing the federal funding that we have to help communities, especially our public water systems, get ready for those drinking water standards that are coming down the pipeline. We have experience with Cape Fear Public Utility Authority and with Brunswick County and what it takes to actually implement treatment technologies. We know that this is not an overnight process; it takes doing research to see what types of, what mix of PFAS are you seeing coming in, which technology is going to work best, and how to design it. We're trying to make sure that all of North Carolina's systems are right ready to go because once those MCLs are finalized, typically you have three years to come into compliance and those three years will go by quickly. Our goal is to make sure that all of North Carolina is in compliance with those standards at that point.

When we're thinking about these water systems, PFAS is not the only issue they're facing. A lot of these systems were put in the ground many, many years ago and out of sight, out of mind. The only time people like to think about their water infrastructure is when they turn on the tap and water doesn't come out, or they've got other contamination issues, or if you can't flush the toilet. Right? That's the only time you tend to think about it. And unfortunately, that's been the case not just in North Carolina but across the country.



Fortunately for us, North Carolina has received significant funding for this between state and federal dollars, perhaps more than any other state in the country. We've got a great opportunity, and I won't go into the other opportunities we've had through the Inflation Reduction Act and Bipartisan Infrastructure Law grants that are upcoming for things like electric vehicles and charging infrastructure, and many other opportunities with the historic federal funding initiatives that have come down. But when you add in state appropriations and couple that with the federal appropriations we've gotten, North Carolina DEQ has received \$5.6 billion, that's billion with a B, for water and wastewater infrastructure in North Carolina.

This sounds like a lot of money. It is a lot of money. Don't get me wrong: we are grateful for this. It is a down payment on what the state needs. The latest study we have, from 2017 that we're in the process of updating right now, so this was before some of the storms, and not including PFAS, estimates \$17 to \$26 billion in needs just to take care of the water infrastructure that is in the ground today. That's not including roads; that's not including all the other challenges we have. And so, \$5.6 billion is important, it is a down payment. We need more, but we are making sure that this funding is reaching the communities that need it the most.

We want to make sure that the communities that have been bypassed over the years from water and wastewater service have an opportunity to benefit from this funding. We are very proud that, after changing our process of how we're going about distributing the funding, we have over 2000 residents that are slated to be connected to public water for the very first time as a result of this historic level of investment. This is going to help us make sure that we are correcting inequities over the years, that we're able to address areas that have contamination concerns, and that we're addressing the outdated infrastructure that is causing groundwater contamination and is not able to withstand the more frequent and more intense storm events that we're seeing. It is going to make us more resilient as a state.

Our staff has been really dedicated and working overtime to make sure that we get all of that funding out the door and into the hands of communities to use as quickly as possible. All of this investment shows that we do have really strong support from both the state and federal level. Water quality is a multifaceted, and at times, a very challenging issue, but with strong partnerships in both the public and the private sectors, we're working to tackle those issues and make progress together.

Another area that demonstrates the power of partnership in a great way is through our Coastal Habitat Protection Plan process, which is DEQ's cross cutting effort to increase the health of our coastal ecosystems through building more community resilience. The recommended actions from that plan range from addressing habitat, implementing protective measures, ensuring compliance with existing rules, and maintaining and renovating wastewater infrastructure. We know that there are multiple sources that are contributing to contamination and habitat degradation over time, which is why—we call it the “CHIP” [CHPP], that's how we affectionately refer to this plan. It takes a holistic view to make sure that we are addressing issues that are handled traditionally under different jurisdictions and that we've got good coordination and partnership among those jurisdictions.

The initial adoption of the CHPP in 2004 was a joint effort approved by three commissions: the Environmental Management Commission, the Marine Fisheries Commission, and the Coastal



Resources Commission. These commissions--and by the way, to get three commissions to work together is no small feat, our former EMC chair can tell you that over here--these commissions just adopted a resolution advocating for more funding to help landowners manage and reduce runoff in state waters. That resolution was developed as a result of a public-private partnership. And again, the CHPP is such a great example of a public-private partnership in action. Everybody has a different role, but we are all working together towards a common goal. Collaboration is key; not just for the CHPP, but for all of the ongoing initiatives that are doing complementary work, including the Climate Risk and Resiliency Plan, the Natural Working Lands Action Plan, and the Flood Resiliency Blueprint.

The Flood Resiliency Blueprint is something that I'm particularly excited about. It is a statewide initiative to address flooding in North Carolina. It's really the first of its kind in the country, the largest statewide flood mitigation investment in our history as a state. The intention of the Blueprint is to be a tool to get policymakers, from communities to a state level, to adopt tools and strategies to increase flooding resiliency and mitigate the impact when storms happen. With better data, better models, better planning, we can help our residents and our communities recover from storms more quickly.

The Flood Resiliency Blueprint, which got a \$20 million appropriation for us to build a couple of years ago, shows that there's statewide support for initiatives that address the issues facing communities dealing with increased flooding and with water quality issues. Those partnerships are critically important as we're navigating the shifting landscape regarding wetlands. It's going to take all of us working together to ensure that environmentally significant places are protected, even as the state and federal rules around them continue to change. We are working through those processes now, but I promise you we're going to be on the positive side.

Some of our other programs that got additional resources in the budget, that are going to enable us to make more progress, include \$10 million for the Resilient Coastal Communities Program. This initiative provides funding to local governments, and will help them overcome the barriers in coastal resilience and adaptation planning, boost local government capacity, and support a proactive, sustainable, and equitable approach to coastal resilience planning and project implementation. A few years into this initiative, I'll tell you, we're seeing great results from the 20 coastal counties.

We're dealing with a lot of big, complex issues when it comes to our water quality, like PFAS and climate change. It's going to take the power of partnerships for us to work together and bring people together to find common ground, and that all starts with good communication. Engaging with stakeholders and communities is key to addressing environmental justice and equity in our work. That's a crucial part of what we do at DEQ. It's an effort to make sure that all voices are heard, especially those that are from historically underserved communities.

I will tell you from experience that the input that we receive from community members as a result of our work on environmental justice broadens our perspective and helps us do our job better, to carry out our mission at our agency, and more effectively serve everyone. I was with the Governor just a few weeks ago as he was signing Executive Order 292, which is a great executive order meant to advance environmental justice in North Carolina as a "whole of government" approach. Recognizing that environmental justice goes beyond just DEQ, folks



think environmental justice and think environment, but there's so many other aspects of what we do as a state government that goes into supporting communities, like whether or not they have access to broadband or health care. The governor has been a fantastic champion on this, and we're glad to be supportive of him and those efforts. It's clear that more proactive community engagement on the front end leads to better outcomes and fewer issues down the road.

All of these programs I talked about today require us to engage with our community of partners and stakeholders, but they also require us to have adequate resources to tackle these challenges. We've been doing everything we can as a department to streamline and modernize our processes to better serve North Carolinians. You'll often hear me tell you that we've got the best team in state government, and I mean that. I will put the team that we've got at DEQ against any team in state government, in any state.

But like the rest of state government, DEQ faces a number of challenges when it comes to day-to-day operations. On top of looking at the aging workforce--I was telling Stan earlier a third of our workforce is eligible to retire in the next five years--we're very happy that we just finally got the first fee increases since 2007. Since so much of our department's budget is dependent on that fee revenue, that has significantly hampered our ability to recruit and keep highly qualified candidates. This change will help us address that and make sure that we're addressing pay at the agency.

Another big part of this is looking at how are we modernizing, how are we handling data. We handle vast amounts of data as an agency, and one of my top priorities has been modernizing how we handle that data, unifying our different databases, and making information more accessible to the public. Now, this legislative funding cycle just gave us funding for this initiative. So, I'm excited to see that we're going to be able to do even more. We've got an online permit transformation program going on that just got another \$11 million worth of funding. We also got about \$1 million recurring about \$5 million nonrecurring in funding specifically for our data modernization initiative, to move our information online. I cannot tell you how excited I am about this.

We're going to be building on work that we've already done. Last week, we launched Access DEQ, which is our online hub that's going to bring together the online permitting program, our public records, and our data tools. With this new funding, with this new website, we're going to be able to do even more as an agency to bring our environmental monitoring, permitting, and other crucial functions into the 21st century.

It is critical that we have resources, partnerships, to protect water quality, habitats, to make sure we've got safe drinking water, and to build resilience for the future because the work that we're doing is not optional. We don't get to choose whether we're doing it; this is our core mission. Whatever challenges come our way, from whatever direction, this work continues. So, I'm excited again to be here today with folks who care about these issues as well. I appreciate the work you all do to help protect our natural resources and appreciate the time that you gave me here today.

Thank you.





**Stan Meiburg:** Thank you very much, Secretary Biser. We really appreciate your being with us today. You have two people here who will vouch for you, and a few of us who've been around a while know how many demands there are on your own particular schedule and agenda. That was quite a cook's tour through the work that the department is doing!

There's so much to be proud of, and we particularly appreciate the work that you're doing on behalf of the State of North Carolina and representing states nationally as the President of ECOS, which I think I forgot to mention. For those of you who are the aficionados, you need to know that the presidency of ECOS is one that rotates among state directors of environmental quality across the country. For Elizabeth to become the President in a very short period of time is a great credit to the fact that she works effectively across many different states and interests. It's also a credit to the fact that she gets to work with Wake Forest alumnus Ben Grumbles, so that's a shout-out for Ben, in the course of her ECOS role as well. So, thank you very much for taking that on.