



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

November 22, 2017

Donald van der Vaart
(Personnel Number: 1147256)
Mail Service Center 1641
Raleigh, NC 27699

Dear Dr. van der Vaart:

This letter is a formal notice of a scheduled Pre-Disciplinary Conference (PDC) to be held on November 28, 2017 at 3:00 pm in Green Square, Focus Room, Room 1102. Ursula Hairston, the DEQ Human Resources Director, and I will be conducting this meeting. The purpose of this conference is to give you an opportunity to respond to the recommended disciplinary action up to and including dismissal. In accordance with State Human Resources Policy, attorneys are not allowed to be present during the pre-disciplinary conference.

Dismissal is being recommended based on unacceptable personal conduct as defined in Section 7, pages 3-4 of the State Human Resources Manual.

Incident Resulting in This Pre-Disciplinary Conference:

You co-authored a lengthy commentary in a legal journal, *The Environmental Law Reporter*, entitled "Prevention of Significant Deterioration: A Case for Repeal" that was released in September 2017. This published commentary expressed your own opinions regarding matters affecting a Division of Air Quality permitting program, Prevention of Significant Deterioration (PSD), that the Division of Air Quality executes in accordance with the directives of the US Environmental Protection Agency. Specifically, your division addresses compliance with permits issued under the PSD program. You commented on matters over which you, in your position as Section Chief, make decisions that impact the public's use and the public's ability to trust the credibility of the information the department is providing on issues related to compliance with permits granted under the PSD program. It further calls into question the department's ability to impartially conduct its oversight activities in compliance with federal, state, and local regulations.

Your role as a section chief specifically directs you to provide "technical and policy support related to air quality compliance activities" to your division director and deputy director. You are also expected to alert leadership to potential issues or areas of concern within the section.

You failed to provide any notice of concern or inquiry about this topic to the department at all. Yet, you publicly expressed great concern about it and used your current and previous DEQ titles in the published commentary. Your use of a small print disclaimer stating that your views may not represent the views of the department is inadequate to separate the views you expressed as a matter of personal concern in the published commentary from the required compliance activities of this department due to the placement and manner in which your current employer and job titles were used to add credibility to your authorship of the commentary. This action creates confusion for the public and compromises the perception of fairness and impartiality that this department needs to effectively carry out its regulatory obligations.

On September 12, 2017, you met with the division director to discuss your participation in presenting a topic for a public presentation on your personal time on an Air Quality related topic. The purpose of that meeting was to clarify and it underscored the importance of the separation between your personal opinions and any real or perceived message of the department conveyed through the presentation. It is highly reasonable to expect that you would have taken the same or similar course of action in regards to the submission of this journal commentary.

In addition, we have become aware of your nomination to various scientific boards without timely and appropriate discussion with this department.

Next Steps:

You will have the right to respond to this proposal in the Pre-Disciplinary Conference and offer information. Your response will be reviewed and considered before a final decision is made. Please be aware that the pre-dismissal conference *cannot* be recorded as stated in the State Human Resources Manual, Section 7, Page 9. If you do not attend the conference and have not discussed rescheduling, a decision will be made based on the information available. You may contact Ursula Hairston, Human Resources Director at 919-707-8303 if you have questions about this process.

Sincerely,



Michael S. Regan, Secretary

cc: Sheila Holman, Assistant Secretary for the Environment
Personnel File