

**Meeting Minutes of the
North Carolina Mining and Energy Commission
January 25, 2013
Ground Floor Hearing Room
Archdale Building
Raleigh, North Carolina
9:00 am – 2:00 pm**

1. Preliminary Matters

Vice-Chairman George Howard called the meeting of the North Carolina Mining and Energy Commission to order at 9:05 am. He advised the Commission that he would be presiding over the meeting in Chairman Jim Womack's absence. The meeting began with the Pledge of Allegiance, followed by a moment of silence. Mr. Howard welcomed Commission members and others attending the meeting.

Vice-Chairman Howard read the excerpt of the State Government Ethics Act, and asked Commission Members to consider whether or not they had a conflict of interest with respect to any action items on the agenda. No conflicts were raised.

Vice-Chairman Howard advised that the public would be allotted a specified time to present comments. He instructed that anyone wishing to do so would have to add his or her name to the public comment sign-in sheet. Although this sheet remained available during the entire meeting, no names were written on it. As a result, no public comments were offered.

The following persons were in attendance for all or part of the meeting.

Commission Members

Mr. George Howard (Vice Chair, substituting as Chair)
Ms. Charlotte A. Mitchell
Mr. Charles Taylor
Mr. Charles Holbrook
Dr. Robert Mensah-Biney
Dr. Kenneth B. Taylor
Ms. Amy E. Pickle
Dr. Ray Covington
Mr. Ivan K. Gilmore
Dr. Vikram Rao
Dr. Marva Price
Ms. Jane Lewis-Raymond (via telephone)

DENR Staff Members

Mr. Mitch Gillespie (Assistant Secretary for the Environment)
Mr. Tracy Davis
Mr. Mell Nevils

Mr. Toby Vinson
Mr. Walt Haven
Ms. Katherine Marciniak
Ms. Trina Ozer
Ms. Brenda Harris
Ms. Debra Godwin

The Attorney General's Office

Ms. Jennie Wilhelm Hauser

Others in Attendance

See attached sign in sheets.

2. Approval of December 19, 2012 Minutes

Dr. Kenneth Taylor made a motion to approve the minutes from the last meeting. His motion was seconded by Ms. Pickle. The motion passed with no dissenting votes.

3. Remarks by Newly Appointed Assistant Secretary for the Environment, Mitch Gillespie

Assistant Secretary Mitch Gillespie stated that he would be overseeing the environmental regulatory divisions within DENR and working with the Mining and Energy Commission. Additionally, he explained his background with the General Assembly and his current role in assisting with the implementation of the Department's new mission statement regarding customer service and assistance.

As follow-up to the prior Commission meeting, Vice-Chairman Howard presented text for a "thank you" letter to Governor Bill Ritter, to express appreciation from the Commission for the Governor's presentation during the December 19, 2012 meeting. Dr. Kenneth Taylor recommended edits to the letter, to which the Commission agreed. Dr. Taylor then made a motion, seconded by Dr. Marva Price, to pass a resolution to place the letter with his edits on DENR letterhead. The motion passed with no dissenting votes.

4. Committee Reports

Water & Waste Management Committee – Vikram Rao, Committee Chairman

Dr. Vikram Rao stated that his committee divided the regulatory work loads into two "buckets": (1) water access and use and (2) proper disposal of wastes. The majority of discussion centered on bucket (1), water access and use. He further stated that draft rules related to water use would be presented at the next meeting on March 7. Additionally, his committee plans to continue researching the following:

- (a) A comparison of the costs, logistics, and other elements for treatment and discharge. Specifically, the treatment of flowback water and the reuse or discharge of flowback

water, including costs associated with reusing/recycling versus discharging flowback water, without reusing it;

- (b) If the wastewater reuse law that is defined by State statute could be amended or if a variance could be requested so that highly treated wastewater could potentially be used in hydraulic fracturing fluids;
- (c) Ways to incentivize the use of alternate fresh water sources and encourage the General Assembly to devise alternatives;
- (d) Creating a reporting process for the submittal and review of plans for using alternative water sources that is effective and efficient and allows for public access to related records;
- (e) Best practices for water storage.

Vice-Chairman Howard asked the Commission if they agreed to direct staff to draft rule language on the first bucket for the next committee meeting on March 7. All stated agreement.

Vice-Chairman Howard questioned if Commission members, staff, and the general public could submit draft rule amendments to Katherine Marciniak, and if it would be permissible to bring the changes to the Commission legally. Ms. Amy Pickle advised that only non-contradictory statements from the Commissioner's input could be worked into the document. Following discussion on changes to the master document, Mr. Nevils suggested that comments from the Commissioners be sent to staff who would put comments in different colors from each Commission member and that this information would be posted for public view on the MEC webpage. The document with the amendments would be sent to Dr. Rao first before being submitted to others.

Dr. Price asked about alternatives related to the amount of water used due to local droughts. She also stated that alternatives would be an important element when considering incentives related to water use. Additionally, she explained that operators should be made aware of alternative strategies for water use.

Vice-Chairman Howard stated that "FracFocus" would be the best practical technology to promulgate information about hydraulic fracturing fluids, along with posts on the DENR website. Vice-Chairmen Howard and Dr. Rao also discussed the desire for the incorporation of new technology, in particular the use of "DNA tags" for the identification and tracking of fracturing fluids.

Dr. Rao stated his concerns regarding the 5,000 foot presumptive liability distance (referenced in Session Law 2012-143) and the nearly three square miles around the well that radius would encompass. He also explained that chemical testing parameters would need to be defined.

Administration of Oil and Gas Committee – Charles Holbrook, Committee Chairman

Mr. Holbrook addressed the Commission on the seventeen rule drafting areas or "buckets" that have been tasked to the Administration of Oil and Gas Committee. The seventeen rule

“buckets” were parceled out to individual committee members who bore the responsibility to review them and submit their comments to him. Mr. Holbrook expressed that there are many areas where the responsibilities of the different Committees overlap.

He stated that rule “bucket” #7, “Appropriate Construction Standards for Oil and Gas Wells” was broad in scope and would include the infrastructure surrounding the construction of the well. Due to the scope of this requirement, Mr. Holbrook tasked DENR staff with studying the best management practices used in three other states concerning well construction and development. These findings will be presented at the March 7 committee meeting.

Mr. Holbrook explained that an engineer with 40 years of experience in the oil and gas industry had volunteered to assist the committee. Mr. Holbrook also mentioned that he would contact this person and discuss how he might be able to contribute.

MEC Vice-Chairman Howard asked when a set of draft rules would be available. Mr. Holbrook stated that once input from the committee members was received and all contributions on the regulation requirements were collected, it would be discussed at the next committee meeting on March 7. Further, he stated that he would coordinate with DENR staff and with the Rules Committee Chairwoman, Ms. Amy Pickle as rule language development progresses.

Ms. Lewis-Raymond questioned if staff would be able to handle the draft revisions before the next meeting. Mr. Holbrook stated that all committee members should be working on their assigned topic areas and should submit their findings to him to be compiled into the work document. Mr. Nevils stated staff would help research the rules in other states in regard to well construction (rule requirement #7). Ms. Ozer restated that DENR staff will be researching “bucket” #7 and will report findings at the next Committee meeting.

Environmental Standards Committee – George Howard, Committee Chairman and MEC Vice-Chairman

Before Vice-Chairman Howard addressed updates from the Environmental Standards Committee, he stated that DENR staff presenters were bringing a large volume of information with too many PowerPoint slides in their presentations. He requested that there be no more than six slides each so as to allow for more discussion time. He requested that staff presenting, or coordinating presentations, limit presentations to 5 minutes and allow for 10 minutes of discussion. Dr. Rao also requested that presentation materials be made available sooner to allow for advanced reading.

Vice-Chairman Howard stated that his committee meeting was organized into three parts, with the first two related to background and baseline testing. The third part involved the draft chemical disclosure rules as presented by DENR staff. He stated he was exploring the requirement to have North Carolina’s baseline testing regime require testing of every water source within 5,000 feet of an oil or gas well, a greater distance than any other similar state regulation. Additionally, follow-up testing would be conducted within one year after

operations began. However, his committee is considering reducing follow-up testing to a frequency of every two to three years. The Commission discussed the use of tracers for the identification and tracking of hydraulic fracturing fluids. Vice-Chairman Howard then stressed that the baseline testing requirements should be robust and that he would be working on drawing up the language for these rules, to be discussed at the next Environmental Standards Committee meeting.

The proposed chemical disclosure rules were discussed, along with the obligation of committee members to submit their comments for discussion at the next meeting. The stakeholder comments would also be incorporated into the document, with some changes based on the recommendations presented by Assistant Secretary Gillespie.

Ms. Pickle stated that the one mile retesting requirement was the strongest in the nation. She also suggested that the committee could reach some general agreement with baseline testing and move on to the next subject, such as banning the use of specified chemicals (i.e. diesel) in the well stimulation process. Dr. Rao noted that the bulk of diesel fuel has a long chain of compounds and a better definition is needed to address them. Further, he agreed to assist DENR staff on the list.

Rules Committee – Amy Pickle, Committee Chairwoman

Chairwoman Pickle addressed the Commission concerning a rule framework outline, which had been developed in her committee. Ms. Pickle further requested that draft rules from other committees should already be in a rule format style, before being relinquished to the Rules Committee. She further stated that the role of the Rules Committee would be to assist and review rules for clarity and consistency.

Dr. Rao asked at what point in the writing process the Rules Committee wanted draft rules for water usage. Ms. Pickle stated that rules should not be submitted to the Rules Committee for formal review until the subject committee has approved them. However, the Rules Committee would provide assistance during any part of the drafting process.

5. Study Group Reports

Local Government Study Group: Charles Taylor, Chairman

Mr. Taylor stated that during his committee's January 16 meeting, presentations focused on extra territorial jurisdictions (ETJs) and a report from NCDOT on an infrastructure assessment trip to Pennsylvania. He recommended that the DOT presentation be viewed by the Commission, as it addressed impacts on infrastructure, the roles and concerns of NCDOT, changes in traffic patterns, and interactions between local governments and oil and gas companies.

He explained that the upcoming agenda would include discussion of ordinances such as those related to noise and zoning, taxes and fees, and a rough draft of the study group report framework. Mr. Taylor further described how public comments were expressed through the submittal of written questions being read by the chairman of the study group. The next meeting of this study group has been scheduled for February 15, 2013.

Compulsory Pooling - Dr. Ray Covington

The last Compulsory Pooling Study Group meeting was held on January 11, 2013 in Sanford, NC. Dr. Covington reported that the meeting style was “casual” and meant to allow for people to voice their opinions and comments. However, a number of meeting attendees behaved in a rude and unprofessional manner. As a result, Dr. Covington explained that his next meeting would have a more structured public comment style to help prevent any unruly activities.

During the first study group meeting held on December 19, 2012, Dr. Taylor, Trina Ozer, and Lynne Weaver presented on compulsory pooling related to shale plays, pooling applications throughout the US, and current pooling laws in North Carolina. These presentations will be posted to the MEC webpage for public view.

At the second meeting, held on January 11, 2013, the group also addressed pooling laws throughout the United States, the expansion of the study group, and other sources of information and assistance. Dr. Covington stated that Ms. Allison Saito provided information concerning pooling practices across the United States. Additionally, James Robinson and John Humphrey presented on landowner rights issues, which included a flow chart showing the land lease process for a typical land owner.

The study group has been expanded to include the following resource members:

- Lynne Weaver, Consumer Protection Division of the Department of Justice
- John Humphrey, property lawyer
- James Robinson, RAFI-USA
- Grady McCallie, North Carolina Conservation Network
- Ted Feitshans, Department of Agricultural & Resource Economics, NCSU
- Don Kovasckitz, Director of Strategic Services for Lee County
- NC Bankers Association
- NC Insurance Commissioner Counsel
- NC Real Estate Commission - pending
- Oil and Gas Industry Experts - pending
- National Association of Royalty Owners - pending

The next meeting is scheduled for February 8 from 9 am to 12 pm, at a location to be determined. Topics for discussion will include mortgages and compulsory pooling, as well as severed estates.

Funding Levels and Potential Funding Sources – Ms. Jane Lewis-Raymond, Committee Chairwoman

Ms. Lewis-Raymond explained that her next study group meeting is scheduled for January 31 in Raleigh from 3:00 to 5:00 pm. The agenda has been posted on the MEC webpage. Topics for discussion will include an outline for the study report, funding and costs associated with impacts, and a comparison of bonding implementation from different states. Dates for the next two meetings were announced: February 20 and March 22, 2013.

6. Presentations from the Division of Air Quality (DAQ), Division of Waste Management (DWM), and Division of Water Quality (DWQ) – Sheila Holman, Dexter Matthews, and Chuck Wakild, respectively.

Ms. Holman explained the current framework of DAQ regulations and standards. She stated that the current framework is probably sufficient to address future oil and gas operations, but that minor rule revisions may eventually be required. She also explained that DAQ will need to consider the new emissions guidelines once the U.S. Environmental Protection Agency releases its new standards.

Ms. Holman also stated that the current regional network of ambient air monitoring stations needs to be expanded with a station added in Lee County to account for oil and gas activities. Her staff is currently investigating the costs and components for this additional monitoring station and can provide an update at a later date.

Mr. Matthews outlined the missions and functions of programs within DWM that may have some involvement with oil and gas operations, such as Hazardous Waste, Solid Waste, Underground Storage Tanks, and Brownfields. However, he noted that the oil and gas industry is generally considered as legally exempt from hazardous waste-related rules. Mr. Matthews further stated that in North Carolina, solid waste landfills would cover anything discarded from a facility, either through onsite industrial solid waste landfills or offsite municipal solid waste landfills.

The Commission discussed the types of wastes that may be generated (such as drill cuttings and fracturing fluids) and areas where permit requirements might need improvement. Permit requirements may need to address disposal facilities currently allowed to handle waste and the containment of wastes onsite prior to disposal. Ms. Mitchell and Dr. Rao asked about the classification of the residuals from the treatment of wastewater onsite (solids that drop out in settling ponds). Mr. Matthews responded that such waste would be exempt from hazardous waste classification, but that the waste may still be dangerous and should be disposed of accordingly.

Mr. Wakild discussed DWQ's current efforts to examine current rules and to assess future rule writing needs related to oil and gas operations. Future rules would probably address

stormwater related to oil and gas site development and would be under the purview of the Environmental Management Commission.

The Commission discussed the use of flowback water and the recycling of water for onsite use. Mr. Wakild stated that if reuse were the intended purpose of the fluids, then such fluids are not classified as “waste.” The designation of “waste” would become applicable at the point where the fluids are to be disposed through either a treatment facility or via post-treatment discharge. Ms. Ozer stated that Dr. Rao had previously asked if wastewater from other facilities could be used as part of the hydraulic fracturing fluid. Mr. Wakild said that this type of wastewater could be a potential water source and that reclaimed water treatment standards may or may not be applicable. The Commission was advised to look at the reuse rules and standards for further clarification. Ms. Pickle mentioned that the use of wastewater with respect to well injection may still be legally prohibited and may require some level of onsite pretreatment prior to discharge or transport to treatment facilities.

7. Concluding Remarks

Vice-Chairman Howard expressed his concerns regarding the stakeholder group, which he said is composed of government representatives and special interests. Dr. Rao asked if Mr. Howard had a better procedure for consulting with the stakeholder group. Mr. Howard said that the stakeholders should be present at the regular MEC meetings if they are going to contribute outside of the meetings in a separate process.

Ms. Pickle asked to move this discussion on stakeholder involvement to the next meeting and to adjourn due to inclement weather. Mr. Holbrook made a motion to adjourn that was seconded by Dr. Covington. The motion passed with no dissenting votes.

Meeting was adjourned at 12:30 pm.

Respectfully Submitted,

Debra W. Godwin
Division of Energy, Mineral, and Land Resources

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Director, Division of Energy, Mineral, and Land Resources