

**Meeting Minutes of the Environmental Standards Committee of the  
North Carolina Mining and Energy Commission  
September 5, 2013**

**1. Preliminary Matters**

Committee Chairman Mr. George Howard called the meeting to order at 1:00 p.m. He read the ethics statement and asked Committee members whether or not they had conflicts of interest with respect to any action items on the agenda. Mr. Howard noted a recent purchase by his company of a prairie chicken company, which could potentially result in his future business arrangements with the oil and gas industry. He is already coordinating consultative efforts with Ms. Jennie Hauser and the State Ethics Commission.

No other potential conflicts were expressed. Chairman Howard invited members of the public who wished to formally address the Committee to sign their names to the “public speakers” sign-in sheet.

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

**Committee Members Present**

Mr. George Howard, Chairman  
Dr. Ray Covington , Vice Chair  
Dr. Vikram Rao  
Dr. Kenneth Taylor  
Ms. Amy Pickle  
Ms. Charlotte Mitchell

**Attorney General’s Office**

Mary Lucas (legal counsel)

**DENR Staff Members**

Trina Ozer Matta, Office of the Secretary  
Layla Cummings, Office of the Secretary  
Walt Haven, DEMLR  
Katherine Marciniak, DEMLR  
Ryan Channell, DEMLR  
Rosalind Harris, DEMLR

**Others in Attendance**

Refer to the meeting sign in sheets (attached to these minutes).

**2. Background and Introduction**

Chairman Howard reviewed the meeting agenda and his plans for his Committee meeting.

**3. Approval of Minutes from Last Meeting**

Dr. Kenneth Taylor made a motion to approve the minutes and Dr. Ray Covington seconded. The motion passed.

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**4. Presentation and Discussion of Draft Setback Rules**

Ms. Katherine Marciniak led Committee discussion regarding the draft setback rule (see presentation attached to these minutes). She provided an overview of these draft rules and addressed the following matters:

- a. Definitions related to setbacks;
- b. Setback distances;
- c. Facility setback distances;
- d. Setbacks within a well site;
- e. Potential conflicts between draft rule sections .XXX1 (Setback Distances) and .XXX2 (Facility Safety Setback Distances);
- f. Setbacks from surface water bodies;
- g. Specific setback rules from AL, AR, CO, OH, PA, CA, TX, WY, and NY;

Ms. Marciniak noted that she did not find API standards for environmental setbacks. She also explained that some states allow local authorities to have complete jurisdiction over setbacks. The Committee noted that the Local Government Regulation Study Group was recommending that the Mining & Energy Commission (MEC) adopt state setback rules, with the ability for variances to be granted when appropriate. However, the Committee could still decide to allow local governments the authority to determine setback standards. It was noted that recent legislative action limits the authority of local governments to regulate oil and gas activities.

The Committee discussed the authority for the MEC or the Department to grant variances. However, such authority is not clear within Session Law 2012-143. Ms. Pickle explained that a legal analysis regarding variance authority was needed to allow for proper decision making.

Concern was raised over the potential abuse of a variance, whereby a mineral rights owner requests a setback waiver and where the respective surface owner has no opportunity to oppose the waiver. Mr. Womack stated that the surface owner should be the entity around which setback standards are designed.

The Committee discussed which state would be the best proxy for North Carolina and to use that states setback distances as a reference. Chairman Howard explained that was the strategy implemented to draft the rule set and that Ohio is generally the best proxy. Dr. Rao suggested using Ohio and/or Pennsylvania as a basis for determining setback rules.

Dr. Rao suggested using a setback related to large propane tanks as an example for establishing a setback between an oil or gas wells and a building. Discussion focused on the need for setback distances to be based on objective health and safety standards. Accident occurrences and distances based on safety could also be used to establish setbacks. Ms. Marciniak will review above ground tank farm standards for applicable setback distances. She also explained that her prior research indicated that few current setback standards in other rules were established on scientific basis. Mr. Tracy Davis suggested requiring companies to preform site modeling to determine setbacks specific for each site. However, Mr. Womack believes that such a process would result in lengthening the permit processing time.

Ms. Pickle noted that many current setbacks were based on the best professional judgment by the rule writers. She also acknowledged the difficulty in researching and finding peer-reviewed publications regarding setback distances. The Committee requested staff to provide justification for each

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suggested setback, which could relate to population density, demographics, safety, etc. for the next meeting. According to Resources for the Future, several states (i.e. CO and others) have updated setbacks in the last two years. These setbacks were doubled, but the reasons for the changing standards are uncertain. The Committee requested input from the Division of Air Quality to assist with determining proper setback standards.

Dr. Rao recommended considering vertical setbacks, but Chairman Howard mentioned that subsurface standards would be addressed by the Administration of Oil and Gas Committee. It was noted that vertical setbacks were already inherent in rules developed by the Administration of Oil and Gas Committee concerning well construction, but that the Environmental Standards Committee could provide suggestions to Mr. Holbrook.

Chairman Howard would like to add rule language prohibiting the installation of well pads in flood plains.

**5. Public Comment**

Therese Vick (Blue Ridge Environmental Defense League) – Ms. Vick expressed her belief that the setback numbers provided in the draft rules were too low. Ms. Vick asked about variances and whether a home purchaser or the home mortgage company was considered the property owner. She stated that no health risk assessment study had been completed and requested that all comments regarding the rule set development show all track changes for the setback rules and be placed on line. She mentioned a study from West Virginia showing that setbacks of 625 ft were not far enough.

Martha Girolami (Chatham County resident) – Ms. Girolami talked about health studies related to air quality and also explained that various chemicals become airborne from oil and gas wells, as well as from holding ponds. Children, pregnant women, and elderly people will have to vacate their homes due to oil and gas operations.

**6. Adjournment**

The Environmental Standards Committee adjourned the meeting at 2:40 pm.

**DENR Staff Contact for this Committee: Mr. Walt Haven, DEMLR**