

Meeting Minutes of the Protection of Trade Secret and Proprietary Information Study Group
of the
North Carolina Mining and Energy Commission
June 28, 2013
15 minutes following the adjournment of the MEC

1) Call to Order and Notice of NCGS 138A-15

Director Womack called the meeting of the Protection of Trade Secret and Proprietary Information Study Group to order at 3:08 pm in the Ground Floor Hearing Room of the Archdale Building in Raleigh, NC. Director Womack read the relevant excerpt of the State Government Ethics Act, and asked Commission Members to consider whether or not they had conflicts of interest with respect to any items on the agenda. No conflicts were reported.

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

Study Group Members:

James Womack, Director, MEC
Amy Pickle, MEC
Jane Lewis Raymond, MEC
Ward Lenz, State Energy Office
David Levine, Elon Law

Attorney General's Office:

Jennie Wilhelm Hauser (legal counsel)

DENR Staff Member:

Layla Cummings, Department of Environment and Natural Resources (DENR) Secretary's Office
Evan Kane, Division of Water Quality
Mike Abraczinskas, Division of Air Quality
Walt Haven, Division of Energy, Mineral and Land Resources (DEMLR)
Katherine Marciniak, DEMLR
Ryan Channell, DEMLR

Others in Attendance:

Refer to the attached meeting sign-in sheets.

2) Background and Introductions:

Director Womack welcomed Professor David Levine as an official member of the study group.

3) Approval of Minutes from June 7, 2013 Meeting:

Ms. Amy Pickle made a motion to approve the minutes and Director Womack seconded. The motion passed.

4) Review Division of Water Quality Trade Secret Policy:

Mr. Evan Kane discussed the Division's process for managing confidential and trade secret information. The Division of Water Quality (DWQ) attempts to provide as much information as possible to the public while retaining the necessary information as either confidential or a trade

secret. If a consultant uses a product considered confidential or a trade secret the supplier of the product has the option to provide the confidential or trade secret data directly to DENR so that the consultant/contractor never has access to the trade secret information. DWQ receives confidential and trade secret data based on the chemical abstract service number. The review process in DWQ involves two steps; determine if the material qualifies as a trade secret and determine if the material is safe to introduce to groundwater. Trade secret data is necessary for DWQ to design and model groundwater remediation projects accordingly. DWQ requires the applicant to send a copy of the “trade secret” material to the Department of Health for toxicological review. Trade secrets are stored in a locked filing cabinet and are not released to the public.

5) Review Division of Air Quality Trade Secret Policy:

Mr. Mike Abraczinskas discussed the Division of Air Quality’s (DAQ) process for managing confidential and trade secret information. The Division does not have a separate trade secret policy in place, but follows the guidelines in the North Carolina Public Records law. Emissions data cannot be labeled confidential information pursuant to §143-215.3C. The Division receives a request to hold data in confidence once every two to three years. The confidential/trade secret information is stored in a locked filing cabinet and is not released to the public.

6) Review Division of Waste Management Trade Secret Policy:

Ms. Layla Cummings discussed the Division’s process for managing confidential information. The Division receives requests to hold confidential information infrequently and does not challenge the request. The process utilized by the Division of Waste Management is similar to that of the DWQ and DAQ.

7) Review Department of Commerce Trade Secret Policy:

Mr. David Ebird discussed the Department of Commerce process for managing confidential and trade secret information. The Department of Commerce does not distinguish a difference between confidential and trade secret information. Competition sensitive information is held by the Department for 25 days before release to the public, but trade secrets are retained by the Department. Trade secrets are destroyed after a certain retention period, but never released to the public.

8) Discussion of Statutory Definitions:

Director Womack discussed the differences between how the State of North Carolina (NCGS § 66-152 & NCGS § 132-1.2) and the Federal Government (Code of Federal Regulations (CFR) § 1910.1200 – Hazard Communications) define trade secrets and confidential data. The study group discussed if there should be an attempt to combine or bridge the state and federal definitions and to extend the definitions beyond hazardous waste to include technology and processes. It was noted that North Dakota, Louisiana, and New Mexico cross reference the CFR in state rules. Professor Levine discussed how trade secrets have been defined in federal court. Discussion included the Department of Labor and the fact that all employers are required to adhere to OSHA policies. The MEC will not have to adopt rules for occupational activities.

9) Public Comment:

No one from the audience signed up for the public comment period.

10) Next Steps:

The following items were assigned to Staff for the next meeting:

- Research case law studies related to hydraulic fracturing operations;
- Invite a representative from the Department of Labor to discuss occupational rules related to trade secrets and proprietary information.

11) Adjournment:

Director Womack adjourned the meeting at 4:20 pm.

DEMLR Staff contact for this Committee: Ryan Channell – NCDENR.