

**MEETING OF THE NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION**

**Raleigh, North Carolina  
July 15, 2010  
Minutes**

The North Carolina Environmental Management Commission met in the Ground Floor Hearing Room of the Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina. Chairman, Stephen T. Smith presided. The following persons attended for all or part of the meeting:

**COMMISSION MEMBERS:**

Yvonne C. Bailey	Marion E. Deerhake	Dr. David H. Moreau	Dr. Charles H. Peterson
Donnie Brewer	Tom Ellis	Jeffrey V. Morse	Dickson Phillips III
Thomas F. Cecich	William L. Hall	Mayor Darryl D. Moss	Stephen Smith
Stan L. Crowe	Dr. Ernest W. Larkin	Dr. David B. Peden	Forrest R. Westall, Sr.
John S. Curry	Kevin Martin	Thomas H. Percival	

**DIVISION OF WATER QUALITY:**

Bradley Bennett	Mike Templeton	Tom Reeder	Jon Risgaard
Ted Bush	Bethany Georgoulis	Coleen Sullins	Diane Reid
Kevin Bowden	Connie Brower	Lois Thomas	Jeff Manning
Frances Candelaria	Gary Kreiser	Julie Ventaloro	
Alan Clark	Matt Matthews	Adriene Weaver	
Matthew Faerber	Sandra Moore	Chuck Wakild	
John Huisman	Rob Krebs	Elizabeth Kountis	

**SECRETARY OF STATE OFFICE:**

Deputy Secretary Michael R. Peeler

**DIVISION OF AIR QUALITY:**

Keith Overcash  
Michael Abraczinskas  
Joelle Burleson  
Paul Grable

**ATTORNEY GENERAL'S OFFICE:**

Frank Crawley

**Chairman Smith:** called the July 15, 2010 meeting to order at 9:05 a.m. He then read the Ethics General Statute § 138A-15, which mandates that the Chairman inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Commission. Commission members were asked if they knew of any conflict of interest or appearance of a conflict to please so state at this time.

**I. Preliminary Matters**

**Ms. Deerhake:** I will just repeat what I said at yesterday's committee meeting the hazardous medical waste incinerator rule that's coming before the Commission today if we approve the 30

day waiver that work on the contract to support the EPA on the promulgation package was done by my employer, RTA International but I did not work on that project. I discussed it with Mr. Crawley and he did not see that I had a conflict of interest.

**Chairman Smith:** We begin by welcoming our newest member **Mr. Thomas Percival**. He is a recent appointment by Senator Basnight and joins us today. He was here yesterday for committee meetings but he joins us for his first Commission meeting. We have Mr. Michael Peeler from Secretary of State Elaine Marshall's office and Mr. Percival if you would he will administer the Oath of Office to you. Thank you Mr. Peeler.

Welcome **Mr. Percival** and by way of introduction let me tell all of you that Mr. Percival lives in Lumberton. He is a registered and professional forester and a graduate of N. C. State University with a B.S. in Forestry and a B.S. in Natural Resource Recreation Management both from N. C. State. He has been a professional registered forester apparently since that time and presently owns Percival Land and Timber Consultants in Lumberton. He lives in Lumberton so he is a full time resident in the Lumber River Basin and he also owns a home in Ashe County so that he has a second home in the New River Basin. He will appreciate much of the work that we do on both ends of the state. So welcome Tom and we are glad to have you here.

**Chairman Smith:** Are there any additions or amendments to the minutes? Minutes came out a little late this session and that's entirely my responsibility. Lois got them well in time and they sat in my office for way too long.

**Forrest Westall:** I passed along to Lois this morning the emails with modifications to the minutes in sections where I had spoken to clarify a few things so with that I would recommend approval of the minutes. **Mayor Moss** seconded. The motion passed.

**Chairman Smith:** We also welcome the new director of the Division of Air Quality Sheila Holman. This is her first EMC meeting and she was here yesterday with us for the committee meetings. We are glad to have you here Sheila.

**Chairman Smith:** Any additions of amendments to the agenda? Hearing none the chairman proceeded with the meeting. He called the first action item 10-29 to discuss.

**Tom Ellis:** What I would like to do is in order to prevent repetition is include the process with items 1 and 2 at the same time. We can vote on them separately.

**Chairman Smith:** Well then, let me call item number two as well. We will hear Mr. Ellis' report on both of those and we will vote on them separately.

**10-29 Hearing Officer's Report on Amendments to the Prevention of Significant Deterioration and Sources in Nonattainment Areas Rules**

**10-30 Hearing Officer's Report on Amendments to Volatile Organic Compound (VOC) Rules (484)**

**Summary (Tom Ellis):** On April 27 and April 29, 2010 the Division of Air Quality and I held public hearings in Charlotte and Raleigh on amendments to the prevention of significant

deterioration rules and the new source review rules. The second hearing of each evening concerned adoption repeals and amendments to rules in subchapter 02D section 0900 that regulate volatile organic compound emissions. The public notice for these hearings had been advertised in the North Carolina Register and five newspapers in the state. Copies of the notice were sent to those on the official Division of Air Quality mailing list. The PSD requirements can be found in rule 15A NCAC 2D .0530 Prevention of Significant Deterioration and the NSR requirements can be found in rule 15A NCAC 02D .0531 Sources in Nonattainment Areas. The rule amendments were to clarify the installation of BACT which applies to all new natural gas-fired electrical utility generating units for which cost recovery is sought under the Clean Smokestacks Act, and to remove pollutant specific references that require sources to continue measures after an area's redesignation to attainment, and replace description of nonattainment areas with reference to 40 CFR 81.334 that identifies nonattainment areas. We received no comments on this set of rule modifications.

The second hearing of the evening dealt with modifications of 15A NCAC 2D section 0900 volatile organic compounds. Being considered were rule changes to incorporate EPA control technique guidelines level of reasonable available control technology to comply with section 172 (c) 1 and 182 (b) of the Clean Air Act. The Division of Air Quality is required under provisions of the Clean Air Act Section 172 (c) (1) to revise a state implementation plan in order to include an ozone attainment demonstration that will lead to attainment of the national ambient air quality standards for ozone. Section 182(b)(2) of the Clean Air Act provides that states must revise their ozone state implementation plan to include RACT for each category of volatile organic compound sources covered by any control technology guideline document issued after November 15, 1990 and prior to the date of attainment. After EPA revised the volatile organic compound regulations several times and the issuance of new source performance standards and national emission standards for hazardous air pollutants for related industries, it finally provided states with guidance concerning what types of controls would constitute reasonable available control technology for a given source category through the issuance of control technology guidelines to comply with the requirements of Section 182 (b)(2). EPA has issued 11 control technology guidelines since 2006. The changes in Section .0900 Volatile Organic Compounds, presented at this hearing addressed recommendations made in those 11 guidelines. For these amendments we received a few comments, two from representatives of industry and one from the Mecklenburg County Air Quality. There was a technical correction by EPA regarding the location of a decimal point. There were a few places where format needed to be realigned to fit with the administrative code. I will now ask Ms. Joelle Burleson to explain any modifications to the proposed rule.

**Joelle Burleson:** The majority of comments were related to typographical errors and those have been corrected and are reflected in the hearing record in the summary of comments and responses in chapter one. With respect to .0966, Paper, Film and Foil Coatings we deleted the definition of fabric coating because it is already defined and referenced in another rule, paragraph (d)(3) of that rule. We added clarification regarding applicability of the VOC limits in paragraph 02D .0912. The phrase "coating lines" and the word "applied" were added as explanatory clarification. In 2D .0967 the definitions for coating types consistent with the CTG were added in response to comment. In rule 02D .0968 the definition of automobile top coat protocol was added in subparagraph (a)(2). The decimal correction was also added in Table 1 of that rule and the coating content in gallons coating solids applied was corrected to 0.7 lbs per gallon. We also incorporated the EPA recommendations on VOC limits rate for categories of

pleasure craft surface coatings which were based on a California rule as included in the CTG. This was the area where comments were received from a representative of the pleasure craft coating industry. At the time, they had been pursuing a change with EPA and EPA responded in early June choosing not to change the CTG. We have stuck with the EPA recommendation in that respect. That covers the changes in the rule. There was one other area with respect to 2D .0961 Offset Lithographic Printing and Letterpress Printing. We did make a correction regarding the test method that can be used there and there's an option to use test method 25(a) that has been added to the rules consistent with our regular testing procedures.

**Motion (Tom Ellis):** I move for the adoption of the amendments to the prevention of significant deterioration and sources in nonattainment area rules as submitted. **Dr. Peterson** seconded.

**Chairman Smith:** Ms. Deerhake you might want to note that these rules came through the Air Quality Committee with a recommendation that we put them out to public hearing. They were aired to my recollection at length in the Air Quality Committee. It seems to me like these proposed rules have been around my entire career. Any discussion?

There was no discussion and the motion carried.

**Motion (Tom Ellis):** For the second item I would like to move for the adoption of the amendments to the volatile organic compounds rules as submitted. **Dr. Peterson** seconded.

**Chairman Smith:** Hearing no discussion the motion passed. I want to thank Mr. Ellis for the service on those two rules. As he said to me it was more comfortable dealing with water quality issues but he did not whine about taking an air quality hearing officer appointment. At least he didn't whine to me.

### **10-31 Request for 30-day Waiver, Request to Proceed to Hearing on Hospital, Medical, Infectious Waste Incinerator (HMIWI) Rule Amendments (491), and Discussion of Related County Resolutions**

**Summary (Paul Grable):** This public hearing request is to take proposed amendments to Rule 15A NCAC 02D .1206, Hospital, Medical, and Infectious Waste Incinerators to public hearing.

This rulemaking will amend the Rule to include the federal guidelines, "Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources. The final rule was published October 6, 2009 in the Federal Register. The federal guidelines require compliance no later than October 6, 2014. The State rule is required to be amended and effective October 6, 2010, however the earliest effective date we've determined will be January 1, 2011. Federal law requires these amendment actions. It strengthens the existing emission limits for all regulated pollutants including additional stack testing and monitoring requirements, requires visible emissions test of ash handling operations, includes new procedures for test data submittal, and revises waste management plan provisions. North Carolina has two HMIWI facilities currently operating under 02D .1206. The first is Stericycle which is located in Haw River, Alamance County. It operates two commercial incinerators that serve customers from eight states. The second facility is BMW in Mathews, North Carolina which is permitted and inspected by the Mecklenburg local air quality program. BMW operates one commercial incinerator and is in competition with Stericycle. Yesterday the Air Quality Committee voted at

their meeting to ask for public comments concerning the rule compliance date. That would be the date on which these incinerators would have to meet and be in compliance. The options are October 6, 2012 or 2014. The draft public notice and the draft rule with the new amendments have been modified to reflect the compliance date options. The rule changes and some other additional information are in the handout which you have before you. The Director recommends that the Commission consider a 30-day waiver on this rule and authorize a public hearing on these amendments and that the Chairman appoint a member of the Commission to serve as hearing officer.

**Chairman Smith:** Any questions for Mr. Grable?

**Ms. Deerhake:** We did address this yesterday and as a result because of the timing and the implementation date of the federal rules we believe it is necessary to request a 30-day waiver before we get into the discussion about the technical content. Would you like a motion for that Mr. Chairman?

**Chairman Smith:** Yes please.

**Motion (Ms. Deerhake):** On behalf of the Air Quality Committee I move for a 30-day waiver to discuss and carry this to the public comment period. **Mr. Curry** seconded.

**Chairman Smith:** asked for discussion and hearing none the motion passed. **Mr. Percival** just for your information the EMC, our bylaws say that for rulemaking action there's a 30 day gap between a matter being heard by committee and a matter being heard by the full EMC which gives the committee's work an opportunity to be reviewed by the public at large. We have the option to waive that under certain circumstances and this is one of those. The next rule is also one in which we will be seeking a 30-day waiver. So that's what that's about.

**Ms. Deerhake:** Does everyone have a copy of the package that was handed out today? It is somewhat different from the package we began discussion on yesterday at our meeting. One of the two facilities is located in the Mecklenburg County local air quality program. They have received the enforcement of rules at that facility. Mecklenburg County Commissioners, the local air quality director and several other government entities associated or in the vicinity of the two incinerators had submitted resolutions in which they supported an implementation date of 2012, not 2014. So after a thorough discussion in the Air Quality Committee we agreed and voted on having two options presented in the package on today for public comment. Embedded in the actual rule you will see references to an option 1 which is October 6, 2012 and then October 6, 2014. The October 6, 2014 date is the date that EPA had in their package and the 2014 date is basically the five year period from date of promulgation to allow time for technology and design to be fully installed. The EPA chose that maximum length of time due to limited information. They didn't have enough information to select a tighter date, I guess you might say. So I did want to mention to Mr. Grable in the first occurrence of those two options it appears there might be a typo in paragraph (c)( 2). There seems to be a repeat of the options.

**Paul Grable:** Yes there is and I will fix it.

**Ms. Deerhake:** So that should say prior to parenthesis Option 1 October 6, 2012, semi-colon Option 2 comma October 6, 2014 parenthesis.

**Paul Grable:** I saw that last night and corrected it but evidently I didn't print out the right one.

**Ms. Deerhake:** The motion before the Air Quality Committee was to have two options come to the Commission. On behalf of the Air Quality Committee the vote was unanimous with the exception of one negative yesterday. On behalf of the Air Quality Committee I move that we proceed to public hearing on this proposed package. **Dr. Peden** seconded.

**Chairman Smith:** asked for discussion. Let me repeat what was made clear at the Air Quality Committee meeting. By putting these two options out for public comment we are not indicating an inclination towards either one of them. There was no further discussion and the motion passed.

Let me also say that today is Mr. Grable's last EMC meeting with us. He is retiring before our September meeting and we will surely miss him. He has been a great assistant and helped us in a lot of ways. I particularly appreciate all I learned from him about air quality back when I was completely lost in air quality. So thank you Mr. Grable and we wish you a long and happy retirement. Thank you for your service.

### **10-32 Request for 30-day Waiver and Request to Proceed to Hearing On Prevention of Significant Deterioration (PSD) and Permitting Rule Amendments to Incorporate Greenhouse Gas (GHG) Tailoring Provisions (492)**

**Summary (Joelle Burleson):** Ms. Burleson noted that for new rules there is an APA requirement that they not be more than three levels and she had made structural revisions to correct the version presented to the AQC the day before to allow the rule to move forward. It does not change anything other than cross references in the rule.

Ms. Burleson reviewed a slide presentation providing a review of actions that led up to the rule, the content of the final rule at the federal level, what the proposed state rule says, why it is needed, and why a 30-day waiver is requested. A series of significant federal regulatory actions have led to the tailoring rule including: the 2007 Massachusetts v. EPA Supreme Court decision that Greenhouse Gases (GHGs) are air pollutants covered by the Clean Air Act (CAA) and that EPA needed to determine whether or not GHG emissions from new motor vehicles would cause or contribute to air pollution that could reasonably be anticipated to endanger public health or welfare or whether the science was there to make a reasoned decision; EPA's subsequent final endangerment and cause or contribute findings for GHGs under Section 202(a) of the Clean Air Act on December 7, 2009; and EPA's establishment of a light duty vehicle rule regulating GHG emissions and corporate average fuel economy standards published May 7, 2010 (the first time GHGs are actually regulated under Clean Air Act). EPA also reconsidered its interpretation of regulations that determine when pollutants are covered by the federal Prevention of Significant Deterioration (PSD) Permit Program, referred to as the Johnson memo. Under PSD any new pollutant triggers PSD permitting requirements when actual control requirements take effect rather than at signature of a rule, federal register publication, or the effective date after federal register publication of the rule that implements those requirements. For GHGs EPA interprets that date as January 2, 2011 when the light duty vehicle rule requirements take effect. The same subject to regulation interpretation applies for Title V permitting. The Johnson memo reconsideration clarified that there would be no grandfathering of pending permit applications.

Under the Clean Air Act the definitions of major stationary source and thresholds relative to PSD permitting are 100/250 tpy and for Title V permits the threshold is 100 tpy. Modifications would be considered major if there's any increase in emissions of a newly regulated pollutant. GHGs are not specifically listed in the Clean Air Act and fall under the category of other regulated pollutants and that's why these thresholds apply currently without the tailoring rule in place. GHGs are emitted in much greater mass than conventional pollutants. Many smaller sources would exceed the 100/250 tpy level for PSD and Title V putting a significant administrative burden on permitting agencies they had not geared up for and did not have resources to deal with under the current structure. As a result EPA issued the final tailoring rule signed during the last EMC meeting May 13, 2010 and published in the *Federal Register* June 3, 2010. The purpose of the rule is to limit the number of stationary sources that are actually subject to PSD and Title V permit programs for GHGs. After the tailoring rule, primarily larger GHG emitters, such as power plants, refineries and other energy intensive source categories, would be affected. Some categories that would have been affected without the tailoring rule at the lower threshold such as small farms, restaurants, and commercial facilities, are not affected with the tailoring threshold in place. The tailoring rule specifies applicability thresholds for GHGs. It uses the same definition of GHGs as in the light duty vehicle rule which is the sum of the six gases carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>). These are compared on a CO<sub>2</sub> equivalent basis against the threshold to determine applicability. The definitions in the tailoring rule and all the other requirements relative to the PSD rule and State PSD rule are found in 40 CFR 51.166 and include definitions of subject to regulation consistent with the Johnson memo, greenhouse gases, CO<sub>2</sub> equivalent emissions, emissions increase and significant. In 40 CFR 51.166 EPA also establishes thresholds for GHG and amends the definition of major source to allow for incorporation of these other definitions.

EPA's federal rule phases in applicability. In Step 1 sources that are subject to non-GHG permitting under PSD come into the program beginning in January 2011, but only those sources that have modifications at levels greater than 75,000 tpy CO<sub>2e</sub>. For Title V permitting of existing sources, only those Title V's that are applying for, renewing, or revising their permits would have to incorporate consideration of GHG.

In Step 2 EPA adds, beginning in July 1, 2011, sources with actual or potential emissions greater than 100,000 tpy CO<sub>2e</sub>. For new construction if the source also has emissions greater than 100,000 tpy of CO<sub>2e</sub>, then modifications would be brought in only if the net GHG emissions increased by greater than 75,000 tpy of CO<sub>2e</sub> since modifications at existing facilities with GHG emissions and new Title V permits would only be required for facilities greater than 100,000 tpy of CO<sub>2e</sub>. In the third phase, from July 1, 2013 through April 2016, EPA would assess the value of regulating at lower thresholds and follow up with separate rulemaking for any regulation of smaller sources. EPA committed through the rule that they will not regulate sources below 50,000 tpy before April 30, 2016. EPA estimated nationally 82,000 sources per year major under the new source review PSD program would be subject to review/permitting if the tailoring rule were not in place. With respect to the Title V program, without a tailoring rule EPA expected six million sources initially plus additional sources each year to be subject to GHG permitting requirements. EPA anticipates the new sources subject to PSD regulation for permitting due solely to their emissions of GHGs in the first step of the program to be zero and the same for Title V. The estimated number of sources newly subject to review/permitting each year under the second phase of the rule for PSD purposes is expected to be 900 sources nationally or 550

sources under the Title V program. For PSD that is doubling the workload based on existing PSD permits nationally and adds another third to the Title V load.

If EPA developed a tailoring rule then why does North Carolina need to do something along those lines? North Carolina has an approved PSD program currently housed in 15A NCAC 02D .0530. It does not automatically adopt the federal requirements. While it does cross reference the majority of the requirements including those in the tailoring rule 40 CFR 51.166, it only does so as of June 13, 2007. Under the current state PSD rule GHGs would be considered other regulated pollutants and would have a zero emissions increase level for modifications. Thus a state rule revision adopting the federal requirements is needed. The current state rule reflects the situation that the tailoring rule at the federal level is seeking to avoid on a state scale. Because several other actions are in process on the PSD rule for different purposes and GHGs are treated differently under the federal program in that nonattainment areas are not being established for GHGs given the nature of the pollutant, the proposed rule places the PSD requirements in the existing rule in a new rule, 15A NCAC 02D .0544, and removes the provisions that would be related to nonattainment areas. The version handed out is cut and pasted from the existing PSD rule with the nonattainment areas provisions removed and incorporates federal tailoring provisions by reference to the June 3, 2010 federal tailoring rule in the last paragraph. In the beginning paragraph language specifies that the rule applies for GHG purposes rather than 15A NCAC 02D .0530.

So what's the big rush? Once the requirements that apply to GHGs take effect under the Act, in January 2011 for light-duty vehicles, PSD and Title V permitting provisions apply. At that point in time the state will be faced with regulating sources at 100/250 tpy under the current rule if tailoring provisions are not adopted. The rulemaking schedule is tight. Without any special meetings the earliest a rule can be effective is January. A 30-day waiver and approval to proceed to hearing on the schedule below is requested.

7/15/2010 EMC Approval to Proceed to Hearing  
7/26/2010 File Notice of Text and Hearing with OAH  
8/16/2010 Notice appears in NCR  
8/31/2010 Earliest date for hearing  
Early September Scheduled hearing date  
10/15/2010 Close of Comment period  
11/18/2010 EMC action  
11/22/2010 File for RRC review  
12/16/2010 RRC action

Absent objections from the RRC in one form or another, the effective date would be January 2, 2011. If there are objections, this would allow opportunity for review by the Legislature in 2011 versus the 2012 session per the APA which requires a 25 day period after agency adoption prior to the start of the session in order for review in that session. In summary, the current state rule doesn't automatically adopt the federal tailoring provisions. Without those tailoring provisions we'll face an unmanageable permitting workload in the state, many currently unpermitted sources would be incurring a burden for low environmental benefit. Those initial permits issued would be considered hollow permits in many cases particularly on the Title V side since there are not other applicable requirements for GHGs in the early phases. Guidance regarding what BACT might be for sources under PSD that are required to do BACT analysis is lacking. The state

needs to proceed to rulemaking to incorporate tailoring provisions and to have them potentially in place by January 2, 2011 needs the 30-day waiver. One key category of sources that would be impacted that do not currently have many Title V permits in the state are the landfills many of which are owned by municipalities. Currently there are three Title V permitted facilities with emissions at the 100,000 tpy CO<sub>2</sub>e thresholds and there are eight active landfills. Staff estimates approximately 25 landfills might be required to obtain PSD and Title V permits for GHGs.

**John Curry:** Could you tell us real briefly the CO<sub>2</sub> equivalent calculations? Does that mean you have a list of equivalent gases and then there's a ratio to calculate that over into CO<sub>2</sub> equivalencies? Is that how that works?

**Joelle Burleson:** Essentially there are global warming potentials that are multiplied by mass to come up with it and then summed to get the GHG total.

**Yvonne Bailey:** I was wondering about pending legislation and litigation that's going on and how those impact our rulemaking as you go forth?

**Joelle Burleson:** Certainly, we can't predict what will happen. The day the rule was issued there were suits filed on the rule, but that seems to be the case with every rule that comes out of EPA lately on the air side. So we don't feel like we can wait because of the situation with our current state rule to move forward to do something. We can't predict the outcome nor do we know how long that process will take.

**Motion (Ms. Deerhake):** We discussed this yesterday in the Air Quality Committee meeting and voted unanimously to first of all request the 30-day waiver to bring it to vote here today. On behalf of the Air Quality Committee I make a motion for a 30-day waiver. **Mr. Curry** seconded.

**Chairman Smith:** asked for a discussion. There was none and the motion passed.

**Ms. Deerhake:** The committee discussed the content and range of the proposed draft rule and voted unanimously to go to the EMC to take it to public hearing. On behalf of the Air Quality Committee I move to proceed to public hearing. **Dr. Peterson** seconded.

**Chairman Smith:** asked for a discussion. There was none and the motion passed.

### **10-33 Request to Adopt the Hearing Officer's Recommendation on a Reclassification Proposal for the Upper Catawba River Area in McDowell County (Catawba River Basin)**

**Chairman Smith:** Are you a native of McDowell County?

**Forrest Westall:** No. I reside in Yancey County which shares a border with McDowell County. I want to thank Adriene Weaver. She did a tremendous job setting this up and getting it ready to go. We've had several conversations about the report and the presentation today. She is on vacation this week and I told her I would make the presentation.

**Summary (Forrest Westall):** I have a brief slide presentation. I would say to Tom some hearings are not as much fun as others. I think you probably had more fun here than I did. I'd

like to review this with a presentation that is on the board. Just in review of the Environmental Management Commission section 0100 rules the hearing officer must submit a hearing report on the proceeding of the public hearing to the EMC and that's what I'm doing today. The EMC must adopt a final action with respect to the classification either to adopt it, modify it or to deny. In September 2009 the Environmental Management Commission voted to take to public hearing the proposal to reclassify the upper Catawba River area west of Old Fort and McDowell County to high quality waters. In January 2010 a public hearing was held at the Old Fort Elementary School. Information on the reclassification proposal you have in your package or on the website a copy of the hearing officer's report which reviews all of these things. I was particularly interested in land use within the watershed and also property ownership. If you're familiar with interstate 40 as you go west across the Old Fort Mountain you go through McDowell County on your way to Asheville. As you drive across the mountain if you look to the left just before you cross the mountain that is the upper Catawba watershed. As you can see from that vantage point it is a very wooded watershed and has quite a bit of relief in it. It's fairly rugged terrain through there but this area was studied by the Division of Water Quality Environmental Sciences Section and found that the water quality in the stream at the monitoring stations met the requirement of excellent biological quality and also had excellent chemical quality as well. So that was why this reclassification was requested. Here's the map showing the location of the watershed and looking at it if you've been to Old Fort this area would provide you a view of coming up into that watershed. You would travel south from Old Fort and then turning back to the west you would find yourself in the location of this particular watershed. That gives you some indication of location of these particular tributaries in the watershed as well as an indication of the newest maps is not perfectly exact but they are a good indication of the watershed. As most high quality waters or outstanding resource watersheds are they are mainly wooded, relatively undeveloped small developments, and rural in nature at most. These are usually large tracks of lands. No areas of really intense development. There is one development in this watershed that I would consider more intense than normal. You will see some advertisement for Catawba Falls on interstate 40. That particular development is located in that watershed. A lot of the area is national forest and in conservation easement. Most of it is managed as private forest land and is used mainly for access hunting and similar activities. There weren't a lot of plans, no plans in fact stated at the public hearing on development of this property. In the pictures of the watershed you can see some of these were taken by the Foothills Conservancy of North Carolina. They spoke at the hearing. They hold the easements for these conservation easements that are in that watershed. There is a photo showing the Catawba River SR 1274 looking upstream on July 12, 2007 under what I would consider to be low flow conditions, not drought conditions but fairly low flow conditions. Typical of undeveloped watersheds in the mountains, extremely clear water and beautiful boulder and cobble bottoms in it and a good place to go trout fishing. I wanted to review with the Commission also because there was a lot of contention in this area about the application of additional government regulations on their property, and the concerns they had. These are all trout waters already. They are covered by the Division of Land Resources trout buffer requirements. In addition those requirements are an undisturbed buffer for 25 ft. and then the high quality water rules require a 30 ft. setback and density controls. Any development that is less than 12% built upon, if it installs BMPs such as grass conveyances, or other ways what I would call passive ways to absorb stormwater they are allowed to build in those watersheds with no additional requirements. If they do high density they are required to control the runoff from the first inch of rain. So there are requirements for additional treatment under HQW single family resident discharges are not allowed and all transportation projects in those watersheds require the installation of Best Management Practices.

The comments on the reclassification were submitted from the notice period through February 15, 2010. We had 24 comments received, 10 in support, 4 in opposition and 10 comments without a position as far as we could tell in reviewing the comments. Main opposition component was infringement of property rights prohibiting the development of private property. When I got to Old Fort I called the county manager in McDowell and offered to hold a public meeting prior to the public hearing to answer any questions. That way I could take the beating before hand and afterwards but he didn't request a meeting but he appreciated that. Two county Commissioners actually attended the public hearing. We had folks there, mainly local people but we had some of the folks that came from the Conservancy Groups that spoke in favor of it. There were local people in support. The truth is the Soil and Water Conservation folks there and the people that had served on this water conservation board thought it was a good idea and they supported it, and they were very gracious in doing that. We had a question and answer session actually before the hearing and I asked for any clarification questions and answered some questions. Then after the hearing we had an extensive question and answer session mainly because there was a lot of misunderstanding about what the effect rules would have regarding access to property. One gentleman asked me about him having a piece of property that was remote and had several fords that he had to cross. It was a very rugged piece of property. He was under the impression or had been told he wouldn't be able to get to his property if these rules passed. Of course, I told him that wasn't the case and that he would continue to be able to access his property. I told him if he needed to build a bridge or do development of the property he would be required to go through the permitting process. But I said regardless of whether it's HQW or the current classification he would still have to do that. That kind of eased his mind to some degree. They were very concerned about it. It's a matter of principle. We received some letters from folks that I knew in the county. They just said they didn't want any more regulations and they were tired of regulations and the government infringing upon their property rights. That is a frustrating aspect of doing these things. I was able to tell them that my family has been in the mountains for over 200 years, I have private property and I live along outstanding resource water. That hasn't prohibited use of my property and hasn't taken away any rights that I see. In fact, I saw it as an enhancement of the property and probably would increase the value of the property. It's a very tightly held view that this is their property. You have to realize that people that moved to the mountains wanted to get away from everybody anyway so they don't want the government to come back in. My recommendation with all the points that I've noted and the hearing report has a fairly extensive discussion of my concerns about the lack of knowledge of the trout buffer rules, the 401/404 program. These folks don't realize they are already under buffer rules. But I recommend because the waters meet the criteria for an HQW. I recommend the reclassification of these waters to high quality waters as indicated on this slide and as described in your package and those classifications become effective in accordance with the provisions laid out in the recommendation.

**Motion (Forrest Westall):** So I make that as a motion and thanks for the opportunity to do that hearing. **Dr. Peterson** seconded.

**Chairman Smith:** Thank you **Mr. Westall**. Is there any discussion?

**Dr. Moreau:** During the hearing officer's report I noticed that if you look at the last sentence on page 5 there is no need for us to get into it, it's just missing a verb.

**Chairman Smith:** We will take care of that. We've got a motion and a second. Hearing no other discussion the motion passed.

Thank you **Mr. Westall** for your services as hearing officer. I think you were the ideal Commissioner to do that since you have a history in the mountains and your residence in the adjoining county, I thought that would be a worthwhile set of facts for the interested people to know.

**Dr. Peterson:** I'd like to thank you for going beyond the call of duty too in offering up additional time for appearing through the county manager but also in your talking to folks there and being sensitive to views. I think that is a form of outreach that is important in the long run and something essentially none of the rest of us could have done. So thanks.

#### **10-34 Request for Permission to Proceed to Public Notice for the Proposed Reclassification of Southwest Creek from Class C to Class SC**

**Summary (Elizabeth Kountis):** I'm here to request the Commission's Permission to proceed to public notice for a proposed reclassification which is for a section of Southwest Creek in Onslow County to go from Class C to Class SC. This reclassification is for a portion of Southwest Creek from approximately a half-a-mile upstream of Mill Run to the New River, and about 2 miles of the creek are proposed to be reclassified. Wilmington Regional Office staff submitted this request to reflect the saltwater nature of these waters. The waters were originally classified in 1956, prior to our state's coastal monitoring programs, and since then, DWQ has much better information on these waters than in the past. Land owned by Camp Lejeune exists directly adjacent to all of the proposed waters and Camp Lejeune staff was contacted about the proposed reclassification. They stated they have no concerns with the proposal. The informational memorandum that you received provides more in-depth information regarding the proposed classification such as the exact location and proposed changes in classifications of the involved waterbodies, the nature of data received and current land uses, and the additional regulations associated with it.

**Dr. Peterson:** I'm sorry that I didn't notice before but I recused myself from this item on the Water Quality Committee and I ask to be recused this time on the grounds that I am doing environmental work for the base at Camp Lejeune, and this is pretty much a Camp Lejeune issue.

**Chairman Smith:** Thank you sir. Any questions?

**Marion Deerhake:** Just a narrow disclosure. The work is also under contract with RTI at Camp LeJeune.

**Motion (Forrest Westall):** I make a motion that we proceed to public notice for the proposed reclassification of Southwest Creek from Class C to SC. **Dr. Larkin** seconded.

**Chairman Smith:** asked for discussion. Hearing none the motion passed.

**10-35 Request to Confirm Recommendation to Appoint One Member and Reappoint Two Members to the Water Pollution Control System Operators Certification Commission (WPCSOCC)**

**Dr. Peterson:** I make the recommendation and the motion that we reappoint Mr. Young and Mr. Lowder and appoint Mr. Waters to the Water Pollution Control System Operators Certification Commission. We don't typically do this in a competitive nature at this Commission and the two have performed admirably. The third is a very appropriate choice and I thought it appropriate that we make that motion and move this forward. **Mr. Morse** seconded.

**Chairman Smith:** There was no discussion and the motion passed.

**10-36 Hearing Officers' Report on the Proposed Nutrient Offset Actual Cost Rate Rule for the Ecosystem Enhancement Program and Amendment of the Nutrient Offset Payment Rule**

**Yvonne Bailey:** I just wanted to give a short introduction to Suzanne Klimek who will be explaining this in more detail. This issue started way before I started on the Commission and through the process there was 2007 legislative action taken which directed DENR to implement the least cost alternative and implement the means of charging actual cost for nutrient reduction projects. There was also an extensive stakeholder process and a report issued through North Carolina State University in October 2009. **Dr. Ernest Larkin** and I held public hearings on March 22<sup>nd</sup> and March 23<sup>rd</sup>. A total of 24 people attended both of the hearings, two attendees provided verbal comments and four written comments were also received. I think the reason there were not that many comments at this point in the process was that so much had happened prior to the time we went to rulemaking, and a lot of issues were discussed. With that I'd like to turn it over to Suzanne Klimek and have her explain everything that the staff is going through developing these rules and bringing them out to public notice.

**Summary (Suzanne Klimek):** As **Yvonne** noted this was a legislative directive that we were pursuing to develop an actual cost approach to setting rates. We did have a deadline of September 1, 2010 for implementing an approach this was extended in the last legislative session just to make sure we get the rule in place before the fees sunset. As **Yvonne** noted we did convene stakeholders to discuss this before developing rules and there was active participation in that process. We drafted rules that were approved for a public notice through the Water Quality Committee and the EMC. Basically we are talking about two rules. One is 2B .0240 which was the original fee rule for the nutrient offset payment program and it's been converted to address procedural requirements. Then we have 2B .0274 which is a new rule that includes the actual cost method approach to setting rates. We went through a public input process and circulated public notice of the draft rules in mid February. There was a 60 day comment period. **Yvonne** noted we did have a couple of hearings, one in Greenville and one in Raleigh. We had a total of 24 attendees and we had one speaker at each of the two hearings. We received a total of 4 written comments. The hearing officers reviewed the comments and developed the recommendations in your package of information. Regarding the issue of the geographic watershed area they recommend that reductions be required in the 8-digit watershed. So that's the current climate that we have now for restrictions, but they are also recommending that these impacts be tracked by the 10-digit watershed so that we can begin to get some data on this. As we track the impacts where you find that there's a preponderance of impacts preference should

be given to the implementation of reduction projects in those areas. There also were some revisions to the language for wastewater treatment plants and that is to respond to some of the comments received. There were some additional language additions that were made that are just for clarification purposes and represent current operating protocol that we just want to make sure were included in the rule. Regarding the actual cost method rule we didn't make a lot of revisions. So with that I will pass it back to Yvonne.

**Yvonne Bailey:** Are there any questions?

**Dr. Peterson:** First I apologize that I couldn't participate with **Dr. Larkin** and **Ms. Bailey** as much as I wanted to but my history with this goes way back. If there's a timeline between when the impact occurs through the development and when the reduction of nutrients through the EEP action is taken, is there discount input in this and the way that it is typically done for injury to habitat and federal rules where a 3% discount rate is applied?

**Suzanne Klimek:** I'm not familiar with the discount rate that you mention but the way that we deliver projects for nutrient reduction mirrors the way we are delivering projects under our other programs for streams and wetlands, for example. So basically once we receive payment for the project we have 12-24 months to get a project identified and the land acquired, and the project in design.

**Chairman Peterson:** How about the lag time empirically between the development that causes the loss of use and the completion of the project that restores the nutrient removal function?

**Suzanne Klimek:** I'm not sure how this is handled in the mitigation calculation of nutrient reduction. I know for some of the other programs there is a ratio. Typically if you have an impact to an acre of wetlands there will be twice that amount required for the mitigation, and that is to address in part temporal loss. Jim Stanfill with the Ecosystem Enhancement Program may be able to address that more specifically.

**Jim Stanfill:** Currently there is no temporal loss addition to the mitigation requirements. The developers meet their onsite requirements and then once they've met that threshold they are allowed to pursue offsite options whether it is through our program or other entities. The Division of Water Quality does not require an additional amount of mitigation to offset to address temporal lag. I hope that answers your question.

**Dr. Peterson:** Yes it does. The answer is no.

**Jim Stanfill:** There is another piece though that would be helpful for you to understand. It depends on where you are in terms of whether it's actually a temporal loss. For example in the Tar-Pamlico we have advanced mitigation available and waiting for future payments. That's true also in parts of the Neuse. It really depends upon the situation whether impacts to a temporal loss have occurred the division doesn't require that as part of their upfront mitigation requirements.

**Dr. Peterson:** I was just trying to get at what...I never got an answer to that question what the average duration between loss and recovery is but you pointed out that where we've got a larger area going you can actually be almost ahead of the curve with that. The point of this temporal

loss is that as a rule the broad understanding of loss of ecosystems service is equivalent to money, which is to say that service today is more valuable than that same service twenty years from today. So if you do damage to something today and you lose 20 acres of wetland services it's not appropriate to keep the money in the bank for the next twenty years from today. So that if you do damage to something today and you lose 20 acres of wetland services it's not appropriate to keep the money in the bank for the next 20 years and then pay it back with dollars that you're doing this 20 years from now but rather typically a discount rate of 3% is applied annually to determine what additional area you would need to restore and make up for the area function wetlands today. I just wanted to engage this discussion slightly in part because there was a public perception early on of the EEP that there was a lot of funding sitting around and not a lot of progress being made in putting that funding to work. So I was in some sense prompting you to give some answers as to whether that problem is no longer in existence or whether it was not a problem in the first place in the sense of the mitigation happening in a prompt timeframe.

**Suzanne Klimek:** I appreciate that opening and as Jim indicated we do have a substantial amount of advance mitigation in all of our programs. Particularly for the Department of Transportation we are set up to deliver advance mitigation. But we do develop it for our other programs when we can so there are situations where there is no temporal lag between impact and replacement. There was a perceived problem in the past but we are meeting our requirements now in terms of the timing of mitigation delivery.

**Dr. Peterson:** Thanks

**Kevin Martin:** I've got a question relating to the expected decrease in the nutrient rate. Originally the Commission adopted some numbers based on research which was done by N. C. State University and EEP's data that were substantially higher than where we think we are now in the 40's, I think on phosphorus and 50's on nitrogen and vice versa. Is it correct that the anticipated decrease in rate is mainly due to those original numbers were focused on going to the source of the problem, what it would cost to retrofit potentially existing areas that had no treatment? Another option for meeting its requirements is basically restoring buffers to get the credit which currently is as cheap as dirt to do if you can find somewhere to do it. Is that why the rate is decreasing because of maybe a different focus on being required to go to what's cheapest, not what's best?

**Suzanne Klimek:** There's a couple of different dynamics with respect to the rate. The first reference to the original rule which was actually \$57.00 per lb. of nitrogen in the Neuse and that rule was set up to allow EEP to implement some best management practices and not just do buffer restoration to provide for the nutrient reductions. Then the Legislature set rates that were more in line with the results of the study that RTI did that said you could do a variety of different mixes of nutrient reductions, and they went for the least cost alternative which is buffer restoration, and set rates around \$28.00 per lb. just as a reference point for nitrogen. We are predicting that to decrease. We have been able to contract for some buffer restoration in the last couple of years that's been below the current rate. Some of that has got to do with competition in the economy. So the actual cost method reflects those efficiencies that we've achieved.

**Kevin Martin:** The follow-up on that is not that I think we can do anything about it but the concern that is similar to our stormwater requirements where when you install a BMP there's a presumed reduction in nitrogen. When you do this restoration there's a presumed reduction in

nitrogen and phosphorus but nobody is out there measuring that. What effect we're getting from putting buffers on soy bean field ditches in the middle of nowhere compared to what we would get from a retrofit in an urban area in my mind is very questionable. Maybe something for us to consider in the future would be while retrofits are more costly maybe they should get more benefit because they are more effective. In other words if you're dealing with a watershed that has 30 ppm nitrogen in it and you do a retrofit, you are probably going to get a better benefit than buffering a stream in a watershed that already only has 5 ppm nitrogen in it. But we don't collect that kind of information. We basically go out and say is there a riparian buffer here that meets our criteria? If there's not you can do restoration enhancement. Water quality in a stream may be excellent already.

**Suzanne Klimek:** You'll be pleased to know that the Division of Water Quality has already identified that as an issue. They want to look into it a little more so you will probably hear more about that in the future.

**Kevin Martin:** Wonderful. I was sitting here feeling kind of hopeless that there was nothing we could do. Thanks Suzanne.

**Chairman Smith:** **Ms. Sullins** what would be a reasonable date for us to flag this for a report down the road?

**Coleen Sullins:** I'm not sure. I will have to check with staff and get back with you in terms of what we're trying to accomplish and the timeframe associated with that.

**Chairman Smith:** Thank you.

**Mayor Moss:** I think I have concluded that I may need to recuse myself on this matter looking at the map on page A-9. It looks like Creedmoor is in that affected area. Not really sure but just to be safe I will recuse myself.

**Kevin Martin:** Can I ask a question related to that? It's my understanding, Frank when we're dealing with something that affects everyone equally, for example every municipality on that entire map wouldn't necessarily be a conflict or failure to act unless there's more specific information. We've had so many cases before where so many people recused themselves we wondered if we had quorum but it was being better safe than sorry. Should we not just be accurate?

**Mayor Moss:** Frank, let me bail you out on this one. **Kevin** as it relates to the Falls Lake rules I made the same argument. But with looking forward in anticipation of me dealing with the Falls Lake rules that was my argument that you just made and the answer was that I really needed to recuse myself from that as well. So I see this as very much related. So let's just leave it at that.

**Chairman Smith:** That answer to **Mayor Moss** on the Falls Lake rules came out of the Ethics Commission.

**Frank Crawley:** **Mr. Martin** I think your point is well made where we have state-wide application as opposed to the narrow application for the Falls rules and Creedmoor being within

that particular small watershed. Unless you have a real clear appearance of a conflict or actual conflict you wouldn't have to recuse yourself.

**Chairman Smith:** I think rather than expand **Mayor Moss'** position into a broad policy statement by the entire EMC I trust each of you to recuse yourselves when you have any hesitation at all about whether or not you want to sit. Also it is clear from Mr. Crawley if there is statewide application of a rule then we are free to sit. It does not constitute a conflict. An example of that is the Ethics Commission ruling that **Mr. Morse** could be active in the metals rules even though the metals rules if implemented as passed might cost the Town of Valdese some money and he is the town manager of Valdese. With that **Mayor Moss** has recused himself. Are there any other comments or other discussion? We have a motion by **Ms. Bailey** and a second by **Dr. Larkin**. Hearing no other discussion or comments the Commission voted and the motion passed.

#### **IV. Status Reports by EMC Committee Chairmen**

##### **A. Water Allocation Committee Mayor Darryl Moss, Chairman**

The Water Allocation Committee did not meet yesterday.

##### **B. Water Quality Committee Dr. Charles H. Peterson, Chairman**

The Water Quality Committee met yesterday. We listened to a summary of the final draft to the Catawba River Basinwide Water Quality Plan and had some discussion of that plan. That item will come to full Commission at our next meeting. We also moved forward on another item that will come to the full Commission the next time and this is a proactive procedure to look at areas where nutrient enrichment is proceeding at a pace that suggests there would be deterioration of the water quality standards and violation of those water quality standards. This is a challenging action that we're undertaking and we are doing it in the context of protecting what's great, and not waiting until it's declined to the point where we have to do remedial actions that are serious and more costly. In any case this issue is an issue that will require more of our attention to move forward and we are in the process of moving that into a public hearing mode, and that's what will be requested of the Commission in two month's time when we meet again. I think that we will hear a lot of comments when we take it out to public hearing and perhaps a lot of good suggestions that we'll want to take up. I wanted to flag that to you in part because we're likely to have that at the Water Quality Committee meeting next time and perhaps make some changes to what you will have received as Commission members in advance. So I wanted to say that anyone is invited but with the particular motivation next time to attend, listen and even contribute to the discussions if we have them at the Water Quality Committee meeting on that item. We have asked the staff to update us on a whole variety of issues in an annual report on enforcement actions and the adoption of Universal Stormwater Management Program Ordinances and Phase II Delegations and the like. We indeed received that report as an information item and I suspect that it is available to all in some fashion on the web. That concluded our meeting.

##### **C. Groundwater Committee Kevin Martin, Chairman**

The Groundwater Committee did meet after a long time of not meeting. We had two information items that were basically priming us for things that will be coming to the committee in the near future and not so near future and ultimately to the Commission. One was an update on requests that had been made to establish groundwater interim maximum allowable concentrations otherwise

known as IMAX. There were 17 requested which the director has adopted based on staff's recommendations, 16 that will be in effect in August and I will not even attempt to pronounce these concentrations. But they were in our groundwater committee attachments. Staff is also considering some additional IMAX that may very well be adopted between now and the end of the year. These standards will stand in place until they come to us to go through formal rulemaking which is probably anticipated to be sometime next year that staff will come forward with a request to go through rulemaking to establish the standards formally. The other item we had was information on revision to injection well rules and those will be coming to the Commission and the Groundwater Committee possibly in September is the plan. It would not be on a 30-day waiver so the Commission would likely not see a request to go to public hearing with those until maybe November. Finally we concluded with a game of Stump the Staff where the committee asked questions of staff trying to trip them up and the current score right now is staff two and Groundwater Committee zero.

#### **D. Air Quality Committee**

#### **Marion Deerhake, Chairman**

The Air Quality Committee met. We began by welcoming Sheila Holman as the new director of the Division of Air Quality. She had some very nice and helpful comments at the end of the meeting to give us an indication of where the state's air quality program was going in the future and what challenges lie ahead for us. We had a concept on amendments to the ambient nitrogen oxide and sulfur dioxide standards to bring the state program in line with federal revisions. Then we had discussions and voted on the two rules we voted to take to public hearing today on the PSD permitting rule amendments for GHG tailoring provisions and for the hospital, medical, infectious waste incinerator (HMIWI) rule amendments. We also received an update on the General Assembly and two or three bills that had been before the Legislature that did not move to any votes. Also we were told that municipal waste combustor rule has now gone into effect.

The Steering Committee did not meet.

#### **E. NPDES Committee**

#### **Dr. David H. Moreau, Chairman**

The NPDES Committee is a special committee of the Commission that is charged with making final decisions regarding NPDES rulings. What came before us yesterday was the variance for the Blue Ridge Paper on the Pigeon River in western North Carolina. Thanks to Mr. Curry and Mr. Morse serving as hearing officers on this very demanding task. This is a facility that is integrated bleach Kraft Pulp Corporation and employs approximately 1,200 people and is the single largest employer in western North Carolina. It's a facility which has been there for years. This variance has been in place since 1989. It has been a very controversial facility. Initial variance was granted by the State of North Carolina in 1988. The EPA has objection after objection by many people for the State of Tennessee, EPA took responsibility for the permit in 1989 and essentially adopted what had been negotiated by the State of North Carolina and resulted in about a \$300 million upgrade and \$350 million investment to reduce the color from that facility including oxygen delignification and a bleach filtrate recycling system. They reduced color by about 90%. In 1994 the facility's permit was returned the State of North Carolina. The state issued a permit but there were objections in 1996 and as part of the settlement agreement was created something called the Technology Review Group which is chaired by EPA. This turned out to be fairly significant in the deliberations. This is a committee that involves North Carolina, EPA and others that essentially makes judgments about what is the limit of technology. To grant a variance we have to come to the conclusion that the available technology reasonably and economically available cannot meet the standards. To go beyond that

would impose widespread hardship. So this technology group makes its recommendation as to what is the limit of technology. Without getting into too many details, the limit of technology is about 38,000 ppy of color. To meet the standard the mode would have to be reduced to approximately 19,000 ppy which is half of what best available technology would achieve. These are the findings that came before us. The logic was then that to go beyond that would be the only way to do it would be to curtail production and reduce employment. So the hearing officers came forward with the recommendation to extend the variance with a number of conditions that will hopefully have the promise of leading to further reductions. We had a motion that would be an annual report after approving the variance with those conditions and had motion to ask or directed the department to come back annually to report on what progress had been made. This was a very demanding exercise. I would like thank my colleagues for their extensive work on this.

**Chairman Smith:** I want to repeat part of that. **Mr. Curry** and **Mr. Morse** were the hearing officers and it was a difficult undertaking. They held a public meeting across the Tennessee line and a public hearing in North Carolina to gather as much comment as possible from both Tennesseans and North Carolinians who are interested in the Pigeon River. The river flows from the plant across the border into Tennessee. Those meetings and hearings were held in January on consecutive nights so it required a significant contribution on their part. Then they put together a very knowledgeable report. I commend it to you if you're interested. It's well framed and organized, clear and concise, so this was good work. I didn't know where this one was going to come out because it has been so controversial over the years. **Ms. Deerhake** was the previous hearing officer some time ago. Thank all of you for that good service.

### **Renewable Energy Committee**

### **Dickson Phillips, Chairman**

The Renewable Energy Committee met. **Mr. Phillips**, who is the chairman for the Renewable Energy Committee, is not here today. He is sitting in on the Utilities Commission hearings on biomass and I will make a report in his absence. The Renewable Energy Committee heard two presentations. One was on the reuse of ash from biomass combustion sources in North Carolina and it was a joint presentation by Michael Scott of the Division of Waste Management and Jon Risgaard of the Division of Water Quality. Basically ash from a biomass plant or a plant burning biomass is dealt with as a dry substance it comes under the jurisdiction of the Division of Waste Management. If it is wet, turned into a slurry or stored wet, it comes under Division of Water Quality. That is why we had two presenters. They gave us a very good presentation and I commend that to you and it is on the webpage. We had Mr. Terry Wombsley come from New York representing Fibrowatt which is the poultry company that produces electricity by burning poultry liter and he gave us a discussion of byproducts from poultry liter combustion. That's the second time Mr. Wombsley has been before the Renewable Energy Committee on behalf of Fribrowatt. I think the first was about two years ago when we were getting started and taking presentations on a variety of renewable energy technology. Those were both very informative and useful and I commend them to you.

**John Curry:** The Fibrowatt representative did mention a question that has been raised several times in general discussion which is are they going to be applying for a permit any time in the near future? He indicated that the time was just about to arrive that they would be making a permit application.

**Chairman Smith:** What I took away from what he said was that they would have already done so if they had a contract to sell the electricity. They don't have that yet. While Mr. Curry was on vacation some time ago in Minnesota he toured the only poultry liter electric generating unit in the United State which is a Fibrowatt plant in Minnesota.

### **III. Concluding Remarks**

**Dr. Peterson:** I wanted to say relative to the NPDES Committee item and the outcome that we should note and I imagine people did in the course of that committee meeting which I unfortunately couldn't make, that there has been tremendous improvements in the Pigeon River. The efforts that have happened over the 20 plus years by the company have been simply dramatic. Those efforts and improvements have continued after the company became employee owned and was reorganized and that in my judgment has been something to celebrate. The fact that the company cannot reach that particular standard is not a huge problem and every year there's a greater approach towards it. So it has not been static in something that was just getting in under the wire and left where it was. There's been a continued reduction in the pounds of color that is emitted and I can foresee the time when it might actually meet the standard at some time in the future. But I simply wanted to point out that the record of what is going on there is in my judgment something to celebrate and I'm sure that was discussed at the NPDES Committee meeting.

**Chairman Smith:** asked for other Commission member comments and comments by directors.

**Coleen Sullins:** I must say this is a record. I've been with the division for 20 years now and I don't think I've ever seen an EMC meeting end quite this quickly. I want to give you some quick highlights and I won't go into any detail. Once we get some written documentation we will share it with you and some highlights from the Legislative session. First of all the budget passed in record time also this year. The impacts on the Division of Water Quality while significant are not as severe as they originally were proposed to be. We did lay off 5 staff members I am sorry to report and we working hard to find them other employment opportunities within the division or within the department in an effort to help them out. We're very sorry to lose those folks. I will say that that was better than the original about 18 positions in the division. We did lose a total of 9-1/2 positions so that does have an impact obviously on our ability to produce. Again, I do want to reiterate that instead of a 7% cut we only took a 4% cut this year. In terms of the Legislature's other activity they weren't here very long this year but they still managed to get a number of pieces of legislation passed. I just want to run down a few of the water issues. Sheila is going to talk about some of the air issues. In case we miss anything or you have more in depth questions Robin is here to assist us as she was very actively engaged in the General Assembly for all of us and was very helpful.

There are some bills that were passed associated with the grants management and loan management programs dealing with the major loans that we make under the Clean Water State Revolving Fund and the Drinking Water Fund that requires and provides additional prioritization for projects that have active management. Our prior unit cost looking at regional issues they are considering water conservation and addressing conflicts that have been uncovered through the state water supply plans. Those are all good things in terms of providing other additional priority points for when they're applying for loans into the programs. There's also a task force set up under House Bill 1746 to study the whole process that the infrastructure needs, survey process to

see if there's some things that need to be done to improve upon that. There's a House Bill 1765 that's called the IBT Bill that had many things other than the IBT issues in it. It has for example there's a Falls Lake Watershed Association the authorizing legislation to set up an association that enables them to do a number of things in the Falls Lake and including enabling and entering into a Memorandum of Agreements with the department or over implementing different types of projects associated with monitoring of Falls Lake, etc. It provides some additional legislative authority that the local governments in the Falls Lake watershed would be supportive of the efforts they would like to carry forward. It also includes some changes to the IBT Bill which I started off with the Falls Lake but it does include changes for the central coastal plain capacity use that bumps out of timeframe that I think takes an issue off of your plate, by pushing up that timeframe from 2011 to 2013 so that the Neuse River Water and Sewer Authority has a little more time to accomplish the things that they need to do. It also defines isolated river basins and treats them similarly to the central coastal plain capacity use area. In addition there's legislation, a section that addresses a project specifically that would enable for conjunctive use projects to be able to allow them to come forward for permitting through the permitting programs under the EMC's regulations whereby there is a regulation for those who have been working with water quality issue and for those who have been here for a long time we affectionally called the 7Q10, 30Q2 and the Zero Flow Policy. It's in the standard regulations and this would provide for in those types of situations the EMC's regulations do not allow for a discharge when you are having zero flow on a 7 day ten year low flow or 30 day two year low flow. They don't allow for domestic waste discharge and this would in essence allow them provided certain other criteria where met. There's a Senate Bill 778 that made some modifications to the State Environmental Policy Act. But in essence provides an exception where a document wasn't required for a project for which public other monies are extended if the expenditures are solely for the obtainment of incentives pursuant to an agreement that makes the incentive payments conditional upon prior completion of the project or activity. You'll know this was brought about as a result of the discussions that have been going on as I am sure you are aware on the Titan cement facility. That particular facility is not covered under this particular piece of legislation. There is the Environmental Laws Bill which this is something that carries forward every year. We look for small fixes and it usually ends up having a fair number of different things within it. It enables us to reinitiate the surface water identification training courses that we have been providing. A number of you have gone out and done that with us. That legislation is sunseted so it brings that back to light again so we will continue that process of doing that for staff, public agency staff and consultants who are interested in hearing that. It also addresses a couple of minor issues. Suzanne earlier indicated the nutrient offset payment sunset date moved out in order to allow this process to complete that you just took action on today. Collection system reports reduced the requirements only to those who were subject to permits because your rules have a full subset of folks that are deemed permitted. They're a much smaller group and we have to do annual reports. Since they were being permitted we thought that would be the appropriate thing to modify. Senate Bill 981 was passed a number of years ago that dealt with lakes water quality. As a matter of fact Falls Lake and Jordan Lake are two of the lakes that were specifically mentioned and this has to do with nutrient issues in lakes. It had provided that discharge into the lakes were not allowed and the intent was to be not allowed when the lakes were impaired. Not to say that it couldn't be allowed across the board. We have a lot of dischargers currently into lake systems and it did not allow for any additional nutrient loading when we have had significant issues in that particular lake so that has been modified. That bill also requires a study of wave and physical processes for renewable energy which considered the ocean health. There was a modification that brought that into it. Of course there is the very

important pimento cheese combined with that particular statute that allows pimento cheese and peanut butter and banana sandwiches to be sold at convenient stores without having to have certain licenses. That sounded like an environmental piece of legislation to me. House Bill 1743 sets up the requirement to do nationwide hydrologic models for those of you that might have been listening and are here this morning. You've heard Steve Reed from the Division of Water Resources talking about this and this is to look at hydrologic aspect of river basins and make sure there's sufficient amount of flow to meet the needs for the next 50 years in that particular basin for services, and including ecological flows. House Bill 1829 is a bill to promote the use of renewable energy. There is also the Studies Bill which always has a series of things in it. There are a number of things in the Studies Bill this year and they allow for these studies to occur. They don't say that these studies will occur. There is a water quality cost share of studies that the ERC may undertake to study the cost and benefit to improving water quality in reservoirs, rivers and other water resources shared by local governments. In its study the Commission may consider the water quality issues for the local governments located in the upstream and downstream wastewater treatment standards, the cost of complying with the water quality and the wastewater standards and benefits achieved by local governments. This is obviously tied to the Falls Lake and some of the issues that have been raised in the Falls Lake process. There is also a study for potential for the oil and gas exploration. That came up yesterday in the Groundwater Committee that the committee may study the issues with the oil and gas exploration in the Triassic Basin. There's another study related to the ability to use aquifer storage and recovery systems for reclaimed water that currently wouldn't be allowed under the statute. So there's a provision for the Commission to study that. There is also additional study on the gas leases in the Central Share Belt and in Chatham County and Moore County areas and a carbon sequestration potential of natural landscapes and other carbon offset opportunities that can be studied. I saved my last one Senate Bill 1259 that has a direct effect on an action that was taken by the Environmental Management Commission, and that is to delay the Boylston Creek trout water reclassification that has been delayed until January 2011 to allow for additional public meetings to be held out in the watershed to see if we can't resolve some of the concerns associated with the land owners. The land owners out in that area asked for clarification of the trout classification and the trout buffer rules. So we will be scheduling some additional meetings to occur out in the Boylston Creek watershed sometime later this fall. Then it will come back to the General Assembly for consideration. So they just delayed the effective date of the Boylston Creek trout reclassification to enable it to be reconsidered again at the next General Assembly session. That's it for water quality.

**Chairman Smith:** You probably remember that Boylston Creek in Transylvania County roughly between Brevard and Asheville.

**Dr. Moreau:** One of the interesting aspects of House Bill 1743 is that the Environmental Management Commission must approve each of the basinwide hydrologic models that are to be developed.

**Sheila Holman:** Let me first say that I am honored to have been named the next Director of the Division of Air Quality. I know each of you spent many years working with Keith Overcash so you know the shoes that I have to fill. Let me say that I will strive to do that day in and day out. There are many challenges that lie ahead and I won't go into all of them as I did with the Air Quality Committee yesterday. But just know that I'm committed to working with each of you as we strive to solve the air quality issues in North Carolina. Let me cover briefly the legislative

amendments that affect air quality. I will begin first with the amendment of the environmental laws 2010. There was one minor change, basically to increase the maximum civil penalty assessment from \$10,000 to \$25,000 for each of the three local air programs in North Carolina. You may recall a couple of years ago we increased the civil penalty assessment for North Carolina from \$10,000 to \$25,000 to bring it more in line with other states around us where they are assessing as well as the federal assessments. Senate Bill 886 which is to authorize the establishment of clean fuels renewable energy demonstration parks in the state. Currently I am only aware of one proposed project and that's the ReVenture Project in Mecklenburg County that may fit this definition. If the Utilities Commission determines that the new facilities is a new biomass renewal energy facility and it meets all the criteria for the Clean Fuels Act, then the project can get a triple renewable energy credit for any renewable energy certificates generated from renewable material at the site. Finally the changes to the Bill Lee Act in HB 1973 basically these were made to clarify the disqualifying events for tax credits for growing businesses. Those would include willful violations and injunctive relief and criminal penalties. The chairman did mention that there were several bills that had been introduced to disapprove recent air quality rules. None of these were acted on during the session so the amendments to the air toxics rules, the fugitive dust rule and the adoption of the idle reduction rule for heavy duty vehicles all became effective on July 10, 2010.

**Chairman Smith:** I remember at the end of the session last year somebody provided me with a survey or summary of all of those. I am not asking that be prepared but if something like that is prepared for this session it would be helpful to us if we could have it.

**Sheila Holman:** There is one being prepared right now.

**Robin Smith:** It should be available within the next week or so.

**Chairman Smith:** Would you have someone send it out to me and I'll forward to Lois so everybody can get one? Thank you.

Hearing no further comments the meeting adjourned at 2:00 p.m.

NOTE: Attachments are on file in the Division of Water Quality with the Official Minutes.

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Lois C. Thomas, Recording Clerk

By Commission Members  
By Directors  
By Counsel  
By Chairman

Adjournment AG07-15-10