

**MEETING MINUTES OF THE
NORTH CAROLINA MINING AND ENERGY COMMISSISON
June 7, 2013
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING, RALEIGH, NC**

The North Carolina Mining and Energy Commission met in regular session on Friday, June 7, 2013 beginning at 9:10 am, in the Ground Floor Hearing Room of the Archdale Building, Raleigh, North Carolina. Commission Chairman James Womack presided over the meeting.

1. Preliminary Matters

Chairman Womack called for a moment of silence, followed by the Pledge of Allegiance. Further, he welcomed Commission members and others attending the meeting.

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

Chairman Womack called the roll for Commission Members as follows:

Commission Members Present
Present

Mr. James Womack (Chairman)
Mr. George Howard (Vice-Chairman)
Dr. Robert Mensah-Biney
Mr. Charles Holbrook
Dr. Kenneth Taylor
Dr. Marva Taylor
Mr. Ivan "Tex" Gilmore (via Telephone)

Ms. Jane Lewis-Raymond (via Telephone)

Ms. Amy Pickle
Ms. Charlotte Mitchell
Dr. Vikram Rao
Mr. Charles Taylor

The Attorney General's Office
Ms. Jennie Wilhelm Hauser

Others in Attendance
See attached sign in sheets

Commission Members Absent

Dr. Ray Covington

DENR Staff Members

Mr. Tracy Davis
Mr. Mell Nevills
Mr. Walt Haven
Ms. Katherine Marciniak
Mr. Ryan Channell
Ms. Trina Ozer
Ms. Debra Godwin

Ms. Rosalind Harris

Ms. Layla Cummings

2. Approval of Minutes of May 3, 2013

Dr. Kenneth Taylor made a motion, seconded by Mr. Charles Taylor, to approve the minutes as presented. The motion passed.

3. Committee Reports

Water and Waste Management

Dr. Vikram Rao, Committee Chairman, reviewed the items discussed at the Water and Waste Management Committee Meeting as follows:

- DWQ provided information regarding deep well injection and disposal of liquid waste underground. Following the presentation, the Committee discussed underground injection and advised the Commission that it was the Committee's preference to refrain from performing underground injection for the purpose of wastewater disposal. However, the Committee plans to continue investigating the topic.
- The Committee favors the recycling and reuse of water, as opposed to injecting wastewater into the ground.

Chairman Womack stated that the current version of Senate Bill 76 removed provisions to allow for deep well injection. He also agreed that recycling and reuse is the preferred option.

Administration of Oil and Gas Committee

Mr. Charles Holbrook, Committee Chairman, reviewed the items discussed at the Administration of Oil and Gas Committee meeting as follows:

- The Committee finalized review and edits of the draft Well Construction Standards Rule. The edits were based on staff research, Committee research and input from stakeholders. Representatives from the Environmental Defense Fund and Southwestern Energy addressed the Committee and assisted with developing rule edits.
- The Committee plans to address additional topics including permitting, setbacks, production units, equipment construction standards, and wellhead standards.

Chairman Womack mentioned that he had coordinated with API to obtain standards needed for DEMLR's Energy Program and would like to have an industry representative assist staff as the rules are drafted for the Administration of Oil and Gas Committee. Dr. Rao suggested that a member of Environmental Defense Fund be added too, as well as the industry representatives.

Chairman Womack spoke of his intent to "migrate" staff to do more supporting work for the Administration of Oil and Gas Committee, as workload for the other Committees decreases over time.

Environmental Standards Committee

Mr. George Howard, Committee Chairman, reviewed the items discussed at the Environmental Standards Committee Meeting as follows:

- The Committee discussed the "indicator" or reduced sample "canary list" for the first round of baseline subsequent sampling. Staff was asked to contact the authors of the documents provided by Dr. Rao regarding indicator contaminants/parameters. Mr. Howard also asked staff to generate a list of questions related to indicator parameters to ask these authors.

- Mike Abraczinskas with the Division of Air Quality (DAQ) provided a presentation regarding current ambient air quality monitoring, as well as plans for future monitoring.
- The Committee plans to address setbacks during its next meeting.

Chairman Womack said that Lee County already has a current ambient air monitoring station. He also talked about the ability to access real-time data online from the current ambient monitoring network.

Dr. Rao said that the current draft baseline rule is the most stringent in the United States. He stated his concern about the rule being overly burdensome to industry, due to the requirement to sample all water supplies within 5,000 feet of an oil or gas wellhead. Regardless, he still supports the full draft rule parameters for the initial baseline sampling. However, he wanted to look at subsequent testing that would involve sampling only “canary” indicators (a reduced set of parameters) versus sampling the whole suite for subsequent sampling. He also expressed concerns related to false positive and false negative sampling results.

Dr. Rao spoke about real-time, remote monitoring technology being used to reduce the workload for an already limited staff.

Mr. Howard expressed a concern that if his committee decides not to require “canary list” sampling for subsequent sampling, then other concessions should be made, such as reducing the 5,000 foot sampling radius; reducing the number of wells to be sampled; or reducing the constituents for which samples should be tested.

The MEC discussed whether to send draft rules to industry for comment or not. Ms. Pickle noted the following: (1) sending out rules without equivalent fiscal note information would not provide the “whole” picture to industry; (2) industry already has representation on the stakeholders group and sending draft rules to industry would show unfair favoritism toward certain groups; and (3) industry and others have ample opportunity to participate in the rule development process.

Both Mr. Howard and Chairman Womack disagreed, since the stakeholders only have two industry representatives. Chairman Womack mentioned API, ANGA, Chesapeake Energy, and independent companies. He would like participation from each entity.

Rules Committee

Ms. Amy Pickle, Committee Chairwoman, reviewed these items from the Rules Committee:

- The draft Water Acquisition and Management rule was approved during the June 6, 2013 meeting for transmittal to the MEC, pending staff updates based on the Rules Committee comments.
- The Rules Committee directed staff to incorporate the technical changes to the current version of the draft Chemical Disclosure rule. However, Ms. Pickle noted that another proposal for chemical disclosure was being developed by other Commissioners.
- The draft “Prohibited Chemical Constituent” rule was approved for transmittal to the MEC.

Chairman Womack stated that he had developed an alternate draft Chemical Disclosure rule to conform with statutory and industry needs. When compared to the current Chemical Disclosure Rule, Mr. Womack’s version will have much of the trade secret references removed. He stated that

ultimately his version of the draft rules will require full chemical disclosure, but will not require that precise concentrations of additives be provided.

Chairman Womack addressed the Commission regarding the official acceptance of a draft rule by the MEC. He explained that whenever the Rules Committee completed their review of a rule, that the Commission should vote to formally accept that rule from the Rules Committee. He called this a "minimum threshold of acceptance" or a "vote of acceptance." This process would recognize that a given rule would not be returned to its originating Committee, but would instead be amended as needed by the Commission.

Ms. Pickle mentioned difficulties associated with rule drafting, requesting needed statutory authority, and the current October 2014 rule writing deadline. She expressed concern about the feasibility of obtaining needed statutory authority in time to meet the calendar deadline. She also noted that without proper statutory authority, the Commission's rules would be subject to rejection from the Rules Review Commission, and that the MEC could be subject to lawsuits.

Chairman Womack suggested that the Commission recommend legislative action for next year's omnibus energy bill, in order to obtain needed statutory authority.

4. Study Group Reports

Local Government Regulation Study Group

Mr. Charles Taylor, Study Group Director, reviewed the following items that were discussed during the last Study Group meeting:

- The last meeting scheduled for May 31, 2013 was postponed until June 6, 2013.
- Mr. Don Kovasckitz, Lee County Strategic Services, presented "Ownership of Oil and Gas Rights: The Surface and Mineral Estate." Topics included:
 - Split estates are estates in which the mineral rights are not owned by the surface owner.
 - Data gathered and modeled by Lee County based on title records. The graphics revealed where natural gas will likely be found in Lee County overlaid with where the surface and mineral rights were owned separately. It was noted that not all title records reveal where there is a split estate.
 - The Real Property Marketable Title Act G.S. 47B. If a person claims title to real property with a chain of record for 30 years, without another individual filing a claim of interest to the same property during the 30 year period, then all conflicting claims prior to the 30 year period shall be extinguished.
- The Study Group discussed mineral rights and the recording of severed estate information at the local Register of Deeds office and the Tax Assessor's office. The registers of deeds and tax assessors from Lee, Chatham, Montgomery, and Richmond Counties were present to discuss the level of activity in each county related to oil and gas leases.
- The Study Group noted that all oil and gas leases would have to be recorded in accordance with G.S. 113-423(g) and property owners must disclose to a potential buyer if mineral rights have been severed from the estate in accordance with G.S. 113-427, 47E-4(b2).
- Mr. Tom Morgan from the North Carolina Department of the Secretary of State, Certification and Filing Division, shared with the Study Group that the responsibility of the register of deeds office is to check the deed for proper formatting and archiving. Mr. Morgan also noted that the county land records group is the only entity that reviews the entire title document and these

groups are scattered throughout the state. Mr. Morgan recommended that “agents” buying or selling mineral rights in North Carolina should have the proper certification or license and the verification of these “agents” must be managed by the Department of the Secretary of State Securities Division.

- The Study Group discussed the diverse language used in deeds and the lack of consistency identifying severed estates. It was noted that the state should require an individual who sells the surface property but reserves the mineral rights to file an affidavit with the county reserving and registering the mineral ownership.

Compulsory Pooling Study Group

Ms. Mitchell, a Study Group member, reviewed the following items that were discussed during the last Compulsory Pooling Study Group meeting:

- The Study Group desires that all interested parties enter into lease agreements voluntarily.
- The Study Group agreed that leased owners should be subject to compulsory pooling, but will study further whether non-leased owners should be subject to compulsory pooling.
- The Study Group recommended the following regarding protection of compulsory pooled owners:
 1. the applicant should be required to make a fair and reasonable offer to any party it seeks to pool and the Commission should develop other factors to evaluate an application seeking a pooling order;
 2. the Commission should take an options approach to cost sharing for leased and non-leased owners;
 3. there should be time limitations on pooling orders issued;
 4. tort immunity and indemnification should be extended to compelled owners ;
 5. operators should give compelled owners information about volumes of product production as well as the right to audit production records; and
 6. operators should provide notice to owners about property entries.

Chairman Womack asked the Compulsory Pooling Study Group to add to its scope the following language as proposed in Senate Bill 76: “...shall study and recommend restitution fund for landowners who suffer damage.” Dr. Kenneth Taylor mentioned that Alabama had established an orphaned well fund to address such matters.

Funding Levels and Sources Study Group

Study Group Director Jane Lewis-Raymond reviewed the following items from the last meeting:

- The Study Group has developed recommendations for bonds to cover well plugging and abandonment, site reclamation, and geophysical exploration.
- The Group is planning to recommend both an impact fee and a severance tax. The impact fee will most likely be based on the number of stages of well fracturing or the anticipated horizontal well length. Chairman Womack stated that a third type of impact fee might be needed to address vertical wells, exploratory wells, or “dry hole” wells.
- Ms. Lewis-Raymond stated that the next meeting will address the actual cost to local governments from the impacts of oil and gas development, as well as severance taxing. Chairman Womack stated that the current version of Senate Bill 76 removed language detailing how the severance tax would be assessed and tasked the Commission with

studying severance taxes and impact fees, so the output of this Study Group should meet this requirement.

Coordinated Permitting Study Group

Study Group Director Dr. Kenneth Taylor reviewed the following items from the Study Group meeting:

- DAQ provided a presentation regarding possible permitting needs related to air monitoring and compliance.
- The Study Group has reviewed the permitting process in Pennsylvania, but will also be researching permitting in other states.
- The Study Group plans to research the feasibility of electronic submission of permit applications.

Protection of Trade Secrets and Proprietary Information Study Group

Study Group Director and MEC Chairman Womack stated that this Study Group would meet immediately following adjournment of the MEC that day. The purpose of the group is to discuss changes that should be made to statutory language to facilitate rulemaking that addresses trade secret, proprietary, and competition sensitive information. .

5. Surface Ownership, Mineral Rights and Severed Estates

Mr. Don Kovasckitz, Strategic Services Director for Lee County, provided a presentation on surface and mineral rights and addressed the following issues:

- Split estates and surface land ownership;
- Geographic Information System (GIS) data showing current mineral leases for Lee County;
- GIS data showing locations of potable water wells and gas wells;
- Real estate and lease holdings records; and
- GIS data showing various setback applications related to water wells, property boundaries, surface water bodies, etc.

6. Air Quality Monitoring Plans

Mr. Mike Abraczinskas, Deputy Director of the Division of Air Quality, gave a presentation on "Baseline Ambient Air Monitoring near Potential Shale Gas Development Zones in Lee County." His presentation included:

- Monitoring objectives;
- Monitoring locations;
- Monitoring parameters;
- The existing N.C. Air Quality Monitoring Network; and
- Public access to air monitoring data.

Mr. Abraczinskas noted that additional language with respect to air monitoring was not needed within the current MEC draft baseline sampling rules.

7. Resolution of Appreciation for Mr. Mell Nevils

Chairman Womack read a Resolution of Appreciation to Mr. Francis Mell Nevils, Jr. for his many years of public service. Dr. Kenneth Taylor made a motion, seconded by Dr. Rao, to adopt the Resolution of Appreciation. The Commission voted in favor of the resolution and wished Mr. Nevils well in his retirement.

8. Public Comment

- Dave Rogers with Environment North Carolina stated the following: (1) he does not support hydraulic fracturing of any kind but if citizens were willing to allow fracking, the disclosure policy should state that prior notice of chemicals should be published for the public's information; (2) the public meeting process could be made easier for the public by having evening and weekend meetings for those who cannot attend day-time meetings; (3) the MEC should allow people to sign up at any point during a given meeting to make public comments.
- Therese Vick, N.C. Health Campaign Coordinator for the Blue Ridge Environmental Defense League, stated that people who live on or own severed property are vulnerable because "mineral rights usually trump property rights." She thanked Ms. Pickle for mentioning human health during the MEC meeting. Further, she requested that in regards to fiscal notes, the Commission should look at the cost for groundwater and surface water remediation costs.
- Hope Taylor, Executive Director of Clean Water for North Carolina, stated that the Stakeholder Group was a diverse set of people. She reiterated Mr. Rogers' comments regarding meeting dates and times.
- Martha Girolami, Chatham County citizen, stated that a 9,000 foot radius to encompass baseline sampling around an oil or gas wellhead would be better than the proposed 5,000 foot radius. A larger radius would reduce the number of oil or gas well pads.
- John Wagner, Haw River Assembly, expressed his concern about adequate funding for DENR. He also asked if an operator who contaminates a drinking water well would be responsible for continually providing water to the affected well user. Finally, he suggested that water samples be archived in storage to allow for follow up testing of those collected samples.
- Lib Hutchby, a Wake County resident, stated she was working to ban fracking in North Carolina. She stated that "hydrofracking is gambling with peoples' lives."
- James Robinson of Rural Advancement Foundation International stated that the MEC had expressed concern about the balance of the stakeholder group and some of the MEC members had said that the stakeholder group balance was skewed toward the regulatory agencies or environmental groups. Mr. Robinson noted that at the last meeting of the stakeholder group, there had been three industry representatives, one environmental group and RAFI present. He recommended that if the MEC determines that they need further industry comment, RAFI recommends also soliciting comments from environmental, health and landowner groups so that the additional comments are as balanced as the stakeholder process has been.

9. MEC Discussion and Action on “Water Acquisition and Management” Rule

Ms. Pickle provided a summary of the changes made by the Rules Committee during their meeting on June 6. She also noted that the Rules Committee had passed the Water Acquisition and Management rule, pending updates from staff. She explained that once edits were completed, the rule would proceed to the MEC.

10. MEC Discussion and Action on the “Prohibited Chemicals and Constituents” Rule

Following discussion, Ms. Pickle made a motion, seconded by Mr. Taylor, for the MEC to accept the Prohibited Chemicals and Constituents rule, with the following acknowledgments: (1) verbiage in the second sentence, first paragraph, references an effective date that will be tied to the permit issuance date and (2) this verbiage would also be dependent on the final permitting rule. The MEC voted and approved acceptance. Following further discussion, Ms. Pickle made a motion, seconded by Ms. Mitchell, for the MEC to approve the rule and return it to DEMLR for eventual fiscal analysis. The MEC voted and approved the motion.

11. MEC Discussion and Action on “Chemical Disclosure Requirements” Rule

Mr. Howard made a motion, seconded by Dr. Rao, for the MEC to accept the Chemical Disclosure Requirements rule, as presented by the Rules Committee, but defer further discussion until the June 28 MEC meeting as mentioned earlier. The MEC voted and approved the motion.

12. Administrative Update

Mr. Walt Haven introduced the two new interns: Ms. Colleen Brophy and Mr. Franklin Wolfe. He further discussed parking passes and travel claim reimbursement procedures.

13. Concluding Remarks

Commission members thanked DEMLR staff and expressed appreciation to Mr. Nevils for his many years of service.

Chairman Womack reminded everyone that members of the public wishing to formally address the MEC are to sign up to do so before the meeting begins. He explained that this requirement is based on the MEC bylaws. Additionally, he added that despite the leniency with which the MEC typically implements this bylaw that the requirement would remain in place.

Ms. Pickle said she appreciated the public’s participation.

Chairman Womack asked DEMLR to provide him with a list of summer vacation schedules for staff.

12. Adjournment

There being no further business, Dr. Taylor made a motion, seconded by Mr. Howard, to adjourn. The motion passed. The meeting was adjourned at 2:40 pm.

Respectfully Submitted,



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



Tracy E. Davis, PE, CPM
Director, Division of Energy, Mineral & Land Resources