

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

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

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

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

**Study Group Members:**

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

**Attorney General's Office:**

Jennie Wilhelm Hauser (legal counsel)

**DENR Staff Member:**

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

**Others in Attendance:**

Refer to the attached meeting sign-in sheets.

2) **Background and Introductions:**

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

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

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

4) **Review Division of Water Quality Trade Secret Policy:**

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

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

**5) Review Division of Air Quality Trade Secret Policy:**

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

**6) Review Division of Waste Management Trade Secret Policy:**

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

**7) Review Department of Commerce Trade Secret Policy:**

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

**8) Discussion of Statutory Definitions:**

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

**9) Public Comment:**

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

**10) Next Steps:**

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

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

**11) Adjournment:**

Director Womack adjourned the meeting at 4:20 pm.

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

Meeting Minutes of the Protection of Trade Secret and Proprietary Information Study Group  
of the  
North Carolina Mining and Energy Commission  
August 6, 2013

**1. Preliminary Matters**

Director Womack called the meeting of the Protection of Trade Secret and Proprietary Information Study Group to order at 2:02 pm in room 504Q of the Archdale Building in Raleigh, NC. Director Womack read the relevant excerpt of the State Government Ethics Act, and asked Commission Members to consider whether or not they had conflicts of interest with respect to any items on the agenda. No conflicts were reported.

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

**Study Group Members:**

James Womack, Mining & Energy Commission (MEC)  
Kevin O'Barr, Department of Labor (DOL)  
Dr. David Levine, Elon University School of Law

**DENR Staff Member:**

Layla Cummings, Department of Environment and Natural Resources (DENR) Secretary's Office  
Walt Haven, DEMLR  
Rosalind Harris, DEMLR  
Ryan Channell, DEMLR

**Others in Attendance:**

Refer to the attached meeting sign-in sheets

**2. Background and Introductions:**

Director Womack introduced Mr. Kevin O'Barr as an advisor to the Study Group. Everyone attending the meeting introduced himself or herself.

**3. Review of Department of Labor and OSHA Policies:**

Director Womack reviewed trade secret related requirements with respect to the Commission and the Commission's coordination with the North Carolina DOL. He also expressed his desire for DENR, the Commission, and DOL to work together to address trade secret matters.

Director Womack noted that DENR did not want to keep trade secrets and as a result, identified other options for holding trade secrets:

- a. Held by a third party; or
- b. Held by the DOL, where these trade secrets would be subject to OSHA standards.

Mr. O'Barr explained that the oil and gas industry would fall under DOL jurisdiction and the industry would be subject to most Occupational Safety & Health Administration (OSHA) standards. DOL maintains custody of trade secret information and protects it from public release. He also stated that DOL has already implemented the most recent OSHA requirements related to trade secrets. Director Womack expressed his desire to write disclosure and trade secret rules consistent with

respective OSHA Code of Federal Regulations. It was noted that 35 states have provisions for managing trade secrets. Some states allow industry to retain trade secret information.

Director Womack stated that the study group should consider three options for managing trade secrets:

- a. Review the trade secret information and either approve or deny its use, and the trade secret information would be retained by industry;
- b. DOL retains trade secret information; or
- c. DENR retains trade secret information.

DOL standards require the following information to be disclosed for a given substance:

- a. Hazards from the chemical; and
- b. The proper method of treating for exposure to the chemical.

The DOL deals with hazards to industry employees, but not hazards to the environment.

Director Womack asked Mr. O'Barr to investigate whether or not the DOL Secretary would be willing to maintain trade secret information related to oil and gas operations.

**4. Discussion of Report Submitted to Alaska Oil and Gas Conservation Commission (document attached)**

Dr. David Levine reviewed the content of a letter he provided to the Alaska Oil and Gas Conservation Commission. He explained that the letter addressed the following concerns:

- a. The ability of citizens to conduct informed debate and discussion of matters important to the public;
- b. Effective environmental management requiring broad disclosure;
- c. Governmental agencies often hold trade secrets and doing so should not be controversial; and
- d. Trade secrecy laws should not be used as a means to impede public access to environmental health information.

Dr. Levine stated that the MEC should have the expertise to determine which claims regarding trade secret status are valid.

Director Womack explained the following procedures for determining the validation of trade secret claims:

- a. Check trade secret claims against chemical constituents listed on the FracFocus website; and
- b. Use the expertise of engineers and geologists who serve as MEC members.

The Study Group discussed implementing a process whereby any trade secret should have a date limit. When the date limit is reached, the information designated as trade secret can be reviewed by the MEC to determine whether or not the information can be released or needs to continue having trade secret protection.

The Study Group discussed whether or not a non-patented or experimental process or substance should be considered as a trade secret.

The Study Group acknowledged that protection of trade secrets is essential to maintaining industrial incentives to operate.

The Study Group discussed whether rules might be developed in a manner that set the level of disclosure based on the respective level of toxicity. Writing a rule in this manner would incentivize industry to use non-toxic chemicals. Thus, specific information related to chemical's molecular structure would not be needed for non-toxic substances. Also, if a chemical abstract service (CAS) number denotes a non-OSHA regulated chemical, then an oil or gas operator might not need to disclose that CAS number.

#### **5. Discussion of Appeal Authority**

The study group discussed how an appeal to a trade secret decision would be handled. Ms. Cummings stated that any appeal would go to the Office of Administrative Hearings. Director Womack stated that he preferred the North Carolina Business Court to consider the appeal. The Study Group noted that routing appeals through the business court system would require a statutory change.

#### **6. Public Comment**

Martha Girolami (Chatham County resident) – Ms. Girolami expressed a concern about chemicals that can be harmful in trace amounts, such as endocrine disrupting chemicals. Thus, knowledge of the chemical use is important in the event that chemical hazards are discovered at a later date. She also expressed a concern about a high concentration of hydraulic fracturing fluids being used in a small area. Director Womack responded with his own concern regarding agricultural chemicals and ensuring that oil and gas operators are regulated equivalently to other industries. Ms. Girolami asked how chemical information would be provided to medical officials. Director Womack stated that the pending chemical disclosure rule outlines the procedure for disclosing chemical information to emergency medical staff. Director Womack also stated that federal (OSHA) rules for hazardous chemical communications require information to be disclosed to medical professionals.

Jeannie Ambrose (Chatham County) – Ms. Ambrose asked about how the MEC or DENR could evaluate the safety of a new technique? Director Womack responded that the MEC or the Department would investigate if the technique has been used in other areas. If a potential hazard is identified, then industry representatives and government regulators would appear before the MEC to discuss the information in order to formulate a decision.

#### **7. Next Steps**

Director Womack was advised by Ms. Cummings to invite Dr. Vikram Rao to become a study group member. Director Womack would like the Study Group members to consider recommendations for statutory changes. The next Study Group meeting is tentatively scheduled to meet on September 27, 2013.

#### **8. Adjournment**

Director Womack called the meeting adjourned at 4:18 pm.

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