MEETING MINUTES OF THE
NORTH CAROLINA MINING AND ENERGY COMMISISON
June 28, 2013
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING, RALEIGH, NC

The North Carolina Mining and Energy Commission (MEC) met in regular session on Friday, June 28, 2013 beginning at 9:08 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	Commission Members Absent	DENR Members Present
Mr. James Womack (Chairman)	Mr. Ivan "Tex" Gilmore	Mr. Toby Vinson
Mr. George Howard (Vice-Chairman)	Dr. Vikram Rao	Mr. Mell Nevils
Dr. Robert Mensah-Biney		Mr. Walt Haven
Mr. Charles Holbrook		Ms. Katherine Marciniak
Dr. Kenneth Taylor		Mr. Ryan Channell
Dr. Marva Price		Ms. Layla Cummings
Dr. Ray Covington		Ms. Rosalind Harris
Ms. Jane Lewis-Raymond		
Ms. Amy Pickle		
Ms. Charlotte Mitchell		
Mr. Charles Taylor		

Attorney General's Office
Ms. Jennie Wilhelm Hauser

Others in Attendance
See attached sign in sheets.

2. Approval of Minutes from June 7, 2013 Meeting
Mr. George Howard made a motion, seconded by Mr. Charles Taylor, to approve the minutes as presented. The motion passed.

3. Committee Reports

Water and Waste Management Committee
Ms. Charlotte Mitchell, Committee Vice Chairwoman, reviewed the following items related to the Water and Waste Management Committee Meeting:

a. The Committee did not meet during the month of June;
b. Committee work on the exploration and production of waste rule set continues; and
c. Draft rule language related to waste management is scheduled to be presented to the Stakeholder Group on Oil and Gas Management on July 11, 2013.

Administration of Oil & Gas Committee

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

a. The Committee discussed oil and gas permitting procedures from Ohio, Texas, Wyoming, North Dakota, Colorado, Pennsylvania, West Virginia and Arkansas;
b. Rule writing for oil and gas wellhead standards is underway; and
c. Draft well construction rules have been approved by the Committee and sent to the Rules Committee.

Mr. Holbrook explained that the Administration of Oil and Gas Committee would address the following topics during future meetings:

a. Well closure;
b. Setback standards; and
c. Well permitting.

Chairman James Womack noted his desire to dedicate more staff time to the Administration of Oil and Gas Committee as other committees and study groups complete the rule writing initially assigned to them.

Environmental Standards Committee

Mr. Howard, Committee Chairman, reviewed the items addressed by the Environmental Standards Committee as follows:

a. Draft baseline testing rules were approved by the Committee during their June 27 meeting. The rule set establishes standards for initial baseline testing and subsequent water supply testing. Additionally, it establishes very comprehensive standards for water supply sampling while allowing for the use of innovative technologies, such as hydraulic fracturing tracers. The rule set has been forwarded to the Rules Committee;
b. The draft rule set regarding chemical disclosure was previously approved by the Committee;
c. The draft rule on prohibited chemical constituents had been previously approved by the Committee; and
d. The Committee plans to address setbacks during its next meeting.

The Commission discussed the need to require sampling and analysis of water stored in impoundments at oil and gas sites. Additionally, members recognized that the Water and Waste Management Committee would likely address this matter in the near future.

The Commission also discussed the draft baseline testing rule as compared to Session Law 2013-122 (Private Well Water Education Act). Dr. Kenneth Taylor noted that private well samples collected in accordance with this statute would be analyzed by the State Laboratory of Public Health. He explained that this laboratory follows analytical protocols which are different from those referenced in the Baseline Testing rule.

Rules Committee

Ms. Amy Pickle, Committee Chairwoman, reviewed the items addressed by the Rules Committee as follows:

a. Ms. Lewis-Raymond was added as a Committee member;
b. The draft well construction rules were reviewed by the Committee, with edits returned to staff to update the draft rule set; and
c. The Committee plans to provide a final review of the well construction rule set during its next meeting.

The Commission noted that rules should be written so that regulatory requirements and individuals subject to those requirements are clearly defined.

4. The Commission recessed from 9:48 am until 10:05 am so that staff could correct Internet-broadcasting problems.

5. Study Group Reports

Local Government Regulation Study Group

Mr. Charles Taylor, Study Group Director, explained that his Study Group was continuing to draft its final report. He provided details for the following meeting dates:

a. July 12, 2013: The Study Group should complete discussion of the report outline and pending items; and
b. July 19, 2013: The Study Group should finish developing the report content and recommendations.

The Commission discussed the need to coordinate efforts and recommendations with committees and study groups to ensure that appropriate rules are developed. Additionally, Commissioners recognized that rules related to setbacks would require such coordination.

Compulsory Pooling Study Group

Dr. Ray Covington, Study Group Director, reviewed the following items being addressed by the Compulsory Pooling Study Group:

a. The Study Group is continuing its research of compulsory pooling laws in various states;
b. Non-voting members of the Study Group would meet during the summer to continue working on the report;
c. The Study Group has already developed various recommendations regarding pooling, including indemnification and the pooling of leased properties; and
d. Research continues on the subjects of pooling of properties without leases and determining a minimum percentage requirement for voluntary pooling before allowing compulsory pooling.

Chairman Womack asked Dr. Covington to consider compensation recommendations for mineral owners who had signed unfair leases with oil or gas companies. He also asked that this Study Group consider making recommendations related to rulemaking for landman registration.

Funding Levels and Potential Funding Sources Study Group

Ms. Lewis-Raymond, Study Group Director, reviewed the following items being addressed by the Funding Levels and Potential Funding Sources Study Group:

a. The Study Group plans to recommend the following types of bonding instruments:
    1. Assignment to savings account;

    2. Surety bonds;
    3. Bank guaranty; and
    4. Cash deposits.

b. The Study Group plans to recommend bonding requirements for the following activities:
    1. Geophysical exploration ($50,000);
    2. Site reclamation; and
    3. Well plugging and abandonment ($27.00 per foot of casing requiring cement filling).

c. Recommendations for surface owner bonding were still under consideration. However, this form of bonding would likely be a lease agreement requirement; and

d. The Study Group is also researching N.C. Department of Transportation cost impacts, local government cost impacts, severance taxes, and impact fees.

The Commission discussed that study group reports should be provided to the MEC in final form, after which the MEC would report to the General Assembly. However, Commissioners recognized that time constraints may require the Commission to vote to send draft documents to the General Assembly.

Chairman Womack explained to the Commission that the charter for this study group in Senate Bill 820 was not to consider the oil and gas industry as an alternative new revenue source for the State. Rather, the Study Group's charter is to identify cost impacts and to address reimbursement mechanisms for those impacts. The study group's report will be focused on recovering funds for direct cost impacts to the state and to local jurisdictions.

<u>Coordinated Permitting Study Group</u>

Dr. Taylor, Study Group Director, reviewed the following items being addressed by the Coordinated Permitting Study Group:

a. The Study Group had reviewed permit applications from the following states: Wyoming, Arkansas, Colorado, North Dakota, Ohio, Pennsylvania, Texas and West Virginia;
b. Energy Program interns Ms. Colleen Brophy and Mr. Franklin Wolfe, as well as Mr. Ryan Channel, were recognized for their efforts in assembling application packages from these states; and
c. Future Study Group work would involve researching the usefulness of electronic permitting.

<u>Protection of Trade Secrets and Proprietary Information Study Group</u>

Commission Chairman Womack, Study Group Director, reviewed the following items being addressed by the Protection of Trade Secrets and Proprietary Information Study Group:

a. The Study Group continues to research trade secrets and propriety information, as applied to all future oil and gas rules;
b. Specific trade secrets and propriety information rules from Arkansas, Colorado, Texas and Illinois were studied;
c. Current North Carolina rules allowing for the N.C. Geological Survey to keep and protect propriety information related to geological and geophysical data have been reviewed;
d. The Study Group plans to develop recommendations that would appropriately address trade secret and propriety information protection with economic development; and
e. The Study Group discussed using possible expiration dates for claims related to trade secret and propriety information.

The Commission discussed and noted the following with respect to geophysical operations:

a. Neither current rule nor session law requires permitting for non-explosive geophysical operations;
b. "Vibroseis" trucks should coordinate their operations with the N.C. Department of Transportation; and
c. The Study Group would continue researching trade secret and propriety information related to geophysical and geological exploration data.

8. MEC Discussion and Action on "Water Acquisition and Management" Rule

According to MEC meeting bylaws, any draft rule which is approved by the Rules Committee must be held for at least 30 days before being heard by the Commission. However, Commission members may choose to waive this rule as long as two-thirds of the MEC vote to do so. The Water Acquisition and Management rule had been approved by the Rules Committee less than 30 days prior to the June 28 MEC meeting. As a result, Ms. Pickle offered a motion to waive this 30 day rule, which was seconded by Mr. Taylor. The motion passed.

Ms. Mitchell led the rule discussion and reviewed the overall purpose of each rule section. She explained that the rule set addressed water acquisition, water use, and water management. She also noted that one water management plan could be used to address water withdrawal from multiple wells.

The Commission discussed the following issues related to this rule set:

a. The term "real property" should be defined to encompass both real estate and severed mineral estates. This term should be listed in the overall "Definition" section within the entire oil and gas rules;
b. A water management plan would be part of an application package to drill an oil or gas well;
c. Legal responsibilities of a permit holder and the responsibilities of water acquisition or other subcontractors;
d. Encouraging the reuse of water;
e. The frequent need for "new" water to replace reused water lost to a formation during well operations; and
f. The potential for one operator to collect, retain, and own large quantities of water.

The draft rule was amended by the Commission as follows:

a. Changed the term "well operator" to "permittee" throughout the rule.
b. Removal of text from 05H .XXX3(c): "The proposed water management plan may address water use for multiple well pads, some of which may be authorized under future applications for comprehensive oil and gas development permits. A water management plan approved for multiple well pads may be included by reference in subsequent applications for comprehensive oil and gas development permits for any well pads included in the approved water management plan."
c. The Commission agreed that any reference to another rule or statute which is incorporated into the Water Acquisition and Management rule, and is intended to be continually implemented as that referenced rule or statute changes, should be specifically noted. Thus, any referenced statutes or rules should be accompanied by the rule or statute name, along with this accompanying text, "…which is incorporated by reference, including subsequent amendments."

Ms. Pickle made a motion to approve the rule based on amendments. Her motion was seconded by Dr. Taylor. The motion passed.

9. MEC Discussion Regarding Chemical Disclosure Requirements

Chairman Womack stated that the Commission would not deliberate the chemical disclosure rule set during this meeting. The MEC discussed House Bill 94, which was amended by the Senate and references disclosure of trade secrets. The bill as currently written would require oil and gas companies to disclose the constituents being used in hydraulic fracturing fluids, except those constituents or mixtures identified by industry as being trade secrets. However, the bill would allow the Secretary of the Environment to request and obtain trade secret information to address a public health or environmental emergency.

Mr. Taylor expressed his disappointment with the bill and remarked that the General Assembly should allow the MEC to complete its work related to the chemical disclosure rules before writing respective legislation. He noted that the bill seemed to have been written counter to the Commission's intent with respect to disclosure.

Commissioners offered opposing viewpoints related to the retention and protection of trade secrets. Mr. Howard offered that the original version of the chemical disclosure rule set as developed by the Environmental Standards Committee would have allowed industry to retain trade secret information, but would have required release of the information to address a human health or environmental emergency. He also stated that dealing with trade secret information in this manner would have been in compliance with Session Law 2012-143. Mr. Howard noted that the current version of the chemical disclosure rule set was different from the original Environmental Standards Committee version with respect to the holding of trade secrets by DENR.

Chairman Womack stated his preference for DENR or the MEC to retain trade secret information to foster public trust and oversight of the oil and gas industry. He also remarked that he felt the General Assembly was being used to circumvent the MEC's rulemaking process.

Mr. Taylor made a motion for the Commission to draft official correspondence to the Speaker of the House and the President Pro-Tempore of the Senate. The letter would be drafted by Chairman Womack and address the following concerns:

a. Explanation to the General Assembly that their action regarding chemical disclosure was premature;
b. Ask the General Assembly to allow the MEC to proceed with the rule writing process; and
c. Request that the General Assembly allow the MEC to deliberate the rule and submit it to them.

Dr. Covington seconded the motion. The motion was unanimously approved.

9. Lunch Break at 1:05 pm. The Commission reconvened at 1:36 pm.

10. Further MEC Discussion Regarding Chemical Disclosure Requirements

Chairman Womack reviewed federal standards with respect to the U.S. Occupational Safety and Health Administration (OSHA) rules. He addressed the following matters:

a. The Code of Federal Regulations (CFR) only requires hazardous substances to be disclosed;

b. Non-hazardous substances which are part of a trade secret would not have to be disclosed to anyone and trade secret conflicts could be avoided; and
c. The current chemical disclosure rule set could be amended such that disclosure would be required only for substances identified as hazardous by OSHA standards.

The Commission discussed situations where the release of some non-hazardous substances, depending on quantity, could still constitute an environmental hazard. Members also discussed designations of trade secrets as being based on chemical concentrations. Dr. Taylor noted the usefulness of chemical names being disclosed based on class, as defined for emergency planning purposes (flammable, corrosive, etc.).

The Commission deliberated the holding of trade secrets and whether or not confidential information should routinely be held by the Commission, by DENR, or by industry. Mr. Howard stated that the requirements for the State to hold trade secret information was the only controversial section of the current draft chemical disclosure rule set. Other commissioners felt that the rule was crafted based on various compromises and that removing the holding of trade secrets language from the rule would require a review of all other parts of the rule.

The MEC plans to further deliberate the draft chemical disclosure rule set during its next meeting.

11. Public Comment

Therese Vick (Blue Ridge Environmental Defense League): Ms. Vick thanked several commissioners for their support of the public process and transparency, but she expressed her concern that House Bill 94 reduces industry accountability. She stated that she was worried about the ability of emergency personnel to properly respond to accidents related to trade secret chemicals. She also explained that other programs within DENR had a history of holding trade secrets and believes that DENR would hold the secrets properly. She expressed her disappointment with the General Assembly circumventing the MEC rule writing process through House Bill 94.

George Mathis (River Guardian Foundation): Mr. Mathis expressed his support of Ms. Vick's remarks and agreed with the MEC's intention to send a letter to the General Assembly. He also expressed his support of a full chemical disclosure rule.

Sharon Garbutt (Chatham County): Ms. Garbutt is a potable well user. She asked, "If my neighbor sold water to an oil or gas company, would it be possible for my well to run dry? How would I go about proving that his action dried my well? Do we know enough about groundwater to be sure if this scenario could happen or not?" She believes that "we don't understand enough about groundwater flow to answer these questions." She also expressed her desire to protect the interests of residents in her area.

David McGowan (N.C. Petroleum Council): Mr. McGowan introduced himself and stated that he was looking forward to working with the Commission and the public.

Nancy Wood (Chatham County, Environmental Health): Ms. Wood talked about a "cone of influence" from water well use and stated that it would be possible for the use of one well to cause another to run dry.

13. Concluding Remarks

Chairman Womack explained that nominations for the positions of chair and vice chair would be due for the next Commission meeting. Newly elected chair and vice chair members would take office effective in August. Chairman Womack appointed Ms. Pickle, Dr. Covington, and Mr. Holbrook to serve on the Nominating Committee.

Dr. Marva Price expressed her desire to ensure that coordination with the MEC and the Commission for Public Health was accomplished.

The MEC wished Mr. Nevils well during his retirement and thanked staff.

Chairman Womack adjourned the meeting at 2:42 pm.

Respectfully Submitted,

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Walter Haven, PG
Division of Energy, Mineral, and Land Resources

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