

**North Carolina Mining and Energy Commission**  
**Coordinated Permitting Study Group**  
Minutes of the October 25, 2013 Meeting

The North Carolina Mining and Energy Commission's (MEC) Coordinated Permitting Study Group held its seventh meeting on Friday, October 25, 2013 beginning at 2:31 pm in the Ground Floor Hearing Room of the Archdale Building, Raleigh, North Carolina. Study Group Director Dr. Kenneth Taylor presided over the meeting.

**I. Preliminary Matters**

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

Dr. Taylor called the meeting to order. He welcomed Commissioners and other Study Group members attending the meeting. He read the relevant excerpt of the State Government Ethics Act, and asked members to consider whether or not they had conflicts of interest with respect to action items on the agenda. No conflicts were raised.

**2. Welcome Study Group Members and Review of the Meeting Agenda**

Dr. Taylor welcomed all study group members and reviewed the agenda prior to asking for a motion to approve minutes from the previous meeting. He also conducted a roll call of members and noted the following results:

Study Group Members Present

Dr. Kenneth Taylor, PG (Study Group Director), MEC  
Mr. James Womack, Mining and Energy Commission Chairman, MEC  
Mr. Charles Holbrook, Administration of Oil and Gas Committee Chairman, MEC  
Dr. Ray Covington, Compulsory Pooling Study Group Director, MEC  
Mr. Mike Abraczinskas, EIT, CPM, Deputy Director, Division of Air Quality (DAQ)  
Mr. Tracy Davis, PE, CPM, Director, Division of Energy, Mineral, and Land Resources (DEMLR)  
Mr. Toby Vinson, PE, Chief Engineer, Land Quality Section, DEMLR  
Mr. Ken Pickle, Surface Water Protection Section, DEMLR  
Ms. Ellen Lorscheider, Division of Waste Management (DWM)  
Mr. Brandon Jones, NC Department of Transportation (NCDOT)  
Mr. Evan Kane, PG, Groundwater Planning, Division of Water Resources (DWR)  
Mr. William Willets, PE, Engineering Supervisor, Permitting Section, DAQ

Study Group Members Absent

Mr. George Howard, Environmental Standards Committee Chairman, MEC  
Dr. Vikram Rao, Water and Waste Management Committee Chairman, MEC  
Mr. Don Rayno, DWR

**3. Approval of the Minutes of the September 27, 2013 Study Group Meeting**

The Study Group reviewed the minutes, wherein the following items were noted:

- a. MEC Chairman James Womack noted that his remarks as referenced under item 3, on page four of the minutes regarding "local government concerns" were related to overall permitting in general. He explained his intent would be that a permit would not be issued without coordination with a local government and asked that his remarks be listed under a new section referenced as item 4;

- b. Mr. Mike Abraczinskas stated that his comments regarding fugitive dust and best management practices should be shown within item #2 on the September 27 meeting minutes;
- c. Dr. Taylor noted that the minutes actually captured the timing of when the remarks were made, whether or not those remarks were directly associated with an agenda-listed discussion item. As a result, summarized comments shown within the meeting minutes are written in chronological order; and
- d. Mr. Evan Kane noted a typographical error on page #3, wherein the word “through” should have been rendered as “thought.”

MEC Chairman Womack made a motion to approve the minutes, followed by Mr. Abraczinskas who seconded the motion. The meeting minutes were approved.

## **II. Action Items**

### **4. Jurisdiction over gathering lines**

Ms. Jennie Hauser (Office of the Attorney General) explained that the utilities commission has jurisdiction over gathering lines, according to MEC Commissioner Jane Lewis-Raymond. However, Ms. Hauser is continuing to research the matter and will report results at a later date.

### **5. Submission Standards**

Dr. Kenneth Taylor noted that no standards for electronic submission of permit applications exist. He stated his plans to work with Mr. Ted Bush (NCDENR’s Director of Environmental Assistance and Customer Service) to establish a working group to define these standards. Additionally, the Study Group noted that the Mining Program and Sedimentation and Erosion Control Program had submission guidelines, but no required submission standards.

### **6. Creation of a permitting checklist**

Dr. Taylor noted that his research into the permitting processes of other states is continuing.

### **7. Waste Management Characterization**

Ms. Katherine Marciniak explained that the Water and Waste Management Committee was still deliberating the draft waste management rule. However, the current rule draft would require characterization of oil and gas operations waste.

## **III. Informational Items**

### **8. Input from additional member on the “White Board” comments**

Mr. Evan Kane addressed the following matters related to DWR’s role in the coordinated permitting process:

- a. No deficiencies were noted with respect to the “white board” listed items;
- b. The possibility of oil and gas operators needing Corps of Engineers approval for the installation of culverts, damming of streams, etc.;
- c. Notation that “waters of the State” refers to all surface waters, including wetlands;
- d. Wastewater source profiling should be adequately addressed in the MEC’s waste management rules; and
- e. Stream buffer rules.

### **9. Presentation on the Draft rule set for Oil and Gas Permitting**

Ms. Katherine Marciniak led Study Group discussion regarding the draft well permitting rules. The Study Group discussed and addressed the following matters with respect to this rule set:

- a. Definitions of terms related to the draft rule set;
- b. Requirement for oil and gas industry service companies to register with the NC Secretary of State's Office;
- c. Requirement for all permit owners to maintain bonds for financial assurance related to well closure and site reclamation;
- d. Requirement for an operator to have a permit drill or operate an oil or gas well;
- e. Permit application submission requirements;
  - i. Fee of \$3,000 per Session Law 2012-143;
  - ii. Bonds;
  - iii. "Permit to Drill" form;
  - iv. Documentation showing authorizations to drill on specified properties
- f. Assignment of an API number for well registration;
- g. Requirement for electronic submission;
- h. Permit application contents:
  - i. Proposed well name;
  - ii. Geographic location of the well (latitude and longitude coordinates);
  - iii. Site plat, showing map scale, legend, overall site layout, and name of preparer;
  - iv. Overlay of proposed site on topographic or Geographic Information System (GIS) map;
  - v. Consent from local governments related to those authorities under local jurisdiction;
  - vi. Well characteristics regarding true vertical and measured depths and well inclination;
  - vii. Copies of land owner notifications; and
  - viii. Compliance with setback requirements.

MEC Chairman Womack commented that municipal consent for drilling should not be required and that requiring local consent would be contrary to current statute. However, local government authorities should be notified of upcoming drilling operations.

Ms. Marciniak continued her review of the draft rule and noted these additional application submission requirements which would include:

- a. Baseline sampling results;
- b. Copies of water well construction records;
- c. Table of water well or receptor information;
- d. Diagram showing presumptive liability area;
- e. Well construction design plans;
- f. Plans for site construction phases, including site diagrams with insets of erosion and sedimentation control measures, well pad construction characteristics, wetland boundaries, floodplain limits, etc.;
- g. Water use plan;
- h. Waste management plan;
- i. Heritage and endangered species review;
- j. Site reclamation plan;
- k. Emergency response plans (development is pending); and
- l. Public notifications (development is pending).

Ms. Marciniak also explained that draft rules delineating permit denial criteria, proposed rules for permit transfers, and rules defining permit expiration and revocation were pending development.

### III. Study Group Discussion

#### 10. Discussion of the “White Board” comments and the Draft Rule set

Dr. Taylor asked study group members if the draft rules addressed the concerns that had been raised during the “White Board” exercise. Messrs. Brandon Jones, Toby Vinson, and Tracy Davis stated agreement with the overall rule set. However, Mr. Ken Pickle explained that more detail within the rules might be needed. Mr. George Howard, via note to Director Dr. Taylor, stated that maintenance of an approved vendor list would not be necessary. Ms. Ellen Lorscheider mentioned that a plat should include plans for the storage of hazardous materials. She further explained that a rule listing specific denial criteria could allow for lawsuits against DENR, in which the Department would have to defend justifications for not issuing permits. However, Mr. Davis explained that the draft denial criteria mimic criteria the paradigm used within the mining program and have been successfully implemented since 1971. Mr. Kane mentioned that permit issuing and denial authority is outlined in DWR’s land application rule, wherein specific criteria are not listed, but that the Director is required to draft correspondence justifying the permit denial. Mr. Abraczinskas noted that Study Group members could continue to consider this matter.

MEC Chairman Womack changed the direction of conversation to discuss the draft permitting rule. He stated that the rule set seemed to indicate that each well would have its own permit, as opposed to a drilling unit with multiple wells operating under one permit. However, Ms. Marciniak and Dr. Taylor explained that a well permit fee of \$3,000 was required by statute (Session Law 2012-143), but that a permit could still be issued for the entire site.

Mr. Abraczinskas noted that permit conditions related to on-site engine sizes, engine quantities, engine fuel type, and operating characteristics should be included into the draft rule. He also offered DAQ assistance in drafting these requirements. Mr. Abraczinskas also recommended that “rescinding of permit” replace the phrase “release of permit.” Mr. Davis noted that “releasing of permits” was consistent terminology within the mining industry and the Mining Program. Mr. Abraczinskas stated that his office would review its expectation of emissions standards based on scenarios of well density within drilling sites in other states.

MEC Chairman Womack stated that even if the Utility Commission would be responsible for regulating gathering lines, that the MEC should provide regulatory language that the Utility Commission should use.

Mr. Abraczinskas suggested that the draft permitting rules should include a “purpose” or “scope” paragraph.

Mr. Pickle explained that the rules implemented by his program do not allow for the transfer of a permit from one entity to another. Ms. Hauser explained that permit transferring does occur within the Mining Program. Mr. Vinson stated that recent legislation would allow for the transferring of permits related to erosion and sediment control. Dr. Taylor reiterated the principle of permit fees as being a mechanism to fund a respective regulatory program. He also talked about recent well permitting in Pennsylvania, which included the following matters:

- a. Large volume of permit applications;
- b. Limited regulatory personnel; and
- c. Use of permit fees to fund regulatory programs and respective staff positions.

#### **11. Identify Proposed Legislative Needs for the Study Group Report**

The Study Group considered the following possible suggestions for statutory changes:

- a. Mr. Abraczinskas and Mr. Willets suggested the need for new statutory authority for DEMLR or for the MEC to issue a coordinated well permit;
- b. MEC Chairman Womack suggested the need for statutory changes related to trade secrets to withhold certain documents from the public, so that a permit could be issued without having to reveal sensitive or protected information; and
- c. Dr. Covington suggested that statutory changes related to severed estates might be needed.

#### **IV. Public Comments**

No member of the public requested to speak.

**The Coordinated Permitting Study Group adjourned at 4:21 pm.**