

**MEETING MINUTES OF THE
NORTH CAROLINA MINING AND ENERGY COMMISSION
July 26, 2013
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING, RALEIGH, NC**

The North Carolina Mining and Energy Commission (MEC) met in regular session on Friday, July 26, 2013 beginning at 9:02 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. Mr. Howard noted a recent purchase by his company of a prairie chicken company, which could potentially result in future business arrangements between his corporation and the oil and gas industry. He is already coordinating consultative efforts with Ms. Jennie Hauser and the State Ethics Commission. No other conflicts were raised.

Chairman Womack called the roll for Commission members as follows:

Commission Members Present

Mr. James Womack (Chairman)
Mr. George Howard (Vice-Chairman)
Dr. Robert Mensah-Biney
Mr. Charles Holbrook
Dr. Kenneth Taylor
Dr. Marva Price
Dr. Ray Covington
Ms. Jane Lewis-Raymond
Ms. Amy Pickle
Ms. Charlotte Mitchell
Mr. Charles Taylor
Dr. Vikram Rao
Mr. Ivan "Tex" Gilmore

Commission Members Absent

DENR Members Present

Mr. Toby Vinson
Ms. Trina Ozer
Mr. Walt Haven
Ms. Katherine Marciniak
Mr. Ryan Channell
Ms. Layla Cummings
Ms. Rosalind Harris
Mr. Evan Kane

Attorney General's Office

Ms. Jennie Wilhelm Hauser

Others in Attendance

See attached sign in sheets.

2. Approval of Minutes from June 28, 2013 Meeting

Mr. George Howard made a motion, seconded by Mr. "Tex" Gilmore to approve the minutes as presented. The motion passed.

3. Committee Reports

Water and Waste Management Committee

Dr. Vikram Rao, Committee Chairman, reviewed the following items related to the Water and Waste Management Committee Meeting:

- a. The Committee last met on July 25, 2013 to review the draft waste management rules;
- b. Stakeholder comments were considered;
- c. The Committee asked staff to edit the draft rule set based on Stakeholder comment;
- d. The Committee is considering various wastewater disposal options and is reconsidering deep well injection as a disposal alternative. Additional study regarding injection is needed before the Committee recommends it be prohibited;
- e. The Committee plans to present a paper regarding injection during the next meeting on September 5, 2013; and
- f. Work will continue on the waste management rule set.

Chairman Jim Womack expressed his appreciation of the Stakeholder group process, as well as Ms. Trina Ozer's leadership of this group. The Commission discussed recent research regarding deep well injection in Pavillion, WY, the Marcellus Shale, and the Fayetteville Shale. Dr. Rao noted that a recent USGS study in Arkansas indicated no contamination resulting from fracturing activities. He also noted that a similar study in the Fayetteville Shale yielded similar results. Additionally, Dr. Rao reiterated the importance of proper well construction with respect to groundwater protection. The Commission discussed recent opinions from Duke University's Dr. Rob Jackson regarding deep well injection and whether or not injection, while appropriate for other states, would be appropriate for North Carolina. Dr. Taylor summarized southeastern North Carolina geology and regional groundwater. The Commission recognized that flowback water from Triassic Basin rocks should result in low salinities and could be treated and reused.

Administration of Oil & Gas Committee

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

- a. The Committee received a presentation on wellhead standards during its last meeting on July 25, 2013;
- b. The Committee reviewed and edited the draft wellhead standards rule set;
- c. The draft rules were approved and forwarded to the Rules Committee;
- d. Ms. Katherine Marciniak presented information regarding setback distances, as well as respective rules for North Carolina and other states;
- e. The Chairman from the Administration of Oil and Gas Committee will be working with the Chairman of the Environmental Standards Committee to coordinate efforts to address setbacks and buffers;
- f. The Administration of Oil and Gas Committee discussed well closure procedures;
- g. Four classes of well closure were defined:
 - a. Plugged and abandoned – permanent sealing;
 - b. Shut in – the well is completed with a wellhead and awaiting infrastructure;
 - c. Temporarily abandoned – the well has not been completed for production. Examples may include vertical exploration wells which may be subject to future well construction work; and
 - d. Producing well;

- h. The Committee Chairman scheduled a three-hour planning meeting with staff on August 9, 2013 to develop a strategy for future research and rule writing.

The Administration of Oil and Gas Committee will retain jurisdiction regarding well spacing and producing units. However, the Environmental Standards Committee will oversee rule development for setbacks both within and away from the well site. Chairman Womack explained that he would be researching justification for setback distances from other states and prefers that setbacks distances be based on health and safety considerations.

Environmental Standards Committee

Mr. Howard, Committee Chairman, reviewed the items addressed by the Environmental Standards Committee during its July 25, 2013 meeting as follows:

- a. The Environmental Standards Committee realizes that determining quantitative reasoning for setback distances will be difficult;
- b. The Committee received an information presentation regarding noise, odor and dust;
- c. Odor and dust matters are already being addressed by the Division of Air Quality;
- d. The Committee Chairman has asked for a formal presentation regarding diabase dikes;
- e. The next meeting is scheduled for September 05, 2013; and
- f. The Committee anticipates addressing light pollution issues.

The Commission discussed potential rule drafting for visual impact mitigation, which may or may not be addressed as part of wellhead rules. Ms. Jane Lewis-Raymond noted that local jurisdictions often have their own rules regarding this matter.

Mining Committee

Mr. "Tex" Gilmore reviewed the items addressed by the Mining Committee during its July 25, 2013 meeting as follows:

- a. The Committee received an information presentation regarding mining statistics;
- b. The Committee also received a presentation regarding rule enforcement measures and pending appeals; and
- c. Mr. Toby Vinson provided information regarding overall Land Quality Section activities.

Dr. Taylor mentioned current N.C. Geological Survey research regarding potential diamondiferous deposits in the western part of the state.

Rules Committee

Ms. Amy Pickle, Committee Chairwoman, reviewed the items addressed by the Rules Committee during its July 25, 2013 meeting as follows:

- a. The Committee finished consideration of the well construction rule set;
- b. The Rules Committee is considering whether or not to meet on August 9, 2013;
- c. The Committee is planning to compile definitions of terms into a separate rule section; and
- d. "Placeholder" text will be left in place for rule language in need of research regarding statutory authority.

The Commission discussed advantages of referencing American Petroleum Institute (API) standards by title, as opposed to referencing specific text within these standards. Referencing these standards by title ensures that as the standards change, respective oil and gas rules will not have to be amended. Additionally, DEMLR and the Attorney General's Office are working with the Ethics

Commission to determine whether or not API would be allowed to provide respective standards to the Division of Energy, Mineral and Land Resources at no cost.

4. 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 the following details:

- a. The Study Group plans to provide a final draft to the Commission within two weeks;
- b. The report will also include an executive summary to summarize overall Study Group findings;
- c. The Study Group has also researched analogies between local zoning and mobile phone towers with respect to oil and gas sites;
- d. The last meeting included an information presentation regarding noise, light, dust and odor nuisances; and
- e. A future meeting date has yet to be determined.

The MEC discussed how different states have allowed local governments to use their zoning authorities to regulate the oil and gas industry. However, MEC Chairman Womack and the Study Group Director Taylor believe that a zoning approach to restrict the industry would be inappropriate for North Carolina. The Commission also noted that Lee County has a unified development ordinance (UDO), however this UDO does not include oil and gas operations.

Compulsory Pooling Study Group

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

- a. Resource Group members met to outline the draft report;
- b. The next meeting of the subgroup is scheduled for August 2; and
- c. The Compulsory Pooling Study Group is planning to officially meet again on August 28.

The Chairman noted that the Compulsory Pooling Study Group will be researching items previously identified within Senate Bill 76. These items will be addressed after the Study Group completes its work regarding compulsory pooling. Additionally, the Group will also 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. Last meeting occurred on July 8, 2013;
- b. The Study Group has continued its work on defining costs to DENR and NCDOT;
- c. The Study Group is continuing its work on defining impact fee structures, which would include:
 1. Initial flat fee for an initial pad;
 2. Additional fee to apply per each stage of hydraulic fracturing;
- d. The Study Group's consideration of severance taxes may depend on the outcome of pending legislation and the adequacy of funding provided by taxes;

- e. Next meeting is scheduled for July 30, which will include a draft report review, continued research regarding severance taxes, the Underground Storage Tank Trust Fund management system, and fracturing stages and well construction processes.

Coordinated Permitting Study Group

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. Dr. Taylor is working with Dr. Covington to estimate gas production rates from Triassic Basin areas. These estimates will be based on the assumptions involving:
 - 1. Pre-existing infrastructure being in place;
 - 2. Price of recovered gas will be within a profitable margin;
 - 3. Well spacing;
 - 4. Expected drilling unit configuration;
- c. Dr. Taylor noted the potential advantage to profits of “wet gas” versus “dry gas”; and
- d. The Study Group is working to determine permitting application requirements.

Protection of Trade Secrets and Proprietary Information Study Group

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. The Group had received presentations regarding the current management of trade secret and proprietary information, as well as the protection of this information;
- c. Dr. David Levine from Elon University Law School has joined the Study Group;
- d. The next meeting is scheduled for August 6, 2013; and
- e. Chairman Womack reiterated the Group’s goals of researching related statutes and then documenting where statutory or internal DENR procedural changes are needed.

The Commission discussed balancing the protection of trade secrets against the protection of the public and the public’s “right to know.”

5. The Commission recessed from 10:43 am until 11:06 am.

6. MEC Discussion and Action on the Well Construction Rule Set

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 Well Construction rule set had been approved by the Rules Committee less than 30 days prior to the July 26th MEC meeting. As a result, Dr. Taylor offered a motion to waive this 30 day rule, which was seconded by Ms. Amy Pickle. The motion passed. Dr. Taylor noted that definitions may need to be added to this rule after other related rules are written. He asked about the procedures allowing the MEC to recall an approved rule for additional Commission review and editing. The Chairman stated that re-accessing an already approved rule for amendments would be possible and appropriate to do.

Mr. Holbrook led the rule discussion and introduced the overall rule set. He also noted that staff edits were still pending based on Rules Committee comments.

The Commission and staff addressed the following issues related to this rule set:

- a. Text edits were pending;
- b. The use of centralizers in the construction of and sealing of a well;
- c. The use of API specifications and whether or not some well construction requirements should exceed these standards;
- d. The use of typical API specifications for mechanical equipment and best management practices;
- e. The recognition of API standards as minimum standards and that the MEC could adopt more stringent rules;
- f. The importance of stakeholder recommendations, the majority of which had been accepted;
- g. The placement of cement, as well as intermediate casing standards;
- h. The term "zone of production" being replaced with "production zone." The latter term will be added to the overall list of rule definitions;

The Dr. Rao noted that the current level of expertise may not exist within DENR as referenced under the "Specific Notifications" section of the rule. Dr. Taylor noted that he believes sufficient expertise already exists within the Department. The Commission considered noting areas within the Department where specific expertise is needed and to report those needs to the Secretary. Ms. Lewis-Raymond mentioned that respective cost impacts related to obtaining needed expertise were being addressed in her study group report.

Dr. Rao asked about rule content related to cementing requirements, intermediate casing standards, and ensuring that well cement provides an appropriate seal. He also requested additional time to review the rule set. Chairman Womack directed Commissioners to continue looking over the rule for overall rule content and stated his desire that the Commission to more formally address rule language details during the next MEC meeting.

Mr. Holbrook explained that his planning meeting, which is scheduled for August 9, 2013 at 9:00 am, would establish a strategy to develop remaining "placeholder" sections within the well construction rule set.

The Commission formally recognized audience members, N.C. General Assembly Representatives Jamie Boles (Moore County) and Mike Stone (Harnett and Lee Counties).

7. The Commission recessed at 12:03 pm for lunch and reconvened at 1:10 pm.

8. MEC Discussion of Chemical Disclosure Rule and Implications of House Bill 74

Chairman Womack led discussion on the following topics regarding the implications of House Bill 74 and several other bills that relate to the MEC's work:

Senate Bill 76:

- a. The bill has new study group requirements;
- b. The MEC seat that was previously an ex officio position reserved for the Assistant Secretary of Commerce will instead become an at large position to be filled by the Governor;
- c. Locally elected officials currently serving on the Commission may complete their Commission terms whether or not those members are reelected to their local positions; and
- d. The bill addresses offshore energy development, which does not yet apply to the MEC.

House Bill 74:

- a. This bill recently passed through the legislature; and
- b. Chemical disclosure language had been removed in the last bill draft.

Senate Bill 127:

- a. This bill did not pass through the legislature; and
- b. This bill contains language which would have impacted the Commission.

Senate Bill 402:

- a. This bill constitutes appropriations legislation;
- b. The bill has some provisions which affect the Environmental Management Commission's representation on the MEC, which involves Ms. Amy Pickle's seat; and
- c. The MEC Chairman recommends that Ms. Pickle be allowed to continue operating as the Rules Committee Chairwoman.

Despite pending possible legislative changes, the MEC will retain 15 seats. Positions for the State Geologist and the seat for a member of the Commission for Public Health seat are being retained. The dates of MEC term expirations are still uncertain in statute.

9. Nominating Committee Results

Mr. Holbrook reviewed the responsibility of the Nominating Committee. Committee members were Mr. Holbrook, Ms. Pickle and Dr. Covington.

The Nominating Committee developed the following criteria for nominees to the positions of chairman and vice chairman of the Mining and Energy Commission:

- a. Willingness and ability to serve;
- b. Good communication skills;
- c. Good listening skills;
- d. Familiarity with all issues related to S.L. 2012-143;
- e. Presence to serve as MEC spokesperson and project a positive image;
- f. Good consensus building skills; and
- g. Knowledge of industry practices and participation in all Commission, Committee, and Study Groups.

The Committee nominated Chairman Womack to continue serving as Chairman and Dr. Covington to serve as Vice Chairman for the term August 1, 2013 through July 31, 2014.

10. Voting for MEC Chair and Vice Chair positions for service from August 1, 2013 through July 31, 2014.

Chairman Womack opened the floor for nominations in addition to those nominated by the Nominating Committee. No floor nominations were made for Commission Chairman. Mr. Taylor made a motion to close nominations for the position of Commission Chairman. Ms. Hauser noted that a two-thirds majority vote to close the nomination process was required. Dr. Price seconded the nomination. The motion passed unanimously. No floor nominations were made for Vice Chairman.

All members voted to reelect Mr. Womack to continue serving as Chairman. Additionally, all members voted to elect Dr. Covington to serve as Vice Chairman.

Chairman Womack recalled a previous conversation he had with the Governor's Office, in which he asked that all current Commissioners be allowed to continue serving.

11. Public Comment

Therese Vick (Blue Ridge Environmental Defense League): She stated her appreciation for her interactions with the Commission and expressed her desire for Ms. Pickle to continue serving.

12. Administrative Remarks

Toby Vinson announced that Mr. Jim Simons, retired DEMLR Division Director, would be assisting with personnel transitions to accommodate DWQ's Stormwater Program and Department of Commerce personnel.

Chairman Womack appointed Mr. Walt Haven to serve as the Ethics Liaison for the Commission.

The Chairman of the Administration of Oil and Gas Committee is planning to meet with staff during the morning of August 9, 2013 to conduct a rule development strategy meeting.

A Rules Committee meeting for August 9, 2013 is uncertain due to the possible expiration of Ms. Pickle's MEC seat as of July 31, 2013.

The Protection of Trade Secret and Proprietary Information Study Group is planning to meet on August 6, 2013.

Chairman Womack reappointed each Committee Chair and Study Group Director to his or her current position. He also expressed his desire to reduce all Committees to six members. Thus, Committees with seven members were each asked to identify a respective member who could be removed.

Dr. Price stated that she had public health information related to the justification of setback distances. She explained that the majority of North Carolina setbacks had been established without scientific justification. However, she did mention that required setbacks related to surface water bodies were based on scientific studies regarding the movement of nitrates and phosphates. Additionally, she explained that the setback between a private drinking water well and a building foundation had been determined from studies involving the subsurface movement of pesticides.

13. Concluding Remarks

All Commissioners expressed their appreciation to DENR staff. Additionally, Ms. Lewis-Raymond thanked the Nominating Committee members.

Mr. Taylor thanked all Commissioners for working together and reminded all members to continue to work in a manner respectful of one another.

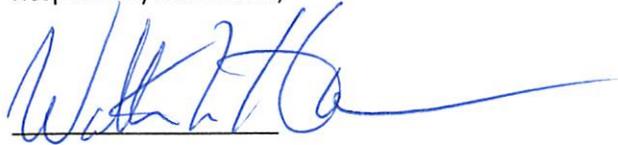
Dr. Rao reminded members that setback distances typically do not have sound scientific bases. He also explained that the distances related to public health applications depended on the type of biological species being monitored and may not apply to all situations. He cautioned against investing too much staff time investigating scientific justifications for setbacks. As a result, he recommended that setback rules from various states be reviewed and that determinations be made for those distances which would best fit North Carolina.

Mr. Howard recognized Dr. Covington as being well suited for the vice chairman position. He expressed his respect and appreciation for his fellow Commission members.

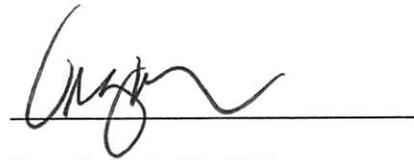
Chairman Womack expressed his appreciation to Vice Chairman Howard for his service. He also apologized to the public for any curt statements he may have made during MEC meetings. Chairman Womack expressed MEC support of the Governor's energy agenda by producing proper and practical rules related to oil and gas operations.

Chairman Womack adjourned the meeting at 2:03 pm.

Respectfully Submitted,



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



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