

**Meeting Minutes of the Environmental Standards Committee of the  
North Carolina Mining and Energy Commission  
March 7, 2013 1:00 – 3:00 pm  
March 25, 2013 1:00 – 4:00 pm**

**1. Preliminary Matters**

**March 7, 2013:**

Chairman George Howard called the meeting of the Environmental Standards Committee to order at 1:06 pm in the Ground Floor Hearing Room of the Archdale Building in Raleigh, N.C. Chairman Howard 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.

**March 25, 2013:**

Chairman George Howard called the meeting of the Environmental Standards Committee to order at 1:00 pm in the Ground Floor Hearing Room of the Archdale Building in Raleigh, N.C. Chairman Howard 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 personnel were in attendance for all or part of the meeting(s):

**Committee Members**

George Howard (Chair)  
Dr. Vikram Rao  
Charlotte Mitchell  
Dr. Kenneth Taylor  
Amy Pickle  
Dr. Ray Covington

**Attorney General's Office**

Jennie Hauser (legal counsel)

**DENR Staff Members**

Trina Ozer, Office of the Secretary  
Tracy Davis, Division of Energy, Mineral and Land Resources (DEMLR)  
Mell Nevils, DEMLR  
W.E. Toby Vinson, DEMLR  
Walt Haven, DEMLR  
Katherine Marciniak, DEMLR  
Ryan Channell, DEMLR

**Others in Attendance**

Refer to the attached meeting sign-in sheets.

**2. Background and Introductions- Chairman George Howard**

**March 7, 2013:**

Chairman Howard provided an initial review of the agenda and the secondary topics of baseline testing and diesel fuel constituents. He stated that this meeting would be

considered the informational session for the secondary meeting topics, with the May meeting serving as the session for the presentation of rules on baseline sampling and diesel fuel constituents.

### **3. Approval of Minutes from last meeting- Chairman George Howard**

Dr. Taylor made a motion to adopt the minutes from the January 24, 2013 meeting. The motion was seconded by Dr. Rao and passed by unanimous vote.

### **4. Disclosure (draft) rule presentation and revision- Facilitated by Mr. Mell Nevils and edited by Ms. Katherine Marciniak**

#### **March 7, 2013:**

Chairmen Howard provided a brief review of the SL 2012-143 that grants the MEC the authority to draft rules related to chemical disclosure. Chairman Howard also introduced the "Chairman's Mark" document to the Committee as the main working document for the revisions and amendments to the rule that DENR staff proposed. He explained that the three other sets of amendments (from Ms. Mitchell, Dr. Taylor, and Ms. Pickle) were incorporated into the "Chairman's Mark" document with the source of the amendments being noted or retained. Chairman Howard stated that in general the "Chairman's Mark" document retains, clarifies, or allows for:

- Approved contractor status, by which a master list of all additives with at least the chemical family for trade secret constituents would be submitted to DEMLR (05H.0XX3 (g)).
- Immediate access to full disclosure information for health professionals. (05H.0XX4)
- A process for a trade secret classification to be challenged (05H.0XX6).

Chairman Howard moved to begin discussion on the "big issues" and then return to the smaller one. Ms. Pickle agreed with this approach.

Trade Secret Information: Ms. Pickle stated that she would foresee DENR/DEMLR holding the trade secret information that would be disclosed by the vendors/service providers/operators. Currently this authority is beyond the MEC and DENR and would need to be defined before the Committee can move forward on this subject. Dr. Rao asked if DENR would be able to hold trade secret information confidential in the event of a public records request; Ms. Pickle replied that this authority would also need clarification. Ms. Hauser provided that currently the MEC does not have the authority to determine the validity of a trade secret or the ability to protect a trade secret, and that this authority would need to be granted by the legislature. Chairman Howard and Ms. Pickle both stated that the Committee should move to support the MEC seeking the authority needed. MEC Chairman Womack stated that there is currently an omnibus bill in the works that will be submitted to the legislature that will seek the authority for the MEC to discern and hold trade secret information confidential. Chairman Womack further stated that he would recommend all Committees to identify any areas where the MEC lacks authority so that he may petition the legislature for such authorities. Chairman Howard asked Ms. Pickle to propose language to adopt for MEC authority.

Trade Secret Disclosure & Challenge: Dr. Rao asked if there are many trade secret challenges going on in other states, and would DEMLR or the MEC be the body responsible for holding and releasing information in the event of an emergency. Ms. Pickle stated that DEMLR may be more appropriate body to hold information because they would be able to respond more readily in the event of an emergency. Dr. Rao and Ms. Pickle both raised the question of how the eligibility of a trade secret would be determined and how/when to disclose that information. Chairman Howard addressed Dr. Rao's first question on number of challenges- in conversation with the Colorado Oil and Gas program, Chairman Howard discovered that there are currently no challenges in Colorado, but they have seen an uptick in the number of trade secret claims that are being submitted. Chairman stated that he was told that many of the trade secrets being submitted are more often for "non-toxic" substances.

Amendments: There were numerous editorial and content changes made to the "Chairman's Mark" document in the course of discussion on the different rules.

Editorial changes include:

- Capitalization of certain terms in document- "Health Professional" and "Emergency Responder" (05H.0XX4).
- Striking of "Office of Attorney General" due to it not applying to NC. This was in document originally to illustrate the challenge process in Texas and replace with "court of proper jurisdiction" (05H.0XX3 (g)).

Content changes:

- Addition of "Emergency Responders" in "Health Professionals" definition with additional text for appropriate definition, and in all locations where "Health Professionals" are mentioned in the text (05H.0XX2, 05H.0XX4).
- Fracking report required 15 days after hydraulic fracturing treatment. Striking of "in no case later than 60 days" clause due to conflicting deadlines for reporting (05H.0XX3 (a, b)).
- Contact information for someone with 24 hour access to trade secret information beyond the basic company contact information is required (05H.0XX3 (e)(5)).
- All areas where a court is mentioned are to be "court of proper jurisdiction" which will be defined at a later date (05H.0XX3 (g)).
- A timeframe for disclosure to health professionals of two hours was added (05H.0XX4 (b)).

Dr. Taylor's amendment to include verbiage on restricting BTEX constituents (diesel) in the hydraulic fracturing process will be discussed after staff reports on the topic of banning diesel (05H.0XX2 (13)).

15NCAC 05H.0XX5- Trade Secret Protections: discussion and amendments on this section was tabled and will be examined at a later date.

The Committee was beginning to discuss 05H.0XX6 Trade Secret Challenge, when the time allotted to this Committee expired.

### **March 25, 2013 (Continuation):**

#### Trade Secret Disclosure:

There was additional discussion of the approach that the Committee should follow in drafting the rules; to write them according to the current statutory authority or write the

rules according to the statutory authority that the MEC would request to be granted by the legislature. The Committee decided to draft the rules so that the vendor would be the first party contacted for the trade secret information. The Department would only obtain the trade secret information if the Health Professional or Emergency Responder did not receive a response from the vendor or were refused by the vendor. Once received by the Department, the trade secret information would be released to the Health Professional or Emergency Responder, and would then be held as confidential.

#### Trade Secret Challenge:

The Trade Secret Challenge section (05H.XXX6) was accepted according to the Chairman's Mark document, but there was discussion on if the rules put limits on the "public's right to know". A motion was made for the removal of subsection (a) under this rule (05H.XXX6), but the vote was a tie. Dr. Rao noted that most other states all have some limitation on who can submit a challenge.

Amendments: There were numerous editorial and content changes made to the "Chairman's Mark" document in the course of discussion on the different rules.

Editorial changes include:

- Change "court of proper jurisdiction" to "North Carolina Business Court" (05H.0XX6).

Content changes:

- An amendment from C. Mitchell was reintroduced into the Trade Secret Protection section, along with a "safety valve" allowing someone to contact DENR if they do not receive information from the vendor (05H.0XX5, 05H.0XX4).
  - The "safety valve" in 05H.0XX4 (b) allows for the Health Professional or Emergency Responder to contact the Department if a vendor or service provider does not respond to a request for trade secret disclosure in the event of an emergency. The Department would then obtain the needed information and provide it to the Health Professional or Emergency Responder.
  - The amendment within 05H0.XX5 (c) requires that the vendor submit a form containing the chemical identity and concentration, a written claim that substantiates that the information is a trade secret, and the contact information for an authorized representative that can provide the Department with the trade secret information.
  - Any information submitted to the Department to document the claim of entitlement will be held confidential (05H0.XX5 (d)).

After the Committee completed their review the Chairman's Mark document and of all amendments, the Chairman asked for a motion to move the chemical disclosure rule to the Rules Committee as it was written and revised at this meeting. The motion was made, seconded, and voted on. The vote to move the final document was unanimous.

## **5. Baseline Sampling Presentation- Ryan Channell, DEMLR.**

Mr. Channell presented to the Committee a review of the baseline sampling programs in other states with recommendations for the Committee to consider. A copy of the presentation is attached to the original minutes. His presentation looked at the following topic areas from the different states:

- If sampling is required to rebut presumptive liability;
- Presumptive liability distance from the wellhead;
- Air quality standards;
- If a professional sampler is required;
- Submittal of samples to an accredited laboratory for testing; and
- Lists of parameters to be tested for.

Recommendations from staff were:

- Adopt the water sampling parameters as outlined by the National Groundwater Association.
- Subsequent sampling should be conducted after the completion of wells. The timing for the sampling should follow SL 2012-143 and those outlined in the Colorado regulations.
- According to SL 2012-143 all wells within the presumptive liability distance will be sampled during all sampling periods.
- The Committee decided to set aside discussion of the distance associated with presumptive liability until after they have set the drilling block and well spacing.

Based on the above recommendations from staff, the Committee directed staff to drafting baseline sampling rules for discussion at the May 2 meeting.

## **6. Upcoming Agenda- Chairman George Howard**

The Committee moved to remove the presentation on diesel fuel to the upcoming meeting on April 4<sup>th</sup>, 2013.

## **7. Public Comment-**

Therese Vick- from the Blue Ridge Environmental Defense League (BREDL) and on behalf of local Emergency Personnel.

Ms. Vick, on behalf of BREDEL, stated that either DENR or the Office of Emergency Management should hold the trade secret information. From other local emergency personnel she stated that 2 hours for disclosure is too long and that the molecule does matter for providing treatment.

Hope Taylor- Clean Water for North Carolina, speaking on behalf of Granville County Emergency Planning Committee.

Ms. Taylor stated that having the vendor being the first contact to make after an emergency has occurred was unacceptable. There should be a single point of contact at the agency that will be able to provide the required information immediately. Ms. Taylor also stated that the baseline sampling program discussed at the meeting is not sufficient to protect residential well receptors- an active monitoring network from the vertical component of the well should be a part of the plan.

8. **The Committee adjourned at 3:00 pm on March 7, 2013 and at 4:12 pm on March 25, 2013.**

**DEMLR Staff Contact for this Committee: Mr. Mell Nevils – NCDENR-DEMLR.**