MEETING MINUTES OF THE
NORTH CAROLINA MINING AND ENERGY COMMISISON
May 3, 2013
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING, RALEIGH, NC

The North Carolina Mining and Energy Commission met in regular session on Friday, May 3, 2013 beginning at 9:03 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. , he also 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 and others present as follows:

Commission Members Present	DENR Staff Members Present
Mr. James Womack (Chairman)	Mr. Tracy Davis
Mr. George Howard (Vice-Chairman)	Mr. Toby Vinson
Dr. Robert Mensah-Biney	Mr. Walt Haven
Mr. Charles Holbrook	Ms. Katherine Marciniak
Dr. Kenneth Taylor	Mr. Ryan Channell
Dr. Marva Price	Ms. Debra Godwin
Mr. Ivan "Tex" Gilmore	Ms. Rosalind Harris
Ms. Jane Lewis-Raymond	
Dr. Ray Covington	
Ms. Amy Pickle	
Ms. Charlotte Mitchell	
Dr. Vikram Rao (via telephone)	
Mr. Charles Taylor	

The Attorney General's Office	Others in Attendance
Ms. Jennie Wilhelm Hauser	See attached sign in sheets

2. Approval of Minutes of April 5, 2013

Dr. Kenneth Taylor made a motion, seconded by Mr. Charles Taylor, to approve the minutes as presented. The motion passed.

3. Committee Reports

Water and Waste Management:

Dr. Vikram Rao, Committee Chairman, advised the Commission that the Water and Waste Management Committee did not meet on May 2, 2013. As a matter of information, he stated that he had attended an EPA workshop on hydraulic fracturing. The re-use of flow back water, final treatment and discharge of water, and underground injection control (UIC) class II wells were discussed. Dr. Rao will provide the information to DEMLR staff. Further, Dr. Rao plans to discuss UIC disposal options at the next Committee meeting. The next Committee meeting is scheduled for May 31, 2013.

Administration of Oil & Gas Committee:

Mr. Charles Holbrook, Committee Chairman, stated that the Committee was unable to complete all of its agenda items during its May 2, 2013 Committee meeting due to time constraints. Mr. Holbrook noted that significant progress had been made and provided an overview of the items discussed during the Committee meeting:

- Presentation by Mr. Jeff Crisp with Kleinfelder Engineering regarding (1) oil and gas infrastructure, (2) creating an economic "climate" that would encourage industry to come to North Carolina, and (3) examples of water containment, pits, tanks, fractionation facilities and other on-site infrastructure;
- Trina Ozer reviewed stakeholder group recommendations regarding the draft well construction rules. The Committee disagreed with stakeholders requests to limit the use of cement bonding logs and wire line geophysical logging (#15); the 48-hour notice before setting casing strings and well cementing, as opposed to the 24-hour notice (#7 and 8); and requested additional information on well operator certifications (#12) be presented at the next Committee meeting; and
- The Committee worked through approximately two-thirds of the draft well construction rule and will finish their review during their June 6, 2013 Committee meeting.

During discussion, Chairman Womack stated that he was impressed with the draft well construction rule and the small number of conflicts that exists between the current draft and stakeholders' concerns.

Dr. Rao, speaking via telephone, made comments to the Commission that were inaudible. He subsequently summarized his verbal remarks into an email as follows: *"I would like to see the comments from the stakeholder group to understand the point that they wanted less stringent conditions. ... In the matter of open hole wire line logs If, in fact, they suggested we did not need them, they could be right in view of our stricture to cement from bottom to top. The logs were intended to identify zones of potential gas incursion and ensure these were cemented. Bottom to top cementing would appear to make open hole logs unnecessary; need to think about this and discuss with Charles."*

Environmental Standards Committee:

Mr. George Howard, Committee Chairman, reviewed the items discussed at the Environmental Standards Committee Meeting as follows:

- Baseline Testing and Presumptive Liability: Mr. Howard explained that the current rules for baseline testing are unique and more comprehensive than in any other state due to the 5,000 foot radius from the well head and requiring that all water supplies be sampled. Additionally, the sampling parameters are the most comprehensive set of analysis required. If any contaminates are identified after establishing a baseline level, the operator would be liable.
- Mr. Howard plans to discuss amendments to the Baseline Testing Rule during the next Committee meeting and pass it to the Rules Committee. One of the suggested baseline testing changes would be the three stage test: (1) To test the whole suite of constituents (before drilling to establish baseline), (2) To test a subset of constituents at 12 months, and (3) To test a subset of constituents at 18 months. Mr. Howard noted that Ms. Pickle had asked for expert presentations regarding the recommended subset of chemical constituents and asked if a representative from Southwest Energy could be contacted to attend the next Committee meeting.
- The (draft) diesel fuel rule was vetted and passed to the Rules Committee. The next Committee Meeting will address setbacks.

The Commission discussed the potential cost impact to industry to perform the three stage testing. Additionally, the Commission noted that baseline requirements (as currently written) comply with current State Statute.

The Commission also discussed historical contamination causes as generally resulting from surface spills or from poor well construction, as opposed to resulting from actual hydraulic fracturing activities.

The Commission discussed the previous USGS sampling and noted that their testing is not sufficient to establish "baseline" requirements in accordance with Session Law 2012-143.

Chairman Womack stated that various Committees and the Commission had received several public comments regarding air quality testing and monitoring. He advised that the Commission was not taking this issue lightly and the Environmental Standards Committee was addressing air quality testing and monitoring in its draft rule set in cooperation with the Division of Air Quality.

Dr. Rao e-mailed his summarized telephone remarks as follows: *"Regarding my comments yesterday in George's (Environmental Standards Committee) session: I added two tests to be in the follow up testing: divalent ions and chlorides. Divalent ions are strongly predictive of Radium 226 and 228. Chlorides, in addition to TDS, have value. Maybe conductance substitutes, need to check. My point regarding a subset for all testing following baseline is as follows. If there are scientific rationale, and actual data in proof, that subsets do in fact act as markers for the bad actors, then there is no reason for these not to kick in for all testing which is not baseline. Our expectation that our state will likely have more wells being tested, in part due to the 5000 foot rule, places a greater burden on us to be diligent in keeping costs down while not impairing efficacy."*

Rules Committee:

Ms. Amy Pickle, Committee Chairwoman, reviewed with the Commission the items discussed at the Rules Committee meeting as follows:

- The Committee worked through about 1/3 of the Chemical Disclosure Rule. This rule will be addressed again during the June meeting of the Rules Committee. Another Rules Committee meeting has been scheduled for May 31, 2013 to address the Water Management Rule.
- Ms. Pickle also explained the use of a rule status coversheet, which summarizes a given rule, provides references to other rules, and identifies potential areas where the rule may be incomplete and need to be revisited at a later date.
- Ms. Pickle reviewed her previous discussion with Rules Commission staff. It was suggested that Jennifer Everett (DENR rules coordinator) or Rules Review Commission staff provide presentations to the Mining and Energy Commission regarding proper rule formatting and the submittal process at a future meeting.

Commission members discussed the Chemical Disclosure Rule development, as well as learning other disclosure options after the current Chemical Disclosure Rule had already been sent to the Rules Committee. Ms. Pickle stated the need for any new information that results in a significant change to the current Chemical Disclosure Rule would require that the rule be returned to the Environmental Standards Committee. Chairman Womack stated that the Commission also has options for making amendments.

Following discussion, Chairman Womack also noted inaccuracies related to a recent headline in a local paper regarding chemical disclosure. He stressed that the rule is not being rushed through and that no company will halt or deter any work of the Commission.

4. Study Group Reports

Local Government Regulation Study Group:

Study Group Director Mr. Charles Taylor reviewed the following items that were discussed during the last Study Group meeting:

- Local government concerns and public questions discussed at the meeting related to water sampling, air sampling, sedimentation control, property rights, easements, funding and fees, land use management, gathering lines and other potential local impacts.
- The next meeting will include a presentation by Mr. Don Kovasckitz (Lee County Strategic Services) regarding mineral rights, surface rights, and severed estates. Members from County Tax Offices and the Register of Deeds offices have also been invited to attend.

- Questions/concerns that were raised by the public during his meeting:
  - Will public hearings be held regarding air and water quality, especially if local communities could not afford local monitoring?
  - What is the lifespan of tracers?
  - How does one find out what's going on and who's responsible? (The question was raised by a property owner who relayed a story about the marking of utility lines and the difficulty she had when trying to obtain information.)
  - A two-hour delay between a contaminant release and a response is too long. (This question related to the [draft] chemical disclosure rule that is being reviewed by the Rules Committee.)
  - What is being planned for baseline air testing?
  - How will gathering locations be labeled and how will they be constructed?
  - What is the allowable level of radioactive waste that can be put into an industrial landfill?
  - During well construction, will DENR have enough staff on site for oversight?
- The next Study Group meeting is scheduled for May 10, 2013.

Compulsory Pooling Study Group:
Study Group Director Dr. Ray Covington reviewed the following items from the last Study Group meeting:
- Consideration of Compulsory Pooling options and cost-sharing method.
- A list of terms related to Compulsory Pooling is being developed.
- Ms. Layla Cummings has provided research information on cost-sharing options from various states.
- Mr. Dewbre, current President of the American Association of Professional Land Men, provided a presentation on the use of Compulsory Pooling in the industry.
- Newly developed goal statement: "To set up a process that will encourage all interest holders to come to the table to negotiate in good faith a working relationship."
- "Indemnification for Compulsory Pooling Landowners" will be addressed at the next Study Group Meeting.

Funding Levels and Sources Study Group:
Study Group Director Jane Lewis-Raymond reviewed the following items from the last Study Group Meeting:
- Researched county taxes on industry, funding needs for DEMLR to regulate the oil and gas industry, bonding, and impact fees.
- Dr. Rao has been assigned the task of developing a strategy for assessing impact fees based on activity versus revenue.

During discussion, Commission members noted that impact fees should not be tied to the cost of oil or gas, and that severance taxes should be different for liquids, "dry gas", "wet gas", or with other gases (i.e. helium). Further, they discussed piping of gas and how ethane is corrosive.

The Commission suspended the meeting at 10:50 am for a break, then resumed the meeting at 11:10 am.

Coordinated Permitting Study Group:
Study Group Director Dr. Kenneth Taylor stated that the Study Group met for the first time on May 2nd and that industry contacts and different DENR Divisions had been invited to help develop permitting procedures and needs. Dr. Taylor noted the purpose and scope of the Study Group, that various presentations from DENR Divisions will occur over the first several meetings, and that six more meetings of the Study Group will be conducted before a report will be completed.

Protection of Trade Secret and Proprietary Information Study Group:
Study Group Director James Womack stated that this group will meet after the MEC meeting for the first time and therefore did not have anything to report.

Dr. Taylor reminded the Commission that current rule (15A NCAC 05D) allows for a two-year time window for retention of intellectual property/information. However, this rule may not be in compliance with session law directly related to oil or gas operations. Any information provided to the State could be subject to a public records request.

5. **Discussion and Action on "Chemical Disclosure Requirements" Rule**
   Chairman Womack stated that this rule had already been discussed during the Rules Committee report.

6. **Discussion and Action on "Water Acquisition and Management" Rule**
   Chairman Womack advised that this Rule will be considered during the May 31, 2013 meeting of the Rules Committee and this agenda item will be added to the June 7th MEC agenda.

7. **Administrative Update**
   - Introduction and Welcome of new Administrative Assistants Rosalind Harris & Debra Godwin – Mr. Walt Haven;
   - Presentation of Rule Writing and Staff Research Update and the color-coded status of rule research and writing by Mr. Walt Haven (see attached document); and
   - Anticipated Rule Titles and Committee Assignments – Chairman Womack
     Chairman Womack asked that Commissioners review his version of the rule listing and provide comment to him and staff before the next Commission meeting (see attached document).

8. **Public Speakers**
   - Therese Vick with Blue Ridge Environmental Defense League expressed her concern about the chemical disclosure rules and asked why industry had not used public comment periods to express their concerns. She stated that the disclosure rule had been "stopped in its tracks" after it was voted out of the Environmental Standards Committee. She was concerned about the influence that large companies have on these topics. She noted that industry profit margins should not be a consideration by this Commission during its deliberations.

9. **Concluding Remarks**
   The Commission expressed appreciation to DENR staff, Committee Chairs, and Study Group Directors. Commission members also noted the importance of public comment. Chairman Womack also thanked the news media for its coverage of the proceedings and work of the Mining and Energy Commission.

   Dr. Covington thanked Ms. Vick and remarked that the Commission had learned of a better way to protect the environment related to trade secret disclosure. He also said that he would like to hear from industry. Ms. Lewis-Raymond reminded the Commission about the importance of having a process of integrity.

   Chairman Womack stated that he met the previous week with oil and gas producing county representatives-America's Counties for Energy Independence (ACEI) - at a conference in Houston, Texas. The group discussed that the holding of trade secrets by the government could result in lawsuits. This group also discussed best practices, lessons learned and types of disclosures industry may be willing to support. Chairman Womack also noted that Commissioner "Tex" Gilmore had earlier provided AIPG presentations to staff and the Commission that would benefit the rule drafting process.

   Chairman Womack reminded the Commission and staff that two Commission meeting cycles will be held in June.

   Ms. Marva Price asked how Commissioners should handle responses to documents they receive from stakeholders. Both Chairman Womack and Ms. Jennie Hauser, AG's Office, reminded the group that e-mails

received related to Commission work, including any responses issued by Commission members to them, should be sent to the Mining and Energy Commission's e-mail service account for archiving as these communications are considered public records.

10. Adjournment

There being no further business, Dr. Taylor made a motion, seconded by Dr. Mensah-Biney, to adjourn the meeting at 12:11 pm. The motion passed unanimously.

Respectfully Submitted,

Debra W. Godwin
Division of Energy, Mineral & Land Resources

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