

**MEETING OF THE COMPULSORY POOLING STUDY GROUP  
NORTH CAROLINA MINING AND ENERGY COMMISSION  
May 31, 2013  
GREEN SQUARE TRAINING ROOM, 217 W. JONES STREET  
RALEIGH, NC**

**1. Preliminary Matters**

Study Group Chairman Ray Covington called the meeting of the Compulsory Pooling Study Group of the Mining and Energy Commission (MEC) to order at 1:10 pm and read the ethics statement into the record. Panel members made up of the MEC Commissioners and the Resource Group members introduced themselves. The following persons were in attendance for all or part of the meeting:

**MEC Study Group Members**

Dr. Ray Covington  
Mr. Charles E. Holbrook  
Ms. Charlotte Mitchell

**Study Group Resource Members**

Mr. Theodore Feitshans, Department of Agriculture and Resource Economics, NCSU  
Mr. Bryan Gossage, N.C. Department of Commerce  
Mr. Bryan Heckle, N.C. Department of Insurance  
Mr. John G. Humphrey, the Humphrey Law Firm  
Mr. Jonathan Lanier, N.C. Department of Agriculture and Consumer Services  
Mr. Ward Lenz, N.C. Department of Commerce  
Mr. Grady McCallie, N.C. Conservation Network  
Mr. James Robinson, Rural Advancement Foundation International (RAFI)  
Ms. Janet Thoren, N.C. Real Estate Commission  
Ms. Lynne Weaver, N.C. Attorney General's Office, Consumer Protection Division

**DENR Staff Members**

Ms. Layla Cummings  
Mr. Tracy Davis  
Mr. Walt Haven  
Mr. Mell Nevils  
Ms. Trina Ozer  
Mr. Toby Vinson

**Others In Attendance**

See attached sign-in sheets.

**2. Group Recommendations on When to Compel Pooling (Attached presentation and chart)**

Study Group Chairman Covington began a discussion on if and when to compel pooling. The first recommendation concerned whether or not leased and unleased landowners should be pooled. The Commissioners agreed leased owners should be subject to compulsory pooling. The Commissioners decided to further study the issue of whether unleased owners should be subject to compulsory pooling.

The Study Group next addressed what protections would be in place if leased and unleased owners were subject to compulsory pooling. The Commissioners recommended the following: (1) the applicant is required to make a fair and reasonable offer to any party it seeks to pool and the Commission should develop other factors to evaluate an application seeking a pooling order; (2) the Commission will take an options approach to cost sharing for leased and unleased owners; and (3) there will be time limitations on pooling orders issued.

**3. Group Recommendations on Indemnification (Attached handout)**

Mr. Ted Feitshans of N.C. State University presented a revised set of recommendations on indemnification under a pooling order. Since the last meeting, Mr. Feitshans added a duty to defend against third party actions for unleased landowners to the recommendation.

Mr. Feitshans further updated the recommendations with the input of the Study Group and the revised recommendations are attached. The revisions include that expenses to be indemnified include attorney fees and costs of a third-party action, and that the right to indemnification survives dissolution of the unit. The Commissioners approved the recommendations.

**4. Group Recommendations on Notice and Reporting Requirements (Attached handouts)**

Mr. John Humphrey, a private attorney, also presented revised recommendations on subsurface entry, reporting of production, and the right to audit. Mr. Spencer Scarborough of the State Employees' Credit Union could not be present, but sent a message to the Study Group Commissioners and Resource Members that he approved of the revised recommendations. The Commissioners approved the recommendations.

**5. Next Steps**

Study Group Chairman Covington asked that a subgroup of Resource Members meet over the summer to organize what the Study Group has done to date and to propose technical details with regard to procedure. The next meeting was scheduled for Wednesday, August 28, 2013 in Raleigh.

**6. Public Questions and Comments**

Ms. Therese Vick of the Blue Ridge Environmental Defense League commented on her opposition to pooling and asked whether the meetings over the summer of the Resource Members would be public. Ms. Cummings answered that they would not be public meetings, but any materials put together will be available on the website and presented at the August meeting.

Ms. Martha Girolami remarked that “waste” is inherent in the drilling process and individual rights should not be denied on that rationale. She also provided written comments (attached) in which she addressed other matters, which are summarized as follows:

- a. The pooling process would lack uniformity from one place to another;
- b. “Waste” of resources would occur whenever a given landowner is left out of a pool or unit;
- c. The rights of individual property owners should be protected, doing otherwise is abusive;
- d. Oklahoma (OK) well density is supposedly one well per 640 acres and may be an underlying factor in OK’s “one percent” for pooling rule;
- e. What is a “good faith” offer?

The meeting was adjourned at 4:15 pm.