

**Meeting Minutes of the Funding Levels and Potential Funding Sources
Study Group of the
North Carolina Mining and Energy Commission
July 30, 2013**

The North Carolina Mining and Energy Commission's (MEC) Funding Levels and Potential Funding Sources Study Group met in regular session on Tuesday, July 30, 2013 in Conference Room (504-Q) of the Archdale Building. Chairwoman Jane Lewis-Raymond called the meeting to order at 2:33 pm via teleconference. She welcomed all study group members and others attending. She also read the ethics statement and asked Study Group Members whether or not they had conflicts of interest with respect to any action items on the agenda. No conflicts were noted.

Study Group Members Present

Jane Lewis-Raymond, Study Group Chairwoman (via telephone)
Jim Womack, Chairman MEC
Dr. Vikram Rao, MEC (via telephone at 3:45 pm)
Johanna Reese, NC Association County Commissioners
Emily McGraw, NC Department of Transportation (NCDOT)
Sergeant Sneed, NCDOT Enforcement

Study Group Members Absent

Brandon Jones, NCDOT
George Howard, Vice-Chairman MEC
Erin Wynia, League of Municipalities

DEMLR Staff Members Present

Rosalind Harris
Katherine Marciniak
Walt Haven
Others in Attendance (See attached Sign-in Sheet)

Introductions

Those in attendance introduced themselves to others in the group.

Items of Business

1. Approval of Minutes of July 8, 2013

Mining and Energy Commission Chairman Mr. Jim Womack made a motion to approve the minutes, with Ms. Johanna Reese seconding the motion. The Study Group approved the minutes pending the following edits:

- a. Paragraph 6b on page #2 the word "midstream" was to be inserted in front of "Infrastructure Development"; and
- b. Group members wanted the minutes to note that their work was not premised on using the oil and gas industry as a new revenue source.

2. Review of Proposed Draft Outline for the Study Group Report (attached)

Study Group Director Lewis-Raymond reviewed the latest revisions to the report outline. She stated that the report was color coded to assign report writing responsibilities to specific Study Group participants. Local government input was requested. Ms. Johanna Reese noted that her office was working to obtain information, but had been unable to receive much data, due to a slow response from county governments. She explained that she would be following up with her staff to continue research. MEC Chairman Womack stated that he had received information from the State Association of Commissioners in Pennsylvania which could be included in the report. The Study Group expressed their desire for input from the Coordinated Permitting Study Group regarding a recommended permitting fee per well application.

MEC Chairman Womack asked that the report denote the most recent statutory language from Senate Bill 76 regarding bonding.

3. Presentation on Management of Leaking Underground Storage Tank Trust Fund

Mr. Vance Jackson, Branch Head, DENR Division of Waste Management (DWM) presented information regarding DWM's Underground Storage Tank (UST) Trust Fund and led Study Group discussion regarding the following matters:

- a. The UST Trust Fund was established under requirements from 40 Code Federal Regulation 20 and serves as a reimbursement fund;
- b. Tank owners and operations were required to maintain insurance for cleanup costs;
- c. Funded by excise tax on motor fuels and registration fees on UST tanks (\$400 per active tank) and 19/32 of each cent of the fuel tax;
- d. Eligibility criteria are based on information from forms;
- e. Work is performed by contractors and consultants;
- f. Pre-approval is required for work related to UST site investigation and remediation;
- g. Incident manager work from the regional offices and oversee UST site related work;
- h. Work approved by the incident manager is forwarded to the DWM Central Office for reimbursement;
- i. Reimbursement payments for commercial sites are up to \$1,000,000 with either a \$20,000 or a \$75,000 deduction, after which payments of 80 percent are made up to \$1,500,000;
- j. The Trust Fund also provides funding for sites where an owner is unable to pay for remediation;
- k. Processed about 34,000 claims during 2012 and reimbursed \$36,000,000;
- l. Current staffing (14) 2 Engineers, 7 Hydrogeologists, 3 Accounting Technicians, 1 Business Officer, 1 Processing Assistant;
- m. Currently managing 8,000 active sites, where a petroleum-based release has occurred;
- n. Management of the "State Lead" Program to address sites for which a responsible party is unable to pay for cleanup costs;
- o. Management of the Alternate Water Program, which provides either bottled water or treatment systems for water supply wells impacted by a contaminant release;
- p. Management of federal grants;
- q. Total reimbursement is around \$550,000,000 in claims, 680,000,000 in revenues, and 51,000,000 for operating fees.

Mr. Jackson explained that the Trust Fund rate structure was based on information obtained from the bidding of State Lead contracts for UST site investigation and remediation. Data from those bids are used to establish reasonable cost reimbursement for given tasks. Impact fees (tank fees) pay about 40 percent of the reimbursement. Revenue and excise taxes cover other portions of funding.

Chairwoman Jane Lewis-Raymond noted that Piedmont Natural Gas has USTs that DWM regulates.

The Study Group discussed concerns regarding an administrative burden for the establishment of an equivalent funding collection and distribution program within DEMLR's Energy Program.

Mr. Jackson noted that the UST Trust Fund process typically proceeds in this manner:

- a. Reimbursement to the responsible party;
- b. The responsible party will then pay his or her environmental consultant;
- c. Revenue arrives on a monthly basis;
- d. Once a claim is approved, the approval goes to the controller's office;
- e. Controller then makes the payment.

Trust Fund Section personnel are funded by four percent appropriations, while other funding comes from federal grants and tank fees. These fees result in funding for 60 to 65 percent of personnel.

Director Lewis-Raymond asked that an explanation of the UST Trust Fund model be included in the Study Group report, to serve as an analogy for creating an equivalent organization within DEMLR.

The Group discussed using the MEC's Civil Penalty Remissions Committee to approve applications from local governments requesting reimbursement from oil and gas industrial impacts. Mr. Jackson also recommended funding a position for an attorney to assist with reimbursement decisions.

4. Well Fracturing and Stimulation Stages

Dr. Kenneth Taylor presented information and a written report (attached to these minutes) regarding well stimulation and hydraulic fracturing. He also led Study Group discussion concerning the following matters:

- a. Example case study involved the Frank Unit No.2 site in Ohio;
- b. Anticipated truck loads hauling sand, hydrochloric acid, water, etc.;
- c. Impact of anticipated truck trips on roads;
- d. The example involved a 24-stage fracturing process, which extended for a period of 10 days;
- e. The purpose of each component of the fracturing fluid;
- f. Typical stage length was set at around 230 to 235 feet;
- g. Average time per fracturing stage was around three hours each; and
- h. Average amount of sand per stage was around 10 to 11 truckloads, or 244 tons per stage.

The Study Group noted that the Pennsylvania impact fee is \$30,000 to \$50,000 per year. Dr. Rao recommended that the impact fee be based on the road impact per stage. He also stated that the fee should be applied to municipal roads, as opposed to major highways.

MEC Chairman Womack stated road and bridge costs should be figured into the State severance tax to cover state roads and bridges. Local cost recovery would come from the impact fee funds. The Study Group agreed that the impact fee would be structured as follows:

- a. Initial flat rate fee for a given well pad; and
- b. Second fee based on a standard rate for each stage of hydraulic fracturing.

The Study Group noted that the Pennsylvania impact fee is actually structured as a severance tax.

5. Study Group Report Introduction

MEC Chairman Womack stated that his drafting efforts are continuing.

6. Discussion and Review of Severance Tax

Chairwoman Lewis-Raymond outlined the following severance tax principles:

- a. North Carolina should have a simple severance tax structure;
- b. North Carolina should structure its severance tax so that industry is not discouraged from operating; and
- c. Would a severance tax be based on value of produced oil or gas, volume of produced oil or gas, or both?

Ms. Judith Corley-Lay, NCDOT stated she did not like relying on a severance tax for NCDOT road funding. She explained that such a tax depends on actual production, while the process involving the drilling of the well is the sources of road impacts. Dr. Rao explained that drilling would not occur unless the price of gas high enough to be worth industry's effort and cost. He also stated that drilling and capping a well for later use was an unlikely scenario, as wells are only profitable when in production.

The Study Group recommended that any severance tax should be based on the value of product being produced. Additionally, the severance tax should be adequate enough to properly fund NCDOT and NCDENR work related to the oil and gas industry.

MEC Chairman Womack relayed information he received via conversation with Representative Mike Hager regarding severance taxing. He explained the following details:

- a. The legislature is looking at the severance tax to create a new source of revenue;
- b. The legislature did not give the MEC the charter to study the tax as being a revenue source;

- c. The legislature intends that the severance tax will pay for the Department of Commerce reorganization; and
- d. The legislature's plans for future legislation to define the severance tax.

General Discussion

The next study group meeting will be scheduled during the week of 26 to 30 August.

The Study Group adjourned at 4:30 pm.

Respectfully submitted,

Walt Haven, Energy Program Supervisor
DEMLR Staff