

**NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION**

Minutes of January 8, 2015 Meeting

The North Carolina Environmental Management Commission met on Thursday, January 8, 2015 in the main floor hearing room in the Archdale Building, Raleigh, NC. Commissioners present were:

Benne Hutson, Chairman
Kevin Martin, Vice Chairman
David Anderson
Jerry Carroll
Charlie Carter
Tommy Craven
Dan Dawson
Charles Elam
E.O. Ferrell
Bill Puette
Larry Raymond
Bob Rubin
Butch Smith
Steve Tedder
Julie Wilsey

Commission Counsel Mary Lucasse was also present.

I. Preliminary Matters

The meeting was called to order at 9:05 a.m. with Chairman Hutson presiding. He read the notice required by N.C.G.S. §138A-15(e). No conflicts of interest or appearances of conflicts of interests were identified at this time.

II. Approval of Minutes

Chairman Hutson asked for discussion, comments or corrections concerning the minutes of the November 13, 2014 meeting. On motion by Commissioner Tedder, seconded by Commissioner Ferrell, the minutes were approved.

III. Action Items

Agenda Item 15-01: Request for Approval to Submit Rules Review Report to the Rules Review Commission for Subchapter 02R in accordance with S.L. 2013-413 (HB74)

Kelly Williams of the NCDENR's Ecosystem Enhancement Program stated that this matter was before the Commission for approval to submit to the Rules Review Commission the report on the review of 15A NCAC Subchapter 02R, the public comments on the report and the responses to those comments in order to meet the March deadline.

Commissioner Martin moved that the EMC approve submitting the report to Rules Review by the deadline. Commissioner Rubin seconded the motion. The motion passed unanimously.

Agenda Item 15-02: Request for Approval to Submit 15A NCAC 02S Rules Review Report to the Rules Review Commission in accordance with S.L. 2013-413 (HB74)

Pete Doorn, Division of Waste Management, stated that this report was presented to the Groundwater Committee in November and was now being presented to the EMC to request approval to submit the report to the Rules Review Commission. He reported that of the 16 rules in Subchapter 02S, 12 rules were designated as necessary with substantive public interest and four were designated as necessary without substantive public interest, and there were no public comments on the report that was sent out for public comment.

Commissioner Ferrell moved to approve to submit the report to the Rules Review Commission. Commissioner Wilsey was seconded the motion. The motion passed unanimously.

Agenda Item 15-03: Request to Proceed to Public Hearing with 15A NCAC 02B .0295 (Consolidated Buffer Mitigation Rule) and Approved Fiscal Note Addendum in accordance with NCGS 150B-19.1

Chairman Hutson indicated that this item was considered yesterday at the Water Quality Committee meeting after the presentation by Ms. Homewood. The Division of Water Resources was requesting permission to proceed to public notice with the proposed mitigation program requirements for the protection and maintenance of riparian buffers included in attachment C of the materials for this agenda item. As an addendum, staff had noticed that there was a typo in that existing rule under section O, where "G.S. 143-215.25A" should have been "G.S. 143-214.25A."

Sue Homewood, Division of Water Resources gave a brief history of the consolidated buffer mitigation rule. Ms. Homewood stated that they started the process as the Division of Water Quality in 2006 based on general Statutes requiring them to adopt rules concerning alternative measures for buffer

mitigation. There was a stakeholder process. A permanent rule was passed by the EMC in May 2013, but the Rules Review Commission received ten letters of objection. Senate Bill was passed that the EMC shall adopt a buffer mitigation rule no later than October 1, 2014. That bill specified what the temporary rule should include. The temporary rule was adopted by this Commission on September 30, 2014 and it is effective at this time.

Ms. Homewood further stated that she was now presenting the permanent rule to replace that temporary rule and indicated that there was some urgency because of the expiration date of the temporary rule in the fall of 2015. She reported the benefits of this proposed consolidated buffer mitigation rule and indicated that it increases the number of sites and options available for buffer mitigation, which provides a value to communities, homeowners and developers and it is consistent with the principles and Executive Order 70 and Senate Bill 781. The proposed rulemaking schedule would be to publish notice of text later in January. The public comment period would be February 16 – April 17, and there would be a hearing in Raleigh in March. The public comment period would close April 17 and the hearing officer's report would be brought back before this Commission for adoption for a permanent rule at the EMC's July 2015 meeting. That would allow the EMC to adopt the permanent rule before the expiration date of the temporary rule. The matter was then deferred to Commissioner Tedder, Chairman of the Water Quality Committee.

Commissioner Tedder stated that the Water Quality Committee considered the request on Wednesday. He moved to waive the 30-day rule. Commissioner Martin seconded the motion. With no further discussion the motion passed unanimously.

Commissioner Tedder stated that proceeding to public hearing with the proposed rule was approved by the Water Quality Committee on Wednesday, and he moved to proceed to public hearing with both the proposed rule in Attachment C and the fiscal note, including the correction of the typo in Section O from "G.S. 143-215.25A" to "G.S. 143-214.25A". Commissioner Raymond seconded the motion. After discussion by the Commission members, the motion passed unanimously.

Agenda Item 15-04: Request to Confirm Recommendation to Appoint New Member to the Water Pollution Control System Operators Certification Commission

Steve Reid, Public Water Supply, stated that in December 2014 DENR Secretary Skvarla appointed Mr. Arnold Eugene Allred to the Water Pollution Control System Operators Certification Commission (WPCSOCC). Mr. Allred is currently employed by the Town of Franklinville as the Utilities Director and Operator in Responsible Charge at the wastewater treatment facility. Mr. Reid further stated

that Mr. Allred would occupy the seat on WPCSOCC reserved by statute for person employed by a North Carolina municipality in the capacity of facility operator, superintendent, director or equivalent. He indicated that Mr. Allred had been employed in the wastewater industry for more than 39 years, including experience with the City of Asheboro, the Village of Alamance, Sapona Manufacturing and the Town of Franklinville, and Mr. Allred's term of service would begin on January 9, 2015, upon his swearing in at the WPCSOCC meeting, and would expire on June 30, 2017. Mr. Reid recommended on behalf of WPCSOCC that the EMC approve Secretary Skvarla's selection of Mr. Allred as a member of the WPCSOCC.

Commissioner Tedder moved to approve the staff's recommendations. Commissioner Anderson seconded. After no further discussion, the motion passed unanimously.

Agenda Item 15-05: Request for Adoption of Modifications or Other Appropriate Action on the Stormwater Oil and Gas Rules (15A NCAC 2H .1030) to Address RRC Objections

Bradley Bennett, Division of Energy, Mineral, and Land Resources, presented a history of 15A NCAC 2H .01030, culminating in the Commission's adoption of rules in November of last year to govern groundwater, land application requirements and also stormwater management in the context of the oil and gas industry. In December 2014 those rules were approved by the Rules Review Commission, with the exception of the stormwater rule, 15A NCAC 2H .1030. The Rules Review Commission objected to this rule on the grounds that there was a substantial changes made in the language of the rule adopted from the language contained in the rule published in the North Carolina Register; therefore, the changed language would have to be published in the Register and the comment period re-opened for the new language to be approved by the Rules Review Commission..

Mr. Bennett outline for the EMC options for this rule. First, the EMC could take the rule that was adopted in November, send it back for publication in the Register, go through the public comment period, readopt that rule, basically in the same format that it was when the EMC adopted it in November 2014 with the additional comment, and then return to the Rules Review Commission. The EMC could also vote to return to the language that was published early last year, and then that rule could be forwarded to the Rules Review Commission for consideration at their January 15, 2015 meeting.

After a discussion between Commission members, directors and staff, Commissioner Ferrell made a motion that Attachment C, the language that originally went to hearing with Dr. Rubin and for which the

public comment period has closed, be resubmitted, to the RRC for approval. Commissioner Carroll seconded. The motion passed unanimously.

Agenda Item 15-06: Request for Adoption of Interim Report on Beneficial Reuse of Coal Ash and Other Matters Required Under the Coal Ash Management Act

Commissioner Rubin, Chairman of the Beneficial Reuse of Coal Ash Ad Hoc Committee, reported that they had been given a short timeline on this matter by statute. He further stated that the committee had held a couple of meetings and had developed an interim report to send to the General Assembly's Environmental Review Commission. He indicated that this report addresses the major elements that were included in Session Law 2014-122. Director Culpepper, DWM staff, and Jon Risgaard from the Division of Water Resources have been extremely helpful in putting together this information. Commissioner Rubin indicated he had spent a lot of time looking at the existing rule and the EPA rule. Commissioner Rubin then deferred the presentation to Linda Culpepper, Director of Division of Waste Management.

Director Culpepper reported that the Division of Waste Management staff was preparing a comparison of the existing requirements and the statute on coal ash.

Commissioner Rubin moved that the EMC approve the adoption of the interim report and submit it to the Environmental Review Commission by the 15th of January. Commissioner Raymond seconded. The motion passed.

Commissioner Rubin indicated that the final report to the ERC would include a couple of appendices: One appendix about some of the health consequences or health benefits; an appendix listing criteria for beneficial use; and another appendix listing some of the environmental issues that might be critical for ecosystems issues.

Chairman Hutson thanked Commissioners Rubin, Raymond, Wilsey, Dawson, and Puett for their service over the last couple of months. He stated that the interim report was a testament to all the hard work that was done, especially for Commissioner Rubin who had been traveling the east coast to make sure that they had sufficient information. Chairman Hutson requested that Director Culpepper and Director Reeder extend thanks to staff members, who were instrumental in this effort, especially those involved in writing the report. Commissioner Rubin thanked the staff of Water Resources, Waste Management and the Commissioners for working wonderfully with him.

Agenda Item 15-07: Draft Amended By-Laws for 2015

Chairman Hutson deferred this matter to Commission Counsel Mary Lucas for the presentation. Ms. Lucas pointed out to the Commission members that under the existing terms of the internal operating procedures, pursuant to Article 16, any amendment to EMC bylaws requires a three-fourths vote of the members present and that the amendment being considered also needed to be, and has been, made available to each Commission member five days prior to the adoption of the amendment. The reason for the changes being recommended by the Steering Committee as proposed changes to the internal operating procedures was a change in the scope of authority granted by the General Assembly to this Commission to include waste management issues. She indicated that it was a minor change on page 3 of the internal operating procedures under Article 9, Section 4, where the committees of the Commission are changed. First, the Groundwater Quality would now include waste management, and the name of the committee would be changed to, "The Groundwater Quality and Waste Management Committee." The other proposed change is to delete as one of the standing committees of the Commission the Renewable Energy Committee, whose work had been completed for some time.

Commissioner Dawson asked whether on the top of the second page under "records," where it said, "the records will be maintained by the Division of Water Quality," if that should read "the records will be maintained by the Division of Water Resources?" Chairman Hutson replied that it should, but that change would require action at a subsequent meeting because that change was not submitted to all the Commission members in accordance with Article 16. Chairman Hutson stated he would review this and propose a future amendment to ensure that all the references to the correct, current designations within the agency were included in the Commission's internal operating procedures.

Commissioner Tedder moved that the EMC approve the proposed amendments to the internal operating procedures. The motion was seconded by Commissioner Wilsey. The motion carried.

Chairman Hutson suggested that members take a look at the bylaws and if they had any further comments to submit those by February 1, 2015 in order to put together a comprehensive set of revisions to bring forward to the Steering Committee and the full Commission.

Chairman Hutson requested that Counsel prepare the revised version of the bylaws and provide those to Ms. Thomas for posting on the website at the earliest possible date.

IV. Information Items

Information Item 15-01: High Rock Lake Update

Pam Behm reported that the division had been working on development of a nutrient management strategy for High Rock Lake since 2005. She gave a brief outline, a description of the lake and watershed, a quick description of the impairment history, what DENR has been doing to address the impairment, the role of a Technical Advisory Committee on this project, as well as what the next steps would be. She described the watershed model and the response model in detail with regard to High Rock Lake.

Director Reeder pointed out that DENR was probably going to receive some very specific direction from the General Assembly in the upcoming session about the development of future lake nutrient management strategies, including the strategy for High Rock Lake.

Chairman Hutson requested staff provide to the Commission the statutory authority under which they had to take action with regard to High Rock Lake.

Information Item 15-02: Mining and Energy Commission – Air Toxics from Oil and Gas Drilling Operations

Chairman Hutson and Commissioner Ferrell spoke on this matter. Under the Energy Modernization Act there is a provision that requires the EMC to adopt rules regarding toxic emissions from drilling operations, a part of oil and gas drilling operations. The Mining and Energy Commission has formed a committee to consider the development of recommendations to make to the EMC on this issue. Commissioner Ferrell who also serves on that Commission is the Chair of that committee. Recommendations that are presented by the Mining and Energy Commission to the EMC will go to the Air Quality Committee for consideration of those recommendations as part of any final action that this Commission may take. The statute is clear and what the EMC will get is recommendations from the Mining and Energy Commission. The EMC is not under any statutory obligation to adopt in whole or in part those recommendations, but obviously they will be given differential consideration. Chairman Hutson has asked

Commissioner Carter, as Chair of the Air Quality Committee, to work with Commissioner Ferrell with regard to coordinate regarding the recommendations so that they can be considered in a timely manner. There is a statutory deadline that the EMC will continue to pursue to fulfill our statutory duty

Commissioner Ferrell reported that the Blue Ridge Environmental Defense League presented a petition for rulemaking to the Mining and Energy Commission to develop the issue of rules around air toxics. The committee formed determined that it was outside of the Mining and Energy Commission's purview; however, the Mining and Energy Commission felt a responsibility for staying on top of what the oil and gas Industry might be doing to all environmental areas in the state when drilling begins. The committee has about 12 items under review to see if there should be rulemaking initiated. The committee is working very closely with Director Holman and Mike Abraczinskas. If anything needs to be done, the Mining and Energy Commission will first determine that this step should be taken. Then the recommendation would come to the EMC to determine whether to begin rulemaking.

Chairman Hutson clarified his understanding that the Mining and Energy Commission received from the Blue Ridge Environmental Defense League a petition to make recommendations. It was not a petition for rulemaking. The EMC had not received a petition for rulemaking from any party with regard to this issue. Chairman Hutson reminded the members that the EMC had received information from the Blue Ridge Environmental Defense League, and the EMC had received the presentation by Deputy Director Abraczinskas on this issue. When the EMC gets recommendations from the Mining and Energy Commission they will refer those to the Air Quality Committee for appropriate consideration.

IV. Concluding Remarks

By Committee Chairs

Commissioner Craven reported on behalf of the Water Allocation Committee regarding three information items: a presentation on the Jordan Lake allocation update; the Division of Water Resources integrated Tar-Pamlico river basin plan; and the proposed interbasin transfer for Cary, Apex, Morrisville and Wake County.

Commissioner Martin reported on the Groundwater and Waste Management Committee and highlighted one action item and one information item. The action item involved a previous instruction to staff to begin the rulemaking process for the groundwater rules, section 2L and compliance boundaries. The committee

made a decision on recommended language to publish for public comment and hearing, and that will be coming to the full Commission in May. The second item was an update on the request for petition for rulemaking from Marvin Taylor related to petroleum spills. This petition was granted by the Commission, and staff has been working with Mr. Taylor to put draft language together to send to public hearing

Commissioner Tedder reported on the Water Quality Committee and stated that the major item for the committee was the buffer mitigation rules discussed earlier. He indicated that the committee also had an information item that was an update to the nutrient criteria development plan and another information item concerning new modeling techniques and a prioritization tool for the use of 319 grant monies within the state.

Commissioner Rubin reported on the Beneficial Reuse of Coal Ash Committee and stated the committee had met a couple of times as previously discussed. At those meetings, the committee discussed drafting the report to the General Assembly and reviewed EPA rules and the State's rules on coal ash.

Commissioner Carter reported on the Air Quality Committee. The committee had one action item, which was a request to proceed to public comment on the air division's report on periodic review under the legislature 874 for air rules under 15A NCAC 02D and 02Q. He indicated that this report would come to the Commission at the March meeting. The committee received an information report from Section Chief Donnie Redmond on EPA's development of the new ozone standard that was proposed in December, which is supposed to lower the standard from where it now is and Mr. Redmond provided this information on possible acts from that rulemaking and impacts across the state which could be minimal if EPA doesn't go very far down. Commissioner Carter provided the Commission with some information regarding the Mecklenburg, Buncombe/Ashville, and Forsyth/Winston-Salem local air programs and coordination with the Air Quality Division in Raleigh.

Chairman Hutson indicated he thought one thing that would be helpful for the Air Quality Committee and the Commission was defining the authority of those local programs, especially when they adopt rules that are more stringent than state rules, especially in light of two statutes one being the statute that state regulations cannot be more extensive than federal regulations except in limited circumstances.

Of additional concern would be the moratorium that was adopted on local environmental regulations in the 2013 session, and its impact on local programs adopting rules that are more stringent than state regulations.

By Directors

Director Holman reported that she would hit a few high points that she had covered on Wednesday with the Air Quality Committee members. On December 1 the department submitted comments on EPA's proposal under Section 111d of the Clean Air Act to regulate greenhouse gases from existing power plants. Those comments have been submitted to the EPA docket and posted on the division's website. Yesterday, EPA provided an update to the media that they are planning to release all of the Section 111 regulations. The 111d comments that I just spoke of were for the existing power plants. EPA had also proposed 111b which is for new or modified or reconstructed units. Those are all proposed rules at this point. Yesterday in its announcement the agency indicated that by mid-summer they would be finalizing all of those rules and that they would be proposing a federal plan in the event that states do not come forward with their own greenhouse gas plans under the 111d requirements. I wanted to also update the Air Quality Committee that the cross state air pollution rule which is the rule to address those on transport in the eastern United States is now back in effect. There's been litigation ongoing since 2011, but the Supreme Court has upheld that rule. It replaces the former Clean Air Interstate rule so we are now moving into the implementation phase of the rule. The division is moving forward with the Charlotte re-designation request under the 2008 ozone standard. We will be submitting a draft plan to EPA in mid-January and taking that out to public comment in February with the expectation that we submit the plan in final form to EPA in early April.

Director Culpepper reported that the division had received another rule package from EPA on the definition of solid waste. She indicated that rules that are adopted by their hazardous waste section were rules that were implemented earlier several years ago. They actually took action to unadopt that rule set knowing that it was going to be further litigation and waited for the rule said to be finalized in a different format. That came out in December as well. There will be a presentation on this at the Groundwater & Waste Management Committee meeting in March. That discussion dovetails with discussions on the beneficial use of coal ash.

Chairman Hutson asked for the status of the risk-based corrective action report. Director Culpepper stated the report was being reviewed by the Governor's office.

Director Davis had no comments.

By Commission Members

Commissioner Carter asked Director Holman about the redesignation request for Charlotte, which would be to attainment, and whether with that re-designation the state would have attainment with the ozone standard. Director Holman replied that the state would be in attainment with the 2008 standard.

By Counsel

Counsel Mary Lucasse stated that she just wanted to say thank you for letting her serve as substitute as Commission Counsel and she would coordinate the compilation of additional comments on the bylaws.

By Chairman

The Chairman noted a couple of things. One was the Commission had received a petition for rulemaking on a regulation. He was in the process of making the determination whether or not the petition was complete. If he makes the determination that the petition is complete, the petition would then go to the Air Quality Committee. The deadline to grant or deny the petition is in April; so, the petition would be considered at the March meeting. The Chairman had received a response from EPA on the Commission's comment letter with regard to the 303(d) listing of impaired waters. EPA is not making further changes to the list, with one exception. EPA has reduced the list from 52 to 51 bodies. What the EMC will do now is work with Jeff Manning, who has responsibility for 303(d), as well as going through the methodology, the development of the next list, and the Triennial Review approval. So Commissioner Tedder will be involved in working on that with EPA. One of the issues to be discussed with EPA is the presumption about lasting effects of an exceedance from a non-conventional pollutant. EPA bases the one-in-three rule on the premise that a non-conventional pollutant has a longer-lasting effect from a toxicity standpoint. There have been some committee reassignments based upon the changes to the Groundwater and Waste Management Committee. Those are now reflected on the committee roster. It was really to take

advantage of expertise and experience that some people have in Waste Management, which was not previously within the jurisdiction of this Commission, and also to take advantage of some expertise in the water area that was not taken advantage of with regard to Commissioner Smith and his long lasting experience with the Water Authority. In terms of recent speaking engagements, I spoke to the North Carolina Water Resources Association.

Chairman Hutson commended Commissioner Dawson who made a presentation in Wilmington. Former Secretary Skvarla who is now the Secretary of Commerce, asked me to extend thanks to all of the Commission members for the work that had been done during his tenure. The Chairman had also received a note from the new Secretary, Donald R. van der Vaart thanking the Commission for the work that's being done.

With no further business before the Commission, the Chairman adjourned the meeting at 12:05 a.m.

Approved this 12th day of March, 2015.

A handwritten signature in black ink, appearing to read "G. P. Carroll", written over a horizontal line.

Gerard P. Carroll, Chairman of the EMC