

**NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION**

Minutes of September 14, 2017 Meeting

The North Carolina Environmental Management Commission met on Thursday, September 14, 2017 in the main floor hearing room in the Archdale Building, Raleigh, NC.

Meeting Called to Order: J. D. Solomon, Chairman

The meeting was called to order at 9:05 a.m. with Chairman Solomon presiding. He provided 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.

Present: 11 - John D. Solomon, Chairman, Gerard Carroll, Charlie Carter, Marion Deerhake, Steve Keen, Dr. Suzanne Lazorick, Dr. Stan Meiburg, Bill Puette, Dr. Bob Rubin, Julie Wilsey, Richard Whisnant

Others Present: Commission Counsel Jennie Hauser

I. Approval of Minutes

Chairman Solomon indicated Commissioners Smith, Anderson, Elam, and Gillespie would not be present for various reasons. He asked for discussion, comments or corrections concerning the minutes of the July 13, 2017 meeting. On motion by Commissioner Meiburg and second by Commissioner Carroll, the minutes were approved unanimously.

II. Action Items

Agenda Item 17-35: Request for Approval of Hearing Officer's Report and Adoption of Temporary Rule Amendments in 15A NCAC 2L Section .0400 as Required by SL 2017-57

Jared Edwards, Division of Waste Management, Underground Storage Tanks Section, discussed the proposed temporary rule amendments that would enable the Department to evaluate the risk posed by the release of petroleum from non-commercial USTs as either high risk or low risk based on factors commonly related to noncommercial tank contents and use prior to requiring any remedial response. A rule adoption schedule was presented and a request made for the Commission to approve the hearing officer's report and the adoption of the temporary rule amendments.

Commissioner Puette made a motion to approve the request for approval of the hearing officer's report and adoption of the temporary rule amendments. **Commissioner Rubin** seconded the motion. The motion passed unanimously.

Agenda Item 17-36: Request Approval to Proceed to Public Comment and Hearing for Amendments and Readoption of 15A NCAC 13A

Jenny Patterson, Division of Waste Management, Hazardous Waste Section, discussed the Division's request to seek approval to proceed to public comment and hearing for proposed amendments to 15A NCAC 13A. The rules are proposed for re adoption pursuant to G.S. 150B-21.3A. In addition, permanent rulemaking amendments are proposed to replace the Hazardous Waste Generator Improvements temporary rules.

Commissioner Deerhake addressed a concern about the amendment made in 15A NCAC 13A .0109(r)(2)(A) with the addition of the term "public" and removal of the statement "including by not limited to schools, health care facilities and prisons". The concern was that, as written, private institutions are not captured. Michael Scott stated that there were some other ways this could be worded to be consistent with regulations that deal with public institutions. **Commissioner Deerhake** requested the wording be restored to the original wording prior to the proposed amendment.

Commissioner Rubin expressed concern with the proposed wording in 15A NCAC 13A .0101(f)(2) and requested the addition of the term "electronically" to indicate that the federal rules incorporated by reference would be electronic and not a hard copy.

Commissioner Carter suggested removing the term "free" from the proposed wording of 15A NCAC 13A .0101(f)(2) rule. Jennifer Everett stated that the cost and location that the rule can be obtained must be shown in the rule.

Chairman Solomon called for a motion. **Commissioner Puette** made a motion to approve proceeding to public comment and hearing with the restored wording of 15A NCAC 13A .0109(r)(2)(A) and to add the word "electronically" in 15A NCAC 13A .0101(f)(2). **Commissioner Keen** seconded the motion. **Chairman Solomon** called for a vote and the motion passed unanimously.

III. Information Items

Information Item 17-12: Update on Coal Combustion Residuals Program

Ellen Lorscheider, Division of Waste Management, Solid Waste Section, provided an overview and updates on the Department's Coal Combustion Residuals Program. Specific information was provided, to the Commission, regarding DEQ's plans to apply for an EPA Coal Combustion Residuals Program approval.

In November 2016, the US Congress passed the WIIN Act which recommended that states develop and submit a Permit Program for EPA approval. The two parts of the federal CCR rule which regulates dams (Division of Energy Mining and Land Resources) and landfills (Division of Waste Management), after minor changes and additions are made, are considered by the Department to be "as protective" as the federal CCR rule. These rule sets should be on the calendar of the respective EMC committees as early as January, as

action items. The drafting of these two rule sets will allow the department to apply for partial approval from the EPA of a Permitting and Regulatory Program for coal ash. A third rule set, pertaining to the CCR impoundments (Division of Water Resources), will be part of future rulemaking calendars.

After further discussion and questions between the Commissioners and Ms. Lorscheider, the Chairman proceeded to the next information item.

Chairman Solomon indicated that it was requested by the Commissioners to describe the process of communication on various topics. He invited Jamie Kritzer, Communications Director for DEQ to provide guidance and an overview of the communication process to the Commission.

Information Item 17-13: Communication and DEQ Communications Support

Jamie Kritzer covered a brief overview of interactions with the media, public hearings and public records, all of which would affect the members of the Commission and allow them to make the most informed decisions. He also informed the Commission of all the public information officers in the Department. He discussed the procedures of handling confidential emails.

Information Item 17-14: Regulatory Process Overview

Counsel Jennie Hauser briefly described the issues of the rules that govern the EMC actions. She framed the conversation with the language of the Open Meetings Act which is that public bodies administer the laws of the state of North Carolina whether it is quasi-judicial or advisory functions. They exist solely to do the people's business and it's the public policy of North Carolina that hearings, deliberations and actions of the bodies be conducted openly. She further explained public meetings and official meetings with respect to Commissions and these meetings had to be noticed. Counsel Hauser continued to inform the Commission of the various rules and regulations of conducting business including statutes and attendance as a Commission.

Chairman Solomon thanked Mr. Kritzer and Counsel Hauser for their presentations and information to the Commission and that they all benefited as a Commission and the public.

IV. Concluding Remarks

By Directors

Annette Lucas, the new Supervisor, DEMLR Stormwater Program reported on how legislation affected the DEMLR programs that had been signed into law since the July EMC meeting which were:

- Senate Bill 107
- Senate Bill 615

She also provided updates on legislation that had been ratified by the General Assembly, but had not been signed by the Governor since the July EMC meeting:

- House Bill 56
- Senate Bill 16

Director Michael Abraczinskas stated on August 2, 2017, EPA announced the agency has withdrawn its decision to delay by one year its designations for whether areas are attaining the 2015 ozone national ambient air quality standards (NAAQS), saying that “information gaps” justifying the delay no longer appear to be as extensive as initially believed and that EPA might be able to issue the designations this year. During the July EMC meeting, the DAQ shared EPA’s June 6, 2017 announcement to extend the deadline for making initial area designations for the 2015 ozone NAAQS, from October 1, 2017, to October 1, 2018. North Carolina currently meets the 2015 ozone NAAQS statewide.

On August 22, 2017, EPA informed DAQ of its intentions to designate certain areas of North Carolina for the 2010 primary NAAQS for sulfur dioxide (SO₂). EPA is on a court ordered schedule to complete SO₂ designations by December 31, 2017 and December 31, 2020. With regard to the areas that will be designated by December 31, 2017, EPA agreed with North Carolina’s recommendations of an attainment designation for most of the State. One exception includes a few townships in Person County where EPA requested additional information to inform an appropriate final designation. DAQ is pulling that information together now and will submit that to EPA. It will support an attainment designation for those townships. Other exceptions include areas where monitoring will determine compliance. Those designations are deferred until December 31, 2020.

Director Michael Scott reported:

- DWM is pleased to announce that Vance Jackson has accepted the position as the Underground Storage Tanks Section Chief.
- There are several pieces of legislation from this year’s long session that are still active. The Division continues to monitor the status of House Bill 576 (Allow Aerosolization of Leachate) and House Bill 56 (Amend Environmental Laws) which contains several components that may impact DWM programs.
- DWM staff spent last week and the weekend preparing for Hurricane Irma to include coordinating with permitted facilities, establishing disaster debris staging sites and coordinating with other state agencies to include NCDA.
- DWM will be holding an information session along with DHHS for the community around the Bladen County Chemours facility on Thursday night (9/14) in St. Paul’s.
- DWM appreciates the opportunity to provide updates on the Brownfields program and Solid Waste program rule review process yesterday within the GWWMC meeting.
- DWM continues to evaluate the federal coal combustion residual rule with DWR and DEMLR and appreciates the Commission’s input on suggested next steps.

Director Jay Zimmerman indicated there was one active IBT certificate request which was Pender County. He provided an update on Coal Ash which included:

- Background data
- CSAs/CAPs
- TVA Visit
- Update on EPA conversations

The Commissioners continued to discuss and provided comments with the director and staff.

Assistant Secretary Holman gave the Commission an update of the actions that had taken place since the last meeting on the compound known as GenX in the lower Cape Fear River. She thanked staff within DEQ who had worked many long hours to address the emerging contaminant and their partners at the Department of Health and Human Services. She extended appreciation to **Deputy Director Linda Culpepper** and **Director Michael Scott** for their leadership both on surface water and groundwater issues.

Since the July EMC meeting, DEQ continued to take surface water samples at 14 locations for a total of 6 weeks (June 19-July 28). The concentrations of GenX in finished water dropped significantly over this time period, as the company had stopped the discharge of GenX into the wastewater stream in late June. After week 3, all concentrations in finished water were below the health goal set by DHHS. Beginning July 31, DEQ has continued to sample the finished water weekly, and the Chemours outfall daily through the work week. DEQ is in the process of contracting with a commercial lab to evaluate the ongoing water samples.

DEQ also began sampling groundwater at the facility in early August. The results of the groundwater samples showed levels of GenX in 13 of the 14 wells above the practical quantitation limit of 10 ppt. The PQL is established by the lab test standard for GenX. The concentrations ranged from 513 ppt to 61300 ppt. Since these levels were above the PQL and constituted a violation of the groundwater rules (15A NCAC 2L.0202(c)), an NOV was issued last week. Additionally, DEQ will conduct a community meeting tonight in St. Paul's to discuss private well sampling that will begin tomorrow. Chemours has begun testing the private wells near the facility due to the groundwater sampling results.

On September 5, 2017 based on the information Chemours provided, DEQ issued a 60-day notice of intent to suspend the NPDES permit. Additionally, on September 7th and on behalf of DEQ, NCDOJ filed a complaint against the company in Bladen County Superior Court. The 60-day notice letter and the complaint should be read in tandem as this represents an integrated strategy to achieve the appropriate outcome. DEQ is exploring both administrative and legal options for addressing the situation. On Friday, September 8th, the court entered a partial consent order in this matter. Chemours is making progress toward addressing those requests in the 60-day letter. DEQ continues to work with the company on this situation. She emphasized that DEQ is committed to developing a sound NPDES permit for this facility based on as much information as we can gather, and grounded in the statutes and rules to protect public health and the environment. She indicated that all of the documents discussed were available to the Commission and the public.

There were questions and comments from the Commissioners, and further discussion continued with Assistant Secretary Holman.

By Committee Chairs

Chairman Whisnant reported on the Water Allocation Committee and mentioned to everyone that he had spoken to Vice-Chair Smith to discuss some issues.

Chairman, Dr. Rubin of the Water Quality Committee reported that the Committee had three action items that were discussed. One was changed from an action item to an information item. They did approve advancing to the EMC the coastal stormwater rules and they approved a variance for a property in Cary, North Carolina. They also discussed the 2B and 2H rules which was an information item. They will be heard again as action items in the interim 60 days. DWR has agreed to gather all of the information of the fiscal note that is needed to proceed to the Commission. He has also implemented some educational sessions in their committee meeting.

Chairman Puette reported that the Groundwater & Waste Management had no action items but two information items, the 13B rule readoption process presented by Ms. Lorscheider and an update on the Brownfield Program by Bruce Nicholson, DWM.

Chairman, Dr. Meiburg reported that the Air Quality Committee had one modification to the minutes from the July meeting which was concerning the draft IM rules that **Commissioner Deerhake** noted that she had asked at the July meeting that DEQ engage in a periodic review of the exempt counties list and the minutes were revised to reflect that. The Committee had a couple of actions which they voted to move the proposed IM rules forward to the EMC for approval to proceed to public hearing. They also voted to move forward the proposed rule revisions to the EMC for approval to proceed to public hearing for the readoption of the Group III air quality rules that's pursuant to the state process. The Committee discussed the conceptual presentation by the staff on the Startup, Shutdown and Malfunction (SSM) SIP Call Temporary Rule (545).

By Commission Members

Commissioner Deerhake commented on the storm events. She thanked staff for always being prepared for those situations and efforts to raise awareness of meteorology, climate and emergency events. Agencies at the local, federal and global level need to be prepared for such situations, and to mitigate as much as possible.

Commissioner Keen expressed appreciation on the report of the Brownfield Program and keeping a watch on the federal level EPA and how the Brownfield piece is not partisan.

By Counsel

Counsel Jennie Hauser reported that a previous civil penalty case, House of Raeford Farms actually falls under the old APA rules where the EMC made the final decision on the civil penalty; this case will be back before the Commission in January which is quasi-judicial. The Cary/Apex IBT case had been set for hearing on the petition for judicial review in September; this case was moved to October. In the last couple of days, the Union County IBT case had been set for hearing in November, but it has been continued until the summer of 2018. The reasoning for that was the need for a real expanded discovery in that case and the hearing schedule for some of the witnesses that will be used in the case will not be available until that time.

By Vice-Chair

Vice-Chair Wilsey thanked staff for the new IT improvements which is very helpful and thanked all the vice-chairs and committee chairs for their work during the transition of the new committee chairmen. She emphasized the importance of keeping the spreadsheet up-to-date. She indicated that the timelines for the agendas for both the committee meetings and the EMC meetings.

By Chairman

Chairman Solomon stated that the Committee Chairs had a Steering Committee meeting and as a refresher covered 30-day waivers, fiscal notes, agenda title consistency and communication plan. Counsel Hauser is working on language for the 30-day waivers and that discussion will be at the November EMC. Also, the Commission needs to look at the bylaws periodically. He expressed appreciation to the Water Quality Committee and Annette Lucas for expediting changes during the Committee meeting. Some of the coastal rules need to be expedited which may require a special ~~call~~ meeting on October 11, 2017 to be considered by the General Assembly. Please arrange your calendars accordingly. There may be another topic on the agenda ~~also~~ to be discussed as well. He thanked the members for taking on committee roles. He welcomes input from all members.

On behalf of the Commission, Chairman Solomon recognized the Department for post hurricane assistance. He applauded DEQ, Secretary Regan and Governor Cooper for their continued focus on recovery efforts that include an awareness on the environment. We are making that effort in North Carolina to rebuild, be resilient and sustainable while protecting our natural resources.

With regards to the rules for staff, the Commissioners and the regulated public, we are halfway in the process that started in 2013. We must pay attention to the details of the rules to make sure that this is conducted in accordance with ~~to~~ state law. The Chairman continued to explain and describe the requirements of looking at these rules. He also indicated that they wanted to be transparent and have open, two-way communication.

With no further business before the Commission, the Chairman adjourned the meeting at 12:30 p.m.

Approved this 9th day of November 2017.



J. D. Solomon, Chairman of the EMC