



Meeting Minutes

Monday August 23, 2021 - Virtual Meeting

At 3:02pm, Chair Johnson called the meeting to order, read the ethics statement, and asked Ms. Renee Kramer (DEQ staff Liaison) to call the roll.

Board members present:

Chairman Dr. Jim Johnson
Vice-Chair Dr. Marian-Johnson Thompson – *Joined at 3:11pm*
Vice-Chair Jamie Cole
William Barber III
Veronica Carter – *Joined at 5:42pm*
Dr. Deepak Kumar
Carolina Fonseca Jimenez
Ranee Haven-O'Donnell
Dr. Danelle Lobdell
Marilynn Marsh-Robinson
Naeema Muhammad
Carlos Velasquez
Elke Weil
Sherri White-Williamson

Board members absent:

Jeff Anstead
Rodney Sadler Jr.

Old Business:

Hearing no proposed adjustments to today's agenda, a motion made by Ms. Haven-O'Donnell to accept today's agenda as printed, which was seconded by Ms. Weil.

Hearing no proposed adjustments to May 24, 2021, meeting minutes, a motion made by Ms. White-Williamson to accept the May 24, 2021, meeting minutes as printed, which was seconded by Ms. Haven-O'Donnell.

New Business:

1. *Introductory Remarks Elizabeth Biser, NCDEQ Secretary*

Secretary Biser thanked the members for their participation on this EJE Advisory Board. The Secretary introduced herself to the Board, briefly discussed her background and past work at—what was then—DENR. The Secretary expressed her EJ goals for the Department and asked the Board for help on providing additional perspective. **To do this, Secretary Biser indicated that she will be sending the Board a survey this week to get their perspective on the work of the Board to date.**

Chairman Johnson asked the Board to complete the Secretary's survey as soon as possible.

2. *American Recovery Plan and funding for State broadband initiatives. Nate Denny, Deputy Secretary for Broadband & Digital Equity, N.C. Department of Information Technology Division of Broadband and Digital Equity*

Mr. Denny shared a presentation outlining Governor Cooper's plan to achieve digital equity in North Carolina using American Recovery Plan funding. The three pillars of the plan are: 1. Infrastructure 2. Affordability 3. Digital Literacy. **Mr. Denny requested to follow-up with the Board about the benefit program and asked the Board to spread the word about the benefit program and the grant opportunities for digital literacy programs.**

Chairman Johnson asked how the NCDIT will ensure EJ communities benefit in regard to business opportunities and job creation in dealing with the digital divide? Is there any conscious effort to be more inclusive in the supply chain to get the work done?

Mr. Denny responded that within the infrastructure piece, the current statutory provisions restrict the work to existing internet providers that are either private sector or rural co-ops. Therefore, the Department is proposing to expand these provisions so that potentially publicly owned entities—including non-profits—could also participate. With the current statutory restrictions, options are relatively limited. However, focusing on digital literacy and building local community partnerships—local education groups, local non-profits, etc.—may also address this topic. **NCDIT plans to take guidance from EJ and equity stakeholders.**

Chairman Johnson asked if the State is able to look at the private sector's supply chain and Tier 2 spending to ensure there is more equity in the distribution of funds to benefit EJ communities?

Mr. Denny responded that NCDIT does not currently have the authority to build those criteria into grant requirements. However, opportunities to address these criteria by gaining more data and better mapping to target areas that need these benefits the most.

Dr. Kumar asked how much involvement do EJ communities have in the structuring of the grant process? How is NCDIT avoiding structural discrimination and ensuring proper engagement?

Mr. Denny responded that NCDIT will need ongoing feedback from the Board and other EJ stakeholders to make sure the grant process is equitably structured.

Ms. Muhammad commented that NCDIT needs to be intentional in how it incorporates EJ communities early in the structuring process to prevent exclusivity. Ms. Muhammad used the intense paperwork for the recovery process after Hurricane Floyd as an example of unintentional exclusion of EJ communities.

Mr. Denny acknowledged Ms. Muhammad's comment by proposing a follow-up conversation with the Board and the Director of the Office of Digital Literacy.

Ms. White-Williamson asked if there were any plans to subsidize low-income households to afford internet equipment.

Mr. Denny responded that there are two main paths NCDIT can take in assisting low-income households. One being the direct \$50/month subsidy for internet service for low-income households (not currently approved by the General Assembly). The other option being the pending federal infrastructure bill which extends that Emergency Broadband Benefit at the federal level to be not just for pandemic-related circumstances. The NCDIT's main focus—if option 1 is not possible—will be to drive awareness about the Emergency Broadband Benefit. NCDIT is doing this by encouraging internet providers to inform their customers of the Benefit. Mr. Denny also requests help from the Board to raise awareness and will be sending more information to Board members for distribution. Mr. Denny also notes that one out of the three goals for the funding within “devices support and break-fix services” is to help get new devices (laptop, desktop computers, modems, hotspots, etc.) and fix broken/older devices for low-income households.

Chairman Johnson thanked Mr. Denny and encouraged the Board to reengage with Mr. Denny and NCDIT later. Chairman Johnson agreed with Ms. Muhammad on the importance of equitable access to broadband but also equitable access to job creation and business expansion.

3. Update on Regional Greenhouse Gas Initiative (RGGI) petition to EMC and DEQ actions. Mike Abraczinskas, Director, Division of Air Quality (DAQ), NCDEQ

The purpose of Mr. Abraczinskas' presentation was to provide a RGGI overview and a summary of updates on the RGGI petition and rulemaking process since the May 24, 2021 Board Meeting.

The NC RGGI petition includes a steeper decline (70% reduction by 2030) in the CO2 budget compared to other states. However, DAQ is still analyzing whether this is a realistic goal. There is also a new Consignment Auction Approach, which means facilities will be allocated conditional CO2 allowance that cannot be used directly for compliance. North Carolina would be the first RGGI state to implement this consignment approach. The DAQ staff's next steps are to work on a fiscal note/analysis, draft EJ reports, and conduct public hearings, then send the proposed rules to the Environmental Management Commission for final action.

Mr. Abraczinskas welcomed the Board to share any thoughts they may have during any part of this process.

Ms. Muhammad asked about specifics on the EJ reports for RGGI.

Mr. Abraczinskas responded that they are still working through this while referencing EPA's EJ for ideas on the approach. **Mr. Abraczinskas invited feedback from the Board on the development of the EJ analysis and reporting.**

Ms. Muhammad added the importance of making sure EJ communities are not an afterthought in the RGGI rulemaking process.

Mr. Abraczinskas responded by welcoming the Board to provide comments by reaching out to Ms. Kramer.

Ms. Haven-O'Donnell asked for clarification on how the State Utilities Commission ensures proceeds are not revenue to the utility. Is this definite or pending approval?

Mr. Abraczinskas explained that they are in discussion with the Utilities Commission on the details of the Commission's authority.

4. *Presentation on VW Phase II Settlement funding opportunity; historically under-resourced counties outreach program. Brian Phillips, Supervisor, Mobile Sources Compliance Branch, DAQ, NCDEQ*

The purpose of Brian Phillips' presentation was to provide an update on what happened with funding in Phase 1 and what is planned for Phase 2 of the VW Settlement.

The public comment period on the Phase 2 Mitigation Plan ends September 7th.

Mr. Phillips and his team are **looking for contacts for the historically under-resourced counties outreach program. Mr. Phillips asked if any Board members have recommendations on scoring criteria for Phase 2 proposals or know any fleet managers (or others) with eligible vehicles.**

Mr. Phillips invited the Board to join the email list to receive updates about the Volkswagen Settlement Program. To join the email list, send an email to daq.NC_VWGrants@ncdenr.gov with the word "Subscribe" in the subject line.

Mr. Phillips offered that the Board may email him at brian.phillips@ncdenr.gov if they have any questions.

Chairman Johnson encouraged the Board to respond directly to the action steps included in Mr. Philips' presentation.

5. *Presentation and Discussion of Section 11 of the 2021 Farm Act: Create a New General Permit for Farms with Farm Digester Systems. Joy Hicks, Senior Director for Governmental Affairs, NCDEQ*

The purpose of Ms. Hicks' presentation was to provide an overview and explain the Department's plans for implementation of the new Farm Digester General Permits, including background history, terminology, and differences between this and previous General Permits.

Ms. Hicks expressed her hope to hear from the Board during the stakeholder process and public comment period.

6. Biogas...The Case to Protect Environmental Justice Communities, Sherri White-Williamson and Naeema Muhammad

Ms. Muhammad shared a presentation on the concerns with CAFOs and their adverse impacts on water, air, odor, soil, public health, and quality of life. Additionally, Ms. Muhammad reminds the Board of the disproportionate adverse and cumulative impacts of CAFOs on communities of color in North Carolina.

Ms. White-Williamson presented the history of CAFOs since 2000 and explained biogas and methane capturing process. Ms. White-Williamson shared concerns about the impacts of directed biogas processes to neighboring communities.

Ms. White-Williamson asked the Board to support air and water monitoring, data collection and analysis and consideration of cumulative impacts as the minimum protection for EJ communities.

Ms. White-Williamson presented the following eight recommendations for the General Permitting process:

1. Conduct at four public meetings.
2. Provide at least 60-day notice of any planned public meeting.
3. Extend the period for public comment on the draft permit for at least 90 days.
4. Provide Spanish interpretation services for participants with limited English proficiency.
5. Provide Spanish translation of draft permits, EJ analyses and related notices.
6. Contract an independent facilitator to enable dialogue between stakeholders and agency staff at all meetings.
7. DEQ should respond on writing to community concerns expressed during the permitting process so that agency decision-making is transparent and reflects consideration of public input.
8. DEQ should consult with the NC Department of Health and Human Services to evaluate the health impacts of existing swine CAFOs including but not limited to those employing directed biogas technology.

Ms. Fonseca Jimenez thanked presenters for including additional insight on community engagement.

Dr. Johnson-Thompson asked DEQ staff to respond to Ms. White-Williamson's comments about the General Permit not being suitable.

Ms. Hicks responded that the General Assembly wanted the State to include biogas in the General Permit for those farms that want to start methane capture for biogas at their facilities.

Dr. Johnson-Thompson asked a follow-up question about the General Assembly's basis for their biogas permitting decisions. When the General Assembly mandates something, where are they getting their information?

Ms. Hicks responded that the genesis for the idea originated from stakeholders and a legislative bill sponsor. The bill sponsor (Senator Brent Jackson) developed the bill language and the stakeholders provided technical assistance.

Ms. White-Williamson added that the problem that communities have with the General Permit is the “one size fits all” approach.

Ms. Muhammad added that historically the General Assembly tends to support the pork industry. Ms. Muhammad went on to express concern over a DEQ employee testifying in court on behalf of the industry DEQ regulates.¹

Ms. White-Williamson shared an advisory letter with the Board and asked that the Board join onto this advisory and send it to Secretary Biser for consideration.

Chairman Johnson asked the Board on how to proceed.

Ms. Kramer advised that the Board could vote if they want to make an official action as a Board.

Chairman Johnson entertained a motion to support the letter and recommendations, make any final edits, and then forward the letter to Secretary Biser.

Mr. Barber made the motion with Ms. Haven-O’Donnell seconding, that the Board make a final review of letter and forward it on behalf of the Board to Secretary Biser.

Ms. Lobdell asked for a deadline on reviewing and sending the letter.

Chairman Johnson instructed the Board to review and send comments to Ms. White-Williamson, Ms. Muhammad, Dr. Johnson-Thompson, and Chairman Johnson within 24 hours, adding that he and Dr. Johnson-Thompson will take responsibility for finalizing the letter.

At 5:01 pm Ms. Muhammad made a motion to adjourn the meeting which was seconded by Ms. White-Williamson.

¹ Clarification of this concern is provided in the accompanying letter from DEQ General Counsel, Bill Lane.

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

WILLIAM F. LANE

General Counsel



NORTH CAROLINA
Environmental Quality

October 7, 2021

To: Secretary's Environmental Justice and Equity Advisory Board

Re: Clarification for August 23, 2021 Meeting

Dear Board Members,

On behalf of the North Carolina Department of Environmental Quality, I write to clarify a topic that arose during the recent meeting of the Secretary's Environmental Justice and Equity Advisory Board on August 23, 2021.

During the meeting, there was an agenda item entitled "Presentation and Discussion of Section 11 of the 2021 Farm Act: Create a New General Permit for Farms with Farm Digester Systems." Following the presentations on this topic, there was a discussion during which board member Naeema Muhammad made the following comment: "We have a waste management manager at the DEQ who goes into court during the nuisance cases and testifies on behalf of the very industry they're supposed to be regulating." This statement can be heard at approximately 1:51:40 on the recorded meeting on YouTube, available on the Board webpage.

DEQ wishes to clarify the actual circumstances surrounding the testimony that was mentioned by Ms. Muhammad. It is not uncommon for parties to name DEQ employees as witnesses, even in cases where DEQ is not a party. DEQ employees may be called, for example, to provide testimony about a specific agency action or to provide more general information about a DEQ regulatory program. DEQ employees do not volunteer or have the ability to choose which party will call them as a witness.

On July 30, 2018, Christine Lawson, an engineer in DEQ's Animal Feeding Operations program, testified as a fact witness in a case involving nuisance claims by neighbors against swine farm operators (*Artis v. Murphy-Brown*, 7:14-CV-00237-BR) in federal district court in Raleigh. She answered factual questions presented by the defendant's counsel and then she answered questions under cross-examination by plaintiff's counsel.

Ms. Lawson did not volunteer to serve as a witness nor did she choose which party would call her as a witness. She was named as a witness by defendant's



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counsel and subpoenaed to provide testimony. In this case, the parties had subpoena power and could ask the court to compel Ms. Lawson to testify if she refused to appear.

After being designated as a witness by the defendant's counsel, Ms. Lawson made herself available for interviews by each party for equal time (approximately one hour per interview session) prior to her appearance in court. Counsel for both parties separately met with Ms. Lawson before she testified. These arrangements, which exemplified Ms. Lawson's neutrality between the parties, were made through DEQ's Office of General Counsel.

We appreciate the service of all board members and their interest in DEQ's permitting programs. We hope that this clarification will contribute to further informed deliberation by the board and we intend to include this information in the minutes for the August meeting.

Sincerely,



Bill Lane
General Counsel