

**ENVIRONMENTAL MANAGEMENT COMMISSION
SPECIAL AIR QUALITY COMMITTEE MEETING SUMMARY
February 7, 2018
Archdale Building-Ground Floor Hearing Room
12:30 PM - 2:30 PM**

MEETING BRIEF

During their February 7, 2018 meeting, the Air Quality Committee (AQC) of the Environmental Management Commission (EMC) considered a Petition for Rulemaking to Limit North Carolina's Carbon Dioxide Emissions to Protect a Stable Climate System and Preserve the Natural Resources of North Carolina and decided to recommend that the full EMC deny the petition.

AQC MEMBERS IN ATTENDANCE

Dr. Stan Meiburg, AQC Chairman;
Mr. Charles S. Carter, AQC Vice Chair;
Mr. Gerard Carroll via telephone;
Ms. Marion Deerhake;
Dr. Suzanne Lazorick; and
Ms. Julie Wilsey;

PETITIONERS

Mr. James P. Longest, Jr., Duke Environmental Law and Policy Clinic Director;
Ms. Shannon Arata, Staff Attorney;
Mr. Zachary Hennessey, Law Student;
Ms. Hallie Turner, High School Student;
Ms. Emily Liu, High School Student; and
Ms. Arya Pontula, High School Student

RESPONDENT

Mr. Francis X. De Luca, Civitas Institute;

OTHERS IN ATTENDANCE

Mr. J.D. Solomon, EMC Chairman;
Mr. Philip Reynolds, EMC Counsel;
Mr. William "Bill" Puette, EMC;
Mr. Steve Keen, EMC;
Ms. Sheila Holman, Assistant Secretary for the Environment;
Mr. Mike Abraczinskas, Division of Air Quality, Director;
Mr. Michael Pjetraj, Division of Air Quality, Deputy Director;
Ms. Sushma Masemore, Division of Air Quality, Planning Section Chief;
Mr. Steve Hall, Division of Air Quality;
Mr. Matthew Davis, Division of Air Quality;
Ms. Paula Hemmer, Division of Air Quality;
Mr. Rahatul Ashique, Division of Air Quality;
Mr. Patrick Knowlson, Division of Air Quality;
Mr. Brad Nelson, Division of Air Quality;
Ms. Lois Thomas, EMC Recording Clerk; and
Members of the public

Agenda Item #1, Call to Order and the State Government Ethics Act, N.C.G.S. §138A-15(e)

Chairman Meiburg called the meeting to order and inquired, per General Statute §138A-15(e), as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Environmental Management Commission's Air Quality Committee. No conflicts were identified.

RULEMAKING PETITION**Agenda Item #2, Petition for Rulemaking to Limit North Carolina's Carbon Dioxide Emissions to Protect a Stable Climate System and Preserve the Natural Resources of North Carolina****Background:**

On November 14, 2017, the Division of Air Quality (DAQ) received a petition for rulemaking from James P. "Ryke" Longest, Jr., Director of the Duke Environmental Law & Policy Clinic, on behalf of three youth petitioners, Hallie Turner of Raleigh, Emily Liu of Chapel Hill, and Arya Pontula of Raleigh. The petition addresses carbon dioxide emissions in North Carolina and requests that the Environmental Management Commission (EMC) initiate rulemaking to eliminate statewide carbon dioxide emissions by 2050.

After review by the EMC Chairman, DAQ staff, and EMC Counsel in accordance with the criteria outlined in 15A NCAC 02I .0501, *Form and Contents of Petition*, the petition for rulemaking was deemed to be complete and was referred to the AQC for review in accordance with 15A NCAC 02I .0502, *Review by a Committee of the Commission*. 15A NCAC 02I .0502 requires the AQC to review the petition and recommend action to the full EMC.

Notice was sent to interested parties, stakeholders, and to the Secretary of State that the Air Quality Committee would convene for a special session to address the petition. In accordance with the requirements of 15A NCAC 02I .0502, interested parties may make an oral presentation pertaining to the petition for rulemaking.

The EMC Chairman asked the AQC to follow the procedures in 15A NCAC 02I, .0501 through .0503 in reviewing the complete petition for rulemaking and then making a recommendation for action on the petition.

Rules for Presentations:

Chairman Meiburg stated the purpose of the special meeting, welcomed the interested parties, and specified that there's a 15-minute limit for presentations.

Process and Considerations for Rulemaking Petitions (Philip Reynolds, EMC Counsel):

EMC Counsel Reynolds provided an overview of the petition process and rulemaking requirements pursuant to the North Carolina Administrative Procedures Act (APA). Pursuant to G.S. 150B-20, petitions for rulemaking are authorized; however, the rules cannot conflict with statute. It is also important to note that neither the North Carolina General Statutes or administrative rules require that the petition provide an economic analysis; only cost factor estimates. If the Commission grants the petition, it does not mean that the rules are automatically adopted into the North Carolina Administrative Code; however, it begins the rulemaking process. If the Commission denies the petition, the petitioners may obtain judicial review in a Superior Court.

G.S. 150B-19.1 governs how a rule is adopted and the general principles that an administrative agency must follow. While the proposed rules have been developed as part of the petition, the principles of the General Statute still apply and should be considered when granting or denying the petition. The provisions of G.S. 150B-19.1 also contain additional requirements for noticing the proposed rules; however, a fiscal note or regulatory impact analysis must be approved before the notice is published. G.S. 150B-21.2(c) defines "notice of text", which includes the proposed rule text along with additional information that must also be included pursuant to G.S. 150B-20.

Pursuant to G.S. 150B-19.3(a), an agency is prohibited from adopting an environmental rule that is more restrictive than federal requirements of the same subject matter unless the rule falls within one of the five listed exceptions. The decision whether to deny or grant the rulemaking petition or part of the petition is ultimately decided by members of the Commission.

Discussion:

EMC Chairman Solomon thanked everyone in attendance and stated that the petition is currently in step-three of a four-step process. Regardless of the Committee's decision during the special AQC session, step-four will require presenting their recommendation during the March EMC meeting. Per State Rules, the petition request was submitted to the DAQ Director for review. The DAQ Director's review was submitted to EMC Chairman Solomon and contained some reservations regarding the petition. Chairman Solomon's review produced similar reservations; however, the completion of the petition was enough to be heard as a body of 15 and not of one. This action does not imply whether EMC Chairman Solomon is in favor or not in favor of the rulemaking; it is only to fulfill the required rulemaking petition process.

EMC Counsel Reynolds noted that the petition's completeness does not bind the Committee or the full Commission from determining whether there is sufficient information to grant the petition.

Commissioner Carter asked whether the DAQ Director could speak prior to the petitioner and respondent. AQC Chairman Meiburg specified that he would rather hear the petitioner and respondent before the DAQ.

Commissioner Deerhake asked for procedural clarification as to whether the DAQ is supposed to present their position during the special AQC session. EMC Counsel Reynolds specified that the State Rules specify that the petitioner shall be afforded an opportunity to speak, one party in opposition shall be allowed an opportunity to speak, and the Department may provide information if requested.

AQC Chairman Meiburg asked if there were any other questions. No questions were identified.

Petitioners Statements (Three Youth Petitioners and Duke Environmental Law & Policy Clinic Staff):

The three youth petitioners thanked the Commissioners for the opportunity to speak and issued their joint statement. Members of the EMC are asked to issue a rule that will reduce North Carolina's in-state carbon dioxide emissions to zero by 2050. Having a clean and habitable planet is a fundamental human right that should be accessible for current and future generations. The petitioners are not old enough to vote and cannot have a voice in which leaders are elected to protect human rights. They have seen the impacts of climate change on the State, the country, and the planet; specifically, an increase in floods, intense wildfires, erosion, pollution, and drought. It is imperative that the State must act on this issue.

They filed the petition because North Carolina is sensitive to the impacts of climate change. The State is already seeing sea level rise encroaching on coastal communities, drought reducing agricultural yields, more severe hurricanes and tropical storms, and social justice issues, such as low-income neighborhoods seeing the brunt of the changes. Climate change not only threatens human lives and property, but also the State's tourism and agricultural economy. Summers are becoming hotter and the beaches are shrinking. The State can avoid an economic and humanitarian crisis by investing in training in the renewable energy sector for people that are dependent on fossil-fuels. The State can transition away from carbon dioxide-emitting fuels. In 2016, North Carolina ranked second in solar capacity and fifth in off-shore wind potential. It will not be easy to transition, but the environmental, health, and economic benefits will be a legacy for current and future generations in North Carolina. North Carolina can and must be a leader in the global effort to combat climate change.

The EMC is responsible for adopting rules for protecting North Carolina's air and water resources on behalf of future generations. Young people should not be responsible for protecting the planet for current and future generations. They should be able to trust leaders to make decisions that benefit and protect livelihoods. Younger generations did not create this problem; however, they are willing to be a part of the solution. It is a step in the right direction to reduce State's carbon dioxide emissions to zero by 2050 and by transitioning to renewable energy. There are no easy fixes, but one certainty is that North Carolina needs to act now.

Ms. Shannon Arata, Duke Environmental Law & Policy Clinic Staff Attorney, thanked the Commission for the opportunity to speak. The Commission is requested to adopt a carbon dioxide rule that would require zero carbon dioxide emissions by 2050. The proposed rule requests that the Commission continue to build upon the regulatory framework the Commission and DEQ has already undertaken. For example, in 2015, the Commission proposed its own carbon dioxide rule for electric generating units in North Carolina. That effort was guided through the notice and comment process by Commissioner Carter; as was the Clean Smokestacks Act, which required the DAQ to develop feasible carbon dioxide emissions reductions strategies for North Carolina. The proposed rule would allow the Commission to cover sources not covered in federal law. The rules are designed to enable the Commission to mitigate North Carolina's contribution to global carbon dioxide emissions in three ways: 1) by developing a rule that will achieve in-boundary carbon dioxide emissions produced in the State or directly supplied by power or heat sources; 2) by adopting a statewide carbon dioxide budget; and 3) by complying with limited reporting requirements.

The rule language is intentionally flexible with respect to sources the Commission may choose to regulate. The petitioners anticipate that the final language of the rule will undergo change during the comment period and by virtue of the APA process. The costs are anticipated to be above one million dollars for a calendar year. Per the APA, the Commission will be obligated to consider two additional options to the rule. The rule language does narrow the regulatory scope to carbon dioxide emissions generated within North Carolina. Since agricultural carbon dioxide emissions are slight, they are also mobile, and covered by federal rule. North Carolina is the 14th largest carbon dioxide-emitting state in the country. If North Carolina were a country, it would be the 38th largest carbon dioxide-emitter in the world. Although Duke Energy has invested in solar technologies, those market forces do not reach zero by 2050. North Carolina's neighbors have committed to certain actions for increasing renewable energy usage. Pursuant to G.S. 143 and 143(b), the Commission has the power to adopt rules for enhancing and conserving the State's resources. Also, the North Carolina Constitution Article 14, Section 5, specifies that the State shall control and limit air pollution to preserve its natural resources. The question before the Commission is not whether the EMC has the legal authority to act, but whether it will meet its legal obligation to do so.

Mr. Zachary Hennessey, Duke Environmental Law & Policy Clinic law student, thanked the Commission for the opportunity to speak, and specified that his clients want to grow up in a state that is not adversely affected by climate change and pollution. The petition presents a feasible, measurable, and flexible pathway to protect these fundamental rights. The Commission is requested to grant the petition for three reasons: 1) the risks of inaction are severe; 2) the economic and health benefits of the proposed rule outweigh the cost; and 3) North Carolina is legally obligated to act on climate change. Climate change imposes significant risks to North Carolina's economy, health, and the environment. This is especially true on the coasts, where the sea level is rising at three to four times the global rate. The best available science demonstrates that deep and immediate reductions in carbon dioxide are necessary to avert these dangers; however, North Carolina's business as usual scenario will not fix these issues.

North Carolina's Legislative Commission on Climate Change stated in their findings eight years ago that failing to act on climate change would result in impacts to the environment, economy, infrastructure, and society of North Carolina. Economic benefits from the petition would be achieved by reducing imports of coal into the State and using the savings to invest in in-state renewable energy production which benefits local communities. The health benefits from the reduction of carbon dioxide generation would improve air quality and reduce upper

respiratory and cardiovascular burdens on local communities. The petition also points out that EMC is legally obligated (Article 15, Section 4 of the NC Constitution) to act on climate change to protect the State's natural resources for the benefit of their citizens. The EMC should act now to protect North Carolina's coasts, water, air, and atmosphere for future generations.

Discussion:

Commissioner Carter asked how the petition can avoid regulating agriculture to meet zero CO₂ emissions. Ms. Arata responded that the primary source of agriculture CO₂ emissions comes from mobile sources and that the emissions from these sources are minimal and already regulated. Commissioner Carter pointed out that CO₂ emissions are also generated from livestock and poultry. Ms. Arata responded that methane emissions are the primary pollutant from agriculture and the EMC can choose to regulate these sources.

Commissioner Deerhake thanked the petitioners for their work on this petition. She asked for confirmation that the petition was focused on carbon dioxide emissions and not carbon dioxide equivalent, which the petitioners confirmed. She also asked if the term "Best Climate Science" was a new term or if they were adopting this term from another document. The petitioners stated that this term was a new definition for this petition and is used to guide the DAQ staff in developing the CO₂ budget. Commissioner Deerhake also requested the source of the climate stabilization definition value that is in the petition, which the petitioners noted was obtained from the Jacobson study that is cited in the petition. Commissioner Deerhake asked the petitioners the source of the greenhouse gas definition that was used in the petition, which the petitioners stated referred to the greenhouse gases defined by the EPA. Commissioner Deerhake also suggested including the State of North Carolina in the term "in boundary" and the term "power" should be defined to only include electric generating units.

Commissioner Deerhake provided the following comments on the petitioner's proposed rule:

- The rule should define the specific sources that would be affected by the proposed rule;
- The rule should require a baseline emissions inventory to determine feasibility of emission goals;
- The rule should clearly define the terms "power" and "energy sector"; and
- The effective date of July 1, 2018 is not feasible because of the APA process for rulemaking.

With respect to the supporting documents for the petition, Commissioner Deerhake pointed out in Section 2 of the petition that there was no information about the status of the previous petition to reduce CO₂. EMC Counsel Reynolds stated that former EMC Chairman Hudson had determined the previous petition to be incomplete. AQC Chairman Meiburg added that the previous petition for rulemaking was proposed but never finalized and went to abeyance after the stay of the Clean Power Plant (CPP) by the Supreme Court. Commissioner Deerhake stated that the CPP was promulgated and there are calls for public notice on the rule.

Commissioner Deerhake noted that the 2016 Hansen study called for a 350 parts per million (ppm) CO₂ ambient concentration by the Year 2100 and not 2050 as proposed in the petition, and asked the petitioners if they agreed with that assessment. The petitioners agreed that the modeling done for the study is based on reaching a global average of 350 ppm by the Year 2100, however in order to reach this goal, reductions in CO₂ need to happen now. The petitioners added that the 2050 target is based on the timeline developed by private institutions as an interim goal to reach climate neutrality. Commissioner Deerhake added to the record the following paragraph from the Climate Change 2014 Synthesis Report by the Intergovernmental Panel on Climate Change (IPCC):

"Emissions scenarios leading to CO₂-equivalent concentrations in 2100 of about 450 ppm or lower are likely to maintain warming below 2°C over the 21st century relative to pre-industrial levels. These scenarios are characterized by 40 to 70% global anthropogenic GHG emissions reductions by 2050 compared to 2010, and emissions levels near zero or below in 2100. Mitigation scenarios reaching concentration levels of about 500 ppm CO₂-eq by 2100 are more likely than not to limit temperature change to less than 2°C, unless they temporarily overshoot concentration levels of roughly 530 ppm CO₂-eq."

Commissioner Deerhake also added to the record the following portion from the Executive Summary of the Recommended Mitigation Options for Controlling Greenhouse Gas Emissions submitted by the North Carolina Climate Action Plan Advisory Group (CAPAG):

“Full adoption by the state and complete, strict and proper implementation of each and every one of the CAPAG’s recommendations is estimated to reduce gross GHG emissions by approximately 47%, from 256 million metric tons of carbon dioxide equivalent (MMtCO₂e) in the reference case forecast to 137 MMtCO₂e by 2020, or within 1% of 1990 levels. Cumulative GHG reductions from 2007-2020 from complete adoption and implementation are estimated to be as high as 828 MMtCO₂e. The associated economic analysis (considering both plus and minus costs) indicates significant cost savings for the State’s economy over the period 2007–2020. The associated cost savings are defined fully in the following chapters of this report. Details of the 56 mitigation options and their analysis, over the five sectors, as supported by the CAPAG process and recommendations are presented in Chapters 3 through 7 of this report, and in the Appendices”.

Commissioner Deerhake recommended that the AQC review the DAQ report entitled “Carbon Dioxide (CO₂) Emissions Reduction Strategies for North Carolina” that was submitted to the Legislature in 2005.

Commissioner Deerhake had an issue with a statement in the petition that read “adopting the proposed rule will prevent losses of property and land on North Carolina’s coast.” She pointed out that North Carolina emissions are only a portion of the global emissions and that each state and every country would need to reduce CO₂ emissions to prevent these losses. She also pointed out that the Defense Coastal Estuarine Program studies the effect of climate change on military bases and can provide some potential guidelines to use.

Commissioner Deerhake asked the petitioners about the timeline for feasible commercial use of wave and tidal electric generation technology. The petitioners responded that this technology was advancing, however the rulemaking can be adjusted for other future technologies. The petitioners also clarified that the offshore renewable energy sources in Table 2 of the petition may contain sources outside of North Carolina’s jurisdiction. This would allow other states in the region to contribute to North Carolina’s CO₂ reductions.

EMC Chairman Solomon reserved the right to ask questions at a later date.

Commissioner Lazorick stated that she supports efforts by citizens and policy-making bodies to support the health and environment of our state.

Commissioner Carrol stated that he did not have any questions for the petitioners at this time.

Commissioner Wilsey voiced concerns about tourism along the coast of North Carolina with the addition of wind and solar electrical generating units. She noted that these technologies may be favorable to some in the state, however the AQC also has to consider all citizens in the state.

AQC Chairman Meiburg asked for confirmation that the petition requests the EMC to establish these rules by July 1, 2018, which the petitioners confirmed. Chairman Meiburg also asked the petitioners whether the zero CO₂ emissions outlined in the petition included sequestration. The petitioners stated that the petition is based on zero CO₂ emissions and not net zero CO₂ emissions. The petitioners believe it would be difficult to administer a net zero rule.

Chairman Meiburg asked for additional information on the reference to approximately zero emissions in the petition. The petitioners responded that a confidence interval would need to be determined around the ability to measure zero emissions and would only account for the sources that the EMC has the authority to regulate.

Chairman Meiburg noted that this causes a contradiction between going to zero CO₂ emissions and the EMC's ability to only regulate some of the sources.

Chairman Meiburg also asked for more information on the statutory authority in the State Constitution that allows the EMC to supersede conflicting statutory provisions and guides the interpretation of all statutes touching upon environmental protection. The petitioners explained that the State Constitution requires the EMC to protect the air and natural resources of the State for the benefit of future generations. The petitioners believe that this constitutional provision supersedes any procedural rule. Chairman Meiburg asked how this would be relevant to the issue of displacement. The petitioners noted the primary duty of the government is to protect the people, and in this case there are young people who are not eligible to vote, however they have a lot at stake in the policy making of this state. The public trust doctrine operates as a constitutional limitation on the state government's ability to remain inactive to the threat of climate change. The General Assembly has produced procedural mechanisms for exercising that authority. In the water and air resources chapter of a duty to set standards of air purity so as to provide a permanent economic foundation for the state. The petitioners argued that importing fossil fuels is not a basis for a permanent economic foundation. The petitioners also noted that the EPA has made an endangerment finding and it is the duty of the EMC to act, even though there has been no action by the federal government.

Chairman Meiburg asked if actions by North Carolina alone would achieve the benefits outlined in the petition. The petitioners stated that they attempted to explain actions that are being taken in other places, and they believe that North Carolina will be working with other states on this issue. Chairman Meiburg noted that with emission from stationary, area, and mobile sources that CO₂ emission would not be zero. The petitioners stated that the purpose of this stage of the process to decide whether this petition has made the legal standard to move forward and whether not the AQC and the EMC agrees that rulemaking should be initiated. The petitioners noted that this is just the initial stage and the only way to get the process started is to develop a rulemaking notice to get feedback from the public and other stakeholders.

Chairman Meiburg asked the petitioners how the proposed rule would be enforced. The petitioners stated that the EMC would create the standard of zero CO₂ emissions by 2050 from regulated sources but would not dictate how those regulated entities would achieve these reductions. The EMC would receive reports from the regulated entities and could reassess the rule and the status of these reductions.

EMC Commissioner Pruitt asked how this petition compares with the rule that California has recently adopted. The petitioners stated the proposed rule is a cap on CO₂ emissions and is not a cap and trade program that California has used for a number of years. In 2016, California also promulgated a rule that required greenhouse gas emission reductions by 40 percent below 1990 levels by 2030.

EMC Commissioner Keen was encouraged by the youths involved in the petition and encouraged the petitioners to work with the university system on wave and tidal energy generation systems.

Respondent Statements (Francis X. De Luca, Civitas Institute)

Mr. Francis De Luca first commented on earlier statements by the petitioners saying that North Carolina's CO₂ levels would rank much lower if the State's economy was considered. He also added that the petition should include methane if the goal was to reduce greenhouse gases, and this would have an effect on agriculture, specifically livestock. Mr. De Luca praised the young women for raising this issue but believes that this is not the right forum for addressing their concerns. He believes they should lobby elected officials, start grassroots campaigns, or use other processes allowed by State law.

Mr. De Luca believes that if the proposed rule is enacted it would irreversibly harm the economic future of the State of North Carolina and its citizens. He argued that the AQC is required to deny this petition because the

General Assembly has expressly prohibited the EMC from adopting any rule that is more restrictive than a federal rule (G.S. 150b-19.3). Mr. De Luca believes that the proposed rule would result in increased energy costs and those costs would hurt our most vulnerable citizens. He also argued that high energy costs will also prevent North Carolina from attracting new businesses.

Mr. De Luca disagreed with the petitioner's argument that moving to renewable energy will reduce energy costs. He points out that Duke Energy and Dominion Energy are required by law to produce energy using the least-cost model, however neither of these companies have enacted any of the provisions in the petition. In addition to the higher energy costs, Mr. De Luca also believes that the petition should be denied on public policy grounds and gives three reasons: (1) market forces have reduced GHG emissions by 24 percent since 2005, (2) G.S. 150b-19.3 prohibits the EMC from adopting any rule that is more restrictive than federal rules, and (3) the Supreme Court upheld the authority of the federal government to regulate GHG emissions.

Mr. De Luca stated that the petitioners' argument that that the EMC adopted an interpretation of G.S. 150b-19.3's language to allow the EMC to adopt carbon dioxide rules is incorrect. He noted that the EMC's interpretation was based on limitations to 111(d) and not a reinterpretation of G.S. 150b-19.3. Mr. De Luca stated that even though the petitioners may disagree with the way that the EPA has regulated GHG emissions, it does not mean that there has been a failure to regulate these emissions. Mr. De Luca pointed out that North Carolina has already enacted programs that encourage renewable energy, and that North Carolina is number two in the nation for installed solar panels.

Discussion:

AQC Chairman Meiburg asked the Committee members if they had any questions for Mr. De Luca. Commissioner Carter stated that he had no questions. Commissioner Deerhake asked for clarification of G.S. 150b-19.3 with regard to the Clean Power Plan (CPP). Mr. De Luca stated that the EMC did develop draft requirements for electric generating units in response to the CPP, however if the CPP were repealed then these proposed requirements would be more stringent than the federal requirements. AQC Chairman Meiburg added that the draft requirements were an interpretation of the CPP, however this draft is in limbo due to the uncertainty of the CPP. EMC Chairman Solomon asked to amend the record to show that the CPP was composed of three building blocks, and the EMC drafted regulations based on the first of these three building blocks. He noted that no further changes have been made at this time.

EMC Chairman Solomon reserved the right to ask questions at a later date. Commissioners Lazorick, Carrol, and Wilsey did not have any questions for the Mr. De Luca at this time.

AQC Chairman Meiburg pointed out that he did not hear anything in the response from Mr. De Luca as to whether climate change is an issue that should be addressed. Mr. De Luca stated that the focus of his response was that this petition should not be advanced. AQC Chairman Meiburg also asked about the 25 MW applicability example provided by Mr. De Luca in the MATS rule and whether this would allow the EMC to regulate facilities less than 25 MW. Mr. De Luca believes this is a legal argument to determine if the absence of regulations for smaller facilities means that the EPA intentionally intended not to regulate these facilities. He continued this would be an interpretation of G.S. 150b-19.3 on whether the EMC could regulate these sources. He noted that North Carolina is currently taking action on climate change and believes that the market forces will continue to reduce GHG emissions.

AQC Chairman Meiburg asked if there were any other questions. No questions were identified. He then introduced the Director of the Division of Air Quality, Mike Abraczinskas.

Division of Air Quality Statements (Mike Abraczinskas, DAQ Director)

Director Abraczinskas stated that the agency admires the petitioners concerns about North Carolina's environment and their call for action to reduce greenhouse gas (GHG) emissions.

The DEQ is not opposed to a regulatory framework for reducing GHGs. The agency needs to look at opportunities for a lower carbon future; success will likely come from both non-regulatory and regulatory approaches. However, this petition is not the appropriate process. The DAQ cares a lot about this issue, but the process must include a thorough and comprehensive engineering, cost/benefit, and policy analysis. Also, there must be significant engagement through a careful and deliberate stakeholder process that includes subject matter experts, the public, legislative bodies, businesses, industries, and regulatory agencies.

As a member of the U.S. Climate Alliance, Governor Cooper has pledged to meet GHG reduction targets and to accelerate the state's transition to a clean energy economy. Planned initiatives include expansion of renewable energy resources, reduction in electricity consumption at the user level and at state government buildings, and expansion of zero emission vehicles in the private sector and the state motor fleet. There are additional measures that could be taken that would result in positive outcomes for the health and wellbeing of our citizens while bringing economic prosperity to our state. The agency must work cohesively to address this complex environmental challenge, and propel North Carolina to be a leader as it has demonstrated many times before in implementing progressive environmental solutions for our citizens.

As the agency reviewed the petition, questions arose about the EMC's authority to regulate all sources of anthropogenic GHGs and the uncertain means of achieving such reductions across all source sectors including energy production, transportation, agriculture, waste management, the residential/industrial/commercial sector, and other contributors of GHG emissions. Additional questions arose regarding the rule text; as it reads much like a legislative bill giving the EMC broad authority and instruction to do something, without evaluating whether the EMC has the authority to do those things.

Finally, there are questions about the stated costs and benefits associated with the petition. There are assumptions made about technology pathways and what other states and countries will or will not do to reduce GHG emissions to achieve the specified CO₂ concentration levels. This all needs to be carefully considered in a robust regulatory impact and economic analysis.

Discussion:

AQC Chairman Meiburg asked if the committee had any questions for Director Abraczinskas. Commissioner Carter stated that he thought the Director has done an excellent job characterizing the petition. Commissioner Deerhake asked for an assessment of the CAPAG's recommendations and why these recommendations were not implemented. Director Abraczinskas stated that the DAQ would need to look back at the recommendations and could provide a summary to the committee at a later date. She also recommended including any proposals from the CO₂ report in response to the Clean Smokestack Act. AQC Chairman Meiburg stated that it may be appropriate to include these summaries as an agenda item for a future AQC meeting.

Commissioner Lazorick asked the Director what the DAQ's recommendation was on the petition. Director Abraczinskas reiterated that the DAQ had concerns with the achievability of meeting the emission reduction targets. He also stated that the DAQ had concerns with the ability and authority to look across all of the source sectors to achieve the target.

EMC Chairman Solomon pointed out that rules are developed through laws passed by the General Assembly and through the policies of the Administration. He added that the petitioners have chosen to bypass this process and petition the EMC directly. He pointed out that North Carolina has made reductions in GHG emissions, however the AQC needs to consider the specific requirements set forth in the petition.

Commissioner Carroll asked about the plan of action for this petition. AQC Chairman Meiburg stated that the role of the AQC is to make a recommendation on the petition to the EMC, and the EMC would either grant or deny the petition. Commissioner Carroll also stated that he agrees with the DAQ's position as summarized in the comments by Director Abraczinskas. Commissioner Wilsey did not have any comments at this time.

MOTION AND AQC VOTE ON THE PETITION

AQC Chairman Meiburg opened the floor for discussion or a motion on how to proceed. Commissioner Carter made a motion to recommend to the EMC that they deny this petition. Commissioner Carroll seconded the motion and stated that he believes that the EMC does not have the authority promulgate the rule outlined in the petition. He believes that this rule would violate several subsections of 150B-19.1(a) of the Administrative Procedure Act (APA). He also noted that this petition would have a large economic impact and the petition did not quantify the costs and benefits to all parties affected by the rule. He also pointed out that all fossil fuel equipment would need to be replaced, and in some cases, the technology does not exist. He also noted that reducing North Carolina's CO₂ emissions would not have any effect on global climate change.

Commissioner Deerhake stated she disagreed with the assessment that the EMC did not have authority to promulgate this rule, but had issues with whether the petition had sufficient information to move forward. EMC Counsel Reynolds added that if the EMC grants the petition, the rules in the petition would be moved forward. He also added that even though the petition met the limited requirements for moving forward, this does not bind the EMC from determining that the petition is insufficient. Commissioner Deerhake asked if it was possible for the EMC to issue a call for information or comment on the topic of regulating CO₂ in North Carolina. EMC Chairman Solomon stated this could be a future action for the AQC or DAQ, however they first need to address the issue of the petition.

AQC Chairman Meiburg added that one point that he found compelling in the petition was the urgency of the issue and that it should not be deferred to the next generation to deal with. He also added that in the cost-benefit analysis it is easy to look at the costs and neglect the benefits which may be wide-spread. He also stated that he disagreed with assessment that the technology is not available, and pointed out that regulation can produce innovation. He stated that he was uncertain that the EMC rulemaking was the correct venue for these types of regulations versus action by the Legislature or Department using their existing statutory authority. He stated that another issue that is unclear in the petition is the split between Federal and State roles at achieving zero CO₂ emissions. He also pointed out that since 2005, market forces have made reductions in CO₂ emissions. He added that the most difficult question is whether the EMC has the ability and authority to promulgate the rules in the petition.

AQC Chairman Meiburg asked for a vote on the motion to recommend to the EMC that they deny this petition. Commissioners Carter, Deerhake, Lazorick, Wilsey, and Carroll all voted in favor of the motion, and AQC Chairman Meiburg declared the vote to be unanimous.

ADJOURNMENT

Agenda Item #3, Meeting Adjournment

AQC Chairman Meiburg asked for additional questions or comments, and upon hearing none, noted that the next meeting of the AQC would be March 7, 2018. AQC Chairman Meiburg adjourned the meeting.