NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

**Minutes of March 10, 2016 Meeting**

The North Carolina Environmental Management Commission met on Thursday, March 10, 2016 in the main floor hearing room in the Archdale Building, Raleigh, NC. Commissioners present were:

Steven J. Rowlan, Chairman

David Anderson

Charlie Carter

Gerard Carroll

Tommy Craven

Charles Elam

E.O. Ferrell

Bill Puette

Larry Raymond

Bob Rubin

John D. Solomon

Steve Tedder

Julie Wilsey

Commissioner Martin and Smith was absent from this meeting.

Commission Counsel Jennie Hauser was also present. Jill Weese from the Attorney General’s office as also present.

1. **Preliminary Matters**

The meeting was called to order at 9:05 a.m. with Chairman Rowlan 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.

 **Commissioner Tedder** and **Commissioner Anderson** both recused themselves from the discussion regarding the House of Raeford Farms matter.

1. **Approval of Minutes**

The Chair asked for approval of the minutes from the Commission meetings on January 14, 2016 and February 16, 2016. Those minutes had been published and distributed for review. Minutes were approved **by Commissioner Tedder** and **Commissioner** **Carter** seconded the motion. The motion passed unanimously.

**Agenda Item: 16-12 Request Approval of a Study of the State’s Riparian Buffer Protection Program pursuant to SL 2015-246**

This agenda item was removed from the agenda.

**Agenda Item: 16-13 Final Adoption of the 2015 Coastal Habitat Protection Plan**

**Jimmy Johnson** presented the final draft of the 2015 Coastal Habitat Protection Plan. He indicated that they were asking for approval of the plan itself which would then be forwarded to the Secretary of the Department if approved. The Department would have 30 days for review which after that time they would forward it to the General Assembly through the Government Operations Committee as well as the Environmental Review Commission.

There was continued discussion and comments from the Commissioners and **Commissioner Solomon** presented recommendations.

**Commissioner Solomon**: I said back in November and I will say it now I think the technical report in here is very good. You’ve got a lot of great information in it and what I’ll say is not a criticism of the process or anything that you’ve done. But it’s just concerns I’ve got.

 The first one I’d say is just the use of the word dredging which seems to be kind of flipped around without a lot of definition. In fact, in the definition section there’s no definition of dredging. Clearly I said it in November you do make a distinction in Section 8 about navigational dredging. But as soon as you launch into navigational dredging you start talking about dredging just like fishery dredging or harvesting dredging. Backing up this is where I live and play. There’s a big difference and I think it really strikes me as the number of inconsistencies in the document to people that are familiar with the different types of fishery dredging, the difference between shallow dredging like you would do for a road and that of fisheries. Page 89 is a figure that shows where dredging is prohibited. In the figure it shows oyster dredging, trolling prohibited, right? But when you go into caption 5.0 on the map it says areas prohibited for dredging and trolling under Roanoke Island ……

My recommendation would be somehow you’ve got to clean it up in the document a little bit, because you talk about clam dredging, oyster dredging, harvesting dredging, general dredging and navigational dredging. But in the definitions you’ve got on definition of dredging. I think the intent would be that most of this document when you say dredging is in the context of Marine Fisheries dredging, not navigational dredging. But even the statements like that as a guiding statement for the document would make it clear. Fair disclosure I’ve been active in Beach and Waterway Association for years. There’s crisis for funding and I would say that navigational dredging is one of the most regulated things that we do. I don’t think personally that’s the source of the problem here that you think it’s a problem which is more than marine harvesting fishing dredging, not the navigational dredging that’s the very protected and regulated. I would like to see that cleaned up in the document. The other thing goes back to Commissioner Tedder’s comments is when I looked at your graph back in November you mentioned dredging nine times in the plain you showed us and you mentioned erosion 18 times. Through this document I go to page A-242. The question you have is what is the source of this dredging? Why do we have the dredging? Where’s the sediment control? You do a very good job of the document I’ve seen. We can about copy this document and make that the buffer rule document we would ask them to give because you make great points about what that is. I think this body is going to be obligated if we approve this report today to let that be the science that governs any decision we make forward on buffer rules or anything else we do. Because this is very conclusive of what it says. What this document says on A-242 is any activity involving clearing of vegetation, grading or ditching can increase erosion and sediment runoff into surface waters. Such land disturbing activities include building and road construction, grading, crop irrigation of sediment loading sources from agriculture is cited as the largest contributors to water pollution in the southeast. The EPA concluded that situation and nutrients impair more miles of rivers and streams than any other pollutants, affecting 45% and 37% of impaired rivers. In naturally forested systems of the southeast, there is little surface runoff during and after rainfall events, as rainwater flows over vegetation, infiltrating the soil. On page 257 the conclusion was that golf courses with vegetated buffers, we detention ponds and wooded wetlands exported considerably less nutrients than those without. Another study in New Hanover County found that soils under suburban and golf course grasses were highest in phosphorus, followed by soils in wet detention ponds and runoff channels. But then I get to your recommendations on A-332 which say that all of this is voluntary. Nowhere in your document do you talk about voluntary or involuntary measures. But all of a sudden in that section it says in number 4 encourage expanded use of voluntary stormwater BMPS and low impact development (LID) to reduce sediment loading into estuarine creeks. Voluntary looks like a political word because you make a great case that these things should be required. I would also add we’ve got our stormwater 2H rules out for public comment right now. Clearly those are minimum design criteria set by the General Assembly. Our BMPs are not voluntary in North Carolina. They are required. I don’t know what to do with this because I think there needs to be some thought. I would like to see if nothing else the word voluntary struck. In that line just say stormwater BMPs. Encourage expanded use of stormwater BMPs or requires BMPs. But clearly our charges are a regulating body. Voluntary is beyond voluntary in North Carolina. The final thing I would say is again back into the typos and language you got to table back on page A-374 that still references DENR and that’s a trivial thing, but it makes me want to look at the whole document again. If we’re going to go by DEQ then it needs to be DEQ vs DENR.

 I really have concerns about getting the navigational dredging right and then the potential inconsistencies we have with the buffer plan that has been pulled today that will come back up. The great science that’s in here and our stormwater rules we have public hearings on, all of that being inconsistent. I don’t know how to deal with this other than to table this. Then we can really assess next time. Our public comments will be back on our stormwater rules. Hopefully this \_\_\_\_\_\_\_\_\_\_plan will be back out and we just table it all to make sure we are consistent across the board. That would be my thought process for the Commission that we make sure that what actually takes is consistent across the board.

**Commissioner Solomon**: The three things I would like to see out of it, because when we approve it today, got to go back to this. There’s a consistency issue. Today we’re going to take an action that we say we agree with everything that’s in this report and recommendations. The next time we may have some science that’s brought to us that’s counter to this. Then we may have some stuff from the public comments on 2H rules that’s counter to that. I don’t want to personally get bound by inconsistency. That’s not in the public health, safety and welfare for public good. It demands a comprehensive approach. If this goes forward, I will vote against it or I will make a motion to table until we can be consistent. If we can quickly get the navigational dredging done, we can get the voluntary reference which I think legally may be a challenge since it has been out to public hearing, and voluntary and involuntary may mean two different things. It may mean more than grammatical. The other thing was to clean up the DEQ or DENR references. Let’s be consistent.

**Commissioner Tedder**: **Commissioner Solomon** would you motion for approval with those three items addressed before it moves forward?

**Commissioner Solomon** replied yes.

**Commissioner Solomon** – a motion to move forward with three things that we clearly make sure clarification to general references in the document about dredging being from a fishery, a marine standpoint, not a navigational standpoint, that we look at the navigational section where do find dredging for navigational purposes. We get those distinctions right and make a cleaner document. Strike the recommendation for voluntary and just make them best management practices. Just remove the word voluntary and get the information cleaned up in the table. I make that motion.

 **Chairman Rowlan** deferred discussion until the motion was carried out because it needed a second. Commissioner Tedder seconded the motion.

 **Counsel Jennie Hauser** restated the motion. Mr. Solomon has made a motion to approve the plan if (1) they can clarify that the dredging mentioned in the plan is not navigational dredging (2) that the word voluntary is struck from recommendation 4 and (3) that the references to DENR are changed to DEQ.

 **Commissioner Solomon** replied that navigational be clarified that the body of the document generally says dredging. When it says, dredging they’re talking about fishery dredging or harvesting dredging. Not navigational dredging and navigational dredging is defined in its context as navigational.

 **Counsel Jennie Hauser** asked would it be a better statement of the motion that you want staff to clarify when it uses the term dredging whether it’s using it for navigational dredging or for some other dredging.

 **Commissioner Solomon** replied exactly.

 **Commissioner Carroll** asked if this would have to go back to the other two Commissions to get their comments or approvals.

 **Chairman Rowlan** asked for vote. There was no further discussion and the motion passed unanimously.

**Agenda Item: 16-14 Request for Approval of Hearing Officer's Report and Adoption of Proposed Amendments to Replace Rules for the Collection and Transportation of Solid Waste: 15A NCAC 13B .0105**

This item was removed from the agenda.

**Agenda Item: 16-15 Request for Approval to Proceed to Public Comment and Hearing with Amendments to Solid Waste Rules 15A NCAC 13B .0201 and .0206, and with Proposed Rule 15A NCAC 13B .0207**

 Ed Mussler, Permit Branch Supervisor, Solid Waste Section in the Division of Waste Management presented this item on behalf of Ellen Lorscheider. He indicated they were requesting to bring forward their life-of-site permitting rules that are required to change from the Solid Waste Management Act. He also explained that the Session Law 2015-14 in the budget bill as rewritten by the Regulatory Reform Bill, establish a process for sanitary landfills and transfer stations to obtain permits which are effective for the period of initial placement of waste to final closure of the facility, known as life-of-site. The current rules indicate the life-of-site cannot exceed the length of time or quantity of waste as specified in local government franchises or approvals. The statute directed this body to approve the rules by July 1. The rules as written allow existing sanitary landfills and transfer stations to apply for those types of permits. Mr. Mussler indicated the schedule of deadlines for the proposed .0201, .0206 and .0207 life-of-site permit rules.

 He further stated they would address any concerns the Commission might have regarding approval of their text, dates and assignment of a hearing officer. Also on the schedule they would proceed to publication and the earliest effective date of the rule would be September 1. The staff recommendations were to request that the Environmental Management Commission approve the proposed rule text to proceed to public comment and hearing with amendments to solid waste rules 15A NCAC 13B .0201 AND .0206, and with proposed rule 15A NCAC 13B .0207.

 **Commissioner Solomon** made a motion to approve the staff recommendations.

 **Chairman Rowlan** asked if there were any further questions on the rules going forward.

 **Commissioner Craven** stated that he would be willing to serve as the hearing officer on the proposed rules. **Chairman Rowland** asked for the motion.

 **Counsel Jennie Hauser** asked **Commissioner Solomon** to restate his motion more completely along the lines of motion to approve rules 13B .0201. 13B .0206 and 13B .0207 for publication and public hearing.

 **Commissioner Solomon** agreed to Counsel’s statement of the motion and **Chairman Rowlan** asked for a second to the motion. **Dr. Rubin** seconded the motion. The Chairman asked for a vote and the motion passed unanimously.

**Agenda Item: 16-16 Repeal of 15A NCAC 02D .1010, Heavy-Duty Vehicle Idling Restrictions**

 **Joelle Burleson**, Division of Air Quality, requested to proceed to public comment on repeal of Rule 15A NCAC 02D .1010. The rule was put in place in 2010 and limited the amount of time heavy duty vehicles may idle. Mrs. Burleson explained that Section 4.24 of Session Law 2015-263 mandated that the Secretary of the Department of Environmental Quality repeal the rule; however, it is an Environmental Management Commission rule so a single comment period would be held on behalf of both the EMC and the Secretary to facilitate concurrent adoption of the repeal. The item came out of the Air Quality Committee. It was noted that the session law also mandates that until the effective date of the repeal, the rule shall not be implemented or enforced. There was discussion as to whether the item had to go to hearing or just to public comment and one comment supporting going to public comment but expressing concern about the possibility of health impacts. Clarification was provided that per the Administrative Procedures Act (APA), proposals can go to public comment with opportunity to request a hearing and if one is requested in the specified timeframe, it must be held.

**Commissioner Carter** made a motion to approve proceeding to public notice and hearing on the repeal. **Commissioner Carroll** seconded the motion.

**Chairman Rowlan** called for a vote and discussion. There was no further discussion and the motion passed unanimously.

The Chairman inquired regarding the need for appointment of a hearing officer. It was noted that another air item later in the agenda, if approved to proceed, would also need a hearing officer and that the two items could be combined for hearing and use the same hearing officer.

**Agenda Item: 16-17 A Survey of In Situ Strategies for Mitigation of Water Quality Impairments in North Carolina**

 This item was removed from the agenda.

**Agenda Item: 16-18 Request to Remand 10 EHR 5508, House of Raeford Farms v. EMC to the N.C. Office of Administrative Hearings for Additional Fact Finding**

 **Counsel Jennie Hauser** made introductory comments and reminded the Commission that **Commissioner Tedder** and **Commissioner Anderson** had recused themselves from this matter.  She provided a brief history of the contested case challenging the civil penalty assessment, which contested case was filed under a different version of the Administrative Procedures Act.  For this reason, review of the case having been denied by the North Carolina Supreme Court, the matter had been remanded to the EMC. Ms. Hauser told the Commission that attorneys for both Petitioner and Respondents were present and had requested to speak to the Commission on the issue of whether the matter should be returned to OAH or whether the Commission wanted to make additional findings and conclusions based on the record previously created in the case, which was the Commission’s prerogative. Ms. Hauser asked that the Commission members allow the attorneys to make their presentations prior to asking questions and beginning deliberation.

            There were questions put to Ms. Hauser from members of the Commissions about whether the Commission was obligated to hear the presentations and whether the EMC was the original finder of fact.  Ms. Hauser explained that under the version of the Administrative Procedures Act in place at the time of the original EMC decision, the Commission was able to make finding of fact and conclusions of law and it did so in this case in order to change the ALJ’s recommended decision.  Ms. Hauser again explain that, if it thought there was sufficient evidence in the existing record, the Commission had the option of determining the remaining issue of the amount of the civil penalty.  In response to additional questions, Ms. Hauser clarified that the Commission could also request the Chief Administrative Law Judge appoint an Administrative Law Judge to take additional evidence.

**Commissioner Carter** made a motion to remand this to OAH with the request that it be assigned to the original Administrative Law Judge and dispense with the rest of that.  **Commissioner Craven** seconded the motion.

**Ms. Hauser** indicated that the petitioner and the respondent had slightly different requests of the body.  The petitioner had requested the Commission send this back to the ALJ for acceptance of evidence from about three witnesses, but respondents had requested that the ALJ’s inquiry be limited to a single witness on very specific factors.  Ms. Hauser again suggested that the Commission should hear from the parties.

**Chairman Rowlan** called for the vote on the motion.

**Counsel Hauser** asked to clarity whether the Commission was sending this to the Chief Administrative Law Judge for assignment of an ALJ without specifying which ALJ, or whether the motion was to direct assignment to the ALJ who originally heard the case.

**Commissioner Carter** amended his motion by stating he wanted to request that the Chief ALJ assign an ALJ.  The “friendly” amendment was acceded to by Mr. Craven, who had seconded the original motion.

**Chairman Rowlan** called for a vote on the motion, and the motion passed unanimously.

**Agenda Item: 16-19 Request for Approval to Proceed to Hearing on Revisions to Volatile Organic
Compound (VOC) Rules in 15A NCAC 02D .0902 (532)**

 **Joelle Burleson,** Division of Air Quality, presented a request to proceed to public hearing on revisions to applicability of the volatile organic compound rules in 15A NCAC 02D .0902. Through ongoing review of rules to remove unnecessary requirements, DAQ staff identified the work practice standards Rule 02D .0958, for which applicability is referenced in 02D .0902, as a rule where requirements could be narrowed from statewide applicability to the maintenance area for the 1997 8-hour ozone standard. Given North Carolina’s abundance of biogenic, or natural, sources of VOC emissions, the state has a NOx limited environment for ozone formation and reducing NOx emissions is the effective means of preventing ozone formation. The work practice standards in 02D .0958, put in place in the late 1990s to minimize VOC emissions, are based on good housekeeping type practices such as keeping VOC containing materials in closed containers when not in use, keeping solvent containing wipe rags in closed containers, and not agitating solvents above the freeboard area when cleaning parts. Since adoption of 02D .0958, many other rules such as maximum achievable control technology (MACT) standards and generally available control technology (GACT) standards have come into place with similar work practice standards for many sources. A regulatory impact analysis had been finalized and reviewed by Office of State Budget and Management (OSBM) as having little to no state or local impact, some savings to the regulated community due to reduced recordkeeping and reporting burden, and non-substantial impact overall. This item could be combined with item 16-16 approved earlier in the meeting to proceed to hearing and use the same hearing officer. The AQC approved moving the rule forward to the full EMC for approval to go to public hearing in September and

**Chairman Carter** recommended that a DAQ staff person be appointed as hearing officer.

**Commissioner Carter** made a motion to approve proceeding to public comment and hearing on the amendments. **Commissioner Solomon** seconded the motion. **The Chairman** asked for a vote and the motion passed unanimously.

**Information Item: 16-02 2016 Status Report: Falls Lake Nutrient Strategy**

 John Huisman presented the 2016 Status Report of the Falls Lake Nutrient Strategy which updated the implementation status of rules, evaluated changes in nutrient loading to the lake, detailed progress towards achieving nutrient-related water quality standards, and addressed advancements in scientific understanding and treatment technology. He also stated that the Division is required to report to the EMC every five years to provide an update on strategy implementation, evaluate changes in loading and lake water quality progress and review advancements in science and control technology. He also gave information that had been provided by multiple Divisions and stakeholders. He indicated that the report was structured by giving background and history, providing the implementation and water quality progress and discussing advances in science and control technology. Mr. Huisman discussed the implementation progress of the existing development stormwater and it was proposed that the Division would bring the model program to the EMC in two years. Discussion continued with Mr. Huisman and the Commissioners make comments and asking questions. Mr. Huisman provided the next steps which were to continue credit measures work with the UNRBA, complete the existing development model program and give the next five-year report in 2021.

Mr. Forrest Westall, Executive Director of the Upper Neuse River Basin Association presented comments and answered questions from the Commission.

 Chairman Rowlan commented that was an excellent discussion and Commissioner Tedder gave one last comment. He thanked Mr. Huisman for an excellent report.

**Concluding Remarks:**

# By Committee Chairs

 **Commissioner Craven** stated that the Water Allocation Committee met and reviewed the pending interbasin transfers that would be coming in the near future and continued the discussion on impediments to water supplies and will continue with those same items in two months.

 **Commissioner Tedder** stated that the Water Quality Committee met and had two major variances that were approved by the Committee. A couple of items that were removed and a very good presentation from N. C. State by Michael Berchel who spoke on the research they had done on buffers around the state and the country.

 **Commissioner Carter** mentioned that the startup and shutdown and malfunction proposal that they did consider at the Air Quality Committee and recommended to the full Commission to go to notice and hearing. That item would come before the Commission at the May meeting. He indicated that it was a knotty issue in a lot of ways. The Committee also had an excellent presentation by DAQ staff.

# By Directors

 **Director Holman** updated and mentioned that the permit on exemptions streamlining rules which were approved by the EMC in January went before the Rules Review Commission following staff addressing some technical changes that the Rules Review Commission staff had recommended. The RRC did approve the rules at their February 18th meeting and received ten letters of objection. So the rules are waiting the legislative review process for the 2016 short session. She also mentioned where the air quality rules stood with regard to the H74 process. The Commission approved the categorization report at the November meeting and that report went before the RRC at their December meeting and approved by the RRC. It was also approved by the Administrative Procedures Oversight Committee in January. They had recommended that 27 of their rules were not necessary. Those were contained in the 02D .2400 clean air interstate rules, the 02D .2500 clean air mercury rules and 02D .1600 general confirmative rules. Because the report was approved the effective date of expiration was 2/1/2016. Now we are at the stage of developing the schedule in the process for the re-adoption for our 322 rules that are necessary with substantive and public interest. We talked about this issue yesterday with the Air Quality Committee. At this point the Division will be recommending to the Department that we have approximately four years for that re-adoption process. We did ask for comments yesterday from the Committee and we received a couple of suggestions on the stakeholder process. She indicated she was certainly open to hearing from the full Commission on recommended for their timeframe. Obviously it was a recommendation that goes to the RRC but it is the rules for the review Commission that sets the actual timeline.

**Acting Director Michael Scott,** Division of Waste Management on February 29th of this year formerly the Deputy Director of the Division of Waste Management. He updated the Commission on several items and commented that they had been actively working on several reports that were due to the General Assembly on April 1 and just wanted to mention those to the Commission. There was a UST continuation review that was due for the commercial fund and that has been a big deliverable that they just finished and submitted it to the Department. There was also a report that is due on April 1 on the expansion of risk-based remediation and also due April 1 to the General Assembly. Also, a mercury switch program report that came out of their hazardous waste section that is due on April 1 and has been submitted to the Department. Finally, a Division of Waste Management, Division of Environmental Assistance and Customer Service report on the electronics program. They have also been working with the RRC and the General Assembly specifically the Waste Working Group. They have been actively working with them on some capacity studies, landfill capacity in North Carolina as it relates to municipal solid waste landfills. Their current statewide capacity is about 30 years from municipal solid waste. They have been working on doing some different capacity studies, looking at service areas, franchises and the effects on capacity. That same ERC Working Group had been looking at management of leachate and municipal solid waste landfills, construction and demolition landfills and also has them looking at some different technologies when it comes to leachate management. Could that come about in the rulemaking process, at some point, potentially just wanted to mention a couple of those studies. He has also been actively working with the Division of Water Resources and DEMLR on the public hearings this month for the coal ash basin classification public hearings. They had one last week in Wilmington for the Sutton plant. He indicated that staff would be in Robeson County tonight for the Witherspoon plant, in addition, DWR and DEMLR staff that are covering those hearings this month. They will also have a public hearing next week on a proposed industrial landfill that is going to be built at the Sutton plant in Wilmington to manage the coal ash coming out of the basins. That public hearing would be on March 15. He mentioned that they had started their transition out of Documentum into a new document management system which is Laserfiche. They are continuing to expand their use of art GIS online which has been a great endeavor for them and he is looking at compiling their information related to non-sources of contamination in coordination with other department divisions. In order to help with the siting of location of private wells they’re proposed to be drilled on making informed decisions on where to put those wells and having a good art GIS online system that will compile and be able to share those non-sources of contamination. On a final note that the EMC had asked for him to update, they did ask the Chairman’s approval to pull the collection and transport rule. He commented that he truly understood the time the Commission members put in to reviewing documents and a proposed rule, and the time the public puts in to reviewing documents that are posted online. They were engaged in a lot of stakeholder discussions and basically an unintended consequence. When the session law changed the rule there was language that had a potential impact that they needed to pin down further. They will be bringing that rule back before the Commission. He stated that he appreciated the Chairman’s consideration.

**Director Zimmerman** advised the Commission that Linda Culpepper was now working with him as the Deputy Director and he felt that her skill set would complement his very well and ask that they extend their welcome to Linda working with him as they moved forward within the Division of Water Resources. He also echoed what Michael said and he truly appreciated all the effort that the Commission members and the Committee Chairs had given as far as their time to review the rules and the two reports, in particular that were pulled from the agenda. He indicated he was meeting with the Department to get some additional guidance and provide some additional input into those reports and he hoped to have something that they could bring back to the Commission. The House Bill 74 process that the Water Quality Committee Chair, Steve Tedder brought it up, they are working with the Department. The Department is going through all the rules that are subject to the HB 74 process and working with staff to make sure that those rules are streamlined and meet the needs of the Department and stakeholders. Hopefully they would be bringing those back at some point in one of the subsequent meetings. He stated that the Division appreciated their patience as they migrate all of their content into the new server, Drupal.

**Commissioner Solomon** commented that however they could expedite the process on the rules quickly, the user community would like to see that happen. He also requested that the documents that are being pulled after the EMC have studied them that they see the redlines to know what has been changed.

**Commissioner Tedder** asked if the reports that got pulled from the agenda be listed on the May agenda.

# By Commission Members

            **Commissioner Puette** asked about the Commission having authority over the civil penalties initially.

            **Counsel Jennie Hauser** indicated the Commission does not have the ability either to assess a penalty in the first instance or to make a final agency decision with regard to a civil penalty.  But what the Commission retains authority over remission of penalties. The Secretary has the ability to delegate the assessment of civil penalties any employee he or she chooses, and delegation is limited only where the General Assembly has specified the level at which that delegation must stop.  Ms. Hauser assured the Commission that each of the employees to whom civil penalty authority is delegated understands the requisite statutory factors to be applied in issuing a civil penalty.  She also indicated that DEQ’s Office of General Counsel is currently looking at methods by which it can ensure that employees delegated civil penalty authority understand the level of detail for the findings of fact and consideration of the assessment criteria.  Ms. Hauser deferred to the Directors present in case they had something to add.

            **Director Holman** that she was the person responsible for assessing civil penalties in her Division, and obviously she followed the statutory factors in doing so.

            **Director Zimmerman** added that because of the scope of the Division of Water Resources programs he has the ability to assess civil penalties, but he has also delegated civil penalty assessements for certain types of violations to the Regional Supervisor, the level that’s most closely associated with whatever penalty arises.  Additionally, some of the penalties are assessed out of the central office; for example, certain types of violations in the animal program and some of the NPDES related violations.  DWR does have a fairly comprehensive guidance document that’s available to staff to try and ensure and promote consistent approaches to enforcement.

# By Commission Counsel

A copy of the March 2016 litigation summary was distributed to each Commissioner and staff. **Counsel Hauser** highlighted a few items on the sheet.

# By Chairman

**Chairman Rowlan** requested that when staff was making a presentation to ensure that they clearly define the acronym(s) being used in their presentations and powerpoints. He also asked if anyone had any objections to the minutes being summarized. The Commissioners agreed to have the minutes summarized. He expressed appreciation for everyone’s help in the responsibility as Chair of the EMC.

With no further business before the Commission, the Chairman adjourned the meeting at 1:10 p.m.

Approved this day 11th of March 2016.

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Steven J. Rowlan, Chairman of the EMC