

**NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION**

**Minutes of November 9, 2017 Meeting**

The North Carolina Environmental Management Commission met on Thursday, November 9, 2017 in the main floor hearing room in the Archdale Building, Raleigh, NC.

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

The meeting was called to order at 9:02 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:** 15 - J. D. Solomon, Chairman, David Anderson, Gerard Carroll, Charlie Carter, Marion Deerhake, Charles Elam, Mitch Gillespie, Steve Keen, Dr. Suzanne Lazorick, Dr. Stan Meiburg, Bill Puette, Dr. Bob Rubin, Julie Wilsey, Richard Whisnant

**Commissioner Butch Smith** attended the meeting by teleconference. **Chairman Solomon** announced that since **Commissioner Smith** was unable to travel but had read the materials of the meeting, it was satisfactory that he could attend by teleconference. The Chairman also welcomed Deputy Director of DWR, Jim Gregson to the staff.

**Others Present:** Commission Counsel Jennie Hauser, Counsel Brenda Menard

**Commissioner Gillespie** read a statement in relationship to Item 17-47. "Mr. Chairman & members, my role as Senior Policy Advisory to the North Carolina House and Speaker, I am currently working on issues concerning Chemours. Out of an abundance of caution from have made the visual conflict of interest and appearance of conflict of interest or the natural conflict of interest, I wish to immediately discontinue my involvement with this matter."

**I. Approval of Minutes**

**Chairman Solomon** asked for an approval of the minutes from the September 14, 2017 meeting. **Commissioner Meiburg** made a motion to approve the minutes and **Commissioner Carroll** seconded. No discussion and the motion passed unanimously. The Chairman also asked for approval of the minutes from the October 11, 2017. **Commissioner Puette** made a motion to approve the minutes from the October 11, 2017 minutes and **Commissioner Rubin** seconded. No discussion and the motion passed unanimously.

## II. Action Items

### Agenda Item 17-38: Request for Approval of Hearing Officer's Report on Session Law 2013-413 (H74) Readoption of Group 1 Air Quality Rules 15A NCAC 02D Sections .0100, .0200, .0300, .0400, .1300, .2000, and .2200 (537)

Joelle Bureson, DAQ Senior Regulatory Advisor, requested approval of the hearing officer's report on the proposed amendment, repeal, and readoption of 35 rules in 15A NCAC 02D Sections .0100, .0200, .0300, .0400, .1300, .2000, and .2200. Pursuant to S.L. 2013-413, rules in the Group 1 package are proposed for initial readoption with primarily minor administrative updates; one section of rules is proposed for readoption as a repeal, and three rules initially readopted through the report phase of the process as necessary without substantive public interest are proposed for amendment.

**Commissioner Carter** asked why 15A NCAC 02D Section .0400 doesn't contain total suspended particulates (TSP). Ms. Bureson concluded that the DAQ will address 15A NCAC 02D .0403, Total Suspended Particulates, in Group 6.

**Commissioner Carroll** made a motion to adopt the hearing officer's report and to adopt the proposed rules. **Commissioner Wilsey** seconded the motion. **Commissioner Meiburg** commended DAQ staff on their efforts, supports periodically reviewing existing rules, and endorses the motion. The motion passed unanimously.

### 17-39 Request for Approval of Hearing Officer's Report on the Ambient Air Quality Standards to Incorporate the 2015 Ozone National Ambient Air Quality Standards (534)

Joelle Bureson, DAQ Senior Regulatory Advisor, requested approval of the hearing officer's report and fiscal note on the proposed readoption and amendment of the ambient air quality rule 15A NCAC 02D .0405, Ozone, to incorporate the 2015 national ambient air quality standards for ozone into the state rules.

**Commissioner Carroll** stated that this hearing was held in the early afternoon. There should be a general rule to conduct public hearings in the evening so there's an opportunity for everyone to attend.

**Commissioner Carroll** made a motion to adopt the hearing officer's report, adopt the proposed rules, and adopt the fiscal note. **Commissioner Meiburg** seconded the motion and expressed his Committee's support of the action. The motion passed unanimously.

### 17-40 Request for Approval of Proposed Rule Revisions, Regulatory Impact Analysis, and to Proceed to Public Hearing on Session Law 2013-413 (H74) Readoption of Group 3 Air Quality Rules 15A NCAC 02D .1100, .1201-.1203, .1205-.1208, and .1211-.1212 and 02Q Section .0700 (543)

Joelle Bureson, DAQ Senior Regulatory Advisor, presented a request to proceed to public hearing on the proposed readoption of 33 air quality rules in 15A NCAC 02D Sections .1100, and .1200, and 02Q Section .0700. Pursuant to S.L. 2013-413 rules in the Group 3 package are proposed for readoption with primarily minor administrative updates, while certain unnecessary rules are proposed for readoption as a repeal. Ms. Bureson noted that a stakeholder meeting was held in June 2017 to receive input on needed changes and draft rules were approved at the July 2017 AQC meeting. Also, a regulatory impact analysis

was submitted to the Office of State Budget and Management (OSBM). On October 9, 2017, OSBM determined the rule changes have little to no impact on state or local governments and no substantial economic impact.

**Chairman Solomon** asked whether the DAQ was surprised that they received limited comments from the stakeholder community since the rules cover many topics. Ms. Burleson stated that the DAQ wasn't surprised since some of the rules had recent changes and stakeholder participation during the Group 3 meeting was low. The DAQ is hopeful that this is because staff did an excellent job working on the rules. **Commissioner Puette** asked what will happen to new sources that would be subject to the incinerator rules proposed for repeal. Ms. Burleson stated that if a source subject to any of the repealed incinerator rules starts operations as a new or modified source, it will be subject to 15A NCAC 02D .0524, New Source Performance Standards. **Commissioner Meiburg** provided a brief regulatory history of toxic ambient air limits in North Carolina, why there's not a federal analogue for ambient limits of toxics, and expressed his Committee's support for proceeding to public hearing. **Commissioner Deerhake** provided a follow-up statement that while the Environmental Protection Agency's Residual Risk Analyses have been behind schedule, it would be useful for the Committee to use their findings for protecting North Carolinians. **Commissioner Rubin** asked how new emerging toxic contaminants are added to lists like those in 15A NCAC 02D .1104. Ms. Burleson stated that the Secretaries' Science Advisory Board (SAB) develops acceptable ambient levels (AAL) for emerging contaminants. The SAB's AAL recommendations allow state agencies to add them to their list of regulated compounds. **Commissioner Carter** stated that the SAB has a process to review the AAL's for new and existing chemicals of concern and the most recent example is the arsenic standard.

**Commissioner Meiburg** made a motion to approve the regulatory impact analysis, proposed rule revisions, and proceeding to public hearing. **Commissioner Carter** seconded the motion.

**Chairman Solomon** noted that the EMC wants to start following the agenda item titles to reflect motions and asked if the present motion was correct. Counsel Jennie Hauser noted that, although the current motion was accurate, the agenda titles for DAQ topics 1 and 2 were not complete in that they only mentioned a request for adopting the hearing officer's report and not the additional request for the final adoption of the proposed rules. She suggested that DAQ be clearer with their full intent with future agenda titles.

#### **17-41 Request for Approval of Proposed Rule Revisions, Regulatory Impact Analysis, and to Proceed to Public Hearing on Adoption of Final Emission Guidelines for Existing Commercial and Industrial Solid Waste Incinerators (539)**

Sushma Masemore, DAQ Planning Section Chief, presented the request to proceed to public hearing on the proposed adoption of final Emission Guidelines for existing Commercial and Industrial Solid Waste Incinerators (CISWI) under Section 129 of the Clean Air Act. In this rulemaking action, 15A NCAC 02D .1210 has been updated to reflect EPA's revised emissions guidelines, including 1) revised emissions limits, operational standards, and monitoring recordkeeping and reporting requirements, 2) the new definition of solid waste, and 3) the applicability of the rule to additional combustion sources burning solid waste. A regulatory impact analysis was submitted to OSBM. OSBM has reviewed the DAQ proposed changes to Rule 15A NCAC 02D .1210 in accordance with G.S. 150B-21.4. On October 6, 2017, OSBM approved the regulatory impact analysis and has determined the rule changes do not result in a substantial economic impact to North Carolina under the most likely regulatory outcome. However, sensitivity analysis indicates that specific compliance pathways chosen by affected sources may result in substantial cost to the regulated facilities but also result in some monetary benefits for private companies and public health benefits.

**Commissioner Meiburg** provided a brief history of the EPA's new definition of solid waste and expressed his Committee's support to proceed to public hearing.

**Commissioner Meiburg** made a motion to approve the regulatory impact analysis, proposed rule revisions, and proceeding to public hearing. **Commissioner Deerhake** seconded the motion and commented that the Committee welcomed seeing the calculated health benefits of this rulemaking. The motion passed unanimously.

**17-42 Request for Approval of Proposed Rule Revisions, Fiscal Note, and to Proceed to Public Hearing on Inspection/Maintenance (I/M) Rules to Incorporate Session Law 2017-10 Section 3.5 Applicability to Vehicles with Model Year within 20 Years of Current Year and for Readoption of 15A NCAC 02D Section .1000 (544)**

Steve Hall, Acting DAO Rules Development Supervisor, presented the request to proceed to public hearing on the proposed rule revisions incorporating Session Law 2017-10 Section 3.5 applicability and minor administrative updates, the fiscal note, and the rule readoptions pursuant to Session Law 2013-413. A fiscal note was submitted to OSBM in accordance with G.S.150B-21.4. On September 7, 2017, OSBM approved the fiscal note and they determined that the rule changes have substantial economic impact on state, local and private entities. The DAO recommended having one hearing officer at one hearing location on the same date in Raleigh for the I/M and CISWI rule revisions. They also recommend having one hearing officer conduct two hearings for the Group 3 rules; one hearing in Charlotte and Raleigh.

**Chairman Solomon** asked whether the I/M rules were part of Group 3 and would be a separate hearing on the same day and location. Steve Hall confirmed that the I/M and Group 3 rules would have separate reports and hearings. The reason for this recommendation is because the DAO didn't want the I/M package's implementation delayed by potential issues with any other rule set. **Chairman Solomon** asked whether the I/M package includes all the General Statutes mandates. Steve Hall affirmed that the package contains all the statutory requirements. **Commissioner Meiburg** commended staff, provided a brief history of the rulemaking, described current air quality trends, outlined the fiscal impacts, and expressed his Committee's support to proceed to public hearing.

**Commissioner Meiburg** made a motion to approve the proposed rule revisions and fiscal note to proceed to public hearing. **Commissioner Carter** seconded the motion. The motion passed unanimously.

**17-43 Request for Approval of the 2018-2020 Coastal Habitat Protection Implementation Action Plan**

Jimmy Johnson, DEQ/APNEP indicated in the spring of 2016 the Commission approved adopting the latest revision of the North Carolina Coastal Habitat Protection Implementation Action Plan (NC CHPP) which is part of the Fisheries Reform Act from 1997. The CHPP is revised on 5-year cycles and the 2016 version contains 26 recommendations. He requested the EMC approve the actions that were associated with the 26 recommendations found in the plan to implement them. He described the excel spreadsheet that the Commission had received which showed the actions that were either ongoing or new and associated with four priority areas that were identified in the CHPP. He concluded by stating that they were requesting the approval of the actions that were specifically associated with DWR and DEMLR. Mr. Johnson noted that he

had failed to mention in the WQC meeting that 1.4.2 action is associated with the Marine Fisheries but also associated with DWR. That's the identification of any primary nursery areas that are not currently designated as high-quality waters and, work to reclassify those two high-quality waters. He requested the Commission approve the implementation plan for 2018-2020. The Coastal Resources Commission approved their section of the implementation plan on Tuesday and next week he would be presenting before the Marine Fisheries Commission in asking them to also approve their portion of the implementation plan.

After continued discussion, questions and comments from the Commission, Dr. Rubin made a motion that the Commission approve the 2018-2020 CHPP implementation action plan as presented by Mr. Johnson and the CHPP. Commissioner Elam seconded the motion. No other discussion and the motion passed unanimously.

#### **17-44 Request Approval of the 2017 Annual Report to the Environmental Review Commission for Basinwide Water Quality Management Planning per GS 143-215B (d)**

Ian McMillan, Basinwide supervisor, on behalf of the DWR Planning Section requested the full commission to approve the EMC and Department's Draft 2017 Annual Basinwide Water Resource Management Planning Report to the ERC. Ian presented a summary of what was included in the 2017 ERC report. This included an outline of the items that are required to be included in the report. Some EMC members were concerned that the report needed some additional refinement/fine-tuning as well as needing additional review by staff. Understanding that the report was due November 1<sup>st</sup>, members wanted to take the extra time to get what could be addressed completed, understanding there was limited time available to adjust the report this year and other aspects would be refined next year with the guidance of the Commission.

Commissioner Whisnant made a motion not to approve the report and that staff should work with a small EMC subgroup to fine-tuning the report, and bring it back to the full commission in January. Dr. Rubin seconded the motion and the motion passed unanimously. Chairman Solomon appointed Mr. Whisnant, Dr. Rubin and Ms. Wilsey to the subgroup to work with staff on the annual report.

#### **17-45 Request for Approval of Hearing Officer's Report and Readoption of Permanent Rules with Amendments in 15A NCAC 02T Section .1500**

Scott Bullock, 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. Brief discussion followed Mr. Bullock's presentation.

Commissioner Puette made the motion to approve the request for approval of the hearing officer's report and readoption of the permanent rules with amendments. Commissioner Wilsey seconded it. The motion passed unanimously.

#### **17-46 Request to Approve Proposed Changes to the Commission's Internal Operating Procedures**

**Chairman Solomon** presented some history on this item. He indicated that the Executive/Steering Committee met in July and discussed procedural things and changes to the Commission's bylaws. One item discussed was the 30-day waiver which needs to be a useful tool for the Commission when driven by regulatory outside drivers beyond the Commission. Clarification on that was the Commission needed a 30-day waiver that they went by the final things that made sense that they were about to apply to. It was also found the "Conflict of Interest" statement needed to be updated to reflect the actual statute more closely.

Counsel Hauser explained that she had heard from several members about topographical (or typographical items) that needed to be updated in the bylaws. The changes will be corrected and she appreciated them bringing the changes to her attention. She stated in Article 7 of the internal operating procedures which their standard order of business in Section 2 is where the existing provision occurs that colloquially it had been called the 30-day waiver. The desire was to specifically state, when something will go directly from committee on one day and to the Commission on the following day, that is why the revamping has been done. They retained the statement that makes it clear that the preference is where to be a meeting delay between a committee's consideration of a rule, and the Commission's first consideration of a rule. They retained the ability for the Commission to take a vote to do something differently than either of those two preferred courses of action. That is what the rewritten language in this particular section attempts to do.

The second section that has the major changes is in Article 14 which is your "Conflict of Interest" statement, and it occurs in section 2 and 3. It talks about publicly announcing the "Conflict of Interest" and when it must be done, and when a written statement of a "Conflict of Interest" has to be provided, and if a written statement I provided that has to be read into the record or the minutes. She explained that was what happened in the meeting with Commissioner Gillespie when he provided a written "Conflict of Interest" and was trying to be protective in the case he might have either a potential "Conflict of Interest" or an actual conflict. She referred to the State Ethics Statute and the exact provision is Section 138A-36 that speaks to the public servant's participation in an official action when you must recuse yourself and when the statement must be made in arriving a statement and the statement must be made into the record. As written previously your minutes didn't track this statute as it's currently written. The changes in Article 14 are to make your bylaws more closely track the actual Ethics Act as it is currently written.

The Commissioners discussed the changes with suggestions to the internal operating procedures.

**Chairman Solomon** agreed to have the bylaws written in both forms of the suggestions that they presented and this would come back to the next meeting which there will be three alternatives.

Ms. Hauser stated in the circumstance where there is an actual "Conflict of Interest", there has to be an announcement of that conflict, a recusal which is mentioned in the provision. She continued to describe the stipulations of the "Conflict of Interest".

After continued discussion Commissioner Carter made a motion to put the package for approval (was this the actual motion?) at the next meeting. Commissioner Keen seconded.

**Chairman Solomon** indicated that the item would be back in January, and they would look at the State Ethics Act and tighten the bylaws and move on to January. He asked Counsel Hauser to circulate the changes/suggestion in advance of the January meeting. After continued discussion the vote was unanimous.

Agenda Item: 17-47 Request by Col Francis X. De Luca USMCR (Ret), for a Declaratory Ruling directing DEQ to move the Bladen County Superior Court to void the Partial Consent Order filed in State of North Carolina, ex rel. Michael S. Regan, Secretary of DEQ v. The Chemours Company FC, LLC, 17 CVS 580

Commission Counsel Jennie Hauser gave the members some background on the particular type of process for declaratory ruling provided for and in North Carolina Administrative Procedures Act, 150B-4. She explained that this is a quasi-judicial proceeding, and that means the members must be cognizant of both potential and actual conflicts of interest, and that ~~you~~ they provide the applicant with due process in this proceeding. The members should be willing to look at the materials that have been submitted and listen to the presentations that will be made and to have deliberations among yourselves and only then to make a decision as to what the disposition of this matter should be. She advised the members that they had received written materials from both parties and would have a 15-minute presentation from each of the parties.

**Chairman Solomon** indicated procedurally for the record **Commissioner Smith** was absent, **Commissioner Gillespie** is recused. Therefore, the Commission has 13 voting members for this item.

Ms. Hauser indicated to **Chairman Solomon** he could entertain a motion and vote on whether, or not the Commission would consider the merits, and if the vote is to consider the merits, the Commission could proceed to hear the presentations. The Commission also had the option to hear the presentations to decide whether they were going to consider the merits.

**Chairman Solomon** stated that it was the Commission's intention to hear the matter unless someone objected.

Commissioner Keen made a motion that the Commission proceed to hear the matter based upon the merits of the case. **Commissioner Puette** seconded.

**Commissioner Whisnant** asked if the Commission moved forward and heard the oral arguments, whether that meant that they are compelled to issue a declaratory ruling?

Ms. Hauser clarified that by moving to hear the presentations and to consider the substance. The Commission was in no way bound to issue a declaratory ruling. The EMC could also provide partial relief; however, if they did not issue a ruling within 45 days, the petitioner would be allowed to go directly to Superior Court to challenge the fact that the Commission denied issuance of the ruling. **Chairman** asked for further discussion, and after hearing none the vote was unanimous.

Linda Nelson, Attorney, appeared on behalf of Col. DeLuca and presented argument on the request for a declaratory ruling directing DEQ to move the Bladen County Superior Court to void the Partial Consent Order filed in State of North Carolina, ex rel. Michael S. Regan, Secretary of DEQ v. The Chemours Company FC, LLC, 17 CVS 580. She argued that the matter was legal dispute about the validity of the consent order that DEQ and Chemours entered into on September 8. She then went into the details of the matter with explanations of the dispute to the Commission. She argued that this matter was not an injunction and explained why.

Brenda Menard, counsel for DEQ, argued that DEQ followed the applicable law in entering the partial consent order resolving some issues in their conjunctive action against Chemours. She indicated that the

declaratory ruling could be denied for failure to comply with the declaratory ruling statute. In conclusion, she contended that DEQ would respectfully request that the EMC decline to determine the merits of the request, but in the alternative that DEQ would encourage the Commission to issue a declaratory ruling that DEQ complied with the law in the matter that was set forth in DEQ's proposed declaratory ruling.

Discussions and questions continued between Attorney Nelson, Counsel Brenda Menard and the Commissioners.

Ms. Hauser stated that the Commission could have a motion to deny the request.

**Commissioner Carroll** made a motion that the Commission deny the request and not issue any declaratory ruling in this matter.

After there was discussion regarding this matter **Commissioner Carroll** withdrew his motion and **Commissioner Whisnant** made a motion that the EMC decline to issue a declaratory ruling directing DEQ to move the Bladen County Superior Court to void the Partial Consent Order filed in State of North v. The Chemours Company FC, LLC, 17 CVS 580 for any, and all of the following nonexclusive list of reasons:

1. The petitioner filed a contested case proceeding challenging the same issues, and that proceeding provides a judicial forum for finding facts and settling law regarding the allegations in the petition, including the question of whether petitioner is an "aggrieved party";
2. The transactions and occurrences that are the subject of the petition are already being litigated in the North Carolina court system, and the court system provides a way for parties such as petitioner to intervene if their interests are actually affected by the litigation;
3. The relief sought, "ordering" the Secretary of the Department to take some action in a civil enforcement matter, is not the proper outcome of a declaratory judgment action under GS 150B-4;
4. The petitioner also asks the Commission to review the propriety of the Court's order, and to seek public input on the Court's order, and both requests are well outside of the Commission's powers and the declaratory judgment statute; and/or
5. The consequences of issuing an order in a case such as this would be to risk swamping this Commission's time with petitions to second-guess any enforcement or other decisions of the Department with which someone disagrees, as well as to contravene the legislature's allocation of responsibilities between the Commission and the Secretary.

**Commissioner Carroll** seconded the motion. There was no further discussion, and the motion passed unanimously.

### III. Information Items

#### Information Item 17-16: Annual Progress Reports on the Neuse and Tar-Pamlico Agriculture Rules

Jim Hawhee presented on behalf of the Basin Oversight Committee for the Neuse and Tar-Pamlico basins. He reported based on the annual agricultural reports. Mr. Hawhee indicated that they had nutrient

strategies in place for the Neuse and Pamlico estuaries. They're seeking to address algae blooms. There are broad strategies and regulations associated with buffers, new development, agriculture and wastewater. The Tar-Pamlico and Neuse Agriculture Rules (15A NCAC 2B .0238 and .0256) require their respective Basin Oversight Committees to report to the EMC regarding annual implementation progress.

Mr. Hawhee stated that the way they keep track of nitrogen is with a tool called NLEW which is a spreadsheet based model which was developed by DWR and others. There were comments and discussions from the Commissioners. Mr. Hawhee continued to report on the annual progress reports and indicated points of moving forward.

#### **Information Item 17-17 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. Mrs. Lorscheider explained that 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 calendars of the respective EMC committees, in early 2018, 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. Mrs. Lorscheider also stated that she planned to provide the committees the language in the federal rule which applies to new DEQ rules and would be updating the Committee and the Commission as to federal rule update changes. Information will be placed on DWM's rulemaking web page and Mrs. Lorscheider said that she would alert the Commission and Committee to any changes.

Brief discussion followed Mrs. Lorscheider's presentation.

#### **IV. Concluding Remarks**

##### **By Directors**

- **Michael Abraczinskas, Director of the Division of Air Quality**

On October 10, 2017, DAQ opened a public comment period for a minor source air quality permit for the proposed Northampton Compressor Station, which would serve the Atlantic Coast Pipeline project. The compressor station would consist of three natural gas-driven compressor units and associated air emission control equipment, intake air and moisture removal filters, gas coolers, exhaust and noise silencers, tanks, heaters, and emergency generators. The comment period runs until November 20, 2017. Additionally, DAQ will hold a public hearing on the draft permit on November 15, 2017 at 6pm in Garysburg, NC. The draft permit, application and related information are available on our website at [www.ncair.org](http://www.ncair.org). The entire State of North Carolina was designated as "Attainment/Unclassifiable" for the 2015 national ambient air quality standards for ozone. This was supported by official 2014 – 2016 air

quality data and preliminary 2015 – 2017 data. The DAQ received several inquiries related to their involvement with the GenX situation. Currently, DAQ is researching the location and magnitude of emissions for facilities emitting perfluorinated compounds. It's important to note that most of the contaminants of interest are not included in EPA's list of 187 hazardous air pollutants and are not listed as a toxic air pollutant under state rules. The DAQ asked the Chemours plant for information regarding air emissions of GenX compounds and concluded that they emit 500 to 669 pounds per year. All the emission estimates for the facility's GenX compounds and other emerging contaminants are from the ASPEN chemical-process model. DAQ staff are studying and collecting information for conducting air dispersion modeling that may inform the state's water monitoring networks. Also, DAQ staff are working closely with the company to evaluate the appropriate methods for stack testing. There has been discussion with EPA regarding appropriate methods, equipment, and lab capabilities for measuring the emerging contaminants of interest.

- **Director Michael Scott, Director of Division of Waste Management**

There are several pieces of legislation from this year's long session, that became session law, since the last EMC meeting. Senate bill 16 (Session Law 2017-211) and House Bill 56 (Session Law 2017-209) both include some components that impact DWM programs. Some of these components include landfill life of site permitting aspects and financial assurance requirements for risk based remedies. House Bill 576 (Allow Aerosolization of Leachate) was ratified but did not become a session law. DWM staff continue to coordinate with DWR, DAQ and local partners regarding the Chemours plant in Bladen County. Gen X has been found above the provisional health goal of 140ppt in 40 private wells thus far (10/25). Chemours is expanding the private well sampling radius to one (1) mile from the facility boundary which includes another 450 parcels.

DWM continues:

- To work diligently with DWR and DEMLR on seeking a partial program approval from EPA to administer a coal combustion residuals program. Proposed rules will be submitted to the EMC for consideration in early 2018.
- To address sites across the state where groundwater contamination proposes an indoor air quality risk. The specific concern with TCE and short-term impacts was relayed to the Scientific Advisory Board as an area of review for 2018.

A Department of Health and Human Services handout was also provided to the Commission as a clarification and follow-up item from the Gen X overview that was provided in the Groundwater and Waste Management Committee meeting.

- **Interim Director Linda Culpepper** thanked Jay Zimmerman for doing a tremendous job of leadership within the Division and having his expertise continue. He is going to be focusing on the coal ash area for us and he is out on site today. He is also still working with Lois as a resource for the Environmental Management Commission.

Ms. Culpepper introduced Jim Gregson who is very experienced and comes to us from the Wilmington Regional Office. He has been the Director of the Coastal Management Division and is a tremendous asset for us. Ms. Culpepper indicated that they are still working with EPA on the R4 303(d) discussion and moving forward with vision for the 2018 list. She also stated that they are also continuing to

appreciate the support and guidance from EPA on Chemours. They are also continuing to monitor the wastewater in the Cape Fear River. On the analytical side Mike and Michael have mentioned as well that it is very difficult sometimes for the lab analysis.

**Assistant Secretary Holman** indicated on behalf of Secretary Regan she thanked staff for their service seeing a lot of rules, for taking a lot of actions and they appreciate that. She thanked the directors and all the staff with all the work with the rule readoption process as we close out another year. She reflected on the great work that was done by many in the department. She gave a special appreciation to those working on the Gen-X issues which has gone from a surface water to a groundwater and currently an air quality issue. She stated that it was tremendous team effort to address the situation. She mentioned they had kicked off their first Joint Secretary's Science Advisory Board that happened on October 23 and their next meeting of the SAB is scheduled for December 4 in Wilmington. The first issue before the SAB is looking at Gen-X. The first meeting in January is on January 29 which at that point they will be continuing their discussion of Gen-X but also looking at chromium issues. They are going to invite Chairman Bartram to come and speak with the Commission at the January EMC meeting if his schedule allows. She indicated that Jennifer Everett wanted her to remind the Commission that any petitions for rulemaking that is received by the EMC, after January 1, 2018 must be sent to OAH for publication on their website distribution to their ListServ within 3 business days of their receiving it. Secretary Holman concluded by thanking Tracy Davis for his 30 years of service to the agency and wished him well as he goes into retirement. She also thanked Toby Vinson for being willing to step into the acting director role and special thanks to Jay Zimmerman for his service not only to the agency as director, but to his many years of service and his continued service both as they work on implementing the Coal Ash Management Act and to the Commission in the rule readoption as they go forth. Special thanks to Linda Culpepper and Jim Gregson for stepping in their acting roles for leadership of the Division of Water Resources.

**Chairman Solomon** thanked Secretary Holman for her role and all the work she has done, and helping the EMC. He indicated that instead of going to all the committee chairs he was asking them if they had any comments to give them at this time.

### **By Committee Chairs**

**Ms. Deerhake** recommended that the Commission read the Lancet article on pollution and health global analysis. She pointed out that the Audubon Society dedicated a garden of native vegetation and the executive mansion which was very impressive and the resolution that went along with it and the proclamation from the Governor was very articulate and great explanation in detail about the need for native plants.

### **By Counsel**

Counsel Jennie Hauser indicated that in January the Commission would have coming to them for a decision the House of Raeford Farms case. This is the last of the civil penalty cases to come to them for a final decision.

Also, there are two IBT cases, Cary/Apex case that is still winding its way to the appellate process and the Union County case. She indicated that the litigation coordinators for each of those cases have been in direct contact with the Commission in coordinating the information. That discovery process is still ongoing for Union County.

**By Chairman**

**Chairman Solomon** indicated to the Commission that they may have to schedule some special meetings because he wanted to ensure that they give due diligence to the rules as all the strategic issues they need to discuss. The Chairman stated that he appreciated their willingness to serve.

With no further business before the Commission, the Chairman adjourned the meeting at 2:30 p.m.

Approved this 11<sup>th</sup> day of January 2018.

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J. D. Solomon, Chairman of the EMC