

**NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION**

Minutes of January 10, 2019 Meeting

The North Carolina Environmental Management Commission met on Thursday, November 8, 2018 in the Ground Floor Hearing Room of the Archdale Building in Raleigh, NC.

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

The meeting was called to order at 9:03 a.m. with Chairman Solomon presiding. He provided the notice required by N.C.G.S. §138A-15(e).

Commissioner Pettus recused himself from action item 19-03 as a potential conflict of interest.

Present: 14 – John D. Solomon (Chairman), Julie A. Wilsey (Vice-Chair), David W. Anderson, Shannon Arata, Charles Carter, Marion Deerhake, Mitch Gillespie, Gerard Carroll, Steve Keen, Dr. Suzanne Lazorick, Stan Meiburg, George H. Pettus, Manning W. Puette, Dr. Albert R. Rubin

Others Present: Commission Counsel Phillip T. Reynolds

I. Preliminary Matters

Chairman Solomon reported that he had spoken to **Commissioner Elam** and he is recovering well but indicated that he would probably attend the March 14, 2019 meeting.

The **Chairman** also thanked **Vice-Chair Wilsey** for her contact with **Commissioner Elam**.

Chairman Solomon followed up with updates from 2017-2018. He indicated that another transition upcoming in 2019 would involve the expiring terms for at least half of the members on the Commission. The Commission still has rule re-adoptions and, many outstanding issues that the Commission will work through in the next six months.

Chairman Solomon indicated that he came in as chairman with three basic principles; the Commission would be open and transparent; be fact based and science based; and to not advance issues that the Commission didn't agree on.

Chairman Solomon asked for comments and questions. Hearing none he asked for approval of the minutes.

1. Approval of minutes from Commission meetings on November 8, 2018 (attached)

Vice-Chair Wilsey made a motion to approve the minutes and Dr. Meiburg seconded. The minutes passed unanimously.

II. Action Items

19-01 Request Approval of Hearing Officer's Report, Regulatory Impact Analysis and Adoption of 15A NCAC 2B .0620 - .0624 Water Supply Watershed Rules

Annette Lucas, Supervisors of DEMLR's Stormwater Program, requested the approval of the hearing officer's report, regulatory impact analysis and the adoptions of the Water Supply Watershed Rules (15A NA 02B. .02620, .0621, .0622, .0623, and .0624).

The substantive changes make the rules consistent with the stormwater rules, updates the stormwater treatment options to reflect current science and technology, and adds flexibility for local programs while providing equivalent environmental protection.

A Regulatory Impact Analysis was prepared in conjunction with this rulemaking per N. C. General Statute 150B-21.4. As measured from the baseline conditions, it was concluded that there are no quantifiable economic costs or benefits associated with this proposed rulemaking.

Commissioner Rubin made a motion to approve approval of the hearing officer's report regulatory impact analysis and adoptions of the Water Supply Watershed Rules. Commissioner Wilsey seconded the motion. The motion unanimously passed.

19-02 Request Approval to Proceed to Public Notice and Hearing with the Fiscal Note and Proposed Rule Re-adoptions and Amendments to Nutrient Strategy Rules 15A NCAC 02B .0229 through .0258 and Proposed 15A NCAC 02B .0701 and .0730

John Huisman, DWR Planning Section presented to the Commission a request for approval to proceed to public comment and hearing for the proposed amendments to Nutrient Strategy Rules for the Neuse and Tar-Pamlico River Basins (15A NCAC 02B .0229 through .0258 and Proposed 15A NCAC 02B .0701 and .0730). The presentation included an overview of the rule revision process to date, a summary of the key revisions proposed for each rule and a summary of the fiscal note developed for the rule package.

Following the presentation, **Chairman Solomon** provided a recap of the process to date and reiterated the rule readoption timeline highlighting the need to complete adoption by the EMC by October 2019. This was followed by a lengthy discussion about the proposed revision to the point to nonpoint trading ratio in the Neuse Wastewater rule including a discussion of the Fiscal Note approval letter issued by the Office of State Budget and Management (OSBM) as well as staff's reasoning for seeking input on a range of trading ratios during the public hearings to help inform hearing officer deliberations for the final rules.

The Commission also discussed assumptions made in the fiscal note regarding the relative costs of nutrient offsets to allocations trades and leases. The Chairman explained that letters had been received from several wastewater treatment plants making the case that there is no excess allocation available for trading among the treatment plants. Staff provided the basis of the assumptions made in the fiscal note and explained that the analysis evaluates possible avenues of

meeting the regulatory requirements. While trading or leasing allocations is one possibility, staff recognizes that facilities may not want to sell or lease allocation and ultimately trades or lack of trades will be driven by the free market.

Commissioner Gillespie raised concerns over the extent of some of the proposed rule revisions and questioned if some of these changes exceeded the authority provided under the rule revisions process. Following a discussion of the idea of separating out some proposed changes, the Commission decided to continue to move the rules as they are proposed forward as one rule package.

Commissioner Rubin made a motion to approve the rules and fiscal note to go out to public notice and hearing and **Commissioner Keen** seconded. The motion passed unanimously. **Chairman Solomon** directed staff to schedule one public hearing in Kinston and a second public hearing in Clayton and shared that he and Commissioner Keen would be the hearing officers.

19-03 Request Approval of Hearing Officer's Report and Issuance of Water Quality Special Order by Consent (SOC) S18-006 to Address Seeps from Coal Ash Basins and the Cooling Pond at Duke Energy's H. F. Lee Plant in Wayne County

Bob Sledge of the Division of Water Resources introduced the matter, stating it was the fifth in a series of SOC's brought before the Commission concerning seeps from coal ash basins at Duke Energy power generation facilities – in this case, from those at the H. F. Lee Plant in Wayne County. The SOC was characterized as being similar to the SOC's previously approved by the Commission. Specific circumstances associated with the H. F. Lee facility were pointed out as being attributable for the differences found in S18-006 relative to the terms of the other SOC's.

It was noted that the facility will be the location of a beneficiation project that will remove coal ash for processing to make it a product used in the manufacture of concrete. This activity will lead to the excavation of all the coal ash deposits at the site. Dewatering of the basins associated with excavation is expected to result in further reduction and/or elimination of seeps.

The facility includes a large cooling pond that remains in use at the site. It also has seeps, some of which have exhibited minor concentrations of coal ash constituents. These seeps are also covered in the SOC, but their final disposition will be resolved in future NPDES permits.

Administrative procedures associated with the SOC were discussed, including the low level of public interest exhibited at the December 6, 2018 public hearing. No changes were made to the SOC that was placed at public notice.

Commissioner Keen made a motion to approve the hearing officer's recommendation and **Commissioner Carroll** seconded. The motion passed unanimously.

19-04 Request Approval of Technical Correction to 15A NCAC 02T .1310(b)(2) without Public Notice pursuant to G.S. § 150B-21.5(a)

Christine Lawson, DWR/Program Manager for the Animal Feeding Operations presented this item. She indicated that in July 2018, the EMC readopted Subchapters 15A NCAC 02T – Waste Not Discharged to Surface Waters (124 rules) and 02U – Reclaimed Water (34 rules). The hearing officers were **Commissioners Deerhake, Dr. Rubin, and Vice-Chair Wilsey**. The rules went into effect on September 1, 2018. This was the conclusion of a four-year process; one year for classification and three for readoption. As part of that readoption process, the Division added one new rule in the animal rules: Rule .1310, the Animal Waste Residuals Management Rule, covering the marketing and distributing of animal waste residuals. Rule .1310 was a new rule because over the course of time we realized that when 02T was first issued in 2006 (transitioning from the old 2H .0200 rules), it had been left out.

Initially DWR drafted Rule .1310 to follow .1100 Section for Residuals. During the public comment period, EPA provided input that animal waste residuals are not subject to the 40 CFR 503 rules for which the .1100 Section was written. Taking that into account, the hearing officers felt very strongly that we needed to amend this rule so that it was protective and appropriate. **Dr. Rubin and Commissioner Wilsey** worked on that rule.

Unfortunately, out of all these lines of rule, there is one line where an editorial correction was missed; it was not caught until after it went to Rules Review Commission. The rule language error in the attachment it is on line 29 of page 1. Between what went out to public notice and what was officially adopted, the vector attraction reduction requirements were unintentionally removed.

DWR staff requests EMC's approval for a technical correction to 15A NCAC 02T .1310(b)(2) to eliminate the references to requirements that no longer exist and to correctly reference the proper paragraph within the Rule. This request is made under the authority of General Statute 150B-21.5 Circumstances when notice and rule-making hearing not required. Under paragraph (a) item (3) it says correct a citation in a rule to another rule or law where the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law. This request falls under that purview. This is the only correction that staff is seeking. She indicated that staff is not requesting any substantive content or requirement of the permittees.

Chairman Solomon asked the hearing officers if they were good with the technical correction and if it was correct. Counsel and the hearing officers agreed that it was correct.

Commissioner Carroll made a motion to adopt the hearing officer's recommendations as stated and **Vice-Chair Wilsey** seconded. The motion passed unanimously.

III. Information Items

19-01 Overview of Governor Cooper's Executive Order No. 80: North Carolina's Commitment to Address Climate Change and Transition to a Clean Energy Economy

Sushma Masemore, Deputy Assistant Secretary for Environment and State Energy Director, presented the information item for the overview of Governor Cooper's Executive Order No. 80:

North Carolina's Commitment to Address Climate Change and Transition to a Clean Energy Economy. The executive order was signed by Governor Cooper on October 29, 2018, in the backdrop of various national and international reports summarizing the impacts of greenhouse gases on the global climate. In particular, the Intergovernmental Panel on Climate Change issued its Fifth Assessment Report, providing details on the science behind emissions into the atmosphere, the impacts of global warming, and that immediate and intense actions are needed by all within the next 12 years for addressing climate change impacts. Next, the United States Global Change Research Program issued a similar report concluding that the scale of action in the coming decades needs to be accelerated and enlarged to address climate change impacts. Governor Cooper's Executive Order No. 80 was envisioned and designed to assess local and regional impacts of climate change to North Carolina.

Ms. Masemore described the three quantitative goals that North Carolina will strive to accomplish by 2025. A Climate Change Interagency Council was formed to implement the executive order and accomplish those goals. Their inaugural meeting was held on December 19, 2018, where Governor Cooper provided guidance and charged his leadership to embrace the initiative. The Executive Order is divided into specific directives for each cabinet agency to accomplish. The Department of Environmental Quality (DEQ) is tasked: (1) with developing a Clean Energy Plan by October 1, 2019 to look at the opportunities for distributed energy resources and building an electric grid that is modern, smart and resilient (2) updating the Comprehensive Energy, Water, and Utility Use Conservation Program for best practices and guidance to achieve the 40 percent state buildings efficiency goal (3) to develop a Climate Risk Assessment and Resiliency plan by March 1, 2020, to provide a scientific assessment of current and projected climate impacts on North Carolina and to prioritize effective resiliency strategies, and (4) develop and update statewide greenhouse gas emissions inventory.

The Department of Transportation will develop a plan to achieve the ZEV target and address topics such as corridors and infrastructure by October 1, 2019. The Department of Commerce will develop clean energy and clean transportation workforce assessments by October 1, 2019 that will evaluate current and future workforce needs and recommend actions to assist North Carolinians to develop the necessary skills. The Department of Administration will develop North Carolina's Motor Fleet ZEV Plan by October 1, 2019, which will identify state business travel requirements feasible for a ZEV, recommend needed infrastructure, address ZEV procurement options, and other key strategies for ZEV utilization.

A draft version of North Carolina's greenhouse gas inventory report was released for public comment. The report is currently in the process of becoming finalized and will be released soon.

Discussion continued with questions and comments with the Commissioners and Ms. Masemore.

Chairman Solomon noted that he read the United States Global Change Research Program report in its entirety and believes that the state is taking a pragmatic approach towards addressing climate change. However, he asked whether the State of North Carolina will be able to link its climate change factors and impacts to the federal climate change report. There are trends in each region of the country, but the report suggests that there is more state-level data that needs to be obtained to know the exact state-level impacts. Director Masemore affirmed and specified that the DEQ's approach is to downscale the assessments for the Southeast Region to North Carolina. This will provide a comprehensive climate assessment for the state. **Chairman Solomon** specified that the recent public request for rulemaking discussed international reports and it was difficult to break down what it means for North Carolina, so it is welcome to have state-level data. **Chairman Solomon** noted that the state is doing a great job for temperatures relative to other Regions; however, there is not much that North Carolina can do for extreme events other than to be resilient.

Commissioner Carter suggested that Executive Order No. 80 be placed on the Air Quality Committee agenda in March 2019. **Chairman Solomon** and **Commissioner Meiburg** expressed support for this action. It was agreed that no motion was required for this item.

19-02 Update on Methyl Bromide Log Fumigation Rulemaking

Chairman Solomon briefly summarized the status of the rulemaking efforts noting that there were detailed discussions during the Air Quality Committee the day before.

19-03 Update on Proposed CCR Rules

Ellen Lorscheider, Deputy Director of the Division of Waste Management, gave an update on the proposed CCR rules. Ms. Lorscheider stated that four public meetings were held in September and that most public comments were about excavation of coal ash, distances from waste to compliance boundaries and seismic zones, the seasonal high-water table and waste in flood plains. Closure options for ash basins as well as the need for Environmental Justice language and the need for beneficial reuse language were also mentioned.

Following the public hearings, 95 comment letters were received. In addition to topics heard at the meetings, comments were also made regarding the definition of "substantial amendment" and qualified professionals. Staff continues to review those comments and is compiling all the necessary rule changes.

DWM will return to the EMC with the final ruleset once all changes and updates are made.

Remarks from Secretary Michael S. Regan

DEQ Secretary Michael Regan indicated his thanks to everyone for their service to the State of North Carolina, and his appreciation for the hard work that the Commission was doing. He commented that the results of the Commission showed that they were making a lot of progress, having some really, good, hard conversations, and moving in the right direction. He gave recognition to Chairman Solomon in which he stated the appreciation for both the personal and professional relationship that they had developed and how he had championed the Commission. He stated that “JD” had joined in the Commission in 2015. He had been a very strong contributor and watching him perform as the Chairman through 2016 and beyond had really been a thrill for him and DEQ. Under Chairman Solomon’s leadership he had ushered some very tough topics. He indicated that when he thought about the rules re-adoption topic and about the intensity, not only of the subject matter, but the times that we’re all living in very complex policies and politics. He has done a wonderful job navigating such a tough topic and doing it in a way where he has created an environment where everyone’s ideas matter, especially our staff. DEQ staff has always felt that Chairman Solomon has offered the opportunities to present the case so there could be a very robust conversation. Rules re-adoption is just one example, and also thinking of methyl bromide, CCR and climate change. We have seen his commitment to jump into the tough topics. The Commission has sought each other’s counsel and they have thought about strategically how best to traverse very tough waters to get the best solutions for the state of North Carolina.

Secretary Regan then presented **Chairman Solomon** with a Certificate of Appreciation on behalf of DEQ (applause)

The Secretary’s concluded his comments by stating that when they think about strong leadership, he was happy to say that as they transition from **Chairman Solomon’s** leadership he was very pleased that **Commissioner Meiburg** was willing to step in and continue to keep the momentum going. He truly sees the group as a problem-solving group. He was looking forward to a strong leadership and appreciative to **Commissioner Meiburg** for stepping in as of February 1, 2019. It was his expectation that they will continue to do the business for the people of North Carolina.

Chairman Solomon stated that working with DEQ staff had been a privilege and thanked the Commission. He gave further comments and thanked Secretary Regan.

IV. Concluding Remarks

Directors’ Comments

The division directors made their respective comments, the written version of which were published with the agenda and details of those comments can be found at:

https://files.nc.gov/ncdeq/Environmental%20Management%20Commission/EMC%20Meetings/2019/jan_2019/Directors_Comments_for_January2019.pdf

Director Danny Smith, Division of Energy, Mineral and Land Resources

Michael Scott, Director of Division of Waste Management

Director Michael Abraczinskas, Division of Air Quality Division

Director Linda Culpepper, Division of Water Resources

Assistant Secretary Holman gave a brief update on the proposed consent order related to the Chemours matter. The Chemours consent order between DEQ, Cape Fear Riverwatch and Chemours was issued for public comment on the November 21. The original comment deadline of December 21 that was extended to January 7. The comment period closed on Monday approximately 380 comments were received, which were currently being considered by the Department, including in determining whether any changes to the proposed order would be made based on the comments before requesting a hearing on the order. She noted that Department staff was continuing to do a lot of work related to the order.

Chairman Solomon thanked Assist. Secretary Holman for her work on Chemours.

She also noted that the first community meeting being held later tonight on closure option plans for the Belews Creek facility. This is the first of six community meetings. For six of the sites the closure option determination has not yet been made they are going to Walnut Cove and hoping to hear from the community members on the different options that had been proposed as well as the criteria that DEQ would be using to evaluate those closure options. She concluded by thanking Chairman Solomon for his excellent leadership of the time period that he served as chair and appreciated all his efforts.

Committee Chairs/Commissioners

Dr. Rubin reported on the Water Quality Committee and thanked everyone for the support of the nutrient rule. He expressed his thanks to Director Culpepper and her staff for all their work.

Commissioner Puette noted that the Groundwater & Waste Management Committee did not meet. He indicated that an email was out for agenda items out for March.

Commissioner Pettus thanked staff all their hard work on the committee and good discussion.

Dr. Lazorick indicated the Water Allocation Committee met and had an information item and former Commissioner Whisnant reviewed the history of water rules in the state for various

issues that face the Commission. There will be future informational sessions meetings for the committee.

All the Commissioners expressed comments and thoughts of appreciation and excellent leadership to **Chairman Solomon** during his time as Chair of the Environmental Management Commission.

Chairman Solomon expressed his thanks to **Vice-Chair Wilsey** for her help during his time as Chair of the EMC.

EMC Counsel

Counsel Reynolds expressed that it was a year ago that he became counsel to the EMC, in January 2018. Counsel expressed his sincere appreciation to Chairman Solomon for working with him and understanding the different dynamics and leadership. He congratulated Dr. Meiburg and thanked the Commission for working with him.

Chairman Solomon thanked everyone on the Commission for their efforts in working with him. He asked Asst Secretary Holman to express to Secretary Regan that he appreciated how the transition of the chairs was done through the many discussions and how the transition was handled very smoothly.

With no further business before the Commission, the Chairman adjourned the meeting at 2:15 p.m.

Approved this 10th day of January 2019.



J. D. Solomon, Chairman of the EMC