

NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

Minutes of September 12, 2019 Meeting

The North Carolina Environmental Management Commission met on Thursday, September 12, 2019 in the Ground Floor Hearing Room of the Archdale Building in Raleigh, NC.

Meeting Called to Order: Dr. Stan Meiburg, Chair

The meeting was called to order at 9:03 a.m. with **Chair Meiburg** presiding. He provided the notice required by N.C.G.S. §163A-159(e).

Present: 15 – Dr. Stan Meiburg (Chair), Dr. Suzanne Lazorick (Vice-Chair), David W. Anderson, Shannon Arata, Yvonne Bailey, Charles Carter, Donna Davis, Marion Deerhake, Mitch Gillespie, Pat Harris, Steve Keen, John McAdams, Maggie Monast, J. D. Solomon, Donald van der Vaart

Others Present: Commission Counsel Phillip T. Reynolds

Commissioner Solomon, in response to the Chair's conflict of interest reminder, noted that he had discussed with counsel previously his participation in the Commission's consideration of the nutrient rules. He noted further that, out of an abundance of caution, he discussed the issue with Commission counsel before serving as the Hearing Officer for the public hearing on the rules, which took place in Clayton. He stated that his SEI shows that he is a consultant and he does work for entities in the Neuse River Basin and several of those that are affected by the nutrient rules. However, his work did not involve nutrient rules, though it involved both water and wastewater related work. He also stated that he lives in the Neuse River Basin and was active in the community. But that he was not a water or sewer customer of Johnston County or the Town of Clayton. As such, out of an abundance of caution that he consulted with the Chair and Commission counsel to determine whether and to what extent he could participate in the Commission's consideration of the nutrient rules.

Chair Meiburg invited Commission Counsel to respond to **Commissioner Solomon** and provide more information to the Commission. Mr. Reynolds stated that, pursuant to the State Government Ethics Act, members were directed to consult with the Chair and counsel to determine whether a member may participate in a matter when the member was uncertain as to whether a conflict of interest existed. Mr. Reynolds noted that **Commissioner Solomon** did not believe he was required to recuse himself from participation but was raising the issue out of an abundance of caution. He stated that **Chair Meiburg** made the decision that there was no actual or a potential conflict of interest under those circumstances; and that it was permissible for **Commissioner Solomon** to participate in the Commission's consideration of the nutrient rules. It was also noted that no circumstances had changed since the matter was last considered by the Chair.

Chair Meiburg introduced the two new Commissioners who were sworn in on Committee Day, September 11, 2019. The new Commissioners were **Yvonne C. Bailey**, Carolina Beach and **Donald van der Vaart**, Chapel Hill. He expressed thanks to the new Commissioners and welcomed them to the Commission. He asked Commission Counsel to expound on the provisions, and to read into the record the relevant portions of the ethics evaluations for the new members.

Mr. Reynolds described briefly the evaluations provided by the Ethics Commission in relation to conflict of interest and stated that a portion of the letters had to be read into the minutes. The actual letters will be kept on file as part of the Commission records.

At the Chair's request, Mr. Reynolds read the evaluations for the two new members, **Commissioners Bailey and van der Vaart**.

For **Commissioner Bailey** their office had received her 2019 Statement of Economic Interest as a prospective appointee to the Environmental Management Commission and they've reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A, the North Carolina General Statutes also known as the State Governments Act. In their review the Commission states that they did not find an actual conflict of interest but found the potential conflict of interest. The potential conflict of interest does not prohibit service on this entity. **Commissioner Bailey** would fill the role a member who shall at the time of appointment be actively employed or recently retired from an industrial manufacturing facility and shall be knowledgeable in the field industrial pollution control. She is a licensed attorney who a former employee of Martin Marietta Materials, Inc. and owns a financial interest in the company. Because Martin Marietta, Inc. would be subject to the rules and regulations set forth by the Commission she has the potential for a conflict of interest. Therefore, Ms. Bailey should exercise appropriate caution in the performance of her public duties and should issues involve Martin Marietta Materials, Inc. come before the Commission for official action.

For **Commissioner van der Vaart** their office had received his 2019 Statement of Economic Interest as a prospective appointee to the Environmental Management Commission and they've reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A, the North Carolina General Statutes also known as the State Governments Act. They did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity. **Commissioner van der Vaart** fills the role of an at-large member on the Commission and he is the Senior Fellow for the John Locke Foundation, an organization that seeks to influence state and local policies including those involving environmental issues. In addition, **Commissioner van der Vaart** serves as the Director of the Environmental Law and Science Institute. Therefore, **Commissioner van der Vaart** has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should issues involving the John Locke Foundation or the Environmental Law and Science Institute come before the Commission for official action.

I. Preliminary Matters

1. Approval of minutes from Commission meetings on July 11, 2019 (attached)

Dr. Lazorick indicated that upon her review of the minutes she found minor corrections to be made.

Commissioner Carter made a motion to approve the minutes with the necessary corrections to be made mentioned by **Dr. Lazorick**. **Commissioner van der Vaart** seconded. The minutes passed unanimously.

II. Action Items

19-21 Appointment of Vice-Chairman

Chair Meiburg indicated that this agenda item was somewhat mislabeled on the agenda. He noted that the by-laws of the Commission provide that the Commission members will elect a Vice-Chair, and that it was his great delight to inform the members of the Commission that **Dr. Suzanne Lazorick** had expressed her willingness to stand for nomination and election to this position. She has been on the Commission for a little over two years and has made a tremendous contribution. She has a distinguished career as a doctor at East Carolina University and is a wonderful colleague. **Chair Meiburg** expressed his gratefulness and it was extraordinarily helpful to him.

Commissioner Deerhake made a motion to elect **Dr. Lazorick** as Vice-Chair of the Commission and **Commissioner Gillespie** seconded. The motion passed unanimously.

19-22 Request to Approve Recommendation to Reappoint Members to the Water Pollution Control System Operators Certification Commission

Steve Reid, DWR presented a request for the EMC to approve the reappointment of two members, Marchell Adams David and Martha E. Groome to the Water Pollution Control System Operators Certification Commission. **Chair Meiburg** and **Commissioner Solomon** commented that the credentials of the candidates were impressive.

Commissioner Monast made a motion to approve the reappointment of the two members to the WPCSOCC as presented. **Commissioner Arata** seconded the motion. The motion passed unanimously.

19-23 Request Approval of Hearing Officer's Report, Regulatory Impact Analysis, and Adoption of Amendments for 15A NCAC 13B .1400 Solid Waste Compost Facility Rules

Jessica Montie, DWM, presented a proposal for the Readoption and Amendments to 15A NCAC 13B Section .1400, Solid Waste Compost Facilities Rules. Ms. Montie gave an overview of the rules in question and presented a schedule that listed a previous public hearing, comment

period and a proposed rule effective date of November 1, 2019. Ms. Montie presented a summary of the proposed rule changes, including a new Rule, .1410, that pertained to closure requirements. She also noted these changes had been published in the NC Register and on DEQ's website. An email was sent to interested parties and a public hearing was held on July 16, 2019 with **Commissioner Arata** serving as the Hearing Officer. A summary of the public comments followed.

In closing, Ms. Montie put forth the Division's recommendation that the EMC approve the Hearing Officer's Report and adopt the Amendments to the Solid Waste Compost Facility Rules 15A NCAC 13B .1401-.1409, with changes from the published Rules, and adopt new Rule .1410.

Questions followed with **Commissioner Arata** clarifying that, with potential for PFAS to be in compost, it was determined that the language change to .1402 was the best way to give the Division the ability to test for PFAS if necessary.

Commissioner Carter asked, "Is this part of the H74 readoption process?" Ms. Montie answered in the affirmative.

Commissioner Monast spoke about comments received from the Composting Council; that the Council had noted that biogas and vermiculture are handled the same way and they objected to that. The Department of Environmental Quality decided to go ahead with how it is written in the Rule and **Commissioner Monast** wished to hear more about how that decision was made.

Perry Sugg, Division of Waste Management, responded that biogas and vermiculture are in the same Rule (.1409) but separate sub-paragraphs. Mr. Sugg also noted that we have one biogas anaerobic digester in the state but that may expand in the future. He stated that our current regulatory authority addresses the handling of the solid waste but that the actual industrial process is handled through a separate regulatory agency. Mr. Sugg continued, stating that The American Biogas Council has their own certification process but a lot of that has to do with the operation of the facility and safety requirements.

Chair Meiburg clarified that the Rule being referred to was .1409(b).

Commissioner van der Vaart stated that there had been some discussion about amending .1405-.1406 to include nuisance requirements. Currently, there is a prohibition against siting considerations from creating a nuisance in .1404. What did you add to .1405-.1406?

Jessica Montie answered that more clarification was added on the procedures for preventing odor problems and the procedures of what to do if a complaint is received.

Commissioner van der Vaart then asked if somebody tested for PFAS and found some, what might they possibly be facing and what would their options be?

Michael Scott, Director/DWM responded that there had been discussion about PFAS in compost. DEQ inspected the compost facility where these concerns were noted, and samples were taken of the compost while also looking for the original source of the PFAS compounds. There

are not specific standards for PFAS in soil or laboratory methods for this media. Often what is used is a modified drinking water method which is the EPA 537.1 method. When it comes to soil or in this case compost, we go back to that facility, test the materials, then start looking for sources; what they are receiving as waste streams that may have PFAS in them to then see if those can be eliminated or managed in a different way. We have talked about more routine sampling for PFAS but, with this rule set, there wasn't the time to put a standard in this rule when we don't know what the standard will be for soil or compost. Our existing compost permits and administrative code, in addition to what we are proposing to amend, give us the authority to collect that data to confirm levels of PFAS or other compounds and then go back to the source generator to prohibit that material showing up in finished compost and potentially interacting with groundwater or impacting it.

Commissioner Arata made the motion to approve the Hearing Officer's Report, Regulatory Impact and Fiscal Analysis, and the adoption of the amendments to 15A NCAC 13B .1400 Solid Waste Compost Facility Rules. **Commissioner van der Vaart** seconded the motion. The motion passed unanimously.

19-24 Request Approval of Hearing Officer's Report, Regulatory Impact Analysis, and Adoption of Amendments for 15A NCAC 13B .1200 Medical Waste Management Rules

Jessica Montie, of the Division of Waste Management, requested approval of the Hearing Officer's Report, Regulatory Impact Analysis, and Adoption of Amendments for 15A NCAC 13B .1200 Medical Waste Management Rules. In her presentation she included an overview of the existing rules and showed a schedule listing a proposed effective date of November 1, 2019. Ms. Montie gave a summary of the proposed rule changes, the public hearing, stakeholder meetings, comments that were received, and the subsequent revisions that were made based on continued discussion.

In closing, Ms. Montie recommended that the EMC approve the Hearing Officer's Report, adopt the amendments to 15A NCAC 13B Rules .1201-.1204 for Medical Waste Management, with changes from the published rules, and repeal Rules .1205-.1207, as well as approve the Regulatory and Fiscal Impact Analysis.

Questions followed with **Commissioner van der Vaart** inquiring as to whether this was the first time there has been a prohibition for a nuisance odor? Ms. Montie responded that she believed there was a general rule, in the whole of subchapter 13B, for solid waste odor but, in this case, the rule is specific to a nuisance odor.

Commissioner Keen made a motion to readopt 15A NCAC 13B rules .1201-.1204 and repeal rules .1205- .1207, as provided in appendix 6, with minor changes, in response to a comment and to also approve the Regulatory Impact & Fiscal Analysis. **Commissioner Davis** seconded the motion. The motion passed unanimously.

19-25 Request Approval to Send the 2019 Annual Report on Basinwide Water Management Plan by the Department of Environmental Quality and the Environmental Management Commission to the Environmental Review Commission

The annual report is required under GS 143-215.8B(d) and 143-355(p) and includes information related to developing and implementing basinwide water management plans and hydrologic models. The report is due to the ERC by November 1 of each year. Nora Deamer presented the seven required elements and a brief description of how the report fulfilled each requirement. Nora asked for approval to send the 2019 annual report from the Department and the EMC to the ERC.

Chair Meiburg indicated that he met with staff earlier in the year and granted the request to limit the scope of the report to the items statutorily required due to time constraints and staffs need to focus on the development of basinwide management plans.

Commissioner Deerhake stated that WQC heard the presentation the day before and made a motion to approve the 2019 annual report and send it to the ERC. **Commissioner Harris** seconded the motion.

Commissioner van der Vaart asked if the report includes discussion on TMDL's and the progress of restoring a watershed. Nora Deamer indicated that the basin specific portion of the report would include this type of information if it occurred over the time frame of the report.

Chair Meiburg called for a vote and the motion passed unanimously to send the 2019 annual report to the ERC.

19-26 Request Approval of Hearing Officer's Report, Fiscal Note and Proposed Rule Re-adoptions for Neuse and Tar-Pamlico Nutrient Strategy Rules 15A NCAC 02B .0229 through .0258 and Proposed 15A NCAC 02B .0701 and .0730

DWR Staff made a presentation to request approval of the Hearing Officers' Report and 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). These rules underwent S.L. 2013-413 Rules Review in 2014 which requires all Agency rules to be readopted. The revised rules were advanced by the Water Quality Committee in May 2018. The Fiscal Analysis for this rule package was approved by the Office of State Budget and Management in December 2018. Following Commission approval of the draft rule amendments in January 2019, two public hearings were held in Kinston and Clayton on March 2019. **Commissioners Steve Keen and J.D. Solomon** were the EMC appointed hearing officers. The public comment period closed on April 16, 2019. Six hearing officer meetings were held with DWR staff between May and July 2019 to deliberate over the public comments received. Staff presented a summary of the proposed rule revisions based on the Hearing Officer recommendations as well as a Department recommendation pertaining to the point to nonpoint trading ratio set forth in amendments to the Nutrient Offset rule 15A NCAC 02B .0703.

Following the presentation by staff, **Commissioner Solomon** provided a summary of the key issues discussed during the Hearing Officer deliberations of public comments and provided additional perspective on the recommendations made in the Hearing Officers' Report. This was followed by extensive discussion about the rulemaking schedule, cost estimates provided in the fiscal note, and debate concerning the 1.1 to 1 point to nonpoint trading ratio (expressed as 10% in rule text) as proposed by the Hearing Officers to be included in the Nutrient Offset Rule.

Members of the Commission shared arguments both in support and in opposition of the proposed 10% ratio and discussed the merits of different trading ratios, the supporting science and ratios used in trading programs run by other states. **Commissioner Deerhake** shared that she wished the Commission had sought explicit comment on the 2 to 1 ratio as requested by multiple members during the January WQC meeting. Members of the Commission collectively expressed support for a healthy nutrient trading program and a desire to promote a successful trading program based on sound science under the rules.

After lengthy discussion **Commissioner Solomon** made a motion *"to request approval of proposed amendments to Neuse River and Tar-Pamlico Nutrient Strategy Rules (15A NCAC 02B .0229 through .0258 and Proposed 15A NCAC 02B .0701 and .0730) as recommend by the hearing officers including the 1.1 trading ratio."* At the prompting of counsel **Commissioner Solomon** confirmed that the motion included requesting approval of both the Hearing Officers' Report and the fiscal note. This motion was then followed by a continuation of the discussion about trading ratios.

Commissioner Arata proposed an amendment to the primary motion to change the trading ratio in the proposed rule from a 1.1 to 1 ratio (represented as 10% in rule) to a 2 to 1 ratio (expressed as 100% in rule) with no monitoring provision. There was some discussion as to whether a monitoring option should be included in the motion. After much discussion **Commissioner Arata** clarified that her amendment was only to change the trading ratio from 10% to 100% in the rule text with no provision for monitoring.

A vote on **Commissioner Arata's** amendment to the primary motion to replace the 10% trading ratio with a 100% ratio was taken and the amendment failed. **Commissioner Deerhake** then proposed an amendment to the primary motion to replace the 10% trading ratio with a 50% trading ratio. This second amendment was voted on and passed by the Commission by a vote of 8 to 7.

Final action was then taken by the Commission by voting on the primary motion as amended to adopt the Hearing Officers' Report and Fiscal Note as amended with changes to the trading ratio from 10% to 50% in the Nutrient Offset Rule. The motion as amended passed by a vote of 10-4.

19-27 Request Approval of Hearing officer's Report on Session Law 2013-413 (H74) Readoption of Group 5 Rules 15A NCAC 02D .0601 - .0615, .2100 - .2104, .2300 - .2311, .2600 - 2621 and Final Approval of Regulatory Impact Analysis (547)

Staff presented the Hearing Officer's Report on readoption of Group 5 rules in 15A NCAC 02D .0601-.0615, .2101-.2104, .2301-.2311, .2601-.2621, and final approval of the regulatory impact analysis (RIA). **Commissioner Deerhake** served as the Hearing Officer. The RIA was submitted to the Office of State Budget and Management (OSBM) in accordance with G.S. 150B-21.4. On November 26, 2018, OSBM determined that the rule actions do not result in significant state or local impacts and no substantial impact; however, there is a minor impact to the private sector in the form of preparing and submitting a written plan.

The proposed rules and RIA were published in the North Carolina Register and posted on the DAQ's website from April 15, 2019, to June 14, 2019. Also, a public hearing was held in Raleigh, North Carolina on May 22, 2019. As a result of the comment period, the DAQ received a total of three comments from the Mecklenburg County Air Quality Local Program (MCAQ), the North Carolina Petroleum Council, and the United States Environmental Protection Agency (EPA). The following actions occurred as a result of the comment period: 15A NCAC 02D .0606(c) and .0608(e) were revised to address a comment from EPA on the effect of removing the phrase "equally spaced". The DAQ's revisions clarified and aligned the two rules with current federal requirements. No changes were made to 15A NCAC 02D .0614(g) since its removal does not adversely affect the DAQ's or EPA's enforcement authority. 15A NCAC 02D .2104 was revised in response to a comment from MCAQ which resulted in the DAQ restoring some of its original language and aligning the rule with federal requirements in 40 Code of Federal Regulations 68.215(e). The DAQ retained language in several rules in 15A NCAC 02D Section .2600 regarding the Director's discretion to review and approve alternative testing methods since it provides clarity and transparency. The removal of the circular reference to 15A NCAC 02D .0912 was retained in 15A NCAC 02D .2601(c) since it was deemed unnecessary. For 15A NCAC .2608, the DAQ restored "the Director determines that" in response to the EPA's comment. The DAQ retained revisions to the American Society for Testing and Materials test methods in 15A NCAC 02D .2611 since they were deemed appropriate and necessary. 15A NCAC 02D .2615 was recommended to be deferred from the Group 5 readoption package to the Group 6 readoption package by the Hearing Officer and the DAQ. Also, several cross-reference, typographical, and grammatical corrections were made for the Group 5 package based on comments from the EPA and Hearing Officer.

Commissioner Deerhake commended staff for their responses to the three commenters and specified that she was prepared to make a formal motion.

Chair Meiburg asked whether North Carolina had existing "banks" of emission reduction credits, and if so, what would happen to the credits in the event that an area became nonattainment.

Ms. Burleson specified that some of the criteria for the emission reduction credits is that they remain permanent, surplus to any other federal regulatory requirements, and enforceable. There is no recent activity with the credits since the state does not currently have nonattainment areas. There may be a few credits in the “bank” but there are not many. **Commissioner van der Vaart** asked whether the emission reduction credits were only for nonattainment areas and not for State Implementation Plan compliance. Ms. Burleson stated that it is written in terms of 15A NCAC 02D .0531 for New Source Review areas.

Chair Meiburg asked whether there were any other questions. No questions were identified.

Commissioner Deerhake made a motion for the EMC to adopt amendments to 15A NCAC 02D Sections .0600, .2100, .2300, and .2600 as presented in Chapter II and final approval of the regulatory impact analysis in Chapter VI of the Hearing Officer’s report. This motion included the recommended changes made in response to commenters and the Hearing Officer, with DAQ support, and included deferring 15A NCAC 02D .2615 to the Group 6 readoption package. Commissioner Solomon seconded. The motion passed unanimously.

19-28 Request Approval of Proposed Amendment to 15A NCAC 02B .0304 for the Proposed Reclassification of the Sandy Bottom Wetlands in Buncombe County (French Broad River Basin) from Class WL to Class WL UWL and Regulatory Impact Analysis to Proceed to Public Notice and Comment

Chair Meiburg introduced the item and asked **Commissioner Deerhake** for comments on it. **Commissioner Deerhake** noted that this item was heard at the July 2019 WQC meeting and approved to proceed to the full Commission. She made a motion (on behalf of the WQC) that the EMC approve to send proposed rule amendment to 15A NCAC 02B .0304, French Broad River Basin, for the proposed reclassification of the Sandy Bottom wetlands from Class WL to Class WL UWL and the fiscal note to public notice and comment. Counsel Reynolds corrected the misstatement in the motion by stating that the fiscal note is a regulatory impact analysis. **Commissioner Solomon** seconded the motion.

Some of the Commission members had questions on this item. **Commissioner Bailey** asked who filed the November 20, 2018 petition. **Chair Meiburg** stated that the petition came from Mountain True, Defenders of Wildlife, and the North Carolina Wildlife Federation. Ms. Weaver affirmed that this was the case. **Commissioner Solomon** asked whether the potential affected parties [Long Branch Environmental Education Center and the Board of Trustee of the Endowment Fund of the University of North Carolina at Asheville] support the reclassification proposal. Ms. Weaver said yes.

Commissioner van der Vaart asked if the Unique Wetland reclassification proposal is a “voluntary” program. He followed up his question with other questions that focused on the determination of a wetland as unique, approval process for obtaining a proposed “unique” wetland, and the rights of individuals, organizations etc., that own the land upon which proposed “unique” wetlands sets. Counsel Reynolds stated that affected property owners - if there is a change in a

circumstance for them - can comment like any other public participant as part of the rule-making process.

Following this discussion, the motion to proceed to public notice and comment passed unanimously.

III. Information Items

1. 19-IF-08 Briefing on Draft Clean Energy Plan

Sushma Masemore, Deputy Assistant Secretary for Environment and State Energy Director, presented an overview of the Draft Clean Energy Plan. She started the presentation giving a general introduction of the EO-80, North Carolina's Commitment to Address Climate Change and Transition to a Clean Energy Economy. In October 2018, the DEQ was directed under Governor Cooper's Executive Order No. 80 (EO-80) to develop a North Carolina Clean Energy Plan. The directives of the EO required inclusion of clean energy resources (i.e. energy efficiency, solar, wind, energy storage, and other innovative technologies), and integration of these resources to facilitate the development of a modern and resilient electric grid. DEQ was directed to deliver the plan to the Governor by October 1, 2019.

A detailed update of the completed work, its purpose, and a description of the plan's development was presented. As part of the plan, collaboration with businesses, industries, power providers, technology developers, North Carolina residents, local governments, and other interested stakeholders were requested to increase utilization of clean energy technology solutions. The stakeholder process was launched in February 2019 with a variety of methods to obtain the stakeholders' input. She went into the details of the plan content, emphasizing that the plan is being revised.

All received recommendations during the public comment period were compiled and broken down into twelve focus areas under five main strategies: (1) utility incentives and comprehensive system planning: those related to the commissions, legislation, and utilities; (2) customer access to clean energy and economic development; (3) equitable access and just transition, which addresses the needs and concerns of low income rate payers; (4) carbon reduction and resilience; and (5) beneficial electrification and energy efficiency, in relation to electric vehicles and reducing the use of fossil fuels. Ms. Masemore focused on one recommendation related to GHG emissions and walked through the action items related this recommendation.

The recommendations were separated by action schedules (short, medium, and long term) with nine actors or implementers. Short term was considered urgent, high priority, and durable in the system authority for the entities throughout all the state; these are mainly for those who have the power to take action.

Before entering the discussion section, she indicated again that the final Clean Energy Plan will be released on September 27, 2019. Majority of the comments were received with positive engagement, contribution and supportive information; these will be addressed in the final document.

The Commission members asked questions and discussion regarding this information item.

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/directors_comments_2019/Directors_Comments_for_September2019.pdf

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

Director Michael Scott, Division of Waste Management

Director Michael Abraczinskas, Division of Air Quality Division

Director Linda Culpepper, Division of Water Resources

Committee Chairs/Commissioners

Commissioner McAdams indicated that he wasn't prepared with the report. He will be reporting at the next meeting.

WQC Chair Deerhake reported on the Committee's meeting. She recognized new WQC members including Commissioner Pat Harris who will serve as the WQC Vice-Chair. The WQC heard a presentation on the 2020 Clean Water Act Section 303(d) Methodology for listing and delisting impaired waters. DWR reported they received a quick turnaround and favorable review from EPA on the draft 2020 methodology, and revisions to the draft were minor. The WQC approved the document as revised, and it will be forwarded to the EMC for full approval in November.

The WQC also heard a presentation on the Basinwide Management Planning Report that will be presented to the Legislature's Environmental Review Commission. She thanked the staff for their ongoing planning efforts.

The WQC next heard a presentation by staff on “A request to proceed to the EMC for public notice would propose removal of the EPA disapproved swamp designation and a portion of the management strategy from a section of the Cape Fear River.” She reminded Commissioners that DWR received a petition for rulemaking from the Cape Fear River Watch and the Waterkeeper Alliance in c/o Southern Environmental Law Center earlier in the year. The petition requested that the EMC remove the supplemental swamp waters classification from the Lower Cape Fear. The DWR staff concluded that the removal of swamp designation from a section of the Lower Cape Fear River in 2B.0311 would also impact the management strategy to that same section of the river in 2B .0227. At the July 2019 meeting, the EMC granted the petition and approved the initiation of rulemaking. She reminded Commissioners that granting a petition for rulemaking leads to rulemaking, but it is not rulemaking in itself. After considerable discussion in Committee, the vote was to defer approval of the reclassification rulemaking until the November meeting when the WQC hear a staff presentation on the context and possible strategy for addressing impairments in the Lower Cape Fear as part of the management strategy. This November agenda item will include the WQC’s action on proceeding with the rulemaking.

Finally, the WQC received a presentation from DWR on surface water classifications.

Chair Deerhake concluded, saying that the WQC will begin maintaining a calendar of past and anticipated future activities and will also discuss possible future Committee topics.

Commissioner Bailey reported on the Groundwater and Waste Management Committee and indicated that they had five action items. The first action item had to do with amendments to the groundwater quality standards in 2L. The request by staff was to go to public notice and hearings and refer it to the EMC for doing so. There was quite a bit of discussion about incorporating the interim maximum allowable concentrations into the rules. There was approximately 44 of those that were going to be incorporated into the rules. The staff did put together a chart with some very helpful materials and they reformatted the rules. She felt that it was a better way to see the rules and the different concentrations. But in the end what they decided was to defer this issue until November. They are asking staff for additional information to compare these standards to other similar sorts of state standards for groundwater and nearby states, which **Commissioner Solomon** had suggested. South Carolina, Tennessee and Virginia were the three states they asked staff to look at what they had. There was a lot of discussion about when were those IMACs created, how old were they and why were they created in the first place, since usually, they arise out of a responsible party who would be doing a cleanup, and petitions for an individual IMAC for a particular cleanup site. There was a great deal of discussion on that and we’re going to be getting more information in their November committee meeting. Ellen Lorscheider had briefly mentioned that other items on their agenda were going forward to recommend public notice and hearings on some items concerning her Division. **Commissioner Bailey** mentioned that one of them had to do with: (1) solid waste management facilities and transfer facilities, (2) underground storage tank financial responsibility requirements, (3) electronic hazardous waste manifest system, and (5) hazardous waste pharmaceuticals rules.

There was one information item presented by Ellen Lorscheider regarding requirements for reporting and rulemaking regarding solar projects and wind energy.

Commissioner Arata reported that the Air Quality Committee did not have any action items, but they did get a preview of the Group 6 rules, which will be coming before the committee, and a quick update on the Group 5 rules that were voted on today in light of the few changes that were made in response to **Commissioner Deerhake's** recommendations previously. They also heard from the planning section and the technical services section's and she pointed to the technical services section presentation for an update on the Volkswagon settlement agreement update and where the state is with that. They had a very quick update on the methyl bromide rules and about 1,500 comments had been received. The goal is to hear it in November but understanding 1,500 comments will take some time.

Chair Meiburg stated for the new members that it was customary to go around the circle and hear from each member if they wanted to make comments.

Vice-Chair Lazorick expressed that she was honored to be nominated as Vice-Chair and former Vice-Chair Wilsey set the goal very high and she would do her very best.

Commissioner Keen recognized the work and efforts that go into rulemaking and public hearings and expressed his thanks to former Chair, J.D. Solomon for having done an outstanding job.

Commissioner McAdams echoed what **Commissioner Keen** had state regarding former Chair, JD Solomon's service. On the Neuse and Tar Pamlico strategy rules, themselves, he found himself wishing strongly that they had better data on that issue of the effectiveness of mitigation standards. He questioned if there was anything they could do as a Commission to send a request to the Governor or the General Assembly that research be carried out to establish these standards better of protecting the river.

Commissioner Solomon commented on **Commissioner McAdam's** question. He stated that he felt that the Commission could take a motion at some point and write a letter. The Commission does have the ability to do that and it is probably something that they should support and take a longer more structured view of this situation, now that we see it.

Commissioner van der Vaart agreed totally with what **Commissioner McAdams** said and it was a very tough problem that has been around for a while.

Chair Meiburg rescheduled the meeting of the Executive Committee due to the lateness of the hour.

With no further business before the Commission, the Chairman adjourned the meeting at 3:00 p.m.

Approved this 14th day of November 2019.



Dr. A. Stanley Meiburg, Chairman
Environmental Management Commission