

**NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION**

Minutes of March 14, 2019 Meeting

The North Carolina Environmental Management Commission met on Thursday, March 14, 2019 in the Ground Floor Hearing Room of the Archdale Building in Raleigh, NC.

Meeting Called to Order: A. Stanley Meiburg, Ph.D., 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. §138A-15(e).

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

Others Present: Commission Counsel Phillip T. Reynolds

I. Preliminary Matters

Chair Meiburg reported that he was happy to serve as the new chair for the Commission and he commended former Chair Solomon stating he did a marvelous job in running meetings that were timely, focused and allowed for ample discussion among the members of the Commission.

Chair Meiburg stated that his great environmental hero was Bill Ruckelshaus who was the first administrator of EPA and someone who is a great American. At the beginning of his tenure at EPA, he articulated three values: (1) to follow the law; (2) follow the science and to be transparent. Those are good values and they certainly would serve this Commission well. We are an organization that is always seeking for common interests with the recognition that a healthy environment is not a partisan issue. Seeking common interests doesn't always mean that we're going to have universal agreement.

Chair Meiburg thanked former **Chair Solomon** for the great leadership he has given to the Commission and expressed his delight and pleasure that he would be continuing as a public servant.

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

1. Approval of minutes from Commission meetings on January 10, 2019 (attached)

Vice-Chair Wilsey made a motion to approve the minutes and **Commissioner Solomon** seconded. The minutes passed unanimously.

Chair Meiburg reported that Jimmy Johnson sent an email that he was unable to come due to illness. Item 19-05 was removed and will be rescheduled for the May 9th meeting.

Initial Information Item

19-04 Overview of Final Chemours Consent Order

Mr. Benzoni indicated that he and Mr. Spiller represented DEQ in its litigation against Chemours. He provided an overview of the consent order that was entered by the Court on February 25, 2019. He began by providing the Commission with background discussing very briefly the compounds that are the center of this litigation and then an overview of some of the key provisions in the consent order.

The Commissioners continued to ask questions, make comments and entered discussion with the two counsels. They heard comments from Assist. Secretary Holman. After further discussion, Chair Meiburg thanked Asst. Secretary Holman and also the Department of Justice who worked on this consent order. He commented that this was a very comprehensive review and then proceeded to the action items.

II. Action Items

19-05 Request Approval of Hearing Officer's Report, Regulatory Impact Analysis, and Adoption of Amendments to 15A NCAC 02L Section .0400 "Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks" and Section .0500 "Risk-Based Assessment and Corrective Action for Petroleum Releases from Aboveground Storage Tanks and Sources"

Scott Bullock, DWM Underground Storage Tank Section, requested the approval of the hearing officer's report, regulatory impact analysis, and the adoption of the amendments to 15A NCAC 02L Section .0400. Mr. Bullock gave a brief overview of the amendments and summarized the proposed rule changes. He also discussed the public hearing that was held on January 8, 2019, with **Commissioner Arata** serving as hearing officer, noting that no comments were received at the hearing but that one comment was received, via email, during the comment period.

Following Mr. Bullock's presentation there was a brief discussion with **Commissioner Puette** pointing out a potential wording change needed in 15A NCAC 02L .0407, Reclassification of Risk Levels, from "It shall be a continuing obligation that each responsible party shall notify the Department of any changes..." to "Each responsible party shall have the continuing obligation to notify the Department of any changes...".

Chair Meiburg called for a motion and **Commissioner Arata** made the motion to approve the hearing officer's report, regulatory impact analysis and adoption of the amendments, with the wording modification, suggested by **Commissioner Puette** to 15A NCAC .0407. **Commissioner Puette** seconded the motion. The motion passed unanimously.

19-06 Request Approval of Proposed Rule Revisions, Regulatory Impact Analysis and to Proceed to Public Hearing on Readoption of Group 5 Rules - 15A NCAC 02D .0600-.0615, .2100-.2104, .2300-.2311, .2600-.2621 (547)

Joelle Burleson, Senior Regulatory Advisor, Division of Air Quality, presented the request to proceed to public comment and hearing on the regulatory impact analysis and proposed readoption of several air quality rules in 15A North Carolina Administrative Code (NCAC) 02D Sections .0600, .2100, .2300, and .2600. Pursuant to Session Law 2013-413, rules in the Group 5 package are proposed for readoption with some substantive and other minor administrative updates. Per the Air Quality Committee's request, the DAQ reviewed the language in 15A NCAC 02D .2101(b)(1), regarding the agricultural ammonia exemption from animal waste operations. The DAQ's review concluded that the federal Farm Act in 2018 did not impact the 112(r) exemption, and the state's rule incorporates language from 40 Code of Federal Regulations (CFR), Part 68 for customer service.

Ms. Burleson noted that a stakeholder meeting was held on June 28, 2018. The DAQ received verbal comments during the meeting that were subsequently incorporated into the rules; however, no written comments were received. A regulatory impact analysis was approved by the Office of State Budget and Management on November 26, 2018, as having little to no impact on state or local governments and no substantial economic impact to the regulated community or other parties. It is important to note that the revisions to 15A NCAC 02D .2602 have an estimated \$5,076/yr. cost over the next five years for the preparation and submittal of a written plan to achieve compliance.

Chair Meiburg asked whether the "2018" year on slide number 15 of the presentation was a typo. Ms. Burleson affirmed that was the case and specified it should be "2019".

Commissioner Solomon noted that the Air Quality Committee heard the Group 5 agenda item in January and did not have any significant comments. However, he asked for clarification regarding the regulatory impact analysis; specifically, whether the substantive changes for rules in Section .2600 are encompassed in the total cost over 5 years and whether DAQ staff are comfortable with its findings. Ms. Burleson affirmed that was the case and specified that "substantive changes" and "substantial impact" are two different terms according to the Administrative Procedures Act.

Commissioner Solomon made a motion to approve the proposed rule revisions, regulatory impact analysis, and to proceed to public hearing on readoption of Group 5 rules – 15A NCAC 02D .0600-.0615, .2100-.2104, .2300-.2311, .2600-.2621. **Commissioner Carroll** seconded the motion. The motion was unanimously approved.

19-07 Request by Mountain True and Defenders of Wildlife Federation that the Environmental Management Commission Approve the Petition for Rulemaking to Add the

Unique Wetland Classification to the Sandy Bottom Wetlands in the French Broad River Basin in Buncombe County

Commissioner Rubin moved that the EMC approve the requested Mountain True and Defenders of Wildlife Federation petition for rulemaking to add the UWL classification to the Sandy Bottom Wetlands in the French Broad River. **Commissioner Deerhake** seconded the motion. The motion was passed unanimously by the EMC.

19-08 Request Approval of Hearing Officer's Report, Regulatory Impact Analysis and Adoption of Water Quality Permitting Rules

Karen Higgins, DWR, requested approval of the hearing officer's report, regulatory impact analyses, and the adoption, readoption and repeal as specified in Appendix E of the hearing officer's report of the Water Quality Permitting Rule package [Effluent Limitations (02B .0400), Surface Water Monitoring: Reporting (02B .0500), Point Source Discharges to Surface Waters (02H .0100), Coastal Waste Treatment Disposal (02H .0400), Special Orders (02H .1200), Local Pretreatment Programs (02H .0900), Water Quality Certification (02H .0500), Discharges to Isolated Wetlands and Waters (02H .1300), Goose Creek Water Quality Management Plan (02B .0601 to .0604), Randleman Lake Water Supply Plan (02B .0720 to .0722), and Riparian Buffer Protection Rules (02B .0605 to .0608, .0610 to .0614, .0714 to .0715, .0724, and .0734-.0735)] with updates to 15A NCAC 02B .0608. The presentation included an overview of the key comments on the riparian buffer rules, isolated wetland rules. Mike Templeton, DWR presented the key comments to the NPDES wastewater rules.

Commissioner Solomon provided a summary of the rulemaking effort and responses to comments. He stated this package is a solid example of the House Bill 74 process. **Commissioner Deerhake** highlighted the changes to wastewater lines in the Goose Creek Water Quality Management Plan and that those lines are different from utility lines and raised concerns re the change of "forested" to "vegetated" in the Goose Creek and Catawba rules. After discussion, the proposed change of "forested" to "vegetated" remained as recommended by the hearing officer.

Chair Meiburg asked for clarification on 404(f) exemption for forestry roads. There was a lengthy discussion about the proposed change to change forestry roads to a "deemed permitted" activity in the buffer rules. No changes were made to the buffer rule as proposed from the hearing officer.

Commissioner Solomon made a motion to approve the hearing officer's report, regulatory impact analyses and the rules as proposed in Appendix E with the changes to 15A NCAC 02B .0608. **Vice-Chair Wilsey** seconded the motion. The motion passed unanimously.

III. Information Items

19-05 - Update on North Carolina's Coastal Habitat Protection Plan (CHPP) was rescheduled until the May 8, 2019 full EMC.

19-06 Review 2018 303(d) Public Comments (DWR) Pam Behm

Pam Behm, DWR Modeling and Assessment Branch Supervisor, provided an update on the 303(d) process for 2018. Ms. Behm noted that, as a matter of priority, the focus of the update was on the 303(d) itself and acknowledged that there were some remaining Integrated Report comments to be addressed after submittal of the 303(d) list to EPA for approval. A 60-day public comment period began November 14, 2018 and ended January 18, 2019. DWR provided the draft 2018 303(d) list, draft delistings, draft new listings, the 2018 303(d) Listing and Delisting Methodology, and the Integrated Report Category Assignment Procedure to the public for review and comment. DWR received 15 public comments, including three from citizens.

Comments on the 303(d) list itself resulted in six total copper delistings and one new listing for turbidity. The next steps were to submit the 303(d) list to EPA for approval and to continue discussions on the Integrated Report comments.

Commissioner Carter noted that EPA action on the 303(d) list generally takes quite a bit of time. Commissioner Solomon mentioned that EPA action on previous 303(d) lists had some areas of disagreement and that changes to the methodology should have addressed those concerns, at least as far as 303(d) listing and delisting are concerned. **Commissioner Solomon** had several questions about the Integrated Report and referenced the Response to Comments. These included the comments by Mr. Bill Floyd on the Chattooga River, the differences between benthic and fish ecological ratings, data rounding, and the segmentation process.

After the meeting, Ms. Behm discovered that **Commissioner Solomon** was referring to the 2016 Response to Comments, not the 2018 document. While there are still issues with the Chattooga River and the segmentation process for one waterbody (Falls Lake), the other issues raised by **Commissioner Solomon** had been fully addressed.

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/march_2019/Directors_Comments_for_March2019.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

Committee Chairs/Commissioners

Commissioner Solomon indicated that they had a good meeting of Air Quality Committee and they had a couple of information items on the agenda.

Commissioner Deerhake stated the Water Quality Committee did meet and they heard essentially the information that Director Culpepper just provided. She thanked **Commissioner Solomon** and the staff for the work on that very large package of water quality permitting rules.

Chair Puette commented for the Groundwater & Waste Management Committee had two action items. One was on medical waste management and the other was on solid waste compost facilities that will be coming before the Commission in May for final action to go to public hearing. They had an excellent powerpoint presentation by Director Scott on disaster preparation and response. They also had a coal ash impoundment closure update by Ed Mussler.

Chair Lazorick indicated the Water Allocation did meet and had one information item. Staff from the Risk Management Section presented information on flood planning and prevention in the state, which was a very dense informational flood presentation. In the next meeting the WAC will be discussing dam operation and use of reservoirs to have balance and control water needs.

Commissioner Carter thanked **Commissioner Solomon** and the staff for the work on the existing buffer rules. He indicated that there are still two fundamental issues that the Commission needs to deal with. He stated that they had a couple of river basins that have very comprehensive rules, the Tar-Pam and Neuse. He discussed other comments surrounding these rules.

Chair Wilsey reminded everyone that the Commission has the tracking sheet that is for both the directors and the committee chairs to update. She wanted to remind everyone that this tracking was both information to the public and the Commission to inform them of what's coming up.

There were no comments from EMC Counsel.

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

Approved this 9th day of May 2019.



Dr. A. Stanley Meiburg, Chair
Environmental Management Commission