

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

Minutes of July 10, 2014 Meeting

The North Carolina Environmental Management Commission met on Thursday, July 10, 2014 in the main floor hearing room in the Archdale Building, Raleigh, North Carolina. Commissioners present were:

Benne Hutson, Chairman
Kevin Martin, Vice Chairman
David Anderson
Jerry Carroll
Tommy Craven
Dan Dawson
E. O. Ferrell
Bill Puette
Bob Rubin (arrived during Agenda Item 14-17)
Butch Smith
Steve Tedder
Julie Wilsey

Commission counsel Mary Lucasse was also present.

I. Preliminary Matters

The meeting was called to order at 9:05 a.m. with Chairman Hutson presiding. He read the notice required by N.C.G.S. § 138A-15(e). No conflicts of interest or appearances of conflicts of interest were identified at this time.

II. Approval of Minutes

Chairman Hutson asked for discussion, comments or corrections concerning the minutes of the May 8, 2014 meeting. **On** motion by Commissioner Tedder, seconded by Commissioner Smith, the minutes were approved.

III. Action Items

Agenda Item 14-23: Request Approval of the Proposed Reclassification of a Portion of the Green River, including Lake Adger, in Polk County (Broad River Basin) to Class WS-IV

Commissioner Puette served as the hearing officer for and reported on this matter. Commissioner Puette stated that public hearing was held on March 27, 2014 in Mills Springs, North Carolina to receive public comments on the proposed reclassification and associated fiscal note. Thirty persons attended the hearing with seven speaking in favor of the reclassification and one speaking but not taking a position. The public record remained open for comment until

April 21, 2014. Sixteen written public comments were received all of which supported the reclassifications.

After opportunity for questions or comments by other commissioners, Commissioner Puette moved that the reclassification of a segment of the Green River, including Lake Adger, as described in Table 1 of the Report of Proceedings be approved with an effective date of September 1, 2014. Commissioner Raymond seconded the motion. After opportunity for further discussion by the Commission members and staff, the motion passed unanimously.

Agenda Item 14-17: Request by Iluka Resources for a Declaratory Ruling on the Applicability of 15A NCAC 021.0601 - Dam Safety Law to Iluka's Planned Aurelian Springs Mineral Sands Mine

This matter came before the Commission on Iluka Resources' request for a declaratory ruling. Commission counsel Mary Lucasse reviewed the requirements for a request for declaratory ruling under the North Carolina Administrative Procedure Act and that the Commission's decision would be based on a given set of facts stipulated to by the parties. Ms. Lucasse also reported that at the March 13, 2014 Commission meeting, the Commission had delegated to Chairman Hutson authority to decide whether a hearing would be held. Chairman Hutson ruled that a hearing would be held which decision was published as a final agency action on June 4, 2014.

Matthew Hanchey, as counsel for Iluka Resources, made the presentation in support of the request for a declaratory ruling. John Payne, as counsel for NCDENR, made the presentation in opposition to the request for declaratory ruling. Steve McEvoy, an NCDENR dam safety engineer, also participated in the presentation by Mr. Payne.

Commission members raised numerous questions to the parties' counsel. These included questions regarding the technical design of the dams at issue, whether a genuine controversy existed as to the applicability of the dam safety law, and whether the granting of the petition for a declaratory ruling would eliminate the need for future specific applications for approval of each of the dams.

After further discussion among the Commissioners, Commissioner Tedder moved to deny the request for declaratory ruling on the grounds that pursuant to 15A NCAC 021.0603(c)(3), there was no finding that a general controversy existed as to the application of a statute, order or rule to the specific factual situation presented. Commissioner Anderson seconded the motion. Commissioner Martin proposed to add to the motion as another basis for the decision that the Commission lacked adequate information to make a decision due to the absence of detailed plans and specifications. Commissioner Tedder and Commissioner Anderson, as the movant and seconder, agreed to a revision to the motion. After further discussion and a brief recess, Chairman Hutson asked for the consent of Commissioners Tedder and Anderson to a restatement of the motion as follows:

Motion that the Petitioner's petition for declaratory ruling be denied on the grounds that the Petitioner in its request for declaratory ruling on the

applicability of N.C.G.S. §143-215A, subsections 5 and 6, to dams that will be built at the "Planned Aurelian Springs Mineral Sands Mine in Halifax County, North Carolina" on the grounds that the Petitioner has not provided nor do the stipulated facts provide sufficient or adequate information regarding the dams to be built at the planned Aurelian Springs Mineral Sands Mine in Halifax County to make such a declaratory ruling.

Commissioners Tedder and Anderson consented to the restatement of the motion.

Before calling for a vote, Chairman Hutson noted that Commissioner Rubin had just arrived at the meeting during the presentation and ruled that it would not be appropriate for Commissioner Rubin to vote on this matter.

The motion passed unanimously.

Agenda Item 14-18: Request for Waiver of 30-day Rule and Request to Proceed to Public Comment and Hearing on Proposed Amendments to Stormwater Rule 15A NCAC 02H.1002 including a Definition of Gravel and Approval of the Fiscal Note in Accordance with N.C.G.S. §150B-19.1(e)

Chairman Hutson indicated that this matter would require two motions. One would be for a waiver of the 30-day rule in the Commission's operating procedures. The second would be a motion on the substantive matter. Chairman Hutson also indicated that legislation was pending in the North Carolina General Assembly which would remove the exclusion of gravel from the definition of "built upon area" that may require further action by the Commission to amend its regulations to be consistent with such legislation, if adopted.

Julie Ventaloro of the Division of Energy, Mining and Land Resources, gave a brief presentation on the request for approval to proceed to public comment and public hearing with the proposed amendments along with the associated fiscal note.

Commissioner Tedder moved to waive the 30-day requirement. Commissioner Martin seconded the motion. The motion passed unanimously.

Commissioner Tedder moved to proceed to public hearing with the proposed amendments to the stormwater rule 15A NCAC 02H.1002, including the definition of gravel, and the fiscal note. Commissioner Puette seconded the motion. The motion passed unanimously.

Agenda Item 14-19: Request Approval to Proceed to Public Comment with Rules Review of 15A NCAC 02R in Accordance with SL 2013-413(HB 74)

Kelly Williams of the NCDENR's Ecosystem Enhancement Program stated that this matter was for Commission approval to proceed to public comment with the initial classification of the 2R rules pursuant to the requirements of the Regulatory Reform Act of 2013.

Commissioner Tedder, chair of the Water Quality Committee, stated that the committee had considered these matters at its May meeting and moved to approve the initial classifications to proceed to public comment. Commissioner Raymond seconded the motion. The motion passed unanimously.

Agenda Item 14-20: Request for Approval to Proceed to Public Comment with Rules Review of 15A NCAC 02S in Accordance with SL 2013-423(HB 74)

Pete Doorn, head of the Special Remediation Branch in the Superfund Section of the Division of Waste Management, stated that this matter was for Commission approval to proceed to public comment with the initial classification of the 2S rules pursuant to the requirements of the Regulatory Reform Act of 2013.

Commissioner Martin, as chair of the Groundwater Committee, stated that the committee had considered this at its March meeting and moved to approve the Division's recommendation to proceed to public comment. Commissioner Ferrell seconded the motion. The motion passed unanimously.

Agenda Item 14-21: Request for 30-day Waiver and to Proceed to Comment and Hearing on Revisions to Open Burning Rules to Reflect SL 2013-413

Joelle Burlison, Division of Air Quality, made the presentation regarding the proposed revisions and stated that the Division was asking the Commission to waive the 30-day rule, approve the fiscal note and proceed to public hearing.

Commissioner Carroll stated that this matter had been presented to the Air Quality Committee the previous day and that the committee recommended taking the actions requested by the Division of Air Quality. Commissioner Carroll moved to waive the 30-day rule. Commissioner Ferrell seconded the motion. The motion passed unanimously.

Commissioner Carroll moved to proceed to public hearing on revisions to the open burning rules and to approve the fiscal note as presented by staff. Commissioner Ferrell seconded the motion. The motion passed unanimously.

Agenda Item 14-22: Request for 30-day Waiver and Request to Proceed to Hearing to Revise Permit Term to Reflect SL 2013-413

Joelle Burlison, Division of Air Quality, presented the proposed revisions required by this session law and stated that the Division was seeking approval from the Commission to waive the 30-day rule, approve the fiscal note and proceed to public hearing.

Commissioner Carroll stated that the matter had been heard at the Air Quality Committee meeting the previous day and the committee unanimously supported staff's recommendation.

Commissioner Carroll moved to waive the 30-day rule. Commissioner Wilsey seconded the motion. The motion passed unanimously.

Commissioner Carroll moved to proceed to public hearing on the revised permit term rules to reflect the session law and to approve the fiscal note. Commissioner Wilsey seconded the motion. The motion passed unanimously.

Agenda Item 14-24: Request for 30-day Waiver and Petition for Rulemaking 15A NCAC 2L.0404-Amendment Risk-based Assessment and Corrective Action for Underground Petroleum Storage Tanks

Commissioner Martin stated that this matter had been heard at the Groundwater Committee meeting the day before, during which the petitioner had made a presentation in support of the petition. The Department did not take a position in support of or in opposition to the petition.

Commissioner Martin moved to waive the 30-day rule. Commissioner Carroll seconded the motion. After discussion, the motion passed unanimously.

Commissioner Martin moved to approve the petition for rulemaking. Commissioner Smith seconded the motion. There being no further discussion, the motion passed unanimously.

IV. Concluding Remarks

By Commission Members

Commissioner Craven reported on the meetings of the Technical Advisory Group and Water Allocation Committee. He reported that there was interesting discussion on hydrologic basin models and issues regarding the legislation authorizing those models.

Commissioner Carroll reported on the meeting of the Air Quality Committee. In addition to the matters that had already been approved by the Commission during this meeting, Commissioner Carroll said the committee heard from staff regarding two conceptual matters. One deals with the streamlining of non-Title V permitting rules. The second deals with clerical corrections to certain TPER values from non-obstructed and vertically oriented stacks. Director Holman also updated the committee on a number of topics including regulation of sulfur dioxide emissions and the Division's request for relaxation of the reedy vapor pressure requirements for the Triangle and the Triad areas in the summer.

Commissioner Tedder reported on the meeting of the Water Quality Committee. In addition to the matters already considered at the Commission meeting today, the committee had considered a proposed classification change in the Lower Cape Fear River from SC to SC Swamp, an update on the rules going through the rule review process, an update regarding the 303(d) impaired listing process for 2014, and the current and approved EPA nutrient development criteria plan.

By Directors

Linda Culpepper reported on legislation that would transfer responsibility for waste management rules from the Commission on Public Health to the Environmental Management Commission.

By Counsel

Ms. Lucasse reported on the status of the appeals in the House of Raeford Farms matter and the compliance boundary decision relating to the petition for declaratory ruling. Ms. Lucasse also reported that at the request of the Chair she is putting together a process for appointments to the NPDES committee in compliance with federal regulations.

By Chairman

Chairman Hutson stated that the statute requiring appointment of a committee to develop a study on the compliance boundary regulations would be appointed by Commissioner Martin since the Chair would be recusing himself from that matter. Chairman Hutson also reported on the status of working with staff to have a further review of the fiscal note requirements, including the calculation of costs and benefits under those analyses. Commissioner Hutson also highlighted pending legislation in the General Assembly that may impact the Commission.

There being no further business before the Commission, the meeting was adjourned at 12:00 p.m.