

**NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION**

**Minutes of November 13, 2014 Meeting**

The North Carolina Environmental Management Commission met on Thursday, November 13, 2014 in the main floor hearing room in the Archdale Building, Raleigh, NC. Commissioners present were:

Benne Hutson, Chairman  
Kevin Martin, Vice Chairman  
David Anderson  
Jerry Carroll  
Charlie Carter  
Tommy Craven  
Dan Dawson  
Charles Elam  
E.O. Ferrell  
Bill Puette  
Larry Raymond  
Bob Rubin  
Butch Smith  
Steve Tedder  
Julie Wilsey

Commission counsel Jennie Hauser and Mary Lucasse were 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). Chairman Hutson noted that with regard to agenda item 14-45; Request for Adoption of Report of Ad Hoc Compliance Boundary and Corrective Action Pursuant to the Coal Ash Management Act of 2014, he would be recusing himself from that matter. Commissioners Ferrell and Carter also indicated they would be recusing themselves from that matter.

Chairman Hutson indicated that the Commission has had a reassignment of Counsel from the Attorney General's Office. He welcomed back Jennie Hauser. He also expressed thanks to Mary Lucasse on behalf of the entire Commission for her service.

**II. Approval of Minutes**

Chairman Hutson asked for any discussion, comments or corrections concerning the minutes of the July 10, August 14, September 11 and September 30 meetings. On motion by Commissioner Tedder, seconded by Commissioner Martin, the minutes were approved.

**III. Action Items**

**Agenda Item 14-35: Request for Approval of Amendments to Stormwater Rule 15A NCAC 02H .1002**

Julia Ventaloro, Division of Energy, Mining and Land Resources, reviewed the background of this permanent rulemaking and gave the reasons for the rulemaking being proposed. Commissioner Craven, who served as the hearing officer for the rulemaking, stated that the public hearing was held on August 20 in the Archdale Building in Raleigh attended by approximately 18 people, including staff agencies. Two people attending the hearing made oral comments and two written comments were received. The public comments for this rulemaking were received prior to the September 18, 2014 signing of Senate Bill 734 into law.

After opportunity for questions or comments by other Commissioners, Commissioner Craven moved that the Commission adopt permanent rule changes to 15A NCAC 02H .1002 as proposed, with the changes to the definition of “built upon area” and “gravel” as contained in pages A-41 to A-43 of the hearing officer’s report of the proceedings. Commissioner Carroll seconded the motion. After opportunity for discussion, the motion passed unanimously.

**Agenda Item 14-36: Hearing Officer’s Report on Repeal of Transportation Facilities Permitting Rules (523)**

Patrick Knowlson, Division of Air Quality, reported that the public hearing on these rules was held on September 3, 2014, and that two comments were received. One comment suggested retaining the application fee to track these facilities in the future if there were any problems. The second comment was received from the Environmental Protection Agency, which had reviewed the rules but had no comments to provide. No changes were made to these rules except one minor formatting change.

Commissioner Carter, who served as hearing officer, stated that the rules were outdated, obsolete, unnecessary, and there had not been any CO issues in the state for at least 20 years. There had really been no reason to keep this program in place because Congress actually eliminated this program from the federal requirements for state implementation plans back in the mid-1970s. Commissioner Carter made the motion to repeal the rule. Commissioner Ferrell seconded the motion. There was no further discussion, and the motion passed unanimously.

**Agenda Item 14-37: Hearing Officer’s Report on Revisions to Open Burning Rules to Reflect S.L. 2013-413 (521)**

Joelle Bureson, Division of Air Quality, reported that the hearing was held on September 3, 2014 with Commissioner Carter serving as the hearing officer. Commissioner Carter stated that the open burning rules over the years had been a source of a great deal of contention. The majority of notices of violations issued by the Division of Air Quality were for open burning violations. These changes would assist in streamlining the process to a certain degree by allowing people to better understand the requirements. After his report, Commissioner Carter made a motion that the rule changes that went to public notice be adopted by the Commission. The motion was seconded by Dr. Rubin. After opportunity for discussion, the motion passed unanimously.

**Agenda Item 14-38: Hearing Officer’s Report on Amendment to Revise Permit Term to Reflect S.L. 2013-413 (522)**

Joelle Bureson, Division of Air Quality, reported on the proposed amendments to revise the rules that define the duration of a permit term for Non-Title V permits to align the rule with Session Law 2013-

413. The rule proposed for amendment was 15A NCAC 02Q .0308. EPA was the only commenter on the matter, and EPA did not recommend any changes.

Commissioner Carter made a motion to adopt the rule that went to public comment, as recommended in the hearing officer's report. Commissioner Rubin seconded. After opportunity for discussion, the motion passed unanimously.

**Agenda Item 14-39: Hearing Officer's Report on Temporary Amendments to Clarify Applicability of Prevention of Significant Deterioration (PSD) Rule for Greenhouse Gases and Title V Applicability Rule (528)**

Patrick Knowlson, Division of Air Quality, stated that a public hearing was held on October 1, 2014, and Commissioner Carter served as hearing officer. On June 23, 2014, the United States Supreme Court issued a decision in Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA) addressing the stationary source permitting requirements for greenhouse gas emissions. The two rules being amended are 15A NCAC 02D .0544 and 15A NCAC 02Q .0502, and both are removing the requirement that facilities have to obtain a permit solely on the basis of their GHG emissions so as to be consistent with the Supreme Court's decision. Four people commented during the hearing process. Three were in support of these amendments. Two of them asked that the EMC proceed as quickly as possible to get these in place. One person opposed the adoption of the rules.

Commissioner Carter made a motion that the EMC adopt the changes to the greenhouse gas permitting rules as temporary rules, including the technical correction that the Rules Review Commission staff recommended. Commissioner Raymond seconded the motion. In response to questions by Chairman Hutson, Mr. Knowlson indicated that the temporary rule would be effective until September 29, 2015, and that staff anticipated beginning permanent rulemaking in March 2015. After opportunity for discussion, the motion passed unanimously.

**Agenda Item 14-40: Request to Proceed to Hearing on Revision to Ambient Standard for Particulate Matter (PM2.5) (524)**

Joelle Bureson, Division of Air Quality (DAQ), stated that EPA had changed its National Ambient Air Quality Standard for PM2.5 in December 2012 to 12.0 ug/m3. She indicated that the Division was in the process of catching up with that as they move forward to develop their state implementation plan (SIP). The Office of State Budget and Management (OSBM) reviewed DENR's fiscal analysis on the proposed amendments, determined a fiscal note was not required, and certified this analysis. Ms. Bureson stated that DAQ was requesting permission to move the propose change to 15A NCAC 02D .0410 forward for public hearing and comment.

Commissioner Carter made the motion that the EMC authorize DAQ to proceed to public hearing on these rules. Commissioner Puett seconded. After opportunity for discussion, the motion passed unanimously.

**Agenda Item 14-41: Request for Approval of 2014 Stormwater Annual Report to the Environmental Review Commission (ERC)**

Chairman Hutson reported on this item and stated that periodically under various statutes the EMC has a requirement that the Commission submit reports to the ERC. Usually the report is prepared by staff,

but since it comes from the Commission Chairman Hutson has determined to bring the reports to the Commission for approval. For this particular report there was a deadline prior to the EMC meeting; therefore, Chairman Hutson worked with staff and signed the report on behalf of the Commission. Although this report has already gone to the ERC, Chairman Hutson wanted to give this Commission the opportunity to ask questions. Any revisions to the report could still be made today because the ERC was informed that the report would be coming to the EMC at this meeting and that there might be revisions to the report. If there were no revisions, a motion would be necessary to approve the report as presented.

Commissioner Tedder made a motion to approve the report and Commissioner Wilsey seconded. After opportunity for discussion, the motion passed unanimously.

**Agenda Item 14-42: Request for Adoption of the Hearing Officer's Recommendations on Proposed Triennial Review Amendments to the Surface Water Rules in 15A NCAC 02B .0200**

Connie Brower, Division of Water Resources, provided a timeline of events beginning in November 2013. She stated that the Commission approved staff to hold a scoping hearing on .0100 rules through the .0300 rules. Public hearings were held with staff reporting to the Commission in March 2014. Commissioner Tedder served as the hearing officer for those public hearings. Review and approval of those draft rules came to the Commission in May 2014. The filing in the North Carolina Register was published in June 2014, and two public hearings were held in July 2014.

Approximately 120 people attended these hearings, with 35 persons requesting to speak. The public proceedings generated approximately 925 written comments from about 900 private citizens. There were 13 comment letters from businesses, industries and local governments, and agricultural interests. There were three letters from federal government agencies: two from USEPA and one from U. S. Fish and Wildlife. There were also nine non-governmental organizations that submitted comments.

Commissioner Tedder made a motion that the Commission adopt the amendments as described in Section 6 and the rule language as set out in Section 7 of the Hearing Officer's Report, including approval of the fiscal note. Dr. Rubin seconded.

After opportunity for discussion, the motion carried with 14 votes in favor of and one vote against the motion.

**Agenda Item 14-43: Request to Proceed to Public Hearing with the Proposed Reclassification of Cape Fear River Section in New Hanover and Brunswick Counties from Class SC to Class SC SW with a Water Quality Management Plan**

Elizabeth Kountis, Division of Water Resources, presented this item. A request was received from the Lower Cape Fear River Program to reclassify a portion of the Cape Fear River from Class SC to Class SC-Swamp. The portion of the Cape Fear River proposed to be reclassified is that upstream from the mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut. Ms. Kountis stated that in July 2014 the Water Quality Committee had approved sending to the full Commission a request for this proposed surface water reclassification and associated water quality management plan for a portion of the Cape Fear River so that the Division of Water Resources staff could prepare a fiscal analysis.

Ms. Kountis requested that the EMC approve sending the proposed reclassification and water

quality management plan out to public notice. Commissioner Tedder stated that this item was heard before the Water Quality Committee in September and received a unanimous vote to bring it to the full Commission. He made a motion that the EMC approve proceeding to public hearing on the reclassification as well as the associated management plan along with the fiscal note. Commissioner Anderson seconded the motion. After opportunity for discussion, the motion carried.

**Agenda Item 14-44: Request for Adoption of Hearing Officer's Recommendations on New Stormwater Rule and Other Water Quality Rule Amendments for Oil and Gas Operations**

Evan Kane, Division of Water Resources, stated that in May 2014 the Environmental Management Commission approved proceeding with proposed rules related to management of stormwater at oil and gas production sites. There would be a proposed new rule as well as amendment of four other rules related to the land application and reuse of waste and wastewater. A public hearing was conducted in Sanford on July 1, 2014. There were about 80 attendees and 15 speakers at that meeting. The hearing officer's report details all of the comments and proposed recommended changes and response to comments as well as areas where staff and the hearing officer had recommended no changes. Mr. Kane made a final recommendation on behalf of staff that the EMC adopt the proposed 2H .1030 rule with recommended text changes and to adopt the amendments to 2T and 2U with no changes to what was published in the North Carolina Register for public comment.

Commissioner Rubin made a motion that the EMC adopt the rules as presented in the hearing officer's report, which was described by Mr. Kane. Commissioner Carroll seconded the motion. After further discussion, the motion passed unanimously.

**Agenda Item 14-45: Request for Adoption of Report of Ad Hoc Compliance Boundary and corrective Action Pursuant to the Coal Ash Management Act of 2014**

Chairman Hutson recused himself from this matter and yielded the Chair over to Vice-Chairman Kevin Martin, and left the room. Commissioners Carter and Ferrell were also recused themselves from this matter and left the room. Vice-Chairman Martin stated that the Legislature had made specific changes to part of the 2L rules and directed the Commission to review the compliance boundary and corrective action provisions of subchapter 2L of the North Carolina Administrative Code for clarity and internal consistency and to report the results of this review, including recommendations, to the ERC by December 1, 2014.

The Chairman had appointed an Ad Hoc Committee, which was made up of five members of the Commission: Commissioners Tedder, Martin, Craven, Dawson, and Rubin. Those five Commissioners met to discuss this legislative directive, work on the report, direct staff preparation of the report, and adopt proposed changes to the help clarify the rules.

Evan Kane, Division of Water Resources, reported that the Ad Hoc Committee met twice in October to discuss the issues regarding the 2L rules on corrective action and compliance boundary. He stated that the committee identified five issues of clarity with regard to the corrective action rule. Mr. Kane described the different options available for the EMC's decision. After further discussion Commissioner Tedder made a motion to approve the report for submittal to the ERC, including the draft rule language in the report recommended for permanent rulemaking. The motion was seconded by Dr. Rubin.

Commissioner Dawson made a substitute motion to substitute the rule language contained in "Option 2" for the language currently recommended in the report for permanent rulemaking. Commissioner

Carroll seconded the substitute motion. The substitute motion carried on a vote of ten in favor and four opposed.

Chairman Hutson and Commissioners Carter and Ferrell returned to the room, and the meeting continued with Chairman Hutson presiding.

#### **IV. Information Items**

##### **Information Item 14-11: Annual Reports on Neuse and Tar-Pamlico Agriculture Rules**

John Huisman presented this item on the annual agricultural products reports for the Neuse and Tar-Pamlico river basins on behalf of the Basin Oversight Committees and the respective basins. Mr. Huisman discussed the two accounting methods approved by the EMC: the Nitrogen Loss Estimation Worksheet Tool and the Qualitative Approach for Phosphorus Loss.

##### **Information Item 14-12: Letter Regarding EPA's Partial Disapproval of 303(d) List of Impaired Waters**

Chairman Hutson reported on the letter regarding EPA's partial disapproval of the 303(d) list of impaired waters. He stated that at the last Commission meeting there was discussion about this matter with authorization for the Chairman to file public comments in response to the EPA decision working with Commissioner Craven, Commissioner Tedder and Commissioner Carter. The letter, which was attached to the agenda materials, was signed by Chairman Hutson on behalf of the Commission and by Director Reeder on behalf of the Division of Water Resources. That letter has been submitted to EPA but DENR has not yet received any response from the EPA. Going forward DENR will now be working on the methodology for the 2016 listing of impaired waters, which will go through the Water Quality Committee. Jeff Manning has now assigned responsibility for 303(d).

##### **Information Item 14-13: Establishment of Ad Hoc Committee on Beneficial Reuse of Coal Ash Pursuant to the Coal Ash Management Act of 2014**

Chairman Hutson stated that the Coal Ash Management Act had a provision that required the Commission and DENR to conduct a study on the sufficiency of the statute's provisions regarding the use of coal ash and structural fill, and whether the statute was adequately protective of the environment, public health, and natural resources. There was also a requirement to study and identify beneficial reuse options, the viability of those options, and the risks associated with them. There was also a requirement to monitor and report on the promulgation and implementation of EPA rulemaking on coal combustion residuals. To create this report under the Commission's procedures, an Ad Hoc Committee was formed, which Commissioner Rubin agreed to chair. Commissioners Puette, Wilsey, Dawson and Raymond will also serve on the committee.

Commissioner Rubin presented a brief outline of the committee's schedule and functions. He also indicated that a meeting was scheduled for November 24, 2014 at UNC Charlotte to meet some of the researchers there who are doing a significant amount of work on beneficial reuse of coal ash. DWM staff, DWR staff, and representatives of the North Carolina Department of Agriculture and the North Carolina Department of Transportation will attend the meeting. The committee hopes to have an interim report by January 15, 2015.

Chairman Hutson further explained that the meeting on November 24 was an official meeting of the Ad Hoc Committee which has been noticed and will be open to the public.

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

##### **By Committee Chairs**

**Commissioner Craven** reported on behalf of the Water Allocation Committee and stated that they had four items on their agenda. The first was a staff report on the Central Coastal Plain capacity analysis and they followed that up with reports on three interbasin transfers to Cary, Apex, Wake County, an interbasin transfer to Union County, and the Kerr Lake Regional Water System IBT, all of which the Commission will be seeing in the first half of 2015.

**Commissioner Martin** reported the Groundwater Committee heard two information items. One was on the status of rules review of the 15A NCAC 02S in accordance with Session Law 2013-413. The second item was a report by the Director of the Division of Waste Management, Linda Culpepper on a DENR study on the expanded use of risk-based corrective action. Ms. Culpepper gave an update on that report, which was not yet final. The committee requested that they post the report on the EMC website and make it available to Commissioners when it is available.

**Commissioner Tedder** reported on the Water Quality Committee and stated that the major action item on their agenda was a request for an after the fact a major variance from the Tar-Pamlico protection rules. That request was denied by the Water Quality Committee. They also received an update on the status of the rules review for the Environmental Enhancement Program, the 2R rules. He stated that they had a quick update on the minimum design criteria team for stormwater which is required by Session Law 2013-82. Commissioner Tedder also reported that they had an update from John Huisman on the agriculture rules and Ed McMillan provided a brief synopsis of where they're heading on the comprehensive integrated planning information for the basin-wide plans.

**Commissioner Carroll** chaired the Air Quality Committee meeting on behalf of Commissioner Carter. He reported that they heard two concepts that will be rule changes at a later time. The first is in accordance with Session Law 2014-120 regarding outdated rules, which specifically is the elimination of the requirement to submit source reduction and recycling report. The second is another revision to the open burning rules to allow burning of stumps and logs, which is a rule required by Session Law 2013-413. Both those rules will be coming back to the committee in January or March 2015 depending on the preparation of the financial note. The committee also heard five topics that were on full Commission agenda today. They heard Director Holman's update on various topics.

**Chairman Hutson** reported on the Steering Committee which meets infrequently and is made up of the Chair, Vice Chair and the Chairs of the standing committees. He also stated that a recommendation will be made to rename the current "Groundwater Committee" the "Groundwater and Solid Waste Committee." He also reported that the standing "Renewable Energy Committee." which was formed in response to prior legislation that required a review to determine if additional permitting requirements were necessary, completed its statutory obligation some time ago. Therefore, the Steering Committee will recommend removal of the "Renewable Energy Committee" as a standing committee. These changes will come before this Commission in January as proposed amendments to our internal operating procedures for action.

##### **Commission Members:**

**Commissioner Carroll** made comments regarding the use of the term "net present value" when used with regard to the financial impact of regulations. His issue was that the term "net present value" has meaning and what it means is the difference between the present value of the outflows and the present value of the inflows or the present value of the benefits less the present value of the cost. His suggestion was that in

the future when preparing financial analyses and notes, the term "net present value" should be used correctly.

**By Directors:**

**Director Holman** reported that she mentioned at the Air Quality Committee meeting that the EPA is in the process of reconsidering its ozone standard by December 1, 2014. She also gave a brief overview of the presentation that the Division presented to the Mining and Energy Commission's special committee looking at the petition from Blue Ridge Environmental Defense League asking for rulemaking on oil and gas air emissions issues. She also gave an update on the SO<sub>2</sub> litigation pending in the Northern District of California.

**By Counsel:**

None

**By Chairman:**

**Chairman Hutson** followed up on Commissioner Carroll's comments by stating that the Commission still needs to get the agency's attention to meet with the Commissioners who volunteered to talk about this fiscal analysis approach, and the other issues that were previously identified.

He mentioned the 2015 meeting schedule was now on the website. He reported that he spoke at the annual meeting of the North Carolina Manufacturers Alliance in early September and last week to the Regulatory Action Committee of the North Carolina League of Municipalities. He also had met with Michael Jacobs, the Coal Ash Commission Chair, and Lisa Snyder, who had been hired as the Counsel for that Commission.

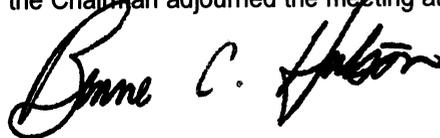
**Information Item 14-14: Closed Session pursuant to N.C.G.S. § 143-318.11(a)(3) to Consult with Counsel regarding 373A14, Cape Fear River Watch v. NCEMC and Duke Energy Carolinas filed in the NC Supreme Court**

Upon motion made by Commissioner Martin and seconded by Commissioner Raymond to move into closed session to consider advice of legal counsel on pending litigation in Cape Fear Riverwatch v. EMC, 373A14, the Commission voted to enter closed session pursuant to G.S. 143-318.11(a)(3). Chairman Hutson recused himself from this matter, yielded the Chair to Vice-Chairman Kevin Martin, and left the room. Commissioners Carter and Ferrell were also recused from this matter and left the room.

Commissioner Dawson moved to return to the open meeting. The motion, seconded by Commissioner Elam, carried.

With no further business before the Commission, the Chairman adjourned the meeting at 12:30 p.m.

Approved this the 8th day of January, 2014.



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Benne C. Hutson, Chairman of the EMC