

**NORTH CAROLINA ENVIRONMENTAL MANAGEMENT
COMMISSION**

Minutes of September 11, 2014 Meeting

The North Carolina Environmental Management Commission met on Thursday, September 11, 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
Charles Elam
Jerry Carroll
Charlie Carter
Tommy Craven
Dan Dawson
E.O. Ferrell
Bill Puette
Larry Raymond
Bob Rubin
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 N.C.G.S. §138A-15(e). Chairman Hutson noted that with regard to agenda item 14-10; the closed session regarding the pending litigation involving the Sierra Club, Waterkeeper Alliance, Duke Energy and the Commission, that he would be recusing himself from that matter. Commissioners Ferrell and Carter also indicated they would be recusing themselves from that matter.

Chairman Hutson introduced the newest Commission member, Charles "Boots" Elam. Haley Haynes from the Secretary of State's office administered the oath of office to Commissioner Elam.

II. Approval of Minutes

Chairman Hutson announced that this item would be delayed as the minutes from both the July and August meetings had not been completed.

III. Action Items

Agenda Item – 14-26: Request to Confirm Recommendation to Reappoint a Member to the Water Pollution Control System Operators Certification Commission.

Steve Reid presented this item. It has been recommended by the Water Pollution Control Systems Operators Certification Commission that Gale Howell be reappointed to that Commission which re-appointment needs to be confirmed by the Commission. Commissioner Tedder moved to re-appoint Gale Howell to the Water Pollution Control Systems Operators Certification Commission. Commissioner Dawson seconded the motion. After opportunity for discussion, the motion passed unanimously.

Agenda Item – 14-27: Request for 30-Day Waiver and to Proceed to Hearing on Clerical Revision to 15A NCAC 02Q .0711

Patrick Knowlson, Division of Air Quality, presented this matter. He stated that it was to make clerical revisions to the cited rule. He said two motions would be needed, one for waiver of the 30-day requirement in Commission's Internal Operating Procedures and another to proceed to hearing on the proposed revisions.

Commissioner Carter stated that the Air Quality Committee had heard the two requests the day before. He moved to waive the 30-day requirement. Commissioner Ferrell seconded. After opportunity for discussion, the motion passed unanimously.

Commissioner Carter moved to proceed to hearing on the proposed rule revisions. Commissioner Ferrell seconded the motion. After an opportunity for discussion, the motion passed unanimously.

Commissioner Carter commented that consideration should be given to amending the Administrative Procedure Act so that clerical revisions of this small a magnitude do not have to go through full notice and comment rulemaking.

Agenda Item 14-28: Request for 30-Day Waiver and to Proceed to Hearing on Temporary Amendments to Clarify Applicability of Prevention of Significant Deterioration (PSD) Rule for Greenhouse Gases in Title V Applicability Rule

Joelle Burlison, Division of Air Quality presented this item. She stated that two motions would be needed, one to waive the 30-day requirement in the Commission's Internal Operating Procedures and the second to proceed to hearing on the temporary rule amendments to clarify the applicability of prevention of significant deterioration rule for greenhouse gases in the Title V Applicability Rule. Ms. Burlison provided a brief summary of the basis for the two motions including the discussion of the U.S. Supreme Court decision that necessitated this rulemaking.

Commissioner Carter stated that this matter had been heard by the Air Quality Committee at its meeting the previous day and recommended adoption of both motions.

Commissioner Carter moved to waive the 30-day requirement. Commissioner Raymond seconded the motion. After opportunity for discussion, the motion passed unanimously.

Commissioner Carter moved to proceed to hearing on the proposed rule change. Commissioner Carroll seconded the motion. After opportunity for discussion, the motion passed unanimously.

Agenda Item 14-29: Request for Approval to Submit Rules Review Report to the Rules Review Commission for Subchapters 02B, 02H, 02T and 02U in accordance with SL2013- 413(HB74).

Jeff Manning, Division of Water Resources, presented this item. He stated that the public comment period on the initial classification of the rules in these four subchapters had been completed. The next step in the regulatory review process is for the Commission to adopt the initial classifications in a report to be submitted to the Rules Review Commission.

Commissioner Rubin moved to approve the submission of the initial classifications of rules in Subchapters 02B, 02H, 02T and 02U to the Rules Review Commission as required by the cited session law. Commissioner Puette seconded the motion. After opportunity for discussion, the motion passed unanimously.

Agenda Item 14-30: EPA's Partial Approval of North Carolina's 2014 303(d) List and Proposed Submission of Comments by the Commission in the Division of Water Resources.

Cathy Stecker, Division of Water Resources, presented this item. She reported that EPA had partially approved the submitted list of impaired waters but had determined that 52 water body/pollutant segments should be added to the list due to impairment by metals and other non-conventional pollutants. This decision was based on EPA using a standard of more than one exceedance of a water quality standard in a 3-year period as opposed to the methodology approved by the Commission which required a 90% confidence level that at least 10% of the samples collected exceeded an applicable water quality standard.

Chairman Hutson noted that EPA had made its decision, that a public comment period was now open and that the Commission had been working with staff in the drafting a public comment letter. Ms. Stecker reported the end of the public comment period had been extended to on or about October 14, 2014. Chairman Hutson noted that this extension had been at the request of the Commission.

Commissioner Dawson moved to authorize Commissioners Craven, Carter, Tedder and Rubin and Chairman Hutson to work with staff and finalize a public comment letter and to authorize Chairman Hutson upon completion of that letter to sign it along with Director Reeder for submission to EPA prior to the end of the extended public comment period. Commissioner Martin seconded the motion. After opportunity for discussion, the motion passed unanimously.

Agenda Item 14-31: Request for Approval of the Tar-Pamlico River Basin Hydrologic Model.

Agenda Item 14-32: Request for Approval of the Roanoke River Basin Hydrologic Model

Agenda Item 14-33: Request for Approval of the Cape Fear-Neuse River Basin Hydrologic Model.

Chairman Hutson stated that Agenda Items 14-31, 14-32 and 14-33 for approval of basin-wide hydrologic models for the Tar-Pamlico, Roanoke River and Cape Fear-Neuse river basins would be combined for consideration as one item before the Commission. Chairman Hutson noted, that this matter had been the subject of discussion for several meetings with regard to the issue of ecological flow and that there had been a very lengthy and productive presentation and discussion the day before at the Water Allocation Committee meeting.

Commissioner Craven as chair of the Water Allocation Committee reported that the basin studies had been subject to considerable discussion including three Technical Advisory Group meetings and presentation to the Commission as an information item in July. Commissioner Craven stated that the issues fell into three broad categories. First, the technical aspects of the model including inputs and outputs and how those functioned as part of the model. Second, the definition of ecological flow and the incorporation of ecological flow into the models themselves. Third, assorted statutory issues relevant to the matter of ecological flow and its incorporation into the models. Commissioner Craven then referred the Commission to a copy of a motion that the Water Allocation Committee recommended for adoption. Commissioner Craven then made the following motion:

The Department of Environment and Natural Resources is authorized and directed to work with the General Assembly to specifically resolve the inconsistent and incompatible uses of the term "ecological flow" in General Statute §143-355(0)(3).

Until such time that such issue is resolved, the hydrologic models for the Tar River Basin, the Roanoke River Basin and the Cape Fear-Neuse River Basin are not approved.

Until such time that such issue is resolved, the Department is authorized to continue to use the Tar River Basin, the Roanoke River Basin and the Cape Fear-Neuse River Basin hydrologic models in planning decisions and, as required, in order to comply with statutes and rules, to make decisions on permit applications or other matters concerning water allocations; PROVIDED THAT any determination required by General Statute §143-355(0)(3) 1, 2, and 3 shall be based on site-specific data and shall not be based on any generally applicable standard or value, including, but not limited to any generally applicable standard or value for ecological flow contained in or derived from the report entitled "Recommendations for Estimating Flows to Maintain Ecological Integrity in Streams and Rivers in North Carolina" dated November, 2013.

If the Department wishes to establish generally applicable standards or values for determining "all needs", "all essential uses" or "ecological flow" for purposes of making the predictions required by General Statute §143-35(0)(3) 1, 2 and 3, it shall do so by

rulemaking proceedings in accordance with the applicable provisions of the North Carolina Administrative Procedure Act.

Commissioner Tedder seconded the motion.

Commissioner Puette requested three changes to the motion. First, in paragraph 1 of the motion, to add subsection 4 to the reference to the statute in paragraph 1. The second was to add the reference to subparagraph b in paragraph 3. The third was the same change in paragraph 4. Commissioner Craven as the movant and Commissioner Tedder as the seconder agreed to these changes.

After an opportunity for further discussion, the motion passed unanimously.

Agenda Item 14-34: Revisions to the Commission's Internal Operating Procedures.

Chairman Hutson stated that revisions were going to be needed due to some statutory changes, but since the statutory changes had not been finalized, this matter was moved from the agenda and would be considered by the Steering Committee at its meeting in November. Changes would then be brought to the Commission either at the November or January meetings.

IV. Information Items

Information Item 14-07: Update on Senate Bill 734 Regarding Proposed Amendments to Storm Water Rule 15A NCAC 02H .1002

Jennifer Everett, the Department's Rulemaking Coordinator, presented this item. Ms. Everett reported that in last year's legislative session the General Assembly amended the definition of "built upon" area to exclude gravel. In response to that legislative enactment, the Commission had adopted a temporary rule defining the term "gravel". The temporary rule took effect on March 28, 2014.

Ms. Everett stated that staff was proceeding with permanent rulemaking. Ms. Everett stated that when Senate Bill 734 becomes law, the exclusion of gravel from the definition of "built upon" area will be undone and the temporary rule will immediately become ineffective. No further action will be required of the Commission to revoke the temporary rule.

Commissioner Craven, as the hearing officer for the permanent rule, asked if another public hearing had to be scheduled or the public comment period had to be extended due to a significant change from the proposed rulemaking, Ms. Everett replied that based on her discussions with the Rules Review Commission, no further public hearing or extension of the comment period would be required.

Information Item 14-08: Legislation Enacted By the General Assembly Presentations

Mike Abraczinskas, Division of Air Quality presented on the impacts of Senate Bill 734 on air regulations with major areas being revisions to open burning laws and prohibition of the regulation of residential combustion.

Tracy Davis, Director of the Divisions of Energy, Mining and Land Resources, presented information regarding legislation that affected that division. Director Davis provided a handout of lists of bills that had such effects and reviewed those bills with the Commission.

Linda Culpepper, Director of the Division of Waste Management, presented information on legislation that affected that Division as well as the transfer of rulemaking authority regarding matters within that Division from the Commission on Public Health to the Environmental Management Commission. Director Culpepper reviewed the jurisdiction of the Division and introduced the senior members of her management team.

Tom Reeder, Director of the Division of Water Resources, presented information regarding legislation affecting that Division. Director Reeder reviewed a matrix of deadlines based on that legislation. Director Reeder reviewed the coal ash legislation. Jeff Manning, Division of Water Resources, also reviewed the items on the matrix presented by Director Reeder.

Information Item 14-09: Special Meeting September 30, 2014 to Act on Temporary Rule for Buffers.

Chairman Hutson noted that on September 30, the Commission would hold a special meeting to act on adoption of the temporary rule for buffers mandated by the legislature that was the subject of the August meeting of the Commission. The meeting would begin at 3:00 pm and would be conducted by telephone conference.

Information Item 14-10: Closed Session Pursuant to N.C.G.S. §143-318.11(A)(3) to Consult with Its Attorneys Regarding Cape-Fear Riverwatch, Sierra Club, Waterkeeper Alliance and Western North Carolina Alliance vs. N.C.E.M.C and Duke Energy Carolinas LLC and Duke Energy Progress, Inc. Filed in the North Carolina Court of Appeals, No. COA14-708

Prior to the Commission going into closed session, Chairman Hutson and Commissioners Ferrell and Carter recused themselves and left the meeting room. The Commission then by motion went into closed session and upon motion came out of closed session.

V. Concluding Remarks

By Commission Members:

Commissioner Rubin reported on the public hearing on the storm water rules for oil and gas operations. He said approximately 90 people attended and 15 people spoke.

Commissioner Dawson gave general comments regarding Commission processes and the need to consider how to streamline those processes.

By Directors:

None

By Counsel:

None

By Chairman:

Chairman Hutson followed up on Commissioner Dawson's comments. He also stated he would be working to identify persons within the Department to discuss the fiscal note requirements.

With no other business before the Commission the meeting was adjourned at 1:30 pm.