

December 19, 2012, Mining & Energy (Fracking) Commission notes

Two MEC members resigned: William "Mack" McNeely, representing mining industry; Jonathan Williams, representing NC Dept of Commerce Chair, James Womack (Lee County Commissioner)

1. This is the main meeting with committee reports from preceding day's activity. DENR introduced two new employees that were added to serve the Commission and eventual permitting duties. George Howard still insisted that DENR could assign more staff to the MEC. Asst. Secretary Robin Smith (retired 12/31) said that the 40% cuts to staff since 2009 have resulted in fewer appropriated positions (70% of DENR positions are fee and grant-based, therefore not "appropriated" by Legislature). The Legislature had also eliminated 4 positions in Land Resources Div. in 2012, the Division directly responsible to MEC. There are no more staff available.

2. Water and Waste Management Committee, Chair, Vik Rao. Working on water resource problem, first. Need 2-5 million gallons per well, over a few days to conduct a frack. Sources: can be fresh or salty, if reused, and should be able to recapture 15 to 30% of water return from fracking. DENR to make rules, assuming fresh water. Consider municipal wastewater as source, water ponds on property, too. Womack said put limits on daily withdrawals. Rao said storage (like in pond) can be a problem. Transportation of these volumes of water are components of the water issue. Regarding stakeholders, Rao said not the same as public comment. He wants a 2-page letter sent to him and he will select stakeholders for 5 min presentations.

3. Administration of Oil & Gas Committee, Chair, Charles Holbrook. Lost two members. Grouped the legislation's 12 regulation requirements into 5 categories for rules: Pre-drilling and current vertical drilling rules (Lewis-Raymond); Physical drilling aspects (Holbrook); Spacing of wells and pooling (Covington); Reporting and record-keeping (no leader assigned); and Chemical treatment and recovery methods (Rao). Wants best practices as determined by American Petroleum Institute. NO stakeholder input, here. Womack wants industry as major partner on this effort.

Discussions of transportation of sand by rail and truck (fracturing process takes a lot of sand); Howard said if Deep River area could support 100 wells, that would be 10 train loads of sand. And the availability of water (no problems [?], except during drought). Taylor worried about thickness of slate around Cumnock, just 800 to 200 meters below surface. Womack said need to consider the entire state, not just Deep River, to give industry "incentive" to consider NC. Holbrook pitched new shale discoveries around the world, even England...\$1 billion day going overseas for US energy needs, and we have the stuff right here!

4. Environmental Standards Committee, Chair, George Howard. Reached out to Duke University for baseline testing and to help prioritize issues. Committee discussed trade secrets for chemical disclosure, and will have a paper on this by next meeting, using Colorado and Texas as models. Howard wants more guidance from the legislature on baseline air and water testing. Womack said he is "troubled" by testing; what is appropriate so we don't waste

money. Is Duke's approach really comprehensive? Rao said Duke depends on what gets funded. Air is also important. Rao said use resources in RTP, such as EPA and National Institutes of Environmental Health, and Environmental Defense Fund. Womack says use FracFocus website for public disclosure, but still have records in NC DENR.

5. Rules Committee, Chair, Amy Pickle. Will work on common language and consistency. How to organize the 100-200 rules in a Table of Contents. The starting methodology is to break rules into categories of predrilling, drilling, completion, reclamation, abandoned sites, administration. Next meeting decides where this fits into NC Administrative Code (as a single location, rather than spread throughout). Reviewing Louisiana, Arkansas, Colorado, Texas table of contents in their administrative codes.

6. Local Government Regulation Study Group, Chair, Charles Taylor. Had representatives from DOT, Highway Patrol, John Locke Foundation, League of Municipalities and Association of County Commissioners. Reviewing local authority for siting, testing, road capacity, economic development, emergency response, and tax values. There are potentially 71 municipalities (1.2 million residents) in the exploration area. Issues are heavy industry, zoning, noise, federal rules, unfunded mandates, enforcement to higher standards, baselines for testing. Institute of Government involved with pipelines impact, and local Register of Deeds regarding recordation of mineral rights. Need a repository of items on website. Question about ETJ's for city/county division of responsibility. Consult Division of Air Quality for impacts, Attorney General on mineral rights. Womack said need to address *ad valorem* taxes on leased land when drilling [*whose, the land owner's property taxes, or the leaseholder's taxes on that same property?*].

7. Funding Levels and Sources Study Group, Chair, Jane Lewis-Raymond. DOT, League of Municipalities, and Association of County Commissioners are members. They are considering what is required in the legislation: fees, impact fees, bonding, severance taxes (paid by industry to State), and how it is distributed. PA has not done this right and is now asking their local governments for input. Will prepare outline for their next meeting. Rao said where value is created in only a few pockets, need to spread the wealth to other owners. Womack said impact fee should be "measured" impacts (road, bridges, social???) and provide funds to where the impacts happened...not to NC General Fund, oh, and DENR, too.

8. Process. Womack wants everything vetted through Committees prior to MEC, and MEC to vote on each rule. Committees must have quorum. Rule content will flow from committees to the Rules Committee to format, then to MEC for voting, then must have fiscal note to accompany when it moves forward to public comment. Study Groups do not require a quorum and will report out next October, per the legislature.

He reassigned three general rule-making areas to specific committees: Measures to mitigate impacts on infrastructure (roads, etc), was assigned to Administration of Oil & Gas Committee (Holbrook), as well as the rules for well-closure, site reclamation, post-closure monitoring and financial assurance. Any other matter deemed "necessary for implementation of a modern regulatory program" was assigned to the Rules Committee (Pickle). The Environmental

Standards Committee (Rao) was given the responsibility for prevention of pollution of water supplies and protection of water quality, air, and soil.

9. Stakeholders. Womack does not see this as productive, but since the “public” deals with DENR through stakeholder groups, DENR can organize a stakeholders committee and manage it independently. It will not be part of MEC process. ONLY invited stakeholders will be allowed to present at MEC meetings, per Womack. DENR staff can present stakeholder “concerns” to full MEC. Trickle up??

Diana Hales, retired