

January 25, 2013, Mining & Energy (Fracking) Commission notes
Chair, James Womack *absent*, Vice Chair George Howard conducted meeting

1. This is the main meeting with committee reports from preceding day's activity. Howard introduced new DENR Assistant Secretary, Mitch Gillespie [*former NC House rep from McDowell County, and key player in the MEC legislation*] who said, "This can be done safely."

2. Water and Waste Management Committee, Chair, Vik Rao. Five areas for further investigation: (a) Treatment of flowback water, and can it be reused. Cost differences between reusing flowback or disposing of it; (b) Wastewater reuse, defined by state and see what need to revise in law; (c) What incentives will encourage alternate water sourcing instead of relying on fresh water; (d) Best practices for water storage, both fresh and water for reuse. Howard asked if any controversy in this committee. Rao, nothing contentious. Expects DENR to have first draft of rules by Feb, to committee. All communications go thru staff so individual committee members are not discussing privately among themselves. DENR staff will take all committee member comments, color code and incorporate them, provide this to Chair. (NOTE: *The Attorney General's staff, Jeannie Hauser, is present at ALL these meetings to remind the members that they can have no "off-the-record" conversations/emails among themselves...dialog must be in public session*). Marva Price asked if there are alternatives to the high volumes of water needed. Rao said need to "incentivize" new technologies replacing dependence on water. Howard says this technology is getting "safer and safer."

3. Administration of Oil & Gas Committee, Chair, Charles Holbrook. Only has 7 members and this committee is responsible for 17 legislative requirements. Each member has been assigned several areas and is to write draft rules and send to Holbrook...he will integrate the document then discuss at next committee meeting, March 7. He said some overlap with Rao's group on Water and Waste Management because of pits and linings for holding water and wastewater fluids. He said has asked DENR to research 3 states on Best Engineering Practices. He wants to consult an engineer in Raleigh. He says construction standards for well integrity drives the train and no *loss of fracturing fluid through casings* should result.

4. Environmental Standards Committee, Chair, George Howard. Complained about DENR providing too many large packets of information and asked DENR staff to reduce the time of presentations to his committee [*this is background info, some of it complex*] so his committee can spend more time in discussion. Vik Rao suggested DENR have fewer PowerPoints and distribute their presentations prior to the committee meetings. Howard said permit will require great deal of testing since operator has "presumptive liability" for water problems within 5,000-ft. of well and therefore should test every water source in the area, and follow-up in a year. Howard would like to test again in 3 years. Rao said he is impressed with the

number of chemicals used in fracking combined with the fact that few labs can actually test for these compounds. Operators could be required to use tracers for chemicals to clearly identify the contamination compound. Howard wants more money to continue well tests (Duke U and USGS) for pre-drilling characterization. Rao said no one else is doing that. Howard expects to have their first draft rule to the Committee members for their mark-up—which must go back to DENR for integration—and then have full discussion at the March committee meeting, and consider the 11 Stakeholder recommendations [*there were 17, but DENR Asst. Secretary Mitch Gillespie, eliminated 6 of them related to disclosure of Trade Secrets, and notification to surrounding land-owners prior to fracking*]. Question on banning certain chemicals; Rao will assist with aromatic compounds.

5. Rules Committee, Chair, Amy Pickle. Working on session law categories and developed a rough form that follows the flow of this extraction process. Discussed how far along the rule should be before it is sent to this committee. This Committee is to assist and develop rule for clarity and consistency of terms. Praised staff on their work in drafting rules. She is also concerned about identifying gaps in rule areas that the committees may not be catching. Howard asked her to “keep eye” on Legislature for new laws that might impact MEC purview.

6. Local Government Regulation Study Group, Chair, Charles Taylor. They discussed Extra Territorial Jurisdictions (ETJs) in general, reviewed how ETJ is established, and reviewed maps. This group heard from NC DOT who had sent contingent to PA to see first-hand how this industry presents itself in the landscape. There is an average of 1,450 truck trips—per well—over the life of one well. Some questions about bridges, roads, schools and general road safety issues. Next meeting for Study Group is Feb. 15 in Chatham County. The group is looking at other states and how they are approaching local zoning, *ad valorem* taxes instead of severance, noise pollution since the frack runs 24/7 with generators. They have invited feedback, and will take questions from audience, but no dialog.

7. Compulsory Pooling, Chair Ray Covington. Covington said he did allow citizens to speak up at his last meeting, but he was too casual about it and there were many rude interruptions. That will change at the next meeting [*Feb. 8, CCCC, Pittsboro, Multipurpose Room, 9 am*]. Ken Taylor had commented about the differences between conventional gas deposits and “tight” gas deposits expected in our shale formations; reviewed current compulsory pooling rules in NC. A student from NCSU, Alison Saito compared other state laws in this area. James Robinson from RAFI and John Humphrey, land-owner rights attorney, presented a flow-chart on lease and land-owner rights and suggestions. There are questions about insurance and how mortgages are affected by severed estates. Covington said that he wanted to add more members to this study group from the NC Bankers Assoc., NC Insurance Commissioner, NC Real Estate Commission, National Assoc. of Royalty Owners, and an oil and

gas expert. *[For more on this discussion and specifics proposed to protect surface owners, see my email dated Jan 25, 2013, Subj: Notes Jan 11 MEC-Fracking-Compulsory Pooling].*

8. Funding Levels and Sources Study Group, Chair Jane Lewis-Raymond. Her group had not met, and was scheduled for Jan 31. Some overlapping topics between her group and Local Government Regulation Study Group.

9. DENR Presentations from other Programs covering aspects of Oil and Gas Exploration and Development. *[George Howard's info overload]*. Div. of Waste Management, Dexter Matthews. Their job is hazardous waste from generation to disposal, BUT Environmental Management Commission exempts oil and gas production, except solvents. The 40 municipal landfills cannot accept hazardous waste; there are some permitted industrial landfills that can handle it. They must have leachate protection, safe transportation, storage at site. Says NC does not cover this area very well, and specifically excludes mining waste from the solid waste regulations. Holbrook said in drilling a well, the drill cuttings are ground up rock and mud that are run across a shaker to separate...this product can be left on site, or transferred to municipal landfill. Matthews said the MEC should consider regulations for (1) disposal facilities that are allowed to take solid waste drillings, which might be contaminated; AND containment rules to be followed at the drilling site. Charlotte Mitchell asked if the fracking fluid residuals, when returned to the surface after the frack, are considered hazardous waste. NOPE, and it is exempt from law. If the return fluid picked up radioactivity, that would be considered "hazardous waste" and is regulated by the NC Commission for Public Health.

Div. of Water Quality, Check Wakild. His division regulates wastewater discharge and storm water, does extensive water monitoring, and manages a state revolving fund to provide money to local governments. Environmental Management Commission (EMC) is developing stormwater management rules for these drilling sites in 2014. Meeting on Feb 25 to get input from stakeholders, then a second meeting. Targeting Sept EMC meeting for proposed rules and fiscal note for Legislator. Will hold public hearings Jan and Feb 2014 for these proposed rules. Vik Rao asked if fracking water was reused, was it considered wastewater? No, as long as it stays on site it is not "wastewater" and is not regulated until it must be disposed. Could be managed as part of stormwater management plan. Amy Pickle [EMC member] said the EMC has issues on the disposal side to meet current industrial standards. Wakild said there would need to be "pretreatment requirement" and NC rules are OK, but they are waiting on the comprehensive EPA rules that should be issued in Oct. 2014, because that could affect NC. Also said stormwater management plans might encompass wetlands...which would require 401/404 permits if that is where a drilling pad, roads are to be constructed.

10. Howard “wrestling” with Stakeholder’s committee that DENR has set up. He says it is too much of a media forum, and people “grandstand.” Vik Rao said DENR has found the Stakeholders are a useful means to get input, but it should be clear that this is a separate process from the MEC. Gillespie supports the Stakeholders Group. Rao asked how stakeholder’s should interact? Holbrook reiterated his policy of people sending him, as chair of a committee, a two-pages “informed” comment and he may allow a 3 minute presentation at his committee meeting. Howard does NOT like the media reporting, and not like people speaking up. Jane Lewis-Raymond said she would like a more formal Stakeholders connection to the MEC. Ray Covington said it is important for stakeholder’s views. *[Note: most of the Stakeholders Committee members are state agency staff, not public.]* Amy Pickle said there is a continuing discussion on validity of the process and different areas of expertise are involved...not just oil and gas. Landowners are still absent from the Stakeholders Committee and will be directly affected. The pros outweigh the cons of having a Stakeholder’s group. As to media interest, that is not unusual. George Howard requested DENR to provide a public information officer JUST FOR THE MEC to present “a positive image” and send a news release after every meeting. Pickel said the Minutes are available to the press, don’t need a news release. Howard charged DENR with not doing their job. *[really???*

Diana Hales, retired