

**NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION**

Minutes of July 9, 2015 Meeting

The North Carolina Environmental Management Commission met on Thursday, July 9, 2015 in the main floor hearing room in the Archdale Building, Raleigh, NC. Commissioners present were:

Gerard Carroll, Chairman
Charlie Carter
Tommy Craven
Dan Dawson
Charles Elam
E.O. Ferrell
Kevin Martin
Bill Puette
Larry Raymond
Bob Rubin
Butch Smith
John D. Solomon
Steve Tedder
Julie Wilsey

Commissioner Anderson was absent from this meeting.

Commission Counsel Jennie Hauser was also present. Jill Weese, AG's Office was also present.

I. Preliminary Matters

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

Chairman Carroll informed everyone that the thunderstorm last night caused some problems with the IT system in the conference room, and there would be audio but no video of the presentations. If necessary, access to the powerpoint presentations would be available on the website. He then welcomed Mr. J. D. Solomon as a new member to the EMC. Chairman Carroll stated that at the conclusion of their regular business of the meeting, the EMC would go into closed session for discussion with Counsel. He also indicated that there would be a short session of the Steering Committee immediately following the closed session.

II. Approval of Minutes

Chairman asked for approval of the minutes from the Commission meeting on May 14, 2015.

Commissioner Dawson moved that the minutes be approved and also he commented how well the minutes

were well prepared. He stated there had been several discussions about what level of detail the minutes should have and he felt that we've got it now and he appreciated it.

Chairman Carroll responded that he was glad to hear that and the credit for that went to Lois and Counsel Hauser.

Commissioner Puette seconded the motion and the motion carried.

Chairman Carroll commented that Commissioner Tedder had suggested to him to get an update on legislation that has either passed, or pending that could have impact DENR or the Commission. Carolyn Daly presented that update. Little information was presented, since the legislature was still in session. Chairman Carroll asked Ms. Daly to return to the September EMC meeting with another update which she agreed to do.

III. Action Items

Agenda Item: 15-23 Hearing Officer's Report on Permanent Amendments to Clarify Applicability of Prevention of Significant Deterioration (PSD) Rule for Greenhouse Gases and Title V Applicability Rule (528)

Ray Stewart, Regional Compliance Supervisor with the Division of Air Quality at the Winston-Salem Regional office presented this action item concerning the hearing officer's report on permanent amendments to clarify applicability prevention of significant deterioration rules for greenhouse gases. A public hearing was held in Raleigh on June 9, 2015 to take public comments on permanent amendments to Prevention of Significant Deterioration Requirements for Greenhouse Gases and Rule 15A NCAC 02Q .0502, Applicability. These rules were adopted as temporary amendments that become effective on December 2, 2014. The public comment period for the permanent amendments closed on June 15, 2015. On June 23, 2014, the United States Supreme Court issued a decision in Utility Air Regulatory Group v. Environmental Protection Agency addressing the application of stationary source permitting requirements to greenhouse gas (GHG) emissions. In its decision, the Supreme Court said that the EPA may not treat greenhouse gases as an air pollutant for the purposes of determining whether a source is a major source required to obtain a Prevention of Significant Deterioration (PSD) or Title V permit.

In 15A NCAC 02D .0544, prevention of significant deterioration requirements for greenhouse gases is proposed for amendment to remove the requirement that major stationary sources obtain a PSD permit on the sole basis of its GHG emissions. The rule was also proposed for amendment to update global warming potentials for greenhouse gases.

In 15A NCAC 02Q .0502 applicability is proposed for amendment to remove the requirement that facilities obtain a Title V permit on the sole basis of its GHG emissions.

On July 24, 2014, Janet G. McCabe, Acting Assistant Administrator, EPA Office of Air and Radiation, and Cynthia Giles, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, issued a memo outlining EPA's next steps for the agency's GHG permit program. In the memo, they wrote that the EPA will not apply or enforce the following regulatory requirements: (1) Federal regulations or the EPA-approved PSD State Implementation Plan (SIP) provisions that require a stationary source to obtain a PSD permit if GHG are the only pollutant (i) that the source emits or has the potential to

emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (e.g., 40 CFR 52.21 (b)(49)(v)), and (2) Federal regulations or provisions in the EPA-approved Title V programs that require a stationary source to obtain a Title V permit solely because the source emits or has the potential to emit GHG above the major source thresholds. The EPA does not interpret the Supreme Court decision to preclude states from retaining permitting requirements for sources of GHG emissions that apply independently under state law even where those requirements are no longer required under federal law. However, under North Carolina G.S. 150B-19.3(a), an agency may not adopt a rule that imposes a more restrictive standard, limitation or requirement than those imposed by federal law or rule. Under G.S. 150B-19.1(a)(2), an agency shall seek to reduce the burden upon those persons or entities who must comply with the rule. Under G.S. 150B-19.1(a)(6), rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner. The fiscal note was approved by the Office of State Budget and Management (OSBM) on March 13, 2015. The fiscal note estimates fiscal impacts of approximately \$46,000 annually starting in 2015 and increasing with inflation each following year. An affected facility's annual cost savings would be the difference between that year's Title V permit fee and the \$1,500 annual synthetic minor permit fee. The fiscal impact to the State would be the equivalent loss of those annual Title V permit fees for the facilities that were required to submit a Title V application under the current rule. One comment was received on the proposed rule amendments during the public comment period. The commenter commented that North Carolina's revisions to its rules appear consistent with the U.S. Supreme Court decision but cannot confirm DAQ's rule revisions will be sufficient to obtain EPA's approval until EPA undertakes its own revisions to federal regulations to address the Supreme Court's decision. No changes were made to the proposed amendments as presented in Chapter IV of this hearing record.

As the hearing officer, Mr. Stewart recommended that the proposed amendments as presented in Chapter 2 of the hearing report be adopted by the EMC. Chairman Carroll asked if anyone had questions or comments for Mr. Stewart.

Commissioner Carter wanted to ensure that the EMC that they were putting in place the permanent rule to accomplish what they did at a temporary rule that would expire shortly. He indicated that they were not replacing it with the permanent rule, but following on an identical rule to one that they previously adopted last fall.

Commissioner Rubin asked Mr. Stewart how many permits were in North Carolina that were GHG only, permits. Mr. Stewart referred the question to Mr. Patrick Knowlson who indicated that they found four in the fiscal note associated with the hearing that would affect them if they did not amend the rule to remove that requirement for GHG.

Commissioner Carter commented that there were four that were currently in the system. But what this was mostly aimed at was not to point folks additionally into the system but it would strictly be pulling for GHGs. He indicated that they would have to project what might be going forward but didn't have that information now. Chairman Carroll stated asked for a motion to approve the fiscal note and asked Counsel Hauser if that could be a part of the motion.

Counsel Jennie Hauser stated that it could be part of that motion, but needed a motion upon recommendation of the hearing officer to adopt the permitted rule and approve the fiscal note.

Commissioner Carter moved to adopt the recommendation of the hearing officer and approve the

fiscal note that accompanied it. Commissioner Rubin seconded. There was no further discussion. Vote was unanimous.

Agenda Item: 15-24 Hearing Officer's Report on Revisions to Reflect S.L. 2014-120 Repeal of Source Reduction and Recycling Reporting Requirement (530)

Ray Stewart was the hearing officer for this item and indicated a public hearing was held in Raleigh on July 9, 2014, to take public comments, the source reductions and recycling reporting rules. The comment period closed on June 15, 2015. Mr. Stewart presented an explanation of the revisions in this matter. He began by stating that the current reporting requirements in Rule 15A NCAC 02Q .0200 - Permit Fees, .0300 - Construction and Operating Permits, and .0500 - Title V Procedures specified that sources submit a written description of their current and projected plans to reduce emissions of air contaminants by source reduction and recycling with their air permit applications. At the conclusion of the 2014 legislative session, the General Assembly enacted S.L. 2014-120, the Regulatory Reform Act of 2014. Section 38(c) of the Session Law repealed G.S. 143-215.108(g) which was the underlying requirement that sources submit a written description of their plans for source reduction and recycling. It was determined that this requirement was unnecessary and its repeal reduced burden on permit applicants.

He further discussed Rules 15A NCAC 02Q .0206, Payment of Fees, .0304, Applications, and .0507, Application, which needed to be amended to reflect the session law repeal of the requirement. The Division of Air Quality completed a regulatory impact analysis per the requirements of the Administrative Procedures Act. The analysis was reviewed by the Office of State Management and Budget and determined no fiscal note was required. The rule amendments did not cause substantial economic impacts as defined in the APA in N.C.G.S. 150B-21.4(b1), and had little to no impact on state or local governments. No public comments were received during the comment period.

As hearing officer, Mr. Stewart recommended that the proposed amendment as presented in Chapter II of the hearing report be adopted by the Environmental Management Commission. Commissioner Ferrell made a motion that the EMC adopt the hearing officer's recommendations as presented. Commissioner Wilsey seconded. There was no discussion and the motion passed.

Agenda Item 15-25: Hearing Officer's Report on Revision to Ambient Standard for Particulate Matter (PM2.5) (524)

This matter was also presented by Mr. Ray Stewart who was the hearing officer for this matter. He indicated that he was there to request adoption of the hearing officer's report on the revision to ambient standard for particulate matter 2.5. He further stated that a public hearing was held in Raleigh on June 9, 2015 to take public comments on amendments to Rule 15A NCAC 02D .0410 to update the ambient standard for PM 2.5., and the public comment period was closed on June 15, 2015. The Office of State Budget and Management reviewed an analysis for the proposed amendment to Rule 15A NCAC 02D .0410 in accordance with G.S. 150B-19.1, 150B-21.4, and E.O. 70. The analysis was certified by OSBM on August 15, 2014 and the proposed rule amendment was determined to not require a fiscal note. The EMC approved the analysis at its November 2014 meeting. The sole comment was from EPA Region 4 noting that they had completed their preliminary review of the proposed amendments and had no other comments were received during the public comment period. No changes were made to the proposed rule as presented in Chapter IV of this hearing record.

As the hearing officer, Mr. Stewart recommended that EMC adopt the proposed amendments as

presented in Chapter II of the hearing report.

Dr. Raymond commented that although this was moving in the right direction for PM2.5 criteria, there was recent data suggesting that even lower values are associated with heart attack and some other well defined health effect.

Chairman Carroll asked for a motion to approve the hearing officer's recommendations. Commissioner Raymond made a motion that the EMC adopt the hearing officer's recommendations as presented and Commissioner Puette seconded. The motion carried.

Agenda Item 15-26: Request to Confirm Recommendation to Reappoint Members to the Water Pollution Control System Operators Certification Commission

Steve Reid, Supervisor, North Carolina Operator's Certification Program in the Division of Water Resources reported this item. He requested the EMC's approval of the reappointment of three seated members as noted: Mr. Tim Bannister, Mr. Troy Perkins and Dr. David Lindbo. All were approved by DENR Secretary Don van der Vaart and all had confirmed their willingness to continue to serve the Wastewater Water Operators of the state.

Commissioner Martin made a motion that the EMC reapprove the reappointment of the three individuals named. Commissioner Tedder seconded the motion. There was no further discussion and the motion passed.

Agenda Item 15-27 Request for Adoption of Hearing Officers Recommendations on Proposed Adoption of 15A NCAC 02B .0295 (Consolidated Buffer Mitigation Rule) and Approved Fiscal Note Addendum in accordance with NCGS 150B-19.1

Sue Homewood, Division of Water Resources, gave a brief history of the rule and this process started in 2006. She discussed that Statute 143-214.20 passed, which required the Division to adopt rules concerning alternative measures of buffer mitigation. There was a stakeholder process from 2009 to 2010 that involved multiple stakeholders. This rule was presented to the Water Quality Committee 11 times between 2009 and 2012. A permanent rule was passed by the EMC in May 2013, however, when it went to the RRC, it received 10 letters of objection. The General Assembly stepped in and passed Session Law 2014-95 which required the EMC to adopt a specific mitigation program requirements rule which was adopted as a temporary rule. The EMC did adopt that rule and it became effective October 24, 2014 and will expire later this month which is why they are currently working on a permanent rule. In January the EMC approved sending this permanent rule to public comment. The public notice was issued February 17, 2015. But the public comment period was from February 17 through April 17. 10 written comments were received. There was a public hearing in March in Raleigh. No oral comments were received at the public hearing.

Ms. Homewood continued to describe and explain this rule. She discussed the modifications that were being recommended by the hearing officer in his report based on the public comments received.

She also pointed out during the public comment period that a section of the rule wasn't clear whether it was approval of an individual site or approval of a technology. She clarified that it was approval of a technology that could then be used by other sites. She also clarified exactly how to go through that EMC

approval process.

After Ms. Homewood presented this item, Commissioner Tedder, the final hearing officer who replaced Commissioner Anderson, stated that this had been a lengthy ordeal. He indicated that staff had done an excellent job getting to this point working through the comments and stakeholder report. As hearing officer, he made a motion that the EMC approve of the document as well as the fiscal note provided. Commissioner Martin seconded.

Chairman Carroll asked if there was further discussion.

Commissioner Carter stated that he was looking at the comments and responses on A-6, page 4 because the comment was that someone was trying to use a commercial buffer mitigation bank for local buffer regulations and they couldn't do it. It looked like they were in a bit of a catch 22 because the response seems to say if the state can't do it, but the comment says the city wasn't delegated the authority for this mess. Is there a way to fix this in these current rules? Is it a question that they just didn't receive sufficient delegation to do that at a local level?

Sue Homewood responded that it was the those buffer requirements that are beyond what the state has required, so where local government could be more stringent and have requirements to do buffer mitigation, where the state doesn't require it, then these rules couldn't be used in the in lieu Fee Program. The In lieu Fee Program couldn't be used to provide those mitigation credits. That's something that our legal counsel has commented on. It's beyond the scope of this rule here. It's how it's set up legally in their program.

Commissioner Carter asked if this was something the locality would have to adopt?

Sue Homewood replied yes and stated that someone would have to provide a different type or some other mitigation way to satisfy the mitigation for the local governments.

Commissioner Kevin Martin elaborated on comments to Commissioner Carter's questions and comments. He indicated that there are a lot of situations where local governments are going way beyond the state minimum requirements. He further stated that it was not appropriate for the state division mitigation services or whatever, to allow them to purchase into their credits. Therefore they sufficiently delegated to run the state program, but when they go beyond the state program with rules that the EMC have nothing to do with, then if they would require mitigation for buffers to a zone 3 which they don't have, then they can set up any kind of mitigation buffer program they want to. It basically has absolutely nothing to do with the EMC and the state and they need to stay completely out of it. It's sort of created an unanticipated complication when the locals did that, and it actually stopped some projects because they adopted these rules, required mitigation and had no mitigation program. It was really poorly thought out and poorly done and the EMC needs to stay clear from that.

Commissioner Smith asked if it was ten credits or a thousand credits, what was the actual cost of the buffer mitigation credit to whoever would be doing it?

Ms. Homewood stated that would depend on if they were purchasing that credit from a private mitigation bank that could set their own fees or from the State Division of Mitigation Services. She commented that yes it was EEP and their schedule of fees was set by rule or statute, however she didn't know which.

After further general discussion, Chairman Carroll stated that a motion was on the table and it had been seconded. The vote was in favor of the motion and the motion passed.

Chairman Carroll thanked Ms. Homewood and in particular, Commissioner Tedder who volunteered to finish this matter by being the hearing officer, due to Commissioner Anderson's accident.

Agenda Item: 15-28 Request Approval of 2014 Tar-Pamlico River Basin Water Resources Plan

Ian McMillan with the Water Planning Section reported on this matter and stated that he was there to request approval for the 2014 Tar Pamlico River Basin Plan. Mr. McMillan presented a brief presentation on the General Statute requirements, a brief introduction to the Tar-Pamlico Basin, the current Estuary status, the TMDL goals, the upstream subbasin trends, the nutrient sensitive water strategy and recommendations.

Commissioner Tedder asked Mr. McMillan if he could elaborate on the NC General Statute Chapter 143, Article 21 § 143-215.8 because it was driven based on flows, that he indicated they were operating under regarding the basin wide plans.

Mr. McMillan stated that Tom Fransen, Water Planning Section Chief had created a table that basically laid out the charge to the Commission regarding what the EMC would be voting upon approval of the plan. The Commissioners continued to discuss their comments and concerns regarding this matter with Mr. McMillan and Ms. Nora Deamer, River Basin Planner for the Cape Fear and Neuse basins.

After further discussion with comments and concerns from the Commissioners with the staff, Commissioner Tedder made a motion that the EMC approve the plan to move forward. Commissioner Carter seconded the motion.

Chairman Carroll asked if there was further discussion. He commented that he was in agreement that the EMC vote to approve the plan. He stated that there were two issues, of which one issue was the poultry aspect the other was the legacy aspect of the matter.

He made an amendment to Commissioner Tedder's motion that if the motion passed to approve the plan, it would be with the proviso that staff come back to the Commission on an annual basis to report on the progress in dealing with those two particular issues. We would get an annual look at those two issues only and to see what had been done, what progress had been made without complicating the matter too much, and see whether there was something else that should be done. Commissioner Raymond seconded. The Chairman then asked for discussion.

Commissioner Dawson responded to Commissioner Raymond's amendment stated that he felt that the EMC was trying to cover too much in one vote. He commented that first item was the primary motion that was originally made. However, there were other issues that they should discuss before completion of the discussion and possibly some other actions that they needed to address. He stated that what

concerned him was Mr. Tedder used the word poultry, but didn't know that he was really trying to single out anything other than agriculture or nonpoint. He asked if that was correct and Commissioner Tedder stated that yes he was singling that out a bit.

Commissioner Dawson indicated that he was looking at in a broader sense and would prefer that it just be pointed out that the nonpoint agricultural runoff and potential for sources of pollution be somewhat evaluated. He stated that it would accomplish the same thing but would not limit it to poultry. He further stated he was speaking against Commissioner Raymond's amendment in favor of the primary motion so that the EMC could come back and talk about what else they could do if approved, after they have approved Mr. Tedder's motion.

There were further comments from Commissioner Solomon and Commissioner Tedder in response to what Commissioner Dawson had stated.

Chairman Carroll restated the proposed amendment which was that if the EMC approved the plan it would be with the proviso that the Department come back on an annual basis and report to the EMC on two specific issues: the poultry issue as far as general information on that and what had been learned in the legacy area. That did not preclude a whole bunch of other things. Commissioner Dawson and Commissioner Solomon opposed the motion. The motion passed.

The Chairman further stated that now there was a motion on the table to approve the Tar-Pamlico river basin water resources plan as amended. He asked for any further discussion on this matter. Commissioner Dawson made motion to change the word "poultry" to "agriculture". Commissioner Solomon seconded the motion. There was no discussion and the motion passed with two in opposition of the motion.

Chairman Carroll then asked if there was any further discussion on the current motion which had been amended to include a requirement to report back on an annual basis on the two issues, legacy and agriculture. One opposed the motion and the motion carried. The plan was approved.

Commissioner Raymond stated that this should get front and center attention including looking to other states poultry producers as to solutions including use of poultry waste as a source of energy, which the State of Maryland was looking at. He made this in the form of a motion and asked staff to include this in their research going forward. Commissioner Rubin seconded the motion.

Chairman Carroll asked for a vote and the motion passed unanimously.

Commissioner Carter made one last point that the Air Division had done a fair amount of work on the use of poultry waste and he recommend that the Water Division talk to the Air Division.

Agenda Item 15-29: Request Approval of the Tar-Pamlico Phase IV Agreement

John Huisman with the Nonpoint Planning Branch reported a brief summary of the Tar-Pam Phase IV Agreement and that staff was requesting approval this agreement. He stated that that this agreement was one component of the Nutrient Management Strategy for the same river basin, the Tar-Pam River Basin. Mr. Huisman explained. He provided the Commission with the process and changes to the agreement. He indicated that had received the signatures from the different parties from the Division, the Director, and the

Department of Agriculture and from the Association.

Chairman Carroll asked for comments or questions.

After questions, comments and discussion from other Commissioners with Mr. Huisman regarding this matter, Commissioner Tedder made a motion to approve the Phase IV agreement. Commissioner Martin seconded.

Discussion continued between the Commissioners and staff. Chairman Carroll asked if there was any further discussion and for vote on the motion to approve the plan.

Commissioner Dawson asked Mr. Huisman if the agreement was a three party agreement. Mr. Huisman responded by stating that it was a four party agreement between the Division, the EMC, Soil and Water Conservation and the Tar-Pam Association. He also responded to Commissioner Dawson's question whether the provisions to terminate and consequences was a ten year agreement. Further discussion continued between the Commissioners and staff.

Chairman Carroll indicated that there was a motion on the table to approve the Phase IV agreement that's been seconded and asked for a vote. There was no further discussion and the motion carried unanimously.

III. Concluding Remarks

By Committee Chairs

Chairman Carter reported on the Air Quality Committee. He wanted to call attention to the full Commission on something they discussed at the Committee, that they had a short report on the status of EPA's clean power plan, and its likely adoption before the Air Quality meets again in September and would have an informational session. He stated that they were expecting the final rule to have a very short timeframe adoption of a state plan within a year, which would be a very quick action for them to accomplish. He indicated that this matter may be on the schedule for the committee meetings that would be held on September 9.

Chairman Craven reported on the Water Allocation Committee. He stated that their first informational item was a presentation from a consortium of a dozen or so utilities and water producers throughout the state who presented us with a list of about a half dozen suggestions that the EMC might could help them with to lower some of the hurdles toward producing additional water supplies. They've taken that information in and in and they are expecting a presentation from both New Hanover Water District and the Greenville Water District about their programs and their procedures at the September committee meeting. They hope to be working toward another list of specifics from them that they can add to the current list and present that at some time in the future to the full EMC. He indicated that they had a second informational item that related to ecological flows with tremendous discussion and a third informational item with a little background on and forecasting on coming interbasin transfers that the Committee will be seeing in September and possibly in January.

Chairman Martin reported on the Groundwater Committee and they had two action items. The first action item was a request to proceed to the full Commission for approval of proposed amendments to the collection and transportation solid waste which the full Commission should see in September. The second

item was a request for approval to proceed to public hearing and comment on temporary rulemaking for proposed revisions to the definition of the solid waste rule. The committee agreed with that request with some changes to the wording which will come back in September and full rulemaking process will begin on those rules as well. They had an information item on the federal electronic manifest rule which is related to electronically signing permits and things like that. They had a joint meeting with the Water Quality Committee with one item.

Chairman Tedder followed up on Commissioner Martin's comments. The informational item they discussed was a review of the five year evaluation of the variance for the City of Raleigh that was granted by this Commission in 2009. He reported that the staff had gone through the information and they had updated the model. The recommendation was there was no action required but the matter was to proceed and they would bring back additional information whenever necessary, and definitely a five year update to that process, but proceed with the natural continuation as far as the groundwater remediation for that site. He stated the Water Quality Committee had the Tar-Pam basin plan that was discussed by the full Commission as well as the agreement that John Huisman presented to the full EMC. They had two variances, one in Bell Haven and the other near Clayton. Both were approved. They had a good discussion on an information item regarding the upcoming minimum criteria design for stormwater and that would be coming before the Commission in the near future.

By Directors

Director Linda Culpepper reported that the Session Law 2015-1 also updated the definition of computer equipment and televisions in the electronic recycling program area. It added a provision for the recyclers to register with the state so that the State knows where they are located. It would help promote the recycling in that and we can get information out so that folks that want to do recycling know where these locations are as we can provide that information to folks. Secondly, it provides a way to monitor that they are doing things properly in managing the materials.

On the budget side the House and Senate both reduced some of the appropriations in legal services. The Senate also includes cuts to the communication and data funding.

The House gives an influx of just over 2.3 million dollars to the non-commercial UST Trust funds to help address the backlog. The Senate provides almost the same injection of money to the non-commercial Trust fund but it changed it from the source of funding from the motor fuel's tax. It takes it away from a reoccurrence, makes it non-reoccurring and provides 2.2 million as non-reoccurring.

Also, the Mercury Switch Removal Program also diverts the funding from reoccurring to non-reoccurring. It sets zero dollars for 2016, 2017 coming into the program and it's also subject to a continuation review.

The other significant efforts on the way in the Division is that we had a good discussion as Chairman Martin had said yesterday on some new rules in our Solid Waste and Hazardous Waste programs. We are continuing to talk to stakeholders and looking at our rules review process. We want to make sure that we're getting out front because there are some rule sets there that are subject to come before you in 2017 for the rules review process. The last item mentioned was that they're supporting some training with staff working with ITRC and with other states on vapor intrusion. They're hosting a course on petroleum vapor intrusion coming up on next month in August and they are trying to get some additional groundwater modeling training.

Water Resources has done a great effort there to make sure that their staff across the department has some additional training opportunities and get some depth of experience in some of these areas.

Director Tracy Davis reported on some legislative actions that were pending that affect their DEMLR programs under the purview of the Commission. The budget bill, the Senate version House Bill 97 incorporates a Senate Bill 453 Regulatory Reform that didn't cross over that talked about the Sedimentation Control Commission being abolished and put underneath this Commission. Commissioner Martin had mentioned that at the last meeting. That had been put into the budget bill on the Senate side but not on the House side. That's one of the conference issues. But it does repeal the Sedimentation Commission place the responsibilities of the Sedimentation Control Program under the Commission as well as add a civil penalty remission process which the Sedimentation Commission does not have. It also caps a first time violator civil penalty at \$25,000 provided they comply with 180 days of the notice of the violation. There's also a provision for the staff to hand deliver notices of violations to first time violators. If we can't do that within 15 days of the violation or the inspection we can then send it certified mail like we do today. There are quite a few specific provisions on the Sedimentation side that could affect this Commission.

Another thing that's in the budget that affects the stormwater program is we have receipts now that fund positions and help fund the program. The Budget Bill says those will revert going forward. So rather than being able to carry those over on June 30 unfortunately those monies will revert and we'll be at zero and so we will rely on annual collection of the fees to support our positions and a portion of our program. That's a big concern.

As far as the Dam Safety Program, we had asked for two full time equipment positions for emergency action plans, not just for coal ash but for all dams that are higher intermediate hazard across the state. The House version will give us two full-time equivalents and the Senate version will only allocate \$250,000 for a contract services for the next two years.

The stormwater built upon area which has been such an issue for this Commission about gravel has raised its head again. It's the sequel to prior battles on this issue. The built upon definition has now been changed again. It was back to just swimming pools and slotted decks as being the exemption from built upon area. Now has been added 57 stone as designated by the American Society of Testing Materials laid at least 4" thick over a geotextual fabric, as well as a trail defined by the North Carolina Trail Act that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than .001 centimeters per second which is about 1.41" per hour.

We had some concerns with that. We tried to work on that but it passed through the Senate as a revision to the House Bill. It went back to the House and the House concurred so now it is on the Governor's desk for signature. I think it has been there since July 6. With that being said, we'll be back before this Commission and the big kicker for us is that the EMC is to adopt rules to implement that revised definition by December 1 of this year. We are really in the pigeon hole and I don't think we are going to be able to make that deadline, to be honest.

Chairman Carroll – What's the number on this bill?

Director Tracy Davis – House Bill 634. It originated in the House and it did just have the number 57 then it went to the Senate side and they kept that in and added the trails to it on the Senate side but it went back to the House and the Senate approved it on the floor. They concurred and they approved it on the floor.

It's now before the Governor. The worst thing is pretty much a done deal so we're going to go ahead and do the text, do the fiscal note and we're going to try to get the hearing officer's stuff, all the paperwork done as much as we can. We'll try to touch basis with OSBM and say is it possible we can get this approved by September 9 at the latest, but maybe before then if we could possibly before then it might, like you said let it shift approval. But if we don't make the publication sometime in September, maybe September 15 might be a publication date for the register. Then if we miss that window then we will be back to the October 1st publication for the register. We are pretty ambitious with trying to get this to you by September but we will have everything we can so hopefully we can file that day if we have all of the paperwork in order for Jennifer to file for us. I'm going to move quite swiftly and met with a lot of changes or modifications per our input.

Commissioner Tedder – No matter what it already would be in effect. Rather than us going through the formality of adopting a specific rule on this matter there's a process that the legislature has established for rulemaking. I can't help that, the final bill had an impossible date. Personally I wouldn't lose any sleep if we do it in January because that's what you would do if you went through the normal rulemaking process and it's already part of the statute. I really don't see the panic button myself.

Chairman Carroll – I agree with that. I mean it's the legislature that established the rules that we're supposed to be following. This makes no sense.

Commissioner Martin – One point that I would make is there were a lot of things in regulations last year that required reports and this and that by certain dates. We bent over backwards to meet those dates and to my knowledge, the EMC met all of theirs. But there are a lot of other entities that did not, and as far as I know, there were zero ramifications from them not meeting their requirements that were passed in a bill. Secondly, we're meeting early in January and the deadline was December 1. Nobody is going to realize it wasn't done until it's too late and we've done it anyway. So I agree.

Chairman Carroll – Has someone gone back to the legislature and said given the rules that you established, we can't do this. We ought to just tell them that given the rules that have established we can't do it. So change the rules or change the dates, one or the other.

Director Davis – I think that was done during this process but wasn't incorporated into the final bill. But we'll continue to work through the Department to make that message clear that the earliest may be January 2016.

Chairman Carroll – Anything else? By the way does anybody know how much work time load is involved in the Sedimentation Control Commission? How many people and how much time is involved?

Commissioner Martin – I can speak to it because I'm the EMC Representative to the Commission, and obviously Tracy can do it. But we meet not quite as often as the EMC but we do meet about six times a year but if certain things come up that we have to address, we meet more often. Those meetings usually run at least a half a day and it involves anything from approving local programs that want to assume the administering act of reapproving them to reviewing staff reports on their reviews of them as well as a lot of other stuff. My take on it would be if this Commission has to take that on it would be at least a half day of time in addition to what we do now at least six of our meetings. That would assume no unusual things coming up which have happened in the past where the Sedimentation Commission had to meet more often.

Chairman Carroll – Is this the full body of the EMC that would be doing this?

Commissioner Martin – I'm assuming you would probably decide. We would create a committee but then the full Commission would act. I'm assuming that you would create that Sedimentation Control Committee.

Commissioner Dawson – Mr. Chairman in response to your question, I sat on the Sedimentation Control Commission in the late 80s and 90s. I will say this, it's probably one of the most smoothly run programs due to its history going back to the early 70s. It was one of the first Commissions set up, permitting programs set up. If we're told to do this we should welcome it. It's a good program and it's well run. But it is going to add some work to what we have to do.

Commissioner Martin – I would like to say I agree with everything that you said except for welcoming it. I think it's a bad idea for a number of reasons and I have yet to be able to get an answer from what's driving it and why it's being proposed because it's clearly not going to be a cost savings. Most of the Sedimentation Control Commission members get no per diem, no mileage reimbursement. They pay for their own parking. So I have no clue as to why this is even proposed and it's definitely not going to streamline on anything. Tracy, did you say that now there will be civil penalty remissions? The current Sedimentation Control Commission does not do that. When I was factoring my time in I wasn't counting the additional time for civil penalty remissions stuff.

Commissioner Dawson – I've not spoken to anyone about this and I've watched it. I think from the regulated community it's going to be viewed as more efficient because you're going into, right now you've already taken over the stormwater program and you have the Sedimentation Control Program. When you mention stormwater guess where that ends up? Here. So when you deal with Sedimentation Control you deal with Sedimentation Control Commission. To me I think it's designed to make it more efficient for the regulated community.

Commissioner Martin – Maybe that's what they think, but I don't really see it happening but that's neither here nor there. You'll have to decide and then the Commission will probably have to amend their rules to decide how to deal with it. But I assume there would be a committee.

Director Sheila Holman – Thank you Chairman Carroll. I want to first just recognize and thank Ray Stewart for stepping in as the hearing officer on the three DAQ rules that you approved this morning. Mr. Anderson was scheduled to be our hearing officer just prior to his accident so thank you Ray for your work. I also wanted to recognize Angela Terry. She has been a long time employee of the Division of Air Quality and she served in a clerical role to both the Air Quality Committee and helped Lois with the work helping with the EMC. Just want to thank her for her service. She's not here today but I do appreciate all that she has done not only for the Division, but for the Commission.

On the legislative front the Senate budget does impact the Division's budget.

There's a proposal to have two of our revenue streams go to non-recurring funding and we'll need to undergo a continuation review if that portion of the Senate budget is approved. Those two revenue streams are fuel tax and the inspection and maintenance program revenues. Also want to make mention of a portion of the 8765 Regulatory Reform that the Senate passed, and there's a portion that would change how currently the new source performance standards, the Federal air quality rules are adopted. Right now those are adopted by reference when the federal rules are passed. This would require an affirmative adoption. I believe it would also require a re-adoption of all of the federal air standards that have been adopted by reference. Just want to make you all aware that not in the interest of delivering more good news, but just as an awareness measure.

Yesterday I updated the Air Quality Committee members on the status of the Charlotte Redesignation request. The Division sent that request into EPA back in April. EPA proposed approval and that is to move the Charlotte area back to attainment for the 2008 ozone standard. The EPA did receive some fairly significant comments from the Sierra Club, and as I understand the agency is in the process of responding to those comments.

I also gave a quick update on the current ozone season. Right now all of our monitors across the state remain in compliance with the 2008 ozone standard. We're about half way through the ozone season. Our highest design value which is the value that we compare to the standard is at 68. That's in the Charlotte area. The current standard is 75 ppb. So we remain in compliance with the federal ozone standard. We are expecting a new ozone standard to be announced by the EPA Administrator on or about October 1, so we'll give you an update on the new ozone standard at the November meeting.

Finally there will be a lot of time and energy put into the response to the Clean Power Plan, so thanks to Chairman Carter for mentioning the a lot of effort that will go into that, not only on the part of the staff but on the part of the Commission over the coming months. Thank you.

Director Jay Zimmerman – Thank you Mr. Chairman and members of the Commission. I'd first like to thank Commissioner Tedder for helping us to wrap up our consolidated buffer rules and picking up where Commissioner Anderson left off. I'd like to thank the staff for their time and effort and in particular, Sue Homewood and her unwavering support in helping us navigate the rulemaking process and put up with a lot of comments and grief from a number of us. I would also like to thank Ian as well as Heather Patt for their support in helping to pull together the Tar-Pam River Basin report and would like to note for members of the Commission that this is somewhat of a historical approach in our plans. One that I've been told is unique of the Country to combine the quantity and quality aspects of these basin plans, so I just wanted to point that out to you. Lastly, thank John for his work on the Tar-Pam Phase IV Agreement. As far as legislative initiatives, I don't have a whole lot to add to what has been said by my counterparts. Tracy did point out that there was a provision to eliminate permitting associated with linear utility lines, that has been changed to a study and we're thankful that we have an opportunity to look at that and report back to the General Assembly. Beyond that I don't think I have a whole lot to add but I wish to thank you for your support today and your questions and comments with respect to the Tar-Pam Basin.

Chairman Carroll – Any closing remarks by the Commissioners?

Commissioner Tedder – I have a question and Kevin may be the one to ask. I know Director Ellison is not here when we're talk about the legislative updates, but I think there was something in the Senate or House Bill that almost appeared to dissolve the Mitigation Program and turn it over totally to the Bankers. Is that correct or did I read that wrong?

Commissioner Martin – the last version I read, that's basically a yea, being proposed. Let's just say there was quite a bit of discussion and interest in that particularly from the people who buy credits.

Commissioner Tedder – I just want to thank the Division Directors for providing some good detailed information on legislative issues. Thanks.

Chairman Carroll – Yes thanks. Appreciate it. That was very good.

Commissioner Solomon – I'd just like to thank you and Ms. Thomas for helping and coordinating with me, communication, making this a smooth transition into the Commission. Thank you so much.

Chairman Carroll – We'll going to change the order here a bit and put Counsel last. I have just a couple of housekeeping items. I did send out recently an email to all the members about committee assignments because everybody has been on the same committee for two years. If I don't hear back that is fine. I'm not particularly interested in making changes. If you do want to make a change just let me know what you might be interested in changing to and we'll try to accommodate that. Just a brief update on Commissioner Anderson, he was discharged from the hospital. He was in the hospital for 92 days and he is at home still recuperating and doing therapy. From what I understand the prognosis is favorable and positive, but it's going to take some time. We just wish him the best and hope to see him back here soon. That's all that I had. Now I'll turn it over to Counsel to update us on litigation matters and after that we'll need a motion to go into closed session.

Counsel Jennie Hauser – I'm handing out the litigation summary that the Chairman had requested our office prepare. This is the same summary you received in March and in May. I'm just going to hit the high points. I'm going to highlight the changes for you. At the beginning we have the City of Fayetteville. This was filed in time to be recorded at your last meeting. The new change is that we have recently filed your prehearing statement in this matter. Also make you aware that there is a joint motion between the City of Fayetteville and the Public Works Commission and the EMC to modify the schedule that was provided. Order due to remediation but it's very compressed time schedule for the size of this matter and the discovery that might need to take place so all the parties have requested a modified schedule but that has not yet been ruled upon. In the Cape Fear River Watch matter that was at the North Carolina Supreme Court; all of you are probably aware that on June 11 the Court vacated the Superior Court's order and remanded to Superior Court with instructions to dismiss the petitioner's appeal which is their request for judicial review from the EMC's declaratory ruling. So the upshot of that is your declaratory ruling which stands, but the reason the matter was dismissed was due to mootness because of the intervening Coal Ash Management Act which actually addresses the provisions here and I will highlight that this body has, in the interim taken steps to adopt a new rule that would also make moot the issue that was presented for judicial review.

On the House of Raeford Farms v. EMC, this is one of your holdover cases from when you had final decision making authority. It's a civil penalty matter. The oral argument on that matter was held on June 1 and we're waiting for the decision in the case.

In the Hallie Turner v. EMC petition for judicial review, the change here is that the petitioner actually did file their brief on May 29 after your last meeting and your response was filed on July 1. That matter is pending for scheduled for hearing.

No change in North Carolina v. EPA.

In Sierra Club v. EPA just note that the period has now run and that there is a related case which is proceeding in the Eastern district of North Carolina specifically on the SO₂ designations for North Carolina. No change in the EPA v. EME Homer Generation matter.

In Michigan v. EPA on June 29, the Supreme Court reversed the DC circuit and found that EPA erred in its interpretation of the Clean Air Act. The Supreme Court has remanded this matter and EPA will now be required to consider cost in its determination of whether to regulate the EGUs.

There's a new matter, North Carolina Coastal Federation v. Carolina Cement Company and it's new to this listing. It is not a new case. This is one of the many cases involving the Titan facility down on the coastal area. What is of note perhaps for this organization is that the most recent iteration of those decisions at the Superior Court has now been appealed to the North Carolina Court of Appeals. That has not yet been docketed. The record on appeal has not been filed but the Notice of Appeal has been given.

On the back page I note that I've repeated an entry that's on the front page. But I will bring to your attention that on July 7 the DC circuit dismissed the petition for review of the 2010 rule as untimely, and denied North Carolina's petition for review of EPA's decision. That decision was one that rejected North Carolina's request for reconsideration. So everything was deemed to be untimely by the Court in that matter. I just wanted to bring that to your attention.

I have two matters that we'll need to discuss litigation strategies.

Chairman Carroll stated that all their business had been concluded at this point and when they come out of closed session, the meeting would adjourn. There were no other comments in the open session.

Commissioner Martin made a motion that the EMC go into closed session in accordance with North Carolina General Statutes 143-318.11(c) to receive litigation advice from and provide direction to the EMC's attorneys concerning two legal matters as permitted pursuant to General Statutes 143-318.11(a)(3). The two legal matters are: Hallie Turner v. EMC, 15 CVS 2488 and City of Fayetteville and Public Works Commission of Fayetteville v. EMC and DENR, 15 HER 03241. Commissioner Tedder seconded the motion. All voted in favor of the motion and the motion passed.

The Commissioners reconvened the business meeting after 15 minutes. With no further business before the Commission, the Chairman adjourned the meeting at 12:08 p.m.

Approved this ____ day of March, 2015

Gerard P. Carroll, Chairman of the EMC