MEETING OF THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

Raleigh, North Carolina
November 19, 2009
Minutes

The North Carolina Environmental Management Commission met in the Ground Floor Hearing Room of the Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina. Chairman, Stephen T. Smith presided. The following persons attended for all or part of the meeting:

COMMISSION MEMBERS:

Yvonne C. Bailey  Marion E. Deerhake  Kevin Martin  Dr. Charles H. Peterson
Donnie Brewer    Tom Ellis       Dr. David H. Moreau  J. Dickson Phillips III
Thomas F. Cecich  William L. Hall  Jeffrey V. Morse   Stephen Smith
Stan L. Crowe     Freddie Harrill  Mayor Darryl D. Moss  Forrest R. Westall, Sr.
John S. Curry     Dr. Ernest W. Larkin  Dr. David B. Peden

DIVISION OF WATER QUALITY:

Bradley Bennett  Mike Templeton  Jeff Poupard  Coleen Sullins
Ted Bush        Bethany Georgoulia  Rob Krebs    Lois Thomas
Kevin Bowden    Connie Brower     Tom Reeder   Julie Ventaloro
Frances Candelaria  Gary Kreiser  Jerry Rimmer  Adriene Weaver
Alan Clark      Jay Sauber       Jason Robinson  Chuck Wakild
Nora Deamer     Matt Matthews    Gary Saunders  Elizabeth Kountis
Matthew Faerber  Sandra Moore   Bob Sledge  Jon Risgaard

DEPARTMENT OF THE SECRETARY OF STATE: Deputy Secretary Haley Haynes

SECRETARY’S OFFICE:
Gen. Counsel Mary Penney Thompson
Asst. Secretary Robin Smith
Steve Wall

DIVISION OF AIR QUALITY:
Keith Overcash
Michael Abraczinskas
Paul Grable

UNDERGROUND STORAGE TANK:
Ruth Strauss

ATTORNEY GENERAL’S OFFICE:
Frank Crawley
Jane Oliver
Don Evans
Motion (Stan Crowe): With that I make a motion that we adopt the rules amended presented in Chapter 2 of this hearing record. Ms. Deerhake seconded.

Chairman Smith: asked for discussion. Hearing no further discussion the motion passed.

09-54 Hearing Officer's Report on Amendments to the Annual Emissions Reporting Rule to add Greenhouse Gases

Summary (Marion Deerhake): As you may remember on October 28, 2008, Mr. Steven Weber, former member of this Commission, and I held hearings on amendments to the Annual Emissions Reporting Rule for major stationary sources and this included a proposed amendment to add greenhouse gases. The hearing officers report on this amendment was originally presented to this Commission at our May 14, 2009 meeting. At that time the EMC voted to postpone action on the rule until after the 2009 session of the General Assembly. We had concluded there was a potential legislative action regarding greenhouse gases. On September 22, 2009, the USEPA issued a final Greenhouse Gas Reporting Rule. The rule requires suppliers of fossil fuels or industrial greenhouse gases, manufacturers of vehicles and engines, and facilities that emit greater than 25,000 metric tons or more per year of GHG emissions to submit annual reports to the USEPA. Livestock facilities with manure management systems as we just heard on yesterday were originally on this list for reporting if exceeding 25,000 but that has now been exempted.

I would like to take a few minutes to tell you about the process that the hearing officers had gone through a little bit more, and now that Mr. Weber is no longer on the Commission I served as the only hearing officer. Let me give you a few remarks about the decision and the recommendation that I am making for you today. I will also add that we discussed all of these yesterday at our Air Quality Committee meeting and Assistant Secretary Smith presented various climate change strategic actions that are going on at the executive branch level. Today you also heard how it is a key component of the strategic plan for the entire department focusing on understanding climate change, the emissions and promoting adaptation. So today my recommendation as a hearing officer is that there be no action at this time on the proposed rule due to the timeliness of EPA’s final greenhouse gas reporting rule and its 2010 inventory results, the anticipated sufficiency of EPA’s final reporting rule and inventory results, and the absence of North Carolina climate action plan at this time to guide DAQ in this information collection. However, I am recommending that the Division of Air Quality report to the EMC no later than November 2010 on the progress of EPA’s implementation of the greenhouse gas reporting rules, the sufficiency of the data that EPA will provide to states for planning purposes, and the potential impact of any congressional or North Carolina General Assembly legislation that occurs during that time. As we know it appears to be next on the list in Congress after the healthcare reform legislation is addressed. Also report to us on whether North Carolina’s Division of Air Quality believes regulatory action by the EMC would be appropriate to address any gas and information needs in response to legislation. The division believes that they can prepare such a report without a significant consumption of resources during the state’s budget crisis. I would like to elaborate a little bit more on the rationale for this recommendation and
also make it clear that with this recommendation of no action it is my understanding that it does not require a vote by the Commission.

The first point about the federal greenhouse gas reporting rule was that we heard a detailed presentation yesterday from the division staff on the content of that rule. The North Carolina concept was presented and introduced to the committee in March 2008 and the rule went through the public hearing processes in the fall of 2008. When no federal rule had been proposed between the public notice of the North Carolina rule and, the time EPA proposed and finalized its greenhouse gas reporting rule indicating that the new administration is moving at a pace comparable to North Carolina’s proposed program. Although North Carolina planned to collect data for 2009 through its rulemaking the likelihood of that occurring is slim due to the Administrative Procedures Act process. If North Carolina were approved by the Legislature during its 2010 session, 2010 emissions data would be the earliest North Carolina could collect data. This is approximately the same reporting year as EPA’s program year one.

The second rationale is that the 2010 greenhouse gas emissions data collected under the federal rule would be acceptable to North Carolina in a timely fashion. It’s our Division’s understanding that the emissions data being reported to EPA will be in a fashion that will be similar to EPA’s acid rain reporting system. This automated system which has been in place for a number of years successfully provides reporting data to the public online and typically about three months after submittal of the regulated community’s data. The Division of Air Quality considers this three month turnaround to be sufficient for their purposes.

Third, the 2010 greenhouse gas emissions data collected under the federal rule is considered to be sufficient in content for North Carolina’s climate change planning. The Division of Air Quality does not know the full scope of the data that EPA will release at this time to the public and states but at a minimum it would be a cumulative facility numbering year one for 2010 emissions followed by units specific or source specific emission data in subsequent years for key source categories. The Division of Air Quality will be seeking to play an active stakeholder role in working with EPA to determine the most suitable form of data to be released. North Carolina’s division will strive to encourage EPA to release the level of data necessary to address our needs as a state to meet future climate change planning goals.

My fourth point is that North Carolina does not have a climate action plan. We’ve heard today of a number of activities that are moving along through the executive branch. There is a Study Commission at the Legislative level. The Climate Planning Action Group Climate Advisory Action Group was formed and produced a very concrete document of recommendations which I see is noted in the strategic plan as part of their implementation. I’m glad to see that, however I do encourage the Legislative branch to continue to pursue and determine what the most suitable planning is for this state because having an adaptation plan, at least appears to be putting states in favorable positions in terms of congressional legislation that is currently going through the House of Representatives and the Senate.

I close by telling you that there were other options that were explored to this “no action” position. The obvious one was to adopt the proposed rule but this option is considered too great of a duplication of the promulgated Federal Program. When the Division of Air Quality introduced the draft concept to the EMC the division did not anticipate that the federal rule would be promulgated in 2009. After reviewing the information requirements of September 2009 package from EPA, the Division believes that the information collected and reported by EPA will be sufficient for planning purposes.
A second option that we explored was requiring that the facilities who are submitting annual emissions reports to EPA also submit the same information to the Division of Air Quality. Although this would be optimal it’s not technically feasible. This option was considered infeasible because North Carolina’s electronic reporting software will not be formatted like the federal electronic reporting software. Substantial state resources would have to be invested to modify the system to readily accept the online submittals of data from the regulated community.

A third option of the four that we explored was requiring greenhouse gases reporting to North Carolina for at least one to two years until the federal reporting rules were fully implemented and reporting occurred for the year 2010 receiving it in North Carolina by 2011. This option would provide North Carolina short term information to facilitate state level planning. The option was considered economically infeasible for state government to develop and implement a reporting system from a two year period given the state’s budget issues.

The fourth and final option that was considered was requiring the Division of Air Quality to develop a greenhouse gas inventory for the years 2008 and 2009 using only the information resources that they have available currently. The Division of Air Quality receives data from voluntary reporting sources as we heard yesterday and they’re making strong efforts to encourage more voluntary reporting. I think this Commission should support and permit that. These voluntary reporters are excluding the major utilities for 2009 but their data can be compiled from other data sources. EPA’s Clean Air Markets Division already sends the electric generating unit data to the Division of Air Quality. Also, the Division of Air Quality could generate estimates for other sectors given activity data from other information sources such as permits. But the North Carolina Division of Air Quality considered this option and determined it to be economically challenging given the current budget crisis impacts on the division’s resources. Also a quality assurance review of the data means that the results would not be available until early 2010.

So given that we explored a number of options and the rationales associated with the EPA Federal Program that has been promulgated and will be implemented soon, the recommendation is for this Commission not to act at this time but to request updates no later than November 2010, earlier if any significant action occurs that could impact the Commission and the states planning.

**Chairman Smith:** Thank you Ms. Deerhake. Let me also say that at yesterday’s Air Quality Committee meeting we heard a presentation by Ms. Sushma Masemore on the work that EPA is doing on greenhouse gas right now. I commend it to each of you as an extensive and detailed presentation. You should be able to find it on the EMC web page under the Air Quality Committee agenda item from yesterday’s Air Quality Committee meeting. It’s a very good presentation on what EPA is doing right now which substantially informed this recommendation by Ms. Deerhake. Are there questions or comments?

This does not require any action on our part. I do want to commend **Ms. Deerhake and Mr. Weber.** Both of them worked very hard on this and put a lot of time in as did the Division of Air Quality, and Ms. Deerhake particularly in the time since Mr. Weber has no longer been with us. So thank you.