



North Carolina Department of Environment and Natural Resources

Beverly Eaves Perdue  
Governor

Dee Freeman  
Secretary

**MEMORANDUM**

TO: ENVIRONMENTAL REVIEW COMMISSION  
The Honorable David Rouzer, Chairman  
The Honorable Mitch Gillespie, Co-Chairman  
The Honorable Ruth Samuelson, Co-Chairman

JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY  
c/o The Honorable Phil Berger, President Pro Tempore of the Senate  
c/o The Honorable Thom Tillis, Speaker of the House

FROM: Jim Womack  
Chairman of the North Carolina Mining and Energy Commission

Tracy Davis  
Director of the Division of Energy, Mineral and Land Resources

SUBJECT: Quarterly Report on Activities Conducted Pursuant to S.L. 2012-143

DATE: January 3, 2013

Pursuant to Session Law 2012-143, the North Carolina Mining and Energy Commission and the Division of Energy, Mineral and Land Resources shall submit to the Environmental Review Commission and the Joint Legislative Commission on Energy Policy a report on activities conducted and progress made pursuant to Session Law 2012-143 on a quarterly basis. Please consider the Quarterly Report on Activities Conducted Pursuant to S.L. 2012-143 attached as the formal submission of this report.

If you have any questions or need additional information, please contact me by phone at (919) 707-9201 or via e-mail at [Tracy.Davis@ncdenr.gov](mailto:Tracy.Davis@ncdenr.gov).

cc: Kari Barsness, Director of Legislative Affairs  
Mell Nevils, Land Quality Section Chief  
Walt Haven, Energy Program Division Director  
Trina Ozer, Policy Analyst, Office of the Secretary

**N.C. Mining and Energy Commission  
and Department of Environment and Natural Resources  
Quarterly Report on Activities Conducted Pursuant to S.L. 2012-143  
to the Joint Legislative Commission on Energy Policy  
and the Environmental Review Commission  
Jan. 3, 2013**

Session Law 2012-143, the Clean Energy and Economic Security Act, was ratified on July 2, 2012 and reconstituted the North Carolina Mining Commission as the North Carolina Mining and Energy Commission. The Act directs the Mining and Energy Commission to establish a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing treatments for that purpose. The Act also directs the Commission to submit quarterly written reports on the Commission's operation, activities, programs, and progress to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission (Section 1.(h)). The department is also required to report on the progress in developing and adopting the rules required to be adopted by S.L. 2012-143. The quarterly reports shall include recommendations on changes required to existing rules and statutes and any other findings or recommendations necessary for the implementation of this act (Section 2.(m)). This report satisfies both of these reporting requirements for the October – December 2012 timeframe.

Since S.L. 2012-143 became law, the Mining and Energy Commission (MEC) has had four meetings. The first meeting of the MEC, held on September 6, 2012, was primarily devoted to orientation topics. The MEC heard presentations on public records and open meetings law in North Carolina, the ethics requirements of serving on the MEC, the requirements of S.L. 2012-143, the rule development process in North Carolina, and administrative matters such as the budget for the MEC.

At the next meeting of the MEC, held on September 28, 2012, the MEC elected Jim Womack as its chairman. The MEC voted for a vice-chairman, but the vote resulted in a tie and was eventually deferred to the next meeting. The MEC heard presentations from DENR staff on a recommended committee structure for the Commission and a recommended work plan for the development of rules by the October 1, 2014 deadline.

At the third meeting of the MEC, held on November 2, 2012, the MEC approved the draft internal operating procedures presented by the Commission's counsel, Jennie Wilhelm Hauser, with a few changes. The final Internal Operating Procedures of the North Carolina Mining and Energy Commission are included with this report as Appendix A. The MEC also discussed changes to the committee structure presented by DENR staff at the previous meeting and approved a final committee structure (Appendix B) and appointments to each of the committees (Appendix C). The MEC agreed to six committees. In addition to the Mining Committee and the Committee on Civil Penalty Remissions, both of which were set out as

committees of the MEC in S.L. 2012-143, the MEC will have the following four additional committees:

- **Environmental Standards Committee**, which will develop rules on information and data to be submitted with applications for permits to conduct oil and gas exploration and development; collection of baseline data for groundwater, surface water and air quality; appropriate siting standards; chemical disclosure and prohibitions on the use of certain chemicals and constituents in hydraulic fracturing fluids; installation of safety devices and protocols for response to emergencies; identification of the ownership of oil and gas wells, leases, and other equipment and facilities; and if necessary, prohibit the location of wells in the interest of protecting the quality of the water, air, soil or any other environmental resource against injury, damage or impairment.
- **Water and Waste Management Committee**, which will develop rules providing limits on water use, including a requirement that oil and gas operators prepare and have a water and wastewater management plan approved by DENR; management of wastes produced in connection with oil and gas exploration and development, including rules to address storage, transportation and disposal of wastes that may contain radioactive materials; to require certificates of clearance or tenders in connection with the transportation of oil or gas; and to prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.
- **Administration of Oil and Gas Committee**, which will develop rules that regulate pre-drilling exploration activities, including seismic and other geophysical and stratigraphic surveys and testing; regulation of drilling, operation, casing, plugging, completion and abandonment of wells; appropriate construction standards for oil and gas wells; notice, record keeping and reporting; to require surveys upon application of any owner who has reason to believe that a well has been unlawfully drilled by another person into land of the owner without permission; to require the making of reports showing the location of oil and gas wells and the filing of logs and drilling records; to prevent blowouts, caving and seepage; to regulate the shooting, perforating and chemical treatment of wells; to regulate secondary recovery methods; to regulate the spacing of wells and to establish drilling units; to require the operation of wells with efficient gas-oil ratios; and to limit and prorate the production of oil or gas for the prevention of waste.
- **Rules Committee**, which will steer the rule development process by other committees to ensure that work of one committee is not inadvertently duplicated by another committee and that rules that are developed fit together as seamlessly as possible.

At the November meeting, the MEC also discussed various ways to include stakeholder input in the development of rules. Some of the methods discussed by the MEC included encouraging members of the public to contact committee chairs directly and convening a stakeholder group facilitated by DENR.

On December 18, 2012, the day before the MEC's regular meeting, the committees and study groups of the MEC met for the first time.

The Water and Waste Management Committee heard presentations from staff on laws governing water use in North Carolina and potential alternatives to the use of surface water in hydraulic fracturing fluids. The Water and Waste Management Committee directed staff to begin work on drafting regulations related to water management plans for drilling operators.

The Environmental Standards Committee (ESC) heard from staff about the recommendations of DENR's shale gas report related to chemical disclosure of hydraulic fracturing constituents. The ESC was also fortunate to receive presentations from Adam Peltz, an Environmental Defense Fund attorney specializing in chemical disclosure, and Mike Nickolaus, who works with the chemical disclosure registry website FracFocus.

The Administration of Oil and Gas Committee viewed an educational video about hydraulic fracturing from Marathon Oil Company. They also discussed the number of rules assigned to the Committee and discussed ways to divide the work among committee members.

The Rules Committee looked at frameworks for oil and gas rules in other states and discussed ways to adapt those frameworks to North Carolina's existing rules. The Committee intends to draft an initial framework for placement of rules that follows the process of oil and gas exploration and development, from pre-drilling through site reclamation and well closure.

Two study groups also met on December 18 and one study group met on December 19. Each study has partners, some identified in S.L. 2012-143 and others invited by the Committee Chairs. These partners attended and participated in the study group meetings. The study groups discussed the scope of the work ahead of them and timelines for next steps.

On December 19, 2012, the MEC held its fourth meeting. The meeting consisted of administrative updates from staff, committee and study group reports and a presentation from Bill Ritter, Director, Center for the New Energy Economy and Former Governor for the State of Colorado. Governor Ritter, who established Colorado as a leader in renewable energy, advised the Commission on important steps to take to protect the environment and enable public input while pursuing a program to regulate and manage oil and gas exploration.

Additional information about the MEC, including agendas, meeting minutes and audio recordings of meetings, can be found at the Commission's website:

<http://portal.ncdenr.org/web/mining-and-energy-commission/>.

In addition to organizing and staffing the meetings of the MEC, DENR staff has also begun work to establish a robust Energy Program within the Division of Energy, Mineral, and Land Resources (DEMLR). The General Assembly appropriated \$250,000 to DEMLR to hire three staff positions in support of the Energy Program. In the last three months, DEMLR staff has interviewed for all three positions and made offers to candidates for two of the three positions. One of the three new staff members, the Energy Program Supervisor, has already started work. Another new staff member, an Environmental Senior Specialist, will begin work on January 2, 2013. DEMLR staff is currently working on making an offer for the third position, a Geologist/Hydrogeologist.

As noted above, the Department created a website to share information about the activities of the MEC with the public. The website lists meeting agendas, meeting minutes, PowerPoint

presentations from meetings, contact information for MEC members, and other information. A listserv is also available for individuals who would like to receive updates on the MEC and changes to the website. To sign up for the listserv, visit <http://lists.ncmail.net/mailman/listinfo/denr.shale.gas>.

The Department has also received authorization from the Mining and Energy Commission to develop and manage a stakeholder group. The Department will begin coordination of this group in early January.

At this time, the Department does not have any recommendations for changes to existing rules and statutes or other findings or recommendations necessary for the implementation of this Act.

## Appendix A: Internal Operating Procedures of the North Carolina Mining and Energy Commission

INTERNAL OPERATING PROCEDURES OF THE  
NORTH CAROLINA MINING AND ENERGY COMMISSION

ARTICLE I.

Authority

These procedures are adopted pursuant to the authority contained in N.C.G.S. §§ 143B-293.1 through N.C.G.S. § 143B-293.6.

ARTICLE II.

Purpose

The purpose of the North Carolina Mining and Energy Commission ("Commission") shall be to fulfill the duties prescribed for it in the General Statutes of North Carolina, particularly those provided at N.C.G.S. Chapter 74 and Chapter 113, Art. 27.

ARTICLE III.

Membership

The membership of the Commission shall be as set forth in N.C.G.S. § 143B-293.2.

ARTICLE IV.

Officers

Pursuant to N.C.G.S. § 143B-293.4 the statutory officers of the Commission are a Chairman and a Vice-Chairman, which officers shall be elected by the Commission from among its members.<sup>1</sup> The

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<sup>1</sup> In these Internal Operating Procedures references to the officers of the Commission shall be capitalized and references to the officers of committees of the Commission shall not be capitalized.

terms for each office are for one year beginning August 1 and ending July 31. The Chairman and Vice-Chairman may serve any number of terms, but not more than two terms consecutively.

Elections for these offices will occur at the regularly scheduled meeting that precedes July 31, and the report of the nominating committee will be received at that time if not previously received. After the report of the nominating committee is received, the Chairman will receive nominations from the floor for each office and the nominations will be closed for each office before voting for any office takes place.

## ARTICLE V.

### Meetings

Section 1. The Commission shall meet at such time and places as may become necessary to discharge its statutory duties as set forth in the General Statutes. From its creation, effective August 1, 2012, through December 31, 2015, the Commission is required to meet at least twice per quarter; thereafter the Commission shall meet at least once per quarter. N.C.G.S. § 143B-293.5 and Sess. Law 2012-143, Part II, Section 2.(n). The date(s) and location(s) of regular meetings shall be set by the Commission's adoption of a meeting schedule during the course of a regular meeting. The meeting schedule so adopted shall be filed with the North Carolina Secretary of State in accordance with N.C.G.S. § 143-318.12 and any changes to this formally adopted schedule, other than the call of special or emergency meetings, shall be made in accordance with N.C.G.S. § 143-318.12(a).

Section 2. Special meetings and work sessions are allowed at the call of the Chairman or, pursuant to N.C.G.S. § 143B-293.5, upon the written request of at least nine (9) members; provided, timely notice in advance of all special meetings must be given to each and every member of the Commission, and further provided, the notice requirement shall be adequately discharged by letter or



comparable electronic means to the members of the Commission at their last known address. Notice to the public regarding special meetings and work sessions shall be given in accordance with N.C.G.S. § 143-318.12(b) unless it is an “emergency meeting,” in which case notice to the public shall be given in accordance with the provisions of N.C.G.S. § 143-318.12(b)(3).

Section 3. Information concerning the Commission’s meetings shall be posted on the Commission’s website, as provided in N.C.G.S. § 143-318.12(d) and (e).

Section 4. A majority of duly appointed members of the Commission shall constitute a quorum, as provided in N.C.G.S. § 143B-293.2(e).

Section 5. Meetings of the Commission shall be open to the public; provided, the Commission may hold closed sessions where allowed by N.C.G.S. § 143-318.11.

## ARTICLE VI.

### Records Retention and Rulemaking Responsibilities

Section 1. Minutes and other records of all Commission meetings shall be kept under the direction of the Director of the Division of Energy, Mineral, and Land Resources (“DEMLR”), said resources to be supplemented, where possible, by electronic recording. Minutes shall be maintained according to DEMLR’s retention schedule approved by the Department of Cultural Resources.

Section 2. Minutes of the Mining Committee of the Commission and all other committees of the Commission shall be kept under the direction of the Director of the DEMLR, said resources to be supplemented, where possible, by electronic recording. Minutes shall be maintained according to DEMLR’s retention schedule approved by the Department of Cultural Resources.

Section 3. The Secretary of the Department of Environment and Natural Resources ("DENR"), or his designee, shall be responsible for filing all rules (as defined in N.C.G.S. § 150B-2) of the Commission in proper form as required by Chapter 150B, Articles 2A, of the North Carolina General Statutes. The Commission hereby designates DENR's rulemaking coordinator as the rulemaking coordinator for the Commission, reporting to the Chairman of the Commission, pursuant to N.C.G.S. § 150B-21.

Section 4. The Secretary of DENR, or his designee, shall be responsible for filing all reports of the Commission as required by N.C.G.S. § 143B-293.1 and Sess. Law 2012-143, Part 2, Section 2.(j)-(m).

## ARTICLE VII.

### Standard Order of Business

Section 1. The Commission adopts the following as its Standard Order of Business; provided that for any given meeting the order of business may be altered by the Chairman in his discretion, at the request of the Steering Committee, or upon a properly made motion and majority vote in order to more efficiently carry out the Commission's business or for the convenience of the public.

1. Preliminary Matters
  - a. Call to Order by the Commission's Chairman
  - b. Pledge of Allegiance and Moment of Silence
  - c. Reading of Ethics Reminder
  - d. Roll call of Commissioners in attendance and members' disclosure of known actual and potential conflicts of interest with agenda items

- e. Revisions or Additions to Agenda
  - f. Opening Remarks, Ceremonies or Presentations
  - g. Approval of Minutes of Previous Meetings
- 2. Action Items
- 3. Committee and other Status Reports
- 4. Informational Items
- 5. Announcements
- 6. Public Comment
- 7. Concluding Remarks
  - a. Commission Members
  - b. Counsel
  - c. Commission Chairman
- 8. Adjournment

Section 2. Except as provided for in this or other sections of these Internal Operating Procedures, the Commission shall take no actions on rulemaking issues that have not been acted on by the appropriate committee at a scheduled meeting of the committee which was held prior to a previous Commission meeting. The Commission may suspend this rule by the affirmative vote of at least a two-thirds majority of those present and voting.

#### ARTICLE VIII.

## Notice Requirements

Section 1. In accordance with the General Statutes of North Carolina, the Secretary of DENR, or an appropriate designee shall be responsible for the timely issuance of any applicable notices to those parties upon whom the right of legal notice of Commission hearings, meetings, decisions, and official action is conferred.

Section 2. The Commission may adopt special notice procedures as it deems necessary, subject to the requirements of the General Statutes.

## ARTICLE IX

### Appearances before the Commission

The Chairman of the Commission is charged with the responsibility for evaluating all requests for appearance before the Commission for their appropriateness and timeliness for consideration and to assess the ability of the Commission to give full consideration to the item of business proposed if added to previously scheduled agenda items. The chairman of each committee will set the agenda and evaluate requests for appearance for that committee's meetings.

## ARTICLE X.

### Committees

Section 1. Pursuant to N.C.G.S. § 143B-293.2(g) the Chairman may establish committees, standing or special, from members of the Commission to address specific issues as appropriate. The Chairman shall designate the chairman of each committee from among its members and shall be ex officio member of all committees except the nominating committee. A majority of duly appointed

members of committees shall constitute a quorum. The chairman of each standing committee shall report on the committee's activities to the Commission during regularly scheduled meetings.

The Chairman of the Commission shall appoint all members of each such committee and designate the chairman of each committee. A vice-chairman for each standing committee shall be elected by the members of that committee. Members shall serve for a term corresponding to that of Officers or until their successors are chosen; therefore, a new body of committee members shall be appointed beginning August 1 of each year. Vacancies on any Committee shall be filled by the Chairman using the procedures set forth in this Section. Committees may adopt at their discretion any internal procedures necessary to the discharge of their business; provided, no procedures adopted by any committee shall be inconsistent with these procedures or any other rules adopted by the Commission, or with any statutes applicable to the Commission. The chairman of the committee shall report on the work of the committee and shall make any majority recommendation of the committee.

Pursuant to Session Law 2012-143, Section 2(j)-(l), the Commission is to conduct several studies in conjunction with certain named entities and then provide its findings and recommendations to the Environmental Review Commission of the General Assembly on or before October 1, 2013. To fulfill this statutory obligation, three special study committees of the Commission are hereby formed, and the Chairman of the Commission shall appoint one Commission member to serve as the Director of each study committee. The study committees will be comprised of members of the Commission, and a quorum will be a simple majority of the appointed members. The Director of each study committee will ensure that all entities named as participants in the study by Session Law 2012-143 are included in the work of the committee, although only Commission members appointed as members of the particular study committee may vote on findings, recommendations, or reports to be forwarded to the full Commission for consideration.

Section 2. A Steering Committee composed of the Commission Chairman, the Commission Vice-Chairman and the chairman of each of the Commission's standing committees shall be appointed by the Commission Chairman. The Chairman of the Commission shall be chairman of the Steering Committee and the Vice-Chairman of the Commission shall be vice-chairman of the Steering Committee. The Director of the Division of Energy, Mineral, and Land Resources, or his designee, shall be ex officio member of the Steering Committee. The Steering Committee shall carry out such administrative functions as the Commission Chairman may direct and may make recommendations to the full Commission on any matters it deems relevant to the Commission's work, including assignment of tasks to standing committees.

Section 3. The following committees are established as standing committees of the Commission by statute, specifically N.C.G.S. §§ 143B-293.2(g) and 143B-293.6:

The membership of the Mining Committee is prescribed by N.C.G.S. §§ 143B-293.2(g) and it has exclusive authority over matters pertaining to mining and the implementation of the Mining Act of 1971 and the Control of Exploration for Uranium in North Carolina Act of 1983. In addition, the Chairman and the Steering Committee shall refer matters such as requests for declaratory rulings or interpretive statements under the Mining Act of 1971 or implementing regulations to the Mining Committee. The chairman of the Mining Committee shall make all initial decisions concerning the completeness of any matter requested to come before the Mining Committee and shall rule on all motions, including motions to intervene or participate as amicus curiae. The chairman's ruling shall be served upon the applicant, the Department, and parties of record. Notwithstanding this exclusive authority, the chairman of the Mining Committee shall report on the committee's activities to the Commission during each regularly scheduled meeting.

The Civil Penalty Remissions Committee shall make the final agency decision for the Commission on matters involving a request for remission of the amount of civil penalties pursuant to N.C.G.S. § 143B-293.6 and Article XII of these Internal Operating Procedures. Notwithstanding this exclusive authority, the chairman of the Civil Remissions Committee shall report on the committee's activities to the Commission during each regularly scheduled meeting.

Additional one-issue special committees may be appointed by the Chairman of the Commission as needed. In addition, committees may establish sub-committees as needed, which subcommittees shall consist of members of the committee.

## ARTICLE XI.

### Parliamentary Authority

Section 1. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable and not inconsistent with these procedures, and any special rules of order the Commission may adopt, or with any statutes or rules applicable to the Commission.

Section 2. In the event the Chairman excuses himself from participation in any matter due to an actual or potential conflict of interest, the Vice-Chairman shall serve as presiding officer for that matter.

## ARTICLE XII.

### Hearings

Section 1. The Chairman shall appoint any Commission member or members, or appropriate qualified employees of DENR, as hearing officer for any required public hearing to receive comments on regulations or as presiding officer for any public hearing conducted under any statutes applicable to the Commission with the exception of hearings related to receiving public comments on regulations necessary to administer the provisions of N.C.G.S. § 143B-293.2(g), which hearing officer(s) shall be appointed by the chairman of the Mining Committee.

Section 2. In making hearing officer appointments, the Chairman shall consider the geographic location of the hearing, the technical complexity of the matter being considered, the public interest in the matter, and the necessity of having an impartial hearing officer without personal bias.

Section 3. All hearing officers appointed pursuant to this Article shall report their recommendations, along with the record of the hearing, to the full Commission for decision or action, and may move adoption thereof.

Section 4. The appropriate time for public comment on the adoption of rules is during the comment period before the hearing officer; therefore, the Commission will refrain from allowing additional public comment during its deliberations on the proposed rules, since the matter is not then in public hearing. However, the Commission may allow limited public discussion during the agenda item for action on the rule(s) if the circumstances warrant and all positions appear to be adequately represented by those present. Additionally, the Commission provides a separate time during its standard order of business outside of Commission deliberations for public comment.

Section 5. With respect to any individual quasi-judicial matter pending before the Commission, such as requests for remissions or requests for declaratory ruling, all members of the Commission and hearing officers shall refrain from directly or indirectly communicating outside of formal hearing process with any person, party or their representative, regarding issues of fact or law



pertaining to the pending matter unless all parties are provided notice of the communication and given an opportunity to participate therein. This prohibition on ex parte communication also applies to the members of the Mining Committee and the Committee on Civil Penalty Remissions when exercising quasi-judicial powers. This section shall not be deemed to limit discussion of such pending matters among Commission members during an official meeting or to limit discussion among Commission members and state employees not directly involved in investigating or prosecuting the pending case.

Section 6. Declaratory Rulings are governed by N.C.G.S. § 150B-4. Motions filed with the Commission by persons seeking leave to intervene in pending proceedings for declaratory rulings or seeking leave to file amicus curiae briefs shall be referred, with any response timely filed by DENR or the party filing the declaratory ruling request, to the Chairman who shall rule on the motion. Persons seeking to intervene shall establish through their motion that they qualify for intervention consistent with N.C.G.S. § 1A-1, Rule 24. With respect to persons seeking leave to file amicus curiae briefs, the motion should state the nature of the applicant's interest, the reasons why the brief is desirable, the questions of law to be addressed in the brief, and the applicant's position on those questions. The proposed amicus brief may be conditionally filed with the motion for leave. The Chairman's ruling shall be communicated to the applicant, the Department and any party of record. As provided in Article X, Section 3 of these Internal Operating Procedures the chairman of the Mining Committee shall rule on all motions in Declaratory Rulings before the Mining Committee.

#### ARTICLE XIII.

##### Remission Requests

Section 1. The chairman of the Committee on Civil Penalty Remissions shall designate at least three members of the Committee to meet together when necessary to review the remission requests that were unable to be resolved by the Secretary, or his designee, and the violator and have

been delivered to the Committee. The members will conduct a review of the documents comprising each remission request and the Division Director's recommendation before making a recommendation to the Committee on the best manner of handling the individual remission requests when the full Committee meets to make the final decision.

Section 2. After reviewing the record documents for each remission request sent to the Committee, the designated members will make a recommendation of one of the following possible actions:

- a. that no grounds for remission under N.C.G.S. § 143B-293.6 are shown by the record and the civil penalty should be upheld without further oral presentation before the Committee;
- b. that one or more grounds for remission under N.C.G.S. § 143B-293.6 are shown by the record and the civil penalty should be remitted in some amount without further oral presentation to the Committee;
- c. that the chairman, pursuant to Article IX of these Procedures, allow a violator's request for oral presentation before the Committee.

Section 3. The Committee on Civil Penalty Remissions will meet as necessary to consider requests for remission and make the final decisions on such requests. When the chairman has allowed a violator's request for oral presentation, the Committee will hear oral presentation by the violator and the staff of DENR. The violator will be notified of the date, time, and location of the meeting when his oral presentation on the remission request will be heard and the matter decided.

Section 4. By submitting a request under N.C.G.S. § 143B-293.6 for remission of a civil penalty assessed by DENR, the violator agrees, and the Committee recognizes that an evidentiary hearing is unnecessary, that all facts alleged in the assessment by DENR are stipulated, and that the only

issue for resolution is the reasonableness of the penalty imposed. The amount of the penalty will be determined by the Committee in accordance with N.C.G.S. § 143B-293.6 and these Internal Operating Procedures. The recommendation of the Secretary, or his designee, on the remission request shall be the final agency decision unless it is modified by the Committee through a motion and vote of a majority of the Committee members in attendance. The Committee may order the full penalty be paid, accept the recommendation of the Secretary's designee, or reduce the penalty in accordance with N.C.G.S. § 143B-293.6. When a request to make an oral presentation is allowed, parties to the proceeding, but not the general public, will be given the opportunity to address the Committee after the recommendation of the staff is received. Oral presentations are limited to issues of record, and should not exceed five (5) minutes per side unless the chairman of the Civil Penalty Remissions Committee rules otherwise. Pursuant to N.C.G.S. § 143-318.11, the Committee may vote to move into executive session for discussion of legal issues.

Section 5. This Article does not apply to civil penalties issued pursuant to N.C.G.S. Chapter 74, Article 7, The Mining Act of 1971, or Article 8, Control of Exploration for Uranium in North Carolina, which statutes do not provide for a remissions process.

#### ARTICLE XIV.

##### Attendance

Regular attendance at Commission meetings is a duty of each member. Commission members recognize that, pursuant to N.C.G.S. § 143B-13(b)(vi), their position becomes vacant by their ceasing to discharge the duties of their office over a period of three consecutive meetings except when attendance is prevented by sickness.

Pursuant to Executive Order 24 those Commission members appointed by the Governor shall attend at least seventy-five percent (75%) of all regularly scheduled meetings of the Commission during the Commission's calendar year. Failure of a Commission member appointed by the Governor to attend Commission meetings in a manner consistent with Executive Order 24 shall constitute grounds for removal from the Commission for misfeasance, malfeasance, or nonfeasance pursuant to N.C.G.S. § 143B-13(d), N.C.G.S. § 143B-16, or other applicable statutes or regulations. The Director of DEMLR will report on the attendance of gubernatorial appointees annually, at the request of the Governor.

#### ARTICLE XV.

##### Conflict of Interest

Section 1. The Commission is subject to the State Government Ethics Act (N.C.G.S. Chapter 138A), establishing the State Ethics Commission, including any subsequent amendments or editions. The members of the Commission, regardless of appointing authority, are bound by the standards enunciated in the State Government Ethics Act and the interpretations of the standards as developed through promulgations and advisory opinions of the State Ethics Commission.

Section 2. Members of the Commission must police themselves against actual and potential conflicts in the discharge of their statutory duties. In circumstances involving actual conflict of interest, the member must immediately discontinue any involvement in the matter including discussions of the matter with other members of the Commission or staff to the Commission. Members who disqualify themselves for actual conflict of interest must file a written statement with the Chairman of the Commission, which statement will be read into the minutes of the Commission.

Section 3. Members recusing themselves for a potential conflict of interest should make a statement, verbal or written, regarding the potential conflict, which statement will be captured in the

minutes of the Commission. Unless a member of the Commission with a potential conflict of interest places it in the public record, the member must withdraw from participation in the matter. When a member withdraws from a matter due to a potential conflict of interest, no further explanation is required. Should the potential conflict of interest be disclosed in a written document, it must be read into the minutes of the Commission before deliberation or discussion of the matter begins. A member with a potential conflict of interest who decides to participate in the pending matter must disclose, in the Commission meeting when the matter is called as an agenda item the nature of the potential conflict of interest and the reason it does not cause them to withdraw from further participation in the matter.

Section 4. For members appointed by the Governor, Executive Order 34 requires appointees to always act in the public's best interest, without regard to their own financial interests, and to recuse themselves from voting on any matter in which the appointee has a financial interest. Executive Order 34 sets forth a standard to be applied in determining whether the member has a financial interest requiring recusal, as follows:

A member derives a financial benefit from a matter under consideration if the person or his or her spouse (i) has an ownership interest in an entity that is directly affected by the matter under consideration; (ii) will derive any income or commission as a direct result of action on the matter under consideration; or (iii) will acquire property as a direct result of action on the matter under consideration.

Section 5. Members of the Commission may appear to defend themselves if actions are initiated against them by the State Ethics Commission. The record of the Commission member's actions during the Commission meetings may be offered in support of the Commission member's position that he complied with the requirements of the Ethics Act.

#### ARTICLE XVI.

## Voting

Section 1. Except as otherwise specifically provided by other Articles of these Procedures, all Commission members shall be entitled to make motions, second, and vote on all matters coming before the Commission.

Section 2. The Chairman of the Commission and the chairman of any committee may or may not vote on any issue before the body over which that person is presiding. If a tie occurs, the motion fails.

Section 3. The Director or his designee shall record in the minutes each member's vote on all decisions on remissions and rule adoptions, repeals, and amendments. Votes shall be recorded on any other matter when so requested by any member.

Section 4. Motions to call the previous question or otherwise limit debate shall be considered extraordinary measures and shall require the affirmative vote of three-fourths of those members present and voting.

## ARTICLEXVII.

### Amendments

These procedures may be amended at any regular or special meeting of the Commission by a three-fourths vote of the members present; provided that a copy of the amendment must be sent by first-class mail or electronically mailed to each Commission member seven (7) days prior to the adoption of the amendment or otherwise be made available to each Commission member five (5) days prior to the adoption of the amendment.

Effective: November 29, 2012



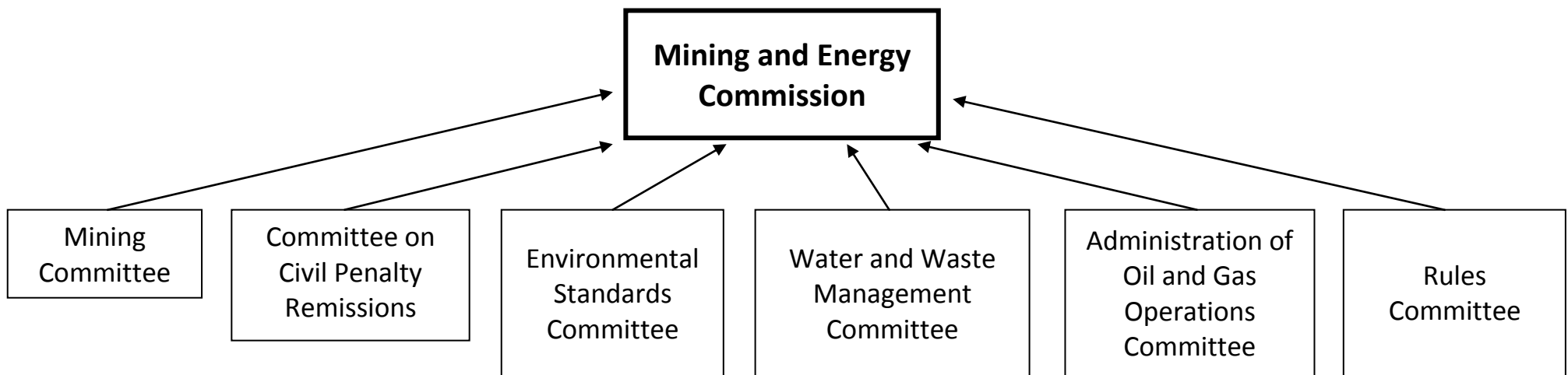
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James Womack, Chairman

Mining and Energy Commission

## Appendix B: Committee and Study Group Structure of the Mining and Energy Commission





**Study #1: Funding Levels and Potential Funding Sources**

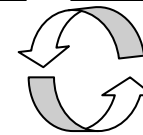
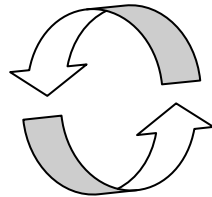
Includes: MEC members, DENR, DOT, N.C. League of Municipalities (NCLM), N.C. Association of County Commissioners (NCACC)

**Study #2: Local Government Regulation**

Includes: MEC members, DENR, NCLM, NCACC

**Study #3: Compulsory Pooling**

Includes: MEC members, DENR, Department of Justice



**Stakeholder Group**

- Members of the MEC
- DENR staff to take notes and facilitate
- 2 representatives of municipalities in the Triassic Basin
- 2 representatives of counties in the Triassic Basin
- 1 county health director from the Triassic Basin
- 3 environmental interest representatives
- 1 agricultural interest representative
- 1 from Consumer Protection Section of the Department of Justice
- 1 representative of Rural Advancement Foundation International-USA
- 1 representative from American Petroleum Institute
- 1 representative from America's Natural Gas Alliance
- 3 scientific and technical experts
- 1 each from the Divisions of Air Quality; Energy, Mineral and Land Resources; Waste Management; Water Quality; and Water Resources
- 1 each from the Department of Transportation, Department of Health and Human Services, Department of Labor, Department of Commerce, Division of Emergency Management, Department of Agriculture and Consumer Services, and Wildlife Resources Commission

## Appendix C: Committee and Study Group Appointments

<b>Committee</b>	<b>Chair/Vice Chair</b>	<b>Other Members</b>	<b>DENR Staff</b>
<b>Mining</b>	Tex Gilmore	George Howard Amy Pickle Dr. Marva Price Dr. Robert Mensah-Biney Dr. Ray Covington	Janet Boyer
<b>Civil Penalty Remissions</b>	Charlotte Mitchell TBD	Jane Lewis-Raymond Jim Womack Dr. Robert Mensah-Biney Charles Taylor	Tracy Davis
<b>Environmental Standards</b>	George Howard TBD	Dr. Ken Taylor Charlotte Mitchell Amy Pickle Dr. Marva Price Dr. Ray Covington Dr. Vikram Rao	Mell Nevils Tracy Davis
<b>Water &amp; Waste Management</b>	Dr. Vikram Rao TBD	Dr. Ken Taylor Charlotte Mitchell Charles Holbrook Tex Gilmore	Trina Ozer
<b>Administration of Oil &amp; Gas</b>	Charles Holbrook TBD	Dr. Vikram Rao Jane Lewis-Raymond Charles Taylor Dr. Ray Covington Dr. Kenneth Taylor	Trina Ozer
<b>Rules</b>	Amy Pickle	Charlotte Mitchell George Howard Charles Holbrook	Tracy Davis
<b>Study Group</b>			
<b>Funding Levels and Potential Funding Sources</b>	Jane Lewis-Raymond TBD	Jim Womack Dr. Vikram Rao George Howard	Mell Nevils Trina Ozer
<b>Local Government Regulation</b>	Charles Taylor TBD	Jim Womack Charles Holbrook Dr. Marva Price Charlotte Mitchell	Toby Vinson
<b>Compulsory Pooling</b>	Dr. Ray Covington TBD	Jim Womack Charles Holbrook Charlotte Mitchell	Trina Ozer Layla Cummings