

History of the State's Oil and Gas Commission

Presentation to the Joint Legislative Commission on Energy Policy
January 9, 2018

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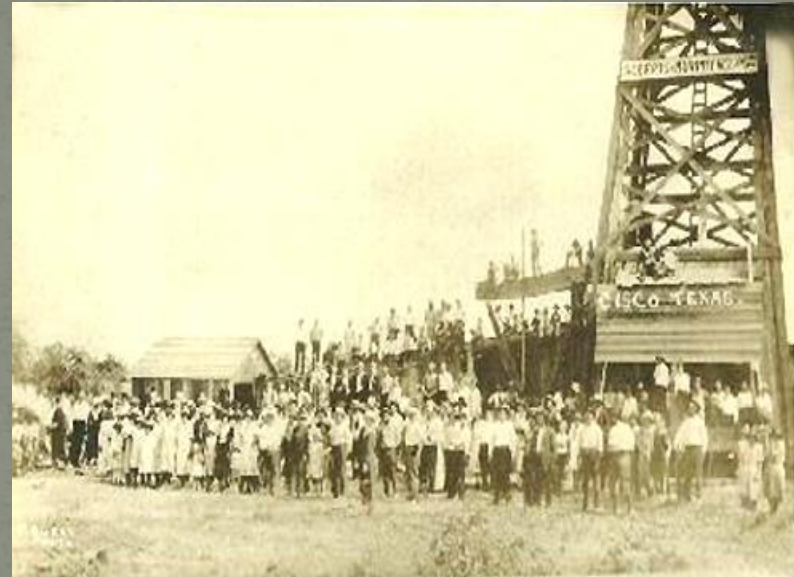
Creation of Mining and Energy Commission

S.L. 2012-143/S820

Clean Energy and Economic Security Act



Origins...



Creation of Mining and Energy Commission (MEC)

MEC directed 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... designed to protect public health and safety; protect public and private property; protect and conserve the State's air, water, and other natural resources; promote economic development and expand employment opportunities; and provide for the productive and efficient development of the State's oil and gas resources.”

- Power and duty to adopt rules necessary to administer the Oil and Gas Conservation Act, and for the development of the oil, gas, and mining resources of the State. The Act specified a host of specific matters for which the Commission was required to adopt rules (appropriate construction and siting standards, limits on water use, waste management, emergency response protocols, etc.).
- Authority to make determinations and issue orders pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to establish drilling units; (ii) require the operation of wells with efficient gas-oil ratios and to fix such ratios; (iii) limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste; and (iv) require integration of interests.

As established by the 2012 legislation, the MEC consisted of 15 members total-- eight legislative appointees, three *ex officio* members (who serve by virtue of holding a specific position — such as the chair of N.C. State University's Minerals Research Laboratory Advisory Committee) , 4 appointed by the Speaker, 4 appointed by the President Pro Tem, and four gubernatorial appointees

Mining and Energy



Oil and Gas Commission Mining Commission

In 2014 the Energy Modernization Act (S786/S.L. 2014-4) eliminated the Mining and Energy Commission and divided its regulatory responsibilities between a new Oil and Gas Commission and a reconstituted Mining Commission.

The new Oil and Gas Commission was established with 9 members, 3 appointed by the Speaker, 3 appointed by the President Pro Tem, and 3 appointed by the Governor.

MEC Rules

Pursuant to the requirements of the 2012 legislation, over the next several years the MEC developed a suite of rules – 15A NCAC 05H – to govern oil and gas exploration and development that were ultimately adopted by the Commission and approved by the Rules Review Commission and became effective in March 2015.

McCrory v. Berger

Suit between the Legislative and Executive branches concerning creation of the Coal Ash Management Commission, the Oil and Gas Commission, and the Mining Commission over whether the legislative appointments to the commissions violated several provisions of the State's Constitution, including the separation of powers clause (N.C. Const. Art. III, sec. 5(8)) and the appointments clause (N.C. Const. Art. 1, sec. 6). The Court held "while the appointments clause itself places no restrictions on the General Assembly's ability to appoint statutory officers, the challenged provisions violate the separation of powers clause."

IN THE SUPREME COURT OF NORTH CAROLINA

No. 113A15

Filed 29 January 2016

STATE OF NORTH CAROLINA, upon the relation of PATRICK L. McCRORY, individually and in his official capacity as Governor of the State of North Carolina; JAMES B. HUNT, JR.; and JAMES G. MARTIN

v.

PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; and, in their official capacities as members of the Coal Ash Management Commission, HARRELL JAMISON AUTEN III, TIM L. BENNETT, D. ALLEN HAYES, SCOTT FLANAGAN, RAJARAM JANARDHANAM, and LISA D. RIEGEL

S.L. 2016-95/House Bill 630

The legislation principally dealt with coal ash matters, including repeal of all provisions related to the Coal Ash Management Commission in the General Statutes but, in response to the McCrory v. Berger decision, also modified appointments and other provisions governing the Mining Commission and the Oil and Gas Commission.

- Modified the appointments to the Oil and Gas Commission by providing:
 - 5 appointments to be made by the Governor subject to confirmation by the General Assembly. The statute sets forth confirmation processes for persons to be appointed by the Governor while the General Assembly is in session, and is out of session.
 - 2 appointments upon recommendation of the President Pro Tem.
 - 2 appointments upon recommendation of the Speaker.
- Increased the duration of membership terms from three years to four years.
- Added "good cause" to the basis for which the Governor may remove any member of the Commission (in addition to existing authority to remove for misfeasance, malfeasance, or nonfeasance).
- Modified prior law which provided that staff for the Commission must be supplied by DEQ's Division of Energy, Mineral, and Land Resources and the North Carolina Geological Survey, to add additional language specifying that such staff must be supervised by the Secretary of Environmental Quality.
- Provided that rules set forth in 15A NCAC 05H (Oil and Gas Conservation Rules) are effective until the Oil and Gas Commission, as reconstituted by the act, amends or repeals the rules.

Current status of appointments

Qualification	Appointee/Appointing Authority	Term
Attorney with experience in oil/gas exploration - appointed by Governor with consent of GA	Mr. Stanford D. Baird, Governor McCrory	01/01/2017 - 12/31/2019
Conservation NGO member - appointed by GA upon recommendation of Pro Tem	Mr. James K. Womack, Senator Berger	10/02/2015 - 12/31/2018
Conservation NGO member - appointed by GA upon recommendation of Speaker	Hon. Michael C. Stone, Speaker Moore	06/01/2016 - 12/31/2019
County commissioner located in a region with oil/gas potential - appointed by Governor with consent of GA	Ms. Ronda R. Jones, Governor McCrory	01/01/2017 - 12/31/2020
Elected municipal official located in a region with oil/gas potential - appointed by Governor with consent of GA	<i>Hon. Rebecca R. Wyhof, Governor Cooper (subject to confirmation by GA)</i>	
Engineer with experience in oil/gas exploration - appointed by GA upon recommendation of Pro Tem	Mr. John T. Lucey Jr., Senator Berger	06/29/2017 - 12/31/2019
Geologist with experience in oil/gas exploration - appointed by GA upon recommendation of Speaker	Mr. Robert Christian Reinhardt PG, Speaker Moore	06/01/2016 - 12/31/2018
Member with public health experience - appointed by Governor with consent of GA	<i>Vacant, Governor Cooper</i>	
Publicly traded natural gas company representative - appointed by Governor with consent of GA	Mr. Victor Gaglio, Governor McCrory	01/01/2017 - 12/31/2020

QUESTIONS?