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Environmental Quality Commission
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Tom Herman, Louisville
Martha Tarrant, Lexington
Benjamin Peterson, Benton
Jeffery Eger, Erlanger*

**Kentucky Environmental Quality Commission
Annual Meeting
June 17 – 18, 2015
Salato Wildlife Education Center
Frankfort, Kentucky 40601**

EQC Commissioners present:

Steve Coleman, Chairman
Tom Herman
Martha Tarrant
Ben Peterson
Jeffery Eger

Staff present:

Arnita Gadson, Executive Director
Sujatha Santhanam, Executive Assistant

Speakers:

Greg Johnson, Commissioner, Kentucky Dept. of Fish and Wildlife Resources
Bob Bauer, Executive Director, Kentucky Forest Industries Association
Pauley Barbara, Attorney, Office of General Counsel
Steve Hohmann, Commissioner, Department of Natural Resources

Guests:

Charles Bush, Deputy Commissioner, Kentucky Dept. of Fish and Wildlife Resources
Katlyn Fams McCarthy, WKU

Meeting called to order at 9.15 a.m. Introductions were made.

Greg Johnson, Commissioner, Kentucky Dept. of Fishing and Wildlife Resources

- Appreciated EQC for its work and efforts in serving the citizens on environmental issues.
- An overview of Salato and its programs included:
 - ❖ Three Conservation camps offered by the department:
 - Camp Currie – located in Kentucky Lake, since 1949.



- Camp Wallace – located on Lake Cumberland, since 1951.
- Camp Webb – located on Grayson Lake, since 1969.
- 5000 children attend these camps every year.
- 50-55 million dollars in budget.
- No funding through the general funds. It's funded through the camp fees, fishing and hunting license sales fees, leverage lab with federal aid money etc.
- Salato is a separate foundation within the department. Financially self-sustained.

In the 1950's there was not a lot of deer, no elk, no turkey and no fish hatcheries in Kentucky. But currently we have:

- ❖ Million plus deer population – quality deer herd.
- ❖ 250,000 turkey flock – staying pretty steady.
- ❖ Elk herd – grown to 10,000 animals, best quality of elk herd in the nation.
- ❖ There is triple digit increase in the quail population.
- ❖ Stable bear population.
- Three fish hatcheries in Kentucky:
 - ❖ Minor Clark
 - ❖ Peter W. Pfeiffer
 - ❖ Wolf creek
- Actively involved with KSU (Kentucky State University) in fish farming.

Commissioner Johnson is concerned about the Bluegrass Pipeline issue and Timber Theft.

March 19, 2015 Meeting Minutes Approved:

Commissioner Peterson motioned to approve the minutes. Seconded by Commissioner Tarrant and approved unanimously.

Bob Bauer, Executive Director
Kentucky Forest Industries Association
Timber Theft & Bad Actor Legislation

- Timber Theft and Trespass Taskforce bill did not pass this session.
- Senate Bill 92 passed this session – Bad Actor Bill.
 - ❖ Division of Forestry randomly inspects those jobs.
 - ❖ Current law requires all loggers to have a trained master logger on site in charge of the operation and follow BMP's (Best Management Practices) for water quality.
 - ❖ Loggers on the current bad actor list are provided a four-step process to repair problems.
 - ❖ In 15 years a small number of loggers listed as bad actors. They have been assessed \$463,000, only paid \$128,000.
 - ❖ The Legislation requires two things :

- First bad actor loggers that have paid fines and fixed damaged sites are required to notify the Kentucky Division of Forestry before they log.
 - Second SB 92 requires that 3 times or more bad actors to pay fines and fix damaged sites by the end of 2015 or they will be issued an emergency order to stop logging until fines are paid and sites repaired.
- 140 total bad actors that have not paid fines and fixed damaged sites.

Timber Theft Taskforce:

Representative Leslie Combs introduced a Timber Theft and Trespass Taskforce bill around 2009. The Bill makes it through the house but not the Senate. In Nov, 2014 a meeting that included the County Attorney, Representatives from the Commonwealth Attorney General Office, loggers and Conservation groups was held. The outcomes:

- ❖ To educate the enforcement community on timber theft.
- ❖ Discussed about what other states are doing. 2 or 3 states have triple damages, which Kentucky already has.
- ❖ State of Georgia passed a law which states:
 - If the landowners are not contacted by registered letter where timber is cut, there are fines that equal up to three times the value of timber, plus the damages to the site. Legal fees are also levied and paid by the logger.
- ❖ When Georgia passed the Act, they put a three person timber theft group in their Division of forestry who knows about values and law enforcement.
- ❖ Getting on the agenda of the Commonwealth Attorney's annual meeting to discuss the existing laws and what is needed.
- ❖ Planning for passage in the next session.
- ❖ Eastern Kentucky has more cases of timber theft than western Kentucky.

EQC Discussions:

Commission: What is EQC's role in helping the timber theft resolution to move forward?

Response: Raise awareness by forming a study group to look into it.

Commission: Fines collected that go into the Stewardship Fund, is it available for the landowners?

Response: Yes, the collected fines go into a Stewardship Fund designed for cost share assistance to landowners for forestry work and planning. The amount of fines even if all collected is not significant enough to establish a cost share program that could be used consistently.

Commission: We will reexamine the resolution and add the fact, we support it, and also it is necessary to form a study group to increase awareness among the enforcement community and the landowners. We will add or update the resolution if needed.

Barbara Pauley, Attorney, Office of General Counsel
EQC Mandates & Responsibilities

Barbara Pauley, one of the Cabinet Attorney discussed with the Commission and the staff the EQC Mandates and Statutes and their responsibilities. EQC mandate under the law is very impressive.

The Commission was created under the state law with a mission to:

- Facilitate public discussion and resolution of environmental issues;
- Promote partnerships to protect the environment for future generations; and
- Serve as an advisory board to the governor and other state officials on environment matters.

EQC is comprised of four statutes:

- Make-up of the commission.
- Eligibility limitations on commission membership.
- Powers and duties of the commission.
- Recommendation of adoption or rejection of proposals.

EQC Discussions:

Commission: If asked by the Secretary or Governor to submit a nomination to the Governor's office for appointment, do they check if he is a permit holder or not?

Response: The Commission Chairman should check it out first and advice the Governor.

Commission: What role does the boards and Commission play in this? Do they check the application made to the Governor's office?

Response: Yes, they check the application made and also do the back ground check and other procedures.

Speaker: Are any by-laws adopted by the Commission?

Commission: No.

Speaker: Have you had a procedure in place that determines when and why you should form an advisory committee?

Commission: We have not had an issue or necessity in the past for an advisory committee to be formed.

Speaker: Do you feel your access to the cabinet Secretary and the Governor is open?

Commission: Yes, the doors are open.

Speaker: Does the commission prepare an annual report?

Commission: Yes, we prepare an annual report.

Speaker: Who gets the annual report when you send it out?

Commission: It goes to the General Assembly and then up the ladder.

Commission: At the end of the discussion, the commission requested Barbara to schedule a meeting with the cabinet Secretary and Mike Haines to discuss the vision and importance of EQC. EQC is not the same entity or provide the same service or plays the same role within the cabinet as in the past. We have a duty to review any regulation before it goes to the LRC. Inadequate staffing is also an issue. It is for us to do what we are mandated by the statute to do.

**Steve Hohmann, Commissioner, Department of Natural Resources
Oil and Gas Modernization Act & Fracking and Seismic movement**

- Department of Natural Resources is a highly regulatory state agency.
 - ❖ Regulate all the mining in Kentucky, both reclamation and mine safety.
 - ❖ Issue mine permits and licenses.
 - ❖ Do reclamation and safety inspections.
 - ❖ Reclaim abandoned mine lands.
 - ❖ Authority over oil and gas exploration, drilling and extraction.
 - ❖ Authority over forestry resources in the state.
 - ❖ Our Division of Conservation implements conservation practices to help the farmers.
- Nine divisions in the department.

Kentucky Coal Statistics:

- Coal production declined from 2012, mostly in eastern Kentucky.
- Less number of active mining permits.
- Division of mine safety surface mining and underground mining licenses declined.
- Kentucky coal mine employment:

- ❖ Western Kentucky – increased and steady.
- ❖ Eastern Kentucky – 7000- 8000 job loss.

Kentucky Oil and Gas Statistics:

- Kentucky natural gas production skyrocketed because of the development in eastern Kentucky in Berea sandstone and the Devonian formation.
- Crude oil production decreased.
- Oil and gas permits declined which decreases the revenue for the department.
- Overall in oil and gas production, Kentucky is in the 11th or 14th place in national production.
- More oil permits than gas permits have been issued.
- Employment in oil and gas sector has dropped, but for most part stayed level with 700 direct employments last year.

Oil and Gas Modernization Act of 2015:

- Workgroup – The “Workgroup” was formed by the Secretary of the Cabinet, Len Peters, in May 2014. There were 15 members in the group which included Kentucky oil and gas Association, Chamber of Commerce, Kentucky Environmental Quality Commission, Kentucky Farm Bureau, Kentucky Resources Council and other Representatives from industry. It was formed with the mission to:
 - Update and make recommendations to modernize the Kentucky oil and gas statutes, which were outdated and did not address certain aspects of the new technology.
 - The outcome of the workgroup meeting which was held from June 2014 – Jan 2015 was:
 - ❖ A recommendation in the form of updates to the oil and gas statutes chapter 353 KRS. Senate Bill 186 was passed. It did several things to update the statute:
 - Contained provisions to regulate high volume hydraulic fracturing.
 - Expanded reclamation requirements to all oil and gas drilling operations.
 - Established abandoned storage tanks reclamation fund.
 - Included higher bonding amounts for deep wells.
 - Increased permits fees for deep wells.
 - Established statutory authority for permitting and creating drilling units for horizontal deep wells.
- Workgroup continues – addressing new issues:
 - ❖ Water management – water disposal from hydraulic fracturing in an environmentally safe manner.
 - ❖ Induced seismicity – earthquakes induced from mining and blasting causes tremors. Re-injecting of water from fracturing into the ground also causes earthquake.

- Oil and Gas Public Meetings is scheduled to be held in July 2015: (Dates and times to be announced later)
 - ❖ Madisonville Community College
 - ❖ Somerset Center for Rural Development
 - ❖ Hazard Community College

Induced Seismicity from Oil and Gas Operations:

Hydraulic Fracturing: Hydraulic Fracturing is defined as the injection of fluids and sand into a formation with some chemicals to open up the formation by fracturing so that the oil and gas trapped in that formation can flow back out. This process is called **fracking**.

When the pressure on that injection water is released, the water flows back up and that is produced water. They usually dispose it in injection wells. They reinject it in the ground into another formation. This process is called **Injection**.

Fracking does not cause earthquake. There has been little to none documented cases of fracking itself causing an earthquake. Studies shows that most of the tremors felt in Oklahoma, Youngstown, Ohio and elsewhere were caused by re-injecting of the fluids from the fracturing process and not fracking itself.

What can we do to control earthquakes?

The common characteristics and observations of induced seismicity studies:

- Petroleum engineering analysis indicated some correspondence between disposal well behavior and seismicity.
- Injection into fractured disposal zones directly overlying or connected to basement rock may be more vulnerable to injection induced seismicity.
- Deep disposal wells were in direct communication or suspected to be in hydraulic communication with basement rocks and faults of concern.
- Operational analysis of disposal rates and pressures showed multiple incidences of repeating cycles of decreased ability to inject followed by enhanced ease of injection, with the decreased injectivity corresponding to seismic events.
- Operating wells below fracture pressure avoids or minimizes fracture propagation.

Induced Seismicity in Kentucky:

- Kentucky Geological Society has installed the first two of at least 15 highly sensitive stations in eastern Kentucky, one in Boyd County and the other in Lawrence County.
- No earthquake activity related to oil and gas development is known to have happened in Kentucky.
- KGS is collaborating with University of Kentucky Dept. Of Earth and environmental Sciences on the study.

- Instrument manufacturers, Nano metrics are matching the number of seismic monitoring stations.
- KGS is working another industry partnership to increase size of network.

Department of Natural Resources Information/Accomplishments:

Division of Mine Reclamation and Enforcement:

- The number requests for inspection is down by 14 percent in 2015.
- Frequency of inspections is at 99 percent for 2015.
- The division has released \$188,816,937 in reclamation bonds in 2015. This represents an increase in the amount of bonds released by 2 percent over the previous year.
- There is a 17 percent increase in penalties collected in 2015.

Division of Mine Safety:

- Reduced fatal accidents to a record low of 2 per annum, for 3 consecutive years.
- Continue to train and educate the largest number of miners in the nation.
- Continue to perform the division's duties with a decreased amount of funding.
- Modernized/upgraded statewide data collection and storage system.

Division of forestry:

- \$12.8 billion to the state's economy with \$8.3 billion in direct revenue.
- Received \$2.630 million in federal funding for 2015.
- \$4.4 million in federal surplus equipment for the division.
- New requirements for bad actors to provide advanced notice of harvest.
- Introduction of bloodhound program to track wildfire arsonists.

Division of Conservation:

- Regional Conservation Partnership Program – will address nutrient management issues with livestock producers across the state.
- Direct aid new point system will make aid to conservation districts more transparent and equitable to those districts that need the funding.
- 2016 State cost share funds reinstated for \$5 million.

EQC Discussions:

Commission: Employment is still greater in eastern Kentucky even though the production is greater in Western Kentucky?

Response: More mines in eastern Kentucky and fewer mines in western Kentucky. They are large producers with fewer people.

Commission: Kentucky is buying a lot of coal from out of state to be used in Kentucky. Does this mean that our coal is less economical because we can buy it cheaper than produce ourselves?

Response: Yes, to some extent we have bought some Powder River basin coal from Wyoming. The reason is unclear. There has been some out of state coal imported into Kentucky and that has supplanted some of our coal production.

Commission: There are two sides of fracking. One is fracking and the other is disposal. We have spent a lot of time studying the concern of disposal of fluids through pipelines. What does Kentucky try to do ahead for safe disposal process of those fluids?

Response: The disposal of fluids in wells in Kentucky is under the authority of EPA. Disposal of fluids in pipelines is not a method of disposal. Bluegrass pipeline is a natural gas liquids pipeline, not a waste water disposal pipeline. It is a byproduct/commodity. It is the product of drilling.

EQC planning for the coming year:

- **Dates for Public Meetings:** Following are the tentative dates for public meetings decided by the Commission.
 - ❖ September 24, 2015
 - ❖ November 19, 2015
 - ❖ January 14, 2016
 - ❖ March 24, 2016
- **2016 Annual Meeting** – EQC Annual meeting is scheduled for June 9 & 10, 2016.
- **2016 Earth day** – booked Berry Hill Mansion for April 8, 2016. The date was changed to April 15, 2016 and staff was asked to check the availability of Berry hill mansion for the changed date.
- The venues for the meetings will be discussed and decided later as needed – particular regional issues of interest to EQC, where we can go in the field so people can provide us with information from their local perspective on any particular environmental issue.

Executive Director's Report

June 17, 2015

Annual Meeting

1. DOF (Division of Forestry) Leah MacSword, Exec. Director, state Rep. Leslie Combs' bill (Timber Theft) made it through the House and stalled in the Senate – deferred to Bob Bauer with the Kentucky Forest Industries Association.



Update to be presented at annual meeting.

2. No further action on the EQC mandate changes.

Scheduled for further discussion at annual meeting June 17, 2015

3. The EJ (Environmental Justice) conference, tentative date June 10-11, Louisville.

Environmental Justice Conference will be in conjunction with the Governor's conference, September 7th and 8th, 2015 in Lexington, Kentucky. EPA will fund the EJ event.

4. Biennial draft completed and forwarded to Commissioners. Comments received from Commissioners Brunty and Coleman. Completion date for next draft –mid-February, 2015.

Draft has been received from PR with corrections and changes. Final draft completed. Final draft forwarded.

5. Received word from Representative Marzian who will schedule presentation on alternative energy bill.

No word from Representative Marzian. Will continue to work with this for next meeting.

7. Working with DAQ on air monitoring status in Louisville – Goal, restore project.

Working in collaboration with KY Department of Air Quality, Louisville Metro Air Pollution Control District, UofL reviewing and reassessing list of chemicals, revising Quality Assurance Plan and Work Plan. Next meeting scheduled June 22, 2015.

8. Lees Lane – the PRP's were notified December 31st with a 45 day response time regarding reopening acquisition of their responsibility. The PRP's cannot ask for extensions.

Will contact UofK Superfund Research Center- Vapor Intrusion Study. EPA is interested in collaborating with them on possible studies involving Lees Lane Project for better community engagement.

No final results from latest EPA testing in residences. Homes were retested for soil gas in yards between the house and the landfill in crawl spaces. Soil Gas Data completion date – March '15.

Met with Lindell Ormsbee at his request, UofK, to work with community relations, after being notified by USEPA. There was soil gas found in three homes.

9. Black Leaf – Residential Cleanup data submitted at last meeting.

Update- Sean Cecil, Director and Tim Hubbard, Asst. Director of the Division of Waste Management met with an interested party to discuss potential renovation into a transportation hub. Potential owners would qualify for the 415 Brownfield initiative.

Black Leaf Update January 16, 2015 submitted by Division of Waste Management

Per Tim Hubbard: EPA is no longer involved with the site since completing their removal action. Discussion has been with a realtor specializing in Brownsfield. There is a client interested in using it as a transportation hub. They are not concerned with the clean-up but with the many tax liens.

DWM received a report of the sampling conducted by the responsible parties' consultants. They recommended additional samples be collected to determine the extent of soil and contamination. The consultants for the responsible parties are in the process of collecting them. The summary report should be completed in 2-3 months.

Donna Seadler, EPA – still awaiting a response.

Respectfully submitted for review:
Arnita Gadson
Executive Director

Environmental Justice Workshop:

The Commission discussed about the EJ workshop which is to be held on September 8 & 9, 2015 @ the Lexington Convention Center.

Commission: What is the template for the EJ Workshop?

Response: Plenary – Welcome Secretary, representatives from EPA, representatives from DEP & DNR and other introductions. Then break into sessions. The sessions will be for educators, regulators, health, industry and community .They will be talking about the responsibilities of working in EJ community.

Commission: Who will be invited to attend?

Response: The audiences (regulators, educators, industry, community and health). EJ workshop is only for people in Kentucky.

Commission: Can EPA give us a briefing during EJ Conference about Environmental Justice?

Response: Will have to check with EPA.

Commission: If we show as a quorum for the EPA briefing, do we have to declare that as a public meeting?

Response: It is a conference not a meeting. Have to check with Barbara.

Commission: Will the utility companies be invited for the conference?

Response: Yes, that was not on the screen but will add it.

EQC Commissioners presentation development:

Potential avenues for discussion: Discussions have been made earlier about videotaping the EQC Commissioners discussing on a particular topic (example: bluegrass pipeline). It would be filmed. It can be uploaded in YouTube, on EQC website and Facebook.

Commission: Does KSU videotape our EQC public meetings?

Response: No, they only do the audio recordings of the meetings.

Commission: The commissioners requested the staff to videotape the EQC public meetings.

Response: KSU can videotape the meetings and can put together a collection of the commissioner's discussion from 2 to 3 previous meetings as a separate video.

Commission: Sellus Wilder videotaped the EQC's discussion on bluegrass pipeline during the Jan 2014 public meeting. He did a documentary on bluegrass pipeline. If he would share some of the footage, we could ask KSU to make a 30 minute video segment out of it.

Response: Staff will contact Deb Pekny to get information about Sellus Wilder on the bluegrass pipeline discussion video and KSU for editing the video.

Commission: Can Ohio template discussion be a part of the videotaping too?

Response: Yes, we can bring representatives from Ohio to discuss about their template in one of our future meetings.

Commission: Structure of the cabinet?

Response: DEP, DNR and DEDI are the three departments in the cabinet.

Commission: Do we have an organizational chart of the 3 departments?

Response: Yes, it's available online on their website.

Commission: Follow-up with Barbara and schedule a meeting with the Secretary and the Attorneys to express our concern about EQC'S vision and importance. EQC is not the same entity or provide the services or plays the same role within the cabinet as in the past.

June 18, 2015

Revisit Recommendations:

Timber Theft Resolution: Senate Bill 92 was passed – bad actor. Leslie Combs idea of having a task force about timber theft did not pass. It passes the house but never the Senate.

Timber Theft Task Force – a group just decided that they don't need legislators to form a task force. They just formed the group. With their work and efforts they came out with one suggestion on timber theft:

- State outreach effort – Division of Forestry should have staff designated who could assist land owners or law enforcement with the prosecution of timber theft by giving them the value of the stolen timber, also educating them.

The Commission revisited and discussed the timber theft resolution:

- Endorse the need for a taskforce and add some more recommendations.
- Laws are in place but not enforced.
- Lack of knowledge on the enforcement side.
- Having a timber theft hotline or 1-800 number to assist the landowners.

Possible topics for September 24, 2015 meeting:

- Law Enforcement
- Timber theft (Division of Forestry) – Leah MacSword.
- 'Citizens Group' – Commission would like to know the members on the Citizens group (Bob Bauer).
- The Cornett's - who brought timber theft to the attention of EQC.
- Task Force group

Commission: For the September meeting a recommendation to follow-up on the timber theft resolution and videotaping was discussed.

Meeting Agenda for future meetings:

- Approve minutes
- Public comments
- Topics for specific discussion
- Open for comments on that discussion
- Open discussion

Ohio Template: Still waiting for a response from the Secretary and the Governor about the recommendation we already made on bluegrass pipeline. The Commission discussed about the Ohio Template and decided:

- As a Commission and continuing our efforts, move to the Secretary and Governor with our recommendation referencing the Ohio standards as a template to consider.
- Another discussion to gather more information about the pipeline by inviting the Ohio representatives/officials if needed.
- Invite all the other interested parties.
- Modify and follow-up on the recommendation we already have by EQC.

Topic to be discussed in November meeting:

- Ohio pipeline representatives, Farm Bureau to discuss their standards (Ohio template).

Commission: The Commission requested the staff to obtain a copy of the comments received by the cabinet on the three oil and gas public meetings held in July 2015.

Topics to be discussed in January meeting:

- Fracking update
- Seismic activity
- KGS, USGS
- Division of oil and gas – Steve Hohmann.

Topics to be discussed in March Meeting:

- Climate changes
- Glacier Climatologist
- Storm water management awareness

EQC Publications:

The Commission discussed about the Crossword puzzles, Time Capsule and EQC'S publication.

EQC Discussions:



Commission: Are we going to include the crossword puzzle and time capsule in our publication or upload it on our website?

Response: Yes, planning to distribute them in school system. Have to contact the Kentucky Association of Education.

Commission: The Commission also suggested contacting and distributing the crossword puzzle and time capsule to conservation districts and other educational outreaches.

Commission: Discussion on public meetings resulted in earlier press release to ensure people that may want to come have more time to prepare.

Commission: Prepare a list of interested agencies and associations and send it those groups directly rather than wait for the people to notice it in the newspaper.

Next meeting: September 24, 2015.

Commissioner Tarrant moved to adjourn the meeting and Commissioner Herman seconded. The meeting was adjourned at 11.15 a.m.

THESE ACTIONS, ALONG WITH THE AGENDA ITEMS, MAKE UP THE OFFICIAL MINUTES, WHICH ARE ON FILE IN THE OFFICE OF THE SECRETARY.

Signed by:

Stephen A. Coleman, Chairman

Date: _____