



June 30, 2013

MEMORANDUM FOR:

Senator Phil Berger, President Pro Tem of the North Carolina Senate, 16 West Jones Street, Room 2008, Raleigh, NC 27601-2808

Representative Thom Tillis, Speaker of the North Carolina House of Representatives, 16 West Jones Street, Room 2304, Raleigh, NC 27601-1096

SUBJECT: Mining and Energy Commission Concerns with Chemical Disclosure and Trade Secret Modifications to Version 3, House Bill 94

1. This Memo is being sent as the result of a unanimous vote by the North Carolina Mining and Energy Commission (MEC) on June 28, 2013. The purpose of the Memo is to express MEC concerns with Part VII (Hydraulic Fracturing Fluid Chemicals and Constituents Data) contained in Edition 3, House Bill 94, presently being held in the Senate Clerk's Office. The companion Senate Bill (S112) is presently referred to the House Committee for Regulatory Reform, but does not contain the Part VII language of concern to the MEC.
2. Under Session Law 2012-143 § 113-391. (a)(5)h. the MEC was directed to adopt rules for disclosure of chemicals and constituents used in oil and gas exploration, drilling, and production, including hydraulic fracturing fluids, to State regulatory agencies and to local government emergency response officials, and, with the exception of those items constituting trade secrets, as defined in G.S. 66-152(3), and that are designated as confidential or as a trade secret under G.S. 132-1.2, requirements for disclosure of those chemicals and constituents to the public.
3. Pursuant to that legislative directive, the MEC committed several months of effort in exhaustive research, analysis and cross-reference to the other federal and state rules, culminating in the development of a draft rule for chemical disclosure in this state. That draft rule has been deliberated by the MEC Environmental Standards Committee and the MEC Rules Committee and thoroughly vetted with our Stakeholder Group which importantly includes knowledgeable industry representatives. This draft rule is on the MEC agenda for full commission deliberation during the July 26, 2013 meeting. When the MEC completes its work on this rule, we believe it will afford a full measure of protection to the public while not materially impacting the competitive status of the oil and gas companies or their contractors. In fact we have reason to believe the simplicity of the MEC's approach will make it particularly attractive to the oil and gas industry.
4. During the Senate Environment Committee hearing on June 25, 2013, new Part VII language was added to House Bill 94, altering the language from Session Law 2012-143 and effectively preempting the work of the MEC on this rule. The proposed H94 language for chemical disclosure allows oil and gas companies to avoid full chemical disclosure (to anyone) of the substances they wish to protect as a trade secret. As written, the language would allow

any company to claim exemption from disclosure of important information about potentially dangerous hydraulic fracturing fluids being pumped into oil and gas wells, denying knowledge of those chemicals to state officials without any effort to verify the validity of the trade secret. The resulting process for handling trade secrets would represent a deviation from current practice among Department of Environment and Natural Resources (DENR) divisions who presently verify, take possession of, and safeguard industrial trade secrets. In short, this language creates a different approach for the handling of trade secrets, results in the state knowing less about chemical substances being pumped underground, and compels changes to rules being developed independently by the MEC.

5. Although the H94 provision concerning public challenge of trade secret status is well intended, the state must recognize that the public typically will not possess sufficient expertise to mount such a challenge. Citizens would be forced to rely on research by third party organizations opposed to shale gas exploitation. In effect, this provision places an undue burden on the public and the state, in both cost and effectiveness.

6. Media and environmental interest group reactions to the proposed new language were immediate and sharply critical. This one simple change has reinvigorated anti-drilling fervor across the state; an outcome the MEC has worked tirelessly to avoid. The introduction of this language at a late stage in the legislative session -- as an insertion into an omnibus environmental bill rather than into the draft energy bill -- and its introduction without any coordination with the MEC circumvent the rulemaking process and erode the confidence among many commission members that their work is appreciated.

7. The MEC has been careful and deliberate in developing rules that govern the disclosure of hydraulic fracturing fluids and the management of trade secret information. We have an active study group meticulously evaluating the Code of Federal Regulations and the body of similar state-specific rules across the nation to identify and enforce mandatory disclosure requirements, while documenting best practices to apply in our rulemaking process.

8. Respectfully request the North Carolina General Assembly remove the Part VII language from Edition 3, House Bill 94 and allow the MEC to complete its rulemaking tasks as directed in Session Law 2012-143. We further request that the legislature make an attempt to coordinate, in advance, any anticipated future changes to the MEC's scope of work, including constraints and restrictions, so the commission may complete its aggressive timeline without disruption.

Warm Regards/



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Cf: All NC House Members
All NC Senate Members