

QUARTERLY REPORT

TO THE

ENVIRONMENTAL REVIEW
COMMISSION

ON

ENVIRONMENTAL MANAGEMENT
COMMISSION ACTIVITIES

April 2007

**YEAR 2006-2007 THIRD QUARTER REPORT TO ERC
IN ACCORDANCE WITH § 143B-282(b)**

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I. SESSION LAW 2005-190 (with revisions from SL 2006-259) REPORTING REQUIREMENTS

Based upon Section 2. (b) of Session Law 2005-190, the Environmental Management Commission (EMC) continues to assess and identify nutrient control strategies and criteria necessary to prevent excess nutrient loading in each drinking water supply reservoir. In compliance with the goals of the Section, the Division of Water Quality received US EPA approval of a plan of action evaluating the current surface water quality standards to determine if adequate nutrient criteria controls are in place to prevent nutrient impairments in North Carolina lakes. Approval to continue with development of additional or revised lake nutrient criteria was mutually agreed with the US EPA on June 27, 2006.

Monitoring is continuing in Falls Lake and the Falls Lake watershed and has been extended to September 2007. This extension will cover another growing season to accommodate the collection of adequate chlorophyll *a* data.

Modeling tasks associated with this project have also progressed. Work has begun on three of the models to be developed of Falls Lake and the reservoir watershed. As of September 1, 2006, DWQ has a fully executed contract with NC State University to perform hydrodynamic and water quality modeling of Falls Lake. DWQ staff have begun to process data and information for another model, the watershed loading model.

Although Session Law 2006-259 technically corrected the target date for the EMC to develop a nutrient management strategy for the Falls Lake Reservoir from July 1, 2008 to July 1, 2009, the target date for the EMC to adopt the rules to implement the nutrient management strategy by the same date (July 1, 2009) does not consider timing for rule adoption in accordance with the Administrative Procedures Act, General Statutes 150B. The inaccurate date will not interfere with the EMC's goal, however.

The ninth Falls Lake Reservoir Technical Advisory meeting was held on November 1, 2006 at the TJCOG offices. A review of monitoring data collected in 2005 was presented to concerned stakeholders by Peter Caldwell of the Division of Water Quality's (DWQ) Modeling and Total Maximum Daily Load (TMDL) Unit. Summaries of the current status of the watershed loading model were presented by Narayan Rajbhandari of the DWQ's Modeling and TMDL Unit, and the lake hydrodynamic model and lake water quality model were presented by Jing Lin of the Marine Earth and Atmospheric Science Department at N.C. State University. Staff are continuing to work on calibration of the watershed loading model and the lake nutrient response model.

The next scheduled Falls Reservoir Technical Advisory meeting is scheduled for May 15, 2007, 9:30 am at the North Durham Reclamation Facility.

Section 4 of Session Law 2005-190 and amendments in Session Law 2006-259 require the Environmental Management Commission to report its progress in developing and implementing nutrient management strategies for drinking water supply reservoirs meeting certain criteria to the Environmental Review Commission by April 1 of each year beginning April 1, 2006. The B. Everett Jordan Reservoir fits these criteria. The following is an update on the progress made.

In January 2006, the Environmental Management Commission deferred proceeding to public comment with draft rules for Jordan Reservoir, and directed staff to address outstanding stakeholder issues with the draft rules. Issues included the modeling basis for strategy goals, point source timelines and costs, and existing development load reduction requirements and costs. Over the course of 2006, staff conducted over thirty stakeholder meetings, both technical and general. As a result, revisions have been made to the draft rules reflecting discussions over the last year and a fiscal note summarizing the estimated total costs of the rules has also been completed.

In March 2007, Division staff obtained Environmental Management Commission approval to initiate the formal public comment period for the draft rules. Public notice is expected to be published within the next quarter and will include a two month public comment period. Staff intends to hold several public hearings within the Jordan Reservoir watershed during the public comment period. Under this schedule, the Commission would adopt rules in time to reach the 2008 session of the General Assembly, if required.

TMDL Update:

The Jordan Reservoir draft TMDL went out for public review originally in 2005. The draft TMDL was based on the chlorophyll-a standard impairment of the Upper New Hope Arm of the reservoir. Since that time, the 2006 federal 303(d) listed adjoining waters as impaired. Specifically, the Lower New Hope Arm and the Haw River Arm of the lake are now listed as impaired based on the chlorophyll-a standard, and the Haw River Arm is also listed as impaired based on the pH standard. To respond to these newest impairment listings, a new version of the TMDL document has been drafted and placed on public review beginning April 1, 2007 through May 15, 2007. The TMDL is now a phased TMDL; Phase I (out for public review) addresses the chlorophyll-a impairment of the reservoir and a future Phase II will address the pH impairment of the Haw River Arm. Other modifications to the recently available draft TMDL document include incorporation of comments received from the US EPA as well as other miscellaneous updates and corrections. The draft TMDL is available on the following website:
<http://h2o.enr.state.nc.us/tmdl>.

II. STANDING COMMITTEE MEETINGS

i. WATER ALLOCATION COMMITTEE

The Water Allocation Committee did not meet during this quarter.

ii. WATER QUALITY COMMITTEE

The Water Quality Committee conducted business in January and March 2007.

iii. GROUNDWATER COMMITTEE

The Groundwater Committee did not meet this quarter.

iv. AIR QUALITY COMMITTEE

The Air Quality Committee conducted business in January and March 2007.

v. STEERING COMMITTEE

The Steering Committee did not meet during this quarter.

vi. NPDES COMMITTEE

The NPDES Committee conducted business in January, February, and March 2007.

III. SUMMARIES OF ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) ACTIONS

Agenda Item: Request by the Cities of Concord and Kannapolis for Interbasin Transfer Certification

Explanation: The Commission is responsible for Interbasin Transfer (IBT) certifications according to N.C. General Statutes §143-215.22I. The Cities of Concord and Kannapolis are requesting permission to transfer an average of 22 million gallons per day (MGD) of water from the Catawba River and Yadkin River Basins for use in the Rocky River Basin. The Cities are requesting permission to transfer up to a maximum of 10 MGD from the Yadkin River Basin with the remainder of up to a maximum of 36 MGD to come from the Catawba River Basin. Two public hearings were held in June 2005 in Charlotte and Albemarle. Two additional public meetings were held in September 2006 in Valdese and Charlotte.

The materials under review for this request includes three documents sent to EMC members on Dec. 11, 2007. They are:

- 1) The Hearing Officer's Report, including recommendations to the EMC (December 2006),
- 2) The Interbasin Transfer Petition (November 2004) with a July 2006 supplement, and
- 3) The Revised Final Environmental Impact Statement (November 2006) including public comments on the petition, draft, and final environmental impact statements.

Recommendation: Having reviewed and considered the comments received during the public review process and the requirements set forth in North Carolina General Statute §143-215.22I, the Hearing Officers recommend that the Environmental Management Commission grant the cities of Concord and Kannapolis a 10 million gallon per day maximum transfer from the Catawba River Basin to the Rocky River Basin and a 10 million gallon per day maximum transfer from the Yadkin River Basin to the Rocky River Basin with conditions.

EMC ACTION:

The EMC approved an interbasin transfer for Concord and Kannapolis of 10 mgd (million gallons per day) from the Catawba River Basin and 10 mgd from the Yadkin River Basin.

Agenda Item: Request to Proceed to Public Hearing on VOC and NOx Reasonable Available Control Technology to Incorporate Contingency Provisions

Explanation: The Environmental Management Commission is requested to approve one or more public hearings on the amendments to rules to incorporate contingency provisions for reasonable control technology (RACT) for volatile organic compounds (VOC) and nitrogen oxides (NOx) for the Charlotte nonattainment area for ozone.

The US Environmental Protection Agency requires a pre-adopted contingency plan to be part of the State Implementation Plan (SIP) before it will approve an ozone nonattainment area plan. The purpose of the contingency plan is to apply additional controls quickly, without rulemaking, on sources if the nonattainment area plan fails to achieve compliance with the ambient air quality standard.

To satisfy this requirement, the NOx and VOC RACT rules are proposed to be amended to apply them to facilities whose potential emissions are between 50 and 100 tons per year. (Facilities whose emissions of NOx are greater than 100 tons per year are already required to apply RACT.) For NOx, this requires amending the applicability rule, 15A NACA 2D .1402, and the compliance schedule rule, 15A NCAC 2D .1403. For VOC, it requires amending the applicability rule, 15A NACA 2D .0902, and possibly the compliance schedule rule, .0909.

The NOx RACT requirements would be implemented when EPA notifies the State that its State Implementation Plan (SIP) for the Charlotte ozone nonattainment area failed to bring the area into compliance. However, VOC RACT would not be applied unless the area receives a “serious” designation.

Recommendation: The Director recommends that the Commission authorize a public hearing(s) on these amendments and that the Chairman appoint a member(s) of the Commission to serve hearing officer(s).

EMC ACTION: The EMC approved the request to proceed to public hearing on the proposed amendments.

Agenda Item: Request to Proceed to Public Hearing on Amendments to, Adoption of, and Repeal of Various Air Quality Rules

Explanation: The Environmental Management Commission is requested to approve one or more public hearings on proposed amendments to the control of nitrogen dioxide and nitrogen oxide rules, new source performance standard rule, fugitive dust rule, certification of leak tightness tester rule, open burning rules, banking applicability rule, permitting rules; proposed adoption of the other solid waste incinerator rule and a new open burning rule; and proposed repeal of automobile tailpipe emission standards rule and initial Title V permit application submittal rule.

The control of nitrogen dioxide and nitrogen oxides rule, 15A NCAC 2D .0519, is proposed to be amended to remove the requirements for nitric acid plants and boilers covered under new source performance standards or the nitrogen oxide standard for new generating units, large boiler, or large internal combustion engine standards. The standards in 15A NCAC 2D .0519 are not needed for these categories of sources. Currently, there are no nitric acid plants in North Carolina, and any new nitric acid plants will have to comply with the new source performance standard, which is more restrictive. Likewise, new combustion sources for which there is a new source performance standard will have to comply with that standard, which is more restrictive.

The new source performance standard rule, 15A NCAC 2D .0524, is proposed to be amended to add additional guidelines to the list of subparts in 40 CFR Part 60 that are not incorporated by reference into this rule. The guidelines apply to the states and not to industry. The Commission has adopted or is in the process of adopting rules based on these guidelines.

The fugitive dust rule, 15A NCAC 2D .0540, is proposed to be amended to extend it to both process and non-process fugitive dust emissions and to all required to have an air permit or subject to an air quality requirement. Currently, this rule applies only to non-process fugitive dust emissions from hot mix asphalt plants, mica and feldspar processing plants, lightweight aggregate processes, and sand, gravel, and crushed stone operations. It would not apply to non-production military base operations; land disturbing activities, such as clearing, grading, or digging; or public roads, public parking, timber harvesting, or crop production.

The rule for certification of leak tightness testers, 15A NCAC 2D .0960 is proposed to be amended to remove obsolete and unnecessary requirements.

The automobile tailpipe emission standards , 15A NCAC 2D .1004, is proposed to be repealed. The General Statutes eliminated tailpipe emissions testing on January 1, 2006. On-board diagnostic testing has completely replaced tailpipe emission testing.

The other solid waste rule, 15A NCAC 2D .1211, is a proposed new rule to control emissions from incinerators at institutions such as universities and military bases. This rule is based on the EPA guidelines for other solid waste incinerators. The incinerator definitions rule is proposed to be amended to add several definitions related to the new other solid waste incinerator rule. The air curtain burner rule, 15A NCAC 2D .1904, is proposed to be amended to reference the new

source performance standards for other solid waste incinerators and municipal waste combustors. Several rules are also proposed to be amended to reference the new rule: these rules are control of visible emissions rule, 15A NCAC 2D .0521, the incinerator purpose and scope rule, 15A NCAC 2D .1201, and the other incinerator rule, 15A NCAC 2D .1208.

Three open burning rules are proposed for amendment and a new open burning rule is proposed to clarify the number of violations when multiple piles of land cleaning debris being burned on the same site fail to meet the setback or other requirements of the permissible open burning without an air quality permit rule, 15A NCAC 2D .1903, and to require prescribed forest burns to comply with the Division of Forest Resource's smoke management program. The purpose and scope rule of the open burning section is rewritten to make it read more like open burning is prohibited instead of allowed. Two definitions are proposed to be added to the open burning definition rule, 15A NCAC 02D .1902. The permissible open burning without an air quality permit rule is proposed to be amended to clarify conditions under which a regional supervisor may not approve a waiver for reducing the setback requirements. It is also proposed to be amended to require prescribed forest burns to follow the smoke management plan outlined in the Division of Forest Resource's smoke management program. A new rule, 15A NCAC 2D .1907, is proposed to make clear that a single episode of open burning may result in multiple violations and multiple civil penalties.

The banking applicability and eligibility rule, 15A NCAC 2D .2303, is proposed to be amended to make it agree with other banking rules. Other banking rules allow banking of emission reductions that occur outside a nonattainment area. The language in the applicability and eligibility rule that restricts banking to nonattainment areas is being removed.

The permit exemption rule, 15A NCAC 2Q .0102, is proposed to be amended to exempt some storage tanks used to store ethanol-based fuels and to exempt portable generators regulated by rules adopted under Title II of the Federal Clean Air Act.

The initial Title V permit application submittal rule, 15A NCAC 2Q .0506, is proposed to be repealed. This rule established a schedule by which existing facilities required to have a Title V permit were to submit their initial Title V permit application. This rule is no longer needed as the deadline in the schedule has long passed.

Recommendation: The Director recommends that the Commission authorize a public hearing(s) on these amendments and that the Chairman appoint a member(s) of the Commission to serve hearing officer(s).

EMC ACTION: The EMC approved the request to proceed to public hearing on the proposed amendments, new rules, and repeals.

Agenda Item: Hearing Officer's Report on VOC and NOx Reasonable Available Control Technology

Explanation: On October 4, 2006, Mr. Steve Weber held a public hearing on the amendments to rules to extend the applicability of reasonable control technology (RACT) rules for volatile organic compounds (VOC) and nitrogen oxides (NOx) to all the counties in the Charlotte nonattainment area for ozone.

The applicability rules for VOC RACT (15A NCAC 02D .0902) and for NOx RACT (15A NCAC 02D .1402) are proposed to be amended to require facilities with the potential to emit 100 tons per year or more of VOC or NOx to comply with the RACT requirements for VOC or NOx if they are in the Charlotte nonattainment area for ozone. Counties covered are Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union. Also, Davidson and Coddle Creek Townships in Iredell County are covered.

The compliance schedule rules (15A NCAC 02D .0909 and .1403) are proposed to be amended to add compliance schedules for the facilities to comply with the RACT requirements.

These rule changes are being proposed to meet EPA requirements for a complete State Implementation Plan (SIP) submittal for the Charlotte ozone nonattainment SIP.

Two people commented on these rules. As a result of these comments the compliance date to implement RACT was changed from October 2009 to April 2009 to comply with the 8-hour ozone Phase 2 Implementation rule. Several comments were related to the use of "rules in this Section," "of this Section," and "of this Rule" as causing some confusion. The terminology is required by codification of rules. Two paragraph references were changed.

Recommendation: The hearing officer recommends that the Commission adopt the proposed amended rules presented in Chapter II of the hearing record.

EMC ACTION: The EMC adopted the proposed amendments.

Agenda Item: Request for Approval to Proceed to Rulemaking with a of Notice of Text and Hearing for Proposed Risk-Based Rules to Address Contaminated Sites in the Dry-Cleaning Solvent Cleanup Program

Explanation: The Dry-Cleaning Solvent Cleanup Act of 1997 established a funded, voluntary program to address contamination resulting from dry-cleaning facilities, wholesale distribution facilities and abandoned sites. Section 143-215.104D of the Act states that “the Commission shall adopt rules establishing a risk-based approach applicable to the assessment, prioritization, and remediation of drycleaning solvent contamination”. The rules shall address, at a minimum:

1. Criteria and methods for determining remediation requirements, including the level of remediation necessary to assure adequate protection of public health and the environment.
2. The circumstances under which information specific to the dry-cleaning solvent contamination site should be considered and required.
3. The circumstances under which restrictions on the future use of any remediated dry-cleaning solvent contamination site should be considered and required as a means of achieving and maintaining an adequate level of protection for public health and the environment.
4. Strategies for the assessment and remediation of drycleaning solvent contamination, including presumptive remedial responses sufficient to provide an adequate level of protection as described in item one above.

The Act states that the rules adopted by the Commission shall be applicable to all dry-cleaning facilities, wholesale distribution facilities and abandoned dry-cleaning facilities in the State and shall, to the maximum extent practicable, be cost-effective and technically feasible while protecting public health and the environment.

The DSCA Program brings before you today, the proposed risk-based rules to accomplish the goals set out in the Act. These rules were developed with extensive input and cooperation from a large group of stakeholders that have been involved in the DSCA Program since its inception.

It is essential that the DSCA program implement risk-based rules as quickly as possible. The DSCA program has hired independent contractors who are currently performing assessment activities at prioritized sites certified into the program. However, until risk-based cleanup levels are established, the DSCA program cannot issue “no further action” letters to sites that can be closed or determine appropriate remedial actions based on site-specific target cleanup levels determined through application of the riskbased rules.

Prior to drafting the proposed rules, a review of comparable risk-based programs across the country was completed. The majority of risk-based corrective action programs that have been implemented in various states across the country are generally based on the American Society for Testing and Materials (ASTM) Risk-Based Corrective Action (RBCA) guidelines published in November 2000. Prior to this ASTM RBCA standard, there was an ASTM RBCA standard for petroleum release sites published in 1995 that was also used as a framework for many risk-based

programs. The ASTM RBCA guidelines establish procedures for conducting a tiered approach to risk assessment.

This ASTM framework was used as the basis for the DSCA proposed risk-based rules. The first tier is a screening process with calculated look-up tables that provide concentrations protective of public health and the environment for different exposure scenarios (i.e. residential, non-residential, construction worker) and various media pathways (e.g. inhalation of vapors from groundwater, dermal contact with groundwater, ingestion of soil). The second tier allows the calculation of sitespecific target cleanup levels using prescribed models and input parameters along with site-specific data and information that are protective of public health and the environment. If necessary, a third tier may be conducted that allows site-specific cleanup levels to be calculated using various models and assumptions that are scientifically sound and agreed upon by the specific program requesting the risk assessment.

Currently, the only risk-based program in the Department of Environment and Natural Resources is in the Underground Storage Tank (UST) program. The DSCA program examined the UST risk-based approach to determine if any components of that program could be applied to the DSCA risk-based approach. The approach used in the UST program is not a typical risk-based approach since it is not a tiered approach and does not allow the determination of site-specific target cleanup levels based on site-specific conditions that may be appropriate for determining the level of remediation that will be required. The calculation of site-specific cleanup levels is an integral part of the ASTM RBCA guidelines and most, if not all, of the risk-based programs implemented in other states. Therefore, the proposed DSCA risk-based rules more closely follow the ASTM RBCA guidelines since this process is widely accepted in the scientific and regulatory community and is the most appropriate use of limited finances in a funded program that must address as many sites as possible that enter the program.

1. In addition to the proposed rules, there were several components of a risk-based program that have also been developed to support the implementation of the rules.
These components are:
2. Technical guidance documents.
3. Tool kits or spreadsheet systems to calculate risk and site-specific target cleanup levels.
4. A standardized reporting format for assessment and risk reports.
5. Training to regulators, consultants and interested parties regarding any developed rules, guidance, tool kits or spreadsheet systems to complete risk assessments in accordance with the requirements of the DSCA program.

Development of a risk-based program as described above requires multiple personnel with various areas of expertise such as rule and guidance writing, risk calculations, modeling, database and spreadsheet development. Such personnel must also have the time necessary to focus solely on this project. Due to these requirements, most states with risk-based programs have hired outside contractors with expertise in assisting regulatory agencies with developing risk-based corrective action programs. To assist the DSCA program with development of the riskbased program, a contract was entered into with The RAM Group, Inc. The principal of the RAM Group, Inc. is Dr. Atul Salhotra. Dr. Salhotra is a nationally recognized expert in the field of risk assessment and was one of the original certified ASTM risk-based corrective action

trainers. Dr. Salhotra has assisted eleven states (Idaho, Alabama, Nebraska, Kansas, Oklahoma, Missouri, Louisiana, New York, New Mexico, Colorado, and Tennessee) in the development of risk-based corrective action programs and has provided support and training for risk-based programs in over twenty-six states. Dr. Salhotra and The RAM Group Inc.'s involvement in the development of the DSCA risk-based program provided:

- expertise in developing risk-based programs in other states that allowed a knowledge of what has worked and what has not worked in the past;
- personnel with various types of experience that the DSCA program did not have;
- the dedication of many RAM Group employees to accomplish the task in a shorter time frame than DSCA personnel could have done alone;
- the opportunity for DSCA personnel to continue to address other program issues while The RAM Group, Inc. completed aspects of the risk-based program; and
- expertise necessary to address comments and concerns from the DSCA program stakeholders and interested parties. This expertise will continue to be used throughout the rule-making process.

The proposed risk-based rules are based on scientifically sound, widely-accepted risk assessment protocols with the input of nationally recognized experts in the field of risk assessment and numerous stakeholders and interested parties and meet the requirements of the Act.

Recommendation: That the Environmental Management Commission approve DWM's request to proceed to rulemaking with a Notice of Text and hearing for proposed risk-based rules to address contaminated sites in the DSCA program.

EMC ACTION:

The EMC approved sending the rules out for public notice and hearing.

Agenda Item: Request for Approval of the Final Watauga River Basinwide Water Quality Plan

Explanation: The Watauga River Basinwide Water Quality Plan is in its third cycle of basinwide water quality plans that the Division of Water Quality is preparing for all 17 river basins across the state.

In September 2006, the draft basinwide plan was approved by the Water Quality Committee (WQC) to be released for public review and comment. The draft plan included language developed during an in-depth interim review process, which involved NCDENR agencies, the Soil and Water Conservation Districts, representatives of the Natural Resources Conservation Service (NRCS), the regional council of governments, and several local watershed groups. Staff received written and verbal comments from both state and local agencies during the public review phase. Revisions were made and information was added to or clarified in the draft plan. Copies of the revised plan were sent to EMC members in the EMC package.

The Basinwide Water Quality Plan is a planning document that will guide the Division's actions in this river basin over the next five years and beyond. The management actions are based on existing rules and policies. Therefore, approval and endorsement of this plan by the Commission would affirm that the management actions set forth in this plan are consistent with the rules adopted by the Commission and with the decision-making policies under which the Division has acted in the past.

Recommendation: Staff recommends that the *Watauga River Basinwide Water Quality Plan* be approved and endorsed by the Commission as a guide to water quality program management and implementation by the Division of Water Quality as it carries out its Water Quality Program duties and responsibilities in the Watauga River basin.

EMC ACTION: The EMC approved the Watauga River Basinwide Water Quality Plan.

Agenda Item: Request for Approval of the Hearing Officer's Report on the Proposed Reclassifications of the North Fork First Broad River in Rutherford County (Broad River Basin) to Class Outstanding Resource Waters (ORW), and Two Segments of the Broad River in Cleveland, Polk, and Rutherford Counties (Broad River Basin) to Class Water Supply IV (WS-IV) and WS-IV CA (Critical Area)

Explanation: •North Fork First Broad River

A request for a High Quality Waters (HQW) reclassification of the North Fork First Broad River was submitted by an organization known as The Concerned Citizens of Rutherford County, as well as by two individuals, Mr. and Mrs. Rob McComas. Because the requests mentioned that the area including these waters "...contains an impressive array of high quality natural communities, rare animal populations..." and "...several rare or unusual benthic macroinvertebrate species...", as well as excellent water quality as confirmed by studies conducted by DWQ in 2004 and 2005, DWQ staff determined the ORW classification to be more suitable for recognizing and protecting existing uses.

If reclassified, regulations that affect development and wastewater discharges would apply. There are no current or planned discharges in the proposed area, and no plans for development in the proposed area. However, DOT staff know of one DOT planned activity in the proposed watershed in the next several years, one road that may be paved. Additional erosion control devices would be needed in order for the paving project to meet ORW requirements.

- Broad River

McGill Associates, P.A. and the Town of Forest City ("Town") requested that portions of the Broad River be reclassified to WS-IV CA and WS-IV [Protected Area (PA)]. The reclassification is needed in order to construct a potable water supply intake. The Division of Environmental Health (DEH) granted the Town approval for use of these waters as a potable water source. The waters to be reclassified meet water supply water standards according to 2004 DWQ studies.

Willis Engineers and the City of Shelby ("City") requested that additional portions of the Broad River be reclassified to WS-IV CA and WS-IV (PA). The reason for the reclassification is to allow for a City "raw water supply pipe line", which is currently under construction, and "...intended for use in withdrawal of water from the Broad River under conditions where the current City supply of the First Broad River is inadequate." DEH granted the City approval for emergency use of this water source. The waters to be reclassified meet water supply water standards according to 2004 DWQ studies.

If reclassified, development and wastewater discharge restrictions will apply in the proposed water supply watersheds. There are facilities that hold wastewater discharge permits in these areas, but none of these facilities will most likely be affected by the proposed reclassifications. In addition, there are not any known planned dischargers and developments in these areas that will likely be affected by the proposed reclassifications. DOT staff stated that there are several bridge replacement projects and one road widening project planned to occur in the next several years in these areas. Additional stormwater control devices would be needed in order for such

projects to meet the proposed reclassifications' requirements. Cleveland, Polk, and Rutherford Counties as well as Boiling Springs, Mooresboro, and Lattimore are the local governments with jurisdiction in these areas, and each of these entities supports the proposed water supply reclassification/s within their jurisdiction. These local governments would need to develop or modify water supply watershed protection ordinances within 270 days after the reclassification effective date. However, please note that when a reclassification is anticipated to not become effective before waters are to be used as a potable water supply source, DWQ staff recommends that local governments create or modify water supply watershed protection ordinances before these waters are utilized as a potable water supply source.

In November 2005 and January 2006, the Water Quality Committee and the Commission, respectively, approved the request to proceed with rule-making for the proposed reclassifications. A public hearing was held in September 2006 in Spindale. Two speakers made comments, only addressed the proposed North Fork First Broad River reclassification, and were in favor of it.

During the comment period, one letter was received from a person in support of the three proposed reclassifications. No additional letters were received for the water supply proposals. However, an additional 526 distinct letters, including six template letters, addressing only the proposed North Fork First Broad River reclassification were received and support this proposal. 533 additional letters were received that were replicates of the template letters. The Report of Proceedings sent to the members of the EMC includes further details on these proposed reclassifications.

Recommendation: Staff recommends that the proposed reclassifications be approved by the Commission. If reclassified as proposed, and approved by the RRC in February 2007, the effective date for these reclassifications will be March 1, 2007.

EMC ACTION: The EMC approved the above reclassifications of surface waters.

Agenda Item: Request to Correct Cross-Reference in Best Available Retrofit Technology Rule

Explanation: The Environmental Management Commission is requested to approve correction of a cross-reference error in the recently adopted Best Available Retrofit Technology (BART) rule.

The recently adopted 15A NCAC 02D .0543, Best Available Retrofit Technology rule, contains a cross-reference error in paragraph (f). The paragraph specifically refers to a list of six items in paragraph (d) which are actually listed in paragraph (e). The reference is an obvious typographical error. The Administrative Procedures Act contains provisions in G.S. 150B-21.5 (a) (5) for correcting such typographical errors without going through public hearing. The Director proposes that this provision be used to correct this obvious cross-reference error.

Recommendation: The Director recommends that the Commission authorize correction of the cross-reference error using the provisions of the Administrative Procedures Act in 150B-21.5.

EMC ACTION: The EMC adopted the proposed amendment.

Agenda Item: Request to Adopt Hearing Officer's Recommendations On Proposed Changes to the Surface Water Quality Standards and Classifications Rules for the Triennial Review

Explanation: The Triennial Review is required under the Federal Clean Water Act to review and revise water quality standards and classifications. The proposed recalculation of numerical standards in 15A NCAC 02B is based on revised federal methodology for calculating human health protection criteria. The updated methodology revised the pollutants' toxicological risk assessments, including new or revised reference doses (RfD) and cancer potency factors. These recalculations integrated an updated national default freshwater/estuarine fish consumption rate (17.5 g/day) and, where applicable, relative source contribution (RSC) values obtained from US EPA. The water quality recreational use bacteria standard for saline coastal waters is proposed for revision in direct response to the Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000. Additionally, standards are proposed for revisions due to US EPA updates to Aquatic Life Water Quality Criteria and to further clarify existing standards.

Public hearings were held across the state in July 2006. Numerous comments were received in opposition to the proposed revision to the Cadmium standard. Comments were primarily related to NPDES and Pre-Treatment permitting issues, as well as analytical concerns. Comments on the remainder of the proposed rule changes were received and the majority of those comments support the proposed changes. A careful and comprehensive review of all the submitted written and oral comments is included in the Hearing Officer's Report.

The standard changes recommended for adoption are summarized below in the order in which they appear in rule:

- Language changes to include prohibition of mixing zones for point source dischargers in SB and SA waters.
- Proposed changes to factors affecting human health criteria calculations, including:
- Update "Dietary Intake" to the US EPA Relative Source Contribution (RSC) language and clarify applicability and use of RSC;
- Change the NC Fish Consumption Rate (FCR) of 6.5 g/person/day to the national default fish consumption rate of 17.5 g/person/day;
- Update standards with revised Cancer Potency Factors including revisions to 15 existing carcinogen standards applicable to Class C waters, removal of Beryllium from the carcinogen classification based on current science, addition of Tetrachloroethylene as a known carcinogen, and revisions to 12 existing carcinogen standards applicable to all Class WS waters.
- Proposed changes to aquatic life protective standards for Tributyltin.
- Clarification to narrative language for Temperature to clearly denote that a listing of thermal variances will be available for public access.
- Proposed changes to the recreational use bacterial indicators for Saltwaters, resulting in dual indicators for Class SA waters.

Based on the new data provided during the public hearing process, the Division staff recommends, at this time, a further review of the Cadmium standard proposal. All the submitted comments regarding water quality and thermal variances will be forwarded to the NPDES

Permitting Unit of DWQ for further review and consideration by appropriate parties at the time of the next scheduled renewal of these variances.

Recommendation: That the Commission adopt the changes to the surface water quality standards and amend rules in 15A NCAC 02B as proposed in the Hearing Officer's Report.

EMC ACTION: The EMC approved the surface water standards amendments.

Agenda Item: Request to Proceed to Formal Comment Period with Draft Nutrient Rules for the Jordan Reservoir Watershed

Explanation: Staff will request approval to initiate the formal public comment and hearing process on a nutrient strategy for the Jordan Reservoir watershed. An ad hoc session of the Commission in January 2006 directed staff to address outstanding stakeholder issues. Issues included the modeling basis for strategy goals, point source timelines and costs, and existing development load reduction requirements and costs. Revisions have been made to most of the rules and reflect discussion that has taken place over the last year. Staff will summarize the recent stakeholder process, the revised rules, estimates of costs to affected parties, and a rulemaking schedule.

Recommendation: That the Commission approve staff's request to proceed with the formal public comment period for the set of rules that comprise the Jordan nutrient strategy.

EMC ACTION: The EMC approved sending the draft rules out to public hearing for comments.

Agenda Item: Request to Adopt Hearing Officer's Recommendation to Reclassify Portions of the Catawba River in Burke County to "Trout" Waters

Explanation: A request to reclassify three segments of the Catawba River to "Trout" waters was received in a formal petition from the Southern Environmental Law Center on behalf of three petitioners: The Table Rock Chapter of Trout Unlimited, The Catawba Riverkeeper Foundation and American Rivers. Formal petitions require a recommendation to be based on the information submitted with the petition. Originally, the EMC denied the petition, but a court disagreed with the EMC's decision and ordered the EMC to reverse its action. Therefore, the EMC commenced rulemaking as petitioned. The petition documented the presence of reproducing trout in a portion of the river beginning approximately one mile downstream of the Linville Dam but did not include data documenting the presence of reproducing trout in the river above that. The tributary streams to the Catawba River are also not included in this proposed reclassification. The practice of stocking trout and management of cold-water releases from the Linville Dam are at least two factors contributing to the establishment of reproducing trout in the waters of the Catawba River. Staff has developed rule language to recognize and protect the existing use of this specific trout population in these specific waters. The Hearing Officer's Report is attached and includes the proposed rule language as was presented at public hearing.

Recommendation: That the Commission approve the reclassification and amend Rule 15A NCAC 2B .0308 as proposed in the Hearing Officer's Report.

EMC ACTION: The EMC approved the surface water reclassification to trout waters, as proposed by the Hearing Officer.

Agenda Item: Request for Approval of the Final Hiwassee, Little Tennessee, and Savannah River Basinwide Water Quality Plans

Explanation: The Hiwassee, Little Tennessee, and Savannah River Basinwide Water Quality Plans are in their third cycle of basinwide water quality plans that the Division of Water Quality is preparing for all 17 river basins across the state. In November 2006, the draft basinwide plans were approved by the Water Quality Committee (WQC) to be released for public review and comment. The draft plan included language developed during an in-depth interim review process, which involved NCDENR agencies, the Soil and Water Conservation Districts, representatives of the Natural Resources Conservation Service (NRCS), the regional council of governments, and several local watershed groups. Staff received written and verbal comments from both state and local agencies during the public review phase. Revisions were made and information was added to or clarified in the draft plan. Copies of the revised plan were sent to EMC members in the EMC package.

The Basinwide Water Quality Plan is a planning document that will guide the Division's actions in these river basins over the next five years and beyond. The management actions are based on existing rules and policies. Therefore, approval and endorsement of this plan by the Commission would affirm that the management actions set forth in this plan are consistent with the rules adopted by the Commission and with the decision-making policies under which the Division has acted in the past.

Recommendation: That the Commission approve the river basin plans.

EMC ACTION: These basin plans were approved.

