



ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Stephen T. Smith
Chairman
Charles Peterson
Vice Chairman

Beverly Eaves Perdue, Governor
Dee Freeman, Secretary

Christopher J. Ayers	Kevin Martin
Marvin S. Cavanaugh Sr.	David H. Moreau
Donnie Brewer	Jeffrey V. Morse
Thomas F. Cecich	Darryl D. Moss
Marion Deerhake	David B. Peden
Tom Ellis	Dickson Phillips III
William L. Hall, Jr.	Clyde E. Smith Jr.
Steve Keen	Steve W. Tedder
Ernest W. Larkin	

April 15, 2012

TO: ENVIRONMENTAL REVIEW COMMISSION
Commission Counsel Jeff Hudson
Commission Counsel Jennifer McGinnis

FROM: Stephen T. Smith, Chair, Environmental Management Commission

RE: EMC Quarterly Report

Enclosed please find the quarterly report of the Environmental Management Commission on its operations, activities, programs and progress for the period December 1, 2011 to February 29, 2012.

Attachment

cc: Robin Smith, Assistant Secretary for Environment, NCDENR
Chuck Wakild, Director, DWQ, NCDENR
Dexter Matthews, Director, DWM, NCDENR
Sheila Holman, Director, DAQ, NCDENR
Kari Barsness, Director, LIA, NCDENR
Mariah Matheson, Research Division, NC General Assembly
Claire Hester, Fiscal Research Division, NC General Assembly

**NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
QUARTERLY REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION**

Covering the period December 1, 2011 to February 29, 2012

Per the requirements of G.S. 143B-282(b), the Environmental Management Commission (EMC) is submitting this quarterly report covering the period of December 1, 2011 to February 29, 2012 on the EMC's operations, activities, programs and progress.

I. Nutrient Control Strategies Sections 2, 3, and 4 of Session Law 2005-190 (as amended by SL 2006-259 and SL 2009-486)

Nutrient Control Criteria – Section 2(b)

Per Section 2(b), the EMC continues to assess and identify nutrient control strategies and criteria necessary to prevent excess nutrient loading in each drinking water supply reservoir. The EMC is currently considering modifications to the chlorophyll-a surface water quality standard and will be hosting a forum addressing nutrient control issues in the Research Triangle Park on May 29th and 30th of this year.

Falls Lake - Section 3

The EMC is required to report its progress in assessing, identifying and adopting nutrient control strategies necessary to prevent excess nutrient loading in the Falls Lake water supply reservoir. Following an extensive stakeholder and rule-making process, permanent rules went into effect on January 15, 2011. Major actions are to be initiated over a 10-year first stage of implementation, with potential adaptive requirements under a second stage. Noteworthy groundwork occurred this quarter with the EMC approving fourteen local government new development stormwater programs for the Falls watershed in January. Local governments will fully adopt and implement these local programs by July 2012. Staff with the Division of Soil and Water Conservation and the Division of Water Quality (DWQ) also held three additional monthly meetings with of the Watershed Oversight Committee that assists in implementing the Agriculture rule. At its February meeting the Watershed Oversight Committee finalized recommendations for agricultural accounting methods that they will present to the EMC for approval in March 2012.

Jordan Lake - Section 4 of Session Law 2005-190

Section 4 requires the EMC to report on progress toward developing and implementing a nutrient management strategy for reservoirs including Jordan Lake. The final set of Jordan Lake rules went into effect in August 2009. Timeframes for most new actions under the rules fall within nine years of the effective date of the rules.

The following actions were taken this quarter to support implementation: The Nutrient Scientific Advisory Board, which assists in implementing existing development stormwater requirements, held two meetings. The Board is tasked with developing a set of best management practices and accounting recommendations to be presented to the Secretary of DENR in July 2012. The Board is also assisting DWQ in assigning existing development load reduction goals to the jurisdictions and state and federal entities in the watershed by 2014. DWQ is reviewing local government new development stormwater programs that were submitted to DWQ in September for EMC approval by May 2012 and summer 2012 local implementation. Soil and Water Conservation districts are collecting data to conduct agriculture accounting in the watershed. The Jordan Watershed Oversight Committee, which administers requirements of the Jordan agriculture rule, will present accounting findings to the WQC in summer 2012. DWQ has been working with the NC Cooperative Extension Service on outreach for fertilizer management training that began in November and will continue through August 2012.

II. EMC Rulemaking Approvals

Adopted Amendments to Open Burning Rules to Incorporate Session Law 2011-394 Requirements (507)

During the 2011 legislative session, the General Assembly enacted S.L. 2011-394, An Act to Amend Certain Environmental Laws, which adjusted the setback requirements for permissible open burning. Amendments to 15A NCAC 02D .1900 were necessary to reflect the changes resulting from S.L. 2011-394 for consistency with the General Statutes in order to avoid confusion. Per the S.L. 2011-394, these amendments were not subject to the publication of notice of text and public hearing requirements of the Administrative Procedures Act (APA) or review by the Rules Review Commission (RRC). Per the statute, the EMC adopted amendments substantively identical to the statutory language to 15A NCAC 02D .1903, Open Burning Without An Air Quality Permit, to change the setback requirement to 500 feet and to 15A NCAC 02D .1904, Air Curtain Burners, to change the setback requirement for air curtain burners to 300 feet. The Commission also discussed members' concerns regarding the public health impact of the statutory amendments and adopted a resolution to the General Assembly asking the General Assembly to re-evaluate and reconsider its decision and restore the 1000 feet setback.

Approved the Reclassification of the Haw River in Alamance, Caswell, Guilford, and Rockingham Counties (Cape Fear River Basin) to Class WS-IV and WS-IV with CA

The City of Greensboro (City) requested that a Haw River segment in Alamance, Caswell, Guilford and Rockingham Counties be reclassified in order to recognize and allow continued use of an existing emergency potable water supply intake on the Haw River. During the drought of 2002, the City received permission from the former Public Water Supply Section of the Division of Environmental Health and funding from the Division of Water Resources to construct and use an emergency intake on the Haw River. The waters draining to the intake are currently classified as Water Supply-V (WS-V) Nutrient Sensitive Waters (NSW) due to the Jordan Lake rules. Under current regulations, the source must be classified as a WS-I, WS-II, WS-III, or WS-IV to be used as a public water supply. Review of existing state and local government regulations applicable to these waters, including the Jordan Lake rules that apply to the entirety of the proposed watershed and the Phase 2 Stormwater Program that applies to approximately 40% of the proposed watershed, led to the proposed WS-IV designation for these waters. DWQ studies indicate that the subject waters meet WS-IV water supply water standards. In March 2011 and May 2011, the Water Quality Committee and the Commission, respectively, approved the request to proceed with rule-making for the proposed reclassification. A public hearing was held in September 2011 in Reidsville. The Rules Review Committee (RRC) approved the rules in February 2012 and the reclassification became effective March 1, 2012.

Approved the Reclassification of the South Fork New River in Ashe and Watauga Counties (New River Basin) to Class WS-IV and WS-IV CA

The Town of Boone requested that a segment of the South Fork New River in Ashe and Watauga Counties be reclassified to WS-IV CA and WS-IV (PA) to allow a new drinking water intake structure to be placed in the river. The Town's water system has surpassed 80% of capacity, which is DENR's trigger for requiring an expansion plan. In March 2011 and May 2011, the Water Quality Committee and the Commission, respectively, approved the request to proceed with rule-making for the proposed reclassification. A public hearing was held in August 2011 in Boone. The EMC approved the reclassification in January 2012. However, 10 letters of objection were received by the RRC; therefore, the reclassification will not become effective pending action by the legislature.

III. Other EMC Actions

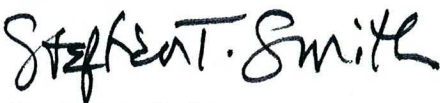
Approved the Local Programs Implementing the Falls Lake New Development Stormwater Rule, and Delegation of Further Approval Authority to the Director

The Falls New Development stormwater rule, 15A NCAC 2B .0277, requires 14 local governments to prepare, adopt, and implement programs to achieve nutrient control on runoff from new development within their respective jurisdictions. In March 2011, the EMC approved a model local program developed by staff with input from stakeholders. The Falls communities submitted proposed programs for DWQ staff review in August 2011 and have made revisions based on staff comments. As specified in their ordinances, local programs will begin implementing the new development requirements immediately following ordinance adoption, with adoption dates scheduled during July 2012. The Commission approved twelve of the fourteen Falls Lake local government new development stormwater programs and gave conditional approval for two of the governments. The Commission also delegated authority to the Director to grant final approval to any programs on which the Commission places contingencies, upon resolution of those contingencies, and to approve any subsequent program amendments that these communities may propose.

Amendments to Rules for Declaratory Rulings, 15A NCAC 2I .0602 and 2I .0603

Commission counsel summarized the changes proposed for the Commission's rules for requesting and processing a request for declaratory ruling. The proposed changes are intended to efficiently implement the recent changes to the declaratory ruling statute, G.S. § 150B-4. Following discussion concerning the delegation of preliminary decisions to the Chairman regarding completeness of a request, standards for determining whether a request is granted or denied, and whether oral presentations will be allowed, the Commission by consensus referred the proposed rules to the Steering Committee for further review.

April 15, 2012



Stephen T. Smith
Chair, Environmental Management Commission