



ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA
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January 15, 2012

TO: ENVIRONMENTAL REVIEW COMMISSION
Jeff Hudson, Commission Counsel, Environmental Review Commission

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

RE: EMC Quarterly Report

A handwritten signature in dark ink, appearing to read "S.T. Smith".

Enclosed please find the quarterly report of the Environmental Management Commission on its operations, activities, programs and progress for the period October 1, 2011 to November 30, 2011.

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

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

Covering the period October 1, 2011 to November 30, 2011

Per the requirements of G.S. 143B-282(b), the Environmental Management Commission (EMC) is submitting this quarterly report covering the period of October 1, 2011 to November 30, 2011 on the EMC's operations, activities, programs and progress. The next quarterly report will cover December 1, 2011 through February 29, 2012.

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 mid-2012.

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 Division of Water Quality (DWQ) staff completing the initial review of and providing comments on fourteen Falls Lake local government draft new development stormwater programs. Revised final drafts of local government stormwater programs will be brought to the January 2012 EMC meeting for approval. In November, staff of the Division of Soil and Water Conservation and DWQ held the second meeting of a Watershed Oversight Committee that will implement the Agriculture rule. This committee is charged with overseeing farmer registration by January 2012 and then reviewing, updating and seeking EMC approval of agricultural accounting methods 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, and a Board subcommittee met three times. 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 July 2013. DWQ is reviewing local government new development stormwater programs that were submitted to DWQ in September 2011 for EMC approval by May 2012 and local implementation by summer 2012. 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 Temporary Rule to Defer Carbon Dioxide Emissions from Combustion of Biomass from Prevention of Significant Deterioration and Title V Requirements (496)

In November the EMC adopted a temporary amendment to 15A NCAC 02D .0544, Prevention of Significant Deterioration for Greenhouse Gases, to defer carbon dioxide (CO₂) emissions from biomass from consideration for prevention of significant deterioration (PSD) purposes for a period of three years.

On July 20, 2011 the United States Environmental Protection Agency (USEPA) put in place a three year deferral of consideration of these emissions for purposes of the federal PSD permitting program while the agency completes its science and technical review of the issue of accounting for the net atmospheric impact of biogenic CO₂ emissions. The deferral excludes from consideration CO₂ emissions from bioenergy and other biogenic sources when determining whether a stationary source meets PSD and Title V permitting applicability thresholds, including those for the application of best available control technology (BACT). Stationary sources that combust biomass (or otherwise emit biogenic CO₂ emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO₂ emissions resulting from those actions. The temporary amendment ensures that stationary sources would not have to unnecessarily complete a BACT analysis for biogenic CO₂ and possibly be required to install equipment to control emissions during the three year deferral. The amendment to the state rule reflects the recent federal deferral of such emissions in the state PSD program.

III. Other EMC Actions

Approved Request to Proceed to Hearing on Permanent Rule Amendment to Defer Carbon Dioxide Emissions from Biomass from Prevention of Significant Deterioration Requirements

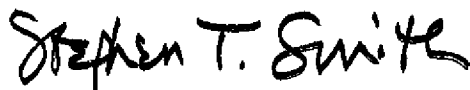
In November the EMC also approved a request to proceed to public hearing on the permanent rule amendment to 15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases, to defer carbon dioxide emissions from biomass from prevention of significant deterioration requirements for three years. The EMC is soliciting comment on the economic assessment and information relative to human health effects and impacts to ecosystem services. Pursuant to the Administrative Procedures Act, the permanent rule would eventually replace the temporary rule adopted in November.

Considered Request for Adoption of Amendments to Open Burning Rules to Incorporate Session Law 2011-394 Requirements

The Air Quality Committee of the EMC approved adoption of amendments to the open burning rules required by Session Law 2011-394 and to update the name of the former Division of Forest Resources and requested EMC waiver of the EMC's rule requiring a 30-day delay between committee rule-making recommendations and EMC action thereon. 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 are necessary to reflect the changes resulting from S.L. 2011-394 for consistency with the General Statutes in order to avoid confusion; however, per the S.L. 2011-394 Sections 2.(d) and 2.(g), these amendments are not subject to the publication of notice of text and public hearing requirements of the Administrative Procedures Act (APA) found in G.S. 150B-21.2 nor review by the Rules Review Commission (RRC) found in G.S. 150B 21.9 - 21.14. 15A NCAC 02D .1903, Open Burning Without An Air Quality Permit, is to be amended to change the setback requirement to 500 feet per S.L. 2011-394 Section 2.(d). 15A NCAC 02D .1904, Air Curtain Burners, is to be amended to change the setback requirement for air curtain burners to 300 feet per S.L. 2011-394 Section 2.(g). S.L. 2011-394 Sections 2.(d) and 2.(g) specify that the rule amendments adopted to implement these provisions in 2D .1903 and .1904 are to be substantively identical to S. L. 2011-394 Section 2.(c) and Section 2.(f), respectively. In addition, a technical amendment updating the reference to the former Division of Forest Resources to reflect its new name, the North Carolina Forest Service, is proposed for adoption.

The technical amendment does not require notice of text or hearing pursuant to G.S. 150B 21.5(a)(2); however, it does undergo review by the Rules Review Commission. Waiver of the EMC's rule requiring a 30 day delay between EMC committee recommendations on rule-making and EMC rule-making action was not approved. This rule-making action is scheduled for the EMC's January 12, 2012 meeting in accordance with the EMC's normal rule-making procedures.

January 15, 2012



Stephen T. Smith
Chair, Environmental Management Commission