



## ENVIRONMENTAL MANAGEMENT COMMISSION

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October 15, 2013

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

FROM: Benne Hutson, Chair, Environmental Management Commission

RE: EMC Quarterly Report

As required by G.S. 143B-282(b), the Environmental Management Commission is submitting a quarterly report on its operations, activities, programs and progress for the period June 1, 2013 to August 31, 2013.

Attachment

cc: Mitch Gillespie, Assistant Secretary for Environment, NCDENR  
Tom Reeder, Director, DWR, NCDENR  
Dexter Matthews, Director, DWM, NCDENR  
Sheila Holman, Director, DAQ, NCDENR  
Neal Robbins, 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 June 1, 2013 to August 31, 2013

Per the requirements of G.S. 143B-282(b), the Environmental Management Commission (EMC) is submitting this quarterly report covering the period of June 1, 2013 to August 31, 2013 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 S.L. 2006-259 and S.L. 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 Division of Water Resources (DWR) and the EMC are using the information collected from the North Carolina Forum on Nutrient Over-Enrichment (May 2012) and public input to develop a plan for study and development of nutrient control criteria. The draft of the Nutrient Criteria Development Plan was released for public comment during April 2013. Comments were incorporated into an updated draft. There will be a stakeholders meeting on September 25, 2013 to discuss the draft plan. More information is available on the DWR website: <http://portal.ncdenr.org/web/wq/ps/mtu/nutrientcriteria>

**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. As required by rules, DWR developed a draft Stage I existing development model program with assistance from affected parties. Staff met with the Upper Neuse River Basin Association to get feedback on draft model text and to discuss ways of expanding the best management practices (BMPs) credit accounting toolbox that will be part of the Stage I existing development model program. A meeting was also held with affected parties in June to get their feedback on a draft. Staff presented a draft model program to the July EMC. Upon staff request, the commission deferred approval of the model program while the division continues to collaborate with the affected parties to complete ongoing initiatives to expand the list of available nutrient reducing measures.

**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. Actions taken this quarter to support implementation are described below.

The Nutrient Scientific Advisory Board (NSAB), which assists in implementing existing development stormwater requirements, held two meetings and several subcommittee meetings. The board and the Triangle J Council of Governments is assisting DWR in assigning existing development load reduction goals to jurisdictions and state and federal entities in the watershed. A contractor is currently developing a watershed model for this purpose. Contractors have also been hired to assist DWR and the NSAB in developing accounting methods for alternative load-reducing measures and developing a new load accounting tool. DWR developed a draft existing development model program with assistance from affected parties including the NSAB. A meeting was held with affected parties in June to get their feedback on the draft. Staff presented a draft model program to the July EMC. Upon staff request, the commission deferred approval of the model program while the division continues to collaborate with the affected parties to complete ongoing initiatives to expand the list of available nutrient reducing measures.

**II. EMC Rulemaking Approvals**

**Approved Revisions to New Source Review (NSR) and Prevention of Significant Deterioration (PSD) Nitrogen Oxides (NOx) Significance Level for PM2.5 and PM2.5 Increment**

The EMC amended the NSR and the PSD permitting rules in 2010 to establish the significance level for NOx for fine particulate matter in North Carolina at 140 tons per year (tpy). Fine Particulate Matter (PM2.5) includes particles less than 2.5 micrometers in diameter and is interchangeably referred to as "fine" particles. This significance level was based on monitoring and modeling data indicating that NOx is a lessor contributor to the formation of PM2.5 than sulfur dioxide

(SO<sub>2</sub>). As part of its rule review of North Carolina's state implementation plan (SIP), the Environmental Protection Agency has determined that, while the federal rule allows for a demonstration that NO<sub>x</sub> is not a significant precursor to formation of PM<sub>2.5</sub>, there is not an allowance for states to establish an alternate significance level. As a result, the state significance level had to be revised to reflect the federal 40 tpy significance level in the EPA PM<sub>2.5</sub> Implementation Rule. In 2010, the EPA added PM<sub>2.5</sub> increments under the program. An increment is the maximum allowable increase in ambient pollutant concentration. Federal increments were established for 24-hour and annual averaging periods in Class I, Class II and Class III areas. Adoption of these federal increments is required in order for the EPA to approve North Carolina's SIP. 15A NCAC 02D .0530, Prevention of Significant Deterioration, was amended to revise North Carolina's NO<sub>x</sub> significance level from 140 tpy to 40 tpy and to update the federal cross-reference to reflect the current federal increments for PM<sub>2.5</sub>. 15A NCAC 02D .0531 Sources in Nonattainment Areas, was amended to revise North Carolina's NO<sub>x</sub> significance level from 140 tpy to 40 tpy. The amendments are effective September 1, 2013.

### **III. Other EMC Actions**

#### **Approved Request to Hold a Public Hearing to Receive Comment on Brunswick County Public Utilities' Petition for an Interbasin Transfer (IBT) Certificate**

Brunswick County Public Utilities provides water to more than 34,000 retail customers and 11 wholesale customers located throughout the county service area. The county is currently in the process of requesting an IBT certificate from the EMC to meet future water demands. Brunswick County has an existing grandfathered capacity to transfer 10.5 MGD from the Cape Fear River Basin to the Shallotte and Waccamaw river basins. The county is requesting an increase of 7.8 MGD over the grandfathered transfer, with all the increase going to the Shallotte IBT river basin. This would result in a maximum transfer from the Cape Fear IBT River Basin of 18.3 MGD. This increase is based on projections of water demand and need through approximately 2042, representing nearly a 30-year period for the IBT certificate. This certificate request currently falls under the requirements of NCGS 143-215.22I, which requires that the applicant develop an Environmental Assessment (EA) and a petition to support its request. The county developed an EA which received a Finding of No Significant Impact (FONSI) from the Division of Water Resources in April 2013. The statute also requires that the EMC hold a public hearing to receive comment on the petition. The hearing was scheduled to be held on September 9, 2013.

**Approved the Request to Proceed to Hearing on Exemption of Certain Motor Vehicles from Emission Inspections**  
Session Law 2012-199, amends the current rule's exclusion of the current model year for emission inspection to exclude vehicles of the three most recent model years with less than 70,000 miles on its odometer. This change directly involves amending four rules; 15A NCAC 02D .1002, Applicability; 15A NCAC 02D .1003, Definitions; 15A NCAC 02D .1005, On-Board Diagnostic Standards; and 15A NCAC 02D .1006, Sale and Service of Analyzers. These rules establish and define which vehicles are subject to the Motor Vehicle Emission Control Standard and which analyzers are suitable for conducting the emission inspections. In addition, this change involves minor housekeeping amendments and repealing a rule – 15A NCAC 02D .1009, Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements. The proposed rule changes conform to the principles of Executive Order 70 by reducing the existing and potential burden on the regulated community and making the rule language easier to understand, relevant and up-to-date. The public hearing is scheduled for September 18, 2013 in Raleigh. The comment period closes October 14, 2013.

#### **Approved Request to Proceed to Hearing on Air Toxics Rule Revisions (519) and Asbestos Acceptable Ambient (AAL) Correction**

Session Law 2012-91 provides an exemption from North Carolina's air toxics rules for certain sources of toxic air pollutants as long as the DAQ determines that the emissions from a facility will not pose an unacceptable risk to human health. Section 1 of the law exempts sources subject to federal maximum achievable control technology (MACT), generally available control technology (GACT), or case-by-case emission limits for toxic air pollutants established under Section 112(j) of the Clean Air Act, and codifies the Director's Call provision of the state air toxics rules. Section 2 of the law requires rule amendments consistent with Section 1. Section 3 of the Session Law required the DAQ to review the existing air toxics rules and make recommendations to the Environmental Review Commission (ERC) on whether further changes could be made that would reduce unnecessary regulatory burden and increase the efficient use of division resources while maintaining public health protections. The report included six recommendations based on a review conducted in consultation with interested parties. These recommendations were provided in a report to the ERC on December 1, 2012. A stakeholder meeting on draft rule amendments to incorporate the recommendations was held March 20, 2013. The proposed amendments include: additional set of toxic emission permitting rates (TPER) for unobstructed vertical stacks; exempt natural gas and propane-fired combustion sources less than 450 mm BTU/hr that are only source of benzene; exempt emergency engines less than 4843 hp that are only source of formaldehyde; repeal Standard Industrial Classification (SIC) call rule; clarify the term "actual rate of emissions"; and remove the term

“unadulterated wood”. In addition, Rule 15A NCAC 02Q .0714, Waste Water Treatment Systems At Pulp And Paper Mills, is proposed to be repealed due to applicable requirements having expired. Existing rule numerical values for the asbestos ambient air level (AAL) in 15A NCAC 02D .1104 and the associated asbestos TPER in 02Q .0711 are proposed to be revised due to a calculation error in their original development. Rule 15A NCAC 02D .1104 and Rules in Section 15A NCAC 02Q .0700 are proposed to be revised to incorporate the Section 1 statutory exemptions, the Section 3 report recommendations and to revise the asbestos AAL and TPER. The public hearing is scheduled for September 19, 2013 in Raleigh. The comment period closes October 14, 2013.

#### **Deferred Decision on the Proposed Revision of Arsenic Acceptable Ambient Level (AAL)**

Changes are proposed to North Carolina’s air toxics rules for arsenic based upon a recommendation from the North Carolina DENR Secretary’s Science Advisory Board (SAB). The SAB studies the toxicological effects of toxic air pollutants and advises the EMC regarding the necessary level of control of those pollutants for protection of human health and the environment. The SAB recommended that the Acceptable Ambient Level be revised from its current annual value of  $2.3 \times 10^{-7}$  to  $2.1 \times 10^{-6}$  milligrams per cubic meter. Subsequent changes are proposed to the emission rates requiring a permit for arsenic from the current value of 0.016 to 0.053 pounds per year. Under the proposed amendments, 137 fewer facilities would potentially be impacted by the rules. A public hearing was held on May 14, 2013, the comment period closed June 14, 2013, and the hearing officer’s report was presented to the EMC at its July 11, 2013 meeting. The EMC postponed action on the hearing record until its September meeting to further consider questions posed by members regarding the SAB methodology, deposition and ingestion, and ongoing review of USEPA health based arsenic values. In order to provide time for new EMC members to review all of the materials associated with the hearing record, EMC action on this proposal is not anticipated until the November EMC meeting.

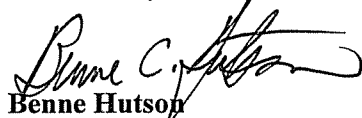
#### **Returned Model Programs for Jordan and Falls Existing Development Stormwater back to DWQ to Make Revisions**

The Falls Lake Existing Development Stormwater rule and Jordan Lake Session Law, 15A NCAC 2B .0278 and S.L. 2009-216, respectively, call on DWQ to submit model local programs to the EMC for approval in July 2013. These model programs are to include guidance and identify nutrient reducing tools that will be used by local governments and state and federal entities to develop local programs required to implement the existing development requirements within each watershed. Staff discussed the current draft program and presented an update on its development highlighting the key requirements and ongoing work with affected parties beyond July 2013 to expand the tool box of approved nutrient reduction measures and finalize the content of the Model Program. The EMC returned the model program to the division with a request for incorporation of specific changes. This return as to the Jordan Lake model local program was required by statute. The commission is required by statute to take final action on the Jordan Lake model program by December 2013. The division will continue to collaborate with the affected parties to complete ongoing initiatives to expand the list of available nutrient reducing measures.

#### **Approved the Request to Confirm Recommendation to Appoint New Chairman and Re-appointment of Two Members to the Water Pollution Control System Operators Certification Commission (WPCSOCC)**

DENR Secretary John E. Skvarla, III has appointed Mr. W. Corey Basinger as Chairman. Mr. Basinger is currently employed by DWR as Surface Water Protection Supervisor in the Winston-Salem Regional Office. He satisfies the statutory requirement of a member employed by DENR working in the field of water pollution control, who shall also serve as Chairman of the Commission. It was also recommended that Mr. Stephen Adam Waters, II and, Mr. Gregory E. Young be reappointed as members of the WPCSOCC. All current terms expired June 30, 2013. The new terms will be effective immediately and expire June 30, 2016.

October 15, 2013



Benne Hutson  
Chair, Environmental Management Commission