



## ENVIRONMENTAL MANAGEMENT COMMISSION

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January 15, 2014

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 September 1, 2013 to November 30, 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 September 1, 2013 to November 30, 2013

Per the requirements of G.S. 143B-282(b), the Environmental Management Commission (EMC) is submitting this quarterly report covering the period of September 1, 2013 to November 30, 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. Following several rounds of stakeholder review, staff is drafting final plan for implementation in 2014. 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. During the most recent quarter, several implementation activities were initiated. Staff continued to collaborate with the Upper Neuse River Basin Association to develop a contract with the UNRBA's private contractor to develop credit accounting for additional best management practices (BMPs). These will be added to the credit accounting toolbox that will be part of the Stage I existing development model program. A conference call was held in September to provide comments on the proposed scope of work. Additional refinements to the scope were made in October and finalized in November. In September, DWR staff met with NCDOT to review their Falls Lake new & existing development stormwater management program which will be presented to the EMC in January for approval. A training session for Falls local governments and contractors was held in October to train users of the updated new development nutrient accounting tool. In November, DWR worked with Division of Soil and Water Conservation to finalize a draft of the Agriculture Annual Progress Report which will be provided to the Watershed Oversight Committee for review in December and presented to the EMC in January.

**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 (TJCOG) are assisting DWR in assigning existing development load reduction goals to jurisdictions and state and federal entities in the watershed. A contractor was hired to develop a watershed model for this purpose. Model development was completed and preliminary numbers were generated in October. TJCOG and the Board continue to assist DWR in developing a contract for the peer review of this watershed model. The model will also be peer-reviewed by EPA. Contractors were also hired to assist DWR and the NSAB in developing accounting methods for alternative load-reducing measures and developing a new load accounting tool. These contracts were completed in October. Training workshops were held for the accounting tool in November. DWR continues to work on developing a Stage 2 Existing Development stormwater model program. Local governments were required to submit annual reports for their Stage 1 existing development stormwater programs in October. DWR brought a rule adoption and five rule amendments in accordance with 2009-2012 session laws to the EMC in November, where they were adopted. The revised rules were filed with the Rules Review Commission and will proceed to the next General Assembly for review.

**II. EMC Rulemaking Approvals**

### **Approved Revision of Arsenic Acceptable Ambient Level (AAL)**

In March 2013, the EMC proposed changes 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. Corresponding changes were 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. Multiple new appointments to the EMC were made between its July and September meetings. In order to provide time for newly installed EMC members to review all of the materials associated with the hearing record, EMC action on the proposal was delayed until the November EMC meeting. At the November meeting the EMC heard presentations addressing the questions raised in July and presentation of the hearing record by the hearing officer. The EMC adopted the proposed revision to the AAL and corresponding emission rates.

### **Approved Revisions to Inspection/Maintenance (IM) Rules**

North Carolina's motor vehicle emission control standards rules provide for emission inspections to meet federal standards in counties with a recent history of violating national ambient air quality standards. Under the existing rules, current year gasoline-powered motor vehicles in the counties identified in G.S. 143-215.107A, except motorcycles, are required to have an annual emissions inspection. Session Law 2012-199 expanded the existing exclusion from emission inspection of the current model year motor vehicles to the three most recent model years motor vehicles with less than 70,000 miles on the odometer. The EMC proposed conforming rule amendments and, minor housekeeping amendments for 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, repeal of an unnecessary rule, 15A NCAC 02D .1009, Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements, was proposed. A public hearing on the proposed rule amendments was held September 18, 2013 in Raleigh, the comment period closed October 14, 2013, and the EMC unanimously adopted the subsequent amendments and repeal at its November 14, 2013 meeting. Per the Session Law, the exemption becomes effective on the later of January 1, 2014 or the first day of a month that is 30 days after both: 1) DENR certifies to the Revisor of Statutes that the U.S. Environmental Protection Agency has approved the amendment to the North Carolina State Implementation Plan reflecting the change to the emissions inspection program and 2) the Commissioner of Motor Vehicles certifies to the Revisor of Statutes that the Motor Vehicle Inspection and Law Enforcement System (MILES) has been replaced.

### **Approved Proposed Rule and Rule Amendments under the Jordan Lake Nutrient Strategy in Accordance with 2009-2012 Session Laws**

Session Laws 2009-216, 2009-484, 2011-394, 2012-187, 2012-200 and 2012-201, which are currently being implemented, required the EMC to replace the Jordan Lake existing development stormwater rule, 15A NCAC 2B .0266, and to amend the following Jordan Lake nutrient strategy rules: 15A NCAC 02B .0262, .0265, .0267, .0270 and .0271. All rule revisions were to be substantively identical in content to that of the session laws.

## **III. Other EMC Actions**

### **Approved Request to Proceed to Public Hearing on the Triennial Review of Surface Water Quality Standards**

Under the Clean Water Act, NC is delegated authority to establish the water body classifications and applicable water quality standards to protect human health and the aquatic environment. Per this delegation, the state is expected to adopt water quality standards (WQS), which include numeric and narrative criteria and designated use classifications as well as antidegradation provisions, to protect all uses of the waters of the state. Requirements to establish these standards are authorized to the EMC by NC General Statutes (NC GS §143-214.1 and 215.3(a)). Water quality standards are used in various ways such as setting NC's National Pollutant Discharge Elimination System (NPDES) permit limits and evaluating the conditions of the surface waters of the state per Clean Water Act Sections 303(d) and 305(b). Potential changes to regulations resulting from these hearings could affect permitting, monitoring, and assessment programs. The hearing was held on November 19, 2013 with the comment period ending January 3, 2014.

### **Elected a vice-chair to the Environmental Management Commission**

At the November 14, 2013 meeting, Mr. Kevin Martin was elected as the vice-chair of the EMC.

#### **Approved Establishing Page Limits on Briefs in Contested Case Proceedings**

The EMC approved amendments to its internal operating procedures that any written argument, memorandum, or brief submitted to the commission or any of its committees in hearings governed by Article XI of the EMC's internal operating procedures, shall be limited to thirty-five pages if the font used in the brief is a non-proportional type and to 8,750 words if the brief uses proportional type.

#### **Approved the submittal of the Emission Reductions Beyond Clean Smokestacks Act 2013 Report to the ERC**

Session Law 2002-4 Section 11 instructs the EMC to study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) beyond those required by the Clean

Smokestacks Act (CSA). The EMC is to report its findings and recommendations biennially (as amended by S.L. 2010-142) to the General Assembly and the Environmental Review Commission beginning September 1, 2011.

The 2013 report presents the status of key federal judicial and legislative actions for which the outcomes are still undetermined, such as the Cross-State Air Pollution Rule (CSAPR) to regulate interstate pollution transport from electric generating units (EGUs), which is currently on the Supreme Court docket for review, and the delayed revision of the National Ambient Air Quality Standards (NAAQS) for ozone, as well as other actions that will affect EGU emissions. In addition, the report provides background on compliance with the CSA. North Carolina EGU emissions of SO<sub>2</sub> and NO<sub>x</sub> have been significantly reduced by 89 and 83 percent, respectively, in response to the CSA requirements in recent years and all of the state's EGUs are reported to be on course to meet the Clean Air Interstate Rule (CAIR) and Mercury and Air Toxics Standards (MATS) rules. Given these and the other pending actions affecting EGU emissions, the report recommends that DENR continue to evaluate the need for reductions beyond CSA from the utilities based on what additional emission reductions are needed to attain the NAAQS upon EPA issuance of a new NAAQS. If additional controls are necessary, DENR would initiate necessary rule changes, open permits to include new emissions limitations or take both actions. The report also recommends that a report every two years is no longer necessary. The EMC approved the report at its November 14, 2013 meeting.

#### **Denied Petition for Rulemaking to Reclassify a Portion of the Dan River to Class C**

In August 2013 DWR received a Petition for Rulemaking from Caswell County. This petition, which was submitted in accordance with 15A NCAC 021 .0500, requested the EMC to initiate rulemaking proceedings to reclassify a portion of the Dan River to Class C. The portion of the Dan River of interest extends from the location of a proposed city of Roxboro riverine water supply intake in Caswell County to the point where the Dan River enters Caswell County at the North Carolina-Virginia state line. At its November meeting, the EMC denied the petition.

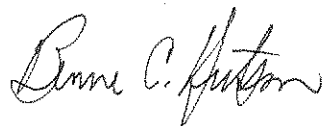
#### **Approved Brunswick County Interbasin Transfer (IBT) Certificate**

Brunswick County requested an IBT certificate to transfer 17.0 MGD, calculated as a daily average of a calendar month, from the Cape Fear River Basin to the Shallotte and Waccamaw River Basins. The County has had a grandfathered transfer capacity of 10.5 MGD. The requested increase was based on a 30-year water demand projection. Brunswick County completed the environmental review and received a "Finding of No Significant Impact" (FONSI) for the Environmental Assessment (EA) document. The EMC approved that Brunswick County be granted the IBT Certificate to transfer a daily amount not to exceed a maximum of 17 million gallons, calculated as a daily average of a calendar month, from the Cape Fear River Basin to the Shallotte and Waccamaw River Basins.

#### **Approved Delegation of the Neuse Buffer Program to the Town of Hillsborough**

The EMC granted delegation of the Neuse Buffer Rules (15A NCAC 02B .0233 and .0242) to the Town of Hillsborough.

**January 15, 2014**



**Benne Hutson**

**Chair, Environmental Management Commission**