



ENVIRONMENTAL MANAGEMENT COMMISSION

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October 12, 2011

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

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 July 1, 2011 to September 30, 2011.

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

Attachment

cc: Robin Smith, Assistant Secretary for Environment, NCDENR
Coleen Sullins, 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 July 1, 2011 to September 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 July 1, 2011 to September 30, 2011 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 early 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 local governments finalizing and submitting new development stormwater programs to the Division of Water Quality (DWQ) for review and subsequent approval by the EMC (potentially January 2012). In August, staff of Division of Soil and Water Conservation and DWQ held the first 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 effective date of the rules.

The following actions were taken this quarter to support implementation. The Nutrient Scientific Advisory Board held three meetings this quarter to begin developing a set of best management practices for reducing nutrient runoff from existing developed areas. The Board will also develop recommendations on how much nutrient reduction credit should be allowed for each management practice. The Board's recommendations are to be presented to the Secretary of DENR in July 2012. These recommendations will be used to implement the requirements in the Jordan Lake rules for reduction in nutrient contributions from existing developed areas. The Board's watershed modeling subcommittee also met several times. The Watershed Oversight Committee (WOC), which administers requirements of the Jordan agriculture rule, held one meeting this quarter to finalize accounting recommendations, which were then approved by the EMC in July for use in annual agricultural progress reporting. Local governments submitted new development stormwater programs to DWQ in September for EMC approval by May 2012 and summer 2012 local implementation.

II. EMC Rulemaking Approvals

Amendments to the National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide (SO₂) and Nitrogen Dioxide (NO₂)

Rule 15A NCAC 02D .0402, Sulfur Oxides, was amended to reflect changes to the NAAQS for sulfur dioxide. On June 2, 2010, the U.S. Environmental Protection Agency (EPA) establishing a new 1-hour standard at a level of 75 ppb sulfur dioxide (SO₂) and revoked the two existing primary standards of 140 ppb evaluated over 24-hours and 30 ppb evaluated over an entire year because they will not provide additional public health protection given a 1-hour standard at 75 ppb. The existing 24-hour and annual standards will remain in effect until one year after the effective date of initial designations under Section 107(d) of the Clean Air Act. Amendments to 15A NCAC 02D .0402 are necessary to reflect the federal rule change.

Rule 15A NCAC 02D .0407, Nitrogen Dioxide, was amended to reflect changes to the NAAQS for nitrogen dioxide. On January 22, 2010, the EPA set a new 1-hour NO₂ standard at the level of 100 parts per billion (ppb). The form for the 1-hour NO₂ standard is the 3-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. The EPA also retained the current annual average NO₂ standard of 53 ppb. No one commented at the hearing. The only comment received was a letter stating that EPA Region 4 had completed review of the submittal and had no comments at this time. The EMC adopted the amendments on July 14, 2011. The rules were subsequently approved by the Rules Review Commission (RRC) on August 18, 2011, and became effective September 1, 2011.

Technical Revisions to the Jordan Nutrient Rules

The Jordan Nutrient Rules went into effect on August 11, 2009, and are currently being implemented. DWQ staff had found that six of the rules required minor technical revisions. The RRC approved the rules in August 2011.

Reclassification of Dan River Segments in Caswell County (Roanoke River Basin) to Class WS-IV and WS-IV CA

The city of Roxboro requested that Dan River segments (Caswell County, Roanoke River Basin) be reclassified from Class C to WS-IV CA and WS-IV PA to allow construction of a water supply intake in the river. The new intake will initially serve Roxboro and the towns of Yanceyville and Milton with an emergency potable water supply source and will eventually become a permanent potable water supply source. More than 10 objections to this reclassification were sent to the RRC; therefore, it will not become effective until after legislative review in 2012.

Reclassification of the French Broad River (Henderson County) to Class Water Supply-IV Critical Area

The city of Hendersonville requested that a French Broad River segment in Henderson County (French Broad River Basin) be reclassified to WS-IV CA for an emergency water supply intake. Comments were accepted April 1, 2011 through May 31, 2011, and no comments against the reclassification were received. The RRC will review in October or November 2011.

III. Other EMC Actions

Approved Petition for Rulemaking to Amend the Groundwater Quality Standard for 1,1-Dichloroethylene

In March 2011, Rhodia Inc. filed a petition for rulemaking requesting the amendment of the groundwater standard for 1,1-dichloroethylene (1,1-DCE) contained in 15A NCAC 02L .0202(g)(59) from 7 ug/L to 350 ug/L, based on current data. The Division of Water Quality is preparing to move forward with rulemaking per the EMC's directions.

Declined to adopt the Proposed Rules for Monitoring at Animal Feeding Operations

The Waterkeeper Alliance, et al. filed rulemaking petitions during the fall of 2007 to require water quality monitoring by animal operations covered by the NPDES General Permit and State General Permit. The EMC granted the petition in May 2008, directing staff to gather more input on draft rules before proceeding to the public comment process. As a result of input during four stakeholder meetings, changes were recommended to the proposed rules. The EMC approved the rules for public notice in November 2008. Four public hearings were held during the 60-day comment period in 2009. Another comment period was conducted in June 2010. In 2010, DENR management directed DWQ to pursue funding for a study that could help to answer some of the issues raised by industry during the comment periods about the necessity and format of monitoring at animal operations. In May 2011, DWQ and the United States Geological Survey finalized a contract to perform a multi-year study of possible surface water impacts related to animal operations. At their September meeting the EMC declined to adopt the proposed rule and will use the multi-year study to assist in identifying the best monitoring systems.

Approved the Final French Broad and New River Basin Plans

The French Broad River Basin and New River Basin Plans were developed per G.S. 143-215.8B to guide DWQ's actions in the French Broad and New River Basins over the next five years and beyond utilizing existing rules and policies.

Approved the request to proceed to public hearing with the proposed reclassification of the Neuse River and associated Quarry in Johnston County to Class WS-IV (PA) and WS-IV CA

Johnston County has requested that portions of the Neuse River and an abandoned quarry be reclassified to allow construction of the public water supply intake and utilization of the quarry's water as a public water supply. The quarry will receive water from a proposed Neuse River intake, and will be reclassified to Water Supply-IV (WS-IV) Critical Area (CA) to meet water demands projected through 2050. The subject portions of the Neuse River are to be reclassified to WS-IV CA and WS-IV (Protected Area or PA). The draft fiscal analysis' quantifiable results revealed a one-time cost of approximately \$600 to the state and \$500 to Johnston County. The proposed effective date for this reclassification is July 1, 2012.

Approved the request to proceed to public hearing for a temporary rule to defer carbon dioxide emissions from combustion of biomass from prevention of significant deterioration and Title V requirements

In September the EMC approved a request to proceed to hearing on a temporary amendment to 15A NCAC 02D .0544, Prevention of Significant Deterioration for Greenhouse Gases, to defer carbon dioxide (CO₂) emissions from combustion of biomass from consideration for prevention of significant deterioration (PSD) purposes for a period of three years. On July 20, 2011, the EPA put in place a three year deferral of consideration of these emissions for purposes of the federal PSD permitting program. The amendment to the state rule is proposed to reflect the recent federal deferral of such emissions in the state PSD program.

October 12, 2011

Stephen T. Smith

Chair, Environmental Management Commission

