



North Carolina Department of Environment and Natural Resources

Pat McCrory Governor

John E. Skvarla, III Secretary

MEMORANDUM

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

FROM: J. Neal Robbins
Director of Legislative and Intergovernmental Affairs

SUBJECT: EMC Quarterly Report

DATE: April 15, 2013

Pursuant to G.S. § 143B-282(b), "The Environmental Management Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission." The attached report is submitted to fulfill this requirement.

If you have any questions or need additional information, please contact me by phone at 919.707.8618 or via e-mail at neal.robbins@ncdenr.gov.

cc: John E. Skvarla, III, Secretary
Mitch Gillespie, Assistant Secretary for the Environment
Mariah Matheson, Research Division



ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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April 15, 2013

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, 2012 to February 28, 2013.

A handwritten signature in black ink that reads "Stephen T. Smith". The signature is written in a cursive style with a large, stylized "S" and "T".

Attachment

cc: Mitch Gillespie, Assistant Secretary for Environment, NCDENR
Chuck Wakild, Director, DWQ, 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 December 1, 2012 to February 28, 2013

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, 2012 to February 28, 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 EMC is currently considering modifications to the chlorophyll-a surface water quality standard. The Division of Water Quality (DWQ) 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. A draft plan is expected to be released for public comment in March. More information is available on the DWQ website: <http://portal.ncdenr.org/web/wq>.

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 DWQ staff meeting with Upper Neuse River Basin Association in January and February to work on potential methods for developing jurisdictional loads and credit accounting for local governments that will be part of the Stage I existing development model program due to the EMC in July 2013. Division of Soil and Water Conservation staff also held two additional Watershed Oversight Committee meetings in January and February to finish and approve the initial agriculture accounting report that will be presented to the Water Quality Committee in March 2013.

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.

A set of revised rules, as required by Session Laws, was published in the North Carolina Register in February for a 30 day public comment period. The Nutrient Scientific Advisory Board (SAB), which assists in implementing existing development stormwater requirements, held three meetings and several subcommittee meetings. The board is assisting DWQ in assigning existing development load reduction goals to jurisdictions and state and federal entities in the watershed by 2014, as required by Session Law 2009-216. A contractor is currently developing a watershed model for this purpose. Per the Session Law, the SAB is developing accounting methods for alternative load-reducing measures (contract under development). The Jordan Watershed Oversight Committee, which administers requirements of the Jordan agriculture rule, has developed an initial accounting report to present to the Water Quality Committee in March 2013.

II. EMC Rulemaking Approvals

Approved Changes to Groundwater Rules: 15A NCAC 02L .0113 -Variance and .0202 - Groundwater Standards:

On July 14, 2011, the EMC authorized the DWQ to proceed to public notice and hearing with three proposed rule change options to 15A NCAC 02L, *Groundwater Classification and Standards*. DWQ held a public hearing on May 23, 2012 in Raleigh. The proposed revisions consisted of an amendment to the 1,1-dichloroethylene (1,1-DCE) standard in 02L .0202(g)(59) from 7 ug/L to 350 ug/L as requested in a rulemaking petition, changes to .0202(d) & (f) to allow flexibility in the use of the maximum contaminant level and secondary drinking water standard criteria when establishing groundwater standards and changes to the .0113 variance requirements that would allow the EMC to issue a statewide variance to a groundwater standard.

The EMC adopted staff's alternative recommendation listed in HO report that would change the 1,1-DCE groundwater standard from 7 ug/L to 350 ug/L and adds rule language to allow a groundwater standard to be established at a

concentration less stringent than the MCL as long as private wells and public water systems are not impacted above the MCL. The change would also allow other groundwater standards to be established above their respective MCLs where updated health effects data is available. The proposed effective date for this rule change will be April 1, 2013.

Approved the Proposed Reclassification of Segments of Maiden and Allen Creeks in Catawba and Lincoln Counties (Catawba River Basin) to Class WS-V

The Town of Maiden had requested that two portions of Maiden Creek and two portions of Allen Creek be reclassified to recognize their use as a former public water supply. The subject portions of these creeks are to be reclassified from WS-II Critical Area (CA) High Quality Waters (HQW) and WS-II (Balance of Watershed or BW) HQW to WS-V. The Town no longer uses these waters for public water supply and the HQW designation was based strictly on the WS-II classification. The new WS-V classification keeps the surface water supply water quality standards in place and allows the local governments to modify their ordinances to remove water supply specific land use requirements as long as Phase II stormwater requirements are met. In March and May 2012, 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 2012 in Maiden, NC. The proposed effective date for this reclassification will be March 1, 2013.

III. Other EMC Actions

Approved Typographic Corrections to 15A NCAC 02H .1005, and Approved to Proceed to the RRC

DWQ staff presented proposed typographic corrections to 15A NCAC 2H .1005 Stormwater Requirements: Coastal Counties. This rule was amended July 2012 per S.L. 2008-211. Two sentences from S.L. 2008-211, Section 2(b)(1)b.5. were mistakenly omitted in the amended rule 02H .1005(e). These were added into 02H .1005(e) to stay consistent with S.L. 2008-211 as required in Section 4. Also, 02H .1005(h)(2)(G)(iii) was brought up one level to be (h)(2)(H); then was re-lettered from (H)-(K) to (I)-(K). Implementation of the requirements per session law was not impacted by these revisions.

Approved to Proceed to Public Notice with Session Law Revisions to the Jordan Lake Nutrient Strategy and the Fiscal Analysis:

Session Laws 2009-216, 2009-484, 2011-394, 2012-187, 2012-200, and 2012-201 required the EMC to adopt rules that are "substantively identical" to the S.L.s passed by the General Assembly. These laws have combined to disapprove and replace one rule and modify five others (15A NCAC 02B .0262, .0265, .0266, .0267, .0270, and .0271. A fiscal analysis for the S.L. changes has been completed by DWQ and was approved by the Office of State Budget and Management in September 2012. The proposed revisions were published in the February 15, 2013 North Carolina Register with the comment period ending on April 16, 2013.

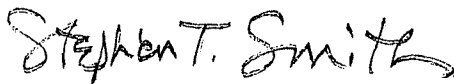
Made a Declaratory Ruling on the applicability of 15A NCAC 2L .0106 – Corrective Action to unlined coal ash lagoons for any concentration of substances in ground water around the lagoons that exceeds groundwater standards:

The Request for Declaratory Ruling was submitted October 10, 2012 and stated that DENR has not required electric power plant owners to take corrective action to address groundwater contamination from coal ash lagoons because the rule has been misread to conclude that (1) no action is required until contamination crosses the compliance boundary, (2) coal ash lagoons are not required to immediately eliminate the source of ongoing groundwater contamination, and (3) closed or inactive coal ash lagoons are not subject to the rule. G.S. § 150B-4 provides in part that a person aggrieved may request, and the agency shall issue, a declaratory ruling as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency. The EMC held a meeting on December 3, 2012 to discuss the merits of the request and issued a declaratory ruling upholding DENR's interpretation of the rule.

Approved that the Environmental Management Commission Delegate Limited Authority to a Special Air Permit Appeals Committee for Final Agency Decision

By resolution, the EMC approved delegating to the Special Air Permit Appeals Committee the authority to exercise final agency decision authority with respect to permits and enforcement orders for control of sources of air pollution.

April 15, 2013



Stephen T. Smith
Chair, Environmental Management Commission