




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: July 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 for the period March 1, 2013, through May 31, 2013.

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

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

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

Covering the period March 1, 2013 to May 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 March 1, 2013 to May 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 EMC is currently considering modifications to the chlorophyll-a surface water quality standard with rulemaking expected during 2013. 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. The draft of the Nutrient Criteria Development Plan was released for public comment on April 17, 2013. Comments on the draft plan were accepted through May 24, 2013. 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 and the Division of Soil and Water Conservation presenting the Falls Watershed Oversight Committee's Initial Agriculture Accounting Report to the March meeting of the Water Quality Committee. DWQ staff also met with the Upper Neuse River Basin Association twice in March and again in May to get feedback on draft model text and to discuss ways of expanding the bmp credit accounting toolbox that will be part of the Stage I existing development model program. Staff provided an information item presentation to the May 2013 meeting of the Water Quality Committee to update them on the development of the existing development model program due to the full EMC in July 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 for a public comment period that lasted until mid-April. No comments were received. The next step will be to bring the revised rules back before the EMC. The Nutrient Scientific Advisory Board (NSAB), which assists in implementing existing development stormwater requirements, held two 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. A contractor has also been hired to assist DWQ and the NSAB in developing accounting methods for alternative load-reducing measures. The Jordan Watershed Oversight Committee (WOC), which administers requirements of the Jordan agriculture rule, presented an initial accounting report to the Water Quality Committee in March 2013. The WOC also held one meeting. DWQ staff provided an information item to the May 2013 meeting of the Water Quality Committee to update them on the development of an existing development model program due to the full EMC in July 2013.

II. EMC Rulemaking Approvals

Approved Amendments to 02Q .0102 Permitting Exemption to clarify the interactions between Rules 02Q .0102, Exemptions and 02Q .0702, Exemptions

The Division of Air Quality (DAQ) identified the need for clarification regarding the interaction of the air toxics rule specific exemptions with the more broadly applicable rules regarding sources that are exempt from the general requirement to obtain a permit. 15A NCAC 02Q .0102, Exemptions (General Provisions), specifies which activities are exempt from the requirement to obtain an air quality permit. 15A NCAC 02Q .0702, Exemptions (Toxic Air Pollutant

Procedures), specifies activities which are exempt from the requirement to obtain a permit to emit toxic air pollutants (TAP) and not required to be included in TAP demonstrations. The EMC has previously determined through rulemaking that many of the activities currently exempt from the general requirement to obtain a permit under 02Q .0102(c) should also be exempt from air toxics demonstration and permitting requirements as identified in 02Q .0702(a)(1)-(24). Existing language in 02Q .0102(b)(7) needed to be clarified to reflect this interaction relative to smaller sources such that small sources not be required to be included in an air toxics demonstration or permit retain the exemption from having to obtain an air quality permit. 15A NCAC 02Q .0102, Exemptions, was amended to clarify the interaction between Rules 02Q .0102, Exemptions and 02Q .0702, Exemptions. A public hearing was held in Kannapolis, NC on January 15, 2013, the EMC approved the proposed rules changes March 14, 2013, the RRC approved them April 18, 2013, and the revisions became effective May 1, 2013.

Approved Revision of Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) Rules Applicability (513) and Clarifications (511)

Section 182(b)(2) of the Clean Air Act (CAA) requires RACT for all sources addressed by Control Technique Guidelines (CTGs) in areas classified moderate nonattainment and above for ozone. The RACT rules' applicability was structured such that the RACT requirement for sources in CTG categories applied to major sources. For a moderate nonattainment area major sources are those with emissions of 100 tons of volatile organic compounds or more per year. In order to meet the CAA requirement and thus facilitate the process for redesignation of the Charlotte Gastonia portion of the 1997 8-hour ozone nonattainment area to attainment for that standard, 15A NCAC 02D .0902, Applicability, was amended to reflect applicability to all sources in a CTG category and upon redesignation of the area to attainment, provide for transition of the requirements to contingency measures to be applied in the event of a future violation of the 1997 8-hour ozone standard. 02D .0951, RACT For Sources of Volatile Organic Compounds, was amended to provide flexibility to comply via the category specific rules in the Section or through approved site specific alternative determinations. 15A NCAC 02D .0961, Offset Lithographic Printing and Letterpress Printing, and .0962, Industrial Cleaning Solvents, were amended in response to industry associations' comments and requests for language clarification and flexibilities consistent with the CTGs. Amendments to 15A NCAC 02D .0903, Recordkeeping: Reporting: Monitoring, and 02Q .0102, Exemptions, made corresponding updates to cross-references. A public hearing was held in Kannapolis, NC on January 15, 2013. The EMC adopted the proposed rules March 14, 2013 and the rules were approved by the RRC April 18, 2013. The rules became effective May 1, 2013, were submitted to EPA for approval into the state implementation plan (SIP) and for processing by EPA to redesignate the area to attainment for the 1997 8-hour ozone standard prior to the anticipated July 20, 2013 revocation of the 1997 standard and transition to the more stringent 2008 ozone standard. If the area is not redesignated attainment for the 1997 standard prior to its revocation, the additional requirements for a moderate nonattainment area continue to apply until the area achieves attainment of the 2008 standard.

Approved Amendments to Phase II Stormwater Requirements in Accordance with S.L. 2011-220

The EMC approved amendments to Rules in 15A NCAC 02H .0152 and 02H .1016. The revisions incorporated the Phase II stormwater requirement revisions of S.L. 2011-220 into the EMC's Rules. In accordance with the Session Law, the revised language in the rules is identical to the provisions of the act; and has been renumbered to be placed in the rules format. These revisions to the stormwater requirements are currently being implemented as per the Sessions Law.

Approved Consolidated Riparian Buffer Mitigation Rules and Repeal of Existing Buffer Mitigation Rules

DWQ proposed to consolidate several Riparian Buffer Mitigation Rules (15A NCAC 02B.0242, .0244, .0260, .0268, .0609 and .0252) into one Riparian Buffer Mitigation Rule (.0295). The purpose of this consolidation was to make these rules easier to use and also to comply with requirements in Session Law 2009-337. Included in this consolidation of existing rules are new rules addressing flexible mitigation options as required by the North Carolina General Statute 143-214.20. Modifications approved by the EMC included: mitigation location ratios; preservation of subject streams; mitigation credits for sewer easements; retroactive credits for alternative buffer mitigation sites; allow for buffer and stream mitigation credits on the same site; and other proposed revisions as described in the Hearing Officer's Report. Additionally, the EMC approved the repeal of 15A NCAC 02B 0242, .0244, .0252, .0260, .0268 and .0609. The proposed effective date of these rules would be July 1, 2013.

III. Other EMC Actions

Approved to Convert Orange Water and Sewer Authority's Jordan Lake Water Supply Storage Allocation from a Level II to Level I

The Orange Water and Sewer Authority (OWASA) sent a letter dated December 21, 2012 requesting to convert their Level II Jordan Lake water supply storage to a Level I. Level I allocations are made based on 20-year projections and when withdrawals are planned to begin within five years of receiving the allocation. Level II allocations are made based

on longer term needs of up to 30 years. Level I allocations represent a more imminent plan to use water. Level II allocations are more of a reservation to potentially use the water sometime in the future. OWASA currently has an allocation of five percent of the total water supply, which has an estimated yield of five million gallons a day. OWASA first received a 10 percent allocation in 1988, as part of the original water supply allocations. As part of the review for the Round 3 allocations, OWASA's allocation was reduced to five percent in 2002. Jordan Lake is an important part of OWASA's long-range drought management strategy. OWASA needs to convert to a Level I allocation to be able to modify their existing interlocal agreements with Durham and Cary to be able to access Jordan Lake water during droughts. Jordan Lake is unique in that it is the only reservoir where the state controls the water supply storage. The EMC is assigned the responsibility to allocate the water to local governments based on N.C. Administrative Code Section T15A:02G.0500 Allocation of Jordan Lake Water Supply Storage.

Approved the Request to Proceed to Hearing on Revision of Arsenic Acceptable Ambient Level (AAL) (514)

Under the air toxics rules with the exceptions in S.L. 2012-91, a facility must demonstrate through modeling that predicted concentrations at or beyond the property boundary are below health-based acceptable ambient levels (AALs) as defined in the Toxic Air Pollutant Guidelines. The emission rates requiring a permit, also referred to as "toxics permitting emission rates" (TPER), are first step screening levels to which calculated facility-wide emissions levels are compared to determine whether further analysis (modeling) is necessary. The amendments are proposed based upon recommendation of the North Carolina DENR Secretary's Science Advisory Board (SAB) review of the AAL for arsenic and inorganic arsenic compounds. The SAB recommended that the AAL be revised from the current annual value of 2.3×10^{-7} mg/m³ to 2.1×10^{-6} mg/m³. 15A NCAC 02D .1104, Toxic Air Pollutant Guidelines, which contains the AALs for toxic air pollutants, is proposed for amendment to revise the AALs for arsenic and inorganic arsenic compounds to the SAB recommended 2.1×10^{-6} mg/m³. 15A NCAC 02Q .0711, Emission Rates Requiring a Permit, is proposed for amendment to revise the corresponding emission rate requiring a permit for arsenic and inorganic arsenic compounds from the current value of 0.016 pounds per year to 0.053 pounds per year. The proposed amendments are expected to reduce regulatory burden while maintaining protection of public health. 137 fewer facilities potentially would be affected by the revised AAL and corresponding TPER than under the current AAL and TPER. The comment period began April 15, 2013, a public hearing was held in Raleigh May 14, 2013, and the comment period closes June 14, 2013.

Approved the 2014 303(d) Listing Methodology

Section 303(d) of the 1972 Federal Clean Water Act requires states to submit a list of waters that do not meet water quality standards to EPA for approval by April 1 of even-numbered years. In November 2012, the EMC decided to approve future 303(d) Listing Methodologies, beginning with the 2014 cycle. DWQ accepted comments on the Listing Methodology. Staff summarized comments and responses, information included in a new comprehensive assessment document, and revised 303(d) Listing Methodology. The EMC approved the proposed 2014 303(d) Listing Methodology.

Approved Modification of Charlotte Mecklenburg Utilities Department's Interbasin Transfer Certificate.

In 2002, the Charlotte Mecklenburg Utilities Department (CMU) received an interbasin transfer certificate from the EMC. The Certificate allowed CMU to transfer 33 million gallons per day (MGD) from the Catawba River Basin to the Rocky River Basin. At the time, the EMC had concerns that impacts to the Carolina heelsplitter, a federally-listed endangered species, had not been sufficiently evaluated. Therefore the EMC added a condition excluding Goose Creek from the area that could be served by the interbasin transfer until the impacts of additional urban growth on the endangered species were fully evaluated. Since 2002, several significant protective measures have been put in place to protect the Carolina heelsplitter. The most significant was the NC DENR Site Specific Water Quality Management Plan for the Goose Creek Watershed 15A NCAC 2B .0600-.0609, which was adopted by the EMC in 2008.. In accordance with the 2008 EMC Management Plan, the Town of Mint Hill developed and adopted its 2010 Post-Construction Ordinance (PCO). The measures being implemented by the Town of Mint Hill meet or exceed the requirements set forth by the EMC in its Management Plan. As a result of the efforts that have taken place since the certificate was issued in 2002, CMU believes that it has met the certificate requirement to evaluate the impacts of additional urban growth on the Carolina Heelsplitter. Therefore CMU has requested that the EMC remove Condition 3 from its certificate. On March 4, 2013, the EMC held a public hearing to receive comments on CMU's request to remove Condition 3. The EMC approved to modify the interbasin transfer certificate to remove condition 3.

July 15, 2013

Stephen T. Smith
Chair, Environmental Management Commission