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April 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 December 1, 2013 to February 28, 2014.

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 December 1, 2013 to February 28, 2014

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, 2013 to February 28, 2014 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 a 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 took place. Staff continued to collaborate with the Upper Neuse River Basin Association to develop a contract with the UNRBA's private contractor that will begin in March 2014 and 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. In November, DWR staff worked with North Carolina Department of Transportation (NCDOT) to finalize revisions to their Falls Lake new and existing development stormwater management program and presented the final program at the January EMC meeting for approval. In December, DWR met with the Division of Soil and Water Conservation and the Falls Watershed Oversight Committee to review and discuss revisions to the 2nd Annual Falls Lake Agriculture Progress Report and presented the report at the January meeting of the EMC's Water Quality Committee (WQC) and EMC.

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. The Nutrient Scientific Advisory Board (NSAB), which assists in implementing existing development stormwater requirements, did not meet this quarter. A watershed model that was developed with the assistance of the NSAB, DWR staff, and the Triangle J Council of Governments (TJCOG) for the purpose of assigning existing develop load reduction needs to affected parties was completed in November. The model and its results are currently being peer-reviewed by multiple parties. These peer reviews and subsequent revisions to the model are expected to be completed this summer. DWR continues to work on developing a Stage 2 Existing Development stormwater model program. This includes drafting implementation guidance for alternative load reducing measures that have recently had nutrient accounting developed for them. Accounting continues to be developed for other measures. The Jordan Watershed Oversight Committee (WOC), which assists in implementing the Jordan Agriculture Rule, drafted an annual agriculture accounting report, met in January to review the report, and submitted the draft report to DWR per rule requirements. DWR staff assisted the director in the preparation of two presentations to the Legislative Research Commission's Study Committee on Jordan Lake.

II. EMC Rulemaking Approvals

Approved Correction to Inspection/Maintenance (IM) Rules Revision

Rule amendments incorporating Session Law 2012-199 were approved at the November 2013 EMC meeting to amend the existing rule's exclusion of the current model year from emissions inspection to exclude vehicles of the three most recent model years with less than 70,000 miles on their odometers. The change directly involved 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. At its January meeting, the EMC approved a clerical correction to 02D .1003 to include the inadvertently omitted four-word phrase "or the registration card" as an

alternative to the Vehicle Identification Number (VIN) for determining the model year in the definition of the term “three most recent model years” for consistency with the response to comments in the hearing record. The rules were approved by the Rules Review Commission in December 2013 and the correction in January 2014, and they became effective January 1, 2014, and February 1, 2014, respectively. 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 (SIP) reflecting the change to the emissions inspection program and 2) the Commissioner of the Division of Motor Vehicles (DMV) certifies to the Revisor of Statutes that the Motor Vehicle Inspection and Law Enforcement System (MILES) has been replaced. A coordinated Division of Air Quality (DAQ) and DMV announcement is planned later this year regarding when these criteria reflected in 2D .1002(b) have been met and when implementation of the exemption will begin.

III. Other EMC Actions

Approved Request to Proceed to Public Hearing with the Proposed Reclassification of a Segment of the Green River (including Lake Adger) in Polk County to Class WS-IV

Polk County has requested that a Green River segment, including Lake Adger, be reclassified from Class C to Class Water Supply-IV Critical Area (WS-IV CA) and Water Supply-IV Protected Area (WS-IV PA) in order to construct a public water supply intake. The waters to be reclassified meet water supply water quality standards. If reclassified, wastewater discharge and new development restrictions will apply throughout the proposed watershed. Other requirements, which apply only in the proposed CA, are additional treatment for new industrial process wastewater discharges as well as no new landfills and new land application sites. Polk County is the only local government with jurisdiction in the proposed area and will have 270 days after the reclassification effective date to modify or create water supply watershed protection ordinances. The public hearing is to be held on March 27, 2014. The proposed effective date is September 14, 2014.

Approved Request to Proceed to Publication for Public Comment and Hearing on Changes to Rule 15A NCAC 02H .1002

During the recent legislative session, N.C.G.S. § 143-214.7 was amended to exclude gravel from the definition of “built-upon area.” Unlike in statutes where the General Assembly collectively used the terms “gravel”, “stone” and “rock” (and hence evidenced that those three materials are different from each other) the legislation did not define the term “gravel.” The regulated community, in dealings with the Division of Energy, Mineral, and Land Resources (DEMLR), questioned how to interpret the term “gravel” in the amended statute. There was also a concern that absent a definition, “gravel” could be interpreted to include “stone” and “rock” which could adversely impact water quality by excluding portions of a development from being included in the calculation of “built-upon” thus resulting in no or under designed stormwater management systems and management practices. For these reasons, the EMC is pursuing temporary rulemaking to define the term used in the amended statute in accordance with industry standards so as to prevent adverse environmental impacts, and to direct the regulated community to the established guidelines set forth in the DEMLR’s best management practices for stormwater control. The public hearing was held January 23, 2014.

Approved of Delegation of the Neuse Buffer Program to Johnston County and Delegation of Further Approval Authority for Previously Delegated Local Governments in the Neuse and Tar-Pamlico to the Director

The EMC granted delegation of the Neuse Buffer Rules (15A NCAC 02B .0233 and .0242) to Johnston County. The EMC also granted permission for the director to approve any subsequent program amendments that previously delegated local governments in the Neuse and Tar-Pamlico Basins may propose. The director will provide notice of the request to the EMC’s WQC and would forward unique future programs revisions of concern to the WQC for review.

Approved North Carolina Department of Transportation's Falls Lake New & Existing Development Stormwater Management Program and Delegation of Further Approval Authority to the DWR Director

The Falls Lake State and Federal Entities Stormwater Rule, 15A NCAC 2B .0281, requires NCDOT to prepare, adopt and implement a joint stormwater program to achieve nutrient reductions from stormwater runoff from new and existing development in the Falls Lake Watershed. The rule establishes implementation requirements and timelines specific to NCDOT. The NCDOT submitted a draft program for DWR staff review in July 2013 and has made subsequent revisions based on staff comments. The EMC also delegated authority to the DWR director to approve any subsequent program amendments that the NCDOT may propose in the future. The director will forward unique future program revisions of concern to the WQC for review.

April 15, 2014

Benne Hutson

Chair, Environmental Management Commission

