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July 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 March 1, 2014 to May 31, 2014.

Attachment

cc: Mitch Gillespie, Assistant Secretary for Environment, NCDENR
Tom Reeder, Director, DWR, NCDENR
Linda Culpepper, 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 March 1, 2014 to May 31, 2014

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, 2014 to May 31, 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)

Pursuant to 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 and discussions with the US Environmental Protection Agency (EPA), the plan was submitted on June 6, 2014 for EPA's concurrence. 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 and their private contractor to initiate a credit measures project in March 2014 to develop credit accounting for additional best management practices (BMPs). These additional BMPs will be added to the credit accounting toolbox that will be part of the Stage I existing development model program. In April and May staff presented a revised draft of the proposed Alternative Measures Approval Process, which establishes the process for approving credit for new nutrient reducing practices and measures, to the Nutrient Scientific Advisory Board (NSAB). A final draft of this document is scheduled to go out to public comment in June 2014. Staff also completed draft design guidance for two nutrient reducing measures, remedying discharging sand filters and disconnecting impervious surfaces, and is in the process of receiving comments from the NSAB before taking these guidance documents out to public comment in June 2014.

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 since then, there have been eight Session Laws that have revised and delayed the rules. Timeframes for most new actions under the rules now fall within 12 years of the effective date of the rules. During the most recent quarter, several implementation activities took place: The Jordan Watershed Oversight Committee (WOC), which assists in implementing the agriculture requirements, completed and submitted a final 2011 Annual Progress Report in late April. The NSAB, which assists in implementing existing development stormwater requirements, met once this quarter. The Jordan watershed model that was developed by a private contractor in collaboration with staff, the NSAB and TJCOG for the purpose of estimating existing development load reduction goals was completed in November. Two independent parties and two stakeholders parties reviewed the watershed model and submitted their comments in early March. The private contractor is now making any necessary revisions to the model and accompanying documentation.

Staff has been developing and sought NSAB input on a revised draft of the proposed Alternative Measures Approval Process, which will establish the process for approving credit for measures. A final draft of this document is scheduled to go out to public comment in the next quarter.

Staff continues to collaborate with the Upper Neuse River Basin Association and their private contractor to develop nutrient credit accounting for additional practices and measures, which will be added to the credit accounting toolbox of the Jordan existing development model program. Staff also completed draft practices standards for two nutrient measures, remedying discharging sand filters and disconnecting impervious surfaces, and is seeking feedback from the NSAB on these two practice standards before taking them out to public comment in the next quarter. Finally, staff assisted the

DWR Director in preparing presentations for two meetings of the Legislative Review Commission's Committee on Jordan Lake.

II. EMC Rulemaking Approvals

Approved Revisions to Air Toxics Rule and Asbestos Acceptable Ambient (AAL) Correction

In 2012, the General Assembly amended the statutes that authorize the state air toxics rules. Section 1 of Session Law 2012-91 exempts from state air toxics emissions rules those sources of emissions that are: (A) subject to an applicable requirement under 40 CFR Part 61, as amended; (B) an affected source under 40 CFR Part 63, as amended; or (C) subject to a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Division pursuant to Paragraph (j) of 42 U.S.C. Section 7412, as amended. Section 2 of the Session Law requires rule amendments consistent with Section 1. Section 3 of the Session Law requires the Division of Air Quality (DAQ) to review the existing air toxics rules and make recommendations on whether further changes could be made that would reduce unnecessary regulatory burden and increase the efficient use of Division resources while maintaining public health protections. These recommendations were provided in a report to the Environmental Review Commission (ERC) on December 1, 2012. Following the stakeholder and rulemaking process, at its March meeting, the EMC adopted amendments incorporating the session law changes and resulting recommendations. The rules were approved by the Rules Review Commission in April and became effective May 1, 2014.

Approved Temporary Rule Changes to Rule 15A NCAC 02H .1002

During the 2013 legislative session, N.C.G.S. § 143-214.7 was amended to exclude gravel from the definition of "built-upon area." The legislation, however, did not define the term "gravel." The regulated community, in dealings with the Division of Energy, Mineral, and Land Resources (DEMLR), had questioned how to interpret the undefined use of the term "gravel" in the amended statute. For these reasons, the EMC pursued temporary rulemaking to define "gravel" in accordance with industry standards, to prevent adverse environmental impacts, and to direct the regulated community to the established guidelines set forth in DEMLR's best management practices for stormwater control. A public hearing on the proposed temporary rule was held in Raleigh, NC on January 23, 2014. Public comments were accepted at the hearing and during the public comment period from January 15, 2014 to February 7, 2014. Comments were reviewed and the Hearing Officer prepared a Report of Proceedings that contained recommended changes to the proposed temporary rule. The rule was approved by the EMC at its March meeting and became effective on March 28, 2014.

III. Other EMC Actions

Approved Request to Proceed to Hearing on Repeal of Transportation Facilities Permitting Rules

At its March meeting the EMC approved proceeding to hearing to repeal the air quality Transportation Facilities Permitting rules (Sections 15A NCAC 02D .0800 and 02Q .0600). S.L. 2013-413, Part V, Section 27 amended G.S. 143-215.109(a) to provide the EMC the flexibility to determine whether rules are necessary for controlling the effects of transportation facility sources, such as parking decks, on air quality. In a previous review of air quality rules, the DAQ identified the Transportation Facilities Permitting rules as outdated requirements that are not providing environmental benefit. The rules are focused on addressing carbon monoxide (CO) emissions; however, North Carolina does not have any CO nonattainment areas. Currently, the CO monitors are measuring ambient concentrations at approximately 20 percent of the standard. Additionally, federal engine standards have resulted in significant CO reductions from mobile sources. Also, evaluations of transportation facility applications have resulted in no additional requirements, and therefore are no longer necessary. The proposed repeal does not require a fiscal note; however, certification by OSBM that the agency followed the rule-making process is required according to G.S. 150B-19.1 and has been obtained. A companion demonstration to EPA that the repeal will not interfere with maintenance of the National Ambient Air Quality Standards (NAAQS) is being processed and a public comment period is being scheduled.

Approved Request Approval to Proceed to Public Comment with Rules Review of 15A NCAC 02B, 02H, 02T and 02U in accordance with SL 2013-413 (HB74)

The Water Quality Committee, at its January 2014 meeting, approved the DWR's recommendation to proceed with the rules review of 15A NCAC 02B (116 rules), 02H (119 rules), 02T (108 rules), and 02U (32 rules) in accordance with SL 2013-413. An initial determination of "necessary with substantive public interest" was approved for these 375 rules which cover the majority of the EMC's water quality programs. The public comment period for these rules was from March 17, 2014 to May 21, 2014. DWR will return to the WQC in July with a status report, and then to the EMC in September with a final recommendation for the EMC's action.

Approved Request to Proceed to Public Hearing with Surface Water Quality Standards Rule Amendments in 15A NCAC 02B

The State is required to hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. The EMC approved a waiver of its 30-day rule and approved proposed amendments to 15A NCAC 02B water quality standards regulations, and the accompanying fiscal note, to allow DWR to proceed to public hearings as part of North Carolina's Triennial Review of surface water quality standards.

Proposed amendments include: updates to metals standards in accordance with federal criterion; revision of metals standards to reflect, where applicable, the dissolved metal concentration; acute and chronic metals standards; applying hardness values to derive hardness-dependent metals standards; and equations to allow for development of standards. The standard for 2,4 D (chlorophenoxy herbicide) is proposed for revision to incorporate newer reference dose information. Edits for organizational purposes and reading clarity are also proposed. The hearings are scheduled for July 15 and 16, 2014.

Approved Request to Proceed to Public Comment and Hearing on Proposed Stormwater Control Rules and Other Water Quality Rule Revisions for Oil and Gas Exploration and Development Activities in Response to S.L. 2012-143

Session Law 2012-143 (S820) directed the EMC to adopt rules for stormwater control and other water quality considerations related to oil and gas exploration and development activities. DWR and DEMLR presented proposed stormwater rules and other minor water quality rule revisions to meet the requirements of S.L. 2012-143 at the EMC's March meeting. The proposed rules and proposed revisions do not require a fiscal note. The public hearing is scheduled for July 1, 2014.

Approved Request to Proceed to Public Comment on proposed changes to underground storage tank rules 15A NCAC 02N .0304, .0903 and .0904 based on legislative amendments in SL 2011-394 and SL 2013-413

Session Law (SL) 2011-394 [Sections 11.4(c), 11.6(a), 11.6(b) and 11.7(a)] directed the EMC to adopt several changes to rules (15A NCAC 02N) governing UST systems. SL 2011-394 stated that the rule changes must be substantively identical to the provisions of the act. SL 2011-394 [Sections 11.6(c) and 11.7(b)] further required that the EMC adopt the rule changes by January 1, 2014. However, because an important clarifying change was needed for one of the sections [Section 11.6(a)], rule-making was not initiated until after the clarifying change (SL 2013-413, Section 36) was made near the end of the 2013 legislative session. The EMC approved the request at its May meeting and the public hearing is currently in the process of being scheduled.

July 15, 2014



Benne Hutson
Chair, Environmental Management Commission