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October 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 June 1, 2014 to August 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 June 1, 2014 to August 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 June 1, 2014 to August 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 used the information collected from the North Carolina Forum on Nutrient Over-Enrichment (May 2012) and public input to develop a Nutrient Criteria Development Plan (NCDP) for the study and development of nutrient control criteria. The US Environmental Protection Agency (EPA) requires all states to have a NCDP. The DWR and the EPA reached an agreement on the NCDP for North Carolina in June, 2014. Information on the NCDP can be found here:

<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 reviewed and approved the Upper Neuse River Basin Association's (UNRBA) proposed monitoring plan for Falls Lake that will inform their supplemental modeling efforts. This additional monitoring was initiated by the UNRBA and their contractors in August. In July, staff met with stakeholders and sent the final draft of the Alternative Measures Approval Framework document out for public comment. This guidance document establishes the process for approving credit for new nutrient reducing practices and measures. Staff also revised the design guidance for three nutrient reducing measures, remedying discharging sand filters, remedying malfunctioning septic systems, and disconnecting impervious surfaces, and is in the process of receiving comments from the Nutrient Scientific Advisory Board (NSAB) before taking these guidance documents out to public comment in September 2014. Staff also began developing guidance for three additional measures: street sweeping, pond retrofits and stream restoration.

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 NSAB, which assists in implementing existing development stormwater requirements, met three times this quarter. Staff and a subcommittee of the NSAB worked with a contractor to address peer review comments on the recently developed watershed model and submit a final report to the Division in July. The model and associated report will be used to assign existing development load reduction goals to affected Jordan parties. In July, staff met with stakeholders and sent the final draft of the Alternative Measures Approval Framework document out for public comment. This guidance document establishes the process for approving credit for new nutrient reducing practices and measures. Staff also revised the design guidance for three nutrient reducing measures: remedying discharging sand filters, remedying malfunctioning septic systems, 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 the next quarter. Staff also began developing guidance for three additional measures: street sweeping, pond retrofits and stream restoration.

II. EMC Rulemaking Approvals

Approved reclassification of a portion of the Green River, including Lake Adger, in Polk County (Broad River Basin) to class WS-IV

Polk County requested that a portion of the Green River, including Lake Adger, be reclassified to allow its use as a water supply. The subject portion of the Green River will be reclassified to WS-IV with a CA and WS-IV with a Protected Area (PA). The resulting water supply will allow Polk County to meet local water demands. The waters to be reclassified meet water supply standards according to 2011 DWR studies. In November 2013 and January 2014, the Water Quality Committee (WQC) and the Commission, respectively, approved the request to proceed with rule-making for the proposed reclassification. A public hearing was held in March 2014 in Mill Spring, NC. The Rules Review Commission (RRC) approved the rules in August and the effective date for this reclassification will be September 1, 2014.

III. Other EMC Actions

Denied request for Iluka Resources' for a declaratory ruling on the applicability of 15A NCAC 02I .0601 – dam safety law to Iluka's planned Aurelian Springs mineral sands mine

Iluka requested a declaratory ruling on the applicability of NCGS 143-215.25A(a)(6) to dams that will be built at the planned Aurelian Springs mineral sands mine in Halifax County, North Carolina. Iluka asked for a determination of whether their dams are exempt from the requirements of the Dam Safety Law.

Approved request to proceed to public comment and hearing on proposed amendments to stormwater rule 15A NCAC 02H .1002 including a definition of gravel and approval of the fiscal note in accordance with G.S. 150B-19.1(e)

During the 2013 Regular Session of the 2013 North Carolina General Assembly, Session Law 2013-413 amended G.S. 143-214.7 to exclude “gravel” from the definition of “built-upon area.” This proposed rulemaking incorporates the revised definition of “built-upon area” into Rule 15A NCAC 02H .1002 as required by G.S. 143-214.7 and replaces the identical temporary rule currently in effect. This proposed rulemaking also defines the term “gravel” and includes other changes that are technical in nature, such as renumbering and alphabetizing the definitions. All of these changes address protection of water quality and provide clarity to the regulated community on the implementation of stormwater rules that are required by G.S. 143-214.7. The temporary rule will expire on January 10, 2015. DEMLR conducted a public hearing on August 20, 2014 and will return to the WQC and EMC in November 2014 with a final recommendation for EMC action.

Approved request to proceed to public comment with rules review of 15A NCAC 02R in accordance with S.L. 2013-413 (HB74)

The EMC at its July 2014 meeting approved the Ecosystem Enhancement Program's (EEP) recommendation to proceed with the rules review of 15A NCAC 02R (10 rules) in accordance with SL 2013-413. An initial determination of “necessary with substantive public interest” is proposed for these ten rules which cover EEP's fee schedule and other compensatory mitigation activities. The public comment period is from July 11, 2014 to September 17, 2014. EEP will return to the WQC in November with a status report and will present a final recommendation to the EMC in January for the EMC's action.

Approved request to proceed to public comment with rules review of 15A NCAC 02S in accordance with S.L. 2013-413 (HB74)

The EMC at its July 2014 meeting approved the Division of Waste Management's (DWM) recommendation to proceed with the rules review of 15A NCAC 02S. An initial determination of “necessary with substantive public interest” is proposed for 12 of the 16 rules. A determination of “necessary without substantive public interest” is proposed for the remaining four rules. The public comment period is from July 11, 2014 to September 17, 2014. DWM will return to the Groundwater Committee (GWC) in November with a status report and will present a final recommendation to the EMC in January for the EMC's action.

Approved request to proceed to comment and hearing on revisions to open burning rules to reflect S.L. 2013-413

Session Law 2013-413, Part V, Section 28 amended the requirements that pertain to permissible open burning for land clearing or right-of-way maintenance. Pursuant to the session law, its provisions have been implemented by the Division of Air Quality since its effective date while rulemaking under the Administrative Procedures Act (APA) is completed to incorporate substantively identical amendments to 15A NCAC 02D .1903, Open Burning Without an Air Quality Permit. Pursuant to the Session Law, the rule amendments are not subject to review by the Rules Review Commission under the APA, and are to become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received. A public hearing was held September 3, 2014. The comment period closes September 30, 2014. The hearing record is anticipated to be before the EMC at its November meeting for final action.

Approved request to proceed to comment and hearing on revising permit term to Reflect S.L. 2013-413

Session Law 2013-413, Part V, Section 29 amended G.S. 143-215.108 to require non-Title V air quality permits to be issued for a term of eight years. The rule found at 15A NCAC 02Q .0308, Final Action on Permit Applications, needed to be revised to reflect the change in the length of permit term for consistency with the statute. A public hearing on the amendment was held September 3, 2014. The comment period closes September 30, 2014. The hearing record is anticipated to be before the EMC at its November meeting for final action.

Approved request for petition for rulemaking 15A NCAC 2L .0400 – amendment to risk-based assessment and corrective action for underground petroleum storage tanks

The risk-based assessment and corrective action for petroleum underground storage tanks rules (15A NCAC 2L .0400) address requirements for response to releases from petroleum underground storage tanks (USTs). The EMC received a petition to amend the provisions of Section .0400 of 15A NCAC 2L to extend the risk-based assessment and corrective action regime set forth in Section .0400 to all discharges and releases of petroleum.

October 15, 2014

A handwritten signature in black ink, appearing to read "Benne C. Hutson", written in a cursive style.

Benne Hutson
Chair, Environmental Management Commission