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July 15, 2015

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

FROM: Gerard P. Carroll, 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, 2015 to May 31, 2015.

Attachment

cc: Tom Reeder, Assistant Secretary for Environment, NCDENR  
Jay Zimmerman, Director, DWR, NCDENR  
Linda Culpepper, Director, DWM, NCDENR  
Sheila Holman, Director, DAQ, NCDENR  
Matthew T. Dockham, Director, LIA, NCDENR  
Mariah Matheson, Research Division, NC General Assembly  
Jennifer Hoffmann, Fiscal Research Division, NC General Assembly

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

Covering the period March 1, 2015 to May 31, 2015

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, 2015 to May 31, 2015 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)**

The U.S. Environmental Protection Agency (EPA) requires all states to develop and implement a Nutrient Criteria Development Plan (NCDP) to protect the uses of a waterbody from the effects of excess nutrients. The Division of Water Resources (DWR) and the EPA agreed on the NCDP for North Carolina in June 2014. In May 2015, DWR staff updated the EMC Water Quality Committee on the DWR's progress in implementing the NCDP. A Scientific Advisory Council (SAC) was created to advise DWR on establishing nutrient criteria and held its first meeting in May 2015. A Criteria Implementation Committee (CIC) is also being formed to advise DWR on nutrient criteria implementation challenges and costs. The membership of the CIC currently is being finalized.

**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. Staff completed draft revisions to the full set of Falls rules as part of the legislatively mandated rules re-adoption process. Staff attended three Upper Neuse River Basin Association (UNRBA) meetings for updates on work being done on 10 additional existing development nutrient reducing measures, which are being evaluated by UNRBA's contractor for credit development. Staff held a conference call in with a core stakeholder group in April put together by Tetra Tech as part of their EPA technical assistance contract work with the division to develop an accounting program for remediating malfunctioning septic systems. Staff also made a final round of revisions to a new version of the stormwater nutrient accounting tool used to estimate nutrient loading from development and reductions by best management practices (BMPs). The tool will now go through beta-testing with members of the Nutrient Scientific Advisory Board. Staff also evaluated an informal proposal for a potential nutrient offset credit generating technique that would process chicken litter through a waste-to-energy technology.

**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 March-to-May 2015 quarter: staff conducted a 30-day informal public comment period on draft revisions to the full set of Jordan rules as part of the legislatively mandated rules re-adoption process, concluding with a key stakeholders meeting; staff completed revisions to a new version of the stormwater nutrient accounting tool used to estimate nutrient loading from development, and distributed the tool to a committee of the Nutrient Scientific Advisory Board for beta-testing; staff held several meetings with NSAB members on interpreting results of a recently completed Jordan watershed model for purposes of establishing loading targets for local governments subject to Existing Development stormwater requirements; and staff received a briefing from the Medora Corporation on initial data from the Jordan Lake (Solarbee) demonstration project.

**II. EMC Rulemaking Approvals**

**Approved amendments to the underground storage tank rules in 15A NCAC 02N .0304, .0903, and .0904**

The EMC approved amendments to 15A NCAC 02N .0304, .0903 and .0904 in accordance with Session Law 2011-394 [Sections 11.4(c), 11.6(a), 11.6(b) and 11.7(a)] that directed the EMC to adopt several changes to rules governing UST

systems. S.L. 2011-394 stated that the rule changes must be substantively identical to the provision of the Act. S.L. 2013-413, Section 36 clarified the universe of USTs subject to the rule change directed by S.L. 2011-394, Section 11.6(a). The revisions are expected to become effective June 1, 2015.

#### **Approved clerical revision to 15A NCAC 02Q .0711**

A public hearing was held in Raleigh, NC on December 3, 2014, to take public comments on an amendment to Rule 15A NCAC 02Q. 0711 to make clerical revisions to toxic air pollutant permitting emission rates (TPER) for unobstructed and vertically oriented emission release points. Rule amendments to the air toxics permitting requirements incorporating Session Law 2012-91 were approved in the March 2014 EMC meeting. One of the amendments was to Rule 15A NCAC 02Q .0711, Emission Rates Requiring a Permit, added an additional set of TPERs that would apply to those situations where air pollutant emission release points at a given facility are non-obstructed and vertically oriented. Staff identified clerical issues in the spreadsheet used to calculate the TPER values that was transferred into the table in Paragraph (b) of the rule. The rule was revised to reflect the TPER values for three pollutants in the appropriate columns. No comments were received on the proposed rule during the public comment period. The amendments became effective May 1, 2015.

#### **Approved amendments to 15A NCAC 02B .0269 and 15A NCAC 02B .0274 and approved transfer to 15A NCAC Subchapter 02R per 26 NCAC 02C.0408**

As part of the periodic rules review process, staff proposed to transfer 15A NCAC 02B .0269 Riparian Buffer Mitigation Fees and 15A NCAC 02B .0274 Nutrient Offset Payment Rates to Subchapter 02R- ECOSYSTEM ENHANCEMENT PROGRAM under a new Section .0600. This transfer would facilitate the use of the Administrative Code such that the fee schedules for funds administered by the Division of Mitigation Services (formerly the NC Ecosystem Enhancement Program (NCEEP)) are in the Subchapter that establishes the program and its funds, fee schedules and processes. The proposed amendments in 15A NCAC 02B .0269 serve solely to correctly reference the rules' citations to maintain accuracy after they are transferred pursuant to G.S. 150B-21.5 (a)(3). The effective day of the transfer was May 1, 2015.

### **III. Other EMC Actions**

#### **Approved request to proceed to hearing on permanent amendments to clarify applicability of prevention of significant deterioration (PSD) rule for greenhouse gases and Title V applicability rule**

The EMC approved a request to hold one or more public hearings to consider permanent amendments to the prevention of significant deterioration rule for greenhouse gases (GHG) and Title V permit applicability rule. The EMC adopted temporary amendments to these rules on November 13, 2014, which became effective on December 2, 2014, to reflect the U.S. Supreme Court Decision in *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA)* addressing the application of stationary source permitting requirements to GHG emissions. In its decision, the Supreme Court said that the EPA may not treat greenhouse gases as an air pollutant for the purposes of determining whether a source is a major source required to obtain a PSD or Title V permit. The state rules are proposed for amendment to remove the requirement that major stationary sources obtain a PSD or Title V permit on the sole basis of its GHG emissions and to update the reference to the global warming potentials for GHGs. The hearing on the permanent rule to replace the temporary rule is scheduled for June 9, 2015.

#### **Approved request to proceed to hearing on revisions to reflect S.L. 2014-120 repeal of source reduction and recycling report requirement**

The EMC approved a request to hold one or more public hearings to consider rule amendments to reflect the S.L. 2014-120 repeal of the source reduction and recycling reporting requirement. The existing rules contain language requiring permitted sources to submit a written description of current and projected plans to reduce air contaminant emissions by source reduction and recycling. The proposed amendments align the rule language with the statutory repeal of the reporting requirement. The DAQ began implementing the provisions of the statutory repeal when it became effective on September 18, 2014 by discontinuing the requirement for permit holders to report their source reduction and recycling plans. The hearing is scheduled for June 9, 2015.

#### **Approved request to proceed to public comment on S.L. 2013-413 (H74) periodic review of rules report for 15A NCAC 02D and 02Q**

The EMC approved the request to proceed to public comment with the review of the air quality rules in 15A NCAC 02D, Air Pollution Control Requirements, and 02Q, Air Quality Permit Procedures. The rules review follows the procedure mandated by S.L. 2013-413 incorporated into the Administrative Procedures Act. The review covers all existing 353 rules in the air quality program: 15A NCAC 02D (263 rules) and 02Q (90 rules). An initial determination of "necessary with

substantive public interest” is proposed for 322 of the rules which cover the majority of the EMC’s air quality programs. An initial determination of “necessary without substantive public interest” is proposed for 4 of the rules. An initial determination of “unnecessary” is proposed for 27 of the rules. The DAQ will conduct a public comment period on the report on these rules and plans to return to the AQC in July and then to the EMC in September with a final recommendation for the EMC’s action.

#### **Approved the Towns of Cary, Apex, Morrisville and Wake County interbasin transfer certificate (IBT) modification**

The towns of Apex, Cary and Morrisville, and Wake County (for RTP South) have requested a modification of their current IBT certificate to address the towns’ and county’s IBT demands through 2045; resulting in a total transfer of 33 mgd from the Haw River subbasin to the Neuse River basin and Cape Fear River subbasin on a daily average of a calendar month basis. The EMC granted the towns of Cary and Apex a permitted transfer amount not too exceed a maximum of 31 million gallons per day from the Haw River Basin to the Neuse River Basin and 2 million gallons per day from the Haw River Basin to the Cape Fear River Basin, calculated as a daily average of a calendar month basis.

#### **Approved request to proceed to hearing on revisions to open burning rules to reflect S.L. 2014-120**

The EMC approved the request to hold one or more public hearings to consider amendments to the open burning rules that pertain to residential burning to reflect the provisions of Session Law 2014-120. Section 24(d) of the Session Law requires the Commission to adopt amendments to 15A NCAC 02D .1903, Open Burning Without an Air Quality Permit, that are substantively identical to the Session Law provisions. Per the Session Law, these rule amendments are not subject to review by the Rules Review Commission under the Administrative Procedures Act , are to become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received, and thus would become effective following opportunity for legislative review. In addition to the already permissible residential open burning of leaves, tree branches, or yard trimmings under the conditions specified in the rule, the amendments allow residential open burning of logs and stumps. The statutory amendments also specify that burning of stumps and logs shall not be considered to create a nuisance. Rule 15A NCAC 02D .1903, is proposed for amendment to reflect these provisions. Rule 15A NCAC 02D .1902 is proposed for amendment to remove the definition of the term nuisance for consistency with the changes to 02D .1903. The hearing is scheduled for June 21, 2015.

#### **Approved the 2016 303(d) Listing Methodology**

Section 303(d) of the 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. The EMC on March 14, 2013 approved the 303(d) Listing Methodology that was used for the 2014 303(d) List. The 2014 303(d) List was subsequently prepared by DWR, submitted to US EPA and approved. There is a subset of waters on the 2014 303(d) List on which the state and the US EPA disagree with regard to the appropriateness of including those waters on the 303(d) List. They are listed based upon water quality standards that are outdated. The state has adopted new, revised standards and is pursuing assessment of waters using the new, revised water quality standards. The 2016 listing methodology is the same that was used in 2014, with minor modifications to reflect that the state has adopted new, revised water quality standards.

#### **Approved the 2014 coal combustion products study as required by the coal ash management act and to proceed to the Environmental Review Commission (ERC)**

Session Law 2014-122 Section 4(d) required that DENR and the EMC jointly review regulations relative to coal combustion product structural fills and other beneficial reuses. An interim report was sent to the ERC in January 2014. The final report was approved by the EMC in May and then submitted to the ERC.

#### **Approved request to proceed to public comment and hearing on proposed rules for risk-based assessment and corrective action for non-UST petroleum releases: 15A NCAC 2L Section.0500**

In accordance with 150B-20(Petitioning an agency to adopt a rule), on May 15, 2014, Mr. Marvin E. Taylor, Jr. petitioned the EMC to make rules for the risk-based assessment and corrective action of petroleum discharges and releases from sources other than underground storage tanks. The Groundwater Committee heard the petition during the July 9, 2014 meeting and directed staff to develop draft rule language. At the May meeting, the EMC approved the request to proceed to public comment and hearing and is anticipated to be held by the end August 2015.

**Approved request to proceed to public comment and hearing on proposed amendments to 15A NCAC 2L .0106**

As required by Session Law 2014-122 (the Coal Ash Management Act of 2014) the EMC reviewed its compliance boundary and corrective action rules in 15A NCAC 2L for clarity and consistency, and reported the results of that review to the ERC by December 1, 2014. In the review, the EMC identified five clarity or consistency issues in Rule 15A NCAC 2L .0106 that require that the rule to be revised and directed DWR to begin the process of permanent rulemaking to address these issues. In January 2015, the Groundwater and Waste Management Committee approved a revised rule to proceed to the full EMC. The proposed rule revision is intended to clarify existing rule language for the interested parties. It will not change the timeliness or extent of groundwater cleanups compared to current implementation of the existing rule, nor would it change the expenses incurred by the state or remediating parties. The public hearing is scheduled for July 20, 2015.

**At its meeting May 14th, EMC unanimously approved a resolution opposing the enactment of HB 571 in its current form**

**July 15, 2015**



**Gerard P. Carroll**  
**Chair, Environmental Management Commission**