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January 15, 2016

TO: ENVIRONMENTAL REVIEW COMMISSION
The Honorable Jimmy Dixon, Co-Chair
The Honorable Chuck McGrady, Co-Chair
The Honorable Trudy Wade, Co-Chair

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 September 1, 2015 to November 30, 2015.

Attachment

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

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

Covering the period September 1, 2015 to November 30, 2015

Per the requirements of G.S. 143B-282(b), the Environmental Management Commission (EMC) is submitting this quarterly report covering the period of September 1, 2015 to November 30, 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 Nutrient Criteria Development Plans (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. The NCDP established two advisory committees to assist in the development and implementation of nutrient criteria. The Scientific Advisory Council (SAC) consists of 12 members representing a variety of backgrounds. As of December 1, 2015 the SAC has held five meetings and is currently focusing its discussion on the uses of a body of water and indicators of whether those uses are being met. High Rock Lake is serving as the example. The Criteria Implementation Committee (CIC) was formed to address the challenges of implementing the nutrient criteria that may be recommended. The CIC consists of six members representing consultants, agriculture and stormwater. The CIC met in August and October. All meetings are open to the public and accessible through the internet via WebEx.

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 September to November 2015 quarter staff held a meeting with the Nutrient Scientific Advisory Board on proposed stormwater rule revisions associated with the Falls and Jordan Lake nutrient management strategies as part of the Division's rules review/readoption Process. A final draft of the Falls rule revisions was completed and will be presented to the Commission in January. Work continued on the Falls Lake 2016 Status Report which provides an update on rule implementation, progress toward achieving water quality standards in the lake, and current state of knowledge and technological advances in treatment technology. An initial draft of the report was completed in November and shared with affected parties for review and comment in November. It will be revised in December and submitted to the January meeting of the Commission. Staff also attended two Upper Neuse River Basin Association meetings for updates on the Association's watershed monitoring project, accounting tool development, and nutrient credits development work. Staff also participated in the review and development of several nutrient crediting documents associated with these alternative load reducing measures. Staff held a meeting with Tetra Tech and select local governments as to discuss the utility of developing landscape attenuation factors to be used in existing development settings.

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 September-to-November 2015 quarter: staff held one meeting with the Nutrient Scientific Advisory Board on proposed stormwater rule revisions associated with the Falls and Jordan Lake nutrient management strategies as part of the Division's Rules Review/Readoption Process; staff released a Memo concerning updated delivery factors for nutrient offsets to stakeholders and completed a 30-Day Public Comment Period; staff participated in the development of several nutrient crediting documents associated with alternative load reducing measures; staff reviewed Stage 1 Adaptive Management Annual Reports submitted by local governments per Existing Development stormwater requirements; and staff completed additional revisions to a new version of the stormwater nutrient accounting tool used to estimate nutrient loading from development.

II. EMC Rulemaking Approvals

Approved revisions to open burning rules to reflect S.L. 2014-120

The EMC held a public hearing in Raleigh, NC on July 21, 2015, to take public comments on amendments to the open burning rules to reflect S.L. 2014-120. The current version of the Rule 15A NCAC 02D .1903 prohibits residential open burning of stumps and logs that are greater than six inches in diameter while leaves, tree branches, and yard trimmings may be burned on site if all provisions listed in .1903(a)(1) are met. On September 18, 2014, the General Assembly enacted Session Law 2014-120 (S.L. 2014-120) to require the EMC to adopt a rule that pertains to residential open burning without an air quality permit. Section 24.(b) of S.L. 2014-120 mandates that the EMC and the Division of Air Quality (DAQ) shall implement 15A NCAC 02D .1903, Open Burning without an Air Quality Permit, as provided in Section 24.(c) of S.L. 2014-120, which includes logs and stumps in the list of permissible open burning without an air quality permit and specifies that burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exceptions listed in Section 24.(c). Section 24.(d) of S.L. 2014-120 which requires that: “The Commission shall adopt a rule to amend the Rule 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 24.(c) of S.L. 2014-120. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 24.(c) of S.L. 2014-120 of this section”. The comment period closed August 14, 2015. The EMC adopted the rule amendments incorporating the language contained in Section 24(c) of the law at its September 10, 2015 meeting, the rule was filed with OAH, and pursuant to the Session Law awaits legislative review during the 2016 session.

Approved reclassification of a portion of the Cape Fear River in New Hanover and Brunswick Counties (Cape Fear River Basin) from Class SC to Class SC Sw with a water quality management plan

The Lower Cape Fear River Program has requested that a segment of the lower Cape Fear River in New Hanover and Brunswick Counties (Cape Fear River Basin) be reclassified from Class SC to Class SC Sw. The proposed Sw reclassification would allow, if caused by natural conditions, the pH of the subject waters to reach as low as 4.3 and would allow, if caused by natural conditions, the DO to be lower than 5 mg/l. In addition, the proposed water quality management plan associated with the proposed reclassification codifies the current permitting policy already in existence for new individual NPDES wastewater discharges and expansions of existing individual NPDES wastewater discharges to the subject waters. The proposed reclassification in partnership with the proposed management plan spells out a path forward for the dischargers and enables the community to plan accordingly.

Approved temporary rules to 15A NCAC 13A .0102, .0103 and .0106

The EPA is requiring states to adopt certain provisions of the new Definition of Solid Waste (DSW) Rule. EPA revised the 2008 DSW rule because of significant regulatory gaps in that rule, which could result in risk to human health and the environment from hazardous waste recycling activities, including disproportionate risk to minority and low-income populations. The temporary rules amended the provisions of 15A NCAC 13A .0102, .0103 and .0106 by codifying a new regulatory definition of the 2008 “Contained” standard in order to prevent mismanagement of hazardous secondary materials during storage. It also corrects an inaccurate citation, incorporate rulemaking petitions that are equivalent to the federal rule, and incorporate additional requirements and subparts for the identification and listing of hazardous wastes. The temporary rules also allow the State’s hazardous waste universe to take advantage of the proposed amendments sooner. Permanent rulemaking is being initiated to replace the temporary DSW rule.

Approved revisions to 15A NCAC 02L Section .0500 rules for risk-based assessment and corrective action for non-UST petroleum releases

In accordance with G.S. 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. A public hearing was held in Raleigh, North Carolina on August 26, 2015, to take public comments on permanent Rule 15A NCAC 02L Section .0500 Rules for Risk-Based Assessment and Corrective Action for Non-UST Petroleum Releases.

Approved modifications to respond to RRC objection and request for technical changes to the consolidated buffer mitigation rule – 15A NCAC 02B .0295

Permanent Rule 15A NCAC 02B .0295 was approved by the EMC on July 9, 2015. This permanent rule will replace the temporary rule that became effective on October 24, 2014. The adopted rule was reviewed by the Rules Review Commission (RRC) at its August 20, 2015 meeting. The RRC objected to the rule and requested technical changes.

III. Other EMC Actions

Approved request to proceed to hearing on rule revisions and fiscal note for streamlining of permit exemptions rule

At its September 10, 2015 meeting the EMC approved the fiscal note and proceeding to public hearing on amendments to the air quality permit exemption rules. Rule 15A NCAC 02Q .0102, Activities Exempted From Permit Requirements, had been amended a number of times since it was adopted in 1994. Each amendment added complexity to the rule that made it difficult to understand and implement. The Division of Air Quality formed an internal workgroup to simplify the rule. Simultaneously, DAQ looked to new ways to reduce regulatory burden while not impacting air quality. The resulting proposed rule changes from that review process should provide regulatory relief to a large number of small facilities that have very low emissions. Rule 15A NCAC 02Q.0102, Activities Exempted From Permit Requirements, is proposed for amendment to simplify the rule to make it easier to understand. New exemption requirements are also added. Facilities with actual emissions less than five tons per year of each specified pollutant and total aggregate actual emissions of up to 10 tons per year would be exempt from permitting. Facilities that are not exempt and have total aggregate actual emissions less than 25 tons per year would be eligible for registration instead of obtaining a permit. Additional related rule amendments are proposed to repeal requirements duplicative of those in the revised Rule 15A NCAC 02Q .0102, to allow facilities to make minor changes without first modifying their permit and to add an exemption from permitting for stationary reciprocating internal combustion engines if the engine is the only source of emissions at the facility. The estimated total fiscal impacts from the proposed rule amendments are substantial. The Office of State Budget and Management approved the fiscal note on August 18, 2015 in accordance with G.S. 150B-21.4, and E.O. 70. A public hearing was held November 4, 2015 and the public comment period closes November 30, 2015.

Approved request to proceed to public comment and hearing for proposed amendments to replace rules for the collection and transportation of solid waste: 15A NCAC 13B .0105

The Division of Waste Management (DWM) was directed by Session Law 2013-413 to replace rule 15A NCAC 13B .0105 to change the vehicle and container requirement wording from “leak-proof” to “leak-resistant.” The proposed rules must be substantively identical to the provisions of Session Law 2013-413, which expires when the permanent rules have become effective. Rule 15A NCAC 13B .0105 establishes provisions for the collection and transportation of all solid waste to a permitted disposal site or facility using vehicles and containers constructed, operated, and maintained in order to prevent the creation of a nuisance or environmental harm.

Approved request for exception of “green area” requirements in 15A NCAC 02H Section .0404(g)(7), in accordance with 15A NCAC 02H .0407

Sugarloaf Utilities, Inc., requested an exception from the “green area” requirements for Coastal Facilities as specified in 15A NCAC 02H .0404(g)(7). The rule specifies that “[w]aste disposal areas are to contain 1,000 square feet of open ‘green area’ for each residential unit served, or 2,500 square feet per thousand gallons per day of waste flow, whichever is less.” As a condition of the exception, Sugarloaf Utilities, Inc., is recommending the permit include an onsite repair area sized to accommodate the permitted wastewater flows and more stringent effluent limitations for total nitrogen and total phosphorus to better ensure protection of the state’s water resources. The exception of the rule is in accordance with 15A NCAC 02H .0407, which states; “No exception from the requirements of these Regulations shall be made until such exception is approved by the Commission.”

Approved recommendation regarding mercury compliance plans

Pursuant to 15A NCAC 02D .2500, Mercury Rules for Electric Generators, the EMC approved Mercury Control Plans for electric generators. Section 15A NCAC 02D .2500, Mercury Rules for Electric Generators, became effective on January 1, 2007. Two paragraphs are state-only rule provisions not included as a part of N.C.'s "Mercury Plan" submitted to the EPA for compliance with the federal Clean Air Mercury Rule (CAMR) of 2005. The CAMR is now null and void having been vacated by the D.C. Circuit Court. The two remaining state paragraphs are in Section 02D .2511, Mercury Emission Limits. 15A NCAC 02D .2511(b) requires Duke Energy and Progress Energy to submit Mercury Control Plans to the Division of Air Quality (DAQ) Director by January 1, 2013 and Duke Energy and Progress Energy submitted Mercury Control Plans on December 13, 2012. Each plan must identify the mercury control technologies in use at each unit, the schedule for operation of these controls at each unit at the earliest feasible date, and the remaining units not equipped with mercury controls to be shut down by December 31, 2017. 15A NCAC 02D .2511(c) states that the DAQ Director must review the submitted mercury control plans and recommend that the EMC approve, disapprove, or conditionally approve the Mercury Control Plans. The EMC shall only approve a mercury control plan if it finds that the plan achieves the maximum level of reductions in mercury emissions at each unit that is technically and economically feasible without

reliance on mercury trading. The Division of Air Quality completed a review of the submitted Mercury Control Plans and found that each plan met all the requirements in 02D .2511(b) and in 02D .2511(c). The EMC approved the Mercury Control Plans at its November 5, 2015 meeting.

Approved S.L. 2013-413 (H74) Periodic Review of Rules Report for 15A NCAC Subchapters 02D and 02Q for Submission to Rules Review Commission

The EMC approved proceeding 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 at its March 12, 2015 EMC meeting. The review covers all existing 353 rules in the air quality program: 15A NCAC 02D (263 rules) and 02Q (90 rules) following the procedure mandated by S.L. 2013-314 as incorporated into the Administrative Procedures Act. The EMC made an initial determination of “necessary with substantive public interest” for 232 rules, “necessary without substantive public interest” for 4 rules, and “unnecessary” for 27 rules in 15A NCAC 02D and “necessary with substantive public interest” for 90 rules in 15A NCAC 02Q. A comment period was held from March 13, 2015 to June 19, 2015. Eleven sets of comments were received from various persons and entities via the online system and/or letter or email addressing a total of 35 rules. Comments in opposition to the rules being classified as “unnecessary” as well as comment in support of the classification were received. Eight of the rules on which comment was received were already classified as “necessary with substantive public interest” and comments will be addressed during the readoption process. No changes to the initial classifications of the 02D or 02Q rules following the comment period were recommended by the agency. The AQC approved the report at its July meeting, the EMC approved the report at its November meeting, and the report was filed in November with the Office of Administrative Hearings for review by the Rules Review Commission at its December 17, 2015 meeting.

Approved fiscal note and request to proceed to public hearing on proposed 15A NCAC 02D .2700, Standards of Performance for Existing Electric Utility Generating Units under Clean Air Act Section 111(d)

At its November 5, 2015 meeting the EMC approved the fiscal note and proceeding to public hearing on proposed adoption of a new set of rules 15A NCAC 02D .2700, Standards of Performance for Existing Electric Utility Generating Units under Clean Air Act (CAA) Section 111(d). The purpose of the rules is to implement the Section 111(d) provisions for the best system of emission reductions (BSER) for existing fossil fuel-fired electric utility generating units (EGUs) to reduce carbon dioxide emissions through heat rate improvement. The proposed state rules are in response to the Environmental Protection Agency’s (EPA) new rule for Carbon Dioxide Emission Guidelines for Existing EGUs, signed on August 3, 2015 and published in the Federal Register October 23, 2015. Section 111(d) requires EPA to identify the BSER that is adequately demonstrated and available to limit pollution and to set guidelines for states to reflect BSER. Based on its evaluation of BSER for existing EGUs, the EPA regulation provides state specific goals for reducing carbon dioxide emissions for the power sector. States are then required to develop a plan including necessary rules to meet those goals. The proposed rules in Section .2700 reflect the BSER determined at a facility specific unit level for existing EGUs in North Carolina and represent the state’s primary plan. The total fiscal impacts from the proposed rule adoptions are estimated to be substantial. Hearings on the proposed rules are scheduled for December 16, 2015 in Charlotte, December 17, 2015 in Raleigh, and January 5, 2016 in Wilmington. The comment period closes January 15, 2016. Additional stakeholder discussions regarding development of a broader backup plan, in the event that resolution of ongoing litigation upholds the EPA plan, are slated to begin in the March 2016 timeframe.

Approved appointments for members to the Water Pollution Control System Operators Certification Commission

DEQ Secretary Donald R. van der Vaart has appointed the following individuals to the Water Pollution Control System Operators Certification Commission. Mr. Dennis Baxley – City of Raeford – fulfilling the requirement of a member employed as a manager of a NC municipality serving population of less than 10,000. Mrs. Marchell Adams-David – City of Raleigh – fulfilling the requirement of a member who is employed as a manager of a NC municipality serving population of greater than 10,000.

Approved an Interbasin Transfer Certificate for Kerr Lake Regional Water System

The Kerr Lake Regional Water System submitted a petition for an Interbasin Transfer (IBT) certificate in order to transfer up to 14.2 million gallons per day (MGD) from the Roanoke River Basin to the Tar River, Neuse River, and Fishing Creek basins. The requested IBT certificate will increase the authorized transfer from 10 MGD (the grandfathered amount) to 14.2 MGD, calculated as a daily average of a calendar month basis. The transfer amount is based on water use projections to 2045.

Approved request to proceed to public comment and hearing for permanent rulemaking for solid waste Rules 15A NCAC 13A .0102, .0103 and .0106 and Approval of Fiscal Note

The EPA is requiring states to adopt certain provisions of the new Definition of Solid Waste (DSW) Rule. EPA revised the 2008 DSW rule because of significant regulatory gaps in that rule, which could result in risk to human health and the environment from hazardous waste recycling activities, including disproportionate risk to minority and low-income populations. The rule will amend the provisions of 15A NCAC 13A .0102, .0103 and .0106 by codifying a new regulatory definition of the 2008 "Contained" standard in order to prevent mismanagement of hazardous secondary materials during storage. It will also correct an inaccurate citation, incorporate Rulemaking Petitions that are equivalent to the federal rule, and incorporate additional requirements and Subparts for the identification and listing of hazardous wastes.

Approved request to proceed to public comment and hearing for rulemaking for amendments of general rule 15A NCAC 13A .0101 (b) and (f) and approved economic impact analysis

The EPA is requesting North Carolina amend the rule to clarify when the substitution of the term "Department of Environmental Quality" applies to both terms: "Environmental Protection Agency" and "EPA", and other non-technical changes.

Approved request to proceed to public comment and hearing for rulemaking for hazardous waste management system and electronic manifest rules 15A NCAC 13A .0107 and .0108 and approved economic impact analysis

The EPA is encouraging North Carolina to amend the rules that will authorize the use of electronic manifests as a means to track offsite shipments of hazardous waste from the generator's site to the site of the receipt and disposition of the hazardous waste.

Approved request to proceed for public comment for the 2015 draft coastal habitat protection plan and source document

The Fishery Reform Act requires that the NC Coastal Habitat Protection Plan be updated on five year cycles. The purpose of the plan is to enhance coastal fishery populations by implementing recommendations to protect, restore, and enhance the habitats they depend on. The plan is drafted by staff in the Department of Environmental Quality (Divisions of Marine Fisheries, Coastal Management, Water Resources, and Energy, Minerals, and Land Resources. The Environmental Management, Coastal Resources, and Marine Fisheries commissions are required to review the plan and approve of the plan recommendations. The 2015 draft plan has been reviewed by the Coastal Habitat Protection Plan Steering Committee, which includes two members of the Environmental Management Commission. This plan, in contrast to previous versions, has been shortened in length and focuses exclusively on non-regulatory actions that the department and commissions can work toward. An updated source document, that includes more details and the latest science on coastal habitats in NC, accompanies the Coastal Habitat Protection Plan. The plan recommendations address 1) enhancing coordination among agencies; 2) mapping coastal habitats and assessing linkages between habitat and fish; 3) protecting habitat from adverse physical impacts, and 4) improving water quality.

January 15, 2016



Gerard P. Carroll
Chair, Environmental Management Commission