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July 15, 2016

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

FROM: Steven J. Rowlan, 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, 2016 to May 31, 2016.

Attachment

cc: Tom Reeder, Assistant Secretary for Environment, NCDEQ
Jay Zimmerman, Director, DWR, NCDEQ
Michael Scott, Director, DWM, NCDEQ
Sheila Holman, Director, DAQ, NCDEQ
Mollie Young, Director, LIA, NCDEQ
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, 2016 to May 31, 2016

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, 2016 to May 31, 2016 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 June 1, 2016 the SAC has held eight 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. During the remainder of 2016 the SAC will meet on: June 15, Aug 17, Oct 19, and Dec 14. The second committee is the Criteria Implementation Committee (CIC). It 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, 2015. All meetings are open to the public and accessible through the internet via WebEx. Information on the NCDP and advisory committees is available here: <http://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/nutrient-criteria-development-plan>

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 March to May 2016 quarter, staff presented the Falls Lake 2016 Status Report to the Commission. The report provided 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. In May staff completed additional revisions and released a beta version of the updated stormwater nutrient accounting tool used to estimate nutrient loading from new development. Staff also held two meetings with stakeholders from the Upper Neuse River Basin Association to discuss comments on the use support assessment and segmentation for Falls Lake. Staff attended three Upper Neuse River Basin Association Board meetings for updates on the Association's watershed monitoring project and nutrient credits development and participated in interviews of potential contractors to perform additional water quality modeling of the lake on behalf of the UNRBA. Staff also participated in the review and development of several nutrient crediting documents associated with these alternative load reducing measures.

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 2016 quarter: staff participated in the development of several nutrient crediting documents associated with alternative load-reducing measures; staff conducted a presentation about Stage 1 Existing Development annual reporting requirements to the Guilford County Environmental Review Board; staff completed additional revisions and released a beta version of an updated version of the stormwater nutrient accounting tool used to estimate nutrient loading from development; staff presented the nutrient crediting document for the StormFilter® Stormwater Management System to the Nutrient Scientific Advisory Board (NSAB); staff planned three meetings with the NSAB on nutrient crediting development; and staff issued two certificates of completion to participants of DWR's Fertilizer Management Training.

II. EMC Rulemaking Approvals

Approved adoption of proposed amendments to 15A NCAC 13A .0101, .0102, 0103, .0106, .0107 and .0108 for the general rule, definition of solid waste rules, and the electronic manifest rules and approved fiscal note and economic impact analysis

A public hearing was held in Raleigh, NC on January 11, 2015, to take public comments on proposed amendments to the general rule, definition of solid waste rules and electronic manifest rules. The public comment period for the permanent rules closed on February 15, 2016. One positive comment was received from the public. The EMC adopted the recommended amendments as presented in Chapter II of the hearing report.

Approved adoption of 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.” 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. The EMC adopted the proposed amendments to the rules for the collection and transportation of solid waste (15A NCAC 13B .0105) as presented in the hearing report.

Approved revisions to 15A NCAC 02B .0227 Water Quality Management Plans

The EMC approved rule amendments reflecting the reclassification of a portion of the Cape Fear River in New Hanover and Brunswick Counties to Class SC Sw with a water quality management plan. The rulemaking involved proposed amendments to 15A NCAC 2B .0227 (2B .0227) and 15A NCAC 2B .0311 (2B .0311). DWR submitted the EMC approved rule amendments to the Rules Review Commission (RRC), and RRC legal staff requested technical changes to 2B .0227. The EMC approved the revisions at its November 2015 meeting to go out to public notice. An Addendum to the Hearing Officer’s Report of Proceedings was sent to the members of the EMC and included all written comments received on the revised version of 2B .0227. If approved by the RRC in June, the effective date for all amendments to 2B .0227 will be July 1, 2016.

III. Other EMC Actions

Approved final 2015 Coastal Habitat Protection Plan (CHPP)

The CHPP Steering Committee has met over the past year to update and revise the CHPP to reflect changes in the implementation goals and recommendations as the result of accomplishments and new information based on scientific studies. Also added to the CHPP were four Priority Habitat Issues for the next five years. These four issues are Oyster Restoration, Living Shorelines, Sedimentation and Developing Metrics. The goals, recommendations and Priority Habitat Issues are all designed to achieve the CHPP’s legislated goal of the “long-term enhancement of coastal fisheries associated with each coastal habitat” for the benefit of the people of North Carolina.

Approved request for approval to proceed to public comment and hearing with amendments to solid waste rules 15A NCAC 13B .0201 and .0206, and with proposed rule 15A NCAC 13B .0207

Rule changes are needed due to Session Law 2015-241, concerning landfill and transfer station permit duration. The law now allows for these solid waste facilities to be permitted to operate for the life of the facility, instead of for a limited time period of five or ten years. The following rules with proposed amendments were presented for 15A NCAC 13B (Solid Waste Management) .0201 Permit Required and .0206 Option to Apply for Issuance of 10-Year Permit for Sanitary Landfill or Transfer Station; and proposed new rule .0207 Life of Site Permit Issued for a Sanitary Landfill or Transfer Station.

Approved request to proceed to public comment on repeal of 15A NCAC 02D .1010, Heavy-Duty Vehicle Idling Restrictions

Section 4.24 of the Session Law 2015-286 requires the Secretary of the Department of Environmental Quality to repeal the EMC Rule 15A NCAC 02D .1010, Heavy-Duty Vehicle Idling Restrictions. Until the effective date of the repeal of

the rule required pursuant to this section, the Secretary of the Department of Environmental Quality, the EMC, or any other political subdivision of the State shall not implement or enforce 15A NCAC 02D .1010, Heavy-Duty Vehicle Idling Restrictions. The EMC approved proceeding to public hearing at its March 10, 2016 meeting. Pursuant to the Administrative Procedures Act, to effect the rule change the repeal was noticed in the April 15, 2016 North Carolina Register and a hearing was subsequently held May 25, 2016, on behalf of the EMC and the Secretary of DEQ, and the comment period closes June 14, 2016.

Approved request to proceed to hearing on revisions to Volatile Organic Compound (VOC) Rules in 15A NCAC 02D .0902

At its March 10, 2016 meeting the EMC approved proceeding to public hearing on the rule revisions and regulatory impact analysis on 15A NCAC 02D .0902, Applicability, to narrow the applicability of 15A NCAC 02D .0958, Work Practices for Sources of Volatile Organic Compounds, from statewide to the maintenance area for the 1997 8-hour ozone standard. The proposed amendments will remove unnecessary burden associated with permitting and complying with the work practice standards in 15A NCAC 02D .0958. Provisions of the Clean Air Act require that the VOC requirements previously implemented in an ozone nonattainment area prior to redesignation of the area to attainment remain in place; however, facilities outside the maintenance area counties (the former nonattainment area counties) for the 1997 8-hour ozone standard would no longer be required to comply with the work practice standards in 15A NCAC 02D .0958. A public hearing on the proposed amendments was held May 25, 2016, and the comment period closes June 14, 2016.

Approved Request to Proceed to Public Hearing on Startup, Shutdown, and Malfunction State Implementation Plan (SIP) Call Rule Revisions

At its May 12, 2016 meeting the EMC approved proceeding to public hearing on amendments to 15A NCAC 02D .0535, Excess Emissions Reporting and Malfunctions and adoption of 15A NCAC 02D .0545, Treatment of Malfunction Events and Work Practices for Startup and Shutdown Operations. On May 22, 2015, the U.S. Environmental Protection Agency (EPA) issued a final action to ensure states have plans in place that are fully consistent with the Clean Air Act (CAA) and recent court decisions concerning startup, shutdown and malfunction (SSM) emission limit exemptions. EPA's final action responds to the Sierra Club Petition; clarifies the EPA's SSM Policy to assure consistency with the CAA and recent court decisions; and finalizes findings that the SSM provisions in the State Implementation Plans (SIPs) of 36 states including North Carolina do not meet the requirements of the CAA and accordingly issues a "SIP call" for each of those states. There is a requirement to submit a SIP revision by November 22, 2016. Several states, including North Carolina, have entered into litigation over the validity of the EPA SIP call. Due to the uncertainty of the outcome of the litigation, North Carolina has chosen to move forward with rulemaking. 15A NCAC 02D .0535, Excess Emissions Reporting and Malfunctions, is proposed to be amended to include introductory language that indicates that Rule 02D .0535 is the rule that will be in effect if the states' lawsuits are successful. 15A NCAC 02D .0545, Treatment of Malfunction Events and Work Practices for Startup and Shutdown Operations, is proposed for adoption and would be in effect in the event that states' lawsuits are unsuccessful as indicated in its introductory language. Rule 02D .0545 eliminates the exemptions in paragraphs (c) and (g). For startup and shutdown, Rule 02D .0545 allows a facility to demonstrate compliance with the applicable existing emission limits, generally available work practice standards, work practice standards in analogous federal rules that a specific source may not otherwise be subject to, or a source specific startup and shutdown work practice standard permit limit. For malfunctions a facility may demonstrate compliance with the applicable existing limits or with a source specific malfunction work practice standard permit limit. Public hearings on the proposal are scheduled for July 18 and 20, 2016 and the public comment period closes August 1, 2016.

Approved March 2016 version of a survey of in situ strategies for mitigation of water quality impairments pursuant to SL 2015-241

Session Law 2015-241 Section 14.5(d) directed the Department of Environmental Quality and the Commission to evaluate currently available "in situ strategies" with the potential to mitigate water quality impairments in NC waterbodies. The Department and the Commission were directed to survey the potential efficacy of such strategies and report their findings to the Environmental Review Commission and other bodies of the General Assembly.

Approved March 2016 version of a study of the state's riparian buffer protection

Session Law (SL) 2015-246 (13.2)(a) directed the Commission, with the assistance of the Department, to examine ways to provide regulatory relief from the impacts of riparian buffer rules adopted to implement the State's Riparian Buffer Protection Program for parcels of land that were platted on or before the effective date of the applicable riparian buffer rule.

Request from Cary-Apex for clerical correction to 2015 InterBasin Transfer (IBT) certificate

On March 12, 2015, the EMC approved a modification to the existing Cary-Apex IBT to allow the transfer water of water from the Haw River Basin to the Neuse and Cape Fear River Basins under the provisions of G.S. § 143-215.22L. The certificate signed by the Chairman on that date contains a clerical error reciting a different standard for the mitigation of detriments than the standard required by G.S. § 143-215.22L, as contained in the Commission's decision memorialized in the written motion presented to and deliberated by the Commission and the Commission's vote to grant the modification, which was captured on the tape recording and approved in the official minutes of the meeting.

June 21, 2016

A handwritten signature in dark ink, appearing to be 'SR' or similar initials, written over a horizontal line.

Steven J. Rowlan
Chair, Environmental Management Commission