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January 15, 2017

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 September 1, 2016 to November 30, 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**

September 1, 2016 – November 30, 2016

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–November 30, 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 to protect the uses of waterbodies from the impacts of excess nutrients. The Division of Water Resources (DWR) and the EPA agreed on the plans for North Carolina in June 2014.

The state’s Nutrient Criteria Development Plan established an external Scientific Advisory Council (SAC) to assist in the development and implementation of nutrient criteria. The SAC consists of 11 members representing a variety of backgrounds. As of Dec. 1, 2016, the council has held ten meetings and is currently focusing its discussion on the uses of specific waterbodies and indicators of whether those uses are being met. High Rock Lake is serving as an example. Bimonthly meetings are being planned through 2017, and all meetings are open to the public.

A Criteria Implementation Committee has also been established, which was formed to address the challenges of implementing any nutrient criteria that may be recommended. The Criteria Implementation Committee met in August and October 2015. All meetings are open to the public.

Information on the N.C. Nutrient Criteria Development Plan and advisory groups is available online at: <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 Jan. 15, 2011. Major actions are to be initiated over a 10-year first stage of implementation, with potential adaptive requirements during a second stage. In July 2016 the North Carolina General Assembly passed Session Law 2016-94, which calls for an evaluation of the Falls and Jordan nutrient management strategies and separates these rules from the rest of the periodic rules re-adoption process and establishes their own rulemaking timelines. This legislation also calls on the University of North Carolina at Chapel Hill to oversee a study of the Jordan and Falls strategies and tasks the Department with developing individual reports on lake treatment technologies, the nutrient offset program, and the need for state-specific values for stormwater best management practices. The EMC is charged with considering the findings of these studies, convening a stakeholder working group, and initiating the rules re-adoption process no later than March 15, 2019.

During the September 1- November 30, 2016 period covered by this report, division staff:

- Provided a presentation to the Water Quality Committee of the ECM on the requirements included in the recently passed Nutrient Management Regulatory Framework Session Legislation (SL 2016-94) and its impact on the Falls Lake rule re-adoption process;
- Participated in the Upper Neuse River Basin Associations Modeling and Regulatory Support Kickoff Meeting in September as they begin their work to remodel Falls Lake;
- Worked with EMC members to identify participants for a Falls and Jordan Rulemaking Stakeholder group as called for in SL 2016-94 and scheduled the first meeting of the group to take place in December;
- Worked with the Division of Mitigation Services to develop a draft report evaluating Nutrient Offset Market Dynamics in the Jordan and Falls Lake Watersheds as required under SL 2016-94;

- Presented the Falls Agriculture Watershed Oversight Committee’s Annual Agriculture Progress Report along with the Division’s one-time report on agriculture’s progress in meeting Stage I goals to the November meeting of the EMC;
- Continued to participate in the development of several nutrient crediting documents associated with alternative load-reducing measures for existing development;
- Participated in three Upper Neuse River Basin Association meetings to receive updates on the association’s watershed monitoring and modeling project and nutrient credits development project; and
- Held a September meeting with the Nutrient Scientific Advisory Board to present and receive the board’s input on the Draft Stormwater Control Measures Credit Document and Draft Livestock Exclusion Credit Document.

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. Most recently, Session Law 2016-94 repeals the most recent three-year delay in implementation of the Jordan rules while simultaneously indefinitely prohibiting local government implementation of new development and existing development stormwater requirements. As with the Falls Strategy, it also calls for UNC to evaluate the Jordan Strategy and separates the Jordan rules from the rest of the periodic rules readoption process with the both the Jordan and Falls readoption process to begin no later than March, 15, 2019.

During the September 1- November 30, 2016 period covered by this quarterly report, division staff:

- Provided a presentation to the Water Quality Committee of the EMC on the requirements included in the recently passed Nutrient Management Regulatory Framework Session Legislation (SL 2016-94) and its impact on the Jordan rule re-adoption process;
- Worked with EMC members to identify participants for a Falls and Jordan Rulemaking Stakeholder group as called for in SL 2016-94 and scheduled the first meeting of the group to take place in December;
- Developed an updated template and provided it to local governments to use in submitting their annual Stage I Existing Development Reports submitted each year in October;
- Continued to participate in the development of several nutrient crediting documents associated with alternative load-reducing measures for existing development;
- Held a September meeting with the Nutrient Scientific Advisory Board to present and receive the board’s input on the Draft Stormwater Control Measures Credit Document and Draft Livestock Exclusion Credit Document.

II. EMC Rulemaking Approvals

Approved repeal of 15A NCAC 02D .1010, heavy-duty vehicle idling Restrictions, pursuant to Section 4.24 of Session Law 2015-286

Section 4.24 of the Session Law 2015-286 required the Secretary of the Department of Environmental Quality to repeal the Environmental Management Commission 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 Environmental Management Commission, 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 closed June 14, 2016. The EMC finalized the repeal in its September 8, 2016 meeting and those same rules were approved by the Rules Review Commission in its October 20, 2016 meeting with a November 1, 2016 effective date.

Approved amendment to rule 15A NCAC 02D .0902, Applicability.

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 removed 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 closed June 14, 2016. The EMC adopted the rule modifications in its September 8, 2016 meeting and those same rules were approved by the Rules Review Commission in its October 20, 2016 meeting with a November 1, 2016 effective date.

Approved rule revisions on Startup, Shutdown, and Malfunction State Implementation Plan (SIP) Call

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 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 chose to move forward with rulemaking to address the findings of the SIP call. 15A NCAC 02D .0535, Excess Emissions Reporting and Malfunctions, is 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, was 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 were held on July 18 and 20, 2016 and the public comment period closed August 1, 2016. The EMC adopted the modification of the existing rule and proposed new rule at its September 8, 2016 meeting. Those same rules were approved by the Rules Review Commission in its October 20, 2016 meeting with an effective date of May 22, 2018. The Division of Air Quality has submitted these rules to the EPA for State Implementation Plan incorporation on November 22, 2016.

Approved technical changes to Stormwater Rules Section 15A NCAC 2H .1000

The Rules Review Commission (RRC) objected to 14 proposed stormwater rules in Section 15A NCAC 2H .1000 on the basis that the definition of the term "licensed professional" is outside the authority of the EMC for the standard stormwater permitting process. The RRC stated that this requirement is within the EMC's authority for the fast-track stormwater permitting process as authorized under G.S. 143-214.7B. To address the RRC's objection, staff proposed the following: adding language to Rule 2H .1050(14) stating that, for the standard permitting process, stormwater systems may be designed by persons for whom a license is not required by any occupational licensing statute for the type of stormwater system proposed and revising Rule 2H .1043(2) to allow only licensed Professional Engineers and Landscape Architects to apply under the fast-track permitting process. Staff also proposed minor revisions to the remaining 12 rules to make them compatible with the new language described above. The proposed effective date for all these rules is January 1, 2017.

Approved revisions to 15A NCAC 02I .0501

The Division of Waste Management requested approval of revisions to rule 15A NCAC 02I .0501 pursuant to G.S. 150B-21.5(a)(4). The scope of the changes made are in response to a change of authority from the Public Health Commission and a change in title for the former Division of Water Quality. The RRC objected to language previously in the rule for lack of statutory authority. Staff made those amendments to address the objection.

III. Other EMC Actions

Approved the Periodic Review and Expiration of Existing Rules Report for 15A NCAC 02A.

The periodic review of existing rules mandated by S.L. 2013-413 (HB74) were undertaken for the EMC's organizational rules in 15A NCAC 02A, including publication and solicitation of public comment. Subchapter 02A consists of five separate rules. An initial determination of "unnecessary" was proposed for two rules (.0101 and .0103). An initial

determination of “necessary without substantive public interest” was proposed for the remaining three rules (.0102, .0105, and .0107). No comments were submitted during the public comment period. The final determinations are proposed to remain the same as proposed initially.

Approved the stormwater management annual report to the Environmental Review Commission

NC GS 143-214.7(e) requires the Commission to submit an annual report on the stormwater management programs by October 1st each year.

Approved Request to Proceed to Public Notice and Hearing for Reclassification of a Segment of the Catawba River (including Lake James) in McDowell and Burke Counties (Catawba River Basin) to Class WS-IV

McDowell County requested the reclassification of a segment of the Catawba River in McDowell and Burke Counties. One portion of the segment is to be reclassified from Class C to Class WS-IV CA and WS-IV (PA), and a second portion of the segment (Lake James) is to be reclassified from Class WS-V & B to Class WS-IV & B CA. This reclassification will allow McDowell County to put a new water intake in Lake James, which will enable this county to meet local water demands. If reclassified, wastewater discharge and new development restrictions will apply in the proposed watershed. Other requirements, which apply only in the proposed CA, are additional treatment for new industrial process wastewater discharges, no new landfills, and no new residual or septage land application sites. There are no permitted or planned wastewater discharges and no known planned developments that the proposal would impact. In addition, there are not any known planned septage or residual land application sites or landfills in the proposed CA. A regulatory impact analysis for this proposal, which has yet to be submitted to OSBM, shows a one-time cost of approximately \$2,700 to the state, \$2,000 to Burke County, \$2,000 to McDowell County, and \$10,000 to the City of Marion. The proposed effective date for this proposal is May 1, 2017.

Approved Request to Proceed with Rules Review of Rules 15A NCAC 02E in accordance with SL2013-413

The rules review follows the procedure mandated by Session Law 2013-413 and General Statute 150B. The review covers 27 rules in the Water Use Registration and Allocation subchapter (02E). All rules are categorized as "Necessary with Substantive Public Interest" and the one public comment on one of the rules agreed with that determination.

Approved Appointment of Members to the Water Pollution Control System Operators Certification Commission

Department of Environmental Quality Secretary Donald R. van der Vaart approved the following reappointments to the Water Pollution Control System Operators Certification Commission; Ms. Marchell Adams David, Mr. Stephen Adam Waters and Mr. Jonathan Godfrey.

Approved Request to Proceed with Rules Review of Rules 15A NCAC 02C in accordance with SL 2013-413

The DWR requested the EMC’s approval to proceed with the review of the subject rules in accordance with Session Law (SL) 2013-413. After review of the public comments received, the final recommendation of the 02C rules is “necessary with substantive interest.”

Request for Approval to Proceed to Public Comment with Revisions to 15A NCAC 02N and 15A NCAC 02O

The Division of Waste Management requested approval to proceed to public comment with revisions to rules governing underground storage tanks (USTs). The rules are 15A NCAC 02N (Criteria and Standards Applicable to Underground Storage Tanks) and 15A NCAC 02O (Financial Responsibility Requirements for Owners and Operators of Underground Storage Tanks). Rule changes are needed to incorporate revisions made to the federal UST regulations (40 CFR Parts 280 and 281), which were published in the Federal Register on July 15, 2015. The federal revisions establish requirements that are similar to key portions of the federal Energy Policy Act of 2005 – secondary containment for new and replacement UST systems and operator training. In addition, EPA added new operation and maintenance requirements for existing UST systems and addressed UST systems that were deferred in the 1988 UST regulations. The state is required to incorporate these changes in order to retain its State Program Approval.

Approved Request for Permission to Proceed to Rulemaking on 15A NCAC 02L .0507 Rule

The Department has received feedback indicating concern that the rule does not reference SL 2015-286 which contains significant requirements regarding risk-based corrective actions in situations with off-site impacts of contamination from petroleum releases regulated by 15A NCAC 02L .0501 thru .0515. The Department agrees with the need for concern and proposes to remedy this situation by making a minor change to the rule language that references the newly enacted statute.

Approved Request to Proceed with Rules Review of Rules 15A NCAC 02K in accordance with SL2013-413

The rules review followed the procedure mandated by SL 2013-413 and General Statute 150B. The review covers the 33 rules in the Dam Safety subchapter (02K). Staff recommended that two rules be categorized as “unnecessary” but the remainder of the rules be categorized as “necessary without substantive public interest.”

Approved Request to Convene the Falls & Jordan Nutrient Rulemaking Stakeholder Group Required Under S.L. 2016-94

Session Law 2016-94 calls for an evaluation of the Falls and Jordan nutrient management strategies and separates these rules from the rest of the rules readoption process by establishing their own rulemaking timelines. It also required several other studies by the Department and for the EMC to convene a stakeholder working group to provide input to the Commission regarding revisions to the nutrient management strategies. Staff have developed a stakeholder list comprised of lake users and affected parties in consultation with members of the Commission and request the Commission’s approval to proceed with convening the group. Once approved staff will schedule a kickoff meeting with stakeholders via conference call in December 2016.

Approved Request to Proceed to Public Comment and Hearing and Approval of the Fiscal Note for Amendments to Rule 15A NCAC 13B .0840: Sampling and Analysis regarding Septage Management

The DWM requested an amendment to Rule 15A NCAC 13B .0840 regarding the frequency of soil sampling and analysis at permitted septage land application sites and request to proceed to public comment and hearing.

Approved Request to Send the Commission and Department Basinwide Water Quality Management Plans Annual Report to the ERC

General Statute 143-215.88 (d) requires the EMC and the DEQ to report on or before 1 October of each year to the ERC on the progress in developing and implementing water quality management plans. The report includes information on the completion and approval of the Tar-Pamlico River basin management plan by the EMC in July 2015. The report also includes a list of water resource plans currently under development by the Basin Planning Branch with the assistance of many other resource agency staff. As a requirement of the statute to include an overall pollutant summary for surface waters of the state, a summary graph of the draft 2016 Integrated Report is included.

Approved Request to Engage Settlement Process for Union County Application for Interbasin Transfer Certificate and to Delegate the Appointment of a Mediation Officer

G.S. 143-215.22L(h) provides for a mediation process to resolve disputes arising involving the procedures in 143-215.22L. The EMC can commence the mediation process on its own motion or at the request of DEQ, the applicant, or any interested party. In this case, in the course of discussing a notification issue, DEQ concluded it would be useful to engage this process with the applicant and interested parties, including Montgomery County, with the hope that it could help to resolve some issues short of litigation. The mediation process has not previously been engaged, but the EMC has issued guidance for the conduct of the mediation. Staff requested that the EMC delegate to the Chairman or one of its members the authority to appoint a mediation officer to conduct the mediation. The Guidance sets a limit of 120 days, subject to extension upon request of the mediator. Pending the mediation, DEQ would postpone presentation of the proposed Certificate beyond the January meeting. DEQ will report back to the EMC as to the status and progress of the mediation at the EMC’s January meeting.

December 15, 2016



Steven J. Rowlan
Chair, Environmental Management Commission