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## **ANNUAL REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION**

Covering the period from March 1, 2017 to November 30, 2017

Per the requirements of General Statutes (G.S.) 143B-282(b), the Environmental Management Commission (EMC) is submitting this report on its operations, activities, programs and progress. Per Session Law (S.L.) 2017-10, reports will now be provided annually by January 1<sup>st</sup>, instead of quarterly.

### **I. Overview**

In addition to its normal duties related to environmental rulemaking, remission of civil penalties, declaratory rulings, watershed reclassification, Round IV of the Jordan Lake allocations, and issues related to interbasin transfer certificates, the EMC had an active year as the rules review and re-adoption as mandated by S.L. 2013-413 (HB74) proliferated.

The EMC also received regular updates from the Department on a number of issues, in particular, the Coal Combustion Residuals (CCR) rule and emerging contaminants in state source waters. The Groundwater and Waste Management Committee worked with the Department in 2016 to develop new coal combustion rules, but federal legislation in December 2016 provided the state with several additional alternatives. The Department worked to develop a modified CCR program over the course of 2017 and kept the EMC apprised of its progress. GenX is one of several emerging contaminants in source water that demanded a high level of attention by state and local government. The Department provided regular briefings to the EMC, the EMC had several educational workshops on topics related to emerging contaminants, and several EMC members attended public forums on the topic. The EMC was not requested to take formal rulemaking action on CCR or emerging contaminants in 2017, although the Commission did decline to issue one declaratory ruling related to Chemours.

The year was also marked by transitions. Obviously, a new Governor and administration took office in January. In May and July, five new members were added by Governor Cooper and two new members were also added by the Speaker of the House in July. A new vice-chair was elected by the members in

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July and in September the chair named a full slate of new committee chairs and vice-chairs. These transitions were made without negative events and without disruption to the normal business of the EMC.

The remainder of this report is broken in sections that describe the EMC activities in more detail. Section II describes EMC rulemaking adoptions, Section III outlines other EMC actions, Section IV details nutrient control strategies in surface waters that were performed by the Department, and Section V is a brief closing statement. Nutrient control strategies are included in this report because there are a number of legislative requirements that at some point will require EMC action; however, the EMC was not actively involved in the nutrient control strategies implemented by the Department in 2017.

## **II. EMC Rulemaking Adoptions**

### **March 9, 2017 EMC Meeting**

#### **Approved hearing officer's report and adoption of amendments to 15A NCAC 02N and 15A NCAC 02O, Underground Storage Tank Rules**

The EMC adopted amendments to underground storage tank rules: 15A NCAC 02N (Criteria and Standards Applicable to Underground Storage Tanks (UST)) and 15A NCAC 02O (Financial Responsibility Requirements for Owners and Operators of Underground Storage Tanks). The amendments incorporate revisions to federal UST regulations (40 CFR Parts 280 and 281), which were published in the Federal Register in July 2015. The revisions address secondary containment for UST systems and operating training. As required by G.S. 150B-21.4, a fiscal note was prepared for the proposed rule changes. A public hearing and comment period for the proposed amendments was held in November 2016 and opened from November 2016 to January 2017, respectively. A hearing officer's report that includes discussion of the amendments for these UST rules was approved by the EMC.

#### **Approved hearing officer's report and adoption of amendments to 15A NCAC 13B .0840, Sampling and Analysis Management**

The EMC adopted amendments to rule 15A NCAC 13B .0840 (Sampling and Analysis Management) regarding the frequency of soil sampling at septage land application sites. As required by G.S. 150B-21.4, a fiscal note was prepared for the rule changes. A public hearing and comment period for the proposed amendments was held in January 2017 and opened from December 2016 to February 2017, respectively. A hearing officer's report that includes discussion of the changes was approved by the EMC.

### **May 11, 2017 EMC Meeting**

#### **Approved hearing officer's report and adoption of temporary rules 15A NCAC 13A .0101, .0102, .0106 -.0113, .0118, and .0119 (Hazardous Waste Generator Improvements Rule)**

On May 30, 2017, new requirements for EPA's Hazardous Waste Generator Improvement rule will go into effect. In March 2017, the EMC approved a waiver of its 30-day rule and proceeding to public hearing and comment on proposed temporary amendments for rules 15A NCAC 13A .0101, .0102, .0106 -.0113, .0118, and .0119 (Hazardous Waste Generator Improvements Rule) to remove references to new federal requirements that would become effective on May 30, 2017. The temporary rule amendments were adopted by the EMC. A public hearing for the proposed temporary rules was held in April 2017. A hearing officer's report that includes discussion of the temporary rules was approved by the EMC.

**Approved hearing officer's report on proposed reclassification of a portion of the Catawba River, including Lake James, in Burke and McDowell Counties (Catawba River Basin) to Class WS-IV**

In December 2016, the EMC approved proceeding to public hearing and comment for the proposed reclassification of a portion of the Catawba River, including Lake James, in Burke and McDowell Counties to Class WS-IV. For the reclassification, a public hearing was held in January 2017 and the comment period was open December 2016 to January 2017. As required by G.S. 150B-21.4, a fiscal note was prepared for the reclassification proposal. The EMC approved to reclassify a portion of the Catawba River, including Lake James, in Burke and McDowell counties to allow its use as a public water supply. One portion of the segment is reclassified from Class C to Class WS-IV CA and WS-IV(PA), and a second portion of the segment (Lake James) is reclassified from WS-V & B to Class WS-IV & B CA. This action will allow McDowell County to meet local water demands. A hearing officer's report that includes discussion of this proposed reclassification was approved by the EMC.

**July 13, 2017 EMC Meeting**

**Approved hearing officer's report and adoption of amendments to Rule 15A NCAC 02D .0530, Prevention of Significant Deterioration**

In March 2017, the EMC approved a waiver of its 30-day rule and proceeding to public hearing and comment on the proposed amendments to Rule 15A NCAC 02D .0530, Prevention of Significant Deterioration. This action was in response to a proposed disapproval of North Carolina's State Implementation Plan (SIP) submittal. On October 20, 2010 (75 FR 64864), the EPA promulgated key components for making Prevention of Significant Deterioration (PSD) permitting determinations for fine particle pollution - increments, significant impact levels (SIL's), and a significant monitoring concentration (SMC). The EMC adopted some provisions of the corresponding federal regulation in 2013, but not all. On September 14, 2016 (81 FR 63107), EPA published its disapproval of North Carolina's SIP submittal. This disapproval triggers EPA to promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the state timely corrects the deficiencies through an EPA approved SIP revision. The rule amendments, which incorporate by reference revisions to §51.166 of the Clean Air Act as of July 1, 2014, were adopted by the EMC. As required by G.S. 150B-21.4, a regulatory impact analysis was prepared. A public hearing was held in May 2017 and the comment period closed in June 2017. A hearing officer's report that includes discussion of the proposed rule amendments was approved by the EMC.

**September 14, 2017 EMC Meeting**

**Approved hearing officer's report and adoption of temporary amendments for 15A NCAC 02L .0404, .0405, .0406, .0408, and .0409 rules as required by Session Law 2017-57**

In July 2017, the EMC approved a waiver of its 30-day rule and proceeding to public hearing and comment on proposed temporary rules for 15A NCAC 02L .0404, .0405, .0406, .0408, and .0409 rules. This action was triggered by S.L. 2017-57 Section 13.19, which requires the EMC to adopt temporary rules implementing Section 14.16B of S.L. 2015-241 by October 1, 2017. Session Law 2015-241 modifies the Department's handling of petroleum releases from noncommercial USTs following the sunset of the Noncommercial Leaking Underground Storage Fund. The temporary rule amendments were adopted by the EMC. A public hearing and comment period for the proposed amendments was held in July 2017 and opened from July 2017 to August 2017, respectively. A hearing officer's report that includes discussion of the proposed temporary rule amendments was approved by the EMC.

### **November 9, 2017 Meeting**

#### **Approved hearing's officers report and readoption of air quality rules in 15A NCAC 02D Sections .0100, .0200, .0300, .0400, .1300, .2000, and .2200**

In May 2017, the EMC approved proceeding to public hearing and comment with the proposed readoption of 35 air quality rules in 15A NCAC 02D Sections .0100 Definitions and References, .0200 Air Pollution Sources, .0300 Air Pollution Emergencies, .0400 Ambient Air Quality Standards, .1300 Oxygenated Gasoline Standard, .2000 Transportation Conformity, and .2200 Special Orders. The public hearing and comment for the proposed readoption occurred and closed in August 2017. A hearing officer's report that includes discussion of the readoption was approved by the EMC.

#### **Approved hearing officer's report and readoption of 15A NCAC 02D to incorporate the 2015 ozone National Ambient Air Quality Standards**

In May 2017, the EMC approved proceeding to public hearing and comment with the proposed amendment of 15A NCAC 02D .0405 to incorporate the 2015 ozone National Ambient Air Quality Standards. A hearing officer's report that includes discussion of the rule amendments and readoption was approved by the EMC.

#### **Approved hearing officer's report and readoption of 15A NCAC 02T .1500, Soil Remediation, with amendments**

In July 2017, the EMC approved proceeding to public hearing and comment with proposed amendments for 15A NCAC 02T .1500. The readoption of those changes was adopted by the EMC. A public hearing and comment for the proposed rule amendments was held in August 2017 and closed in October 2017, respectively. A hearing officer's report that includes discussion of the proposed rule amendments was approved by the EMC.

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

#### **March 9, 2017 EMC Meeting**

##### **Approved Round 4 Jordan Lake Water Supply allocation recommendations**

Pursuant to G.S. 143-354(a) (11) the EMC has authority to allocate Jordan Lake water supply storage to units of local government. At the beginning of 2017, approximately two-thirds of the water supply pool in Jordan Lake was allocated. DWR's recommendations for the Round 4 Jordan Lake Water Supply were approved by the EMC. These recommendations resulted in a total of 96% allocation of the Jordan Lake water supply pool.

##### **Approved letter to EPA Region 4 in follow-up to EPA decision on 2016 303(d) list**

The EMC approved a letter related to the 2016 -303(d) List as a follow-up to the EPA's decision on this subject. The letter will be sent to EPA Region 4 when a new administrator for Region 4 is named.

## **May 11, 2017 EMC Meeting**

### **Approved proceeding to public hearing and comment for readopting Rule 15A NCAC 02D .0405, Ozone, to incorporate the 2015 ozone National Ambient Air Quality Standards (NAAQS)**

The EMC approved proceeding to public hearing on the proposed readoption with substantive change to Rule 15A NCAC 02D .0405, Ozone. The EPA strengthened its NAAQS for ozone, also known as O<sub>3</sub>, on October 1, 2015 (80 FR 65291). These revisions are the result of EPA's five-year periodic review of NAAQS as required by the Clean Air Act. EPA revised the primary and secondary ozone standards from 0.075 ppm, set in 2008, to 0.070 ppm, while retaining the indicators (O<sub>3</sub>), forms (fourth-highest daily maximum, averaged across three consecutive years) and averaging times (eight hours). The proposed changes to Rule 15A NCAC 02D .0405, Ozone, are necessary to comply with federal requirements. As required by G.S. 150B-21.4, a fiscal note for the proposed rule change was prepared.

### **Approved proceeding to public hearing and comment for readopting air quality rules 15A NCAC 02D Sections .0100, .0200, .0300, .0400, .1300, .2000, and .2200**

The EMC approved proceeding to public hearing and comment on the proposed readoption of 35 rules in 15A NCAC 02D Sections .0100, Definitions and References, .0200, Air Pollution Sources, .0300, Air Pollution Emergencies, .0400, Ambient Air Quality Standards, .1300, Oxygenated Gasoline Standard, .2000, Transportation Conformity, and .2200, Special Orders. As required by G.S. 150B-21.4, a regulatory impact analysis was prepared.

### **Approved Periodic Review of Existing Rules report for dam safety rules in 15A NCAC 02K for submission to the Rules Review Commission (RRC)**

The EMC approved the periodic review report of existing rules in 15A NCAC 02K, the Dam Safety rules, for submission to the RRC as mandated by S.L. 2013-413 (HB74). The report contains the initial determinations and final determinations for these rules based on public comments. In the report, 31 of the 33 rules were categorized as being "necessary without substantive public interest"; two were categorized as "unnecessary."

### **Approved appointments of members to the Water Pollution Control System Operators Certification Commission**

The EMC approved Department of Environmental Quality Secretary Michael S. Regan's recommendation to appoint and reappoint Mr. Matthew A. Haynes and Mr. Arnold E. Allred, respectively, to the Water Pollution Control System Operators Certification Commission.

### **Approved the issuance of a final determination for the Interbasin Transfer Certificate for Union County (Quasi-Judicial)**

The EMC issued a final determination to grant the Interbasin Transfer Certificate (IBT) Certificate to Union County, permitting an interbasin transfer not to exceed 23 MGD from the Yadkin River IBT basin to the Rocky River IBT basin, including all conditions to the certificate as presented.

## **July 13, 2017 EMC Meeting**

### **Approved proceeding to public hearing and comment for readopting 78 rules in 15A NCAC 02Q Sections .0100, .0200, .0300, .0400, .0500, .0800, .0900**

The EMC approved proceeding to public hearing and comment on the proposed readoption of 78 rules in 15A NCAC 02Q Sections .0100, General Provisions, .0200, Permit Fees, .0300, Construction and Operation Permits, .0400, Acid Rain Procedures, .0500, Title V Procedures, .0800, Exclusionary Rules, and .0900, Permit Exemptions. As required by G.S. 150B-21.4, a regulatory impact analysis was prepared for the proposed rule readoption.

### **Approved proceeding to public hearing and comment for proposed amendments to 15A NCAC 02D .1204, Sewage Sludge Incineration Units, to incorporate final Emission Guidelines (EGs) for sewage sludge incinerators**

The EMC approved proceeding to public hearing and comment on the proposed amendments to Rule 15A NCAC 02D .1204, Sewage Sludge Incineration Units. On March 21, 2011, EPA finalized revised New Source Performance Standards (NSPS) and EGs for sewage sludge incineration (SSI) units. The EGs and the identical federal plan set limits for nine pollutants: cadmium, carbon monoxide, hydrogen chloride, lead, mercury, nitrogen oxides, particulate matter, dioxins/furans, and sulfur dioxide for sewage sludge incineration units located at wastewater treatment facilities designed to treat domestic sewage sludge. These limits are pursuant to Clean Air Act Section 129(a)(2), and are based on maximum achievable control technology (MACT) standards. They are subcategorized by unit type in two categories: fluidized bed and multiple hearth. The EMC was required to modify its rules implementing the EGs contained in 40 CFR Part 60 Subpart M. The SSI State Plan must be "at least as protective as" the EGs and must ensure compliance with all applicable requirements not later than 3 years after the State Plan is approved by EPA, but not later than 5 years after the relevant EGs are promulgated. The four subject facilities in the state are currently complying with the federal plan in place while EMC undergoes the rulemaking process. As required by G.S. 150B-21.4, a regulatory impact analysis was prepared for the proposed rule amendments.

### **Approved proceeding to public hearing and comment with proposed amendments to 15A NCAC 02R Ecosystem Enhancement Program**

The EMC approved proceeding to public hearing and comment with proposed amendments to 15A NCAC 02R for the purpose of readoption in accordance with S.L. 2013-413 (HB74). The amendments include technical and formatting changes, updates to reflect current basinwide restoration planning practices, a focus on functional uplift and consistency with basinwide restoration plans, and coastal wetland fees. As required by G.S. 150B-21.4, a fiscal note was prepared for the proposed amendments.

### **Approved proceeding to public notice with Periodic Review of Existing Rules report for 15A NCAC 02N Underground Storage Tanks, 02O Financial Responsibility Requirements for Owners and Operators of Underground Storage Tanks, and 02P Leaking Petroleum Underground Storage Tank Cleanup Funds**

The EMC approved proceeding with the Periodic Review of Existing Rules reports for 15A NCAC 02N, 15A NCAC 02O, and 15A NCAC 02P to public notice under S.L. 2013-413(HB74) rule review pursuant to G.S. 150B-21.3A.

**Approved proceeding to public hearing and comment with proposed amendments and readoption for 15A NCAC 02T Section .1500 Soil Remediation**

The EMC approved proceeding to public hearing and comment with proposed amendments and readoption for 15A NCAC 02T.1500, Soil Remediation. This rulemaking procedure pertains to the S.L. 2013-413 (HB74) rule review process. As required by G.S. 150B-21.4, a fiscal note was prepared for the proposed rule amendments.

**Approved Initial Determinations for public comment for 15A NCAC 02L Groundwater Classification and Standards Rule Review**

In May 2017, the EMC approved the initial determinations for groundwater standards and classifications rules for 15A NCAC 02L Sections .0100, .0200, .0300, .0400, and .0500. For the 66 rules covered, 43 rules were categorized as necessary with substantive public interest, 21 rules were necessary without substantive public interest, and 2 rule rules were unnecessary. The EMC approved the initial determinations for public comment. This rulemaking procedure pertains to the S.L. 2013-413 (HB74) rule review process.

**Approved proceeding to public hearing and comment with proposed amendments and readoptions for rules in 15A NCAC 02T and 15A NCAC 02U**

The EMC approved proceeding to public hearing and comment with proposed amendments and readoptions for 15A NCAC 02T, Waste Not Discharged to Surface Waters and 02U, Reclaimed Water rules. These rules are undergoing the S.L. 2013-413 (HB74) rule review process. As required by G.S. 150B-21.4, a regulatory impact analysis was prepared for the proposed rule-amendments.

**September 14, 2017 EMC Meeting**

**Approved proceeding to public hearing and comment with proposed amendments and readoption for 15A NCAC 13A, Hazardous Waste Management**

The EMC approved proceeding to public hearing and comment on proposed amendments and readoption of 15A NCAC 13A, Hazardous Waste Management Rules. These rules are undergoing review per the S.L. 2013-413 (HB74) rule review process. The rules proposed for permanent rule making will replace the Hazardous Waste Generator Improvement temporary rules.

**October 11, 2017 EMC Meeting**

**Approved proceeding to public hearing and comment with proposed amendments to 15A NCAC 02H .1019, Coastal Stormwater Rule**

The EMC approved proceeding to the public hearing and comment with proposed amendments for rule 15A NCAC 02H. 1019. The amendments are needed to make the applicability criteria for residential developments consistent with S.L. 2008-211 and Senate Bill 16. As required by G.S. 150B-21.4, a fiscal note was prepared for the proposed amendments.

## **November 9, 2017 EMC Meeting**

### **Approved proceeding to public hearing and comment with proposed amendments for air quality rules 15A NCAC 02D .1100, .1201 - .1203, .1205 - .1208, .1211, and .1212 and 02Q Section .0700 and associated regulatory impact analysis**

The EMC approved proceeding to public hearing and comment with proposed amendments for air quality rules 15A NCAC 02D .1100 Control of Toxic Air Pollutants, .1201 - .1203, .1205 - .1208, .1211, and .1212 Control of Emissions from Incinerators and 02Q Section .0700 Toxic Air Pollutants Procedures for the purpose of readoption in accordance with S.L. 2013-413 (HB74). As required by G.S. 150B- 21.4, a regulatory impact analysis was prepared for the proposed amendments for the rules.

### **Approved proceeding to public hearing and comment with proposed amendments for 15A NCAC 02D .1210, Commercial and Industrial Solid Waste Incinerators, and the associated regulatory impact analysis**

The EMC approved proceeding to public hearing and comment with proposed amendments for 15A NCAC 02D .1210, Commercial and Industrial Solid Waste Incinerators (CISWI) for the purpose of readoption in accordance with S.L. 2013-413 (HB74). The proposed amendments are necessary to make 15A NCAC 02D .1210 consistent with EPA requirements pertaining to emission guidelines for CISWI units. As required by G.S. 150B-21.4, a regulatory impact analysis was prepared for the proposed rule amendments.

### **Approved proceeding to public hearing and comment with proposed amendments on Inspection/Maintenance (I/M) rules to incorporate Session Law Section 3.5 Applicability to vehicles with model year with current year and for readoption of 15A NCAC 02D .1000**

The EMC approved proceeding to public hearing and comment with proposed amendments for I/M rules in 15A NCAC 02D ,1002, Applicability, to comply with S.L. Section 3.5 which modifies the vehicle model year coverage requirements for certain North Carolina counties. The EMC also approved proceeding to public hearing and comment on the remaining Section 02D .1000 rules for readoption under S.L. 2013-413 (HB74). As required by G.S. 150B-21.4, a regulatory impact analysis was prepared for the proposed rule amendments.

### **Approved 2018-2020 Coastal Habitat Protection Implementation Action Plan**

The EMC approved the 2018-2020 Coastal Habitat Protection Implementation Action Plan. This plan lays out how the recommendations and actions found within the revised 2016 Coastal Habitat Protection Plan are implemented. Implementation actions developed by DWR and DEMLR staff are included in the Implementation Plan.

### **Denied approval of 2017 Annual Report to the Environmental Review Commission for Basinwide Water Quality Management Planning per G.S. 143-215B**

Per G.S. 143-215B the EMC is required to submit an annual report on Basinwide Water Quality Management Planning. The EMC did not approve of its 2017 report on Basinwide Water Quality Management Planning and established a workgroup to revise the report for presentation for approval at the January 2018 EMC meeting.



### **Denied approval of proposed changes to EMC's Internal Operating Procedures**

The EMC did not approve the proposed changes for the 30-day waiver and conflict of interest language in its internal operating procedures.

### **Denied declaratory rule petition, State of North Carolina versus the Chemours Company FC, LLC 17 CVS 580**

EMC declined to issue a declaratory ruling directing DEQ to move the Bladen County Superior Court to void the Partial Consent Order filed in State of North Carolina v. The Chemours Company FC, LLC, 17 CVS 580 for any and all of the following nonexclusive list of reasons:

1. The petitioner filed a contested case proceeding challenging the same issues and that proceeding provides a judicial forum for finding facts and settling law regarding the allegations in the petition, including the question of whether petitioner is an "aggrieved party";
2. The transactions and occurrences that are the subject of the petition are already being litigated in the North Carolina court system, and the court system provides a way for parties such as petitioner to intervene if their interests are affected by the litigation;
3. The relief sought, "ordering" the Secretary of the Department to take some action in a civil enforcement matter, is not the proper outcome of a declaratory judgment action under GS 150B-4;
4. The petitioner also asks the Commission to review the propriety of the Court's order, and to seek public input on the Court's order, and both requests are well outside of the Commission's powers and the declaratory judgment statute; and/or
5. The consequences of issuing an order in a case such as this would be to risk swamping the Commission's time with petitions to second-guess any enforcement or other decisions of the Department with which someone disagrees, as well as to contravene the legislature's allocation of responsibilities between the Commission and the Secretary.

### **III. Nutrient Control Strategies Sections 2, 3, and 4 of S.L. 2005-190 (as amended by S.L. 2006-259, S.L. 2009-486, and S.L. 2017-10)**

#### **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 of nutrient criteria. The SAC consists of 11 members representing complementary scientific backgrounds. As of November 30, 2017, the SAC has held fifteen meetings. The SAC's current focus is the systemic evaluation and development of recommendations for individual criteria parameters in High Rock Lake. Bimonthly meetings are planned through 2017, and all meetings are open to the public.

A Criteria Implementation Committee (CIC) has also been established, which was formed to address the challenges of implementing any nutrient criteria that may be recommended by the SAC. The Criteria Implementation Committee met in April 2017 and will meet again in 2018. 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 adopting and implementing a nutrient control strategy to reduce excess nutrient loading to the Falls Lake water supply reservoir. Following an extensive stakeholder and rule-making process, the Falls Lake nutrient rules went into effect Jan. 15, 2011, and have been implemented accordingly since that time. Major reduction actions are being implemented over a 10-year first stage, with additional steps scheduled for a 15-year second stage. In July 2016, the General Assembly passed S.L. 2016-94, which calls for an evaluation of the Falls and Jordan nutrient strategies and separates these rules from the rest of the periodic rules readoption process, setting later rulemaking timelines. The legislation also calls on the University of North Carolina at Chapel Hill to conduct studies of the Jordan and Falls strategies and to provide reports and recommendations to the Environmental Review Commission (ERC), EMC and Department of Environmental Quality (Department) by December 2018 and December 2021, respectively, to guide further rulemaking. The EMC is charged with convening a stakeholder working group to provide rulemaking input, considering the findings of the UNC studies, and initiating rules readoption no later than March 15, 2019. The 2016 legislation also tasked the Department with developing reports on several specific strategy-related topics within a year.

During the March 1 – Oct. 31, 2017 period, DWR staff:

- Continued development of a draft nutrient credit practice for riparian buffer restoration in developed areas, intended primarily for local government use under the Existing Development stormwater rule. Revisions were made based on meetings with and review by Division of Mitigation Services (DMS) in May 2017 and joint DMS-Upper Neuse River Basin Association (UNRBA) meeting in October 2017;
- Completed draft of Wastewater “overtreatment” nutrient credit practice, distributed to external Subject Matter Experts for review;
- Made draft revisions to cross-strategy Nutrient Offset rule in April, sought public comment, held meetings with UNRBA and other interested parties, and made additional revisions for inclusion in the package of rules entering the readoption process;
- Solicited a second round of comments from a broad set of stakeholders on the stormwater nutrient accounting tool SNAP v.4, made final revisions to tool and User’s Manual in preparation for release, provided training at several NCSU stormwater workshops;
- Engaged extensively with UNRBA in May-June 2017 over language in active bill S434, ultimately not ratified, that would have modified compliance timeframes and provided for certain kinds of nutrient credit;
- Reviewed and provided comments to UNRBA in July 2017 on its draft Quality Assurance Plan for planned re-modeling of Falls watershed and lake;
- Presented information to UNRBA Board of Directors on Falls Stage I Existing Development implementation requirements and timeline for developing jurisdictional loads and reduction goals;
- Participated in ten UNRBA meetings to receive updates on the Association’s Falls Lake monitoring activities, modeling and nutrient credit development projects and to update the UNRBA Board on DWR activities.

### **Jordan Lake - Section 4 of S.L. 2005-190**

Section 4 requires the EMC to report on progress toward developing and implementing a nutrient management strategy for reservoirs including Jordan Lake. After a several-year stakeholder process, the Jordan Lake rules went into effect in August 2009. Since then, there have been eight session laws that have revised or delayed the rules. Most recently, S.L. 2016-94 terminated an in-lake mixing demonstration project in Jordan Lake and concurrently repealed a three-year delay in implementation of the Jordan rules enacted in 2015. In addition to other Jordan-specific actions described in the Falls section above, the 2016 legislation also restricted implementation of the Jordan stormwater rules.

During the March 1 - Oct. 31, 2017 period, DWR staff:

- Produced interim reports on In-Situ (in-lake) treatment technologies, which the Department submitted to the ERC in March and October 2017 per requirements of Section 14.13(e) of SL 2016-94;
- Coordinated with SePRO Corporation, US Army Corps of Engineers (USACE), drafted and submitted to USACE in October an Outgrant Application, the first step in seeking approval for an in-lake algaecide/phosphorus-locking demonstration project;
- Developed a draft nutrient credit practice document on Storm Drain Cleanout for use by local governments under the Existing Development rule. Presented to and obtained feedback from the Nutrient Scientific Advisory Board (NSAB), created pursuant to Jordan SL 2009-216, in August 2017.
- Developed first draft of a nutrient trading framework. Obtained feedback from the NSAB in June and September 2017 meetings.
- Reviewed and provided feedback in June 2017 on a draft multi-year Agriculture rule progress report from the Jordan Watershed Oversight Committee.
- Reassessed the NSAB operational process at its request, specifically with regards to decision making, stakeholder interests, and feedback mechanisms. Captured in a draft Charter, which underwent NSAB review and is scheduled for approval at the December meeting.

Also, in May 2017 the Department delivered a report, drafted jointly by DWR and DMS staff, evaluating nutrient offset market dynamics in the Jordan and Falls Lake watersheds, as required by Section 14.13(g) of the 2016 legislation, to the General Assembly.

## **IV. Closing**

This report has been prepared based on the 2017 EMC agendas and meeting minutes. A more detailed description of this information can be found on the EMC website. Additional information regarding the Nutrient Control Strategies can be obtained through the Department.

To the best of my knowledge the information contained in this report is accurate and complete.



J.D. Solomon  
Chair, Environmental Management Commission