August 15, 2007

MEMORANDUM

TO: Jordan Rules Hearing Officers

FROM: Rich Gannon and Jason Robinson, DWQ NPS Unit

SUBJECT: Information Produced by PTCOG on the Jordan Rules

Nonpoint Source staff offer the following comments on several pieces of information provided by PTCOG on their website regarding the proposed Jordan Nutrient Strategy. Most of our comments focus on a sample letter tailored for member governments' use in commenting to the EMC on the proposed rules. We find that the letter presents inaccurate information or unsubstantiated speculation on most major points. The PTCOG materials appear to have played a key role in informing commenters at the public hearings, as a large portion of the comments included statements bearing a close resemblance to information posted on the website. Assuming that one of a COGs' roles is to provide accurate and timely information to its member governments, it is unfortunate that they have distributed information containing such significant inaccuracies. We confine our comments to clear inaccuracies and unsubstantiated speculation, leaving a number of misleading statements or omissions for discussion. We offer these comments as background for future discussions.

Sample Letter (bold type repeats section titles in the letter)

1. Inequitable burden of responsibility. The document accurately characterizes the watershed modeling results – majority of nutrient inputs to lake are NPS (in the Haw subwatershed), and a majority of NPS inputs are from agriculture (in the Haw subwatershed). The succeeding statement, *"The proposed rules place very little pollutant load reduction requirement, cost, or accountability on the agricultural community"*, is inaccurate in these respects:

- Load reduction requirements directly reflect the strategy percentage goals for all sources and are directly proportional to baseline loading, meaning that agriculture faces the *greatest* load reduction requirement among nonpoint sources in the Haw.
- The cost comment is inaccurate in that annual costs to the agricultural community would exceed those to developers for the first five years. It is true that costs to the agricultural community as we've estimated are minor compared to existing development and wastewater costs to local governments (this is a function of at least two significant factors: the more cost-effective nature of agricultural BMPs and the fact that our cost estimates reflect an assumption that 75% of installation costs will be funded by state and federal agriculture cost share programs). However, the comment is also misleading in that it is not the responsibility of the rules to distribute costs evenly among sources. Nevertheless, the rules do attempt to make the most cost-effective reduction options available to all parties through offsets and trading, yet PTCOG's comments fail to recognize those elements of the rules.

- We believe that the agricultural community is held fully accountable by the rules, as are local governments. Uncertainties around all enforcement mechanisms make this point arguable.

The final statement in this paragraph, *"The rule is an inequitable and inadequate solution since it does not address the primary pollutant source and ultimately may not improve water quality in Jordan Lake"*, is inaccurate since the rules clearly address agriculture, requiring it to meet the nitrogen loading goal within 5 to 8 years. This is a much shorter timeframe than we anticipate for local governments to address existing development within (although that rule does not set forth compliance timeframes). We believe both are reasonable timeframes specific to the source type, based on the nature of the source and cost and complexity of achieving reductions.

2. Extreme cost and questionable effectiveness of the requirement to retrofit existing development. Phrasing of the first sentence is misleading – *"The unprecedented rule requirement for all previously developed areas to retrofit existing infrastructure is exceedingly costly and places an undue burden on local governments"*. The rule would not require all developed areas to be retrofitted; rather it calls for meeting the percentage goals relative to baseline loading from developed lands, and makes no prescription as to how. In the Haw subwatershed, the percentage targets are 8% N and 5% P. Since conventional stormwater BMPs nominally achieve from 20% to 40% N reduction and 20% to 45% P reduction depending on the BMP, retrofitting all developed lands would far exceed rule requirements in the Haw, not considering the potential for alternative load-reducing practices to further reduce the breadth of implementation needed (on the other hand, in the UNH, such a scenario or equivalent would meet rule requirements since the N reduction target is 35%).

No context is provided to support the characterization of costs as extreme. The comments also do not recognize that annual costs would be based on local feasibility studies, and would potentially be spread over decades.

3. Burdensome new development requirements will have a negative impact on the region's economy. The second statement, *"As written, the rules will require* any *(emphasis added) new commercial or industrial development to build up to three BMPs such as wet ponds, per site, just to achieve the minimum reduction rate needed to buy down the remaining load"*, is inaccurate. While an acceptable export method for Jordan will likely not be established until after the rules become effective, based on the Tar-Pamlico Export Method, Piedmont Version, the most intensive (100% impervious) development would require two BMPs, with a marginal possibility for a third BMP, to reach the offsite threshold. Commercial and industrial developments with up to 70% - 80% impervious would require as little as one BMP to reach the offsite threshold. In most jurisdictions, Phase II would already require one BMP for any such commercial/industrial development.

The last sentence in the paragraph, *"The requirements include limits on density and increased BMPs installation, which will drive up the cost of homes and property, increase sprawl and*

place our region at a significant economic disadvantage" is partly inaccurate factually. There are no density limits proposed, other than carrying forward and continuing the existing density limits in existing WSW's within the Jordan watershed.

No references are given to support the title statement and the last sentence, making them speculative, however PTCOG does not substantiate such claims anywhere that we have seen and does not otherwise indicate that these are simply their opinions.

4. Unwarranted designation of entire watershed as a critical water-supply watershed. The body of discussion, *"That designation will trigger a host of increased regulation now and in the future that will only further limit the potential economic growth opportunity for this region. Specifically, water and wastewater treatment plant permits will be further scrutinized and any expansion requests will be far more difficult as we are approaching the limits of technology for these facilities. In addition, potential land-use density restrictions may be further regulated in the future"*, is partly inaccurate, partly speculative, and does not comport with any DWQ expectations for use of the designation. The Goals rule states the intent and meaning of the critical water supply watershed designation. That statutory designation invokes the EMC's ability to impose more stringent requirements than the state minimum WSW requirements, and the Goals rule clearly states that this set of rules is that more stringent set of requirements. The rule states no option for or interest in imposing any requirements beyond these rules. The Division has not discussed any such thing. Any further restrictions would require additional rule-making.

5. Point sources may be the future target for additional reductions. The premise statement starting this paragraph, *"Numerous studies have shown that point sources represent a relatively small percentage of the basin's overall nutrient loading budget"*, is plainly inconsistent with the results of the watershed model, which estimates point sources as the *largest* single N source in both the Haw and UNH subwatersheds at 35% and 52% of total lake N inputs, respectively, and the *largest and second-largest* P source in the two watersheds at 28% and 29% respectively. The succeeding sentence is speculative – *"However, the current draft rule identifies point sources as the target of both current* ***and future*** *requests for nutrient reductions"*.

6. Inaccurate cost feasibility study. The first statement in this paragraph, *"The accuracy of the fiscal analysis produced by DWQ is highly questionable in many areas and doesn't account for many true "opportunity" or lost opportunity costs in this case"* is not substantiated here or in anything we've received from PTCOG, making for unsubstantiated opinion.

The following sentences state, "*Costs related to the new and existing development rules are significantly underestimated. The cost of compliance will be far greater than what DWQ estimated in the fiscal analysis, currently at almost ¾ of a billion dollars*". Similarly, PTCOG staff has publicly stated that estimates from private professionals greatly exceed those in DWQ's fiscal analysis. These statements are misleading and unsubstantiated. They are misleading first because that total reflects all rules, spread over all affected sources and parties, not just new and existing development costs, and spread over the entire watershed, not just the Haw subwatershed.

Second, the Haw subwatershed faces much less stringent reduction requirements than the Upper New Hope subwatershed, and would face a proportionally smaller fraction of total costs than an even distribution of the total would suggest.

These claims are unsubstantiated to date. PTCOG has not provided DWQ or the public to our knowledge with their own or the referenced private estimates.

Jordan Lake Rules Fact Sheet

The paragraph addressing new development states: "*New Development: The Jordan lake rules… DWQ estimate of cost is $12 million (underestimated).*" This is incorrect; the DWQ fiscal analysis estimates the total cost for the first five years for new development to be $1.1 million.

The paragraph addressing existing development states "*DWQ estimated costs to local governments to meet requirements for stormwater retrofits on existing development: $403,000,000 over five years*". This statement also appeared in a PowerPoint presentation apparently given to PTCOG members at a June 12, 2007 meeting, and which is provided on the website. This statement is incorrect and significantly misleading. The final fiscal analysis estimates an initial five-year cost of $16,400,000 (which reflects one year of actual implementation assuming a 30-year compliance timeframe). A third piece of information on the website, a "Jordan Lake Rules Update" brochure, is even more inaccurate on this point, stating "*DWQ estimated costs to Haw River arm local governments to meet requirements for stormwater retrofits on existing development $403,000,000 over five years."* This adds to the other inaccuracies the incorrect statement that these costs would be borne by the Haw local governments only. As described previously, a larger relative proportion of these costs will occur in the Upper New Hope subwatershed due to its more stringent reduction target for nitrogen. We are further concerned with this information repeated by PTCOG in that repetition tends to reinforce the belief that statements are factual.