

**ENVIRONMENTAL MANAGEMENT COMMISSION
WATER QUALITY COMMITTEE MEETING
SUMMARY**

**July 13, 2011
1:00 PM - 3:00 PM**

BRIEF

At the July 13, 2011 meeting of the Environmental Management Commission (EMC) Water Quality Committee (WQC), the WQC:

- heard information on North Carolina's compensatory mitigation efforts.
- took no action on the proposed consolidated buffer and buffer mitigation rules for the Neuse River Basin, Tar-Pamilco River Basin, Randleman Watershed, and the Jordan Watershed.
- approved to send the final draft of the New River Basin Plan to the EMC for approval.
- approved to send the proposed Water Supply-IV Protected Area and Water Supply-IV Critical Area reclassification for the Neuse River and Quarry in Johnston County (Neuse River Basin) to the EMC for approval to go to notice and public hearing.

WQC members in Attendance:

Mr. Charles H., Peterson (Chairman)
Mr. Donnie Brewer
Dr. David Moreau
Mr. Tom Ellis
Mr. Kevin Martin
Mr. Dickson Phillips
Dr. Ernest Larkin
Mr. Stephen Smith

Others in Attendance:

Chuck Wakild (DWQ Deputy Director)
Coleen Sullins (DWQ Director)
Frank Crawley (DENR General Counsel)
Marion Deeharke (EMC)

The Chair opened up the July 11, 2011 WQC meeting with an introduction of Mr. Clyde Smith, Mr. Steve Keen, Marvin S. Cavanaugh, Sr., and Steve Tedder, all new EMC members.

According to General Statute 138-A15, the Chair gave an opportunity for members of the WQC to publically reveal a conflict or appearance of a conflict of interest with any matter on the meeting agenda. None of the members had any conflict with any matter and therefore no one recused him/herself from participating in a decision on any agenda matter.

1. Overview of Report “Compensatory Stream and Wetland Mitigation in North Carolina – An Evaluation of Regulatory Success” – (Information Item) (Tammy Hill)

Description

The purpose of the study was to evaluate compensatory mitigation efforts in North Carolina (NC), in order to determine if mitigation required under Section 404 permits issued by the U.S. Army Corps of Engineers and 401 Water Quality Certifications issued by the NC Division of Water Quality (NCDWQ) met applicable regulatory success criteria in place at the time of project construction. An overview of the study design, results, and conclusions was presented. ([Slide Presentation as of July 13, 2011](#))

Discussion

Chairman Peterson asked what the difference is between stream restoration and stream preservation. Ms. Hill said that stream restoration requires earth moving work to modify a stream and preservation involves less work to enhance a stream. He also asked what could cause a preservation site to be unsuccessful. She replied that there is occasionally infringement, trespass, or damage by the landowner, neighboring landowners, or others that can cause damage due all-terrain vehicles, mowing, or moving of fences. Mr. Martin asked is there any correlation between data, for one point in time, for the mitigation sites versus follow-up monitoring data for those same mitigation sites. Ms. Hill said yes. He also asked if a correlation was done between those mitigation site that were being actively monitored compared to those where the monitoring was completed to see if things fell apart after the monitoring period. Ms. Hill said that an evaluation of each site at what it was at the present day was done.

2. Request Permission to Proceed to the EMC with Proposed Rules to Consolidate the Neuse, Tar-Pamlico, Jordan and Randleman Riparian Areas Buffer Rules that comply with SL 2011-394 and the Proposed Consolidated Buffer Mitigation and Alternative (Flexible) Mitigation Options Rule – (Action Item) (Amy Chapman and John Dorney)

Description

DWQ is proposing to consolidate several Existing Riparian Buffer Rules (15A NCAC 02B .0233, .0250, .0259, and .0267) into one set of Protection and Maintenance of Existing Riparian Buffer Rules (.0290-.0294) that complies with Session Law 2011-394. The purpose of this consolidation is to make these rules easier to use, incorporate clarification memos, to provide consistency among the current buffer rules and incorporates changes mandated by Session Law. DWQ also is proposing to consolidate several Riparian Buffer Mitigation Rules (15A NCAC 02B .0242, .0244, .0260, .0268, .0609 and .0252) into one Riparian Buffer Mitigation Rule (0295). The purpose of this consolidation is to make these rules easier to use and also to comply with requirements in Session Law 2009-337. Also included in this consolidation of existing rules are new rules addressing Flexible Mitigation Options as required by the North Carolina General Statute 143-214.20. Staff presented these draft rules to the WQC in March 2011, January 2011 and November 2010 and will present a summary of the draft fiscal analyses for these rules. DWQ will request that the WQC waive the 30-day rule to proceed the following day to the EMC with the proposed consolidated buffer and buffer mitigation rules for approval. ([Slide Presentation as of July 13, 2011](#))

The following materials for this agenda item were distributed at the meeting after the revised (July 13, 2011) agenda was posted on the Environmental Management Commission Agendas for 2011 website:

- [Legal Basis for Adoption of Certain Proposed Buffer Rules](#)
- [Additional Suggestions for the Draft Fiscal Note for the Proposed Consolidated Buffer Mitigation and Alternative Mitigation Rules](#)
- [Additional Suggestions for the Proposed Consolidated Buffer Mitigation and Alternative Mitigation Rules](#)

Discussion

Mr. James Gulick, a senior attorney with the North Carolina Department of Justice, gave opening remarks on the legal basis for adoption of the proposed consolidated buffer and buffer mitigation rules. Some of the WQC members provide suggestions about text of certain sections in the proposed buffer rules (15A NCAC .02B .0292). Mr. Larkin suggested that in the Table of Uses the wording “Existing Lots” replace the wording “existing Coastal Residential Properties” because it has the same definition as “existing lots.” Ms. Chapman concurred with Mr. Larkin. Mr. Brewer asked could properties in the Randleman Reservoir watershed that are purchased after the effective date of the Randleman buffer rules get a variance hardship exception under the proposed General Major Variance language with the variance language taken out. Ms. Chapman replied yes because there’s less predictability in the Randleman watershed because you don’t have to adhere to the USGS topographic maps or the USDA soil survey maps. Mr. Larkin asked why the General Major Variance language is an option. Ms. Chapman said that this language is not in our (EMC) rules and we (EMC) don’t have statutory authority at this time. For the Variances section, Mr. Martin suggested that the wording “the applicant’s property showing a lot is intended to be built upon” in (7) (viii) be omitted or reworded. He added that in determining hardship “who caused the hardship” should be considered in variance requests for situations where a applicant purchases property after the effective date of the proposed buffer rules and there’s a hardship to the applicant and the applicant’s use of the property. For the Determination of “NO PRACTICAL ALTERNATIVES” section, Mr. Smith suggested that (1) the word “written” be added in front of the wording finding of “no practical alternatives”, (2) the finding of fact needs to name the other alternatives that were considered and briefly describe why they were determined not to be practical, and (3) the finding of facts be required to be attached to the Authorization Certificate. He requested that these changes be incorporated in the proposed consolidate buffer rules before the WQC receives them in September 2011.

Mr. Martin added that justification of not having the findings of fact should be attached to the Authorization Certificate. Mr. Larkin asked why is it that waters in the Randleman watershed that are determined to be present based on a site-specific determination would be subject to the proposed rules and not for the Neuse River Basin, the Tar Pamlico River Basins and the Jordan Lake watershed. Ms. Chapman said that if this provision were taken out of the proposed consolidated buffer rules, there would be a huge loss of protection for the Randleman watershed. Mr. Brewer added that there are a lot of mistaken location of the waters in this watershed. Mr. Martin pointed out that the stream kick in from Randleman buffer rule was in the buffer rule for the Neuse River Basin and later the legislature removed it that rule and had the EMC to insert the map provision to identify streams for the buffer protection. He went on to say that putting back the Randleman stream kick in provision back into the Neuse buffer rule, the EMC would be undoing what the legislature told it to do. Mr. Phillips asked could a greenway be constructed of anything. Ms.

Chapman replied yes, but a greenway must have a permanent deeded easement associated with it and common development to be under private greenways. Mr. Phillips suggested that the public greenway width in the Table of Uses be from 8 feet to 10 feet. Chairman Peterson said that he is concerned by the lack of buffer protection for the headwaters in coastal areas upstream the streams that do not need restoration. Mr. Dorney said that while it is easy to see where the headwaters in the coastal landscape are it is very difficult to see where in the field they end. Mr. Smith asked Mr. Frank Crawley with General Council to confer with Mr. Martin on the legislation concerning this issue, as per Dr. Larkin's suggestion. General Counsel said that we would try to get this done before September.

Chairman Peterson asked does the economic analysis have to include the benefits. Mr. Dorney said yes. Mr. Dorney said that he could provide in the fiscal note for the proposed buffer rules more description of benefits for the alternatives. Mr. Smith recommended that DWQ staff incorporate all WQC's suggested changes made today and if the veto on 781 is overruled, then DWQ will need to make sure the rules comply with all the terms of SB 781 in particular the consideration two alternatives before returning back to the WQC, rather than take a vote today on whether or not to send the rules to the EMC. Once we know the status of 781, staff would send the WQC an updated rule package and a decision would be made on what to do. Chairman Peterson said that he would enjoy staff's reaction to several points suggested by stakeholders. Dr. Larkin said that he would like to revisit multiplier concept at the next meeting.

Motion

No action was taken on this agenda item because at the present time the status of SB 781/Session Law 2011-398 (Regulatory Reform Act of 2011).

3. Request to Send the Final Draft for the *New River Basinwide Water Quality Plan* to the Environmental Management Commission (EMC) for Approval – (Action Item) (Melanie Williams)

Description

The Division of Water Quality (DWQ) staff will request permission to take the final draft *New River Basinwide Water Quality Plan* to the EMC for approval. Staff presented a summary of plan highlights and public comments. ([Slide Presentation as of July 13, 2011](#))

Discussion

None

Motion

Mr. Ellis made a motion to take the proposal to the EMC in September 2011 and Mr. Larkin seconded his motion. The WQC passed the motion.

4. Request to Proceed to EMC with Proposed Reclassification of Portions of the Neuse River and Quarry in Johnston County (Neuse River Basin) to Class WS-IV Critical Area (CA) and WS-IV (Protected Area or PA) - (Action Item) (Elizabeth Kountis)

Description

Johnston County submitted a request to reclassify portions of the Neuse River and an abandoned quarry located in the county (Neuse River Basin). The subject portions of the Neuse River are to be reclassified from WS-V and WS-IV (PA) to WS-IV (PA) and WS-IV CA, respectively, to allow a new public water supply intake. The quarry is to receive water from the proposed Neuse River intake and is to be reclassified from Class C to WS-IV CA. Reclassification is required to allow construction of the intake and utilization of the quarry's water as a public water supply. This new water supply source will allow the County to meet water demands through 2050. These waters meet the existing criteria for the proposed reclassification. The Water Quality Committee (WQC) was asked to approve this reclassification request in order for staff to proceed to the full EMC for permission to send the proposed reclassification out to public hearing. ([Slide Presentation as of July 13, 2011](#))

Discussion

There was no discussion following staff's presentation on this matter.

Motion

Dr. Moreau made a motion to take the proposal to the EMC in September 2011 and Mr. Ellis seconded his motion. The WQC passed the motion.

5. Request Approval of Agriculture Nutrient Tracking and Accounting Methods for the Jordan Watershed - (Action Item) (Jason Robinson)

Description

Item (7) (b) of the Jordan Agriculture Rule, 15A NCAC 02B .0264, requires the Jordan Watershed Oversight Committee (WOC) to develop tracking and accounting methods for nitrogen and phosphorus loss from agricultural lands in the Jordan watershed. Specifically, the WOC shall develop nitrogen accounting methods for cropland and for pastureland, as well as a phosphorus accounting method. These are to be submitted to the WQC for its approval by August 2011 based on standards set out in the rule requiring submittal within two years of the rule's August 2009 effective date. The proposed methods will be used by the WOC to determine if agriculture has met its nutrient reduction goals. Initial findings will be returned to the Committee at its July 2012 meeting. The Jordan Agriculture Rule and a report summarizing the proposed tracking and accounting methods are provided in the meeting materials. ([Slide Presentation as of July 13, 2011](#))

Discussion

Chairman Peterson expressed his concern on how the agricultural land conversion to development is accounted for and how it reflects on agriculture's performance in reaching nutrient reduction goals. Chairman Moreau commented that reductions from changes in agricultural land use are reported in agriculture's annual reports. Chairman Peterson also expressed a concern about the move of Division of Soil and Water Conservation (DSWC) and Division of Forestry out of the Department of Environment and Natural Resources and how that might present a conflict of interest because it could perceive that an entity regulating agriculture or forestry would be the same entity that's promoting it. Julie Henshaw, with DSWC, explained that as far as the Jordan Watershed oversight goes, the group is represented by many more entities than just the DSWC."

Motion

Mr. Ellis motioned that the WQC approve the Nutrient Tracking and Accounting Method for Jordan and Dr. Moreau seconded his motion. The WQC passed the motion.

Closing Comments – Chairman Peterson

Summary prepared or reviewed by WQC meeting presenters: Adriene Weaver, Tammy Hill, Amy Chapman, John Dorney, Elizabeth Kountis, Melanie Williams, and Jason Robinson.