

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

**Archdale Building-Ground Floor Hearing Room
November 7, 2012**

BRIEF

At the November 7, 2012 meeting of the Environmental Management Commission (EMC) Water Quality Committee (WQC), the WQC:

- approved to send revisions to the proposed Consolidated Buffer Mitigation Rule (15A NCAC 2B .0295) and the proposed repeal of Buffer Mitigation rules (15A NCAC 02B.0242, .0244, .0252 .0260, .0268, and .0609) and draft fiscal analysis to the EMC.
- approved to send North Carolina Department of Transportation's (NCDOT) Jordan Lake New Development Stormwater Management to the EMC and to delegate authority to the Division of Water Quality (DWQ) Director to approve any subsequent program amendments that the NCDOT may propose.
- approved to send Session Law Revisions to the Jordan Lake Nutrient Strategy and the associated fiscal analysis to the EMC.
- approved to send proposed rule amendments to Phase II Stormwater Requirements in accordance with Session Law 2011-220.
- received annual progress reports on the Neuse and Tar-Pamlico Agriculture rules.

WQC Members in Attendance:

Dr. Ernest Larkin
Mr. Steve Tedder
Mr. Benne Hutson
Mr. Jeffrey Morse
Mr. Dickson Phillips III

WQC Members Not in Attendance:

Dr. Charles H. Peterson (Chairman)
Ms. Amy Pickle
Mr. Tom Ellis
Mr. Kevin Martin
Mr. William Less Hall, Jr.

Others Present:

Mr. Chuck Wakild, DWQ Director
Mr. Ted Bush, DWQ Deputy Director
Mr. Frank Crawley, Attorney General Office
Ms. Marion Deehaake, EMC

Under the authority of General Statute § 138A-15 Dr. Larkin in the absence of Dr. Peterson, Chairman for the WQC, inquired as to whether any member of the WQC knows of any known conflict of interest or appearance of conflict with respect to any of the matters on the November

7, 2012 WQC agenda. No WQC member had recused himself from any matter on the November 7, 2012 WQC agenda.

1. Request to Proceed to the Environmental Management Commission with the following: Proposed Repeal of Buffer Mitigation Rules for the Neuse River (15A NCAC 02B .0242), Catawba River (02B .0244), Randleman Lake (02B .0252), Tar-Pamlico River (02B .0260), Jordan Lake (02B .0268), and Goose Creek Watershed (02B .0609); and Revisions to the Proposed Consolidated Buffer Mitigation Rules (15A NCAC 02B .0295) that Were Approved for Public Notice and Hearing by the EMC in the July 2012 Meeting and the Associated Fiscal Note – (Action Item) (Amy Chapman)

Description

The buffer mitigation rules for the Neuse River (15A NCAC 02B .0242), Catawba River (02B .0244), Randleman Lake (02B .0252), Tar-Pamlico River (02B .0260), Jordan Lake (02B .0268), and Goose Creek Watershed (02B .0609) will be replaced by the Consolidated Buffer Mitigation Rule (15A NCAC 02B .0295). DWQ will incorporate the repealed rules in the current draft fiscal analysis for Rule 02B .0295. DWQ also made an edit to Rule 02B .0295. Staff requested approval to proceed to the EMC the next day at which time they will request permission to proceed to public notice and public hearing with the proposed repealed buffer mitigation rules, revised consolidated buffer mitigation rule and fiscal analysis.

Discussion

Mr. Morse asked were any stakeholders opposed to the rule proposal. Ms. Chapman said that there has not been any opposition.

Motion

Mr. Tedder motioned to (1) waive the 30-day rule and (2) proceed with DWQ's staff recommendation. Both motions were seconded by a WQC member and approved by the WQC.

2. Request to Proceed to the EMC for Approval of the North Carolina Department of Transportation's (NCDOT) Jordan Lake New Development Stormwater Management Program and Delegation of Further Approval Authority to the DWQ Director - (Action Item) (Jason Robinson)

Description

The Jordan Lake State and Federal Entities Stormwater Rule, 15A NCAC 2B .0271 requires the NCDOT to prepare, adopt, and implement a program to control nutrient runoff from new development within the Jordan Lake watershed. The NCDOT submitted a draft program for DWQ staff review in February 2012 and has made subsequent revisions based on meetings and staff comments. Staff requested that the Water Quality Committee recommend that the EMC approve the NCDOT's New Development Program as meeting the minimum requirements established in Item (4)(c) of the rule. Staff also requested delegation of authority to the DWQ Director to approve any subsequent program amendments that the NCDOT may propose in the future. The DWQ Director would forward unique future program revisions of concern to the WQC for review.

Discussion

There was no discussion.

Motion

Mr. Tedder motioned that DWQ's request be approved. Mr. seconded the motion and the WQC approved both the recommendation and the motion.

3. Request to Proceed to the EMC with Session Law Revisions to the Jordan Lake Nutrient Strategy and Approval of the Fiscal Analysis – (Action Item) (Michael Herrmann)

Description

After approval from the EMC in May 2008, objections to the Jordan Nutrient Strategy at the Rules Review Commission led to the rules being sent to the 2009 Legislative Session where Session Laws (SLs) 2009-216 and 2009-484 were passed that disapproved the Existing Development Rule (15A NCAC 2B .0266) and modified four others. These rules along with the remaining seven in the strategy became effective in August 2009, commencing implementation of the Jordan Lake strategy. Subsequent legislation (i.e., SLs 2011-394, 2012-187, 2012-200, and 2012-201) made additional adjustments to the strategy. In doing so, these laws direct the EMC to adopt rules that are "substantively identical" to the SLs passed by the General Assembly. These laws have combined to disapprove and replace one rule and modify five others. A fiscal analysis for the SL changes has been completed by the DWQ and was approved by the Office of State Budget and Management in September 2012. The approved fiscal note qualitatively compares the proposed rules with those passed by the EMC in 2008. As such, it is an amendment to the strategy's 2007 fiscal analysis. DWQ requests to proceed to the full EMC for approval to proceed to public notice and hearing with Session Law revisions to the Jordan Nutrient Strategy and for approval of the fiscal analysis.

Discussion

There was no discussion.

Motion

Mr. Tedder motioned that the Division's request be approved. The motion was seconded and then approved by the WQC.

4. Request to Proceed to the EMC to Go out to Public Notice with Proposed Rule Amendments to Phase II Stormwater Requirements in Accordance with S.L. 2011-220 – (Action Item) (Robert Patterson)

Description

DWQ staff will present proposed amendments to rules in 15A NCAC 2H .0152 and 2H .1016. The proposed revisions incorporate the Phase II stormwater requirement revisions of S.L. 2011-220 into the EMC's rules. In accordance with the Session Law, the revised language in the rules is identical to the provisions of the act and has been renumbered to be placed in the rules format. These revisions to the stormwater requirements are currently being implemented as per the Session Law. Staff requested approval to proceed to the EMC that next day at which time they will request permission to proceed to public notice with the proposed rules.

Discussion

There was no discussion.

Motion

Mr. Tedder motioned to waive the 30 day rule. It was seconded followed by approval by the WQC. Mr. Hutson moved that DWQ staff's recommendation be approved along with the fiscal note. Mr. Smith seconded the motion and the WQC approved both the recommendation and the motion.

5. Annual Progress Reports on the Neuse and Tar-Pamlico Agriculture Rules – (Information Item) (John Huisman)

Description

The Neuse and Tar-Pamlico Rules (15A NCAC 2B .0238 and .0256, respectively) require that the Basin Oversight Committees (BOCs) report to the EMC each year on implementation progress. For crop year 2011, the BOCs received and approved annual reports from the 17 Local Advisory Committees (LACs) in the Neuse basin and the 14 Tar-Pamlico LACs. The reports showed cumulative nitrogen loss reductions of 45% and 43% from baseline through 2011 from Agriculture in the Neuse and Tar-Pamlico, respectively. Relative to reductions reported last year, this equates to a 4% decrease in nitrogen loss reduction in the Neuse and a 6% decrease in nitrogen loss reduction in the Tar-Pamlico Basin.

Discussion

Mr. Tedder:

- commented that nitrogen loss reduction could be market driven versus BMPs.
- noted that phosphorous is important in the western North Carolina and encouraged DWQ staff to consider future rules for an accounting methodology for phosphorous.
- asked if there is monitoring presently going in selected smaller watersheds to see some water quality improvements. Mr. Huisman replied that over the years monitoring coalitions have added, at the request of DWQ, additional monitoring stations in watersheds throughout the river basin that we know are of a specific landuse type in order correlate some connection between the water quality at those stations with the land that they drain.

Ms. Deerhaake:

- asked whether North Carolina would see some opportunity for successful nutrient trading. There may be some opportunity for this in the Falls Lake and Jordan Lake watersheds where there are more stringent requirements and the universe of reduction activities of what can be done is more restrictive.
- asked has the DWQ considered looking at how hydrological units within the counties play in the water quality benefits of the percent nitrogen reductions. Mr. Huisman replied that DWQ has not done this analysis for agriculture.
- suggested that DWQ staff evaluate the role of federal air quality regulations in decreasing nitrogen emissions and in turn nitrogen deposition.

Mr. Morse asked has less degradation been seen as a result of having BMPs in place.

This summary was prepared by Adriene Weaver, Amy Chapman, Jason Robinson, Robert Patterson, Michael Hermann, and John Huisman.